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Via CM/ECF

Mr. Lyle W. Cayce, Clerk
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: No. 17-50282; *Planned Parenthood of Greater Texas Family Planning & Preventative Health Servs., Inc., et al., v. Phillips, et al.*

Dear Mr. Cayce:

This letter responds to plaintiffs' Rule 28(j) letter of October 19.

Plaintiffs already alerted this Court to the Fourth Circuit's *Baker* decision on November 4, 2019. Texas responded three days later, on November 7, demonstrating that *Baker* is both inapposite and wrong. In particular, unlike Texas, South Carolina did not determine that Planned Parenthood was unqualified to participate in Medicaid on the basis of medical and ethical violations. Moreover, the Fourth Circuit based its opinion largely on *Blessing v. Freestone*, 520 U.S. 329 (1997), which reflects an outdated understanding of the law. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 282-84 (2002). The Supreme Court's denial of certiorari in *Baker* changes nothing, since "denial of certiorari does not signify that the Court necessarily agrees with the decision (much less the opinion) below." *Kennedy v. Bremerton Sch. Dist.*, 139 S. Ct. 634, 635 (2019) (Alito, J., joined by Thomas, Gorsuch, and Kavanaugh, JJ., respecting the denial of certiorari).

The Court should thus disregard the Fourth Circuit's decision and conclude, consistent with the Eighth Circuit, *Does v. Gillespie*, 867 F.3d 1034 (8th Cir. 2017),

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that the injunction below is unlawful. That injunction has been in place now for over three-and-a-half years. Texas should not be required to endure it any longer.

Respectfully submitted.

/s/ Kyle D. Hawkins
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Counsel of Record for Appellants

cc: All counsel of record (via CM/ECF)