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July 25, 2019

VIA ECF

Honorable Wendy Beetlestone
United States District Judge
United States District Court for the Eastern District of Pennsylvania
601 Market St.
Suite 3809
Philadelphia, PA 19106

RE: *Commonwealth of Pennsylvania, et al., v. Trump, et al., 2:17-cv-4540*

Dear Judge Beetlestone:

On July 23, 2019, the Court held a telephonic status conference to address the effect of the Third Circuit's recent decision (affirming the Court's order entering a preliminary injunction) on the disposition of the pending motions, particularly the cross motions for summary judgment. The Court invited the parties to file letters on this issue, at their discretion, on or before Thursday, July 25, 2019. Federal Defendants write to provide further explanation—and a slight modification—of their position, with an eye toward identifying the approach that will best facilitate further review of the issues raised in this suit without unnecessary delay.

As Federal Defendants explained during the status conference, the Court could facilitate further review without undue delay by (i) entering summary judgment for Plaintiffs on the same grounds that the Third Circuit relied on in affirming the issuance of the preliminary injunction, (ii) denying as moot the claims not reached by the Third Circuit, and (iii) issuing a final judgment to this effect. The Court expressed concern that a reviewing court might then have to decide, in the first instance, the claims denied as moot. But this possibility should not trouble the Court. First, those claims include constitutional claims, which the Court should avoid deciding if possible, as it is here: "It is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case." *Nw. Austin Mun. Util. Dist. No. One v.*

Holder, 557 U.S. 193, 205 (2009) (quotation marks and bracket omitted); *see also Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 445 (1988). Second, and more generally, the claims that would be denied as moot raise purely legal issues, which can just as readily be decided by a higher court in the first instance (as an alternative ground for relief, if necessary). *See Flora v. Cty. of Luzerne*, 776 F.3d 169, 179 n. 12 (3d Cir. 2015). Finally, a reviewing court could remand those claims to this Court for it to decide immediately, if the reviewing court disagrees with the decision reached by Third Circuit panel and any summary judgment decision to the same effect issued by this Court.¹ The bottom line is this: This approach would provide finality, would not require the Court to unnecessarily decide any claims, and would not prejudice Plaintiffs, because a reviewing Court can affirm on any basis supported by law and the record. *See City Select Auto Sales Inc. v. David Randall Assocs., Inc.*, 885 F.3d 154, 161 (3d Cir. 2018).

During the status conference, Federal Defendants noted that issuing a final decision on the claims decided by the Third Circuit, for the same reasons as the Third Circuit, and staying the remaining claims would be an acceptable fall back.² A clarification is in order. While this is not an unreasonable approach, adopting it may delay further review given the state of the jurisprudence regarding the applicability of Federal Rule of Civil Procedure 54. That said, entering a permanent injunction in conjunction with the issuance of an order under Rule 54 would ameliorate this concern. Lastly, there is another viable option involving a stay, namely, the Court could stay the matter in its entirety to allow for further review of the Third Circuit's decision as to the preliminary injunction.

Plaintiffs advocated for the Court to decide all of their claims on the merits. But, under this tack, the Court would decide claims, including constitutional claims, that it need not decide to provide the relief that Plaintiffs seek. Thus, the Court should not adopt Plaintiffs' preferred approach.

Sincerely,

/s/

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¹ Further review of the claims decided by the Third Circuit could also provide guidance for a later decision of the other claims. For example, a subsequent decision on the RFRA claim, to the extent it addresses burden on women, could facilitate resolution of the Establishment Clause claim, to the extent it involves arguments regarding such burdens.

² Under this approach and the approach outlined in the previous paragraph, consistent with the reasoning of the Third Circuit opinion, the Court would deny the pending motions to dismiss.