

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, Secretary
of Health and Human Services, *et al.*,

Defendants.

No. 7:16-cv-00108

**DEFENDANTS' MOTION FOR AN EXTENSION OF TIME FOR SUMMARY
JUDGMENT RESPONSE**

Defendants respectfully move the Court for a three-week extension of time to respond to Plaintiffs' Motions for Summary Judgment (ECF Nos. 132, 135), from April 5, 2019 to April 26, 2019. Pursuant to Local Rule of Civil Procedure 7.1.a, the undersigned counsel conferred with counsel for Plaintiffs, who represented that Plaintiffs will oppose the requested extensions.

Good cause exists for this motion. Plaintiffs challenge a Rule issued by the Department of Health and Human Services (HHS) in 2016 that, among other things, construes Section 1557 of the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. § 18116, to prohibit discrimination on the basis of gender identity and termination of pregnancy. On December 31, 2016, the Court issued a nationwide preliminary injunction barring HHS from enforcing the Rule's prohibitions on discrimination on the basis of gender identity and termination of pregnancy. *Franciscan Alliance, Inc. v. Burwell*, 227 F. Supp. 3d 660, 696 (N.D. Tex. 2016).

In March 2017, Plaintiffs moved for summary judgment. In response, Defendants sought a stay of the litigation and a voluntary remand to HHS to reconsider the reasonableness,

necessity, and efficacy of the Rule. ECF No. 92. The Court granted a stay and required Defendants to file a status report every 60 days providing updates on the reconsideration of the Rule. ECF No. 105.

In December 2018, the parties filed a motion to lift the stay, which the Court granted. ECF Nos. 125, 126. Plaintiffs then renewed their motions for summary judgment. ECF Nos. 132, 135.

Defendants agreed to lift the stay because, “[a]lthough HHS [was] reevaluating the reasonableness, necessity, and efficacy of the Rule, the time required to complete” the process was “not . . . known” and could “take a substantial length of time.” ECF No. 125. However, since Plaintiffs filed their renewed summary judgment motions, Defendants have submitted an updated draft of a proposed new rule to replace the challenged Rule to the Office of Management and Budget (OMB) as part of the inter-agency clearance process required under Executive Order 12,866, which began some months ago. Defendants expect that this new rule will be published for notice and comment in the near future.

Defendants request an additional three weeks to respond to Plaintiffs’ summary judgment motions to allow the inter-agency clearance process for the new proposed rule to conclude, which could obviate the need for any further litigation before this Court. Furthermore, Plaintiffs will not be prejudiced by this extension, as the Rule they are challenging is enjoined nationwide and is therefore not in effect.

For the foregoing reasons, and to conserve the Court’s and the parties’ resources and time, Defendants respectfully request that the Court grant their motion for an extension of time to respond to Plaintiffs’ Motions for Summary Judgment until April 26, 2019.

DATED: April 4, 2019

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[PROPOSED] ORDER

Upon consideration of Defendants' Motion For An Extension Of Time For Summary Judgment Response, and there being good cause, it is therefore:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that Defendants shall file their Response to Plaintiffs' Motions for Summary Judgment no later than April 26, 2019.

SO ORDERED on this ____ day of _____, 2019.

REED O'CONNOR
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS