

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

Deborah S. Hunt
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Filed: February 07, 2018

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Re: Case No. 17-2504/18-1089, *Adrian Fowler, et al v. Ruth Johnson*
Originating Case No. : 4:17-cv-11441

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Antoinette S. Macon
Case Manager
Direct Dial No. 513-564-7015

cc: Mr. David J. Weaver

Enclosure

Nos. 17-2504/18-1089

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Feb 07, 2018

DEBORAH S. HUNT, Clerk

ADRIAN FOWLER, KITIA HARRIS, on behalf of)
themselves and others similarly situated,)

Plaintiffs-Appellees,)

v.)

RUTH JOHNSON, Michigan Secretary of State, in)
her official capacity,)

Defendant-Appellant.)

O R D E R

Before: GUY and GILMAN, Circuit Judges; HOOD, District Judge.*

Ruth Johnson, the Michigan Secretary of State in her official capacity (the “Secretary”), appeals the district court’s amended preliminary injunction enjoining the suspension of driver’s licenses

because of nonpayment of any fine, cost, fee or assessment under Michigan Compiled Laws § 257.321a *unless and until* [the Secretary] or another entity: (1) offers drivers the option to request a hearing where they have the opportunity to demonstrate their inability to pay a fine, cost, fee and/or assessment; (2) provides a hearing when requested; (3) provides reasonable notice of the hearing opportunity; **and** (4) institutes alternatives to full payment for those unable to pay (e.g., realistic payment plans or volunteer service).

The Secretary moves for a stay of the amended preliminary injunction. The plaintiffs oppose the motion for a stay pending appeal. The Secretary replies and requests immediate action on her motion.

* The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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The Secretary “bears the burden of showing that the circumstances justify” the exercise of discretion to grant a stay pending review. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Four factors guide our consideration of the motion for a stay: (1) whether the Secretary has a likelihood of success on the merits; (2) whether she will suffer irreparable harm in the absence of a stay; (3) whether the requested injunctive relief will substantially injure other interested parties; and (4) where the public interest lies. *Id.* at 434; *see also In re EPA*, 803 F.3d 804, 806 (6th Cir. 2015); *Ohio ex rel. Celebrezze v. Nuclear Regulatory Comm’n*, 812 F.2d 288, 290 (6th Cir. 1987). “The first two factors of the traditional standard are the most critical.” *Nken*, 556 U.S. at 434.

The Secretary has challenged the standing of the plaintiffs to pursue the claims alleged in this action. Specifically, the Secretary has submitted evidence indicating that Plaintiff Kitia Harris contacted the state court after she was issued a traffic ticket. Although she was granted an extension of time to pay her traffic fine and offered a payment plan, Harris allegedly failed to make any payments to the court or otherwise contact the court again concerning the payment plan. And the district court previously noted concerns about the standing of Plaintiff Adrian Fowler. Because of the unresolved factual issues regarding standing, the court’s jurisdiction over this case is unclear.

Accordingly, the motion for a stay pending appeal is **GRANTED**. These appeals are again **REMANDED** to the district court, this time to address the plaintiffs’ standing. We retain jurisdiction, but will hold these appeals in abeyance pending a ruling by the district court on standing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk