

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Richard W. DeOtte, et al.,

Plaintiffs,

v.

Case No. 4:18-cv-825-O

Alex M. Azar II, et al.,

Defendants.

JOINT STATUS REPORT AND PROPOSED BRIEFING SCHEDULE

The Court's order of February 7, 2019 (ECF No. 24), directed the parties to confer and propose briefing schedules for the plaintiffs' motions for class certification (ECF No. 20) and preliminary injunction (ECF No. 21). The Court instructed the parties to file proposed briefing schedules by February 14, 2019.

The parties were unable to agree on a proposed briefing schedule by February 14, 2019, so they filed competing proposals with the Court (ECF No. 25). The parties, however, asked the Court for additional time to negotiate a solution that would enable them to file a joint proposal acceptable to both sides. The Court gave the parties until February 20, 2019, to file a supplemental joint status report, and the Court deferred its ruling on the briefing schedule until that time (ECF No. 26).

The parties are pleased to report that they have agreed on a proposal that will accommodate the defendants' desire to postpone briefing on the preliminary injunction until after this Court rules on the motion for class certification, while simultaneously mitigating the irreparable harms that the plaintiffs assert would be inflicted on them and their fellow class members from a delayed resolution of the preliminary-

injunction motion. If the Court approves this proposal, then the parties will be able to agree on a briefing schedule.

The plaintiffs' primary concern with delaying the briefing of the preliminary-injunction motion is that plaintiff Braidwood Management Inc. has already terminated contraceptive coverage in its self-insured health plan, and Braidwood is currently being subjected to tax penalties of \$100 per employee per day on account of the Contraceptive Mandate and Judge Beetlestone's nationwide injunction. *See* 26 U.S.C. § 4980D. Braidwood seeks a prompt ruling on its request for preliminary relief so it is no longer accruing daily fines for conduct that is protected by the Religious Freedom Restoration Act. The plaintiffs are also seeking a prompt ruling on behalf of the individual plaintiffs and the putative class members (both individuals and employers) who represent that they are suffering irreparable harm *per se* because of the ongoing violations of RFRA.

The defendants, however, have agreed to accommodate the plaintiffs' concerns by taking the following steps. First, the defendants have agreed not to oppose a motion for temporary restraining order that would shield Braidwood from tax penalties for revoking its contraceptive coverage in reliance on the defendants' final rule of November 15, 2018. This protection in the proposed TRO would last only until the Court issues its ruling on the motion for preliminary injunction. The plaintiffs will file this unopposed motion for temporary restraining order with the Court later today.

Second, the plaintiffs and defendants have agreed to respectfully ask this Court to rule promptly on the motion for class certification after briefing is submitted, and the proposed briefing order respectfully asks the Court to rule on class certification by Friday, March 29, 2019—two weeks after briefing has been completed. The plaintiffs do not want to risk a situation in which class certification remains unresolved for months, which would prevent them from obtaining a prompt ruling on their motion for preliminary injunction.

If the Court grants plaintiff Braidwood's unopposed TRO motion and is willing to rule promptly on the plaintiffs' motion for class certification, then the plaintiffs agree to postpone the preliminary-injunction briefing until after the class-certification issues are resolved. The joint briefing schedule would proceed as follows:

- The defendants will respond to the plaintiffs' motion for class certification no later than Friday, March 8, 2019.
- The plaintiffs will file their reply brief in support of the motion for class certification no later than Friday, March 15, 2019.
- The Court will endeavor to rule on the plaintiffs' motion for class certification as soon as possible after briefing is submitted, and will make every effort to rule on the motion by Friday, March 29, 2019.
- Within seven (7) days after the Court rules on class certification, the parties will meet and confer and propose a briefing schedule for the plaintiffs' motion for preliminary injunction.

A proposed order with this briefing schedule is attached.

Respectfully submitted.

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Dated: February 20, 2019

CERTIFICATE OF SERVICE

I certify that on February 20, 2019, I served this document through CM/ECF upon:

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**[PROPOSED] ORDER SETTING BRIEFING SCHEDULES FOR
MOTIONS FOR CLASS CERTIFICATION AND PRELIMINARY
INJUNCTION**

Before the Court are the plaintiffs' motions for class certification (ECF No. 20) and preliminary injunction (ECF No. 21), each filed on February 5, 2019. Having considered the joint briefing schedule submitted by the plaintiffs and the defendants, it is ORDERED that:

The defendants shall respond to the plaintiffs' motion for class certification (ECF No. 20) by Friday, March 8, 2019.

The plaintiffs shall file their reply brief in support of the motion for class certification by Friday, March 15, 2019.

The Court will endeavor to rule on the plaintiffs' motion for class certification as soon as possible after briefing is submitted, so that the parties and the Court may proceed quickly to resolve the outstanding motion for preliminary injunction, and to minimize any irreparable harms that could be imposed on the plaintiffs and their fellow members while the motions for class certification and preliminary injunction are litigated. The Court will make every effort to rule on the plaintiffs' motion for class certification by Friday, March 29, 2019.

Within seven (7) days after this Court rules on the plaintiffs' motion for class certification, the parties shall meet and confer and propose a briefing schedule for Plaintiffs' motion for preliminary injunction.

Dated: _____, 2019

REED O'CONNOR
UNITED STATES DISTRICT JUDGE