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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEF ROBINSON,

Plaintiff,

v.

DIGNITY HEALTH D/B/A CHANDLER
REGIONAL MEDICAL CENTER,

Defendant.

Case No.: 16-CV-3035 YGR

ORDER GRANTING STAY; VACATING CASE
MANAGEMENT CONFERENCE; SETTING
COMPLIANCE HEARING

DKT. NO. 64

Defendant Dignity Health dba Chandler Regional Medical Center (“Chandler”) moves for an order staying this action pending the resolution by the United States Supreme Court of *Gloucester County School Board v. G.G.*, No. 16-273, on the grounds that the Supreme Court’s resolution of one of the questions would decide an issue central to the complaint of Plaintiff Josef Robinson, and a stay would affect efficient administrative of justice while imposing no harm on Plaintiff. Plaintiff opposes the motion.

Having carefully considered the papers submitted and the pleadings in this action, and for the reasons set forth below, the Court **GRANTS** the Motion to Stay.¹

Plaintiff Josef Robinson, a transgender employee of Chandler, filed a lawsuit against Chandler on June 6, 2016. The complaint alleges that Chandler discriminated against Robinson on the basis of sex by excluding coverage for “sex transformation” surgery from Chandler’s health plan. Robinson alleges that the exclusion violates the anti-discrimination provisions of Title VII section 1557 of the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. § 18116. Section 1557 expressly incorporates the sex discrimination prohibition of Title IX. *See* 42 U.S.C. § 18116

¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument. Accordingly, the Court **VACATES** the hearing set for **December 13, 2016**.

1 (“Except as otherwise provided for in this title ... an individual shall not, on the ground[s]
2 prohibited under ... title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) ... be
3 excluded from participation in, be denied the benefits of, or be subjected to discrimination under,
4 any health program or activity” receiving federal funds).

5 On September 27, 2016, the Court heard oral argument on Chandler’s still-pending motions
6 to dismiss and to change venue.

7 On October 28, 2016, the Supreme Court granted *certiorari* in *Gloucester County*, on two
8 of the three questions posed:

9 2. If [the] *Auer* [doctrine concerning deference to an agency opinion] is
10 retained, should deference extend to an unpublished agency letter that,
11 among other things, does not carry the force of law and was adopted in
12 the context of the very dispute in which deference is sought?

13 3. With or without deference to the agency, should the Department's
14 specific interpretation of Title IX and 34 C.F.R. § 106.33 be given
15 effect?

16 *Gloucester County School Bd. v. G.G.*, 2016 WL 4610979 (U.S.); *see Gloucester Cty. Sch. Bd. v.*
17 *G.G. ex rel. Grimm*, No. 16-273, 2016 WL 4565643, at *1 (U.S. Oct. 28, 2016). Dignity argues
18 that the Supreme Court’s decision in *Gloucester County* will decide the issue of whether Title IX’s
19 ban on sex discrimination includes discrimination on the basis of gender identity, and therefore the
20 meaning of the sex discrimination prohibition for purposes of section 1557 of the ACA as well.
21 Thus, Dignity contends that this action should be stayed pending the Supreme Court’s decision.

22 **II. APPLICABLE STANDARD**

23 A district court has discretionary power to stay proceedings in its own court under *Lockyer*
24 *v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (citing *Landis v. North American Co.*, 299
25 U.S. 248, 254 (1936)). “A trial court may, with propriety, find it is efficient for its own docket and
26 the fairest course for the parties to enter a stay of an action before it, pending resolution of
27 independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of California, Ltd.*,
28 593 F.2d 857, 863 (9th Cir. 1979). “This rule ... does not require that the issues in such
proceedings are necessarily controlling of the action before the court.” *Id.* at 863–64. While a
court’s discretion to stay matters pending before it is broad, such discretion is not unfettered. *See*

1 *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). “[I]f
2 there is even a fair possibility that the stay for which he prays will work damage to someone else,”
3 the party moving for a stay “must make out a clear case of hardship or inequity in being required to
4 go forward.” *Landis*, 299 U.S. at 255. The length of a stay must be proportionate to “the strength
5 of the justification given for it.” *See Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). A greater
6 showing is required to justify especially long stays, or those of “indefinite” term. *Id.*; *Dependable*
7 *Highway Exp.*, 498 F.3d at 1066. Thus, in determining whether to exercise its discretion to stay the
8 case, a court must weigh:

9 [1] the possible damage which may result from the granting of a stay, [2] the
10 hardship or inequity which a party may suffer in being required to go forward,
11 and [3] the orderly course of justice measured in terms of the simplifying or
12 complicating of issues, proof, and questions of law which could be expected to
result from a stay.

13 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

14 **III. ANALYSIS**

15 Here, Plaintiff’s claim under the ACA would be directly affected by an interpretation of
16 Title IX addressed to the meaning of “on the basis of sex,” since that definition is expressly
17 incorporated into the text of section 1557. The meaning of that phrase is the subject of Question 3
18 in the *Gloucester County* petition for *certiorari*, on which review was granted. While it is true that
19 Question 3 concerns one of the exceptions under Title IX, which permits recipients of federal funds
20 to provide separate but comparable facilities shower and bathroom facilities on the basis of sex (as
21 stated in 34 C.F.R. § 106.33), the central issue there, as here, is whether “sex” encompasses gender
22 identity for purposes of anti-discrimination protection under the statute. Further, the Ninth Circuit
23 has held that Congress meant similar substantive standards to apply under Title IX and Title VII
24 when interpreting the meaning of “on the basis of sex.” *Emeldi v. University of Oregon*, 698 F.3d
25 715, 724 (9th Cir. 2012) (citation omitted), *cert. denied*, 133 S.Ct. 1997 (2013). Certainly, the
26 Supreme Court could decide the two questions it has certified for review more narrowly, reaching
27 only issues of administrative law and deference, the questions under consideration indicate that the
28 issue in this case is squarely before it for decision as well. Thus, a stay to await the Supreme

1 Court's decision would serve the orderly administration of justice and simplify the issues in the
2 litigation, given the high likelihood that the decision in *Gloucester County* would affect the
3 decision of one or both of Plaintiff's claims. The Court notes that, unlike the cases cited by the
4 parties in which a sister court or administrative proceeding could have an effect, here the key
5 question posed by this litigation is before our highest court, making its pronouncements far more
6 significant to the outcome here.

7 In terms of harm that might result from granting a stay while awaiting the decision, such
8 harm is minimized if not completely eliminated by the change in Chandler's policy that will go into
9 effect in less than one month. Chandler has offered evidence that it will change the policy at issue
10 in this litigation as of January 1, 2017, such that it will no longer exclude from coverage treatment,
11 drugs, service, and supplies for or leading to, sex transformation surgeries, such as the hormone
12 therapy, chest surgery, and phalloplasty for which Plaintiff sought coverage here. (Declaration of
13 Eva-Marie Palermo at ¶ 4.) Chandler acknowledges that it will and must make this change due to
14 the ACA's implementing regulations at 45 C.F.R. § 92.207, which provide that a covered entity
15 shall not

16 [d]eny or limit coverage ... for any health services that are ordinarily or
17 exclusively available to individuals of one sex, to a transgender individual based
18 on the fact that an individual's sex assigned at birth, gender identity, or gender
19 otherwise recorded is different from the one to which such health services are
20 ordinarily or exclusively available; [h]ave or implement a categorical coverage
21 exclusion or limitation for all health services related to gender transition; ... or
[o]therwise deny or limit coverage ... for specific health services related to
gender transition if such denial, limitation, or restriction results in
discrimination against a transgender individual.

22 45 C.F.R. § 92.207 (b) (3)-(5). Thus, the policy challenged in the instant case will be eliminated.
23 While this leaves for decision questions of whether Chandler's previous denial of coverage was a
24 violation of Title VII and the ACA, with this change in policy the harm Robinson suffered from
25 those past denials will not be compounded during a temporary stay of the litigation awaiting the
26 Supreme Court's decision this term.

27 As to the factor considering hardship or inequity to Chandler, the Court agrees that normal
28 costs of litigation or risks that a decision could be affected by a contrary Supreme Court

1 determination are not sufficient to justify a stay. *See Lockyer*, 398 F.3d at 1112 (“[B]eing required
2 to defend a suit, without more, does not constitute a ‘clear case of hardship or inequity’ within the
3 meaning of *Landis*.”) Consequently, this factor does not weigh in favor of a stay, but leaves the
4 equities as between the parties essentially in equipoise. As a consequence, the Court finds that
5 considerations of the orderly and efficient administration of justice counsel a stay under the
6 circumstances.


7 Based upon the foregoing, the Motion to Stay is **GRANTED**.

8 The case management conference set for December 13, 2016, is **VACATED**. This matter is
9 set for a compliance hearing regarding the status of the Gloucester County case on March 17, 2017,
10 on the Court’s 9:01 a.m. calendar. Five business days prior to the compliance hearing, the parties
11 shall file a joint status report of no more than three pages. Upon review of the status report, the
12 Court may vacate the compliance hearing.

13 This terminates Docket No. 64.

14 **IT IS SO ORDERED.**

15 Date: December 6, 2016


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE