

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES HOUSE OF REPRESENTATIVES,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:14-cv-01967-RMC
	)	
<b>SYLVIA MATHEWS BURWELL</b> , in her official	)	
capacity as Secretary of Health and Human Services, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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**DEFENDANTS’ RESPONSE TO THIS COURT’S ORDER WITH  
RESPECT TO THE FILING OF A JOINT PROPOSED BRIEFING SCHEDULE**

This Court has directed the parties to file a proposed briefing schedule for dispositive motions in this action. The defendants have filed a motion (ECF No. 45), which is pending, that requests that the deadline for this filing be deferred until the disposition of the defendants’ motion to certify this Court’s September 9, 2015 Order for interlocutory appeal and, if the Order is certified, final resolution of the interlocutory appeal (ECF No. 44).

For the reasons stated in the defendants’ request for certification, this Court should certify its Order for interlocutory appeal, in order to permit the D.C. Circuit to determine whether this suit could be brought consistent with Article III and separation-of-powers principles, before this case proceeds to the merits. And for the reasons stated in the defendants’ request to defer the filing of a proposed briefing schedule, it would be appropriate for this Court to defer that filing until after the disposition of the defendants’ request for certification and the resolution of the interlocutory appeal.

If this case were to proceed to the merits, however, the defendants respectfully suggest that the plaintiff’s proposed briefing schedule, which calls for the parties’ simultaneous

submission of opening, opposing, and reply briefs, would not be conducive to the Court's or the parties' informed consideration of the issues that would arise in dispositive briefing. A four-brief schedule – *i.e.*, a schedule that calls for the plaintiff to file a dispositive motion, the defendants to file a cross-motion and opposition, the plaintiff to reply, and the defendants to reply – would permit a more informed exchange.

Accordingly, if this case were to proceed to the merits, the defendants would propose the following schedule:

1. The defendants' answer would be due to be filed 14 days after the disposition of defendants' pending motion for certification of this Court's Order for interlocutory appeal and, if the Order is certified, final resolution of the interlocutory appeal.

2. The plaintiff's dispositive motion would be due to be filed 30 days after the defendants' answer is due to be filed.

3. The defendants' dispositive motion, and opposition to the plaintiff's dispositive motion, would be due to be filed 30 days after the plaintiff's dispositive motion is due to be filed.

4. The plaintiff's reply in support of its dispositive motion, and opposition to the defendants' dispositive motion, would be due to be filed 30 days after the defendants' dispositive motion is due to be filed.

5. The defendants' reply in support of their dispositive motion would be due to be filed 15 days after the plaintiff's reply is due to be filed.

At all events, the defendants respectfully request that the Court defer setting a briefing schedule until after the disposition of defendants' pending motion for certification of this Court's

Order for interlocutory appeal and, if the Order is certified, final resolution of the interlocutory appeal.

Dated: September 23, 2015

Respectfully submitted,

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          /s/ Joel McElvain            
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