

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

FemHealth USA, Inc., d/b/a carafem, on)	
behalf of itself, its physicians, its staff, and its)	
patients,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	
City of Mount Juliet; Kenny Martin, City)	
Manager of Mount Juliet, in his official)	
capacity; James Hambrick, Chief of Police of)	
Mount Juliet, in his official capacity; Jennifer)	
Hamblen, Zoning Administrator of Mount)	
Juliet, in her official capacity,)	
)	
Defendants.)	

COMPLAINT

Plaintiff FemHealth USA, Inc., d/b/a carafem (hereinafter, “carafem”), on behalf of itself, its physicians and staff, and its patients, by and through counsel, bring this Complaint against the City of Mount Juliet; Kenny Martin, City Manager of Mount Juliet, in his official capacity; James Hambrick, Chief of Police of Mt. Juliet, in his official capacity; and Jennifer Hamblen, Zoning Administrator of Mt. Juliet, in her official capacity, and in support thereof allege the following:

PRELIMINARY STATEMENT

1. In recent years, Tennessee politicians have engaged in a relentless attack on abortion rights, enacting a multitude of restrictions designed to shutter clinics that have provided

safe and affordable abortion care and impose unconscionable obstacles on women¹ seeking such care. This lawsuit challenges just such a restriction.

2. On March 3, 2019, two days after carafem’s opening, the Mt. Juliet Board of Commissioners (the “Board”) introduced Ordinance 2019-16 (the “Ordinance”). The Ordinance plainly targeted carafem, the only abortion clinic within the city limits of Mt. Juliet, and effectively precluded any provider of surgical abortions from operating in Mt. Juliet.

3. In remarks published in *The Tennessean* on March 1, 2019, City Commissioner Ray Justice, said: “The members of the commission I have talked to are 100 percent behind shutting this abomination down. . . . This is not Mt. Juliet. This is not us.”² Other officials made comparable public statements.

4. The Ordinance does not protect the health, safety, or welfare of Mt. Juliet citizens, and serves no legitimate governmental interest. It simply prohibits carafem from providing surgical abortions, in turn unduly burdening Tennesseans attempting to access abortion.

5. Plaintiff, the only abortion clinic in Mt. Juliet, brings this lawsuit under 42 U.S.C. § 1983 on behalf of itself, its physicians and staff, and its patients to challenge this restrictive ordinance. It seeks declaratory and injunctive relief from this unconstitutional law.

JURISDICTION AND VENUE

¹ Plaintiff uses “woman” or “women” in this complaint as a short-hand for people who are or may become pregnant, but notes that people of all gender identities, including gender non-conforming people and transgender men, may also become pregnant and seek abortion services and thus also suffer irreparable harm as a result of the Ordinance.

² Andy Humbles, *Mt. Juliet elected officials, religious leaders vow to fight new abortion clinic in city*, NASHVILLE TENNESSEAN (March 1, 2019, 5:03PM), <https://www.tennessean.com/story/news/local/wilson/2019/03/01/mt-juliet-abortion-provider-carafem-resistance-city-church/3029532002/>.

6. This controversy arises out of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the United States Constitution. Because this action arises under the Constitution and laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).

7. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

8. Venue is proper under 28 U.S.C. § 1391 because Defendants reside in this District and because all acts related to this action occurred within this District.

PLAINTIFF

9. Carafem is a 501(c)(3) nonprofit organization registered in the District of Columbia that provides women's reproductive health services. Carafem operates a network of health centers, including one located in Mt. Juliet, Tennessee, that provide information and low-cost options for people seeking abortion care, as well as most methods of birth control and testing for sexually-transmitted infections. In addition to its Mt. Juliet location, carafem has clinics located in Atlanta, Georgia; Washington, D.C.; and Chicago, Illinois.

10. Carafem also brings this action on behalf of its patients, who cannot secure an abortion without the aid of carafem and its physicians. The rights of carafem's patients who seek access to abortion are inextricably bound with carafem's capacity to provide abortion services. Moreover, carafem's patients are and will be unable to assert their own fundamental rights to an abortion, given the extremely short time frame in which to seek an abortion and the desire to protect their privacy, including from potentially abusive partners.

DEFENDANTS

11. The City of Mt. Juliet is a city incorporated in Wilson County, Tennessee. It operates the Mt. Juliet Police Department, employs the individual defendants and has the authority to enforce the Ordinance pursuant to Section 6-19-101 of the Uniform City Manager-Commission Charter set forth in chapters 18-29 of Title 6 of the Tennessee Code, and as adopted by Mt. Juliet (hereinafter, the “City Charter”).

12. Kenny Martin is the City Manager of Mt. Juliet and has the authority to enforce the Ordinance pursuant to Section 6-21-108 of the City Charter. Mr. Martin is sued in his official capacity.

13. James Hambrick is the Chief of Police of Mt. Juliet and has the authority to enforce the Ordinance pursuant to Section 6-21-602 of the City Charter. Mr. Hambrick is sued in his official capacity.

14. Jennifer Hamblen is the Zoning Administrator of Mt. Juliet, and has the authority to enforce the Ordinance pursuant to Sections 14-101 and 14-108 of the Land Use Code of Mt. Juliet. Ms. Hamblen is sued in her official capacity.

FACTUAL ALLEGATIONS

Background on Abortion

15. Legal abortion is one of the safest procedures in contemporary medical practice and is substantially safer than continuing a pregnancy through to childbirth. Studies have estimated that the risk of death associated with childbirth nationwide is approximately 14 times higher than that associated with abortion, and every pregnancy-related complication is more common among women giving birth than among those having abortions.³

³ See Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 215 (2012).

16. Abortion-related mortality is also lower than that for colonoscopies, plastic surgery, adult tonsillectomies, and a multitude of other outpatient medical procedures.⁴ Abortion is safe and effective (and complications are very rare) regardless of the method of abortion used.⁵

17. Legal abortion is not only extremely safe but also common; approximately one in four women in this country will have an abortion by age 45.⁶

18. Individuals seek abortion for a multitude of complicated and personal reasons that are closely tied to each person's values, culture and religion, health and reproductive history, family situation and support system, educational or career goals, and resources and financial stability.

19. Some patients have abortions because they conclude that it is not the right time to become a parent given their age, desire to pursue their education or career, or because they lack the necessary financial resources or level of familial or partner support or stability.

20. Others are already parents; indeed, a majority of abortion patients in the United States already have at least one child.⁷ These individuals may already be struggling to adequately provide for their existing children—both materially and emotionally—and may be concerned about their ability to do so if they add another child to their family. That strain is all

⁴ Ushma Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 *Obstetrics & Gynecology* 175, 175 (2015).

⁵ *Id.*

⁶ See News Release, Guttmacher Inst., *Fact Sheet: Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates* (Oct. 19, 2017), <https://www.guttmacher.org/2017/abortion-commonexperience-us-women-despite-dramatic-declines-rates>.

⁷ See Guttmacher Inst., *Induced Abortions in the United States* at 1 (Sept. 2019), https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf; see also Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, Guttmacher Inst., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, at 6, 7 (May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

the more apparent if one considers that the vast majority—approximately 75%—of abortion patients nationwide are poor or low-income.⁸ That is true at carafem as well, where a significant percentage of patients qualify for need-based financial assistance.

21. In the first trimester of pregnancy, two abortion methods are available. First, a pregnancy can be terminated using medication. In a medication abortion, which is available only up to 10–11 weeks from the last menstrual period (“LMP”), the patient ingests two medications to induce an early miscarriage. The patient ingests the first medication, mifepristone, at the clinic, and takes the second medication, misoprostol, at home 24 to 48 hours later.

22. The other first-trimester abortion method is a surgical or vacuum aspiration abortion. Aspiration abortion involves the use of gentle suction to empty the contents of the uterus. The procedure takes between five and ten minutes to complete and, like medication abortion, is extremely safe. Although sometimes referred to as “surgical abortion,” aspiration abortion does not involve any incision.

23. Medication and aspiration abortion are both common medical procedures, with aspiration being the more prevalent of the two.

24. For patients who are candidates for either medication or aspiration abortion, the choice between the two methods is a matter of patient preference, in conjunction with the recommendations of the clinician.

25. However, some patients are not candidates for medication abortion. For one thing, medication abortion is available only up to 10–11 weeks LMP, while aspiration abortion can be performed after that point. Moreover, patients with various medical conditions—including bleeding disorders; certain heart or blood vessel diseases; severe liver, kidney or lung

⁸ Guttmacher Inst., *Induced Abortions in the United States* at 1 (Sept. 2019), https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf.

disease; an uncontrolled seizure disorder; or patients who are taking blood thinners or steroid medications—are not candidates for medication abortion. And because a medication abortion requires the patient to pass the pregnancy at home over an uncertain period of time, certain patients—including those with caregiving responsibilities at home and some patients at risk for domestic violence—are more appropriate candidates for aspiration abortion.

Carafem Opens Its Doors in Mt. Juliet

26. Carafem operates a network of health centers, including in Atlanta, Georgia; Washington, D.C.; and Chicago, Illinois. These clinics provide a variety of reproductive healthcare services, including abortion care; most methods of birth control; and testing for sexually-transmitted infections.

27. In the months before it opened the Mt. Juliet clinic, carafem regularly saw women from Tennessee travel to its Atlanta, Georgia facility for abortion services. This is because access to abortion services is limited in Tennessee and in the Nashville metropolitan area in particular. Before the Mt. Juliet clinic opened, there was just one abortion clinic in the area—a Planned Parenthood health center in Nashville. As carafem learned in 2018, this clinic could not and does not meet the needs of all individuals seeking abortion. Indeed, the Planned Parenthood-Nashville clinic was unable to offer abortion services at all for several months in early 2019 due to apparent staffing limitations. Even when abortion services were available, it could not meet the needs of all patients seeking abortion care, with patients waiting weeks for an appointment. Many of these patients were forced to travel elsewhere for abortion services, including to carafem's clinic in Atlanta.

28. To better serve these patients, carafem decided to open a new facility in the Nashville metro area. Carafem identified a location for its new facility in a commercial area of

Mt. Juliet, in the Providence Medical Pavilion, which leases medical office space to several health care providers and specialists.

29. The Providence Medical Pavilion houses several other medical clinics in addition to Carafem, including: The Allergy, Asthma and Sinus Center; Alberto Cadeno, OB/GYN; Comprehensive Pain Specialists; Oxford Orthodontics; Premier Radiology; Providence Surgery Center; Results Physiotherapy; TN Maternal Fetal Medicine; Vanderbilt Neurosurgery; and Vanderbilt Orthopaedics.

30. Providence Medical Pavilion is located in a commercial interchange (“CI”) zoning district. Under Mt. Juliet’s Land Development Code (the “Development Code”), “professional services, medical” is a permitted use in CI districts. According to Development Code, Art. III, § 3-103.3 (12), “[p]rofessional services, medical” includes various types of physicians’ offices and clinics, dental offices, optometrists, and outpatient medical service facilities.

31. Carafem’s Mt. Juliet location opened on March 1, 2019, providing medication abortion to women up to 10 weeks from LMP, as well as birth control options and emergency contraception.⁹ Within 48 hours of opening, Carafem was completely booked for the next 30 days.

32. While Carafem offered medication abortion services in the days after the Mt. Juliet clinic opened, it planned to expand its services to include surgical abortion shortly

⁹ Carafem has since expanded its services to offer medication abortion up to 11 weeks from LMP.

thereafter, in order to better meet the needs of its patients. Carafem announced these plans publicly in a press release dated February 28, 2019.¹⁰

Passage of the Ordinance

33. Shortly after carafem's opening, several members of the Board and other city officials made public statements expressing their opposition to carafem's opening and explicitly stating that they would act to prevent carafem from providing abortion services.

34. City Commissioner Brian Abston, in remarks published in *The Tennessean* on March 1, 2019, said: "I was disgusted to hear they plan to open in my district and my town. . . . If there is anything we can legally do to keep them from opening in Mt. Juliet we will do it."¹¹

35. In a statement provided to NewsChannel 5, Commissioner Abston stated: "I was disgusted to hear they plan to open in my district and my town. . . . I realize they have rights, but my constituents and I don't want it here. I am pro-life so I will take any action possible within the law to make sure it's not here."¹²

36. City Commissioner Ray Justice, in remarks published in *The Tennessean* on March 1, 2019, said: "The members of the commission I have talked to are 100 percent behind shutting this abomination down. . . This is not Mt. Juliet. This is not us."¹³

¹⁰ *Carafem Opens Doors in the Nashville, Tennessee Area*, carafem website, (February 28, 2019), <https://carafem.org/carafem-opens-doors-nashville-tennessee-area/>.

¹¹ Andy Humbles, *Mt. Juliet elected officials, religious leaders vow to fight new abortion clinic in city*, NASHVILLE TENNESSEAN (March 1, 2019, 5:03PM), <https://www.tennessean.com/story/news/local/wilson/2019/03/01/mt-juliet-abortion-provider-carafem-resistance-city-church/3029532002/>.

¹² Laurie Everett, *MJ moves to stop abortion clinic*, THE WILSON POST (March 6, 2019), https://www.wilsonpost.com/community/mj-moves-to-stop-abortion-clinic/article_3748b5ca-3fd5-11e9-acee-bba608f35793.html.

¹³ Andy Humbles, *Mt. Juliet elected officials, religious leaders vow to fight new abortion clinic in city*, NASHVILLE TENNESSEAN (March 1, 2019, 5:03PM),

37. In a posting on Facebook, Commissioner Justice also stated that the Board of Commissioners would pursue ways to close carafem's clinic:

The City of Mt. Juliet did not approve an abortion clinic in our city! . . . We are pursuing every possible legal option to stop this "organization" from being in Mt. Juliet. To a man, our city commission is Christian Conservative and will not just "let this happen" without fighting.¹⁴

38. City Commissioner and Vice Mayor James Maness, sharing his opposition to carafem's opening, stated on his Facebook page and his blog:

I am pro-life. The taking of innocent life is called murder. Abortion is not a matter of choice, it's a matter of life and how we value life.¹⁵

39. Mayor Hagerty also reportedly voiced his opposition to carafem in an open letter to supporters that was later published on the blog Left-Handed Conservative, stating:

I too am pro-life. . . . I am guessing most if not all on this email feel the same. Candidly, I am embarrassed and disgusted that this happened on my watch. If I had the power to stop it, I would have done so.¹⁶

40. Consistent with these public statements, the Mt. Juliet Board of Commissioners announced a special meeting for Sunday, March 3, 2019, two days after carafem's opening.

<https://www.tennessean.com/story/news/local/wilson/2019/03/01/mt-juliet-abortion-provider-carafem-resistance-city-church/3029532002/>.

¹⁴ Ray Justice City of Mt. Juliet Commissioner District 1, Facebook Post (March 1, 2019), <https://www.facebook.com/mjcommishd1/posts/1527848127352459>.

¹⁵ James Maness, Facebook Post (March 1, 2019), https://www.facebook.com/jm4mj/?ref=py_c. See also, James Maness, Mt. Juliet Abortion Clinic Blog Post (March 1, 2019, 1:04PM), https://www.jamesmaness.com/mt_juliet_abortion_clinic.

¹⁶ Lefty, *Under cover of darkness*, Left-handed Conservative (March 4, 2019), <https://lefthandedconservative.wordpress.com/2019/03/04/under-cover-of-darkness/>.

41. The only item on the agenda for the special meeting was the first reading of the Ordinance: an amendment to the zoning ordinances that effectively prohibited the provision of surgical abortion services anywhere within the city.

42. The Board convened the special meeting on March 3, 2019, to consider the Ordinance. Mayor Hagerty also attended the special meeting. All four members of the Board voted in favor of the Ordinance. A video recording of the meeting posted on the Mt. Juliet website shows the entire meeting lasted less than five minutes.

43. After review and approval by the Mt. Juliet Planning Commission on March 21, 2019, the Board unanimously approved the Ordinance on April 8, 2019.

44. At each of these meetings, officials made no statements regarding the purpose or intent of the Ordinance apart from the self-evident purpose of blocking access to abortion, heard no public comments or evidence regarding any constitutionally permissible benefits that would be promoted by the Ordinance, and introduced no other testimony or other evidence that supported the passage of the Ordinance.

45. The Ordinance amended Part B of the Unified Development Code of the City of Mt. Juliet, including by amending Articles 2-103.3, Definition, Commercial Activities; 3-102(C), Listing of Activity Types for Commercial Activities; 3-103.3, Commercial Activities-Class and Types; 3-104.7, Provisions Applicable to Commercial Activities; Table 7-102A, Permitted and Conditional Uses and Structures Allowable within Industrial Districts to include Surgical Abortion Clinics. A true and correct copy of the Ordinance is attached hereto as Exhibit A.

46. The Ordinance amends Section 2-103.3 of the Development Code to define “Surgical Abortion Clinics” as:

any entity, place or building in which surgical activity is primarily conducted or aimed toward terminating pregnancy, otherwise known as abortion as defined at Tenn. Code Ann. § 39-15-201.

47. The Ordinance limits Surgical Abortion Clinics to be a permitted use with supplemental provisions (“SUP”) in industrial zones I-G and I-S. Table 7-102A. A SUP is defined in Section 7-102.3:

A use permitted with supplemental provisions is an activity, use or structure which is permitted subject to a finding by the Zoning Administrator that the specific standards indicated for the use in question have been met. Only those uses and structures so indicated in table 7-102A, may be allowed within the districts indicated.

48. The Ordinance further restricts the locations in which Surgical Abortion Clinics may be located by amending Section 3-104.7 to state that no such Surgical Abortion Clinic:

shall be located within 1,000 feet (measured property line to property line) of any church, public or private school ground, college campus, public park or recreation facility, public library, child care facilities, or a lot zoned residentially or devoted primarily to residential use.

49. Because of the specific restrictions set forth in the Ordinance, there is no land in Mt. Juliet where a Surgical Abortion Clinic may be located. There is no land in Mt. Juliet zoned I-S. There are only two areas in Mt. Juliet currently zoned I-G.¹⁷

¹⁷ City of Mt. Juliet, Tennessee, Official Zoning Map, <https://www.mtjuliet-tn.gov/DocumentCenter/View/82/Zoning-Map-PDF>.

50. The first area of land zoned I-G is located near the intersection of Golden Bear Gateway and East Division Street, as shown on the zoning map below in Figure 1.

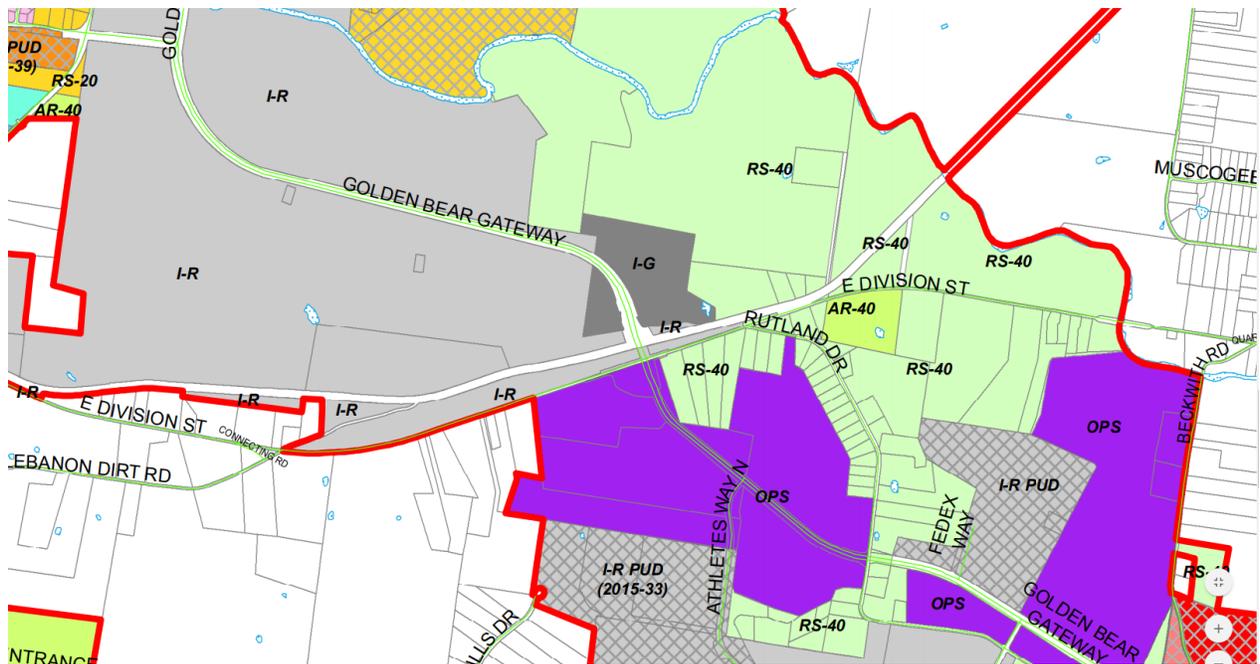


Figure 1. Excerpt of Mt. Juliet Zoning Map¹⁸

51. However, most of this I-G zone is surrounded by land zoned for RS-40, Single Family Residential use. Because of the restrictions in Section 3-104.7, namely, that any clinic must be at least 1,000 feet from a lot zoned for residential use, a Surgical Abortion Clinic could not be located in this I-G district.

52. Moreover, this I-G zone appears to be largely undeveloped land. Thus, even if it were legal to operate a Surgical Abortion Clinic in this area, building a new medical facility on this lot would be cost-prohibitive.

53. The second I-G zoned district is located near the Main Street District, around Industrial Drive and East Division Street, shown in dark gray in the zoning map below:

¹⁸ City of Mt. Juliet, Tennessee, Official Zoning Map, <https://www.mtjuliet-tn.gov/DocumentCenter/View/82/Zoning-Map-PDF>.

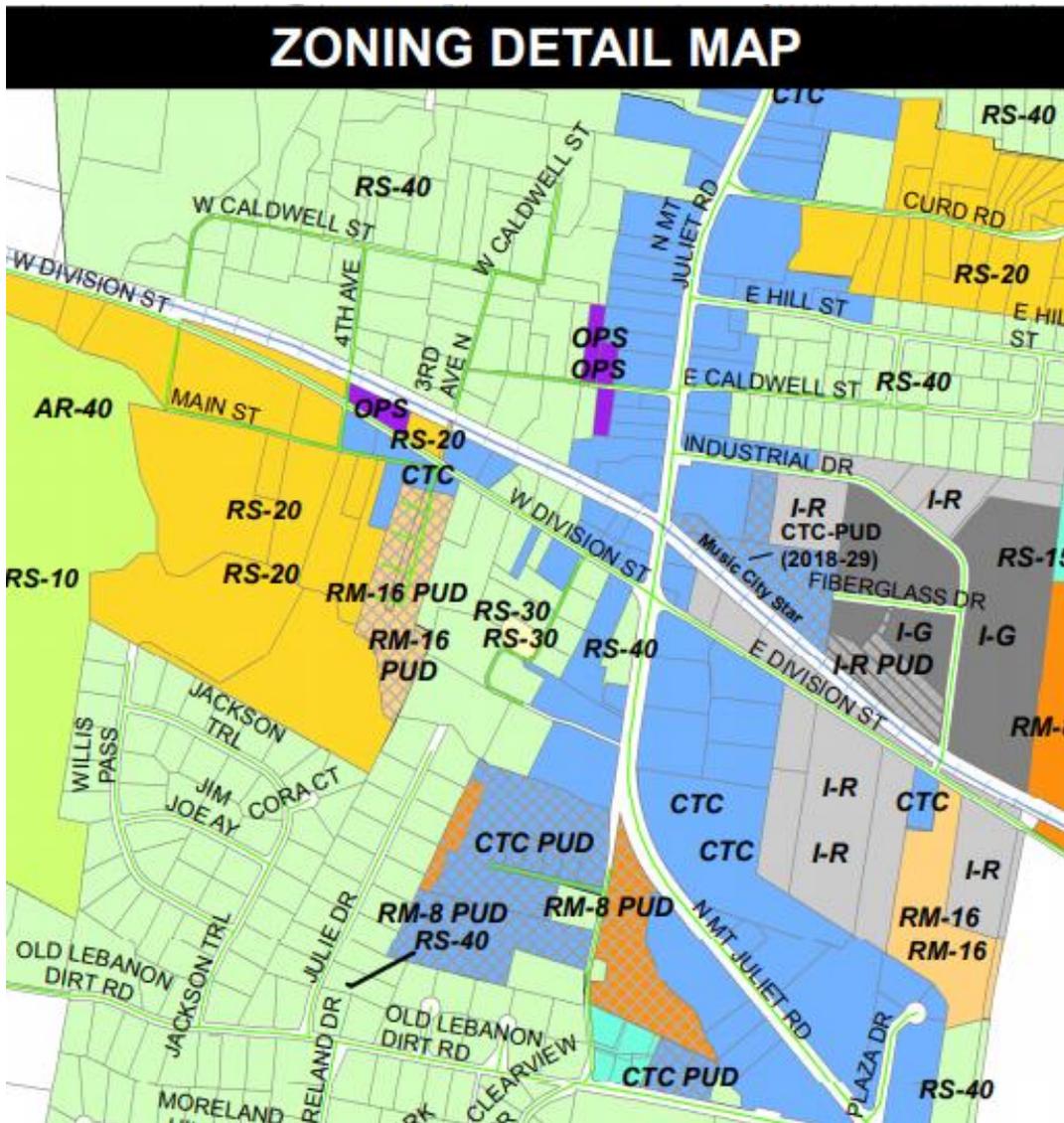


Figure 2. Excerpt of Mt. Juliet Zoning Map¹⁹

54. There are several businesses located within this area, including Flexible Metal Products, Brittle Kettle, Battery Shop, Irving Materials, Inc., Nashville Ready Mix, and Mt. Juliet Tae Kwon Do, Inc. However, The Fellowship Ministries, Mt. Juliet, a church, is located adjacent to this zone, and the surrounding land is zoned for residential use.

¹⁹ City of Mt. Juliet, Tennessee, Official Zoning Map, <https://www.mtjuliet-tn.gov/DocumentCenter/View/82/Zoning-Map-PDF>.

55. Because the Ordinance prohibits a Surgical Abortion Clinic from operating within 1,000 feet from any church or any lots zoned for residential use, a Surgical Abortion Clinic cannot be located in this I-G district.

56. Thus, in purpose and effect, the Ordinance is a complete ban on Surgical Abortion Clinics within the city limits of Mt. Juliet.

57. After the passage of the Ordinance, carafem explored its legal options, including seeking consent from Mt. Juliet to be grandfathered in under the previous zoning ordinances. Mt. Juliet rejected those efforts.

58. Carafem currently has the personnel, facilities, equipment, and expertise to provide surgical abortions at its Mt. Juliet clinic. But for the Ordinance, carafem would currently be providing surgical abortion services.

The Ordinance Was Enacted with the Impermissible Purpose of Blocking Abortions

59. The purpose of the Ordinance was to unduly burden Mt. Juliet women seeking an abortion and to hinder women's free choice. As the contemporaneous statements of the officials who enacted the Ordinance make clear, the sole purpose of the Ordinance is to block access to abortion in Mt. Juliet. Indeed, the day after carafem announced its intentions to provide surgical abortions at its Mt. Juliet clinic, city commissioners announced their intention "to stop this 'organization' from being in Mt. Juliet."

60. The Ordinance's operation in practice confirms its purpose. As discussed above, the Ordinance limits abortion clinics to areas in Mt. Juliet zoned I-S and I-G—but there is no land in the city zoned I-S, and the Ordinance's restriction on proximity to residential areas and churches renders any land zoned I-G off-limits for Surgical Abortion Clinics. There is no

location in Mt. Juliet in which a Surgical Abortion Clinic would be permitted, which is the very intent of the Ordinance.

61. Moreover, there is no constitutionally tolerable justification for this severe restriction in the Ordinance's legislative history or its operation; indeed, there is no justification at all. The Board did not make any legislative findings, identify any legitimate purpose, or enter, hear, or consider any evidence that the Ordinance would promote health, safety, or welfare, or serve any interest other than stopping the provision of abortion.

62. Enacting the Ordinance was motivated solely by animus against carafem's abortion services by the Board.

63. Because the principal purpose of the Ordinance is to restrict abortion access, it burdens a constitutional right with no constitutionally permissible reason and is invalid.

The Ordinance Creates An Undue Burden On Women Seeking Abortion Care

64. The Ordinance's ban on surgical abortion in Mt. Juliet is unduly burdensome to all patients seeking such procedures.

65. Currently, there is only one provider of surgical abortions in Nashville, TN: Nashville Health Center, which is operated by Planned Parenthood of Tennessee and North Mississippi (hereinafter, "Planned Parenthood-Nashville"). In December 2018, Planned Parenthood-Nashville stopped offering any abortion services at that location, reportedly due to staffing difficulties. Although abortion services resumed at that location in March 2019, availability is intermittent, and at best there are lengthy wait times of two to three weeks for abortion services due to capacity constraints.

66. These wait times were discussed at length in recent litigation involving Planned Parenthood-Nashville; the testimony indicated that patients seeking to schedule an abortion at the

clinic would have to wait one to three weeks for their first visit and an additional two to six days for their second appointment if they were having a medication abortion, or over a week for their additional second appointment if they were having a surgical abortion.²⁰ For some patients, that delay would be as long as six weeks from the initial request to the scheduling of the abortion.²¹

67. Due to capacity constraints and wait times at Planned Parenthood-Nashville, patients are faced with the prospect of traveling hundreds of miles round-trip to obtain surgical abortion services at another clinic. Indeed, during the period in which Planned Parenthood stopped providing abortion services in Nashville, carafem saw a significant increase in the number of clients making the long, burdensome journey from Tennessee to carafem's Atlanta facility to seek abortion care. During January 2019, carafem found that 5% of women coming to its Atlanta location were from Tennessee.

68. Such lengthy inter-city travel subjects women to burdensome expenses, including expenses associated with transportation and lodging. This travel requirement is burdensome for anyone, but particularly for low-income women, who are disproportionately likely to be seeking abortion services. For poor and low-income women, the inter-city travel that is now required to seek an abortion delays numerous women in seeking an abortion, and prevents others from being able to obtain an abortion altogether.

69. Indeed, women who travel to other abortion providers face burdensome expenses, including gas or bus fare, lodging expenses, childcare expenses, and lost wages due to time away from work. Many women may not be able to afford such a trip. Women who make these lengthy trips also face personal burdens, such as a loss of confidentiality. For instance, some

²⁰ Trial Transcript Vol. 2 at 97:1-24, *Adams & Boyle P.C. v. Slatery*, No. 3:15-cv-00705 (M.D. Tenn. Sept. 24, 2019).

²¹ *Id.*

women in abusive relationships may be unable to leave for the day or more that such travel requires without revealing their intent to have an abortion, particularly if their partners are aware that the women are pregnant. Such women may be subjected to an increased risk of violence and abuse in these circumstances.

70. The burdens women face as a result of the Ordinance are compounded by other obstacles to abortion access in Tennessee law. For example, Tennessee law prohibits many private health insurance plans from providing abortion coverage—including for medically necessary procedures, *see* Tenn. Code Ann. § 56-26-134, and also limits abortion coverage in public health insurance plans, *see* Tenn. Code Ann. § 9-4-5116. Further, Tennessee law requires a woman seeking an abortion to make two trips to a clinic, *see* Tenn. Code Ann. § 39-15-202(b), (d)(1). The first visit is for in-person counseling by a doctor. The woman then must wait at least 48 hours before returning for an abortion.

71. The delays in abortion access caused by the Ordinance subject patients to increased medical risk. Although abortion is safe throughout pregnancy—and safer than many other common medical procedures—both the risk of complications and the cost of the procedure increase with gestational age.

72. As such, the Ordinance imposes substantial burdens that are not justified by any legitimate governmental interest.

73. Because the Ordinance has both the impermissible purpose and effect of imposing an undue burden on abortion access, the Ordinance is unconstitutional.

The Ordinance Denies carafem and Its Patients Equal Protection Under the Law

74. There is no legitimate basis for the Ordinance, which distinguishes between surgical abortions—by effectively banning them from the city limits of Mt. Juliet—and the numerous comparable medical procedures that are unaffected by the Ordinance.

75. The Ordinance singles out surgical abortion from other medical procedures and treats providers of surgical abortion disparately as compared to similarly situated medical practitioners. Specifically, providers of surgical abortion are effectively precluded from operating anywhere in the city of Mt. Juliet whereas other medical services and outpatient surgery providers are unaffected.

76. While the Ordinance prevents practitioners from offering surgical abortion procedures within CI-zoned districts (or, effectively, anywhere within the city limits of Mt. Juliet), other outpatient surgical procedures are performed in the very same building as carafem’s Mt. Juliet Office. Indeed, the Providence Medical Pavilion, where carafem is currently located, houses several other facilities, including Providence Surgery Center, which performs a variety of cardiac, ENT, orthopedic, pain, and podiatry outpatient surgical procedures, some which may involve the use of sedation or anesthesia.²² Moreover, none of the other medical providers in the Providence Medical Pavilion were restricted by the Ordinance and are permitted to continue performing outpatient surgery.

77. The city has failed to identify any “compelling reason” for the Ordinance—or any legitimate basis whatsoever. The Board neither introduced nor heard any evidence suggesting that the Ordinance would serve any particular purpose before passing it, nor did it describe any ends—apart from reducing the availability of abortion—it sought to achieve.

²² Providence Surgery Center, *About Us*, <http://providenceasc.com/about-us> (last accessed November 12, 2019).

78. The Ordinance does not further any interest in patient health or safety. Surgical abortion is an extremely safe medical procedure.

79. The rate of major complications from abortion is similar to the rate of major complications from colonoscopy (0.24%), another minimally invasive procedure.²³ The overall abortion complication rate is lower than that for wisdom tooth extraction, which is nearly 7%, according to one study. The overall abortion complication rate is also lower than that for tonsillectomy, which is around 8-9%.²⁴

80. Abortion is also far safer than the alternative—carrying a pregnancy to term. Almost 29% of hospital deliveries involve at least one obstetric complication. The major complication rate for hospital deliveries is 1.3%. As a result, denying a woman who wants to have an abortion access to legal abortion services does not benefit her health.²⁵

81. Despite the safety of surgical abortion, the Ordinance treats Plaintiff disparately as compared to similarly-situated medical providers. The Providence Medical Pavilion, in which carafem is currently located, houses several other medical clinics, and at least one of these clinics provides outpatient surgical procedures. However, the Ordinance did not affect any other medical service provider in the Providence Medical Pavilion, including those that provide surgical services.

82. The disparate treatment of providers of surgical abortion by the Ordinance is not related to and does not further any valid government interest, nor is it narrowly tailored to further

²³ Note to ACLU: The Providence Surgery Center website does not indicate the types of procedures performed.

²⁴ ANSIRH, Issue Brief #6 Safety of abortion in the United States (Dec. 2014).

²⁵ ANSIRH, Issue Brief #6 Safety of abortion in the United States (Dec. 2014).

a compelling government interest. Indeed, the Ordinance was passed without any identification of any reason for its implementation.

83. The Ordinance was the product of ill will and animus against abortion providers and patients.

84. The Board knew or should have known that passing the Ordinance would have the purpose and effect of banning clinics that provide surgical abortion within the city limits of Mt. Juliet. The Board of Commissioners passed the Ordinance with the intent of making abortion less accessible and less affordable for Mt. Juliet women.

85. With nothing but opposition to abortion purporting to justify this discriminatory treatment, the Ordinance denies carafem equal protection under the law and is unconstitutional as a result.

The Ordinance Is Arbitrary, Capricious, and Lacks Any Rational Basis

86. The Ordinance is arbitrary, capricious, and not rationally related to a legitimate public purpose.

87. The Ordinance bars an entire category of business, because, as discussed above, no Surgical Abortion Clinics are permitted within Mt. Juliet. However, the Ordinance fails to promote the health, safety, morals, convenience, order, prosperity, and welfare of Mt. Juliet citizens.

Carafem and Its Patients Are Being Irreparably Harmed by the Ordinance

88. The Ordinance has irreparably harmed carafem's patients, and will continue to do so each and every day it remains in effect. Since the Ordinance was enacted, carafem has been forced to turn away women seeking aspiration abortion services who are not eligible for

medication abortion, including all women past 11 weeks of pregnancy and those with contraindications to medication abortion.

89. Denying these women access to time-sensitive medical care causes them irreparable injury. There is just one other abortion clinic in the Nashville metropolitan area, and its limited capacity means that women seeking aspiration abortion at a minimum incur a lengthy wait time of 2-3 weeks or greater, and some are unable to get an appointment at all.

90. While abortion is a very safe procedure, such unwanted delay subjects patients to increased medical risks.

91. Women unable to obtain abortions in the Nashville area face the prospect of traveling hundreds of miles round-trip to the next-closest clinics—and doing so twice (or securing lodging for a multiple-night stay) if the clinic is in a state like Tennessee that mandates multiple in-person visits to the clinic at least 48 hours apart.

92. Many women seeking carafem's services are low-income, and for many poor women struggling to make ends meet, financial and logistical challenges make such travel difficult or impossible, and, at a minimum, result in delayed access to care.

93. The Ordinance deprives women of their constitutional right to abortion, and will continue to cause irreparable injury absent relief from this Court.

94. Plaintiff has no adequate remedy at law.

CAUSES OF ACTION

COUNT 1 – SUBSTANTIVE DUE PROCESS: UNCONSTITUTIONAL PURPOSE OF

IMPOSING AN UNDUE BURDEN

95. The allegations of the foregoing paragraphs are incorporated as though fully set forth herein.

96. The Ordinance was enacted for the purpose of imposing an undue burden on women seeking a surgical abortion in Mt. Juliet.

97. Therefore, the Ordinance violates the Due Process Clause of the Fourteenth Amendment and is invalid.

**COUNT 2 – SUBSTANTIVE DUE PROCESS: UNCONSTITUTIONAL EFFECT OF
IMPOSING AN UNDUE BURDEN**

98. The allegations of the foregoing paragraphs are incorporated as though fully set forth herein.

99. The Ordinance has the effect of imposing an undue burden on women seeking a surgical abortion in Mt. Juliet.

100. Therefore, the Ordinance violates the Due Process Clause of the Fourteenth Amendment and is invalid.

COUNT 3 – EQUAL PROTECTION

101. The allegations of the foregoing paragraphs are incorporated as though fully set forth herein.

102. The Ordinance denies equal protection of the laws to Plaintiff and its patients in violation of the Equal Protection Clause of the Fourteenth Amendment.

COUNT 4 – SUBSTANTIVE DUE PROCESS: ARBITRARY ZONING DECISION

103. The allegations of the foregoing paragraphs are incorporated as though fully set forth herein.

104. The Ordinance is an arbitrary, unreasonable, capricious, and discriminatory zoning regulation that lacks any substantial relationship to the public health, safety, morals, or

general welfare. The Ordinance violates both the Due Process Clause of the Fourteenth Amendment and Article I, Section 8 of the Tennessee Constitution, and is invalid.

WHEREFORE, as a result of the foregoing, Plaintiff would respectfully request that this Honorable Court award a judgment to Plaintiff as follows:

- A. Issue a declaratory judgment that the Ordinance is unconstitutional and unenforceable on its face;
- B. Preliminarily enjoin Defendants and their employees, agents, and successors in office from enforcing the Ordinance;
- C. Permanently enjoin Defendants and their employees, agents, and successors in office from enforcing the Ordinance;
- D. Grant Plaintiff attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and/or
- E. Grant such other and further relief as this Court may deem just, proper and equitable.

Respectfully submitted,

/s/ Thomas H. Castelli
Thomas H. Castelli, BPR#024849
Legal Director
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
Tel.: 615-320-7142
tcastelli@aclu-tn.org

Andrew D. Beck*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004
Tel.: 212-549-2633
abeck@aclu.org

Elizabeth P. Gray*
Heather M. Schneider*
Tara L. Thieme*
Vanessa Richardson*
Devon W. Edwards*
Sruti Swaminathan*
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
hschneider@willkie.com
(212) 728-8187
(212) 728-9187 *Facsimile*

**Pro hac vice motion forthcoming*

Attorneys for Plaintiff