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 Attorneys for Defendants

11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 12 **SAN FRANCISCO DIVISION**

13 CITY AND COUNTY OF SAN
 FRANCISCO,

14 Plaintiff,

15 vs.

16 ALEX M. AZAR II et al.,
 17 Defendants.

18 STATE OF CALIFORNIA, *by and*
through ATTORNEY GENERAL
 19 XAVIER BECERRA,

20 Plaintiff,

21 vs.

22 ALEX M. AZAR II et al.,
 Defendants.

23 COUNTY OF SANTA CLARA et al.,

24 Plaintiffs,

25 vs.

26 U.S. DEPARTMENT OF HEALTH AND
 HUMAN SERVICES et al.,
 27 Defendants.

No. C 19-02405 WHA
Related to
 No. C 19-02769 WHA
 No. C 19-02916 WHA

NOTICE OF FILING

Hon. William Alsup
 Hearing: October 30, 2019, 8:00 a.m.

Phillip Burton Federal Building & United
 States Courthouse, Courtroom 12, 19th
 Floor,
 450 Golden Gate Ave., San Francisco, CA
 94102

1 Pursuant to the Court's July 1, 2019 order, Defendants hereby file the attached certification of the
2 administrative record, index of the administrative record, and administrative record. The administrative
3 record has been manually filed because it is over 500,000 pages long and requires approximately 106
4 gigabytes of storage in compressed form. Through courier delivery service, two copies have been sent to
5 the Office of the Clerk of Court and a copy was sent to Plaintiffs' counsel in each of the above captioned
6 cases.

7 Dated: July 22, 2019

Respectfully Submitted,

8 JOSEPH H. HUNT
9 Assistant Attorney General

10 MICHELLE BENNETT
11 Assistant Branch Director
12 Civil Division

13 /s/ Benjamin T. Takemoto
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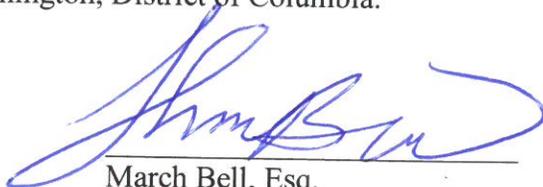
19 *Attorneys for Defendants*
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Administrative Rulemaking Record for the 2019 Final Rule
Protecting Statutory Conscience Rights in Health Care; Delegations of Authority

CERTIFICATION OF THE ADMINISTRATIVE RECORD

Pursuant to 28 U.S.C. § 1746, I, March Bell, Chief of Staff, Office for Civil Rights, United States Department of Health and Human Services (HHS), certify, to the best of my knowledge, that the materials described in the accompanying Index, in addition to those publicly available materials otherwise referenced in the 2018 Proposed Rule, 83 Fed. Reg. 3,880 (Jan. 26, 2018) and in *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23,170, 45 C.F.R. Part 88 (May 21, 2019) (“2019 Final Rule”), comprise the complete administrative rulemaking record for the 2019 Final Rule, and together with those publicly available materials, includes all materials considered by HHS in promulgating the 2019 Final Rule.

I declare under penalty of perjury that the foregoing is true and correct. Executed, this 22nd day of July, 2019, in Washington, District of Columbia.



March Bell, Esq.
Chief of Staff
Office for Civil Rights
United States Department of Health and Human Services

INDEX TO THE ADMINISTRATIVE RECORD

Final Rule: Protecting Statutory Conscience Rights in Health Care; Delegations of Authority

84 Fed. Reg. 23,170 (Mar. 21, 2019)

Bates Number	Description
000000001 - 000185296	Public comments submitted in response to 2018 NPRM, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Proposed Rule), 83 Fed. Reg. 3,880 (Jan. 26, 2018)
000185297 - 000185308	2008 NPRM, Ensuring that Department of Health and Human Service Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law (Proposed Rule), 73 Fed. Reg. 50,274 (Aug. 26, 2008)
000185309 - 000198372	Public comments submitted in response to 2008 NPRM, Ensuring that Department of Health and Human Service Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law (Proposed Rule), 73 Fed. Reg. 50,274 (Aug. 26, 2008)
000198373 - 000198403	2008 Final Rule, Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law (Final Rule), 73 Fed. Reg. 78,072 (Dec. 19, 2008)
000198404 - 000198408	2009 NPRM, Rescission of the Regulation Entitled “Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law”; Proposal (Proposed Rule), 74 Fed. Reg. 10,207 (March 10, 2009)
000198409 – 000537538	Public comments submitted in response to 2009 NPRM, Rescission of the Regulation Entitled “Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law”; Proposal (Proposed Rule), 74 Fed. Reg. 10,207 (March 10, 2009)
000537539 – 000537548	2011 Final Rule, Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws (Final Rule), 76 Fed. Reg. 9,968 (Feb. 23, 2011)
000537549 - 000537560	Armand H. Matheny Antommaria, <i>Adjudicating rights or analyzing interests: ethicists’ role in the debate over conscience in clinical practice</i> , Theor. Med. Bioeth. 29:201-212 (2008)
000537561 - 000537562	Letter from Members of Congress to Sylvia M. Burwell, Secretary of Health and Human Services, and Jocelyn Samuels, Director of the Office for Civil Rights (June 28, 2016)
000537563 - 000537577	Lisa H. Harris <i>et al.</i> , <i>Obstetrician-Gynecologists’ Objections to an Willingness to Help Patients Obtain and Abortion</i> , Obstet. Gynecol. 118(4): 905-912 (October 2011)
000537578 - 000537579	Letter from Michael O. Leavitt, Secretary of Health and Human Services, to Norman F. Gant, Executive Director of the American Board of Obstetrics and Gynecology (Mar. 13, 2008)
000537580 - 000537593	Peter A. Clark, <i>Medical Ethics at Guantanamo Bay and Abu Ghraib, the Problem of Dual Loyalty</i> , 34 J.L. Med. & Ethics 570 (Fall 2006)
000537594 - 000537602	Letter from Members of Congress to Sylvia Mathews Burwell, Secretary of Health and Human Services (Nov. 25, 2014)
000537603 – 000537608	Letter from Members of Congress to Kathleen Sebelius, Secretary of Health and Human Services (Feb. 11, 2011)
000537609 - 000537613	Freedom2Care and The Christian Medical Association, Summary of Polling Data

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000537614 - 000537744	William W. Bassett, <i>Private Religious Hospitals: Limitation Upon Autonomous Moral Choices in Reproductive Medicine</i> , J. Contemp. H. L. & Policy 17: 455-583 (2001)
000537745 - 000537752	List of 343 Conscience Complaints OCR Received in FY 2018
000537753 - 000537755	Census Statistics of U.S. Businesses Data
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000537876 - 000537877	Form SF-424B
000537878 - 000537879	Financial Assistance General Certifications and Representations - Test from Grants.Gov Staff
000537880 - 000537891	Christian Medical Association, Memorandum to Office of Public Health and Science Department of Health and Human Services (Apr. 9, 2009)
000537892 - 000537893	Douglas B. White & Baruch Brody, <i>Would Accommodating Some Conscientious Objections by Physicians Promote Quality in Medical Care?</i> , JAMA, Vol. 305, No. 17 (May 4, 2011)
000537894 - 000537900	Josh Hyatt, <i>Recognizing Moral Disengagement and Its Impact on Patient Safety</i> , J. of Nursing Reg., Vol. 7, Issue 4 (Jan. 2017)
000537901 - 000537923	Joan McCarthy & Chris Gastmans, <i>Moral distress: A review of the argument-based nursing ethics literature</i> , Nursing Ethics, Vol. 22(I), 131-152 (2015)
000537924 - 000537931	Farr A. Curlin, <i>et al.</i> , Religion, Conscience, and Controversial Clinic Practice, N. Engl. J. Med., 356:593-600 (2017)
000537932 - 000537951	Lynn Stout, Cultivating Conscience: How Good Laws Make Good People, Chapter 1
000537952 - 000537996	Kevin H. Theriot & Ken Connelly, <i>Free to Do No Harm: Conscience Protections for Healthcare Professionals</i> , 49 Ariz. State L. J. 549 (Summer 2017)
000537997 - 000537999	Letter from George Washington to the Society of Quakers (Oct. 13, 1789)

Bates Number	Description
000538000 - 000538014	<i>United States v. Seeger</i> , 380 U.S. (1965)
000538015 - 000538028	Christy Mallory & Brad Sears, <i>Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014</i> , The Williams Institute (Feb. 2016)
000538029 - 000538045	Christy A. Rentmeester, <i>Moral Damage to Health Care Professionals and Trainees: Legalism and Other Consequences for Patients and Colleagues</i> , <i>Journal of Medicine and Philosophy</i> , J. Med. & Philosophy, 33: 27-43 (2008)
000538046 - 000538051	Kathleen M. Morrell and Wendy Chavkin, <i>Conscientious Objection to Abortion and Reproductive Healthcare: A Review of Recent Literature and Implications for Adolescents</i> , <i>Curr. Opin. Obstet. Gynecol.</i> 27:333-338 (2015)
000538052 - 000538075	Emmanuel Scheppers, <i>et al.</i> , Potential Barriers to the Use of Health Services Among Ethnic Minorities: A Review, <i>Family Practice</i> 23: 325-348 (2006)
000538076 - 000538504	James Madison, <i>The Writings of James Madison</i> , ed. Gallard Hunt Vol. 2 (1901)
000538505 - 000538552	Human Rights Watch, <i>"All We Want is Equality" Religious Exemptions and Discrimination against LGBT People in the United States</i> (2018)
000538553 - 000538637	Letter from Lawrence J. Joseph on behalf of the American Association of Pro-Life Obstetricians and Gynecologists to the Department of Health & Human Services Office of Public Health & Science (April 9, 2009)
000538638 - 000538666	Christopher C. Lund, <i>Religion is Special Enough</i> , 103 Va. L. Rev. 481 (May 2017)
000538667	James Madison, Property, The Founders' Constitution, Vol. 1, Ch. 16, Doc. 23
000538670 - 000538674	Michael P. Combs <i>et al.</i> , <i>Conscientious refusal to refer: findings from a national physician survey</i> , <i>J. Med. Ethics</i> 37:397-401 (2011)
000538675 - 000538708	<i>Conscientious objection to the provision of reproductive health care</i> , Ed. Wendy Chavkin, <i>Supp. to Int'l J. Gynecology & Obstetrics</i> 123 Supp. 3
000538709 - 000538727	Stephen J. Genuis and Chris Lipp, Review Article: <i>Ethical Diversity and the Role of Conscience in Clinical Medicine</i> , <i>Int'l J. Family Medicine</i> (2013)
000538728 - 000538732	Letter from Reverent Dennis H. Holtschneider, Executive Vice President and Chief Operations Officer of Ascension to Alex M. Azar II, Secretary of Health and Human Services (March 27, 2018)
000538733 - 000538740	Fariba Borhani <i>et al.</i> , <i>The relationship between moral distress, professional stress, and intent to stay in nursing profession</i> , <i>J. Med. Ethics & History of Med.</i> 7:4 (2014)
000538741 - 000538764	Matthew S. Bowman and Christopher P. Schandavel, <i>The Harmony between Professional Conscience Rights and Patients' Right of Access</i> , 6 <i>Phoenix L. Rev.</i> 31 (Fall 2012)
000538765 - 000538788	Kathleen A. Brady, <i>The Disappearance of Religion from Debates about Religious Accommodation</i> , 20 <i>Lewis & Clark L. Rev.</i> 1093 (2017)
000538789 - 000538791	Letter from Sr. Carol Keehan, President and CEO of the Catholic Health Association of the United States to Department of Health and Human Services (March 27, 2018)

Bates Number	Description
000538792 - 000538810	Fallon Chipidza <i>et al.</i> , <i>Impact of the Doctor-Patient Relationship</i> , Prim. Care Companion CNS Discord. 2015; 17(5)
000538811 - 000538815	Freedom2Care and The Christian Medical Association, Summary of Polling Data
000538816 - 000538821	Ezekiel Emmanuel <i>et al.</i> , <i>Euthanasia and Physician-Assisted Suicide: attitudes and experiences of oncology patients, oncologists, and the public</i> , The Lancet 347, 9018 (Jun. 29, 1996)
000538822 - 000539068	Department of Health and Human Services, Fiscal Year 2018, Administration for Community Living: Justification of Estimates for Appropriations Committees
000539069	Estimated Cost for Reporting Notices of Violation per Firm – Required by 88.6d
000539070 - 000539402	Department of Health and Human Services, Fiscal Year 2018, Centers for Disease Control and Prevention: Justification of Estimates for Appropriations Committees
000539403 - 000539748	Department of Health and Human Services, Fiscal Year 2018, Centers for Medicare & Medicaid Services: Justification of Estimates for Appropriations Committees
000539749 - 000540125	Department of Health and Human Services, Fiscal Year 2018, Administration for Children and Families: Justification of Estimates for Appropriations Committees
000540126 - 000540128	Centers for Disease Control and Prevention, Global Health Funding Webpage, viewed 2017
000540129 - 000540130	Analysis of Firms and Establishments Impacted by Voluntary Notice Provision at 88.5
000540131 - 000540140	Final Rule Assumptions and Calculations for Regulatory Impact Analysis
000540141 - 000540155	Buildings HHS_Report_10302018
000540156 - 000540172	Executive Office of the President, Office of Management and Budget, M-17-21, Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions on EO 13771 (April 5, 2017)
000540173 - 000540321	Department of Health and Human Services, Fiscal Year 2018, National Institutes of Health: Justification of Estimates for Appropriations Committees
000540322 - 000540672	Department of Health and Human Services, Fiscal Year 2018, Health Resources and Services Administration: Justification of Estimates for Appropriations Committees
000540673 - 000540919	Department of Health and Human Services, Fiscal Year 2018, Administration for Community Living: Justification of Estimates for Appropriations Committees
000540920 - 000541227	Department of Health and Human Services, Fiscal Year 2018, Substance Abuse and Mental Health Services Administration: Justification of Estimates for Appropriations Committees

Bates Number	Description
000541228 - 000541233	Notes and materials from February 15, 2019 listening session with the California Attorney General, Oregon Attorney General, California Department of Health and Human Services, and California Department of Healthcare Services
000541234 - 000541240	Notes and materials from February 19, 2019 listening session with the National Women's Law Center
000541241 - 000541296	Notes and materials from February 22, 2019 listening session with the National Center for Transgender Equality
000541297 - 000541301	Notes and materials from February 25, 2019 listening session with Lambda Legal
000541302 - 000541307	Notes and materials from February 28, 2019 listening session with the Center for Reproductive Rights
000541308 - 000541314	Notes and materials from March 5, 2019 listening session with Americans United for Separation of Church and State
000541315 - 000541538	Notes and materials from March 7, 2019 listening session with the American Association of Pro-Life Obstetricians & Gynecologists
000541539 - 000541545	Notes and materials from March 7, 2019 listening session with the National Council of Jewish Women, Inc.
000541546 - 000541550	Notes and materials from March 11, 2019 listening session with the Human Rights Campaign
000541551 - 000541557	Notes and materials from March 12, 2019 listening session with the National Center for Lesbian Rights
000541558 - 000541560	Notes and materials from March 13, 2019 listening session with the Concerned Women for America Legislative Action Committee
000541561 - 000541565	Letter from the Anti-Defamation League to the Department of Health and Human Services Office for Civil Rights (March 26, 2018)
000541566 - 000541570	Notes and materials from March 20, 2019 listening session with the American Civil Liberties Union
000541571 - 000541575	Notes and materials from April 8, 2019 listening session with the American Psychological Association
000541576 - 000541580	Notes and materials from April 10, 2019 listening session with the Alliance Defending Freedom
000541581 - 000541585	Notes and materials from April 11, 2019 listening session with Americans United for Life
000541586 - 000541589	Notes and materials from April 23, 2019 listening session with the NYC Mayor's office and Law Department
000541590 - 000541632	Notes and materials from April 30, 2019 listening session with the National Catholic Bioethics Center / Catholic Medical Association
000541633 - 000541634	Notes and materials from April 30, 2019 listening session with NYU Law School
000541635 - 000541642	Transcript of FedSoc Teleforum Conference Call with Roger Severino (Feb. 13, 2018)
000541643 - 000541745	2019 Final Rule, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Final Rule), 84 Fed. Reg. 23,170 (May 21, 2019)

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000541746 – 000541797	2018 NPRM, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Proposed Rule), 83 Fed. Reg. 3,880 (Jan. 26, 2018)
000541798 - 000541995	Complaint records referenced in 2018 NPRM, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Proposed Rule), 83 Fed. Reg. 3,880 (Jan. 26, 2018)
000541996 - 000542016	Complaint records referenced in the 2019 Final Rule, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Final Rule), 84 Fed. Reg. 23,170 (May 21, 2019)
000542017 - 000545608	343 Complaints referenced in the 2019 Final Rule, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Final Rule), 84 Fed. Reg. 23,170 (May 21, 2019), as listed at 000537745 – 000537752.
000545609 - 000546163	Additional Complaint records referenced in 2018 NPRM, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Proposed Rule), 83 Fed. Reg. 3,880 (Jan. 26, 2018)

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MANUAL FILING NOTIFICATION

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1 The administrative record for the above captioned cases was not e-filed for the following reason(s):

- 2 1. Unable to Scan Documents: The administrative record is over 500,000 pages long and requires
3 approximately 106 gigabytes of storage in compressed form. Accordingly, Defendants are
4 manually filing the administrative record. Through courier delivery service, two copies have been
5 sent to the Office of the Clerk of Court and a copy was sent to Plaintiffs' counsel in each of the
6 above captioned cases.
- 7 2. Physical Object (please describe)
- 8 3. Non-Graphic/Text Computer File (audio, video, etc.) on CD or other media
- 9 4. Item Under Seal in Criminal Case
- 10 5. Conformance with the Judicial Conference Privacy Policy (General Order 53)
- 11 6. Other (please describe)

12 Dated: July 22, 2019

Respectfully Submitted,

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14 Assistant Attorney General

15 MICHELLE BENNETT
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24 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I certify that on July 22, 2019, copies of the certified administrative record were sent through courier delivery service from the Federal Programs Branch office at 1100 L St. NW, Washington, DC 20005 to Plaintiffs' counsel at the following addresses:

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