

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

STATE OF TEXAS,  
STATE OF MONTANA,

Plaintiffs,

v.

Case No. 6:24-cv-211-JDK

XAVIER BECERRA, in his official capacity  
as Secretary of Health and Human Services;  
MELANIE FONTES RAINER, in her  
official capacity as Director of the Office for  
Civil Rights; CENTERS FOR MEDICARE  
& MEDICAID SERVICES; UNITED  
STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Defendants.

**JOINT MOTION TO STAY PROCEEDINGS**

The parties jointly and respectfully request that the Court stay further district court proceedings in this case until Defendants' appeal of the Court's July 3, 2024 Memorandum Opinion and Order, ECF No. 18, and August 30, 2024 Order Modifying Stay, ECF No. 41, is finally resolved. *See* Notice of Appeal, ECF No. 43. In support of this joint motion, the parties state the following:

1. This case concerns an Administrative Procedure Act challenge to a Final Rule promulgated by the U.S. Department of Health and Human Services implementing the nondiscrimination requirements provided in § 1557 of the Affordable Care Act, 42 U.S.C. § 18116(a). *See* ECF No. 1.

2. Plaintiffs filed their Complaint against Defendants on June 10, 2024, *see id.*, and filed a Motion for Temporary Restraining Order, Preliminary Injunction, and Stay of Agency Action the next day, ECF No. 2, which Defendants opposed, ECF No. 15.<sup>1</sup> On July 3, 2024, the Court issued a

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<sup>1</sup> The United States Attorney for the Eastern District of Texas was served with Plaintiffs' Complaint on June 13, 2024, meaning that Defendants' response to the Complaint was originally due by

Memorandum Opinion and Order (“Order”) granting Plaintiffs’ motion seeking a stay of the Final Rule’s effective date and ordering, pursuant to 5 U.S.C. § 705, “that the effective date of all portions of” the Final Rule be “stayed as to Texas and Montana and all covered entities in those States until further order of the Court.” ECF No. 18 at 27.

3. On July 8, 2024, Plaintiffs filed a Motion for Clarification requesting that the Court “clarify that its Order stays the effective date of the Final Rule universally.” ECF No. 20 at 3. Defendants opposed that motion, ECF No. 22; Plaintiffs replied, ECF No. 29; and Defendants filed a sur-reply on August 5, 2024, ECF No. 30.

4. On July 22, 2024, Defendants filed a Motion to Reconsider Grant of Motion for Stay of Agency Action (“Reconsideration Motion”), in which Defendants argued that the Court “should reconsider the scope of its Order and stay only those portions of the [Final] Rule that specifically implicate the provision of or coverage for gender-affirming care, which [were] the only portions that Plaintiffs ‘*actually challenge[d]*’ in their [motion for preliminary relief].” ECF No. 21 at 9 (quoting *Career Colleges & Schs. of Tex. v. U.S. Dep’t of Educ.*, 98 F.4th 220, 255 (5th Cir. 2024)); *see id.* at 2, 2 n.3 (listing the provisions of the Final Rule appropriately subject to a § 705 stay). Plaintiffs opposed Defendants’ Reconsideration Motion, ECF No. 31, and Defendants filed a reply on August 12, 2024, ECF No. 39. Plaintiffs did not file a sur-reply.

5. On August 30, 2024, the Court issued an Order Modifying Stay (“Modified Order”), in which it granted Plaintiffs’ Motion for Clarification and expanded the geographic scope of the Court’s stay of the effective date of the Final Rule to have nationwide effect. ECF No. 41 at 3. The Court also granted Defendants’ Reconsideration Motion “in part” and “limit[ed]” the substantive scope of its stay “only to the sections” of the Final Rule “subject to Plaintiffs’ challenge.” *Id.* at 4; *see id.* (listing the provisions of the Final Rule encompassed by the Court’s Modified Order).

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August 12, 2024. *See* Fed. R. Civ. P. 12(a)(2). Defendants later filed an unopposed motion to extend their deadline to respond to the Complaint to October 7, 2024, ECF No. 37, which the Court granted, ECF No. 38.

6. Defendants timely appealed the Court's July 3, 2024 Order and August 30, 2024 Modified Order to the United States Court of Appeals for the Fifth Circuit on August 30, 2024. ECF No. 43.

7. In light of that appeal and Defendants' upcoming deadline to respond to Plaintiffs' Complaint, *see* ECF No. 38, the parties have conferred about potential next steps in this case and respectfully request that the Court stay further district court proceedings until Defendants' appeal is finally resolved. *See Nevada v. U.S. Dep't of Labor*, 227 F. Supp. 3d 696, 698 (E.D. Tex. 2017) ("A district court has broad discretion to stay proceedings in the interest of justice and to control its docket.").

8. Good cause supports the parties' request. As a general matter, the Fifth Circuit's resolution of Defendants' appeal will likely have a "substantial effect," if not a "controlling" one, on Plaintiffs' claims here, which is a "good" reason, "if not an excellent one," for staying further district court proceedings in the interim. *Micosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009). Pressing on with such proceedings would therefore be an inefficient, and perhaps largely wasteful, use of the parties'—and, more importantly, the Court's—time and resources. *See Coker v. Select Energy Servs.*, 161 F. Supp. 3d 492, 495 (S.D. Tex. 2015) (concluding that a stay of district court proceedings was warranted in part because it would help "avoid expending unnecessary judicial resources"); *Accident Ins. Co. v. Classic Bldg. Design, LLC*, No. 2:11-cv-33, 2012 WL 4898542, at \*2 (S.D. Miss. Oct. 15, 2012) ("[C]onsiderations of judicial economy counsel, as a general matter, against investment of court resources in proceedings that may prove to have been unnecessary." (citation omitted)). Moreover, a stay of district court proceedings would not prejudice either Plaintiffs or Defendants. Indeed, both parties jointly move for such relief, and a stay would merely preserve the status quo until the Fifth Circuit weighs in on the potentially dispositive questions of law that will be raised in Defendants' appeal.

9. Accordingly, for the foregoing reasons, the parties respectfully request that the Court stay further district court proceedings in this case until Defendants' appeal of the Court's July 3, 2024

Order and August 30, 2024 Modified Order is finally resolved. The parties additionally request that the Court order the parties to file a joint status report within 30 days of the appeal's final resolution.

DATED: September 30, 2024

Respectfully submitted,

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*/s/ Zachary W. Sherwood*  
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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule CV-7(h), the parties conferred via email on September 25, 2024, and agreed to jointly move for the relief requested in this motion.

*/s/ Zachary W. Sherwood*  
ZACHARY W. SHERWOOD

**CERTIFICATE OF SERVICE**

On September 30, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

*/s/ Zachary W. Sherwood*  
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