

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**GEORGIA LATINO ALLIANCE \*  
FOR HUMAN RIGHTS, et al., \***

**Plaintiffs, \***

**V. \***

**1:11-CV-1804-TWT**

**NATHAN DEAL, Governor of the \*  
State of Georgia, et al., \***

**Defendants. \***

**DEFENDANTS' BRIEF IN SUPPORT OF  
MOTION STAY THE CASE**

In order to avoid the potentially unnecessary cost and burden of litigation, Defendants move that this case including their answer, discovery, including all disclosures and planning conferences pursuant to Fed. R. Civ. P. 26 and L.R. 26.1 be stayed pending a ruling on Defendants' Appeal.

**PROCEDURAL POSTURE**

Plaintiffs, a group of organizations and individuals filed the instant case on June 2, 2011 challenging the constitutionality of Georgia's House Bill 87 (HB 87) in its entirety. (doc. 1). Shortly after filing the complaint, Plaintiffs filed a motion for preliminary injunction seeking to preliminarily enjoin enforcement of section 7,

8 and 19 of the Bill. (doc. 29). Defendants Deal, Olens, Beatty and Rease filed a Motion to Dismiss Plaintiffs' complaint in its entirety (doc. 47) to which Plaintiffs filed a response. (doc. 76). Defendants also filed a response to Plaintiffs' Motion for Preliminary Injunction and an objection to much of the evidence relied on by Plaintiffs. (doc. 70, 72). All briefing subsequent to the filing of the Motion for Preliminary Injunction occurred in an expedited fashion at Plaintiffs request and pursuant to the Court's direction. The Court conducted a hearing and heard argument on the Motion for Preliminary Injunction and Defendants' Motion to Dismiss on June 20, 2011. The Court entered an order on both of these motions on June 27, 2011 where it granted in part and denied in part Plaintiffs' Motion for Preliminary Injunction and Defendants' Motion to Dismiss. The Court enjoined the enforcement of Sections 7 & 8 of HB 87 based upon Plaintiffs' likelihood of prevailing on the merits of their claims related to preemption and dismissed all of Plaintiffs' other claims. Defendants filed a Notice of Appeal of the Court's order enjoining enforcement of Sections 7 & 8 of the Bill. (doc. 97). Defendants now seek to stay the case pending the outcome of the appeal.

## ARGUMENT AND CITATION OF AUTHORITY

The Supreme Court has explained that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S. Ct. 400, 401, 74 L. Ed. 2d 225 (1982); *see also* Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 379, 105 S. Ct. 1327, 1331, 84 L. Ed. 2d 274 (1985), *reh'g denied*, 471 U.S. 1062, 105 S. Ct. 2127, 85 L. Ed. 2d 491 (1985). As the Eleventh Circuit has explained, once a notice of appeal has been filed, the "district court retains only the authority to act in aid of the appeal, to correct clerical mistakes, or to aid in the execution of a judgment that has not been superseded." Showtime/The Movie Channel, Inc. v. Covered Bridge Condominium Ass'n, Inc., 895 F.2d 711, 713 (11th Cir. 1990).

Moreover, Rule 26(d) of the Federal Rules of Civil Procedure provides the Court broad discretion to alter the sequence of discovery "for the convenience of the parties . . . and in the interests of justice." Fed. R. Civ. P. 26(d). Further, federal courts routinely exercise their power to stay a proceeding where a stay

would promote judicial economy and efficiency. See, e.g., Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist., 559 F.3d 1191, 1198 (11th Cir. 2009) (approving district court's decision to stay case pending appeal in another case that was "likely to have a substantial or controlling effect on the claims and issues in the stayed case"). As any decision from the Court of Appeals will have profound impact on the development of this case and because it is in the interests of efficiency and justice, this Court should exercise its discretion this case and relieve the parties from having to exert additional resources pending a ruling on Defendants' appeal.

This case involves novel questions related to the constitutionality of a state statute. As part of the review related to the appeal, the Eleventh Circuit Court of Appeals will necessarily be required to examine the viability of Plaintiffs' claims related to preemption including their ability to pursue the claims, the implication of law of preemption and their likelihood to succeed on the merits. As such the issues on appeal bear directly on the further adjudication of this case before this Court. In consultation with the Plaintiffs, they agreed to stay the case as it relates to Sections 7 & 8 of the Bill but as they believe that there are other claims remaining before this Court, presumably related to the enforcement of Section 17 of the Bill, they would not agree to stay the case.

It is Defendants' belief that all claims, as pled, related to other portions of the Bill, including Section 17, have been dismissed by this Court. The only possible claim that might lack clarity in the Court's order relates to a possible preemption claim related to Section 17. As Plaintiffs conceded that based upon Section 17's clear adoption of the language in Section 19, codified as 50-36-2, which provides, in no uncertain terms that a "secure and verifiable document" includes any document "recognized by the United States government..." and that which is required "by federal law," that Plaintiffs' conflict preemption claims regarding Section 17, would be resolved. (doc. 76 p. 29). Plaintiffs have not with any particularity pled other preemption claims related to this or any other section of the Bill. Even if the Court were to determine that there are additional claims related to other provisions of the Bill and preemption, any ruling by the Court of Appeals related to the viability of these claims would certainly be instructive to the parties and the Court.

Consequently, the issues in the pending appeal mirror the issues remaining in this court and Defendants believe that in the interest of judicial economy, and a desire to conserve the resources of the parties that a stay of the case is warranted.

**CONCLUSION**

For these reasons, Defendants respectfully request that the Court stay this matter until the appeal is adjudicated.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing **BRIEF IN SUPPORT OF MOTION TO STAY PENDING APPEAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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