

No. 23-10994

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

SPECTRUM WT,
Plaintiff-Appellant,

v.

WALTER WENDLER, *et al.*,
Defendants-Appellees.

**MOTION TO DISMISS APPEAL
UNDER FRAP 42(b)(2)**

On Appeal from the United States District Court for the
Northern District of Texas, Amarillo Division,
Civil Action No. 2:23-CV-48
Hon. Matthew J. Kacsmaryk Presiding

JT Morris	Adam Steinbaugh
<i>Counsel of Record</i>	Jeffery D. Zeman
Conor T. Fitzpatrick	Sara Berinhout
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION 700 Pennsylvania Ave. SE, Suite 340 Washington, D.C. 20003 Tel: (215) 717-3473 jt.morris@fire.org conor.fitzpatrick@fire.org	FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION 510 Walnut St., Suite 900 Philadelphia, PA 19106 Tel: (215) 717-3473 adam@fire.org jeff.zeman@fire.org sara.berinhout@fire.org

Attorneys for Plaintiff-Appellant

CERTIFICATE OF INTERESTED PARTIES

The cause number and style of the case is *Spectrum WT v. Wendler* (USDC Civil No. 2:23-CV-48, Northern District of Texas).

Counsel of record certifies that the following listed persons or entities described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

Plaintiff-Appellant

Spectrum WT

Attorneys for Plaintiff-Appellant

JT Morris

Conor T. Fitzpatrick

Foundation for Individual Rights and Expression
700 Pennsylvania Ave. SE, Suite 340
Washington, D.C. 20003

Adam Steinbaugh

Sara Berinhout

Jeffrey Daniel Zeman

Foundation for Individual Rights and Expression
510 Walnut St., Suite 900
Philadelphia, PA 19106

Defendants-Appellees

Dr. Walter Wendler
Dr. Christopher Thomas¹

Attorneys for Defendants-Appellees

William R. Peterson
William F. Cole
Monroe David Bryant, Jr.
Zachary Berg
Munera Al-Fuhaid
Alexia Baker
Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711

Allison Marie Collins
Foster Swift Collins & Smith PC
313 South Washington Square
Lansing, MI 48933

Former Parties and Other Interested Parties

Barrett Bright
Lauren Stovall
John Sharp
Glenn Hegar
Robert L. Albritton
James R. Brooks
Jay Graham
Michael A. Hernandez, III
Tim Leach
Bill Mahomes
Elaine Mendoza
Michael J. Plank
Cliff Thomas
Demetrius L. Harrell, Jr.

¹ On December 30, 2025, the parties stipulated in the district court to dismiss Spectrum WT's claims against Defendant Thomas. *Spectrum WT v. Wendler*, No. 2:23-cv-00048, ECF No. 142 (N.D. Tex. Dec. 30, 2025).

West Texas A&M University
Texas A&M University System

Respectfully,

/s/ JT Morris
JT Morris
Counsel of Record for Plaintiff-Appellant
Spectrum WT

Plaintiff-Appellant Spectrum WT respectfully moves under Fed. R. App. P. 42(b)(2) to dismiss this interlocutory appeal as moot, given the district court's January 17, 2026 final judgment dismissing Spectrum WT's claims for permanent injunctive and declaratory relief. *See Satanic Temple, Inc. v. Texas Health & Hum. Serv. Comm'n*, 79 F.4th 512, 514 (5th Cir. 2023).

In support of this motion, Spectrum WT states as follows:

1. This is an interlocutory appeal under 28 U.S.C. § 1292(a)(1), arising from the district court's denial of Spectrum WT's motion for a preliminary injunction. ECF No. 1.
2. On August 18, 2025, a 2–1 panel of this Court reversed the denial of Spectrum WT's motion for a preliminary injunction. ECF No. 186.
3. The Court withheld mandate (ECF No. 193), however, and on October 27, 2025, it granted rehearing en banc (ECF No. 207), and as a result, vacated the panel opinion (ECF No. 209).
4. Oral argument on rehearing en banc is scheduled for January 23, 2026.

5. On January 14, 2026, the district court held a bench trial on Spectrum WT’s remaining claims for permanent injunctive relief and declaratory relief. *Spectrum WT v. Wendler*, 2:23-cv-00048, ECF No. 166 (N.D. Tex.).²

6. On January 17, 2026, the district court issued findings of fact and conclusions of law denying Spectrum WT a permanent injunction and declaratory relief. *Id.* at ECF No. 168.

7. The same day, the district court entered final judgment and dismissed Spectrum WT’s case with prejudice. *Id.* at ECF No. 169.

8. Under this Court’s precedent, the district court’s “denial of permanent relief” has “moot[ed]” Spectrum WT’s “appeal from a denial of preliminary relief,” depriving the Court of jurisdiction over the current appeal. *Satanic Temple, Inc.*, 79 F.4th at 514 (quoting *Koppula v. Jaddou*, 72 F.4th 83, 84 (5th Cir. 2023)).

² For the one-day trial, the district court admitted 78 Plaintiff’s exhibits, 432 Defendant’s exhibits, and five sets of deposition designations, in addition to taking testimony from two live witnesses. *Spectrum WT v. Wendler*, 2:23-cv-00048, ECF No. 167 (N.D. Tex.). The district court’s Findings of Fact and Conclusion of Law relies on an “unofficial, expedited transcript.” *Id.* at ECF No. 168 at 2, n.3. The deposition designations and unofficial trial transcript are not part of the appellate record. Nor are most of the exhibits. To date, the unofficial trial transcript has not been made available to the parties.

9. Spectrum WT intends to appeal the district court's final judgment, and to "litigate further any issues that were raised in the preliminary injunction motion" in that forthcoming appeal. *See id* at 515.³

10. Thus, Spectrum WT requests that the Court dismiss this appeal, with each party to bear its own costs.

11. Counsel for Spectrum WT has conferred with counsel for Appellees-Defendants, who indicated Appellees-Defendants do not take a position on this motion and reserve the right to respond.

For good cause shown, Spectrum WT respectfully asks the Court to grant its motion to dismiss and remove the scheduled en banc argument from the Court's argument docket.

Dated: January 19, 2026

Respectfully,

/s/ JT Morris
JT Morris
Conor T. Fitzpatrick
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
700 Pennsylvania Ave., SE, Ste. 340
Washington, D.C. 20003
Tel: (215) 717-3473

³ The district court's final judgment also triggers the right of Plaintiffs Barrett Bright and Lauren Stovall (who are no longer parties to this appeal, *see* ECF No. 301), to appeal the district court's September 21, 2023, dismissal of their damages claim. *See Spectrum WT v. Wendler*, 2:23-cv-00048, ECF No. 59 (N.D. Tex.); *see also* 28 U.S.C. § 1291.

jt.morris@fire.org
conor.fitzpatrick@fire.org

Adam Steinbaugh
Jeffrey D. Zeman
Sara Berinhout
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
510 Walnut St., Suite 900
Philadelphia, PA 19106
Tel: (215) 717-3473
adam@fire.org
jeff.zeman@fire.org
sara.berinhout@fire.org

Attorneys for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This certifies that on January 19, 2026, in compliance with Rules 25(b) and (c) of the Federal Rules of Appellate Procedure, the undersigned served the foregoing via the Court's ECF filing system on all registered counsel of record.

/s/ JT Morris
JT Morris
Attorney for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. App. P. 32(a)(7)(B) because this brief contains 564 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Local Rule 32.2.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Local Rule 32.1 and the type style requirements of proportionally spaced typeface using 14-point Century Schoolbook font for text and 12-point Century Schoolbook font for footnotes.

Dated: January 19, 2026

/s/ JT Morris
JT Morris
Attorney for Plaintiff-Appellant