

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND)	
HEALTHCARE COOPERATIVE,)	
)	No. 17-877
Plaintiff,)	(Chief Judge Sweeney)
)	
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S UNOPPOSED MOTION TO POSTPONE THE JANUARY 29, 2019 ORAL ARGUMENT IN LIGHT OF LAPSE OF APPROPRIATIONS

Defendant, the United States, respectfully requests that the Court postpone the January 29, 2019 oral argument in this case.

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The Department does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

3. Undersigned counsel for the Department of Justice therefore requests a postponement of the oral argument on plaintiffs’ motions for summary judgment and defendant’s cross-motions to dismiss in *Common Ground Healthcare Cooperative v. United States*, No. 17-877C, *Maine Community Health Options v. United States*, No. 17-2057C, and *Community Health Choice, Inc. v. United States*, No. 18-5C, which is currently scheduled for Tuesday, January 29, 2019, at 11:00 a.m. We request that oral argument be postponed until Congress has

restored appropriations to the Department. A postponement of the argument in these three cases is especially appropriate given the breadth, complexity, and potential financial impact of the cost-sharing reduction (CSR) cases. This is particularly true here where one of the cases, *Common Ground*, is a class-action involving 94 insurer plaintiffs. Preparing for oral argument in these three matters will involve substantial time and preparation, and will require our consultation and coordination with attorneys in other offices at the Department and at HHS (HHS has not suffered a lapse in appropriations, though). Our ability to adequately prepare will be compromised absent a stay.

4. As we advised plaintiffs' counsel on January 11, 2019, we have waited until now to file this motion, because we were amenable to going forward with argument on January 29, if the lapse in appropriations had ended last week. We also previously informed them that we were likely to move the Court to postpone the argument, if the lapse continued beyond January 18, as we would no longer have sufficient time to prepare beyond that date.

5. We have moved to stay most CSR cases, with limited exceptions. On January 4, 2019, the Court heard oral argument in *Local Initiative Health Authority of Los Angeles County v. United States*, No. 17-1542 (Fed. Cl.) (Wheeler, J). However, that argument was scheduled in late-November, well before the lapse in appropriations, and the Department attorney responsible for handling that matter had a long-scheduled medical procedure set for later in January, which would have made him unavailable for a rescheduled argument for a lengthy period of time afterwards. Contrarily, the order setting argument in these three matters was issued two days before the lapse in appropriations, and the attorneys responsible for handling these matters will be available for oral argument after the lapse in appropriations has ended, assuming a reasonable amount of time for preparation is afforded them.

6. In addition, we have not yet moved the Court to stay a recently-filed case, *Noridian Mutual Insurance Co. v. United States*, No. 18-1983 (Fed. Cl.) (Horn, J.), because our response to the complaint is not due until February 25, 2019. Should the lapse in appropriations continue into February, we likely will request a stay in that case, too.

7. In the meantime, this Court stayed briefing in another CSR case, *Guidewell Mutual Holding Corp. v. United States*, No. 18-1791C (Fed. Cl.) (Griggsby, J.), pending an appropriation to the Department. The Court also temporarily suspended supplemental briefing in *Blue Cross & Blue Shield of Vermont v. United States*, No. 18-373C (Fed. Cl.) (Horn, J.), until funds are restored to the Department.

8. If this stay motion is granted, undersigned counsel will notify the Court as soon as Congress has appropriated funds for the Department. The United States will then work with the Court and plaintiffs' counsel to find a mutually agreeable date for oral argument that works with the Court's schedule and affords adequate time for preparation. As we have advised plaintiffs' counsel, we would expect that an oral argument scheduled 10 days or more after funding has been restored would provide sufficient time for preparation.

9. Plaintiff's counsel has represented that they do not oppose our motion.

Therefore, although we greatly regret any disruption caused to the Court and the other litigants, we respectfully request that the Court postpone the January 29, 2019 oral argument until Department of Justice attorneys are permitted to resume their usual civil litigation functions, and direct the parties to work together with the Court to promptly reschedule argument at that time.

Respectfully submitted,

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