

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case No. 11-11021-HH

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants/Appellants/Cross-Appellees,

v.

STATE OF FLORIDA, by and through
Attorney General Pam Bondi, et al.,
Plaintiffs/Appellees/Cross-Appellants.

Appeal from the United States District Court
for the Northern District of Florida

Response to Appellants' Motion for Expedited Appeal

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rule 26.1-1, counsel for the Plaintiff/Appellee States certify that the certificate supplied with the Appellants' Motion for Expedition, served March 8, 2011, appears complete with the following additions:

Counsel for the Plaintiffs:

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Marshall, C. Kevin
Mooppan, Hashim M.
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Amici Curiae:

Rendell, Edward, former Governor
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/s/ Scott D. Makar
Plaintiffs/Appellees' Attorney

RESPONSE

This appeal is one of several pending and expedited appeals nationwide involving the constitutionality of the Patient Protection and Affordable Care Act (Act). It is unprecedented in its scope, scale, and importance, involving over half the States and a massive piece of federal legislation, which imposes immense and unparalleled fiscal obligations on the States. Its impact and future effects on the federal-state relations are extraordinary.

The trial court declared the Act's individual mandate unconstitutional and ruled it was not severable; the court subsequently stayed its order pending appeal on the condition that Defendants file a notice of appeal and seek expedited review in this Court. Defendants have now filed their notice and a motion for expedition that does *not* expedite the briefing schedule and only requests "oral argument to follow on an expedited basis as determined" by this Court. Motion at 2.

Plaintiffs agree with Defendants' request for expedited appellate review, but it is respectfully noted that their proposed briefing schedule is identical to the ordinary, non-expedited briefing periods set forth in Rule 31, Federal Rules of Appellate Procedure. Indeed, this Court's scheduling order states that Defendants' initial brief is due on April 18, 2011 – the same date suggested in the Defendants' motion.

For this reason, Plaintiffs respectfully request that a different approach to expedite and resolve this case is in order. Specifically, Plaintiffs request: (a) an expedited briefing schedule; and (b) hearing en banc for this Court's sitting set for the week of June 6, 2011. To effectuate their request, Plaintiffs have simultaneously filed a petition for en banc review in this appeal seeking that the following briefing schedule be adopted in conjunction with this en banc sitting of the Court:

Defendants' Initial Brief April 18th

Plaintiffs' Answer/Initial Brief on Cross-Appeal May 9th

Defendants' Reply/Answer Brief on Cross-Appeal May 23rd

Plaintiffs request adoption of this schedule,¹ which is slightly accelerated by allowing approximately five weeks for the filing of Defendants' initial brief, three weeks thereafter for Plaintiffs' answer/initial brief on the cross-appeal, and two weeks for Defendants' reply/answer brief to the cross-appeal.

Given the substantial briefing that already exists in the trial record of this case, and that the federal government is currently briefing or has already briefed

¹ This expedited three-brief schedule is premised on convenience to the Court and the Plaintiffs' fully addressing cross-appeal matters in their May 9th brief. If the Court allows, and time permits, it is suggested that the State Plaintiffs be afforded a reply brief on their cross-appeal on May 30th, which will be one week prior to the June 6th en banc sitting.

the central issues in this appeal in other cases, this proposed briefing schedule should not pose a substantial hardship to any party.² In addition, the proposed schedule provides this Court with the opportunity to consider review of this case during its en banc proceedings scheduled for the week of June 6, 2011, which is important in light of the need for thorough but expeditious resolution of the exceptionally important constitutional questions presented.

As indicated, Plaintiffs have simultaneously filed their petition requesting that the Court hear this case en banc at its June 2011 sitting in Atlanta pursuant to the same proposed briefing schedule above. If this Court does not agree to hear this case en banc at its June 2011 sitting, Plaintiffs respectfully request a briefing and oral argument schedule that will result in expeditious resolution of the appeal. In either case, the Plaintiffs respectfully request sufficiently expedited review and resolution so that the United States Supreme Court has the opportunity for review in its 2011 Term of the decision in this appeal along with those in other pending appeals involving related issues regarding the constitutionality of the Act.

² The trial court noted that it “should not be at all difficult or challenging to ‘fast-track’ this case. The briefing with respect to the general issues involved are mostly already done, as the federal government is currently defending several other similar challenges to the Act that are making their way through the appellate courts. Furthermore, the legal issues specific to this case have already been fully and very competently briefed. With a few additional modifications and edits (to comply with the appellate rules), the parties could probably just change the caption of the case, add colored covers, and be done with their briefing.” [Doc. 167 at 19]

WHEREFORE, Plaintiffs respectfully request that the Court establish the expedited briefing schedule set forth above in conjunction with the Plaintiffs' pending petition for en banc hearing during the week of June 6, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2011, I filed the foregoing Response with the Court by federal express/overnight delivery and served copies on the following counsel by first class regular mail and email at the addresses provided below:

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