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BY ECF

May 11, 2020

Catherine O'Hagan Wolfe, Clerk of the Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *State of New York et al. v. U.S. Department of Health & Human
Services et al.*, 19-4254 (L)

Dear Ms. Wolfe:

I write on behalf of the governmental plaintiffs-appellees¹ in the above-captioned case pursuant to Local Rule 31.2(a)(1)(D) to respectfully request that the governmental plaintiffs-appellees' brief in this case be due 120 days after the April 27, 2020, filing of appellants' opening briefs—i.e., on August 25, 2020. Local Rule 31.2(a)(1)(D) permits requests for more than 91 days for an appellee's brief if the case record is voluminous or to prevent extreme hardship. Both criteria are met here.

First, the underlying action—an Administrative Procedure Act and constitutional challenge to a sweeping federal regulation affecting the provision of health care throughout the country—involves an indisputably voluminous record. The challenged regulation itself comprises more than 100 printed pages in the Federal Register and relies on dozens of disparate federal statutes involving medical care, funding, and religious and conscience protections. (*See* Special Appendix (SPA))

¹ The governmental plaintiffs-appellees are the States of New York, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin, the District of Columbia, Cook County, Illinois, the City of New York and the City of Chicago.

160-263.) The administrative record includes, among other things, approximately 240,000 comments received during the notice-and-comment period. Even the excerpts of the administrative and trial records reproduced in the Joint Appendix comprise ten volumes. Likewise, the district court's decision invalidating the regulation comprises nearly 150 pages and addresses numerous legal and factual issues. (SPA 1-147.)

Second, this consolidated appeal involves two groups of appellants, each of whom have filed separate briefs raising multiple independent challenges to the district court's decision, including an oversized brief filed by the governmental-defendants-appellants.² In addition, seven groups of amici curiae have thus far notified the parties that they intend to file briefs in support of appellants. The governmental plaintiffs-appellees will therefore need to respond to two comprehensive party briefs, as well as at least seven additional amicus briefs, to the extent amici raise arguments different from those raised by appellants. Moreover, of the seven putative amici, only two have thus far filed their briefs, because this Court's March 16, 2020, scheduling order has extended all deadlines by 21 days. Accordingly, the deadline to file amicus briefs in support of appellants is now 28 days after the filing of appellants' briefs, rather than the typical 7 days. The extended period for amicus curiae briefs further supports the request for an extension on appellees' brief.

Third, an extension of time is necessary to prevent extreme hardship due to scheduling and resource constraints. Any brief in a case of this magnitude and importance requires multiple levels of review and approval in the offices of each of the 23 governmental plaintiffs-appellees, requiring more than the usual allotment of time to finalize the filing. We expect that the review and approval process will be even more challenging here given that state and local governments are currently experiencing extreme operational challenges and disruptions due to the COVID-19 crisis. In addition, the undersigned (who will be the primary drafter of the appellate brief for the government plaintiffs-appellees) is currently on maternity leave and will be on leave through the end of June 2020.

For all of these reasons, the governmental plaintiffs-appellees respectfully request that their brief be due on August 25, 2020. In the alternative, if the Court is not inclined to grant the requested additional time, the governmental plaintiffs-appellees respectfully request a deadline of July 27, 2020, which is 91 days from the filing of the appellants' briefs.

Counsel for the governmental-defendants-appellants has informed me that they do not consent to this request. Counsel for the intervenor-defendants-appellants did not respond to my inquiry regarding consent.

² The governmental plaintiffs-appellees reserve the right to move separately for an enlargement of the word limit for their brief, if necessary, closer to the filing deadline.

Respectfully submitted,

/s/ Ester Murdukhayeva

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cc: All counsel of record (ECF)