

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

TEXAS, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Civil Action No. 4:18-cv-00167-O

**MOTION FOR EXTENSION OF TIME TO RESPOND
TO THE MOTION TO INTERVENE BY CALIFORNIA ET AL.**

Defendants respectfully move for a three-week extension of time to respond to the motion to intervene by the State of California, *et al.*, and state as follows:

1. In this case, Plaintiffs—the State of Texas, joined by nineteen other states and two individuals—challenge the constitutionality of 26 U.S.C. § 5000A(a), which was enacted in 2010 as part of the Affordable Care Act. They allege that an amendment to 26 U.S.C. § 5000A enacted in the Tax Cuts and Jobs Act of 2017 has rendered that provision unconstitutional. They further allege that the provision cannot be severed from the remainder of the Affordable Care Act, which they ask the Court to invalidate in its entirety, along with all regulations that have been promulgated thereunder.

2. Plaintiffs filed an amended complaint on April 23, 2018, *see* ECF No. 27, and moved for a preliminary injunction on April 26, 2018, *see* ECF No. 39. Defendants' response to the amended complaint and the preliminary injunction motion are due on June 7, 2018. *See* ECF No. 31.

3. The State of California, joined by fifteen other states and the District of Columbia, filed a motion to intervene as Defendants on April 9, 2018. *See* ECF No. 15. Although that motion was not served on Defendants, they have agreed to accept service as of April 26, 2018, and their deadline to respond is currently May 17, 2018. *See* Local Rule 7.1(e).

4. Defendants respectfully seek additional time to respond to the motion to intervene for many of the same reasons that they sought additional time to respond to the amended complaint and to the preliminary injunction motion. Plaintiffs seek the invalidation of a federal statute, and their complaint raises a number of different legal theories, including under Article I of the U.S. Constitution, the Fifth Amendment's Due Process Clause, the Tenth Amendment, and the Administrative Procedure Act. Defendants' response will require close coordination among several federal agencies, including the Department of Justice, the Department of Health and Human Services, the Department of the Treasury, and the Internal Revenue Service. In addition, counsel at the Department of Justice are currently occupied with other pressing litigation matters, which will interfere with their ability to prepare a considered response to the intervention motion by the default deadline. Under the circumstances, then, there is good cause for a three-week extension of time, which would make Defendants' response to the intervention motion due on June 7, 2018, at the same time as their response to the complaint and the preliminary injunction motion.

5. Granting this motion would not affect any other deadlines in this case. Plaintiffs' response to the motion to intervene is currently due on April 30, 2018, *see* Local Rule 7.1(e), and if the Court wishes to resolve that motion before Defendants file a response, Defendants would not object.

WHEREFORE, Defendants respectfully request that the Court grant them a three-week extension of time, from May 17 to June 7, 2018, to respond to the motion to intervene. A proposed order is attached.

Dated: April 27, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JENNIFER D. RICKETTS
Director

JOEL McELVAIN
Assistant Director

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER
Cal. Bar No. 237526
REBECCA KOPPLIN
Cal. Bar No. 313970
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
(202) 514-3338
(202) 616-8470 (fax)
eric.beckenhauer@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on April 27, 2018, I filed the foregoing document with the Clerk of Court via the CM/ECF system, causing it to be served electronically on Plaintiffs' counsel of record.

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER

CERTIFICATE OF CONFERENCE

I certify that, in accordance with Local Rule 7.1(a), I conferred with Neli Palma, counsel for potential Intervenor-Defendants California, *et al.*, who advised that the potential Intervenor-Defendants oppose this motion. Ms. Palma and I spoke by telephone on April 25, 26, and 27, 2018, at which time we exchanged our respective views regarding the relief sought in this motion, but were unable to reach agreement.

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER

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[PROPOSED] ORDER

Upon consideration of Defendants' motion for an extension of time to respond to the motion to intervene by the State of California, *et al.*, it is hereby

ORDERED that the motion is **GRANTED**, and it is

FURTHER ORDERED that Defendants shall respond to the motion to intervene by the State of California, *et al.*, by June 7, 2018.

SO ORDERED.

Dated: _____

REED O'CONNOR
United States District Judge