

**In the United States Court of Appeals
for the Fifth Circuit**

STATE OF TEXAS, ET AL.,
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, ET AL.,
Defendants-Appellants.

On Appeal from the Northern District of Texas, Wichita Falls Division

**PLAINTIFFS-APPELLEES' MOTION FOR EXTENSION OF
TIME TO FILE APPELLEES' BRIEF**

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

Office of the Attorney General
209 W. 14th Street, 7th Floor
Austin, Texas 78701
Tel.: (512) 936-1700
Fax: (512) 474-2697

SCOTT A. KELLER
Solicitor General
scott.keller@oag.texas.gov

JOSEPH D. HUGHES
Assistant Solicitor General
jody.hughes@oag.texas.gov

Counsel for Plaintiffs-Appellees

In accordance with Federal Rule of Appellate Procedure 27 and Fifth Circuit Rules 27.4 and 31.4, Plaintiffs-Appellees the State of Texas et al. (“Plaintiffs”) hereby move for a 30-day extension of time to file their appellees’ brief.

1. As confirmed by the Clerk’s Office, Plaintiffs’ appellees’ brief is currently due February 6, 2017.¹ Plaintiffs seek a 30-day extension of time, until March 8, 2017, to file their appellees’ brief. This is Plaintiffs’ first request for an extension of time in this appeal.

2. Plaintiffs’ counsel conferred with Jeffrey Sandberg, counsel for Defendants, who stated that Defendants are unopposed to a 30-day extension of time. Plaintiffs’ counsel also conferred with Ezra Young, counsel for Dr. Tudor, who stated that Dr. Tudor will oppose the requested extension.²

3. The requested extension is necessary because Plaintiffs’ counsel has numerous other appellate deadlines falling on or close to the existing February 6 briefing deadline:

- *Sterling v. United States*, U.S. Supreme Court No. 16-814 (certiorari-stage amicus curiae brief due January 27, 2017);

1. Movant-Appellant Dr. Rachel Tudor filed her opening brief on January 3, 2017, and Defendants-Appellants the United States et al. (“Defendants”) filed their brief on January 6. The Clerk’s Office confirmed that, when two appellants’ briefs are filed, the deadline for a single appellee’s brief addressing both appellants’ briefs is 30 days after the filing date of the later-filed appellant’s brief. Here, because the thirtieth day after January 6 is Sunday, February 5, the deadline is Monday, February 6. *See* Fed. R. App. P. 26(a)(1)(C).

2. Because Dr. Tudor has not been permitted to intervene in the district court and has not challenged in this Court the district court’s failure to rule on her intervention motion, Plaintiffs do not believe that she is a party for purposes of Fifth Circuit Rule 27.4. Plaintiffs have conferred with her counsel in an abundance of caution to ensure compliance with Rule 27.4.

- *Young v. Davis*, U.S. Supreme Court No. 16-7032 (brief in opposition to certiorari in a capital case due January 30, 2017);
- *TC Heartland, LLC v. Kraft Food Group Brands LLC*, U.S. Supreme Court No. 16-341 (merits-stage amicus curiae brief due February 6, 2017);
- *King Street Patriots v. Texas Democratic Party*, Texas Supreme Court No. 15-0320 (oral argument on February 7, 2017); and
- *Ayestas v. Davis*, U.S. Supreme Court No. 16-6795 (brief in opposition to certiorari in a capital case due February 8, 2017).

In addition to those deadlines, the Court notified the parties yesterday that oral argument on Defendants' Motion for Partial Stay Pending Appeal will be heard on February 14, 2017. The requested extension will give Plaintiffs' counsel much-needed time to meet these deadlines and will not materially delay the resolution of this appeal.

4. The extension of time is sought in the interest of justice, not for delay, and no party will be prejudiced if the requested extension is granted.

5. For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for a 30-day extension of time to file their Appellees' brief, up to and including March 8, 2017. In the alternative, Plaintiffs request that the Court grant a shorter extension of time.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

/s/ Scott A. Keller
SCOTT A. KELLER
Solicitor General

JOSEPH D. HUGHES
Assistant Solicitor General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

Counsel for Plaintiffs-Appellees

January 26, 2017

CERTIFICATE OF CONFERENCE

On January 25-26, 2017, Plaintiffs' counsel conferred via email with Jeffrey Sandberg, counsel for Defendants-Appellants; and with Ezra Young, counsel for Movant-Appellant Dr. Rachel Tudor. Mr. Sandberg stated that Defendants-Appellants are unopposed to the requested extension of time. Mr. Young stated that Dr. Tudor opposes the requested extension.

/s/ Scott A. Keller
SCOTT A. KELLER

January 26, 2017

CERTIFICATE OF SERVICE

I certify that on January 26, 2017, this motion was (1) served via the Court's CM/ECF Document Filing System, <https://ecf.ca5.uscourts.gov>, upon all registered CM/ECF users; and (2) transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the Court's CM/ECF Document Filing System, <https://ecf.ca5.uscourts.gov>. I further certify that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Scott A. Keller
SCOTT A. KELLER

January 26, 2017

CERTIFICATE OF COMPLIANCE

This motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts exempted by Fed. R. App. P. 32(f), it contains 524 words. This motion complies with the requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface (Equity Text A and Equity Caps A) using Microsoft Word 2010.

/s/ Scott A. Keller
SCOTT A. KELLER

January 26, 2017