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

GAINESVILLE WOMAN CARE, LLC, ET AL.,	)	Case No.: 1D15-3048
Plaintiffs-Petitioners,	)	L.T. Case No.: 2015-CA-1323
v.	)	
STATE OF FLORIDA, ET AL.,	)	
Defendants-Respondents.	)	

PLAINTIFFS-PETITIONERS' EMERGENCY MOTION TO STAY THIS COURT'S ORDER PENDING SUPREME COURT REVIEW, AND FOR EXPEDITED CONSIDERATION AND BRIEFING

1. Pursuant to Florida Rule of Appellate Procedure 9.310, Plaintiffs-Petitioners move for a stay of this Court's non-final Order reversing the circuit court's temporary injunction as well as the circuit court's vacatur of the automatic stay created by Florida Rule of Appellate Procedure 9.310(b)(2) ("Order"), and allowing Chapter 2015-118, § 1, Laws of Florida, codified at § 390.0111(3) ("the Act") to take effect "immediately upon release of th[e] opinion." Order at 7. The Act's sweeping restrictions, affecting the medical care and private decision-making of every woman seeking an abortion in Florida, deprive Florida women of their constitutional right to privacy and pose serious risks to their health and safety. In light of the significant and irreparable harm to which women in Florida will be

subjected each day that the Act is in effect, Plaintiffs-Petitioners further request that briefing on and consideration of this motion be expedited. *See* Fla. R. App. P. 9.300(a).

In support of this motion, Plaintiffs-Petitioners state the following:

I. PROCEDURAL HISTORY

2. The day after Governor Scott signed the Act into law, on June 11, 2015, Plaintiffs-Petitioners filed this lawsuit alleging that the Act violates the Florida Constitution's Privacy and Equal Protection Clauses. Plaintiffs-Petitioners also filed an emergency motion for a temporary injunction on their privacy claim. *See* Fla. R. Civ. P. 1.610. Following a June 24 hearing on Plaintiffs-Petitioners' emergency motion—at which Defendants-Respondents neither disputed Plaintiffs' evidence nor presented any evidence of their own—on June 30, the trial court issued an Order temporarily enjoining the Act.

3. Defendants-Respondents subsequently filed a Notice of Appeal to this Court, triggering an automatic stay of the injunction pursuant to Florida Rule of Appellate Procedure 9.310(b)(2). On Plaintiffs-Petitioners' motion and after a telephonic hearing, the trial court lifted the automatic stay. Defendants-Respondents did not appeal the vacatur of the automatic stay.

4. This Court heard oral argument on Defendants-Respondents' appeal of the trial court's temporary injunction order on February 9, 2016. Today, February 26, 2016, this Court reversed the circuit court's entry of a temporary injunction and

also reversed, *sua sponte*, the circuit court's vacatur of the automatic stay created by Florida Rule of Appellate Procedure 9.310(b)(2). In its Order, this Court expressly construed the Privacy Clause of the Florida Constitution, holding that a circuit court may never find that a state statute constitutes a "significant restriction" on the right to abortion as a matter of law—i.e., based on the statute's plain terms. Instead, this Court held that a circuit court must, as a matter of Florida constitutional law, first make "factually-supported findings" regarding the effects the law has on women seeking abortion care. *See* Order at 5–6. This Court further held that the 2004 adoption of article X, section 22, of the Florida Constitution "in effect overruled *North Florida Women's*" [*Health and Counseling Services, Inc.* v. *State*, 866 So. 2d 612 (2003)]. *Id.* at 5. Both of these constructions are plainly incorrect.

5. Today, Plaintiffs-Petitioners filed in this Court a Notice to Invoke the Discretionary Jurisdiction of the Supreme Court, explaining that the Florida Supreme Court has discretionary jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii). Within ten days, Plaintiffs-Petitioners will file a jurisdictional brief in the Supreme Court.

6. Although the mandate will not issue for 15 days, the Act appears to now be in effect because the Order reversing the trial court's order vacating the automatic stay created by Florida Rule of Appellate Procedure 9.310(b)(2) became "effective immediately upon release of th[e] opinion." The Act will remain in effect unless the motion for a stay of this Court's Order is granted.

II. ARGUMENT

7. Florida Rule of Appellate Procedure 9.310(a) provides that "a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief." This Court, having issued the Order to be reviewed, has discretion to stay its Order pending review by the Supreme Court. Fla. R. App. P. 9.020(e).

8. In deciding this motion, the "[f]actors to be considered are the likelihood that jurisdiction will be accepted by the Supreme Court, the likelihood of ultimate success on the merits, the likelihood of harm if no stay is granted and the remediable quality of any such harm." *State ex rel. Price v. McCord*, 380 So. 2d 1037, 1038 n.3 (Fla. 1980) (internal citation and quotation marks omitted).

9. Each of these considerations weighs strongly in favor of staying this Court's Order and preventing the Act from continued effect before the Florida Supreme Court has had an opportunity to assess Plaintiffs-Respondents' likelihood of success in proving this law unconstitutional, and to assess whether this Court properly determined that the question of whether a restriction on the right to abortion is "significant" cannot, as a matter of state constitutional law, ever be answered in the absence of substantial evidentiary findings. *See* Order at 3–6.

A. Likelihood of Harm if No Stay is Granted

10. The likelihood of harm to Plaintiffs-Petitioners and their patients absent a stay is significant. Plaintiff-Petitioner Gainesville Woman Care, LLC, already has over a dozen patients scheduled to obtain abortions on Wednesday, March 2nd, or Friday, March 4, and it is likely that another 10–15 will call to schedule appointments for one of those days. *See* Decl. of Kristin Davy (Feb. 26, 2016), attached as Exhibit A, ¶ 4. If this Court's Order is not stayed, Gainesville Woman Care, LLC, will not be able to provide these patients with the abortions they seek at the time of their scheduled appointments. In other words, Plaintiff-Petitioner will be compelled to deny these women medically appropriate care that they desire in order to comply with the Act. *See id*.

11. Further, if this Court's Order is not stayed, Plaintiffs-Petitioners' patients' constitutional rights to privacy will be significantly infringed. For the first time since the legalization of abortion in Florida, Florida women will be affirmatively prevented by the State from exercising their right to abortion for a minimum of 24 hours, and will be forced to make an additional, medically unnecessary visit to their physicians. To add insult, the State will be allowed to communicate its condescending message that a woman seeking an abortion, alone among all patients, is incapable of making a thoughtful, informed decision about her medical care without State interference. Florida's right to privacy guards

against precisely this type of "unwarranted governmental interference." *Von Eiff*, 720 So. 2d at 516.

12. The Act will also require that a physician be at the health center to provide the required information on the patient's first visit. For Plaintiff Gainesville Woman Care, LLC, this requirement will lead to patient delays far greater than 24 hours, because its sole physician works no more than two days per week. Davy Decl. ¶ 6. Moreover, because it is likely not possible to staff a physician at every facility offering abortions each single day of the week, and because many women will not be able to take time away from their existing obligations to travel on two consecutive days, the Act will inevitably force many women to delay their abortion procedures by a significantly longer period of time than 24 hours. R. II at 106, 108 (Curry Decl. ¶¶ 15, 20); Davy Decl. ¶¶ 5, 13, 17–18. That will in turn impose medical harm on women: While abortion is an extremely safe procedure, the later an abortion takes place in pregnancy, the greater the medical risks for the woman (and the greater the cost). R. II at 105–06 (Curry Decl. ¶¶ 13, 15); Davy Decl. ¶¶ 19, 20. The additional-trip requirement also poses a very real threat to a woman's confidentiality and privacy by increasing the risk that partners, family members, employers, co-workers, or others will discover that she is having an abortion. Davy Decl. ¶¶ 21–22. For some women, the mandatory delay and additional-trip requirements will prevent them from

obtaining a medication abortion, which is an early method of ending a pregnancy involving drugs rather than surgery. R. II at 104, 106 (Curry Decl. ¶¶ 10, 15); Davy Decl. ¶ 15. Medication abortion is medically indicated for physiological or mental health reasons for some women and is strongly preferred over surgical abortion by others for personal reasons. R. II at 104–05 (Curry Decl. ¶¶ 10–12); Davy Decl. ¶ 15.

13. The mandatory delay and additional-trip requirements will pose particular harms to especially vulnerable groups of Florida women, including low-income women; women who are victims of intimate partner violence; those whose pregnancy is the result of rape or other forms of abuse; those with wanted pregnancies that involve a severe fetal anomaly, and those with medical complications of pregnancy that are not immediately life-threatening. For these women, the mandatory delay and additional-trip requirements significantly increase costs and burdens, threaten psychological harm, threaten their safety, threaten their health—and even their lives—and could prevent them from obtaining an abortion altogether. Davy Decl. ¶ 21; R. II at 106–08 (Curry Decl. ¶¶ 15-19).

14. Low-income women will have the greatest difficulty in rearranging inflexible work schedules at low-wage jobs, arranging and paying for childcare, paying for the travel costs for an additional trip to the clinic, foregoing lost wages

for missed work, and paying any additional costs associated with a later procedure. Davy Decl. ¶¶ 13–16.

15. For a woman with an abusive partner who is seeking an abortion without detection, the need for privacy—and thus the threat posed by the Act—is particularly acute. R. II at 107 (Curry Decl. ¶ 17), Davy Decl. ¶ 21. Women in abusive relationships often are carefully monitored. R. II at 107 (Curry Decl. ¶ 17), Davy Decl. ¶ 21. Forcing these women to make a medically unnecessary trip could subject them to further violence. R. II at 107 (Curry Decl. ¶ 17), Davy Decl. ¶ 21.

16. Significantly, those women with wanted pregnancies who seek abortions to protect their medical well-being, or because they have received a diagnosis of a severe fetal anomaly, will also face grave harms. While the Act incorporates a limited exception for medical emergencies that immediately threaten a woman's life, there is no exception for non-emergency threats to a woman's life, and no exception for *any* threat to a woman's health.[1] The Act will thus impose serious medical risks on women facing one of the numerous complications of

[1] The underlying statute provides that a physician's "reasonable belief that complying with the requirements of informed consent would threaten the life or health of the patient is a defense to any action brought under this paragraph." § 390.0111(3)(c), Fla. Stat. This affirmative defense to disciplinary action in limited cases, which a physician must prove to the medical board before she can avail herself of it, does not constitute an adequate health exception, nor provide any protection to licensed abortion clinics for potential violations of the Act.

pregnancy that threaten a woman's life or health outside the dangerously narrow confines of the Act's exception for life-threatening medical emergencies. R. II at 107–08 (Curry Decl. ¶¶ 18–19). The Act also contains no exception for women whose pregnancies involve grave or even lethal fetal anomalies, whom the Act threatens with psychological harm. R. II at 106–07 (Curry Decl. ¶ 16).

17. Finally, by imposing a mandatory delay on women seeking abortion care—a delay that the Legislature imposes on no other patients—the Act stigmatizes these women and sends the message that they are incompetent decision-makers. This mandatory delay reflects and perpetuates the pernicious gender stereotype that women do not understand the nature of their medical procedures, have not thought carefully about their decision to have an abortion, or are less capable of making an informed decision about their health care than men.

18. By contrast, maintaining the status quo would impose *no* substantial harm on Defendants-Respondents. Defendants-Respondents have presented no evidence that women seeking abortions are not adequately informed under Florida's existing abortion-specific informed consent scheme, nor did the Florida legislature issue any findings to that effect in passing the Act. *See generally* § 390.0111, Fla. Stat. Indeed, for over 40 years, women in Florida have been able to make the personal and private decision about whether to continue a pregnancy, and to effectuate that decision, without a state-mandated delay. Thus, the risk of

immediate and irreparable harm absent a stay, compared with the lack of any harm to Defendants-Respondents if a stay is granted, weighs heavily in favor of granting Plaintiffs-Petitioners' motion. *See State v. Miyasato*, 805 So. 2d 818, 826 (Fla. 2d DCA 2001) (granting motion to stay where "the harm to [the non-movant] caused by a stay is minimal and the risks to the [movant] if no stay is granted are significant").

B. Irremediable Nature of Any Harm

19. The violation of Florida women's constitutional rights, even for a limited time, cannot be remedied at law. *See, e.g.*, *Coal. to Reduce Class Size v. Harris*, No. 02-CA-1490, 2002 WL 1809005, at *2 (Fla. Cir. Ct. July 17, 2002) (holding that plaintiffs would suffer irreparable injury in light of "the time constraints involved" and the "significant impact on the[ir] state and federal constitutional rights"), *aff'd sub nom. Smith v. Coal. to Reduce Class Size*, 827 So. 2d 959 (Fla. 2002); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (stating that a loss of constitutional "freedoms . . . unquestionably constitutes irreparable injury"); *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) (stating that the "right of privacy" is an "area of constitutional jurisprudence where we have said that an on-going violation constitutes irreparable injury"); *Brenner v. Scott*, 999 F. Supp. 2d 1278, 1291 (N.D. Fla. 2014) (loss of constitutional rights constitutes irreparable

injury). Nor is the injury to Plaintiffs-Petitioners flowing from the direct interference with the physician-patient relationship remediable: even if that injury could be quantified, which it cannot, Plaintiffs-Petitioners cannot seek damages from Defendants. *Thompson v. Planning Comm'n of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985) (where calculation of damages is speculative, legal remedy is inadequate); *Stephens v. Geoghegan*, 702 So. 2d 517, 521 n.1 (Fla. 2d DCA 1997) ("[A] [v]iolation of privacy provisions of the Florida Constitution does not give rise to a cause of action for money damages" (citation omitted)); *Tucker v. Resha*, 634 So. 2d 756, 759 (Fla. 1st DCA 1994) (finding no legislative waiver of sovereign immunity as to the privacy provision of the Florida Constitution, and therefore concluding that money damages are not available for violations of that right), *aff'd on different grounds*, 670 So. 2d 56 (Fla. 1996).

C. Likelihood That Jurisdiction Will Be Accepted

20. There is a strong likelihood that the Florida Supreme Court will exercise discretionary review of the Order, which construes the Florida Constitution's privacy clause and implicates a matter of great public importance. *Cf. Am. Civil Liberties Union of Fla. v. Hood*, 881 So. 2d 664, 666 (Fla. 1st DCA 2004) ("In light of the long and contentious history of [the abortion] issue in Florida and the widespread social impact of [the proposed] legislation, we must conclude that the instant litigation presents a question of great public importance

which should be decided by this state's highest court."), *pass-through certification review granted*, 882 So. 2d 384 (Fla. 2004).

21. The Act constitutes an unprecedented infringement on the right to privacy by requiring virtually every woman[2] seeking an abortion to wait at least 24 hours before effectuating her decision, and to make an additional, medically unnecessary trip to her abortion provider. No such conditions are imposed on any other patient seeking any other type of medical care in Florida.

22. The Florida Supreme Court has rigorously protected the Privacy Clause since its adoption in 1980, overwhelmingly striking down laws that infringe upon privacy, particularly in the personal decision-making context. *See Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998) ("[T]his Court in *In re T.W.* noted that it could cite no cases in Florida in which 'government intrusion in personal

[2] The Act contains two extremely limited exceptions to the additional-trip and delay mandates: one is for a woman who presents written proof "evidencing that she is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking." § 390.0111(3)(a)(1)(c), Fla. Stat. The other, which is a holdover from the existing law, is for a woman in "a medical emergency," § 390.0111(3)(a), Fla. Stat. The statute does not define "medical emergency," but allows the woman to obtain care without delay only if her physician can "obtain[] at least one corroborative medical opinion attesting . . . to the fact that . . . continuation of the pregnancy would threaten the life of the pregnant woman." § 390.0111(3)(b), Fla. Stat. This exception does not apply where continuation of the pregnancy would threaten a woman's health, but not necessarily her life.

decisionmaking' survived the compelling state interest test.").[3] Indeed, in both cases in which the Supreme Court has considered statutes affirmatively interfering with access to abortion, it struck the laws down on privacy grounds. *North Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 639–40 (Fla. 2003); *In re T.W.*, 551 So. 2d 1186, 1196 (Fla. 1989).[4] There is no reason for the Court to reach a different conclusion here. Since the legalization of abortion in Florida, for more than 40 years, a woman in Florida has been able to obtain an abortion when she and her physician concluded that it was medically appropriate and in her best interests—including on the day of her initial appointment. This Court's Order disrupts the status quo and allows the State to intrude upon a

[3] *See also, e.g., D.M.T. v. T.M.H.*, 129 So. 3d 320, 347 (Fla. 2013) (statute barring egg donor from asserting parental rights unconstitutional as applied to biological mother who intended to parent child); *State v. J.P.*, 907 S.2d 1101, 1119 (Fla. 2004) (striking juvenile curfew law); *Sullivan v. Sapp*, 866 So. 2d 28, 38 (Fla. 2004) (striking grandparent visitation statute); *Richardson v. Richardson*, 766 So. 2d. 1036, 1037 (Fla. 2000) (striking statute giving grandparents standing in custody disputes).

[4] In the two other abortion-related cases that the Florida Supreme Court has considered, the Court upheld the laws only after concluding that they did not affirmatively interfere with the right to abortion. *State v. Presidential Women's* Center, 937 So. 2d 114, 118 (Fla. 2006) (right to privacy was not implicated because the abortion-specific informed consent statute at issue was "analogous to" the common law and other Florida informed consent statutes); *Renee B. v. Fla. Agency for Health Care Admin.*, 790 So. 2d 1036, 1040 (Fla. 2001) (upholding state ban on Medicaid funding for abortion because "[t]here is a big difference between a government making a decision not to fund the exercise of a constitutional right and doing something affirmatively to prohibit, restrict, or interfere with it").

woman's private medical decision-making. Such an intrusion into a woman's private medical decision is unprecedented and completely lacking in any health or medical justification.

23. Given that the Florida Supreme Court has exercised its discretionary jurisdiction every time it has been presented with a law impacting a woman's decision whether to continue or end a pregnancy, *see North Florida*, 866 So. 2d at 615; *Renee B.*, 790 So. 2d at 1037, it is highly likely that the Florida Supreme Court will review this Court's Order as well.

D. Likelihood of Success on the Merits

24. Plaintiffs-Petitioners are likely to succeed on the merits. Under well-established precedent, Florida courts apply strict scrutiny to laws infringing on the right to privacy, *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989). As argued before this Court, *every* court to consider a mandatory abortion delay law under the strict scrutiny standard has struck it down.[5] These courts have consistently held that

[5] *See, e.g.*, *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 449-51 (1983), *overruled on other grounds by Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992); *Zbaraz v. Hartigan*, 763 F.2d 1532, 1535-39 (7th Cir. 1985), *aff'd*, 484 U.S. 171 (1987); *Planned Parenthood Ass'n of Kan. City, Mo., Inc. v. Ashcroft*, 655 F.2d 848, 866 (8th Cir. 1981), *supplemented by* 664 F.2d 687 (8th Cir. 1981), *rev'd on other grounds*, 462 U.S. 476 (1983); *Planned Parenthood League of Mass. v. Bellotti*, 641 F.2d 1006, 1014-16 (1st Cir. 1981); *Charles v. Carey*, 627 F.2d 772, 785-86 (7th Cir. 1980); *Wynn v. Carey*, 599 F.2d 193, 196 n.6 (7th Cir. 1979); *Eubanks v. Brown*, 604 F. Supp. 141, 145-46 (W.D. Ky. 1984); *Margaret S. v. Edwards*, 488 F. Supp. 181, 212-13 (E.D. La. 1980); *Women's Cmty. Health Ctr., Inc. v. Cohen*, 477 F. Supp. 542, 550-51 (D. Me. 1979); *Leigh v.*

mandatory delays—particularly those that require a woman to make an additional, medically unnecessary visit to her physician—impinge the right to abortion and do not further a compelling state interest using the least intrusive means.[6]

25. It cannot be the case that a 24-hour mandatory delay law was struck down as unconstitutional under *Roe v. Wade*, *see City of Akron*, 462 U.S. at 449-51, but is nonetheless lawful under the Florida Constitution's *explicit* right to privacy. *See North Florida*, 866 So. 2d at 634 (rejecting *Casey*'s undue burden

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Olson, 497 F. Supp. 1340, 1347-48 (D.N.D. 1980); *Am. Coll. of Obstetricians & Gynecologists, Pa. Section v. Thornburgh*, 552 F. Supp. 791, 797-98 (E.D. Pa. 1982); *Women's Med. Ctr. of Providence, Inc. v. Roberts*, 530 F. Supp. 1136, 1145-47 (D.R.I. 1982); *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 22-24 (Tenn. 2000); *Mahaffey v. Attorney Gen. of Michigan*, No. 94-406793, 1994 WL 394970, at *6-7 (Mich. Cir. Ct. July 15, 1994), *rev'd on other grounds sub nom. Mahaffey v. Attorney Gen.*, 564 N.W.2d 104 (Mich. Ct. App. 1997). The very few decisions upholding a mandatory delay law under strict scrutiny were either reversed on appeal or overruled by a later decision of the same court. *Wolfe v. Schroering*, 541 F.2d 523, 526 (6th Cir. 1976), *effectively overruled by Akron Ctr. For Repro. Health, Inc. v. City of Akron*, 651 F. 2d 1198, 1208 (6th Cir. 1981); *Akron Ctr. For Repro. Health, Inc. v. City of Akron*, 479 F. Supp. 1172, 1205 (N.D. Ohio 1979), *reversed in relevant part by same*.

[6] *See, e.g.*, *Zbaraz v. Hartigan*, 763 F.2d 1532, 1537 (7th Cir. 1985), *aff'd*, 484 U.S. 171 (1987) ("[A] waiting period places a direct and substantial burden on women who seek to obtain an abortion"); *Planned Parenthood League of Mass. v. Bellotti*, 641 F.2d 1006, 1014 (1st Cir. 1981) (the mandatory delay "temporarily forecloses the availability of an abortion altogether" and therefore "constitutes a state-created obstacle and direct state interference" (internal quotations and citation omitted)); *Planned Parenthood of Missoula*, 1999 Mont. Dist. LEXIS 1117, at *9 (a mandatory delay "tell[s] a woman that she cannot exercise a fundamental constitutional right for a 24-hour period . . . . [I]t is a restriction on a woman's right . . . not supported by a compelling reason.").

standard and continuing to apply *Roe*'s strict scrutiny standard to laws that infringe on a woman's fundamental right to abortion).

26. Thus, while this Court raised doubts about whether Plaintiffs-Petitioners are likely to succeed on the merits of their privacy claim, *see, e.g.*, Order at 8–9 ("[T]he trial court erroneously proceeded to decide, without any evidentiary basis, that . . . the one-day waiting period somehow imposed a significant restriction on a woman's (or minor's) opportunity to seek an abortion . . . ") (Thomas, J., concurring), Plaintiffs-Petitioners respectfully argue that there is significant persuasive legal authority suggesting that they will indeed be successful, *see In re T.W.*, 551 So. 2d at 1192–95 (applying strict scrutiny to Florida law requiring minors to obtain parental consent prior to obtaining an abortion); *North Florida*, 866 So. 2d at 615 (applying strict scrutiny to law requiring minors to provide parental notification prior to obtaining an abortion); *see also Miyasato*, 805 So. 2d at 826 (granting motion to stay, explaining, "we accept the proposition that the [movant] has arguments that it can present in good faith . . . . [T]here is precedent from other jurisdictions that would support the [movant's] position.").

III. CONCLUSION

27. For more than forty years, women in Florida have made and effectuated the decision to end a pregnancy without the State mandating that they

delay that decision or make an additional, medically unnecessary trip to their physician. This Court's Order allowing the Act to take effect immediately upends this status quo, imposing significant harm on Plaintiffs-Petitioners and their patients. By contrast, staying the Order pending Supreme Court review will pose no harm to Defendants-Respondents. The Florida Supreme Court is likely to review this Court's Order, as it has consistently done when presented with a case implicating the fundamental right to privacy. And, in light of the Florida Constitution's robust protection of the right to privacy and the fact that courts across the country have uniformly invalidated mandatory delay laws under strict scrutiny, the Supreme Court is likely to rule in Plaintiffs-Petitioners' favor.

WHEREFORE, for each of these reasons, Plaintiffs-Petitioners respectfully request that this Court grant this motion to stay its Order while Plaintiffs-Petitioners pursue their appeal to the Florida Supreme Court. Plaintiffs-Petitioners further request that the court exercise its discretion to shorten the time for response to this motion, *see* Fla. R. App. P. 9.300(a), and that consideration of this motion be expedited.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this brief was served by electronic mail on the individuals listed below, this 26th day of February, 2016.

/s/ Julia Kaye
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief, prepared in Times New Roman 14-point font, complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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Exhibit A

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

GAINESVILLE WOMAN CARE, LLC, ET AL.,	)	Case No. 1D15-3048
Plaintiffs-Petitioners,	)	L.T. Case No.: 2015-CA-1323
v.	)	
STATE OF FLORIDA, ET AL.,	)	
Defendants-Respondents.	)	

DECLARATION OF KRISTIN DAVY IN SUPPORT OF PLAINTIFFS-PETITIONERS' EMERGENCY MOTION TO STAY THIS COURT'S ORDER PENDING SUPREME COURT REVIEW

I, Kristin Davy, declare under penalty of perjury that I am over 18 years of age, and that the following statements are true and correct:

1. I am the owner of Gainesville Woman Care LLC d/b/a Bread and Roses Women's Health Center ("Bread and Roses" or "the Clinic"), located in Gainesville, which has provided safe, compassionate and legal abortion care to women in Florida for three decades. I have worked at Bread and Roses since 1998, and been its owner and director since 2004. As the Clinic's owner and director, I oversee its daily operations, business matters, and compliance with all applicable laws and regulations.

2. Bread and Roses is a plaintiff in this lawsuit on behalf of itself, its patients, and its doctor. Based on my knowledge and experience working at and operating Bread and Roses, I submit this declaration in support of Plaintiffs-Petitioners' Emergency Motion to Stay Issuance

of this Court's Mandate Pending Supreme Court Review in this challenge to Section 1 of 2015 House Bill 633.

3. I have read this law and understand that it requires a woman seeking abortion care to visit the doctor who will perform the abortion procedure (or, theoretically, "the referring physician") to receive counseling, and then to return for an additional appointment at least 24 hours later to receive the care she seeks.

4. As I saw today after this Court's Order was released, this law imposes severe harm on our patients. We had 13 women come to our office today to receive abortion care. Another dozen patients are scheduled to obtain abortions on Wednesday, March 2nd, or Friday, March 4th, and it is likely that another 10–15 will call to schedule appointments on one of those days. None of these women were, or will be, able to receive the care they need, when they need it, because of this Court's Order.

5. When we told the patients at our clinic today that, because of a court order, they could only hear the state-mandated consent information today and would then have to delay their procedures and return after at least 24 hours, they were—to a one—distraught. Most of them were in tears. It is only because our doctor, who normally sees patients Wednesday and Friday, was eventually able to rearrange her life in order to return to the clinic tomorrow that most of these women will get care in a timely manner—and even then, they and their families still experienced significant turmoil. Because of this law, patients will need to miss an extra day of school or work, and find the money to pay for additional travel, childcare, and related expenses necessitated by the additional trip. As a result, some women will be delayed in obtaining the care that they need, and some are at increased risk of having their confidential decision revealed to others. These difficulties are particularly acute—and potentially insurmountable—for our

patients who must travel long distances, or who are very poor. Given these logistical burdens, not all of the women in our clinic today could return tomorrow, and I can only hope that these burdens and complications will not ultimately foreclose access to care.

BACKGROUND: BREAD AND ROSES AND OUR PATIENTS

6. At Bread and Roses, we provide high quality surgical abortion services (involving the use of instruments to evacuate the uterus) up to 13 weeks and 6 days of pregnancy, as measured from the woman's last menstrual period ("LMP"), and medication abortions (involving medications that cause a procedure akin to an early miscarriage) up to 8 weeks LMP. In addition to abortion care, we also offer pregnancy tests and non-directive options counseling, and refer for prenatal care and adoption services. We provide roughly 800 abortions each year, at a cost between $450 and $675 each. Our medical director, an obstetrician-gynecologist, is the only doctor to provide abortions at Bread and Roses for the past ten years. She is now in semi-retirement and provides abortions only two days per week.

7. We take very seriously our responsibility to ensure that every patient's decision is voluntary and informed. Accordingly, we take a full medical history from each patient, perform additional laboratory tests, and carefully explain what the abortion procedure entails and the possible side effects and risks. We give every patient multiple opportunities to raise any questions and concerns with our staff, including the physician. In addition, we take a number of additional steps, such as meeting with each patient alone, to ensure that she has considered her options, is confident in her decision, and is not being coerced. If she is not sure of her decision, or in the rare instances where a patient indicates that she is being coerced into having an abortion, we will not perform the procedure.

8. Pursuant to existing Florida law, our doctor discusses the relevant medical information, including the risks of the procedure and alternatives; performs an ultrasound; and offers the woman the opportunity to view the image. We also offer her printed state materials describing the embryo or fetus at various stages of development and listing entities that offer alternatives to abortion, with details on medical assistance for prenatal care, childbirth, and neonatal care.

9. Before a woman contacts us to set up an appointment for abortion care, she is generally well aware of her options: giving birth and then either parenting or placing a child for adoption, or terminating the pregnancy. We provide her with more information regarding each of these options to empower her to make the right decision for her and her family. Occasionally, we have patients who seek an appointment not for an abortion, but for a pregnancy test and/or options counseling, and we schedule those appointments on days when we do not offer abortion care. If, after options counseling, she decides to terminate, we schedule her for an abortion on another day. If she decides to carry to term, we refer her for prenatal care and/or adoption services.

10. In my experience, women do not take this decision lightly. They consider their financial resources, implications for their future, their educational plans, partner support in raising a child, and responsibilities to their children, among other factors. Because the decision is so significant, by the time a woman has called our clinic to make an appointment for an abortion, collected the resources, made arrangements to come in for the procedure, and arrived at the clinic, she is quite certain of her decision, having in most cases considered it for several days or even weeks.

11. Our patients seek abortions for a variety of reasons. Many already have children, and seek an abortion because they know they cannot care for another child at this time. Some are students and want to complete their education before they start a family. Others—many of them already mothers—need to leave an abusive relationship, and fear that pregnancy and childbirth will prevent them from doing so.

12. In Florida, Medicaid does not cover abortion care except in cases of rape, incest, and when the woman's life is endangered. Most of our patients must pay for their abortions out of pocket, and the $450-675 can be a significant and unexpected expense. Already, many of our patients have difficulty paying for the procedure, and approximately one-fourth receive funding from charities. Many forego important expenses to gather the necessary funds, or turn to friends and family to help pay.

EFFECT OF THE 24-HOUR DELAY AND ADDITIONAL-TRIP REQUIREMENT

13. The requirement that every patient meet in person with the physician who will perform the abortion (or, theoretically, "the referring physician"), at least 24 hours before the procedure, adds to the burdens our patients already face by requiring them to make an additional trip to the clinic in order to have an abortion. I know this based on working with our patients over the past seventeen years, and especially from the experiences of our patients today, after this Court's Order. For some women, making an extra trip to the clinic on another day is a significant hardship, especially for those women who come from far away. These women face a difficult choice: either pay for a hotel to stay overnight, pay for and arrange for childcare, miss school or work, and forego lost wages for a few days; or take two separate trips to the clinic and make a separate set of arrangements for work, childcare, or school for that extra visit. As I noted above, a significant proportion of our patients are poor and receive assistance from outside

organizations that provide funds to help women pay for their abortion procedures. However, these funds cover only a *fraction* of the cost of the *procedure* (less than half), and they do not cover travel expenses, childcare costs, or other expenses. All women must bear these costs on their own. Moreover, patients who do not qualify for these funds also often struggle to afford the costs and expenses of obtaining an abortion. Only women who are below 100% of the federal poverty line qualify for assistance from these organizations. A significant number of our patients live close to, though slightly above, the federal poverty line and they must pay for their abortion care and the associated expenses on their own. For these low-income women, the costs and burdens associated with an additional trip to the clinic may threaten their ability to obtain an abortion.

14. For example, one woman who was terribly upset in our clinic today is a waitress with children at home. Because she is living below the federal poverty line, she qualifies for charitable assistance to help cover the cost of the abortion care itself, but she still has to carry the burden of transportation, missed work and wages, and childcare. She indicated that she absolutely could not take off work again next Wednesday (which was our next scheduled procedure day).

15. Another patient in our clinic today is a clerical worker with children at home. Coming back next Wednesday is also not possible for her: she said that missing one more day of work after today would cost her her job—and her ability to support her children. In addition, she very much wanted to have a medication abortion—which some women find to be less invasive and more like a spontaneous miscarriage, and which allows a woman to complete the abortion at home—and would have been over the limit for that care by next Wednesday. It was only because our doctor was able, exceptionally, to come in tomorrow that we could provide the care

this woman needed. In addition, because her partner accompanied her to drive her home today, and will also do so tomorrow, they had to arrange for additional childcare for tomorrow.

16. Another patient who drove an hour and a half to come to our clinic today likewise expressed fear and distress at the prospect of asking for another day off work next Wednesday, but that is what she plans to try to do. She is a mom with childcare responsibilities, and simply cannot return tomorrow.

17. Even women who live near the clinic will be significantly burdened. Many of our patients have jobs with unpredictable schedules, or schedules that are not set well in advance, such as in the food service or retail industries. Indeed, it is hard to overstate how difficult it is for some women to ensure that they will not be scheduled to work during their *single* appointment. Requiring these women to arrange at least two shifts off work in a single week so that they can make an extra visit to the clinic will be tremendously difficult, and may threaten their employment. This is a profound risk and burden on the lives of these women and their families. Moreover, this will double the amount of lost wages these women suffer, adding to the expense of having an abortion. For our patients who already have children, arranging for childcare so they can attend even one appointment can be costly and/or difficult. As I saw today, requiring a woman to arrange for childcare for two days in a week will again pose a greater burden.

18. As mentioned above, Bread and Roses has had a single doctor for the last ten years, who is now semi-retired and provides care at the clinic only two days per week. It already can be difficult for our patients to find time to match their work and family obligations with our schedule. If a woman must make an additional trip to the clinic, these difficulties will be exacerbated, and may cause her to wait at least an extra week for her abortion at our clinic.

These delays have the potential to push patients past the gestational age up to which we schedule surgical abortions—13 weeks and 6 days LMP.

19. Moreover, aside from the increased risks of the procedure, I understand that there are patients for whom it is particularly inadvisable to delay the procedure, including those who are suffering from severe symptoms of pregnancy. One patient who drove an hour to our clinic to receive care today has hyperemesis—a pregnancy complication involving persistent, severe vomiting. She has kids at home, no health insurance, no regular doctor she can see, and she cannot stop vomiting. Returning home while still throwing up, taking care of her children while still throwing up, and then driving back to receive abortion care while still throwing up is simply an awful experience for her.

20. Finally, the costs of the procedure go up as gestational age increases. This is especially true for procedures after the first trimester. This will only exacerbate the obstacles our patients must overcome, as they must save even more money to have a later procedure.

21. While the additional-trip requirement will inconvenience all of our patients and will burden their access to abortion, it will be especially dangerous for some of our most vulnerable patients: women who are victims of intimate partner violence. We have had patients who were in abusive relationships and wanted to extricate themselves from these dangerous situations. These women desperately wanted abortions in order to terminate pregnancies that could potentially tie them to their abusive partners forever. They had an extremely difficult time concealing their pregnancies, gathering the funds to pay for their abortions, and finding the time to evade the scrutiny of their abusive partners for the three to four hours necessary for the abortion procedure. While it can be difficult and embarrassing for women to ask others for support and assistance to pay for and obtain an abortion—for example, by asking for a ride to the

clinic, or for childcare—for women in abusive relationships, these concerns are exacerbated. We have treated some women whose friends and families did not want to provide assistance or support for the woman in obtaining an abortion, out of fear that, should the abusive partner learn of the abortion, he would target them for helping her. For these women, an additional trip to the clinic would not only be extremely difficult, but could be fatal. Each additional trip to the clinic is another opportunity for the woman to be caught by her abusive partner. When a patient reveals to us that she is a victim of intimate partner violence, we provide her with information regarding local resources, including shelters, counselors, and groups at the university, which can provide assistance.

22. The question of confidentiality raises a broader concern. The decision to terminate a pregnancy is a deeply private one, and all of our patients, not just those in abusive relationships, have concerns about protecting their privacy. Requiring a woman to make an additional visit will only increase the chance that she will be seen or judged by people she knows. One of the patients today, for example, feared that asking for another day off work would lead her employer to ask her why she wanted the time off, and would thus risk her confidentiality.

23. Moreover, the additional-trip requirement also subjects our patients to further harassment by anti-abortion activists who are routinely outside our clinic holding signs with upsetting messages and images, yelling messages at all who walk through our doors. While we occasionally have volunteers who escort our patients, that is not always the case. For many of our patients it can be very distressing to be harassed and called horrible names while walking into our clinic. Forcing our patients to endure this harassment and humiliation once more will harm our patients' emotional well-being.

24. I understand that Defendants have argued at earlier points in this litigation that the challenged law permits a woman to visit a separate "referring physician" to receive the required information and ultrasound before coming to our clinic for an abortion, and that this will minimize the burdens of this law. But the law states that the ultrasound must be performed by a person working "in conjunction" with the abortion provider. I do not know what the term "in conjunction" means in this context, but, as a practical matter, it seems to preclude any person outside of Bread and Roses from providing the ultrasound, since we do not have an established relationship with any physicians other than the obstetrician/gynecologist who provides abortion care at our clinic. Moreover, even if a woman were allowed to receive the information and ultrasound from a "referring physician" with whom Bread and Roses does not have an established relationship, this will do little to alleviate the law's burdens, and could in fact create more hassle and confusion. First, these women would still be compelled to make an additional, unnecessary trip to a physician. This continues to burden all women, and to be especially burdensome on our patients who are low-income or victims of domestic violence. Second, because this law threatens Bread and Roses and its physician with liability (rather than the referring physician), we would need to establish a system for ensuring that all referring physicians have, in fact, provided all of the state-mandated information before we provide the abortion. It is highly likely that an ob-gyn or family physician who does not provide abortions is unfamiliar with the law's requirements, and it would be difficult for us to verify that the required information was actually provided to the woman.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true.

Executed on February 26, 2016 in Gainesville, Florida.

_/s/_ Kristin Davy_____
Kristin Davy