

APR 15 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL ASSOCIATION OF CHAIN
DRUG STORES, and the NATIONAL
COMMUNITY PHARMACISTS
ASSOCIATION,

Plaintiffs - Appellants,

v.

ARNOLD SCHWARZENEGGER, not
individually, but solely in his official
capacity as Governor of the State of
California, KIM BELSHE, not
individually, but solely in her official
capacity as Secretary of the California
Health and Human Services Agency,
DAVID MAXWELL-JOLLY, not
individually, but solely in his official
capacity as Director of the California
Department of Health Care Services, and
THE CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES,

Defendants - Appellees.

No. 09-57051

D.C. No. 2:09-cv-07097-CAS-
MAN

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Submitted April 5, 2010
Pasadena, California

Before: KOZINSKI, Chief Judge, D.W. NELSON, Circuit Judge, and
GERTNER,** District Judge.

Appellants are not entitled to a preliminary injunction because the balance of equities and considerations of public interest weigh in the appellees' favor. The injunction that the appellants seek would require California to recalibrate its established reimbursement formula to counteract the effect of the reduction in AWP's. This, in turn, would compel California to bear the administrative burdens associated with amending its state Medicaid plan. *See* 42 C.F.R. §§ 430.12-.20. The state should not be required to take on such burdens before the district court has finally resolved the merits of the appellants' claims. Thus, regardless of the appellants' likelihood of success on the merits of their claims, they are not entitled to the preliminary injunction that they seek.¹ *Cf. Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008) (holding that a preliminary injunction that

** The Honorable Nancy Gertner, United States District Judge for the District of Massachusetts, sitting by designation.

¹ Whether the appellants are entitled to a permanent injunction that would require California to conduct a study to determine whether its reimbursement formula continues to accord with the factors set forth in 42 U.S.C. § 1396a(a)(30)(A) is a different question. *See Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491 (9th Cir. 1997). We do not address this issue, leaving it to the district court to decide in the first instance.

interfered with the Navy's ability to conduct effective, realistic training exercises was an abuse of discretion regardless of the plaintiffs' showing of irreparable injury and likelihood of success on the merits).

AFFIRMED.