

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

HARRIS COUNTY, TEXAS, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his
official capacity as Secretary of Health
and Human Services, *et al.*,

Defendants.

Case No. 1:25-cv-01275-CRC

JOINT SCHEDULING SUBMISSION

Pursuant to the Court’s Memorandum Opinion and Order of June 17, 2025, the parties submit the below proposed schedules for briefing and other outstanding steps. After meeting and conferring on June 25, 2025 and July 11, 2025 via videoconference and additionally via email, the parties were unable to agree on a joint scheduling proposal. Each party’s position is set forth below.

Plaintiffs’ Position

Plaintiffs propose a briefing schedule that allows the Court to decide the parties’ cross-motions for summary judgment by the end of this calendar year. Plaintiffs request this schedule because the Court declined to extend the preliminary injunction to any of Local Government Plaintiffs’ grants issued under the American Rescue Plan Act or the Paycheck Protection Act. *See* ECF No. 33 (“PI Order”) at 21.

Defendants have identified two indirect grants that may have included Paycheck Protection Act funds: Columbus, Ohio’s Enhanced Operations Grant and Harris County, Texas’s Infectious Disease Control Unit Grant. Although Plaintiffs continue to investigate the funding sources for these grants and their renewals, for the time being they have not been reinstated, and irreparable

harm to Columbus and Harris County continues. For example, Columbus used the Enhanced Operations Grant to modernize its health systems for disease tracking and epidemiology. ECF No. 14-6 at ¶ 10. As a result of the termination of that grant, Columbus lost access to approximately \$3 million and had to terminate eleven full time staff members including nine disease intervention specialists. *Id.* at ¶ 13. Columbus Public Health is operating at about twenty-five percent capacity for its disease tracing and investigation work. *Id.* at ¶¶ 17-19. Moreover, the grant performance deadline for the Enhanced Operations Grant currently expires on December 31, 2025. *Id.* at ¶ 9. Harris County used the Infectious Disease Control Unit Grant to carry out essential public health activities including infectious disease surveillance, case intake, and investigation. ECF No. 14-4 at ¶ 24. As a result of the termination of the grant, Harris County lost access to approximately \$1 million, thereby depriving it of funding to prevent the spread of communicable diseases. *Id.* at ¶¶ 22, 24, 26–27. The performance period for the Infectious Disease Control Unit Grant ends on July 31, 2026. *Id.* at ¶ 21. As detailed in AFSCME’s pending motion for reconsideration, ECF No. 38, AFSCME and its members suffer ongoing harm absent relief vacating the Mass Termination Decision. Moreover, Defendants do not agree that the performance period of any grants not covered by the PI Order should be extended should the Court rule in favor of Plaintiffs on the merits.

Plaintiffs therefore need a decision on the merits in this case as soon as possible, so that in the event that Plaintiffs ultimately prevail as to those grants that are not covered by the PI Order, they have sufficient time and ability to take advantage of relief in this case and to mitigate further harm. Procurement processes, staffing, and submission for reimbursement all take time. Given this context, Plaintiffs propose the following briefing schedule:

- Deadline for Defendants to respond to AFSCME's Partial Motion for Reconsideration, filed July 15, 2025: July 29, 2025 (14 days)
- Deadline for AFSCME to reply ISO Motion for Reconsideration: August 5, 2025 (7 days)
- Deadline for Defendants to produce the administrative record: August 7, 2025
- Deadline for parties to file cross motions for summary judgment/Defendants to file motion to dismiss: August 21, 2025
- Deadline for parties to respond to cross motions for summary judgment/motion to dismiss: September 4, 2025 (14 days)
- Deadline for parties to file replies in support of cross motions for summary judgment/motion to dismiss: September 11, 2025 (7 days)
- Plaintiffs further respectfully request that the Court hold a hearing on the parties' cross motions for summary judgment and Defendants' motion to dismiss by October 9, 2025 and issue a decision by October 23, 2025 to provide the parties clarity and allow for resolution of the case before the expiration of Plaintiffs' grant performance periods for grants not covered by the Preliminary Injunction Order.

Plaintiffs believe this schedule is reasonable and feasible, particularly given the history of this case: the parties have already briefed the majority of the legal issues involved, the Court has held a lengthy oral argument, and this case has been pending for more than two months. As such, Plaintiffs have proposed cross-motions on the standard briefing schedule under Local Rule 7 (14 days to respond, 7 days to reply).

Defendants' proposed schedule, which calls for staggered briefing instead of simultaneous briefing and envisions that briefing will be completed only by mid-November, is inefficient,

unnecessary, and will make a decision on the merits by the end of the year unlikely. Moreover, Defendants seek more time than is necessary to respond to Plaintiff AFSCME's limited motion to reconsider. Given the circumscribed nature of that motion, Plaintiffs' position is that the standard briefing schedule under Local Rule 7 should apply.

Defendants' Position

Plaintiffs' proposal to use simultaneous briefing on dispositive motions would be ineffective and inefficient. Rather than focusing the issues, Plaintiffs' proposal would result in the parties 'speaking past' each other in large part, for each of the three contemplated rounds of briefing, and would entail the Court's review of six separate briefs. By contrast, Defendants' proposal to use staggered briefing will enable the Court to conserve resources, and to consider four focused briefs that each address the other side's arguments.

Plaintiffs' proposal is also essentially a 'second bite' at a preliminary injunction (or a third if you consider their Motion for Partial Reconsideration). Plaintiffs claim they need a decision on the parties' dispositive motions about 60 days after the filing of the opening brief on October 23 (as proposed by plaintiffs), "because the Court declined to extend the preliminary injunction to any of Local Government Plaintiffs' grants issued under the American Rescue Plan Act or the Paycheck Protection Act." But the Court denied their motion for preliminary injunction in part precisely because Plaintiffs had not met the standard for preliminary relief. Plaintiffs are not entitled to a second expedited briefing schedule where the Court already determined that they did not need preliminary injunctive relief (in part) while the case was litigated on a standard schedule. Moreover, notably, although asserting the need for a decision as soon as possible because of ongoing irreparable harm, AFSCME waited until the last day of the 28-day period to file its Motion

for Partial Reconsideration (Doc. 39) (July 15)—when it could have filed that any time earlier. (*See* Fed. R. Civ. Proc. 59(e)).

Defendants’ proposal moves the litigation along expeditiously, while also taking into account the complexity of this case, as well as Defendants’ counsels other litigation deadlines. The Court’s 42-page Memorandum Opinion (Doc. 33) reflects the complexity (and number) of issues, and adequate time should be allowed to properly research and prepare comprehensive briefs. Plaintiffs’ six count complaint asserts constitutional, Administrative Procedure Act (APA), and *ultra vires* claims, which implicate the Tucker Act, Article III standing, and appropriations and contract law, to name just a few legal issues. And Plaintiffs seek a broad nationwide permanent injunction, based on the theory that AFSCME has members all over the country who are allegedly affected by the grant terminations. The briefing also will address issues and claims which the Court declined to address at the preliminary injunction stage. *See, e.g., id.* at 32 (explaining that “[t]he Court declines at this time to address plaintiffs’ contrary-to-statute and contrary-to-regulation claims under the APA,” where “[u]ntangling the competing strands of jurisdictional case law now . . . would . . . not be an efficient use of jurisdictional resources”).

Plaintiffs assert that they need a decision on the merits in this case as soon possible, in part because “Defendants do not agree that the performance period of any grants not covered by the PI Order should be extended should the Court rule in favor of Plaintiffs on the merits.” Defendants do not agree on extension of those performance periods, on account of the passing of the natural expiration date of those awards, because, among other reasons, Plaintiffs’ complaint (and preliminary injunction motion) never requested this relief. The awards have stated periods of

performance, and naturally expire at different times through calendar years 2025, 2026, and 2027¹, yet in filing this lawsuit, Plaintiffs never sought an extension of those expiration dates as relief. Rather, Plaintiffs asked the Court only to reinstate those awards. *See, e.g.* Compl., at p. 53 (Prayer for Relief), para. D (“Enjoin Defendants to reinstate Plaintiffs grants for the award project period”); *see also* Preliminary Injunction Motion (Dkt. 14-1), pp. 41-42. Plaintiffs also have not demonstrated that the Court would have the power to direct that relief in any event.

Finally, Defendants clarify that the expiration dates which Plaintiffs specifically reference in their statement (December 31, 2025, and July 31, 2026) are the expiration dates of *subawards*, which the Ohio Department of State Health issued to Columbus, and the Texas Department of State Health Services issued to Harris County, respectively. CDC is not a party to those awards. CDC sets the period of performance (expiration date) in the grants it issues to the states, but does not control the expiration date in any subawards (which the state may issue to a local government).

For the reasons given above, Defendants propose the following schedule:²

- Defendants’ deadline to respond to AFSCME’s Motion for Partial Reconsideration (filed July 15, 2025): Tuesday, August 5, 2025 (LCivR 7(b), plus seven days)
- Defendants’ deadline to produce the Administrative Record: Wednesday, August 13, 2025
- Plaintiffs’ deadline to file opening Motion for Summary Judgment: Wednesday, August 27, 2025

¹ For example, two of the direct awards at issue—one to Harris County and one to Nashville—have expiration dates of August 30, 2025.

² Defendants reserve the right to seek to stay or modify the dispositive motions schedule should either party appeal this Court’s order granting a preliminary injunction or the Court’s forthcoming order on AFSCME’s Motion for Partial Reconsideration.

- Defendants’ deadline to file combined Motion to Dismiss and Motion for Summary Judgment, and Opposition to Plaintiffs’ Motion for Summary Judgment: Tuesday, September 30, 2025
- Plaintiffs’ deadline to file combined Reply in support of their Motion for Summary Judgment, and Opposition to Defendants’ Motion to Dismiss and Motion for Summary Judgment: Tuesday, October 21, 2025
- Defendants’ deadline to file Reply in support of their combined Motion to Dismiss and Motion for Summary Judgment: Friday, November 14, 2025

Finally, regarding the last two dates in Plaintiffs’ proposed schedule—the date for a hearing on the dispositive motions, and a date for the Court’s issuance of a decision on those motions—Defendants defer to the Court about any hearing and the timing of its decision.

Dated: July 18, 2025

Respectfully submitted,

/s/ Sharanya Mohan

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