

Emily C. Mimnaugh (NV Bar #15287)
 PACIFIC JUSTICE INSTITUTE, Nevada Office
 1580 Grand Point Way #33171
 Reno, NV 89533
 Telephone: (916) 857-6900
 Fax: (916) 857-6902
 emimnaugh@pji.org
Designated Resident Nevada Counsel for Moving Defendants
 James Bopp, Jr. (IN Bar #2838-84)*
 jboppjr@aol.com
 Richard E. Coleson (IN Bar #11527-70)*
 rcoleson@bopplaw.com
 Joseph D. Maughon (VA Bar #87799)*
 jmaughon@bopplaw.com
 THE BOPP LAW FIRM, PC
 1 South Sixth St.
 Terre Haute, IN 47807-3510
 Telephone: (812) 232-2434
 *Pro hac vice counsel will comply with LR IA 11-2 within 14 days.
Counsel for Moving Defendants

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

Eugene Glick, M.D., and Planned Parenthood of Wash-
 oe County, a non-profit Nevada Corporation,
 Plaintiffs,

v.

Aaron D. Ford, Nevada Attorney Gen.; Christopher J.
 Hicks, Washoe County Dist. Attorney; Jason D. Wood-
 bury, Carson City Dist. Attorney; Arthur E. Mallory,
 Churchill County Dist. Attorney; Steven Wolfson,
 Clark County Dist. Attorney; Mark B. Jackson, Doug-
 las County Dist. Attorney; Tyler Ingram, Elko County
 Dist. Attorney; Robert E. Glennen, III, Esmeralda
 County Dist. Attorney; Theodore Beutel, Eureka
 County Dist. Attorney; Kevin Pasquale, Humboldt
 County Dist. Attorney; William E. Schaeffer, Lander
 County Dist. Attorney; Dylan V. Frehner, Lincoln
 County Dist. Attorney; Stephen B. Rye, Lyon County
 Dist. Attorney; T. Jaren Stanton, Mineral County Dist.
 Attorney; Brian T. Kunzi, Nye County Dist. Attorney;
 Bryce R. Shields, Pershing County Dist. Attorney;
 Anne Langer, Storey County Dist. Attorney; James S.
 Beecher, White Pine County Dist. Attorney,
 Defendants.**

Case No. **3:85-cv-00331**

**Motion of Defendants Jason D.
 Woodbury, Carson City District
 Attorney, and Stephen B. Rye,
 Lyon County District Attorney,
 for Relief from
 Judgment Under
 Fed. R. Civ. P. 60(b)(5)**

ORAL ARGUMENT REQUESTED

** Current office-holder Defendants were automatically substituted for those in *Glick v. McKay*,
 616 F. Supp. 322 (D. Nev. 1985). Fed. R. Civ. P. 25(d).

Motion

Defendants Jason D. Woodbury, Carson City District Attorney, and Stephen B. Rye, Lyon County District Attorney, move for relief from the Court's Judgment (Dkt #74) and the Clerk's Judgment in a Civil Case (Dkt #75). Fed. R. Civ. P. 60(b)(5). This Court's Judgment states:

THIS MATTER comes before the Court upon the motion filed by Plaintiffs herein for the Entry of Summary Judgment. The Court, finding good cause therefor in that there is no question of material fact and Plaintiffs are entitled to Judgment as a matter of law, does hereby enter Judgment in favor of Plaintiffs and against Defendants, and each of them, jointly and severally as follows:

1. Declaring that NRS 442.255 and NRS 442.2555 are unconstitutional; and
2. Permanently enjoining enforcement of NRS 442.255, NRS 442.2555 and NRS 442.257.

The Clerk's Judgment entered accordingly states (underline and bold in original):

IT IS ORDERED AND ADJUDGED that **JUDGMENT** is entered in favor of Plaintiffs and against Defendants, and each of them, jointly and severally, as follows:

1. Declaring that NRS 442.255 and NRS 442.2555 are unconstitutional; and
2. Permanently enjoining enforcement of NRS 442.255, NRS 442.2555 and NRS 442.257.

These Judgments (collectively "**Judgment**") were based on *Glick v. McKay*, 616 F. Supp. 322 (D. Nev. 1985) (using dkt. no. "CV-R-85-33" in error), and *Glick v. McKay*, 937 F.2d 434 (9th Cir. 1991), both based on the abortion right in *Roe v. Wade*, 410 U.S. 113 (1973). "[A]pplying [the Judgment] prospectively is no longer equitable," Fed. R. Civ. P. 60(b)(5), because

- *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), removed its foundation by overruling *Roe* and *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833 (1992), and substituting a rational-basis test that the challenged provisions readily survive;¹ and
- *Lambert v. Wicklund*, 520 U.S. 292 (1997) (per curiam), abrogated *Glick*, 937 F.2d 434.

¹ That *Dobbs* also abrogated cases recognizing third-party standing in the abortion context, *see* 142 S.Ct. at 2275, is a further reason to vacate. All hyperlinks herein functioned as of November 28, 2023.

Memorandum of Points and Authorities in Support of Motion

Parties, Counsel & Service

Plaintiffs in 1985 were Dr. Glick and Planned Parenthood of Washoe County (“PPWC”). Movants are separately filing a suggestion of Dr. Glick’s death under Rule 25(a)(1), which authorizes “the proper party” to move to substitute. Fed. R. Civ. P. 25(a)(1). Rule 25 applies to post-judgment actions. *See, e.g., Rodriguez-Miranda v. Benin*, 829 F.3d 29, 40 (1st Cir. 2016), *quoted with approval in GMAT Legal Title Trust 2013-1 v. SFR Invs. Pool 1, LLC*, 2018 U.S. Dist. LEXIS 26978, *3. Whoever is now assuming Dr. Glick’s role and interest herein, i.e., a physician wanting to perform abortions on minors without complying with Nevada’s parental-notice provisions, would be such a “proper party.” *See Glick*, 616 F. Supp. at 323. That person is unknown to Movants but is necessarily known to PPWC’s successor in interest. Under Rule 25(a)(1), absent such a motion “the action by . . . the decedent must be dismissed.” But since Movants seek relief *from judgment* in a case only reopened by operation of Rule 60(b)(5), it is too late to dismiss Dr. Glick’s claim. However, only for purposes of establishing a successor in interest to PPWC in this case, Movants believe “the right sought to be enforced survives”² for PPWC’s successor in interest, Fed. R. Civ. P. 25(a)(2), so a motion to substitute for Dr. Glick is permitted but not required.

A search for PPWC at esos.nv.gov/EntitySearch/OnlineEntitySearch yields no results. Rule 25(c) addresses interest transfers, including by corporate mergers. *See* 7C Fed. Prac. & Proc. Civ. § 1958 (3d ed.). PPWC’s transferee is Planned Parenthood Mar Monte, Inc. (“PPMM”) at 455 West Fifth St. in Reno, *see* www.plannedparenthood.org/planned-parenthood-mar-monte/contact-us, which offers abortion services to minors without requiring parental notice, *see* www.plannedparenthood.org/planned-parenthood-mar-monte/patient-resources/information-for-teens. PPMM is at 455 West Fifth Street in Reno; its formation date is 07/29/1999.³ The Planned

² Obviously, the abortion right declared in *Roe v. Wade*, 410 U.S. 113 (1973), was eliminated by *Dobbs*, 142 S.Ct. 2228, so the present motion should be granted. But that abortion right was the right Glick and PPWC both asserted, so that “right . . . survives” for the purpose of establishing a successor in interest.

³ Search esos.nv.gov/EntitySearch/OnlineEntitySearch for “Planned Parenthood Mar Monte, Inc.” “Registered Agent Information” lists Tanya McDougall-Johnson at that address.

1 Parenthood entity operating in Washoe County from 1971 to 1997 was Planned Parenthood of
 2 Northern Nevada, also at 455 West Fifth Street.⁴ PPMM was formed by “mergers of Planned Par-
 3 enthood affiliates and independent health centers during the 1990s.” See [www.plannedparen-](http://www.plannedparenthood.org/planned-parenthood-mar-monte/who-we-are/mission-and-history)
 4 [thood.org/planned-parenthood-mar-monte/who-we-are/mission-and-history](http://www.plannedparenthood.org/planned-parenthood-mar-monte/who-we-are/mission-and-history). One was with
 5 Planned Parenthood of Northern Nevada. See B.D. Spence, *Planned Parenthood to merge*,
 6 Recordnet.com (Sept. 27, 1996), [www.recordnet.com/story/news/1996/09/27/planned-](http://www.recordnet.com/story/news/1996/09/27/planned-parenthood-to-merge/50839953007/)
 7 [parenthood-to-merge/50839953007/](http://www.recordnet.com/story/news/1996/09/27/planned-parenthood-to-merge/50839953007/). PPMM is also the successor in interest based on abortion
 8 services. Cf. *Lucero v. Trosch*, 121 F.3d 59 (11th Cir. 1997) (new owner of abortion business
 9 could be joined as a party plaintiff to receive the protection of an injunction obtained by prior
 10 owner). So PPMM may move to be substituted. But Rule 25(c) says “[i]f an interest is trans-
 11 ferred, the action may be continued by . . . the original party unless the court, on motion, orders
 12 the transferee to be substituted in the action or joined with the original party.”

13 The most significant feature of Rule 25(c) is that it does not require that anything be done
 14 after an interest has been transferred. The action may be continued by or against the original
 15 party, and the judgment will be binding on the successor in interest though the successor
 is not named. An order of joinder is merely a discretionary determination by the trial court
 that the transferee’s presence would facilitate the conduct of the litigation.

16 7C Fed. Prac. & Proc. Civ. § 1958 (3d ed.) (citations omitted). Thus, PPMM may move to substi-
 17 tute or assure that any defense it wishes to make is provided on behalf of the merged PPWC.

18 1985 Defendants were Attorney General McKay and district attorneys listed in *Glick*, 616 F.
 19 Supp. at 322. Public-office substitutions are automatic, Fed. R. Civ. P. 25(d), so Movants substi-
 20 tuted defendants in the present caption based on the current Attorney General and district attor-
 21 neys at ag.nv.gov/uploadedFiles/agnv.gov/Content/Home/NVDAA%20CONTACT%20LIST.pdf.

22 Movants Jason D. Woodbury, Carson City District Attorney, and Stephen B. Rye, Lyon
 23 County District Attorney, are successors in office to defendants Plaintiffs sued. They seek relief
 24 from the Judgment preventing them from enforcing Nevada’s parental-notice provisions. Should
 25 other defendants not support Movants, such issues were raised and rejected in *Bryant v. Woodall*,
 26 622 F. Supp. 3d 147, 152 (M.D.N.C. 2022). There the court sua sponte ordered post-*Dobbs*

27 ⁴ Search esos.nv.gov/EntitySearch/OnlineEntitySearch for “Planned Parenthood of Northern
 28 Nevada.”

1 briefing as “injunctive relief granted in this case may now be contrary to law.” *Id.* at 150 (citation
 2 omitted). Plaintiffs there argued against lifting the injunction on abortion restrictions, and Defen-
 3 dants *also* argued that “[l]ifting the injunction will likely worsen the public confusion that is in-
 4 evitable from such a profound reversal in the law.” *Id.* at 151 (citation omitted). The court said,
 5 “Plaintiffs’ and Defendants’ arguments illustrate why this injunction must be dissolved and dis-
 6 missed,” since *Dobbs*’s elimination of the federal abortion right “depriv[ed] the injunction of any
 7 constitutional basis from which to enjoin the challenged [provisions].” *Id.* That the two district
 8 attorneys “ha[d] no intention to exercise that enforcement authority,” and no other district attor-
 9 ney indicated an intention to enforce the provisions, was simply “not a persuasive reason to
 10 maintain the injunction” because “the likelihood of future prosecution will always be difficult to
 11 predict.” *Id.* (quotation marks omitted; citations omitted). “[A] court of equity will not grant an
 12 injunction to restrain one from doing what he is not attempting to do and does not intend to do.”
 13 *Id.* at 154 (citation omitted).

14 The Civil Cover Sheet lists Plaintiffs’ counsel as Stanley H. Brown, Chartered, Stanley H.
 15 Brown, Sr., and Stanley H. Brown Jr. at 147 East Liberty Street, Reno, NV 89501. *See also*
 16 *Glick*, 616 F. Supp. at 323 (same). Nevada State Bar records show Stanley H. Brown, Sr. de-
 17 ceased but Stanley H. Brown, Jr. practicing at 127 East Liberty Street. *See* [nvbar.org/for-](https://nvbar.org/for-the-public/find-a-lawyer/?usearch=stanley%20H.%20Brown)
 18 [the-public/find-a-lawyer/?usearch=stanley%20H.%20Brown](https://nvbar.org/for-the-public/find-a-lawyer/?usearch=stanley%20H.%20Brown). So Movants are serving attorney
 19 Brown, Jr. both by this Court’s electronic filing system (where he is listed as Plaintiffs’ counsel
 20 of record with an email address) and by mail at his new address, as required by Rules 5 and 25
 21 But Movants are also serving PPMM directly because they are unsure that attorney Brown’s rep-
 22 resentation of PPWC continues with PPMM and because in *FDIC v. Harger*, 778 F. Supp. 2d
 23 1123, 1133 (D.N.M. 2011), the court found notice to counsel appearing twenty years prior did
 24 not suffice without serving the party. Counsel for all Defendants was the Attorney General. *See*
 25 Docket p. 1. The specific attorney listed for the Attorney General’s office, Brooke Nielsen, no
 26 longer appears to be employed by Nevada, *see* [https://transparentnevada.com/di-](https://transparentnevada.com/directory/?department=&q=Nielsen)
 27 [rectory/?department=&q=Nielsen](https://transparentnevada.com/directory/?department=&q=Nielsen), so Movants are serving the Attorney General. For like reasons,
 28 the also are serving the current district attorneys. Movants withdraw and do not renew their prede-

cessors' consent for Attorney General representation in this matter.

Statutory Provisions

The Judgment declared unconstitutional and permanently enjoined three provisions: NRS § 442.255 (“**Notice Requirement**” with “**Judicial-Bypass Procedure**”); NRS § 442.2555 (“**Appeal Procedure**”), and NRS § 442.257 (“**Penalty Provision**”). *See Glick*, 937 F.2d at 442-43 (1985 texts of 442.255 and 442.2555); www.leg.state.nv.us/nrs/nrs-442.html#NRS442Sec255 (current texts). A 2015 Appeal Procedure amendment does not affect the present Motion.

Statement of the Case

On June 28, 1985, Dr. Glick and PPWC challenged the constitutionality of the foregoing provisions “pursuant to the United States Constitution and 42 U.S.C. § 1983,” *Glick*, 616 F. Supp. at 323, moving for a preliminary injunction (Dkt. #2) and a temporary restraining order (Dkt. # 5). On the same date, this Court issued a temporary restraining order against enforcement of the challenged provisions (Dkt. #6). On July 17, 1985, this Court entered an order granting the preliminary injunction (Dkt. #23), reported at 616 F. Supp. 322.

In its preliminary-injunction order, this Court noted the challenge’s sole basis: “[t]he [federal] constitutional guarantee of personal liberty [that] protects a woman’s right to terminate her pregnancy.” 616 F. Supp. at 324 (citing *Roe*, 410 U.S. 113). But it said that “this right is not absolute and the Supreme Court has noted that ‘a State’s interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial.’” *Id.* (quoting *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 439 (1983) (“**Akron I**”). “Thus, Nevada’s parental notification statute is not per se unconstitutional and must be analyzed under the applicable constitutional analysis.” *Id.* Noting that the parties disagreed over whether parental-consent analysis applied to the Notice Requirement, *id.* at 324, this Court decided to apply the parental-consent analysis, *id.* at 325. The Court preliminarily enjoined NRS §§ 442.255, 442.2555, and 442.257. *Id.* at 325-28.

Defendants appealed that order. *Glick*, 937 F.2d at 436. The Ninth Circuit said “although this appeal arises from a ruling on a motion for a preliminary injunction, important constitutional

1 issues are at stake and the customary discretion accorded to a district court’s ruling on a prelimi-
 2 nary injunction yields to our plenary scope of review as to the applicable law.” *Id.* (citation omit-
 3 ted). The Ninth Circuit conducted briefing and argument, then “withheld judgment pending the
 4 decision of the United States Supreme Court in *Thornburgh v. American College of Obstetri-*
 5 *cians & Gynecologists*, 476 U.S. 747 (1986), *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), *Hodgson*
 6 *v. Minnesota*, 497 U.S. 417 (1990), and *Ohio v. Akron Center for Reproductive Health*, 497 U.S.
 7 502 (1990) (*Akron II*)⁵” *Glick*, 937 F.2d at 436. It decided it need not decide appellants’
 8 argument, left open in *Akron II*, that since a notification requirement lacked the potential for a
 9 veto, a judicial bypass provision was not constitutionally required. *Id.* at 436. Rather, it decided
 10 that it need only address the adequacy of the bypass procedure:

11 Though we hold *infra* that the Nevada statute does not similarly satisfy the requirements
 12 for a parental consent statute, we need not address whether such a judicial or other bypass
 13 procedure is constitutionally required. Appellees attack only the adequacy of the judicial
 14 bypass, not the lack of it. Because the Nevada parental notification statute contains a bypass
 15 procedure, we must address the constitutional adequacy of the procedure, but we are con-
 16 strained from addressing the constitutional necessity of such a procedure.

15 *Id.* at 436-37 (paragraph break removed). Noting that “*Akron II* . . . held that a bypass procedure
 16 that would suffice as a consent statute will suffice as a notice statute,” *id.* at 437, the court ana-
 17 lyzed the Notice Requirement under “[t]he four *Bellotti [II]* criteria applied in *Akron II*,” *id.* (cit-
 18 ing *Akron II*, 497 U.S. at 511-13 (citing *Bellotti v. Baird*, 443 U.S. 622, 643-44 (1979) (plurality
 19 opinion) (“*Bellotti II*”))). Finding problems,⁶ the panel affirmed the preliminary injunction:

20 We hold that a bypass procedure within a parental notification statute must meet constitu-
 21 tional scrutiny. Because we find that the Nevada bypass procedure fails to meet the require-
 22 ments for a consent statute bypass, and also does not meet the expediency requirement for
 23 a notice statute bypass, . . . the district court properly enjoined NRS 442.255, NRS
 24 442.2555, and NRS 442.257.

24 937 F.2d at 442. So the identified problems were with the bypass and expediency.

25 On October 10, 1991, this Court entered Judgment for declaratory and permanent injunctive

26
 27 ⁵ As established below, *Akron II* (1990) provided controlling precedent by upholding a
 parental-notice provision nearly identical to Nevada’s at issue in *Glick*. See Part II.

28 ⁶ The panel’s erroneous analysis was abrogated in *Wicklund*, 520 U.S. 292. See Part II.

1 relief without further analysis, *see supra* at 2 (Judgment language), so that Judgment was based
 2 on the analysis in this Court’s preliminary-injunction analysis and the Ninth Circuit’s opinion.

3 **Argument**

4 *Legal Standard.* This Court should provide Movants relief from the Judgment preventing
 5 enforcement of Nevada’s parental-notification provisions under Rule 60(b)(5): “On motion and
 6 just terms, the court may relieve a party . . . from a final judgment . . . for the following reasons:
 7 . . . (5) . . . applying it prospectively is no longer equitable.” The core issue is “whether ongoing
 8 enforcement of the original [injunction] is supported by ongoing violation of federal law.” *See*
 9 *Horne v. Flores*, 557 U.S. 433, 454 (2009). If not, a severe federalism problem arises. *See, e.g.,*
 10 *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 389 (1992). Modifying an injunction under
 11 Rule 60(b)(5) is within a district court’s discretion, but “a district court abuses its discretion by
 12 refusing to modify an injunction even after its legal basis has evaporated.” *California by &*
 13 *through Becerra v. United States Environmental Protection Agency*, 978 F.3d 708, 711 (9th Cir.
 14 2020) (“*EPA*”); *see also id.* at 713 (same). “An unbroken line of Supreme Court cases makes
 15 clear that it is an abuse of discretion to deny a modification of an injunction after the law under-
 16 lying the order changes to permit what was previously forbidden.” *Id.* at 713-14 (collecting
 17 cases); *see also id.* at 715 (Ninth Circuit and other circuit precedents holding same). For exam-
 18 ple, the Ninth Circuit said that *Agostini v. Felton*, 521 U.S. 203 (1997), “confirms the equitable
 19 principle that when the law changes to permit what was previously forbidden, it is an abuse of
 20 discretion not to modify an injunction based on the old law.” *Id.* at 714-15. That “equitable princi-
 21 ple” satisfies Rule 60(b)(5)’s “no longer equitable” analysis without further consideration of eq-
 22 uitable factors in cases like this. The Ninth Circuit in *EPA* said this in rejecting plaintiff states’
 23 argument “that courts must look beyond the new regulations and conduct a broad, fact-specific
 24 inquiry into whether modification prevents inequity.” *Id.* at 713. For example, it said, *Agostini*
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 26
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“held —without any analysis of other equitable factors—that the City was entitled to relief from the prospective injunction” after the U.S. Supreme Court’s “Establishment Clause jurisprudence had shifted so significantly that the prior cases supporting the injunction were no longer good law.” *Id.* at 714 (citing *Agostini*, 521 U.S. at 208-09). Following *Agostini*, the Ninth Circuit “relied solely on the law without considering other equitable factors.” *Id.* at 715 (citations omitted).

Application by Other Courts. Other district courts have applied Rule 60(b) to vacate similar injunctions post-*Dobbs*. For example, in *June Medical Services LLC v. Phillips*, No. 14-525-JWD-RLB, 2022 WL 16924100 (M.D. La. Nov. 14, 2022), the court held that post-*Dobbs* it was no longer in the public interest and no longer equitable to maintain a permanent injunction barring enforcement of a Louisiana law requiring doctors performing abortions to have admitting privileges at a nearby hospital (which it held also met the rational-basis test), so it vacated the injunction. For another example, in *Bryant v. Woodall*, 622 F. Supp. 3d 147 (M.D.N.C. 2022), the court sua sponte ordered briefing on whether a permanent injunction against enforcement of North Carolina abortion regulations should be lifted pursuant to Rule 60(b) and then ordered that the “the injunction described in the summary judgment order [citations omitted] and the Judgment [citation omitted], is hereby VACATED and DISSOLVED, and the injunctive relief is DISMISSED,” *id.* at 155. Similarly, three circuit courts have vacated abortion-regulation injunctions post-*Dobbs*. See *Whole Woman’s Health v. Young*, 37 F.4th 1098, 1099 (5th Cir. 2022); *Sistersong Women of Color Reprod. Justice Collective v. Governor*, 40 F.4th 1320, 1324 (11th Cir. 2022); *Planned Parenthood S. Atl. v. Wilson*, 2022 WL 2900658 (4th Cir. July 21, 2022).

Application to Judgment. As stated in the Motion, *supra* at 2, and developed next, the Judgment should be vacated because (I) *Dobbs* (2022) removed the Judgment’s abortion-right foundation, substituting a rational-basis test that Nevada’s parental-notice law readily survives; (II) even under *Roe*, the Supreme Court abrogated *Glick* (1991) in *Wicklund* (1997), holding that the controlling precedent was *Akron II* (1990), under which Nevada’s parental-notice provisions were constitutional; and (III) applying the Judgment prospectively is not equitable.

I.

***Dobbs* replaced the Judgment’s foundation and analysis
with a rational-basis scrutiny that Nevada’s law readily survives.**

As established in the Statement of the Case, *Glick* was based solely on the right and scrutiny in *Roe*, 410 U.S. 113, and its progeny. But as established next: (A) *Dobbs* removed the Judgment’s federal-right foundation; (B) *Dobbs* replaced the Judgment’s analysis with a rational-basis test; and (C) Nevada’s law readily meets the governing rational-basis scrutiny.

A. *Dobbs* removed the Judgment’s federal-right foundation.

Dobbs removed the Judgment’s federal-right foundation by overruling *Roe* and *Casey*, 505 U.S. 833, because abortion is not “protected by *any* constitutional provision” (emphasis added):

We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and *no such right is implicitly protected by any constitutional provision*, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks omitted). The right to abortion does not fall within this category.

142 S.Ct. at 2242 (emphasis added; paragraph break removed). So the abortion issue returns to the states: “We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.” *Id.* at 2279; *see also id.* at 2284 (“We now overrule those decisions and return that authority to the people and their elected representatives.”). That overruling justifies relief from the Judgment because it removes *Glick*’s federal-right foundation.

B. *Dobbs* replaced the Judgment’s analysis with a rational-basis test.

With the overruling of *Roe*, 410 U.S. 113, and *Casey*, 505 U.S. 833, their analyses were also overruled, so *Dobbs* removed the Judgment’s analysis. As established next (1) *Roe*’s strict scrutiny and *Casey*’s undue-burden test are gone, (2) facial challenges are governed by the no-set-of-circumstances test, and (3) *Dobbs* established a rational-basis test.

1. *Roe*’s strict scrutiny and *Casey*’s undue-burden test are gone.

With *Dobbs*’s overruling of *Roe* and *Casey*, the strict scrutiny of *Roe*, 410 U.S. at 155, and

the undue-burden test of *Casey*, 505 U.S. at 878, are gone. All federal abortion cases post-*Roe* (1973) and pre-*Casey* are built on *Roe*'s strict scrutiny. That includes the analyses in *Glick*, 616 F. Supp. 322, *Glick*, 937 F.2d 434, and this Court's October 10, 1991 Judgment. *Casey* replaced that analysis, but *Casey*'s analysis is also overruled. So the Judgment's analysis is gone. *Dobbs* also abrogated cases recognizing third-party standing in abortion cases, 142 S.Ct. at 2275, providing another reason to vacate the Judgment because Plaintiffs cannot assert patients' rights.

2. Facial challenges are governed by the no-set-of-circumstances test.

As the present case is a facial challenge, the applicable facial-challenge test must be established and followed. *Dobbs* noted that "[t]he Court's abortion cases have diluted the strict standard for facial constitutional challenges." 142 S. Ct. at 2275 (citing compare *United States v. Salerno*, 481 U.S. 739, 745 (1987), with *Casey*, 505 U.S. at 895, and see also *Dobbs*, 142 S. Ct. at 2771-74). With *Casey* overruled, that dilution is gone. But even back in *Akron II* (1990), the Ohio parental-notice law was challenged facially and the Supreme Court held that the no-set-of-circumstances rule applied and "worst-case" speculation must be rejected:

[B]ecause appellees are making a facial challenge to a statute, they must show that "no set of circumstances exists under which the Act would be valid." *Webster v. Reproductive Health Services*, 492 U.S. 490, 524 (1989) (O'CONNOR, J., concurring). The Court of Appeals should not have invalidated the Ohio statute on a *facial* challenge based upon a *worst-case analysis that may never occur*.

Akron II, 497 U.S. at 514 (emphasis added). Of course, this *Akron II* test is the well-known test stated earlier in *Salerno*, 481 U.S. at 745 ("insufficient" to show that a challenged provision "might operate unconstitutionally under some conceivable set of circumstances"); *id.* (must "establish that no set of circumstances exists under which the [provision] would be valid") So even under *Roe*, *Salerno* controlled in abortion cases, including parental-involvement cases.

A question about the ongoing applicability of that test in the abortion context arose when *Casey* (1992) employed a large-fraction analysis: If "in a large fraction of the cases in which [the challenged spousal-notification provision] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion[,] [i]t is an undue burden, and therefore invalid." *Casey*, 505 U.S. at 895. The dissent noted that the large-fraction test did not comply with *Salerno*'s no-

1 set-of-circumstances test for facial challenges. *Id.* at 972-73 (Rehnquist, C.J., joined by White,
2 Scalia & Thomas, JJ., concurring in the judgment in part and dissenting in part).

3 Even under *Casey*'s large-fraction test, parental-involvement laws such as *Akron II*'s were
4 constitutional. After holding that a spousal-notice law was an undue burden on a substantial frac-
5 tion of women, *Casey* distinguished *parental-involvement* cases, 505 U.S. at 895:

6 This [spousal-notice] conclusion is in no way inconsistent with our decisions upholding
7 parental notification or consent requirements. See, e.g., *Akron II*, 497 U.S., at 510-519;
8 *Bellotti v. Baird*, 443 U.S. 622 (1979) (*Bellotti II*); *Planned Parenthood of Central Mo. v.*
9 *Danforth*, 428 U.S. [52,] 74 [(1976)]. Those enactments, and our judgment that they are
10 constitutional, are based on the quite reasonable assumption that minors will benefit from
11 consultation with their parents and that children will often not realize that their parents have
12 their best interests at heart. We cannot adopt a parallel assumption about adult women.

13 After *Casey*, the *Salerno* test *should* have controlled abortion cases because the Supreme
14 Court has made *no* statement that it was overruling *Salerno* in the abortion context, which state-
15 ment was required to deem it overruled since the Court instructs courts *not* to “conclude that its
16 recent cases have, by implication, overruled an earlier precedent,” *Agostini*, 521 U.S. at 237.

17 Yet in 1999, the Ninth Circuit decided that “[a]lthough the Court ha[d] yet to address the
18 conflict between *Casey* and *Salerno* in a majority decision, members of the [Supreme] Court
19 have offered their opinions,” on which the Ninth Circuit panel decided it could rely to decide that
20 “*Casey* has overruled *Salerno* in the context of facial challenges to abortion statutes”
21 *Planned Parenthood of Southern Arizona v. Lawall*, 180 F.3d 1022, 1025, 1027 (1999), *amended*
22 *on other grounds*, *Planned Parenthood of Southern Arizona v. Lawall*, 193 F.3d 1042 (9th Cir.
23 1999) (Order amending opinion and denying en-banc rehearing). So the Ninth Circuit decided
24 *Salerno*'s test did not apply to a facial challenge to a judicial bypass to a parental-consent statute.
25 *Id.* at 1024.⁷ Notably, that *Lawall* decision ignored *Casey*'s own distinguishing of parental-

26 ⁷ In the Order amending its *Lawall* opinion and denying en banc rehearing, 193 F.3d 1042, dis-
27 senters said *Salerno* governed, but even under *Casey* “plaintiffs . . . have not shown that Ari-
28 zona’s trial courts will impermissibly drag out their consideration of a ‘large fraction’ of minors’
petitions for judicial bypasses.” *Id.* at 1045-47 (O’Scannlain, J., joined by Nelson & Kleinfeld,
JJ., dissenting). The dissent said “[t]his holding flies in the face of . . . *Hodgson v. Minnesota*,
497 U.S. 417 (1990) (plurality opinion). In *Hodgson*, five Justices (with Justice O’Connor writ-

1 involvement cases under its new undue-burden, large-fraction analysis and citing *Akron II*'s law
 2 as a constitutionally permissible example, 505 U.S. at 895. The Ninth Circuit's refusal to follow
 3 Supreme Court authority was presaged in *Glick* where the Ninth Circuit first noted *Akron II*'s
 4 facial-challenge rule and followed it, 937 F.2d at 439 (confidentiality criterion), but then again
 5 noted *Akron II*'s rule and did *not* follow it, *id.* at 440 n.4 (expedition criterion).

6 But now the large-fraction analysis is gone with the overruling of *Casey* in *Dobbs*. *Salerno*'s
 7 analysis governs abortion-case facial challenges. And long before *Dobbs* overruled *Casey* in
 8 2022, the Supreme Court was rejecting facial challenges in abortion cases. *See, e.g., Gonzalez v.*
 9 *Carhart*, 550 U.S. 124, 167 (2007) (“ [T]hese facial attacks should not have been entertained in
 10 the first instance. In these circumstances the proper means to consider exceptions is by as-applied
 11 challenges.”); *id.* (“The latitude given facial challenges in the First Amendment context is inap-
 12 plicable here. Broad challenges of this type impose ‘a heavy burden’ upon the parties maintaining
 13 the suit. *Rust v. Sullivan*, 500 U.S. 173, 183 (1991).”).⁸

14 As the present case involved a facial challenge, Plaintiffs had the burden to prove that *no*
 15 circumstances exist under which the challenged provisions would be constitutionally applied.
 16 That was not required of them, and the Ninth Circuit erroneously failed to follow *Salerno*'s test.
 17 937 F.2d at 440 n.4. That requires vacating the Judgment because under the proper test Nevada's
 18 provisions survived strict scrutiny. *See infra* Part II (further discussion of this *Glick* problem).⁹
 19

20
 21 ing separately) upheld the judicial bypass provision of a Minnesota parental-notice statute that
 22 imposed no specific time-limits on the courts' disposition of bypass petitions.” 193 F.3d at 1044.

23 ⁸ *Rust* (a challenge to restrictions on abortion counseling, referral, and advocacy restrictions
 under federal Title X) stated the facial-challenge test thus, 500 U.S. at 183:

24 Petitioners face a heavy burden in seeking to have the regulations invalidated as facially
 25 unconstitutional. ‘A facial challenge to a legislative Act is, of course, the most difficult
 26 challenge to mount successfully, since the challenger must establish that no set of circum-
 27 stances exists under which the Act would be valid. The fact that [the regulations] might
 operate unconstitutionally under some conceivable set of circumstances is insufficient to
 render [them] wholly invalid.’ *United States v. Salerno*, 481 U.S. 739, 745 (1987).

28 ⁹ Applying *Salerno*'s analysis also establishes that *Wicklund* entirely (not partially) abrogated
Glick. *See infra* Part II.

1 **3. *Dobbs* established a rational-basis test.**

2 *Dobbs* substituted a rational-basis test for the analysis on which the Judgment was based.
 3 Under the U.S. Constitution, provisions regulating abortion now are subject only to low, rational-
 4 basis scrutiny: “[R]ational-basis review is the appropriate standard for . . . challenges [to abortion
 5 regulations].” 142 S. Ct. at 2283. “[W]hen such regulations are challenged under the Constitu-
 6 tion, courts cannot ‘substitute their social and economic beliefs for the judgment of legislative
 7 bodies.’” *Id.* at 2283-84 (citation omitted). “A law regulating abortion, like other health and wel-
 8 fare laws, is entitled to a ‘strong presumption of validity.’” *Id.* at 2284 (citation omitted). “It must
 9 be sustained if there is a rational basis on which the legislature could have thought that it would
 10 serve legitimate state interests.” *Id.* (citation omitted). Citing legitimate interests for restricting
 11 abortion, *id.*, the Court held that those interests justified Mississippi’s ban on abortion after 15
 12 weeks of probable gestational age: “These legitimate interests provide a rational basis for the
 13 Gestational Age Act, and it follows that respondent’s constitutional challenge must fail.” *Id.*

14 That analysis also applies to *Roe*’s progeny regarding parental-involvement laws. *Dobbs*
 15 noted that “[d]espite *Roe*’s weaknesses, its reach was steadily extended in the years that fol-
 16 lowed. The Court struck down laws requiring . . . that minors obtain parental consent” *Id.* at
 17 2271. But with the *Roe* and *Casey* foundation gone—because “no [abortion] right is implicitly
 18 protected by any constitutional provision,” *Dobbs*, 142 S. Ct. at 2242—there is no federal consti-
 19 tutional basis to employ either *Roe*’s strict scrutiny or *Casey*’s undue-burden test in reviewing
 20 parental-involvement requirements for minors seeking abortion. Rather, as *Dobbs* established,
 21 rational-basis scrutiny now controls abortion law under the federal Constitution. *Id.* at 2283.

22 **C. Nevada’s law readily meets the governing rational-basis scrutiny.**

23 Nevada’s parental-notice provisions are constitutional under rational-basis scrutiny. As
 24 *Dobbs* established, “rational-basis review is the appropriate standard,” *id.*, which requires only “a
 25 rational basis on which the legislature could have thought that it would serve legitimate state in-
 26 terests.” *Id.* at 2284. *Dobbs* provided legitimate reasons for the post-15-week abortion ban provi-
 27 sion at issue there (which it upheld):
 28

1 These legitimate interests include respect for and preservation of prenatal life at all stages
 2 of development, *Gonzales*, 550 U.S. [at 157-158]; the protection of maternal health and
 3 safety; the elimination of particularly gruesome or barbaric medical procedures; the preser-
 4 vation of the integrity of the medical profession; the mitigation of fetal pain; and the pre-
 5 ventation of discrimination on the basis of race, sex, or disability. See *id.*, at 156-157; *Roe*,
 410 U.S. at 150; cf. [*Washington v.*] *Glucksberg*, 521 U.S. [702,] 728-731 [(1997)] (identi-
 6 fying similar interests).

7 *Id.* And specifically in the parental-notice context, *Akron II* held that a parental-notice require-
 8 ment is justified by the requisite legitimate interests, for example, 497 U.S. at 520:

9 It is both rational and fair for the State to conclude that, in most instances, the family will
 10 strive to give a lonely or even terrified minor advice that is both compassionate and mature.
 11 The statute in issue here is a rational way to further those ends. It would deny all dignity
 to the family to say that the State cannot take this reasonable step in regulating its health
 professions to ensure that, in most cases, a young woman will receive guidance and under-
 standing from a parent. We uphold H.B. 319 on its face and reverse the judgment of the
 Court of Appeals.

12 That applies here. Since parental-notice laws have been held constitutional under both strict scru-
 13 tiny, *see, e.g., Akron II*, 497 U.S. 502, and undue-burden, large-fraction scrutiny, *see Casey*, 505
 14 U.S. at 895, *a fortiori* they survive rational-basis scrutiny. Since minors have no federal abortion
 15 right, states may now even ban abortion, so *a fortiori* they may require parental notice.

16 II.

17 ***Wicklund* abrogated the Judgment for failure to follow *Akron II*.**

18 Even *post-Casey* and pre-*Dobbs*, *Glick*, 937 F.2d 434, was abrogated in *Wicklund*, 520 U.S.
 19 at 294-99, for failure to follow federal precedent in *Akron II*, 497 U.S. 502, under which Ne-
 20 vada's law was constitutional.¹⁰ Westlaw's red-flagged *Glick* caveat says: "Severe Negative
 21 Treatment[:] Abrogated by Lambert v. Wicklund, U.S.Mont., March 31, 1997." 937 F.2d 434.

22 The Supreme Court's decision to summarily (i) reverse the Ninth Circuit in *Wicklund* and
 23 (ii) abrogate *Glick* was not a close call for the Supreme Court. It granted certiorari and summarily
 24 reversed the Ninth Circuit in a six-member, per-curiam opinion, with Justice Stevens (joined by
 25 Justices Ginsburg and Breyer) concurring in the judgment. 520 U.S. at 293, 301. So there was
 26

27 ¹⁰ With the reversal of *Roe* and *Casey* in *Dobbs*, federal parental-involvement cases like *Akron*
 28 *II* no longer control generally, but they show Nevada's provisions survive any scrutiny level. So
 though no state-law challenge is at issue here, the provisions should survive any such scrutiny.

1 unanimous agreement that the Ninth Circuit erred in *Wicklund* by relying on its erroneous *Glick*
 2 decision, and the error was so obvious that (i) full briefing and oral argument were unnecessary
 3 and (ii) the Ninth Circuit could be summarily reversed in a for-the-court opinion.

4 The Supreme Court abrogated *Glick* in *Wicklund* while upholding a 1995 Montana parental-
 5 notification statute the Supreme Court found “substantively indistinguishable” from (i) the Ohio
 6 statute the Court upheld in *Akron II* and (ii) Nevada’s statute at issue in *Glick*:

7 In *Akron [II]*, we upheld a statute requiring a minor to notify one parent before having an
 8 abortion, subject to a judicial bypass provision. We declined to decide whether a parental
 9 notification statute must include some sort of bypass provision to be constitutional. [497
 10 U.S. at 510]. Instead, we held that this bypass provision satisfied the four *Bellotti [II]*, 443
 11 U.S. at 643-44,] criteria required for bypass provisions in parental *consent* statutes, and that
 12 *a fortiori* it satisfied any criteria that might be required for bypass provisions in parental
 13 notification statutes. Critically for the case now before us, the judicial bypass provision we
 14 examined in *Akron* was substantively indistinguishable from both the Montana judicial
 15 bypass provision at issue here and the Nevada provision at issue in *Glick*. See 497 U.S., at
 16 508 (summarizing Ohio Rev. Code Ann. § 2151.85 (1995)).

17 *Wicklund*, 520 U.S. at 296 (emphasis in original). And the *Wicklund* Court again reiterated that
 18 the statutes in the three states must be treated alike: “The Ohio parental notification statute at is-
 19 sue [in *Akron II*] was indistinguishable in any relevant way from the Montana statute at issue” in
 20 *Wicklund*, *id.* at 297, which in turn was “substantively indistinguishable from . . . the Nevada
 21 provision at issue in *Glick*,” *id.* at 296. Yet in *Glick* the Ninth Circuit ignored the “virtual[] ident-
 22 i[ty]” of both the Montana statute (in *Wicklund*) and the Nevada statute (in *Glick*) with the Ohio
 23 statute that *Akron II* said met all of *Bellotti II*’s judicial-bypass criteria, *id.* (emphasis added):

24 Despite the fact that *Akron [II]* involved a parental notification statute, and *Bellotti [II]*
 25 involved a parental consent statute; despite the fact that *Akron [II]* involved a statute *virtu-*
 26 *ally identical* to the Nevada statute at issue in *Glick*; and despite the fact that *Akron [II]*
 27 explicitly held that the statute met all of the *Bellotti [II]* requirements, the Ninth Circuit in
 28 *Glick* struck down Nevada’s parental notification statute as inconsistent with *Bellotti*

The Supreme Court noted the Ninth Circuit’s failure in *Wicklund* to follow the *Akron II* prece-
 dent regarding *Bellotti II*’s judicial-bypass criteria though the statutes were “indistinguishable in
 any relevant way”—all based on the Ninth Circuit’s error in *Glick*:

Based entirely on *Glick*, the Ninth Circuit in this case affirmed the District Court’s ruling
 that the Montana statute is unconstitutional, since the statute allows waiver of the notifica-

tion requirement only if the youth court determines that notification—not the abortion itself—is not in the minor’s best interests. 93 F.3d, at 572.

As should be evident from the foregoing, this decision simply cannot be squared with our decision in *Akron II*. The Ohio parental notification statute at issue there was indistinguishable in any relevant way from the Montana statute at issue here. Both allow for judicial bypass if the minor shows that parental *notification* is not in her best interests. We asked in *Akron II* whether this met the *Bellotti II* requirement that the minor be allowed to show that “the desired abortion would be in her best interests.” We explicitly held that it did. 497 U. S., at 511. Thus, the Montana statute meets this requirement, too. In concluding otherwise, the Ninth Circuit was mistaken.

Id. at 297 (italics in original; underlining added). Despite the three provisions being “indistinguishable in any relevant way,” *id.*, the Supreme Court noted that in *Wicklund* the Ninth Circuit declared itself bound by the Ninth Circuit’s erroneous decision in *Glick*. *Id.* at 294. But the *Wicklund* district-court and Ninth-Circuit decisions—following the *Glick* precedent—failed to follow the controlling Supreme Court precedents, leading to reversal: “Because the reasons given by the District Court and the Ninth Circuit for striking down the Act are inconsistent with our precedents, we . . . reverse the judgment of the Ninth Circuit.” *Id.* at 299.¹¹

From the foregoing, it is clear that the analysis and holding of the Ninth Circuit opinion in *Glick* and (by extension) this Court’s Judgment were erroneous, even pre-*Dobbs*, and were abrogated in *Wicklund* for failing to follow the controlling *Akron II* precedent (which governed as to both its facial-challenge and *Bellotti II*-criteria analyses). Though that suffices for vacating the Judgment herein, Nevada’s parental-notice provisions are briefly addressed next to show that, as the Supreme Court said, they readily fit both *Akron II*’s facial-challenge analysis and *Bellotti II*’s four-criterion parental-consent analysis to further illustrate that the provisions were constitutional when preliminarily enjoined. The focus will be on the Ninth Circuit’s analysis since it engaged in “plenary . . . review,” *Glick*, 937 F.2d at 436, and ignored some concerns of this Court, such as with a “pocket approval” not providing a physician with a “tangible” order or whether “necessary

¹¹ The Ninth Circuit then “remanded to the district court for further proceedings in light of *Lambert v. Wicklund*, 520 U.S. 292,” to “consider in particular those contentions raised by plaintiffs that were not addressed by the Supreme Court.” *Wicklund v. Lambert*, 112 F.3d 1040, 1040 (9th Cir. 1997). That court upheld Montana’s parental-notice law under *Bellotti II*’s criteria and rejected an equal-protection challenge. *Wicklund v. Lambert*, 979 F. Supp. 1285 (D. Mont. 1997).

steps” to establish confidentiality sufficed.¹² *Glick*, 616 F. Supp. at 325.

Regarding the *Bellotti II* four-part criteria, the first was that a parental-consent law “allow the minor to bypass the consent requirement if she establishes that she is mature enough and well enough informed to make the abortion decision independently.” *Wicklund*, 520 U.S. at 295. The Ninth Circuit held that Nevada’s bypass procedures at NRS §§ 442.255(2)(a) and NRS 442.2555(3)(a) sufficed. *Glick*, 937 F.2d at 438 (“Under *Akron II*, the Nevada statute meets the first *Bellotti [II]* criterion.”).

The second *Bellotti II* criterion was that the law “allow the minor to bypass the consent requirement if she establishes that the abortion would be in her best interests.” *Wicklund*, 520 U.S. at 295. As just discussed, the Ninth Circuit erred on what the best-interests showing requires and failed to follow *Akron II*. *Id.* at 294-99. Since Montana’s near-identical bypass procedure satisfied this *Bellotti II* criterion, *id.*, Nevada’s does too.

The third *Bellotti II* criterion was that the law “ensure the minor’s anonymity.” *Id.* at 295. The Ninth Circuit held that NRS § 442.255(4) and the Nevada Supreme Court’s April 30, 1991 order met this criterion. *Glick*, 937 F.2d at 439-40.

The fourth *Bellotti II* criterion was that the law “provide for expeditious bypass procedures.” *Wicklund*, 520 U.S. at 295. Regarding the Nevada provisions in *Glick*, the Ninth Circuit held that because “the statute does not contain *any* time period within which the district court must rule upon a minor’s petition under NRS 442.2555,” 937 F.2d at 440 (emphasis in original), “[t]he district court review procedure does not meet the *Bellotti [II]* expediency criterion,” *id.* at 441. Noting that the *Bellotti II* criterion was for a bypass to a *consent* requirement, the Ninth Circuit also decided that the district-court-review procedure failed the expedition requirement for a *notice* provision. *Id.* at 441-42. So the flaw found was based on *assuming* a court might not expedite.

But that holding is erroneous because *Glick* was a *facial* challenge. For such a challenge, *Akron II* (the precedent the Supreme Court said in *Wicklund* was controlling) said courts may not assume worst-case scenarios, such as state courts not being expeditious: “The Court of Appeals

¹² *Akron II* considered and rejected both of these concerns. 497 U.S. at 515, 517.

1 should not have invalidated the Ohio [parental-notice] statute on a facial challenge based upon a
 2 worst-case analysis that may never occur.” *Akron II*, 497 U.S. at 514. Because the Supreme Court
 3 held in *Wicklund* that (i) *Akron II*’s Ohio law met all *Bellotti II* criteria and (ii) the Ohio, Monta-
 4 na, and Nevada laws were “substantively indistinguishable,” “virtually identical,” and “indistin-
 5 guishable in any relevant way,” *see supra* Part II (citations omitted), the Court necessarily de-
 6 cided that Nevada’s statutory decision not to impose a district-court time-limit did not distinguish
 7 the Nevada law from the Ohio and Montana laws in any relevant or substantive way. Thus, under
 8 *Akron II*, the Ninth Circuit’s assumption that a state court would not act expeditiously was not a
 9 relevant, substantive, or proper basis to hold that the expediency criterion was not met.

10 Because all three cases involved *facial* challenges, the differences between the Ohio,
 11 Montana, and Nevada provisions were irrelevant and insubstantial, and the Supreme Court re-
 12 jected speculative possibilities and assumed judges would act appropriately. Under *Akron II*’s no-
 13 set-of-circumstances rule, if one circumstance is that a district-court judge would rule expedi-
 14 tiously, a facial challenge must fail. A non-expeditious ruling would be rare or never occur, and
 15 an as-applied challenge is available if the speculated event ever actually occurred. *Akron II* also
 16 noted that “[*Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft*, [462 U.S. 476
 17 (1983),] . . . upheld a Missouri statute that contained a bypass procedure that could require 17
 18 calendar days *plus a sufficient time for deliberation and decisionmaking* at both the trial and ap-
 19 pellate levels. See 462 U.S., at 47[9], n. 4,^[13] 491, n. 16^[14]” *Akron II*, 497 U.S. at 514 (em-
 20 phasis added). “[U]nder our precedents, the mere possibility that the procedure may require up to
 21 22 days in a rare case is plainly insufficient to invalidate the statute *on its face*.” *Id.* (emphasis
 22 added). *See also id.* at 513 (“We refuse to base a decision on the *facial* validity of a statute on the
 23 mere possibility of unauthorized, illegal disclosure by state employees.” (emphasis added)); *id.* at
 24

25 ¹³ *Ashcroft* provided the Missouri statute at issue, which had *no* deadline for the district court,
 26 so it was presumed the court would act expeditiously. See 462 U.S. at 479 n.4.

27 ¹⁴ The Supreme Court decided the appellate expedition was sufficient, though there was *no*
 28 appellate-court deadline, because “[t]here is no reason to believe that Missouri will not expedite
 any appeal consistent with the mandate in our prior opinions.” 462 U.S. at 491 n.16.

517 (“Regardless of whether Ohio could have written a simpler statute, H.B. 319 survives a *facial challenge*.” (emphasis added)); *id.* at 519 (“On this *facial challenge*, we find the physician notification requirement unobjectionable.” (emphasis added)). Based on that facial-challenge analysis, the Supreme Court decided in *Wicklund* that the Ninth Circuit should not have held as it did in the facial challenge to Montana’s law: “As with the Ohio statute in *Akron II*, the challenge to the Montana statute here is a facial one. Under these circumstances, the Ninth Circuit was incorrect to assume that Montana’s statute ‘narrow[ed]’ the *Bellotti II* test, 937 F.2d, at 439, as interpreted in *Akron II*.” 520 U.S. at 298.

In the *Glick* facial challenge, the Ninth Circuit first noted and followed *Akron II*’s facial-challenge analysis, but then later rejected it. Regarding the *Bellotti II* confidentiality criterion, the court followed *Akron II* in rejecting a facial challenge:

Following the lead of the Supreme Court, we refuse to base our decision on the facial validity of this provision requiring the courts to provide confidentiality on the mere possibility that the courts may illegally fail to do so. *Akron II*, 110 S.Ct. at 2980. NRS 442.255(4) meets the *Bellotti II* confidentiality prong.

Glick, 937 F.2d at 439. But regarding expedition, the Ninth Circuit did *not* follow *Akron II*:

We acknowledge that the Supreme Court in *Akron II* did caution against invalidating a notification statute on a facial challenge based upon a worst-case analysis that may never occur. *See Akron II*, 110 S.Ct. at 2981. However, in *Akron II* the Court was considering a bypass procedure with a maximum time of twenty-two days, which the Court compared favorably with the seventeen-day period it upheld in *Ashcroft*, 462 U.S. at 477, n. 4, 491 n. 16. *See Akron II*, 110 S.Ct. at 2981. While a seventeen or twenty-two day bypass procedure period satisfies the *Bellotti II* requirement that the courts must conduct a bypass procedure with expediency to allow the minor an effective opportunity to obtain an abortion, an indefinite period does not. *See Akron II*, 110 S.Ct. at 2980; *Bellotti II*, 443 U.S. at 644.

Glick, 937 F.2d at 440 n.4. Nor did it follow *Ashcroft*, in which the Supreme Court upheld “an indefinite period” as *Akron II* noted, 497 U.S. at 514 (statute at issue in *Ashcroft* “could require 17 calendar days *plus a sufficient time for deliberation and decisionmaking* at both the trial and appellate levels” (emphasis added)).

But in *Wicklund* the Supreme Court summarily reversed the Ninth Circuit’s facial-challenge analysis in *Wicklund* and abrogated the same erroneous analysis in the Ninth Circuit’s *Glick*

1 opinion because the Ninth Circuit failed to apply *Salerno*'s facial-challenge rule and *Akron II*'s
 2 application of that rule to a parental-notice statute. In effect, the Ninth Circuit was still applying
 3 the post-*Roe* hyper-strict scrutiny of abortion regulations that the Supreme Court had, in the
 4 parental-involvement context, rejected even in 1983 in *Akron II* and *Ashcroft*. More recent abor-
 5 tion cases have applied the High Court's same facial-challenge analysis, for example, in *Gonza-*
 6 *lez*, 550 U.S. 124, which upheld the Partial-Birth Abortion Ban Act of 2003 against a facial chal-
 7 lenge. *See, e.g., id.* at 168 ("For this reason, '[a]s-applied challenges are the basic building blocks
 8 of constitutional adjudication.' Fallon, As-Applied and Facial Challenges and Third-Party Stand-
 9 ing, 113 Harv. L. Rev. 1321, 1328 (2000).").

10 That *Wicklund* abrogated *all* of *Glick* is unaltered by the Ninth Circuit's dictum regarding
 11 *Glick* in its 1999 *Lawall* decision, wherein the Ninth Circuit dropped a footnote in passing at-
 12 tempting to rehabilitate *Glick* in part, *Lawall*, 180 F.3d at 1029 n.9 (parallel citation omitted):

13 The Supreme Court has disapproved the analysis in *Glick*, in which we held unconstitu-
 14 tional a bypass procedure which allowed a minor to have an abortion if parental notifica-
 15 tion, and not the abortion itself, was not in the *minor's* best interests. *See Wicklund*, 520
 16 U.S. at 297-99. Nothing in *Wicklund*, however, affects *Glick's* holding regarding *Bellotti*
II's expediency requirement.

17 But that non-binding dictum is erroneous. While the Supreme Court did not expressly discuss the
 18 expediency criterion, it said Nevada's law did not differ in any relevant way from the constitu-
 19 tionally sound Ohio and Montana laws, indicating that, under *Salerno*, the differences in Neva-
 20 da's law were not relevant. Moreover, *Wicklund* established that *Akron II* was the controlling pre-
 21 cedent, and *Akron II* noted approvingly that *Ashcroft* "upheld a Missouri statute that could re-
 22 quire 17 calendar days *plus a sufficient time for deliberation and decisionmaking* at both the trial
 23 and appellate levels," 497 U.S. at 514 (emphasis added). *Akron II* gave that *Ashcroft* example
 24 immediately after it stated the facial-challenge rule: "The Court of Appeals should not have in-
 25 validated the Ohio statute on a facial challenge based upon a worst-case analysis that may never
 26 occur." *Id.* So it was an illustration of the just-stated facial-challenge rule. Thus, *Akron II* and
 27 *Ashcroft* were the controlling precedents on this issue and definitively discredit the Ninth Cir-
 28 cuit's *Lawall* dictum.

Moreover, that *Lawall* dictum was based on the Ninth Circuit’s erroneous rejection of *Akron II*’s no-set-of-circumstances facial-challenge test in favor of *Casey*’s large-fraction test. 180 F.3d at 1027 (“In light of our previous suggestion, combined with the great weight of circuit authority holding that *Casey* has overruled *Salerno* in the context of facial challenges to abortion statutes, we apply *Casey*’s undue burden standard in determining the facial constitutionality of [the challenged parental-consent statute and judicial bypass]”).¹⁵ But *Akron II*’s no-set-of-circumstances facial-challenge test properly controlled, so the Ninth Circuit’s *Lawall* dictum was based on a fundamental error regarding the facial challenges in *Glick*. Under *Salerno*’s facial-challenge test, which properly governed *Glick* for analyzing Nevada’s provisions under *Bellotti II*’s expedition criterion, Nevada’s law readily satisfied the expediency requirement. (It clearly does now, too, since any large-fraction argument about facial challenges is gone with *Casey*’s overruling.)

In sum, the Supreme Court in *Wicklund* abrogated *entirely* the Ninth Circuit’s affirmation in *Glick* of this Court’s Judgment. So the Judgment lacked constitutional support before *Dobbs* overruled *Roe* and *Casey* because it failed to follow controlling Supreme Court precedents.

III.

Applying the Judgment prospectively is not equitable.

As established, the Judgment’s foundation and analysis were replaced by *Dobbs* (Part I), and even under the law post-*Roe* and pre-*Dobbs*, the Judgment’s analysis was erroneous and so abrogated (Part II). Either the overruling or abrogation would suffice to meet Movants’ Rule 60(b) burden to establish that it is inequitable to apply the Judgment prospectively. Fed. R. Civ. P. 60(b)(5). So the Judgment and its injunction should be vacated.

¹⁵ Ironically, *Lawall* cited Justice Stevens’s statement that “*Salerno*’s ‘no set of circumstances’ rule was dictum and unsupported by law,” 180 F.3d at 1026 (citation omitted), though *Akron II* said the rule controlled, 497 U.S. at 514 (citation omitted), mooted the dictum claim. In *Planned Parenthood of S. Arizona v. Lawall* (“*Lawall II*”), the Ninth Circuit equated the facial-challenge test with the undue-burden test: “In analyzing a facial challenge to an abortion statute, we apply the undue burden standard set forth in *Planned Parenthood v. Casey*, 505 U.S. 833, 895 (1992). See *Lawall*, 180 F.3d at 1027.” 307 F.3d 783, 786 (9th Cir. 2002) (footnote omitted). *Lawall II* upheld Arizona’s revised parental-consent against a facial challenge based on the third *Bellotti II* confidentiality requirement as *Akron II* had rejected a like facial challenge. 180 F.3d at 789.

1 Nor is there need for more to vacate the Judgment, as established in *Legal Standard* at the
 2 beginning of the Argument section. “[R]efusal to modify [an] injunction . . . , when a change in
 3 law dissolved the legal basis for its order, is an abuse of discretion.” *EPA*, 978 F.3d at 713. “An
 4 unbroken line of Supreme Court cases makes clear that it is an abuse of discretion to deny a mod-
 5 ification of an injunction after the law underlying the order changes to permit what was previ-
 6 ously forbidden.” *Id.* at 713-14. *Agostini*, 521 U.S. 203, “confirms the equitable principle that
 7 when the law changes to permit what was previously forbidden, it is an abuse of discretion not to
 8 modify an injunction based on the old law.” 978 F.3d at 714-15. That “equitable principle” satis-
 9 fies Rule 60(b)(5)’s “no longer equitable” element without further consideration of equitable fac-
 10 tors. *Id.* at 713. *Agostini* “held—without any analysis of other equitable factors—that the City
 11 was entitled to relief from the prospective injunction” after the U.S. Supreme Court’s “Establish-
 12 ment Clause jurisprudence had shifted so significantly that the prior cases supporting the injunc-
 13 tion were no longer good law.” *Id.* at 714. Following *Agostini*, the Ninth Circuit “relied solely on
 14 the law without considering other equitable factors.” *Id.* at 715 (citations omitted).

15 Though considering equitable factors is not required, Movants note that the post-*Dobbs* dis-
 16 trict court applying Rule 60(b)(5) to vacate an injunction barring enforcement of a Louisiana
 17 abortion regulation also held that the “significant change in the law brought by *Dobbs* makes
 18 continued maintenance of the injunction *detrimental to the public interest* and inequitable so as
 19 to justify an order vacating it.” *June Medical Services*, 2022 WL 16924100, at *13 (emphasis
 20 added). The court cited *Moore’s Federal Practice* for the principle that in public-interest litiga-
 21 tion, “[a]nd when no consent decree is involved, a change in the law that permits what was pre-
 22 viously forbidden is sufficient by itself to warrant modification of the injunction, the court need
 23 not consider other factors such as the balance of harms.” *Id.* (quoting *Moore’s Federal Prac-*
 24 *tice—Civil* § 60.47(2)(b) (2002)) (emphasis added by court). The court then (i) noted that other
 25 courts had lifted injunctions post-*Dobbs*, *id.*, (ii) found cases purportedly saying the change in the
 26 law alone was insufficient to be “distinguishable or unpersuasive,” *id.* at *14, and (iii) applied
 27 *Dobbs*’s rational-basis test to uphold the challenged provision, *id.* at *14-*15. Here as there, up-
 28

holding an injunction against an abortion regulation that now passes constitutional muster would not be in the public interest, making it inequitable on that basis not to vacate the injunction.

Conclusion

As established above, the Motion should be granted and this Court's Judgment (Dkt. #74) and the Clerk's Judgment (Dkt. #75) should be vacated, including the permanent injunction against "enforcement of NRS 442.255, NRS 442.2555 and NRS 442.257," because "applying them prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5).

Respectfully submitted,

/s/ Emily C. Mimnaugh

James Bopp, Jr. (IN Bar #2838-84)*
jboppjr@aol.com
Richard E. Coleson (IN Bar #11527-70)*
rcoleson@bopplaw.com
Joseph D. Maughon (VA Bar #87799)*
jmaughon@bopplaw.com
THE BOPP LAW FIRM, PC
1 South Sixth St.
Terre Haute, IN 47807-3510
Telephone: (812) 232-2434
*Pro hac vice counsel will comply with LR IA
11-2 within 14 days.
Counsel for Moving Defendants

Emily C. Mimnaugh (NV Bar #15287)
PACIFIC JUSTICE INSTITUTE, Nevada Office
1580 Grand Point Way #33171
Reno, NV 89533
Telephone: (916) 857-6900
Fax: (916) 857-6902
emimnaugh@pji.org
Designated Resident Nevada Counsel for Moving Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December 2023, I personally served a true and correct copy of the foregoing Motion for Relief Under Fed. R. Civ. P. 60(b) by the following means: U.S. Mail and Email (except where noted)

Plaintiffs' Counsel and Plaintiff Successor in Interest

Stanley H. Brown Jr.
127 East Liberty Street
Reno, NV 89501
shbjrlaw@gmail.com
Tel: (775) 337-8800

Counsel for Plaintiffs Glick and Planned Parenthood of Washoe County per docket

Tanya McDougall-Johnson
Registered Agent for
Planned Parenthood Mar Monte, Inc.
455 West Fifth St., Suite D-2.,
Reno, NV 89503
Tel: (775) 321-8711
Successor in Interest to Plaintiff Planned Parenthood of Washoe County
(by certified mail only, no email address)

Defendants' Counsel and Defendant Successors in Interest

Aaron D. Ford
Nevada Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
Tel: (775) 684-1100
adford@ag.nv.gov
Defendant Successor in Office and Counsel for Original District Attorney Defendants per docket

Arthur E. Mallory
Churchill County District Attorney
165 North Ada Street
Fallon, NV 89406
Tel: (775) 423-6561
amallory@churchillda.org
Defendant Successor in Office

Steven Wolfson
Clark County District Attorney
P.O. Box 552212
Las Vegas, NV 89155
Tel: (702) 671-0978
steven.wolfson@clarkcountynv.gov
Defendant Successor in Office

Mark B. Jackson
Douglas County District Attorney
P.O. Box 218
Minden, NV 89423
Tel: (775) 782-9800
mjackson@douglas.nv.gov
Defendant Successor in Office

Tyler Ingram
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
Tel: (775) 738-3101
tingram@elkocountynv.net
Defendant Successor in Office

Robert E. Glennen, III
Esmeralda County District Attorney
P.O. Box 339
Goldfield, NV 89013
Tel: (775) 485-6352
escodaoffice@gmail.com
Defendant Successor in Office

Theodore Beutel
Eureka County District Attorney
701 South Main Street
Eureka, NV 89316
Tel: (775) 237-5315
tbeutel@eurekacountynv.gov
Defendant Successor in Office

Kevin Pasquale
Humboldt County District Attorney
P.O. Box 909
Winnemucca, NV 89445
Tel: (775) 623-6360
kevin.pasquale@humboldtcountynv.gov
Defendant Successor in Office

William E. Schaeffer
Lander County District Attorney
P.O. Box 187
Battle Mountain, NV 89820
Tel: (775) 635-5195
districtattorney@landercountynv.org
Defendant Successor in Office

Dylan V. Frehner
Lincoln County District Attorney
P.O. Box 60
Pioche, NV 89043
Tel: (775) 962-8073
dfrehner@lincolncountynv.gov
Defendant Successor in Office

Stephen B. Rye
Lyon County District Attorney
31 S. Main Street
Yerington, NV 89447
Tel: (775) 463-6511
srye@lyon-county.org
Defendant Successor in Office

T. Jaren Stanton
Mineral County District Attorney
P.O. Box 1210
Hawthorne, NV 89415
Tel: (775) 945-3636
jstanton@mineralcountynv.org
Defendant Successor in Office

Brian T. Kunzi
Nye County District Attorney
1520 E. Basin Ave., Suite 107
Pahrump, NV 89060
Tel: (775) 751-7080
btkunzi@nyecountynv.gov
Defendant Successor in Office

Bryce R. Shields
Pershing County District Attorney
P.O. Box 299
Lovelock, NV 89419-0299
Tel: (775) 273-2613
bshields@pershingcountynv.gov
Defendant Successor in Office

Anne Langer
Storey County District Attorney
P.O. Box 496
Virginia City, NV 89440
Tel: (775) 847-0964
alanger@storeycounty.org
Defendant Successor in Office

Christopher J. Hicks
Washoe County District Attorney
P.O. Box 11130
Reno, NV 89520
Tel: (775) 328-3220
chicks@da.washoecounty.gov
Defendant Successor in Office

James S. Beecher
White Pine County District Attorney
1786 Great Basin Blvd., Suite 4
Ely, NV 89301
Tel: (775) 293-6565
JBeecher@whitepinecountynv.gov
Defendant Successor in Office

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

/s/ Emily C. Mimnaugh

Emily C. Mimnaugh (NV Bar #15287)
PACIFIC JUSTICE INSTITUTE, Nevada Office
1580 Grand Point Way #33171
Reno, NV 89533
Telephone: (916) 857-6900
Fax: (916) 857-6902
Email: emimnaugh@pji.org
Designated Resident Nevada Counsel for Moving Defendants