

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RONNIE MAURICE STEWART, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:18-cv-152 (JEB)
)	
ALEX M. AZAR II, et al.,)	
)	
Defendants.)	

PLAINTIFFS’ OPPOSITION TO FEDERAL DEFENDANTS’ MOTION TO STAY CASE

Plaintiffs respectfully file this opposition to the federal Defendants’ motion to stay this matter. *See* ECF No. 90.

At the outset, Plaintiffs recognize the burden imposed on counsel for the government by being required to litigate this case during the pendency of the government shutdown and are open to finding a means to set a schedule that will not compel them to work without pay. Notwithstanding disagreements related to the merits of this case, Plaintiffs affirm their appreciation for personnel in the Department of Justice and the critical role that they play in our justice system.

Nevertheless, the impact of an indefinite stay would be far more prejudicial to Medicaid recipients in Kentucky than to the federal Defendants. *See Weil v. Markowitz*, 829 F.2d 166, 175 n.17 (D.C. Cir. 1987) (noting “that the entry of stays . . . [is] generally disfavored in American jurisprudence”); *United States v. Honeywell Int’l, Inc.*, 20 F. Supp. 3d 129 (D.D.C. 2013) (weighing benefit of stay to movant against prejudice to party opposing stay). The briefing schedule, as proposed jointly by the parties and adopted by the Court, was designed to ensure that the Court will be able to consider arguments and decide the case prior to April 1, 2019, the date

on which the Kentucky HEALTH project is scheduled to go into effect.¹ *See* Joint Motion Regarding Proposed Briefing Schedule at 1, ECF No. 83 (“The parties have conferred and submit the following proposed briefing schedule, which would allow for the parties’ motions on the merits of this case to be ripe for decision in advance of April 1, 2019.”). After that date, it is Plaintiffs and other Medicaid recipients who will face immediate benefit cuts and be forced to comply with work and premium requirements or lose Medicaid coverage altogether. The benefit cuts, which include eliminating non-emergency transportation, and new restrictions on eligibility will leave Plaintiffs and Medicaid recipients unable to afford medically necessary health care. *See, e.g.*, First Am. Compl. ¶¶ 261–66; 276–83 (plaintiffs between 100 and 133 percent of the federal poverty level currently relying on Kentucky’s Medicaid program to afford necessary health care); *see also* Order at 1, *Maryland v. United States*, No. 18-2849 (D. Md. Jan. 3, 2019), ECF No. 49 (denying motion to stay in light of the “potential significance of this matter to the health and well-being of the citizens of Maryland”).

Although Congress will eventually act to re-open the government and has authorized payment for furloughed federal workers, Government Employee Fair Treatment Act of 2019, S. 24, 116th Congress (enacted), there is little chance that Congress or the Commonwealth of Kentucky will take action to pay the costs of medical care for those removed from Medicaid or

¹ The federal Defendants refer to *Gresham v. Azar*, No. 18-cv-1900, *see* ECF No. 90. There, Plaintiffs consented only to a short term stay for federal Defendants to file their final reply brief. This Court’s stay of the federal Defendants’ deadline for the reply brief was entered after Defendants had filed their Motions for Summary Judgment, and the stay affects only the federal Defendants reply brief deadline. Because arguments raised for the first time in reply are waived, *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23, 29 nn.3–4 (D.C. Cir. 2008), the court in *Gresham* could conceivably rule on the motion without the federal Defendants’ reply brief in hand. Here, by contrast, the federal Defendants seek an *indefinite* stay of the entire case where briefing has just begun.

losing currently covered benefits under Kentucky HEALTH. And it is impossible to compensate Medicaid recipients for medical care forgone because they are unable to afford it.

For these reasons, Plaintiffs oppose the indefinite stay requested by the federal government. Plaintiffs are willing to work on any schedule that the Court sets that would ensure a ruling on Plaintiffs' motion prior to implementation of the Kentucky HEALTH project and its unlawful requirements. The current schedule would achieve that goal, and Plaintiffs believe that a sensible summary judgment briefing schedule is the best way to proceed; otherwise, Plaintiffs would be compelled to seek a temporary restraining order and/or a preliminary injunction prior to April 1, which would not ease the burden on any party.

But the current briefing schedule is not the only approach that would be consistent with the imperative of protecting Kentucky residents from harm. The Intervenor-Commonwealth has it within its power to delay the implementation date of Kentucky HEALTH beyond April 1, 2019, which could also provide additional time to brief and decide this case. The Court could also enter an order, based on the current record and the lack of any serious attempt by the federal Defendants to address the Court's reasons for vacating the initial approval, delaying implementation of the Kentucky HEALTH project until such time as the issues are fully litigated.

Dated: January 17, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2019, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send an electronic notice to all authorized CM/ECF filers.

By: /s/ Jane Perkins
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