

December 5, 2020

Via CM/ECF

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *Alex M. Azar, II, Secretary of Health and Human Services, et al. v. Mayor and City Council of Baltimore*, S.Ct. No. 20-454

Dear Mr. Harris:

The petition for a writ of certiorari in the above-captioned case was filed on October 7, 2020, and placed on the docket on October 8, 2020. The Mayor and City Council of Baltimore's response was originally due on November 9, 2020. At the City's request, the Court extended the deadline to respond to December 9, 2020. The City now respectfully requests that the Court further extend the time for the City to respond by 58 days, to February 5, 2021. The City discussed this motion with counsel for the petitioners and petitioners oppose this request and intend to file a response. If the Court concludes a longer extension of time is unwarranted, the City respectfully requests, in the alternative, a shorter extension of time to file its response, to December 17, 2020.

The Court should extend the time for the City to respond to the petition because insurmountable barriers to this Court's review of the decision below will almost certainly arise in late January. Two days after his inauguration in 1993, President Clinton ordered HHS immediately to rescind a rule materially similar to the rule at issue in this case. Mem., *The Title X "Gag Rule,"* 58 Fed. Reg. 7455 (Jan. 22, 1993). In response, HHS rescinded that earlier rule, with immediate effect, sixteen days after the President's inauguration, on February 5, 1993. 58 Fed. Reg. 7462 (Feb. 5, 1993). The President-elect has said many times that he intends to do as President Clinton did and "reverse" the rule at the center of this case after his inauguration on January 20, 2021. See *The Biden Agenda for Women*, <https://archive.is/TP18M>; see also Joe Biden, *Tweet of Aug. 19, 2019*, <https://archive.is/WA5aj> (the rule is "wrong, and as president I will reverse it"). A short extension of time would benefit the Court by permitting the City the opportunity to discuss the consequences of those actions for this Court's review in its response to the petition.

A short extension also will not prejudice the petitioners. The permanent injunction in this case has been in place for nearly ten months (since February 14, 2020). Petitioners did not seek a stay of that permanent injunction in this Court. Petitioners have continued to administer the program effectively notwithstanding the permanent injunction which is narrow, limited to Maryland. Furthermore, the very probability that this case will become unreviewable in late January means a short extension of time would not prejudice the petitioners because this case is unlikely to reach the merits in this Court this Term whether the Court grants an extension or not.

Additionally, counsel for the City's competing obligations make the current December 9, 2020 response deadline difficult to meet. Complications arising out of the COVID-19 pandemic continue to interfere with counsel's ability to prepare a response to the petition. And the heavy press of other obligations, including deadlines in other matters pending in this Court and in courts of appeals nationwide, have hindered the preparation of a response in this case.

The City appreciates petitioners' aim to have this case heard this Term. But this case almost certainly will not reach the merits in this Court and any response the City files is likely to be overtaken by events. In light of that overwhelming likelihood, the Court should grant a short extension that may obviate any need for the City to respond at all.

If this Court denies the City's request for a longer extension, the City requests, in the alternative, that the Court at least grant a short extension of time to respond to the petition to December 17, 2020.

Respectfully Submitted,

By /s/ Andrew Tutt
Andrew T. Tutt

cc: See Attached Service List

20-0454

ALEX M. AZAR, SEC. OF HEALTH & HUMAN SERVICES, ET AL.
MAYOR AND CITY COUNCIL OF BALTIMORE

JEFFREY B. WALL
ACTING SOLICITOR GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20530-0001
202-514-2217
SUPREMECTBRIEFS@USDOJ.GOV

HASHIM M. MOOPAN
COUNSELOR TO THE SOLICITOR GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20530-0001
HASHIM.MOOPAN@USDOJ.GOV

BRINTON LUCAS
ASSISTANT TO THE SOLICITOR GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20530-0001
BRINTON.LUCAS@USDOJ.GOV