

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 13 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STATE OF IDAHO,

Defendant,

v.

MIKE MOYLE, Speaker of the Idaho House
of Representatives; CHUCK WINDER,
President Pro Tempore of the Idaho Senate;
THE SIXTY-SEVENTH IDAHO
LEGISLATURE, Proposed Intervenor-
Defendants,

Movants-Appellants.

Nos. 23-35440, 23-35450

D.C. No. 1:22-cv-00329-BLW
District of Idaho,
Boise

ORDER

Before: MURGUIA, Chief Judge, and GOULD, CALLAHAN, M. SMITH,
OWENS, MILLER, BRESS, FORREST, VANDYKE, KOH and MENDOZA,
Circuit Judges.

The Idaho Legislature's motion to stay the district court's injunction pending appeal (Dkt. 31) is denied. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). The district court's injunction therefore remains in effect. Further, we deny the Idaho Legislature's Emergency Motion Under Circuit Rule 27-3 (Dkt. 71) as moot.

The en banc court will proceed to consider the merits of this preliminary injunction appeal. Absent further order of the Court, no additional briefing is required.

En banc oral argument will take place during the week of January 22, 2024, in Pasadena, California. The date and time will be determined by separate order. For further information or special requests regarding scheduling, please contact Deputy Clerk Paul Keller at paul_keller@ca9.uscourts.gov or (206) 224-2236.

Within seven days from the date of this order, the parties shall forward to the Clerk of Court eighteen additional paper copies of the original briefs and ten additional paper copies of the excerpts of record. The paper copies must be accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. The Form 18 certificate is available on the Court's website at <http://www.ca9.uscourts.gov/forms/>.

Judges Callahan, Miller, Bress, and VanDyke respectfully dissent from the order denying Idaho's motion to stay the district court's injunction pending appeal and would have granted the stay for substantially the reasons set forth in the original three-judge motions panel order. *See United States v. Idaho*, 83 F.4th 1130 (9th Cir. 2023).