

Orig. No. 154

In the Supreme Court of the United States

STATE OF NEW HAMPSHIRE,
Plaintiff,

v.

COMMONWEALTH OF MASSACHUSETTS,
Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

SUPPLEMENTAL BRIEF IN OPPOSITION

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This supplemental brief, filed pursuant to Rule 15.8, brings to the Court’s attention that on June 15, 2021, the Commonwealth of Massachusetts’s COVID-19 state of emergency ended. *See* Governor Charles D. Baker, COVID-19 Order No. 69 (May 28, 2021), <https://tinyurl.com/5ddx42bn> (ending emergency effective June 15, 2021); *see also* Office of Governor Charlie Baker & Lt. Governor Karyn Polito, COVID-19 State of Emergency, <https://tinyurl.com/fwwsbvkt> (acknowledging emergency’s end on June 15, 2021). The Governor’s declaration of an end to the emergency triggers the sunset of the pandemic-related tax regulation New Hampshire seeks to challenge in this Court in the first instance. *See* 830 Code Mass. Regs. 62.5A.3(1)(d) (governing “the sourcing of wage income attributable to employee services performed commencing March 10, 2020 through 90 days after the

date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect”); *see also id.* at 62.5A.1(5), 62.5A.2 (setting forth Massachusetts’s pre-existing wage-income sourcing rules—not challenged by New Hampshire here—that will apply following the pandemic-related regulation’s sunset).

The regulation’s sunset, while not unexpected in that it is contemplated by the regulation’s very terms, underscores the arguments why this dispute fails to rise to the level of grave importance warranting exercise of the Court’s original jurisdiction, *see* Br. in Opp. 11-21; U.S. Br. 4-11, and why any disputes over application of the temporary regulation to taxpayers should be addressed through the ordinary course of state proceedings in the first instance, *see* Br. in Opp. 22-25; U.S. Br. 11-16. Above all, the development belies New Hampshire’s contention that this expressly time-limited measure will endure “indefinitely,” N.H. Reply Br. 2.

Respectfully submitted,

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