

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

John Kelley, et al.

Plaintiffs,

v.

Xavier Becerra, et al.,

Defendants.

Case No. 4:20-cv-00283-O

NOTICE OF SUPPLEMENTAL AUTHORITY

Earlier today, the Fifth Circuit denied panel rehearing in *DeOtte v. Nevada*, No. No. 19-10754. It also denied rehearing en banc in a 9-8 vote. The Court's order is attached.

The Fifth Circuit's mandate will issue on August 31, 2022. When the mandate issues, it will remove any res judicata effect of the *DeOtte* litigation and allow the plaintiffs to renew their challenges to the Contraceptive Mandate under the Appointments Clause, the nondelegation doctrine, and RFRA. The Court had previously dismissed those claims on res judicata grounds in its order of February 25, 2021 (ECF No. 35). The plaintiffs respectfully ask the Court to allow them to seek summary judgment on these claims and permit the parties to submit supplemental briefing on this matter.

Respectfully submitted.

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Dated: August 23, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on August 23, 2022, I served this document through CM/ECF

upon:

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United States Court of Appeals
for the Fifth Circuit

No. 19-10754

RICHARD W. DEOTTE, *on behalf of* HIMSELF AND OTHERS
SIMILARLY SITUATED; YVETTE DEOTTE; JOHN KELLEY; ALISON
KELLEY; HOTZE HEALTH & WELLNESS CENTER; BRAIDWOOD
MANAGEMENT, INCORPORATED, *on behalf of* ITSELF AND OTHERS
SIMILARLY SITUATED,

Plaintiffs—Appellees,

versus

STATE OF NEVADA,

Movant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CV-825

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before HIGGINBOTHAM, SOUTHWICK, and ENGELHARDT, *Circuit
Judges.*

PER CURIAM:

The petition for panel rehearing is DENIED.

No. 19-10754

Additionally, the court having been polled at the request of one of the members of the court and a majority of the judges who are in active service not having vote in favor, the petition for rehearing en banc is DENIED. *See* FED. R. APP. P. 35; 5TH CIR. R. 35.

In the en banc poll, eight judges voted in favor of rehearing (Richman, Jones, Smith, Elrod, Haynes, Ho, Duncan, and Oldham), and nine voted against rehearing (Stewart, Dennis, Southwick, Graves, Higginson, Costa, Willett, Engelhardt, and Wilson).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 23, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-10754 DeOtte v. State of NV
USDC No. 4:18-CV-825

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: _____
Charles B. Whitney, Deputy Clerk
504-310-7679

Ms. Elizabeth N. Dewar
Mr. Charles William Fillmore
Mr. Hartson Dustin Fillmore III
Ms. Jessica Fuhrman
Ms. Crystal Johnson Geise
Ms. Susan Pearl Greenberg
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Mr. Richard Brian Katskee
Ms. Jamie A. Levitt
Ms. Melina Maria Meneguini Layerenza
Mr. Jonathan F. Mitchell
Ms. Karen S. Mitchell
Mr. Craig A. Newby
Mr. Bruce H. Schneider
Ms. Priscilla Joyce Smith
Mrs. Heidi Parry Stern
Ms. Catherine Weiss