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ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. KELLIE JOHNSON

CASE NO. C127867

DATE: September 30, 2022

PLANNED PARENTHOOD ARIZONA, INC. et al,
Plaintiffs

VS.

MARK BRNOVICH, ATTORNEY GENERAL of the
STATE OF ARIZONA, ET AL.
Defendants

R U L I N G

IN CHAMBERS: PLAINTIFF PLANNED PARENTHOOD OF ARIZONA'S EMERGENCY MOTION FOR STAY PENDING APPEAL

Pending before the Court and fully briefed is Plaintiff Planned Parenthood of Arizona's ("PPAZ") Emergency Motion for Stay Pending Appeal. The Motion seeks to stay this Court's September 23, 2022, Under Advisement Ruling granting the Attorney General's Motion for Relief from Judgment. The Court has considered the briefing, and for the reasons set forth below, denies the Motion.

FACTS AND PROCEDURAL HISTORY

The procedural history of this matter is set forth in the Court's September 23, 2022, Under Advisement Ruling. In that Ruling, the Court found that the Second Amended Final Judgment and Injunction entered as ordered by the Court of Appeals based on *Roe v. Wade* can no longer be applied prospectively following the decision in *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022).

PPAZ seeks a stay of the Court's judgment pending its appeal. The Pima County Attorney joins in PPAZ's request. The Attorney General and Intervenor oppose the stay.

LEGAL ANALYSIS

To succeed on a motion to stay pending appeal, the Court applies a four-factor test. The party requesting the stay must establish: 1) a strong likelihood of success on the merits, 2) irreparable harm if the stay is not granted, 3) that the harm to the requesting party outweighs the harm to the party opposing the stay; and 4) that public policy favors the granting of the stay. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶ 10 (2006). "The scale is not absolute, but sliding. Nor should the result turn on counting the factors that

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weigh on each side of the balance.” *Id.* at 410-411 ¶10. “Rather, the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party.” *Id.*

The Court finds that PPAZ has not demonstrated probable success on the merits of its appeal. The Court’s ruling decided a narrow issue: that relief from judgment under Ariz. R. Civ. P. Rule 60 (b)(5) was appropriate, and that the injunction entered in 1973 has no prospective effect. The Court finds it is not probable that PPAZ will prevail on its claim that the Court, in considering the prospective effect of the injunction, should have undertaken an attempt to reconcile all of Arizona’s now existing abortion statutes, including statutes not in effect at the time the injunction was entered.

Similarly, the Court finds PPPAZ’s appeal does not raise serious questions as to the merits of its requested relief. While there may be questions about the status of and interplay between Arizona’s now existing abortion statutes, the “serious questions” aspect of the analysis regarding whether to grant a stay deals with serious questions *on the merits*. See, *Ariz. Ass’n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12 ¶13 (App. 2009) (“Whether there are “serious questions” depends more on the strength of the legal claim than the gravity of the issue.”) The Court does not find PPAZ’s appeal raises serious questions about whether the Court is permitted to consider and “harmonize” fifty years of legislative activity in a Rule 60 (b)(5) motion. Interpretation of the current statutory scheme governing abortion is certainly an issue that must be addressed. However, the Court has found that a Rule 60 (b)(5) motion is not the proper procedural vehicle to decide that issue. Rather, the interpretation and interplay of Arizona’s abortion statutes should be addressed in a new lawsuit or on an amended complaint where a full record on the issues can be developed and considered by the Court.

Given the Court’s findings regarding the procedural flaws in PPAZ’s requested relief, it does not address whether PPAZ’s appeal raises serious questions about the conflicts between A.R.S. §13-3603 and the newly enacted 15-week law. Even assuming serious questions exist, the Court finds that PPAZ has not shown that the balance of hardships tip *sharply* in its favor, as it is required to do to obtain a stay.

As the moving party, PPAZ must prove the balance of hardships tip sharply in its favor. In considering the hardships involved, the Court must necessarily consider the hardship to all parties and non-parties affected by the Court’s analysis. Having considered all potential hardships raised in the briefs, the Court finds the balance of hardships do not tip *sharply* in PPAZ’s favor, most notably because PPAZ has other appropriate legal avenues available to it to resolve the issues it seeks to resolve surrounding interpretation and

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harmonization of Arizona's abortion statutes. The court similarly finds the balance of hardships do not tip sharply in the Pima County Attorney's favor, as the Court's judgment does not require the Pima County Attorney to pursue prosecutions under A.R.S. §13-3603.

The Court finds PPAZ has failed to meet its burden in establishing a stay of the Court's judgment is appropriate.

Accordingly,

IT IS ORDERED the Motion for Stay is ***DENIED***.


HON. KELLIE JOHNSON /s/

(ID: b24aad7d-6d93-45ea-a339-a1526600f9b8)

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