

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 9:18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO & JULIE H. HAMILTON,

Plaintiffs,

v.

CITY OF BOCA RATON, FLORIDA, &
COUNTY OF PALM BEACH, FLORIDA,

Defendants.

ORDER STAYING CASE

THIS MATTER is before the Court on the parties' joint *ore tenus* Motion to Stay the Case, made on the record at the status conference held today, February 19, 2019. See DE 143; DE 144. For the reasons set forth below the Motion is **GRANTED**.

This Court issued its Order Denying Plaintiffs' Renewed Motion for Preliminary Injunction ("Order Denying Preliminary Injunction") on February 13, 2019 at DE 141. Plaintiffs filed a Notice of Appeal the same day at DE 142. The Court then set a status conference at DE 143, and provided additional instructions to the parties regarding the substance of the status conference at DE 144. Specifically, the parties were instructed in a paperless order:

In advance of today's status conference, the parties should be prepared to address their respective positions on staying this case pending the appeal of the Court's Preliminary Injunction Order at DE 141. Prior to the status conference, the parties are ordered to meet and confer regarding their positions on this issue. To the extent the parties do not agree that the case should be stayed pending appeal, they must appear at the status conference with the legal grounds supporting their position, including any relevant rules and case law.

DE 144. At the status conference, all parties jointly moved to stay the case, pending Plaintiffs' interlocutory appeal.

As discussed on the record at the status conference, Plaintiffs' interlocutory appeal did not divest this Court of its jurisdiction to proceed in adjudicating the merits of this case. *Pueblo of Pojoaque v. New Mexico*, 863 F.3d 1226, 1231 (10th Cir. 2017); *Free Speech v. Fed. Election Comm'n*, 720 F.3d 788, 791–92 (10th Cir. 2013); *Phelan v. Taitano*, 233 F.2d 117, 119 (9th Cir. 1956). However, the Court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

Here, the procedural posture and legal background of this case indicate that a stay is warranted. *See Pickup v. Brown*, No. 2:12-CV-02497-KJM, 2013 WL 411474, at *1 (E.D. Cal. 2013). First, all parties are in agreement in seeking a stay of the proceedings before this Court while the Court's Order Denying Preliminary Injunction is pending on appeal. Second, the Court's Order Denying Preliminary Injunction addressed substantial, threshold questions of First Amendment law that will inevitably have significant effects on the rest of this case. Indeed, both Defendants' Motions to Dismiss, DE 34; DE 39, and Plaintiffs' Consolidated Response to the Motions, DE 62, spend considerable pages on the question of whether Plaintiffs have stated a claim under the First Amendment. In the interests of promoting judicial efficiency, it is appropriate to postpone ruling on those issues in the context of the Motions to Dismiss, or any other motion, until the Court of Appeals for the Eleventh Circuit has reviewed the Order Denying Preliminary Injunction. Third and finally, there will be no prejudice to any party in staying this case pending the resolution of the appeal. As the Court represented to the parties on the record at the status conference, the stay of this case and termination of pending motions will not affect the merits of any party's claims or defenses.

It is hereby **ORDERED** and **ADJUDGED**

1. The parties' joint *ore tenus* Motion to Stay is **GRANTED**.
2. This case is **STAYED**.
3. The Clerk of the Court shall **CLOSE THIS CASE** for statistical purposes.
4. All pending motions and deadlines are **TERMINATED**.
5. All hearings are **CANCELLED**.
6. Plaintiff shall immediately inform this Court through a status report of any ruling by the Court of Appeals for the Eleventh Circuit on this matter.
7. Any party may move to lift the stay in this case at any time.
8. Upon a motion to lift the stay, or the issuance of a ruling from the Court of Appeals, this Court will set a status conference to address the lifting of the stay and reinstatement of deadlines and motions.

DONE AND ORDERED in Chambers, West Palm Beach, Florida, this 19th day of February, 2019.

Copies furnished to:
Counsel of Record


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE