

No. 24-60462

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF TENNESSEE ET AL.,

Plaintiffs-Appellees,

v.

XAVIER BECERRA ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Mississippi
(No. 1:24-cv-00161-LG-BWR)

**UNOPPOSED MOTION FOR RECONSIDERATION OF ORDER
GRANTING IN PART MOTION FOR EXTENSION**

Pursuant to Federal Rule of Appellate Procedure 26(b) and Fifth Circuit Rule 26.2, Appellees respectfully seek reconsideration of their request for an extension of time, up to and including February 21, 2025, for filing their response brief. There is strong reason to believe that the incoming federal administration will seek to repeal the rule at issue in this case, eliminating the need to file any response brief in (or to proceed any further with) this appeal. An extension beyond the current January 22, 2025 deadline—which is just two days into the new administration—is warranted to explore and deliver on that prospect.

Counsel for Appellees have conferred with counsel for the Government, and the Government does not oppose Appellees' request to extend the deadline for filing their response brief up to and including February 21, 2025.

1. On December 12, 2024, the Court partially granted Appellees' request for an extension of time to file their response brief, setting a new deadline of January 22, 2025. However, the Court invited Appellees to file a motion for reconsideration "with further reasoning," if necessary.

2. This case presents a challenge by multiple States under the Administrative Procedure Act to a rule issued by the U.S. Department of Health and Human Services that extends the Affordable Care Act's nondiscrimination provision, Section 1557, to include new protections based on gender identity. The district court granted the Plaintiff States' motion for a Rule 705 stay and preliminary injunction. The Federal Government subsequently appealed.

3. A new administration will take over the leadership of the executive branch of the Federal Government on January 20, 2025. That date, which falls on a federal holiday, is two days before Appellees' response brief is currently due.

4. The requested extension of time would thus permit the Federal Government and the Appellee States needed time to engage in discussions regarding the status of this appeal and further case proceedings. Given the status of the briefing,

such discussions could proceed in a manner permitting the parties and this Court to avoid or minimize expending further resources on this matter.

5. The States’ request reflects that, under the first Trump Administration, the Department of Health and Human Services took the opposite view than that advanced by the Government to this point in these proceedings. Specifically, the Trump Department of Health and Human Services issued a final rule expressly stating that “the term ‘on the basis of ... sex’ in Section 1557 does *not* encompass discrimination on the basis of gender identity.” Compl., R.1, ¶144 (citing Dep’t of Health & Hum. Servs., *Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority*, 85 Fed. Reg. 37,160 (June 19, 2020)) (emphasis added). Other federal agencies issued similar positions under the Trump Administration. *See, e.g.*, Reed D. Rubinstein, *Memorandum For Kimberly M. Richey, Acting Assistant Secretary of the Office for Civil Rights, re: Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020) (Jan. 8, 2021), <https://perma.cc/Q9YC-Q4Y2>.

6. If, upon assuming office on January 20, 2025, the Trump Administration returns to its prior stated position with respect to the proper scope of Title IX and Section 1557, that development could affect the pendency of these proceedings moving forward. At a minimum, the Appellee States would seek to engage in discussions with opposing counsel regarding their continued pursuit of this appeal following President-elect Trump’s assumption of office.

7. Extending Appellees' deadline for filing their response brief to February 21, 2025, will provide the new administration time to evaluate this case and the parties to engage in the aforementioned discussions. Appellees do not believe a shorter time period would provide adequate time for such events to take place.

8. This request for an extension is not made for purposes of unnecessary delay and will not unfairly prejudice any party. The Federal Government previously sought and received an extension of time in this matter. *See* Dkt. 49. It also has sought and received an extension of time in other, related appeals—including in an appeal before the U.S. Court of Appeals for the Eleventh Circuit, in which the Government's opening brief is now due January 2, 2025. *See Florida v. Dep't of Health & Human Servs.*, No. 24-12826 (11th Cir. Nov. 4, 2024), Dkt. 25. The requested extension would preserve the time and resources of the parties and the Court should the Government ultimately choose to pursue a different course in this matter, including dismissal of this appeal.

CONCLUSION

Appellees respectfully request an extension of their deadline for filing their response brief up to and including February 21, 2025.

Date: December 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), I certify that on December 23, 2024, I electronically filed the foregoing document with the clerk of the United States Court of Appeals for the Fifth Circuit via the Court's electronic court-filing system, which sent notice to all registered attorneys in this case.

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