

In the Supreme Court of the State of Idaho

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAII, ALASKA, INDIANA, KENTUCKY, on behalf of itself, its staff, physicians and patients, and CAITLIN GUSTAFSON, M.D., on behalf of herself and her patients,

Petitioners,

v.

STATE OF IDAHO; BRAD LITTLE, in his official capacity as Governor of the State of Idaho; LAWRENCE WASDEN, in his official capacity as Attorney General of the State of Idaho; JAN M. BENNETTS, in her official capacity as Ada County Prosecuting Attorney; GRANT P. LOEBS, in his official capacity as Twin Falls County Prosecuting Attorney; IDAHO STATE BOARD OF MEDICINE; IDAHO STATE BOARD OF NURSING; AND IDAHO STATE BOARD OF PHARMACY,

Respondents.

Order Setting Hearing

Supreme Court Docket No. 49817-2022

PER CURIAM.

On June 27, 2022, Petitioners filed an original action with this Court, fashioning it as a Petition for Writ of Prohibition. The Petition concerns the constitutionality of Idaho's so-called "Trigger Law." I.C. § 18-622(2). Petitioners sought "a declaration that Idaho Code [s]ection 18-622(2) [] is unlawful and unenforceable under the Idaho Constitution and the Idaho Human Rights Act, and seeking a writ of prohibition[.]" This law would criminalize abortion in Idaho and is set

to go into effect thirty days after the United States Supreme Court issues a “judgment in any decision . . . that restores to the states their authority to prohibit abortion[.]” I.C. § 18-622(1)(a). Petitioners assert that the Trigger Law will go into effect as early as August 18, 2022.

Contemporaneous with filing the second Petition, Petitioners filed a motion to expedite briefing and argument, which requests this Court to expedite briefing and oral argument on the second Petition so that both Petitions can be argued on August 3, 2022. Further, Petitioners ask this Court to issue a decision on the second Petition by August 18, 2022, or take action to stay enforcement of Idaho Code section 18-622(1)(a) during the pendency of the case. On June 29, 2022, the State of Idaho, Governor Brad Little, Idaho Attorney General Lawrence Wasden, the Idaho Board of Medicine, and the Idaho Board of Pharmacy filed a response opposing Petitioners’ motion to expedite briefing and oral argument, and further stating that “[t]he State does object to a stay of enforcement of Idaho Code § 18-622.”

Prior to this proceeding, the Petitioners¹ filed a separate Petition for Writ of Prohibition on March 30, 2022 (Supreme Court Docket No. 49615-2022). In the first Petition, Petitioners sought “a declaration [from the Idaho Supreme Court] that Idaho Senate Bill No. 1309 (SB 1309) is unlawful and unenforceable under the Idaho Constitution, and seeking a writ of prohibition forbidding Idaho courts from giving effect to the unconstitutional civil cause of action created by SB 1309.” SB 1309 creates a private right of action against medical professionals who provide or attempt to provide abortions in Idaho. The action brought by Petitioners sought to invalidate SB 1309 in part because it was perceived to be a violation of the separation of powers doctrine and an unconstitutional restriction on citizens’ “fundamental right to privacy in making intimate familial decisions[.]” On April 8, 2022, this Court stayed enforcement of SB 1309. Docket No. 49615-2022 was subsequently set for oral argument before this Court on August 3, 2022.

Prior to oral argument in case number 49615-2022, the United States Supreme Court issued its opinion in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022). In *Dobbs*, the United States Supreme Court overruled both *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). While Petitioners

¹ The Petitioners in this case and Supreme Court Docket No. 49615-2022 are the same. They are: Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky and Caitlin Gustafson, M.D.

grounded their Petition on Idaho's constitution, their arguments were premised, in part, on the contention that the Idaho Constitution should be interpreted consistently with those provisions of the United States Constitution that formed the basis for the decisions in *Roe* and *Casey*. The *Dobbs* decision has altered the landscape of the long-standing federal constitutional law upon which Petitioners relied and which recognized a fundamental right to privacy, as it applies to abortion laws.

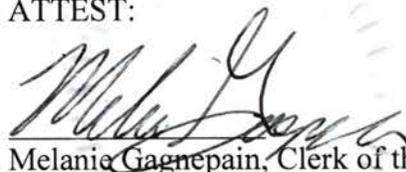
Good cause appearing, THIS COURT ORDERS AS FOLLOWS:

The Petitioners in this case have requested that this Court stay the enforcement of Idaho Code section 18-622 "to preserve the status quo" while this matter is adjudicated. As a result of the Petitioners' request for a stay in this case, Supreme Court Docket No. 49817-2022 is now set for hearing before this Court on August 3, 2022, at 10:00 a.m. MDT. The parties are instructed to prepare and present argument on the following issues:

1. Whether this Court should stay the enforcement of Idaho Code section 18-622(2) pending the outcome of this litigation;²
2. Whether this case, Docket No. 49817-2022, should be consolidated with the first case Petitioners filed, Docket No. 49615-2022; and
3. Whether this case should be transferred from the Idaho Supreme Court to the district court for the development of a factual record and potential motion practice pursuant to I.A.R. 5(d) ("Issues of fact, if any, shall be determined in the manner ordered by the Court.").

(Argument in Supreme Court Docket No. 49615-2022 will take place at the same date and time.) Any party who wishes to submit briefing on any of the issues set for hearing must submit such briefing to this Court no later than 5:00 p.m. MDT on Wednesday, July 20, 2022. There will be no reply briefs allowed.

ATTEST:

 6-30-22
Melanie Gagnepain, Clerk of the Idaho Supreme Court

² The Petitioners have taken the position that Idaho Code section 18-622(2) will become effective no sooner than August 18, 2022. Petition at 7-8. As this is a date after the date set for oral argument in this matter, a temporary stay of the enforcement of section 18-622(2) would be premature.

Email copies of this order have been sent to:

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