

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAYTON AREA CHAMBER OF
COMMERCE, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

Civil Action No. 3:23-cv-00156-MJN-PBS

Judge Michael J. Newman

Magistrate Judge Peter B. Silvain, Jr.

JOINT MOTION TO MODIFY SCHEDULE

All parties, having conferred, jointly and respectfully request modification to the schedule set forth in the Court's September 29, 2023 Order, ECF No. 55. In particular, so that their discussions about the best path forward can be informed by the allegations in Plaintiffs' forthcoming amended complaint, the parties respectfully request (1) that the upcoming deadlines for a Rule 26(f) report and any renewed motion to dismiss be stayed pending further order of the Court; and (2) that the parties be ordered to file a joint proposed schedule for further proceedings (or separate proposals, if they cannot reach agreement) no later than October 23, 2023. As good cause for these joint requests, the parties offer the following:

1. Plaintiffs filed this lawsuit on June 9, 2023, bringing facial constitutional claims challenging the Medicare Drug Price Negotiation Program, which was created by the Inflation Reduction Act of 2022. Compl., ECF No. 1.

2. Plaintiffs moved for a preliminary injunction on July 12, 2023. ECF No. 29. Defendants moved to dismiss on August 11, 2023. ECF No. 33. Briefing on those motions was governed by a schedule agreed upon by the parties and ordered by the Court, after an initial scheduling conference. ECF No. 32. The Court held oral argument on both motions on September 15, 2023. Plaintiffs requested a decision by October 1, 2023. ECF No. 29.

3. On September 29, 2023, the Court issued an order (1) denying Defendants' motion to dismiss; (2) denying Plaintiffs' motion for a preliminary injunction; (3) requiring Plaintiffs to file an amended complaint by October 13, 2023; (4) requiring the parties to file a Rule 26(f) report by October 13, 2023; (5) requiring Defendants to file any renewed motion to dismiss by October 27, 2023; and (6) referring the case to Magistrate Judge Silvain to supervise discovery. ECF No. 55.

4. Since the Court's order, the parties have had productive discussions regarding future proceedings in this case. Plaintiffs will file an amended complaint by October 13, 2023 pursuant to the Court's order, and Plaintiffs do not intend to take an interlocutory appeal of the denial of their motion for a preliminary injunction.

5. At least at this time, the parties do not anticipate the need for any discovery, but the parties reserve their respective rights to revisit that question once Plaintiffs have filed their amended complaint.

6. Under the circumstances, the parties agree that it would not serve the interests of efficiency or judicial and party economy to file a Rule 26(f) report at this time, before Plaintiffs have filed and Defendants have reviewed Plaintiffs' forthcoming amended complaint, and the parties have had an opportunity to consider what discovery, if any, might be appropriate in light of the allegations in the amended complaint.

7. Instead, the parties respectfully submit that it would be most efficient for the parties to further confer after the filing of Plaintiffs' amended complaint, in an effort to reach agreement on a schedule to govern further proceedings. The parties would then intend to file a joint scheduling proposal (or separate proposals, if they cannot reach agreement) no later than October 23, 2023.

8. In the interim, to facilitate these scheduling discussions, the parties respectfully request that the other upcoming deadlines in the Court's recent order be stayed (*i.e.*, the parties' October 13, 2023 deadline to file a Rule 26(f) report, and Defendants' October 27, 2023 deadline to file any renewed motion to dismiss).

9. Accordingly, for these reasons, the parties respectfully request (1) that the upcoming deadlines for a Rule 26(f) report and any renewed motion to dismiss be stayed pending further order

of the Court; and (2) that the parties be ordered to file a joint proposed schedule for further proceedings (or separate proposals, if they cannot reach agreement) no later than October 23, 2023.

Dated: October 12, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

KENNETH L. PARKER
United States Attorney

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Stephen M. Pezzi
STEPHEN M. PEZZI
Senior Trial Counsel
ALEXANDER V. SVERDLOV
CHRISTINE L. COOGLE
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 305-8576
Email: stephen.pezzi@usdoj.gov

Counsel for Defendants

KING & SPALDING LLP

/s/ Jeffrey S. Bucholtz
Jeffrey S. Bucholtz (*pro hac vice*)
*Trial Attorney
Christine M. Carletta (*pro hac vice*)
Alexander Kazam (*pro hac vice*)
1700 Pennsylvania Avenue NW
Washington, DC 20006
(202) 737-0500
jbucholtz@kslaw.com
ccarletta@kslaw.com
akazam@kslaw.com

Gregory A. Ruehlmann (No. 0093071)

1180 Peachtree Street NE
Suite 1600
Atlanta, GA 30309
(404) 572-4600
gruehlmann@kslaw.com

**PORTER WRIGHT MORRIS & ARTHUR
LLP**

/s/ Tami H. Kirby _____

Tami H. Kirby (No. 0078473)
Emma M. Walton (No. 0100024)
One South Main Street, Suite 1600
Dayton, OH 45402
Tel. (937) 449-6721
Fax (937) 449-6820
tkirby@porterwright.com

*Attorneys for Plaintiffs Dayton Area Chamber
of Commerce, Ohio Chamber of Commerce,
Michigan Chamber of Commerce, and Chamber
of Commerce of the United States of America*

U.S. CHAMBER LITIGATION CENTER

Andrew R. Varcoe (*pro hac vice*)
Jennifer B. Dickey (*pro hac vice*)
1615 H Street NW
Washington, DC 20062
(202) 463-5337

*Attorneys for Plaintiff Chamber of Commerce of
the United States of America*