

UNITED STATES COURT OF APPEALS April 27, 2011

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

FUNDAMENTALIST CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS, an Association of
Individuals,

Plaintiff-Appellee,

v.

DENISE POSSE LINDBERG, Judge
of the Third Judicial District Court of
Salt Lake County, State of Utah,

Defendant-Appellant,

BRUCE R. WISAN, Special Fiduciary
of the United Effort Plan Trust;
MARK L. SHURTLEFF, Attorney
General for the State of Utah;
THOMAS C. HORNE, Attorney
General for the State of Arizona,

Defendants,

RICHARD JESSOP REAM; THOMAS
SAMUEL STEED; DON RONALD
FISCHER; DEAN JOSEPH
BARLOW; WALTER SCOTT
FISCHER; RICHARD GILBERT;
BRENT JEFFS,

Intervenors,

No. 11-4066
(D.C. No. 2:08-CV-00772-DB)
(D. Utah)

JONATHAN HARKER; HYRUM
HARKER; HARKER DAIRY FARM,

Movants.

**ORDER STAYING THE DISTRICT COURT'S APRIL 8, 2011
PRELIMINARY INJUNCTION ORDER AND APRIL 14, 2011 SHOW
CAUSE ORDER**

Before **O'BRIEN** and **HOLMES**, Circuit Judges.

This matter comes before us on the emergency motions of defendant-appellant, The Honorable Denise Posse Lindberg, to stay a preliminary injunction order entered by the United States District Court for the District of Utah in Case No. 2:08-CV-772 on April 8, 2011, and to stay that court's show-cause order entered on April 14, 2011. The district court issued the latter show-cause order in response to an order issued by Judge Lindberg on April 11, 2011. In that order, contrary to the terms of the district court's preliminary injunction order, Judge Lindberg directed the Special Fiduciary of the United Effort Plan Trust, Bruce Wisan, to, among other things, retain the assets and documents related to the Trust. Significantly, Judge Lindberg also indicated in her order that, other than those actions necessary to preserve and protect the assets of the Trust, Wisan should initiate no other affirmative action until there is a final appellate decision affirming, modifying, or overturning the federal district court's

order. On April 15, 2011, we entered an order granting a temporary stay of the district court's preliminary injunction and show-cause orders and ordered a response to the motions from plaintiff-appellee, The Fundamentalist Church of Jesus Christ of Latter-Day Saints. We also invited responses to the temporary stay order from the other interested parties. We have received and considered the responses.

The applicable standard for a stay pending appeal "requires the applicant to address the following: (a) the likelihood of success on appeal; (b) the threat of irreparable harm if the stay . . . is not granted; (c) the absence of harm to opposing parties if the stay . . . is granted; and (d) any risk of harm to the public interest." *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th Cir. 1996) (quotation omitted). Judge Lindberg has addressed these factors and made the required showing for a stay of the April 8, 2011 preliminary injunction order, which order is stayed until the stay is dissolved by this Court. The April 14, 2011 show-cause order was issued in response to Judge Lindberg's alleged failure to follow the preliminary injunction order, which we have stayed until the stay is dissolved by this Court. As such, the show-cause order is also stayed until dissolved by this Court.

We grant the motion filed on April 22, 2011, titled "Intervenors' Ex Parte Motion For Enlargement Of Time," in which they request a ninety-minute

extension of time to file their response concerning the propriety of our April 15, 2011 order granting temporary stays.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk