

1 JOSEPH H. HUNT
 2 Assistant Attorney General
 3 JOSEPH H. HARRINGTON
 4 United States Attorney
 5 MICHELLE R. BENNETT
 6 Assistant Branch Director
 7 REBECCA M. KOPPLIN
 8 BRADLEY P. HUMPHREYS
 9 Trial Attorneys
 10 Federal Programs Branch
 11 U.S. Department of Justice, Civil Division
 12 1100 L Street, N.W.
 13 Washington, DC 20005
 14 (202) 514-3953
 15 Rebecca.M.Kopplin@usdoj.gov
 16 *Counsel for Defendants*

11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF WASHINGTON**
 13 **AT YAKIMA**

14 STATE OF WASHINGTON,

15 Plaintiff,

16 v.

17 ALEX M. AZAR II, in his official
 18 capacity as Secretary of the United
 19 States Department of Health and
 20 Human Services; and UNITED
 STATES DEPARTMENT OF
 HEALTH AND HUMAN SERVICES,

21 Defendants.
 22

Nos. 2:19-cv-0183-SAB

NOTICE OF FILING

1 Defendants submit this notice to inform the Court that they have provided
2 counsel for Plaintiff with a copy of the administrative record, except for those
3 portions which may contain information covered by the Privacy Act, as
4 described in Defendants' motion for entry of order, ECF No. 32. The affected
5 portions of the administrative record are bates numbers 000541798 to
6 000546163. If Defendants' requested order is entered, Defendants will promptly
7 provide these portions of the administrative record to Plaintiff. Attached to this
8 notice are the index to the administrative record and the certification of the
9 administrative record.

10
11
12
13
14
15
16
17
18
19
20
21
22

Dated: July 22, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JOSEPH H. HARRINGTON
United States Attorney

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Rebecca Kopplin
REBECCA KOPPLIN
(California Bar No. 313970)
BRADLEY P. HUMPHREYS
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs
Branch

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1100 L Street, NW
Washington, DC 20005
Tel: (202) 514-3953
Fax: (202) 616-8470
Email: Rebecca.M.Kopplin@usdoj.gov

Counsel for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Rebecca Kopplin
REBECCA KOPPLIN
Trial Attorney
U.S. Department of Justice

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

Bates Number	Description
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
000537756 - 000537757	2010 Census Geographic Entity Tallies by State and Type
000537758 - 000537801	FY 2016 HHS Awards to Junior Colleges, Colleges, and Universities
000537802 - 000537806	FY 2017 HHS Awards from PEPFAR Implementing Agencies to Foreign Nonprofits, Foreign Governments, and International Organizations
000537807 - 000537820	FY 2017 HHS Awards to Counties
000537821 - 000537828	FY 2017 HHS Awards to the State of California, Pivot Table
000537829 - 000537872	FY 2020, HHS OCR, Justification of Estimates for Appropriations Committees
000537873	HHS Table Supporting Regulatory Impact Analysis
000537874	Form HHS-690, Civil Rights Assurance of Compliance
000537875	Form SF-424B – R&R, Federal Agency Form Instructions
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)

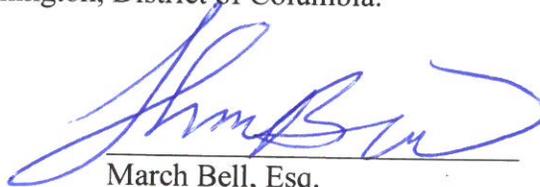
Bates Number	Description
000541746 – 000541797	2018 NPRM, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (Proposed Rule), 83 Fed. Reg. 3,880 (Jan. 26, 2018)
000541798 - 000541995	Complaint records referenced in 2018 NPRM, Protecting Statutory Conscience Rights in Health 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)

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