

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER

Supreme Court No. 20220260
Burleigh Co. Court No. 2022-CV-01608

**Drew H. Wrigley, in his official capacity as
Attorney General for the State of North
Dakota;**

Petitioner

v.

**The Honorable Bruce A. Romanick, Judge of
District Court, South Central Judicial
District; 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; and Birch P. Burdick, in his official
capacity as the State Attorney for Cass
County,**

Respondents

[¶1] On September 7, 2022, Drew H. Wrigley, in his official capacity as Attorney General for the State of North Dakota, filed a notice of appeal from an Order on Plaintiff's Motion for Preliminary Injunction entered August 25, 2022. On September 16, 2022, the Court advised Wrigley that by September 20, 2022, he must either advise whether he will attempt to obtain 54(b) certification or submit a written response regarding this Court's supervisory jurisdiction. On September 20, 2022, Wrigley filed a response in which he requested this Court exercise its supervisory jurisdiction. On September 28, 2022, this Court issued an order concluding the Order on Plaintiff's Motion for Preliminary Injunction was not appealable and gave the Petitioner until October 10, 2022, to comply with N.D.R.App.P. 21 and all other applicable Rules of Appellate Procedure to seek a writ.

[¶2] On October 10, 2022, Petitioner filed a petition for a supervisory writ arguing, in part, that the district court did not address the substantial probability of succeeding on the merits factor.

[¶3] A district court's discretion to grant or deny a preliminary injunction is based upon the following factors: (1) substantial probability of succeeding on the merits; (2) irreparable injury; (3) harm to other interested parties; and (4) effect on the public interest. *See Vorachek v. Citizens State Bank of Lankin*, 461 N.W.2d 580, 585 (citing *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981)). In its

order dated August 25, 2022 granting a preliminary injunction, the district court stated it “makes no findings towards the substantial probability of succeeding on the merits prong and instead, reserves such analysis for the proper time, on a motion for summary judgment or trial.”

[¶4] The Court considered the matter, and

[¶5] ORDERED, the petition is **GRANTED IN PART**. The district court is directed to determine the substantial probability of succeeding on the merits and then to determine whether the injunction remains appropriate based on all the factors. The district court is directed to enter a decision and provide it to this Court by 12 p.m. on October 17, 2022.

[¶6] The Supreme Court of the State of North Dakota convened this 11th day of October, 2022, with the Honorable Jon J. Jensen, Chief Justice, and the Honorable Gerald W. VandeWalle, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, and the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

/s/ Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court