

A22-0073

**STATE OF MINNESOTA
IN COURT OF APPEALS**

DR. JANE DOE, *et al.*,

Respondents,

vs.

STATE OF MINNESOTA, *et al.*,

Appellants.

**RESPONDENTS' MOTION TO VACATE STAY
AND FOR EXPEDITED BRIEFING AND CONSIDERATION**

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Plaintiffs-Respondents (hereinafter “Plaintiffs”) respectfully ask the Court to vacate the stay of proceedings it entered on May 3, 2022, so that Plaintiffs may seek voluntary dismissal of the claims on appeal. Given the urgency of the constitutional rights violations that Plaintiffs seek to remedy and the small role of the claims on appeal in relation to the case as a whole, Plaintiffs are willing to dismiss the claims on appeal so the remainder of the case may proceed expeditiously to final judgment.

Plaintiffs further ask the Court to expedite briefing and consideration of this motion. The parties were engaged in settlement talks about this matter for nearly two weeks, during which time Defendants-Appellants (hereinafter “Defendants”) had ample opportunity to develop their position, so Defendants will not be prejudiced by expedited briefing.

STATEMENT OF FACTS

Plaintiffs Jane Doe, Mary Moe, Our Justice, and First Unitarian Society of Minneapolis (“FUS”) filed this case to challenge the constitutionality of Minnesota laws restricting access to sexual and reproductive healthcare. Compl. (May 29, 2019) (Index No. 1); Am. Compl. (Aug. 1, 2019) (Index No. 47). Dr. Doe and Ms. Moe are healthcare providers who treat patients seeking abortion and miscarriage care in Minnesota. *See id.* ¶¶ 7-8. Our Justice is a Minnesota nonprofit organization that provides financial assistance and logistical support to Minnesota abortion patients. *Id.* ¶ 10. FUS is a Minnesota religious congregation whose members

include abortion patients and providers, as well as individuals who seek and provide treatment for miscarriage. *Id.* ¶¶ 9, 268.

Plaintiffs assert seven counts challenging as unconstitutional certain Minnesota laws restricting access to sexual and reproductive healthcare, including a statute that prohibits qualified advanced practice clinicians from providing abortion care, *id.* ¶¶ 64-77; mandatory disclosure requirements and a twenty-four-hour waiting period, *id.* ¶¶ 127-81; a requirement that fetal tissue be buried or cremated regardless of a patient’s wishes (the “Disposition Requirement”), *id.* ¶¶ 190-212; a requirement that minors seeking abortion care notify *both* of their parents or obtain a court order authorizing the procedure, *id.* ¶¶ 213-38; a ban on advertising STI treatments (“Advertising Ban”), *id.* ¶¶ 239-46; and related criminal penalties, *id.* ¶¶ 117-26, 182-89, (collectively, the “Challenged Laws”).

As relevant here, Dr. Doe and Our Justice assert that the Advertising Ban violates the right to free speech guaranteed by Minnesota Constitution art. I, § 3. Order & Mem. on Defs.’ First Mot. For Partial Summ. J. (Nov. 22, 2021) (Index No. 227) (“MSJ I Order”) at 19-21, 24. All Plaintiffs assert that the remaining Challenged Laws violate Minnesota constitutional provisions concerning privacy, equal protection of the laws, and special legislation. Am. Compl. ¶¶ 249, 252, 255. FUS additionally challenges the Disposition Requirement as violating the right to religious freedom and prohibition on religious preference set forth in Minnesota

Constitution art. I, § 16. *Id.* ¶ 264. Plaintiffs seek only declaratory and injunctive relief from the Challenged Laws, and not monetary damages. *Id.* at pp. 45-47.

The Amended Complaint names as Defendants the State of Minnesota, the Governor of Minnesota (“Governor”), the Attorney General of Minnesota (“Attorney General”), the Minnesota Commissioner of Health (“Health Commissioner”), the Minnesota Board of Medical Practice (“Medical Board”), and the Minnesota Board of Nursing (“Nursing Board”) (collectively, the “State”). *Id.* ¶¶ 11-16. They enforce the Challenged Laws through a combination of criminal penalties, civil and administrative penalties, and professional discipline. *Id.* ¶¶ 11-16, 67, 82, 84, 96, 103-04, 108, 118-22, 139, 154, 165, 183, 193, 219, 240.

The parties agreed that, following discovery, they would conduct three rounds of summary judgment briefing. First Am. Scheduling Order (Mar. 15, 2021) (Index No. 166). The first round focused on issues concerning standing and proper parties. Defs.’ First Mot. for Partial Summ. J. (July 9, 2021) (Index No. 176). After the district court issued its ruling on November 22, 2021, the State waited fifty-seven days to file an interlocutory appeal. Defs.’ Notice of Interlocutory Appeal to the Ct. of Appeals (Jan. 18, 2022) (Index No. 289) (“Defs.’ Notice of App.”). In the meantime, the parties briefed the second and third rounds of summary judgment, which consisted of cross-motions concerning the merits of all operative claims. *See* First Am. Scheduling Order ¶ 4. Those motions have been fully briefed and argued

to the district court, and the parties are awaiting rulings from the district court that have been delayed in light of the stay issued by this Court. *See* Order for Temporary Stay (Feb. 18, 2022) (Index No. 311) ¶ 5; Order Granting Appellants’ Mot. to Stay District Court Proceedings (May 3, 2022) (Index No. 334) (“Stay Order”) at 5.

The district court’s November 22, 2021, summary judgment decision held that FUS has standing to challenge each Challenged Law except the Advertising Ban. MSJ I Order at 11-21. It further held that Dr. Doe and Our Justice have standing to challenge the Advertising Ban. *Id.* at 19-21. Finally, it held that the Governor and Attorney General are proper parties, but the State of Minnesota is not. *Id.* at 27.

On January 18, 2022, Defendants filed a Notice of Appeal seeking interlocutory review of the district court’s order, Defs.’ Notice of App., and Plaintiffs subsequently filed a conditional cross-appeal of the district court’s ruling that the State of Minnesota is not a proper party, Cross-Appellants’ Stmt. of the Case (Jan. 27, 2022) (Index No. 305) at 3-5. On March 16, 2022, this Court issued an order accepting jurisdiction “over the part of this appeal taken from the district court’s standing rulings.” Order (Mar. 16, 2022) (Index No. 319) at 8. It dismissed “[t]he part of this appeal taken from the district court’s rulings that the governor and attorney general are proper parties,” and it dismissed the conditional cross-appeal. *Id.* On March 29, 2022, the State filed a petition in the Minnesota Supreme Court seeking review of this Court’s decision to dismiss the proper parties issue. Pet. for

Review of Decision of the Minn. Ct. of Appeals (Mar. 29, 2022) (Index No. 322). That petition was denied on May 17, 2022. Order Den. Pet. for Rev. (May 17, 2022) (Index No. 336).

After filing their Notice of Appeal, Defendants filed a series of motions to stay the case pending appeal, first in the district court and then in this Court. Defs.’ Notice of Mot. & Mot. to Stay Proceedings Pending Appeal, (Jan. 24, 2022) (Index No. 295); Mem. in Supp. of Appellants’ Mot. to Stay District Ct. Proceedings (“Appellants’ Mot.”) (April 8, 2022). On May 3, 2022, this Court granted a stay of all proceedings in the district court pending resolution of this appeal. Stay Order at 5. On May 5, 2022, Plaintiffs contacted Defendants to initiate confidential settlement discussions concerning the claims on appeal. On May 17, 2022, the parties ended those discussions without reaching an agreement.

Plaintiffs maintain that the Challenged Laws are causing serious, ongoing violations of Plaintiffs’ constitutional rights, as well as the constitutional rights of abortion patients across Minnesota. Am. Compl. ¶¶ 59-246, 247-264. Every day that the Challenged Laws remain in effect, Plaintiffs and abortion patients suffer irreparable harm. Moreover, the Challenged Laws are preventing Minnesota abortion providers from expanding their capacity to meet the increased demand for

their services that is expected to begin this summer, should the U.S. Supreme Court overturn *Roe v. Wade*, 410 U.S. 113 (1973), as is widely anticipated.¹

ARGUMENT

I. This Court Should Vacate the Stay to Enable Plaintiffs to Voluntarily Dismiss the Claims on Appeal.

This Court should vacate the stay of district court proceedings that it entered on May 3, 2022, so that Plaintiffs may seek voluntary dismissal of the claims on appeal. Minnesota Rule of Civil Procedure 41.01(b) authorizes a district court to dismiss claims at a plaintiff’s request. Dismissal of the claims on appeal would render the appeal moot. *See In re Twp. of Glendale*, 180 N.W.2d 925, 927 (Minn. 1970) (“It is well settled that if, pending an appeal, an event occurs which renders it impossible to grant any relief to appellant, or which makes a decision unnecessary, the appeal will be dismissed as presenting a moot question.”). Plaintiffs are prepared to request dismissal of all claims on appeal—both the claims against the Advertising Ban and the claims asserted by FUS—to enable the case to proceed expeditiously to final judgment.

¹ Steve Karnowski, Associated Press, *Minnesota prepares to be abortion destination if Roe falls*, La Crosse Trib., May 4, 2022, https://lacrossetribune.com/news/state-and-regional/minnesota-prepares-to-be-abortion-destination-if-roe-falls/article_8b7bb65c-632a-570c-b0ed-dc5b6fa1d064.html; Briana Bierschbach & Emma Nelson, *Minnesota physicians brace for Roe v. Wade decision*, Star Trib., May 2, 2022, <https://www.startribune.com/minnesota-physicians-brace-for-roe-v-wade-decision-abortion/600168782/>; Josh Gerstein & Alexander Ward, *Supreme Court has voted to overturn abortion rights, draft opinion shows*, Politico, May 2, 2022, <https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473>.

II. This Court Should Expedite Briefing and Consideration of This Motion.

Given the urgency of the constitutional rights violations that Plaintiffs seek to remedy, good cause exists for the Court to expedite briefing and consideration of this motion. Further, expedition will not prejudice Defendants. The parties were engaged in settlement talks about this matter for nearly two weeks. *See supra* at 5. Accordingly, Defendants had ample opportunity to develop their position.

CONCLUSION

For the reasons set forth above, the Court should vacate the stay of proceedings it entered on May 3, 2022, so that Plaintiffs may seek voluntary dismissal of the claims on appeal.

Dated: May 19, 2022

Respectfully submitted,

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