

Nos. 19-15072, 19-15118, 19-15150

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE STATE OF CALIFORNIA, *et al.*,
Plaintiffs-Appellees,

v.

ALEX M. AZAR II in his official capacity as Acting Secretary of the
U.S. Department of Health and Human Services, *et al.*,
Defendants-Appellants,

and

THE LITTLE SISTERS OF THE POOR JEANNE JUGAN
RESIDENCE; MARCH FOR LIFE EDUCATION AND DEFENSE
FUND,
Intervenors-Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**THE LITTLE SISTERS' OPPOSITION TO STATES'
MOTION FOR EXTENSION OF TIME
TO FILE CONSOLIDATED ANSWERING BRIEF**

Intervenor-Defendant-Appellant Little Sisters of Poor Jeanne Jugan Residence (“Little Sisters”) opposes the States Appellees’ motion for an extension of time to file their answering brief.¹ The Little Sisters

¹ The States did not ask the Little Sisters for consent to a 21-day extension, but instead for consent to a 30-day extension. For the reasons set out below, the Little Sisters oppose any extension.

respectfully request that this Court deny the motion and order that the appeal continue on the schedule currently in place. COA 19-15072 Dkt. No. 15.

There are three reasons the Court should deny the motion.

First, both federal law and this Court's Rules require an expedited briefing schedule. *See* 28 U.S.C. § 1657 (instructing that "the court shall expedite the consideration of any action for . . . preliminary injunctive relief"); 9th Cir. R. 3-3. The States are now the beneficiaries of a preliminary injunction that applies in 14 states, representing a full 36% of the nation's population. Having obtained such extraordinary relief on an expedited schedule, they should not now be able to delay appellate review of these critically important issues.

Second, the States do not need additional time because they have already briefed the issues in this appeal three times: once for the 2018 preliminary injunction, once for the 2018 appeal in this Court, and once just two months ago for the 2019 preliminary injunction that was briefed on an expedited basis. *See also* Mot. at 1 (noting that this appeal follows "multiple rounds of litigation"). No novel complexity has arisen in the last two months that would justify an extension. Although the Court decided

the 2018 appeal on narrower grounds, the legal issues under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, and the substantive APA provisions were briefed in that appeal. *See* COA 18-15144, Dkt. No. 42, Brief for California *et al.* at 40-43, 53-55, *California v. Azar*, 911 F.3d 558 (9th Cir. 2018). Those issues were also all briefed before the district court in January. N.D. Cal. Dkt. 218 at 7-9, 10-12.

Third, the States are trying to have it both ways. Most recently, the States asked for an accelerated briefing schedule for the preliminary injunction in the district court, asking for briefing over the holiday season. N.D. Cal. Dkt. No. 168. That schedule was granted on December 17. N.D. Cal. Dkt. No. 169. On December 19, the States submitted a motion for a preliminary injunction. Within 15 business days, all parties completed all of the briefing on the States' preliminary injunction motion, and the district court held a preliminary injunction hearing on January 11. All that took place less than two months ago.

Whatever internal review the States need, they offer no reason why that process is more cumbersome in March than it was in January. These same states achieved agreement on the terms of their preliminary

injunction motion one day after filing their amended complaint, and on the terms of a reply brief just five days (two of which were weekend days) after receiving defendants' briefs. Moreover, these issues have been briefed in this Court once before, *California v. Azar*, 911 F.3d 558 (9th Cir. 2018), and many of the Plaintiff States are participating as amici in concurrent litigation over the same issues in the Third Circuit, and were recently able to make joint filings there. *See* Brief for Massachusetts *et al.* as Amici Curiae in Support of Motion for Preliminary Injunction, *Pennsylvania v. Trump*, 351 F. Supp. 3d 791 (E.D. Pa. 2019) (No. 17-4540) (joined by all State Appellees here), *appeal docketed* No. 19-1129 (3d Cir. January 23, 2019). Spending time working on amicus briefing in lieu of briefing this Court is not a proper reason for an extension of time.

With the preliminary injunction now in hand, the States should not be permitted to insulate it from review by slowing down the appeal in this Court *and* slowing down final judgment in the district court, where they also asked for an extended schedule that would not foresee final resolution in that court until late 2019. N.D. Cal. Dkt. 273 at 2. Indeed, the district court granted a schedule that means the hearing on the parties' summary judgment motions will not be heard until six months

from now, on September 5, 2019, even though no parties have requested discovery. N.D. Cal. Dkt. 275. Allowing the States to delay in both courts undermines the purpose of § 1657 and this Court's rules.

The Little Sisters respectfully request that the Court deny the States' motion to delay resolution of this appeal.

Respectfully submitted this 1st day of March 2019.

/s/ Mark L. Rienzi

Mark L. Rienzi

Eric C. Rassbach

Lori H. Windham

Diana M. Verm

The Becket Fund for Religious Liberty

1200 New Hampshire Ave NW,

Ste. 700

Washington, D.C. 20036

(202) 995-0095

mrienzi@becketlaw.org

*Counsel for Intervenor-Defendant-
Appellant Little Sisters of the Poor*

CERTIFICATE OF COMPLIANCE

I certify that:

This opposition complies with the length limits permitted by Fed. R. App. P. 27(d)(2)(A). The opposition is under 20 pages. The opposition's type size and type face comply with Fed. R. App. P. 27(d)(1).

/s/ Mark L. Rienzi

Mark L. Rienzi

Counsel for Intervenor-Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 1, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Mark L. Rienzi

Mark L. Rienzi

Counsel for Intervenor-Defendant-Appellant