

No. 21-1068

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

FREDERICK W. HOPKINS, et al.,
Plaintiffs-Appellees,

v.

LARRY JEGLEY, PROSECUTING ATTORNEY FOR PULASKI COUNTY, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the
Eastern District of Arkansas
No. 4:17-CV-00404-KGB (Hon. Kristine G. Baker)

Defendants-Appellants' Status Report & Motion for Summary Vacatur

Defendants-Appellants respectfully submit this motion to summarily vacate the preliminary injunction entered by the district court in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392.

This appeal is from the district court's January 5, 2021, preliminary injunction of four Arkansas laws relating to abortion: Act 45 of 2017, the Unborn Child Protection from Dismemberment Abortion Act; Act 733 of 2017, the Sex Discrimination by Abortion Prohibition Act; Act 1018 of 2017, the Amendment of the Law Regarding Maintenance of Forensic Samples from Abortions Performed on a

Child; and Act 603 of 2017, the Amendment to the Provisions of Law Concerning the Disposition of Fetal Remains.

That injunction was the second preliminary injunction entered by the district court. This Court vacated the district court's first preliminary injunction and remanded for reconsideration in light of the Supreme Court's intervening decisions in *June Medical Services L. L. C. v. Russo*, 140 S. Ct. 2103 (2020), and *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780 (2019) (per curiam). *Hopkins v. Jegley*, 968 F.3d 912, 916 (8th Cir. 2020), abrogated by *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022) The district court again enjoined the four challenged laws following remand. *Hopkins v. Jegley*, 510 F. Supp. 3d 638, 651 (E.D. Ark. 2021).

The district court concluded that Plaintiffs were likely to succeed in showing that the challenged laws were unconstitutional under the Supreme Court's decisions in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). The court relied on *Casey*'s holding that states "may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Hopkins*, 510 F. Supp. 3d at 710 (quoting *Casey*, 505 U.S. at 879). The gravamen of Plaintiffs' lawsuit was based on the substantive due process right to an abortion announced in *Roe* and reaffirmed in *Casey*. Though the district court also considered vagueness challenges, it

recognized that those claims were intertwined with Plaintiffs’ undue-burden claims. *See id.* at 739 (noting that the vagueness concerns “also contribute to the undue burden the Medical Records Mandate imposes on women seeking abortion”); *id.* at 773 (vagueness concerns “also contribute to the undue burden the Tissue Disposal Mandate imposes on women”).

Shortly after this appeal was filed, this Court granted Plaintiffs-Appellees’ unopposed motion to hold the case in abeyance pending the outcome of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392. *See* Order dated May 26, 2021. The Court more recently directed the parties to file “a status report regarding the developments in the case within 10 days of the decision *Dobbs*.” Order dated May 24, 2022. Because the outcome of this case is directly controlled by *Dobbs*, and under that case the preliminary injunction cannot stand, Defendants-Appellants submit this report and motion requesting this Court immediately and summarily vacate the district court’s order.

I. The injunction should be vacated.

On June 24, 2022, the Supreme Court issued its decision in *Dobbs* and overruled *Roe* and *Casey*, recognizing that there is no constitutional right to abortion. In particular, *Dobbs* holds, “procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution’s text or in our

Nation’s history.” *Dobbs*, slip op. at 77. Thus, as *Dobbs* explains, “*Roe* was egregiously wrong from the start” because “[i]ts reasoning was exceptionally weak” and it rested on false foundations. *Id.* at 6; *accord id.* at 44 (“*Roe* was on a collision course with the Constitution from the day it was decided.”). And *Casey* did little more than “perpetuate[] [*Roe*’s] errors.” *Id.* at 44. Thus, the Court has “now overrule[d] those decisions.” *Id.* at 79. An abortion law like the challenged laws in this case “must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests.” *Id.* at 77. A complete and accurate copy of the Court’s slip opinion is attached.

Given the Supreme Court’s decision that there is no constitutional right to abortion, the district court’s decision granting a preliminary injunction must be vacated. *See, e.g., Whole Woman’s Health v. Young*, No. 18-50730, 2022 WL 2315034, at *1 (5th Cir. June 28, 2022) (summarily vacating injunction of Texas fetal remains law and remanding for further proceedings consistent with *Dobbs*).

II. The Court should act immediately.

The Court need not, and should not, require Arkansas to wait for full briefing of this appeal before vacating the district court’s preliminary injunction order. The Supreme Court has acknowledged the State’s interest in protecting unborn life, and time is of the essence.

The Court should accordingly dispense with briefing, summarily vacate the decision below, and remand with instructions for the district court to dismiss Plaintiffs' claims. All of Plaintiffs' claims, including their vagueness claims, necessarily depended on *Roe*'s and *Casey*'s holdings creating a substantive due process right to abortion, which the Supreme Court has now overruled. There is no good faith argument that the laws at issue here do not satisfy rational-basis review. Indeed, the state's interest in enforcing these laws are as weighty as the interest that the Supreme Court concluded was sufficient to uphold the Mississippi statute at issue in *Dobbs*: "protecting the life of the unborn." *Dobbs*, slip op. at 78 (quotations omitted); see e.g., Ark. Code Ann. 20-16-1902 (findings regarding legislature's intent to protect girls from sex-selective abortions and protect mothers' health). The Court also specifically acknowledged state's legitimate interest in "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." *Dobbs*, slip op. at 78; see also *Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1782 (2019) (acknowledging a "legitimate interest in proper disposal of fetal remains").

Vacatur of the preliminary injunction is required by Supreme Court precedent. That result should not be prolonged to the detriment of the People of Arkansas.

Conclusion

Defendants-Appellants respectfully request that the Court summarily vacate the decision below and remand for further proceedings consistent with the Supreme Court's decision in *Dobbs*.

Respectfully submitted,

LESLIE RUTLEDGE

Arkansas Attorney General

NICHOLAS J. BRONNI

Solicitor General

DYLAN L. JACOBS

Deputy Solicitor General

MICHAEL A. CANTRELL

Assistant Solicitor General

OFFICE OF THE ARKANSAS

ATTORNEY GENERAL

323 Center St., Suite 200

Little Rock, AR 72201

(501) 682-2007

Nicholas.Bronni@arkansasag.gov

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains approximately 1,066 words, excluding the parts exempted by Fed. R. App. P. 32(f).

Pursuant to Fed. R. App. P. 27(d)(1)(E), I also certify that this motion complies with the requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a 14-point Times New Roman, a proportionally spaced typeface, using Microsoft Word.

I further certify that this PDF file was scanned for viruses, and no viruses were found on the file.

/s/ Nicholas Bronni

Nicholas Bronni

CERTIFICATE OF SERVICE

I certify that on July 1, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to any CM/ECF participants.

/s/ Nicholas Bronni

Nicholas Bronni