

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 27, 2020

Christopher M. Wolpert
Clerk of Court

SOUTH WIND WOMEN'S CENTER
LLC, on behalf of itself, its physicians and
staff, and its patients, d/b/a Trust Women
Oklahoma City; LARRY A. BURNS, D.O,
on behalf of himself and his staff and his
patients; COMPREHENSIVE HEALTH
OF PLANNED PARENTHOOD GREAT
PLAINS INC., on behalf of itself, its
physicians and staff, and its patients,

Plaintiffs - Appellees,

v.

J. KEVIN STITT, in his official capacity as
Governor of Oklahoma; MICHAEL
HUNTER, in his official capacity as
Attorney General of Oklahoma; DAVID
PRATER, in his official capacity as
District Attorney for Oklahoma County;
GREG MASHBURN, in his official
capacity as District Attorney for Cleveland
County; GARY COX, in his official
capacity as Oklahoma Commissioner of
Health; MARK GOWER, in his official
capacity as Director of the Oklahoma
Department of Emergency Management,

Defendants - Appellants.

No. 20-6055
(D.C. No. 5:20-CV-00277-G)
(W.D. Okla.)

ORDER

Before **LUCERO, BACHARACH**, and **MORITZ**, Circuit Judges.

This matter is before the court on Appellants' emergency motion to stay the district court's April 20, 2020, preliminary injunction pending appeal of that order. Appellees responded to the motion, and Appellants filed a reply. In addition, two amicus briefs were filed, and a third was submitted with a motion for leave to file. We grant the motion for leave to file an amicus brief filed by the Roman Catholic Diocese of Oklahoma and other faith-based entities.

To obtain a stay pending appeal, Appellants must address the same four factors applicable to preliminary injunctions: (a) "the likelihood of success on appeal"; (b) "the threat of irreparable harm if the stay or injunction is not granted"; (c) "the absence of harm to opposing parties if the stay or injunction is granted"; and (d) "any risk of harm to the public interest." 10th Cir. R. 8.1; *see also FTC v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852 (10th Cir. 2003) (per curiam). "A stay is not a matter of right," but rather is an "exercise of judicial discretion . . . dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). Further, "injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court's] discretion." *Nken*, 556 U.S. at 433-34.

A motion for stay pending appeal is subject to the same standards as a preliminary injunction. *Warner v. Gross*, 776 F.3d 721, 728 (10th Cir. 2015). "Courts have consistently noted that because a showing of probable irreparable harm is the single most

important prerequisite for the issuance of a preliminary injunction, the moving party must first demonstrate that such injury is likely before the other requirements will be considered. Demonstrating irreparable harm is not an easy burden to fulfill.” *First W. Capital Mgmt. v. Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017) (citation and internal quotation marks omitted).

Currently, certain categories of abortion procedures are prohibited by Executive Order in Oklahoma until after April 30. Appellants have not shown a probability they or the public will be irreparably harmed between now and April 30 absent a stay of the preliminary injunction by this court pending their appeal of that order. As a result, the emergency motion for stay pending appeal is denied, as is the motion to expedite the appeal.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', written in a cursive style.

CHRISTOPHER M. WOLPERT, Clerk