

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

TEXAS, WISCONSIN, ALABAMA,  
ARKANSAS, ARIZONA, FLORIDA, GEORGIA,  
INDIANA, KANSAS, LOUISIANA, PAUL  
LePAGE, Governor of Maine, MISSISSIPPI, by  
and through Governor Phil Bryant, MISSOURI,  
NEBRASKA, NORTH DAKOTA, SOUTH  
CAROLINA, SOUTH DAKOTA, TENNESSEE,  
UTAH, and WEST VIRGINIA,

Plaintiffs,

v.

UNITED STATES OF AMERICA, UNITED  
STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, ALEX AZAR, in his  
Official Capacity as SECRETARY OF HEALTH  
AND HUMAN SERVICES, UNITED STATES  
INTERNAL REVENUE SERVICE, and DAVID  
J. KAUTTER, in his Official Capacity as Acting  
COMMISSIONER OF INTERNAL REVENUE,

Defendants.

Civil Action No. 4:18-cv-00167-O

CALIFORNIA, CONNECTICUT, DISTRICT OF  
COLUMBIA, DELAWARE, HAWAII,  
ILLINOIS, KENTUCKY, MASSACHUSETTS,  
MINNESOTA, NEW JERSEY, NEW YORK,  
NORTH CAROLINA, OREGON, RHODE  
ISLAND, VERMONT, VIRGINIA, and  
WASHINGTON,

[Proposed] Intervenors-Defendants.

**REQUEST FOR EXPEDITED RULING ON MOTION TO INTERVENE**

Proposed Intervenors-Defendants, the States of California, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota by and through its Department of Commerce, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia and Washington, respectfully request an expedited ruling on their pending

Motion to Intervene. The Proposed Intervenors-Defendants specifically request that the Court expedite consideration of the Motion to Intervene and issue a ruling by May 15, 2018,<sup>1</sup> in order to permit them an opportunity to respond to the Plaintiff States' Application for Preliminary Injunction at the same time as the federal defendants, pursuant to the Court's April 24, 2018 Order.

### **BACKGROUND**

On February 26, 2018, Plaintiff Texas, represented by the Attorney General of Texas, and joined by Wisconsin, Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Governor of Maine Paul LePage, Mississippi by and through Governor Phil Bryant, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah and West Virginia, filed the instant action seeking a declaration that the Patient Protection and Affordable Care Act (ACA) is unconstitutional, in whole or in part. ECF No. 1.

On April 9, 2018, Proposed Intervenors-Defendants the States of California, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota by and through its Department of Commerce, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia and Washington, filed a Motion to Intervene. ECF No. 15. This motion is amply supported by declarations demonstrating the grave harm that would result if the Plaintiff States were granted their requested relief. *Id.* The Proposed Intervenors-Defendants seek to protect their concrete economic, sovereign, and quasi-sovereign interests in the ACA. These interests include hundreds of billions of dollars to which the States are entitled under the ACA for publicly funded health programs, which ensure the health and well-being of millions of their citizens and which protect state coffers by decreasing state spending on healthcare costs for the uninsured. The Proposed Intervenors-Defendants also have an interest in ensuring that their residents have access to quality, affordable healthcare. In addition, the Proposed Intervenors-Defendants have a strong interest in protecting their existing healthcare infrastructure and the

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<sup>1</sup> In support of this request, the Proposed Intervenors-Defendants are willing to file their Reply Brief by May 7, 2018, one week early, and to forego any hearing on the motion.

orderly operation of their respective state healthcare systems, which would be thrown into disarray if the ACA were ruled unconstitutional. *See generally* Declaration of Henry J. Aaron (Aaron Dec.) ¶¶ 4-41, Appx. 002-058; *see also* Declaration of Frederick Isasi ¶ 16, Appx. 107-108.

A response to the Motion to Intervene is presently due on or before April 30, 2018, and a reply by May 14, 2018. On April 23, 2018, Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief. ECF No. 27. That same day, the current parties to the action filed a Joint Motion for Entry of Briefing Schedule and to Extend Time and Page Limits (ECF No. 26), which the Court granted on April 24, 2018, with some modifications. ECF No. 31. The Court's Order set the following briefing schedule:

1. Plaintiffs' motion for a preliminary injunction shall be filed by April 26, 2018;
2. Defendants' response to Plaintiffs' preliminary injunction motion and response to the amended complaint shall be filed by June 7, 2018;
3. Plaintiffs' reply in support of their motion for a preliminary injunction and opposition to any motion Defendants file in response to the amended complaint shall be filed by July 9, 2018; and
4. Any reply by Defendants in support of any motion filed in response to the amended complaint shall be filed by July 27, 2018.

ECF No. 31, at 1. The Court also granted the parties' request to file 50-page briefs in support of and in opposition to the motion for a preliminary injunction. *Id.*

### **ARGUMENT**

Given the magnitude of the Proposed Intervenors-Defendants' interests in this action and the sweeping consequences if preliminary relief were granted, it is imperative that they be permitted to participate as parties in the preliminary injunction briefing. It is crucial that the Court have before it not just the evidence of the role and impact of the ACA on the 20 Plaintiff

States, but also of its role and impact on the seventeen Intervenor States.<sup>2</sup> The record before the Court would be woefully incomplete if it were to consider the impact of the ACA on less than half the States, without considering its impact on the approximately other half of the Union. In order to fully and fairly adjudicate the issues in this case, the Court should consider the facts and arguments of all impacted States wishing to be heard, all of whom have evidence relevant to the issues at hand. These issues are of nationwide import to all States, not just to the Plaintiff States, and the Proposed Intervenor-Defendants should not be forced to “wait on the sidelines until after a court has already decided enough issues contrary to their interests.” *Blumfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014); *White v. Tex. Am Bank/Galleria, N.A.*, 958 F.2d 80, 84. (5th Cir. 1992).

In addition to creating a complete evidentiary record as parties before to the Court’s preliminary injunction determination, the Proposed Intervenor-Defendants are entitled to party status to establish their right to appeal any preliminary injunction that may be issued by the Court. Without a ruling on the Motion to Intervene—which was filed first—before the Court’s ruling on the Application for Preliminary Injunction, the Proposed Intervenor-Defendants could be denied the right to appeal an adverse ruling that could deprive them of over half a trillion dollars and harm millions of their citizens. That would be profoundly unjust.

Moreover, there is no great urgency here. Plaintiffs’ request for a preliminary injunction is not even ripe because the Tax Cuts and Jobs Act of 2017 does not reduce the individual mandate’s tax penalty to zero until 2019.<sup>3</sup> Even Plaintiffs acknowledge as much. ECF No. 27 at 3. The Court, therefore, lacks both jurisdiction and any reasonable basis to grant preliminary relief at this time and without the benefit of relevant evidence from the Proposed Intervenor-Defendants. On the other hand, it would be massively disruptive to disturb the status quo at this

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<sup>2</sup> As noted in the Motion to Intervene, the District of Columbia shall be included as a “State” for ease of reference.

<sup>3</sup> Section 11081(b) of the Tax Cuts and Jobs Act (H.R. 1) sets the effective date: “The amendments made by this section shall apply to months beginning after December 31, 2018.”

early juncture of the litigation, causing grievous immediate and long-term harm to the Nation's healthcare system (including but not limited to Medicare and Medicaid), to federal and state budgets, and even the stock market. Aaron Dec. at ¶ 42, Appx. 23-24. In light of these concerns, the Court should rule on the Motion to Intervene before the current parties proceed to brief Plaintiffs' Application for Preliminary Injunction.

As a final matter, the existing parties will not be prejudiced by this request. Their oppositions to the Motion to Intervene remain due on April 30, 2018, twenty-one days after the Proposed Intervenor-Defendants filed and served the Motion to Intervene. Moreover, the Proposed Intervenor-Defendants are willing to abide by the preliminary injunction briefing deadlines and page limits established by the Court in its April 24, 2018 Order. No party will be prejudiced if the Court decides the Motion to Intervene by May 15, 2018, and in fact could benefit from getting clarity from the Court on which parties are in the action.

#### **CONCLUSION AND REQUEST FOR RELIEF**

Given the preliminary injunction briefing schedule established by the Court, the Proposed Intervenor-Defendants respectfully request a ruling on their Motion to Intervene with ample time to permit them to submit an opposition to the Application for Preliminary Injunction. They specifically request that the Court expedite consideration of the Motion to Intervene and issue a ruling by May 15, 2018. That would allow the Proposed Intervenor-Defendants adequate time to participate as parties in the briefing on Plaintiffs' request for preliminary injunction. For the Court's convenience, and in order to facilitate an expedited ruling on the Motion to Intervene, the Proposed Intervenor-Defendants are willing to file their Reply Brief by May 7, 2018, one week early, and to forego any hearing on the motion. The Proposed Intervenor-Defendants also stand ready to confer with the Court and with the parties to discuss options for ensuring that the Proposed Intervenor-Defendants obtain a ruling on the Motion to Intervene well in advance of the Application for Preliminary Injunction opposition deadline of June 7, 2018.

Dated: April 27, 2018

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

I hereby certify that on April 27, 2018, I conferred with Austin Nimocks, counsel for the Plaintiff States, concerning the Proposed Intervenor-Defendants' request for an expedited ruling on their Motion to Intervene. During that conference, Mr. Nimocks indicated that Plaintiffs were opposed to the expedited request, but he did confirm they will submit their reply to the Motion to Intervene by April 30, 2018. Also on April 27, 2018, I conferred with Eric B. Beckenhauer, counsel for the Defendants to determine their position on the request for an expedited ruling. Mr. Beckenhauer stated that they take no position on the request for an expedited decision on the motion to intervene.

Dated: April 27, 2018

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***Certificate of Service***

On April 27, 2018, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

**s/ Michelle Schoenhardt**