**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF OHIO**
**WESTERN DIVISION**

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| DAYTON AREA CHAMBER OF COMMERCE, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>XAVIER BECERRA, *et al.*,<br><br>Defendants. | Civil Action No. 3:23-cv-00156-MJN-PBS<br><br>Judge Michael J. Newman<br><br>Magistrate Judge Peter B. Silvain, Jr. |

**DEFENDANTS' UNOPPOSED MOTION TO MODIFY BRIEFING SCHEDULE**

Defendants, having conferred with Plaintiffs, respectfully request a modest adjustment to the briefing schedule set forth in the Court's October 27, 2023 Order, ECF No. 59, in order to promote efficient case management, reduce repetitive briefing, and to account for conflicts with preexisting deadlines in parallel litigation. As good cause for this request, which Plaintiffs do not oppose (and which is identical to Plaintiffs' proposal in the parties' recent Rule 26(f) report, ECF No. 58), Defendants offer the following:

1. On October 23, the parties jointly filed a Rule 26(f) report. ECF No. 58. Although the parties largely agreed on all other issues in the report, the parties disagreed over whether the next step in this case should be motion-to-dismiss briefing or summary-judgment briefing. *See id.*

2. On October 27, the Court issued an order resolving that particular dispute in Plaintiffs' favor, "conclud[ing] that allowing the parties to file cross-motions for summary judgment will promote fair and efficient case management." Order at 1. The Court also set the following schedule for cross-motions for summary judgment:

- Summary judgment motions due: December 5, 2023
- Oppositions to summary judgment motion due: January 5, 2024
- Replies to summary judgment opposition due: January 19, 2024

3. This schedule differs from the summary-judgment briefing schedule proposed by Plaintiffs in two respects: (1) by ordering simultaneous briefing and a six-brief schedule (rather than a four-brief schedule), and (2) by concluding briefing by January 19, 2024 (rather than January 31, 2024).

4. Defendants respectfully submit that, now that it is clear that the next step in this case is going to be briefing on cross-motions for summary judgment, the summary-judgment schedule originally proposed by Plaintiffs would better serve the goals of "fair and efficient case management" identified in the Court's recent order. In particular, Plaintiffs' original proposal would only require four briefs, in sequence, allowing for the parties to develop and respond to each other's arguments—rather than talking past each other in simultaneous briefs. In addition, as all parties are likely to seek summary judgment on all claims (and also oppose the entry of summary judgment for the opposing parties on all claims), a six-brief schedule will necessarily result in repetition of the same arguments in different briefs.

5. In addition, the current schedule happens to create significant conflicts with pre-existing briefing deadlines in several of the nine other pending cases that challenge this same statutory scheme, all nine of which are being handled by the same team of litigation attorneys at the Department of Justice. Plaintiffs' original proposal, by contrast, aligns more manageably with the government's other litigation deadlines.

6. For these reasons, Defendants respectfully request that the summary-judgment briefing schedule be modified to reflect Plaintiffs' proposal in the recent Rule 26(f) report, as follows:

- Plaintiffs' motion for summary judgment: November 3, 2023
- Defendants' cross-motion for summary judgment / opposition to Plaintiffs' motion for summary judgment: December 8, 2023
- Plaintiffs' reply / opposition to government's cross-motion for summary judgment: January 10, 2024
- Defendants' reply: January 31, 2024

7. Before filing this motion, counsel for Defendants conferred with counsel for Plaintiffs, who reported Plaintiffs' position as follows: "Plaintiffs are comfortable proceeding according to the schedule adopted by the Court in its October 27 order, but Plaintiffs would have no objection if the Court wished to adopt the schedule that Defendants now propose (given that it is the same schedule that Plaintiffs previously proposed)." Plaintiffs also confirmed that Defendants could caption this motion as "unopposed."

8. A proposed order is attached.

Dated: October 30, 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*