

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 26-2705

MAYDAY HEALTH and NANCY TURBAK BERRY,

Plaintiffs-Appellees,

v.

LARRY R. RHODEN, Governor of the State of South Dakota and
MARTY J. JACKLEY, Attorney General for the State of South Dakota,
in their official capacities,

Defendants-Appellants.

REPONSE TO APPELLEES' MOTION FOR EXTENSION

Appellants Larry R. Rhoden, Governor for the State of South Dakota and Marty J. Jackley, Attorney General for the State of South Dakota, by and through their counsel, file this response to appellees' motion for an extension to respond to appellants' motion to stay the preliminary injunction entered by the district court in this case. Appellants ask that the motion be denied.

1. The district court enjoined a state statute proscribing advertising for and the solicitation/facilitation of abortion-inducing pill purchases within the borders of the State of South Dakota on First Amendment grounds.
2. Ordinarily, undersigned counsel would consent to an extension of time out of courtesy to opposing counsel. But a stay of this injunction is urgently required

because it legalizes trafficking in illegal abortion pills in South Dakota for as long as the injunction is in place.

3. Appellants filed a motion for stay in the district court. Appellees responded to that motion. The motion filed in the district court and in this court are substantially the same. Appellees have already written a response to the motion to stay and need only format it to this court's specifications and file it. It does not take 10 days to reformat an already-written response for filing in this court.
4. Mayday chose to bring this case as an expedited proceeding for a preliminary injunction rather than as a simple declaratory judgment action. Having elected expedited proceedings, Mayday must meet the deadlines of such proceedings. Now that Mayday has an injunction, it wants to slow the proceedings down.
5. Each day the injunction remains in place Mayday can traffic in illegal abortion pills in South Dakota with legal impunity. The injunction's irreparable harm to unborn life is self-evident.
6. As detailed in the appellants' motion to stay, the district court's injunction was entered without applying proper legal standards. There is an urgent need for this court to address this abuse of discretion and permit the state to enforce its laws.

7. Injunction of a state criminal statute is an extraordinary remedy that is not appropriate unless the statute is “flagrantly and patently violative of express constitutional prohibitions,” which SDCL 22-17-5.3 facially is not. *Younger v. Harris*, 401 U.S. 37, 53-54 (1971). SDCL 22-17-5.3 does no more than prohibit advertising in connection with transactions to procure illegal abortion pills. Because such a statute is not flagrantly or patently violative of the constitution, the district court abused its discretion in preliminarily enjoining it.
8. Appellants respectfully request that Mayday be required to timely respond to the motion to stay the wrongfully entered preliminary injunction in this case.

Dated this 9th day of September 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The State of South Dakota, by and through its counsel, Paul S. Swedlund, hereby certifies that this document complies with the type/volume limits of Fed.R.App.P. 32(a)(7)(b) and Fed.R.App.P. 27(d)(2)(A). It contains 441 words and complies with the typeface and type style requirements of Fed.R.App.P. 32(a)(5)/(a)(6). It has been printed in a proportionally spaced typeface in 14-point Times New Roman font and scanned for viruses using Symantic Endpoint Protection.

Paul S. Swedlund

Paul S. Swedlund
Solicitor General

CERTIFICATE OF SERVICE

The State of South Dakota, by and through its counsel, Paul S. Swedlund, hereby certifies that the foregoing appellants' response to motion to extend time to respond to appellants' motion to stay preliminary injunction was served on appellees' counsel via CM/ECF by electronic filing of the foregoing brief with the clerk of this court this 9th day of September 2026.

Paul S. Swedlund

Paul S. Swedlund
Solicitor General