IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

JACKSON WOMEN'S HEALTH ORGANIZATION, et al **PLAINTIFFS**

VS. **CAUSE NO. 25CH1:22-cv-00739**

THOMAS E. DOBBS, M.D., et al **DEFENDANTS**

MEMORANDUM OPINION AND ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

I. INTRODUCTION

Jackson Women's Health Organization (JWHO), on behalf of itself and its patients; and Sacheen Carr-Ellis M.D., M.P.H., (Carr-Ellis) on behalf of herself and her patients (collectively, Plaintiffs), filed both a Complaint for Declaratory and Injunctive Relief [MEC 2] and a Petition for Temporary Restraining Order & Injunctive relief [MEC 9] against Thomas E. Dobbs, M.D., M.P.H., in his official capacity as State Health Officer of the Mississippi Department of Health (Dobbs); Mississippi Board of Medical Licensure (Licensure Board); Kenneth Cleveland, M.D., in his official capacity as Executive Director of the Mississippi State Board of Medical Licensure (Cleveland) (with all of the preceding Defendants collectively referred to as State Defendants); Jody E. Owens, II, in his official capacity as District Attorney for Hinds County (Owens); Gerald A. Mumford, in his official capacity as County Attorney for Hinds County (Mumford); and Catoria P. Martin,

in her official capacity as City Attorney for the City of Jackson (Martin) (with the remaining Defendants collectively referred to as Local Defendants).

Miss. R. Civ. P. Rule 65 governs both the issuance of temporary restraining orders and preliminary injunctions. By definition, a temporary restraining order is short in duration and issued with no or little notice to the opposing parties, with little or no opportunity to brief the Court and argue the law relative to its issuance. The issuance of a preliminary injunction, on the other hand, is taken up by the Court when parties positioned opposite to those requesting the relief have received adequate notice of the request, with an opportunity to respond and to be heard prior to the issuance.

In this case, all Defendants have been served with process and State Defendants have filed a Response (MEC 33) opposing the issuance of any preliminary injunctive relief, which adequately briefs the Court and puts forth the authorities upon which their opposition is based. Martin has filed an Answer (MEC 35) to the Complaint, amounting to a general denial of the Complaint and asserting various affirmative defenses not germane to the issues presented today. The other Local Defendants have not yet answered but were properly notified by MEC of the hearing on whether to issue preliminary injunction (MEC 31). Inasmuch as all parties have been served in this matter, have notice of the hearing on the request for injunctive relief, and have had an opportunity to respond and participate in the hearing, the Court finds that it is appropriate to proceed on the issue of whether to issue a preliminary injunction, potentially to

endure until the completion of the litigation. The Court declines to take up the request for issuance of a temporary restraining order.

Plaintiffs' Complaint for Declaratory and Injunctive Relief [MEC 2] asserts that the Mississippi Constitution protects the right to abortion and relies on the decision of the Mississippi Supreme Court in *Pro-Choice Mississippi v. Fordice* 716 So. 2d 645 (Miss. 1998) in support of their position. Plaintiffs' ultimate requests for relief are findings that Miss. Code Ann. . § 41-41-45 (1972 & Supp.) (known as the Trigger Ban) and Miss. Code Ann. § 41-41-34.1 (1972 & Supp.) (known as the 6-Week Ban are unconstitutional infringements against that right to abortion and the granting of permanent injunctions against the enforcement of the such bans. Per the Court's Amended Order Setting Hearing entered on July 1, 2022 [MEC 31], the only issue before the Court today for decision is whether or not to grant preliminary injunctive relief to Plaintiffs enjoining enforcement of these statutes until the case can be decided on its merits. State Defendants filed a Motion to Dismiss (MEC 34) which is not considered by the Court today.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 24, 2022, the Supreme Court of the United States of America ruled that there is no U. S. Constitutionally protected right to an abortion in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ___ (2022), overruling *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705. 35 L.Ed.2d 147 (1973) and its progeny. In its ruling, the Court stated that the power to regulate abortions lies with the States, as it had been prior to *Roe.*

In 2007, the Mississippi Legislature enacted the Trigger Ban statute which prohibited most abortions, with a delayed implementation date designed to be triggered, if and when the Mississippi Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe*, and that it is reasonably probable that the statute would be upheld by the Court as constitutional. On June 27, 2022, the Attorney General of Mississippi, Lynn Fitch, published such a determination. As such, it is argued that the Trigger Ban will take effect on July 7, 2022, absent court injunction.

The 6-Week ban is the second statute that Plaintiffs seek injunction against enforcement, even though such enforcement is currently enjoined by the Federal District Court of the Southern District of Mississippi in *Jackson Women's Health Organization v Dobbs,* as affirmed by the Fifth Circuit Court of Appeals, 951 F.3d 246 (5th Cir. 2020). This statute, prohibiting most abortions in Mississippi after six weeks past the last menstrual period, was enacted by the Legislature during its 2019 Legislative Session and prohibits abortions after the detection of a "fetal heartbeat". The parties do not dispute that since the federal injunction was based on federal law, it could be lifted in the near future, leaving the statute subject to state enforcement.

III. DISCUSSION AND ANALYSIS

In determining the propriety of issuing an injunction, the Court must balance four factors: (1) there exists a substantial likelihood that plaintiff will prevail on the merits; (2) the injunction is necessary to prevent irreparable harm; (3) the threatened harm to the applicant outweighs the harm the injunction

might do to the respondents; (4) entry of the injunction is consistent with the public interest. The Court now undertakes to address these factors.

A. There exists as substantial likelihood that Plaintiffs will prevail on the merits

Plaintiffs can only prevail on the merits if, when the case is decided on the merits, the Supreme Court finds that the Mississippi Constitution protects the right to abortion. Since Plaintiffs contest the constitutionality of the Trigger Ban and the 6-Week Ban, those issues will be decided ultimately by the Supreme Court and not the Chancery Court. If this Court found either of these statutes to be unconstitutional because of a violation of a state constitutional right protecting abortion, there follows an automatic and immediate appeal. The plain wording of the Mississippi Constitution does not mention abortion. Plaintiffs rely upon state constitutional protection of such a right announced in *Fordice*. Since the ultimate relief sought by Plaintiffs in their Complaint is an adjudication of unconstitutionality of the two abortion statutes, then this Court's granting of that relief would be necessarily appealed to the Supreme Court for a final determination on the merits of that claim.

However, since the Supreme Court is the Court with the ultimate authority to determine the constitutionality of legislative statutes and to reconsider the rules of law announced in prior cases, this Court is bound to consider what the outcome of the case likely will be when the Supreme Court decides it on the merits. In doing so, this Court must consider the arguments of counsel about whether *Fordice* will be good law after the Supreme Court renders its final

decision on the constitutionality of these statutes because of their near-ban on most abortions in contradiction to *Fordice*. The *Fordice* Court compared Section 32 of the Mississippi Constitution to the Ninth Amendment of the U. S. Constitution. Neither Constitutional provision made specific reference to any protection for abortion. The Court largely rested its finding of a state protected right to abortion to that federal constitutional right found by the *Roe* Court to flow from the Ninth Amendment. In their arguments before this Court, to which this Court agrees, State Defendants point out that there seems to have been inadequate attempts by the *Fordice* Court to define alternate bases for finding the existence of state constitutional protection for abortion. The repeated references to *Roe* and *Casey* support State Defendants' argument. Since *Roe* and *Casey* are no longer the law of the land, reliance upon *Fordice* will almost certainly not be well-founded when pursuing this case in the Supreme Court. When considering *Fordice*, in light of *Roe*, *Casey* and *Dobbs*, it is more than doubtful that the Mississippi Supreme Court will continue to uphold *Fordice*. Having so considered, this Court is unable to accord *Fordice* as sufficient authority to find that there exists substantial likelihood that Plaintiffs will prevail on the merits.

B. The injunction is necessary to prevent irreparable harm

If there is a state constitutionally protected right to abortion, it is likely that Plaintiffs would suffer irreparable harm by allowing the Trigger Ban and the 6-Week Ban to be enforced during the pendency of this litigation. Although many of the harms alleged by Plaintiffs boil down to economic harms to the providers

by having to close their clinics and to their patients for the costs of delivery and caring for unwanted children, the Court acknowledges that the psychological trauma suffered by the patients and the perceived loss of life opportunities they will face in a post-*Roe* world is significant, and irreparable from those patients' perspectives. The loss of licensure and potential imprisonment arguments urged by Plaintiffs are not persuasive inasmuch as those consequences can be avoided by compliance with the statutes as enforced.

C. The threatened harm to the applicant outweighs the harm the injunction might do to the Respondents

The Court finds that Plaintiffs fail to show that the balance of harms weighs in their favor. Injunctive relief would clearly harm the State and its citizens. Any injunction against a state's duly enacted laws necessarily irreparably harms that state by denying the public interest in the enforcement of its laws. Further, states have "legitimate interests" in restricting abortion—including "respect for and preservation of prenatal life at all stages of development," "the protection of maternal health and safety," "the elimination of particularly gruesome or barbaric medical procedures," "the preservation of the integrity of the medical profession," "the mitigation of fetal pain," and "the prevention of discrimination on the basis of race, sex, or disability," all as noted by the U. S. Supreme Court in *Dobbs*. The laws here advance those interests, and enjoining the laws would undermine those interests. When considering this, clearly the real harm to the State of Mississippi and its citizens, current and

future, flowing from the issuance of an injunction is outweighed by any potential threatened harm to Plaintiffs, if the injunction is not issued.

D. Entry of the injunction is consistent with the public interest

As noted hereinabove, there is a strong public interest in having the laws of a state enforced. The Trigger Ban and the 6-Week Ban are affirmative statutes that have been properly enacted by the Mississippi Legislature through proper constitutional law-making authority. The Mississippi constitutional protection for abortion is based on judicial interpretation by the *Fordice* Court of Section 32 of the Mississippi Constitution which fails to mention abortion, in significant reliance on *Roe* and *Casey*, neither of which remain good law. This Court cannot find that enjoining enforcement of two properly enacted statutes in deference to a case whose constitutionality has come into such strong challenge is consistent with the public interest.

Having so considered the pleadings, argument and relevant law, the Court declines to issue any preliminary injunctive relief in this case.

IT IS, THEREFORE, ORDERED that Plaintiffs' request for preliminary injunctive relief is **DENIED.**

SO ORDERED, this the 5th day of July, 2022.

Debbra K. Halford

DEBBRA K. HALFORD
SPECIAL CHANCELLOR