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Daniel L. Gaustad
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May 13, 2014

VIA FEDERAL EXPRESS
Tracking No. 7988 4628 9127

Attn: Rob Ansley
Clerk of Court
U.S. District Court
220 East Rosser Avenue
Bismarck, ND 58505

Re: MKB Management Corp v. State of North Dakota, et al.
Case No. 1:13-CV-00071
Our File No. 11427.001

Dear Mr. Ansley:

In accordance with your telephone conversation with my paralegal, Illa Engel, today we are enclosing the following original documents:

- 1) Notice of Appeal; and
- 2) Certificate of Service.

Also enclosed is our check in the amount of \$505.00 in payment of the filing fee. Please file these documents and serve through the ECF system.

Thank you, and if you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,


Daniel L. Gaustad

IE
Encls.

cc Rebecca S. Thiem (w/encls.) via Fed Ex Tracking No. 7988 4694 2312
Janet Crepps, David Brown (w/encls.) via Fed Ex Tracking No. 7988 4699 1365
Thomas A. Dickson (w/encls.) via Fed Ex Tracking No. 7988 4702 2713
Scott K. Porsborg (w/encls.) via Fed Ex Tracking No. 7988 4704 3722
Doug Bahr (w/encls.) via Fed Ex Tracking No. 7988 4721 4217

**IN THE UNITED STATES DISTRICT FOR THE
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

MKB MANAGEMENT CORP, d/b/a RED
RIVER WOMEN'S CLINIC, and KATHRYN
L. EGGELSTON, M.D.,

Plaintiffs/Appellees,

-vs-

WAYNE STENEHJEM, in his official
capacity as Attorney General for the State of
North Dakota; et al.,

Defendants/Appellants.

Civil No. 1:13-CV-071

NOTICE OF APPEAL

Notice is hereby given the Defendants, Wayne Stenehjem, Attorney General, Larry Johnson, M.D., Robert Tanous, D.O., Kate Larson, P.A.C., Norman Byers, M.D., Cory Miller, M.D., Kayleen Wardner, Gaylord Kavlie, M.D., Kent Martin, M.D., Kent Hoerauf, M.D., Burt Riskedahl, Jonathan Haug, M.D., Genevieve Goven, M.D., Robert J. Olson, M.D. (hereinafter collectively referred to as "State Defendants"), hereby appeal to the United States Court of Appeals for the Eighth Circuit from the **Order Granting Plaintiffs' Motion for Summary Judgment** (District Court Doc. 110) and **Judgment in a Civil Case** (District Court Doc. 111) filed on April 16, 2014 granting Plaintiffs', MKB Management Corp, d/b/a Red River Women's Clinic, and Kathryn L. Eggelston, M.D., motion for summary judgment which permanently enjoins the implementation of House Bill 1456. The State Defendants also hereby appeal to the United States Court of Appeals for the Eighth Circuit from the **Order Denying Appeal from Magistrate Judge's Order** (District Court Doc. 88), filed on January 28, 2014, which precluded the State Defendants a full and fair opportunity to conduct the necessary discovery to respond to the Plaintiffs/Appellees' claims in this case and their motion for summary judgment.

STATEMENT OF ISSUES¹

A. Underpinnings of holdings in *Roe v. Wade* and *Casey* are no longer valid warranting that the holdings of these decisions be overturned

1. Whether North Dakota House Bill 1456, codified at N.D.C.C. §§14-02.1-05.1, 14-02.1-05.2 and 43-17-31(29), (“HB 1456”) is constitutionally sound and must be upheld because the factual underpinnings of *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of SE Pennsylvania v. Casey*, 505 U.S. 833 (1992) have been shown to be false and invalid, resulting in *stare decisis* no longer requiring adherence to these decisions and warranting that the holdings of these decisions be overturned?

B. Due Process

1. Does HB 1456 violate the substantive due process rights of the Plaintiffs’ patients under the Fourteenth Amendment of the United States Constitution?
2. Whether a genuine issue of material fact existed, as to when viability of an unborn child occurs, to preclude summary judgment in favor of Plaintiffs?
3. Whether the Defendants/Appellants were precluded from a full and fair opportunity to conduct the necessary discovery required to respond to the Plaintiffs/Appellees’ claims and their motion for summary judgment where Plaintiffs asserted HB 1456 violated substantive due process of their patients under the Fourteenth Amendment of the United States Constitution?

C. Equal Protection

1. Does HB 1456 discriminate against women on the basis of sex in violation

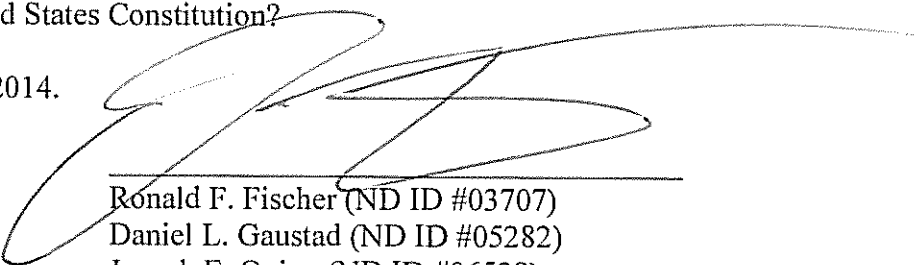
¹ In accordance with Fed. R. App. P. 10(b)(1), the Defendants/Appellants intend to request an entire transcript of the proceedings not already on file. Therefore, this statement of issues is being submitted for administrative purposes and may not serve as the Defendants/Appellants’ statement of issues. Defendants/Appellants will file a statement of issues in the event an entire transcript of the proceedings not already on file is not requested, or as may be required by the Court. See Fed. R. App. P 10(b)(3).

of women's right to equal protection under the Fourteenth Amendment of the United States Constitution?

2. Was there a genuine issue of material fact as to whether HB 1456 discriminates against women on the basis of sex in violation of women's right to equal protection under the Fourteenth Amendment of the United States Constitution to preclude summary judgment in favor of Plaintiffs?

3. Whether the Defendants/Appellants were precluded from a full and fair opportunity to conduct the necessary discovery required to respond to the Plaintiffs/Appellees' claims and their motion for summary judgment where Plaintiffs asserted HB 1456 discriminates against women on the basis of sex in violation of women's right to equal protection under the Fourteenth Amendment of the United States Constitution?

Dated this 13th day of May, 2014.



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Kent Martin, M.D., Kent Hoerauf, M.D., Burt
Riskedahl, Jonathan Haug, M.D., Genevieve
Goven, M.D., Robert J. Olson, M.D.

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L. EGGELSTON, M.D.,

Plaintiffs/Appellees,

-vs-

WAYNE STENEHJEM, in his official
capacity as Attorney General for the State of
North Dakota; et al.,

Defendants/Appellants.

Civil No. 1:13-CV-071

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2014, the following document:

➤ **Notice of Appeal**

was mailed via Federal Express Overnight Mail to:

Clerk of Court
U.S. District Court
220 East Rosser Avenue
Bismarck, ND 58505

and that the Clerk of Court through ECF will send a Notice of Electronic Filing (NEF) to the following:

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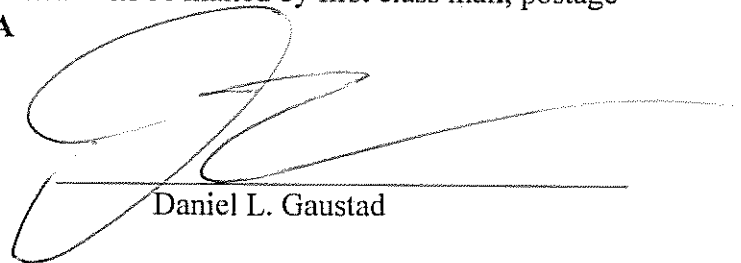
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I further certify that a copy of the foregoing document will be mailed by first class mail, postage paid to the following non-ECF participants: NA

Dated: May 13, 2014.



Daniel L. Gaustad