IN HE EME C F FL IDA

CASE NO. SC2022-1050

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients, *ET AL.*,

Petitioners,

v.

STATE OF FLORIDA, *ET AL.*,

Respondents.

Discretionary Proceeding to Review Decision of the First District Court of Appeal

Lower Tribunal Nos. 1D22-2034; 2022-CA-912

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abortion providers lack third-party standing to assert their patients' privacy rights, despite contrary outcomes in *Gainesville Woman Care*,

In direct contravention of these protections, the Florida legislature earlier this year enacted HB 5, which bans abortion after 15 weeks of pregnancy. HB 5, ÄÄ 3ð4 (codified at ÄÄ 390.011,

On July 5, 2022, the circuit court entered a written order enjoining enforcement of HB 5. Petitionersð Appðx 4ð117. Based on extensive factual findings, the circuit court concluded that the State failed to carry its heavy burden under strict scrutiny. *Id.* at 5. The court credited Plaintiffsð witnesses and found that HB 5 does not advance, and in fact undermines, maternal health, *id.* at 28ð40, 58ð

them òeither to stop providing abortions after 15 weeks LMP,[1] or to face criminal prosecution, license revocation, and other penalties,ó *id*. at 49; they have a close relationship with their patients, as the State conceded, *id*. at 51; and their patients are hindered in suing to protect their own interests by òthe time-limited nature of pregnancy, when compared to how long litigation can take,ó and because many abortion patients òface difficult circumstances, including poverty,ó

requirement of a temporary injunction.ó *Id.* at 126. Judge Kelsey

B. DCA C C B D C D .

The DCA Order conflicts with òbinding precedent from the Florida Supreme Courtó and other district court decisions on two grounds, as Judge Kelsey explained in dissent: (1) it misapplies this Courtõs precedent on the irreparable harm prong of the test for temporary injunctive relief; and (2) its third-party standing holding conflicts with numerous decisions of this Court and district courts of appeal permitting identically situated plaintiffs to assert claims

210 So. 3d at 1263ð64 (citing trial courtôs finding that òwomen seeking to terminate their pregnancies in Florida would be harmed by the enforcementó of the restriction). Where òcertain fundamental rights are violated,ó including the right to abortion under the Privacy Clause, this Court òpresumed irreparable harm,ó even where that harm befell third parties. *Id*. at 1263.

The DCA Order failed to properly apply this presumption of irreparable harm based on the loss of constitutional rights. In fact, it wholly ignored the trial courtôs conclusion, based on extensive factual findings, that HB 5 is likely unconstitutional and will therefore cause *per se* irreparable harm to Floridians seeking abortions. *See* Petitionersô Appôx 53ð67. Instead, the First DCA considered (and rejected) only purportedly òeconomicó harm to Plaintiffs themselves. *Id*. at 125 (quotation marks omitted). The DCA Order thus misapplies and conflicts with this Courtôs holding in *Gainesville*

district courts of appeal. The First DCA held that Plaintiffs òcannot assert the privacy rights of pregnant women,ó Petitionersô Appôx 126,

that physicians who provide abortion careñlike Plaintiff Dr. Shelly Hsiao-Ying Tienñ òhave standing to assert the rights of their . . . patients,ó and this Court reinstated a permanent injunction based on those plaintiffsô third-party privacy claims. *State v. N. Fla. Womenôs Health & Counseling Servs., Inc.*,

explained in their motion filed concurrently with this brief, Plaintiffs also respectfully request that the Court vacate the automatic stay of the circuit courtôs injunction pending this Courtôs review.