

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF)
PENNSYLVANIA,)
v. Plaintiff,) Civil Action No. 2:17-cv-04540 (WB)
JOSEPH R. BIDEN, in his official)
capacity as President of the United States,)
et al.,)
Defendants.)

MOTION FOR A STAY OF PROCEEDINGS

The Court stayed this case until July 30, 2021. *See* ECF No. 275. Federal Defendants request that the Court extend the stay to afford Federal Defendants additional time to evaluate (i) the issues presented by this case and (ii) their regulatory and policy options.

1. This case involves a challenge to final rules the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA*, 83 Fed. Reg. 57,536 (Nov. 15, 2018); *Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA*, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
2. This Court entered a preliminary injunction; the judgment was reversed and remanded by the Third Circuit on August 21, 2020, following the Supreme Court's decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).
3. The Court has before it fully briefed dispositive motions. *See, e.g.*, ECF Nos. 252, 254, 255.
4. The Court has the inherent power to stay this case to save "time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Relatedly,

the Court has the power to hold motions in abeyance. *See, e.g., Bracey v. Lancaster Foods LLC*, 2019 WL 1129436, at *6 (D. Md. Mar. 12, 2019), *appeal dismissed*, 2020 WL 7385192 (4th Cir. Dec. 16, 2020).

5. On March 5, 2021, Federal Defendants asked the Court to stay this case or, in the alternative, hold the pending dispositive motions in abeyance, to enable new leadership at the Defendant Agencies and the U.S. Department of Justice to evaluate the issues presented by the case. ECF No. 269.
6. The Court entered an order staying the case until April 30, 2021 and instructing Federal Defendants to file a status report on or before the same day. ECF No. 271.
7. In an April 30, 2021, motion asking the Court to continue the stay, Federal Defendant explained that new leadership at the federal defendant agencies—the U.S. Department of Health and Human Services, the U.S. Department of Labor, and the U.S. Department of the Treasury—and the U.S. Department of Justice are continuing to evaluate the issues that this case presents in light of all relevant facts and circumstances, including the Executive Order on Strengthening Medicaid and the Affordable Care Act, January 28, 2019 (EO), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/?_hs_mi=117826243&_hsenc=p2ANqtz-9ZGdrSbFhmzpZv1U5tBXA5boILZhCzIZdVpKC3RgZl3d3ZDayiCDM0lrq6CTOqVJsF88ThoYbQQFpNxZbyc7C5jyrg9A. The EO states, “it is the policy of my Administration to protect and strengthen Medicaid and the ACA and to make high-quality healthcare accessible and affordable for every American.” *Id.* § 1. The Court granted the motion, staying the case until July 30, 2021. ECF No. 275.
8. Federal Defendants continue to assess the issues presented by this case—and to consider their regulatory and policy options.
9. It would conserve the resources of the Court and the parties to extend the stay entered in this case while the agencies undertake this evaluation.

10. Federal Defendants propose to file a status report with the Court on or before October 29, 2021 and every 90 days thereafter.
11. The plaintiff States have asked Federal Defendants to represent that the States remain concerned about the ongoing harms they have identified that are caused by the Rules. But Plaintiffs do not oppose Federal Defendants' request so that Federal Defendants can consider regulatory and policy options. The States reserve the right to move to lift the stay at any time.
12. Counsel for the intervenor, The Little Sisters of the Poor, states that their client opposes this motion.
13. Therefore, Federal Defendants hereby move for a stay of proceedings in this case to permit leadership to evaluate the issues presented by this case.

DATED: July 30, 2021

Respectfully submitted,

BRIAN NETTER
Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

/s/ Justin M. Sandberg
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CERTIFICATE OF SERVICE

I hereby certify that, on July 30, 2021, a copy of the forgoing document was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 30th day of July, 2021

s/ Justin M. Sandberg
JUSTIN M. SANDBERG
Senior Trial Counsel
United States Department of Justice

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[PROPOSED] ORDER

The Court, having considered the Federal Defendants' motion to stay proceedings in this case, hereby GRANTS the motion and STAYS the case. Federal Defendants shall file a status report on or before October 29, 2021, and every 90 days thereafter.

IT IS SO ORDERED, this _____ day of _____, 2021.

HON. WENDY BEETLESTONE
United States District Judge