UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, *et al.*,

Plaintiffs,

v. Case No. 4:16-cv-321-RH-CAS

JOSEPH LADAPO, in his official capacity as State Surgeon General and Secretary of Health, *et al.*,

Defendants.
_____/

DEFENDANTS' UNOPPOSED
MOTION TO VACATE INJUNCTION IN PART[1]

On June 30, 2016, this Court entered a preliminary injunction against § 390.0111(15), Fla. Stat. *See* Doc. 20. That provision, which this Court called the "defunding provision," *id.* at 3, prohibits payment of certain state funds to "an organization that owns, operates, or is affiliated with one or more clinics that are licensed" to perform abortions in the State, subject to certain exceptions. § 390.0111(15), Fla. Stat. The sole basis for the injunction was this Court's holding that the defunding provision was an unconstitutional funding condition under the

[1] Defendants do not seek vacatur of the final judgment and permanent injunction against § 390.012(1)(c)2, Fla. Stat.

U.S. Supreme Court's abortion jurisprudence. Doc. 20 at 14–15. On August 18, 2016, this Court converted the preliminary injunction into a permanent injunction, Doc. 26, and the clerk entered final judgment, Doc. 27.

In light of the Supreme Court's holding that the "right to an abortion is not protected by any constitutional provision," *SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga.*, 40 F.4th 1320, 1326 (11th Cir. 2022) (discussing *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2283–84 (2022)), Defendants ask this Court to vacate the final judgment and permanent injunction with respect to § 390.0111(15), Fla. Stat.

Plaintiffs do not oppose this motion on the condition that the Court's order clarify that the effective date of the vacatur is June 1, 2023. Plaintiffs made this request to ensure an orderly transition. Defendants consent to this condition.

ARGUMENT

Under Federal Rule of Civil Procedure 60(b)(5), a court may relieve a party from a final judgment or order where "applying it prospectively is no longer equitable." *See Reynolds v. McInnes*, 338 F.3d 1221, 1226 (11th Cir. 2003). As the Supreme Court has repeatedly recognized, "it is appropriate to grant a Rule 60(b)(5) motion when the party seeking relief from an injunction . . . can show 'a significant change either in factual conditions or in law.'" *Agostini v. Felton*, 521 U.S. 203, 215 (1997) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). In

fact, "[a] court errs when it refuses to modify an injunction . . . in light of such changes." *Id.* A movant's "ability to satisfy the prerequisites of Rule 60(b)(5) hinges on whether" the authorities relied on to enter the injunction remain "good law." *Id.* at 217–18.

Here, Defendants easily satisfy Rule 60(b)(5)'s standard. In enjoining § 390.0111(15), Fla. Stat., this Court reasoned that the statute unconstitutionally conditions Plaintiffs' receipt of state funds by "prohibit[ing] indirectly" abortions "that the government could not constitutionally prohibit directly." Doc. 20 at 6; *see id.* at 6–10, 14–15. *Dobbs*, however, makes clear that there is no constitutional right to abortion and that Supreme Court cases holding otherwise were "egregiously wrong from the start." *SisterSong*, 40 F.4th at 1326 (quoting *Dobbs*, 142 S. Ct. at 2243). The State may thus constitutionally prohibit abortion within its borders. *See Dobbs*, 142 S. Ct. at 2279 ("[T]he authority to regulate abortion must be returned to the people and their elected representatives.").

In light of *Dobbs*, the legal basis for this Court's injunction no longer exists. *See Rumsfeld v. Forum for Acad. & Inst'l Rights, Inc.*, 547 U.S. 47, 59–60 (2006) ("It is clear that a funding condition cannot be unconstitutional if it could be constitutionally imposed directly."). Indeed, in a recent Eleventh Circuit decision applying *Dobbs*, the plaintiffs—one of which is an affiliate of the Plaintiffs here—

"concede[d] that *Dobbs* dooms" even a challenge to Georgia's "prohibition of abortions after detectable fetal heartbeat." *Id.* at 1325.

District courts addressing similar situations have granted similar relief since the Supreme Court decided *Dobbs*. *See June Med. Servs. LLC v. Phillips*, No. 14-525, 2022 WL 16924100 (M.D. La. 2022); *Preterm-Cleveland v. Yost*, No. 1:19-cv-360, 2022 WL 2290526 (S.D. Ohio 2022); *Bernard v. Individual Members of Indiana Med. Licensing Bd.*, No. 1:19-cv-1660, 2022 WL 3009741 (S.D. Ind. 2022). This Court should do the same.

CONCLUSION

For the foregoing reasons, the Court should vacate the final judgment and permanent injunction against § 390.0111(15), Fla. Stat. The parties have agreed that the order should specify an effective date of June 1, 2023.

Respectfully submitted,

Ashley Moody
ATTORNEY GENERAL

John Guard (FBN 374600)
CHIEF DEPUTY ATTORNEY GENERAL

James H. Percival (FBN 1016188)
CHIEF OF STAFF

Henry C. Whitaker (FBN 1031175)
SOLICITOR GENERAL

/s/ Natalie Christmas
Natalie Christmas (FBN 1019180)
ASSISTANT ATTORNEY GENERAL OF LEGAL POLICY

Joseph E. Hart (FBN 124720)
ASSISTANT ATTORNEY GENERAL OF LEGAL POLICY

Office of the Attorney General
The Capitol, Pl-01
Tallahassee, Florida 32399-1050
(850) 414-3300
(850) 410-2672 (fax)
natalie.christmas@myfloridalegal.com

Counsel for Defendants

CERTIFICATE OF COMPLIANCE

This motion complies with the requirements of Local Rule 7.1(F) because it contains 710 words.

CERTIFICATE OF CONFERRAL

Consistent with Local Rule 7.1(B), counsel for Defendants conferred by telephone and email with counsel for Plaintiffs. As discussed above, Plaintiffs consent to the relief request on the condition that the effective date of the vacatur be June 1, 2023.

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2023, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties.

/s/ Natalie Christmas
Natalie Christmas