

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

HOBBY LOBBY STORES, INC., et al.,

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official
capacity as the Secretary of the United States
Department of Health and Human
Services, et al.,

Defendants.

Civil Action No.
CIV-12-1000-HE

**JOINT MOTION TO STAY DISTRICT COURT
PROCEEDINGS PENDING APPEAL**

The parties, by and through their undersigned counsel, hereby jointly move this Court to enter an order staying further proceedings in this Court pending resolution of plaintiffs' appeal to the United States Court of Appeals for the Tenth Circuit of this Court's denial of plaintiffs' motion for a preliminary injunction. In support of this motion, the parties state as follows:

1. On November 19, 2012, this Court entered an order denying plaintiffs' motion for a preliminary injunction. *See* Order, ECF No. 45. The Court determined, among other things, that plaintiffs had not demonstrated a likelihood of success on their Religious Freedom Restoration Act ("RFRA") or Free Exercise Clause claims.

2. That same day, plaintiffs filed a Notice of Appeal in which plaintiffs appealed this Court's order denying plaintiffs' motion for a preliminary injunction to the United States Court of Appeals for the Tenth Circuit. *See* Notice of Appeal, ECF No. 46.

3. Defendants' response to plaintiffs' complaint is currently due on December 13, 2012. *See* Order, ECF No. 53. Absent a stay of district court proceedings, defendants intend to move to dismiss the complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

4. "Although the filing of an interlocutory appeal does not automatically stay proceedings in the district court, the district court has broad discretion to decide whether a stay is appropriate to promote economy of time and effort for itself, for counsel, and for litigants." *Association of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008).

5. Defendants' intended motion to dismiss will raise legal issues regarding plaintiffs' RFRA and Free Exercise Clause claims that are likely to be addressed by the Tenth Circuit in adjudicating plaintiffs' appeal of this Court's denial of a preliminary injunction. The parties believe it would be inefficient to concurrently litigate these issues in both courts.

6. The District Court for the District of Colorado recently stayed district court proceedings under similar circumstances in *Newland v. Sebelius*. *See* Order, *Newland v. Sebelius*, No. 1:12-cv-01123, Oct. 26, 2012, ECF No. 57. In that case, the district court granted plaintiffs' motion for a preliminary injunction, and the government appealed. *Id.* at 1. The court stayed all district court proceedings "until the Tenth Circuit issues its ruling or until further order of this Court." *Id.* at 2. The parties respectfully request that this Court do the same.

7. The parties wish to reserve the right to request that this Court reopen district court proceedings prior to resolution of the appeal under appropriate circumstances. The Court, of course, retains discretion to accept or reject any such request.

8. Further, if the Court denies this joint motion to stay proceedings pending appeal, the parties jointly request that the Court extend the deadline for defendants to respond to plaintiffs' complaint to January 4, 2013.

Accordingly, the parties respectfully request that this Court enter an order staying all district court proceedings until the Tenth Circuit issues a ruling resolving plaintiffs' appeal of this Court's denial of preliminary injunctive relief or until further order of this Court.

Respectfully submitted this 10th day of December, 2012,

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2012, a copy of the foregoing was filed electronically with the Clerk of the Court to be served upon the following:

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