

No. 23-1394

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**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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JESSE HAMMONS,

*Plaintiff-Appellant,*

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORP., ET AL.,

*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the District of Maryland  
No. 20-cv-02088

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**REPLY IN SUPPORT OF APPELLEES’  
MOTION TO HOLD CASE IN ABEYANCE**

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Earlier in this appeal, Hammons sought to hold this case in abeyance until this Court issued an *en banc* decision in *Kadel v. Folwell*, which involved the question of sex discrimination at issue here. That same question now pends before the U.S. Supreme Court in *United States v. Skrmetti*, and merits briefing is in full swing. Appellees thus likewise asked to stay this appeal based on the same reason Hammons gave: the outcome there will “shape the scope of th[is] appeal.” Doc. 30 at 3. But after securing the previous stay, Hammons now reverses course and urges this Court to press ahead—immediately. Hammons had it right the first time around.

1. Unable to justify the about-facing, Hammons first invites this Court to sidestep Appellees’ request altogether, arguing that this Court “already rejected” Appellees’ arguments when it issued its briefing order. Doc. 52 at 2. Not so. Though Appellees submitted a letter to the Clerk of Court after the Supreme Court took *Skrmetti*, there is no indication that a motions panel considered the letter, much less ruled on it. The proper way to request an abeyance is through a motion to raise new developments, as Hammons had done before and as Appellees have done now.

2. On the merits of the stay request, Hammons insists that the appeal now “dramatically differ[s]” from when this Court initially stayed it. Doc. 52 at 4. But there is no material difference between the *en banc* and Supreme Court proceeding. Both involve the same question—whether denying transgender treatment constitutes prohibited discrimination. Doc. 50 at 2-3. And the panel here will be bound by the Supreme Court just as it stood to be bound by the *en banc*. So, as before, the outcome of the related case will “shape the scope of th[is] appeal.” Doc. 30 at 3.

Hammons observes that *Skrmetti* will not resolve the separate claim under the Establishment Clause or the district court’s sovereign immunity grounds for dismissing it. Doc. 52 at 5. True, but that was equally true when Hammons requested a stay for *Kadel*. See Doc. 30 at 3. It remains most efficient to wait for a final resolution of one of this case’s central issues so that the parties and this Court can fully understand the remaining scope of this case.

3. Hammons has identified no good reason to brief this appeal now because there is none. The temporary pause will save the parties time and money, as well as conserve this Court's resources.

### **CONCLUSION**

For the foregoing reasons, Appellees respectfully request that this Court hold this appeal pending resolution of *Skrmetti*.

September 10, 2024

Respectfully submitted,

/s/ Yaakov M. Roth

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**CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2) because it contains 435 words. This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it was prepared in a proportionally spaced typeface using 14-point Times New Roman font.

/s/ Yaakov M. Roth  
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*Counsel for Appellees*