

No. 17-50154

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**In the United States Court of Appeals  
for the Fifth Circuit**

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WHOLE WOMAN'S HEALTH; BROOKSIDE WOMEN'S MEDICAL CENTER, P.A., doing business as Brookside Women's Health Center and Austin Women's Health Center; LENDOL L. DAVIS, M.D.; ALAMO CITY SURGERY CENTER, P.L.L.C., doing business as Alamo Women's Reproductive Services; NOVA HEALTH SYSTEMS, INCORPORATED, doing business as Reproductive Services,  
*Plaintiffs-Appellees,*

v.

DOCTOR JOHN HELLERSTEDT, M.D.,  
*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Western District of Texas, Austin Division

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**UNOPPOSED MOTION FOR VOLUNTARY DISMISSAL**

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Counsel for Defendant-Appellant

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Pursuant to Federal Rule of Appellate Procedure 42(b) and Circuit Rule 42.1, Defendant-Appellant hereby moves to dismiss this appeal. In support of this motion, Defendant-Appellant shows as follows:

1. This is an appeal of a preliminary injunction entered by the district court regarding administrative rules adopted by the Texas Department of State Health Services concerning the disposition of fetal tissue. The Texas Legislature has since enacted a statutory scheme to govern the disposition of fetal tissue which will take effect on February 1, 2018. Given the short time in which the Court would need to reach a decision, Defendant-Appellant has concluded that the resources of the parties and the courts would be best conserved by dismissing this appeal and returning to trial court.
2. No fees are currently due to the Court, and the parties will each bear their own costs associated with this appeal.
3. Counsel for Defendant-Appellant conferred with counsel for Plaintiffs-Appellees prior to filing this motion and have been informed that this motion is unopposed.

**CONCLUSION**

For the foregoing reasons, the Court should direct the clerk to enter an order of dismissal pursuant to Federal Rule of Appellate Procedure 42(b) and Circuit Rule 42.1.

Respectfully submitted.

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**CERTIFICATE OF CONFERENCE**

I certify that counsel for Appellant contacted David Brown, counsel for Appellees, regarding this motion. Mr. Brown advised that Appellees are unopposed.

/s/ Scott A. Keller  
**SCOTT A. KELLER**

**CERTIFICATE OF SERVICE**

On December 5, 2017, this motion was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Scott A. Keller  
SCOTT A. KELLER

**CERTIFICATE OF COMPLIANCE**

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains fewer than 5200 words; and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Scott A. Keller  
SCOTT A. KELLER