
**In the United States Court of Appeals for the
Eighth Circuit**

Planned Parenthood Minnesota, North Dakota, South Dakota, and
Sarah A. Traxler, M.D.,

Plaintiffs-Appellees,

v.

Kristi Noem, Governor, Joan Adam, Interim Secretary of Health,
Department of Health, Philip Meyer, D.O., President, South Dakota Board
of Medical and Osteopathic Examiners, in their official capacities,

Defendants-Appellants.

On Appeal from the United States District Court for the District of South Dakota
Civil Action No. 4:22-cv-04009-KES
Judge Karen E. Schreier

**MOTION OF PLAINTIFFS-APPELLEES
TO DISMISS THE APPEAL AS MOOT**

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Plaintiffs-Appellees respectfully move this Court to dismiss this appeal as moot and to vacate the district court’s preliminary injunction order. In light of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392 (U.S. June 24, 2022), overruling *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992), and the State of South Dakota’s “trigger” statute, S.D.C.L. § 22-17-5.1 (making the performance of abortions a felony unless “necessary to preserve the life of the pregnant female”), Plaintiffs have ceased providing abortions in the State of South Dakota. As such there is no longer a case or controversy for this Court to decide. Accordingly, and with no Defendants having answered or filed motions for summary judgment to date, Plaintiffs have filed a notice of voluntary dismissal in the district court, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

Argument

The appeal should be dismissed as moot. On June 24, 2022, the Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392 (U.S. June 24, 2022), overruling *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992). The case at hand and its appeal arose out of a controversy regarding regulations by the State of South Dakota imposing restrictions on the provision of medication abortion. That controversy no longer exists. Upon issuance of *Dobbs*, the State of South Dakota’s

“trigger” statute, S.D.C.L. § 22-17-5.1, went into effect. The statute makes the performance of abortions, including medication abortions, a felony unless “necessary to preserve the life of the pregnant female.” Consequently, Plaintiffs have ceased providing abortions, including medication abortions, in the State of the South Dakota.

Where no case or controversy exists, this Court must dismiss the appeal. Article III of the Constitution limits this Court’s jurisdiction to “cases” and “controversies.” U.S. Const. Art. III, § 2, cl. 1. The standard requires that “an actual controversy . . . be extant at all stages of review, not merely at the time the complaint is filed.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997)). This Court has noted a case must be dismissed “if intervening circumstances moot the controversy.” *Robinson v. Pfizer, Inc.*, 855 F.3d 893, 896–897 (8th Cir. 2017) (also stating this Court “cannot decide a moot case.”). While an actual controversy did exist at time of filing, the intervening Supreme Court decision in *Dobbs* renders that controversy nonexistent. This appeal has been rendered moot and should be dismissed.

Furthermore, this Court should vacate the underlying preliminary injunction order. This Court has followed the “established practice of federal appeals courts” when a case pending appeal becomes moot “to vacate the judgment or order being appealed because that clears the path for future relitigation of the issues between the

parties and eliminates a judgment.” *Robinson*, 855 F.3d at 898 (internal quotation marks omitted) (quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 22 (1994)). Accordingly, this appeal should be dismissed as moot and the preliminary injunction order should be vacated.

Plaintiffs-Appellees have also filed today a motion to voluntarily dismiss the underlying case in the United States District Court for the District of South Dakota, Case No. 4:22-cv-04009-KES, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

Conclusion

For the foregoing reasons, this court should (1) dismiss the appeal as moot, and (2) vacate the district court’s preliminary injunction order.

Dated: June 29, 2022

Respectfully submitted,

/s/ Diana O. Salgado

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2022, a copy of the foregoing motion was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit using the CM/ECF system. I certify that counsel for the Defendants-Appellants are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: June 29, 2022

/s/ Diana O. Salgado

Diana O. Salgado
Attorney for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Federal Rules of Appellate Procedure 27(d)(1) (E) and (d)(2)(A) and 32(g)(1), that the foregoing Motion of Plaintiffs-Appellees to Dismiss the Appeal as Moot is proportionately spaced, has a typeface of 14 points or more, was prepared using Microsoft Word 2022, and contains 585 words. I further certify that the electronic version of this filing was automatically scanned for viruses and found to contain no known viruses.

Dated: June 29, 2022

/s/ Diana O. Salgado

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