

No. 19-10011

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

STATE OF TEXAS; 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 Bryant; 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 & HUMAN SERVICES; ALEX AZAR, II, SECRETARY, U.S. 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**

No. 4:18-cv-167-O

Hon. Reed O'Connor, Judge

**MOTION TO SUBSTITUTE STATE OF KENTUCKY, *EX REL.*
ANDY BESHEAR, GOVERNOR AS A PARTY**

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Movant, State of Kentucky, *ex rel.* Andy Beshear, Governor, requests that this Court substitute it as a party to the above-styled appeal in place of the current Intervenor Defendant-Appellant, State of Kentucky, pursuant to Federal Rule of Appellate Procedure (“FRAP”) 43(a)(1). Under Section 69 of the Kentucky Constitution, the Governor of Kentucky is the Chief Magistrate of the Commonwealth of Kentucky and is vested with the supreme executive power of the Commonwealth. The undersigned counsel represented the State of Kentucky in the above-styled appeal, during which time the current Governor of Kentucky, Andy Beshear, was the Attorney General of Kentucky. Therefore, consistency in the representation of the State of Kentucky will be maintained by the substitution of the State of Kentucky, *ex rel.* Andy Beshear, Governor in the above-styled appeal. Pursuant to Fifth Circuit Rule 27.4, the Movant has contacted or attempted to contact all other parties and has not been notified that an opposition will be filed to this Motion, and counsel for the Individual Plaintiffs has stated the Individual Plaintiffs do not oppose the Motion.

Wherefore, Movant, State of Kentucky, *ex rel.* Andy Beshear, respectfully requests that this Court substitute it as a party to the above-styled appeal pursuant to FRAP 43(a)(1).

Respectfully submitted,

s/ S. Travis Mayo

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CERTIFICATE OF SERVICE

I certify that on December 19, 2019, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 19, 2019

/s S. Travis Mayo

S. Travis Mayo

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 27(d)(2) and Fifth Circuit Rule 27.4 because it contains 204 words, according to the count of Microsoft Word. I further certify that this brief complies with typeface and style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) because it has been prepared in Microsoft Word using 14-point Times New Roman font.

Dated: December 16, 2019

/s S. Travis Mayo

S. Travis Mayo