

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

**McCOMB CHILDREN'S CLINIC,
LTD., a Mississippi Corporation**

PLAINTIFF

v.

CAUSE NO. 5:24cv48-LG-ASH

**ROBERT F. KENNEDY, JR., in his
official capacity as Secretary of the
United States Department of Health
and Human Services; UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES; ANTHONY
ARCHEVAL, in his official capacity as
Acting Director of the Office for Civil
Rights of the United States
Department of Health and Human
Services; OFFICE FOR CIVIL
RIGHTS OF THE UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

DEFENDANTS

ORDER STAYING CASE

This matter is before the Court sua sponte for the purpose of staying the case pending an appeal before the Fifth Circuit Court of Appeals of the [30] Preliminary Injunction and related [29] Memorandum Opinion and Order entered by this Court in *State of Tennessee v. Kennedy*, Cause No. 1:24cv161-LG-BWR.¹ Both the *State of Tennessee* case and the present case are challenges to a Rule published by the United States Department of Health and Human Services ("HHS"). See *Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6,

¹ The *State of Tennessee* case has been assigned No. 24-60462 by the United States Court of Appeals for the Fifth Circuit.

2024). The Rule, which cites *Bostock v. Clayton County*, 590 U.S. 644 (2020), provides, inter alia, that Section 1557 of the Affordable Care Act prohibits discrimination on the basis of gender identity. 89 Fed. Reg. 37,522-01.

Soon after his inauguration, President Donald J. Trump issued an Executive Order that provides in part:

Agencies shall remove all statements, policies, regulations, forms, communications, or other internal and external messages that promote or otherwise inculcate gender ideology, and shall cease issuing such statements, policies, regulations, forms, communications or other messages.

Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025). He also ordered the Attorney General to “immediately issue guidance to agencies to correct the misapplication of the Supreme Court’s decision in *Bostock v. Clayton County* (2020) to sex-based distinctions in agency activities.” *Id.*

In the present case, Plaintiff argues that this Executive Order “requires Defendants to withdraw their opposition to Plaintiff’s motion for partial summary judgment” Notice [47] at 2. Defendants have not disputed this argument, and it appears that Defendant HHS has removed the Fact Sheet for the Rule from its website since the change in administration. *See HHS, Strengthening Nondiscrimination Protections and Advancing Civil Rights in Health Care through Section 1557 of the Affordable Care Act: Fact Sheet*, <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557-fact-sheet/index.html> (last visited Feb. 19, 2025).

During a telephonic hearing held in the present case on February 12, 2025, Counsel for Defendants candidly conceded that the Plaintiff, McComb Children's Clinic, LTD, a Mississippi Corporation, is currently protected by the [30] nationwide Preliminary Injunction entered in the *State of Tennessee* case. The following day, Robert F. Kennedy, Jr., was confirmed as Secretary of HHS by the United States Senate. On February 18, 2025, the United States Court of Appeals for the Fifth Circuit granted an unopposed Motion filed by HHS and others that requested a stay of the *State of Tennessee* appeal for sixty days "to allow new [HHS] officials sufficient time to become familiar with the issues in this case and determine how they wish to proceed." Order [125-2] at 2, No. 24-60462 (5th Cir. Feb. 18, 2025).

Given these recent developments, the Court finds that this matter should be stayed pending the resolution of, or additional guidance from the pending appeal, of the Preliminary Injunction entered in *State of Tennessee v. Kennedy*. In the meantime, the parties will continue to apprise the Court of any material change in circumstances. In addition, in the event that Defendants attempt to proceed with any action against Plaintiff while this matter is stayed, Plaintiff may file a motion to set aside the stay, and it may seek immediate relief from the Court.

IT IS THEREFORE ORDERED AND ADJUDGED that this lawsuit is **STAYED** pending the resolution of or additional guidance from the appeal of the [30] Preliminary Injunction and related [29] Memorandum Opinion and Order entered by this Court in *State of Tennessee v. Kennedy*, Cause No. 1:24cv161-LG-BWR, or upon further order of the Court.

SO ORDERED AND ADJUDGED this the 19th day of February, 2025.

sl Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE