

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF AIR MEDICAL
SERVICES,

Plaintiff,

v.

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

Defendants.

No. 1:21-cv-03031-RJL

AMERICAN MEDICAL ASSOCIATION,
et al.,

Plaintiffs,

v.

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

Defendants.

No. 1:21-cv-03231-RJL

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CASES OR,
IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME**

Consolidation of these cases is appropriate.¹ Consolidation serves to “relieve[] the parties and the Court of the burden of duplicative pleadings and Court orders,” *New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 148 (D.D.C. 2002), and this Court would face such a burden if it were

¹ The Defendants file this reply in response to the partial opposition of the Plaintiffs in No. 21-3231, which was filed only on the docket of that case.

required to decide the same statutory challenge to the *Part II* rule in each of these cases. Consolidation would also avoid burdening the Court with “duplicative pleadings,” *id.*, as there is no good reason for the filing of the same brief and the same joint appendix under two separate docket numbers, as the Plaintiffs in No. 21-3231 propose.

The Defendants, of course, defer to the Court’s preferences as to how to go about issuing a single decision or multiple decisions in these cases (a matter that would remain within this Court’s discretion even after the cases are consolidated, *see Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018)). The Defendants note, however, that in exercising this discretion the Court may wish to consider that the challenge of the Plaintiff in No. 21-3031 to the *Part I* rule is in some ways related to the challenge of both sets of Plaintiffs to the *Part II* rule. If the Court were to invalidate the Departments’ methodology for the calculation of the qualifying payment amount, that ruling may have a bearing on its consideration of the *Part II* rule. (To be clear, however, the Defendants contend that all of the challenges to both rules lack merit.)

Contrary to the accusations of the Plaintiffs in No. 21-3231, the Defendants have filed the motion for consolidation to further the purposes of judicial economy, not for purposes of delay. The Defendants voluntarily agreed to an expedited schedule for the filing of their summary judgment motion and the service of the administrative record within a little more than six weeks after these Plaintiffs filed their complaint. The Defendants did so despite the absence of any plausible claim that the Plaintiffs suffer irreparable harm from the challenged rule, or that they otherwise require an immediate ruling from this Court. The Defendants, moreover, do not seek any alteration of the briefing schedule in No. 21-3231; briefing in both cases will be completed on the same timetable as before. And both cases are record-review cases that will not require further factual development for this Court to resolve.

The Defendants, accordingly, respectfully request that the Court grant the motion to consolidate, or, in the alternative, that the Court grant their request for a one-week extension of time for their reply brief in No. 21-3031 (which the Plaintiff in No. 21-3031 has joined in, together with a joint request for an extension of time for that Plaintiff's reply brief in that case).

Dated: January 28, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

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

Counsel for Defendants