

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

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

ALEX M. AZAR II, in his official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES; and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

No. 1:19-cv-01672-GLR

**DEFENDANTS' MOTION TO HOLD PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION IN ABEYANCE AND TO SET A SUMMARY
JUDGMENT BRIEFING SCHEDULE; OR, IN THE ALTERNATIVE,
FOR ENLARGEMENT OF TIME TO FILE THEIR OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Defendants Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, and the U.S. Department of Health and Human Services (HHS) respectfully ask that the Court hold Plaintiff Mayor and City Council of Baltimore's motion for a preliminary injunction motion in abeyance and to set a briefing schedule for (cross) motion(s) for summary judgment. In the alternative, Defendants respectfully ask for an enlargement of time to respond to Plaintiff's motion for a preliminary injunction, until July 31, 2019.

Defendants were served with the Complaint in this matter on June 13, 2019, one day after Plaintiff filed its motion for preliminary injunction. Accordingly, pursuant to Local Civil Rule 105(2), Defendants' opposition to Plaintiff's motion for a preliminary injunction is currently due on June 27, 2019, and Plaintiff's reply is currently due on July 11, 2019.

Defendants' request is warranted for several reasons. First, undersigned counsel is

authorized to represent to this Court that HHS will delay enforcement of the HHS rule challenged in this case, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2018) (“Final Rule”), until *November 22, 2019*—four months after its July 22, 2019 effective date. Thus, the initial alleged emergency that prompted Plaintiff’s preliminary injunction motion no longer exists. Instead, there is now sufficient time to permit the Court’s resolution on the merits of Plaintiff’s purely legal challenge to the Final Rule, before any of Plaintiff’s allegedly irreparable harms could plausibly come to pass. Proceeding to summary judgment briefing would also conserve the resources of the Court and the parties by avoiding the duplication of resolving a motion for preliminary injunction and then, regardless of that result, a later motion for summary judgment.

Accordingly, Defendants respectfully request that the Court hold Plaintiff’s motion for a preliminary injunction in abeyance and set the following briefing schedule for (cross) motion(s) for summary judgment, which would provide sufficient time for Defendants to prepare the Administrative Record, for Plaintiff to review the Record (more than two months), for the parties’ to thoroughly brief the merits, and for the Court to resolve this case on the merits before November 22, 2019:

- July 22, 2019: HHS lodges the administrative record.
- September 5, 2019: Defendants file their motion for summary judgment.
- September 27, 2019: Plaintiff files its opposition to Defendants’ motion for summary judgment (and cross-motion for summary judgment, if any).
- October 11, 2019: Defendants file their reply (and opposition, if any).
- October 25, 2019: Plaintiff files its reply in support of its motion for summary judgment, if any.

If the Court is not inclined to adopt Defendants’ proposed summary judgment briefing schedule, Defendants respectfully request, in the alternative, an expansion of time, until July 31, 2019, to

respond to Plaintiff's motion for preliminary injunction. Again, in light of HHS's commitment not to enforce the Final Rule until November 22, 2019 at the earliest, Plaintiff will not be harmed by the expansion of time. Counsel for Defendants require more time to respond because they have expended a significant amount of time in the past several weeks consulting both within the government concerning the delay in enforcement and with Plaintiff as to the best course forward. A small team of government attorneys, each of whom is also assigned to other matters in active litigation, are handling the multiple cases in various jurisdictions challenging the Final Rule. Defendants' proposed opposition deadline would allow sufficient time to resolve Plaintiff's motion for a preliminary injunction well before November 22, 2019. The longer briefing schedule would also permit Defendants to more thoroughly respond to Plaintiff's claims, including through a motion for summary judgment, which Defendants may file alongside their opposition to Plaintiff's motion for a preliminary injunction.

Counsel for Defendants have conferred with counsel for Plaintiff concerning a request for substantially similar relief that Defendants seek here, and Plaintiff indicated that it does not consent to Defendants' motion.

Dated: June 25, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Bradley P. Humphreys

BRADLEY P. HUMPHREYS

(D.C. Bar No. 988057)

Trial Attorney, U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, N.W.

Washington, D.C. 20005

Phone: (202) 305-0878

E-mail: Bradley.Humphreys@usdoj.gov

Counsel for Defendants