

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JANE DOES 1-6, JOHN DOES-1-3, JACK
DOES 1-1000, and JOAN DOES 1-1000,

Plaintiffs,

v.

JANET T. MILLS, Governor of the State of
Maine, JEANNE M. LAMBREW,
Commissioner of the Maine Department of
Health and Human Services, NIRAV D.
SHAH, Director of the Maine Center for
Disease Control, MAINEHEALTH, GENESIS
HEALTHCARE OF MAINE, LLC, GENESIS
HEALTHCARE, LLC, NORTHERN LIGHT
FOUNDATION, and MAINEGENERAL
HEALTH,

Defendants.

Civil Action No. 1:21-cv-00242-JDL

**STATE DEFENDANTS' PARTIAL OPPOSITION TO PLAINTIFFS' MOTION TO STAY
PENDING INTERLOCUTORY APPEAL AND INCORPORATED MEMORANDUM OF LAW**

Defendants Janet T. Mills, Governor of the State of Maine, Jeanne M. Lambrew, Commissioner of the Maine Department of Health and Human Services (Department), and Dr. Nirav D. Shah, Director of the Maine Center for Disease Control (Maine CDC) (collectively, "State Defendants"), hereby oppose, in part, Plaintiffs' motion to stay, ECF No. 138.

Plaintiffs' motion seeks an overall stay of the proceeding pending disposition of their appeal of this Court's order unsealing their identifies and requiring Plaintiffs to file an amended complaint. In the alternative, Plaintiffs seek to stay just the unsealing order, ECF No. 131, during the pendency of their interlocutory appeal. State Defendants oppose a

general stay of this matter but take no position on whether the unsealing order should be stayed pending Plaintiffs' appeal of that order. This response addresses only the portion of the motion opposed by State Defendants.

This Court has inherent power to stay proceedings to manage its docket. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "Four factors influence a court's determination of whether to grant a stay of" an interlocutory "order pending appeal":

the likelihood that the party seeking a stay will succeed on the merits in its appeal; whether the party seeking a stay will undergo irreparable harm if the court does not issue a stay; whether the court's issuance of a stay will result in substantial harm to other parties interested in the proceedings; and where the public interest lies.

Maine v. U.S. Dep't of Interior, No. CIV. 00-122-B-C, 2001 WL 98373, at *2 (D. Me. Feb. 5, 2001) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776–77 (1987)) (staying matter pending an appeal of a partial grant of summary judgment that required the federal government to disclose documents under FOIA); accord *In re Elias*, 182 F. App'x 3, 4 (1st Cir. 2006) ("the courts below properly applied the traditional four-part standard applicable to preliminary injunctions in determining whether to grant a stay pending appeal" of bankruptcy court order granting a creditor relief from automatic stay).

In evaluating motions to stay, this Court also seeks to avoid further proceedings that would impinge directly on the questions presented in the interlocutory appeal. See *Pharm. Care Mgmt. Ass'n v. Me. Atty. Gen.*, 332 F. Supp. 2d 258, 260 (D. Me. 2004) (analyzing *United States v. Mala*, 7 F.3d 1058 (1st Cir. 1993)). For example, further trial court proceedings after a putative intervenor sought review of the denial of a motion to intervene would be inconsistent with the issues being determined on appeal, i.e., whether the intervenor-appellant was entitled to participate as a full party to the case. *Maine v. Norton*, 148 F. Supp.

2d 81, 83 (D. Me. 2001). In contrast, further trial court proceedings are permitted when “there is no inconsistency . . . between the interlocutory appeal and proceeding toward final resolution of the merits.” *Pharm. Care Mgmt. Ass’n*, 332 F. Supp. 2d at 260.

Applying these factors and considerations here, Plaintiffs’ motion to stay should be denied.

First, it is unlikely that Plaintiffs will succeed on the merits of their appeal and be allowed to continue to shield their identities from the public. Plaintiffs’ position on pseudonymity suffers from a total lack of evidence in support of their claims that they will be harmed by the disclosure of their identities. *See* ECF No. 131 at 10 (noting evidence provided failed to demonstrate “a reasonable fear of severe harm” or allow for “a meaningful evaluation of specific adverse consequences or threats” to Plaintiffs). Plaintiffs had ample opportunity to supplement the declaration from their attorney filed in August of 2021, ECF No. 21-1, in the briefing that led to the Court’s order, but failed to do so. Based on the record alone, it is unlikely the First Circuit will conclude that this Court abused its discretion in unsealing Plaintiffs’ identities. *See Doe v. Megless*, 654 F.3d 404, 407 (3d Cir. 2011) (reviewing “district court’s decision to deny a plaintiff permission to proceed anonymously for abuse of discretion”).

Second, Plaintiffs will suffer no irreparable harm if their motion to stay the proceedings is not granted. The only irreparable harm alleged in their motion is the harm they assert they will suffer if their identities are disclosed to the public before disposition of their appeal. *See* ECF No. 138 at 4-5. They assert no irreparable harm if they must continue to litigate on the merits of the case during the pendency of the appeal. And the reason for that is clear: State Defendants have known Plaintiffs’ identities since September 3, 2021, and

the other Defendants have known Plaintiffs' identities since December 15, 2021. The outcome of Plaintiffs' appeal of the Court's unsealing order will not change State Defendants' knowledge of Plaintiffs' identities. *Cf. Providence J. Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979) (granting stay during pendency of appeal of order requiring disclosure of documents because "[t]he status quo could never be restored").

By comparison, and third, unnecessary delay will prejudice State Defendants. Plaintiffs allege that State Defendants "have been wholly indifferent towards Media Intervenor's efforts to reveal Plaintiffs' identities," and posit that this alleged "indifference" equates to a lack of prejudice from a delay in the disposition of this case. ECF No. 138 at 5. Plaintiffs misperceive State Defendants' position. From the beginning of this case, State Defendants have taken no position on whether Plaintiffs should be able to shield their identities from the public and Media Intervenor's intervention or subsequent motion. ECF No. 25 at 1-2; ECF No. 76 at 1; ECF No. 131 at 1-2. But State Defendants have opposed staying this proceeding pending Plaintiffs' previous appeals, *see* ECF No. 85, and continue to oppose a stay for an issue unrelated to the merits of their claims. Put another way, State Defendants have not objected to the participation of Media Intervenor as long as it has not affected negatively State Defendants' interests in obtaining a prompt resolution of this matter.¹

Plaintiffs agree that delay prejudices the nonmoving party, but claim the prejudice is negligible because no scheduling order has issued. ECF No. 138 at 5. But as Plaintiffs pursue their appeal, memories fade and relevant documents may become unavailable. Moreover, since they filed their appeal on May 31, 2022, Plaintiffs have not moved to expedite the

¹ For similar reasons, the Court should reject Media Intervenor's alternative position on Plaintiffs' motion to stay. ECF No. 139 at 3.

proceedings in the First Circuit. State Defendants' motions to dismiss have been fully briefed since March 23, 2022, and oral argument is scheduled for June 24, 2022. A delay that may continue for many months or even a year while Plaintiff pursue an unmeritorious interlocutory appeal of an issue that does not affect the merits of their claims against State Defendants would constitute prejudice. *Cf. Good v. Altria Grp., Inc.*, 624 F. Supp. 2d 132, 134 (D. Me. 2009) (reasoning a delay of only weeks would not prejudice nonmoving party).

Fourth, the public interest lies in timely resolution of issues critical to public health. All parties – and the public – would be served by promptly resolving Plaintiffs' challenge to the Department and Maine CDC's immunization regulation.

Lastly, continuing with the litigation will neither impinge on any of the issues of which Plaintiffs seek review in the First Circuit nor serve the interests of judicial economy. As noted, State Defendants have known Plaintiffs' identities for more than nine months, and Plaintiffs' appeal will not affect that status quo during the appeal. On the other hand, staying the proceedings pending appeal would not serve the interests of judicial economy. In State Defendants' view, Plaintiffs failed to oppose their motions to dismiss with respect to the claims of John Doe 1 and Jane Doe 6 and the claims against Governor Mills. Proceeding with this case through the motions to dismiss will narrow the case for the Court and the parties. Plaintiffs' arguments about duplicative discovery are inapposite, ECF No. 138 at 6; there is no parallel proceeding addressing Plaintiffs' claims against State Defendants. And, contrary to Plaintiffs' suggestion, proceeding to discovery does not involve any issues of claim-splitting, such that only some of each Plaintiff's claims can proceed.² ECF No. 138 at 6. In

² The present case is unlike the circumstances in *Dyer v. Penobscot County*, No. 1:20-CV-00224-NT, 2020 WL 5801081, at *4 (D. Me. Sept. 28, 2020), in which only some of a single plaintiff's claims were subject to a pre-litigation screening process and so "proceed[ing] with some but not all of the

this case, “[i]t is an appropriate use of judicial resources (and those of the parties) to proceed with the actual merits so as to obtain a final resolution.” *Pharm. Care Mgmt. Ass’n*, 332 F. Supp. 2d at 260.

In sum, and based on the foregoing, State Defendants request that Plaintiffs’ motion to stay be denied.

DATED: June 13, 2022

Respectfully submitted,

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plaintiff’s claims when they arise from the same nucleus of alleged facts would be inefficient for the court and the parties.” Here, nine separate plaintiffs bring identical claims against all State Defendants, and Plaintiffs seek to stay the entire case during an appeal that does not go to the merits of any of those claims.

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2022, I electronically filed this document with the Clerk of the Court using the CM/ECF system; that the same will be sent electronically to registered participants as identified in the CM/ECF electronic filing system for this matter.

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