Fifth Circuit Court of Appeals

John J. Dierlam	§	
	§	
	§	
versus	§	NO. 18-20440
	§	
Donald Trump, President, et. al.	§	
USDC No. 4:16-CV-307	§	
	§	
	§	

Letter of Response to the Decision to Place this Case in Abeyance

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Argument

I – Supreme Court precedent indicates a Court may Stay proceedings in the management of its docket as long as the stay is not immoderate or oppressive of the rights of the parties.

The Supreme Court stated in *Clinton v. Jones, 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2D 945 (1997)*, a "court has broad discretion to stay proceedings as an incident to its power to control its own docket." This discretion is not without limits and can be abused as the Supreme Court found the District court had done in the case cited in violation of the "right to an orderly disposition of" the complainant's claims. Id. p.710. The Supreme Court stated in *Landis v. North American Co., 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936)*, a decision to stay some proceedings in favor of others "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." A stay of indefinite length placing the rights of some parties in jeopardy for no justifiable reason the Court considered immoderate. That court said, "in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted." Id. p.256.

II – The facts and circumstances in the instant case indicates an abuse of discretion exists in the decision to place this case in abeyance.

A – The present case was filed long before the *Texas* case and involves the violation of SUBSTANTIAL Constitutional rights by the ACA and its regulations.

No reason or time limit is provided in the letter from the court other than a stay is issued awaiting a decision in the *Texas v. United States case no. 19-10011.* The present case was initiated on February 4, 2016, long before *Texas v. US, 340 F. Supp. 3d 579 (N.D. Tex. 2018),* for which the initial complaint was filed on February 26, 2018. It has been fully briefed for nearly six months. The initial complaint in this case claimed multiple violations by the ACA, involving the 1st, 4th, 5th, and 9th amendments to the Constitution. These violations were more fully developed in later submissions. (See the Appeal Brief filed on 10/5/2018 and my Reply Brief filed on 3/12/2019 with this court for more information.)

B – The *Texas* case involves primarily a single PROCEDURAL Constitutional Violation.

The Supreme Court in *Nat. Fedn. of Indep. Business v. Sebelius, 132 S. Ct. 2566, 2597 (2012)* saved the ACA by considering the Individual Mandate Penalty a tax which raises at least some revenue, therefore the whole act was Constitutional for the sole reason the Act fell under the Constitutional power of Congress to tax. Public Law 115-97 (Tax Cuts and Jobs Act of 2017 or TCJA) set the Individual Mandate Penalty to $0, therefore it no longer collects revenue. While it is factually true the Act currently raises no revenue, other questions may arise to complicate a decision in the *Texas* case such as the intention of Congress in the raising of revenue from the ACA both in the future and the past. No matter how these issues

are settled, the *Texas* case is clearly a matter of Procedural Law. The Constitution limits Congress to powers specifically enumerated in the Constitution. It protects and reserves all rights not enumerated to the citizens or states. In addition, direct taxes were to be apportioned to protect another substantive right, the Consent of the Governed, which provides the government the power to tax the people in the first place. As described in Section VIII of my Complaint, *Hylton v. United States, 3 U.S. 171, 1 L. Ed 556, 1 L. Ed. 2D 556 (1796)* effectively destroyed Consent of the Governed. The Constitutional requirements at issue in *Texas* are clearly procedures to ensure protection of underlying substantive rights.

C – Procedural rights work to protect Substantive rights for which the Courts primarily exist to defend. The decision here at issue in effect denies these facts and works great harm on the public to which the Courts were instituted to serve.

Justice Black observed in his dissent in *Link v. Wabash R. Co., 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2D 734 (1962) - Black dissenting,* the purpose "for which courts were created— that is, to try cases on their merits and render judgments in accordance with the substantial rights of the parties." The decision in the present case in effect places Procedural Law ahead of Substantive, which to some extent turns on its head the very purpose of the courts. If the underlying substantial rights are ignored or denied to exist, procedural Law is of little consequence. Therefore, if a case must be placed in abeyance, it is the *Texas* case which should be held in

abeyance awaiting the present case, which involves substantive rights the protection of which are more central to the purpose of the courts. Although the goal of both cases is a declaration of the unconstitutionality of the ACA, any gain in judicial efficiency and expediency by staying the instant case comes at a cost which eliminates the very reason for a judiciary. The *Texas* case faces far less harm if the present case succeeds, whereas this case in large part will be destroyed by declaring it moot, doing great harm to myself and to the public, which is better served by the protection of the substantive rights involved in the present case. Even if the *Texas* case succeeds all the way to the Supreme Court, it can be nullified by a simple act of Congress to raise the Individual Mandate Penalty by one cent avoiding the procedural violation entirely. Therefore, the decision to place this case in abeyance is in stark opposition to the principles stated in the above cited cases. It is immoderate in extent and in contrast to promoting the "public welfare or convenience," can greatly harm the substantive rights of myself and the public.

III – The judiciary and government has upon multiple instances harmed and impeded the present case.

The District judge treated the parties differently allowing the government to file excess pages in their Motion to Dismiss the First Amended Complaint, but after a substantial delay denied my similar unopposed request. He then refused my Motion for a Request of Clarification. (ROA.6) Later, the Judge granted a Stay in

this case without the requisite justification. (ROA.401-413) I appealed unsuccessfully. Finally, a different District Judge, ruled to dismiss the entire case. He based his ruling in large part upon an abusive decision from another circuit, which denied any violation of religious liberty based upon a "substantial burden test", in spite of the fact the government had changed its position and admitted to a violation of my religious freedom. (See Section I of the Appellant's Brief) Recently, in *CHRISTIAN EMPLOYERS ALLIANCE v. Azar, No. 3: 16-cv-309 (D.N.D. May 15, 2019)* a district court ruled the HHS Mandate was in violation of RFRA. Consideration of the admission of a violation by the government did influence the court in its decision. Given the bias of the District Judge in the present case, it is easy to understand why my other claims were not given serious consideration.

After filing the appeal brief last year, I attempted to file a Motion for Summary Judgment and Injunction. The clerks of this court blocked this filing in violation of the rules of the Court. After considerable delay, the Motion was filed after my Motion for Reconsideration outlined the Rules of the court and provided case precedent filed on 11/29/2018. This case has not been allowed any discovery. In short, this case has never been allowed a fair and impartial hearing. The present situation is no exception and appears designed to prevent one in the future.

Conclusion

The abeyance should be removed and this case proceed to decision for the reasons above. However, I find it difficult to believe this Court has simply overlooked the points made above. Given the judicial history of the lack of equity in this case, I expect this letter will have no impact and my words will fall upon deaf ears. Based upon the evidence, I firmly believe, this court fully intends to utilize this abeyance to dispose of the majority if not all of the present case despite the Supreme Court and other precedent cited in opposition to the oppression of substantive rights.

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Certificate of Service

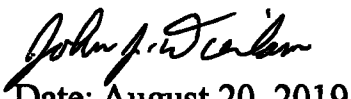
I certify I have on August 20, 2019 mailed a copy of the above document to the clerk of the court at:

FIFTH CIRCUIT CLERK'S OFFICE
600 South Maestri Place
New Orleans, LA 70130

as I do not have access to the Court's electronic filing system. I have also mailed a copy to Apellee's Counsel at:

Lowell Sturgill
U.S. Department of Justice, Room 7241
950 Pennsylvania Ave NW
Washington, DC 20530

I have emailed courtesy copies to the Defendant's counsel at Lowell.Sturgill@usdoj.gov and Emily.S.Newton@usdoj.gov



Date: August 20, 2019
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