

IN THE SUPREME COURT OF THE UNITED STATES

No. 21A____ (20-1375)

KRISTINA BOX, COMMISSIONER, INDIANA DEPARTMENT OF HEALTH, *ET AL.*,

Petitioners,

v.

PLANNED PARENTHOOD OF INDIANA AND KENTUCKY, INC.,

Respondent.

APPLICATION FOR IMMEDIATE TRANSMITTAL OF THE JUDGMENT

To the Honorable Amy Coney Barrett, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit *:

Petitioners Kristina Box, Commissioner, Indiana Department of Health; Bernard Carter, Lake County Prosecutor; Christopher G. Gaal, Monroe County Prosecutor; Patrick K. Harrington, Tippecanoe County Prosecutor; and Terry Curry, Marion County Prosecutor (collectively, petitioners) respectfully move for immediate transmittal of this Court's judgment vacating the Seventh Circuit's judgment below.

* Pursuant to Supreme Court Rule 22.3, the application is addressed to the Circuit Justice for the Seventh Circuit. Petitioners, however, note that Justice Barrett was sitting on the Seventh Circuit while this case was pending before it and took no part in the consideration or disposition of the petition for certiorari filed in this case. Petitioners' understanding is that the application should be distributed to the next most junior Justice, Associate Justice Ketanji Brown Jackson. *See* Sup. Ct. R. 22.3.

There is no question that the preliminary injunction at issue in this case—which enjoined enforcement of amendments to Indiana Code section 16-34-2-4 based on this Court’s now-overruled decisions in *Roe v. Wade*, 410 U.S. 133 (1973), and *Planned Parenthood of Southeast Pennsylvania v. Casey*, 505 U.S. 833 (1992)—should be vacated in light of *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ___, No. 19-1392 (U.S. June 24, 2022). Respondent Planned Parenthood of Indiana and Kentucky, Inc. (Planned Parenthood) did not oppose vacatur of the preliminary injunction in the district court. And on June 30, 2022, this Court granted petitioners’ petition for certiorari, vacated the Seventh Circuit decision upholding the preliminary injunction, and remanded for further proceedings.

Currently, however, petitioners are unable to obtain any effective relief from the preliminary injunction—even though Planned Parenthood has not opposed its vacatur or stay. The district court has denied a motion to vacate without prejudice because it deems the case to be pending in the Seventh Circuit, and the Seventh Circuit has stated that it will not rule on petitioners’ motion to stay the preliminary injunction until this Court formally transmits its judgment. Under Supreme Court Rule 45, however, this Court is not slated to transmit its judgment until July 25, 2022. Petitioners therefore ask that this Court issue its judgment forthwith so that they can obtain relief from a preliminary injunction that no one seeks to maintain.

Petitioners contacted Planned Parenthood’s counsel regarding this application, but did not receive a response by the time of filing.

BACKGROUND

This case involves a challenge to amendments that the State of Indiana enacted in 2017 to Indiana Code section 16-34-2-4, which governs the process by which an unemancipated minor can obtain an abortion without the consent of her parent or guardian. As amended, that statutory provision requires a juvenile court to notify the minor's parent or guardian of her intent to obtain an abortion unless the court "finds that it is in the best interests of an unanticipated pregnant minor to obtain an abortion without parental notification." Ind. Code § 16-34-2-4(d).

On June 28, 2017, the district court preliminarily enjoined enforcement of the new procedures in Indiana Code section 16-34-2-4. App. 49a. Relying heavily on *Planned Parenthood of Southeast Pennsylvania v. Casey*, 505 U.S. 833 (1992), the court ruled that the new notice-with-judicial-bypass procedures unduly burdened the right to seek an abortion recognized in *Roe v. Wade*, 410 U.S. 113 (1973). *Id.* at 16a–33a. It rejected arguments that the State's countervailing interests in protecting minors, the parent-child relationship, and the unborn justified the new procedures. *Id.* The court also rejected arguments that the equities and public interest weighed against a preliminary injunction on the ground that Planned Parenthood "has made a strong showing that it is likely to succeed on the merits." *Id.* at 46a; *see id.* at 47a.

The Seventh Circuit affirmed. App. 86a. Applying *Casey*'s undue-burden standard, the court held that the challengers were likely to prevail on the merits. *Id.* at 66a. It expressed concern that the notice requirement could have the practical effect

of obstructing abortions in some cases and rejected arguments that the State’s countervailing interests—which, the court observed, “could be legitimate”—were sufficient to justify the burden. *Id.* at 79a. The Seventh Circuit also rejected arguments that the equities and public interest weighed against a preliminary injunction. *Id.* at 84a–86a. It, too, relied heavily on its conclusion that “Planned Parenthood’s likelihood of success on the merits is substantial.” *Id.* at 85a.

Petitioners filed a petition for a writ of certiorari. This Court granted the petition, vacated the Seventh Circuit’s decision, and remanded for further consideration in light of *June Medical Services L.L.C. v. Russo*, 140 S. Ct. 2103 (2020). *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 141 S. Ct. 187 (2020).

On remand, the Seventh Circuit adhered to its original decision. App. 124a. It explained that the intervening decision in *June Medical* “did not overrule the precedential effect of . . . *Casey*” and other abortion decisions. *Id.*

Petitioners filed another petition for a writ of certiorari. *Box v. Planned Parenthood of Ind. & Ky., Inc.*, No. 20-1375 (U.S.). While that petition was pending, the Court issued its opinion in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ___, No. 19-1392 (June 24, 2022).

In *Dobbs*, the Court overruled *Roe* and *Casey*—the decisions underpinning the district court’s and the Seventh Circuit’s analyses of Indiana Code section 16-34-2-4. The Court “h[e]ld that the Constitution does not confer a right to abortion”; that “*Roe* and *Casey* must be overruled”; and that the “authority to regulate abortion” now lies with “the people and their elected representatives.” *Dobbs v. Jackson Women’s Health*

Organization, 597 U.S. ___, No. 19-1392, slip op. at 69 (June 24, 2022). In overruling *Roe* and *Casey*, the Court specifically rejected the “undue-burden standard” applied by the lower courts in this case. *Id.* at 56, 61. As a constitutional matter, the Court explained, States are free to “regulat[e] or prohibit[] abortion” so long as “there is a rational basis on which the legislature could have thought that [the regulation] would serve legitimate state interests.” *Id.* at 77, 79.

Promptly following *Dobbs*, petitioners asked the district court to vacate its preliminary injunction against “the bypass procedure set out in Indiana Code § 16-34-2-4 (eff. July 1, 2017).” App. 139a–140a. Six days later, while petitioners’ motion to vacate was still pending, this Court granted petitioners’ petition for writ of certiorari, vacated the judgment, and remanded the case to the Seventh Circuit “for further consideration in light of *Dobbs*.” *Box v. Planned Parenthood of Ind. & Ky., Inc.*, No. 20-1375 (U.S. June 30, 2022). Then, on July 7, 2022, the district court denied petitioners’ motion to vacate the preliminary injunction against Indiana Code § 16-34-2-4 without prejudice on the ground that “the case is currently pending before the Seventh Circuit, not the district court.” App. 140a.

Petitioners then moved the Seventh Circuit for an immediate stay of the preliminary injunction pending final resolution of the appeal. App. 142a. On July 11, 2022, however, the court stated “that the court will hold resolution of this motion until it receives the Supreme Court’s certified judgment or mandate.” *Id.*

ARGUMENT

Immediate transmittal of a certified copy of this Court’s order and judgment in this case is warranted to protect compelling state interests and to promote expeditious resolution of this 5-year-old case.

Immediate transmittal of this Court’s judgment is necessary to avoid inflicting further irreparable harm to the State of Indiana. Under the district court’s preliminary injunction, the State cannot enforce or implement Indiana Code section 16-34-2-4’s requirement that parents be notified of a minor’s desire to obtain an abortion (unless a court finds no notice is in the child’s best interest). That injunction, however, no longer has a legal basis. It rests on the premise that the U.S. Constitution confers a right to an abortion and that States may not enact laws that unduly burden that right. *See App. 16a–33a, 65a–83a, 124a. After Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ___, No. 19-1392 (June 24, 2022), however, that premise is no longer good law. In *Dobbs*, this Court “h[e]ld that the Constitution does not confer a right to abortion” and that decisions of whether to “regulat[e] or prohibit[] abortion” are for “the people and their elected representatives” to make. Slip op. at 69, 79.

The preliminary injunction’s sole effect is thus to prevent the State from enforcing duly enacted laws. That alone constitutes a form of irreparable harm that justifies action: “[A]ny 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) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist,

J., in chambers)). Here, moreover, the preliminary injunction is inflicting additional, concrete harms to recognized state interests.

Section 16-34-2-4's parental-notice requirement furthers important state interests in protecting minors, families, and the unborn. As the district court itself acknowledged, the State has "legitimate" interests "in protecting children and adolescents, preserving family integrity, and encouraging parental authority," and "the preferred method by which a state may limit a child's decision-making freedom is to encourage parental consultation." App. 18a–19a. A "parent's interest in, as well as responsibility for, the rearing and welfare of his or her unemancipated minor does not end at the abortion decision, nor is it completely extinguished by a judicial finding of maturity." *Id.* at 32a; see *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 326-27 (2006) ("States unquestionably have the right to require parental involvement when a minor considers terminating her pregnancy"). And as this Court has recognized, States may "regulat[e]" abortion to promote a "legitimate" interest in "respect for and preservation of prenatal life at all stages." *Dobbs*, slip op. at 77–78.

The parental-notice requirement in turn furthers those important interests. Timely notification aids parental consultation in what may be a "difficult and painful moral decision." *Gonzalez v. Carhart*, 550 U.S. 124, 159 (2007). Where a minor seeks an abortion based on the incorrect assumption that her parents would disapprove of her carrying the pregnancy to term or based on a fear that she lacks sufficient financial resources to care for a child, timely notification may allow parents to correct misapprehensions or offer financial support. Parental notification also enables parents

to provide counsel and comfort to minors who go through with abortions and who are grappling with emotions or regrets. And parental notification ensures that parents know their child's complete medical history, which may be important in making future medical decisions for the child.

Given that the preliminary injunction is without legal basis and that it is inflicting irreparable harm to important state interests, there is no reason to delay transmittal of this Court's judgment. Delay would only serve to prevent enforcement of a duly enacted state law designed to protect minors, families, and the unborn. Planned Parenthood, moreover, will not be prejudiced by immediate transmittal of this Court's judgment. It did not oppose vacatur or a stay of the preliminary injunction against the enforcement of Indiana Code section 16-34-2-4 below. Immediate transmittal of the judgment would facilitate prompt resolution of this case—which has now been pending at the preliminary-injunction stage for 5 years—and allow the lower courts to reach the merits of Planned Parenthood's claims.

CONCLUSION

The Court should transmit its order and judgment forthwith.

Respectfully submitted,

/s/Thomas M. Fisher

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