

Case No. 23-5110

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

PETER POE, *et al.*,
Plaintiffs-Appellants,

v.

GENTNER DRUMMOND, *et al.*,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
HONORABLE DAVID RUSSELL, DISTRICT JUDGE
CIV-23-177

**APPELLEES OU MEDICINE, INC. AND
DR. RICHARD LOFGREN'S RESPONSE**

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ORAL ARGUMENT NOT REQUESTED

December 15, 2023

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRIOR OR RELATED APPEALS.....	1
STATEMENT OF THE ISSUES.....	2
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
CERTIFICATE OF COMPLIANCE	8

TABLE OF AUTHORITIES

Statutes

Okla. Stat. Ann. tit. 63 § 2607.1	3
Okla. Stat. Ann. tit. 74, § 18b	6

PRIOR OR RELATED APPEALS

There are no prior or related appeals.

STATEMENT OF THE ISSUES

Pursuant to Federal Rule of Appellate Procedure 28(i), Defendants-Appellees OU Health adopt and incorporate by reference the State Defendants-Appellees' Statement of Issues.

STATEMENT OF THE CASE

Defendants-Appellees OU Medicine, Inc. d/b/a OU Health, an Oklahoma not-for-profit corporation (“OU Medicine”) and Dr. Richard Lofgren (in his official capacity as President and Chief Executive Officer of OU Health) (“Dr. Lofgren”) (together, “OU Health”) are named Defendants in this lawsuit alongside thirty-eight (38) other named Defendants, which include the Attorney General of the State of Oklahoma, various state agencies, and various officials of those state and public agencies (the “State Defendants-Appellees”). J.A.(Vol.1).0034.

Plaintiffs-Appellants’ underlying lawsuit challenges two pieces of Oklahoma legislation: (1) Senate Bill 613 (“SB 613”), Okla. Stat. Ann. tit. 63 § 2607.1, enacted by the Oklahoma State Legislature on April 27, 2023 and signed into law by Oklahoma Governor Stitt on May 1, 2023 and (2) Senate Bill 3 (“SB 3”), enacted by the Oklahoma State Legislature on September 29, 2022 and signed into law on October 4, 2022. J.A.(Vol.1).0034. Plaintiffs allege due process and equal protection violations against transgender adolescents under both SB 613 and SB 3. As the claims relate to OU Health, Count II (the sole claim asserted against Dr. Lofgren) and Count IV (the sole claim asserted against OU

Medicine), are each asserted in regards to SB 3. J.A.(Vol.1).0086; J.A.(Vol.1).0091.

While Plaintiffs-Appellants' underlying lawsuit challenges the constitutionality of both SB 613 and SB 3, their Motion for Preliminary Injunction (the "Motion") sought to restrain the enforcement of SB 613, only. J.A.(Vol.1).0115. Accordingly, in the District Court proceedings, OU Health took no position on whether the District Court should grant an injunction based on the legal questions presented by Plaintiffs' Motion. J.A.(Vol.2).0498

This appeal follows from the District Court's October 5, 2023 Opinion and Order (corrected on October 6, 2023) denying Plaintiffs' Motion. J.A.(Vol.6).1230; J.A.(Vol.6).1266. Pursuant to Federal Rule of Appellate Procedure 28(i), Defendants-Appellees OU Health adopt and incorporate by reference the State Defendants-Appellees' Statement of the Case to the extent it supplements OU Health's Statement of the Case.

SUMMARY OF THE ARGUMENT

OU Health has no summary of the argument.

ARGUMENT

OU Medicine has been named in this lawsuit as it relates to OU Health's purported actions regarding SB 3. J.A.(Vol.1).0086; J.A.(Vol.1).0091. The current appeal is limited to review of the District Court's denial of Plaintiffs-Appellants' Motion for Preliminary Injunction to enjoin enforcement of SB 613.

While OU Health agrees that Plaintiffs-Appellants' Motion presents important issues for which the Court's guidance will be critical, the State Defendants-Appellants, represented by Oklahoma's Office of the Attorney General, are the appropriate parties to defend the constitutionality of SB 613. *See Okla. Stat. Ann. tit. 74, § 18b.*

Accordingly, because OU Health is a medical provider that seeks only to comply with applicable law, OU Health takes no position at this time as to whether the District Court properly denied Plaintiffs-Appellants' Motion or the legal questions presented by Plaintiffs' Motion.

/s/J. Craig Buchan

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CERTIFICATE OF COMPLIANCE

This document complies with Fed. R. App. P. 27(d) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B), this document contains 504 words, including footnotes.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 10th Cir. R. 32(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in fourteen-point Century Schoolbook font.

/s/J. Craig Buchan _____