

IN THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

GAINESVILLE WOMAN CARE, LLC, et al.,

Plaintiffs,

Case No. 2015 CA 001323

v.

STATE OF FLORIDA, et al.,

Defendants.

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**PLAINTIFFS' MOTION TO VACATE AUTOMATIC STAY**

Plaintiffs, Gainesville Woman Care d/b/a Bread and Roses Women's Health Center ("Bread and Roses") and Medical Students for Choice ("MSFC"), by and through their undersigned counsel, move this Court to vacate the stay of the Temporary Injunction that issued automatically under Florida Rule of Appellate Procedure 9.310(b)(2) when Defendants, governmental entities, filed their notice of appeal. As grounds for this Motion, Plaintiffs state as follows:

1. This Court issued an Order Granting Plaintiffs' Motion for Temporary Injunction on June 30, 2015 ("Temporary Injunction Order"), attached as Exhibit A, enjoining Defendants State of Florida, Florida Department of Public Health, John H. Armstrong, M.D., Florida Board of Medicine, James Orr, M.D., Florida Board of Osteopathic Medicine, Anna Hayden, D.O., Florida Agency for Health Care Administration, and Elizabeth Dudek ("Defendants" or "the state") from enforcing Chapter 2015-118, § 1, Laws of Florida ("the Act").

2. In support of its ruling, this Court found that "Plaintiffs have carried their burden for the issuance of [a] temporary injunction. . . . Plaintiffs have shown a substantial likelihood of success on the merits, that irreparable harm will result if the 2015-118 Laws of Florida (HB 633)

is not enjoined, that they lack an adequate remedy at law, and that the relief requested will serve the public interest.” Order Granting Plfs.’ Mot. for Temp. Inj. 11 (June 30, 2015).

3. On June 30, 2015, Defendants filed a notice of appeal of the Temporary Injunction Order. *See* Notice of Appeal, attached as Exhibit B. Pursuant to Florida Rule of Appellate Procedure 9.310(b)(2), the Temporary Injunction Order is now automatically stayed. Rule 9.310(b)(2) provides:

(2) *Public Bodies; Public Officers.* The timely filing of a notice shall automatically operate as a stay pending review . . . when the state, any public officer in an official capacity, board, commission, or other public body seeks review . . . . On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.

4. The Act is scheduled to go into effect this Wednesday, July 1. The Act was signed by the governor on the afternoon of June 10, and Plaintiffs filed suit the morning of June 11. Given the short timeframe created by the effective date of the statute, Plaintiffs asked Defendants to consent to the entry of a Temporary Injunction while Plaintiffs’ Motion was fully briefed; Defendants refused. Plaintiffs and their patients should not bear the brunt of the expedited schedule necessitated by the state’s actions in enacting the Act so close to its effective date. Without certain and immediate relief from the automatic stay, Plaintiffs and their patients will suffer the very same harms that this Court issued the Temporary Injunction Order to prevent.

5. A trial court has broad discretion to vacate the automatic stay provision of Rule 9.310(b)(2). *See, e.g., City of Sarasota v. AFSCME Council ‘79*, 563 So. 2d 830, 830 (Fla. 1st DCA 1990) (“the lower tribunal has broad discretion in the matter of a stay” (internal citation omitted); upholding trial court’s vacatur of automatic stay and denying motion to reinstate automatic stay).

6. To determine whether to vacate the automatic stay, this Court should consider “the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits [on appeal] by the entity seeking to maintain the stay.” *Mitchell v. State*, 911 So. 2d 1211, 1219 (Fla. 2005).<sup>1</sup>

7. The first of these factors is necessarily met in this case, as this Court has already found irreparable harm will occur if the Act goes into effect on Wednesday. *See Tampa Sports Auth. v. Johnston*, 914 So. 2d 1076, 1079 (Fla. 2d DCA 2005) (first factor under *Mitchell* “substantially identical to the first criterion applied by the circuit court when concluding that [plaintiff] was entitled to a preliminary injunction”).

8. This Court has already found that Plaintiffs and their patients will suffer irreparable harm absent a temporary injunction. If the stay is not vacated, this same irreparable harm to constitutional rights will follow. The protection secured by the Temporary Injunction Order will be lost.

9. The second *Mitchell* factor asks whether the state is likely to prevail on the merits of its appeal. This factor “is related to but somewhat different from the criteria applied by” this Court in granting the injunction: the state must demonstrate a likelihood that it “will successfully overturn the injunction on appeal.” *Tampa Sports Auth.*, 914 So. 2d at 1079. In order to make that demonstration, the state will have to “overcome the appellate presumption of correctness,” and demonstrate that “the injunction was not founded on substantial competent evidence, that it resulted from an incorrect application of law, or that the circuit court abused its discretion when entering it.” *Id.*

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<sup>1</sup> To the extent that some district courts of appeal had previously set forth different standards for vacatur of an automatic stay, those tests have been superseded by the Florida Supreme Court’s subsequent adoption of the test in *Mitchell*. *See, e.g., St. Lucie Cnty. v. N. Palm Dev. Corp.*, 444 So. 2d 1133 (Fla. 4th DCA 1984).

10. The state will not be able to make this showing. This Court correctly held that the Act violates the privacy rights of Plaintiffs' patients, and found that the Temporary Injunction Order was necessary to protect against that violation.

11. Courts have held that ongoing violations of constitutional rights, including the right to privacy, support an order to vacate a stay. *See, e.g., Tampa Sports Auth.*, 914 So. 2d at 1079; *Bush v. Schiavo*, 861 So. 2d 506, 508 (Fla. 2d DCA 2003).

12. This Court should order that the stay be vacated to avoid the very harms that necessitated the temporary injunction. Permitting the automatic stay to delay enforcement of this Court's decision will bring about irreparable harm; upend the status quo; and defeat the very purpose of the temporary injunctive relief this Court ordered.

WHEREFORE, Plaintiffs pray this Court enter an Order vacating the automatic stay imposed by Rule 9.310(b)(2).

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 30th day of June, 2015, a copy of the foregoing was filed electronically with the Clerk of the Court through the Florida Courts eFiling Portal, and thereby was served via email on counsel of record.

/s/ Renée Paradis