

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STATE OF OREGON et al.,

Plaintiffs

v.

ALEX M. AZAR II et al.

Defendants,

and

AMERICAN MEDICAL ASSOCIATION,
et al.,

Plaintiffs,

v.

ALEX M. AZAR II et al.,

Defendants.

6:19-cv-00317-MC (Lead Case)

6:19-cv-00318-MC (Trailing Case)

OPINION AND ORDER

MCSHANE, Judge:

On April 29, 2019, this Court issued a preliminary injunction stopping the implementation of certain rules (the “Final Rule”) that would alter the family planning program established by Title X of the Public Health Services Act, 42 U.S.C. § 300 *et seq.* Defendants appealed, and now move this Court to stay any district court proceedings pending appellate review of the injunction. Plaintiffs oppose the motion, pointing out that district courts are generally discouraged from staying matters pending appeal.

This case presents unique circumstances that warrant a stay. First, the Ninth Circuit has indicated that it will hear the merits of the injunction at oral argument on September 23, 2019—just one week away—and proceed “expeditiously.” Second, the issues presented in this case are almost entirely legal in nature. An opinion from the Ninth Circuit will most certainly provide guidance for this Court moving forward. Finally, the threat of extended harm to plaintiffs at this point, following a stay of this court’s injunction by the Ninth Circuit panel, does not outweigh judicial efficiency.

For these reasons, Defendants’ Motion for Stay of Proceedings Pending Appeal of this Court’s Preliminary Injunction, ECF No. 176, is GRANTED.¹

STANDARD

The Supreme Court has long recognized a “power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and

¹ The Court recognizes that District Courts in California and Washington denied Defendants’ similar motions to stay, reaching different interpretations of *California v. Azar*, 911 F.3d 558 (9th Cir. 2018) with respect to the matters before those courts. *California v. Azar*, 2019 WL 2996441 (N.D. Cal. July 9, 2019); *Washington v. Azar*, No. 19 Civ. 2040 (SAB) (E.D. Wash. June 14, 2019).

for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). The Ninth Circuit explained,

Where it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed. Among these competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay. *See Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 81 L.Ed. 153.

CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962).

DISCUSSION

Plaintiffs’ claims against defendants involve multiple violations of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)–(D), as well as constitutional challenges to the Final Rule. *See* Pls.’ Compl. 92–102, ECF No. 1. With a fully developed administrative record and virtually no issues of fact, both parties agree that the issues in this case are legal in nature. Because the Ninth Circuit has indicated it will hear the merits of the injunction at an oral argument scheduled next week, its opinion will almost certainly inform or bind this Court moving forward on those same legal issues. This is an expedited appeal that will not be protracted over the course of years. The interest of judicial economy outweighs the threat of extended harm to plaintiffs in favor of allowing a stay.

Plaintiffs argue that the Ninth Circuit rehearing en banc will only address the three-judge panel’s stay of the district courts’ injunctions. Plts.’ Resp. in Opp’n to Mot. 12, ECF No. 181. Despite the Ninth Circuit instructing the parties to “be prepared to discuss at oral argument the district courts’ preliminary injunction orders on the merits,” Plaintiffs argue that a decision on the merits is only a mere possibility. 9th Cir. Order 2, Aug. 1, 2019, ECF No. 180.

Even assuming that the en banc court does not reach the merits of the preliminary injunction, the reality is that the merits of the preliminary injunction are baked into the three-judge panel's order staying the injunction. The three-judge panel that granted defendants' motions for stay of the preliminary injunctions had to consider the merits of the injunctions themselves. 9th Cir. Order on Mots. for Stay, June 20, 2019, ECF No. 165. Thus, when the en banc court rehears the merits of defendants' motions for stay, it is reasonable to assume the en banc court will also consider the merits of the injunctions themselves.

Finally, the potential harm to plaintiffs does not outweigh the judicial efficiency of allowing a brief stay pending "expeditious" appellate review of almost entirely legal issues. Plaintiffs argue that severe and extended harm will result if the case does not proceed expeditiously to final judgment. *See* Plts.' Resp. in Opp'n to Mot. 1–2, ECF No. 181; Plts.' Mem. In Opp'n to Mot. 2, ECF No. 183. This Court has already agreed with the Plaintiffs that the harm to the public that will result from the Final Rule was such that it required immediate injunctive relief. That finding was squarely rejected on appeal. Op. & Order, ECF No. 142. Allowing a brief stay in litigation while the Ninth Circuit expeditiously considers the stay of the injunction, and likely the merits of the injunction itself, will ultimately benefit both parties and this Court moving forward.

Plaintiffs rely on the Ninth Circuit's recent decision in *California v. Azar*, 911 F.3d 558, 583 (9th Cir. 2018) to support the usual disfavor of district courts "delay[ing] trial preparation to await an interim ruling on a preliminary injunction." The Ninth Circuit explained that "because the fully developed factual record may be materially different from that initially before the district court, our disposition of appeals from most preliminary injunctions may provide little

guidance as to the appropriate disposition on the merits.” *Id.* at 584. This is simply not the case here.

The Ninth Circuit in *California* admonished the district court for staying proceedings because the district court failed to give any reason for allowing the stay. *Id.* And while the *California* court was concerned that the factual record may become materially different as it develops, the administrative record in this case likely will not develop much beyond what already exists. The discovery process will surely remain brief and the case will likely be decided during motions practice rather than at a trial. Additionally, in *California*, the Ninth Circuit stated that its disposition of appeals “may provide little guidance as to the appropriate disposition on the merits.” *Id.* (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1003 (9th Cir. 2012)). Here, it is hard to imagine that the decision on appeal would not guide this court robustly.

CONCLUSION

Defendants’ Motion for Stay of Proceedings Pending Appeal of this Court’s Preliminary Injunction, ECF No. 176, is GRANTED.

IT IS SO ORDERED.

DATED this 17th day of September, 2019.

/s/ Michael McShane
Michael J. McShane
United States District Judge