

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-4254; 20-41

Caption [use short title]

Motion for: consolidation

State of New York v. United States Department of Health & Human Services

Set forth below precise, complete statement of relief sought:

Consolidate these cases with Case Nos. 20-31 and 20-41. Each case seeks review of the same Nov. 6, 2019, decision by the Hon. Paul A. Engelmayer (S.D.N.Y.), vacating a rule issued by the U.S. Department of Health & Human Services.

MOVING PARTY: U.S. Dep't of Health & Human Services, et al.

☐ Plaintiff

☐ Defendant

☒ Appellant/Petitioner

☐ Appellee/Respondent

OPPOSING PARTY: State of New York et al.

MOVING ATTORNEY: Leif Overvold

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Ester Murdukhayeva

U.S. Department of Justice

New York State Office of the Attorney General

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Court-Judge/Agency appealed from: S.D.N.Y.; Hon. Paul A. Engelmayer

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain): _____

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency: _____

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date: _____

Signature of Moving Attorney:

/s/ Leif Overvold

Date: 1/30/2020

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, et al.,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES, et al.,

Defendants-Appellants,

DR. REGINA FROST, et al.,

Intervenor-Defendants-Appellants.

Nos. 19-4254, 20-41

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC., et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR, II, et al.,

Defendants-Appellants.

No. 20-31

NATIONAL FAMILY PLANNING &
REPRODUCTIVE HEALTH
ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR, II, et al.,

Defendants-Appellants.

No. 20-32

UNOPPOSED MOTION TO CONSOLIDATE

Defendants-Appellants Alex M. Azar, II, in his official capacity; the U.S. Department of Health & Human Services (“HHS”); Roger T. Severino, in his official capacity; the Office for Civil Rights, HHS; and the United States respectfully move to consolidate the above-captioned cases.

1. On December 18, 2019, Intervenor-Defendants Dr. Regina Frost and the Christian Medical and Dental Associations filed a notice of appeal from the November 6, 2019, orders and final judgment entered by the U.S. District Court for the Southern District of New York in the consolidated cases Nos. 19-cv-04676, 19-cv-05433, and 19-cv-05435. That appeal has been docketed in this Court as *State of New York v. HHS*, No. 19-4254.

2. On January 3, 2020, the government Defendants-Appellants also filed notices of appeals from the November 6, 2019, orders and final judgment entered by the U.S. District Court for the Southern District of New York in the consolidated

cases Nos. 19-cv-04676, 19-cv-05433, and 19-cv-05435. Those appeals have been docketed in this Court as *Planned Parenthood Federation of America, Inc. v. Azar*, No. 20-31; *National Family Planning & Reproductive Health Association v. Azar*, No. 20-32; and *State of New York v. HHS*, No. 20-41. The appeals docketed as No. 19-4254 and No. 20-41 have been consolidated.

3. To promote judicial economy, the government Defendants-Appellants respectfully request that *Planned Parenthood Federation of America, Inc. v. Azar*, No. 20-31, and *National Family Planning & Reproductive Health Association v. Azar*, No. 20-32, be consolidated with *State of New York v. HHS*, Nos. 19-4254, 20-41, as well, and that a single, unified briefing schedule be established for the consolidated cases.

4. We have contacted counsel for the Plaintiffs-Appellees and the Intervenor-Defendants-Appellants in these four cases, and they have no objection to consolidation.

Respectfully submitted,

MICHAEL RAAB
LOWELL V. STURGILL
SARAH CARROLL

/s/ Leif Overvold

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JANUARY 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 292 words, according to the count of Microsoft Word.

/s/ *Leif Overvold*
LEIF OVERVOLD

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2020, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ *Leif Overvold*
LEIF OVERVOLD