

Case No. 21-4235

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STATE OF OHIO, *et al.*,

Plaintiffs-Appellants,

v.

XAVIER BECERRA, *et al.*,

Defendants-Appellees.

On Appeal From the United States District Court
For the Southern District of Ohio

**COMBINED MOTION OF THE NATIONAL FAMILY PLANNING
& REPRODUCTIVE HEALTH ASSOCIATION TO FILE BRIEF
AS *AMICUS CURIAE* OPPOSING INJUNCTION PENDING
APPEAL AND TO FILE OVERSIZED BRIEF**

Robin Summers
NATIONAL FAMILY
PLANNING & REPRODUCTIVE
HEALTH ASSOCIATION
1025 Vermont Avenue NW
Suite 800
Washington, DC 20005
T: 202-293-3114
rsummers@nfprha.org

Margaret M. Dotzel
Catherine S. Duval
Casey Trombley-Shapiro Jonas
Alyssa M. Howard
ZUCKERMAN SPAEDER LLP
1800 M Street NW, Suite 1000
Washington, DC 20036
T: 202-778-1800
mdotzel@zuckerman.com
cduval@zuckerman.com
cjonas@zuckerman.com
ahoward@zuckerman.com
*Counsel for National Family
Planning & Reproductive Health
Association*

The National Family Planning & Reproductive Health Association (NFPRHA) respectfully seeks the Court’s leave (1) to file a brief as *amicus curiae* opposing Appellants’ motion for an injunction pending appeal and (2) to file an oversized brief of 3,371 words.

1. Unopposed Motion for Leave to File Brief as *Amicus Curiae*

Pursuant to Federal Rule of Appellate Procedure 29(a), NFPRHA respectfully moves this Court for leave to file the accompanying *amicus* brief opposing Appellants’ motion for an injunction pending appeal. Counsel for NFPRHA has conferred with counsel for the parties and has been informed that Appellees consent to and Appellants do not oppose the motion.

Traditionally, *amicus curiae* “assist[s] in cases of general public interest by supplementing the efforts of private counsel and by drawing the court’s attention to law that might otherwise escape consideration[.]”¹ Under the Federal Rules of Appellate Procedure, a motion for leave to file an *amicus* brief must establish “the movant’s interest” and “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.”² Motions for leave to

¹ *Shoemaker v. City of Howell*, 795 F.3d 553, 562 (6th Cir. 2015).

² Fed. R. App. P. 29(a)(3).

file *amicus* briefs are appropriately granted “unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted.”³

NFPRHA has a strong interest in the issues before the Court because NFPRHA’s members will be directly affected by the Court’s ruling on Appellants’ motion.⁴ Pending their appeal of the district court’s denial of their motion for a preliminary injunction, Appellants ask this Court to enjoin regulations Appellees recently issued to govern the Title X program, which is the nation’s only dedicated federal funding for family planning. NFPRHA is a national, nonprofit membership organization dedicated to promoting and supporting the work of family planning providers and administrators, especially those in the safety net, to provide high-quality, client-centered, affordable family planning services. NFPRHA represents nearly 1,000 members—including more than 900 health care organizations—in all 50 states, the District of Columbia, and the territories. NFPRHA’s members operate or administer thousands of health centers, many of which are or recently have been Title X grantees or subrecipients of Title X grants, serving millions of patients a year. NFPRHA’s organizational members include state, county, and local health departments; private, non-profit family planning organizations; family planning councils; hospital-based clinics; and federally qualified health centers.

³ *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002).

⁴ *See* Fed. R. App. P. 29(a)(3)(A).

Further, NFPRHA's proposed *amicus* brief is desirable and relevant to the disposition of Appellants' motion because it provides the Court with unique insights and specific information that can assist the Court and which the parties cannot otherwise provide.⁵ As the leading national advocacy organization for family planning providers since 1971, NFPRHA seeks to provide the Court with additional facts and perspective about (1) the history and administration of the Title X program; (2) the role of Title X and its providers in ensuring patient access to high-quality, affordable, voluntary, client-centered family planning services; (3) how the Department of Health and Human Services' (HHS's) recent regulatory changes are necessary to restore the Title X network nationwide; and (4) why an injunction would harm public health and curtail patient access to family planning services.

2. Unopposed Motion for Leave to File Oversized Brief

NFPRHA also respectfully moves this Court for leave to file an oversized brief of 3,371 words.⁶ Counsel for NFPRHA has conferred with counsel for the parties regarding this motion, and neither party opposes the motion.

NFPRHA's proposed *amicus* brief will enhance the Court's understanding of Title X's role in funding high-quality family planning services through its

⁵ See Fed. R. App. P. 29(a)(3)(B).

⁶ See Fed. R. App. P. 29(a)(5). The standard word-limit for an *amicus* brief opposing Appellants' motion would be 2,600 words. See *id.*; Fed. R. App. P. 27(d)(2)(A).

descriptions of the effects of HHS’s regulatory changes on the ground as experienced by Title X-funded providers and their patients. In particular, NFPRHA details in its proposed *amicus* brief the devastating effects of Title X regulations enacted in 2019,⁷ as well as HHS’s inability to fill huge gaps in Title X coverage around the country before HHS implemented new regulations in 2021⁸—the regulations Appellants seek to enjoin. Accordingly, NFPRHA respectfully requests that the Court grant a small expansion of fewer than 1,000 words for its proposed *amicus* brief.

⁷ See Compliance With Statutory Program Integrity Requirements, 84 Fed. Reg. 7714, 7722–77 (Mar. 4, 2019).

⁸ See Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56,144 (Oct. 7, 2021).

CONCLUSION

For the foregoing reasons, NFPRHA respectfully requests that the Court (1) grant NFPRHA's motion for leave to file a brief as *amicus curiae* opposing Appellants' motion for an injunction pending appeal and (2) grant NFPRHA's motion for leave to file an oversized brief of 3,371 words.

Dated: January 21, 2022

Respectfully submitted,

/s Robin Summers

Robin Summers
NATIONAL FAMILY PLANNING &
REPRODUCTIVE HEALTH ASSOCIATION
1025 Vermont Avenue NW, Suite 800
Washington, DC 20005
Tel: (202) 293-3114
rsummers@nfprha.org

/s Margaret M. Dotzel

Margaret M. Dotzel
Catherine S. Duval
Casey Trombley-Shapiro Jonas
Alyssa M. Howard
ZUCKERMAN SPAEDER LLP
1800 M Street NW, Suite 1000
Washington, DC 20036
Tel: (202) 778-1800
Fax: (202) 822-8106
mdotzel@zuckerman.com
cduval@zuckerman.com
cjonas@zuckerman.com
ahoward@zuckerman.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served on all parties via their counsel of record through the Court's ECF system this 21st day of January 2022.

/s Alyssa M. Howard
Alyssa M. Howard