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

TEXAS, KANSAS, LOUISIANA, INDIANA, WISCONSIN, and NEBRASKA.

Plaintiffs,

v.

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services, UNITED STATES INTERNAL REVENUE SERVICE, and CHARLES P. RETTIG, in his official capacity as COMMISSIONER OF INTERNAL REVENUE,

Defendants.

Civil Action No. 7:15-cv-00151-O

#### JOINT STATUS REPORT

Plaintiffs and Defendants (collectively, the "Parties"), by and through their respective counsel, and pursuant to the Court's April 9, 2021 Order, ECF No. 166, provide the following status report:

- 1. This Court entered a final judgment on July 30, 2019. See ECF No. 156.
- 2. Plaintiffs, except for Wisconsin, and Defendants appealed. *See* ECF Nos. 161, 162.
- 3. The Fifth Circuit issued its decision on July 31, 2020. *See Texas v. Rettig*, 968 F.3d 402 (5th Cir. 2020). The Fifth Circuit affirmed in part, reversed in part, dismissed in part, and vacated in part, rendering judgment for the United States. *Id.* at 419.
  - 4. Plaintiffs filed a petition for rehearing *en banc*. In response, on February

12, 2021, the Fifth Circuit withdrew its July 31, 2020 decision, and substituted a decision that revised some of that court's reasoning but did not disturb the outcome reached on July 31, 2020. See Texas v. Rettig, 987 F.3d 518 (5th Cir. 2021). On April 9, 2021, the Fifth Circuit denied the petition for hearing en banc, with five judges dissenting. See Texas v. Rettig, No. 18-10545, 2021 WL 1324382 (5th Cir. Apr. 9, 2021).

- 5. This Court then directed the parties to file a joint status report by April 15, 2021. See ECF No. 166.
- 6. Plaintiffs Texas, Kansas, Louisiana, Indiana, and Nebraska are currently analyzing whether to file a petition for certiorari. Accordingly, the Parties respectfully request that the Court stay this case until 30 days after all appellate avenues, including a petition for certiorari, have been exhausted. The Parties further respectfully request that the Court direct the Parties to file, within 30 days after all appellate avenues, including a petition for certiorari, have been exhausted, a joint status report detailing any remaining issues before the Court and proposing a timeline for resolution of those issues.

WHEREFORE, the Parties respectfully request that the Court stay this case until 30 days after all appellate avenues have been exhausted.

Respectfully submitted this 15th day of April, 2021.

For Plaintiffs Texas, Kansas, Louisiana, Indiana, and Nebraska:

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# For Plaintiff Wisconsin:

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### CERTIFICATE OF CONFERENCE

I hereby certify that Plaintiffs' counsel jointly prepared this status report with Defendants' counsel.

<u>/s/ William T. Thompson</u> WILLIAM T. THOMPSON

### CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2021, I electronically filed the foregoing document through the Court's ECF system, which automatically serves notification of the filing on counsel for all parties.

<u>/s/ William T. Thompson</u> WILLIAM T. THOMPSON