

No. 23-1394

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

JESSE HAMMONS,

Plaintiff-Appellant,

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORP., ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland
No. 20-cv-02088

**APPELLANT’S UNOPPOSED MOTION TO SUSPEND BRIEFING AND
HOLD CASE IN ABEYANCE PENDING DECISION IN *FAIN V. CROUCH***

Plaintiff-Appellant, Jesse Hammons, through undersigned counsel, respectfully moves the Court to suspend the briefing schedule and hold this case in abeyance pending its decision in *Fain v. Crouch*, No. 22-01927, which will be argued en banc on September 21, 2023. Defendants-Appellees do not oppose this motion. In support, Mr. Hammons shows the following:

1. Mr. Hammons is a transgender man who has been diagnosed with gender dysphoria. *See Hammons v. Univ. of Md. Med. Sys. Corp.*, —F.Supp.3d—,

No. DKC 20-2088, 2023 WL 121741, at *3 (D. Md. Jan. 6, 2023). As part of his medically necessary care, Mr. Hammons’s surgeon scheduled a hysterectomy to take place at the University of Maryland St. Joseph Medical Center (“St. Joseph”). *Id.* at *4. St. Joseph is owned and operated as a Catholic hospital by the Defendants, who are governmental entities. *Id.* at *1. Before Mr. Hammons’s surgery could take place, St. Joseph ordered Mr. Hammons’s surgeon to cancel the procedure as contrary to the Ethical and Religious Directives of the United States Conference of Catholic Bishops (the “Directives”). *Id.* at *4. The District Court found that the cancellation was motivated by a policy against providing gender-affirming care. *Id.* at *5.

2. Mr. Hammons sued, alleging three claims: (1) violation of the Establishment Clause, (2) violation of the Equal Protection Clause, and (3) violation of Section 1557 of the Affordable Care Act (the “ACA”). The District Court dismissed Mr. Hammons’s two constitutional claims, ruling that Defendants are shielded by sovereign immunity. *See* Notice of Appeal Exs. A–D, D. Ct. ECF Nos. 136-1–136-4.

3. Mr. Hammons prevailed on his statutory claim. *See* Notice of Appeal Ex. E, D. Ct. ECF No. 136-5. The District Court held, *inter alia*, that a refusal to provide gender-affirming care constitutes discrimination on the basis of sex proscribed by Section 1557. *Hammons*, 2023 WL 121741, at *7. In support of this

holding, the District Court cited *Fain v. Crouch*, 618 F. Supp. 3d 313, 327 (S.D.W.V. 2023), and *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), which the district court in *Fain* applied. *Id.* at *7-8.

4. Mr. Hammons now appeals the dismissal of his constitutional claims. Defendants have cross-appealed the summary judgment in Mr. Hammons's favor on his statutory claim.

5. On September 21, 2023, this Court will hear argument en banc in *Fain*. The en banc decision in *Fain* will likely provide guidance on the application of Section 1557 and the Equal Protection Clause to gender-affirming medical treatments and whether *Bostock* is applicable to either doctrinal context. Therefore, the outcome of *Fain* will shape the scope of the appeal and cross-appeal and the number and breadth of issues that the parties must brief and this Court must decide.

6. Accordingly, putting this case in abeyance pending *Fain* would serve the interests of judicial efficiency and the conservation of resources of both parties.

7. Undersigned counsel have contacted Defendants' counsel of record, Yaakov M. Roth, who stated that Defendants do not oppose this motion.

WHEREFORE, Plaintiff-Appellant respectfully requests that this Court suspend the briefing schedule and place this case in abeyance pending its en banc decision in *Fain v. Crouch*, No. 22-01927.

July 27, 2023

Respectfully submitted,

/s/ Aron Fischer

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2) because it contains 527 words. This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it was prepared in a proportionally spaced typeface using 14-point Times New Roman font.

/s/ Aron Fischer _____

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