

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 7/16/2019

STATE OF NEW YORK, et al.,

Plaintiffs,

-v-

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

Defendants.

19 Civ. 4676 (PAE)
19 Civ. 5433 (PAE)
19 Civ. 5435 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has carefully considered counsel’s joint letter, Dkt. 110, and input at the July 12, 2019 conference as to the proper schedule for briefing in this case. The Court thanks all counsel for their thoughtful input.

As anticipated at the conference, the Court’s judgment is that it is sensible for the parties to brief, contemporaneously, (1) the parties’ anticipated cross-motions for summary judgment, based on an administrative record to be filed shortly; and (2) plaintiffs’ pending motions for a preliminary injunction, as to which, to date, plaintiffs’ opening briefs have been filed. Briefing as to both forms of relief will enable the Court, if possible, to resolve the merits issues in this case by November 22, 2019, the date HHS’s rule is scheduled to take effect. At the same time, contemporaneous briefing will enable the Court—in the event that the administrative record’s scale or as-yet unforeseen complications prevent a reliable final determination on the merits by that date—to assess whether preliminary relief is merited. Contemporaneous briefing as to both forms of relief is, further, efficient insofar as the parties’ submissions as to each are expected centrally to focus on the merits.

The Court accordingly sets the following schedule:

July 22, 2019: Defendants produce the administrative record (“A.R.”) to plaintiffs and file a certified list of the contents of the A.R. with the Court.

August 14, 2019: Defendants file their motion for summary judgment and their opposition to plaintiffs’ motions for a preliminary injunction. Defendants are to file a single brief addressing these subjects.

August 21, 2019: Amicus briefs supporting defendants are to be filed.

September 5, 2019: Plaintiffs file their oppositions to defendants’ summary judgment motion, their cross-motions for summary judgment, and their replies in support of their motions for a preliminary injunction. Plaintiffs are to file single briefs addressing these subjects.

September 12, 2019: Amicus briefs supporting plaintiffs are to be filed.

September 19, 2019: Defendants file their reply in support of the motion for summary judgment and their opposition to plaintiffs’ motions for summary judgment. Defendants are to file a single brief addressing these subjects.

October 3, 2019: Plaintiffs file their reply briefs in support of their motions for summary judgment.

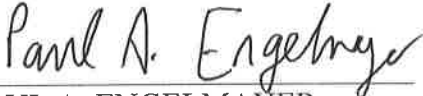
October 18, 2019: Oral argument will be held, beginning at 9:30 a.m., at the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, N.Y. 10007. The courtroom at which argument will be held is to be determined.

As to the mechanics of briefing, although the Court expects that the plaintiffs will coordinate amongst themselves to avoid unnecessary duplication of briefing, the Court does not direct that plaintiffs file a single consolidated brief but will allow two separate briefs, one each from the government plaintiffs (19 Civ. 4676) and the provider plaintiffs (19 Civ. 5433 and 19 Civ. 5435). The Court sets the following page limits for each party’s submissions.

Defendants' opening brief (due August 14) is limited to 80 pages. Plaintiffs' briefs (due September 5) are limited to 50 pages each. Defendants' brief (due September 19) is limited to 50 pages. Plaintiffs' reply briefs (due October 3) are limited to 30 pages each. All amicus briefs are limited to 25 pages.

The Court is conscious that there is a pending motion to intervene in this case, *see* Dkts. 64, 109, that will become fully briefed today. The Court will address the proposed intervenor's participation in the schedule, if necessary, upon resolution of that motion.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: July 16, 2019
New York, New York