

E.D.N.Y. - N.Y.C.
12-cv-763
Korman, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of June, two thousand thirteen.

Present:

Ralph K. Winter,
Peter W. Hall,
Gerard E. Lynch,
Circuit Judges.

ANNIE TUMMINO, *et al.*,

Plaintiffs - Appellees,

v.

13-1690

MARGARET HAMBURG, *et al.*,

Defendants - Appellants.

Appellants, through counsel, move for a stay, pending appeal, of the district court order granting summary judgment in favor of Appellees, and ordering the Appellants to make all forms of emergency contraceptives at issue in this appeal—including both one- and two-pill variants—available over-the-counter to all women of child-bearing age. Upon due consideration, it is hereby ORDERED that the Appellants' motion for a stay pending appeal is GRANTED IN PART and DENIED IN PART.

Insofar as the district court order requires Appellants to immediately provide over-the-counter access to the one-pill variants of emergency contraceptives, a stay, pending appeal, is granted. Insofar as the order mandates immediate over-the-counter access to the two-pill variants of emergency

contraceptives, a stay is denied because the Appellants have failed to meet the requisite standard. *See McCue v. City of N.Y. (In re World Trade Ctr. Disaster Site Litig.)*, 503 F.3d 167, 170 (2d Cir. 2007). The temporary stay entered on May 13, 2013 is terminated insofar as it applied to the two-dose variants.

It is further ORDERED that, pursuant to Federal Rule of Appellate Procedure 2, this appeal shall be heard on an expedited basis. The clerk of the court is accordingly directed to set an expedited schedule for this matter.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


