

No. 13-16978

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

EDWARD HAROLD SCHAD

Plaintiff-Appellant,

and

ROBERT GLEN JONES, JR.,

Intervenor-Plaintiff,

v.

JANICE K. BREWER, Governor of the
State of Arizona, in her official capacity;
et al.

Defendants-Appellees.

On appeal from the United States
District Court for the District of
Arizona

No. 2:13-cv-01962-ROS

**RESPONSE IN OPPOSITION TO
EMERGENCY MOTION FOR
STAY OF EXECUTION**

Thomas C. Horne
Attorney General

Kelly Gillilan-Gibson
Brian P. Luse
Assistant Attorneys General
Attorneys for Defendants-Appellees
1275 West Washington
602-542-8333
602-542-4385 (fax)

Appellants seek a stay of execution on an emergency basis pending this Court's decision on their appeal of the district court's denial of their motion for Temporary Restraining Order. Appellants are not entitled to a stay and their request should be denied.

In order to be entitled to a stay of execution, Appellants must meet the criteria necessary to obtain a preliminary injunction. *See West v. Brewer*, 652 F.3d 1060 (9th Cir. 2011). That is, each Appellant must demonstrate ““(1) that he is likely to succeed on the merits of such a claim, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.”” (citing *Beaty v. Brewer*, 649 F.3d 1071, 1072 (9th Cir.2011)).

For the same reasons set forth in Appellees' simultaneously filed Answering Brief, which is incorporated by reference in the interest of judicial economy, Appellants have not demonstrated that they meet all of the required factors. Indeed, Appellants' Motion for Stay is supported by nothing more than speculation of bias and coercion, neither of which is supported by the evidence. To the contrary, the record demonstrates that after being given the opportunity to fully question past and present clemency board members, without exception, each witness testified that their votes on clemency matters were fair and impartial and undertaken without outside influence. (ER 248, 264, 272, 284, 298, 301 and 311.)

For the same reasons determined by the district court in denying the TRO motion, Appellants are not likely to succeed on appeal on the merits of their claim of actual bias in the clemency process and therefore, the remaining factors are not dispositive. In any event, while Appellants are likely to suffer irreparable harm as is the case with capital prisoners seeking execution stays, the balance of equities does not tip in their favor and an injunction is not in the public's interest because there has been no showing that Schad did not get a full and fair clemency hearing or that Jones will not get a full and fair clemency hearing. Appellants' Motion should be denied.

Respectfully submitted this 6th day of October, 2013.

Thomas C. Horne
Attorney General

By: /s Kelly Gillilan-Gibson
Kelly Gillilan-Gibson
Brian P. Luse
Assistant Attorneys General
Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2013, I electronically transmitted this document to the Clerk of Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF System for filing and emailed a copy to the following:

Kelley J. Henry, Attorney for Appellant Schad
Dale Baich, Attorney for Appellant Robert Glen Jones, Jr.
Kristine Fox, Capital Case Staff Attorney for the District of Arizona
Margaret Epler, Capital Case Staff Attorney for the Ninth Circuit

s/ Kelly Gillilan-Gibson
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