

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,

v.

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.

Supreme Ct. No. 20220260

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

**APPEAL FROM THE AUGUST 25, 2022, ORDER OF THE DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT
HONORABLE BRUCE A. ROMANICK**

**RESPONSE TO NORTH DAKOTA SUPREME COURT'S
JURISDICTIONAL QUESTION**

State of North Dakota
Drew H. Wrigley
Attorney General

By: Matthew A. Sagsveen
Solicitor General
State Bar ID No. 05613
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Email masagsve@nd.gov

By: Courtney R. Titus
Assistant Attorney General
State Bar ID No. 08810
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Email ctitus@nd.gov

Attorneys for State Defendant/Appellant.

¶1 On September 16, 2022, this Court submitted an email to Drew H. Wrigley, in his official capacity as Attorney General of North Dakota, (“Wrigley”), asking him to respond to the following:

The Court has directed that the Appellant either request the case be remanded to the district court to seek Rule 54(b) certification or submit a written explanation as to why this Court should exercise its supervisory jurisdiction to review this matter on the merits.

Wrigley hereby requests that the Court exercise its supervisory jurisdiction to review this matter on the merits. Wrigley is seeking a determination that the district court abused its discretion by entering a preliminary injunction against the operation of N.D.C.C. § 12.1-31-12 and that the injunction should be reversed (or vacated) and remanded for further proceedings with the Court’s opinion reversing (or vacating) the injunction.

¶2 On August 25, 2022, the district court issued an order for preliminary injunction enjoining Section 12.1-31-12. (R95). An order granting an injunction may be carried to the Supreme Court under N.D.C.C. § 28-27-02(3). This Court has required compliance with N.D.R.Civ.P 54(b) when the injunctive features of an interlocutory order are incidental and serve no active purpose. *Fargo Women’s Health Org., Inc. v. Lambs of Christ*, 488 N.W.2d 401, 405-06 (N.D. 1992); *see also Eberts v. Billings Cnty. Bd. of Comm’rs*, 2005 ND 85, ¶ 5, 695 N.W.2d 691 (conducting a review of a temporary injunction without a Rule 54(b) certification because the quick take condemnation procedure enjoined by the court had significant constitutional underpinnings for governmental entities). This Court, however, has exercised its supervisory jurisdiction and reviewed interlocutory orders without a Rule 54(b) certification when interim relief, or the issuance of an injunction, affects fundamental interests of the litigants. *Black Gold*

OilField Servs., LLC v. City of Williston, 2016 ND 30, ¶ 10, 875 N.W.2d 515 (citing *Vorachek v. Citizens State Bank*, 461 N.W.2d 580, 584 (N.D. 1990)).

[¶3] Wrigley requests that the Court exercise its supervisory jurisdiction to review the district court's interlocutory Order on Plaintiffs' Motion for Preliminary Injunction. (R95). The district court's order directly and actively grants the relief requested by Plaintiffs, albeit in an interim order, and the injunction affects the Wrigley's fundamental interests in enforcing laws and the fundamental interests of the people of the State of North Dakota expressed through their Legislature.

[¶4] The district court's order directly enjoins Section 12.1-31-12, it is not incidental, and it serves an active purpose. Frankly, any decision to enjoin the operation of state law is direct rather than incidental and serves an active purpose. In addition, the district court's order directly affects Wrigley in his capacity as Attorney General, because he has a statutory duty to appear and defend all actions and proceedings against the State of North Dakota, N.D.C.C. § 54-12-01(1), and he is sworn to support the North Dakota State Constitution ("State Constitution"). *N.D. Legis. Assembly v. Burgum*, 2018 ND 189, ¶ 39, 916 N.W.2d 83; N.D. Const. art. XI, § 4.

[¶5] The district court's order enjoining Section 12.1-31-12 also affects the fundamental interests of Wrigley in his capacity as Attorney General and the people of North Dakota expressed through their elected representatives in the North Dakota Legislature. The preliminary injunction effects the fundamental interest of Wrigley and the people of the State of North Dakota in protecting fetal life through enforcement of Section 12.1-32-12. The people of the State of North Dakota, through laws passed by elected representatives in the Legislature, have expressed a profound respect for human life and an interest in

protecting fetal life. Wrigley has a fundamental interest in defending and upholding the laws of the State of North Dakota that are passed by the people's elected representatives.

[¶6] These fundamental interests are impacted where the district court enjoined Section 12.1-31-12, but expressly recognized the North Dakota Supreme Court has not declared that a right to abortion exists under the State Constitution, (R95:4:¶10), and bypassed the required analysis of substantial likelihood of success on the merits involving the interpretation of the State Constitution. An injunction of a state law, without any legal support, clearly and fundamentally affects the interests of the Wrigley and the people of the State of North Dakota and challenges the separation of powers between the three coequal branches of government in North Dakota.

[¶7] Wrigley respectfully requests that the Court exercise its supervisory jurisdiction and consider the issues raised by Wrigley on the merits.

Dated this 20th day of September, 2022.

State of North Dakota
Drew H. Wrigley
Attorney General

By: /s/ Matthew A. Sagsveen
Matthew A. Sagsveen
Solicitor General
State Bar ID No. 05613
Email masagsve@nd.gov

/s/ Courtney R. Titus
Courtney R. Titus
Assistant Attorney General
State Bar ID No. 08810
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Email ctitus@nd.gov

Attorneys for State Defendant/Appellant.

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.

CERTIFICATE OF SERVICE

Supreme Ct. No. 20220260

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

[¶1] I hereby certify that on September 20, 2022, the following document: **RESPONSE TO NORTH DAKOTA SUPREME COURT'S JURISDICTIONAL QUESTION** was filed electronically with the Clerk of Supreme Court through the North Dakota Supreme Court E-Filing Portal and was served electronically through the North Dakota Supreme Court E-Filing Portal 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. Eggleston, M.D. on behalf of herself and her patients, by and through their attorneys as follows:

Thomas A. Dickson at tdicksonlaw.com;
Lauren Bernstein at Lauren.Bernstein@weil.com;
Naz Akyol at Naz.Akyol@weil.com;
Luna Barrington at Luna.Barrington@weil.com;
Alexandra Blankman at Alex.Blankman@weil.com;
Cassandra D'Alesandro at Casey.Dalesandro@weil.com;
Liz Grefrath at Liz.Grefrath@weil.com;
Lauren Kelly at Lauren.Kelly@weil.com;
Todd Larson at Todd.Larson@weil.com;
Colin McGrath at Colin.McGrath@weil.com;

