

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC.,

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*Plaintiff,*

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v.

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No. 1:19-cv-01853-SAG

DR. KAREN B. SALMON, et al.,

\*

*Defendants.*

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\* \* \* \* \*

**REPLY MEMORANDUM IN SUPPORT OF MOTION TO STAY**

**INTRODUCTION**

During the course of briefing this motion, events have overtaken the judicial system and state government alike. The current state of affairs, with mandatory telework and reduced operations, only serves to heighten the public interest in judicial efficiency that would be served in entering a stay of all proceedings in this matter pending additional guidance on the complex constitutional issues presented by this case. As explained below, it is highly likely that the Supreme Court will provide helpful guidance on multiple aspects of the claims presented by Bethel. Moreover, Bethel's interests in the current litigation are not pressing. The claims in the current complaint all relate to a program year that is completely past and do not bear on Bethel's participation in upcoming program years. Bethel's only non-moot claim, to enjoin collection of the \$102,600, does not outweigh the interests in judicial economy that will be served by a stay in this case.

## REPLY ARGUMENT

Contrary to plaintiffs' assertions, ECF 50, 9, issues covered by the writ of certiorari in *Fulton v. City of Philadelphia*, 19-123, include Free Speech, Free Exercise, and Establishment Clause issues. Petition for Writ of Certiorari, *Fulton v. City of Philadelphia*, 2019 WL 3380520, i (U.S. Jul. 22, 2019). As explained in defendants' opening memorandum, ECF 49, 4-5, the grant of certiorari on all three questions posed by *Fulton* coupled with the holds in *Arlene's Flowers Inc., et al. v. Washington, et al.*, 19-333 and *Ricks v. Idaho Contractor's Board, et al.*, 19-66, indicate that the Supreme Court intends to broadly consider the issues of Free Speech, Free Exercise, and Establishment Clause claims in light of the states' important function in protecting classes of vulnerable individuals through nondiscrimination legislation. Plaintiffs have not explained, because they cannot, how a decision in *Fulton* resolving the first certiorari question, namely whether "the government would allow the same conduct by someone who held different religious views" or whether courts must also "consider other evidence that a law is not neutral and generally applicable," would not bear directly on their claims. This Court identified facts related to the manner in which the State defendants treated different categories of applicants in their evaluation of BOOST applications and student handbooks as necessary areas for discovery. ECF 41, 27. Whether that evidence is relevant to the claim may change based on the Supreme Court's opinion in *Fulton*. On that issue alone, judicial economy counsils in favor of deferring discovery until after *Fulton* is decided.

Moreover, plaintiffs are incorrect in their assertion that their Equal Protection Clause claims could proceed independently of the First Amendment claims squarely at issue in *Fulton*. The Fourth Circuit treats these types of claims together. Claims that a plaintiff has not been afforded “full, free, and equal right to express and exercise her religious beliefs [are] subject to a unitary analysis.” *Simpson v. Chesterfield County Bd. of Sup’rs*, 404 F.3d 276, 288 (4th Cir. 2005); *see also Columbia Union Coll. v. Clarke*, 159 F.3d 151, 156 n.1 (4th Cir. 1998) (claims of denial based on religion arising out of the free speech, free exercise and equal protection clauses treated “as one constitutional inquiry”).

Judicial economy principles have only grown in importance over time. This Court has issued Standing Order 2020-05, which recognized that because “the Governor of the State of Maryland has declared a state of emergency in response to the spread of the novel coronavirus known as COVID-19,” “the Court will remain open for emergency criminal, civil, and bankruptcy matters related to public safety, public health and welfare, and individual liberty,” but that other operations will be limited through, at minimum, April 24, 2020. And, the Maryland State Department of Education employees, along with all other state employees, are operating under Maryland’s Elevated Level II—Flexible Operations policy, which includes mandatory telework for the relevant employees. Maryland Department of Budget and Management, “Coronavirus Disease Information,” <https://dbm.maryland.gov/employees/Pages/COVID19.aspx>. To the extent discovery requires access to non-electronic information, extensions to response deadlines

and other issues may arise.<sup>1</sup> Moreover, disputes over the scope of discovery that cannot be resolved by the parties, while not an inevitability, do arise routinely in the conduct of discovery. This Court's devotion of resources to resolve any such disputes, when *Fulton* may obviate or narrow the dispute, would not serve the public interest in judicial economy, especially at this time when judicial resources are operating under serious constraint.

Finally, the plaintiffs are incorrect that the potential of, at the outer bounds, a year-and-some-months delay outweighs the substantial interests in granting a stay outlined above. As an initial matter, it is pure speculation that *Fulton* would not be heard next term. Only seven cases have been granted writs of certiorari for the October 2020 term. Supreme Court of the United States, "Granted & Noted List: October Term 2020 Cases for Argument," <https://www.supremecourt.gov/orders/20grantednotedlist.pdf> (March 30, 2020). Even if the Court defers both the March and April 2020 argument sessions to the October 2020 term, and even if the Court does not compress the schedule in any way to accommodate these deferrals and merely assigns the full schedule to existing argument days, *Fulton* would be heard in the December session. It is not the case that the litigation could continue "for an uncertain period of time." *Doe v. Bayer Corp.*, 367 F. Supp. 2d 904, 916 (M.D.N.C. 2005). Given the nature of Supreme Court proceedings, once a writ of certiorari is granted, litigants can be confident of a resolution within a known period of

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<sup>1</sup> Undersigned issued discovery requests at the beginning of March in the spirit of Local Rule 103.3, which counsels parties to proceed with discovery despite the existence of disputes. Bethel has not, as of this writing, requested any extension to the response deadline.

time. As at least one subsequent court has noted, the stay in *Doe v. Bayer Corp.* was rejected “when the lead case had not even published a schedule of proceedings and resolution of the case ‘could go on for years.’” *In re Mut. Funds Inv. Litig.*, No. 04-MD-15862, 2011 WL 3819608, at \*4 n. 6 (D. Md. Aug. 25, 2011) (quoting *Doe v. Bayer Corp.*, 367 F. Supp. 2d at 916). That is not the case here, where there is a determinant time for resolution of the Supreme Court appeal in *Fulton*.

Given that Bethel’s interest in this matter is limited to enjoining the State defendants from collecting \$102,600, as fully explained by this Court in its ruling on the preliminary injunction, *e.g.*, ECF 41, 12, 14, the significant public interest in judicial economy weighs in favor of granting the stay.

### CONCLUSION

For the reasons discussed above, this Court should enter a stay of the proceedings in this case pending the Supreme Court’s decision in *Fulton v. Philadelphia*.

Respectfully submitted,

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/s/ Sarah W. Rice

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March 31, 2020

**CERTIFICATE OF SERVICE**

I certify that, on this 31st day of March, 2020 the foregoing was served by CM/ECF on all registered CMF users.

/s/ Sarah W. Rice

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Sarah W. Rice