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September 29, 2021

Patricia S. Connor
Clerk of Court
United States Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219

Re: *Planned Parenthood S. Atl. v. Kerr*, 4th Cir. No. 21-1043

Dear Ms. Connor:

I write to respond to a Rule 28(j) letter (Dkt. 56) advising the Court of the vacatur order in *Hirschfeld v. ATF*, 2021 WL 4301564 (4th Cir. Sept. 22, 2021).

Hirschfeld does not support vacatur here. First and most fundamentally, unlike *Hirschfeld*, this case is not moot, because Plaintiff Julie Edwards still is a Medicaid beneficiary who intends to continue receiving health care from Planned Parenthood. Dkt. 48-2. Ms. Edwards filed a supplemental declaration (Dkt. 48-3) re-attesting to those facts. Thus, she has an ongoing interest in challenging Planned Parenthood's termination from Medicaid participation. Dkt. 48-2 at 7-11.

Second, even if the case were moot, *Hirschfeld* does not support vacatur in this case. The Court in *Hirschfeld* applied *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), to vacate its opinion and the district-court opinion when the case became moot after this Court issued its opinion but before it issued the mandate. 2021 WL 4301564, at *1. In *Hirschfeld*, neither party was at fault for the case's mootness, and the public interest favored vacatur. *Id.* at *2-3.

Hirschfeld is inapposite for many reasons. Most notably, the state is seeking to vacate a prior published decision of this Court affirming a preliminary injunction. In neither *Hirschfeld* nor *Munsingwear* did the court vacate an opinion from a prior appeal. Both were about undoing the decisions in the *current* case, so that parties whose appeals are "frustrated by the vagaries of circumstance" are not bound by adverse judgments. Dkt. 48-2 at 11 (quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994)). Further, *Munsingwear's* concern about forcing litigants to acquiesce in adverse judgments does not apply to preliminary injunctions, which "become[] moot when the trial court enters a permanent injunction." *Id.* at 11-

12 (quoting *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund*, 527 U.S. 308, 314 (1999)).

Thus, the case is not moot, and even if it were, there would be no basis for vacating this Court's published opinion from a prior appeal.

Thank you for your consideration of this additional material.

Respectfully submitted,

/s/ Nicole A. Saharsky

Nicole A. Saharsky

Counsel for Plaintiffs-Appellees

cc: Counsel of record (via ECF)