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21 **UNITED STATES DISTRICT COURT**  
22 **DISTRICT OF NEVADA**

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

26 v.

27 Aaron D. Ford, Nevada Attorney Gen.; Christopher J.  
28 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-  
glas 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

26 \_\_\_\_\_  
27  
28 \*\* 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;<sup>1</sup> and
- *Lambert v. Wicklund*, 520 U.S. 292 (1997) (per curiam), abrogated *Glick*, 937 F.2d 434.

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<sup>1</sup> 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

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

16 A search for PPWC at [esos.nv.gov/EntitySearch/OnlineEntitySearch](https://esos.nv.gov/EntitySearch/OnlineEntitySearch) yields no results. Rule  
17 25(c) addresses interest transfers, including by corporate mergers. *See* 7C Fed. Prac. & Proc. Civ.  
18 § 1958 (3d ed.). PPWC’s transferee is Planned Parenthood Mar Monte, Inc. (“PPMM”) at 455  
19 West Fifth St. in Reno, *see* [www.plannedparenthood.org/planned-parenthood-mar-](http://www.plannedparenthood.org/planned-parenthood-mar-monte/contact-us)  
20 [monte/contact-us](http://www.plannedparenthood.org/planned-parenthood-mar-monte/contact-us), which offers abortion services to minors without requiring parental notice, *see*  
21 [www.plannedparenthood.org/planned-parenthood-mar-monte/patient-resources/information-for-](http://www.plannedparenthood.org/planned-parenthood-mar-monte/patient-resources/information-for-teens)  
22 [teens](http://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.<sup>3</sup> The Planned  
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24  
25 <sup>2</sup> Obviously, the abortion right declared in *Roe v. Wade*, 410 U.S. 113 (1973), was eliminated  
26 by *Dobbs*, 142 S.Ct. 2228, so the present motion should be granted. But that abortion right was  
27 the right Glick and PPWC both asserted, so that “right . . . survives” for the purpose of establish-  
28 ing a successor in interest.

<sup>3</sup> Search [esos.nv.gov/EntitySearch/OnlineEntitySearch](https://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.<sup>4</sup> 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](http://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*

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27 <sup>4</sup> Search [esos.nv.gov/EntitySearch/OnlineEntitySearch](http://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-

1 cessors' consent for Attorney General representation in this matter.

## 2 **Statutory Provisions**

3 The Judgment declared unconstitutional and permanently enjoined three provisions: NRS  
4 § 442.255 (“**Notice Requirement**” with “**Judicial-Bypass Procedure**”); NRS § 442.2555  
5 (“**Appeal Procedure**”), and NRS § 442.257 (“**Penalty Provision**”). See *Glick*, 937 F.2d at 442-  
6 43 (1985 texts of 442.255 and 442.2555); [www.leg.state.nv.us/nrs/nrs-442.html#NRS442Sec255](http://www.leg.state.nv.us/nrs/nrs-442.html#NRS442Sec255)  
7 (current texts). A 2015 Appeal Procedure amendment does not affect the present Motion.

## 8 **Statement of the Case**

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

15 In its preliminary-injunction order, this Court noted the challenge’s sole basis: “[t]he [fed-  
16 eral] constitutional guarantee of personal liberty [that] protects a woman’s right to terminate her  
17 pregnancy.” 616 F. Supp. at 324 (citing *Roe*, 410 U.S. 113). But it said that “this right is not ab-  
18 solute and the Supreme Court has noted that ‘a State’s interest in protecting immature minors  
19 will sustain a requirement of a consent substitute, either parental or judicial.’” *Id.* (quoting *Akron*  
20 *v. Akron Center for Reproductive Health*, 462 U.S. 416, 439 (1983) (“**Akron I**”). “Thus, Ne-  
21 vada’s parental notification statute is not per se unconstitutional and must be analyzed under the  
22 applicable constitutional analysis.” *Id.* Noting that the parties disagreed over whether parental-  
23 *consent* analysis applied to the Notice Requirement, *id.* at 324, this Court decided to apply the  
24 parental-consent analysis, *id.* at 325. The Court preliminarily enjoined NRS §§ 442.255,  
25 442.2555, and 442.257. *Id.* at 325-28.

26 Defendants appealed that order. *Glick*, 937 F.2d at 436. The Ninth Circuit said “although  
27 this appeal arises from a ruling on a motion for a preliminary injunction, important constitutional  
28

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*)<sup>5</sup> . . . .” *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.

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

22        We hold that a bypass procedure within a parental notification statute must meet constitu-  
23 tional scrutiny. Because we find that the Nevada bypass procedure fails to meet the require-  
24 ments for a consent statute bypass, and also does not meet the expediency requirement for  
25 a notice statute bypass, . . . the district court properly enjoined NRS 442.255, NRS  
26 442.2555, and NRS 442.257.

27 937 F.2d at 442. So the identified problems were with the bypass and expediency.

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

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

31 <sup>6</sup> 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*  
25  
26  
27  
28

1 “held —without any analysis of other equitable factors—that the City was entitled to relief from  
2 the prospective injunction” after the U.S. Supreme Court’s “Establishment Clause jurisprudence  
3 had shifted so significantly that the prior cases supporting the injunction were no longer good  
4 law.” *Id.* at 714 (citing *Agostini*, 521 U.S. at 208-09). Following *Agostini*, the Ninth Circuit “re-  
5 lied solely on the law without considering other equitable factors.” *Id.* at 715 (citations omitted).

6  
7 *Application by Other Courts.* Other district courts have applied Rule 60(b) to vacate similar  
8 injunctions post-*Dobbs*. For example, in *June Medical Services LLC v. Phillips*, No. 14-525-  
9 JWD-RLB, 2022 WL 16924100 (M.D. La. Nov. 14, 2022), the court held that post-*Dobbs* it was  
10 no longer in the public interest and no longer equitable to maintain a permanent injunction bar-  
11 ring enforcement of a Louisiana law requiring doctors performing abortions to have admitting  
12 privileges at a nearby hospital (which it held also met the rational-basis test), so it vacated the  
13 injunction. For another example, in *Bryant v. Woodall*, 622 F. Supp. 3d 147 (M.D.N.C. 2022),  
14 the court sua sponte ordered briefing on whether a permanent injunction against enforcement of  
15 North Carolina abortion regulations should be lifted pursuant to Rule 60(b) and then ordered that  
16 the “the injunction described in the summary judgment order [citations omitted] and the Judg-  
17 ment [citation omitted], is hereby VACATED and DISSOLVED, and the injunctive relief is DIS-  
18 MISSED,” *id.* at 155. Similarly, three circuit courts have vacated abortion-regulation injunctions  
19 post-*Dobbs*. See *Whole Woman’s Health v. Young*, 37 F.4th 1098, 1099 (5th Cir. 2022);  
20 *Sistersong Women of Color Reprod. Justice Collective v. Governor*, 40 F.4th 1320, 1324 (11th  
21 Cir. 2022); *Planned Parenthood S. Atl. v. Wilson*, 2022 WL 2900658 (4th Cir. July 21, 2022).

22 *Application to Judgment.* As stated in the Motion, *supra* at 2, and developed next, the Judg-  
23 ment should be vacated because (I) *Dobbs* (2022) removed the Judgment’s abortion-right foun-  
24 dation, substituting a rational-basis test that Nevada’s parental-notice law readily survives; (II)  
25 even under *Roe*, the Supreme Court abrogated *Glick* (1991) in *Wicklund* (1997), holding that the  
26 controlling precedent was *Akron II* (1990), under which Nevada’s parental-notice provisions  
27 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

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

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

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

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

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

24 A question about the ongoing applicability of that test in the abortion context arose when  
25 *Casey* (1992) employed a large-fraction analysis: If "in a large fraction of the cases in which [the  
26 challenged spousal-notification provision] is relevant, it will operate as a substantial obstacle to a  
27 woman's choice to undergo an abortion[,] [i]t is an undue burden, and therefore invalid." *Casey*,  
28 505 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.<sup>7</sup> Notably, that *Lawall* decision ignored *Casey*'s own distinguishing of parental-

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26 <sup>7</sup> 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).”).<sup>8</sup>

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).<sup>9</sup>  
 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 <sup>8</sup> *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 <sup>9</sup> 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 vention of discrimination on the basis of race, sex, or disability. See *id.*, at 156-157; *Roe*,  
 6 410 U.S. at 150; cf. [*Washington v.*] *Glucksberg*, 521 U.S. [702,] 728-731 [(1997)] (identi-  
 7 fying similar interests).

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

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

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

## 21 II.

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

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

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

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<sup>10</sup> With the reversal of *Roe* and *Casey* in *Dobbs*, federal parental-involvement cases like *Akron 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-

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

3 As should be evident from the foregoing, this decision simply cannot be squared with our  
4 decision in *Akron [II]*. The Ohio parental notification statute at issue there was indistin-  
5 guishable in any relevant way from the Montana statute at issue here. Both allow for judi-  
6 cial bypass if the minor shows that parental *notification* is not in her best interests. We  
7 asked in *Akron [II]* whether this met the *Bellotti [II]* requirement that the minor be allowed  
8 to show that “the desired abortion would be in her best interests.” We explicitly held that  
9 it did. 497 U. S., at 511. Thus, the Montana statute meets this requirement, too. In conclud-  
10 ing otherwise, the Ninth Circuit was mistaken.

11 *Id.* at 297 (italics in original; underlining added). Despite the three provisions being “indistin-  
12 guishable in any relevant way,” *id.*, the Supreme Court noted that in *Wicklund* the Ninth Circuit  
13 declared itself bound by the Ninth Circuit’s erroneous decision in *Glick*. *Id.* at 294. But the *Wick-*  
14 *lund* district-court and Ninth-Circuit decisions—following the *Glick* precedent—failed to follow  
15 the controlling Supreme Court precedents, leading to reversal: “Because the reasons given by the  
16 District Court and the Ninth Circuit for striking down the Act are inconsistent with our prece-  
17 dents, we . . . reverse the judgment of the Ninth Circuit.” *Id.* at 299.<sup>11</sup>

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

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28 <sup>11</sup> 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 plain-  
tiffs 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).

1 steps” to establish confidentiality sufficed.<sup>12</sup> *Glick*, 616 F. Supp. at 325.

2 Regarding the *Bellotti II* four-part criteria, the first was that a parental-consent law “allow  
3 the minor to bypass the consent requirement if she establishes that she is mature enough and well  
4 enough informed to make the abortion decision independently.” *Wicklund*, 520 U.S. at 295. The  
5 Ninth Circuit held that Nevada’s bypass procedures at NRS §§ 442.255(2)(a) and NRS  
6 442.2555(3)(a) sufficed. *Glick*, 937 F.2d at 438 (“Under *Akron II*, the Nevada statute meets the  
7 first *Bellotti [II]* criterion.”).

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

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

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

24 But that holding is erroneous because *Glick* was a *facial* challenge. For such a challenge,  
25 *Akron II* (the precedent the Supreme Court said in *Wicklund* was controlling) said courts may not  
26 assume worst-case scenarios, such as state courts not being expeditious: “The Court of Appeals  
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28 <sup>12</sup> *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,<sup>[13]</sup> 491, n. 16 . . . .<sup>[14]</sup>” *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

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25 <sup>13</sup> *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 <sup>14</sup> 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.

1 517 (“Regardless of whether Ohio could have written a simpler statute, H.B. 319 survives a *fa-*  
2 *cial challenge*.” (emphasis added)); *id.* at 519 (“On this *facial challenge*, we find the physician  
3 notification requirement unobjectionable.” (emphasis added)). Based on that facial-challenge  
4 analysis, the Supreme Court decided in *Wicklund* that the Ninth Circuit should not have held as it  
5 did in the facial challenge to Montana’s law: “As with the Ohio statute in *Akron [II]*, the chal-  
6 lenge to the Montana statute here is a facial one. Under these circumstances, the Ninth Circuit  
7 was incorrect to assume that Montana’s statute ‘narrow[ed]’ the *Bellotti [II]* test, 937 F.2d, at  
8 439, as interpreted in *Akron [II]*.” 520 U.S. at 298.

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

12 Following the lead of the Supreme Court, we refuse to base our decision on the facial  
13 validity of this provision requiring the courts to provide confidentiality on the mere possi-  
14 bility 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.

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

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

26 *Glick*, 937 F.2d at 440 n.4. Nor did it follow *Ashcroft*, in which the Supreme Court upheld “an  
27 indefinite period” as *Akron II* noted, 497 U.S. at 514 (statute at issue in *Ashcroft* “could require  
28 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.

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

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

### 15 III.

#### 16 Applying the Judgment prospectively is not equitable.

17 As established, the Judgment’s foundation and analysis were replaced by *Dobbs* (Part I), and  
18 even under the law post-*Roe* and pre-*Dobbs*, the Judgment’s analysis was erroneous and so abro-  
19 gated (Part II). Either the overruling or abrogation would suffice to meet Movants’ Rule 60(b)  
20 burden to establish that it is inequitable to apply the Judgment prospectively. Fed. R. Civ. P.  
21 60(b)(5). So the Judgment and its injunction should be vacated.

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22  
23 <sup>15</sup> Ironically, *Lawall* cited Justice Stevens’s statement that “*Salerno*’s ‘no set of circumstances’  
24 rule was dictum and unsupported by law,” 180 F.3d at 1026 (citation omitted), though *Akron II*  
25 said the rule controlled, 497 U.S. at 514 (citation omitted), mooting the dictum claim. In *Planned*  
26 *Parenthood of S. Arizona v. Lawall* (“***Lawall II***”), the Ninth Circuit equated the facial-challenge  
27 test with the undue-burden test: “In analyzing a facial challenge to an abortion statute, we apply  
28 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

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

3 **Conclusion**

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

8 Respectfully submitted,

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**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)

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22 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
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