

MOTION INFORMATION STATEMENT

Docket Number(s): 20-3806(L); 20-3815(CON) Caption [use short title] _____

Motion for: Six-month abeyance of appeal State of New York v. Walsh, et al.
and extension of briefing deadlines.

Set forth below precise, complete statement of relief sought:
As set forth in the appended memorandum, the motion seeks a six-month
abeyance of this appeal and corresponding six-month extensions of the
plaintiffs-appellees' opposition brief, due on Apr. 15, 2021, and
defendants-appellants' reply brief, due on May 7, 2021, to allow the
Department of Labor to complete the rule-making process regarding its
proposal to rescind the joint employer rule, which is the subject of this appeal.

MOVING PARTY: U.S. Department of Labor, et al. OPPOSING PARTY: International Franchise Ass'n, et al.
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Natasha Waglow Teleanu OPPOSING ATTORNEY: Maurice Baskin
[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: U.S. District Court for the Southern District of New York (Woods, D.J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: /s/ Natasha W. Teleanu Date: March 31, 2021 Service by: CM/ECF Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, et al.,

Plaintiffs-Appellees,

v.

MARTIN J. WALSH, SECRETARY OF THE
UNITED STATES DEPARTMENT OF LABOR,
et al.,*

Defendants-Appellants,

INTERNATIONAL FRANCHISE
ASSOCIATION, et al.,

Intervenor Defendants-
Appellants.

No. 20-3806(L)
No. 20-3815(CON)

**MEMORANDUM IN SUPPORT OF MOTION TO
HOLD APPEAL IN ABEYANCE**

This memorandum is respectfully submitted in support of defendants-appellants' (the "government's") motion to grant a six-month abeyance of this appeal and corresponding extensions of time for plaintiffs-appellees to file their opposition brief, to October 18, 2021, and for the government and intervenor defendants-appellants to file their reply briefs, to November 8, 2021.

* In accordance with Fed. R. App. P. 43(c), Secretary of Labor Martin Walsh is automatically substituted for his predecessor.

This appeal involves an Administrative Procedure Act (“APA”) challenge to the Department of Labor’s interpretative rule regarding joint employers (the “Joint Employer Rule”), which sets forth a non-exclusive four-factor balancing test for scenarios when an employer employs an employee for one set of hours in a work week and that work simultaneously benefits another person. 29 C.F.R. Part 791. Sixteen states and the District of Columbia (“the states”) challenged the Joint Employer Rule. The issues before this Court concern whether the states have standing to challenge the Joint Employer Rule, whether the Rule is contrary to the Fair Labor Standards Act (“FLSA”), and whether the Rule is arbitrary and capricious in violation of § 706(2)(A) of the APA.

The district court (Woods, D.J.) denied the government’s motion to dismiss for lack of standing, held that the Joint Employer Rule conflicted with the FLSA and was arbitrary and capricious, and vacated portions of the Rule.

The government appealed, and on January 15, 2021, filed its opening brief and appendixes. Intervenor defendants-appellants filed their opening brief the same day. The Court then set the deadline for plaintiffs-appellees’ opposition brief as April 16, 2021. Under Local Rule 31.2, defendants’ reply brief would be due on May 7, 2021.

On March 12, 2021, the Department published in the Federal Register a notice of proposed rulemaking and request for comments pertaining to the Joint Employer

Rule. 86 Fed. Reg. 14,038 (Mar. 12, 2021). The notice of proposed rulemaking proposes to rescind the Joint Employer Rule and provides for the submission of written comments on or before April 12, 2021. *Id.* The Department proposes to rescind the Joint Employer Rule “to allow it to engage in further legal analysis[] in order to ensure that lawful and clear guidance is being provided to the regulated community.” *Id.* at 14,042. The notice explains that “[i]f the Joint Employer Rule is rescinded, . . . Part 791 of Title 29 of the Code of Federal Regulations would be removed in its entirety and reserved.” *Id.* at 14,046.

Following receipt of comments, the Department will need additional time to review the comments, analyze whether to adopt the proposed rulemaking, and finalize any determination. For these reasons, the government requests that the Court hold this case in abeyance for six months and grant six-month extensions of time for the plaintiffs-appellees to file their opening brief, until October 18, 2021, and for defendants-appellees and intervenor defendants-appellees to file their reply briefs until November 8, 2021.

Plaintiffs-appellees have consented to this request. Intervenor defendants-appellees do not consent to this request.

Dated: March 31, 2021
New York, New York

Respectfully submitted,

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: /s/ *Natasha W. Teleanu*
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the above-named counsel hereby certifies that this memorandum complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare it, this memorandum contains 479 words.