



1-1-2011

# U.S. Citizens Association v. Sebelius - U.S. Motion to Stay Proceedings

United States Department of Health and Human Services

Follow this and additional works at: <http://digitalcommons.law.scu.edu/aca>



Part of the [Health Law Commons](#)

## Automated Citation

United States Department of Health and Human Services, "U.S. Citizens Association v. Sebelius - U.S. Motion to Stay Proceedings" (2011). *Patient Protection and Affordable Care Act Litigation*. Paper 274.  
<http://digitalcommons.law.scu.edu/aca/274>

This Motion is brought to you for free and open access by the Research Projects and Empirical Data at Santa Clara Law Digital Commons. It has been accepted for inclusion in Patient Protection and Affordable Care Act Litigation by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact [sculawlibrarian@gmail.com](mailto:sculawlibrarian@gmail.com).

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

U.S. CITIZENS ASSOCIATION, *et al.*,

Plaintiffs,

V.

KATHLEEN SEBELIUS, *et al.*,

Defendants.

Case No: 5:10-cv-1065

Judge David Dowd, Jr.

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR A STAY OF PROCEEDINGS**

The defendants, Kathleen Sebelius, Secretary of the United States Department Health and Human Services, Timothy F. Geithner, Secretary of the United States Department of the Treasury, Eric H. Holder, Jr., Attorney General of the United States, and the United States of America, by the undersigned counsel, respectfully move this Court for a stay of proceedings in this matter. A case currently pending before the Sixth Circuit, *Thomas More Law Center, et al. v. Obama, et al.*, No. 10-2388, involves the same matters that are at issue in this case. Because the court of appeals' resolution of *Thomas More* is virtually certain to control the outcome of this case, the defendants respectfully request a stay of proceedings in this case until the completion of appellate proceedings in *Thomas More*. Plaintiffs oppose this motion. In support of this motion, the defendants state the following:

1. On March 23, 2010, the Patient Protection and Affordable Care Act (“ACA”), Pub. L. No. 111-148, was enacted into law. On the same day, the plaintiffs in *Thomas More* filed a complaint in the United States District Court for the Eastern District of Michigan challenging Congress’s authority to enact the minimum coverage provision of Section 1501 of the ACA.

2. The plaintiffs in *Thomas More* moved for a preliminary injunction, and the district court consolidated its hearing on that motion with a hearing on the merits. The parties’ briefing in that case addressed several issues, including: (1) whether the plaintiffs had standing to challenge Section 1501; (2) whether their suit was ripe; (3) whether the court lacked jurisdiction to hear their suit under the Anti-Injunction Act, 26 U.S.C. § 7421; (4) whether Congress validly exercised its power under the Commerce Clause and the Necessary and Proper Clause in enacting Section 1501; and (5) whether Congress validly exercised its power under the General Welfare Clause in enacting that provision.

3. After full briefing and oral argument, on October 7, 2010, the district court entered an order denying the plaintiffs’ motion for a preliminary injunction and dismissing the counts in their complaint that had challenged Congress’s Article I authority to enact Section 1501. *Thomas More Law Ctr. v. Obama*, --- F. Supp. 2d ---, 2010 WL 3952805 (E.D. Mich. Oct. 7, 2010). The court held that it had jurisdiction to hear their suit, but that the suit did not have merit, as Congress had validly exercised its commerce power in enacting the provision.

4. The plaintiffs in *Thomas More* filed a notice of appeal on October 22, 2010. The Sixth Circuit has docketed the appeal as Case No. 10-2388. The court of appeals has entered a scheduling order that calls for briefing in the appeal to be completed by January 28, 2011.

5. The plaintiffs in this case filed their complaint on May 12, 2010. Like the plaintiffs in *Thomas More*, the plaintiffs in this case alleged that Congress exceeded its Article I powers in enacting Section 1501 of the ACA. The plaintiffs in this case have amended their complaint twice; they filed their second amended complaint on September 16, 2010.

6. The defendants moved to dismiss the second amended complaint. The parties' briefing with respect to that motion addressed the same issues that were presented in *Thomas More*, namely: (1) whether the plaintiffs have standing to challenge Section 1501; (2) whether their suit is ripe; (3) whether this Court lacks jurisdiction to hear their suit under the Anti-Injunction Act, 26 U.S.C. § 7421; (4) whether Congress validly exercised its power under the Commerce Clause and the Necessary and Proper Clause in enacting Section 1501; and (5) whether Congress validly exercised its power under the General Welfare Clause in enacting that provision.

7. This Court denied in part and granted in part the defendants' motion to dismiss on November 22, 2010. This Court held that it has jurisdiction to hear the plaintiffs' suit, and it held that the plaintiffs' challenge to Congress's Article I authority to enact Section 1501 "is not subject to a final resolution on a motion to dismiss, but requires additional consideration by the Court in further proceedings." Doc. 58 at 10. This Court dismissed additional claims raised by the plaintiffs under the First Amendment and the Due Process Clause.

8. "The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 879 n. 6 (1998) ("[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. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). The district court’s broad discretion “includes the power to stay a matter ‘. . . pending resolution of independent proceedings which bear upon the case at hand.’” *Deluca v. Blue Cross Blue Shield of Mich.*, 2007 WL 715304, at \*1 (E.D. Mich. 2007) (quoting *Mediterranean Enter. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir.1983)) (ellipses in original; internal quotation omitted)).

9. This case and *Thomas More* present the same questions of law. In its forthcoming ruling in *Thomas More*, the Sixth Circuit is almost certain to decide legal questions that determine, or at least significantly inform, the outcome of this case. A stay of proceedings in this case during the pendency of appellate proceedings in *Thomas More* is therefore warranted as a matter of judicial economy, to avoid imposing unnecessary costs and burdens on the Court and the parties through duplicative litigation within the same circuit. Given the near identity of the issues in the two cases, it would be inefficient for the parties to prepare, and for this Court to review, potentially lengthy briefs and for this Court to rule on the underlying issues in this case, only to have to revisit the parties’ arguments in light of the Sixth Circuit’s ruling in *Thomas More*.

10. The benefits to the parties and the Court here outweigh any harm that could be caused by a stay. The provision that the plaintiffs challenge, Section 1501 of the ACA, does not become effective until 2014. Insofar as plaintiffs claim harm based on their need to prepare now for the possibility that they will have to purchase insurance come 2014 – which defendants dispute – plaintiffs will continue to face the possibility of such liability so long as

the *Thomas More* case is pending on appeal, regardless of whether this Court proceeds to adjudicate on summary judgment the issues that both cases present.

WHEREFORE, the defendants respectfully request that the Court stay these proceedings until the completion of appellate proceedings in *Thomas More*.

Dated: December 3, 2010

Respectfully submitted,

TONY WEST  
Assistant Attorney General

IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General

STEVEN M. DETTELBACH  
United States Attorney

JENNIFER D. RICKETTS  
Director

SHEILA LEIBER  
Deputy Director

LYNNE H. BUCK  
KATHLEEN MIDIAN  
Assistant United States Attorneys

/s/ Joel McElvain  
JOEL McELVAIN (D.C. Bar #448431)  
TAMRA T. MOORE (D.C. Bar #488392)  
KAREN P. SEIFERT (N.Y. Bar)  
Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20001  
Ph: (202) 514-2988  
Fax: (202) 616-8202  
Joel.McElvain@usdoj.gov

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2010, a copy of foregoing Memorandum in Support of Defendants' Motion for a Stay of Proceedings was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Dated: December 3, 2010

Respectfully submitted,

/s/ Joel McElvain

JOEL McELVAIN

Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Avenue, N.W.

Washington, D.C. 20001

Ph: (202) 514-2988

Fax: (202) 616-8202

Joel.McElvain@usdoj.gov

*Counsel for Defendants*