19-2690

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LITTLE ROCK FAMILY PLANNING SERVICES, et al.,

Plaintiffs,

v.

LESLIE RUTLEDGE, et al.,

Defendants.

Appeal from the United States District Court for the Eastern District Of Arkansas, Western Division

Case No. 4:19-cv-00449-KGB

APPELLEES' MOTION TO DISMISS APPEAL OF THE PRELIMINARY INJUNCTION OF THE OBGYN REQUIREMENT

INTRODUCTION[1]

The State of Arkansas appealed the district court's preliminary injunction of three abortion restrictions to this Court. Appellees have recently been able to come into compliance with one of those laws, the OBGYN Requirement. Because they no longer need emergency, injunctive relief, Appellees contacted the State to propose a joint motion dismissing as moot the OBGYN Requirement-related part of this appeal and vacating that part of the district court's preliminary injunction. Although that is *precisely* the relief the State says it seeks, the State has refused to join in Appellees' motion. It has also—inexplicably—refused to provide any reason for so declining, and thus ground to a halt Appellees' meet-and-confer efforts.

The State's failure to negotiate in good faith has wasted the parties' and the Court's time, because there should be no need for this additional motion practice. More to the point, because there is no justiciable dispute over the district court's preliminary injunction of the OBGYN Requirement, this Court lacks jurisdiction to review it. Appellees accordingly move this Court under Eighth Circuit Rule 47A(b) to dismiss the part of the State's appeal concerning the OBGYN Requirement.[2]

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[1] Unless otherwise indicated, all emphasis is added and all internal citations and quotations are omitted. This brief uses the following terminology: (1) the Appellants are referred to as "Arkansas" or "the State," and (2) Little Rock Family Planning Services and Dr. Thomas Tvedten are together "Appellees."

[2] Neither party has argued that the portion of this case that relates to the 18-Week Ban and the Reason Ban is moot. *See, e.g.*, *Powell v. McCormack*, 395 U.S. 486, 496, n.8 (1969) ("Where several forms of relief are requested and one of these

BACKGROUND

The Summer 2019 Preliminary Injunction

On June 26, 2019, Appellees challenged three Arkansas laws restricting abortion care: One law bans nearly all abortion after 18 weeks, as measured from the first day of a woman's last menstrual period (the "18-Week Ban"). *See* Ark. Code Ann. §§ 20-16-2003, 20-16-2004. Another prohibits a physician from intentionally performing or attempting to perform an abortion "with the knowledge" that a pregnant woman is seeking an abortion "solely on the basis" of a test "indicating" Down syndrome, a prenatal diagnosis of Down syndrome, or "[a]ny other reason to believe" that an "unborn child" has Down syndrome (the "Reason Ban"). *Id.* § 20-16-2103. The third challenged law—the one relevant to this motion—prohibits physicians other than board-certified or board-certification-eligible obstetrician-gynecologists from providing abortions (the "OBGYN Requirement"). *Id.* § 20-16-605.

On August 6, 2019, the district court granted Appellees' motion for a preliminary injunction of all three laws. At the time the preliminary injunction issued, virtually all abortion care at Appellee Little Rock Family Planning Services

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requests subsequently becomes moot, the Court has still considered the remaining requests"); *WWP, Inc. v. Wounded Warriors Fam. Support, Inc.*, 628 F.3d 1032 (8th Cir. 2011) (dismissing as moot challenge to preliminary injunction and affirming rest of judgment).

("LRFP") was provided by two clinicians—Appellee Dr. Thomas Tvedten and non-party Dr. Thomas Horton—neither of whom was a board-certified or board-certification-eligible OBGYN. JA1854. Together, Drs. Tvedten and Horton provided 94% of the abortion care at LRFP between 2016 and 2019. JA279. Neither was able to become a board-certified or board-certification-eligible OBGYN without incurring the significant expense of restarting their medical training and taking substantial time away from their patients and professional responsibilities to attain a qualification that is not necessary to provide safe abortion care. JA1866-68, JA1954 n.15, JA2223-25. Although Drs. Tvedten and Horton received assistance roughly once every-other month from Dr. Fred Hopkins—a board-certified OBGYN who lives in California, JA2221—Dr. Hopkins was unable to increase his patient volume at LRFP because of full-time professional obligations in California. *See* JA1548-49, JA1555-56, JA2222. Despite significant efforts to recruit other qualifying OBGYNs to work at the clinic, LRFP was unable to do so. JA455-59. Thus, the district court found that if the OBGYN Requirement took effect, it would impermissibly and substantially burden patients' access to abortion in the State of Arkansas. JA2364-80.

On August 9, 2019, the State filed a notice of appeal. It sought this Court's review of the preliminary injunction of all three laws. The appeal is now fully briefed and oral argument has been scheduled for September 23, 2020.[3]

Recent Developments At LRFP

On August 6, 2020, the Arkansas State Medical Board temporarily suspended Dr. Tvedten's medical license pending an October 1, 2020 hearing.[4] Dr. Tvedten adamantly refutes the allegations that led to the medical-license suspension, which he intends to disprove at the hearing.

While Dr. Tvedten is not able to provide abortion care at LRFP at this time, LRFP has managed, as a result of sustained and considerable efforts over the last year and half, to identify a board-certified OBGYN who will provide abortion care at the clinic and serve for the time being as LRFP's Medical Director.[5] His support will enable the clinic to provide the necessary abortion care to LRFP's patients, and

[3] The State also sought this Court's review of the district court's June 27, 2019 order consolidating this case with *Planned Parenthood of Arkansas & Eastern Oklahoma v. Jegley*, No. 4:15-cv-00784-KHB (DE14) and its July 5, 2019 order denying reconsideration of that consolidation order (DE29). Appellees filed a separate motion to dismiss that part of this appeal on August 23, 2019, and this Court entered an order stating that it would consider that motion together with the merits.

[4] Appellants' Rule 28(j) Letter, *Little Rock Family Planning Servs. Ltd. v. Rutledge*, No. 19-2690 (8th Cir. Aug. 21, 2020) [hereinafter August 21 Letter].

[5] Decl. of L. Williams ¶¶ 2, 3 (Sept. 3, 2020).

his availability—at least in the short term—obviates the need for emergency relief from the OBGYN Requirement.

The State Asks This Court To Vacate The OBGYN Requirement Portion Of The Preliminary Injunction

On August 21, 2020, the State of Arkansas filed a letter pursuant to Federal Rule of Appellate Procedure 28(j), informing this Court that Dr. Tvedten's medical license had been temporarily suspended.[6] Because of that suspension, the State argued that Appellees lacked standing to challenge the OBGYN Requirement.[7] As to relief, the State said that this Court "must vacate" the OBGYN Requirement.[8]

The State Inexplicably Refuses To Dismiss Its Appeal With Regard To The OBGYN Requirement

On August 27, 2020, counsel for Appellees attempted to contact counsel for the State of Arkansas regarding this pending appeal.[9] On the morning of August 28, counsel for both parties spoke by phone, and Appellees explained that LRFP had retained a board-certified OBGYN who could provide abortion care to LRFP's patients, at least for the time being.[10] Appellees thus proposed that the parties file a joint motion to dismiss the State's appeal and vacate the preliminary injunction with

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[6] August 21 Letter.

[7] *Id.* at 2.

[8] *Id.* at 2.

[9] Decl. of K. Turner ¶ 3 (Sept. 3, 2020) [hereinafter Turner Decl.].

[10] Turner Decl., Ex. 1.

regard to the OBGYN Requirement.[11] The State's counsel said he planned to confer with his colleagues about the proposal.[12] Appellees filed a response to the State's August 21 letter on the afternoon of August 28.[13] Appellees explained that, while Dr. Tvedten's suspension does not moot their appeal, they were meeting and conferring with Appellants regarding a potential motion to dismiss the appeal as to the OBGYN Requirement and to vacate that portion of preliminary injunction, given that LRFP had secured board-certified OBGYN support for now, thereby obviating need for emergency relief to prevent irreparable harm from the OBGYN Requirement at this time.[14]

Later that afternoon, the State of Arkansas informed Appellees that the State did "not consent to filing a joint motion to vacate the district court's preliminary injunction."[15] Appellees responded by inquiring into the basis for the "contention that there is a justiciable dispute," given that Appellees "have confirmed their agreement to the very relief" the State of Arkansas had sought in its "August 21, 2020 letter to [this Court], i.e., that the Court vacate the preliminary injunction."[16]

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[11] Turner Decl. ¶ 6.

[12] *Id*.

[13] Appellees' Rule 28(j) Response, *Little Rock Family Planning Servs. Ltd. v. Rutledge*, No. 19-2690 (8th Cir. Aug. 28, 2020) [hereinafter August 28 Letter].

[14] *Id.* at 2.

[15] Turner Decl., Ex. 1.

[16] *Id*.

The State refused to respond, stating only that it was "clear" the parties could not reach agreement.[17]

ARGUMENT

I. BECAUSE THE STATE'S APPEAL OF THE PRELIMINARY INJUNCTION OF THE OBGYN REQUIREMENT IS MOOT, THIS COURT SHOULD DISMISS THAT PART OF THE APPEAL.

Although this Court has jurisdiction to review a district court's order granting a preliminary injunction, *see* 28 U.S.C. § 1292(a)(1), it loses that jurisdiction if an interlocutory appeal no longer presents a live case or controversy, *see Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 669 (2016). To determine if an appeal is moot, at least in part, this Court considers whether a present decision on the issues before it is necessary in view of real-world, on-the-ground developments. *See, e.g.*, *Olin Water Servs. v. Midland Rsch. Labs., Inc.*, 774 F.2d 303, 305 (8th Cir. 1985) ("The issue before us is whether the parties lack a legally cognizable interest in a determination by this court of whether the district court properly granted the preliminary injunction.").[18]

Because Appellees no longer require emergency, injunctive relief from the OBGYN Requirement and are in compliance with that Requirement at this time,

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[17] *Id.*

[18] *See also, e.g.*, *United States v. Smith*, 372 F. App'x 686, 686-87 (8th Cir. 2010) (dismissing as moot challenge to sentencing order because defendant had completed his sentence); *Clay v. City of St. Louis*, 77 F. App'x 917, 918 (8th Cir. 2003)

deciding the merits of that part of this appeal now is unwarranted in light of real-world developments. "And it is quite clear that the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions." *Flast v. Cohen*, 392 U.S. 83, 96 (1968). Because the part of the State's appeal challenging the preliminary injunction of the OBGYN Requirement is moot, this Court lacks jurisdiction and must dismiss it. *See Forbes v. Ark. Educ. Television Commc'n Network Found.*, 982 F.2d 289, 290 (8th Cir. 1992) (per curiam) (dismissing appeal of preliminary injunction where injunctive relief was no longer needed, and remanding case for resolution of plaintiffs' other claims); *Fauconniere Mfg. Corp. v. Sec'y of Def.*, 794 F.2d 350, 352 (8th Cir. 1986) (dismissing appeal of preliminary injunction where both parties agreed the enjoined contract had been completed pending appeal).

In contrast, Appellees' *non-emergency-relief* challenges to the OBGYN Requirement are not moot. *See, e.g.*, *Univ. of Texas v. Camenisch*, 451 U.S. 390, 393-94 (1981) (while the "correctness of the decision to grant a preliminary injunction" was "moot," "the case as a whole remains alive because other issues have not become moot"). But because those challenges to the OBGYN Requirement—which are subject to different legal standards than Appellees' request

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(dismissing as moot challenge to order requiring city employees to work at election polls on a particular date because date had passed by time of appeal).

for emergency, injunctive relief—have not yet been decided in the district court, they may not be reviewed by this Court at this time. *See, e.g.*, *Olin Water Servs.*, 774 F.2d at 307-08 (declining to decide propriety of damages and injunction-bond recovery claims on appeal because they "must first be tried before the district court"). As the Supreme Court has explained, where "the only issue presently before" the Court—"the correctness of the decision to grant a preliminary injunction—is moot, the judgment" below "must be vacated and the case must be remanded to the District Court for trial on the merits." *Camenisch*, 451 U.S. at 394. The same result is required here: Because the district court has granted emergency, injunctive relief *only*, it has not considered—and the parties have not introduced all evidence relevant to—the propriety of other relief. Thus, while the preliminary-injunction appeal with respect to the OBGYN Requirement is now moot, Appellees' remaining challenges to that Requirement may not be resolved during this appeal, but only after further proceedings in the district court. *See id*. at 396.

II. GOOD CAUSE EXISTS FOR THIS MOTION.

Although Eighth Circuit Rule 47A(b) generally requires that motions to dismiss based on jurisdiction "be filed within 14 days after the court has docketed the appeal," "[t]he appellee may file a motion to dismiss" outside that window where there is "good cause" to do so. Eighth Cir. R. 47A(b). There is good cause for this motion because recent factual developments at LRFP have rendered the appeal of

the preliminary injunction of the OBGYN Requirement moot. *See, e.g.*, *Robinson v. Pfizer, Inc.*, 855 F.3d 893, 896 (8th Cir. 2017) (dismissing case as moot under Rule 47A(b), even though Rule 47A(b) motion was filed more than fourteen days after the notice of appeal). "More important, regardless of . . . Rule 47A(b), [this Court] cannot decide a moot case." *Id.*; *see also Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 459 n.2 (8th Cir. 2000) (noting that, although appellees' motion to dismiss was filed more than fourteen days after the notice of appeal, "the Court may (and, indeed, it must) sua sponte examine the issue" "if there is any question about this Court's jurisdiction").

CONCLUSION

For the foregoing reasons, the Court should dismiss the State's appeal of the district court's preliminary injunction of the OBGYN Requirement.

Dated: September 3, 2020

Respectfully submitted,

/s/ Kendall Turner
Kendall Turner

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On Behalf of the Arkansas Civil Liberties Union Foundation, Inc.
Attorney for Appellees LFRP and Dr. Thomas Tvedten

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 32(a)(5), (6), and (7)(B) of the Federal Rules of Appellate Procedure, counsel certifies that the foregoing was prepared using Microsoft Word in 14-point Times New Roman font and that it contains 2,231 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f).

s/ Kendall Turner
Kendall Turner
Counsel for Appellees

CERTIFICATE OF SERVICE

I certify that on September 3, 2020, the foregoing motion was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit and that the motion will be served by operation of the Court's electronic filing system on all counsel of record.

s/ Kendall Turner
Kendall Turner
Counsel for Appellees

19-2690

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LITTLE ROCK FAMILY PLANNING SERVICES, et al., Plaintiffs, v. LESLIE RUTLEDGE, et al., Defendants.	Appeal from the United States District Court for the Eastern District Of Arkansas, Western Division Case No. 4:19-cv-00449-KGB

DECLARATION OF KENDALL TURNER, ESQ.,
IN SUPPORT OF APPELLEES' MOTION TO DISMISS APPEAL OF THE PRELIMINARY INJUNCTION OF THE OBGYN REQUIREMENT

I, Kendall Turner, Esq., declare under 28 U.S.C. § 1746 and penalty of perjury that the following is true and correct:

1. I am an attorney admitted to practice before this Court. I work at the law firm of O'Melveny & Myers LLP, with an office located at 1625 I Street NW, Washington, DC 20006. O'Melveny & Myers LLP is counsel to all Appellees in this case. I respectfully submit this declaration in support of Appellees' motion to dismiss the appeal of the preliminary injunction of the OBGYN Requirement. I submit this declaration based on my personal knowledge and review of the documents referenced herein. If called and sworn as a witness, I could and would testify competently thereto.

2. On the afternoon of Friday, August 21, 2020, Arkansas filed a letter with this Court under Federal Rule of Appellate Procedure 28(j) (the "August 21 Letter"), explaining that Appellee Dr. Thomas Tvedten's medical license had been temporarily suspended. Because of that suspension, Arkansas argued that Appellees lacked standing to challenge the OBGYN Requirement and that this Court "must vacate" the preliminary injunction of that Requirement.

3. On Thursday, August 27, 2020, my colleague Ms. Leah Godesky and I called Mr. Vincent Wagner, counsel for Arkansas. Because he did not answer, Ms. Godesky left a voicemail asking Mr. Wagner to return our call so we could discuss this case.

4. Because we had not heard back from Mr. Wagner, Ms. Godesky sent Mr. Wagner and his colleagues an e-mail on the morning of Friday, August 28, 2020, copying me, asking to speak about a potential joint motion to vacate the preliminary injunction of the OBGYN Requirement in view of certain developments at the clinic. Attached as **Exhibit 1** is a true and correct copy of that e-mail, and the subsequent exchange of e-mails, between counsel for the parties to this case.

5. Mr. Wagner responded by e-mail, saying he was available on his cell phone and providing that phone number.

6. Ms. Godesky and I called Mr. Wagner around 10:45 a.m. CT on August 28. We spoke for approximately five minutes. During that call, Ms. Godesky

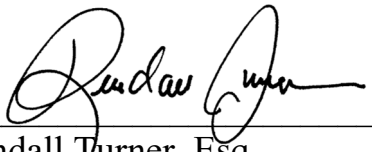
explained that Appellee Little Rock Family Planning Services ("LRFP") had retained a board-certified OBGYN who could provide abortion care to LRFP's patients, at least for the immediate future. Ms. Godesky proposed that the parties file a joint motion to dismiss Arkansas's appeal and vacate the preliminary injunction of the OBGYN Requirement. Mr. Wagner said he planned to confer with his colleagues about that proposal.

7. Mindful of our obligation under Federal Rule of Appellate Procedure 28(j) to respond to Arkansas's August 21 Letter "promptly," we filed a response to that August 21 Letter on the afternoon of Friday, August 28, 2020 (the "August 28 Letter"). We explained that we were meeting and conferring with Arkansas regarding a potential motion to dismiss the OBGYN Requirement-related parts of this appeal and to vacate that part of the district court's preliminary injunction.

8. Mr. Wagner then exchanged a series of e-mails with Ms. Godesky and me, as reflected in Exhibit 1.

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

Executed this 3rd day of September, 2020.



Kendall Turner, Esq.

EXHIBIT 1

From: Godesky, Leah
Sent: Sunday, August 30, 2020 7:27 PM
To: Vincent Wagner; Nicholas Bronni; Michael Cantrell; Dylan Jacobs
Cc: Turner, Kendall; mburrows@aclu.org
Subject: RE: LRFP v. Rutledge, Case No. 19-2690

Vincent, Plaintiffs will, of course, inform the Court that the parties were unable to reach agreement. We regret that we are unable to also state that the parties met and conferred in good faith, given the State's refusal to respond to Plaintiffs' inquiry into the basis for withholding consent to vacate the preliminary injunction with regard to the OBGYN Requirement.

Leah

From: Vincent Wagner <vincent.wagner@arkansasag.gov>
Sent: Friday, August 28, 2020 7:22 PM
To: Godesky, Leah <lgodesky@omm.com>; Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Michael Cantrell <michael.cantrell@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>
Cc: Turner, Kendall <kendallturner@omm.com>; mburrows@aclu.org
Subject: RE: LRFP v. Rutledge, Case No. 19-2690

[EXTERNAL MESSAGE]
Leah—However you characterize our short chat this morning, the plaintiffs' 28(j) letter left the Court with an incomplete picture. It's now clear we can't reach any agreement and rather than debating a hypothetical motion, the better course is to simply inform the Court where things stand. If you still disagree, please let us know, and we'd be happy to send the Court our own update. Thanks.

Vincent

Vincent M. Wagner
Deputy Solicitor General

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323 Center Street, Suite 200
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(501) 682-7395 (fax)

From: Godesky, Leah [mailto:lgodesky@omm.com]
Sent: Friday, August 28, 2020 2:31 PM
To: Vincent Wagner <vincent.wagner@arkansasag.gov>; Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Michael Cantrell <michael.cantrell@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>
Cc: Turner, Kendall <kendallturner@omm.com>; mburrows@aclu.org
Subject: RE: LRFP v. Rutledge, Case No. 19-2690

Thanks for getting back to us, Vincent. Our letter today does not represent that we are negotiating a joint motion; rather, we merely—and accurately—informed the Court that we were meeting and conferring regarding a possible motion to dismiss. Given the proximity of the oral argument, and Rule 28(j)'s instruction

to file any response to a 28(j) letter "promptly," we wanted to file a response as soon as feasible. We understand you need time to confer with your colleagues, and our letter reflects that.

Please let us know the basis for Defendants' apparent contention that there is a justiciable dispute regarding the preliminary injunction for the Court to resolve. Plaintiffs have confirmed their agreement to the very relief Defendants requested in their August 21, 2020 letter to the Eighth Circuit, i.e., that the Court vacate the preliminary injunction. We therefore do not understand why Defendants will not consent to a dismissal motion seeking that relief, which we believe would be in all parties' and the Court's interests.

Leah

From: Vincent Wagner <vincent.wagner@arkansasag.gov>
Sent: Friday, August 28, 2020 2:58 PM
To: Godesky, Leah <lgodesky@omm.com>; Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Michael Cantrell <michael.cantrell@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>
Cc: Turner, Kendall <kendallturner@omm.com>; mburrows@aclu.org
Subject: RE: LRFP v. Rutledge, Case No. 19-2690

[EXTERNAL MESSAGE]

Leah & Kendall—I write to let you know that the defendants do not consent to filing a joint motion to vacate the district court's preliminary injunction. As I mentioned when we spoke on the phone around 10:45 this morning, our team needed time to discuss your proposal. After all, Leah's email at 6:45 this morning was the first time you suggested anything like this proposal to us. Given that the 28(j) letter filed with the Court around 1:15 today represented that the parties were negotiating such a motion, we assume you'll tell the Court about this development. Thanks.

Vincent

Vincent M. Wagner
Deputy Solicitor General

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From: Vincent Wagner
Sent: Friday, August 28, 2020 9:43 AM
To: 'Godesky, Leah' <lgodesky@omm.com>; Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Michael Cantrell <michael.cantrell@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>
Cc: Turner, Kendall <kendallturner@omm.com>; mburrows@aclu.org
Subject: RE: LRFP v. Rutledge, Case No. 19-2690

Leah—Thanks for following up. I got your voicemail when I tried calling back yesterday. I'm generally available today at my cell number, 214-505-4820.

Vincent

Vincent M. Wagner

Deputy Solicitor General

Office of Arkansas Attorney General Leslie Rutledge
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From: Godesky, Leah [mailto:lgodesky@omm.com]
Sent: Friday, August 28, 2020 6:21 AM
To: Vincent Wagner <vincent.wagner@arkansasag.gov>; Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Michael Cantrell <michael.cantrell@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>
Cc: Turner, Kendall <kendallturner@omm.com>; mburrows@aclu.org
Subject: LRFP v. Rutledge, Case No. 19-2690

Counsel,

Following up on the message that we left Vincent yesterday, we'd like to speak with a member of your team regarding a potential joint motion to vacate the preliminary injunction of the OBGYN Requirement in view of certain developments at the clinic. Please let us know when you're available. Thanks.

Leah

O'Melveny

Leah Godesky
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19-2690

IN THE UNITED STATES COURT OF APPEALS
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LITTLE ROCK FAMILY PLANNING SERVICES, et al., Plaintiffs, v. LESLIE RUTLEDGE, et al., Defendants.	Appeal from the United States District Court for the Eastern District Of Arkansas, Western Division Case No. 4:19-cv-00449-KGB

DECLARATION OF LORI WILLIAMS, M.S.N, A.P.R.N. IN SUPPORT OF APPELLEES' MOTION TO DISMISS APPEAL OF THE PRELIMINARY INJUNCTION OF THE OBGYN REQUIREMENT

I, Lori Williams, M.S.N., A.P.R.N., declare under 28 U.S.C. § 1746 and penalty of perjury that the following is true and correct:

1. I am a nurse practitioner and the Clinical Director of Plaintiff Little Rock Family Planning Services ("LRFP").

2. After Arkansas passed a law in early 2019 prohibiting physicians other than board-certified or board-certification-eligible obstetrician-gynecologists ("OBGYNs") from providing abortions, LRFP engaged in an extensive effort to identify and recruit OBGYNs to work at the clinic. I detailed those efforts in my declarations and testimony supporting Appellees' request for emergency relief from the OBGYN Requirement (*see* JA0455–0457). Those efforts included (i) sending a letter to all OBGYNs listed on the Arkansas medical-licensure list to solicit interest in providing care at LRFP, and (ii) networking with other clinicians and organizations that provide reproductive-healthcare services, such as the National Abortion Federation.

3. As a result of those efforts, LRFP has hired Dr. William Parker, a board-certified OBGYN, to provide abortion care at LRFP. On August __, 2020, Dr. Parker assumed the role of Medical Director at LRFP. Dr. Parker does not live in Arkansas, and has other professional obligations that prevent him from moving to the State or providing care in Arkansas full time. Thus, while the hiring of Dr. Parker and his willingness to serve as Medical Director for the time being means that LRFP can comply for now with the OBGYN Requirement, LRFP may not be able to comply with the OBGYN Requirement in the future.

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

Executed this 3rd day of September, 2020.

Lori Williams APRN

Lori Williams, M.S.N., A.P.R.N.