

No. 16-3249

IN THE
United States Court of Appeals for the Tenth Circuit

PLANNED PARENTHOOD OF KANSAS AND MID-MISSOURI; PLANNED PARENTHOOD OF ST. LOUIS REGION; JANE DOE #1, on her behalf and on behalf of all others similarly situated; JANE DOE #2, on her behalf and on behalf of all others similarly situated; JANE DOE #3, on her behalf and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

JEFF ANDERSEN, Acting Secretary, Kansas Department of Health and Environment,
in his official capacity,

Defendant-Appellant.

Appeal from the U.S. District Court for the District of Kansas
Civil Action No. 2:16-CV-02284-JAR-GLR
Judge Julie A. Robinson, Presiding

MOTION TO STAY THE MANDATE

Pursuant to Federal Rule of Appellate Procedure 41(d), Defendant-Appellant Jeff Andersen, in his official capacity, respectfully moves this Court to stay the mandate in the above-captioned case. Pursuant to Tenth Circuit Rule 27.1, the parties have conferred, and Plaintiffs-Appellees Planned Parenthood of Kansas and Mid-Missouri, et al., join in the request to stay the mandate. There is good cause to stay the mandate because the parties seek to maintain the status quo pending any subsequent petition for rehearing or certiorari.

In accordance with Tenth Circuit Rule 41.1(B), Defendant-Appellant further states that a stay of the mandate should be granted because there is a substantial possibility that a petition for writ of certiorari would be granted. In particular, there is a split of authority among the Courts of Appeals on the question whether the Medicaid Act's free-choice-of-provider provision creates a federal right enforceable under Section 1983. *See* Op. at 72 (Bacharach, J., dissenting); *see also Does v. Gillespie*, 867 F.3d 1034, 1042-43 (8th Cir. 2017); *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862, 460-61 (5th Cir. 2017).

Dated: March 5, 2018

Respectfully submitted,

/s/ Darian P. Dernovish

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CERTIFICATE REGARDING PRIVACY REDACTIONS

I certify that all required privacy redactions have been made as required by Tenth Circuit Rule 25.5

Dated: March 5, 2018

/s/ Darian P. Dernovish
Counsel of Record for Appellant

CERTIFICATE REGARDING PAPER COPIES

I certify that I am submitting to the Clerk of the Court four paper copies of this motion and that the submitted copies are identical to the version submitted electronically.

Dated: March 5, 2018

/s/ Darian P. Dernovish
Counsel of Record for Appellant

CERTIFICATE REGARDING VIRUS SCANNING

I certify that the electronic submission of this motion was scanned for viruses with the most recent version of a commercial virus scanning program, and is free of viruses.

Dated: March 5, 2018

/s/ Darian P. Dernovish
Counsel of Record for Appellant

