

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONAL FEDERATION OF INDEPENDENT
BUSINESS; TEXAS ASSOCIATION OF
BUSINESS; LUBBOCK CHAMBER OF
COMMERCE; NATIONAL ASSOCIATION
OF HOME BUILDERS; TEXAS ASSOCIATION
OF BUILDERS,

Plaintiffs-Appellees,

v.

EDWARD C. HUGLER, ACTING SECRETARY,
U.S. DEPARTMENT OF LABOR;¹ ANDREW
D. AUERBACH, Director, U.S. Department of
Labor;² UNITED STATES DEPARTMENT OF
LABOR,

Defendants-Appellants.

No. 17-10328

UNOPPOSED MOTION FOR EXTENSION OF TIME

¹ R. Alexander Acosta has been automatically substituted for Edward C. Hugler pursuant to Federal Rule of Appellate Procedure 43(c)(2).

² Mr. Auerbach's official title is "Acting Director, Office of Labor Management Standards, Department of Labor."

UNOPPOSED MOTION FOR EXTENSION OF TIME

The government respectfully requests a 30-day extension of time, to and including June 21, 2017, to file its opening brief. Counsel for plaintiffs have authorized us to represent that this motion is unopposed.

1. The district court in this case awarded attorney's fees to plaintiffs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. The fee order arises from litigation challenging a final rule that the Department of Labor promulgated on March 24, 2016. *See* Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 81 Fed. Reg. 15,924 (Mar. 24, 2016). The rule interpreted provisions of the Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519, that require employers and labor relations consultants to disclose certain information about their relationships. On June 27, 2016, the district court entered a preliminary injunction against implementation of the rule. The government filed a notice of appeal, but while the appeal was pending, the district granted summary judgment to plaintiffs (and to a group of states that had intervened in support of plaintiffs), and then entered final judgment, stating that the Department of Labor's final rule "is held unlawful and set

aside” and that the government is “permanently enjoined on a national basis from implementing any and all aspects of” the rule. This Court then dismissed the preliminary-injunction appeal as moot. *See Nat’l Fed’n of Indep. Bus. v. Perez*, No. 16-11315 (5th Cir. Dec. 19, 2016). The government filed a notice of appeal from the permanent injunction and final judgment,³ and then filed a separate notice of appeal from the district court’s subsequent order awarding plaintiffs \$331,656.66 in fees and costs.

2. The government’s opening brief is currently due on May 22, 2017. The government has not previously sought an extension of this time limit.

3. We respectfully request a 30-day extension of time, to and including June 21, 2017, to file the government’s opening brief in this case. The extension is necessary because the Acting Solicitor General, the Civil Division of the Department of Justice, and new leadership at the Department of Labor are engaged in ongoing consultations regarding this litigation. The government requires additional time to complete those

³ *See Nat’l Fed’n of Indep. Bus. v. Acosta*, No. 17-10054 (5th Cir.). The government’s opening brief in the merits appeal is currently due on May 17, 2017, but the government has sought a 30-day extension of that deadline.

consultations. Counsel for plaintiffs have authorized us to represent that this motion is unopposed.

Respectfully submitted,

MICHAEL S. RAAB

s/ Daniel Tenny

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MAY 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume requirements of Rule 27(d)(2)(A). This motion contains 430 words.

s/ Daniel Tenny

Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny

Daniel Tenny