

NOT RECOMMENDED FOR PUBLICATION

Case No. 22-5832

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Feb 22, 2023
DEBORAH S. HUNT, Clerk

PLANNED PARENTHOOD GREAT)
NORTHWEST, HAWAII, ALASKA,)
INDIANA AND KENTUCKY, INC., on)
behalf of itself, its staff, and its patients,)

Plaintiff-Appellee,)

EMW WOMEN’S SURGICAL CENTER,)
P.S.C.; ERNEST MARSHALL, M.D.,)

Intervenors-Appellees,)

v.)

DANIEL J. CAMERON, in his official)
capacity as Attorney General of the)
Commonwealth of Kentucky,)

Defendant-Appellant,)

ERIC FRIEDLANDER, in his official)
capacity as Secretary of Kentucky’s Cabinet)
for Health and Family Services; MICHAEL S.)
RODMAN, in his official capacity as)
Executive Director of Kentucky Board of)
Medical Licensure; THOMAS B. WINE, in)
his official capacity as Commonwealth’s)
Attorney for the 30th Judicial Circuit of)
Kentucky,)

Defendants.)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
KENTUCKY

No. 22-5832

Planned Parenthood of Great Nw., Haw., Alaska, Ind. & Ky., Inc., et al. v. Cameron, et al.

BEFORE: SUHRHEINRICH, NALBANDIAN, and MURPHY, Circuit Judges.

Daniel J. Cameron, the Attorney General for the Commonwealth of Kentucky, appealed the district court's order that left in place portions of a preliminary injunction that enjoined many provisions of HB3, a Kentucky law regulating abortion. Three days before their appellees' brief was due, the challengers to HB3 moved to dismiss the appeal for lack of jurisdiction. Their motion briefly outlined two arguments: first, that this court lacks appellate jurisdiction over a district court's order that simply declines to lift an injunction; second, that the issues on appeal were mooted by the Kentucky Supreme Court's recent decision in *Cameron v. EMW Women's Surgical Center, et al.*, No. 2022-SC-0329-TG (Ky. Feb. 16, 2023) (slip op.) and by the Kentucky Cabinet for Health & Family Services' finalization of regulations permitting abortion providers to comply with HB3. In the alternative, the challengers moved for a 5-day extension of time to file their appellees' brief from the date that we denied their motion to dismiss. The Attorney General opposes their motion.

The challengers' mootness arguments are intertwined with the merits of their challenges. In this case, then, we find those arguments more suitable for consideration by a merits panel after the completion of appellate briefing. Indeed, although the challengers requested an extension of time to file their appellees' brief, they have since timely filed it. In that brief, they discuss the jurisdictional arguments that they outline in their pending motion to dismiss—confirming that these issues are suitable for resolution by a merits panel. Following our usual course, therefore, we deny the motion without prejudice to the challengers reraising these issues with the merits panel. *See, e.g., Swiger v. Rosette*, 2020 U.S. App. LEXIS 23574, at *1 (6th Cir. July 24, 2020). And since the challengers timely filed the appellees' brief, they do not need an extension of time.

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The motion to dismiss is DENIED without prejudice to further consideration by a merits panel after the completion of briefing. The motion for an extension of time to file the appellees' brief is DENIED as moot.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk