IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. _____

JACKSON WOMEN'S HEALTH ORGANIZATION, on behalf of itself and its patients; SACHEEN CARR-ELLIS, M.D., M.P.H., on behalf of herself and her patients **PETITIONERS**

VS.

THOMAS E. DOBBS, M.D., M.P.H., in his official capacity as State Health Officer of the Mississippi Department of Health, ET AL. **RESPONDENTS**

PETITION FOR INTERLOCUTORY APPEAL, OR IN THE ALTERNATIVE, FOR A WRIT OF MANDAMUS, AND REQUEST FOR EMERGENCY RELIEF

Claudia Hammerman*
Alexia D. Korberg*
Aaron S. Delaney*
Heather C. Milligan*
Samantha A. Weinberg*
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
chammerman@paulweiss.com
akorberg@paulweiss.com
adelaney@paulweiss.com
hmilligan@paulweiss.com
sweinberg@paulweiss.com
*Pro Hac Vice

Robert B. McDuff, MS Bar # 2532
Mississippi Center for Justice
767 North Congress Street
Jackson, MS 39202
(601) 259-8484
rbm@mcdufflaw.com

Hillary Schneller*
Jiaman ("Alice") Wang*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3777
hschneller@reprorights.org
awang@reprorights.org
*Pro Hac Vice

Counsel for Petitioners

Today, July 7, Mississippi's Trigger Ban took effect, making it a crime to provide nearly all abortion care in this state. Overnight, Mississippians' access to abortion was extinguished when the only abortion provider in the state—Jackson Women's Health Organization ("JWHO")—was forced to close its doors after providing abortion services for decades.

Abortion access ended in Mississippi despite this Court's holding 24 years ago, in *Pro-Choice Mississippi* v. *Fordice*, 716 So. 2d 645 (Miss. 1998), that the Mississippi Constitution guarantees to each individual—and not a majority of the legislature—a right to make this most fundamental decision about their bodies, lives, and futures. *Fordice* was correct when it was decided and it remains the law today.

Two days ago, a Chancery Court judge—specially appointed by this Court after unexplained recusals by all four judges in Hinds County—ended abortion care in Mississippi by declining to enforce the Mississippi Constitution to bar enforcement of two abortion bans Petitioners challenged. Instead, that court speculated that this Court would cede its authority to interpret its own Constitution and follow in lockstep with the U.S. Supreme Court to overrule *Fordice* just because the U.S. Supreme Court overruled *Roe* v. *Wade.* The Chancery Court's duty, however, was to enforce the law as it stands today, which guarantees Mississippians the right to abortion under the *Mississippi* Constitution.

This Court should grant this petition to appeal or issue mandamus relief and enjoin the Bans. Absent relief, Mississippians will continue to be denied their rights under the Mississippi Constitution to privacy and bodily autonomy, as they are compelled by the State to endure the risks of pregnancy and bear children against their will. The significant, ongoing, and irreparable harm necessitates this Court's immediate action. Petitioners respectfully request this Court enter relief so that Petitioner JWHO can reopen as soon as possible during the week of July 11.

ISSUES PRESENTED AND RELIEF REQUESTED

The Mississippi Constitution provides protection for individual rights independent of any protection—or lack thereof—in the U.S. Constitution. And this Court is the final authority on the meaning of the Mississippi Constitution. In 1998, this Court held that the Mississippi Constitution's guarantee of the right to privacy includes the right of each individual to decide whether to continue a pregnancy and give birth to a child, or to obtain an abortion. *Pro-Choice Miss.* v. *Fordice*, 716 So. 2d 645 (Miss. 1998). The Chancery Court had a duty to enforce the Mississippi Constitution, apply the binding precedent of *Fordice*, and enter preliminary injunctive relief against the Bans. Instead, it refused to follow this Court's binding precedent based on mere speculation that the Court would overrule *Fordice* just because the U.S. Supreme Court overruled *Roe*, and, on that basis, refused to enjoin the Bans.

The issue presented is: Whether the Trigger Ban and the 6-Week Ban violate the right to abortion guaranteed by the Mississippi Constitution, as this Court held in *Fordice*. Petitioners request this Court grant this petition or issue mandamus relief, and enter a preliminary injunction barring the Bans' enforcement, to retain the status quo that existed for decades, and to stop the grave, ongoing harm.

STATEMENTS OF THE CURRENT STATUS OF THIS CASE, OF TIMELINESS, AND OF RELATED CASES

The Chancery Court denied Petitioners' request for a temporary restraining order and/or preliminary injunction on July 5, 2022. Relief is being sought within the time prescribed by the Mississippi Rules of Appellate Procedure. Petitioners are aware of no other related cases pending before this Court or any other Mississippi state court related to this matter.

STATEMENT OF FACTS

I. The Abortion Bans

On June 24, 2022, the U.S. Supreme Court abandoned 50 years of unbroken federal

precedent in *Dobbs* v. *Jackson Women's Health Organization*, No. 19-1392, 597 U.S. __ (2022), overruling *Roe* and *Casey*, which had guaranteed a right to abortion under the U.S. Constitution.

In 2007, Mississippi passed Miss. Code Ann. § 41-41-45 (the "Trigger Ban"). The Trigger Ban prohibits nearly all abortions in Mississippi, with exceedingly narrow exceptions for abortions "necessary for the preservation of the mother's life or where the pregnancy was caused by rape," if a formal charge of rape has been filed. *Id*. § 41-41-45(2), (3). Violation of the Ban by any person—other than the pregnant person—risks imprisonment of between one and ten years. *Id*. § 41-41-45(4). On June 27, 2022, the Attorney General published her determination that the U.S. Supreme Court overruled *Roe* and the near-total abortion ban would be upheld by that Court. *See id*. § 41-41-45. Ten days later—today, July 7—the Trigger Ban took effect.

In 2019, Mississippi enacted a 6-Week Ban, which prohibits abortions after just six (6) weeks from a pregnant person's last menstrual period and thus most abortions sought in the state of Mississippi. *See* Miss. Code Ann. § 41-41-34.1(2)(a). This Ban, too, has extremely narrow exceptions for abortions performed "to prevent the death of a pregnant woman" or "a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman." *Id.* § 41-41-34.1(2)(b)(i). Violations of the 6-Week Ban are punishable by significant fines and/or imprisonment in the county jail for up to 6 months, and physicians risk loss of their medical licenses. Miss. Code Ann. § 41-41-39; § 73-25-29(16). The 6-Week Ban has been subject to a preliminary injunction in federal court, but that injunction, which is based on federal law, could be lifted. *See Jackson Women's Health Org.* v. *Dobbs*, 951 F.3d 246 (5th Cir. 2020).

II. Proceedings in the Chancery Court

A. Petitioners' Lawsuit

Hours after the Attorney General published her determination that the Trigger Ban should take effect on July 7, Petitioners filed suit in the Hinds County Chancery Court. Petitioners are

Jackson Women's Health Organization—the only licensed abortion facility in the state—and Sacheen Carr-Ellis, M.D., M.P.H., its medical director. Petitioners challenged the Bans, to bar their enforcement and prevent significant and irreparable harm to Petitioners and their patients.

Petitioners sought to enforce this Court's holding in *Fordice*, 716 So. 2d at 666. Although the U.S. Supreme Court's June 24 decision in *Dobbs* overruled that Court's decision in *Roe* v. *Wade*—taking away federal constitutional protection for the right to abortion—Mississippians retain their independent rights under the Mississippi Constitution to privacy and bodily autonomy when they become pregnant. Accordingly, Petitioners urged the Chancery Court to maintain the status quo in Mississippi: For nearly 50 years since *Roe*, and for all but 21 years since statehood prior to that time, Mississippians could make decisions about abortion. *See Fordice*, 716 So. 2d at 651 (when "the Mississippi Constitution was adopted, abortion was legal until quickening, some four to five months into pregnancy."); Defs.' Opp. 3–4 (abortion was legal before quickening until 1952, when it was first made illegal).

Absent injunctive relief, this right has been nullified because abortion is now a crime in Mississippi. Petitioners are forced to turn away every patient seeking to exercise their right to seek abortion care, or face risk of draconian penalties. Pregnant Mississippians can no longer exercise their right to make one of the most fundamental decisions about their bodies, and their futures, and their families' futures, and instead are compelled by the State to continue their pregnancies and give birth against their wills. The irreparable and irreversible harm is immense. Pregnant Mississippians seeking to exercise their constitutional right to abortion are instead required by the State to accept the *75 times* greater risk of continuing a pregnancy and giving birth, and, for Black Mississippians, even greater risks. Carr-Ellis Aff. ¶ 14. Mississippians are further forced to bear the long-term impacts of forced pregnancy and childbearing on their ability to shape their lives and their families' lives. *Id.* ¶ 15. Nothing can reverse or fully compensate those harms.

The State argued that it can compel Mississippians to endure these grave violations of their rights because the U.S. Supreme Court's decision overruling *Roe* automatically extinguished the independent right to abortion under the Mississippi Constitution this Court recognized in *Fordice*. The State also asserted that, as a result of the U.S. Supreme Court's decision in *Dobbs*, decisions about pregnancy are controlled by the State—not pregnant Mississippians. Defs.' Opp. 10. It failed to acknowledge that this Court has never overruled *Fordice* and that Mississippi voters also declined to do so in 2011 when they were directly asked whether the Mississippi Constitution should be amended to grant personhood and legal rights and protections to fetuses.[1]

B. Chancellors' Recusal and this Court's Appointment of a Special Chancellor

The day after Petitioners filed suit, all four Chancellors for the Chancery Court of Hinds County, First Judicial District, recused themselves from this matter and requested this Court appoint a Special Chancellor. They provided no explanation for the recusals. Recusal Order 1, Dkt. No. 10.

On the evening on June 30, this Court issued an order appointing the Honorable Debbra K. Halford, Judge of the Fourth Chancery Court District. Appointing Order (2022-AP-00648, Order No. 242472. Special Chancellor Halford set a hearing on Petitioners' request for temporary injunctive relief for July 5. Order Setting Hearing, Dkt. No. 31.

The July 5 hearing opened with an invitation to "prayer and reflection" for those who were interested. Reverend Calvin Cosnahan, serving as a special chaplain for the day's session, led the prayer.[2] The prayer began: "Lord, we pray for the presence of your Holy Spirit in this courtroom today. . . . We seek your truth, not our own. We seek your wisdom, not our own. Bless and inspire

[1] Frank James, *Mississippi Voters Reject Personhood Amendment by Wide Margin*, NPR (Nov. 8, 2011, 11:28 PM), https://www.npr.org/sections/itsallpolitics/2011/11/08/142159280/mississippi-voters-reject-personhood-amendment.
[2] Mississippi Trigger Law Hearing (July 5, 2022), https://www.youtube.com/watch?v=4M5D1BupC2U&t=38s.

Judge Halford in her deliberations and judgments here today." *Id.*

C. The Chancery Court's Order

Hours after the hearing, the Chancery Court denied Petitioners' request for a preliminary injunction in an eight page written opinion. The court did not conclude that this Court had already overruled *Fordice*, or, as the State argued, that the U.S. Supreme Court's ruling in *Dobbs* automatically rendered *Fordice* bad law. Instead, the court applied a novel standard to deny the injunction based on its speculation that it is "more than doubtful that the Mississippi Supreme Court will continue to uphold *Fordice*" if and when this case reached this Court. Order 6, Dkt. No. 39 (hereinafter "Order").

The Chancery Court dismissed Petitioners' claims of irreparable harm, acknowledging merely that Petitioners' patients may suffer harm that is "irreparable from those patients' perspectives." Order 7. "[T]he real harm," the court concluded, was to the State, given its alleged interests in enforcing its Bans. *See* Order 7. The court gave no consideration as to whether a temporary restraining order and/or preliminary injunction would preserve the status quo.

STANDARD OF REVIEW

An interlocutory appeal may be sought if "a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may: (1) [m]aterially advance the termination of the litigation and avoid exceptional expense to the parties; or (2) [p]rotect a party from substantial and irreparable injury; or (3) [r]esolve an issue of general importance in the administration of justice." MRAP 5(a).

Mandamus relief is available where (1) the petitioner is authorized to bring the suit; (2) the petitioner has a clear right to the relief sought; (3) the defendant has a legal duty to do what petitioner seeks to compel; and (4) there is no other adequate remedy at law. *See Pryer* v. *Gates*, 312 So.3d 741, 747 (Miss. Ct. App. 2021); *see also* MRAP 21(a). There is no appeal as of right

from the denial of a temporary restraining order or preliminary injunction. And, this Court has original jurisdiction to consider writs to compel a trial judge to act in a matter pending before that judge. *In re Chisolm*, 837 So. 2d 183, 188 (Miss. 2003).

In granting or denying a writ of mandamus, the court must exercise its discretion non-arbitrarily, "on equitable principles and in accordance with well-settled principles of law." *Pryer*, 312 So.3d at 745 (quoting *Chatham* v. *Johnson*, 195 So. 2d 62, 64–65 (Miss. 1967)). The Court "should take into consideration the variety of circumstances . . . among other things, the facts of the particular case, the consequences of granting the writ and the nature of the wrong which would result from the refusal to grant the writ." *Chatham*, 195 So. 2d at 65.

REASONS WHY RELIEF SHOULD BE GRANTED

I. The Chancery Court Had a Duty to Enforce the Mississippi Constitution's Guarantee of an Individual Right to Abortion.

A. The Mississippi Constitution Guarantees a Right to Abortion.

This Court has long held that "[e]ach individual enjoys a right of privacy," "a right to the inviolability and integrity of our persons, a freedom to choose or a right to bodily self-determination. *In re Brown*, 478 So. 2d 1033, 1039 (Miss. 1985). This right of privacy—including a right against state-compelled bodily intrusions—is grounded in "natural law" and the "common law" of this state. *Id*. at 1040; *see also id*. (citing *Deaton* v. *Delta Dem. Publ'g Co.*, 326 So. 2d 471, 473 (referring to common law)). This right is given "constitutional status by Article 3, § 32 of the Mississippi Constitution of 1890," *id.*, which states: "the enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people."

The right of privacy is "so personal that its protection does not require giving a reason for its exercise." *Id*. at 1041. Rather, "[t]hat one is a person, unique and individual, is enough." *Id*. More specifically, "Mississippi follows the fundamental notion that the patient is the master of

his/her own body." *Fox* v. *Smith*, 594 So. 2d 596, 604 (Miss. 1992). And "[i]t requires little awareness of personal prejudice and human nature to know that, generally speaking, no aspect[] of life is more personal and private than those having to do with one's . . . reproductive system." *Young* v. *Jackson*, 572 So. 2d 378, 382 (Miss. 1990); *see also Dodd* v. *Hines*, 229 So. 3d 89, 96 (Miss. 2017) (fact questions as to whether patient consented to removal of her ovaries precluded summary judgment); *Fox*, 594 So. 2d at 597 (reversing lower court's grant of directed verdict for physician, holding genuine issue of material fact existed as to whether patient consented to IUD removal). Constitutional protection for this privacy right "rests upon the bedrock of this state's respect for the individual's right to be free of unwanted bodily intrusions no matter how well intentioned." *In re Brown*, 478 So. 2d at 1040.

In 1998, this Court confirmed that people who become pregnant do not cease to be full and equal citizens under the Mississippi Constitution by losing the inherent right to privacy guaranteed to all others. *Fordice*, 716 So.2d 645. The mere fact of pregnancy does not cede an individual's right to make fundamental decisions about their body and their future to elected legislatures. *Id.* That conclusion was based on the Mississippi Constitution and its own precedent guaranteeing a right to privacy, which this Court described as "the most comprehensive and guarded right" in the Constitution. *Id*. at 654. It was also based on Mississippi's own history, where abortion has been legal at least "some four to five months into pregnancy" for nearly all but 21 years since the Constitution was ratified. *See id.* at 651; *see also* Defs.' Opp. 3–4 (abortion before quickening made illegal in 1952). Thus while the Court considered the U.S. Supreme Court's interpretation of the U.S. Constitution in *Roe* and *Casey*, these considerations were secondary to the weight of Mississippi legal precedent and history.

In *Fordice*, this Court reiterated that, in construing the Mississippi Constitution, it "should look to the history of the times and examine the state of things in existence when the Constitutional

provision in question was adopted, in order to ascertain the mischief sought to be remedied." *Fordice*, 716 So.2d at 651 (quoting *McCaskill* v. *State*, 227 So. 2d 847, 850 (Miss. 1969)). Heeding that guidance, this Court concluded that, Mississippians retain an inherent right to decide how their pregnancies will end. *See id.* at 651–54. That right—including the right to abortion—is among those rights guaranteed by Article 3, § 32 of the Mississippi Constitution that the enumeration of certain rights in the state constitution cannot "deny and impair." *See id*. at 653–54.

The Bans unquestionably violate pregnant Mississippians' inherent and constitutional rights to decide whether to continue a pregnancy and give birth. A straightforward application of this Court's holdings under the Mississippi Constitution requires enjoining the Bans.

Fordice, and the precedent on which it relies, provides critical protection against state-sanctioned reproductive control measures, with which this state has a tragic history. The record reaches back, prior to statehood, to slavery, when Black women endured brutal sexual violence at the hands of enslavers and were coerced to bear and rear children under bondage. Dorothy E. Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, 22–55 (2d. ed. 2017). The law protected and facilitated white slaveholders' treatment of enslaved people as property, afforded white slaveholders an economic interest in enslaved persons' procreation, and denied enslaved people rights to maintain family bonds. *See id.*

Later, this state, as reported by Fannie Lou Hamer, "sterilized six out of ten black women in Sunflower County at the local hospital—against their will." *Jackson Women's Health Org.* v. *Currier*, 349 F. Supp. 3d 536, 540 n.22 (S.D. Miss. 2018) (citing Rickie Solinger, *Wake Up Little Susie* 57 (1992)), *aff'd*, 945 F.3d 265 (5th Cir. 2019), *rev'd and remanded*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022). This state also punished those who had children—selectively supporting families and erecting barriers to parents' employment, with the impact falling most heavily on Black women and families. To take just one example, two Black mothers pursuing work

as teachers' aides challenged a local Mississippi school district policy excluding unmarried parents from jobs. *Andrews* v. *Drew Mun. Separate Sch. Dist*., 371 F. Supp. 27 (N.D. Miss. 1973), *aff'd* 507 F.2d 611. All of the candidates denied jobs under the policy were Black women. *Id.* at 35–36 ("discriminatory effect of the Drew policy upon unmarried women is inescapable," as "only unmarried females [had] been prohibited from employment"); *id*. at 30 (evidence showed that "[n]o white person had been . . . denied employment" under the policy).

As this history demonstrates, many Mississippians have not enjoyed the full promise of the Mississippi Constitution's protection for the right to make decisions about whether, when, and how many children to bear. But the Mississippi Constitution, as this Court interpreted it in *Fordice,* remains a bulwark against the gravest abuses by the State. And generations of Mississippians have relied on its protection of this individual right to privacy—a "protection against the tyranny of the majority and against the power of the state." *In re Brown*, 478 So. 2d at 1036–37.

Fordice is and should remain the law. There is nothing "pernicious," "impractical," or "mischievous in [] effect, and resulting in detriment to the public" that could justify overruling *Fordice*. *See State ex rel. Moore* v. *Molpus*, 578 So. 2d 624, 635 (Miss. 1991) (discussing stare decisis). Rather, it would be perverse to reject this precedent, making pregnant Mississippians less than equal citizens by ceding their right to bodily autonomy to the State.

B. The Chancery Court Abused its Discretion by Refusing to Preliminarily Enjoin the Bans.

The Chancery Court abused its discretion by speculating that, because the U.S. Supreme Court in *Dobbs* overruled *Roe*, this Court would overrule *Fordice,* and based on that conjecture, refusing to enjoin the Bans. Order 6. That reasoning is contrary to the rule of law and to this Court's authority to have the final word on the meaning of the Mississippi Constitution.

A fair reading of *Fordice* demonstrates the speculative nature of the Chancery Court's

reasoning. Contrary to its Order, and the State's arguments, the Mississippi Constitution's right to privacy, including the right to abortion, does not depend on whether the U.S. Constitution guarantees similar rights. Instead, in *Fordice*, this Court exercised "its prerogative to interpret the state constitution independently." *Contra* Defs.' Opp. 12. *Fordice* considered only state law claims, brought under the Mississippi Constitution. 716 So. 2d. at 665. It relied on Mississippi precedent and history. *See supra*. While it also considered *Roe* and *Casey*, citation to and consideration of federal case law cannot supplant the Court's clear holding that was based on its interpretation of the state constitution's independent right to privacy—"the most comprehensive and guarded right" in the "*Mississippi Constitution*." *Fordice*, 716 So. 2d at 654 (emphasis added).

As this Court said in *Fordice*: "A federal court may not interpret the State Constitution. We reserve the 'sole and absolute right' to interpret the Mississippi Constitution." 716 So. 2d at 665–66 (citing *Penick* v. *State*, 440 So. 2d 547, 551 (Miss. 1983)). "The words of our Mississippi Constitution are not balloons to be blown up or deflated every time, and precisely in accord with the interpretation the U.S. Supreme Court, following some tortuous trail." *Penick*, 440 So. 2d at 552. And this Court is "not obligated to accept what [it] deem[s] to be a major contraction of citizen protections under our constitution simply because the United States Supreme Court has chosen to do so." *Sitz* v. *Dep't of State Police*, 506 N.W.2d 209, 218 (Mich. 1993). It is "obligated to interpret [its] own organic instrument of government." *Id*. In *Fordice*, this Court exercised its duty and prerogative to interpret the *Mississippi* Constitution, holding that it protects the right to abortion independently, but to the same extent as, then-existing federal law. 716 So. 2d. at 655.

Dobbs does not and cannot determine what rights the Mississippi Constitution protects. That falls to this Court because, "[w]hile the federal courts are free to determine the constitutionality of abortion statutes based on a federal analysis, the State reserves the right to determine state constitutionality." *Fordice*, 716 So. 2d at 666. The State's notion that federal

constitutional law is determinative—especially absent clear statements by this Court—would fundamentally rewrite state constitutional interpretation canons while rejecting the independent authority of the state courts to interpret their state constitutions. It contradicts what this Court "fully recognize[s:] . . . that decisions of the Supreme Court of the United States construing provisions of the federal constitution are not binding on a state court construing similar provisions of its own state constitution." *Wilson Banking Co. Liquidating Corp.* v. *Colvard*, 161 So. 123, 127 (Miss. 1935).

Absent a clear directive from this Court, *Fordice* remains binding on the Chancery Court. *See Brown* v. *State*, 336 So. 3d 134, 147 (Miss. Ct. App. 2020) ("[W]e will continue to follow the [Mississippi] Supreme Court's directly on-point decisions . . . until the [Mississippi] Supreme Court itself has overruled those decisions."). This Court has given no such directive.

No one disputes that this Court may overrule its own cases. But this Court has not done so. And the Chancery Court had no authority to rule based on its guess as to what this Court might do.

II. The Chancery Court's Order Disrupted Decades of the Status Quo.

"The true object and purpose of an interlocutory injunction is to hold and preserve in status quo . . . until the court is able to finally adjudicate the rights and duties of the parties." *Rochelle* v. *State*, 75 So. 2d 268, 270 (Miss. 1954). The status quo in Mississippi for the 50 years since *Roe* v. *Wade*, 410 U.S. 113 (1973), was that the decision of whether to continue a pregnancy and give birth to a child belongs to the individual and not the legislature, all in accordance with both *Roe* and, independently, *Fordice*. And for 135 of the 156 years of statehood prior to that time, the decision about abortion—at least four to five months into pregnancy—belonged to the individual. *See Fordice*, 716 So. 2d at 651 ("[A]t the time the Mississippi Constitution was adopted, abortion was legal until quickening, some four to five months into pregnancy."); Defs.' Opp. 3–4. By refusing to apply this Court's binding precedent, the Chancery Court upended decades of the status

quo.

Generations of Mississippians have come of age under the promise that should they become pregnant, the decision whether to continue their pregnancy is theirs—not the State's—to make. Overnight, Mississippians lost access to this safe, essential, and time-sensitive care. To prevent further disruption to Mississippians' settled expectations and preserve the decades-old status quo, this Court should enjoin the Bans pending resolution of the merits.

III. The Chancery Court's Order is Causing Irreparable, Ongoing, and Irreversible Harm to Mississippians That Far Outweighs Any Alleged Harm to the State.

Absent injunctive relief, the Bans will cause significant, immediate, and irreversible harm for Petitioners and their patients. This Court should grant relief to prevent further harm.

As a result of the Chancery Court's abuse of discretion, as of today Mississippians who seek to terminate their pregnancies can no longer do so in this state. This is because of the substantial professional sanctions and criminal and civil penalties threatened by the Bans, which have forced Petitioner—the sole abortion clinic in Mississippi—to cease providing abortion care and turn away patients seeking care. Forced pregnancy and childbirth renders pregnant Mississippians less than equal citizens by invading their bodily integrity and robbing them of their autonomy to make the most life-altering of decisions: whether and when to have children. *See* Carr-Ellis Aff. ¶ 14. Because that decision impacts every aspect of a person and their family's lives—from their health, to their educational and professional attainment, to their economic well-being and participation in social and civic life—the Bans inflict substantial harms. *Id.* ¶¶ 14–15. Those harms can neither be compensated nor undone after a trial on the merits. *See In re Brown*, 478 So. 2d at 1040 (invasion of bodily autonomy contradicts "the bedrock of this state's respect for the individual's right to be free of unwanted bodily intrusions"). They are "as irreparable as any that can be imagined" as they also "flow from the deprivation of constitutional rights." *Pilgrim*

Med. Grp. v. *N.J. State Bd. of Med. Examiners*, 613 F. Supp. 837, 848–49 (D.N.J. 1985); *see also Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (deprivation of constitutional rights is irreparable harm).

The Chancery Court dismissed the harms arising from the constitutional violation, and minimized the risk of pregnancy and childbirth, stating harms to Petitioners' patients "boil down to economic harms . . . to [] patients for the costs of delivery and caring for unwanted children." Order 6–7. In fact, Mississippians forced to continue their pregnancies and give birth face grave risk: in this state, continuing a pregnancy and giving birth to a child is more than *75 times* more dangerous than having an abortion, and even greater for Black Mississippians. Carr-Ellis Aff. ¶¶ 14, 23. Further, for the approximately one-third of pregnancies that end in a C-section, patients will have a major abdominal surgery that carries risks of infection, hemorrhage, and damage to internal organs. *Id*. ¶ 23. And, although the Chancery Court "acknowledge[d] the . . . perceived loss of life opportunities [Petitioners' patients] will face" is "irreparable from those patients' perspectives," Order 7, it failed to credit the well-documented long-term consequences of being denied a wanted abortion, for birthing people, their children, and their families. *See* Carr-Ellis Aff. ¶¶ 14–15, 23. Those harms are long-term, irreversible, and non-compensable.

Yet, the Chancery Court held that "the real harm" was to the State, and an injunction would undermine its interests. *See* Order 7–8. The State, however, will suffer no injury, because an injunction will simply preserve the status quo that has existed in this state for nearly 50 years. Further, "in this state . . . we do not sacrifice rights to mere interests." *In re Brown*, 478 So. 2d at 1037. And Mississippi has no legitimate interest in violating the Mississippi Constitution and cannot be harmed by being prevented from doing so. *See Giovani Carandola, Ltd.* v. *Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (preliminarily enjoining likely unconstitutional law does not harm the state; "[i]f anything, the system is improved by such an injunction").

Further, the State can advance its interests and *not* control Mississippians' reproductive

lives by affording pregnant people themselves the autonomy to make their own decisions about pregnancy and family. Despite professing interests in "maternal health and safety" and "respect for and preservation of prenatal life at all stages of development," Mississippi ignores recommendations by its own experts to address its devastating maternal and infant mortality crises and stark racial disparities in both maternal and infant health.[3] State reports share a common recommendation to help address these tragedies: extending postpartum Medicaid eligibility from 60 days to one year after childbirth.[4] Yet, the State has never implemented this recommendation and has taken active steps to frustrate it.[5]

By depriving Mississippians of any say over whether and when to have children, the Bans take away Mississippians' ability to direct the course of their lives, and have already caused significant and irreparable harm that far outweighs any harm to the State.

IV. Petitioners Have No Adequate Remedy at Law.

Petitioners lack an adequate remedy: they cannot appeal the Chancery Court's denial of a preliminary injunction. Accordingly, they meet the requirements for mandamus relief. And delayed relief cannot reverse the harm caused to each Mississippian who is denied a wanted abortion that, absent the Bans, Petitioners would provide to their patients.

CONCLUSION

This Court should grant Petitioners permission for an interlocutory appeal, or in the alternative, grant mandamus relief and enjoin the Bans so that Petitioners can resume abortion services as soon as possible during the week of July 11.

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[3] Miss. State Dep't of Health, Infant Mortality Rep. 2019 & 2020, 7, 28, https://msdh.ms.gov/msdhsite/_static/resources/18752.pdf; Miss. State Dep't of Health, Miss. Maternal Mortality Rep. 2013–2016, 25 (Mar. 2021), https://msdh.ms.gov/msdhsite/index.cfm/31,8127,299,pdf/MS_Maternal_Mortality_Report_2019_Final.pdf.

[4] *See* Infant Mortality Rep., 28; Maternal Mortality Rep., 5, 23.

[5] *See* Emily Wagster Pettus, Associated Press, Mississippi House Leaders Kill Postpartum Medicaid Extension (Mar. 9, 2022), https://apnews.com/article/health-mississippi-medicaid-c49dcbdc7b356f593485853aee5458c1.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Interlocutory Appeal, or in the Alternative, for a Writ of Mandamus was filed with the Clerk of the Court, and will be emailed to Doug Miracle, Director of the Civil Litigation Division, Mississippi Attorney General's Office, at doug.miracle@ago.ms.gov, and to the Honorable Judge Debbra K. Halford at ctadministrator@franklincountyms.org.

Dated: July 7, 2022

Respectfully submitted,

/s/ Robert B. McDuff
Robert B. McDuff, MS Bar # 2532
767 North Congress Street
Jackson, MS 39202
(601) 259-8484
rbm@mcdufflaw.com

Counsel for Petitioners