

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KELSEY CASCADE ROSE JULIANA; et al.,

6:15-cv-1517-TC

Plaintiffs,

ORDER

v.

The UNITED STATES OF AMERICA; et al.,

Defendants.

COFFIN, Magistrate Judge:

Before the court is defendants' motion for a protective order and for a stay of discovery. (#196). In essence, defendants' motion is based on the assertion that "Plaintiff's claim must proceed under the [Administrative Procedure Act] APA" and APA claims must be reviewed solely on the Administrative record. Thus "APA plaintiffs are ... not entitled to discovery" Defendants' Motion For A Protective Order And For A Stay Of Discovery (#196) at p. 10.

But the plaintiffs' complaint does not contain an APA claim. No such claim is pleaded, and the defendants have no ability to edit the complaint to cobble the claim into one fo their choosing

to derail discovery. The plaintiffs' claims in this case, which have survived previous efforts by the defendants to dismiss, are claims based on alleged violations of their constitutional rights. As to these claims, the court has denied the defendants' earlier motion to dismiss, an order which defendants challenged through writ of mandamus to the Ninth Circuit, which was denied. The Ninth Circuit further noted the case should proceed through discovery and the normal process of trial and the development of a record before any appellate review would be appropriate.

The defendants' motion for a protective order and stay is simply a recasting of their position that the plaintiffs' claims should all be dismissed and the District Court should revisit its previous ruling to the contrary.

Beyond whatever procedural impediments exist to the to the government's efforts to reconstruct its motion to dismiss under a different theory, this court is not at all persuaded by their argument that the APA is the sole avenue of relief for the plaintiffs for the asserted violations of their constitutional rights.

Indeed, the District Court has already rejected this very argument on its Order denying defendants' motion to dismiss:

Plaintiffs could have brought a lawsuit predicated on technical regulatory violations, but they chose a different path. As masters of their complaint, they have elected to assert constitutional rather than statutory claims. Every day, federal courts apply the legal standards governing due process claims to new sets of facts. The facts in this case, though novel, are amenable to those well-established standards.

Order dated November 10, 2017 (#83) at p. 13.

In sum, defendants' efforts to transform plaintiffs' constitutional claims into an APA case to bar discovery is unavailing.

Finally, the defendants argue that the separation of powers doctrine justifies an order barring

or staying all discovery in this case based on wholly hypothetical scenarios that may implicate matters of privilege during the discovery process. Under such rationale, the government could avoid all discovery in any litigation in which it is named as a defendant simply by asserting hypothetical discovery requests that a litigant might make during the litigation. Should a specific discovery request arise during discovery in this case that implicates a claim of privilege the government wishes to assert, the government may file a motion for a protective order directed at any such specific request. None has arisen so far in this particular case that the parties have been unable to resolve in the meet and confer process that the court is aware of.

The motion for a protective order and stay of all discovery is hereby denied.

CONCLUSION

For the reasons stated above, defendants' motion for a protective order and stay (#196) is denied.

DATED this 25 day of May 2018.



THOMAS M. COFFIN
United States Magistrate Judge