

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

CARMEN PURL, M.D., et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES, et al.,

Defendants.

No. 2:24-cv-228-Z

OPPOSED MOTION TO AMEND BRIEFING SCHEDULE

Defendants respectfully move the Court to amend the summary judgment briefing schedule set out in its December 23, 2024 Order, ECF No. 35. Specifically, Defendants request that the Court enter a four-brief cross-motion schedule rather than the current six-brief simultaneous motion schedule. In the alternative, Defendants request that the Court extend the deadlines in the current scheduling order. Plaintiffs oppose changing the scheduling order.

Defendants submit that there is good cause for the requested cross-motion schedule, *see* Fed. R. Civ. P. 16(b)(4), in that it will facilitate efficient and thorough briefing of the issues presented by this case, including the new issues identified in the Court’s Memorandum Opinion and Order granting Plaintiffs’ motion for preliminary injunction, ECF No. 34 at 21-22. Some of those issues, including the non-delegation doctrine and vagueness, were not asserted in Plaintiffs’ Complaint nor in any previous briefing. Moreover, the Court also directed the parties to brief how certain issues “affect the constitutionality or legality of HIPAA,” *id.* at 21, thereby implicating the constitutionality of a federal statute that has been in effect for over two decades and is not challenged in Plaintiffs’ Complaint, *see* Compl. ¶ 8, ECF No. 1. Under the current simultaneous motion schedule, Defendants will first have to guess at how Plaintiffs intend to argue these novel issues, and then respond to Plaintiffs’ arguments in no more than a week. In

contrast, a cross-motion schedule would allow Plaintiffs to first articulate how they believe these issues support their challenge and then give Defendants adequate time to respond.

Even if the parties were not required to brief additional issues, the existing briefing schedule does not provide the parties with sufficient time to adequately address the issues presented by this case. The parties will be required to respond to each other's principal briefs, which may be up to fifty pages under the local rules, *see* LR 56.5, in just a week, before having just another week to prepare their respective replies. By default, the local rules provide three weeks and two weeks for oppositions and replies, respectively. Moreover, the current schedule is far quicker than the schedule agreed to by the parties in the State of Texas's challenge to the lawfulness of the 2024 Rule, under which opposition and reply briefs are spaced out by four weeks. *See* Order, *Texas v. HHS*, No. 5:24-cv-204 (N.D. Tex), ECF No. 15. Nor is there any need for expedition in this case, given that Plaintiffs are already under the protection of the Court's order granting a preliminary injunction.

Defendants therefore request that the Court amend the summary judgment briefing schedule as follows, with page limits as laid out by LR 56.5:

- Plaintiffs shall file their motion for summary judgment **on or before January 17, 2025** (no more than fifty pages).
- Defendants shall file their consolidated cross-motion to dismiss and/or for summary judgment and opposition to Plaintiffs' motion **on or before February 17, 2025** (no more than fifty pages). This motion shall also serve as Defendants' responsive pleading.
- Plaintiffs shall file their consolidated reply in support of their motion and opposition to Defendants' cross-motion **on or before March 17, 2025** (no more than 25 pages).
- Defendants shall file their reply in support of their cross-motion **on or before April 17, 2025** (no more than 25 pages).

In the alternative, Defendants request that the Court extend the existing deadlines set out in its December 23, 2024 Order as follows:

- Any motions for summary judgment shall be filed **on or before January 17, 2025** (no more than 50 pages). Defendants' motion shall also serve as their responsive pleading.
- Response briefing to summary judgment motions shall be filed **on or before February 17, 2025** (no more than 50 pages).
- Reply briefing to summary judgment motions shall be filed **on or before March 17, 2025** (no more than 25 pages).

Dated: January 3, 2025

Respectfully submitted,

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/s/ John T. Lewis
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Attorneys for Defendants

CERTIFICATE OF CONFERENCE

I hereby certify that on January 2 and 3, 2025, I conferred with counsel for Plaintiffs in this matter, who represented that Plaintiffs opposed this motion.

/s/ John T. Lewis
John T. Lewis

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2025, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ John T. Lewis
John T. Lewis