

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Access Independent Health Services, Inc.,
d/b/a Red River Women's Clinic, on behalf
of itself and its patients, and Kathryn L.
Eggleston, M.D., on behalf of herself and her
patients,

Plaintiffs/Appellees,

vs.

Drew H. Wrigley, in his official capacity as
Attorney General for the State of North
Dakota; Birch P. Burdick, in his official
capacity as the State Attorney for Cass
County,

Defendants/Appellants.

NOTICE OF APPEAL

Supreme Ct. No. _____

District Ct. No. 08-2022-CV-01608

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[¶1] YOU ARE HEREBY NOTIFIED that State Defendant/Appellant, Drew H. Wrigley, in his official capacity as Attorney General of North Dakota, ("Wrigley" or the "State Defendant/Appellant"), hereby appeals, pursuant to the North Dakota Rules of Appellate Procedure, to the North Dakota Supreme Court from the Burleigh County

District Court’s Order on Plaintiffs’ Motion for Preliminary Injunction, dated August 25, 2022. (R95).

[¶2] The Plaintiffs are suing the Attorney General because they argue N.D.C.C. § 12.1-31-12 violates a woman’s fundamental right to an abortion protected by the North Dakota Constitution, because Section 12.1-31-12 makes the performance of an abortion by anyone, other than the pregnant female upon whom the abortion is performed, a class C felony. Section 12.1-31-12, N.D.C.C., was passed by the Legislature in 2007, but only recently certified as effective by Wrigley after the United States Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022).¹

[¶3] The District Court granted the Plaintiffs’ Motion for Preliminary Injunction and enjoined N.D.C.C. § 12.1-31-12, but the Court declined to consider “substantial probability of succeeding on the merits,” the first factor courts use when evaluating a motion for preliminary injunction.(R95:3-4:¶7). The District Court abused its discretion by not considering this factor and granting the Plaintiffs’ Motion.

PRELIMINARY STATEMENT OF THE ISSUES

[¶4] In accordance with N.D.R.App.P. 3(c)(4), the State Defendant/Appellant submits the following preliminary statement of issues to be raised:

- (a) Whether the District Court abused its discretion by enjoining N.D.C.C. § 12.1-31-12 without considering and expressly evaluating “substantial probability of succeeding on the merits,” the first factor used to evaluate a motion for preliminary injunction; and

¹ The Legislature included a delayed effective date when it enacted N.D.C.C. § 12.1-31-12 in 2007. 2007 N.D. Sess. Laws ch. 132, § 1. The delayed effective date is commonly referred to as the “trigger language”.

- (b) Whether the District Court abused its discretion by not considering the “substantial probability of succeeding on the merits” factor and denying the Plaintiffs’ motion because abortion is not a fundamental right under the North Dakota State Constitution.

Dated this 7th day of September, 2022.

State of North Dakota
Drew H. Wrigley
Attorney General

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CERTIFICATE OF SERVICE

Supreme Ct. No. _____

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[¶1] I hereby certify that on September 7, 2022, the following document: **NOTICE OF APPEAL** was filed electronically with the Clerk of Supreme Court and served upon Plaintiffs/Appellees, Access Independent Health Services, Inc., d/b/a Red River Women's Clinic, on behalf of itself and its patients, and Kathryn L. Eggelston, M.D. on behalf of herself and her patients, by and through their attorneys at the following:

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State of North Dakota
Drew H. Wrigley
Attorney General

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