

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES et al.,

Defendants-Appellees.

No. 18-1514

**UNOPPOSED MOTION OF FEDERAL DEFENDANTS
FOR A 30-DAY EXTENSION OF TIME IN WHICH
TO FILE A RESPONSE BRIEF**

The federal defendants respectfully request a 30-day extension, to and including **November 16, 2018**, to file a response brief.

1. Plaintiff-appellant, the Commonwealth of Massachusetts, challenges two interim final rules issued by the Department of Health and Human Services, the Department of Labor, and the Department of the Treasury.

2. On July 11, 2018, this Court granted plaintiff's motion to extend the briefing schedule, providing plaintiff a 33-day extension to file its opening brief. Plaintiff timely submitted its opening brief on September 17, 2018.

3. Pursuant to this Court's order dated September 21, 2018, the government's response brief is currently due October 17, 2018. The government has not previously sought an extension of its briefing time in this matter. With the requested 30-day extension, the government's response brief would be due November 16, 2018.

4. The requested extension is necessary in light of counsel's obligations to the United States in other pending appellate litigation and to ensure adequate time to consult with the three federal-agency defendants, the Justice Department trial counsel who handled the case in district court, and other components of the Justice Department. Karen Schoen, the attorney with primary responsibility for preparing this brief, is also one of the attorneys responsible for *Pennsylvania v. President*, Nos. 17-3752 and 18-1253 (3d Cir.) (opening brief due September 21, 2018). In addition, Ms. Schoen is scheduled to present oral argument in *Electrical Welfare Trust Fund v. United States*, No. 17-1937 (4th Cir.) on September 25, 2018, and will be out of the office on September 24 and September 25. She is also scheduled to present oral argument in *Xue Lue v. United States*, Nos. 17-55040 and 17-55087 (9th Cir.) on October 9, and will therefore be out of the office October 8–10.

5. We have contacted counsel for plaintiff, who have authorized us to state that they consent to this motion.

CONCLUSION

For the foregoing reasons, the Court should grant defendant-appellees a 30-day extension of time, to and including November 16, 2018, to file a response brief.

Respectfully submitted,

MATTHEW M. COLLETTE

/s/ Karen Schoen

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SEPTEMBER 2018

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with the requirements of Rule 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Rule 27(d)(2)(A), because it contains 357 words, according to the count of Microsoft Word.

/s/ Karen Schoen

Karen Schoen

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the First Circuit 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/ Karen Schoen

Karen Schoen