

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR, et al.,

Defendants.

Civil Action No. 18-1747 (JDB)

ORDER

Before the Court is [68] the government’s motion to stay filing of a joint appendix in this action by January 2, 2019, in light of an ongoing lapse in appropriations, and to extend all current deadlines for the duration of the lapse once the stay is lifted. Plaintiffs oppose the stay, emphasizing the need for prompt resolution of this multi-state challenge to a Department of Labor rule that, they allege, will significantly disrupt state health insurance markets. They argue that this litigation falls within an exception to the Antideficiency Act that permits government employees to work during a lapse in appropriations on activities related to “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342. All that need be decided now is when that joint appendix must be filed.

The Court recognizes and is sympathetic to the impact of the lapse in appropriations on the government’s operations. But where, as here, there is a “reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property,” government functions may continue. 43 Op. Att’y Gen. 293 (Jan. 16, 1981). The Department of Labor, which remains fully funded, is primarily responsible for compiling the administrative record. Pursuant to Local Civil Rule 7(n), the only outstanding task for the parties—and hence for the Department of Justice attorneys impacted by the lapse in appropriations—is to confer and

attempt to agree on the contents of the joint appendix, which plaintiffs are then responsible for filing. Accordingly, based on government reports stating that a significant percentage of Civil Division staff are excepted from the ongoing lapse in appropriations, see U.S. Dep't of Justice, FY 2019 Contingency Plan at tbl. 2 (Sept. 11, 2018), <https://www.justice.gov/jmd/page/file/1015676/download>, and considering the exceptional significance of this litigation for all involved, the Court concludes that one additional week to prepare the joint appendix will be sufficient.

For the foregoing reasons, it is hereby

ORDERED that [68] the government's motion to stay is **DENIED**; it is further

ORDERED that the joint appendix in this action shall be filed by not later than January 9, 2019; and it is further

ORDERED that the schedule in this action, including the January 24, 2019, hearing on the already-fully-briefed cross-motions for summary judgment will otherwise remain unchanged.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: December 28, 2018