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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CITIZENS FOR CONSTITUTIONAL
FAIRNESS, et al.,

Plaintiffs,

Civ. No. 08-3015-PA

ORDER

v.

JACKSON COUNTY, et al.,

Defendants.

PANNER, J.

After a court trial, I ruled for plaintiffs. Judgment issued November 19, 2008. Plaintiffs and defendants have filed notices of appeal.

Plaintiffs seek an expedited trial on their sixth and eighth claims. Defendants seek a stay pending appeal. I deny plaintiffs' petition, and grant defendants' motion for a stay pending appeal.

I. Plaintiffs' Petition for Expedited Trial Setting

Plaintiffs seek an expedited trial on their sixth and eighth claims for relief. Plaintiffs also argue that this court should address their entitlement to costs and attorney's fees.

Although plaintiffs' petition refers to "bifurcated issues," this court's judgment covered the entire action. Plaintiffs' notice of appeal, which raises the same issues on which plaintiffs now seek an expedited trial, transferred jurisdiction from this court to the Ninth Circuit Court of Appeals. See Singh v. Gonzales, 491 F.3d 1090, 1094 (9th Cir. 2007); Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam) (notice of appeal has "jurisdictional significance," divesting district court "of its control over those aspects of the case involved in the appeal").

I deny plaintiffs' petition for lack of subject matter jurisdiction. I also conclude that it would be premature to address plaintiffs' entitlement to costs or attorney's fees because plaintiffs have not filed a bill of costs or a motion for attorney's fees. See generally Fed. R. Civ. P. 54(d).

II. Stay Pending Appeal

Defendants seek a stay pending appeal. This court "in its discretion may suspend, modify, restore, or grant an injunction" during the pendency of an appeal "upon such terms as to bond or otherwise as it considers proper for the security of the rights

of the adverse party." Fed. R. Civ. P. 62(c). In deciding whether to issue a stay, the court should consider (1) whether the applicant for the stay has made a strong showing that the applicant is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether a stay will substantially injure other parties interested in the proceeding; and (4) the public interest. Hilton v. Braunskill, 431 U.S. 770, 776 (1987). The standard is similar to the standard for granting preliminary injunctions. Abbassi v. INS, 143 F.3d 513, 514 (9th Cir. 1998). The moving party "must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of hardships tips sharply in [the moving party's] favor." Id.

Defendants contend that they are reasonably likely to prevail on appeal. Defendants also argue that they are caught between conflicting obligations either to obey this court's judgment requiring that plaintiffs' waivers be honored, or to comply with the State of Oregon's position that plaintiffs also must obtain waivers from the State.

I conclude that a stay is warranted. The pending appeal should resolve the dispute over the validity of plaintiffs' Measure 37 waivers, and the parties are seeking to expedite the appeal. Plaintiffs have not shown that they will suffer

irreparable harm if I grant a stay.

CONCLUSION

Plaintiffs' petition for expedited trial (#138) is denied. Defendants' motion for stay (#140) is granted. Applicants' motion to appear as amicus curiae (#146) is granted.

DATED this 30 day of January, 2009.


OWEN M. PANNER
U.S. DISTRICT JUDGE