

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

BRAIDWOOD MANAGEMENT, INCORPORATED; JOHN  
SCOTT KELLEY; KELLEY ORTHODONTICS; ASHLEY  
MAXWELL; ZACH MAXWELL; JOEL STARNES,

Plaintiff-Appellees/Cross-Appellants,

v.

XAVIER BECERRA, SECRETARY, U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, in his official  
capacity as Secretary of Health and Human  
Services; UNITED STATES OF AMERICA; JANET  
YELLEN, SECRETARY, U.S. DEPARTMENT OF  
TREASURY, in her official capacity as Secretary of  
the Treasury; JULIE A. SU, ACTING SECRETARY,  
U.S. DEPARTMENT OF LABOR, in her official  
capacity as Secretary of Labor,

Defendants-Appellants/Cross-  
Appellees.

No. 23-10326

**UNOPPOSED MOTION TO ESTABLISH AGREED BRIEFING  
SCHEDULE FOR CROSS-APPEALS**

The government's principal brief is due on June 20. For the following reasons, the government respectfully moves that the Court establish the following briefing schedule for the remainder of briefing on these cross-appeals.<sup>1</sup> Plaintiffs' counsel has authorized us to state that plaintiffs support this proposed schedule.

June 27, 2023	Amicus briefs in support of the government
August 7, 2023	Plaintiffs' principal and response brief
August 14, 2023	Amicus briefs in support of plaintiffs
September 29, 2023	Government's response and reply brief
October 6, 2023	Amicus briefs in support of the government (limited to issues raised by plaintiffs' cross-appeal)
November 3, 2023	Plaintiffs' reply brief

The proposed schedule is designed to allow adequate time for the parties and amici to address the issues presented by the cross-appeals. Plaintiffs challenged the constitutionality of provisions of the Patient Protection and Affordable Care Act that require that group health plans and health-insurance issuers offering group or individual health coverage

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<sup>1</sup> A certificate of interested persons is not required because defendants-appellants are government entities and government officials sued in their official capacities. 5th Cir. R. 28.2.1.

provide coverage without cost sharing for four categories of preventive services: (1) evidence-based items or services that have in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force (Task Force); (2) immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved; (3) with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA); and (4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by HRSA. *See* 42 U.S.C. § 300gg-13(a).

The district court accepted plaintiffs’ argument that Task Force members are federal officers whose appointment did not comport with the Appointments Clause, ROA.1797-1806, and further held that the Secretary of Health and Human Services could not remedy that defect by ratifying their recommendations, ROA.1797. The district court also ruled for certain plaintiffs on claims under the Religious Freedom Restoration Act.

ROA.1815-1820. The district court rejected plaintiffs' other claims. The government appealed, and plaintiffs filed a cross appeal.<sup>2</sup>

The proposed schedule builds in time for the parties to address the important issues presented by this case. In addition, the proposed schedule ensures that amici on both sides will have the opportunity to address all issues. As noted above, plaintiffs have authorized us to indicate that they support this motion. Accordingly, we ask that this Court enter the proposed briefing schedule.

Respectfully submitted,

MICHAEL S. RAAB

*/s/ Alisa B. Klein*

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MAY 2023

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<sup>2</sup> The government moved for a partial stay pending appeal of the final judgment to the extent that it included universal remedies. This Court carried the stay motion with the case and entered an administrative stay while the Court considers the stay motion. *See* 5/15/2023 Order.

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2023, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Alisa B. Klein  
Alisa B. Klein

### **CERTIFICATION OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Georgia, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 494 words, according to the count of Microsoft Word.

/s/ Alisa B. Klein  
Alisa B. Klein