

et al, Plaintiffs, v. SYLVIA BURWELL, Secretary of the United States Department of Health and Human Services, et al. Defendants	Civil Action No. 7:16ev-001080
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PROPOSED INTERVENORS' MOTION FOR RULING ON INTERVENTION AND STAY OF PRELIMINARY INJUNCTION PENDING A PPEAL

INTRODUCTION

On December 312016, this Court issued a nationwide preliminary injunction, prohibiting Defendants from enforcing regulatory provisions that prohibit federally healthcare entities from discriminating based on gender identity and termination of pregnancy. Order at 46, ECF No. 62. The rights of Proposed Intervenor~~s~~' members being irreparably impaired pursuant to judicial proceedings in which Proposed Intervenor~~s~~ were denied the right to participate as real parties in interest, or even to have their timely motion to intervene expressly adjudicated.

Proposed Intervenor~~s~~ now respectfully request that the Court issue an explicit ruling on intervention, in order to facilitate appellate review. Proposed Intervenor~~s~~ also request that the Court stay its preliminary injunction order pending appeal. If the Court grants the motion to intervene, Proposed Intervenor~~s~~ will file a notice of appeal from the preliminary injunction order. If the Court denies the motion to intervene, Proposed Intervenor~~s~~ will appeal the denial. In the

absence of an explicit ruling, Proposed Intervenor ~~is~~ appeal from the constructive denial of intervention and seek appropriate relief through a petition for writ of mandamus. Given the injunction and the harm it imposes on Proposed Intervenor's members, Proposed Intervenor intend to seek relief from

out, they intend to raise defenses under the Establishment Clause, Equal Protection Clause, and EMTALA

substantial case on the merits when a serious legal question is involved” and “the balance of equities weighs heavily in favor of a stay.” *United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983). Under either standard, a stay of proceedings is justified if Proposed Intervenor members are likely to succeed on the merits, or at least present a substantial case on the serious legal questions raised by the Court’s ruling, if the injunction imposes irreparable harm on Proposed Intervenor members and the public, and Plaintiffs will not be irreparably harmed by a stay of the preliminary injunction pending appeal.

A. Proposed Intervenor Members Are Likely to Succeed on the Merits, or at Least Present a Substantial Case on the Serious Legal Questions at Stake.

Even if the Court disagrees whether Proposed Intervenor members are likely to succeed on the merits in appealing the preliminary injunction order, Proposed Intervenor members at the very least

of pregnancy bar covered healthcare entities from

the federal government to match transgender people and women with nondiscriminatory healthcare providers is not a satisfactory alternative to enforcement of discrimination protections

In addition, in its RFRA analysis, the Court asserted that “the government’s own health insurance programs, Medicare and Medicaid, do not mandate coverage for transition surgeries,” and that “the military’s health insurance program, TRICARE, specifically excludes coverage for transition surgeries.” Order at 41, ECF No. 62. As Proposed Intervenors pointed out in their amici brief, however, these government programs do, in fact, cover transition-related healthcare when determined to be medically necessary on an individualized basis. See Amici Brief at 31 ECF No. 53.²

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preliminary injunction imposes on Proposed Intervenor's members

A stay of the preliminary injunction pending appeal would irreparably harm Plaintiffs. As Defendants stated in their opposition to Plaintiffs' motions for preliminary injunction: "Plaintiffs have not identified any

CONCLUSION

For the foregoing reasons, the Court should issue a decision on intervention. The Court should also stay the preliminary injunction pending appeal.

Diabetes, and Metabolism Division at Nationwide Children's Hospital, App. 463—is a covered healthcare entity subject to the Final Rule. See Amici Br. ~~ECF~~ No. 53 If Dr. Hoffman is not subject to the Final Rule, then CMDA has not demonstrated that any of its members has individual standing sufficient to support its membership standing.

Respectfully submitted this 9th day of January, 2017.

Rebecca L. Robertson

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CERTIFICATE OF SERVICE

On January 9, 2017, I electronically submitted the foregoing **MOTION FOR RULING ON INTERVENTION AND STAY OF PRELIMINARY INJUNCTION PENDING APPEAL** to the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served counsel of record for all parties through the Court's ECF system.

/s/ Brian Hauss _____

Brian Hauss