

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA *et al.*,

Plaintiffs,

v.

NATIONAL LABOR RELATIONS BOARD
et al.,

Defendants.

Civil Action No. 6:23-cv-553

MOTION FOR EXPEDITED CONSIDERATION

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Civil Rules 7(e)-(g), Plaintiffs respectfully request that the Court expedite its consideration of Plaintiffs’ Motion for Summary Judgment (ECF No. 10) and set a briefing schedule that allows for resolution of dispositive motions before the challenged rule’s effective date of December 26, 2023. Although Plaintiffs propose a schedule below that seeks to be fair to both sides, they stand ready to brief and argue dispositive motions on whatever expedited schedule the Court deems necessary to facilitate a decision before December 26. Plaintiffs have conferred with Defendants but have been unable to reach agreement, and understand that Defendants may propose their own competing schedule.

There is good cause for expedition. The National Labor Relations Board (“NLRB”) published the rule challenged in this suit on October 27, 2023. *See* Standard for Determining Joint Employer Status, 88 Fed. Reg. 73,946, codified at 29 C.F.R. § 103.40 (“Joint Employer Rule” or

“Rule”). Plaintiffs filed their complaint less than two weeks later (November 9) and their summary judgment motion the next business day (November 13) as soon as a judge was assigned. The Rule is set to take effect on December 26, 2023—the earliest effective date allowed under the Congressional Review Act. *See* 5 U.S.C. § 801(a)(3); 88 Fed. Reg. at 74,017 (citing 5 U.S.C. § 804(2)(A)).

As explained in Plaintiffs’ Motion for Summary Judgment and attached declarations, the Joint Employer Rule upends long-established standards governing the scope of employment relationships, and threatens billions of dollars in liability and costs. As Member Kaplan observed in dissent, the Rule’s consequences will be “catastrophic.” 88 Fed. Reg. at 73,987. If the Rule takes effect, Plaintiffs’ member-employers will be forced to reevaluate virtually every contractual relationship to identify potential liabilities. ECF No. 10-12 ¶ 11 (NRF Decl.); ECF No. 10-11 ¶ 20 (NACS Decl.); ECF No. 10-7 ¶ 15 (ABC Decl.). Many will need to change or eliminate their quality-control practices—risking the diminishment of their image and brand reputation. *See* ECF No. 10-5 ¶ 11 (U.S. Chamber Decl.); ECF No. 10-9 ¶¶ 9-11 (IFA Decl.). Some of Plaintiffs’ members “may even decline certain business opportunities out of fear of joint-employer liability, killing opportunities for small businesses and harming the economy.” ECF No. 10-6 ¶ 13 (AHLA Decl.). In fact, given the Rule’s looming ramifications, some members already face “confusion and a dramatic rise in operational and risk management costs.” ECF No. 10-13 ¶ 13 (RLC Decl.). To avoid (or at least limit) these harms, a decision *before* the Rule’s effective date is of the utmost importance.

It is Plaintiffs’ understanding that, on or around November 16, Defendants plan to file a motion to transfer this case to a circuit court of appeals (even though, to Plaintiffs’ knowledge, no circuit court has ever exercised original jurisdiction over a party’s challenge to an NLRB

rulemaking in the history of the NLRA). Although Plaintiffs firmly disagree with that requested relief, and believe the present rule challenge must be adjudicated by this Court, Plaintiffs propose a schedule that would allow for parallel briefing of Defendants' transfer motion concurrently with summary judgment briefing, rather than a staggered briefing schedule that we understand Defendants to prefer. In light of the compressed timeline necessitated by the NLRB's decision to make the Rule effective on December 26, it is essential to have all dispositive motions briefed and considered together to allow for timely resolution.

For these reasons, Plaintiffs respectfully request that the Court issue an order setting forth the following schedule for briefing on (i) Plaintiffs' already-filed summary-judgment motion (with any cross-motion for summary judgment folded into Defendants' proposed response deadline) and (ii) any transfer motion filed by Defendants:

Filing	Plaintiffs' Deadline	Defendants' Deadline
Plaintiffs' Motion for Summary Judgment and Defendants' Motion to Transfer	Monday, November 13	Thursday, November 16
Defendants' Response to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Response to Defendants' Motion to Transfer	Thursday, November 30	Thursday, November 30
Plaintiffs' Reply in support of Summary Judgment and Defendants' Reply in support of Transfer	Thursday, December 7	Thursday, December 7

If this schedule does not allow the Court to render a decision on the merits by the Rule's December 26 effective date, Plaintiffs respectfully ask that the Court order a schedule that does.

Dated: November 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 13, 2023, the foregoing document was electronically submitted with the clerk of the court for the United States District Court, Eastern District of Texas, using the electronic case file system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Pratik A. Shah
Pratik A. Shah

CERTIFICATE OF CONFERENCE

The undersigned certifies that on November 13, 2023, the undersigned complied with the meet and confer requirement in Local Rule CV-7(h). The undersigned—as well as James E. Tysse, James C. Crowley, and Margaret O. Rusconi—participated in a Zoom call with Defendants’ counsel Christine Flack, Dawn Goldstein, Shawnell Barnett, and Elisabeth Campbell. Despite the undersigned’s efforts, the parties could not reach an agreement on the briefing schedule. Plaintiffs were willing to accept any schedule Defendants proposed, so long as the schedule allowed for a December 26 decision and (relatedly) provided for simultaneous briefing of Plaintiffs’ summary-judgment motion and Defendants’ anticipated transfer motion. Defendants maintained that a staggered schedule is necessary so that their transfer motion would be fully briefed first. In the end, the parties reached an impasse, leaving the matter for the court to resolve.

/s/ Pratik A. Shah
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