

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

STATE OF TEXAS; STATE OF WISCONSIN; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; PAUL LEPAGE, Governor of Maine; STATE OF MISSISSIPPI, by and through Governor Phil Bryant; STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF NORTH DAKOTA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF ARKANSAS; NEILL HURLEY; JOHN NANTZ,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; ALEX AZAR, II, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF INTERNAL REVENUE; CHARLES P. RETTIG, in his Official Capacity as Commissioner of Internal Revenue,

Defendants-Appellants,

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

Intervenor Defendants-Appellants.

No. 19-10011

**MOTION FOR A STAY OF THE PROCEEDINGS  
IN LIGHT OF LAPSE OF APPROPRIATIONS**

The federal defendants-appellants hereby move for a stay of proceedings in the above-captioned case.

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The Department of Justice does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

3. Undersigned counsel for the Department of Justice therefore requests a stay of the proceedings in this case until Congress has restored appropriations to the Department.

4. The United States House of Representatives has filed a motion to intervene in this appeal, and responses are currently due January 17, 2019. As the government intends to oppose the intervention motion, the government respectfully requests that the stay of proceedings extend to the intervention motion, and that, as soon as Congress has appropriated funds for the Department, the deadline for any response to the intervention motion be set

ten days from the date on which funds are appropriated. The government also respectfully requests that appellate proceedings otherwise be stayed, and that, in particular, briefing time on the merits not begin to run until Congress has appropriated funds for the Department.

5. On January 8, 2019, the district court in this case stayed briefing on the House of Representatives intervention motion filed in that court. *See* Dkt. No. 232 (Case No. 4:18-cv-00167-O).

6. Plaintiffs-Appellees have no objection to this motion. Intervenor Defendants-Appellants and proposed intervenor U.S. House of Representatives state that they oppose the motion.

Therefore, although we greatly regret any disruption caused to the Court and the other litigants, the Government hereby moves for a stay of the proceedings in this case until Department of Justice attorneys are permitted to resume their usual civil litigation functions.

Respectfully submitted,

JOSEPH H. HUNT

*Assistant Attorney General*

BRETT A. SHUMATE

*Deputy Assistant Attorney General*

s/Martin V. Totaro

MARTIN V. TOTARO

*Attorney, Appellate Staff*

*Civil Division, Room 7513*

*U.S. Department of Justice*

*950 Pennsylvania Avenue, NW*

*Washington, DC 20530*

*(202) 616-5374*

*martin.totaro@usdoj.gov*

JANUARY 2019

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because the motion contains 330 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using Microsoft Word 2016 in a proportionally spaced typeface, 14-point Calisto MT typeface.

s/Martin V. Totaro  
MARTIN V. TOTARO

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 9, 2019, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/Martin V. Totaro  
MARTIN V. TOTARO