

No. 19-2064

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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CHRISTOPHER DOYLE, LPC, LCPC, individually and on behalf of his clients,  
Plaintiff - Appellant,

v.

LAWRENCE J. HOGAN, JR., Governor of the State of Maryland,  
in his official capacity;

BRIAN E. FROSH, Attorney General of the State of Maryland,  
in his official capacity,  
Defendants - Appellees

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On Appeal from the United States District Court  
for the District of Maryland

In Case No. 1:19-cv-00190-DKC before the Honorable Deborah K. Chasanow

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**PLAINTIFF - APPELLANT'S UNOPPOSED MOTION  
TO CONTINUE ORAL ARGUMENT ON THE BASIS OF SCHEDULING  
CONFLICT WITH FIRST CIRCUIT COURT OF APPEALS**

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Pursuant to Fed. R. App. P. 34(b) and 4th Cir. R. 34(c), and with the consent of all parties, Plaintiff-Appellant Christopher Doyle respectfully moves the Court to continue the oral argument in this appeal from October 28, 2020 to the Court's first available argument date thereafter, on the ground that, prior to receiving the oral argument notice in this appeal counsel of record for Plaintiff-Appellant was scheduled to appear for argument on the same date and at the same time in an appeal pending at the First Circuit Court of Appeals. In support of this motion, Plaintiff-Appellant shows the Court as follows:

1. On August 3, 2020, the Clerk sent a pre-argument notification to the parties, indicating that this appeal may be set for argument in late October or in November 2020, and requesting that the parties file conflict notices within 7 days. (Doc. 49).

2. Mathew Staver, lead counsel of record for Plaintiff-Appellant who will be arguing this case, promptly filed a conflict notice, indicating that he was unavailable on some of the requested dates, but that, as of that date, he was available on October 27-30. (Doc. 53).

3. Thereafter, counsel for Plaintiff-Appellant did all that he could to protect those dates on his calendar, so that he remained available for argument in this Court.

4. However, without prior notice to counsel or an opportunity to indicate unavailability, and prior to receiving the oral argument notice in this case, the First Circuit Court of Appeals scheduled oral argument in *Shurtleff v. City of Boston*, No. 20-1158, for October 28, 2020 at 9:30 a.m.

5. Following receipt of the oral argument notice from the First Circuit in *Shurtleff*, this Court then set oral argument in this appeal for the same date and time – October 28, 2020 at 9:30 a.m. (Doc. 57).

6. Attorney Staver is lead counsel of record in both cases, and has been preparing to present oral argument in both cases. He has developed extensive and

special expertise in appellate argument in the subject matter of both cases. He argued a previous appeal at the First Circuit in the same case (*Shurtleff*), and is singularly best equipped to present argument a second time in the same case before the same court. Similarly, Attorney Staver has presented argument in other circuits on the same subject matter involved in this appeal, and is uniquely best equipped to present argument to this Court in this appeal. Therefore, either client would be prejudiced if their lead counsel of record were not permitted to present argument in their respective appeals.

7. Following receipt of this Court's argument notice, counsel for Plaintiff-Appellant immediately contacted the First Circuit clerk to inquire about re-scheduling that argument, but were advised that the First Circuit would not re-schedule it because it was set first, prior to this Court's setting of the argument in this appeal.

8. In addition, counsel for Plaintiff-Appellant made efforts to have the two arguments staggered at different times on the same date (October 28, 2020), so that attorney Staver might present argument in both appeals on the same date. However, counsel were advised that it is not possible to secure a specific time or argument slot on any given day, and that counsel must be available for argument at all times starting at 9:30 on the argument date, until the case is called and argued. The

argument order of cases is only decided a few days prior to argument, and no consideration is given to any counsel needing a particular time slot.

9. Thus, through no fault of counsel or parties, Plaintiff-Appellant is now in the precarious position of his chosen lead counsel of record—who has been preparing for this argument and is uniquely equipped and experienced for it—not being able to argue this appeal.

10. Therefore, Plaintiff-Appellant respectfully requests that this Court continue the October 28, 2020 argument until the next available date on the argument calendar.

11. Plaintiff-Appellant is cognizant that continuance of argument is disfavored, and he does not make this request lightly. Plaintiff-Appellant would not make this request if counsel, in the exercise of diligence and reasoned professional judgment, did not believe that it was absolutely necessary. Plaintiff-Appellant does not make this request for purposes of undue delay.

12. The granting of relief sought herein would not prejudice any party nor the efficient administration of justice in this case. The relief requested herein would ensure that this Court benefits from the best possible presentation of the weighty issues involved in this appeal.

13. Prior to filing this motion, counsel for Plaintiff-Appellant conferred with counsel for Defendants-Appellees, who indicated that they consent to the relief requested herein. **This motion is therefore unopposed.**

WHEREFORE, for good cause shown, Plaintiff-Appellant respectfully requests that his unopposed motion be granted, and that this Court continue the oral argument in this appeal from October 28, 2020 until the Court's first available date thereafter.

Dated this September 25, 2020.      Respectfully Submitted,

s/ Horatio G. Mihet  
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,  
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). Not counting the items excluded from the length by Fed. R. App. P. 32(f), this document contains 820 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This document has been prepared using Microsoft Word in 14-point Times New Roman font.

DATED this September 25, 2020

s/ Horatio G. Mihet  
Horatio G. Mihet  
*Attorney for Plaintiff-Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this September 25, 2020, a copy of the foregoing was electronically filed through the Court's CM/ECF system, which will effect service on the following counsel and parties of record:

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