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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WILDERNESS SOCIETY, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, in his official capacity as President of the United States, *et al.*, Defendants.	Case No. 1:17-cv-2587 (TSC)
GRAND STAIRCASE ESCALANTE PARTNERS, *et al.*, Plaintiffs, v. JOSEPH R. BIDEN, in his official capacity as President of the United States, *et al.*, Defendants.	Case No. 1:17-cv-02591 (TSC) **CONSOLIDATED CASES**
STATE OF UTAH Intervenor-Defendant.	**ORAL ARGUMENT NOT REQUESTED**

INTERVENOR-DEFENDANT STATE OF UTAH'S MOTION TO REOPEN CASES AND LIFT STAY IN ORDER TO FILE MOTION TO DISMISS

Intervenor-Defendant State of Utah ("State") respectfully submits this Motion to Reopen Cases and Lift Stay in the above captioned cases for the purpose of filing the attached Motion to Dismiss Due to Mootness (Attachment A). The State is joined in this Motion by Intervenors-Defendants American Farm Bureau Federation, Utah Farm Bureau Federation, Garfield County, and Kane County ("Joining Parties"). These cases were stayed by the Honorable Tanya S. Chutkan in an order dated March 8, 2021. (ECF No. 152).[1] Pursuant to the Court's recent minute order and the local rules, the parties held a Meet and Confer virtual conference on March 19, 2024. LCvR 7(m). At the Meet and Confer conference, the State reiterated its position that these cases are now moot, but an agreement on the mootness issue was not reached by the parties.

While not directly addressing mootness, the federal government asserted its position that these cases should remain closed and stayed until the Tenth Circuit Court of Appeals provides a ruling in the more recent Grand Staircase Escalante National Monument ("GSENM") litigation. *See Garfield Cnty., Utah v. Biden*, 23-4106 (the "Tenth Circuit Case"). Intervenor-Defendants American Farm Bureau Federation and Utah Farm Bureau Federation indicated they believe the cases are now moot. Following the Meet and Confer, the State was informed by counsel for Intervenor-Defendants Kane County and Garfield County that they believe the cases are now moot. The Farm Bureaus and the Counties (the "Joining Parties") join the State's present motion and will join in the proposed Motion to Dismiss should this Motion be granted. No other parties in the Meet and Confer conference expressed an opinion directly on mootness.

[1] The Court's order preserved "the right of the parties to file a motion to reopen their summary judgement motions." The proposed Motion to Dismiss is a similarly functioning motion that seeks to resolve the cases.

These cases have now been stayed for over three years. Joint Status Reports ("JSRs") and filings related to attorney appearances are the only pleadings that have been filed in that time. To the State's knowledge, no concrete progress[2] towards resolving this matter has been made during this period of over three years, and no viable reason[3] has been provided as to why the cases should remain on the Court's docket. The State and the Joining Parties argue that the issues raised by the Plaintiffs in their respective complaints have been mooted by the subsequent Presidential Proclamation of President Biden on October 8, 2021 (the "Biden Proclamation"). 86 Fed. Reg. 57335-347. For the State to file its Motion to Dismiss, and for this Court to rule on the State's Motion, the Court must first reopen the cases and temporarily lift the stay issued on March 8, 2021.

"'When circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate, the court may lift the stay *sua sponte* or upon motion.'" *Alabama Ass'n of Realtors v. United States Dep't of Health & Hum. Servs.*, 557 F. Supp. 3d 1, 6 (D.D.C. 2021) (quoting *Marsh v. Johson*, 263 F. Supp. 2d 49, 52 (D.D.C. 2003)). The parties have now had over three years to digest "how this case should proceed in light of President Biden's executive order instructing the Secretary of Interior to review, and make recommendations addressing, the boundaries and conditions of the national monument at issue in this case." (ECF 151). As the State will assert if permitted to file its Motion to Dismiss, circumstances have changed since the filing of plaintiffs' respective complaints because the

[2] In the most recent JSR dates April 24, 2024, the federal government indicated that regular settlement talks with plaintiffs have recently "stalled." (ECF 199). The federal attorneys have asserted confidentiality in declining to provide the State with any information regarding potential settlement. It has now been well over six years since the original filing of these cases with apparently no settlement agreement having been reached.

[3] The federal attorneys have indicated a preference to leave the case closed and stayed until a Tenth Circuit decision but have not directly addressed mootness.

Biden Proclamation essentially returned the GSENM boundaries to pre-December 4, 2017 status. The Biden Proclamation has given plaintiffs the remedy they were seeking, thus making the cases classically moot and no longer subject to the jurisdiction of this Court. *See Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 954 (D.C. Cir. 2016).

"The party seeking continuation of a stay 'bears the burden of showing his entitlement to [it].'" *Alabama*, 557 F. Supp. 3d at 7 (quoting *Latta v. Otter*, 771 F.3d 496, 498 (9th Cir. 2014)). "A federal district court 'has broad discretion to stay proceedings as an incident to its power to control its own docket'" and "[o]nce a stay is imposed, the Court may lift it '[w]hen circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate.'" *Campaign Legal Ctr. v. Correct the Rec.*, 2023 WL 2838131, at *2-*3 (D.D.C. Apr. 7, 2023) (internal citations omitted). "In determining whether to do so, the court retains the same 'inherent power and discretion' it exercised to impose the stay," and will "generally 'weigh competing interests and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties." *Ibid* (internal citations omitted).

Federal courts have provided four factors to consider when deciding whether to lift a stay:

> In assessing whether to lift a stay, a court considers the traditional four stay factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."

Alabama, 557 F. Supp. 3d at 7 (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). "The first two factors are 'the most critical.'" *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 571 U.S. 1061 (2013) (Scalia, J., concurring) (quoting *Nken*, 556 U.S. at 434).

Factor one weighs in favor of the State and the Joining Parties. Federal Defendants and Plaintiffs cannot make a strong showing that they will succeed on the merits – particularly given they are opposing parties. Even if Federal Defendants and Plaintiffs are now working in the same direction, they have had over three years since the stay was implemented (and over six years total) to effectuate a settlement agreement and have failed to do so.[4]

Factor two also favors the State and the Joining Parties. Federal Defendants and Plaintiffs would not be irreparably injured in any manner should the stay be lifted. This is evidenced by the fact that (except for Notices of Appearances and court-mandated JSRs) *nothing* substantive has been filed in these cases in the over three years they have been stayed. Therefore, the two most critical factors weigh in favor of the State and the Joining Parties.

Factors three and four also favor the State and the Joining Parties. Regarding factor three, the State and Joining Parties were granted intervention in these cases because their interests and rights were at stake. Maintaining the stay allows the Federal Defendants and Plaintiffs to continue working towards an improper "settlement" of moot claims that the Court no longer has *Article III* jurisdiction over, which will inevitably affect or determine the rights and interests of State and Joining Parties; all while the State and the Joining Parties are denied the opportunity to participate in any purported "settlement" negotiations and have their voices heard.

Lastly, the public interest lies in resolution of these cases, which have now been pending for over six years. This is especially true when these cases have essentially sat dormant for over three years under the stay order and Plaintiffs have already received the relief sought under the

[4] The State asserts that any "settlement agreement" would be inappropriate given that the case is now moot. In short, there are no live issues to settle. As indicated previously, the State has not been invited to participate in settlement talks. The Federal Defendants have declined to provide the State with substantive information regarding potential settlement on confidentiality grounds.

mandates of the Biden Proclamation. Time and money are being expended on these moot claims while "too many civil cases in American courts take too long to resolve." Institute for the Advancement of the American Legal System, *Civil Case Processing in the Federal District Courts*, pg. 1 (2009). In the most recent JSR, Federal Defendants and Plaintiffs argue that the pending Tenth Circuit Case will – without any explanation as to why – "shape the scope of live issues" in this Court's case challenging the Trump Proclamation of 2017. However, as the State has indicated in the JSR,

> The Tenth Circuit litigation challenges the Biden Proclamation based on two issues: The narrow categories of things that can be declared 'objects' to be protected in a national monument under the [Antiquities] Act and the interpretation under the Act of the 'smallest [land] area compatible.' Any Tenth Circuit decision will not address the main challenge before this Court – namely the authority of the President to reduce the boundaries of an existing national monument. That issue has not been raised in the Tenth Circuit litigation.

(ECF 199).

In the last JSR, the federal defendants and plaintiffs, cited authority from this Court regarding the imposition of a stay in *Allen v. D.C.*, 2024 WL 379811, at *2 (D.D.C. Feb. 1, 2024). The Court noted that a stay is "justifiable" where it "would settle some outstanding issues and simplify others," but "a stay is immoderate and hence unlawful unless it has reasonable limits." *Ibid* (internal quotations omitted). *Allen* also gave further considerations beyond the four traditional stay factors addressed previously, albeit concerning imposition of a stay as opposed to lifting one:

> When a party requests a stay pending other proceedings, the court considers: (i) What effect, if any, will the completion of the Supreme Court's[5] proceedings have on the proceedings before this Court?; and (ii) How, if at all, will Plaintiff be burdened if a stay is granted, and how, if at all, will Defendant be burdened if the stay is denied? To determine whether the balance of hardships favors a stay, the

[5] The State also notes that unlike a U.S. Supreme Court opinion, a decision in the Tenth Circuit Case would not be binding on this Court even if the issues were related.

> court considers three factors: (1) the harm to the nonmoving party if a stay does issue; (2) the moving party's need for a stay – that is, the harm to the moving party if a stay does not issue; and (3) whether a stay would promote efficient use of the court's resources. If there is a fair possibility that a stay would adversely affect another party, the movant for the stay must demonstrate a clear case of hardship or inequality in being required to go forward. The court's determination whether a stay is warranted is inextricably intertwined with the nature of the specific case.

Ibid.

The harms or lack of harms have been established above. As the State has indicated, the Tenth Circuit Case does not address the issue before this Court, namely the authority of the President to reduce the boundaries of an existing national monument. With its eventual decision (which is still months away), the Tenth Circuit Case will not settle or simplify any pending issues before this Court. As such, the years-long stay in this Case has lived beyond its purpose and should be temporarily lifted. Plaintiffs and Federal Defendants had the opportunity to express their positions on mootness at the Meet and Confer and failed to do so. They will have the further opportunity to explain their respective positions regarding mootness should this Court lift the stay.

Finally, maintaining the stay does not promote efficient use of the Court's resources. Repetitive monthly (or bi-annual) JSRs on an inactive, moot case is not a reasonable use of time or resources for the Court or any of the parties. As such, the balance of hardships favors lifting the stay in this case temporarily, reopening the case, and allowing the State and the Joining Parties to file their Motion to Dismiss for Mootness to resolve these long-pending matters.

Accordingly, Intervenor-Defendant State of Utah and the Joining Parties respectfully request the Court reopen and temporarily lift the stay in the above captioned consolidated cases.

RESPECTFULLY SUBMITTED this 16th day of May, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 16, 2024, the undersigned electronically filed the foregoing **INTERVENOR-DEFENDANT STATE OF UTAH'S MOTION TO REOPEN AND LIFT STAY IN ORDER TO FILE MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to all counsel of record:

/s/ Stephen K. Kaiser
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