

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

United States Court of Appeals
Fifth Circuit

FILED

January 29, 2020

Lyle W. Cayce
Clerk

No. 19-10011

STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MISSISSIPPI, by and through Governor Tate Reeves;¹ STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF NORTH DAKOTA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF ARKANSAS; NEILL HURLEY; JOHN NANTZ,

Plaintiffs - Appellees

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF HEALTH; HUMAN SERVICES; ALEX AZAR, II, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF INTERNAL REVENUE; CHARLES P. RETTIG, in his Official Capacity as Commissioner of Internal Revenue,

Defendants - Appellants

STATE OF CALIFORNIA; STATE OF CONNECTICUT; DISTRICT OF COLUMBIA; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF KENTUCKY, *ex rel.* Andy Beshear, Governor; STATE OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF VIRGINIA; STATE OF WASHINGTON; STATE OF MINNESOTA,

Intervenor Defendants - Appellants

¹ Governor Tate Reeves is substituted pursuant to Federal Rule of Appellate Procedure 43(c)(2).

No. 19-10011

Appeals from the United States District Court
for the Northern District of Texas

Before KING, ELROD, and ENGELHARDT, Circuit Judges.

PER CURIAM:

The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. 35 and 5TH CIR. R. 35), rehearing en banc is DENIED.²

In the poll, 6 judges voted in favor of rehearing en banc, and 8 voted against. Judges Smith, Stewart, Dennis, Graves, Higginson, and Costa voted in favor. Chief Judge Owen and Judges Jones, Elrod, Southwick, Haynes, Willett, Duncan, and Engelhardt voted against.

ENTERED FOR THE COURT:

/s/ Jennifer Walker Elrod

Jennifer Walker Elrod
United States Circuit Judge

² Judges Ho and Oldham are recused and did not participate in the en banc poll.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 29, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-10011 State of Texas, et al v. USA, et al
USDC No. 4:18-CV-167

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Kenneth G. Lotz, Deputy Clerk

Ms. Munera Al-Fuhaid
Mr. Ryan Wolfe Allison
Ms. Ginger Anders
Mr. Peter J. Anthony
Mr. A. Xavier Baker
Mr. Benjamin Battles
Mr. Matthew Joseph Berns
Mr. Jack R. Bierig
Mr. Nathanael Blake
Mr. Kenneth Lee Blalack II
Ms. Kathleen Boergers
Mr. Wade Carr
Mr. Z.W. Julius Chen
Mr. Lawrence Crawford
Mr. Stuart F. Delery
Ms. Bridget DiBattista
Mr. Nicholas M. DiCarlo
Ms. Margaret Dotzel
Mr. John Allen Eidsmoe
Mr. Nimrod Elias
Mr. August E. Flentje
Mr. Benjamin Michael Flowers
Mr. Brian Rene Frazelle
Mr. Matthew Hamilton Frederick
Ms. Elaine Goldenberg
Ms. Brianne Gorod
Ms. Maame Gyamfi

Mr. David J. Hacker
Ms. Caitlin Joan Halligan
Mrs. Fadwa A. Hammoud
Mr. Brooks M. Hanner
Mr. Kyle Douglas Hawkins
Mr. Joshua L. Hedrick
Mr. Matthew S. Hellman
Mr. Robert E. Henneke
Ms. Hyland Hunt
Mr. Scott H. Ikeda
Mr. Paige Jennings
Ms. Michelle Shane Kallen
Mr. John T. Kitchens
Mr. Jeremy Kreisberg
Ms. Maria Rose Lenz
Mr. Douglas Neal Letter
Mr. Sean Michael Marotta
Ms. Catherine M. Masters
Mr. Steven Travis Mayo
Mr. Darren Lee McCarty
Mr. Matthew Robert McGuire
Mr. Raffi Melkonian
Mr. Jonathan Meltzer
Ms. Rachel Miller-Ziegler
Ms. Karen S. Mitchell
Mr. Robert Tadao Nakatsuji
Mr. Eric Olson
Mr. William Jeffrey Olson
Ms. Neli N. Palma
Mr. Joseph R. Palmore
Ms. Beth Bivans Petronio
Ms. Lanora Christine Pettit
Mr. Ashwin Pradyumna Phatak
Mr. Joseph Rubin
Mr. Richard Salgado
Mr. Jaime Santos
Mr. Andrew Layton Schlafly
Mr. William B. Schultz
Mr. Jay A. Sekulow
Mr. Pratik A. Shah
Ms. Kristin Ann Shapiro
Mr. Samuel Siegel
Ms. Benna Ruth Solomon
Ms. Marie Soueid
Mr. Jeffrey T. Sprung
Mrs. Heidi Parry Stern
Mr. Todd Barry Tatelman
Mr. Martin Vincent Totaro
Ms. Jessica Elaine Underwood
Ms. Lorraine Alofa Van Kirk
Ms. Caroline Van Zile
Mr. Donald B. Verrilli Jr.
Mr. Stephen B. Vogel
Ms. Jessica Willey
Mr. Daniel W. Wolff
Ms. Elizabeth Bonnie Wydra
Mr. David Meir Zions