

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

COMMONWEALTH OF PENNSYLVANIA,)
)
)
 Plaintiff,)
 v.)
)
 DONALD J. TRUMP, in his official)
 capacity as President of the United States;)
 ALEX M. AZAR II, in his official)
 capacity as Secretary of Health and)
 Human Services; UNITED STATES)
 DEPARTMENT OF HEALTH AND)
 HUMAN SERVICES; STEVEN T.)
 MNUCHIN, in his official capacity as)
 Secretary of the Treasury; UNITED)
 STATES DEPARTMENT OF THE)
 TREASURY; RENE ALEXANDER)
 ACOSTA, in his official capacity as)
 Secretary of Labor; and UNITED STATES)
 DEPARTMENT OF LABOR,)
)
 Defendants.)

Civil Action No. 2:17-cv-04540 (WB)

**REPLY IN SUPPORT OF MOTION FOR A STAY OF PROCEEDINGS
IN LIGHT OF LAPSE OF APPROPRIATIONS, OR, IN THE ALTERNATIVE, FOR AN
EXTENSION OF THE ANSWER DEADLINE**

On December 26, 2018, Federal Defendants moved for a stay of proceedings due to a lapse of appropriations or, in the alternative, for an extension of the deadline to answer or otherwise respond to the amended complaint (from December 28, 2018 to February 28, 2019). Mtn. for Stay or Extension, Dec. 26, 2018, ECF No. 96. Plaintiffs filed their response on December 27, 2018. Plaintiffs’ Opp. to Defs.’ Mtn. for a Stay of Proceedings (Opp.), Dec. 27, 2018, ECF No. 99.

Plaintiffs do not oppose Federal Defendants’ request for an extension of the deadline to answer or otherwise respond to the complaint. Opp. at 1 n.1. Thus, if the Court denies the stay motion, it should nonetheless grant (for good cause shown) Federal Defendants’ motion for an extension of the deadline to answer or otherwise respond to the amended complaint.

With respect to Federal Defendants’ request for a stay, there are only a few points that need to be made in reply to the States’ opposition. First, as Defendants have previously argued, plaintiffs have not established that they will suffer any harm from the challenged rules becoming effective. Second, the argument that the stay should be denied because government attorneys will continue to defend the government in the wake of a denial is wrong. Opp. at 2, 3-4. Congress controls the purse strings. And it has established, by statute, limited circumstances in which federal employees can continue to work after a lapse in appropriations. 31 U.S.C. § 1342 (absent appropriations government employees are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property”). Plaintiffs’ argument invites the Court to ignore these limits – and, by extension, Congress’ primacy in appropriations – because government attorneys will appear to defend the government’s interests if the stay is denied. This argument provides no basis in law for denying the stay and is, thus, unpersuasive.

Accordingly, as explained in Federal Defendants’ opening motion, this case should be stayed. In the alternative, the Court should grant the unopposed motion to extend the deadline to answer or otherwise respond to the amended complaint, extending the deadline from December 28, 2018 to February 28, 2019.

DATED: December 28, 2018

Respectfully submitted,

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/s/ Justin M. Sandberg

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CERTIFICATE OF SERVICE

I hereby certify that, on December 28, 2018, 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 28th day of February, 2018.

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