

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION FOR COMMUNITY
AFFILIATED PLANS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TREASURY, *et al.*,

Defendants.

Civil Action No. 18-2133 (RJL)

REPLY IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING SCHEDULE

In opposing plaintiffs' motion for an expedited briefing schedule, the government makes two principal arguments: that all action in this case should be put on pause until formal submission of the administrative record to the Court is complete; and that briefing should proceed in the ordinary course because plaintiffs' withdrawal of the motion for a preliminary injunction somehow establishes that expedited treatment is unwarranted. Both contentions are incorrect.

In fact, the government's response is most notable for what it does *not* say:

First, given that review will proceed entirely on the administrative record, the government makes no response at all to our showing that briefing can move forward on the basis of comments that are now publicly available on the defendant agencies' websites. If briefing is expedited, the parties will call the relevant materials to the Court's attention; the formal record will be available by the time of the Court's decision. The government, notably, does not identify

any practical benefit to awaiting formal submission of the record before the case moves forward.¹

Second, the government also makes no response at all to our demonstration that insurers, States, and all other participants in the health insurance system will be significantly prejudiced by delay in resolution of this case. We explained that insurers will begin working on rates and offerings for 2020 at the close of this year's open enrollment; that such submissions must be complete in the first half, and in some cases the first quarter, of next year; and that State Section 1332 submissions must take account of STLDI plans and also must be submitted in the first quarter of next year. The government takes issue with none of this. Yet its proposed schedule would not have the case submitted to this Court for decision until the end of March 2019, meaning that all of these healthcare filings necessarily will be made in the absence of guidance from this Court and the D.C. Circuit on the status of STLDI plans. Irreparable injury to insurers, providers, and consumers necessarily would follow,

Third, the government simply ignores this Court's suggestion that plaintiffs withdraw the preliminary injunction motion *so that* expedited resolution of the merits would be possible and "you'll get an opinion probably sometime at the beginning of the year." Tr. 54. In this light, the government's "gotcha" contention that withdrawal of the preliminary injunction motion is somehow "at odds" with the request for expedited briefing (Opp. 3), is not well taken; the withdrawal and request for expedited treatment both followed this Court's lead.

Finally, the government offers no way in which either party (or the Court's consideration of the case) would be prejudiced by simultaneous briefing. The fact is, both parties already have submitted extensive merits briefing in connection with the preliminary injunction motion; both

¹ Moreover, the Local Rule cited by the government as precluding this procedure (*see* Opp. 2) applies only "unless otherwise ordered by the Court." LCvR 7(n)(1).

parties are well aware of the other side's arguments. Given that the case will proceed on the administrative record, which closed long ago, the government cannot point to any way in which the circumstances of the case will change materially before the next round of briefing. In this setting, simultaneous briefing is by far the most efficient way to proceed.

For the reasons stated above, plaintiffs respectfully request that the Court enter plaintiffs' proposed expedited briefing schedule for motions for summary judgment in this matter.

Respectfully submitted,

/s/ Andrew J. Pincus

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Dated: November 9, 2018

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**Member of the District of Columbia Bar; application for admission to this Court's Bar pending.