

underlying action and she argues that, in the circumstances of this case, may elect to do so. *Id.* at 5. The Commissioner contends that the State should not have to undergo the “burden of discovery” while the interlocutory appeal is pending. *Id.* at 6.

The Plaintiffs oppose the motion for stay. *Pls.’ Opp’n to Def.’s Mot. for a Stay Pending Appeal* (ECF No. 48) (*Pls.’ Opp’n*). Contrary to the Commissioner’s position, the Plaintiffs contend that the appeal “will not be dispositive of the underlying case regarding the constitutionality of [the State’s] actions.” *Id.* at 2. They point out that the Court has the authority to proceed with the underlying litigation pending interlocutory appeal and acknowledge that discovery can be a burden but say it is “not unnecessarily so.” *Id.* at 3, 6. They also note that discovery will be essential once the First Circuit resolves the pending appeal and promise to make discovery “as painless as possible.” *Id.* at 6. Finally, the Plaintiffs say that they will be irreparably injured by a stay because “they are without adequate healthcare, and no amount of money will be able to undo the harm caused by that lack of care.” *Id.*

In response to the Plaintiffs’ opposition, the Commissioner reaffirms her argument that the First Circuit could, and likely will, decide the entire case in the State’s favor on appeal. *Def.’s Reply in Supp. of Mot. for Stay Pending Appeal* at 1-2 (ECF No. 52) (*Def.’s Reply*). She cites *First Med. Health Plan, Inc. v. Vega-Ramos*, 479 F.3d 46 (2007), a case where the First Circuit reversed a district court’s denial of a motion to dismiss while hearing an appeal on the court’s grant of a preliminary

injunction, to support her position. *Id.* She also disputes the Plaintiffs' claim that it will conduct efficient discovery during the appeal because the Plaintiffs have requested "internal documentation and correspondence stretching back four decades to 1973." *Id.* at 1, 4-5. Accordingly, she urges the Court to spare the State "[t]he harm that will be borne by . . . unnecessary litigation costs and aggravation." *Id.* at 4.

II. DISCUSSION

The general rule is that the filing of a notice of appeal "divests a district court of authority to proceed with respect to any matter touching upon, or involved in, the appeal." *United States v. Brooks*, 145 F.3d 446, 455 (1st Cir. 1998) (quoting *United States v. Mala*, 7 F.3d 1058, 1061 (1st Cir. 1993)). However, a district court "may, if the purposes of justice require, preserve the status quo until decision by the appellate court." *Newton v. Consol. Gas Co.*, 258 U.S. 165, 177 (1922). Thus, "[t]he general rule for an interlocutory appeal of a preliminary injunction is that it 'does not defeat the power of the trial court to proceed further with the case.'" *Pharm. Care Mgmt. Ass'n v. Maine Atty. Gen.*, 332 F. Supp. 2d 258, 259 (D. Me. 2004) (internal punctuation omitted); 16 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3921.2 at 58 (3d ed. 2012).

Here, the Court resolves that the better course is to stay the matter pending resolution of the pending interlocutory appeal. In its Order on the Plaintiffs' Motion for Preliminary Injunction, this Court analyzed the Plaintiffs' likelihood of success on the merits as the sine qua non of the preliminary injunction test. *Order on Pls.'*

Mot. for Prelim. Inj. at 11-26 (ECF No. 34). Noting that the First Circuit had not addressed the issue, the Court turned to decisional law from other jurisdictions to resolve the Plaintiffs' likelihood of success on the underlying claim and the Court adopted the reasoning of some courts and rejected the reasoning of others. *Id.*

The Plaintiffs apparently have concluded that the Court committed legal error in its ruling and they have elected to obtain immediate review from the Court of Appeals for the First Circuit. *Notice of Appeal* (ECF No. 41). The Commissioner is hopeful that the Court of Appeals will decide the merits of the underlying lawsuit. *Def.'s Mot.* at 5; *Def.'s Reply* at 1-2. Neither the parties nor the Court can know how the First Circuit Court of Appeals will resolve the appeal. But, what is certain is that the Court of Appeals will address the Plaintiffs' interlocutory appeal in its own time and in its own way. From this Court's perspective, the First Circuit's response to the interlocutory appeal is likely to inform the future handling of the case, and may well affect the nature and scope of discovery. If the Court of Appeals reaches the Plaintiffs' arguments, it will illuminate the proper pathway and even if the Court of Appeals addresses the appeal summarily, its action will assist future proceedings at the trial court level.

The Court is aware that the Plaintiffs feel strongly about the equities of their case. *Pls.' Opp'n* at 7 n.4.¹ The Court is also aware that the Commissioner wishes

¹ In footnote 4 of their opposition to the motion for stay, the Plaintiffs write:

Mayhew has termed Plaintiffs' interest in pursuing both their underlying claim and their claim for a preliminary injunction as inexplicable (Motion to Stay at 1). For the Court's benefit, as well as Mayhew's, Plaintiffs will endeavor to briefly explicate this interest. Plaintiffs are approximately 500 people who suffer from cancer, heart disease, diabetes, kidney failure, liver failure, chronic pain, and a variety of their

to avoid taxpayer-funded expenses of litigation which may prove unnecessary. *Def.'s Mot.* at 5; *Def.'s Reply* at 4-5. Here, as the Court views the potential of guidance from the First Circuit as assisting the expeditious and cost-effective resolution of this lawsuit, the Court concludes that the case should be stayed until the First Circuit has spoken.

III. CONCLUSION

The Court GRANTS the Commissioner's Motion for Stay Pending Appeal (ECF No. 46).

SO ORDERED.

John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 24th day of May, 2013

Plaintiff

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similarly situated*

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ailments. Plaintiffs need chemotherapy, radiation therapy, dialysis, transplants and other surgeries, and pain management in order to stay alive and to have lives worth living. They have been denied access to that care solely because of where they were born. But no matter where they were born, they are in this country now, and they intend to assert their right to be treated equally to native-born individuals so long as they have an available forum.

Pls.' Opp'n at 7 n.4.

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