

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

April 19, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

DENVER BIBLE CHURCH; ROBERT A.
ENYART; COMMUNITY BAPTIST
CHURCH; JOEY RHOADS,

Plaintiffs - Appellants,

v.

GOVERNOR JARED POLIS, in his
official capacity as Governor, State of
Colorado; JILL HUNSAKER RYAN, in
her official capacity as Executive Director
of the Colorado Department of Public
Health and Environment; COLORADO
DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT; XAVIER
BECERRA, in his official capacity as
Secretary, United States Department of
Health and Human Services;* UNITED
STATES DEPARTMENT OF HEALTH &
HUMAN SERVICES; ALEJANDRO
MAYORKAS, in his official capacity as
Secretary, United States Department of
Homeland Security;** UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; JANET L. YELLIN, in her
official capacity as Secretary, United States

No. 20-1391
(D.C. No. 1:20-CV-02362-DDD-NRN)
(D. Colo.)

* On March 18, 2021, Xavier Becerra became Secretary of the United States Department of Health and Human Services. Consequently, his name has been substituted for Alex M. Azar, II, as Defendant-Appellee, per Fed. R. App. P. 43(c)(2).

** On February 2, 2021, Alejandro Mayorkas became Secretary of the United States Department of Homeland Security. Consequently, his name has been substituted for Chad W. Wolf, as Defendant-Appellee, per Fed. R. App. P. 43(c)(2).

Department of the Treasury;*** UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants - Appellees.

ORDER

Before **MATHESON** and **KELLY**, Circuit Judges.

Plaintiffs have filed an Emergency Motion for Injunction Pending Appeal (Apr. 2, 2021). Defendants Polis, Ryan, and the Colorado Department of Public Health and Environment have filed a response in opposition.

We evaluate a motion for an injunction pending appeal under Federal Rule of Appellate Procedure 8(a)(2) using the preliminary injunction standard. *See Warner v. Gross*, 776 F.3d 721, 728 (10th Cir. 2015). Thus, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

We have considered plaintiffs’ motion in light of these standards. Plaintiffs have failed to demonstrate a likelihood of success on the merits of their claim that the Colorado Disaster Emergency Act, Colo. Rev. Stat. §§ 24-33.5-701 to -717, violates the

*** On January 25, 2021, Janet L. Yellen became Secretary of the United States Department of Treasury. Consequently, her name has been substituted for Steven T. Mnuchin, as Defendant-Appellee, per Fed. R. App. P. 43(c)(2).

First Amendment of the United States Constitution, either as applied to plaintiffs or on its face. Plaintiffs' motion is therefore denied.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk