

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 26-2705

Mayday Health; Nancy Turbak Berry

Plaintiffs-Appellees

v.

Governor Larry Rhoden, in his official capacity; Attorney General Marty Jackley, in his official capacity

Defendants-Appellants

Appeal from the United States District Court
for the District of South Dakota, Southern Division,
Hon. Camela C. Theeler, U.S. District Judge

Reply in Support of Motion to Extend Time

Mayday and Turbak's attorney completed his contested workers' compensation hearing for his brain-injured client this afternoon. The State's "Reponse [sic] to [Mayday's] Motion for Extension" lacks merit for the following reasons.

1. The district court decision does not “legalize[] trafficking in illegal abortion pills in South Dakota.” Response p. 2. Rather, it prohibits the State from violating the First Amendment by criminalizing Mayday and Turbak’s lawful speech.

2. Mayday and Turbak’s attorney cannot merely “format” their district court brief “to this court’s specifications and file it.” The State may believe in cut-and-paste litigation; Mayday and Turbak’s attorney does not.

3. Mayday and Turbak’s attorney asked the State to agree to a ten-day extension. The State refused to do so, but agreed to a five-day extension. Then it reneged on even this partial agreement.

4. The State misstates the standard that applies. It is not “flagrantly and patently violative of express constitutional provisions.” That standard comes from *Younger v. Harris*, 401 U.S. 37, 53 (1971), for a federal court injunction of pending state criminal prosecutions.

5. This case was brought before the statute could go into effect. It does not attempt to enjoin any pending state proceeding, so *Younger* does not

apply. The question before the district court was whether Mayday and Turbak's First Amendment rights to speech were violated. Mayday and Turbak ask only enough time to properly brief the State's motion, and to explain why the district court correctly ruled that enforcement of the statute against them would violate the First Amendment.

Dated: September 9, 2026 Respectfully submitted,

/s/ James D. Leach

James D. Leach

Attorney at Law

1617 Sheridan Lake Rd.

Rapid City, SD 57702

Tel: (605) 341-4400

Attorney for Plaintiffs-Appellees

Certificate of Compliance

Pursuant to F.R.A.P. 27(d)(2)(A) and 32(g)(1), I certify that this document contains 253 words. It has been scanned for viruses and is virus-free.

/s/ James D. Leach

James D. Leach

Certificate of Service

I certify that on September 9, 2026, I filed this document electronically, thereby causing automatic electronic service to be made on all parties.

/s/ James D. Leach

James D. Leach