

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WHITMAN-WALKER CLINIC, INC., *et al.*,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

*Defendants.*

Case No. 1:20-cv-1630 (JEB)

**PLAINTIFFS' RESPONSE TO DEFENDANTS'  
MOTION FOR EXTENSION OF TIME**

Plaintiffs, through undersigned counsel, hereby submit the following response to defendants' Motion for an Extension of Time to Respond to Plaintiffs' Complaint. (ECF No. 51.)

Plaintiffs do not oppose a limited extension of time for defendants to respond to plaintiffs' complaint. However, because an extension of time to respond also affects and extends the deadline for defendants to produce the administrative record in this case, *see* Local Civil Rule 7(n)(1), plaintiffs oppose an extension of time that does not include a firm date for production of the administrative record. Given the irreparable harm, chaos, and confusion the Revised Rule has caused and will continue to cause, particularly as a number of the regulatory actions that plaintiffs have challenged and seek to enjoin already have gone into effect, it is critical that plaintiffs begin their review of the extensive administrative record as soon as possible.

For this reason, when defendants informed plaintiffs on August 21, 2020 that defendants intended to seek an extension of time to respond to plaintiffs' complaint that would make their response due 21 days from the date of the Court's decision on plaintiffs' motion for a preliminary injunction, plaintiffs requested that the parties meet-and-confer by telephone. During the parties'

meet-and-confer that afternoon, plaintiffs explained that they were concerned that tying the defendants' response deadline to a yet-to-occur event would delay production of the extensive administrative record in this case. Indeed, plaintiffs had previously approached defendants with a proposal to expedite production of the administrative record that would coordinate its production in this case with the other pending actions challenging the Revised Rule, but defendants never responded to plaintiffs' proposal.

Thus, in response to defendants' request for an extension of time to respond to the complaint, plaintiffs made another effort to secure a firm date for production of the administrative record. During the parties' meet-and-confer on August 21, plaintiffs proposed to dispense entirely with defendants having to file an answer and instead offered to propose jointly to the Court a schedule pursuant to which defendants would have a firm date for production of the administrative record followed by a briefing schedule for dispositive motions by plaintiffs and defendants. Plaintiffs suggested September 18, 2020 as the date for production because that is the date the administrative record is due in *Washington v. U.S. Department of Health and Human Services*, No. 2:20-cv-01105-JLR (W.D. Wash.). Defendants rejected plaintiffs' proposal and filed their motion for extension of time.

Plaintiffs oppose an extension of time to respond to the complaint that does not include a firm date for production of the administrative record. The administrative record in this case is extensive and will necessitate time for review and briefing. In addition, each additional day any provision of the Revised Rule is in effect is a day in which plaintiffs, their LGBTQ patients and members, their patients and members with limited English proficiency, and others suffer harm.

Dated: August 25, 2020

Respectfully submitted,

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.

STEPTOE & JOHNSON LLP

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\*\* Application for admission to U.S. District  
Court for the District of Columbia forthcoming.