
**In the United States Court of Appeals for the
Eighth Circuit**

Planned Parenthood Minnesota, North Dakota, South Dakota, and
Sarah A. Traxler, M.D.,

Plaintiffs-Appellees,

v.

Kristi Noem, Governor, Joan Adam, Interim Secretary of Health,
Department of Health, Philip Meyer, D.O., President, South Dakota Board
of Medical and Osteopathic Examiners, in their official capacities,

Defendants-Appellants.

On Appeal from the United States District Court for the District of South Dakota
Civil Action No. 4:22-cv-04009-KES
Judge Karen E. Schreier

**OPPOSITION TO MOTION FOR EXPEDITED
CONSIDERATION OF MOTION TO STAY PRELIMINARY
INJUNCTION PENDING APPEAL**

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The district court entered a preliminary injunction in this case on February 8, 2022. Defendants-Appellants (hereafter “Appellants”) did not request that the district court stay that injunction pending appeal until February 15, 2022—one week later. They did not ask the district court for expedited consideration of that motion, the response to which is still not due until March 8, 2022. Instead, Appellants have now filed a motion for stay in this Court a mere three days after filing their stay request with the district court without even attempting to make any showing that it is impracticable to wait for the district court’s ruling on their motion, in violation of Federal Rule of Appellate Procedure 8(2)(A). Under the rules of this Court, Plaintiffs-Appellees’ (hereafter “Appellees”) response to Appellants’ stay motion would ordinarily be due Monday, February 28, 2022.

But, at almost 4:00 PM on Friday, February 18, 2022, Appellants further filed with this Court a Motion for Expedited Consideration of their stay motion and specifically requested a briefing schedule that cuts Appellees’ response time in half to five days, three of which will fall over a holiday weekend. There is absolutely no need for this sort of expedition. Appellants’ own delay in this matter belies any sense of urgency they now portend. Appellants argue that they will be irreparably harmed because they cannot enforce duly enacted laws, but such harm does not attach where, as here, “that [law] is unconstitutional.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). As Appellees will explain in opposing a stay, the preliminary injunction

entered by the district court maintains the status quo and prevents Appellants from enforcing a regulation that would be the only one of its kind in the nation, requiring patients to make three visits to a health center to obtain a safe, early abortion, in contravention of decades of medical practice and the guidance of leading state and medical organizations. In deciding whether to enter the extraordinary remedy of a stay pending appeal, the parties should have adequate time to provide the Court with briefing. *Nken v. Holder*, 556 U.S. 418, 427 (2009) (“A stay is an intrusion into the ordinary processes of . . . judicial review, and . . . is not a matter of right, even if irreparable injury might otherwise result to the appellant.” (internal quotation marks and citations omitted)).

Appellees, therefore, respectfully request that the Court deny Appellants’ Motion for Expediated Consideration, or, if it grants the motion, that it allows Appellees until Friday, February 25, 2022 to file a response.

Respectfully submitted,

/s/ Diana O. Salgado

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that counsel for the Defendants-Appellants are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Diana O. Salgado

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains approximately 428 words, excluding the parts exempted by Fed R. App. P. 32(f). I also certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5)–(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point Times New Roman. I further certify that this PDF file was scanned for viruses and no viruses were found on the file.

/s/ Diana O. Salgado

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