

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

March 12, 2018

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

NAVAJO NATION, a federally recognized
Indian tribe; LORENA ATENE; TOMMY
ROCK; HARRISON HUDGINS, a/k/a
Harrison Hutchins; WILFRED JONES;
ELSIE BILLIE; HERMAN FARLEY,

Plaintiffs - Appellees,

v.

SAN JUAN COUNTY,
a Utah governmental subdivision,

Defendant - Appellant.

No. 18-4005
(D.C. No. 2:12-CV-00039-RJS)
(D. Utah)

ORDER

Before **PHILLIPS** and **MORITZ**, Circuit Judges.

Defendant-Appellant San Juan County has filed an “Emergency Application for Stay Pending Resolution of Appeal.” The County seeks to stay the district court’s judgment entered against it on January 11, 2018, pending its appeal of that judgment. The district court granted summary judgment in favor of the Navajo Nation and six named Tribe members on two claims that had challenged the constitutionality of the County’s School Board and County Commission districts. As part of its judgment, the court adopted remedial School Board and County Commission districts and ordered the County to implement the remedial districts for use in the regularly scheduled November

2018 elections. The court also ordered that elections be held for all seats on the School Board and County Commission in November 2018, and that the County resume staggered elections in 2020. The County seeks to stay the portions of the judgment ordering it to use the remedial districts for the 2018 elections and to hold elections for all seats on the School Board and County Commission, not just the seats that were previously scheduled for election in 2018. The plaintiffs-appellees have filed a response opposing the stay request, and the County has filed a reply in support of its stay request.

“A stay is not a matter of right[.]” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). “It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Id.* (internal quotation marks and brackets omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court’s] discretion.” *Id.* at 433-34.

In deciding whether to exercise our discretion to grant a stay pending appeal, we consider the traditional stay factors. *See id.* at 434; *see also id.* at 425-26. Those factors are:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 426, 434 (internal quotation marks omitted); *see also* 10th Cir. R. 8.1. The Supreme Court has explained that “[t]he first two factors of the traditional standard are the most critical.” *Id.* at 434.

The County has failed to show that it is likely to succeed in having this court overturn the district court's summary-judgment decisions or remedial relief on appeal. Likewise, it has failed to show how the absence of a stay will result in irreparable injury to the County. The harm to the plaintiffs-appellees and to the public interest also weigh against granting a stay.

Accordingly, we deny the County's request for a stay pending appeal.

Entered for the Court

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk