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February 22, 2024

**Via Electronic Filing (CM/ECF)**

Patricia S. Dodszuweit, Clerk of Court  
United States Court of Appeals for the Third Circuit  
601 Market Street  
Philadelphia, PA 19106-1790

Re: *Wright-Gottshall, et al. v. State of New Jersey, et al.*  
No. 23-1990

Dear Ms. Dodszuweit:

Appellees submit this letter pursuant to FRAP 28(j) regarding this Court's recent decision in *Children's Health Defense, Inc., et al. v. Rutgers, et al.*, No. 22-2970 (Feb. 15, 2022).

*Children's Health Defense* rejected similar constitutional claims. That case involved Rutgers University's COVID-19 vaccination requirement for in-person class attendance or campus access by students for the fall 2021 term. This Court reasoned that because there is no fundamental substantive due process right to refuse a vaccination requirement during a public health crisis, rational basis review applied. Op. 21 (discussing *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)). And this Court reasoned that Rutgers' policy met that standard, because Rutgers had a "satisfactory, rational explanation" for its policy, which promoted the "compelling interest" in protecting the health of the school's student body. Op. 28-29 (citing *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020)).

That is fatal to this appeal. As the State has explained, Appellants' claims for injunctive relief are moot, a question not at issue in *Children's Health Defense*. But



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as to the damages claim, *Children’s Health Defense* confirms that Appellants’ claims must be dismissed. Appellants seek damages relating to a policy that had previously required New Jersey public employees to provide proof of COVID-19 vaccination or to undergo periodic testing to return to their offices. Pursuant to *Jacobson*, their employers’ vaccination-or-testing requirement did not violate a fundamental right, and New Jersey’s policies satisfied any rational-review analysis because Appellants’ government employers here shared the same “compelling interest” as Rutgers did in *Children’s Health Defense*—a desire to protect the public health. In other words, this Court’s recent decision confirms that this policy did not violate constitutional rights, let alone any clearly established rights.

Thus, *Children’s Health Defense* confirms that this Court should affirm the District Court dismissal of this case.

Respectfully Submitted,

/s/ Robert J. McGuire  
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Counsel for Appellees

Word Count: 307

cc: Counsel of Record (via ECF)

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February 27, 2024

***Via Electronic Filing***

Patricia S. Dodszuweit, Clerk of Court  
United States Court of Appeals for the Third Circuit  
601 Market Street  
Philadelphia, PA 19106

Re: *Wright-Gottshall, et al. v. State of New Jersey, et al.*  
No. 23-1990

Dear Ms. Dodszuweit:

Appellants respectfully submit this letter in response to Appellees' February 22, 2024 letter regarding this Court's recent decision in *Children's Health Defense, Inc, et al. v. Rutgers, et al., No 22-2970* (Feb 15, 2022).

The decision in *Children's Health Defense* has no relevance or bearing on this case. This case concerns a medical test mandate and the Fourth Amendment, not a vaccine mandate. Appellants do not argue that they have a right to be free of a vaccination mandate and whether or not such a right exists is simply irrelevant to this case.

Moreover, Appellants' Fourteenth Amendment privacy claim is based on Third Circuit precedent holding that the right to privacy includes the right to be free from unwanted medical tests and that this right is so well-established that public officials who violate it are not entitled to qualified immunity. *Gruenke v. Sipp*, 225 F.3d 290, 302 (3d Cir. 2000). Similarly, Appellants' substantive due process and equal protection claims are based on Supreme Court precedents establishing the right to bodily integrity and stating that this right is implicated by government testing of extracted bodily outputs. *See Washington v. Glucksberg*, 521 U.S. 702, 777 (1997) (discussing fundamental right to bodily integrity); *Skinner v. Ry Lab Executive's Ass'n*, 489 U.S. 602, 603 (1989) (breath test implicates bodily integrity); *Missouri v. McNeely*, 569 U.S. 141, 148 (2013) (blood testing is an "invasion of bodily integrity").

This cases concerns medical tests, not vaccination. For that reason, the recent decision in *Children's Health Defense* is not applicable.

Sincerely,

/s/ Dana Wefer

Dana Wefer  
Counsel for Appellants