

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellants.

No. 18-1684

**REPLY IN SUPPORT OF RENEWED MOTION
FOR STAY PENDING APPEAL**

As United States has explained, and as South Carolina does not dispute in its opposition, the district court's preliminary injunction continues to cost federal taxpayers \$1.2 million dollars per day. For the reasons discussed in our briefs and at argument, we respectfully submit that the State has not met its burden of establishing entitlement to the preliminary injunction, and a stay of the injunction is appropriate.

South Carolina's opposition to the stay motion largely tracks the arguments raised in its answering brief, to which the United States has already replied. The only new argument, relevant specifically to the stay motion, is the State's reliance on *Long v. Robinson*, 432 F.2d 977 (4th Cir.

1970). The State mistakenly urges that the additional costs required by the district court's order in that case were "insufficient to constitute irreparable harm." Resp. 6. This Court said nothing of the kind. Instead, this Court's holding was premised on the "historical context in which the litigation ar[ose]." *Long*, 432 F.2d at 980. In particular, at the time of the district court's judgment, Maryland and the City of Baltimore had already amended their laws in the manner ultimately required by the district court, but had taken only minimal steps to implement the amendment. *Id.* The Court declined to recognize as irreparable harm the need to devote the resources necessary to implement the defendants' own policy, concluding that the defendants' harm had become an "injury of their own making," and "a party may not claim equity in his own defaults." *Id.* at 981. That is, of course, not the situation here.

CONCLUSION

For the foregoing reasons and those stated in the federal government's briefs, the preliminary injunction should be stayed.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

SHERRI A. LYDON
United States Attorney

MARK B. STERN
DANIEL TENNY

s/ Andrew A. Rohrbach

ANDREW A. ROHRBACH

(202) 305-8849

*Attorneys, Appellate Staff
Civil Division*

*U.S. Department of Justice
950 Pennsylvania Ave., NW
Room 7245
Washington, DC 20530*

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume requirements set out in Rule 27(d)(2)(A) because it contains 282 words. This motion was prepared using Microsoft Word 2013 in Book Antiqua, 14-point font, a proportionally spaced typeface.

s/ Andrew A. Rohrbach

Andrew A. Rohrbach

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2018, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Andrew A. Rohrbach
Andrew A. Rohrbach