

December 4, 2019

The Honorable Paul A. Engelmayer
United States District Court for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2201
New York, NY 10007

RE: Plaintiffs' joint unopposed letter-motion to extend time limit to file bill of costs in *State of New York v. U.S. Dep't of Health & Human Servs.*, 19 Civ. 4676 (PAE) (consolidated with 19 Civ. 5433 (PAE) and 19 Civ. 5435 (PAE)).

Dear Judge Engelmayer,

Pursuant to Local Civil Rule 54.1 and Rule 3(I) of the Court's Individual Rules and Practices, Plaintiffs the State of New York, on behalf of twenty-two other states and additional local governments ("Government Plaintiffs"); Planned Parenthood Federation of America, on behalf of its member-affiliates, including Plaintiff Planned Parenthood Northern New England; National Family Planning and Reproductive Health Association, on behalf of its members and those members' patients; and Public Health Solutions ("Provider Plaintiffs") (collectively, "Plaintiffs"), respectfully file this letter-motion to seek an extension of the time limit to file their bill of costs until the date Plaintiffs' application for attorneys' fees and other expenses is due under the Equal Access to Justice Act ("EAJA").¹

On November 6, 2019, this Court granted summary judgment for Plaintiffs. *See* Dkt. 248, 249. Under the EAJA, Plaintiffs have "thirty days [from the] final judgment in the action" to "submit to the court an application for fees and other expenses." 28 U.S.C. § 2412(d)(1)(B). "Final judgment" under the EAJA is defined as "a judgment that is final and not appealable," 28 U.S.C. § 2412(d)(2)(G), which means the thirty-day limitation for EAJA petitions begins only after Defendants' right to appeal has lapsed, which is sixty days after the entry of judgment (January 6, 2020). *See Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991) ("The 30-day EAJA clock begins to run after the time to appeal that 'final judgment' has expired."); Fed. R. App. P. 4(a)(1)(B) ("The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is . . . a United States agency . . .").

¹ This case falls under the EAJA because it is a "civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action." 28 U.S.C. § 2412(a)(1); *see also* Fed. R. Civ. P. 54(d)(2)(B) (noting that 14-day time limit for fee motion does not apply when "a statute or a court order provides otherwise").

Under Local Civil Rule 54.1, a bill of costs must be filed “[w]ithin thirty (30) days after the entry of final judgment, or, in the case of an appeal by any party, within thirty (30) days after the final disposition of the appeal, unless this period is extended by the Court for good cause shown.” Local Civ. R. 54.1(a). Accordingly, in the interest of efficiency and conserving this Court’s and the parties’ resources, Plaintiffs respectfully request that this Court extend the time for filing a bill of costs to the same date Plaintiffs’ application for attorneys’ fees and expenses is due under the EAJA.

Counsel for Plaintiffs have conferred with counsel for Defendants and Defendant-Intervenors and they have consented to this request.

Respectfully submitted,

/s/ Sarah Mac Dougall

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