

**IN THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
TENNESSEE, NORTHEASTERN DIVISION**

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CHRISTOPHER SULLIVAN,            )  
NATHAN HASKELL, and            )  
WILLIAM GENTRY,                )

*Plaintiffs,*                )

v.                                        )

Case No. 2:17-cv-00052

SAM BENNINGFIELD and         )  
ODDIE SHOUBE,                 )

Judge Crenshaw

*Defendants.*                )

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**PLAINTIFFS’ MOTION TO CERTIFY QUESTIONS OF STATE LAW**

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Come now the Plaintiffs, by and through undersigned counsel, and respectfully move this Court to certify three determinative questions of state law that govern this action to the Tennessee Supreme Court pursuant to Tenn. Sup. Ct. R. 23, § 1.

**I. Introduction**

The Plaintiffs’ Amended Complaint alleges state law claims for relief pursuant to both Tenn. Const. art. I, § 8 and Tenn. Const. art. I, § 3. See Doc. #13, pp. 14-15 (Claims #4 and #5). The Plaintiffs have also sought attorney’s fees under 42 U.S.C. § 1988(b) on the basis that conditioning the length of an inmate’s sentence upon his or her agreement to be surgically sterilized is “clearly in excess of [a judge’s] jurisdiction” under applicable Tennessee law. *Id.* See also Doc. #13, p. 3., ¶ 13; Doc. #13, p. 15, ¶ 4.

Whether the Plaintiffs have stated cognizable claims for relief under Tenn. Const. art. I, § 8, Tenn. Const. art. I, § 3, and 42 U.S.C. § 1988(b) present important and dispositive state law questions of first impression upon which there is no controlling state

law precedent. Accordingly, the Plaintiffs submit that the following three questions should be certified to the Tennessee Supreme Court for resolution under Tenn. Sup. Ct. R. 23, § 1:

1. Whether Tenn. Const. art. I, § 8 forbids a judge from conditioning the length of a defendant's sentence on his or her agreement to be surgically sterilized;
2. Whether Tenn. Const. art. I, § 3 forbids a judge from conditioning the length of a defendant's sentence on his or her agreement to be surgically sterilized; and
3. Whether Tennessee law reflects that conditioning the length of a defendant's sentence on his or her agreement to be surgically sterilized is clearly in excess of a judge's jurisdiction.

## **II. Standard for Certification**

“The Supreme Court of Tennessee has explained that ‘[r]ather than requiring a federal court to make the law of this state[,] . . . answering certified questions from federal courts promotes judicial efficiency and comity and also protects this state’s sovereignty.’” *Eiswert v. United States*, 619 F. App'x 483, 486 (6th Cir. 2015) (quoting *Renteria–Villegas v. Metro. Gov't of Nashville & Davidson Cnty.*, 382 S.W.3d 318, 320 (Tenn.2012)). To facilitate and enable certification, Rule 23 of the Tennessee Supreme Court Rules provides that:

The Supreme Court may, at its discretion, answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, a District Court of the United States in Tennessee, or a United States Bankruptcy Court in Tennessee. This rule may be invoked when the certifying court determines that, in a proceeding before it, there are questions of law of this state which will be determinative of the cause and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court of Tennessee.

Tenn. Sup. Ct. R. 23, § 1.

Applying Rule 23, the Sixth Circuit has instructed that a case “is proper for certification to the Supreme Court of Tennessee” when: (1) it will determine a “central question in the case,” and (2) “there is no controlling precedent from the Supreme Court of Tennessee on [the] question.” *Eiswert*, 619 F. App'x at 486.

### **III. Argument**

In the instant case, Rule 23’s standard is satisfied as to all three questions for which the Plaintiffs seek certification.

With respect to Plaintiffs’ claims under Tenn. Const. art. I, § 8, the Tennessee Supreme Court has held:

The language of the “due process” provisions in the United States Constitution differs from the “law of the land” provision found in the Tennessee Constitution. Although the terms on occasion have been viewed as synonymous, *Daugherty v. State*, 216 Tenn. 666, 393 S.W.2d 739, 743 (1965), the United States Supreme Court’s interpretations of the United States Constitution establish a minimum level of protection while **this Court, as final arbiter of the Tennessee Constitution, is always free to extend greater protection to its citizens.**

*Seals v. State*, 23 S.W.3d 272, 277 (Tenn. 2000) (emphasis added).

There is no controlling precedent as to whether Tenn. Const. art. I, § 8 affords inmates greater protection than the federal Constitution with respect to state-sponsored inmate sterilization efforts. Further, the Tennessee Supreme Court has previously (and very recently) accepted multiple certified questions on matters of state law sentencing policy on the basis that resolving such questions promotes efficiency and comity and protects Tennessee’s sovereignty. *See Ray v. Madison Cty., Tennessee*, No. M201601577SCR23CV, 2017 WL 3526337, at \*5 (Tenn. Aug. 16, 2017). Moreover, as

Defendants have noted, despite having removed this case to federal court themselves, see Doc. #1 (Defendants' Notice of Removal), matters affecting state sentencing policy are traditionally reserved for adjudication in a state forum. See Doc. #16, pp. 2, 10-11 (noting abstention doctrines). Thus, permitting the Tennessee Supreme Court to act "as final arbiter" on this matter is uniquely appropriate in the instant case. *Seals*, 23 S.W.3d at 277 (Tenn. 2000).

With respect to Plaintiffs' claims under Tenn. Const. art. I, § 3, persuasive Tennessee Supreme Court precedent supports Plaintiffs' claims, although the applicable caselaw cannot be characterized as controlling. In interpreting Tenn. Const. art. I, § 3, the Tennessee Supreme Court has held on two occasions that issues of procreational autonomy are governed in part by the Tennessee Constitution's guarantee of the right to conscience. See *Planned Parenthood of Middle Tennessee v. Sundquist*, 38 S.W.3d 1, 13 (Tenn. 2000); *Davis v. Davis*, 842 S.W.2d 588, 600 (Tenn. 1992), *on reh'g in part*, No. 34, 1992 WL 341632 (Tenn. Nov. 23, 1992). Thus, while Plaintiffs' claims undoubtedly *implicate* Tenn. Const. art. I, § 3, the Tennessee Supreme Court's guidance on the matter is insufficiently clear to determine whether Tenn. Const. art. I, § 3 *controls* them. As such, Plaintiffs' claims under Tenn. Const. art. I, § 3 also present a novel, determinative question of state law, and this Court should certify this question for resolution as well.

Third and finally, the Plaintiffs have alleged a claim for attorney's fees under 42 U.S.C. § 1988(b) under the theory that Defendant Benningfield's Sterilization Orders were issued clearly in excess of his jurisdiction under Tennessee law. Doc. #13, p. 3., ¶ 13; Doc. #13, p. 15, ¶ 4. Whether, as a matter of law, Defendant Benningfield's Sterilization Orders clearly exceeded his jurisdiction under Tennessee law is also a dispositive and exclusive

question of state law, and its resolution will conclusively determine this claim. Accordingly, this question is proper for certification as well.

### **Conclusion**

For the foregoing reasons, the following three questions should be certified to the Tennessee Supreme Court for resolution pursuant to Tenn. Sup. Ct. R. 23, § 1:

1. Whether Tenn. Const. art. I, § 8 forbids a judge from conditioning the length of a defendant's sentence on his or her agreement to be surgically sterilized;
2. Whether Tenn. Const. art. I, § 3 forbids a judge from conditioning the length of a defendant's sentence on his or her agreement to be surgically sterilized; and
3. Whether Tennessee law reflects that conditioning the length of a defendant's sentence on his or her agreement to be surgically sterilized is clearly in excess of a judge's jurisdiction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of November, 2017, a copy of the foregoing was sent via CM/ECF, and to the following parties:

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