

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

RYAN KARNOSKI, et al,
Plaintiffs,
v.
DONALD TRUMP, et al,
Defendants.

Case No: 2:17-cv-1297-MJP

STATE OF WASHINGTON’S
RESPONSE TO ORDER TO
SHOW CAUSE

STATE OF WASHINGTON,
Intervenor-Plaintiff,
v.
DONALD TRUMP, et al,
Intervenor-Defendants.

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I. INTRODUCTION

This Court issued a preliminary injunction to protect Washington from Defendants’ discriminatory Ban and to enforce the equal protection and substantive due process guarantees of the Fifth Amendment. Since this Court enjoined the Ban, transgender individuals have accessed into military service, continued to serve openly, and have received necessary medical care.

Defendants – now that they developed a final version of the Ban – ask this Court to stay the protections of the preliminary injunction and to grant them free reign to discriminate against transgender individuals. This Court has authority to deny Defendants’ motion and should do so to ensure that transgender Washingtonians are not subjected to discriminatory treatment while this litigation proceeds.

II. BACKGROUND

On December 11, 2018, this Court issued a preliminary injunction barring “Defendants from taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump’s July 26, 2017 announcement.” ECF 103 at 23. This Court ordered the injunction to “take effect immediately” to “remain in effect pending resolution of this action on the merits or further order of this Court.” *Id.*

On April 13, 2018, the Court granted partial summary judgment in favor of Washington, and ordered that “[t]he preliminary injunction previously entered otherwise remains in full force and effect.” ECF 233 at 30-31. The Court also found that its ruling on Washington’s summary judgment motion “eliminate[d] the need for Plaintiffs and Washington to respond to Defendants’ [then-pending] Motion to Dissolve the Preliminary Injunction” and struck Defendants’ Motion to Dissolve. ECF 233 at 31.

Defendants filed a Notice of Appeal on April 30, 2018. ECF 236 (giving notice “that all Defendants appeal to the United States Court of Appeal for the Ninth Circuit from this Court’s Order of April 13, 2018, ECF No. 233, granting in part and denying in part Plaintiffs’ and

1 Washington’s motions for summary judgment, granting in part and denying in part Defendants’
2 motion for partial summary judgment, and striking Defendants’ motion to dissolve the
3 preliminary injunction”). On that same day, Defendants moved this Court to stay the preliminary
4 injunction pending appeal. ECF 238. Four days later – and well in advance of the response
5 deadline or motion noting date – Defendants filed a Motion to Stay Pending Appeal before the
6 Ninth Circuit. *See* ECF 238 at 5; *cf.* Local Rule 7(d)(3) (prescribing noting dates for motions).
7 The Ninth Circuit has yet to rule on that motion. ECF 274 at 2. *See generally Karnoski v. Trump*,
8 18-35341 (9th Cir. Apr. 30, 2018).

9 The Court now asks whether Defendants’ Motion to Stay the Preliminary Injunction in
10 the district court should be stayed until after the Ninth Circuit enters a ruling on the stay
11 application filed in that court. ECF 274 at 2.

12 III. ARGUMENT

13 As a general rule, “[t]he filing of a notice of appeal is an event of jurisdictional
14 significance – it confers jurisdiction on the court of appeals and divests the district court of its
15 control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer*
16 *Discount Co.*, 459 U.S. 56, 58 (1982). Upon the filing of a notice of appeal, appellate jurisdiction
17 extends to “‘matters inextricably bound up with the injunctive order from which the appeal is
18 taken.’” *Washington v. Trump*, No. C17-0141JLR, 2017 WL 591360, at *2 (W.D. Wash. Feb.
19 14, 2017) (quoting *Paige v. California*, 102 F.3d 1035, 1039 (9th Cir. 1996)).

20 Appeals of interlocutory orders are an exception to the general rule. “[I]t is firmly
21 established that an appeal from an interlocutory order does not divest the trial court of
22 jurisdiction to continue with other phases of the case.” *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d
23 1291, 1293 (9th Cir. 1982). Nor does the filing of an appeal bar a district court from ruling on
24 motions related to preliminary injunctions. *See Dex Media W., Inc. v. City of Seattle*, No. C10-
25 1857, 2011 WL 1869330, at *1 (W.D. Wash. May 16, 2011) (citing *Tribal Village of Akuton v.*
26 *Hodel*, 859 F.2d 662, 663 (9th Cir.1988)).

1 This Court recently recognized its authority to rule on injunction-related matters “even
2 during an appeal, in order to preserve the status quo or ensure compliance with its earlier orders.”
3 *Doe v. Trump*, 284 F. Supp. 3d 1172 (W.D. Wash. 2018). This is not surprising, as “[t]he plain
4 language of Rule 62(c) allows the district court to ‘suspend, modify, restore, or grant an
5 injunction’ during the pendency of [an] interlocutory appeal, and such action can inure to the
6 benefit of plaintiffs or defendants.” *Id.* (quoting *Mayweathers v. Newland*, 258 F.3d 930, 935
7 (9th Cir. 2001) and Fed. R. Civ. P. 62(c)). The Federal Rules of Appellate Procedure also provide
8 that district courts have authority to rule on injunction related matters even when an interlocutory
9 appeal is pending. Fed. R. App. P. 8(1)(c) (requiring parties to “move first in the district court”
10 for orders “suspending, modifying, restoring, or granting an injunction while an appeal is
11 pending”). *See also Armstrong v. Brown*, 732 F.3d 955, 959 n.6 (9th Cir. 2013) (noting a district
12 court’s authority to enforce its injunction while an appeal is pending). Further, the Ninth Circuit
13 has affirmed that district courts retain jurisdiction to “preserve the status quo during the
14 pendency of an appeal [.]” *Nat. Res. Def. Council, Inc. v. Sw. Marine inc.*, 242 F.3d 1163, 1166
15 (9th Cir. 2001).

16 Neither *Griggs* nor *Paige*, the two cases referenced in the Court’s Order to Show Cause,
17 limit the Court’s ability to manage and enforce its preliminary injunction – including ruling on
18 Defendants’ Motion to Stay – while Defendants’ appeal is pending. *See* ECF 274 at 2. In *Paige*,
19 the Ninth Circuit simply determined that it had jurisdiction to review an order that was
20 “inextricably intertwined with the issuance of . . . the interim injunction.” *Paige*, 102 F.3d at
21 1040. While the Ninth Circuit asserted jurisdiction over matters that were inextricably
22 intertwined the injunction, it did not purport to revoke or narrow Federal Rule 62(c)’s explicit
23 grant of authority to district courts to adjudicate requests to “suspend, modify, restore, or grant
24 an injunction” while an appeal is pending. In *Griggs*, the Supreme Court interpreted the
25 applicability of Federal Rule of Appellate Procedure 4(a)(4) to the interplay of a “timely motion
26 to alter or amend the judgment” and an appeal of that same judgment. 459 U.S. at 57. That issue

1 is not before this Court, because no final judgment has been rendered. Instead, the issue here is
2 whether the Court retains authority to rule on Defendants’ motion for a stay despite a pending
3 appeal related to the preliminary injunction. Neither *Griggs* nor *Paige* divest this Court of
4 authority granted to it by the Federal Rules – and affirmed by longstanding case law – to rule on
5 Defendants’ motion.

6 **IV. CONCLUSION**

7 For the foregoing reasons, this Court should conclude that it has jurisdiction to rule on
8 Defendants’ Motion to Stay the Preliminary Injunction Pending Appeal, and deny it in order to
9 preserve the status quo and prevent Defendants from implementing their discriminatory Ban
10 during the pendency of this litigation.

11 DATED this 6th day of June, 2018.

12
13 ROBERT W. FERGUSON
14 Washington Attorney General

15 *s/ La Rond Baker*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 6th day of June, 2018.

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