

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, et al.,)
)
Plaintiffs,)
)
v.)
)
) CASE NO. 1:13-cv-1612-WTL-TAB
INTERNAL REVENUE SERVICE, et al.,)
)
)
Defendants.)

**JOINT MOTION FOR CONSOLIDATED ORAL ARGUMENT
ON PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT
AND DEFENDANTS' MOTION TO DISMISS**

The plaintiffs, the State of Indiana and 39 Indiana public school corporations, by counsel, pursuant to Local Rule 7.5, jointly move the Court for an oral argument on their motions for summary judgment and the defendants' motion to dismiss, and state as grounds therefor:

1. The 39 Indiana public school corporations (the "Schools") filed their motion for summary judgment and a supporting brief on March 5, 2014 (Dkt. ##46,47). The Schools' brief addresses the plaintiffs' Administrative Procedure Act ("APA") challenge to the legality of an IRS rule (generally, the "IRS Rule") that extends federal premium assistance subsidies and cost-reduction assistance to health insurance coverage purchased through any health benefit "Exchange," rather than through an Exchange "established by the State" as expressly required by the ACA.

2. The State of Indiana also filed its motion for summary judgment and a supporting brief on March 5, 2014 (Dkt. ##44, 45). The State's brief addresses the IRS Rule as well, but also focuses on the plaintiffs' Tenth Amendment challenge to the constitutionality and

nonseverability of the ACA employer mandate penalty provisions and reporting and certification requirements, among other claims.

3. It is expected that the defendants will file a cross-motion for summary judgment and argue that the IRS Rule is authorized under the terms of the ACA and is otherwise a permissible construction of the statute under *Chevron* deference principles.

4. Oral argument will facilitate the Court's disposition of the various motions for summary judgment. This case is one of first impression in the Seventh Circuit. It involves novel questions of law that have nationwide significance. In particular, the plaintiffs are asking the Court to resolve the following important questions of law: (1) whether the IRS Rule, which is found at 77 Fed. Reg. 30,377, 30,387 (May 23, 2012), is a violation of the Administrative Procedure Act, 5 U.S.C. § 706(2); (2) whether the ACA's employer mandate penalties, codified at 26 U.S.C. § 4980H, as applied to the State of Indiana and the Schools violate the intergovernmental tax immunity doctrine or the Tenth Amendment of the Constitution of the United States; (3) whether the ACA's reporting and certification requirements, 26 U.S.C. § 6056, suffer from similar deficiencies; and (4) whether there is a judicial remedy available to provide the force and effect of law to Executive Branch nonenforcement policy statements that fundamentally alter or contradict the express terms of the ACA.

5. The ACA is a massive bill with mounds of implementing regulations that have been promulgated since its enactment in March 2010, including as recently as this February. The plaintiffs' challenge to the IRS Rule is technical and complex as it requires an analysis and understanding of the relationship between several different provisions of the ACA, codified in

several different titles of the United States Code. Oral argument will assist the Court in sorting through this complex statutory structure and the regulations at issue here.

6. The complexity of the plaintiffs' argument is demonstrated, for example, by the fact that the Schools' summary judgment brief addressing the plaintiffs' APA challenge to the legality of the IRS Rule cites nearly 50 separate sections and subsections of the United States Code, which represent several different sections of the ACA. The Schools' argument is also complex in that it addresses the ACA's language, structure, legislative history, and legislative purpose. The State's brief also raises multifaceted and complex arguments, as it addresses (1) the IRS Rule; (2) the intricacies of the intergovernmental tax immunity doctrine and the Tenth Amendment implicated by the ACA's employer mandate and certification and reporting requirements as they are applied to the plaintiffs; (3) the invalidity of the employer mandate as a Commerce Clause regulation, including its argument that *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), is no longer good law and is otherwise inapplicable here; and (4) the nonseverability of Sections 1513 and 1514 of the ACA from Sections 1511, 1512, and 1515 of the ACA. Oral argument will assist the Court in sorting through the complexity of the plaintiffs' many legal challenges.

7. In addition, the defendants filed their motion to dismiss on January 31, 2014, and argued that (1) the plaintiffs lacked Article III standing and "prudential standing" to bring their legal challenges; (2) the plaintiffs must instead wait for enforcement of the ACA and the IRS Rule, and then file an action for a tax refund; (3) the plaintiffs' Tenth Amendment and intergovernmental tax immunity claims were barred by collateral estoppel and res judicata; and (4) the plaintiffs' request for judicial estoppel was non-justiciable, as there was no case or

controversy as to whether the plaintiffs would be liable for assessable payments in 2014 under the ACA's employer mandate. On February 12, 2014, the State of Indiana and the Schools filed separate response briefs in opposition to the defendants' motion to dismiss, addressing a few issues particular to each party, but also in large part incorporating by reference arguments from one another's briefs. The defendants reply in support of their motion to dismiss is due on March 10, 2014. Several of these same issues will likely be relevant to the disposition of the plaintiffs' motions for summary judgment. In an effort to promote judicial efficiency and to conserve this Court's valuable resources, the plaintiffs request that the Court set both the defendants' motion to dismiss and the plaintiffs' motions for summary judgment for oral argument in one hearing.

8. Given the complexity and number of the issues to be presented, the plaintiffs request oral argument of at least three hours, total, with time presumptively split evenly between the plaintiffs and the defendants.

WHEREFORE, the plaintiffs, the State of Indiana and 39 Indiana public school corporations, by counsel, respectfully request that the Court set the plaintiffs' motions for summary judgment and the defendants' motion to dismiss for an oral argument at such time and place as is convenient for the Court.

Respectfully submitted,

/s/ Andrew M. McNeil
Andrew M. McNeil
W. James Hamilton
John Z. Huang

/s/ Thomas M. Fisher
Gregory F. Zoeller
Attorney General
Thomas M. Fisher
Solicitor General

Bose McKinney & Evans LLP
111 Monument Circle
Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000

*Attorneys for the Plaintiff School
Corporations*

Kenneth A. Klukowski
Special Deputy Attorney General

Ashley Tatman Harwel
Heather Hagan McVeigh
Deputy Attorneys General
Office of the Attorney General
Indiana Government Center South,
Fifth Floor
302 West Washington Street
Indianapolis, IN 46205
(317) 232-6255

Attorneys for State of Indiana

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2014, a copy of the foregoing “Joint Motion for Consolidated Oral Argument on the Plaintiffs’ Motions for Summary Judgment and the Defendants’ Motion to Dismiss” was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court’s Electronic filing system. Parties may access this filing through the Court’s system.

Joel McElvain
joel.mcelvain@usdoj.gov

Shelese Woods
shelese.woods@usdoj.gov

Thomas M. Fisher
tom.fisher@atg.in.gov

Ashley Tatman Harwel
ashley.harwel@atg.in.gov

Heather Hagan McVeigh
heather.mcveigh@atg.in.gov

Kenneth Alan Klukowski
kenklukowski@gmail.com

s/Andrew M. McNeil

Andrew M. McNeil

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ORDER SCHEDULING ORAL ARGUMENT

This matter came before the Court on the Plaintiffs’ “Joint Motion for Oral Argument on the Plaintiffs’ Motions for Summary Judgment and the Defendants’ Motion to Dismiss” and the Court, having reviewed the Motion for Oral Argument and being duly advised in the premises, now finds that the Motion should be **GRANTED**;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the parties shall appear, by counsel, to present oral argument on the plaintiffs’ Motions for Summary Judgment and the Defendants’ Motion to Dismiss at _____ o’clock __.m. on _____, 2014 in Room ____ of the United States Courthouse for the Southern District of Indiana. Each side is allotted ____ minutes for argument.

Dated: _____

WILLIAM T. LAWRENCE, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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