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VIA ECF

Lyle W. Cayce
Clerk of the Court
U.S. Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130

Re: ***United States of America, ex rel. Alex Doe, Relator v. Planned Parenthood Federation of America, Inc.*, No. 23-11184**

Dear Mr. Cayce:

Contrary to Relator's December 13, 2024 Letter, *Legacy Recovery Servs., L.L.C. v. City of Monroe*, 2024 WL 4689054 (5th Cir. Nov. 6, 2024), does not undermine the Court's jurisdiction over Appellant Planned Parenthood Federation of America's (PPFA's) appeal.

The district court in *Legacy Recovery* had granted the defendant's motion to dismiss as to some but not all claims, and the plaintiff sought immediate appellate review as to the dismissed claims. *See* 2024 WL 4689054, at *1. The Court dispatched that frivolous appeal in a short, unpublished per curiam opinion for many reasons, including the two Relator focuses on—*viz.*, that (i) the issues on appeal were not "completely separate from the merits" (as required for collateral-order jurisdiction) because "the issues resolved are interwoven with the issues left for disposition before the district court," and (ii) "the order … will be easily reviewable on appeal from a later final judgment without jeopardizing any important right of the appellants." *Id.* at *3-*4.

The question here, in contrast, is whether a *defendant's* assertion of attorney *immunity* is an immediately appealable collateral order. This Court has already held that it is. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341 (5th Cir. 2016). That is because, unlike the partial grant of a motion to dismiss, a denial of attorney immunity *is* "separate from the merits of the action," *id.* at 345, and *does* deprive the defendant of "an immunity from suit" as to claims implicating attorney conduct, *id.* at 346, which cannot be remedied after defendant has already been required to litigate those claims. *See id.* at 345-47; *but see* Letter at 1-2.

Relator also suggests that this Court lacks appellate jurisdiction over PPFA's attorney-immunity appeal because other, non-appealable claims remain to be tried in district court. Letter at 1. But the Supreme Court has expressly rejected that argument. *See Behrens v. Pelletier*, 516 U.S. 299, 312 (1996) ("when immunity with respect to [some] claims has been finally denied,

appeal must be available, and cannot be foreclosed by the mere addition of other claims [to which immunity does not apply] to the suit").

Sincerely,

/s/ Anton Metlitsky
Anton Metlitsky
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cc: Counsel to all parties