

Request for Ruling

Given Defendants' recently filed Notice of Appeal, it is in all parties interests to expeditiously resolve Dr. Tudor's motion so that the Fifth Circuit may address all interrelated issues on appeal, including Dr. Tudor's Motion to intervene if it is denied.¹

Further, constitutional guarantees weigh heavily in favor of a prompt disposition of Dr. Tudor's motion. While district courts are generally afforded latitude in managing cases, due process imposes some limits. Indeed, the Fifth Circuit recognizes that where a party moves to intervene and merits motions are pending, intervention should be granted *before* briefing is completed on the merits motions so that the putative intervener has a meaningful opportunity to participate in the proceedings. *White v. Texas American Bank/Galleria, N.A.*, 958 F.2d 80 (5th Cir. 1992).

Additionally, judicial resources can be readily conserved if the Court reviews the facts and legal arguments presented in Dr. Tudor's motion and determines that it lacks jurisdiction over the parties to and issues in the Oklahoma Litigation and adjusts the Preliminary Injunction accordingly. Such a disposition would moot out Dr. Tudor's motion and thus conserve resources. Clear and binding Fifth Circuit precedent weighs heavily in favor of this approach. *See, e.g., Gregory-Portland Indep. Sch. Dist. v. Texas Ed. Agency*, 576 F.2d 81, 82–83 (5th Cir. 1978) (directing second district court to dissolve injunction and transfer case back to first district court which still had jurisdiction over the parties); *West Gulf Maritime Ass'n v. ILA Deep Sea Local 24, S. Atlantic and Gulf Distr. of ILA, AFL-CIO*, 751 F.2d 721, 731 (5th Cir. 1985) (holding that second district court's issuance of preliminary injunction in a purported effort to "preserve the

¹ See September 30, 2016 Hearing Transcript at 41 (The Court: "So even if it is appealed in the next week or two, why not finish the case and while that is already up there I work hard to get the case finish[ed] so that however I rule the whole thing gets up there are the same time").

status quo” intruded on decisional authority of first district court which still had jurisdiction over the parties and issues); *id.* at 732 (vacating preliminary injunction and remanding for entry of stay, transfer, or dismissal). *See also Ceres Gulf v. Cooper*, 957 F.2d 1199 (5th Cir. 1992) (reversing district court’s denial of intervention motion and directing the court to dismiss case for lack of jurisdiction).

Conclusion

For all the foregoing reasons, Dr. Tudor respectfully requests that this Court immediately rule on her pending Motion to Intervene and Join Claim.

Dated: October 27, 2016

Respectfully submitted,

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)
Admitted *Pro Hac Vice*
Transgender Legal Defense and Education
Fund, Inc.
20 West 20th Street, Suite 705
New York, NY 10011
949-291-3185
Fax: 646-930-5654
eyoung@transgenderlegal.org

Marie E. Galindo (TX Bar No. 00796592)
Law Office of Marie Galindo
1601 Broadway Street
Lubbock, TX 79401
432-366-8300
Facsimile: 806-744-5411
megalindo@thegalindolawfirm.com

ATTORNEYS FOR DR. RACHEL TUDOR

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will serve all counsel of record.

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)
Admitted *Pro Hac Vice*
Transgender Legal Defense and Education
Fund, Inc.
20 West 20th Street, Suite 705
New York, NY 10011
949-291-3185
Facsimile: 646-930-5654
eyoung@transgenderlegal.org