

# HACKERSTEPHENS<sup>LLP</sup>

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Lyle W. Cayce, Clerk  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130-3408

## Via ECF

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

Dear Mr. Cayce,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee submits new authority decided since oral argument on March 13, 2024 supporting Plaintiff-Appellee's position that this interlocutory appeal should be dismissed for lack of jurisdiction.

In *Legacy Recovery Servs., L.L.C. v. City of Monroe*, No. 24-30211, 2024 WL 4689054, at \*1 (5th Cir. Nov. 6, 2024), the appeal was dismissed for lack of jurisdiction because the order appealed from resolved issues "interwoven with the issues left for disposition before the district court." *Id.* at \*3. The same is true here. As explained in the briefing, aside from the fact that it is unclear whether attorney immunity even applies here since attorneys are not being sued, see MTD 13-15, MTD Reply 4-5, even if the Court agreed with PPFA in this appeal, it would not be immune to suit and must stand trial on every claim that survived summary judgment. See MTD 10-12, MTD Reply 8; Appellee Br. 44-46; see also *id.* at 36-43 (evidence showing PPFA involvement beyond litigation).

*Legacy* also noted that the district court's decision on the issues in the appeal was not "effectively unreviewable on appeal from a final judgment," because if the court of appeals agreed with the appellant, the remedy would be vacatur and a new trial, a "remedy [which] seems plainly adequate should petitioner's concerns of possible injury ultimately prove well founded." *Id.* (citation omitted). Likewise, if PPFA loses at trial and appeals from final judgment, if the court agrees that PPFA should not be

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liable for any actions to which attorney immunity applied, an adequate remedy would be a new trial if there was an insufficient remaining basis for the jury's verdict on liability.

When considering whether to permit interlocutory appeals under the narrow exception for collateral orders, "courts must balance 'the inconvenience and costs of piecemeal review' with 'the danger of denying justice by delay.'" *Id.* at \*4 (citation omitted). Here, there have been increased costs due to this interlocutory appeal *and* delay in trial, which had been scheduled for April 2024. *See* MTD at 6, 19-20.

Respectfully submitted.

/s/Heather Gebelin Hacker

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cc: All counsel of record via ECF