

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BECKWITH ELECTRIC CO., INC., and
THOMAS R. BECKWITH,

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official
capacity as Secretary, United States
Department of Health and Human Services, *et*
al.,

Defendants.

Case No. 8:13-cv-648-EAK-MAP

UNOPPOSED MOTION TO STAY PROCEEDINGS

Defendants respectfully ask this Court to stay all proceedings in this case pending the resolution of defendants' appeal to the United States Court of Appeals for the Eleventh Circuit of this Court's order granting plaintiffs' motion for preliminary injunction. Pursuant to Local Rule 3.01(g), undersigned counsel conferred with counsel for plaintiffs, who represented that plaintiffs do not oppose this request.

In support of this motion, defendants state as follows:

1. This Court granted plaintiffs' motion for preliminary injunction on June 25, 2013. *See* Order, ECF No. 39.
2. On August 22, 2013, defendants filed a Notice of Appeal in which defendants appealed this Court's order granting plaintiffs' motion for preliminary injunction to the United States Court of Appeals for the Eleventh Circuit. *See* Notice of Appeal, ECF No. 43.
3. Defendants' response to plaintiffs' complaint is currently due on September 2, 2013. *See* Endorsed Order, ECF No. 41. Absent a stay of district court proceedings, defendants

intend to move to dismiss the complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

4. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). “Although the filing of an interlocutory appeal does not automatically stay proceedings in the district court, the district court has broad discretion to decide whether a stay is appropriate to promote economy of time and effort for itself, for counsel, and for litigants.” *Association of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008).

5. Defendants’ intended motion to dismiss will raise legal issues regarding plaintiffs’ RFRA and First Amendment claims that are likely to be addressed by the Eleventh Circuit in adjudicating defendants’ appeal of this Court’s grant of a preliminary injunction. Defendants believe it would be inefficient to concurrently litigate these issues in both courts. *See Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009) (“[T]he reason for the district court’s stay was at least a good one, if not an excellent one: to await a federal appellate decision that is likely to have a substantial or controlling effect on the claims and issues in the stayed case.”). In the meantime, there will be no prejudice to plaintiffs, as they will have the benefit of the preliminary injunction during the pendency of the stay.

6. Defendants note that numerous district courts have stayed proceedings in similar circumstances in litigation challenging the preventive services coverage regulations. *See, e.g., Order, Tonn and Blank Construction LLC v. Sebelius*, No. 12-cv-00325-JD-RBC (N.D. Ind. Aug.

16, 2013), ECF No. 46; Order, *Ozinga v. U.S. Dep't of Health & Human Servs.*, No 13-cv-3292 (N.D. Ill. Aug. 14, 2013), ECF No. 29; Order, *American Pulverizer Co. v. U.S. Dep't of Health & Human Servs.*, No 12-cv-3459 (W.D. Mo. Feb. 20, 2013), ECF No. 45; Order, *Annex Medical, Inc. v. Sebelius*, No. 12-cv-02804-DSD-SER (D. Minn. Jan. 25, 2013), ECF No. 53; Order, *Korte v. Sebelius*, No. 3:12-cv-01072 (S.D. Ill. Dec. 28, 2012), ECF No. 63.

Accordingly, defendants respectfully request th at this Court enter an order staying all district court proceedings until the Eleventh Circuit issues a ruling resolving defendants' appeal of this Court's order granting preliminary injunctive relief.

Respectfully submitted this 23rd day of August, 2013,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Michael C. Pollack

MICHAEL C. POLLACK