

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

	)	
STATE OF TENNESSEE, et al.,	)	
	)	
	)	
Plaintiff-Appellees,	)	
	)	
v.	)	No. 22-5807
	)	
DEPARTMENT OF EDUCATION,	)	
et al.,	)	
	)	
Defendant-Appellants.	)	
	)	

**MOTION FOR A 30-DAY EXTENSION OF TIME  
TO FILE OPENING BRIEF**

Pursuant to Federal Rule of Appellate Procedure 27 and Sixth Circuit Rule 26, the government respectfully requests a 30-day extension of time, to and including December 15, 2022, of the time for filing its opening brief. Plaintiff-appellees oppose this motion.

Intervenor-appellees take no position on this motion. The government has not previously sought an extension in this case.

1. This case involves the government’s appeal of a preliminary injunction issued in favor of plaintiffs-appellees. The preliminary injunction prohibits the government from implementing against

plaintiffs certain agency guidance documents about the meaning of federal anti-discrimination provisions contained in Title VII, 42 U.S.C. § 2000e-2(a), and Title IX, 20 U.S.C. § 1681(a). The government did not seek a stay of that preliminary injunction pending appeal, and that preliminary injunction therefore remains in effect.

2. Pursuant to the Court's briefing letter of October 6, 2022, the government's opening brief is currently due on November 15, 2022.

3. The government respectfully requests a 30-day extension of time, to and including December 15, 2022, in which to file its response brief. The requested extension is necessary in light of other deadlines faced by government counsel. Jack Starcher has principal responsibility for preparing the government's brief in this case. Mr. Starcher also has principal responsibility for preparing the government's briefs in: *American Public Gas Ass'n v. DOE*, No. 22-1107 (D.C. Cir.) (consolidated respondent brief currently due November 14, 2022); *Spire Inc. v. DOE*, No. 22-1117 (D.C. Cir.) (consolidated respondent brief currently due November 14, 2022); *ACHR v. DOE*, No. 22-1111 (D.C. Cir.) (consolidated respondent brief currently due November 14, 2022); *Brody v. DOJ*, No. 22-4053 (D.C. Cir.) (response

brief currently due November 21, 2022); and *Judicial Watch v. DOJ*, No. 22-5209 (D.C. Cir.) (response brief currently due December 7, 2022). In addition, Mr. Starcher was away on vacation from September 28, 2022, through October 11, 2022.

Charles Scarborough has supervisory responsibility for the government's brief in this case. Mr. Scarborough also has supervisory responsibility for the following matters with upcoming deadlines: *Payne v. Biden*, No. 22-5154 (D.C. Cir.) (oral argument set for November 2); *United States v. Walgreen Co.*, 4th Cir., No. 22-1491 (reply brief due November 3, as extended); *Abbott v. Biden*, 5th Cir., No. 22-40399 (oral argument set for November 8); *Captain v. Secretary of Defense*, 11th Cir., No. 22-12029 (reply brief due November 16); *Sissel v. Wormuth*, D.C. Cir., No. 22-5045 (response brief due November 18, as extended); *Robert v. Austin*, 10th Cir., No. 22-1032 (oral argument set for November 18).

4. No previous extensions of this time having been sought or granted.

5. Plaintiff-appellees oppose this requested extension, noting that this Court “disfavors applications for extensions of time for the filing of briefs.” 6th Cir. R. 26(a)(1).

But although this Court “disfavors applications for extensions of time for the filing of briefs,” 6th Cir. R. 26(a)(1), it regularly grants reasonable initial extension motions like this one whether unopposed, *see, e.g.*, Case No. 22-5496, *Laibel v. Lanter*; Case No. 21-5929, *Polyweave Packaging, Inc. v. Buttigieg*, or opposed, *see, e.g.*, Case No. 22-1257, *Livingston Educations Service Agency v. Becerra*.

An extension is particularly appropriate where, as here, plaintiff-appellees are currently protected by a preliminary injunction and can therefore experience no cognizable harm or prejudice from a short extension of the briefing schedule.

6. Intervenor-appellees take no position on this motion.

## CONCLUSION

For the foregoing reasons, the government respectfully requests a 30-day extension, to and including December 15, 2022, for filing the government's opening brief.

Respectfully submitted,

*s/ Jack Starcher*

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OCTOBER 2022

## CERTIFICATE OF SERVICE

I certify that on October 24, 2022, I filed and served the foregoing Motion with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

*s/ Jack Starcher*

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Jack Starcher