Filing # 153366653 E-Filed 07/14/2022 04:29:34 PM

IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT, STATE OF FLORIDA

CASE NO. 1D22-2034
L.T. CASE NO. 2022-CA-912

STATE OF FLORIDA, ET AL.,
Defendants-Appellants,

v.

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, ET AL.,
Plaintiffs-Appellees.

ON APPEAL FROM A NON-FINAL ORDER OF THE SECOND JUDICIAL CIRCUIT

APPELLANTS' RESPONSE IN OPPOSITION TO EMERGENCY MOTION TO VACATE AUTOMATIC STAY

ASHLEY MOODY
Attorney General

HENRY C. WHITAKER (FBN1031175)
Solicitor General
DANIEL W. BELL (FBN1008587)
Chief Deputy Solicitor General

JOHN GUARD (FBN374600)
Chief Deputy Attorney General
JAMES H. PERCIVAL (FBN1016188)
Deputy Attorney General
NATALIE P. CHRISTMAS (FBN1019180)
Assistant Attorney General

Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
henry.whitaker@myfloridalegal.com

Counsel for Appellants

RECEIVED, 07/14/2022 04:30:21 PM, Clerk, First District Court of Appeal

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases **Page(s)**

Statutes

Rules

Other Authorities

INTRODUCTION

Plaintiffs ask this Court to do what even the circuit court would not—toss aside the "judicial deference" given "to governmental decisions," *DeSantis v. Fla. Educ. Ass'n*, 325 So. 3d 145, 150 (Fla. 2020), and vacate an automatic stay of the circuit court's order enjoining HB 5. But only "the most compelling circumstances" justify vacating an automatic stay. *Fla. Dep't of Health v. People United for Med. Marijuana*, 250 So. 3d 825, 828 (Fla. 1st DCA 2018) (simplified). Here, the very trial court that enjoined HB 5 properly declined to vacate the stay, and the court did not remotely abuse its discretion in doing so.

More important, however, the Court should not rule on the stay request in the first instance. Instead, as the State has requested, the Court should expeditiously certify this case for immediate resolution by the Florida Supreme Court. Once this Court does so, it should leave this motion to "be decided by the court passing on the merits." *Fla. Dep't of Agric. & Consumer Servs. v. Haire*, 832 So. 2d 778, 782 n.2 (Fla. 4th DCA 2002).

BACKGROUND

A. Legal background

In 1980, the people of Florida amended the Florida Constitution to add a "Right of Privacy":

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Art. I, § 23, Fla. Const. (the privacy clause).

The Florida Supreme Court has construed this provision to "implicat[e]" a "woman's decision of whether or not to continue her pregnancy," *In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989), and under that holding has subjected abortion regulations to strict scrutiny, *see generally Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1246 (Fla. 2017) (*Gainesville Women Care II*).

B. Factual and procedural history

1. On March 4, 2022, the Florida Legislature enacted HB 5. *See* Ch. 2022-69, Laws of Fla. (2022), http://laws.flrules.org/2022/69. Titled an "act relating to reducing fetal and infant mortality," *id.*, HB 5 prohibits abortions if "the gestational age of the fetus is more than 15 weeks," subject to certain exceptions for maternal health and fatal

fetal abnormalities. § 390.0111(1), Fla. Stat.

The Governor signed HB 5 into law on April 14, 2022. *See* Ch. 2022-69, Laws of Fla. The bill became effective July 1. *Id.* § 8.

2. On June 1—three months after HB 5 was passed and almost two months after it was signed into law—Plaintiffs brought this facial challenge under the privacy clause and sought temporary injunctive relief. Pls.' App. 4–86.

The State raised procedural and substantive defenses. Pls.' App. 87–201. Its evidence demonstrated that HB 5 leaves unregulated the vast majority of abortions in Florida, more than 94% of which in 2021 occurred prior to 15 weeks. Pls.' App. 118. But "recogniz[ing] that HB 5 would likely be subject to strict scrutiny under current precedent," the State "preserve[d]" the "arguments that strict scrutiny is the wrong standard," that the privacy clause of the Florida Constitution does not implicate abortion, and that the Florida Supreme Court should revisit and overturn its abortion precedents. Pls.' App. 104.

After a hearing, the circuit court enjoined the State from enforcing the law, reasoning that HB 5 was not narrowly tailored to further the State's interests in protecting maternal health and preserving unborn life. Pls.' App. 612–725.

The State appealed, triggering an automatic stay. Pls.' App. 726–28; *see* Fla. R. App. P. 9.310(b)(2). Plaintiffs then moved to vacate the stay, but the circuit court denied the motion because Plaintiffs had not met the "very high burden set by" this Court for establishing that "the most compelling circumstances" require vacatur. Pls.' App. 753–55 (citation omitted).

STANDARD OF REVIEW

This Court reviews the denial of a motion to vacate an automatic stay for abuse of discretion. *See People United for Med. Marijuana*, 250 So. 3d at 829.

ARGUMENT

When the State appeals a trial-court order, that order is automatically stayed. Fla. R. App. P. 9.310(b)(2). "The automatic nature of the stay is grounded in judicial deference to governmental decisions." *Fla. Educ. Ass'n*, 325 So. 3d at 150. A court may override this deference and vacate the stay only "under the most compelling circumstances." *People United for Med. Marijuana*, 250 So. 3d at 828 (simplified). To establish such circumstances, Plaintiffs must show, at minimum: "(1) the equities are overwhelmingly tilted against maintaining the automatic stay, (2) [Plaintiffs] will suffer irreparable

harm if the automatic stay is maintained, and (3) [Plaintiffs are] likely to prevail on the merits of the appeal." *Dep't of Agric. & Consumer Servs. v. Henry & Rilla White Found., Inc.*, 317 So. 3d 1168, 1170 (Fla. 1st DCA 2020) (quotations omitted). As this Court's precedent illustrates, few cases meet this high bar.[1]

Plaintiffs ask the Court to rush to rule on their motion to vacate the stay. The better course, however, is to give the Florida Supreme Court the opportunity to decide that motion in the first instance. As discussed in the State's pending Suggestion for Certification, the Court should certify this case for immediate resolution by the Florida Supreme Court. Once certified, the motion to vacate the stay will either carry with the case, *cf. Savoie v. State*, 422 So. 2d 308, 312 (Fla. 1982); *Lawrence v. Fla. E. Coast Ry. Co.*, 346 So. 2d 1012, 1014 n.2 (Fla. 1977), or can be raised anew, *see* Fla. R. App. P. 9.310(f).

---

[1] *See, e.g.*, *People United for Med. Marijuana*, 250 So. 3d at 829 (reversing vacatur of automatic stay); *Byrd v. Black Voters Matter Capacity Bldg. Inst.*, No. 1D22-1470, 2022 WL 1698353, at *10 (Fla. 1st DCA May 27, 2022) (same); *Fla. Educ. Ass'n*, 325 So. 3d at 151 (same); *Fla. Fish & Wildlife Conservation Comm'n v. Daws*, 256 So. 3d 907, 912 (Fla. 1st DCA 2018) (same). Many other examples are unavailable on Westlaw because trial-court orders setting aside the automatic stay are often reversed without a published opinion. *See, e.g.*, *DeSantis v. Scott*, 1D21-2685 (Fla. 1st DCA 2021).

And because "the stay and the temporary injunction on appeal go hand in hand," they "naturally" should be "consider[ed] together." *Byrd v. Black Voters Matter Capacity Bldg. Inst.*, Inc., No. 1D22-1470, 2022 WL 1698353, at *10 (Fla. 1st DCA May 27, 2022). It is thus "more appropriate for [the motion] to be decided by the court passing on the merits." *Fla. Dep't of Agric. & Consumer Servs. v. Haire*, 832 So. 2d 778, 782 n.2 (Fla. 4th DCA 2002) (certifying pass-through question and declining to resolve vacatur motion so Florida Supreme Court could resolve the motion on pass-through jurisdiction); *see Savoie*, 422 So. 2d at 312 ("We have jurisdiction, and, once this Court has jurisdiction of a cause, it has jurisdiction to consider all issues appropriately raised in the appellate process, as though the case had originally come to this Court on appeal."). That course of action would permit prompt, yet orderly, resolution of the stay motion, as the trial court envisioned when it denied the motion to vacate the stay. Pls.' App. 755 (noting that the reviewing court would not need to analyze the vacatur motion "on an emergency type basis" and would have the luxury of a "full record" and "full briefing").

I. PLAINTIFFS HAVE NOT ESTABLISHED THAT THE EQUITIES ARE OVERWHELMINGLY TILTED AGAINST MAINTAINING THE AUTOMATIC STAY.

If this Court decides the motion in the first instance, it should conclude that the circuit court did not err in leaving the stay in place.

Vacating the stay would irreparably harm both the State, *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018); *Manatee Cnty. v. 1187 Upper James of Fla., LLC*, 104 So. 3d 1118, 1121 (Fla. 2d DCA 2012), and "the public generally," *St. Lucie Cnty. v. N. Palm Dev. Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984). By enjoining the State's duly enacted law, the circuit court stymied the State's "sovereign interest in enacting and enforcing state law," *State v. Nelson*, No. 8:21-CV-2524-SDM-TGW, 2021 WL 6108948, at *9 (M.D. Fla. Dec. 22, 2021), and it robbed the people of protections that their elected representatives have determined are in "the public interest." *Berman v. Parker*, 348 U.S. 26, 32 (1954). The risk that these harms to the State will be for naught counsels in favor of leaving the automatic stay undisturbed. *Cf. N. Palm Dev. Corp.*, 444 So. 2d at 1135.

So do the public interests that HB 5 protects. That law safeguards maternal health, in part by encouraging women to avoid the increased health risks that accompany later-term abortions. Pls.'

App. 105–06, 638.[2] It also shields unborn children from pain. Pls.' App. 106–08, 323–24.[3] And it preserves trust in the medical system through limiting a procedure that "some deem nothing short of an act of violence against innocent human life." *Gainesville Woman Care II*, 210 So. 3d at 1270 (Canady, J., dissenting) (quoting *Planned Parenthood v. Casey*, 505 U.S. 833, 852 (1992)); *cf. Boedy v. Dep't of Pro. Regul.*, 463 So. 2d 215, 218 (Fla. 1985) ("[T]he state has a

[2] The circuit court recognized that "the risk of serious complications from abortion increases as a pregnancy increases," and that in some cases there will be "serious complications" resulting from abortions performed after 15 weeks' gestation. Pls.' App. 638.

[3] The circuit court, to be sure, found that the unborn do not feel pain before 24–26 weeks. Pls.' App. 654–55. The State disputes that finding. But at the very least, the evidence showed that it is unclear whether the unborn feel pain at 15 weeks' gestation. Pls.' App. 458–59. And when a fact is subject to good-faith debate, it is the Legislature's prerogative to decide which side of the debate is most persuasive. *See Gonzales v. Carhart*, 550 U.S. 124, 163 (2007) ("The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty."); *cf. Haire v. Fla. Dep't of Agric. & Consumer Servs.*, 870 So. 2d 774, 786 (Fla. 2004) ("In reversing the trial court, the Fourth District concluded that the trial court erred in rejecting the legislative choice based on its own view of the scientific evidence and improperly substituted its judgment for that of the Legislature, which determined that the 1900–feet eradication zone was justified by the best available science. We agree." (citation omitted)); *see also* Amicus Br. of Fla. Pregnancy Ctrs. in Support of Appellants' Suggestion for Certification at 4–6 (filed July 8, 2022).

compelling interest in the regulation of the practice of medicine . . . to protect the health, safety and welfare of its citizens."). Those interests weigh in favor of leaving the law undisturbed. *E.g.*, *3299 N. Fed. Highway, Inc. v. Bd. of Cnty. Comm'rs of Broward Cnty.*, 646 So. 2d 215, 227 (Fla. 4th DCA 1994) (continued enforcement of an ordinance aimed at protecting public health and welfare weighed against granting of injunction); *accord State Dep't of Env'l Regul. v. Kaszyk*, 590 So. 2d 1010, 1012 (Fla. 3d DCA 1991).

Plaintiffs caption their motion an "emergency" one and claim that it causes irreparable harm through regulating the tiny fraction of abortions in Florida that occur after 15 weeks of gestation. But even after the Governor signed this bill on April 14, Ch. 2022-69, Laws of Fla., Plaintiffs waited more than seven weeks before suing. That "delay in seeking judicial relief" undermines their claim that the equities favor vacatur of the stay. *E.g.*, *Shouman v. Am. Exp. Travel Related Servs. Co.*, 566 So. 2d 875, 876–77 (Fla. 3d DCA 1990).

Plaintiffs also contend that the stay will trigger "uncertainty" about "the healthcare that Plaintiffs can provide and their patients can receive." Mot. 16. But as explained in the State's Suggestion for Certification (at 4), until the Florida Supreme Court grapples with the

implications of *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), there will be great uncertainty about the validity of HB 5 no matter how this Court deals with the stay. HB 5 has now been in effect for the better part of 14 days. Vacating the stay would only scramble again the time limitations for obtaining an abortion, sowing further "confusion and uncertainty for" the many medical personnel, patients, and law enforcement officials that HB 5 implicates. *See Fla. Educ. Ass'n*, 325 So. 3d at 151.

Plaintiffs next point to the fact that leaving HB 5 in place will "delay" them from "provid[ing] constitutionally protected abortion care." Mot. 16. But HB 5 leaves unregulated the vast bulk of abortions that occur in Florida, most of which are performed before 15 weeks, Pls.' App. 118 (more than 94% in 2021), and if HB 5 is upheld, those that might otherwise wait until after 15 weeks to obtain an abortion will almost certainly obtain the procedure earlier (as opposed to not at all). More, Plaintiffs' arguments on the equities insufficiently appreciate that even after 15 weeks, the law has exceptions for preserving the life and health of the mother, and for certain fetal abnormalities. *See* § 390.0111(1), Fla. Stat.

Plaintiffs protest too much in asking the Court to "disregard,"

Mot. 17, past delay tactics in the prosecution of abortion cases after securing a temporary injunction. That history makes it more likely that the harms to the State and the public detailed above would persist should this Court vacate the stay. *Gainesville Woman Care*, for example, bounced up-and-down the court system for nearly *seven years*, in part because the plaintiffs—temporary injunction in hand—delayed in the prosecution of their case. App. 748–49; *see also Gainesville Woman Care, LLC v. State*, 2015-CA-1323 (Fla. 2d Jud. Cir.) (filed 6/2015; final judgment entered 4/2022). Gainesville Woman Care is again a Plaintiff here, and Plaintiffs appear intent on taking a similar path, having already blocked the State's attempts to consolidate the preliminary-injunction hearing with a final hearing on the merits to expedite prosecution of this case to final judgment. State's App. 44–46. On appeal, Plaintiffs then cited the temporary-injunction posture of this appeal as a reason to delay resolution by the Florida Supreme Court. *See* Pls.' Opp. to Suggestion for Cert. at 7.

Moreover, if this Court vacates the stay, Florida is poised to become an abortion destination for out-of-state residents seeking to dodge abortion restrictions in their home states. Like Florida,

neighboring states have also passed abortion prohibitions.[4] Unless HB 5 remains in effect, residents from those states will undoubtedly flock to Florida to obtain late-term abortions. *See* Shefali Luthra, *Florida could be a critical access point for abortion, but the state's own battle is just starting*, The 19th (June 8, 2022) (noting that many have already "made the trek to Florida" to circumvent their home states' abortion restrictions). Florida should not become "a regional destination for [late-term] abortion," *id.*, in defiance of the public policy adopted by its "people and their elected representatives." *Dobbs*, 142 S. Ct. at 2279.

II. THE STATE IS LIKELY TO SUCCEED ON APPEAL.

"A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated." *Bd. of Cnty. Comm'rs, Santa Rosa Cnty. v. Home Builders Ass'n of W. Fla.*,

[4] **Georgia**: Ga. Code. § 16-12-141 (prohibiting abortion after fetal heartbeat is detectable subject to certain exceptions); **South Carolina**: S.C. Code Ann. § 44-41-680 (similar); **Alabama**: Ala. Code § 26-23H-4 (prohibiting abortion subject to certain exceptions); **Louisiana**: La. Stat. Ann. §§ 40:1061, 14:87.1 (similar); **Mississippi**: Miss. Code. § 41-41-45 (similar); **Tennessee**: Tenn. Code § 39-15-213 (similar); **Texas**: Tex. Health & Safety Code Ann. §§ 170A.001-170A.007 (similar).

Inc., 325 So. 3d 981, 984 (Fla. 1st DCA 2021). For two "good reasons," the State will ultimately prevail on appeal.

1. The Florida Supreme Court is likely to accept jurisdiction here and revise its abortion jurisprudence in one of two ways, either of which will result in HB 5 surviving Plaintiffs' challenge.

a. The privacy clause of the Florida Constitution does not limit the Legislature from regulating abortion. As the U.S. Supreme Court recently explained in overruling *Roe v. Wade*, 410 U.S. 113 (1973), a right to abortion is not contained in any of the "broadly framed" rights the U.S. Supreme Court's pre-*Roe* precedents had established—whether framed as a "right to privacy," or as a "freedom to make 'intimate and personal choices' that are 'central to personal dignity and autonomy.'" *Dobbs*, 142 S. Ct. at 2257 (quoting *Casey*, 505 U.S. at 851). Far from having "no bearing on the Florida Constitution," Mot. 15, that reasoning obliterates the foundation of the Florida Supreme Court's abortion precedents, which heavily relied on now-abrogated *Roe v. Wade* and its progeny in establishing a right to abortion under the Florida Constitution. *See In re T.W.*, 551 So. 2d at 1193–94 (citing *Roe*, 410 U.S. at 153, *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 429 n.11 (1983), and

Thornburgh v. Am. College of Obstetricians & Gynecologists, 476 U.S. 747, 772 (1986)). In fact, it is even less plausible to ground a right to abortion in a right to privacy alone, as Plaintiffs attempt to do in this litigation under the Florida Constitution. Even before *Dobbs*, the U.S. Supreme Court had "abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment's Due Process Clause." *Dobbs*, 142 S. Ct. at 2271 (citing *Casey*, 505 U.S. at 846). The Court did so because "legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy." *Gonzales v. Carhart*, 550 U.S. 124, 172 (Ginsburg, J., dissenting); *see also Roe*, 410 U.S. at 172 (Rehnquist, J., dissenting) (A "transaction resulting in an operation" such as an abortion "is not 'private' in the ordinary usage of that word.").

Florida's privacy clause creates a right "to be let alone and free from governmental intrusion into the person's *private life*." Art. I, § 23, Fla. Const. (emphasis added). That is naturally read to limit governmental snooping and information-gathering—but not to establish a liberty to destroy unborn (or any other) life. That reading

is confirmed by the very next sentence, which clarifies that the right cannot be construed to limit access to public records. *See id.*

That is no doubt why, immediately before the Senate vote on the right to privacy occurred on May 14, 1980, the following colloquy occurred on the floor of the Florida Senate between Senator Gordon, the sponsor of the constitutional amendment in the Florida Senate, and another Senator:

> Senator Dunn: Senator, what do you think the effect of this amendment will be on the existing controversy involving right to life and abortion?
>
> Senator Gordon: I don't see that uhh—I don't see that it has any effect on that Senator.
>
> Senator Dunn: Senator you don't uh—you don't—you can't honestly say that this amendment addressing as you have contended the question of privacy will be the focal point of state litigation on the question of all laws dealing with, with the question of abortion or the taking of a uhh—of a—of a fetus under any condition?
>
> Senator Gordon: No, I don't see that at all. I don't know what that has to do with, with—I don't see what that has to do with intrusion in your—in—in—privacy in your home, I don't see that at all.

Fla. S., tape recording of proceedings (May 14, 1980) (on file with State Archives of Florida at Series S1238, Box 57) (discussion regarding impact on abortion under SJR 935).

Even if a right to abortion could be located in the privacy clause, "[c]ommon sense dictates that" any such right would not be "absolute." *In re T.W.*, 551 So. 2d at 1193. Though "significant restrictions" on any such right might trigger strict scrutiny, "[i]nsignificant burdens" should not. *Gainesville Woman Care II*, 210 So. 3d at 1269–70 (Canady, J., dissenting). And a burden is insignificant if it preserves a "reasonable opportunity to choose" to have an abortion. *Dobbs*, 142 S. Ct. at 2310 (Roberts, C.J., concurring in judgment). Here, the law does that, as it permits abortions through 15 weeks' gestation—which, again, constitute over 94% of abortions that occur in Florida today.

b. It is true that the Florida Supreme Court's current precedent is to the contrary. *See N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 634–36 (Fla. 2003) (recognizing an abortion right implicit in the privacy clause); *Gainesville Woman Care II*, 210 So. 3d at 1256 (rejecting the significant-restriction standard). And this Court is bound by that precedent. But the question here is not whether the State should prevail before this Court, but whether the automatic stay should be reimposed pending a final decision on appeal, which would include any proceedings in the Florida Supreme

Court. The State believes the Florida Supreme Court is likely to revisit that precedent—just as the U.S. Supreme Court recently did in *Dobbs*. Indeed, the Florida Supreme Court's governing *stare decisis* framework is if anything more apt to result in reversal of precedent than is the federal standard. *Compare Dobbs*, 142 S. Ct. at 2261–79, *with State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020) (per curiam). And because the State is likely to succeed in defending HB 5 before the Florida Supreme Court, this case falls right in line with the many cases in which this Court has upheld an automatic stay. *See* Mot. 18–21 (collecting First District cases in which the Court upheld a stay when the State was likely to succeed on appeal).

2. Plaintiffs also have not established third-party standing to assert the claims of their patients.

As a general rule, only individuals whose privacy rights are implicated by a law have standing to challenge it on right-to-privacy grounds. *See Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) (explaining that Florida's right to privacy "is a personal one" and belongs "solely to individuals"). Here, Plaintiffs are several abortion clinics and one abortion doctor, but none of them

assert a personal right to privacy.[5] Plaintiffs instead seek to vindicate the privacy rights of their patients. State's App. 8–10.

To overcome the general bar on third-party standing and assert the constitutional rights of another, a litigant must show, among other things, that the third party cannot protect his or her own interests. *Alterra Healthcare*, 827 So. 2d at 941. Yet Plaintiffs nowhere allege that their patients cannot "protect [their] own interests," or facts from which this element could be inferred. *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004); *see also N. Fla. Reg'l Hosp. Inc. v. Douglas*, 454 So. 2d 759, 761 (Fla. 1st DCA 1984) (litigant failed this element because the third party possessing the privacy right had an opportunity to intervene in the suit). Women in Florida routinely challenge abortion restrictions on their own behalf. *E.g.*, *In re T.W.*, 551 So. 2d at 1189; *Renee B. v. Fla. Agency for Health Care Admin.*, 790 So. 2d 1036, 1037 (Fla. 2001). Indeed, *Roe v. Wade* itself was a suit brought by a pregnant woman. *See* 410 U.S. at 120;

[5] Plaintiff Dr. Tien asserts her own rights along with those of her patients. State's App. 10. But Dr. Tien does not allege that she is pregnant or likely to become pregnant and therefore cannot assert her own privacy rights. *See State v. Alice P.*, 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979).

see also id. at 124–25 (holding that the case continued to present an Article III case or controversy despite the absence of evidence in the record that Roe was still pregnant).

The circuit court reasoned that the "time-limited nature of pregnancy" inherently poses a "hindrance" to women challenging a "time-limited abortion ba[n]" like HB 5. Pls.' App. 659–60. But the circuit court did not explain why time poses any hindrances unique to women in their individual capacities; nor are any apparent. The time-limited nature of abortion erects no procedural barrier to judicial review. *See Roe*, 410 U.S. at 125 (abortion challenges qualify for the "capable of repetition, yet evading review exception" to mootness). And women in their individual capacities do not face a "hindrance" simply because Plaintiffs are better positioned to litigate challenges expeditiously.

CONCLUSION

This Court should not rule on Plaintiffs' motion to vacate the stay. Instead, it should expeditiously certify this case for immediate resolution by the Florida Supreme Court. If this Court rules on Plaintiffs' motion, however, then the motion should be denied. An "automatic stay must remain in place absent circumstances that *are*

the most compelling." *Black Voters Matter*, 2022 WL 1698353, at *10 (emphasis in original). Because Plaintiffs failed to show that such circumstances exist here, the circuit court correctly declined to vacate the automatic stay.

Respectfully submitted,

ASHLEY MOODY
Attorney General

/s/ Henry C. Whitaker
HENRY C. WHITAKER (FBN1031175)
Solicitor General
DANIEL W. BELL (FBN1008587)
Chief Deputy Solicitor General

JOHN GUARD (FBN374600)
Chief Deputy Attorney General
JAMES H. PERCIVAL (FBN1016188)
Deputy Attorney General
NATALIE P. CHRISTMAS (FBN1019180)
Assistant Attorney General

Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
henry.whitaker@myfloridalegal.com

Counsel for Appellants

Date: July 14, 2022

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served by the Florida Courts E-Filing Portal, or by email, on July 14, 2022, to the following:

Benjamin J. Stevenson
ACLU FOUNDATION OF FLORIDA
3 W. Garden St., Ste. 712
Pensacola, FL 32502

Daniel Tilley
ACLU FOUNDATION OF FLORIDA
4343 West Flagler St., Ste. 400
Miami, FL 33134

Nicholas Warren
ACLU FOUNDATION OF FLORIDA
336 East College Ave., Ste. 203
Tallahassee, FL 32301

April A. Otterberg
Shoba Pillay
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654

Tassity S. Johnson
JENNER & BLOCK LLP
1099 New York Ave., NW, Ste. 900
Washington, D.C. 20001

Attorneys for Plaintiffs

Whitney Leigh White
Jennifer Dalven
Andrew Beck
Johanna Zacarias
ACLU FOUNDATION
125 Broad Street
New York, NY 10004

Attorneys for Plaintiffs Gainesville Woman Care, LLC d/b/a Bread and Roses Women's Health Center; Indian Rocks Woman's Center, Inc. d/b/a Bread and Roses; St. Petersburg Woman's Health Center, Inc.; and Tampa Woman's Health Center, Inc.

Autumn Katz
Caroline Sacerdote
CENTER FOR REPRODUCTIVE RIGHTS
199 Water St., 22nd Floor
New York, NY 10038

Attorneys for Plaintiff A Woman's Choice of Jacksonville, Inc.

Jennifer Sandman
PLANNED PARENTHOOD
FEDERATION OF AMERICA
123 William St., 9th Floor
New York, NY 10038

Carrie Y. Flaxman
PLANNED PARENTHOOD
FEDERATION OF AMERICA
1110 Vermont Ave., NW,
Ste. 300
Washington, DC 20005

Attorneys for Plaintiffs Planned Parenthood of Southwest and Central Florida; Planned Parenthood of South, East and North Florida; and Shelly Hsiao-Ying Tien, MD., M.P.H.

/s/ *Henry C. Whitaker*
Solicitor General