FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
OCT 10 2000
DAVID J. MALAND, CLERK
BY
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.,	*	
	*	
Plaintiffs,	*	
	*	CIVIL ACTION NO. 3:93CV65
v.	*	
	*	
DON GILBERT, et al.,	*	
	*	
Defendants.	*	

ORDER

Defendants/Appellants in the above-entitled and numbered civil action now move this court to stay enforcement of its August 14, 2000, order pending appeal, or, alternatively, until the adjournment of the 77th session of the Texas Legislature.[1] For reasons further detailed below, the motion will be denied.

On September 1, 1993, plaintiffs first challenged the state's failure to fully implement the Texas Health Steps (THSteps) program (federally titled: Early and Periodic Screening, Diagnosis and Treatment (EPSDT)), a Medicaid program intended to provide and ensure timely, comprehensive health care to indigent youth. Litigation resulted in a consent decree outlining action plans for various components of the THSteps program, administered by the Texas Health and Human Services Commission. The decree was found by the court to be fair, reasonable and adequate on February 20, 1996.

Two and one-half years later, plaintiffs moved the court to enforce the consent decree, citing eight areas of alleged non-compliance. Following an evidentiary hearing earlier this year, this court found the defendants deficient in regard to several obligations under the 1996 consent decree. In

[1]The 77th session will run from January 9, 2001, to May 28, 2001.

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an order issued on August 14, 2000 ("August 14 Order"), the court instructed defendants to file proposed corrective action plans to remedy each violation of the decree identified in the accompanying memorandum opinion within sixty days. It is this order which the defendants seek to stay.

Defendants move for a stay under Rule 62(c) of the Federal Rules of Civil Procedure, which provides interim relief where justified by relative harm and the uncertainty of final disposition. *See Ruiz v. Estelle*, 650 F.2d 555, 566 (5th Cir.1981). Courts should consider four factors in determining the propriety of such a stay: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant will be irreparably injured if the stay is not granted; (3) whether the granting of the stay will substantially harm other interested parties to the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *United States v. Baylor Univ. Medical Ctr.*, 711 F.2d 38, 39 (5th Cir.1983); 11 WRIGHT & MILLER §2904. Under Fifth Circuit interpretation, the applicant "need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay." *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981). Application for stay under Rule 62(c) necessarily goes to the discretion of the court. *Helms v. Cody*, 1994 WL 424367 *2 (E.D.La.); *see also, Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998, 1003 (5th Cir.1969) ("It is well settled that 62(c) is expressive of the power in the courts to preserve the status quo pending appeal.").

With regard to the first factor and threshold inquiry, defendants maintain that their appeal raises "fundamentally important and serious legal issues," which merit a stay. Defs. Mot. at 3. It is without a doubt that these proceedings involve matters of utmost importance to the public, and that the appeal will further clarify the judiciary's capacity to respond specifically to the 1.5 million

program-qualifying children, who remain without complete, preventive health care. Nevertheless, at this point in the inquiry, the court must be guided by the qualitative strength of the legal arguments on appeal, and not by the mere quantity of individuals affected by the suit.

At issue in this case is whether the limited jurisdiction of the federal courts accommodates actions for enforcement of a previously adopted consent decree, and the court's power to remedy breaches of such agreement. The core concern raised by the appeal is whether the state may evade certain obligations it had earlier negotiated and agreed to fulfill by virtue of its immunity under the 11th Amendment of our Constitution. Pointing to *United States v. Baylor University Medical Center*, *supra*, defendants argue that the existence of an issue involving federal/state relations is necessarily a legal question favoring a stay, and that the 11th Amendment concerns in the instant action render the legal query serious, *per se*. Overlooked is the fact that *Baylor* presented a novel issue to the court. *Id.* at 40 (finding "no definitive ruling that would guide [the court]."). In issuing its opinion, this court fully considered the legal contentions of the defendants. It was aided, as will be the Court of Appeals in its review of the decision, by a line of cases which directly addresses the jurisdictional issue and provided the proper framework for the court's discussion. *See Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986); *Kozlowski v. Coughlin*, 871 F.2d 241 (2d Cir. 1989); *Duran v. Carruthers*, 885 F.2d 1485 (10th Cir. 1989); *Komyatti v. Bayh*, 96 F.3d 955 (7th Cir. 1996).[2] Even assuming, *arguendo*, that a serious legal question has been raised, the initial inquiry would not be satisfied; "a substantial case on the merits must also be tendered."

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[2]Throughout the proceedings, defendants urged the court to follow the holdings of *Lelsz v. Kavanagh*, 807 F.2d 1243 (5th Cir. 1987), *cert. dismissed*, 483 U.S. 1057(1987), and *Saahir v. Estelle*, 47 F.3d 758 (5th Cir. 1995)(per curiam), which invalidated portions of a consent decree grounded solely in state law. This court found both cases uninstructive in considering the decree before it, since its provisions obviously have their roots in federal law.

United States v. Louisiana, 815 F.Supp. 947, 950 (E.D. La. 1993). The defendants have failed to present such a case. To support their claim, the defendants incorporate their post-trial brief and arguments made at trial and underscore the general subject matter of the case. Citing to already-dismissed arguments does not persuade the court of their possible merit on appeal.

Defendants also point to the court's interpretation of the consent decree as being a "serious legal issue." Defs. Reply at 4. Again, although the matter interpreted, i.e., the scope of the care provided to the program-qualifying children, is certainly more than meaningful to the public, the legal issue is nothing more that the court's application of the basic rules of contract interpretation and construction. *See United States v. Chromalloy American Corp.*, 158 F.3d 345, 349 (5th Cir. 1998); *Lelsz*, 824 F.2d at 373. Further, the court's interpretation will be afforded wide discretion on appeal. *See Williams v. Edwards*, 87 F.3d 126, 131 (5th Cir.1996)("There is little question that the district court has wide discretion to interpret ... a forward-looking consent decree.")(*quoting Alberti v. Klevenhagen*, 46 F.3d 1347, 1365 (5th Cir.1995). Defendants have not demonstrated either the existence of a serious legal issue and a substantial case or a likelihood of success on appeal.

In contemplating a stay, the equities weigh decidedly against the defendants' position. Defendants purport that not granting the stay would effectively deny them of their right to appeal and would undermine their efforts to adequately prepare for the upcoming legislative session. Defs. Mot. at 4; Aff. of Millwee at ¶ 6. It is obvious, however, that the State is not in the untenable position characteristic of a finding of irreparable harm. *See, e.g.*, *Baylor*, 711 F.2d at 40; *Ruiz*, 650 F.2d at 574. Defendants have been ordered only to prepare corrective action plans. The court's demand was the most mild remedy available in order to achieve a fair result, *see United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 249-50 (1968), granting full freedom to the department

to shape feasible improvements to program weaknesses. Far from imposing obligations that, if complied with, would render defendants' appeal moot or otherwise strip the defendants of the opportunity to challenge this court's decision, the August 14 Order merely directs the state to act in accordance with its self-assumed obligations. *Cf. Alberti v. Klevenhagen*, 606 F. Supp. 478, 485 (S.D. Texas 1985).

In addition, the defendants' own actions belie the assertion of being faced with the impossible choice of compliance or appeal. The defendants have represented in a separate motion to extend the time in which to comply with the August 14 Order that much of the required labor has already been invested in creating a broad based remedial plan. Defs. Mot. for Extension at 2.[3] Finally, in contrast to the contentions of the defendants, the court views the process of review and negotiation with respect to previously identified problem areas as part and parcel of what should be the department's preparation for the legislative session.[4]

Harm to the plaintiffs will certainly result from a stay, in terms of their inability to obtain relief and the continued under performance of the THSteps program. Most importantly, any delay in compliance with the August 14 Order will result in further deterioration of the health and welfare of the program-qualifying children. As this court found, the state's violations of the consent decree have restricted child access to care and caused numerous instances of otherwise preventable disease. Any further delay in acting in accordance with the terms of the consent decree will prolong the suffering.

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[3]Indeed, the motion suggests that a comprehensive plan can be ready for submission by October 27, 2000, only two weeks later than the original deadline. *Id.*

[4]It appears that defendants have already been working in conjunction with the legislature on this matter. *Id.* (noting contributions of various legislative committees and bodies to the preparation of the action plans).

Finally, the public interest would be best served in providing swift and effective remedy to the deficiencies in the program. As the defendants concede, "Texas has no greater interest than promoting, through preventative measures, the health and welfare of its youth." Defs. Mot. at 3. A stay pending appeal in this case is unsupported by the merits or the equities.

Defendants request, in the alternative, that a stay be imposed for the duration of the 2001 legislative session. In considering the state's motion, the court is awake to its responsibility in securing meaningful effect of its order, *Alberti v. Klevenhagen*, 46 F.3d 1347, 1365 (5th Cir. 1995), and understands that the success of THSteps and compliance with the consent decree may well depend on the actions of the legislative arm of this state. The court remains unpersuaded that the equities weigh in favor of delaying enforcement of the decree until after the legislative session. Defendants have stated that they are already engaged in coordinated action with certain members and committees of the legislature in preparing their corrective action plans.[5] These efforts should ease, rather than increase, the department's burden in meeting the legislature's reporting demands.

In closing, the court wishes to express its general view of the posture that the state has assumed in this case, and in particular with the instant motion. Oft repeated in the parties' submissions is the fact that the relief decreed in this case will, each year, determine the health and future of more than 1.5 million needy children. The state made certain promises for the benefit of those children over four years ago, and now seeks to rescind their obligations by claiming immunity from enforcement. In addition, defendants' narrow, crabbed interpretation of the consent decree, if adopted, would only serve to restrict and dilute the rights of the children covered by it. After

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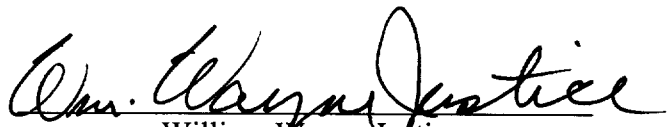
[5]The court remains befuddled as to defendant's contention that only the legislature is capable of preparing and funding a remedial plan. Defs. Reply at 3, 8-9. Logic would suggest that the most effective and efficient means of securing funding would be for the department itself present a plan already evaluated as workable for the Health Commission.

careful consideration of the merits of this case, the court identified areas of non-compliance and determined that enforcement of the decree was proper. It left the details of the remedy to the expertise of the administering agency of the program. However, it will not grant any additional and unwarranted leeway to the state in the face of continued harm to the class of seriously deprived children involved in this litigation. Accordingly, the motion for stay shall be, and is hereby,

DENIED.

SIGNED this 6th day of October, 2000.



William Wayne Justice
Senior United States District Judge