

**SUPREME COURT
STATE OF COLORADO**

2 East 14th Avenue
Denver, CO 80203

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CASE NUMBER: 2020SA321

Original Proceeding
District Court, Denver County, 2019CV34492
Hon. Brian R. Whitney, District Court Judge

KANDICE RAVEN, JANE GALLENLINE, TALIJAH MURPHY, AMBER MILLER, MEGAN GULLEY, LAVENYA KARPIERZ, and CUPCAKE RIVERS,

Plaintiffs, as representatives of themselves and all others similarly situated in this class action,

v.

JARED POLIS, Governor of Colorado, THE COLORADO DEPARTMENT OF CORRECTIONS, DEAN WILLIAMS, Executive Director of the Colorado Department of Corrections, individually and in his official capacity, TRAVIS TRANI, Director of Prisons, individually and in his official capacity, RANDOLPH MAUL, M.D., CDOC Chief Medical Officer, individually and in his official capacity, SARAH BUTLER, M.D., Chief of the Gender Dysphoria Committee and Chief of Psychiatry, individually and in her official capacity, WILLIAM FROST, M.D., former CDOC Chief Medical Officer, individually and in his official capacity, DARREN LISH, M.D., former Chief of Psychiatry, individually and in his official capacity,

Defendants.

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RESPONDENTS' MOTION TO LIFT STAY

Plaintiffs-below, Kandice Raven, Jane Gallentine, Taliyah Murphy, Amber Miller, Megan Gulley, Lavenya Karpierz, and Cupcake Rivers (collectively, “Respondents”), as representatives of themselves and all others similarly situated, by and through their attorneys, submit this Motion to Lift Stay Under C.A.R. 21, and in support thereof states as follows:

CONFERRAL

Pursuant to C.R.C.P. 121 §1-15(8), undersigned counsel conferred with counsel for all Defendants regarding this Motion and was advised the Defendants oppose the relief requested herein.

INTRODUCTION

Petitioner, Governor Jared Polis, seeks to remove his name from this case, and has repeatedly sought to delay this matter that was filed almost one year ago—all while Respondents and similarly situated transgender women are continually subjected to rape and other severe violence. Petitioner now seeks to delay this matter further by arguing that it is too much of a burden on his office to be named in cases involving such significant matters of public importance—despite the fact that his interests are fully aligned with the Colorado Department of Corrections (“CDOC”) and the other Defendants who have already filed an Answer in this case.

While the instant petition is considered, Respondents respectfully request this Court immediately lift the automatic stay in place pursuant to C.A.R. 21, either in whole or as it pertains to the other Defendants in this matter. Petitioner suffers no harm in defending this lawsuit, and the same is true for the other Defendants. In fact, the stay should have no application to the other Defendants as they have not petitioned this Court for relief. The stay conveniently pauses the proceedings for

Petitioner as well as the other Defendants, while Respondents continue to suffer serious abuses in their custody.

PROCEDURAL HISTORY

On November 22, 2019, Respondents filed a complaint against the CDOC and seven executive branch officials, including Governor Jared Polis, seeking declaratory and injunctive relief as well as monetary damages. In particular, Respondents seek enforcement of the Colorado Anti-Discrimination Act (“CADA”), and claim Colorado constitutional violations. Respondents filed an amended complaint on December 23, 2019.

After several motions to extend the time to file an Answer in this case, on March 30, 2020, Petitioner Governor Polis filed a motion to dismiss for failure to state a claim upon which relief can be granted. On July 7, 2020, the district court ruled in favor of Respondents, denying Petitioner’s motion. Then, nearly two months after the district court denied his motion to dismiss, Petitioner filed another request for an extension of time. In good faith, Respondents did not oppose this third request for additional time for him to file an Answer. On September 15, 2020, the CDOC Defendants filed their Answer to Respondents’ complaint. Only on September 16, 2020, when his Answer to Respondents’ complaint was due, did

Petitioner file a request to stay proceedings in the district court and the instant C.A.R. 21 petition.

LEGAL ANALYSIS

This Court has the power to lift the automatic stay. C.A.R. 21(f)(2). Generally, Colorado courts consider four factors when considering a stay: “(1) Whether the stay applicant has made a strong showing that he or she 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.” *Romero v. City of Fountain*, 307 P.3d 120, 122 (Colo. App. 2011) (citing *Nken v. Holder*, 556 U.S. 418, 426 (2009)). “After determining the harm that would be suffered by the moving party if the stay is not granted, the court must then weigh that harm against the harm to the other party if the stay or injunction pending appeal is granted.” *Id.* at 123.

The reasons Petitioner is unlikely to succeed on the merits are more fully briefed in Respondents’ Response to the Court’s Show Cause Order, submitted simultaneously herewith. In summary, nothing about the instant petition warrants the extraordinary remedy of C.A.R. 21 review, and this matter was correctly decided by the district court. The petition presents no legal issues that are new, novel, or otherwise undecided in Colorado. Rather, it is a longstanding, well-established, and

critical tradition that the Governor of our State may be named, in his official capacity, in actions for breaches of statutory duties and constitutional rights made at the hands of his own executive agencies.

Further, as is also discussed in detail in Respondents' Response to the Court's Order and Rule to Show Cause, Petitioner will not be irreparably injured by this case coming at issue. It is not conceivable that, as Governor, the joint Answer submitted by the Attorney General's office on behalf of the CDOC and other current executive officials would be substantially different from the Answer the Attorney General's office would now prepare separately on his behalf. Further, as most discoverable information and documentation is in the possession of CDOC, any additional effort the Attorney General's office, or the Governor's office, would expend is negligible. Moreover, any discoverable information or documentation the Governor may have in his possession would still be discoverable, regardless of whether he is named in his official capacity in the underlying action. Finally, in the unlikely event that the Governor's office may need to expend some small amount of additional resources should the stay be lifted, this harm is profoundly outweighed by the daily and continuous harm the stay causes the women who have brought this action.

This harm is exacerbated by Petitioner's continued delay. Petitioner filed his C.A.R. 21 petition nearly ten months after the Complaint in the underlying action

was initially filed on November 22, 2019. During that ten-month period, Petitioner filed three requests for extensions of time to complete his first responsive pleading. After his motion to dismiss was denied, he then waited more than two months to file this CA.R. 21 Petition on September 16, 2020. Of note, all other Defendants in this action filed their Answer on September 15, 2020, including the CDOC, whose interests are aligned with Petitioner's and with whom he shares representation from the Attorney General's office.

The harm which this delay perpetuates is immeasurable to the women who are suffering under the conditions they are subjected to in the CDOC. Under the current and previous Governor's supervision, the vast majority of transgender women incarcerated by CDOC continue to be confined in cells with men, sexually harassed, strip searched and groped by male corrections officers, assaulted or raped by incarcerated men and correctional officers, or coerced and forced into sexual servitude.

As Governor, Petitioner has authority to—and indeed does—issue executive orders to the CDOC. Hence, not only is Petitioner responsible for the care of the Respondents and the other women CDOC incarcerates with men, he has the authority to grant them the safe living conditions and the medically necessary treatment they seek. Instead, the women in CDOC's men's prisons are routinely

denied both. Dismissing Petitioner from this matter allows the highest official in this state to separate him or herself from responsibility for the actions or inactions of one of the largest state agencies. And allowing him to further delay this matter will, with all certainty, result in additional harms against this group of women.

The other Defendants, who have not petitioned this court, have no claim to any harm at lifting the stay, because they are not awaiting any appellate determinations as to themselves. Having filed an Answer, there is no question that this case will proceed in the district court as to those Defendants; the only question is when and how much longer Respondents will have to wait to seek meaningful relief from the torturous conditions they endure every day in CDOC custody.

CONCLUSION

Respondents respectfully request that this Court lift the C.A.R. 21 stay in its entirety, or in the alternative, that this Court lift the stay as it pertains to the Defendants not before this Court. Respondents are in urgent need of relief and allowing their case to proceed in the district court while this Court considers the instant petition will not cause harm to any Defendant.

Dated: October 16, 2020

Respectfully submitted,

s/ Paula Greisen

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October 2020, a true and correct copy of the foregoing **RESPONDENTS' MOTION TO LIFT STAY** was duly filed and served on the following parties through Colorado Courts E-Filing/ICCES, addressed as follows:

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