

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

**STATE OF KANSAS, STATE OF
NORTH DAKOTA, *et al.*,**

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 1:24-cv-00150-DMT-CRH

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY PRELIMINARY
INJUNCTION**

Defendants demonstrated that a stay of the Court's order granting the preliminary injunction and stay is appropriate. *See* Mot., ECF No. 119. Plaintiffs largely repeat their arguments concerning standing, venue, the merits of their claims, and the equities of their requested relief. *See* Opp'n, ECF No. 127. Defendants have already explained the deficiencies of those arguments, *see, e.g.*, ECF Nos. 61, 90, 96, 107, 108, and will not burden the Court by repeating them here.

One new argument in Plaintiffs' opposition warrants a brief response. They contend that Defendants have waived any argument that complying with the Court's order after the start of Open Enrollment creates irreparable harm. *See* Opp'n at 10. First, Plaintiffs are incorrect as a factual matter that Defendants did not previously argue that there would be significant additional burdens if the Court granted Plaintiffs' requested relief after the start of Open Enrollment. *See, e.g.*, Opp'n to Mot. for Prelim. Inj., ECF No. 61 at 28; Opp'n to TRO, ECF No. 107 at 7-8. Both parties recognized this fact and sought a briefing schedule that, to the extent possible given Plaintiffs' delay in seeking injunctive relief, "w[ould] help facilitate

the Court’s resolution of Plaintiffs’ motion before the final rule takes effect on November 1, 2024.” Joint Motion for Entry of Proposed Briefing Schedule, ECF No. 42 ¶ 4.

Second, Plaintiffs are wrong on the law. The practical consequences of complying with the Court’s order, issued at the start of peak traffic during Open Enrollment, could not be fully known until the Court issued its ruling. Mr. Grant’s declaration provides that information. *See* ECF No. 119-1. This Court and the Court of Appeals may properly consider this additional evidence in weighing the equities and deciding whether to issue a stay under Federal Rule of Civil Procedure 62(d) or the All Writs Act, *see* 28 U.S.C. § 1651. *See, e.g., Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (noting that a court must “bring to bear an equitable judgment of [its] own” in deciding to grant a stay under § 1651). In fact, declarations routinely accompany district-court stay motions, even though (by definition) such declarations were not available to the district court at the time of the appealable order. *See, e.g.,* Decl. of Adm. William K. Lescher, *Navy-Seals 1-3 v. Austin*, No. 21-cv-1236, ECF No. 87 (N.D. Tex. Jan. 24, 2022), *cited in* Order, *Austin v. U.S. Navy Seals 1-6*, No. 21A477 at 2 (U.S. Mar. 25, 2022) (Kavanaugh, J., concurring), and *id.* at 1 n.1 (Alito, J., dissenting).

Finally, Defendants appreciate the Court’s efforts to expedite consideration of the stay request, *see* ECF No. 128, and have filed this reply as quickly as possible. However, given the significant system changes and cancellation of insurance coverage that the Court’s order requires, as previously noted, *see* ECF Nos. 119, 119-1, Defendants also intend to seek relief in the U.S. Court of Appeals for the Eighth Circuit shortly.

CONCLUSION

For the foregoing reasons, and those in Defendants' motion, *see* ECF No. 119, the Court should stay pending appeal its order granting a preliminary injunction or stay of the Final Rule.

Dated: December 13, 2024

Respectfully submitted,

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