

United States Court of Appeals
FIFTH CIRCUIT
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March 03, 2022

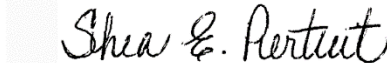
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-30734 State of Louisiana v. Becerra
USDC No. 3:21-CV-3970

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Shea E. Pertuit, Deputy Clerk
504-310-7666

Mr. Drew C. Ensign
Mr. Jimmy Roy Faircloth Jr.
Mr. Andrew Ferguson
Mr. Thomas Molnar Fisher
Mr. Clark Lassiter Hildabrand
Mr. Thomas T. Hydrick
Ms. Alisa Beth Klein
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Ms. Mary Katherine Price
Ms. Lindsay Sara See
Mr. Brandon James Smith
Mr. Joseph Scott St. John

United States Court of Appeals
for the Fifth Circuit

No. 21-30734

STATE OF LOUISIANA; STATE OF MONTANA; STATE OF
ARIZONA; STATE OF ALABAMA; STATE OF GEORGIA; STATE OF
IDAHO; STATE OF INDIANA; STATE OF MISSISSIPPI; STATE OF
OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF UTAH;
STATE OF WEST VIRGINIA; COMMONWEALTH OF KENTUCKY;
STATE OF OHIO,

Plaintiffs—Appellees,

versus

XAVIER BECERRA, SECRETARY, U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES; CHIQUITA BROOKS-LASURE;
CENTERS FOR MEDICARE AND MEDICAID SERVICES,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:21-CV-3970

ON PETITION FOR REHEARING EN BANC
(Order denying Rule 12.1 motion: Revised Feb. 14, 2022, 5 Cir.)

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges*.

PER CURIAM:

The court having been polled at the request of one of its members, and a majority of the judges who are in regular active service and not disqualified having voted against rehearing (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

In the en banc poll, seven judges voted in favor of rehearing (Judges Jones, Smith, Elrod, Ho, Duncan, Engelhardt, and Oldham), and ten judges voted against rehearing (Chief Judge Owen, and Judges Stewart, Dennis, Southwick, Haynes, Graves, Higginson, Costa, Willett, and Wilson).

Rehearing en banc having been denied, this panel retains authority over rehearing. The panel's order challenged on rehearing had denied the Plaintiffs' motion to authorize an amendment to the complaint and permit proceedings on the amendment in district court while this appeal is pending. We applied Federal Rule of Appellate Procedure 12.1, which allows us to remand for proceedings that the district court does not have authority to conduct during the appeal. Our February 14, 2022 order explained that we should not authorize any proceedings in the district court that have the potential to alter the status of the appeal. *See Wooten v. Roach*, 964 F.3d 395, 403 (5th Cir. 2020). We considered at the time of our original order and continue to find there is a risk that proceedings on the proposed amendment would alter the appeal. Therefore, rehearing by the panel is also DENIED.

We close with a few observations. Briefing on the appeal is nearing completion. The Plaintiffs-Appellees have just filed their brief in which they agree the preliminary injunction should be vacated. In light of that position, we urge Defendants-Appellants to file their reply brief as soon as possible and not wait until the briefing schedule's deadline. When briefing is completed, a merits panel will be assigned this case. As is always true, a merits panel may clarify, limit, or even overturn rulings by a motions panel. *See Mattern v. Eastman Kodak Co.*, 104 F.3d 702, 704 (5th Cir. 1997).