

Case No. 20-55437

In the United States Court of Appeals
for the Ninth Circuit

KIM RHODE, et al.
Plaintiffs-Appellees,

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of
California,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of California
(18-cv-00802-BEN-JLB)

**APPELLEES' OPPOSITION TO MOTION FOR EXTENSION OF TIME
TO FILE APPELLANT'S OPENING BRIEF AND EXCERPTS OF
RECORD**

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May 6, 2020

INTRODUCTION

Defendant-Appellant California Attorney General Xavier Becerra (“the State”) moves this Court for a 21-day extension to file the opening brief in an interlocutory appeal of an order issuing a preliminary injunction. Previously, the State filed an emergency motion with this Court to stay that injunction pending appeal, after the district court refused to do so. Appellees opposed that motion. Should this Court grant the State’s emergency stay motion, Appellees oppose the State’s motion seeking a 21-day extension to file its opening brief. Appellees should not be subjected to 21 *more* days of irreparable harm merely because the State claims it is not prepared to prosecute a fast-track appeal of a *temporary* injunction that the State chose to pursue.

BACKGROUND

On April 23, 2020, the district court issued a preliminary injunction in this matter. Appellant’s Emerg. Mot. Stay Order Granting Prelim. Inj. Pending Appeal Ex. 10 (“Emergency Mot.”), Apr. 24, 2020, ECF No. 3-1. The next day, the State filed an *ex parte* application requesting that the district court stay its preliminary injunction order pending resolution of the State’s anticipated appeal. *Id.* at Ex. 11. The district court denied the State’s request. *Id.* at Ex. 12. Mere hours later, the State filed a 34-page emergency request for a stay of the preliminary injunction with this Court, along with 15 supporting documents totaling approximately 200 pages. *See generally id.*

That same day, this Court granted a temporary administrative stay of the preliminary injunction pending further order. Order, Apr. 24, 2020, ECF No. 4. On

April 30, 2020, Appellees filed an opposition to the State's emergency request for a stay and moved this Court to vacate the temporary administrative stay, in part, because they sought to be relieved of the irreparable harm the challenged provisions inflict on them. Appellees' Opp'n Appellant's Emerg. Mot. Stay Order Granting Prelim. Inj. Pending Appeal; Mot. Vacate Admin. Stay, Apr. 30. 2020, ECF No. 8-1. This Court has yet to rule on the State's emergency motion.

ARGUMENT

The State tells this Court that 28 days to brief an interlocutory appeal of a *temporary* injunction is insufficient, that it needs 21 extra days because of staffing issues exacerbated by the COVID-19 pandemic and the need for its attorneys to digest the district court's order and collaborate on opposing it. Mot. Ext. Time to File Appellant's Opening Br. & Excerpts of Record 1-3 ("Appellant's Ext. Mot."), May. 4, 2020, ECF No. 9. Yet the State was able to reach its conclusion that the district court had abused its discretion in issuing the preliminary injunction and draft not one, *but two*, motions making its case, in little more than 28 hours. *See generally* Emergency Mot.; *see also id.* Ex. 11. Twenty-eight days is thus more than enough time for the State to make the case it has already mostly made in seeking a stay.

If this Court denies the State's emergency motion for a stay, Appellees would not object to the State's requested extension because, in that case, they would no longer be suffering irreparable harm. This case involves constitutional injuries, which the district court found not only exist, but also far outweigh any potential harm to the

State. *Id.* at Ex. 10, at 109-114. Each day the injunction is delayed is another day Californians are denied the exercise of their right to acquire ammunition free from the challenged provisions' unlawful burdens. Denial of a fundamental right is irreparable injury—even if for a moment. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (holding that deprivation of constitutional rights, “for even minimal periods of time, unquestionably constitutes irreparable injury”).

The State has made the decision that pursuing an emergency stay and interlocutory appeal of a temporary injunction is so important that it required swift action. It should not be able to now say that it lacks the resources to achieve its goal; particularly when a stay will cause Appellees and millions of California residents to endure continued violations of their constitutional rights with little benefit to the State. Appellees' Opp'n Emergency Mot. 11-13.

CONCLUSION

For these reasons, the Court should deny the State's motion for extra time to file its opening brief in this interlocutory, fast-tracked appeal, unless this Court denies the State's emergency motion for a stay of the preliminary injunction, thereby relieving Appellees' of continued irreparable harm pending this appeal.

Date: May 6, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady
Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2020, an electronic PDF of APPELLEES' OPPOSITION TO MOTION FOR EXTENTION OF TIME TO FILE APPELLANT'S OPENING BRIEF AND EXCERPTS OF RECORD was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: May 6, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady
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