

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION**

STATE OF LOUISIANA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as  
Secretary of the United States Department of  
Health and Human Services *et al.*,

Defendants.

Case No. 3:21-cv-03970

**DEFENDANTS' CONSENT MOTION FOR EXTENSION OF TIME TO ANSWER  
OR OTHERWISE RESPOND TO PLAINTIFFS' COMPLAINT**

Defendants' current deadline for filing an answer or otherwise moving against Plaintiffs' First Amended Complaint under Fed. R. Civ. P. 12 is March 1, 2022. Because appellate proceedings are pending with respect to Plaintiffs' request for leave to file a second amended complaint, it is not yet certain which pleading will be the operative complaint in this action. To avoid an unnecessary duplication of filings and to conserve judicial resources, Defendants accordingly move for an extension of time, until 14 days after the Fifth Circuit's disposition of Plaintiffs' pending rehearing petition, to answer or otherwise to respond to the complaint.

Good cause exists for this request for the following reasons. Plaintiffs filed a motion for leave to file a second amended complaint on February 4, 2022. ECF No. 51. This Court denied the motion on February 9, 2022. ECF No. 59. In the same order, this Court issued an indicative ruling that it would grant leave to file a second amended complaint "only with regard to the issues of the alleged Surveyor Vaccine Mandate, and the alleged violation of the Anti-Commandeering Doctrine." *Id.* at 5. Plaintiffs filed a motion for a remand with the United States Court of Appeals for the Fifth Circuit on February 11, 2022. *See* ECF No. 60. The Fifth Circuit denied that motion on February 12, 2022, and issued an unpublished opinion explaining its reasoning on February 14, 2022. *See* ECF No. 61.

Plaintiffs have filed a petition for rehearing *en banc* of the order denying their motion for a remand. That petition remains pending in the Fifth Circuit.

In light of the foregoing, it is not yet certain whether the First Amended Complaint will be the operative pleading in this action. Defendants accordingly respectfully move pursuant to LR 7.4 (and 7.4.1) for an extension of time to file an answer or otherwise move against Plaintiffs' First Amended Complaint under Fed. R. Civ. P. 12, until 14 days after the Fifth Circuit's disposition of Plaintiffs' pending rehearing petition. This extension will conserve the resources of the Court and the parties by avoiding proceedings that may prove to be unnecessary. Undersigned counsel has conferred with counsel for Plaintiffs, who consent to this Motion.

For these reasons, and for good cause shown, Defendants respectfully request that the Court extend Defendants' deadline to answer or otherwise respond to Plaintiffs' Complaint until 14 days after the Fifth Circuit's disposition of Plaintiffs' pending rehearing petition.

A proposed order is attached.

Dated: February 23, 2022

Respectfully submitted,

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/s/ Joel McElvain  
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**[PROPOSED] ORDER**

Upon consideration of Defendants' Motion for an Extension of Time to Answer or Otherwise Respond to Plaintiffs' Complaint, IT IS HEREBY ORDERED that the Motion is GRANTED. It is ORDERED that Defendants' shall file an answer or otherwise respond to Plaintiffs' First Amended Complaint no later than 14 days following the Fifth Circuit's disposition of Plaintiffs' pending rehearing petition.

DATE: \_\_\_\_\_

\_\_\_\_\_  
HON. TERRY A. DOUGHTY  
UNITED STATES DISTRICT JUDGE