

No. 20-6045

**In The United States Court of Appeals
for the Tenth Circuit**

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

Plaintiffs-Appellees,

vs.

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; and
MARK GOWER in his official capacity as Director of the Oklahoma Department
of Emergency Management,,

Defendants-Appellants.

On Appeal from the United States District Court for the
Western District of Oklahoma
The Honorable Charles B. Goodwin
District Court Case No. CIV-20-277-G

**APPELLEES’ OPPOSITION TO EMERGENCY MOTION
TO EXPEDITE APPEAL**

Expedition of this interlocutory appeal from the partial grant of a temporary restraining order (“TRO”) would be a waste of this Court’s judicial resources. This appeal should be dismissed, not expedited. As directed by the Court, Appellees will address the jurisdictional question more fully when their opposition to Appellants’ emergency motion for a stay is submitted on April 10, 2020. It would be premature to rule on this motion to expedite before that briefing is received. For this purpose, we note only that it is black-letter law that appeals from the grant of a TRO are not the subject of appellate jurisdiction except under special circumstances, which are not present here. *United States v. McVeigh*, 157 F.3d 809, 813 (10th Cir. 1998). Indeed, the Sixth Circuit has dismissed a nearly identical interlocutory appeal of a narrow TRO against enforcement of Ohio’s COVID-19 abortion ban on that basis. *Pre-Term Cleveland, et al., v. Atty Gen. of Ohio*, No. 20-cv-3365 (6th Cir. Apr. 6, 2020) (ECF No. 23-2) (“[W]e are not persuaded that the TRO threatens to inflict irretrievable harms or consequences before it expires, and it requires no affirmative action by the State. Thus, we lack jurisdiction over this appeal.”).

This Court would be better served by reviewing the issues raised by this defective interlocutory appeal in connection with the appeal of a decision on the pending motion by Appellees South Wind Women’s Center LLC, d/b/a Trust Women Oklahoma City *et al.*, for a preliminary injunction. Appeals from the grant

or denial of a preliminary injunction, unlike appeals from a TRO, are immediately appealable to this Court. *Druley v. Patton*, 601 F. App'x 632, 634 (10th Cir. 2015). That appeal will be based on a more complete factual record, which will include supplemental declarations filed by Appellants just yesterday, as well as reply declarations to be filed by Appellees on April 10, 2020. *See* Order, ECF No. 80 (April 7, 2020). And briefing on Appellees' motion for preliminary injunction is set to be completed in two days. The TRO will expire on April 20, 2020, and Appellants have offered no reason to believe that the District Court will be unable to issue its decision promptly. If the Court takes jurisdiction over this appeal and expedites it, it will unnecessarily render a premature decision on an incomplete record. And if this Court accepts the blitzkrieg schedule proposed by Appellants, it will have done so at considerable inconvenience.

For the foregoing reasons, the motion to expedite this appeal should be denied and the appeal should instead be dismissed.

Dated: April 9, 2020

Respectfully submitted,

/s/ Linda C. Goldstein

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CORPORATE DISCLOSURE STATEMENT

South Wind Women's Center LLC, d/b/a Trust Women Oklahoma City and Comprehensive Health of Planned Parenthood Great Plains, Inc., pursuant to Fed. R. App. P. 26.1, each certify that they have no stock and therefore no publicly held corporation owns 10% or more of their stock.

**CERTIFICATE OF COMPLIANCE
WITH TYPE VOLUME LIMITATION**

Pursuant to Fed. R. App. P. 32(a)(7)(B), the undersigned certifies the motion complies with the Rule 27 type-volume limitation as it contains 426 words. Respectfully submitted this 9th day of April, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2020, a copy of this Opposition to Emergency Motion to Expedite Appeal was served by the electronic court filing system upon the following parties:

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By: /s/ Linda C. Goldstein

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Windows Defender Antivirus, version 1.313.1029.0, last updated Dec. 23, 2019, and according to the program are free of virus.

By: /s/ Linda C. Goldstein

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