

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT
Electronically Filed

COMMONWEALTH OF KENTUCKY, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, *et al.*,

Defendants.

Civil No. 3:21-cv-00055-GFVT

JOINT MOTION TO STAY PROCEEDINGS

The parties jointly request that this Court stay further proceedings in this matter pending final resolution of Defendants' appeal from the Court's order granting Plaintiffs' motion for a preliminary injunction. *See* Opinion & Order, ECF No. 50 ("Order").

On November 30, 2021, the Court granted Plaintiffs' motion for a preliminary injunction and enjoined the Federal Government "from enforcing the vaccine mandate for federal contractors and subcontractors in all covered contracts in Kentucky, Ohio, and Tennessee." *Id.* at 29. Defendants appealed the Court's order on December 3, 2021. *See* ECF No. 52. Defendants are currently obligated to respond to Plaintiffs' amended complaint on or before January 7, 2021.

The parties agree and respectfully suggest that a stay of proceedings pending the final resolution of Defendants' appeal will both promote judicial economy and preserve the parties' resources. *See Paintsville Hosp. Co., LLC v. Amneal Pharms., LLC*, No. 7:20-cv-00102-GFVT, 2020 WL 7048275, at *2 (Dec. 1, 2020) ("[T]he power to stay proceedings is

incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). Defendants’ appeal implicates important legal issues that the parties and the Court will likely have to address in future proceedings, including questions pertaining this Court’s jurisdiction and the scope of the President’s authority under the Federal Property and Administrative Services Act, which is “a matter [of] first impression in the Sixth Circuit.” See Order at 11. An appellate decision on those issues (and others) will thus likely provide the Court and the parties significant aid in the ultimate resolution of this case. Furthermore, the parties’ proposed stay is of a limited and definite duration that will not cause undue delay in the resolution of this case.

Accordingly, the parties respectfully request that the Court stay further district court proceedings in this matter until the parties have exhausted appellate proceedings.

DATED: December 20, 2021

Respectfully submitted,

Daniel Cameron
ATTORNEY GENERAL

/s/ Christopher L. Thacker

Barry L. Dunn (KBA No. 93787)

Christopher L. Thacker (KBA No. 91424)

Heather L. Becker (KBA No. 94360)

Jeremy L. Sylvester (KBA No. 92771)

Alexander Y. Magera (KBA No. 97708, *admission application submitted*)

Office of the Attorney General

700 Capital Avenue, Suite 118

Frankfort, Kentucky 40601

Phone: (502) 696-5300

Barry.Dunn@ky.gov

Christopher.Thacker@ky.gov

Heather.Becker@ky.gov

Jeremy.Sylvester@ky.gov

Alexander.Magera@ky.gov

Counsel for the Commonwealth of Kentucky

Dave Yost
ATTORNEY GENERAL

/s/ Benjamin M. Flowers
Benjamin M. Flowers, *pro hac vice*
Carol O'Brien, *pro hac vice*
May Davis, *pro hac vice*
Office of the Attorney General
365 East Broad Street
Columbus, Ohio 43215
Phone: (614) 466-4986
bflowers@OhioAGO.gov

*Counsel for the State of Ohio, Fredrick W. Stevens,
and Scott A. Hildenbrand*
James R. Flaiz, *pro hac vice*
Prosecuting Attorney
Geauga County Prosecutor's Office
231 Main St., 3rd Floor
Chardon, OH 44024
Phone: (440) 279-2100

Counsel for Scott A. Hildenbrand

Herbert H. Slatery III
ATTORNEY GENERAL

/s/ Brandon J. Smith
Dianna Baker Shew, *pro hac vice*
Brandon J. Smith, *pro hac vice*
Office of the Attorney General and Reporter
P.O. Box. 20207
Nashville, Tennessee 37202-0207
Phone: (615) 532-4081
dianna.shew@ag.tn.gov
brandon.smith@ag.tn.gov
Counsel for State of Tennessee

BRIAN M. BOYNTON
Acting Assistant Attorney General

BRAD P. ROSENBERG

Assistant Director

/s/ Jody D. Lowenstein

ZACHARY A. AVALLONE

JODY D. LOWENSTEIN

Mont. Bar No. 55816869

Trial Attorneys

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street NW

Washington, D.C. 20005

Phone: (202) 598-9280

Email: jody.d.lowenstein@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

On December 20, 2021, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Eastern District of Kentucky, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b) (2).

/s/ Jody D. Lowenstein _____
JODY D. LOWENSTEIN
Trial Attorney
U.S. Department of Justice