




**WARNING: AT LEAST ONE DOCUMENT COULD NOT BE INCLUDED!**  
**You were not billed for these documents.**  
**Please see below.**

Selected docket entries for case 17-50282

Generated: 05/18/2022 12:22:45

Filed	Document Description	Page	Docket Text
03/14/2019			MOTION by Not Party Alliance Defending Freedom to file amicus brief [9007011-2]. [17-50282]
	 Motion Filed on Behalf of Party	2	REVIEWED AND/OR EDITED – The original text prior to review appeared as follows: MOTION filed by Not Party Alliance Defending Freedom to file amicus brief [9007011-2]. [17-50282] (RAJ)
	 Unfiled Amicus Brief <b>DOCUMENT COULD NOT BE RETRIEVED!</b>		

**Case No. 17-50282**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

PLANNED PARENTHOOD OF GREATER TEXAS FAMILY PLANNING AND PREVENTATIVE  
HEALTH SERVICES, INC.; PLANNED PARENTHOOD SAN ANTONIO; PLANNED  
PARENTHOOD CAMERON COUNTY; PLANNED PARENTHOOD GULF COAST, INC.;  
PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER; JANE DOE #1; JANE DOE  
#2; JANE DOE #4; JANE DOE #7; JANE DOE #9; JANE DOE #10; JANE DOE #11;

*Plaintiffs-Appellees,*

v.

DR. COURTNEY PHILLIPS, IN HER OFFICIAL CAPACITY AS EXECUTIVE COMMISSIONER  
OF HHSC; SYLVIA HERNANDEZ KAUFFMAN, IN HER OFFICIAL CAPACITY AS  
INSPECTOR GENERAL OF HHSC,

*Defendants-Appellants.*

---

On Appeal from the United States District Court  
for the Western District of Texas, Austin Division  
No. 1:15-cv-01058

---

**MOTION FOR LEAVE TO FILE EN BANC BRIEF OF AMICUS CURIAE  
ALLIANCE DEFENDING FREEDOM IN SUPPORT OF APPELLANTS  
AND SUPPORTING REVERSAL OF THE DISTRICT COURT**

---

John J. Bursch  
ALLIANCE DEFENDING FREEDOM  
Michigan State Bar No. P57679  
440 First Street, N.W.  
Suite 600  
Washington, D.C. 20001  
(616) 450-4235  
jbursch@ADFlegal.org

Kristen K. Waggoner  
Kevin H. Theriot  
Denise M. Harle  
ALLIANCE DEFENDING FREEDOM  
15100 N. 90th Street  
Scottsdale, AZ 85260  
(480) 444-0020

*Attorneys for Amicus Curiae*

**Case No. 14-50196**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

PLANNED PARENTHOOD OF GREATER TEXAS FAMILY PLANNING AND PREVENTATIVE  
HEALTH SERVICES, INC.; PLANNED PARENTHOOD SAN ANTONIO; PLANNED  
PARENTHOOD CAMERON COUNTY; PLANNED PARENTHOOD GULF COAST, INC.;  
PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER; JANE DOE #1; JANE DOE  
#2; JANE DOE #4; JANE DOE #7; JANE DOE #9; JANE DOE #10; JANE DOE #11;

*Plaintiffs-Appellees,*

v.

DR. COURTNEY PHILLIPS, IN HER OFFICIAL CAPACITY AS EXECUTIVE COMMISSIONER  
OF HHSC; SYLVIA HERNANDEZ KAUFFMAN, IN HER OFFICIAL CAPACITY AS  
INSPECTOR GENERAL OF HHSC,

*Defendants-Appellants.*

---

**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

**APPELLANTS:**

- Dr. Courtney Phillips, in her official capacity as Executive Commissioner of HHSC
- Sylvia Hernandez Kauffman, in her official capacity as Inspector General of HHSC

APPELLANTS' ATTORNEYS:

- Ken Paxton
- Jeffrey C. Mateer
- Brantley D. Starr
- Scott A. Keller
- Kyle D. Hawkins
- James E. Davis
- Heather Gebelin Hacker
- Beth Klusmann
- Angela V. Colmenero
- Andrew B. Stephens
- Amanda J. Cochran-McCall
- Adam A. Biggs
- Marc E. Rietvelt
- Patrick K. Sweeten
- Shelley Dahlberg

APPELLEES:

- Planned Parenthood of Greater Texas Family Planning and Preventative Health Services, Inc.
- Planned Parenthood San Antonio
- Planned Parenthood Cameron County
- Planned Parenthood South Texas Surgical Center
- Planned Parenthood Gulf Coast, Inc.
- Jane Does # 1, 2, 4, 7, 9, 10, and 11

APPELLEES' ATTORNEYS:

- Jennifer Sandman
- Maithreyi Ratakonda
- Roger Evans
- Alice Clapman
- Richard Muniz
- Thomas H. Watkins
- Helene Krasnoff

## CERTIFICATE OF COMPLIANCE

The case number is 17-50282. The case is styled as *Planned Parenthood of Greater Texas Family Planning and Preventative Health Services, Inc. v. Phillips*.

1. The accompanying motion for leave to file complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 506 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2010 Times New Roman 14-point font.

Date: March 15, 2019

*s/ John Bursch*

---

Attorney Name

*Attorney for Amicus Curiae*

## **MOTION FOR LEAVE TO FILE**

Pursuant to Fed. R. App. P. 27 and by analogy to Fed. R. App. P. 29(a), Alliance Defending Freedom respectfully requests leave to file its *amicus curiae* brief in support of Defendants-Appellants on rehearing *en banc* in this litigation. The parties have consented to the filing of ADF's brief.

### **IDENTITY AND INTEREST OF *AMICUS CURIAE***

Alliance Defending Freedom is an alliance-building organization that advocates for the right of people to freely live out their faith. ADF is committed to advancing legal protection for all human life and safeguarding the dignity of human life at every stage. For these reasons, ADF has a direct interest in the issues before this Court.

### **AUTHORITY TO FILE ADF'S BRIEF**

Although Rule 29 does not expressly address *amicus curiae* briefs after a Court of Appeals has agreed to rehear a case *en banc*, the rule nonetheless can apply by analogy. *See* Fed. R. App. P. 29(a) Advisory Committee Note to 1998 Amendments. Rule 29 counsels for making the recitals required by Rule 29(b), namely the movant's interest and "the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of this case." Fed. R. App. P. 29(b). The Advisory Committee Note then quotes Sup. Ct. R. 37.1 to emphasize the value of *amicus* briefs that bring a court's attention to relevant matter not raised by the parties: "An *amicus curiae* brief which brings relevant matter to the

attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.” Fed. R. App. P. 29(a) Advisory Committee Note to 1998 Amendments (quoting Sup. Ct. R. 37.1). “Because the relevance of the matters asserted by an amicus is ordinarily the most compelling reason for granting leave to file, the Committee believes that it is helpful to explicitly require such a showing.” *Id.*

**ADF’S AMICUS CURIAE BRIEF WILL SERVE THE COURT’S  
RESOLUTION OF THE ISSUES RAISED**

This Court should grant ADF’s motion for leave to file its *amicus* brief because the brief will aid the Court by addressing the following issues:

- The broader context of a systemic pattern of illegal conduct by Planned Parenthood nationwide, as evidenced by numerous *qui tam* actions and individual state audits over the past several years. The brief analyzes the depth and breadth of Planned Parenthood’s documented bad acts — including extensively documented noncompliance with Medicaid — and how those may inform Texas’s decision to disqualify Planned Parenthood as a provider.
- Federal law governing mandatory termination of Medicaid providers upon termination by another state. The brief analyzes the application of federal requirements and how this Court’s overruling of *Planned Parenthood of Gulf Coast v. Gee*, 862 F.3d 445 (5th Cir. 2017), *cert.*

*denied*, 139 S. Ct. 408 (2018), would accordingly affect the outcome of this case.

### CONCLUSION

For these reasons, ADF respectfully submit that its brief will aid the Court's consideration of the issues presented here. This Court should grant leave to file the ADF *amicus curiae* brief.

Respectfully submitted this the 15th day of March, 2019.

By: s/ John Bursch \_\_\_\_\_

John J. Bursch  
ALLIANCE DEFENDING FREEDOM  
Michigan State Bar No. P57679  
440 First Street, N.W.  
Suite 600  
Washington, D.C. 20001  
(616) 450-4235  
jbursch@ADFlegal.org

Kristen K. Waggoner  
Kevin H. Theriot  
Denise M. Harle  
ALLIANCE DEFENDING FREEDOM  
15100 N. 90th Street  
Scottsdale, AZ 85260  
(480) 444-0020



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 15, 2019, all parties listed on this certificate of service will receive a copy of the foregoing Motion for Leave of *Amicus Curiae* Alliance Defending Freedom filed electronically with the United States Court of Appeals for the Fifth Circuit, with notice of case activity to be generated and ECF notices to be sent electronically by the Clerk of the Court.

Dated: March 15, 2019

*s/ John Bursch*

---

Attorney Name

*Attorney for Amicus Curiae*