



ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

August 31, 2021

Scott S. Harris  
Clerk of the Supreme Court of the United States  
Supreme Court Building  
One First Street, N.E.  
Washington, DC 20543

**Re: No. 21-3, *Eric S. Schmitt, et al., v. Reproductive Health Services of Planned Parenthood of the St. Louis Region, et al.***

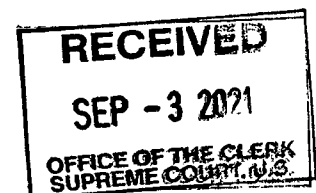
Dear Mr. Harris,

Petitioners Eric S. Schmitt, et al. ("Missouri") filed a petition for writ of certiorari in the above-captioned case, seeking review of a panel decision of the Eighth Circuit filed on June 9, 2021. The petition was docketed in this Court on July 2, 2021. On July 13, 2021, the U.S. Court of Appeals for the Eighth Circuit, acting *sua sponte*, vacated the panel decision and granted en banc consideration of the case. See July 13, 2021 Order, attached. On August 20, 2021, the Eighth Circuit scheduled oral argument before the en banc court to occur on September 21, 2021.

As Respondents noted in their August 5 letter to the Court, the Eighth Circuit's *sua sponte* order granting en banc review vacated the panel decision of which Missouri sought this Court's review. The vacatur of that panel decision does not deprive this Court of jurisdiction over Missouri's petition, because the filed petition may now be deemed a petition for certiorari before judgment. See 28 U.S.C. § 2101(e). In light of the Eighth Circuit's order, this Court may also defer consideration of the petition until the Eighth Circuit re-issues a judgment. See *Ally Fin. Inc. v. Haskins*, 141 S. Ct. 1235 (2021) (deferring consideration until disposition of pending case); see also Shapiro, et al., SUPREME COURT PRACTICE, Ch. 6.31(e) *Deferring Consideration of a Petition*, at 485 (10th ed. 2013). As Respondents noted in their August 5 letter, however, they do not consent to deferred consideration.

Petitioners will promptly advise the Court of any material changes, including any disposition by the en banc Eighth Circuit.

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Sincerely,

A handwritten signature in black ink, appearing to read 'D. John Sauer', written over a horizontal line.

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cc: Counsel for Respondents

Enclosure