

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, et al.,** )  
 )  
 **Plaintiffs,** )  
 )  
 **v.** ) **Case No. 05-cv-329-GKF-SH**  
 )  
 **TYSON FOODS, INC., et al.,** )  
 )  
 **Defendants.** )

**NOTICE**

The State of Oklahoma respectfully notifies the Court of the recent filing of an emergency motion by certain defendants seeking to hold cases in abeyance at the Tenth Circuit. *See* Ex. 1, Emergency Motion of Appellants in Nos. 26-5001, -5002, -5003, and -5005 to Hold Cases in Abeyance. The emergency motion was filed by the defendants that have reached agreement upon terms for settlement with the State (“Settling Defendants”)<sup>1</sup>. The State and the Settling Defendants have filed joint motions, under Federal Rules of Civil Procedure 60(b) and 62.1, for entry of consent judgments that are currently pending before this Court. Doc. 3229; Doc. 3268; Doc. 3269; Doc. 3279. Other defendants in this case have not agreed upon terms for settlement with the State (“Non-Settling Defendants”). *See* Doc. 3294 (identifying Simmons Foods, Inc., and Cal-Maine Foods, Inc. as “(currently) non-settling defendants”).

In their emergency motion, the Settling Defendants have asked the Tenth Circuit to hold their cases in abeyance pending the joint motions for entry of consent judgments. The State opposes the emergency motion to the extent that it results in an abeyance or extension of briefing

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<sup>1</sup> The Settling Defendants are George’s Inc. and George’s Farms, Inc., Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Cargill Incorporated, Cargill Turkey Production LLC, and Peterson Farms, Inc.

deadlines with respect to the Non-Settling Defendants, thereby delaying resolution of this case. Accordingly, the State provides notice that it intends to withdraw the proposed consent judgments pending before this Court *if* the Tenth Circuit grants an abeyance or extension of deadlines with respect to the Non-Settling Defendants.

Respectfully Submitted,

*s/ Garry M. Gaskins, II*

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AMIE ELY, OBA #35840

*First Assistant Attorney General*

GARRY M. GASKINS, II, OBA #20212

*Solicitor General*

JENNIFER L. LEWIS, OBA #32819

*Deputy Attorney General*

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Motley Rice LLC  
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(843) 216-9186

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of April 2026, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.

*s/ Garry M. Gaskins, II*

\_\_\_\_\_  
GARRY M. GASKINS, II

# Exhibit 1

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

TYSON FOODS, INC., et al.,

Defendants-Appellants /  
Cross-Appellees,

v.

STATE OF OKLAHOMA ex rel. GENTNER DRUM-  
MOND, in his official capacity as Attorney  
General of the State of Oklahoma, et al.,

Plaintiffs-Appellees / Cross-  
Appellants.

Case No. 26-5000 &  
consolidated cases

**Relief Requested  
by April 9**

**EMERGENCY MOTION OF APPELLANTS  
IN NOS. 26-5001, -5002, -5003, AND -5005  
TO HOLD CASES IN ABEYANCE**

Opening briefs in these consolidated cases are due April 30. But several appellants have now settled all claims at issue on appeal. Together with the Oklahoma state appellees, those appellants have informed the district court of their settlements and jointly moved for entry of consent judgments that would obviate the need for further proceedings before this Court. Those joint motions remain pending below. In the meantime, to avoid the expense of needless appellate briefing, the settling appellants

respectfully ask the Court to hold their cases (Nos. 26-5001, 26-5002, 26-5003, and 26-5005) in abeyance.

The non-settling appellants (those in cases 26-5000 and 26-5004) consent to the relief requested in this motion. Despite agreeing to settle below, and despite previous indications to the contrary, appellees now oppose this motion in this Court and intend to file a response. Because opening briefs are due imminently, movants respectfully request that the Court order appellees to respond by April 6, and rule on this motion by April 9.

## **BACKGROUND**

### **A. The appeals.**

These consolidated cases arise from long-running litigation between two Oklahoma state officials and a group of poultry companies. The Oklahoma plaintiffs sued the poultry companies in 2005, alleging that they were liable for pollution in State rivers. After decades of litigation, the district court entered final judgment in December 2025. The poultry companies appealed shortly afterward, and Oklahoma later cross-appealed.

The poultry companies' opening briefs and the joint appendix are currently due on April 30, 2026. *See* Dkt. 26. Briefing is likely to be especially complex. The litigation below took 20 years. In those two decades,

the district court held a week-long preliminary injunction trial in 2008, a five-month trial in 2009 and 2010, and a third, two-week trial in 2024. There are now seven consolidated appeals, including one cross-appeal, involving a dozen parties with at least partially divergent interests.

**B. Some of the cases settle.**

Some (but not all) of the poultry companies have now reached settlements with Oklahoma. The settling appellants—movants here—are: Cargill Incorporated and Cargill Turkey Production L.L.C. (appellants in No. 26-5001); Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; and Cobb-Vantress, Inc. (appellants in No. 26-5002), Peterson Farms, Inc. (appellant in No. 26-5003), and George’s, Inc. and George’s Farms, Inc. (appellants in No. 26-5005). The appellants in Nos. 26-5000 and 26-5004 have not reached settlements with Oklahoma.

Within two weeks of this Court entering the briefing schedule on January 30, the settling appellants reached settlements with the State, and then jointly moved the district court, pursuant to Federal Rules of Civil Procedure 60(b) and 62.1, for an indicative ruling that it would vacate the existing final judgment as to the settling parties and enter the negotiated consent judgments. The district court set those motions for hearings, one of which

was postponed for three weeks due to the Attorney General’s scheduling conflict, and called for supplemental briefing. The settling parties spent the following weeks preparing that briefing and for the hearings, which the district court held on February 27, 2026, and March 6, 2026. The motions remain pending.

**C. The settling appellants seek abatement from the Circuit mediator, and the State reneges on its promise to support an extension from the mediator.**

When it became apparent that the district court would not promptly act on the joint motions for an indicative ruling, the settling appellants began seeking an abatement, or at least an extension, of the briefing schedule.

On March 19, counsel for one of the settling appellants contacted the State in hopes of reaching agreement on suspending or extending the briefing schedule. Ex. 1, Declaration of John H. Tucker, ¶ 2. Indeed, avoiding legal fees associated with these appeals was one of the considerations that prompted the parties to settle in the first place. The State responded that it would not consent to any extension or abatement unless the settling appellants waited until April 15—just two weeks before their opening briefs are due—to seek relief.

The next day, March 20, counsel for the settling appellants replied that we could not wait that long given the imminent briefing deadline. Counsel for the State replied that the State would do “whatever is necessary” to make sure the settling defendants would get relief from the current, April 30 briefing deadline. *Id.* & Exhibit A thereto. He also stated that if waiting until April 15 to seek relief was insufficient security, the parties could jointly call the Circuit mediator to confirm that an extension or abatement would be granted if requested after April 15. *Id.*

To avoid bothering the Court with this seemingly simple issue, and understanding the Circuit mediator’s authority to grant an abeyance in light of settlement, *see* 10th Cir. R. 33.1(E), (F); 10th Circuit FAQs: Mediation Office, the settling appellants decided to call the Circuit mediator.

Thereafter, counsel for the State expressed that it would object to any request for an extension for non-settling defendants,. Counsel for the settling appellants explained that piecemeal briefing would be inconvenient for the Court and risked prejudicing the settling appellants. *Cf.* Dkt. 26 (granting unopposed motion to consolidate appeals).

On Friday, March 27, counsel for the settling appellants called the Circuit mediator to request abatement of the briefing schedule. Ex. 2,

Declaration of Peter A. Bruland, ¶ 2. Without disclosing the substance of that call, *see* 10th Cir. R. 33.1(D), the mediator agreed to seek the State’s views and get back to the parties promptly. Bruland Decl. ¶ 2. On the afternoon of March 31, the mediator informed counsel for the settling appellants that he would not abate or extend the briefing schedule over the State’s opposition. Bruland Decl. ¶ 3.

**D. The State withdraws its agreement to an extension of the settling appellants’ briefing schedule.**

In view of Oklahoma’s position with respect to the non-settling defendants, shortly after receiving the mediator’s decision the settling appellants began preparing to move for abatement of the briefing schedule as to just themselves. Bruland Decl. ¶ 4. Recalling the State’s commitment that it would do whatever is necessary to make sure the settling appellants would get relief from the briefing schedule, Tucker Decl. ¶ 2, the settling appellants emailed counsel for the State on April 1 to confirm that the State would not oppose a motion to hold the settled cases in abeyance, Bruland Decl. ¶ 5.

The State reneged. *See id.* Although the State appreciated that the motion would seek to abate only the settling appellants’ cases, the State worried “that the non-settling defendants will use an abeyance as grounds to

obtain their own abeyance/extension. The Attorney General is not willing to risk that result.” *See* Ex. A to Bruland Decl.

## ARGUMENT

### **I. The Court should hold the settling appellants’ cases in abeyance.**

There is good cause to hold the settling appellants’ cases (26-5001, 26-5002, 26-5003, and 26-5005) in abeyance while the district court considers the pending motions to enter the consent decrees. *See* Fed. R. App. P. 26(b). If the district court indicates that it would grant the motions, then the appeals of the settling parties could be dismissed without any further expenditure of this Court’s or the parties’ resources. Meanwhile, if the district court denies the motions, the settling parties would almost certainly appeal that denial. In that case, suspending briefing would increase efficiency for both the parties and the Court by allowing the parties to present a relatively simple, threshold issue either before or concurrently with the more complex issues in the present cases. In short, regardless of how the district court rules on the pending settlement motions, temporarily pausing these cases would save substantial resources for both the parties and the Court.

Abating the settling appellants' cases will not prejudice the State or the non-settling appellants. The State is not currently subject to an adverse judgment. Nor would abatement delay the State's receipt of any relief it received under the judgment. The State consented to a stay pending appeal of the monetary relief it was awarded, Dkt. 33-1 at Add.37, and both the district court and this Court have declined to stay the injunctive portions of the judgment, *see id.* at Add.48; Dkt. 38. Nor does the State have any sound basis for demanding immediate appellate review of a final judgment that the State itself has sought to withdraw in favor of negotiated consent decrees. Finally, abatement also would not prejudice the non-settling appellants, who consent to the relief requested in this motion.

In short, holding the settling appellants' cases in abeyance is all upside for the parties and for the Court.

**II. In the alternative, the Court should extend the deadline for the opening briefs and appendix by 60 days.**

For the past six weeks, the settling parties have proceeded on the reasonable assumption that their appeals very likely would not proceed at all, and certainly would not proceed under the current merits briefing schedule. Indeed, the prospect of saving the substantial legal fees that a merits appeal would occasion was a key driver of settlement. The State has

implicitly and explicitly affirmed that assumption at every turn. Until now. The State should not be permitted to string the settling appellants along for weeks—running out the clock on its adversaries’ briefing schedules—then change position, forcing the settling defendants to brief this complex case in less than a month. Accordingly, if the Court does not abate the settling appellants’ cases, it should at least extend the deadline for the opening briefs and appendix by 60 days.

### **CONCLUSION**

The Court should (1) order that cases 26-5001, 26-5002, 26-5003, and 26-5005 be held in abeyance and (2) order the settling appellants and Oklahoma to file joint status reports every 60 days, as well as within 7 days of any order on the pending motions. Alternatively, the Court should extend the deadline for opening briefs and the joint appendix by 60 days.

April 2, 2026

/s/ Gordon D. Todd

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Frank R. Volpe  
Gordon D. Todd  
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*Counsel for Appellants  
in No. 26-5002*

Respectfully submitted,

/s/ John H. Tucker

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Colin H. Tucker  
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*Counsel for Appellant  
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*Counsel for Appellants  
in No. 26-5005*

## CERTIFICATE OF EMERGENCY

Pursuant to Circuit Rule 8.2(A), the movants certify that this motion could not have been filed earlier, because until the afternoon of March 31 the movants had a good-faith belief that they may be able to obtain the requested relief through the Circuit mediator, and until the afternoon of April 1 the movants had a good-faith belief that the State would consent to the requested relief.

Contact information for counsel of record for all parties is as follows:

<b>Name</b>	<b>Contact Information</b>	<b>Parties Represented</b>
Gordon Todd	(202) 736-8760 gtodd@sidley.com	Appellants in No. 26-5002
John Tucker	(918) 582-1173 jtucker@rhodesokla.com	Appellants in No. 26-5001
Scott McDaniel	(918) 382-9200 smcdaniel@ok-counsel.com	Appellant in No. 26-5003
Perry Glantz	(303) 376-8410 perry.glantz@stinson.com	Appellants in No. 26-5005
Garry Gaskins	(405) 521-3921 Garry.Gaskins@oag.ok.gov	Appellees / Cross-Appellants
Chris Scaperlanda	(405) 235-9621 christopher.scaper- landa@mcafeetaft.com	Appellants in No. 26-5000
Amy M. Stipe	(405) 235-5500 astipe@gablelaw.com	Appellant in No. 26-5004

/s/ Gordon D. Todd  
Gordon D. Todd

## CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font. It complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 1,644 words, excluding the sections listed in Rule 32(f).

/s/ Gordon D. Todd  
Gordon D. Todd

## CERTIFICATE OF SERVICE

I certify that on April 2, 2026, I electronically filed this document with the Clerk of the Court using the CM/ECF System, which will send notice to all registered CM/ECF users.

/s/ Gordon D. Todd  
Gordon D. Todd

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

TYSON FOODS, INC., et al.,

Defendants-Appellants /  
Cross-Appellees.

v.

STATE OF OKLAHOMA ex rel. GENTNER DRUM-  
MOND, in his official capacity as Attorney  
General of the State of Oklahoma, et al.,

Plaintiffs-Appellees / Cross-  
Appellants,

Case No. 26-5000 &  
consolidated cases

**DECLARATION OF JOHN H. TUCKER**

I, John H. Tucker, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a partner with the law firm Rhodes, Hieronymus, Jones, Tucker & Gable PLLC and represent appellants Cargill Incorporated and Cargill Turkey Production L.L.C. in the above-captioned matter. All of the facts stated herein are within my personal knowledge. If called and sworn as a witness, I could and would testify thereto under oath.

2. Between March 19 and March 25, I had several communications with representatives of the Attorney General's office, to confer about extending or abating the briefing schedule in these appeals because

several appellants having reached settlements with appellees. During those communications, representatives of the Attorney General's office stated that the State would work with the settling defendants if they waited until April 15 to request an extension or abatement of the briefing schedule. On March 20, the Solicitor General informed me that the State would do whatever is necessary to make sure the Cargill entities I represent would get relief from the current, April 30 briefing deadline if necessary, as shown in Exhibit A attached hereto. The Solicitor General also stated that, if waiting until April 15 was a concern, the parties could jointly confer with the Circuit mediator assigned to these cases to confirm that an extension or abatement would be forthcoming. The Solicitor General also confirmed that the offer to make a joint request to the Circuit mediation office for the purpose of obtaining an abatement or extension of the appellate briefing schedule after April 15, was applicable to all settling defendants.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: April 2, 2026

/s/ John H. Tucker  
John H. Tucker

# Exhibit A

**From:** [John Tucker](#)  
**To:** [Justman, Jeffrey P.](#)  
**Cc:** [Colin H. Tucker](#)  
**Subject:** FW: State v Tyson et al  
**Date:** Thursday, April 2, 2026 5:03:17 PM

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**This Message originated outside your organization.**

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**From:** Garry Gaskins <Garry.Gaskins@oag.ok.gov>  
**Sent:** Friday, March 20, 2026 10:57 AM  
**To:** John Tucker <jtucker@rhodesokla.com>; Jennifer Lewis <jennifer.lewis@oag.ok.gov>  
**Subject:** RE: State v Tyson et al

John:

The State is not expecting Cargill to have its brief due on April 30. The State will do whatever is necessary to make sure your client gets relief from that deadline if necessary. In exchange for this representation, we are simply asking that you wait until around April 15 to file the motion. If this is not sufficient, we can likely get on a call with the mediation office to have him confirm that you'll get an extension.

**Garry M. Gaskins, II**  
*Solicitor General*  
Oklahoma Office of the Attorney General  
313 NE 21<sup>st</sup> Street, Oklahoma City, OK 73105

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

TYSON FOODS, INC., et al.,

Defendants-Appellants /  
Cross-Appellees,

v.

STATE OF OKLAHOMA ex rel. GENTNER DRUM-  
MOND, in his official capacity as Attorney  
General of the State of Oklahoma, et al.,

Plaintiffs-Appellees / Cross-  
Appellants.

Case No. 26-5002 &  
consolidated cases

**DECLARATION OF PETER A. BRULAND**

I, Peter A. Bruland, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a senior managing associate with the law firm Sidley Austin LLP and represent appellants Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; and Cobb-Vantress, Inc. in the above-captioned matter. All of the facts stated herein are within my personal knowledge. If called and sworn as a witness, I could and would testify competently thereto under oath.

2. On Friday, March 27, 2026, I participated in a video conference with Tenth Circuit mediator Kevin Kinnear and counsel for several

other appellants in the above-captioned matter. The purpose of our conference was to request modification of the briefing schedule because several appellants had reached settlements with the State and then jointly moved the district court to replace the judgment at issue on appeal with proposed consent judgments. (Those joint motions remain pending before the district court.) At the end of the call, Mr. Kinnear confirmed that he would seek appellees' position on the request and follow up later.

3. On the afternoon of March 31, 2026, Mr. Kinnear emailed counsel for the settling appellants, stating that the mediation office would not modify the briefing schedule over appellees' opposition.

4. In light of Mr. Kinnear's decision, the settling appellants immediately began working on a motion to hold their appeals in abeyance while the joint district-court motions remain pending.

5. On April 1, 2026, on behalf of the settling appellants, I emailed counsel for appellees to confirm that appellees would not oppose the requested abeyance. Based on prior representations by counsel for appellees, I expected appellees to consent promptly. Later that afternoon, however, counsel for appellees, Oklahoma Solicitor General Garry Gaskins, responded that they would oppose. Attached hereto as Exhibit A is

a true and correct copy of my April 1, 2026 correspondence with General Gaskins.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: April 2, 2026

/s/ Peter A. Bruland  
Peter A. Bruland

# Exhibit A

**From:** [Garry Gaskins](#)  
**To:** [Bruland, Peter A.](#); [Jennifer Lewis](#); [Amie Ely](#)  
**Cc:** [Todd, Gordon D.](#); [Akins, Cody M.](#)  
**Subject:** RE: IRW - motion to hold settling defendants' CA10 cases in abeyance  
**Date:** Wednesday, April 1, 2026 5:39:27 PM  
**Attachments:** [image001.png](#)

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**EXTERNAL EMAIL - Use caution with links and attachments.**

Peter:

I spoke with the Attorney General. We must oppose the request. It is now clear that the non-settling defendants will use an abeyance as grounds to obtain their own abeyance/extension. The Attorney General is not willing to risk that result. If you can convince me that there is path where we can keep the existing schedule with Simmons/Cal-Maine while consenting to this abeyance, then it will give me something to go back to the AG with.

Garry

**Garry M. Gaskins, II**  
*Solicitor General*  
Oklahoma Office of the Attorney General  
313 NE 21<sup>st</sup> Street, Oklahoma City, OK 73105

---

**From:** Bruland, Peter A. <pbruland@sidley.com>  
**Sent:** Wednesday, April 1, 2026 3:15 PM  
**To:** Garry Gaskins <Garry.Gaskins@oag.ok.gov>; Jennifer Lewis <jennifer.lewis@oag.ok.gov>; Amie Ely <Amie.Ely@oag.ok.gov>  
**Cc:** Todd, Gordon D. <gtodd@sidley.com>; Akins, Cody M. <cakins@sidley.com>  
**Subject:** [EXTERNAL] IRW - motion to hold settling defendants' CA10 cases in abeyance

Dear All,

We appreciate your views with respect to the non-settling defendants. The settling defendants have conferred and decided to ask the Tenth Circuit to hold just their cases (*i.e.*, the Cargill, Tyson, Peterson, and George's cases only) in abeyance while our joint 60(b) and 62.1 motions remain pending.

Oklahoma was previously on board with pausing these cases, and so we're just confirming we can represent that the State doesn't oppose our motion. We hope to file by the close of business today.

All the best,  
Peter

**PETER A. BRULAND**  
Senior Managing Associate

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**SIDLEY**

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immediately.  
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