

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Appellee,

v.

ALEX M. AZAR II, Secretary of U.S.
Department of Health and Human Services; et al.,

Defendants-Appellants.

No. 20-15398

COUNTY OF SANTA CLARA; et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

No. 20-15399

STATE OF CALIFORNIA,

Plaintiff-Appellee,

v.

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

No. 20-16045

Defendants-Appellants.
STATE OF WASHINGTON, Plaintiff-Appellee, v. ALEX M. AZAR II and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Defendants-Appellants.

No. 20-35044

APPELLANTS' UNOPPOSED MOTION TO EXCEED THE TYPE-VOLUME LIMITATION FOR THE OPENING BRIEF

Pursuant to Ninth Circuit Rule 32-2(a), Defendants-Appellants respectfully request permission to exceed the type-volume limitations set forth in Federal Rule of Appellate Procedure 32(a)(7) and Ninth Circuit Rule 32-1(a) by 3,371 words for the opening brief, for a total of 17,371 words in the opening brief. Plaintiffs-Appellees do not oppose the relief requested in this motion.

1. The reasons for this request are set forth in the attached declaration and include the following. This consolidated appeal arises from a 103-page final rule that the U.S. Department of Health & Human Services (HHS) promulgated in 2019. The opening brief addresses appeals from two distinct district court decisions from the Eastern District of Washington and the Northern District of California, resolving four separate lawsuits filed by the plaintiffs challenging the agency's authority to issue the rule and raising numerous statutory and constitutional issues. The district courts'

opinions, one of which adopts in large part the analysis of a 147-page order and opinion of another district court in the Southern District of New York, vacate the rule based on a number of independent grounds, all of which must be addressed in the government's brief. Defendants-Appellants have diligently edited the opening brief to address only the issues presented on appeal, and to do so efficiently. Nonetheless, there is a substantial need for an over-length opening brief in light of the large number and scope of the independent legal questions that must be addressed, the consolidated nature of the appeal and the number of distinct cases filed in the district court, and the significance of the decision at issue.

2. Counsel for Defendants-Appellants have consulted with counsel for Plaintiffs-Appellees, and Plaintiffs-Appellees do not oppose the relief requested in this motion.

3. The detailed declaration required by Ninth Circuit Rule 32-2(a) is attached to this motion, attesting to the facts discussed herein.

CONCLUSION

For these reasons, Defendants-Appellant respectfully request permission for the opening brief to exceed the type-volume limitations.

Respectfully submitted,

MICHAEL S. RAAB

s/ Leif Overvold

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JUNE 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, 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 335 words, according to the count of Microsoft Word.

s/ Leif Overvold

LEIF OVERVOLD

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Leif Overvold

LEIF OVERVOLD

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**DECLARATION OF COUNSEL IN SUPPORT OF MOTION TO EXCEED
THE TYPE-VOLUME LIMITATION FOR THE OPENING BRIEF**

In support of Defendants-Appellants' motion for leave to exceed the type-volume limitation in the opening brief, I declare:

1. As counsel for Defendants-Appellants, I believe an oversize opening brief is required in order to clearly address the issues presented on appeal, and to do so in a way that will best aid the Court in deciding this appeal.

2. On June 12, 2020, I emailed counsel for Plaintiffs-Appellees, and asked for Plaintiffs-Appellees' position on the filing of an oversize opening brief.

3. On June 13, 2020, Neli Palma informed me via email that the State of California does not oppose the Defendants-Appellants' request. On June 14, Jeff Sprung and Jaime Huling Delaye informed me via email that the State of Washington and the City & County of San Francisco, respectively, do not oppose the request, and

on June 15, Miriam Nemetz informed me via email that the Santa Clara plaintiffs do not oppose the request either.

4. Defendants-Appellants believe that they will require a 3,371 word increase in the words allowed in their opening brief, for a total of 17,371 words. A brief of that length is being filed concurrently with this motion.

5. Defendants-Appellants believe that a brief of that length is necessary to adequately address the involved statutory, regulatory, and procedural background of this case. This consolidated appeal arises from a 103-page final rule that the U.S. Department of Health & Human Services (HHS) promulgated in 2019. *See* Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019). The rule clarifies and interprets the requirements imposed by, and explains HHS's procedures for enforcing, numerous statutes protecting individuals and entities with religious or moral objections to providing certain health-care-related services through conditions placed on the receipt of HHS funds.

6. In addition, this brief addresses four separate lawsuits challenging the rule, which were resolved through two distinct district court decisions from the Eastern District of Washington and the Northern District of California, one of which adopts in large part the analysis of a 147-page order and opinion of another district court in the Southern District of New York.

7. The plaintiffs in the four cases also raised a number of distinct challenges to the Rule, and the district court opinions vacate the rule based on a number of

independent grounds, all of which must be addressed in the government's brief.

Addressing the issues presented on appeal in a clear manner and in such a way as will best aid the Court in deciding this appeal requires the filing of an oversized brief as well given the large number and scope of the independent legal questions, the consolidated nature of the appeal and the number of distinct cases filed in the district court, and the significance of the decisions at issue.

8. Defendants-Appellants have diligently edited the opening brief to address only the issues presented on appeal, and to do so efficiently. Nonetheless, Defendants-Appellants believe that substantial need exists to file an oversize opening brief of 17,371 words.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15, 2020.

Respectfully submitted,

MICHAEL S. RAAB

s/ Leif Overvold

LOWELL V. STURGILL JR.

SARAH CARROLL

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s/ Leif Overvold

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