SC22-1050

In the Supreme Court of Florida

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, ET AL.,
Petitioners,

v.

STATE OF FLORIDA, ET AL.,
Respondents.

On Petition for Discretionary Review from the Frist District Court of Appeal
DCA No. 1D22-2034

BRIEF OF AMICUS CURIAE CONCERNED WOMEN FOR AMERICA IN SUPPORT OF RESPONDENTS

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IDENTITY OF AMICUS CURIAE

Concerned Women for America (CWA) is the largest public-policy women's organization in the United States, with half a million members throughout all 50 states. Its members represent the interests of ordinary American women whose views are often overlooked by political and cultural elites. CWA advocates for values that are central to America's cultural health and welfare. Among CWA's core issues are protecting the sanctity of human life throughout every stage of development, and defending the family, which requires staunch support for mothers and their children. For over 40 years, CWA has actively promoted legislation, education, and policymaking consistent with its philosophy, lending a voice to conservative women in the culture, legislatures, and courts.

SUMMARY OF THE ARGUMENT

The Florida Legislature passed the Reducing Fetal and Infant Mortality Act (HB 5), which protects mothers and their unborn children from the harms inherent to late-term abortion by restricting abortions after 15 weeks' gestation. The U.S. Supreme Court has explained that the people of the states—not the courts—

have the final say when it comes to abortion policy. The state maintains an interest in regulating the medical profession. Its oversight is particularly important for a procedure that threatens the health of a mother and results in a child's death.

Planned Parenthood[1] seeks to circumvent the will of the people by convincing this Court to enjoin HB 5. As support for its claim, it offers the theory that the Florida Constitution affords abortionists a special status exempting them from state medical regulations. But Planned Parenthood cannot establish the four elements required to demonstrate that it is entitled to injunctive relief.

First, Planned Parenthood is not likely to succeed on the merits of its case. It has no constitutional right to perform abortions, nor do its prospective clients have a right to abortion, let alone late-term elective abortions. But even if they did, its commercial interests are at odds with the pregnant women it sells abortions to, and there is no evidence in the record that Planned Parenthood has a close relationship with its clients. And, women

[1] For simplicity, amicus refers to all Petitioner abortion providers collectively as "Planned Parenthood."

seeking an abortion past the 15-week limit are capable of bringing their own lawsuits and receiving quick emergency relief, as evidenced by the trial court's expeditious turnaround on Planned Parenthood's request for an injunction here. Because Planned Parenthood has no clear right to perform abortions or the ability to invoke third-party standing, it cannot succeed on the merits and its claim fails on this factor alone.

Second, Planned Parenthood has not shown that its purely economic damages constitute irreparable harm. Monetary damages alone are not enough to establish irreparable harm to a business, and that includes abortionists. Recognizing this obstacle, Planned Parenthood claims that HB 5 will also disrupt the extremely limited relationship between consumers and abortionists, and put its employees at the risk of prosecution. This is another way of arguing that abortion providers have a constitutional right to go about the business of abortion, and it has no legal footing.

Even if a woman had a right to an elective late-term abortion, it would be *her* right—not one she shares with Planned Parenthood. And in the event the state prosecuted Planned Parenthood employees, the employees have a remedy: they can

make the same legal arguments in their defense that Planned Parenthood raised in its motion for injunction. HB 5 may impact Planned Parenthood's business model, but that is not enough to demonstrate irreparable harm.

Third, enjoining HB 5 is contrary to the public interest. An injunction would result in a unique, irreparable injury to the citizens of Florida. Floridians were the impetus behind the passage of HB 5, a statute that "like other health and welfare laws, is entitled to a strong presumption of validity." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (quotation marks omitted). Planned Parenthood disputes this by citing a line of pre-*Dobbs* cases in which this Court effectively converted section 23 of the state Constitution into a vaguely defined "privacy right" to abort a child. Because, as the State's brief explains, there is no such right in section 23, State's Answer Br. at 9–12, and because "courts cannot 'substitute their social and economic beliefs for the judgment of legislative bodies,'" *Dobbs*, 142 S. Ct. at 2283–84 (citing *Ferguson v. Skrupa*, 372 U.S. 726, 729–30 (1963)), this line of cases should be overruled and the Court should base its holding on the will of the people, as demonstrated in HB 5.

This Court need not second-guess what is in the public interest with respect to abortion policy: Floridians made it clear through the passage of HB 5. This Court should honor the will of the people of Florida and reject Planned Parenthood's challenge to the State's judgment.

ARGUMENT

As the First District correctly concluded, the trial court's injunction in this case was in error. The "extraordinary relief" of an injunction:

> should be granted only when the party seeking the injunction has established four elements: (1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest.

Fla. Dep't of Health v. Florigrown, LLC, 317 So. 3d 1101, 1110 (Fla. 2021). Before a court can issue a temporary injunction, "[it] must be certain that the petition or other pleadings demonstrate a prima facie, clear legal right to the relief requested." *Naegele Outdoor Advert. Co. v. City of Jacksonville*, 659 So. 2d 1046, 1048 (Fla. 1995). But Planned Parenthood has no "clear" or "certain" right to

assert third parties' supposed privacy rights so that it can engage in its abortion business without limitation. *See id.*

For too long abortionists have made such arguments, and too many courts have wrongly accepted them. But *Dobbs* threw into doubt precent suggesting that abortionists can vicariously assert their clients' right to an abortion. Indeed, the U.S. Supreme Court in *Dobbs* specifically renounced the way it had allowed *Roe* and its progeny to "ignore[] the Court's third–party standing doctrine." *See Dobbs*, 142 S. Ct. at 2275. And the Court did not stop there. It lamented the way abortion cases "have diluted the strict standard for facial constitutional challenges[,] . . . disregarded standard res judicata principles[,] . . . flouted the ordinary rules on the severability of unconstitutional provisions, as well as the rule that statutes should be read where possible to avoid unconstitutionality[,] . . . [and] distorted First Amendment doctrines." *Id.* at 2275–76.

On both the standing doctrine and the meaning of "privacy," Planned Parenthood asks this Court to continue distorting legal concepts to accommodate abortion. But enough is enough. This Court can begin restoring the proper meaning of legal principles by

overturning its line of cases that led organizations like Planned Parenthood to believe it could skirt third–party standing requirements. See, e.g., *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1253–54 (Fla. 2017); *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612 (Fla. 2003); *In re T.W.*, 551 So. 2d 1186, 1188–89 (Fla. 1989). Planned Parenthood has no right to assert a "privacy" interest that does not belong to it, especially one with no constitutional basis. The time to correct Florida's jurisprudence is now.

I. Planned Parenthood is unlikely to succeed on the merits because it does not have a clear right to perform abortions, and it does not have standing to assert the interests of mothers who are considering abortion.

Planned Parenthood cannot demonstrate a substantial likelihood of success on the merits. First, it has no constitutional right to perform abortions, nor do prospective patients possess a right to get an abortion—let alone late-term abortion on demand. And second, Planned Parenthood cannot establish third-party standing on behalf of its prospective patients.

Planned Parenthood is not a public service. It is a business, and its relationship with prospective abortion customers is limited

to selling one-off offerings. And even if Planned Parenthood did have a meaningful relationship with its customers, women can bring their own claims and get quick relief, as evidenced by the speed with which the trial court granted Planned Parenthood's request for an injunction. Without a clear right to perform abortions or the ability to invoke third-party standing, Planned Parenthood has no chance of success on the merits.

A. Planned Parenthood's prospective patients do not possess a right to unlimited abortion, much less does it possess a right to perform them.

While Planned Parenthood claims to bring suit to assert the rights of its customers to obtain an abortion, its brief is laden with references to its purported right to *perform* abortions. There are two problems with that: first, there is no constitutional right—state or federal—to obtain an abortion. *See Dobbs*, 142 S. Ct. at 2242. Second, even if Floridians had a state constitutional right to abortion, abortionists themselves have no "freestanding right to perform abortions." *Planned Parenthood of Greater Ohio v. Hodges*, 917 F.3d 908, 912 (6th Cir. 2019); *see* State's Answering Br. at 61 (citing cases).

Any "privacy" right to abortion, if one exists, belongs to the woman seeking the abortion, not the abortion provider. *See Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1254 (Fla. 2017) ("Florida's constitutional right of privacy encompasses *a woman's right* to choose to end her pregnancy.") (emphasis added)). That is, because Planned Parenthood is merely in the business of performing abortions, HB 5 has "no more constitutional import as to [Planned Parenthood] than if its requirements dealt with a kidney transplant." *Hodges*, 917 F.3d at 912 (quotation marks omitted).

Planned Parenthood brought a claim without first establishing that it even had a right that it could invoke. It does not, and that alone is fatal to its likelihood of success on the merits.

B. Planned Parenthood does not have standing to assert patients' rights.

This Court has adopted the U.S. Supreme Court's third-party standing doctrine. Litigants may "bring actions on behalf of third parties, provided three important criteria are satisfied:" (1) "The litigant must have suffered an 'injury in fact,' thus giving him or

her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; (2) "the litigant must have a close relation to the third party"; and (3) "there must exist some hindrance to the third party's ability to protect his or her own interests." *Alterra Healthcare Corp. v. Est. of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) (quoting *Powers v. Ohio*, 499 U.S. 400, 410–11 (1991)). Planned Parenthood fails on all three factors.

1. Planned Parenthood's interests conflict with those of pregnant women.

Even if a plaintiff has a "sufficiently concrete interest" in the outcome of a dispute, *id.* at 941, it may not assert third-party standing where its interests "are not parallel and . . . potentially in conflict" with the third party, *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15 (2004). Accordingly, in *June Medical Services v. Russo*, both Justices Alito and Gorsuch recognized the potential conflict between an abortion provider, who "has a financial interest in avoiding burdensome regulations," and a woman seeking abortion, who has "an interest in the preservation of regulations that protect [her] health." 140 S. Ct. 2103, 2166 (2020) (Alito, J., dissenting), *id.* at 2174 (Gorsuch, J., dissenting).

The conflict of interest is apparent here. Florida's 15-week law protects women from late-term abortion, "a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." *See Dobbs*, 142 S. Ct. at 2284. It is not medical "treatment in the traditional sense of that term." *Cf. Krischer v. McIver*, 697 So. 2d 97, 102 (Fla. 1997) (examining physician-assisted suicide). Abortion—like physician–assisted suicide—"is an affirmative act designed to cause death." *Id.* Planned Parenthood has a vested commercial interest in profiting from this "barbaric," lethal "treatment." *Dobbs*, 142 S. Ct. at 2284. Abortionists use techniques such as vacuuming an unborn child out of her mother's womb, or dilation and evacuation ("D & E") in which they forcefully "tear apart" the child's body parts, causing tiny arms and legs to be "ripped off" of the child's body. *Gonzales v. Carhart*, 550 U.S. 124, 135–36 (2007).

This is the business of Planned Parenthood, and it is a very lucrative one. Petitioner Planned Parenthood of South and Central Florida's most recent annual report shows that abortion was

24.9% of its business.[2] Its gross income was more than $23 million.[3]

Planned Parenthood does not dispute that it has a commercial interest in performing as many abortions as possible. *See* Pet'rs' Opening Br. at 37 ("Pet'rs' Br."). Indeed, its focus on profit margins is highlighted by the fact that not once in its 65-page brief does it address the legitimate risks to women who obtain late-term abortions. Instead, Planned Parenthood assures the Court that abortion is a "very safe" procedure, *See* Pet'rs' Br. at 37, despite empirical data showing that women face staggering physical and mental health consequences after having an abortion. For example, the risk of post-abortive death to the mother increases by 38% for each additional week of gestation,[4] and there is an 81% greater incidence of mental health problems post-

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[2] Planned Parenthood of Sw. and Cent. Fla., *FY 2021 Program Report* (July 1, 2020–June 30, 2021), https://bit.ly/3MCtYcx.

[3] Planned Parenthood of Sw. and Cent. Fla., *Form 990 Return of Organization Exempt from Income Tax* (May 13, 2021), https://bit.ly/3Gx2dhC.

[4] Linda Bartlett, et. al., *Risk factors for legal induced abortion–related mortality in the United States*, 103 OBSTETRICS AND GYNECOLOGY 729, 729–37 (April 2004), https://bit.ly/3ZVsJYD.

abortion[5]—not to mention the fact that the procedure is indisputably *fatal* for the woman's unborn child.

Planned Parenthood's financial interest in performing abortions is at the very least "potentially in conflict" with mothers and their unborn children. *See Elk Grove*, 542 U.S. at 15. On this factor alone, Planned Parenthood cannot meet the burden required to establish third-party standing.

2. Planned Parenthood has not established a close relationship with its potential future patients.

Planned Parenthood claims to have the requisite "close relationship" required to assert third–party standing on behalf of women who would be unable to get an abortion in Florida after 15 weeks' gestation. There is nothing in the record to substantiate this claim.

For the purposes of third-party standing, a close relationship requires an "*existing*" relationship," which is "quite distinct from [a] *hypothetical*" relationship. *See Kowalski v. Tesmer*, 543 U.S. 125, 131 (2004) (emphases in original). While *Kowalski* involved an

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[5] Priscilla K. Coleman, *Abortion and mental health: quantitative synthesis and analysis of research published 1995–2009*, 199 BRITISH J. OF PSYCHIATRY 180, 180–86 (2011), http://bit.ly/41lizlr.

attorney–client relationship, in *Dobbs*, the U.S. Supreme Court similarly cast doubt on whether abortion providers can invoke third-party standing on behalf of hypothetical clients. *See Dobbs*, 142 S. Ct. at 2275. The Court reasoned that, if abortion providers can vicariously represent the interests of a client they hardly know, standing requirements are essentially meaningless whenever abortion is at issue. *See id.*; *accord United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1586 (2020) (Thomas, J., concurring); *June Med. Servs.*, 140 S. Ct. at 2168 (Alito, J., dissenting).

Planned Parenthood's "close relationship" to prospective patients is purely hypothetical, as evidenced by the fact that it failed to produce even one woman who claims to be negatively impacted by HB 5. Indeed, Planned Parenthood's only factual support for the requisite close relationship is the trial court's finding, citing plaintiffs' expert, about "the importance and closeness" of abortion providers and their clients. July 25, 2022 Order Granting Pls.' Mot. for TRO at Order at ¶ 101, Pet'rs' Br. at 31. But that generic assertion is belied by the fact that "a woman who obtains an abortion typically does not develop a close relationship with the doctor who performs the procedure." *June*

Med. Servs, 140 S. Ct. at 2168 (Alito, J., dissenting). An abortion involves an extremely brief one-off transaction—minutes, at most—between the abortionist and the pregnant woman. *Id.* In fact, when Florida sought to ensure that women would see an abortion provider two times, abortionists sued, claiming two interactions with a client was too many. *Gainesville Woman Care*, 210 So. 3d at 1261.

If women who obtain abortions have a "close relationship" with a physician at all, they will most likely find it in "overwhelmed emergency rooms in their distress, where they are usually cared for by physicians other than the abortion provider." *See* April 7, 2023 Memorandum Opinion and Order, *All. for Hippocratic Med. v. Food and Drug Admin.*, Case 2:22-cv-00223-Z, ECF No. 137 at 10 (N.D. Tex. April 7, 2023) (quotation marks omitted). Those physicians actually provide treatment to the women, "often spend[ing] several hours" with them and "even hospitalizing them overnight or providing treatment throughout several visits." *Id.*

The abortionist's fleeting contact with a patient is not a "close relationship," and because Planned Parenthood has failed to make

that showing, it cannot satisfy the second requirement to establish third-party standing.

3. Nothing prevents Planned Parenthood's clients from bringing suit on their own behalf.

Women seeking abortion can bring a lawsuit on their own behalf. Planned Parenthood's argument to the contrary is based on unfounded conjecture. Without a record to support its assumptions, Planned Parenthood's argument should be rejected.

To assert a third party's constitutional rights, a litigant must show that the third party cannot protect her own interests. *Alterra Healthcare Corp.*, 827 So. 2d at 941. That is, the litigant must demonstrate "some hindrance to the third party's ability to protect his or her own interests." *Id.* (quoting *Powers*, 499 U.S. at 410–11).

Proving that a third party is hindered from bringing her own claim is a steep climb. For example, the U.S. Supreme Court rejected criminal defense attorneys' claim that the complexity of appellate litigation was a true "hindrance" to indigent criminal defendants, citing cases in which defendants represented themselves and concluding that regardless of a defendant's limitations, they were able to vindicate their own interests.

Kowalski, 543 U.S. at 126. Similarly, this Court's caselaw demonstrates that individuals wishing to challenge abortion laws are unhindered from bringing their own claims. This Court has heard cases from individuals—including a *minor*—who filed such challenges. *See In re T.W.*, 551 So. 2d 1186, 1188–89 (Fla. 1989); *see also Florida v. Planned Parenthood of Sw. & Cent. Fla.*, 342 So. 3d 863, 867 (Fla. 1st DCA 2022); *Renee B. v. Fla. Agency for Health Care Admin.*, 790 So. 2d 1036, 1037 (Fla. 2001) (abortion-related claim brought by three Medicaid recipients); *Burton v. State*, 49 So. 3d 263, 264 (Fla. 1st DCA 2010). Indeed, *Roe v. Wade* was a case in which a woman seeking abortion sued on her own behalf. 410 U.S. 113, 120 (1973).

Planned Parenthood argues that a pregnant woman would only have standing to bring a challenge to HB 5 after she was 15 weeks pregnant, which would effectively force her to carry a baby to term in order to vindicate her rights. Pet'rs' Br. 32–33. The timeline of this case alone contradicts Planned Parenthood's argument.

After Planned Parenthood filed suit on June 1, 2022, the trial court managed to hear competing motions from the parties, hold a

hearing during which it considered extensive evidence from the parties, and issue an injunction by July 5. *See Planned Parenthood of Sw. & Cent. Fla. v. State*, No. 2022-CA-912, 2022 WL 2436704, at *1 (Fla. 2d Jud. Cir. July 5, 2022). A trial court is capable of being similarly responsive to a pregnant plaintiff, who could nonetheless bring suit at any point during pregnancy; and this Court may accept jurisdiction even after a litigant has gotten an abortion, "[b]ecause the questions raised are of great public importance and are likely to recur." *In re T.W.*, 551 So. 2d at 1189. In addition, "if a woman seeking abortion brings suit, her claim will survive the end of her pregnancy under the capable-of-repetition-yet-evading-review exception to mootness." *June Med. Servs.*, 140 S. Ct. at 2169 (Alito, J., dissenting); *accord Burton*, 49 So. 3d at 264.

Although Planned Parenthood argues that "this Court has routinely permit[ted] abortion providers to sue on behalf of their patients in similar circumstances to this case," and notes that the *Dobbs* plaintiff was an abortion provider,[6] Planned Parenthood fails

[6] *See* Pet'rs' Br. 35 (citing *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243 (Fla. 2017); *State v. Presidential Women's*

to mention one fundamental difference between those cases and this one: standing was not raised.

Planned Parenthood's argument requires agreeing that not *one* woman seeking post-15-weeks abortion in Florida could overcome the purported "significant practical barriers, such as poverty and violence" to challenge HB 5. Pet'rs' Br. 33. And while women experiencing poverty or domestic violence deserve compassion and support, those circumstances cannot guide the legal analysis here.

As to poverty, a lack of income or sophistication is not enough to establish the need for third-party representation. *See*, *e.g.*, *Kowalski*, 543 U.S. at 132 (rejecting the argument that "unsophisticated, pro se criminal defendants" could not coherently litigate procedural claims on their own). As to risk of violence, "standing theories that rest on speculation about the decisions of independent actors, particularly speculation about future unlawful conduct" cannot support third-party standing. *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019) (cleaned up) (citing

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Ctr., 937 So. 2d 114 (Fla. 2006); *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 636–37 (Fla. 2003)).

Clapper v. Amnesty Int'l USA, 568 U.S. 398, 414 (2013); *Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983)).[7] In any event, Planned Parenthood has not plausibly suggested—nor could it—that such barriers would apply to prevent *any* woman from litigating her alleged right.

Planned Parenthood fails on all three factors in its attempt to use its consumers as a source of third-party standing. First, its commercial interests directly conflict with the interests of women, who face inherent medical risks from late-term abortions—not to mention the psychological anguish of knowing she terminated her child's life. Second, Planned Parenthood offers no evidence of a close relationship with its prospective patients, none of whom have participated in this litigation. And third, pregnant women are capable of representing themselves without Planned Parenthood's help. Consequently, Planned Parenthood cannot show that it is entitled to invoke third-party standing.

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[7] Even if it were proper to consider poverty and potential domestic violence in the third-party standing context, "there is little reason to think that a woman who challenges an abortion restriction will have to pay for counsel," and if she fears violent retaliation, she may "sue under a pseudonym" to protect her identity. *June Med. Servs.*, 140 S. Ct. at 2168–69 (Alito, J., dissenting).

II. Planned Parenthood is not entitled to injunctive relief because it has not shown that its purely economic damages will result in irreparable harm.

Planned Parenthood cannot show that HB 5 subjects it to irreparable harm. Besides having no right to perform abortions or standing to bring a challenge in the first place, its damages are purely financial ones, which are not sufficient to entitle it to relief regardless.

When a party seeks to establish irreparable harm, "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Cf. Sampson v. Murray*, 415 U.S. 61, 90 (1974) (considering irreparable harm in the context of employment claims). Similarly, Florida "case law is clear that economic harm does not constitute irreparable injury; that is, loss of business and money damages due to a decrease in patient volume do not suffice to demonstrate irreparable injury." *State Dep't of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 475–76 (Fla. 1st DCA 2018).

Planned Parenthood argues that HB 5 irreparably harms abortionists by interfering with the provider–client relationship, forcing the abortionist to stop performing abortions at 15 weeks,

on pain of prosecution. Pet'rs' Br. 22. This is just another way of claiming that abortion providers have a constitutional right to perform abortions. But even *Roe v. Wade* did not go that far. Planned Parenthood cannot establish irreparable harm based on a nonexistent right to sell abortion services to prospective customers. *See Gainesville Woman Care,* 210 So. 3d at 1254 (any alleged right to abortion belongs to woman seeking abortion).

As Planned Parenthood concedes, Florida courts have held that the prospect of prosecution does not constitute irreparable harm. Pet'rs' Br. at 24 n.3; *see Palenzuela v. Dade Cnty.*, 486 So. 2d 12, 13 (Fla. 3d DCA 1986). That is, because an abortion provider can make the same legal argument in its criminal defense that it raised in a motion for injunction, it still has a remedy available—if and when its employees ever had standing and an actual imminent injury. *See 3299 N. Fed. Highway, Inc. v. Bd. of Cnty. Comm'rs of Broward Cnty.*, 646 So. 2d 215, 220–21 (Fla. 4th DCA 1994). Planned Parenthood nonetheless essentially asks this Court to create a distinction for cases involving an abortion doctor–patient relationship. Pet'rs' Br. at 24 n.3. But there is no special jurisprudence for economic harm to abortionists.

Planned Parenthood then argues that HB 5 violates "a physician's fundamental duty . . . to provide medical treatment in accordance with the patient's wishes and best interests." Pet'rs' Br. 24 (internal quotation marks omitted). As support for this proposition, Planned Parenthood cites authorities discussing *patients*' rights, not physicians'.[8] Pet'rs' Br. at 24. But a doctor's general *duty* to provide medical treatment does not confer a *right* to perform a procedure in whatever way the doctor sees fit. *Hodges*, 917 F.3d at 912.[9] Physicians are still subject to the authority of the State.

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[8] *See Gainesville Woman Care*, 210 So. 3d at 1254 (discussing a woman's right to abortion—not a doctor's right to perform them); Fla. Stat. § 381.026 (Florida Patient's Bill of Rights and Responsibilities).

[9] Planned Parenthood cites *State Bd. of Med. Examiners v. Rogers*, 387 So. 2d 937, 937 (Fla. 1980), for the proposition that interference with the doctor–patient relationship is "a distinct injury worthy of a remedy." Pet'rs' Br. at 24–25. The case is unhelpful to Planned Parenthood. In *Rogers*, the State Board of Medical Examiners sanctioned a doctor because he used a treatment that had not yet been proven effective. 387 So. 2d at 937–38. This Court rejected the Board's rationale, noting that there was no evidence the treatment was actually *harmful*. *Id.* at 939–40. Here, the legislature has already determined that the "treatment" at issue is harmful and contrary to public policy.

III. The trial court's injunction was contrary to the public interest.

Florida has a strong interest in protecting its citizens from the harms of late-term abortion. This aligns with the public's interest in the enforcement of duly enacted laws that regulate the integrity of the medical profession and protect health, welfare, and safety of Floridians. These interests far outweigh Planned Parenthood's desire to increase its profit margin.

"Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (cleaned up); *accord Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018). This is especially true with laws regulating abortions, which, "like other health and welfare laws, [are] entitled to a strong presumption of validity." *Dobbs*,142 S. Ct. at 2284 (quotation marks omitted).

In the face of the "strong presumption of [HB 5's] validity," *Dobbs*,142 S. Ct. at 2284, Planned Parenthood suggests that an injunction is in order because "HB 5 is likely unconstitutional," Pet'rs' Br. at 63, based on cases in which this Court, over strong

dissent, framed section 23 as a referendum on abortion *See*, *e.g.*, *Gainesville Woman Care*, 210 So. 3d at 1254; *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612 (Fla. 2003); *In re T.W.*, 551 So. 2d 1186 (Fla. 1989). But that framing suffers the same deep flaws as *Roe*, and "courts cannot 'substitute their social and economic beliefs for the judgment of legislative bodies.'" *Dobbs*, 142 S. Ct. at 2283–84 (citation omitted).

Privacy rights exist only where there is a reasonable expectation. And there is none in the commercial practice of medicine, let alone in performing abortion procedures that end a human life. Insulating abortionists, as a special class, from governmental regulation only results in perverse results that work against the public interest. It wrongly blocks a duly enacted law, misconstrues a constitutional amendment, undermines the will of the people and their elected representatives, and dilutes the State's power regulate the integrity of the medical profession, thereby enabling abortion providers to conduct gruesome procedures that destroy unborn children far into a pregnancy. *See id.* at 2284.

The people of Florida, through their elected representatives, have made it explicitly clear what is in Floridians' public interest

when it comes to regulating abortion: eliminating abortions after 15 weeks' gestation. This comports with U.S. Supreme Court precedent detailing states' important interests in limiting abortion: protecting unborn life, preserving maternal health, and preventing barbaric deadly procedures, to name a few. *Id.* at 2284. It is consistent with the policy decisions of two dozen other states.[10]

Because Planned Parenthood cannot succeed on the merits, cannot show that it is irreparably harmed by HB 5's restrictions, and seeks a remedy that is not in the public interest, it has failed to meet the standard to obtain an injunction.

CONCLUSION

Amicus Concerned Women for America respectfully requests that this Court affirm the Court of Appeals and uphold Florida's 15-week law.

[10] *See* Alliance Defending Freedom, *Mapping Abortion Laws by State* (Revised March 31, 2023) http://bit.ly/41jcgim.

Respectfully submitted this 10th day of April, 2023.

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**Motion for admission pro hac vice forthcoming*

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on all counsel of record via e-mail in conformance with the requirements of Florida Rule of General Practice and Judicial Administration 2.516(b).

s/ Denise M. Harle
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with Florida Rule of Appellate Procedure 9.370(b) and contains 4,996 words. This word count excludes words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block. The word count includes all other words, including words used in headings, footnotes, and quotations.

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