IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

AMERICAN ASSOCIATION OF ANCILLARY BENEFITS, A FLORIDA NOT-FOR-PROFIT CORPORATION, and PREMIER HEALTH SOLUTIONS, LLC, A TEXAS LIMITED LIABILITY COMPANY,	§	Case No. 24-CV-783
	§	Judge Sean D. Jordan
Plaintiffs,	§	
v.	§	
XAVIER BECERRA, in his official capacity, as SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, JULIE A. SU, in her official capacity, as acting UNITED STATES SECRETARY OF LABOR, and JANET YELLEN, in her official capacity, as SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY,	§	
Defendants.	§	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR A 90-DAY STAY OR AN EXTENSION OF TIME

NOW COME Plaintiffs AMERICAN ASSOCIATION OF ANCILLARY BENEFITS and PREMIER HEALTH SOLUTIONS, LLC'S, by and through their counsel, and for their Response to Defendants' Motion for a 90-Day Stay or an Extension of Time (Dkt. # 66), pursuant to the Order of this Court (Dkt. # 67), stating as follow:

1. As this Court ordered in the October 4, 2024 Scheduling Order, Plaintiffs American Association of Ancillary Benefits and Premier Health Solutions, LLC, filed their combined Response and Reply by January 10, 2025. (Dkt. # 30). Briefing on that motion has been completed pursuant to this Court's ordered briefing schedule.

2. In October 2024, the Court had stayed Defendants' deadline to answer Plaintiffs' Amended Complaint and set the deadline for briefing on the cross-motions for summary judgment, including Defendants' Reply in support of their Cross-Motion for Summary Judgment, which was due on February 4, 2025. (*Id.*).

3. On January 23, 2025, Defendants sought an extension of fifteen days, until February 19, 2025, "to accommodate a change of counsel" because "working diligently to master the details" of the New Rule, stating "an extension of slightly more than two weeks would be reasonable . . . and would not prejudice Plaintiffs . . . ." (Dkt. #61, at p. 1).

4. Plaintiffs opposed the motion, noting that the government had successfully pursued a longer briefing schedule than Defendants and explaining the public exigencies that every day of delay imposes an uncertainty of "significant harm to insured[s] and the healthcare insurance industry," including Plaintiffs, policy holders, state regulators, STILDI issuers, and the public (Dkt. #63). Now Defendants are asking for an extraordinary remedy, i.e., a 90-stay so that the new administration can consider its position in this case, or in the alternative, another extension.[1]

5. Again, Plaintiffs oppose Defendants' motion because the relief sought will cause significant harm to Plaintiffs, the consumers of these plans, and STLDI plan issuers. The uncertainty will also cause additional turmoil for state regulators.

6. Previously, Defendants sought an extension with a "reasonable" deadline of "slightly more than two weeks . . . until February 19," noting also "[i]f the Court wishes to address Plaintiffs' allegations of irreparable harm pending resolution of this lawsuit, Plaintiff's opposed motion for a preliminary injunction remains pending before it," and that alternatively the

[1] Plaintiffs did note that they would agree to the motion and stay if Defendants would agree to the entry of the preliminary injunction pending this Court's rulings. Defendants declined this proposal, which would have staved off any harm that would result from the New Rule.

government could have its brief ready by February 12 with the joint appendix by February 14, 2025. (Dkt. #64, at p. 2).

7. On February 18, 2025, the day before Defendants' Reply brief was due, Defendants requested a 90-Day stay "to allow new agency leadership sufficient time to evaluate the government's position in this case and determine how best to proceed." (Dkt. #66).

8. That request is improper for several reasons. Firstly, even Defendants' *Amicus* Association for Community Affiliated Plans "recognize[d] that the incoming administration may take a different view with respect to the merits of this litigation," cautioning that "[i]f that occurs, and the Government indicates that it no longer wishes to defend the 2024 Rule, the Government may not achieve a de facto rescission of the 2024 Rule and restoration of the 2018 Rule through a settlement in this case" and that the Executive "is of course entitled to change its position in litigation with a change in Presidential administrations, but . . . that does not mean that resolution of litigation may be 'leveraged . . . as a basis to immediately repeal [a] Rule, without using notice-and-comment procedures,'" which would allow an Executive Branch to circumvent checks and balances. (Dkt. #50, at pp. 12-13) (quoting *Arizona v. City & Cnty. of San Francisco*, 596 U.S. 763, 765–66 (2022) (Roberts, C.J., joined by Thomas, Alito, and Gorsuch, JJ., concurring) (citing 5 U. S. C. § 551(5)) and *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101 (2015)). And Defendants have consistently expressed their desire for the Judiciary to resolve this question—as per the strictures of *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

9. As such, a 90-day stay could undo all of the work of Plaintiffs and the judicial resources expended by this Court if Defendants were allowed to act contrary to the above-referenced authority.

10. Second, Defendants' new request for a three-month stay further demonstrates their unawareness of the massive sea change brought about by the Supreme Court's decision during the last executive administration, in *Loper Bright Enterprises v. Raimondo*.

11. *Loper Bright* established that neither that administration, nor any administration so situated, could change the settled meaning of laws—because that electoral flip-flop creates impermissible regulatory whiplash. *See Id.* at 2257 ("the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches."). *See Id.* at 2284-85 (Gorsuch, J., acknowledging that the impartial Judiciary is the branch that interprets terms to conclude a fixed meaning, "not those currently wielding power in the political branches;" otherwise, "how could people ever be sure of the rules that bind them?").

12. Unlike the Judiciary, a "bureaucrat may change his mind year-to-year and election-to-election, the people can never know with certainty what new 'interpretations' might be used against them." *See Id.* at 2285 and 2288 (citing *Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981-982 (2005), in which one agency rule had been volleyed across four different presidential administrations with four rules rescinding the last, and each declaring itself to be "just as 'reasonable' as the last."); *see also Biden v. Nebraska*, 600 U.S. 477 2355, 2385 (Kagan, J., dissenting, "When COVID hit, two Secretaries serving two different Presidents decided to use their HEROES Act authority," one to temporarily suspend the other to permanently forgive).

13. A 90-day stay—or any further stay—will compound "unwarranted instability in the law" that "leav[es] those attempting to plan around agency action in an eternal fog of uncertainty." *Loper Bright*, 144 S. Ct. at 2272. The Judiciary must "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Id.*

14. This case—and the meaning of the vague term, "Short-Term Limited Duration Insurance" (STLDI), was taken out of Defendants' hands and vested firmly in the Judiciary's when Plaintiffs filed suit in late summer 2024. *See generally Missouri v. Trump*, No. 24-2332, 2025 WL 518130, at **9, 11 (8th Cir. Feb. 18, 2025) (granting nationwide full stay regarding the 2023 Rule for student loan forgiveness, noting, an "agency's consistently wrong interpretation cannot rewrite the statute's text to change its meaning.") (citing *Loper Bright*, 144 S. Ct. at 2258)); *see also Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 241 (5th Cir. 2024), *cert. granted*, 2025 WL 65914 (U.S. Jan. 10, 2025) (reasoning, "[t]o hold otherwise would greenlight the aggregation of Executive power 'through adverse possession by engaging in a consistent and unchallenged practice over a long period of time' . . . irreconcilabl[y] with the judicial obligation to interpret the statute that Congress actually enacted." *Career Colleges & Sch. of Texas v. United States Dep't of Educ.*, 98 F.4th 220, 241 (5th Cir. 2024), *cert. granted in part sub nom. Dep't of ED. v. Career Colleges & Sch. of TX*, No. 24-413, 2025 WL 65914 (U.S. Jan. 10, 2025) (quoting *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 613–14 (2014) (Scalia, J., concurring in judgment)).

15. Defendants' new request tacitly concedes this unpredictable nationwide and industry-pervasive healthcare question is one "of deep 'economic and political significance'" i.e., a major question, "that is central to this statutory scheme." *See King v. Burwell*, 576 U.S. 473, 486 (2015) ("had Congress wished to assign that question to an agency, it surely would have done so expressly.")

16. Lastly, there is no justification for another extension given in the abbreviated motion. There was no explanation as to why Defendants could not file a Reply in support of their cross-motion for summary judgment. Additionally, Defendants have not claimed that this Court

is precluded from ruling upon Plaintiffs' motion for summary judgment that has been fully briefed.

17. Ultimately, this Court should deny the motion at hand, as Defendants have had sufficient time to file the Reply that supports their dispositive motion. This new request will cause prejudice to Plaintiffs, health insurance consumers, and the health insurance industry as a whole.

18. Should Defendants choose to withdraw the cross-motion, that should not impact the fully-briefed motion for summary judgment filed by Plaintiffs that is pending before this Court.

WHEREFORE, for the above and foregoing reasons, PLAINTIFFS AMERICAN ASSOCIATION OF ANCILLARY BENEFITS and PREMIER HEALTH SOLUTIONS, LLC'S, respectfully requests that this Honorable Court enter an Order denying Defendants' Motion for a 90-Day Stay or Extension of Time, an award of attorneys' fees for responding to this motion and for any further relief this Court deems fair and just.

Respectfully submitted:

By: ***/s/ Dominick L. Lanzito***

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2025, I caused the foregoing documents to be filed with the Clerk for the Eastern District of Texas through the ECF system. Participants in the case who are not registered ECF users will be served through email.

Date: February 20, 2025

Respectfully submitted,

/s/Dominick L. Lanzito

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