

No. 08-1371; 08-1372; 08-1626

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

KENNETH FOSTER, et al.,)
)
 Plaintiffs-Appellees,)
)
 v.)
)
 SHAREE BOOKER, in her official capacity as a)
 member of the Michigan Parole Board, et al.,)
)
 Defendants-Appellants.)
)

NOV 18 2009

LEONARD GREEN, Clerk

ORDER

BEFORE: KENNEDY and ROGERS, Circuit Judges; HOOD, District Judge.*

The defendants appeal the district court’s grant of summary judgment for the plaintiffs in this civil rights action alleging that the retroactive application of changes to the State of Michigan’s parole laws violates the Ex Post Facto Clause of the United States Constitution. The defendants now move to stay (1) the district court’s original injunctive order; (2) the district court’s subsequent order, issued on November 3, 2009, in response to the defendants’ second remedial report; and (3) all further district court proceedings pending resolution of the case on appeal. The plaintiffs oppose the defendants’ motion for a stay.

When deciding whether to grant a motion for a stay pending appeal, this court considers the following four factors: (1) the movant’s likelihood of success on the merits of the appeal; (2) the likelihood of irreparable harm to the movant if the motion for a stay is denied; (3) the likelihood of harm to others if the motion for a stay is granted; and (4) whether the public interest weighs in favor

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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of granting a stay. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991) (citation omitted). None of these factors, taken alone, is a “prerequisite[] that must be met”; rather, these four factors “are interrelated considerations that must be balanced together.” *Id.* (citation omitted).

This court decided previously, after consideration of each of the defendants’ two earlier motions, that a stay of the district court’s original injunctive order was not warranted. In both instances, this court indicated, however, that “[s]hould the district court impose the ‘more drastic and intrusive relief’ that the defendants fear, they may renew their motion for a stay.” The district court’s November 3, 2009, order imposes significant additional requirements upon the defendants. In particular, the requirement that a prisoner’s complete psychological reports be attached to the prisoner’s parole summary and made available for review online by all Parole Board members before they vote “imposes a substantial burden . . . and requires implementation of a practice that was not required, implemented or utilized prior to 1992.” *Sampson Aff.* ¶ 24, Nov. 2, 2009. Indeed, even the plaintiffs noted that the “psychological records may be burdensome to compile.” *Pls.-Appellees’ Resp.* 6.

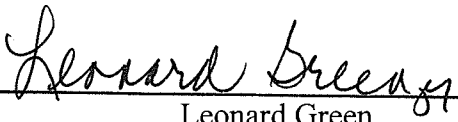
The defendants have demonstrated a sufficient likelihood of success on the merits, when considered with the other factors, to warrant a stay of the district court’s most recent order. Moreover, the defendants have shown a sufficient likelihood of irreparable harm because compliance with the district court’s most recent order will require a significant expenditure of time and money. The public interest also weighs in favor of granting a stay of the district court’s most recent order until this court decides the issues on appeal. Finally, it is unlikely that the plaintiffs will

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suffer significant harm if this court grants the defendants' motion for a stay of the district court's most recent order but the original injunctive order remains in effect.

Accordingly, the defendants' motion for a stay of the district court's November 3, 2009, "Order on the Defendants' Second Remedial Report" is GRANTED. For the reasons provided in our orders filed on October 30, 2008, and November 18, 2008, however, the defendants' motion for a stay of the district court's original injunctive order and all further district court proceedings pending resolution of the case on appeal is DENIED.

ENTERED BY ORDER OF THE COURT.



Leonard Green
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Leonard Green
Clerk

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Re: Case No. 08-1371/08-1372/08-1626, *Kenneth Foster, et al v. Sharee Booker, et al*
Originating Case No. : 05-71318

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Yvonne Henderson
Case Manager
Direct Dial No. 513-564-7031
Fax No. 513-564-7096

cc: Mr. David J. Weaver

Enclosure