

**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,

and

CALIFORNIA, *et al.*,

Intervenor-Defendants.

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

**FEDERAL DEFENDANTS' MOTION FOR A STAY OF BRIEFING ON THE HOUSE
OF REPRESENTATIVES' MOTION IN LIGHT OF LAPSE OF APPROPRIATIONS**

Defendants United States of America, the U.S. Department of Health & Human Services (“HHS”), Alex Azar, in his official capacity as Secretary of HHS, the U.S. Internal Revenue Service (“IRS”), Charles P. Rettig, in his official capacity as Commissioner of the IRS (collectively, the “Federal Defendants”), hereby move for a stay of all briefing on the Opposed Motion of the U.S. House of Representatives to Intervene (ECF No. 226), filed on January 3, 2019 (the “Motion”), until Congress has restored appropriations to the Department of Justice.

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

On January 3, 2019, the House of Representatives moved to intervene in this case regarding Counts II through V of the Amended Complaint. The Federal Defendants oppose the Motion and their opposition, as well as the other parties’ responses, is currently due on January 24, 2019. Although the Federal Defendants would like to be heard before the Court rules on the Motion, they are unable to prepare their opposition at this time due to the lapse in appropriations. The undersigned counsel for the Department of Justice therefore requests a stay of all parties’ deadlines to respond to the Motion until Congress has restored appropriations to the Department. If this motion for a stay is granted, undersigned counsel will notify the Court as soon as Congress has appropriated funds for the Department. The Federal Defendants request that, at that point, the parties’ deadlines for their oppositions or other responses be extended commensurate with the duration of the lapse in appropriations.

A stay of all briefing on the Motion will not prejudice any party and will not delay this case because this Court previously stayed all proceedings concerning Counts II through V pending appeal of the Final Judgment entered as to Count I. *See* ECF No. 223 (“The Court determines the remainder of this case should be STAYED pending further orders.”).

Counsel for the House of Representatives have advised that the House opposes this motion. Counsel for Plaintiffs have advised that the Plaintiffs consent to a stay of all parties’ oppositions or other responses to the Motion. Counsel for the State Intervenor-Defendants have advised that the State Intervenor-Defendants take no position on the request for a stay.

Therefore, although we greatly regret any disruption caused to the Court and the other litigants, the Federal Defendants hereby move for a stay of all briefing on the Motion (ECF No.

226) until Department of Justice attorneys are permitted to resume their usual civil litigation functions.

Dated: January 4, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JEAN LIN
Acting Deputy Director

/s/ Daniel D. Mauler
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Counsel for the Federal Defendants

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1, I certify that I conferred concerning this motion with Brianne J. Gorod, counsel for the U.S. House of Representatives, on January 3, 2019; with Neli Palma, Nimrod Elias, and Kathleen Boergers, counsel for Intervenor-Defendants, on January 4, 2019; with Darren McCarty, counsel for Plaintiff States, on January 4, 2019; and with Robert Henneke, counsel for the Individual Plaintiffs, on January 4, 2019. Ms. Gorod advised that the House of Representatives opposes this motion. Counsel for the State Intervenor-Defendants indicated that they take no position on the request for a stay. Counsel for the Plaintiffs indicated they consent to a stay of all parties' oppositions or other responses to the Motion.

/s/ Daniel D. Mauler
DANIEL D. MAULER
U.S. Department of Justice

CERTIFICATE OF SERVICE

I certify that on January 4, 2019, I filed the foregoing document with the Clerk of Court via the CM/ECF system, causing it to be served electronically on all counsel of record.

/s/ Daniel D. Mauler
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[PROPOSED] ORDER

Before this Court is the Motion of the Federal Defendants to stay (the “Motion to Stay”) all briefing on the Opposed Motion of the U.S. House of Representatives to Intervene, ECF No. 226. Having considered the Motion to Stay, the Court ORDERS as follows:

1. The Federal Defendants’ Motion to Stay is GRANTED;
2. The deadline for the parties to respond to ECF No. 226 is hereby STAYED until after appropriations are restored to fund the operations of the U.S. Department of Justice; and,
3. Once appropriations for the U.S. Department of Justice are restored, counsel for the Department will so advise this Court, at which point, the deadline for the parties’ oppositions and other responses to ECF No. 226 will be extended commensurate with the duration of the lapse in appropriations.

SO ORDERED on this ____ day of January, 2019.

The Honorable Reed O'Connor
United States District Judge