

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

STATE OF NEVADA, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR,
et al.,

Defendants.

No. 4:16-CV-731-ALM
LEAD

**DEFENDANTS' RESPONSE TO STATE PLAINTIFFS' JOINDER TO BUSINESS
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND REQUEST TO
CONSOLIDATE PRELIMINARY INJUNCTION BRIEFING**

While Defendants have no objection to one set of plaintiffs in this action joining in the summary judgment motion of the other set of plaintiffs and resting on the briefs that they have already filed, for the reasons set out below and in the separate Motion to Stay Proceedings Pending Appeal, Defendants respectfully request that this action be stayed pending appeal.

Two sets of plaintiffs are making claims in this consolidated action: State Plaintiffs and Business Plaintiffs. The State Plaintiffs moved for a preliminary injunction, ECF No. 10, which this Court granted on November 22, 2016. *See* ECF No. 60. Defendants have appealed from that Order, and the United States Court of Appeals for the Fifth Circuit has set that appeal to proceed on an expedited basis at Defendants' request.¹ The Business Plaintiffs have moved for summary judgment, ECF No. 35; their motion is currently *sub judice*. The State Plaintiffs have indicated that

¹ For the Court's information, the Fifth Circuit's order granting expedition is attached as Exhibit A.

they wish to join in the Business Plaintiffs' motion for summary judgment and to have their preliminary injunction papers treated as supporting the summary judgment motion.

Defendants have filed a motion to stay proceedings pending the Fifth Circuit's decision on their expedited appeal. *See* ECF No. 68. For the reasons stated in Defendants' stay motion, all proceedings in these consolidated cases should be stayed pending a decision by the Fifth Circuit.

Dated: December 12, 2016

Respectfully Submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

BRIT FEATHERSTON
Acting United States Attorney

JUDRY SUBAR
Assistant Branch Director

/s/ Julie Saltman

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2016, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Julie Saltman

JULIE SALTMAN

EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-41606

STATE OF NEVADA; STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF NEBRASKA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF UTAH; STATE OF WISCONSIN; COMMONWEALTH OF KENTUCKY, by and through Governor Matthew G. Bevin; TERRY E. BRANSTAD, Governor of the State of Iowa; PAUL LEPAGE, Governor of the State of Maine; SUSANA MARTINEZ, Governor of the State of New Mexico; PHIL BRYANT, Governor of the State of Mississippi; ATTORNEY GENERAL BILL SCHUETTE, on behalf of the people of Michigan,

Plaintiffs - Appellees

v.

UNITED STATES DEPARTMENT OF LABOR; THOMAS E. PEREZ, SECRETARY, DEPARTMENT OF LABOR, In his official capacity as United States Secretary of Labor; WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR; MARY ZIEGLER, in her official capacity as Assistant Administrator for Policy of the Wage and Hour Division; DOCTOR DAVID WEIL, in his official capacity as Administrator of the Wage and Hour Division,

Defendants - Appellants

Appeal from the United States District Court for the
Eastern District of Texas, Sherman

O R D E R :

IT IS ORDERED that Appellants' opposed motion to expedite the appeal is GRANTED AS MODIFIED:

- Appellants' opening brief and record excerpts are due on or before December 16, 2016.
- Amicus briefs in support of Appellants are due on or before December 23, 2016.
- Appellees' response brief and record excerpts are due on or before January 17, 2017.
- Amicus briefs in support of Appellees are due on or before January 24, 2017.
- Appellants' reply brief is due on or before January 31, 2017.
- Oral argument will be scheduled by the Clerk of the Court for the first available sitting after the close of briefing.

IT IS FURTHER ORDERED that Appellants' motion for an expedited ruling on the instant motion is GRANTED.

/s/Jennifer Walker Elrod
JENNIFER WALKER ELROD
UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT
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STATE OF NEVADA, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR,
et al.,

Defendants.

No. 4:16-CV-731-ALM

**ORDER GRANTING STATE PLAINTIFFS' JOINDER TO BUSINESS PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT AND REQUEST TO CONSOLIDATE
PRELIMINARY INJUNCTION BRIEFING**

The Court grants the State Plaintiffs' Joinder to the Business Plaintiffs' Motion for Summary Judgment and will consider the State Plaintiffs' preliminary injunction papers as the State Plaintiffs' briefs in support of summary judgment. Because the Court is also granting Defendants' Motion to Stay Proceedings Pending Appeal, Defendants need not file any response to any Complaint in this action until after Defendants' appeal from this Court's order of November 22, 2016, is resolved, and until after a schedule for further proceedings is set.