

**No. 17-51063**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA;  
TEXAS ASSOCIATION OF BUSINESS,

*Plaintiffs-Appellees,*

v.

INTERNAL REVENUE SERVICE;  
UNITED STATES DEPARTMENT OF TREASURY;  
DAVID J. KAUTTER, in his official capacity as  
Acting Commissioner of Internal Revenue;  
STEVEN T. MNUCHIN, in his official capacity as  
United States Secretary of the Treasury,

*Defendants-Appellants.*

---

**APPELLEES' UNOPPOSED MOTION FOR A 60-DAY  
EXTENSION OF TIME TO FILE THE RESPONSE BRIEF**

---

Appellees (collectively, “the Chamber”) move for a 60-day extension of time in which to file their response brief. The brief is currently due May 31, 2018, and the Chamber requests an extension to July 30, 2018. The Government has informed counsel for the Chamber that it consents to this extension.

A 60-day extension is necessary and supported by “more than ordinary good cause.” Fifth Cir. R. 31.4.3.2. The Department of Treasury has notified the public

that it intends to issue a final rule in June that will supersede the temporary rule at issue in this appeal. An extension will facilitate the parties' efforts to determine whether the final rule will cause the Government to dismiss its appeal or will otherwise affect the presentation of the issues.

At issue in this appeal is a "temporary rule" issued by the Department of Treasury in 2016. 81 Fed. Reg. 20,865. The district court vacated the rule because Treasury failed to comply with the rulemaking requirements of the Administrative Procedure Act. ROA.4923. The Government appealed, but it has also been working on a final rule to supersede the temporary rule. *See* Govt.'s Mot., Doc. 514380489 (March 9, 2018). Days ago, on May 11, 2018, Treasury issued a public notice that it intends to publish its final rule in June.<sup>1</sup> Counsel for the Government confirmed that intent to counsel for the Chamber, by email.

An extension of time will enable the parties to evaluate the effect of the final rule on the issues in this appeal. As the Government has previously explained, issuance of the final rule could result in dismissal of the appeal, rendering any further briefing unnecessary. *See* Govt.'s Mot. at 2, Doc. 514380489 (March 9, 2018). Even if the appeal moves forward, the final rule may alter the presentation of the issues to the Court. An extension will therefore benefit this Court and the parties by leading to a more efficient resolution or a better presentation of the issues.

---

<sup>1</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1545-BO20>.

This Court previously granted the Government a 30-day extension to file its opening brief. Entry of February 6, 2018. The Chamber has previously received one 45-day extension of time from the original due date of April 16, 2018. Entry of March 28, 2018.

Dated: May 16, 2018

Respectfully submitted,

/s/ Michael A. Carvin

Michael A. Carvin

*Counsel of Record*

Yaakov Roth

Robert Stander

JONES DAY

51 Louisiana Ave., N.W.

Washington, D.C. 20001

(202) 879-7643

mcarvin@jonesday.com

*Counsel for Appellees*

Steven P. Lehotsky

Warren Postman

U.S. CHAMBER LITIGATION CENTER

1615 H Street, N.W.

Washington, D.C. 20062

(202) 463-3187

slehotsky@uschamber.com

*Counsel for Appellee*

*Chamber of Commerce of the*

*United States of America*

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

I hereby certify that: (1) this document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 371 words, excluding the parts exempted by Fed. R. App. P. 32(f); and (2) this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in a 14-point Times New Roman font.

Dated: May 16, 2018

/s/ Michael A. Carvin  
Michael A. Carvin

**CERTIFICATE OF SERVICE**

I certify that on May 16, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. All counsel of record are registered CM/ECF users who will be served by the court's CM/ECF system.

/s/ Michael A. Carvin

Michael A. Carvin