

United States District Court
for the
Southern District of New York
Related Case Statement

Full Caption of Later Filed Case:

NATIONAL FAMILY PLANNING AND
REPRODUCTIVE HEALTH
ASSOCIATION; and PUBLIC HEALTH
SOLUTIONS, INC.,

Plaintiff

Case Number

vs.

1:19-cv-05435

ALEX AZAR II, in his official capacity as Secretary of the U.S.
Department of Health and Human Services; U.S. DEPARTMENT
OF HEALTH AND HUMAN SERVICES; ROGER SEVERINO, in
his capacity as Director of the Office of Civil Rights of the U.S.
Department of Health and Human Services; OFFICE OF CIVIL
RIGHTS of the U.S. Department of Health and Human Services,

Defendant

Full Caption of Earlier Filed Case:

(including in bankruptcy appeals the relevant adversary proceeding)

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE
OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE
OF HAWAII, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF
MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF
NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF
OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND,
STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF
WISCONSIN, CITY OF CHICAGO, COOK COUNTY, ILL. NOIS

Plaintiff

Case Number

vs.

19-cv-4676

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES, ALEX M. AZAR II, in his official
capacity as Secretary of the U.S. Department of
Health and Human Services, UNITED STATES OF
AMERICA

Defendant

## Status of Earlier Filed Case:

Closed

(If so, set forth the procedure which resulted in closure, e.g., voluntary dismissal, settlement, court decision. Also, state whether there is an appeal pending.)

Open

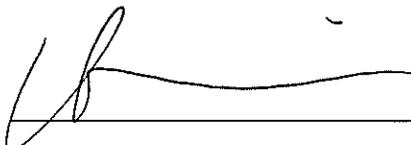
(If so, set forth procedural status and summarize any court rulings.)

State of New York, et al., v. U.S. Department of Health & Human Services, et al., 19-cv-4676, filed on May 21, 2019, is pending before the District Court. On June 7, 2019, the District Court indicated that Plaintiffs' anticipated preliminary injunction motion shall be filed on or before June 14, 2019; with Defendants' opposition filed no later than 14 days thereafter, or June 28, 2019, which is earlier; and Plaintiffs' reply, if any, filed no later than 7 days after that, or July 5, 2019, whichever is earlier. The District Court also scheduled argument on the motion for a preliminary injunction on Friday, July 12, 2019, at 2 PM. Plaintiffs have not, to date, filed their anticipated motion for a preliminary injunction.

Explain in detail the reasons for your position that the newly filed case is related to the earlier filed case.

The earlier-filed and later-filed cases concern the legality of the same final rule promulgated by Defendant U.S. Department of Health and Human Services ("HHS"): Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019) ("Final Rule"). As a result, these cases will have substantial factual and legal overlap, and will involve expenditure of the court's time and resources on these overlapping issues. In both cases, the plaintiffs challenge, pursuant to the Administrative Procedure Act, the substantive and procedural validity of the Final Rule. The plaintiffs in both matters ask that the court declare that the Final Rule is in excess of HHS's statutory jurisdiction, authority, or limitations, or short of statutory right under the APA; declare that the Final Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of the APA; declare that the Final Rule is unconstitutional; vacate and set aside the Final Rule; preliminarily and permanently enjoin HHS and its officers, employees, agents, and any acting in concert with them, from implementing, applying, or taking any action under the Final Rule; and grant any other relief that the court may deem proper. In addition, because the cases require the court to determine the legality of various terms of the Final Rule, as well as its procedural legitimacy, they could result in conflicting orders to HHS if not deemed related. Plaintiffs in the later-filed case would, of course, comply with the existing briefing schedule. It will therefore avoid unduly burdensome duplication of labor and expense and conflicting results if the cases are deemed related. Of note, in similar litigation challenging the Final Rule filed by three different sets of plaintiffs in the Northern District of California Defendant HHS agreed that those cases were related.

Signature: \_\_\_\_\_



American Civil Liberties Union Foundation

Date: June 11, 2019

Firm: \_\_\_\_\_