IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STATE OF FLORIDA; FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION; FLORIDA DEPARTMENT OF MANAGEMENT SERVICES; CATHOLIC MEDICAL ASSOCIATION, on behalf of its current and future members,

Plaintiffs,

v. No. 8:24-cv-1080-WFJ-TGW

DEPARTMENT OF HEALTH AND HUMAN SERVICES; XAVIER BECERRA, in his official capacity as Secretary of the Department of Health and Human Services; MELANIE FONTES RAINER, in her official capacity as the Director of the Office for Civil Rights; CENTERS FOR MEDICARE AND MEDICAID SERVICES; CHIQUITA BROOKS-LASURE, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services,

Defendants.

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY

Plaintiffs do not oppose the Department of Health and Human Services' ("HHS") request for an additional 21 days to file a responsive pleading. Plaintiffs, however, oppose HHS' motion to indefinitely stay all proceedings pending the disposition of the appeal or an unrelated case challenging a different agency action.

An indefinite stay at the pleading stage would unnecessarily delay this proceeding and prejudice Plaintiffs, while conserving minimal judicial resources.

Plaintiffs filed their complaint on May 6, 2024. HHS' responsive pleading was originally due on July 9, 2024, and Plaintiffs then consented to a 60-day extension up to September 9, 2024. The additional 21 days would allow HHS a total of 141 days to file a responsive pleading. Nevertheless, Plaintiffs do not oppose this request.

Plaintiffs, however, oppose an indefinite stay of all district court proceedings. HHS seeks an "immoderate stay"—a stay of "indefinite in duration and scope." *Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 649 (11th Cir. 2022). It seeks to stay "the entire case" until a "decision" in a different proceeding. *Id.* "That date cannot be predicted and may never occur," and so is indefinite. *Id.* To show it is eligible for "a stay of indefinite duration" and scope pending the interlocutory appeal or other litigation, HHS must demonstrate "a pressing need." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). HHS "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." *Id.*

HHS doesn't show a pressing need.

First, HHS has little chance of prevailing on appeal. In a recent challenge to strikingly similar Department of Education regulations promulgated under Title IX, the Supreme Court noted that "all Members of the Court today accept that the plaintiffs were entitled to preliminary injunctive relief as to three provisions of the rule, including the central provision that newly defines sex discrimination to include

discrimination on the basis of sexual orientation and gender identity." *Dep't of Educ. v. Louisiana*, No. 24A78, 2024 WL 3841071, at *1 (U.S. Aug. 16, 2024) (emphasis added). Like the Department of Education, HHS relied upon Title IX and defined "on the basis of sex" to include on the basis of "gender identity," so a unanimous Supreme Court has now virtually confirmed that Plaintiffs were entitled to preliminary relief against enforcement of the challenged regulations. Because HHS has little chance of prevailing on appeal, a stay of further proceedings is unwarranted. HHS does not explain how the Eleventh Circuit could further clarify the law on appeal. The law is clear already.

Second, a stay is unnecessary to protect any minimal interest HHS may have in fully litigating its interlocutory appeal before final judgment. Requiring HHS to litigate a motion to dismiss or file an answer while the appeal is pending would not risk mooting the appeal of the preliminary injunction through the entry of a final judgment in Plaintiffs' favor. After HHS files an answer to the operative complaint, this Court could then consider whether to stay the filing of the administrative record and summary judgment proceedings in order to defer a final judgment and conserve judicial resources, but a stay at the pleading stage is premature. It would unnecessarily delay the proceedings and would serve "more to conserve [HHS'] resources than those of the United States courts." *Marti*, 54 F.4th at 651. Plaintiffs therefore ask this Court to deny the requested stay as premature at least until HHS files an answer to the operative complaint.

Third, there is at least "a fair possibility" that the stay would damage Plaintiffs. *Landis*, 299 U.S. at 255. A stay would prejudice Plaintiffs' interest in moving forward with challenges to regulatory provisions not covered by the order granting a preliminary injunction and stay. Plaintiffs sought a targeted stay and preliminary injunction for some, but not all, of the regulatory provisions. Further, as HHS' motion anticipates, Plaintiffs are also considering amending their complaint to challenge additional regulatory provisions not covered by the July 3 Order. Staying all proceedings now would thus penalize Plaintiffs for filing a narrow and targeted motion for preliminary relief, and prejudice their right to have their other grievances addressed in a timely manner.

Relatedly, the Court denied the preliminary injunction as to Plaintiff Catholic Medical Association ("CMA"). An immoderate stay of all proceedings before this Court would indefinitely deprive CMA's members of the ability to obtain relief on their claims as regulated parties, particularly those residing in this circuit but outside of Florida. In the meantime, the regulations subject them to financial and other harm as discussed in their motion and this Court's July 3 Order. CMA cannot rely on stays entered by other courts, which HHS has already appealed in any event. CMA therefore has a strong interest in proceeding to a final judgment on the merits and vacatur of the regulations, and would be significantly prejudiced by an order indefinitely postponing this proceeding.

Last, HHS now claims that this Court should stay the proceedings because the class action in *Neese*, they argue, is "preclusive" and conclusively resolves the issues

here. Doc. 47, at 8–9 (citing *Neese v. Becerra*, No. 2:21-cv-00163-Z (N.D. Tex. Aug. 25, 2021), ECF No. 1.

That's a strange thing for HHS to argue: HHS lost in *Neese*. *See Neese v. Becerra*, 640 F. Supp. 3d 668 (N.D. Tex. 2022). So, if *Neese* is preclusive here, then the Court should enter final judgment in favor of Plaintiffs, not an indefinite stay. HHS has in any event forfeited any preclusion defense because HHS failed to raise claim or issue preclusion "at the earlier moment practicable"—when it opposed the stay and preliminary injunction. *Consumers' Rsch. v. FCC*, 109 F.4th 743, 754 (5th Cir. 2024) (en banc).

But regardless *Neese* isn't preclusive. As this Court carefully explained in its July 3 Order, *Neese* (1) "does not involve the Final Rule"; (2) "Florida, AHCA, DMS, and APD are not class members in *Neese*"; (3) "*Neese* did not provide equitable relief against Defendants"; and (4) "The judgment in *Neese*, now on appeal, does not stop HHS from enforcing the Final Rule against Plaintiffs." Order, Doc. 41, at 32 (July 3, 2024). Perhaps because of the lengthy extensions it has already sought, HHS has forgotten that it has already tried to snatch a victory from its defeat in *Neese*—and failed. The result should be the same now

Because HHS has not shown a pressing need for a stay of indefinite duration and scope, the Court should deny the motion to stay.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

JOHN GUARD
CHIEF DEPUTY ATTORNEY GENERAL
Florida Bar No. 374600

JAMES H. PERCIVAL
CHIEF OF STAFF
Florida Bar No. 1016188

HENRY C. WHITAKER
SOLICITOR GENERAL
Florida Bar No. 1031175

/S/ NATALIE P. CHRISTMAS
NATALIE P. CHRISTMAS*
SENIOR COUNSELOR
Florida Bar No. 1019180

Office of the Attorney General
The Capitol, Pl-01
Tallahassee, Florida 32399-1050
(850) 414-3300
(850) 410-2672 (fax)
Natalie.Christmas@myfloridalegal.com

* *Lead Counsel*
Counsel for the State of Florida

/S/ JAMES R. CONDE
R. TRENT MCCOTTER (*pro hac vice*)
JAMES R. CONDE (*pro hac vice*)*
Boyden Gray PLLC
801 17th St NW, Suite 350
Washington, DC 20006
(202) 706-5488
tmccotter@boydengray.com
jconde@boydengray.com

* *Lead Counsel*
Counsel for Agency for Health Care Administration & Florida Department of Management Services

ANDREW T. SHEERAN
GENERAL COUNSEL
Florida Bar No. 0030599
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
(850) 412-3670
Andrew.Sheeran@ahca.myflorida.com

Counsel for Agency for Health Care Administration

KRISTEN LARSON
GENERAL COUNSEL
Florida Bar No. 124770
Florida Department of Management Services
4050 Esplanade Way
Tallahassee, Florida 32399
(850) 922-2137
Kristen.Larson@dms.fl.gov

Counsel for Florida Department of Management Services

MATTHEW S. BOWMAN (*pro hac vice*)
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
(202) 393-8690
(202) 347-3622 (fax)
mbowman@ADFlegal.org

/S/ JULIE MARIE BLAKE
JULIE MARIE BLAKE (*pro hac vice*)*
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, Virginia 20176
(571) 707-4655
(571) 707-4790 (fax)
jblake@ADFlegal.org

DAVID A. CORTMAN
Florida Bar No. 18433
Alliance Defending Freedom
1000 Hurricane Shoals Road NE, Suite D1100
Lawrenceville, Georgia 30043
(770) 339-0774
(770) 339-6744 (fax)
dcortman@ADFlegal.org

ALLISON H. POPE (*pro hac vice*)
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, Virginia 20176
(571) 707-4655
(571) 707-4790 (fax)
apope@ADFlegal.org

** Lead Counsel*
Counsel for Plaintiff Catholic Medical Association

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2024, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties who have registered with CM/ECF and filed an appearance in this action.

/s/ James R. Conde
James R. Conde