

No. 19-10011

In the United States Court of Appeals for the Fifth Circuit

STATE OF TEXAS; STATE OF WISCONSIN, STATE OF ALABAMA;
STATE OF ARIZONA; STATE OF FLORIDA; STATE OF GEORGIA;
STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA;
STATE OF MISSISSIPPI, BY AND THROUGH GOVERNOR PHIL BRY-
ANT; STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF
NORTH DAKOTA; STATE OF SOUTH CAROLINA; STATE OF SOUTH
DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; STATE OF
WEST VIRGINIA; STATE OF ARKANSAS; NEILL HURLEY; JOHN
NANTZ,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT
OF INTERNAL REVENUE; CHARLES P. RETTIG, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF INTERNAL REVENUE,

Defendants-Appellants,

STATE OF CALIFORNIA; STATE OF CONNECTICUT; DISTRICT OF
COLUMBIA; STATE OF DELAWARE; STATE OF HAWAII; STATE OF
ILLINOIS; STATE OF KENTUCKY; STATE OF MASSACHUSETTS;
STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF NORTH
CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE
OF VERMONT; STATE OF VIRGINIA; STATE OF WASHINGTON;
STATE OF MINNESOTA,

Intervenor Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Texas, Fort Worth Division

UNOPPOSED MOTION FOR EXTENSION OF TIME

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UNOPPOSED MOTION FOR EXTENSION OF TIME

In accordance with Federal Rule of Appellate Procedure 27 and Fifth Circuit Rule 31.4, Plaintiffs-Appellees file this first unopposed motion for a seven-day extension of time to file their briefs, to and including May 1, 2019. In support thereof, Appellees respectfully show the Court as follows:

1. The Court has not set a briefing deadline for Appellees' Briefs, but based on the date on which the Intervenor-Appellants' Briefs were filed, those briefs would be due on April 24, 2019. Appellees seek a seven-day extension of time, to and including May 1, 2019, in which to file their briefs. This is Appellees' first request for an extension of time.

2. Counsel for Appellees have conferred with counsel for the other parties and have been informed that no party opposes the granting of this motion.

3. The district court entered an order granting partial summary judgment on Count I of the Amended Complaint on December 14, 2018. ECF No. 211. On December 30, 2018, the district court granted the State Intervenor-Defendants' motion for entry of partial final judgment on Count I of the Amended Complaint and granted the State Intervenor-Defendants' motion to stay that judgment pending appeal. ECF No. 220. The district court then entered partial final judgment under Federal Rule of Civil Procedure 54(b). ECF No. 221. The State Intervenor-Defendants filed their notice of appeal on January 3, 2019, and the United States filed a notice of appeal on January 4, 2019.

4. On January 7, 2019, the United States House of Representatives moved to intervene on appeal. This Court granted the motion to intervene on February 14, 2019.

5. Both the State Intervenor-Appellants and the House of Representatives filed their Briefs on March 25, 2019.

6. This extension is necessary because of the complexity and importance of the issues this case presents. The undersigned counsel need additional time to address the points raised in the opening briefs in a way that will be helpful to the Court.

7. In addition, an extension is necessary because the undersigned counsel have commitments in a number of other cases that require significant attention, including *Texas v. New Mexico*, Orig. 65 (U.S.) (brief due April 26, 2019); *Hancock v. Davis*, No. 18-940 (U.S.) (brief due April 24, 2019); *Will v. Davis*, No. 18-70030 (brief due April 3, 2019); *Texas v. EPA*, No. 18-60606 (5th Cir.) (brief filed March 29, 2019); *Daves v. Dallas County*, No. 18-11368 (5th Cir.) (brief filed March 29, 2019). In addition, lead counsel has travel commitments April 3-5.

8. The extension is sought in the interest of justice, not for delay, and no party will be prejudiced if the extension is granted.

9. On March 25, 2019, the Federal Defendants-Appellants filed a letter in this Court indicating the view of the United States that the judgment below should be affirmed. That letter further indicated that the United States will file a brief on Appellees' schedule. The United States formally remains an Appellant in this case,

even though its merits position is aligned with the Appellees. *See United States v. Windsor*, 570 U.S. 744, 756-59 (2013). In the interests of judicial economy, the Plaintiffs-Appellees ask the Court to set a uniform briefing deadline of May 1, 2019, for the briefs of the Appellees and of the United States. Counsel for the State Intervenor-Defendants and the House of Representatives consent to this schedule.

CONCLUSION

The motion to extend time should be granted.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On March 28 and 29, 2019, undersigned counsel conferred with counsel for Intervenor-Defendant-Appellants and Intervenor-Appellants, who advised that Intervenor-Defendant-Appellants and Intervenor-Appellants do not oppose this request for extension of time to file Appellees' Brief.

/s/ Kyle D. Hawkins
KYLE D. HAWKINS

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 578 words, excluding the parts exempted by Rule 27(a)(2)(B); and (2) the typeface and type style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used for the word count).

/s/ Kyle D. Hawkins
KYLE D. HAWKINS

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on April 5, 2019, this motion was served via the Court's CM/ECF Document Filing System, <https://ecf.ca5.uscourts.gov>, upon the all registered CM/ECF users in this appeal.

Counsel further certifies that on April 5, 2019, the foregoing motion was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the Court's CM/ECF Document Filing System, <https://ecf.ca5.uscourts.gov>.

Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Kyle D. Hawkins
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