

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

**John Kelley, et al.**

Plaintiffs,

v.

**Xavier Becerra, et al.,**

Defendants.

Case No. 4:20-cv-00283-O

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Earlier today, the Fifth Circuit denied panel rehearing in *DeOtte v. Nevada*, No. No. 19-10754. It also denied rehearing en banc in a 9-8 vote. The Court's order is attached.

The Fifth Circuit's mandate will issue on August 31, 2022. When the mandate issues, it will remove any res judicata effect of the *DeOtte* litigation and allow the plaintiffs to renew their challenges to the Contraceptive Mandate under the Appointments Clause, the nondelegation doctrine, and RFRA. The Court had previously dismissed those claims on res judicata grounds in its order of February 25, 2021 (ECF No. 35). The plaintiffs respectfully ask the Court to allow them to seek summary judgment on these claims and permit the parties to submit supplemental briefing on this matter.

Respectfully submitted.

GENE P. HAMILTON  
Virginia Bar No. 80434  
Vice-President and General Counsel  
America First Legal Foundation  
300 Independence Avenue SE  
Washington, DC 20003  
(202) 964-3721  
gene.hamilton@aflegal.org

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Texas Bar No. 24075463  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
jonathan@mitchell.law

H. DUSTIN FILLMORE III  
Texas Bar No. 06996010  
CHARLES W. FILLMORE  
Texas Bar No. 00785861  
The Fillmore Law Firm, LLP  
1200 Summit Avenue, Suite 860  
Fort Worth, Texas 76102  
(817) 332-2351 (phone)  
(817) 870-1859 (fax)  
dusty@fillmorefirm.com  
chad@fillmorefirm.com

Dated: August 23, 2022

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on August 23, 2022, I served this document through CM/ECF

upon:

CHRISTOPHER M. LYNCH  
JORDAN L. VON BOKERN  
Trial Attorneys  
U.S. Department of Justice  
Civil Division  
1100 L Street, NW  
Washington, DC 20005  
(202) 353-4537 (phone)  
(202) 616-8460 (fax)  
christopher.m.lynch@usdoj.gov  
jordan.l.von.bokern2@usdoj.gov

BRIAN W. STOLTZ  
Assistant United States Attorney  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699  
(214) 659-8626 (phone)  
(214) 659-8807 (fax)  
brian.stoltz@usdoj.gov

*Counsel for the Defendants*

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Plaintiffs*

United States Court of Appeals  
for the Fifth Circuit

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No. 19-10754

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RICHARD W. DEOTTE, *on behalf of* HIMSELF AND OTHERS  
SIMILARLY SITUATED; YVETTE DEOTTE; JOHN KELLEY; ALISON  
KELLEY; HOTZE HEALTH & WELLNESS CENTER; BRAIDWOOD  
MANAGEMENT, INCORPORATED, *on behalf of* ITSELF AND OTHERS  
SIMILARLY SITUATED,

*Plaintiffs—Appellees,*

*versus*

STATE OF NEVADA,

*Movant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CV-825

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ON PETITION FOR REHEARING  
AND REHEARING EN BANC

Before HIGGINBOTHAM, SOUTHWICK, and ENGELHARDT, *Circuit  
Judges.*

PER CURIAM:

The petition for panel rehearing is DENIED.

No. 19-10754

Additionally, the court having been polled at the request of one of the members of the court and a majority of the judges who are in active service not having vote in favor, the petition for rehearing en banc is DENIED. *See* FED. R. APP. P. 35; 5TH CIR. R. 35.

In the en banc poll, eight judges voted in favor of rehearing (Richman, Jones, Smith, Elrod, Haynes, Ho, Duncan, and Oldham), and nine voted against rehearing (Stewart, Dennis, Southwick, Graves, Higginson, Costa, Willett, Engelhardt, and Wilson).

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

August 23, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-10754 DeOtte v. State of NV  
USDC No. 4:18-CV-825

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Charles Whitney*

By: \_\_\_\_\_  
Charles B. Whitney, Deputy Clerk  
504-310-7679

Ms. Elizabeth N. Dewar  
Mr. Charles William Fillmore  
Mr. Hartson Dustin Fillmore III  
Ms. Jessica Fuhrman  
Ms. Crystal Johnson Geise  
Ms. Susan Pearl Greenberg  
Ms. Claudia Hammerman  
Mr. Richard Brian Katskee  
Ms. Jamie A. Levitt  
Ms. Melina Maria Meneguini Layerenza  
Mr. Jonathan F. Mitchell  
Ms. Karen S. Mitchell  
Mr. Craig A. Newby  
Mr. Bruce H. Schneider  
Ms. Priscilla Joyce Smith  
Mrs. Heidi Parry Stern  
Ms. Catherine Weiss