

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 03, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

ALEX M. AZAR II, in his official  
capacity as Secretary of the United States

Department of Health and Human

Services; and UNITED STATES

DEPARTMENT OF HEALTH AND

HUMAN SERVICES,

Defendants.

No. 1:19-cv-03040-SAB

**ORDER DENYING  
DEFENDANTS' MOTION TO  
STAY PRELIMINARY  
INJUNCTION PENDING  
APPEAL**

NATIONAL FAMILY PLANNING &  
REPRODUCTIVE HEALTH  
ASSOCIATION, FEMINIST WOMEN'S  
HEALTH CENTER, DEBORAH OYER,  
M.D., and TERESA GALL, F.N.P.,

Plaintiffs,

v.

ALEX M. AZAR II, in his official capacity  
as Secretary of the United States

1 Department of Health and Human  
2 Services; UNITED STATES  
3 DEPARTMENT OF HEALTH AND  
4 HUMAN SERVICES, DIANE FOLEY,  
5 M.D., in her official capacity as Deputy  
6 Assistant Secretary for Population Affairs,  
7 and OFFICE OF POPULATION  
8 AFFAIRS,  
9 Defendants.  
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11 Before the Court is Defendant’s Motion to Stay Preliminary Injunction  
12 Pending Appeal, ECF No. 58. The motion was heard without oral argument.

13 Defendants ask the Court to stay the Court’s Order granting Plaintiffs’  
14 Motions for Preliminary Injunction, ECF No. 54, entered on April 25, 2019. The  
15 Order enjoins Defendants from implementing or enforcing in any way the Final  
16 Rule published on March 2019 on a nationwide basis. In essence, Defendants are  
17 asking the Court to reconsider its earlier ruling and permit the Final Rule to go  
18 into effect. *See Nken v. Holder*, 556 U.S. 418, 428 (2009) (“...a stay operates upon  
19 the judicial proceeding itself. It does so either by halting or postponing some  
20 portion of the proceeding, or by temporarily divesting an order of  
21 enforceability.”).

22 Recently, the Ninth Circuit was facing this same issue when a district court  
23 issued a TRO and the United States asked it to say the TRO pending appeal. *See*  
24 *East Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219 (9th Cir. 2018). There, the  
25 Circuit set forth the approach courts should use in determining whether to grant a  
26 stay pending appeal:

27 A stay is an ‘intrusion into the ordinary processes of administration  
28 and judicial review,’ and accordingly ‘is not a matter of right, even if

1 irreparable injury might otherwise result to the appellant.” *Nken*,  
2 556 U.S. at 427 (2009) (citations omitted). “It is instead ‘an exercise  
3 of judicial discretion,’ and ‘the propriety of its issue is dependent  
4 upon the circumstances of the particular case.” *Id.* at 433 (internal  
5 alteration omitted) (*quoting Virginian Ry. Co. v. United States*, 272  
6 U.S. 658, 672–73 (1926)). “The party requesting a stay bears the  
7 burden of showing that the circumstances justify an exercise of that  
8 discretion,” and our analysis is guided by four factors:

- 9 (1) whether the stay applicant has made a strong  
10 showing that he is likely to succeed on the merits; (2)  
11 whether the applicant will be irreparably injured absent  
12 a stay; (3) whether issuance of the stay will  
13 substantially injure the other parties interested in the  
14 proceeding; and (4) where the public interest lies.

*Id.* at 433–34 (*quoting Hilton v. Braunskill*, 481 U.S. 770, 776  
15 (1987)). “The first two factors . . . are the most critical,” and the  
16 “mere possibility” of success or irreparable injury is insufficient to  
17 satisfy them. *Id.* at 434 (internal quotation marks omitted).

18 *Id.* at 1245-46.

19 The Court considers the final two factors after it concludes an  
20 applicant satisfies the first two. *Id.* at 1236.

21 Given that the Court has already considered these factors when it granted  
22 Plaintiffs’ Motions for Preliminary Injunction and concluded it is Plaintiffs, not  
23 Defendants, that have a likelihood of success on the merits, and Plaintiffs, not  
24 Defendants, that would suffer irreparable harm if the preliminary injunction was  
25 not granted, the Court finds that Defendants have not met their burden of showing  
26 that a stay in this matter would be appropriate.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Stay Preliminary Injunction Pending Appeal,  
3 ECF No. 58, is **DENIED**.

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order  
5 and forward copies to counsel.

6 **DATED** this 3rd day of June 2019.



13 *Stanley A. Bastian*

14 Stanley A. Bastian  
15 United States District Judge  
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