

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

State of Texas, et al,

Plaintiffs-Appellees-
Cross-Appellants,

v.

No. 18-10545

United States of America, et al,

Defendants-Appellants-
Cross-Appellees.

**JOINT MOTION TO SET BRIEFING SCHEDULE AND HEAR ORAL
ARGUMENT BEFORE JUNE 10, 2020**

The federal government's opening brief in these cross-appeals was filed on November 20, 2019. For the following reasons, the parties jointly request that the Court set the following schedule for the rest of the briefing, and hear oral argument by no later than June 10, 2020.

Cross-Appellants' Principal and Appellees' Response Brief: Jan. 29, 2020.

Appellant's Response and Reply Brief: Feb. 28, 2020.

Appellees' Reply Brief: Mar. 20, 2020.

1. This case arises at the intersection of the Medicaid program and the Patient Protection and Affordable Care Act (ACA). When States enter into contracts with managed-care organizations to provide healthcare services to Medicaid recipients, federal law requires that payments made under those contracts be actuarially sound. By regulation, the Department of Health & Human Services (HHS) has interpreted

that actuarial-soundness requirement to require that an actuary certify each State's contract with managed-care organizations, applying actuarial standards determined by a private actuarial organization, the Actuarial Standards Board (ASB). And in 2010, Congress as part of the ACA imposed a fee on certain healthcare providers. Subsequently, the ASB determined that States must account for that fee in their Medicaid contracts in order to be certified. Without the certification, States would be ineligible to receive Medicaid reimbursement.

2. Plaintiffs-appellees are six States that sued the federal government in 2015, challenging the provider-fee statute and the HHS regulation on statutory and constitutional grounds and seeking refund of fees previously paid. The district court granted partial summary judgment for the States, concluding that the HHS actuarial-certification requirement violated the private nondelegation doctrine. And the district court then awarded the six States \$479 million in equitable disgorgement. Five of the Plaintiff States and the federal government have appealed the district court's final judgment. The sixth State remains in the case as an appellee but does not separately challenge the judgment.

3. Because of the technical nature of this case, as well as the need to coordinate briefing among six States, the parties request that the Court issue an order setting the following briefing schedule outlined above.

4. Also because of the technical nature of the issues in this case, the federal government respectfully requests that this Court hear argument on or before June 10,

2020. Mr. Joshua Revesz is the lead counsel for the government in this case, and will be departing the Department of Justice in mid-June to begin a clerkship on the Supreme Court of the United States. Because Mr. Revesz has borne primary responsibility for briefing this complex case, the federal government respectfully requests that the Court hold argument before he must leave the Department. The briefing schedule suggested above seeks to accommodate other litigation conflicts and seeks to ensure that the case can be heard before June 10, 2020.

5. Counsel for plaintiff-cross-appellants and for plaintiff-appellee Wisconsin have authorized me to file this motion.

CONCLUSION

For the foregoing reasons, the Court should enter the briefing schedule suggested above and should schedule argument on or before June 10, 2020.

Respectfully submitted,

MARK B. STERN

/s/ Joshua Revesz

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NOVEMBER 2019

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2019, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that appellant's counsel is a registered CM/ECF user and will be served via the CM/ECF system.

/s/ Joshua Revesz
JOSHUA REVESZ

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond font, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 496 words, according to the count of Microsoft Word.

/s/ Joshua Revesz
JOSHUA REVESZ