

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 6:21-cv-00425-JDK

DEFENDANT’S RESPONSE TO MOTION FOR LEAVE TO FILE *AMICUS* BRIEF

The Defendants respectfully submit this response to the motion for leave to file an *amicus* brief filed today on behalf of two Members of Congress, ECF No. 47. The Defendants respectfully oppose the motion for leave.

Counsel for the proposed *amici* initially sought consent from the Defendants for their filing on December 8, 2021. Counsel for the Defendants responded the next day that they would consent to the timely filing of an *amicus* brief within seven days of the filing of the Plaintiffs’ motion for summary judgment, i.e., on or before December 17, 2021, in accordance with the filing deadline for *amicus* briefs that would apply under Fed. R. App. P. 29. (Several other *amici* filed their briefs by this deadline, and the Defendants offered their consent to these filings.) Counsel for the Defendants indicated, however, that they could not consent to a later filing.

Counsel for the proposed *amici* renewed their request today, seeking consent to the filing of a brief on or before January 3, 2022. Counsel for the Defendants adhered to their previously-stated position that they could not consent to a late filing.

The Defendants would potentially face prejudice from a late filing by the proposed *amici*. The proposed schedule would leave the Defendants with only one week to review the *amici*'s filing, determine whether a response is warranted, and to prepare a brief for supervisory review. The Defendants accordingly respectfully, and reluctantly, oppose the late-arising motion for leave.

If the Court is inclined to grant the motion for leave, however, the Defendants respectfully request a one-week adjustment in the briefing schedule, whereby the Defendants would file their cross-motion for summary judgment and opposition to the Plaintiffs' summary judgment motion no later than January 18, 2022; the Plaintiffs would file their reply and cross-opposition no later than February 1, 2022; and the Defendants would file their reply no later than February 9, 2022, with a hearing date to be determined at the Court's convenience. This minor adjustment to the briefing schedule would account for any prejudice that the Defendants might face from the *amici*'s late filing.

WHEREFORE, the Defendants respectfully request that the Court deny the motion for leave to file, or, if the Court is inclined to grant that motion, that the Court adjust the briefing schedule.

Dated: December 21, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

BRIT FEATHERSTON
United States Attorney

JAMES GILLINGHAM
Assistant U.S. Attorney
Eastern District of Texas
110 N. College Street; Suite 700
Tyler, Texas 75702
E-mail: James.Gillingham@usdoj.gov
Phone: (903) 590-1400
Fax: (903) 590-1436

Texas State Bar # 24065295

SEAN C. DAY
Special Assistant United States Attorney
Eastern District of Texas
101 E. Park Blvd., Suite 500
Plano, Texas 75074
Phone: (202) 934-4060
Fax: (972) 590-1209
D.C. Bar No. 502363

ERIC B. BECKENHAUER
Assistant Branch Director

/s/ Joel McElvain
JOEL McELVAIN
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Phone: (202) 616-8298
Fax: (202) 616-8470
E-mail: joel.l.mcelvain@usdoj.gov
D.C. Bar No. 448431

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify on this 21st day of December, 2021, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Joel McElvain
JOEL McELVAIN

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 6:21-cv-00425-JDK

[PROPOSED] ORDER

Before the Court is the Opposed Motion for Leave to File Brief of Members of Congress as *Amici Curiae* by January 3, 2022. Having fully considered the motion and the opposition thereto, the motion is DENIED.

IT IS SO ORDERED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 6:21-cv-00425-JDK

[PROPOSED] ORDER

Before the Court is the Opposed Motion for Leave to File Brief of Members of Congress as *Amici Curiae* by January 3, 2022. Having fully considered the motion and the opposition thereto, the motion is GRANTED, and the proposed *amici* are granted leave to file a brief on or before January 3, 2022. It is further ORDERED that the briefing schedule is adjusted as follows:

1. The Defendants shall file their cross-motion for summary judgment and opposition to the Plaintiffs' summary judgment motion no later than January 18, 2022.
2. The Plaintiffs shall file their reply and cross-opposition no later than February 1, 2022.
3. The Defendants shall file their reply no later than February 9, 2022.
4. A hearing is set on the cross-motions for summary judgment on _____.

IT IS SO ORDERED.