

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

Diana Salgado (*pro hac vice*)
Planned Parenthood Federation of America, Inc.
1110 Vermont Ave., NW Ste. 300
Washington, D.C. 20005
Phone: (202) 973-4800
Fax: (202) 296-3480
diana.salgado@ppfa.org

Hana Bajramovic
Planned Parenthood Federation of America, Inc.
123 William St., 9th Floor
New York, NY 10038
Phone: (212) 541-7800
Fax: (212) 247-6811
hana.bajramovic@ppfa.org

Michelle Banker
Sunu Chandu
National Women’s Law Center
11 Dupont Circle, NW #800
Washington DC 20036
Phone: (202) 588-5180
Fax: (202) 588-5185
mbanker@nwlc.org
schandy@nwlc.org

Sarah Mac Dougall
Cristina Alvarez*
Covington & Burling LLP
620 Eighth Avenue
New York, NY 10018-1405
Phone: (212) 841-1000
Fax: (212) 841-1010
smacdougall@cov.com
calvarez@cov.com

Kurt G. Calia (*pro hac vice*)
Covington & Burling LLP
3000 El Camino Real, 5 Palo Alto Square
Palo Alto, CA 94306-2112
Phone: (650) 632-4717
Fax: (650) 632-4800
kcalia@cov.com

Ryan Weinstein
Paulina Slagter*
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
Phone: (424) 332-4800
Fax: (424) 332-4749
rweinstein@cov.com
pslagter@cov.com

Robin F. Thurston (*pro hac vice*)
Kristen P. Miller (*pro hac vice*)
Democracy Forward Foundation
P.O. Box 34553
Washington, DC 20043
Phone: (202) 448-9090
rthurston@democracyforward.org
kmiller@democracyforward.org

Attorneys for the PPFA Plaintiffs

David M. Zionts (*pro hac vice*)
Covington & Burling LLP
One CityCenter
850 10th Street, NW
Washington, DC 20001
Phone: (202) 662-6000
dzionts@cov.com

* *Pro hac vice* motion forthcoming

Attorneys for the PPFA Plaintiffs

Alexa Kolbi-Molinas
Lindsey Kaley
Brigitte Amiri
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2633
Fax: (212) 549-2652
akolbi-molinas@aclu.org
lkaley@aclu.org
bamiri@aclu.org

Daniel Mach (*pro hac vice*)
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
Phone: (202) 675-2330
Fax: (202) 546-0738
dmach@aclu.org

Attorneys for the NFPRHA & PHS Plaintiffs

Christopher Dunn
Erin Beth Harrist
Donna Lieberman
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004
Phone: (212) 607-2298
Fax: (212) 607-3318
cdunn@nyclu.org
eharrist@nyclu.org
dlieberman@nyclu.org

Elizabeth O. Gill
American Civil Liberties Union Foundation
of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
Phone: (415) 621-2493
Fax: (415) 255-8437
egill@aclunc.org

Attorneys for the NFPRHA & PHS Plaintiffs

LETITIA JAMES
Attorney General of the State of New York

Matthew Colangelo, *Chief Counsel for Federal Initiatives*
Amanda Meyer, *Assistant Attorney General*
Office of the New York State Attorney General
28 Liberty Street, 19th Floor
New York, NY 10005
Phone: (212) 416-6057

Fax: (212) 416-6007
matthew.colangelo@ag.ny.gov

Attorneys for the State of New York Plaintiffs

Granted.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

December 5, 2019