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 11 CITY AND COUNTY OF SAN FRANCISCO

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 CITY AND COUNTY OF SAN
 16 FRANCISCO,

17 Plaintiff,

18 vs.

19 ALEX M. AZAR II, Secretary of U.S.
 Department of Health and Human Services;
 20 ROGER SEVERINO, Director, Office for
 Civil Rights, Department of Health and Human
 21 Services; U.S. DEPARTMENT OF HEALTH
 AND HUMAN SERVICES; and DOES 1-25,

22 Defendants.

Case No. 3:19-cv-2405-JCS

**[PROPOSED] ORDER GRANTING CITY AND
 COUNTY OF SAN FRANCISCO'S MOTION
 FOR PRELIMINARY INJUNCTION**

Hearing Date: July 12, 2019
 Time: 10:30 a.m.
 Judge: Hon. Joseph C. Spero
 Place: Courtroom G, 15th Floor

Trial Date: Not set

1 On June 3, 2019, Plaintiff City and County of San Francisco (“San Francisco”) filed a Motion
2 for Preliminary Injunction (“Motion”) to enjoin certain provisions of the regulations entitled
3 “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” published in the
4 Federal Register on Tuesday, May 21st, 2019 (the “Final Rule”), and a hearing on the motion was held
5 on Friday, July 12, 2019 at 10:30 a.m. In particular, San Francisco moves to enjoin: (1) the definitions
6 of “health care entity,” “assist in the performance,” “referral or refer for,” and “discriminate or
7 discrimination” set forth in Section 88.2 of the Final Rule (collectively, the “Challenged Definitions”),
8 (2) Sections 88.3(a), (b) and (c) of the Final Rule (collectively, “Challenged Substantive
9 Requirements”), which purport to implement the Church Amendments, 42 U.S.C. 300a-7, the Weldon
10 Amendment, Consolidated Appropriations Act of 2009, Pub. L. No. 111-117, 123 Stat 2034, §
11 508(d)(1), and the Coats-Snow Amendment, 42 U.S.C. § 238n(a) (collectively, the “Abortion Refusal
12 Statutes”); (3) the “Certification and Assurances Requirements” as set forth in Section 88.4, as applied
13 to the Challenged Substantive Requirements; and (4) Section 88.7(i)(3) and (j) (the “Enforcement
14 Provisions”), which would allow OCR to deny all current and future HHS funding to San Francisco if
15 it fails to respond to a request for information, fails to provide the certifications and assurances, or
16 violates the Final Rule in any way. Collectively, these provisions are referred to as the “Challenged
17 Provisions.”

18 The Court, having considered the Motion and the documents filed therewith, all of the papers
19 on file in this action, and the evidence and arguments presented at the hearing, hereby GRANTS San
20 Francisco’s Motion. The Court finds that each of the necessary elements for issuing a preliminary
21 injunction are met: San Francisco is likely to prevail on the merits of its claims; absent preliminary
22 injunction, San Francisco would be likely to suffer irreparable injury in the form of budgetary,
23 statutory, constitutional, and community injury; the balance of equities favors San Francisco; and the
24 requested relief is in the public interest. In particular, San Francisco is likely to prevail on the merits
25 of its claims that: (1) the Challenged Provisions violate the Administrative Procedures Act (“APA”), 5
26 U.S.C. § 706(2)(C), because they exceed the Department of Health and Human Services’ (“HHS”)
27 statutory authority under the Abortion Refusal Statutes to promulgate regulations; (2) the Challenged
28 Definitions violate the APA, 5 U.S.C. § 706(2)(C), because they exceed HHS’s statutory authority

1 under the Abortion Refusal Statutes by purporting to expand these statutes beyond the bounds of their
2 legislative origins; (3) the Challenged Provisions violate the APA, 5 U.S.C. § 706(2)(A), because they
3 are contrary to law for being in conflict with the Emergency Medical Treatment and Active Labor Act,
4 42 U.S.C. § 1395dd (“EMTALA”); (4) the Challenged Provisions violate the APA, 5 U.S.C. §
5 706(2)(A), for being arbitrary and capricious because HHS conducted and relied upon a deeply flawed
6 cost-benefit analysis in promulgating them; (5) the definition of “discriminate” violates that
7 Establishment Clause of the First Amendment to the United States Constitution; (6) the Enforcement
8 Provisions violate the Spending Clause of the United States Constitution; (7) the Challenged
9 Provisions violate separation of powers principles embodied in the United States Constitution.

10 **PRELIMINARY INJUNCTION**

11 Now, therefore, it is hereby ORDERED that:

12 Defendants Alex M Azar II, in his official capacity as Secretary of HHS, Roger Severino, in
13 his official capacity as Director of the Office for Civil Rights of HHS, HHS, and their officers agents,
14 servants, employees, and attorneys, and any other persons who are in active concert or participation
15 with them, ARE HEREBY RESTRAINED AND ENJOINED from committing, or performing,
16 directly and indirectly, any and all of the following acts:

17 1. Enforcing the Challenged Provisions of the Final Rule against any entity or jurisdiction
18 in the United States.

19
20 IT IS SO ORDERED

21 Dated: _____

22 HON. JOSEPH C. SPERO
United States Magistrate Judge
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