IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

TATI ABU KING, et al.
Plaintiffs,

v. Civil Action No. 3:23cv408

JOHN O'BANNON, in his official capacity as Chairman of the State Board of Elections for the Commonwealth of Virginia, et al.
Defendants.

ORDER

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This matter comes before the Court on the defendants'[1] motion to stay the proceedings pending resolution of petition for writ of certiorari. (ECF No. 110.) On March 27, 2024, the defendants appealed after the Court granted in part and denied in part the defendants' motion to

[1] The original defendants sued in the matter include: Glenn Youngkin, in his official capacity as Governor of the Commonwealth of Virginia; Kay Cole James, in her official capacity as the Secretary of the Commonwealth of Virginia; John O'Bannon, in his official capacity as Chairman of the State Board of Elections for the Commonwealth of Virginia; Rosalyn R. Dance, in her official capacity as Vice Chair of the State Board of Elections for the Commonwealth of Virginia; Georgia Alvis-Long, in her official capacity as Secretary of the State Board of Elections for the Commonwealth of Virginia; Donald W. Merricks, in his official capacity as a member of the State Board of Elections for the Commonwealth of Virginia; Matthew Weinstein, in his official capacity as a member of the State Board of Elections for the Commonwealth of Virginia; Susan Beals, in her official capacity as Commissioner of the Department of Elections for the Commonwealth of Virginia; Angie Maniglia Turner, in her official capacity as the General Registrar of Alexandria, Virginia; Taylor Yowell, in her official capacity as the General Registrar of Charlottesville, Virginia; and Shannon Williams, in her official capacity as the General Registrar of Smyth County, Virginia.

Due to changes in politically held offices and substitution of parties, the Court has automatically substituted Sandy C. Elswick for Shannon Williams, in her official capacity as the General Registrar of Smyth County, Virginia. As discussed within the memorandum, defendants Governor Glenn Youngkin and Secretary of the Commonwealth of Virginia Kelly Gee were dismissed from the suit. The plaintiffs voluntarily dismissed Angie Maniglia Turner from the suit and did not include Taylor Yowell in either the amended or second amended complaints.

dismiss, dismissed three counts in the amended complaint, and allowed the case to proceed on violations of the Virginia Readmission Act under principles of federal equity and *Ex parte Young* (Count Two) against all defendants. The Court stayed all litigation pending the defendants' appeal to the United States Court of Appeals for the Fourth Circuit. On December 5, 2024, the Fourth Circuit affirmed in part and reversed in part the Court's decision, holding that "the district court correctly declined to dismiss" Count Two of the amended complaint but that two of the defendants, Youngkin and Gee, "lack[ed] enforcement responsibility for the challenged state action" and must be dismissed. (ECF No. 100, at 3.) On February 7, 2025, the defendants moved to stay this case pending resolution of their anticipated petition for writ of certiorari. The plaintiffs opposed the motion. The defendants filed a petition for a writ of certiorari on March 5, 2025.

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Upon due consideration, the Court will deny the motion to stay. (ECF No. 110.) "A stay is not a matter of right." *Nken v. Holder*, 556 U.S. 418, 433 (2009). In determining whether to stay a case, district courts have wide discretion due to the "power inherent . . . to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The moving party has the burden to "justify [the stay] by clear and convincing circumstances outweighing potential harm to the party against whom it is operative." *Williford*, 715 F.2d at 127. The defendants assert a three-factor test under which the court must consider "(1) the interests of judicial economy; (2) hardship and equity to the moving party if the action is not stayed; and (3) potential prejudice to the non-moving party." *Holloway v. City of Virginia Beach*, 2:18cv69, 2022 WL 16950269 at *2 (E.D. Va. Nov. 15, 2022). The plaintiffs argue the court must apply a four-factor test: (1) "whether the applicant is likely to succeed on the merits"; (2) "whether it will suffer irreparable injury without

a stay"; (3) "whether the stay will substantially injure other parties interested in the proceedings"; and (4) "where the public interest lies." *Ohio v. EPA*, 603 U.S. 279, 291 (2024).

Although the Court would deny the stay under either test, because the Supreme Court has repeatedly used the four-factor test as the "traditional test for stays," the Court applies the four-factor test here but focuses its analysis on the two most critical factors. *Nken*, 556 U.S. at 433; *EPA*, 603 U.S. at 291 ("In deciding whether to issue a stay, we apply the same 'sound . . . principles' as other federal courts." (quoting *Nken*, 556 U.S. at 434)); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

1. Likelihood to Succeed on the Merits

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To demonstrate likelihood of success on the merits, "[i]t is not enough that the chance of success on the merits be better than negligible." *Nken*, 556 U.S. at 434–35. In considering the defendants' argument on appeal, the Fourth Circuit determined that the Virginia Readmission Act "has no clear enforcement mechanism" and that the Act does not show any implication that Congress meant to preclude others from enforcing it. *King v. Youngkin*, 122 F.4th 539, 547 (4th Cir. 2024). The fact that one appellate court already rejected the defendants' argument weighs against the defendants' claim that they will likely win on the merits before the Supreme Court, nor does the fact that a circuit split exists make it more likely that the defendants will prevail on their argument. Thus, the defendants fail to satisfy this factor.

2. Irreparable Injury to the Moving Party

The Eleventh Amendment "serves to avoid the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Seminole Tribe v. Florida*, 517 U.S. 44, 58 (1996) (internal citation omitted). Thus, forcing a state to litigate could amount to irreparable harm by conflicting with its sovereign immunity. But that irreparable injury here

only occurs if the Supreme Court grants the writ and reverses the lower courts in deciding that sovereign immunity bars the plaintiffs' suit against the Commonwealth. "Simply showing some possibility of irreparable injury . . . fails to satisfy the second factor." *Nken*, 556 U.S. at 434–35. The defendants, therefore, have not met their burden to show irreparable injury.

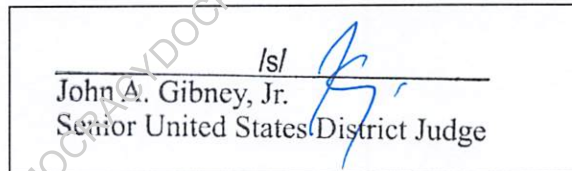
* * *

Because "[t]he first two factors of the traditional standard are the most critical," *id.* at 434, and the defendants fail to meet these factors, the Court DENIES the motion to stay, (ECF No. 110).

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 24 March 2025
Richmond, VA



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