

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

HELEN ROE, a minor, by and
through her parent and next friend
Megan Roe; JAMES POE, a minor,
by and through his parent and next
friend Laura Poe; CARL VOE, a
minor, by and through his parent and
next friend Rachel Voe,

Plaintiffs - Appellees,

v.

DEBORAH JOHNSTON, in her
official capacity as State Registrar of
Vital Records and Interim Director of
the Arizona Department of Health
Services,

Defendant - Appellant.

No. 25-6970

D.C. No.
4:20-cv-00484-
JAS
District of
Arizona,
Tucson
ORDER

HELEN ROE, a minor, by and
through her parent and next friend
Megan Roe; JAMES POE, a minor,
by and through his parent and next
friend Laura Poe; CARL VOE, a
minor, by and through his parent and
next friend Rachel Voe,

No. 25-6980
D.C. No.
4:20-cv-00484-
JAS
District of
Arizona,
Tucson

Plaintiffs - Appellees,

v.

DEBORAH JOHNSTON, in her
official capacity as State Registrar of
Vital Records and Interim Director of
the Arizona Department of Health
Services,

Defendant - Appellee,

v.

WARREN PETERSEN, President of
the Arizona State Senate; Proposed
Intervenor-Defendant; STEVE
MONTENEGRO, Speaker of the
Arizona House of Representatives;
Proposed Intervenor-Defendant,

Movants - Appellants.

Filed April 28, 2026

Before: Andrew D. Hurwitz and Roopali H. Desai, Circuit
Judges.*

* After this matter was argued and submitted, Susan P. Graber, Circuit Judge, recused. In accordance with General Order 3.2(h), this order is issued by Judge Hurwitz and Judge Desai as a quorum pursuant to 28 U.S.C. § 46(d).

SUMMARY**

Stay Pending Appeal

The panel granted a motion of the Director of Arizona’s Department of Health Services for a stay pending appeal of the district court’s permanent injunction in a case in which a class of transgender people in Arizona allege that A.R.S. § 36-337(A)(3), which requires the registrar to amend a birth certificate when she receives verification that the individual seeking amendment has undergone a “sex change operation,” unconstitutionally infringes on the rights of transgender people who have not undergone a “sex change operation.”

The district court granted summary judgment in favor of plaintiffs on all claims. In September 2025, the district court entered a permanent injunction, striking the word “operation” from the statute and its implementing regulation, but delayed its effective date to April 30, 2026.

In light of the stay factors in *Nken v. Holder*, 556 U.S. 418, 434 (2009), and the panel’s interest in preserving the status quo while the panel decides the merits of this appeal, the panel stayed pending resolution of this appeal the district court’s orders entering a permanent injunction and making the injunction effective on April 30, 2026.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

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Angela Y. Wu and Patience Crozier, GLBTQ Legal Advocates & Defenders, Boston, Massachusetts; Kell L. Olson, Lambda Legal Defense and Education Fund Inc., Tucson, Arizona; Charlie Ferguson, Lambda Legal Defense and Education Fund Inc., New York, New York; for Amici Curiae GLBTQ Legal Advocates & Defenders and Lambda Legal Defense and Education Fund Inc..

ORDER

The panel heard oral argument in this case on April 14, 2026. Our decision will issue in due course. In the interim, this order grants appellant's motion for a stay pending appeal. Dkt. 4.

Background

Plaintiffs, a class of transgender people in Arizona, sued the Director of Arizona's Department of Health Services ("ADHS"), alleging that the Arizona law governing amendments to birth certificates violates the Equal Protection Clause and Due Process Clause. They argue that A.R.S. § 36-337(A)(3), which requires the registrar to amend a birth certificate when she receives verification that the individual seeking amendment has undergone a "sex change operation," unconstitutionally infringes on the rights of transgender people who have not undergone a "sex change operation." The district court granted summary judgment in favor of plaintiffs on all claims. In September 2025, the district court entered a permanent injunction, enjoining the word "operation," from the statute and its implementing regulation, but delayed its effective date. Dist. Ct. Dkt. 310. The injunction is set to take effect on April 30, 2026. Dist. Ct. Dkt. 353. ADHS timely appealed and sought a motion for stay pending appeal. Dkt 4.

Discussion

When deciding a motion for a stay pending appeal, we consider four factors: "(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.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation modified). A stay pending appeal “simply suspends judicial alteration of the status quo.” *See id.* at 429 (citation modified).

Here, a stay pending appeal is warranted. In light of the stay factors and our interest in preserving the status quo while we decide the merits of this appeal, the motion for a stay pending appeal is granted. *See id.* at 427 (“The authority to hold an order in abeyance pending review allows an appellate court to . . . bring considered judgment to bear on the matter before it . . . [and] responsibly fulfill [its] role in the judicial process.”). The district court’s orders entering a permanent injunction, Dist. Ct. Dkt. 310, and making the injunction effective on April 30, 2026, Dist. Ct. Dkt. 353, are stayed pending resolution of this appeal. Our decision on the merits will issue in due course.