

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2022-1127

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL
FLORIDA, on behalf of itself, its staff, and its patients, *ET AL.*,

Petitioners,

v.

STATE OF FLORIDA, *ET AL.*,

Respondents.

Discretionary Proceeding to Review Decision of the
First District Court of Appeal

Lower Tribunal Nos. 1D22-2034; 2022-CA-912

**PETITIONERS' MOTION TO CONSOLIDATE
RELATED PROCEEDINGS**

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Plaintiffs-Petitioners (“Plaintiffs”), by and through their undersigned counsel,¹ pursuant to Florida Rule of Appellate Procedure 9.300, respectfully move this Court to consolidate the above-styled proceeding to invoke the discretionary jurisdiction of this Court with the related proceeding in *Planned Parenthood of Southwest and Central Florida et al. v. State of Florida*, Case No. SC2022-1050.² These two petitions to invoke this Court’s jurisdiction involve the very same underlying case, and this proceeding involves a one-paragraph order that was predicated entirely on the reasoning set forth in the order that is the subject of the other proceeding. Consolidating these two proceedings for all purposes will serve judicial economy and ensure consistent conclusions are reached on heavily intertwined questions of law that arise from the very same facts in the very same case.

In support of this Motion, Plaintiffs state as follows:

¹ Plaintiffs are seven clinics and a physician licensed to provide abortion care in this State.

² In Case No. SC2022-1050, Plaintiffs are also simultaneously filing a motion to consolidate these proceedings.

I. FACTUAL BACKGROUND

On June 1, 2022, Plaintiffs filed a motion for temporary injunction, seeking to enjoin the enforcement of House Bill 5, Ch. 2022-69 §§ 3-4, Laws of Fla. (“HB 5”) (codified at §§ 390.011, 390.0111, Fla. Stat. (2021)), which bans virtually all abortions after 15 weeks of pregnancy, measured from the first day of a woman’s last menstrual period (“LMP”). On July 5, 2022, after an evidentiary hearing that included oral and written testimony from four expert and fact witnesses, the Circuit Court granted Plaintiffs’ motion for temporary injunction and barred the State³ from enforcing HB 5. *Planned Parenthood Sw. & Cent. Fla. v. State*, No. 2022-CA-912, 2022 WL 2436704 (Fla. 2d Cir. Ct. July 5, 2022).

The State appealed the Circuit Court’s order, thus triggering an automatic stay of the injunction. *See* Fla. R. App. P. 9.310(b)(2). Plaintiffs moved to vacate the stay, but the Circuit Court denied the motion. *Planned Parenthood Sw. & Cent. Fla. v. State*, No. 2022-CA-

³ “The State” refers to the State of Florida and the Defendant state boards, agencies, and officials. The 20 State Attorneys who were originally named as defendants in this suit were voluntarily dismissed by stipulation, which the Court entered on June 17, 2022. *See Planned Parenthood Sw. & Cent. Fla.*, 2022 WL 2436704, at *2.

912, 2022 WL 2680000, at *2 (Fla. 2d Cir. Ct. July 12, 2022). Plaintiffs then moved to vacate the stay in the First DCA.

On July 21, 2022, the First DCA denied Plaintiffs' motion to vacate the automatic stay. *State v. Planned Parenthood of Sw. & Cent. Fla.*, No. 1D22-2034, 2022 WL 2865900, at *3–4 (Fla. 1st DCA July 21, 2022) (“Stay Order”). Uncertain of when the First DCA would decide the State’s appeal of the temporary injunction itself, on August 10, 2022, Plaintiffs filed a notice to invoke this Court’s discretionary jurisdiction to review the First DCA’s Stay Order, see Notice to Invoke Discretionary Jurisdiction (Petitioners’ Appendix (“App.”) 4–7), and subsequently filed their jurisdictional brief on August 19, 2022 (*id.* at 8–25).

On August 24, 2022, the First DCA entered an order reversing the temporary injunction. *State v. Planned Parenthood of Sw. & Cent. Fla.*, No. 1D22-2034, 2022 WL 3643236, at *1 (Fla. 1st DCA Aug. 24, 2022) (“TI Order”). The TI Order is a single paragraph, and it is premised on the First DCA’s earlier Stay Order. See Stay Order, 2022 WL 2865900. The next day, August 25, 2022, Plaintiffs filed a notice to invoke the discretionary jurisdiction of this Court with respect to the TI Order, resulting in this appellate proceeding. Plaintiffs filed

their jurisdictional brief in this case earlier today, on August 31, 2022.

Plaintiffs now move to consolidate their requests for review of (a) the First DCA's Stay Order refusing to vacate the automatic stay of the Circuit Court's temporary injunction, and (b) the First DCA's TI Order reversing the Circuit Court's temporary injunction order.

II. ARGUMENT

The two matters before this Court are from the same case and should be considered together for all purposes. Not only do they arise from two orders entered in the same case, but nearly identical questions of law are at issue in both. Consolidation, therefore, will benefit judicial economy and ensure consistent results.

In its Stay Order, the First DCA refused to vacate the automatic stay of the TI and held that Plaintiffs lacked third-party standing and “cannot obtain temporary injunctive relief as they cannot assert the privacy rights of pregnant women necessary to substantiate a showing of irreparable harm, an indispensable requirement of a temporary injunction.” Stay Order, 2022 WL 2865900, at *3. Several weeks later, the First DCA reversed the temporary injunction, identifying the same grounds on which it denied Plaintiffs' motion to

vacate the automatic stay: “Appellees could not assert irreparable harm on behalf of persons not appearing below.” TI Order, 2022 WL 3643236, at *1. The sole authority cited in the one paragraph TI Order reversing the injunction was the First DCA’s Stay Order. *Id.* (citing Stay Order, 2022 WL 2865900, at *4).

In both petitions to invoke this Court’s jurisdiction, Plaintiffs argue that the First DCA’s orders conflict with *the same* binding precedent from this Court regarding irreparable harm and third-party standing. First, Plaintiffs assert in both petitions that the First DCA misapplied the holding in *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243 (Fla. 2017), that irreparable harm should be presumed where “certain fundamental rights are violated.” *Compare* Pet’rs Br. on Jurisdiction in SC2022-1050 (App. 8–25) (quoting *Gainesville*, 210 So. 3d at 1263), *with* Pet’rs Br. on Jurisdiction 9–11 (filed concurrently herewith in this proceeding) (same). Second, in both petitions, Plaintiffs identify the same cases from this Court and other District Courts in which injunctive relief was affirmed on similar third-party claims. *Compare* Pet’rs Br. on Jurisdiction in SC2022-1050 (App. 7–10) (collecting cases), *with* Pet’rs Br. on

Jurisdiction 11–13 (filed concurrently herewith in this proceeding) (same).

Accordingly, the questions of law—and the record—in both proceedings will be identical. Thus, consolidation will result in efficiencies for the Court and avoid unnecessary duplication of effort. Moreover, consolidation will not cause any delay, as both proceedings are still at the jurisdictional stage, the State’s deadlines for responding in both matters are presently less than two weeks apart, and no merits briefing has been scheduled.

WHEREFORE, Plaintiffs respectfully request this Court grant this Motion and enter an order consolidating this appeal, for all purposes, with the appeal in Case No. SC2022-1050.

Respectfully submitted this 31st day of August, 2022.

/s/ Whitney Leigh White

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Plaintiffs-Petitioners' Motion to Consolidate Related Proceedings has been furnished by electronic mail to all counsel of record by filing the document with service through the e-Service system, Fla. R. Jud. Admin. 2.516(b)(1), this 31st day of August, 2022.

/s/ Whitney Leigh White

CERTIFICATE OF COMPLIANCE FOR COMPUTER-GENERATED BRIEFS

I certify that this Motion complies with the applicable form and font requirements under Florida Rule of Appellate Procedure 9.045.

/s/ Whitney Leigh White