

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**CHRISTOPHER FAIN; ZACHARY
MARTELL; BRIAN MCNEMAR; SHAWN
ANDERSON a/k/a SHAUNTAE ANDERSON.
And LEANNE JAMES, individually and on
behalf of all others similarly situated,**

Plaintiffs,

vs.

**Case No.: 3:20-cv-00740
Judge Robert C. Chambers**

**WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; JASON HAUGHT, in his official
capacity as Director of the West Virginia Public
Employees Insurance Agency; and THE
HEALTH PLAN OF WEST VIRGINIA, INC.,**

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT JASON HAUGHT’S MOTION FOR ABSTENTION**

I. Introduction

Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, hereby submits the Memorandum of Law in support of his Motion for Abstention.

II. Statement of Facts

Plaintiffs originally filed their Complaint against the Director of West Virginia Public Employees Insurance Agency (“PEIA”) on November 12, 2020. *See* ECF 1. Therein, the Plaintiffs allege that the Director of PEIA deprived the Plaintiffs of equal protection under the law pursuant to the Fourteenth Amendment of the United States Constitution and violated Section 1557 of the Patient Protection and Affordable Care Act. *Id.* at 27-35. However, Count II, the alleged violation of Section 1557 of the Patient Protection and Affordable Care Act was previously dismissed and is not asserted in the First Amended Complaint. *See* ECF 41, 140.

The First Amended Complaint was filed on October 28, 2021. *See* ECF 140. On November 15, 2021, Jason Haught, Interim Director of the West Virginia Public Employees Insurance Agency was substituted as a defendant in place and stead of Ted Cheatham, former Director of the West Virginia Public Employees Insurance Agency. *See* ECF 155. Plaintiff Christopher Fain and Shauntae Anderson are enrolled in Medicaid and do not assert any claims against this Defendant. *See* ECF 140. Plaintiffs James, McNemar, and Martell currently allege a single claim that this Defendant deprived the Plaintiffs of equal protection under the law pursuant to the Fourteenth Amendment of the United States Constitution. *Id.*

However, Plaintiffs McNemar and Martell have reached a settlement in principle with Defendant The Health Plan, which is expected to resolve Plaintiffs McNemar and Martell’s claims against this Defendant. *See* ECF 120. Thus, the only remaining Plaintiff against this Defendant will be Leanne James.

This Defendant is the Director of the West Virginia Public Employees Insurance Agency (“PEIA”). *See* ECF 140 at 7. Plaintiff James is a public employee who works for the Kanawha

County Board of Education as a Micro Computer Technician. *Id.* at 5. Plaintiff James is enrolled in the PPB Plan A through PEIA. *Id.* at 24.

Plaintiff James is transgender, although her sex assigned at birth was male, her gender identity is female. *Id.* As a result, Plaintiff James alleges she suffers from gender dysphoria. *Id.* Plaintiff James alleges she began her social transition in 2011, was diagnosed with gender dysphoria in January 2019, and began hormone therapy thereafter. *Id.*

Plaintiff James alleges she is forced to pay out of pocket for bloodwork and routine visits with her OB-GYN. *Id.* at 25. Additionally, Plaintiff James alleges she requires vaginoplasty and breast reconstruction surgery. *Id.* Plaintiff James alleges PEIA's PPB Plan A precludes her from receiving this care and brings this sex discrimination claim before this Court. *Id.*, generally.

However, Plaintiff James has also submitted a charge to the Equal Employment Opportunity Commission ("EEOC") for sex discrimination under Title VII. *Id.* at 26. Further, Plaintiff James will seek leave to amend her complaint to add a claim under Title VII once her claims have been exhausted before the EEOC. *Id.* at 26.

III. Legal Standard

Defendant is asking this Court to abstain from exercising jurisdiction in this case and asserts that such abstention is appropriate pursuant to principles enunciated by the United States Supreme Court in *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 96 S.Ct. 1236 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 103 S.Ct. 927 (1983). The *Colorado River* doctrine allows a federal court to dismiss or stay a federal action in deference to pending parallel proceedings, based on "considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800,

817 (1976) (citation omitted) (internal quotation marks omitted); see also *Rienhardt v. Kelly*, 164 F.3d 1296, 1302 (10th Cir. 1999) (“In other words, the *Colorado River* Doctrine was adopted to avoid duplicative litigation.”). Under the *Colorado River* doctrine, a federal court may abstain from exercising jurisdiction over a duplicative federal action for purposes of “wise judicial administration.” *vonRosenberg v. Lawrence*, 849 F.3d 163, 167 (4th Cir. 2017).

IV. Argument

A. **The claims against this Defendant should be dismissed and/or stayed pursuant to the *Colorado River* Doctrine.**

While the *Colorado River* doctrine typically applies to federal actions with parallel state proceedings, the doctrine should be expended by this Court and applied here as well given the underlying reason for the existence of the *Colorado River* doctrine. Specifically, the *Colorado River* court and others have explained that the underlying principle for the doctrine is “wise judicial administration.”

Although this case falls within none of the abstention categories, there are principles unrelated to considerations of proper constitutional adjudication and regard for federal-state relations which govern in situations involving the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts. These principles rest on considerations of “(w)ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.” *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183, 72 S.Ct. 219, 221, 96 L.Ed. 200, 203 (1952). See *Columbia Plaza Corp. v. Security National Bank*, 173 U.S.App.D.C. 403, 525 F.2d 620 (1975). Generally, as between state and federal courts, the rule is that “the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction” *McClellan v. Carland*, supra, 217 U.S. at 282, 30 S.Ct. at 505, 54 L.Ed., at 767. See *Donovan v. City of Dallas*, 377 U.S. 408, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964). As between federal district courts, however, though no precise rule has evolved, the general principle is to avoid duplicative litigation. See *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, supra; *Steelman v. All Continent Corp.*, 301 U.S. 278, 57 S.Ct. 705, 81 L.Ed. 1085 (1937); *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 165, 81 L.Ed. 153, 158 (1936).

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S. Ct. 1236, 1246, 47 L. Ed. 2d 483 (1976). Under *Colorado River*, considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation, may justify a decision by the district court to stay federal proceedings pending the resolution of concurrent state court proceedings involving the same matter. *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002). Unlike other forms of abstention, *Colorado River* abstention is not based on weighty considerations of federal-state relations. *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1257 (9th Cir. 1988). Rather, *Colorado River* abstention is designed to promote “wise judicial administration.” *Id.*

Moreover, the *Colorado River* doctrine is not limited to state suits but extends to administrative actions. Administrative proceedings, when adjudicative in nature, are considered state suits. *See Martin Marietta Corp. v. Md. Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir.1994).

Abstention should only occur in “exceptional” circumstances and rests upon considerations of “[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.” *Nationstar Mortgage LLC v. Knox*, 2009 WL 2605356, *6 (5th Cir.2009) (quoting *Colorado River*, 424 U.S. at 816, 817). In determining whether to abstain, the court considers six factors:

- (1) assumption by either court of jurisdiction over a res, (2) relative inconvenience of the forums, (3) avoidance of piecemeal litigation, (4) the order in which jurisdiction was obtained by the concurrent forums, (5) to what extent federal law provides the rules of decision on the merits, and (6) the adequacy of the state proceedings in protecting the rights of the party invoking federal jurisdiction.

Stewart v. Western Heritage Insurance Co., 438 F.3d 488 at 492 (5th Cir. 2006).

The Defendant asserts that the totality of these factors weighs in favor of *Colorado River* abstention. Although there is no *res* in this matter, the factor does contribute to the court's analysis and weighs against abstention. *See Stewart v. Western Heritage Insurance Co.*, 438 F.3d at 493. As to convenience of forum, the EEOC was pending before the First Amended Complaint was filed and before the Plaintiffs filed the Motion for Leave to File the First Amended Complaint. This factor weighs in favor of abstention. As to the third factor, failure to abstain will almost certainly lead to piecemeal litigation and therefore weighs in favor of abstention. Although a pure mechanical argument of which case existed first leans in favor of this case, Plaintiff James filed her EEOC action prior to the Motion for Leave to file the First Amended Complaint was filed, and thus, the fourth factor weighs in favor of abstention. With respect to the fifth factor, the extent to which federal law provides the rules of the decision on the merits, arguably weighs against abstention because this Court could render a decision on the merits. However, in applying the *Colorado River* doctrine in this scenario, this factor should likely be disregarded. Regarding the sixth factor, the adequacy of the alternative proceeding to protect the rights of the plaintiff, the Defendant submits that this factor weighs in favor of abstention, because it is possible that the relief Plaintiff James seeks could be had in the EEOC action.

The Defendant is not asking for a dismissal or stay of the entire case, but rather solely with respect to the claims against this Defendant. Two of the Plaintiffs, Martell and McNemar, are in the process of resolving their claims. The other Plaintiff, Leanne James, is pursuing an action before the EEOC that will undoubtedly have an impact on this litigation. Having this EEOC action running concurrently with this action regarding the same transactions and occurrences is not wise judicial administration. Rather, it is unfairly prejudicial to this Defendant, having to defend himself simultaneously in two different forums. Moreover, Plaintiff James will seek leave to amend the

First Amended Complaint again once she receives a right-to-sue letter.¹ Thus, the case should be stayed until the EEOC process plays out in the interests of judicial economy. As a result, this Court should stay or dismiss this matter against this Defendant.

V. Conclusion

WHEREFORE, for the reasons stated above, this Defendant respectfully requests that this Court abstain from exercising jurisdiction at this time, and either dismiss or stay the claims against this Defendant.

**JASON HAUGHT, in his official
capacity as Director of the West Virginia
Public Employees Insurance Agency,**

BY COUNSEL

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¹ As a practical matter, the EEOC action is a Title VII claim against an employer. Plaintiff James' employer is the Kanawha County Board of Education. Thus, the Kanawha County Board of Education will likely be an indispensable party to Plaintiff James' Title VII action, and thus, is another reason the Court should stay the matter until the EEOC proceedings are concluded.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing “**Memorandum of Law in Support of Defendant Jason Haught’s Motion for Abstention**” on this **18th** day of **November, 2021**, with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

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