

CENTER *for*
REPRODUCTIVE
RIGHTS

WASHINGTON, DC
1634 Eye Street, NW,
Suite 600
Washington, DC 20006
TEL. (202) 629-2681

reproductiverights.org

December 14, 2021

Hon. Scott S. Harris
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: Whole Woman's Health, et al., v. Jackson, et al.,
No. 21A220 (21-463)

Dear Mr. Harris,

After filing our reply in support of the above-captioned application, it came to petitioners' attention that in *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), cited on page 2 of the reply, this Court formally issued the copy of the opinion and judgment to the Second Circuit.¹ Consistent with this Court's decision in that case, the appellants then voluntarily dismissed the appeal, and the case was quickly returned to the district court. See Unopposed Mot. to Voluntarily Dismiss Appeal, No. 19-212 (2d Cir. Aug. 2, 2019), ECF No. 83.

Here, however, the opposition filed by respondents Carlton, Thomas, Tucker, and Young makes clear they will not dismiss their appeal if the case is returned to the Fifth Circuit, and instead will seek to have the state-law question already decided by this Court certified to the Supreme Court of Texas. For the reasons discussed in the application and the reply, that would be contrary to this Court's opinion, which expressly reviewed the district court's order, affirmed it in part and reversed it in part, and remanded for proceedings *consistent with* the opinion. Slip op. 4, 18.

¹ Because the dockets of the courts of appeals in *United States v. Booker*, 543 U.S. 220 (2005), and *Gratz v. Bollinger*, 539 U.S. 244 (2003)—also cited on page 2 of the reply—are unavailable electronically, petitioners cannot tell with certainty to which lower court the copies of the opinions and judgments were transmitted.

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Respectfully submitted,

/s/ Marc Hearron

Marc Hearron
Counsel of Record for Petitioners

cc: Judd Edward Stone II
Heather Gebelin Hacker
Jonathan F. Mitchell