

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

**UNOPPOSED MOTION TO CONSOLIDATE APPEALS WITH RESPECT
TO COORDINATED BRIEFING SCHEDULES, PANEL ASSIGNMENT,
AND THE SCHEDULING OF ARGUMENT**

Defendants-appellants¹ respectfully move to consolidate the above-captioned appeals for briefing schedules, panel assignment, and argument schedules.

1. On May 21, 2019, the U.S. Department of Health and Human Services published a final rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170. The State of Washington filed suit to challenge the rule in the U.S. District Court for the Eastern District of Washington, and the State of California, the City and County of San Francisco, and the County of Santa Clara along with 15 organizational and individual co-plaintiffs filed three separate actions challenging the rule in the U.S. District Court for the Northern

¹ Defendants in the *Washington*, *Santa Clara*, and *California* cases are Alex M. Azar II and the U.S. Department of Health and Human Services (HHS). Defendants in the *San Francisco* case are Secretary Azar, Roger Severino, and HHS.

District of California. The California cases were deemed related and assigned to the same judge.

2. On November 21, 2019, a judge of the U.S. District Court for the Eastern District of Washington issued an order granting the State of Washington's motion for summary judgment, denying defendants' motion to dismiss or for summary judgment, vacating the rule, and entering final judgment. *Washington v. Azar*, 426 F.Supp.3d 704 (E.D. Wash. 2019). On November 19, 2019, a judge of the U.S. District Court for the Northern District of California issued a single order that was entered in the dockets of the three related cases pending in the district, granting the plaintiffs' motion for summary judgment, denying defendants' motions to dismiss or for summary judgment, and vacating the rule. *City & County of San Francisco v. Azar*, 411 F. Supp. 3d 1001 (N.D. Cal. 2019). The district court entered separate final judgments in the *San Francisco* and *Santa Clara* cases on January 8, 2020. Defendants-appellants filed notices of appeals in each of these cases, and on May 8, 2020, this Court granted defendants-appellants' unopposed motion to consolidate the three appeals docketed as Nos. 20-15398, 20-15399, and 20-35044. Defendants-appellants' opening brief in the consolidated appeals is currently due on June 15, 2020.

3. On May 26, 2020, the California district court entered final judgment in the remaining case pending before it, and defendants filed a notice of appeal on May 29, 2020. That case has been docketed in this Court as No. 20-16045, and defendants-appellants' opening brief is due July 28, 2020.

4. Defendants-appellants respectfully request that the most recent appeal be consolidated with the other three already consolidated cases for purposes of coordinated briefing schedules, panel assignment, and oral arguments. Consolidation of this appeal would also promote judicial economy, as it concerns the validity of the same final rule promulgated by the U.S. Department of Health and Human Services, and California asserts similar claims as the plaintiffs' in the three previously consolidated appeals. *See* Fed. R. App. P. 3(b)(2) ("When . . . parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals."). If it is consolidated, defendants-appellants expect to file one opening brief and one reply brief applicable to all four appeals, which would conserve the resources of both this Court and the Executive Branch.

5. Plaintiffs-appellees in all four appeals do not oppose consolidation.

6. The parties have agreed to the following consolidated briefing schedule, which matches the schedule this Court previously set in the consolidated appeals *City & County of San Francisco v. Azar*, No. 20-15398; *County of Santa Clara v. U.S. Department of Health & Human Services*, No. 20-15399; and *State of Washington v. Azar*, No. 20-35044:

Mon., June 15, 2020

Appellants' opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Wed., July 15, 2020

Appellees shall file their answering briefs and excerpts of record in their respective

cases pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Within 21 days of service of the appellees' briefs

Appellants' optional reply brief shall be filed and served pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

The parties' consent to the briefing schedule previously established by the Court in the consolidated appeals is without prejudice to their right to request any deadline extensions available under the Court's procedures and rules.

CONCLUSION

Defendants-appellants respectfully request that the Court consolidate the above-captioned appeals for establishing a coordinated briefing schedule, as well as for panel assignment, and the scheduling of argument.

Respectfully submitted,

s/ Leif Overvold
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JUNE 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A). This document contains 763 words.

s/ *Leif Overvold*
LEIF OVERVOLD

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 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