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**THE DISTRICT COURT OF GUAM**

GUAM SOCIETY OF OBSTETRICIANS  
AND GYNECOLOGISTS; GUAM NURSES  
ASSOCIATION; THE REVEREND MILTON  
H. COLE, JR.; LAURIE KONWITH;  
EDMUND A. GRILEY, M.D.; WILLIAM S.  
FREEMAN, M.D.; JOHN DUNLOP, M.D.; on  
behalf of themselves and all others similarly  
situated, and all their women patients,

Plaintiffs,

vs.

LOURDES A. LEON GUERRERO, in her  
official capacity as the Governor of Guam;  
ARTHUR U. SAN AGUSTIN, in his official  
capacity as the Director of the Department of  
Public Health and Social Services; LILLIAN  
PEREZ-POSADAS, M.N., R.N., in her official  
capacity as the Administrator of the Guam  
Memorial Hospital Authority; DOUGLAS B.  
MOYLAN, in his official capacity as the  
Attorney General of Guam; ALICE M.  
TAIJERON, GERARD "JERRY" C.  
CRISOSTOMO, JOSEPH P. MAFNAS,  
ANTONIA "TONI" R. GUMATAOTAO,  
BENNY A. PINAULA, G. PATRICK  
CIVILLE, and CARISSA E. PANGELINAN,  
in their official capacities as the Board of  
Directors of the Guam Election Commission,  
together with all others similarly situated,

Defendants.

CIVIL CASE NO. 90-00013

**ORDER DENYING DEFENDANT  
ATTORNEY GENERAL OF GUAM'S  
MOTION TO VACATE PERMANENT  
INJUNCTION**

1 Before the court is Defendant Attorney General of Guam Douglas B. Moylan’s Motion to  
2 Vacate Permanent Injunction Pursuant to Fed. R. Civ. P. 60(b)(5) and to Dismiss the Case with  
3 Prejudice (hereinafter “Motion”). See ECF No. 357. For the reasons stated herein, the Motion is  
4 hereby **DENIED**.<sup>1</sup>

5 Defendant Attorney General of Guam (“Defendant AG”) moves the court for an order  
6 vacating the permanent injunction issued on August 23, 1990, in the above-captioned matter. See  
7 Mot., ECF No. 357. The basis for the Motion is that “[t]he doctrinal underpinnings of the  
8 permanent injunction in this case were predicated on the Supreme Court’s decision in *Roe v.*  
9 *Wade* . . . . But *Roe* and its progeny are no longer the law.” Mem. Supp. at 2-3,<sup>2</sup> ECF No. 358.

10 Plaintiffs, Defendant Governor of Guam (“Defendant Governor”), and Defendant Guam  
11 Memorial Hospital Administrator (“Defendant GMH Administrator”) filed oppositions to the  
12 Motion. See Opp’ns, ECF Nos. 382, 391, and 392. Defendants Governor and GMH  
13 Administrator both argue that Sections 4 and 5 of Guam Public Law 20-134 violate the First  
14 Amendment’s freedom of speech clause. See Def. Governor’s Opp’n at 28-32, ECF No. 382;  
15 Def. GMH Adm’r’s Opp’n at 11-15, ECF No. 392. They argue that the United States Supreme  
16 Court’s opinion in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022),<sup>3</sup>  
17 neither impacted nor affected the unconstitutionality of these sections. *Id.* Defendant Governor  
18 also argues that Guam Public Law 20-134 was impliedly repealed by subsequent measures  
19 passed by the Guam Legislature and therefore, the Motion is moot. See Def. Governor’s Opp’n at  
20 18-27, ECF No. 382. Defendant GMH Administrator separately argues that the Government of  
21 Guam did not appeal the District Court of Guam’s decision on Sections 4 and 5 of Guam Public  
22 Law 20-134, and therefore, any challenges to said sections are foreclosed. Def. GMH Adm’r’s

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23 <sup>1</sup> The court finds oral argument to be unnecessary.

24 <sup>2</sup> The page numbering throughout this order is based on the CM/ECF page numbering system.

<sup>3</sup> In a nutshell, *Dobbs* reversed *Roe v. Wade*.

1 Opp'n at 13-14, ECF No. 392.

2 Plaintiffs, on the other hand, argue, *inter alia*, that Defendant AG has not met his burden  
3 for obtaining relief under FED. R. CIV. P. 60(b)(5). Pls.' Opp'n., ECF No. 391. Defendant AG  
4 "does not (and cannot) dispute that both the ban on pre-viability abortion and solicitation of  
5 abortion violated the laws of the United States applicable to Guam, when [Guam Public Law 20-  
6 134] was passed." *Id.* at 18. Because the abortion ban violated the laws of the United States  
7 applicable to Guam, the Guam Legislature lacked the authority to enact such a ban.<sup>4</sup> *Id.* at 19.  
8 Plaintiffs contend that because the Guam Legislature lacked the authority, Guam Public Law 20-  
9 134 was void *ab initio*. *Id.* at 16-20.

10 While Defendant AG filed a response to the oppositions filed by Defendants Governor  
11 and GMH Administrator (*see* Reply, ECF No. 409), Defendant AG's Reply did not respond to  
12 the issues raised in the Plaintiffs' Opposition.<sup>5</sup> Based on Defendant AG's lack of response to  
13 Plaintiffs' arguments, especially those that did not overlap with the arguments raised by  
14 Defendants Governor and GMH Administrator, it is reasonable to presume that Defendant AG  
15 takes no position on their arguments or is not contesting them. *Maciel v. Cate*, 731 F.3d 928,  
16 932 n.4 (9th Cir. 2013) (holding a party forfeited an argument raised in the opponent's answering  
17 brief by failing to address it in reply brief); *Sabra v. Maricopa Cty. Cmty. Coll. Dist.*, 44 F.4th  
18 867, 881-882 (9th Cir. 2022) (same). Rule 60(b)(5) permits a party to obtain relief from a  
19 judgment or order if "the judgment has been satisfied, released, or discharged; it is based on an  
20 earlier judgment that has been reversed or vacated; or applying it prospectively is no longer  
21 equitable[.]" FED. R. CIV. P. 60(b)(5). In reviewing a Rule 60(b)(5) motion, the Supreme Court  
22 requires that there must be "a significant change in facts or law [that] warrants revision of the  
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<sup>4</sup> "The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of [the Organic Act] and the laws of the United States applicable to Guam." 48 U.S.C. § 1423a.

<sup>5</sup> A reply to all oppositions was due March 22, 2023. *See* Order at 2, ECF No. 393; CVLR 7(f).

1 decree,” and “the proposed modification [must be] suitably tailored to the changed  
2 circumstance.” *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 393 (1992). The party seeking  
3 relief bears the burden of establishing that changed circumstances warrant relief. *Id.* In this case,  
4 the burden falls on Defendant AG.

5 While Defendant AG argues that the legal basis for the permanent injunction no longer  
6 exists, Defendant AG failed to address whether the change in law in *Dobbs* warrants vacatur of  
7 the permanent injunction in its entirety. As Plaintiffs have argued, “irrespective of *Dobbs* or any  
8 other Supreme Court decision concerning abortion issued after [Guam Public Law 20-134] was  
9 enacted, the [public law] was a legal nullity the moment it was passed and can have no force or  
10 effect today.” Pls.’ Opp’n at 20, ECF No. 391. Defendant AG has not refuted this argument, and  
11 after having reviewed the relevant statutes and the legal authority provided by Plaintiffs in their  
12 opposition, to which Defendant AG did not respond, the court finds that Defendant AG has not  
13 met his burden under Rule 60(b)(5).

14 Based on the foregoing, the court hereby **DENIES** Defendant AG’s Motion. Any other  
15 pending motions<sup>6</sup> in this case are hereby **MOOT**.

16 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Mar 24, 2023

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<sup>6</sup> Motion to Intervene, ECF No. 389; and Motion for Abstention, ECF No. 368.