

No. 19-1186

IN THE
Supreme Court of the United States

JOSHUA BAKER, in his official capacity as Director,
South Carolina Department of Health and Human
Services,

Petitioner,

v.

JULIE EDWARDS, on her behalf and on behalf of all
others similarly situated, et al.,

Respondents.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit*

**PETITIONER'S RESPONSE TO
RESPONDENTS' SUPPLEMENTAL BRIEF
REGARDING JURISDICTION**

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RULE 29.6 STATEMENT

The Rule 29.6 Statement in the petition remains accurate.

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RESPONSE TO SUPPLEMENTAL ARGUMENT REGARDING JURISDICTION

Respondents urge this Court to deny the petition as moot because the district court “soon will enter a permanent injunction.” Supp. Br. 1. But Petitioner has opposed Respondents’ request for a permanent injunction, and the district court has not yet taken any action. Accordingly, even “Respondents recognize that the dispute about the preliminary injunction is not yet moot.” Supp. Br. 5. The most appropriate course is for the Court to grant the petition and decide this case on the merits to avoid the needless waste of time and judicial resources relitigating a legal issue on which the Fourth Circuit has already opined.

1. In the district court, Respondents tendered a proposed order that would permanently enjoin Defendant from terminating Respondent Planned Parenthood from South Carolina’s Medicaid program. Petitioner objected to entry of that order and urged the district court to stay its hand until after this Court resolves the pending petition for certiorari and, if appropriate, issues a merits decision. As Petitioner explained to the district court, entering a permanent injunction will not provide any additional protection for Respondents; they are already protected by a preliminary injunction. Conversely, Respondents will use the entry of a permanent injunction to seek dismissal of the petition for certiorari—for now—and force the Fourth Circuit Court of Appeals to engage in unnecessary and duplicative proceedings.

The district court should stay its hand. The appellate “redo” that Respondents are trying to force would be an unnecessary multiplication of litigation

proceedings and a substantial waste of judicial resources. The only things that will be accomplished are to delay consideration of the petition by 18 months and to create unnecessary work for the Fourth Circuit. Given the lack of any benefit from entering an order of permanent injunction, and the significant and unnecessary burden on the Fourth Circuit, the most appropriate course is for the district court to stay the matter and delay entry of the permanent injunction until after this Court has disposed of the pending petition and issued a merits decision. Doing so would conserve judicial resources and prejudice no one.

2. Respondent Planned Parenthood's gamesmanship is unhelpful. Its brief in opposition to the petition was originally due April 29, 2020, but Planned Parenthood sought and received multiple extensions, thereby ensuring this Court could not consider the petition until after the summer recess. When Planned Parenthood finally filed its opposition brief, it argued that the Court should deny the petition because the case is interlocutory and if "the district court concluded that [Planned Parenthood's] claim fails on its merits, there would be no need to resolve the question presented here." Opp. Br. 24. Planned Parenthood then urged the district court to grant summary judgment and enter a permanent injunction for the same reasons the district court entered the preliminary injunction, and it uses the district court's anticipated action on the permanent injunction to claim mootness.

3. Until the district court enters a permanent injunction, the petition is not moot. There is a good likelihood the district court will wait to enter a

permanent injunction until this Court issues an order on the pending petition.

The petition presents two jurisdictionally significant questions involving substantial circuit conflict that will affect multiple pending and future matters across the country. There is no reason to delay this case further.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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OCTOBER 2020