

Consolidated Case Nos. 20-15398, 20-15399, 20-16045 and 20-35044

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, et al.,

Defendants-Appellants.

On Appeal from the United States District Courts
for the Northern District of California and the Eastern District of Washington

EXCERPTS OF RECORD VOLUME I

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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA, by and through
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Plaintiff,

v.

**ALEX M. AZAR, in his official capacity as
 Secretary of the U.S. DEPARTMENT OF
 HEALTH & HUMAN SERVICES; U.S.
 DEPARTMENT OF HEALTH AND
 HUMAN SERVICES; DOES 1-100,**

Case No. 3:19-cv-02769-WHA

~~[PROPOSED]~~ FINAL JUDGMENT

Defendants.

Pursuant to the parties' stipulation and the Court's November 19, 2019 Order Re Motions to Dismiss and For Summary Judgment and Requests for Judicial Notice, ECF No. 143, the Court hereby orders and enters the following dispositions:

1. Plaintiff State of California's Motion for Summary Judgment (ECF No. 113) is GRANTED as to its First Cause of Action and Second Cause of Action.
2. Judgment is HEREBY ENTERED in favor of Plaintiff State of California, and the challenged rule, "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, " RIN 0945-AA10, 84 Fed. Reg. 23,170 (May 21, 2019), is set aside and shall be unenforceable.
3. Plaintiff State of California's cause of action under the Freedom of Information Act (the Ninth Cause of Action) is DISMISSED WITH PREJUDICE in accordance with the parties' stipulation.
4. The remaining causes of action (Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action) are DISMISSED AS MOOT.
5. Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 54) is DENIED.

IT IS SO ORDERED.

Dated: May 26, 2020.



The Honorable William Alsop

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
 FRANCISCO,

Plaintiff,

vs.

ALEX M. AZAR II, Secretary of U.S.
 Department of Health and Human Services;
 ROGER SEVERINO, Director, Office for
 Civil Rights, Department of Health and Human
 Services; U.S. DEPARTMENT OF HEALTH
 AND HUMAN SERVICES; and DOES 1-25,

Defendants.

Case No. 3:19-cv-2405-WHA

~~[PROPOSED]~~ FINAL JUDGMENT

~~PROPOSED~~ FINAL JUDGMENT

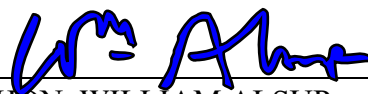
For the reasons detailed in the Court's November 19, 2019, Order, (ECF No. 147), the Court enters the following dispositions:

Plaintiff City and County of San Francisco's Motion for Summary Judgment (see ECF No. 116; *State of California v. Azar et al.*, No. 3:19-cv-02769 (N.D. Cal.), ECF No. 113) is **GRANTED** as to Count I. In all other respects, plaintiff's motion is moot. Judgment is **HEREBY ENTERED** in favor of plaintiff, and the challenged rule is set aside and shall be unenforceable. Plaintiff's remaining claims are dismissed as moot.

Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 89) is **DENIED**.

IT IS SO ORDERED.

Dated: January 8, 2020.


HON. WILLIAM ALSUP
United States District Judge

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

COUNTY OF SANTA CLARA, TRUST WOMEN
 SEATTLE, LOS ANGELES LGBT CENTER,
 WHITMAN-WALKER CLINIC, INC. d/b/a
 WHITMAN-WALKER HEALTH, BRADBURY-
 SULLIVAN LGBT COMMUNITY CENTER,
 CENTER ON HALSTED, HARTFORD GYN
 CENTER, MAZZONI CENTER, MEDICAL
 STUDENTS FOR CHOICE, AGLP: THE
 ASSOCIATION OF LGBTQ+ PSYCHIATRISTS,
 AMERICAN ASSOCIATION OF PHYSICIANS
 FOR HUMAN RIGHTS d/b/a GLMA: HEALTH
 PROFESSIONALS ADVANCING LGBTQ
 EQUALITY, COLLEEN MCNICHOLAS,
 ROBERT BOLAN, WARD CARPENTER, SARAH
 HENN, and RANDY PUMPHREY,

Plaintiffs,

vs.

U.S. DEPARTMENT OF HEALTH AND
 HUMAN SERVICES and ALEX M. AZAR, II, in
 his official capacity as SECRETARY OF HEALTH
 AND HUMAN SERVICES,

Defendants.

Case No. 3:19-cv-02916

~~[PROPOSED]~~ FINAL JUDGMENT

Hon. William Alsup

~~[PROPOSED]~~ FINAL JUDGMENT

For the reasons detailed in the Court's November 19, 2019, Order (ECF No. 87), the Court enters the following dispositions:

Plaintiffs' Motion for Summary Judgment (*see* ECF No. 70; *State of California v. Azar et al.*, No. 3:19-cv-02769 (N.D. Cal.), ECF No. 113) is **GRANTED**. The challenged rule is set aside and shall be unenforceable.

Defendants' Motion to Dismiss Or, In the Alternative, for Summary Judgment (ECF No. 64) is **DENIED**.

Because Plaintiffs have received substantially all the relief they sought in this action, it is unnecessary for the Court to reach the claims not addressed in the Court's Order.

Final Judgment is hereby entered this 8 day of January, 2020.

Date: January 8, 2020.


HONORABLE WILLIAM ALSUP
United States District Judge

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of Washington

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Nov 21, 2019

SEAN F. McAVOY, CLERK

Plaintiff

v.

ALEX M. AZAR II, and
UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Civil Action No. 2:19-cv-00183-SAB

Defendant

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

☐ the plaintiff (*name*) _____ recover from the
defendant (*name*) _____ the amount of
_____ dollars (\$ _____), which includes prejudgment
interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (*name*) _____
_____ recover costs from the plaintiff (*name*) _____
_____.

☒ other: Plaintiff's Motion for Preliminary Injunction, ECF No. 8, is DENIED, as moot.
Defendants' Motion to Dismiss, or, in the Alternative for Summary Judgment, ECF No. 44, is DENIED.
Plaintiff's Motion for Summary Judgment, ECF No 57, is GRANTED.
Judgment is entered for Plaintiff.

This action was (*check one*):

☐ tried by a jury with Judge _____ presiding, and the jury has
rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision
was reached.

☒ decided by Judge Stanley A. Bastian _____ on a motion for
summary judgment.

Date: 11/21/2019

CLERK OF COURT

SEAN F. McAVOY

s/ Tonia Ramirez

(By) Deputy Clerk

Tonia Ramirez

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 21, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

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

No. 2:19-cv-00183-SAB

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT;
DENYING DEFENDANTS'
MOTION TO DISMISS**

Before the Court are Defendants' Motion to Dismiss, or, in the Alternative for Summary Judgment, ECF No. 44, and Plaintiff's Motion for Summary Judgment, ECF No. 57. A hearing on the motion was held on November 7, 2019, in Spokane, Washington. Plaintiff was represented by Assistant Attorney Generals Jeffrey T. Sprung, Lauryn K. Fraas and Paul M. Crisalli. Defendants were represented Rebecca Kopplin and Benjamin T. Takemoto.

On May 21, 2019, U.S. Department of Health and Human Services (HHS) issued a Final Rule in the Federal Register.¹ On May 28, 2019, Plaintiff filed suit to

¹ *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23170 (May 21, 2019).

1 enjoin and set aside the Final Rule. In its Complaint, Plaintiff asserts the Final Rule
2 “imposes the religious views of officials at HHS on Washingtonians and
3 individuals across the country who seek timely, medically necessary care and
4 information about reproductive health, LGBTQ health, and end-of-life care.” ECF
5 No. 1 at 1.

6 In June 2019, Plaintiff filed a Motion for Preliminary Injunction, ECF No. 8.
7 The parties then asked the Court to hold Plaintiff’s Motion for Preliminary
8 Injunction in abeyance, given that the United States agreed to postpone the
9 effective date of the Final Rule until November 22, 2019. ECF No. 27. The Court
10 granted the parties’ request. ECF No. 28. A briefing schedule was entered that set
11 the deadlines for the parties’ anticipated cross-motions for summary judgment to
12 be filed. ECF No. 35.

13 The Court has reviewed the parties’ cross-motions for summary judgment;
14 *amici curiae* briefs from the following entities: Scholars of the LGBT Population,
15 ECF No. 53, Ex. 1; National Center for Lesbian Rights, ECF No. 55, Ex. 1;
16 Institute for Policy Integrity at New York University School of Law, ECF No. 56,
17 Ex. 1; Leading Medical Organizations, ECF No. 63, Ex. 1; and heard from counsel.
18 For the reasons stated below, the Court grants Plaintiff’s Motion for Summary
19 Judgment, ECF No. 57, and denies Defendants’ Motion to Dismiss, or, in the
20 Alternative for Summary Judgment, ECF No. 44.

21 **Motion Standard**

22 Summary judgment is appropriate “if the movant shows that there is no
23 genuine dispute as to any material fact and the movant is entitled to judgment as a
24 matter of law.” Fed. R. Civ. P. 56(a). In an action reviewing the merits under the
25 APA, however, the Court does not ask whether there is a genuine dispute as to any
26 material fact. Rather, “the function of the district court is to determine whether or
27 not as a matter of law the evidence in the administrative record permitted the
28 agency to make the decision it did.” *Occidental Eng’g Co. v. I.N.S.*, 753 F.2d 766,

1 769 (9th Cir. 1985). In an APA review case, “summary judgment is the appropriate
2 mechanism for deciding the legal question of whether the agency could reasonably
3 have found the facts as it did.” *Id.*

4 Generally, courts reviewing an agency decision are limited to the
5 administrative record in existence at the time of the decision. *Lands Council v.*
6 *Powell*, 395 F.3d 1019, 1029 (9th Cir. 2005).

7 **Administrative Procedure Act**

8 Federal administrative agencies are required to engage in “reasoned
9 decisionmaking.” *Michigan v. E.P.A.*, __ U.S. __, 135 S.Ct. 2699, 2706 (2015).
10 “Not only must an agency’s decreed result be within the scope of its lawful
11 authority, but the process by which it reaches that result must be logical and
12 rational.” *Id.* (quoting *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359,
13 374 (1998)).

14 The Administrative Procedure Act, 5 U.S.C § 551 *et seq.*, provides the
15 judicial authority to review executive agency action for procedural correctness.
16 *F.C.C v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009). The APA
17 requires a court to “hold unlawful and set aside agency action, findings, and
18 conclusions found to be--(A) arbitrary, capricious, an abuse of discretion, or
19 otherwise not in accordance with law; (B) contrary to constitutional right, power,
20 privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or
21 limitations, or short of statutory right; or (D) without observance of procedure
22 required by law.” 5 U.S.C. § 706 (2).

23 Final agency actions are arbitrary and capricious if the agency fails to
24 “examine relevant data,” “consider an important aspect of the problem,” or
25 “articulate a satisfactory explanation for its action including a rational connection
26 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State*
27 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). “Unexplained inconsistency”
28 between agency actions is “a reason for holding an interpretation to be an arbitrary

1 and capricious change.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet*
2 *Servs.*, 545 U.S. 967, 981 (2005). This Court’s review of an agency decision “is
3 based on the administrative record and the basis for the agency’s decision must
4 come from the record.” *Gill v. U.S. Dep’t of Justice*, 913 F.3d 1179, 1187 (9th Cir.
5 2019) (quotation omitted). Such review is narrow; the Court may not substitute its
6 own judgment for that of the agency. *Fox*, 556 U.S. at 513.

7 When the agency’s action represents a policy change, such action requires “a
8 reasonable analysis for the change beyond that which may be required when an
9 agency does not act in the first instance.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at
10 42. “A policy change complies with the APA if the agency (1) displays ‘awareness
11 that it is changing position’ (2) shows that ‘the new policy is permissible under the
12 statute,’ (3) ‘believes’ the new policy is better, and (4) provides ‘good reasons’ for
13 the new policy, which, if the ‘new policy rests upon factual findings that contradict
14 those which underlay its prior policy,’ must include ‘a reasoned explanation . . . for
15 disregarding facts and circumstances that underlay or were engendered by the prior
16 policy.” *Organized Village of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 966
17 (2015) (quoting *Fox*, 556 U.S. at 515-16). On the other hand, if the agency ignores
18 or countermands its earlier factual findings without reasoned explanation for doing
19 so, the policy change violates the APA. *Fox*, 556 U.S. at 537 (“An agency cannot
20 simply disregard contrary or inconvenient factual determinations that it made in the
21 past, any more than it can ignore inconvenient facts when it writes on a blank
22 slate.”).

23 Not every violation of the APA invalidates an agency action. *Kake*, 795 F.3d
24 at 969 (citing *Jicarilla Apache Nation v. U.S. Dep’t of Interior*, 613 F.3d 1112,
25 1121 (D.C. Cir. 2010)). Rather, the opponent of the action has the burden to
26 demonstrate that an error is prejudicial. *Id.* The required demonstration of
27 prejudice is not particularly onerous. *Id.* “If prejudice is obvious to the court, the
28

1 party challenging agency action need not demonstrate anything further.” *Id.*
2 (quoting *Jicarilla*, 613 F.3d at 1121).

3 **Federal Conscience and Anti-Discrimination Laws**

4 In the Executive Summary of the Final Rule, HHS relies on a number of
5 statutes it maintains reflect Congress’ intention to protect the freedoms of
6 conscience and religious exercise in the health care context. 84 Fed. Reg. at 23170-
7 74. These provisions include the Church Amendment, the Coats-Snowe
8 Amendment, the Weldon Amendment, provisions under the Patient Protection and
9 Affordable Care Act (“ACA”), provisions for Medicare Advantage organizations
10 and Medicaid managed care organizations; provisions related to the performance
11 of advanced directives; conscience provisions related to Global Health Programs,
12 compulsory health care, hearing screening, occupational illness testing,
13 vaccinations, mental health treatment; provisions in appropriations legislation;
14 provisions for religious nonmedical health care providers and their patients. *Id.*

15 Many of these statutory protections have existed unchanged for decades.

16 **1. The Church Amendments**

17 The Church Amendments were enacted at various times during the 1970’s.
18 Among other things, they prohibit certain HHS grantees from discriminating in the
19 employment of, or the extension of staff privileges to, any health care professional
20 because they refused, based on their religious beliefs or moral convictions, to
21 perform or assist in the performance of any lawful sterilization or abortion
22 procedures.² The Church Amendments also prohibit individuals from being
23 required to perform or assist in the performance of any health service program or
24 research activity funded in whole or in part under a program administered by the
25 Secretary that are contrary to their religious beliefs or moral convictions. *Id.*
26 Any recipients of a grant, contract, loan, or loan guarantee under the Public Health
27

28 ² See 42 U.S.C. § 300a-7.

Service Act must comply with paragraphs (b) and (c)(1) of the Church Amendments.³ Paragraph (c)(2) applies to the recipients of the HHS's grants or contracts for biomedical or behavioral research under any program administered by the Secretary.⁴

i. Paragraph (b)

Paragraph (b) of the Church Amendments provides, with regard to individuals, that no court, public official, or other public authority can use an individual's receipt of certain federal funding as grounds to require the individual to perform, or assist in, sterilization procedures or abortions, if doing so would be contrary to his or her religious beliefs or moral convictions; and prohibits public authorities from requiring an entity that receives federal funds under certain HHS programs to (1) to permit sterilizations or abortions in the entity's facilities if the performance of such procedures there violates the entity's religious beliefs or moral convictions, or (2) to make its personnel available for such procedures if contrary to the personnel's religious beliefs or moral convictions.⁵

ii. Paragraph (c)

Paragraph (c)(1) of the Church Amendments prohibits certain entities from discriminating in employment, promotion, or termination of employment decisions with respect to physicians and other health care personnel based on an individual declining to perform or assist in an abortion or sterilization because of that individual's religious beliefs or moral convictions; and prohibits those entities from discriminating in such decisions based on an individual's performance of a lawful abortion or sterilization procedure, or on an individual's religious beliefs or

³84 Fed. Reg. at 23171.

⁴ 42 U.S.C. § 300a-7(c)(2); 84 Fed. Reg. at 23171.

⁵ 42 U.S.C. § 300a-7(b)(1),(2); 84 Fed. Reg. at 23171.

1 moral convictions about such procedures more generally.⁶

2 Paragraph (c)(2) prohibits discrimination by such an entity against
3 physicians or other health care personnel in employment, promotion, or
4 termination of employment, as well as discrimination in the extension of staff or
5 other privileges, because of an individual's performance or assistance in any lawful
6 health service or research activity, declining to perform or assist in any such
7 service or activity based on religious beliefs or moral convictions, or the
8 individual's religious beliefs or moral convictions respecting such services or
9 activities more generally.⁷

10 **iii. Paragraph (d)**

11 Paragraph (d) of the Church Amendments applies to any part of a health
12 service program or research activity funded in whole or in part under a program
13 administered by the Secretary and states that no individual shall be required to
14 perform or assist in the performance of any part of the program or research activity
15 if doing so would be contrary to his or her religious beliefs or moral convictions.⁸

16 **iv. Paragraph (e)**

17 Paragraph (e) of the Church Amendments applies to health care training or
18 study programs, including internships and residencies, and prohibits any entity
19 receiving certain funds from denying admission to, or otherwise discriminating
20 against, applicants for training or study based on the applicant's reluctance or
21 willingness to counsel, suggest, recommend, assist, or in any way participate in the
22 performance of abortions or sterilizations contrary to, or consistent with, the
23 applicant's religious beliefs or moral convictions.⁹

24 _____
25 ⁶ 42 U.S.C. § 300a-7(c)(1); 84 Fed. Reg. at 23171.

26 ⁷ 42 U.S.C. § 300a-7(c)(2); 84 Fed. Reg. at 23171.

27 ⁸ 42 U.S.C. § 300a-7(d); 84 Fed. Reg. at 23171.

28 ⁹ 42 U.S.C. § 300a-7(e); 84 Fed. Reg. at 23171.

2. 1996 Coats-Snowe Amendment (Section 245 of the Public Health Services Act)

The Coats-Snowe Amendment was passed in 1996. The Coats-Snowe Amendment bars the federal government and any State or local government that receives federal financial assistance from discriminating against a health care entity that (1) refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions; (2) refuses to make arrangements for any of the activities specified in paragraph (1); or (3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.¹⁰ “Health care entity” is defined as including an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.¹¹

The Coats-Snowe Amendment also prohibits governments receiving federal assistance from denying a legal status (including a license or certificate) or financial assistance, services, or other benefits to a health care entity based on an applicable physician training program’s lack of accreditation due to the accrediting agency’s requirements that a health care entity perform induced abortions; require, provide, or refer for training in the performance of induced abortions; or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions.¹²

¹⁰ 42 U.S.C. 238n(a)(1)-(3).

¹¹ 42 U.S.C. § 238n(c)(2); 84 Fed. Reg. at 23171.

¹² 42 U.S.C. § 238n(b)(1); 84 Fed. Reg. at 23172.

3. 2005 Weldon Amendment

The Weldon Amendment was added to the annual 2005 health spending bill and has been included in subsequent appropriations bills.¹³ It bars the use of appropriated funds on a federal agency or programs, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not, among other things, refer for abortions. *Id.*

The Weldon Amendment defines the term “health care entity” to include an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan. *Id.*

4. Patient Protection Affordable Care Act (ACA)

i. Section 1553

Section 1553 of the ACA prohibits the Federal government, and any State or local government or health care provider that receives Federal financial assistance under the ACA, or any ACA health plans, from discriminating against an individual or institutional health care entity because of the individual or entity’s objection to providing any health care items or service for the purpose of causing or assisting in causing death, such as by assisted suicide, euthanasia, or mercy killing.¹⁴ Section 1553 designates the Office of Civil Rights to receive complaints of discrimination on that basis. *Id.*

ii. Section 1303

Section 1303 of the ACA specifically states that health plans are not required to provide coverage of abortion services as part of “essential health

¹³ 84 Fed. Reg. at 23172.

¹⁴ 42 U.S.C. § 18113; 84 Fed. Reg. at 23172.

benefits for any plan year.”¹⁵ No qualified health plan offered through an ACA exchange may discriminate against any individual health care provider or health care facility because of the facility or provider’s unwillingness to provide, pay for, provide coverage of, or refer for abortions.¹⁶

iii. Section 1441

Section 1441 provides exemptions from the individual responsibility requirement imposed under Internal Revenue Code § 5000A, including when such individuals are exempt based on a hardship (such as the inability to secure affordable coverage without abortion), are members of an exempt religious organization or division, or participate in a “health care sharing ministry.”¹⁷

5. Patient’s Self-Determination Act

Section 7 of the Assisted Suicide Funding Restriction Act of 1997¹⁸ clarified that the Patient Self-Determination Act’s provisions stating that Medicare and Medicaid beneficiaries have certain self-determination rights do not (1) require any provider, organization, or any employee of such provider or organization participating in the Medicare or Medicaid program to inform or counsel any individual about a right to any item or service furnished for the purpose of causing or assisting in causing the death of such individual, such as assisted suicide, euthanasia, or mercy killing; or (2) apply to or affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or assistance in causing, the death of an individual, such as by assisted suicide, euthanasia, or mercy killing.¹⁹ Those protections extend to Medicaid and Medicare

¹⁵ 42 U.S.C. § 18023(b)(1)(A); 84 Fed. Reg. at 23172.

¹⁶ 42 U.S.C. § 18023(b)(4); 84 Fed. Reg. at 23172.

¹⁷ 42 U.S.C. § 18081; 26 U.S.C. § 5000A(d)(2); 84 Fed. Reg. at 23172.

¹⁸ Pub. L. 105-12, 111 Stat. 23.

¹⁹ 84 Fed. Reg. at 23172-3.

providers, such as hospitals, skilled nursing facilities, home health or personal care service providers, hospice programs, Medicaid managed care organizations, health maintenance organizations, Medicare+Choice (now Medicare Advantage) organizations, and prepaid organizations. *Id.*

6. Counseling and Referral

Certain Federal protections prohibit organizations offering Medicare+Choice (now Medicare Advantage) plans and Medicaid managed care organizations from being compelled under certain circumstances to provide, reimburse for, or cover, any counseling or referral service in plans over an objection on moral or religious grounds.²⁰ Department regulations provide that this conscience provision for managed care organizations also applies to prepaid inpatient health plans and prepaid ambulatory health plans under the Medicaid program.²¹

7. Global Health Programs

Recipients of foreign assistance funds for HIV/AIDS prevention, treatment, or care authorized by section 104A of the Foreign Assistance Act of 1961 cannot be required, as a condition of receiving such funds, (1) to “endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS,” or (2) to “endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.”²² The government also cannot discriminate against such recipients in the solicitation or issuance of grants, contracts, or cooperative

²⁰ 42 U.S.C. § 1395w-22(j)(3)(B) (Medicare+Choice); 42 U.S.C. § 1396u-2(b)(3)(B) (Medicaid managed care organization); 84 Fed. Reg. at 23173.

²¹ 42 CFR § 438.102(a)(2); 84 Fed. Reg. at 23173.

²² 22 U.S.C. § 7631(d)(1)(B).

1 agreements for the recipients' refusal to do any such actions.²³

2 **8. Compulsory Medical Screening, Examination, Diagnosis, or**
3 **Treatment.**

4 Under the Public Health Service Act, certain suicide prevention programs
5 are not to be construed to require "suicide assessment, early intervention, or
6 treatment services for youth" if their parents or legal guardians have religious or
7 moral objections to such services.²⁴

8 Authority to issue certain grants through the Health Resources and Services
9 Administration (HRSA), Centers for Disease Control and Prevention (CDC), and
10 the National Institutes of Health (NIH) may not be construed to preempt or prohibit
11 State laws which do not require hearing loss screening for newborn, infants or
12 young children whose parents object to such screening based on religious beliefs.²⁵

13 Certain State and local child abuse prevention and treatment programs
14 funded by HHS are not to be construed as creating a Federal requirement that a
15 parent or legal guardian provide a child any medical service or treatment against
16 the religious beliefs of that parent or legal guardian.²⁶

17 In providing pediatric vaccines funded by Federal medical assistance
18 programs, providers must comply with any State laws relating to any religious or
19 other exemptions.²⁷

20 //

21 _____
22 ²³ 22 U.S.C. § 7631(d)(2) section 3(c) of the Garrett Lee Smith Memorial Act (Pub.
23 L. 108-355, 118 Stat. 1404, reauthorized by Pub. L. 114-255 at sec. 9008); 84 Fed.
24 Reg. at 23173.

25 ²⁴ 42 U.S.C. 290bb-36(f); 84 Fed. Reg. at 23173.

26 ²⁵ 42 U.S.C. § 280g-1(d); 84 Fed. Reg. at 23173.

27 ²⁶ 42 U.S.C. § 5106i(a); 84 Fed. Reg. at 23173

28 ²⁷ 42 U.S.C. 1396s(c)(2)(B)(ii).

1 **9. Religious Nonmedical Health Care Institutions (RNHCIs)**

2 Medicare and Medicaid provide accommodations for persons and
3 institutions objecting to the acceptance or provision of medical care or services
4 based on a belief in a religious method of healing through approval of religious
5 nonmedical health care institutions (RNHCIs).²⁸ RNHCIs do not provide standard
6 medical screenings, examination, diagnosis, prognosis, treatment, or the
7 administration of medications.²⁹ Instead, RNHCIs furnish nonmedical items and
8 services such as room and board, unmedicated wound dressings, and walkers, and
9 they provide care exclusively through nonmedical nursing personnel assisting with
10 nutrition, comfort, support, moving, positioning, ambulation, and other activities of
11 daily living.³⁰

12 Patients at RNHCIs can file an election with HHS stating that they are
13 “conscientiously opposed to acceptance of” medical treatment, that is neither
14 received involuntarily nor required under Federal or State law or the law of a
15 political subdivision of a State, on the basis of “sincere religious beliefs,” yet they
16 remain eligible for the nonmedical care and services ordinarily covered under
17 Medicare, Medicaid, and CHIP.³¹

18 **10. Other Provisions**

19 Section 6703(a) of the Elder Justice Act of 2009³² provides that Elder Justice
20 and Social Services Block Grant programs may not interfere with or abridge an
21 elder person’s “right to practice his or her religion through reliance on prayer alone
22 for healing,” when the preference for such reliance is contemporaneously
23

24 ²⁸ 84 Fed. Reg. at 23173.

25 ²⁹ 42 U.S.C. 1395x(ss)(1).

26 ³⁰ 84 Fed. Reg. at 23173.

27 ³¹ See, e.g., 42 U.S.C. 1395x(e), 1395x(y), and 1395i-5 (Medicare provisions).

28 ³² Pub. L. 111-148, 124 Stat. 119.

expressed, previously set forth in a living will or similar document, or unambiguously deduced from such person's life history.³³ Additionally, the Child Abuse Prevention and Treatment Act (CAPTA) specifies that it does not require (though it also does not prevent) a State finding of child abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with religious beliefs.³⁴

The Emergency Medical Treatment and Labor Act (EMTALA)

The Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. § 1395dd, requires hospitals to treat patients that need emergency care. The purpose of EMTALA is to ensure that individuals receive adequate emergency medical care regardless of their ability to pay. *Jackson v. E. Bay Hosp.*, 246 F.3d 1248, 1254 (9th Cir. 2001). Under EMTALA, a hospital must provide appropriate emergency medical care or transfer the patient to another medical facility. 42 U.S.C. § 1395dd(b)(1).

Regulatory History

1. 2008 Rule

In 2008, HHS promulgated a Final Rule ("2008 Rule") to "ensure that Department funds do not support morally coercive or discriminatory practices or policies in violation of federal law" and to "provide for the implementation and enforcement' of the Church, Coats-Snowe, and Weldon Amendments." 73 Fed. Reg. 78072, 78074 (Dec. 19, 2008). The 2008 Rule defined several terms: "Assist in the performance," "Entity," "Health Care Entity," "Health Service Program," "Individual," "Instrument," "Recipient," "Sub-recipient," and "Workforce." 45 CFR § 88.2 (2008). The 2008 Rule set forth the applicability of the regulation to include any state or local government that receives federal funds, federal financial

³³ 42 U.S.C. 1397j-1(b).

³⁴ 42 U.S.C. 5106i(a)(2).

1 assistance, and certain grant contract loan or loan guarantees, and education
2 institutions, teaching hospitals or programs for training of health care professionals
3 or health care workers. § 88.3 (2008). Section 88.4 set forth the requirements and
4 prohibitions against discriminating against entities that refuse to perform, train, or
5 refer abortions or sterilization procedures or make its facilities available for these
6 procedures, or requiring individuals to perform or assist in the performance of any
7 health service program or research activity funded by the Department if such
8 service or activity would be contrary to his or her religious or moral convictions.
9 § 88.4 (2008). The 2008 Rule required written certifications of compliance. § 88.5
10 (2008). The Office of Civil Rights was designated to receive complaints based on
11 the health care conscience protection statutes and the regulation. § 88.6 (2008).

12 **2. 2011 Rule**

13 In February 2011, HHS rescinded most of the 2008 rule and finalized a new
14 rule. 76 Fed. Reg. 9968 (Feb. 23, 2011), after notice and receipt of over 300,000
15 comments. It noted that “[n]either the 2008 final rule, nor this final rule, alters the
16 statutory protections for individuals and health care entities under the federal
17 health care provider conscience protection statutes, including the Church
18 Amendments, Section 245 of the Public Health Service Act, and the Weldon
19 Amendment. These statutory health care provider conscience protections remain in
20 effect.” *Id.*

21 HHS concluded that no regulations were required or necessary for the
22 conscience protections contained in the Church Amendments, The Coats-Snowe
23 Amendments and the Weldon Amendment to take effect. *Id.* at 9970. It noted that
24 the conscience law and other federal statute governing HHS programs, including
25 Medicaid, Title X, and EMTALA have operated side by side often for many
26 decades. *Id.* It also noted that these laws and the 2008 Final Rule were “never
27 intended to allow providers to refuse to provide medical care to an individual
28 because the individual engages in behavior the health care provider found

1 objectionable.” *Id.* at 9973-74. HHS rescinded the definitions contained in the
2 2008 Final Rule because of concerns they may have caused confusion regarding
3 the scope of the federal health care provider conscience protection statutes. *Id.* at
4 9974. HHS did not formulate new definitions because it believed that individual
5 investigations will provide the best means of answering questions about the
6 application of the statutes in particular circumstances. *Id.*

7 HHS concluded the 2008 Rule may have negatively affected the ability of
8 patients to access care. *Id.* It was concerned the 2008 Rule may have undermined
9 the ability of patients to access contraceptive services as required by the Medicaid
10 program, especially in areas where there are few health care providers for the
11 patient to choose from. *Id.*

12 The 2011 Rule retained the provisions of the 2008 Final Rule that designated
13 OCR to receive complaints of discrimination and coercion based on the federal
14 health care provider conscience protection statutes. *Id.* at 9972.

15 **The Final Rule**

16 After reviewing the previous rulemaking, comments from the public and
17 OCR’s enforcement activities, HHS concluded that “there is a significant need to
18 amend the 2011 Rule to ensure knowledge of, compliance with, and enforcement
19 of, federal conscience and anti-discrimination laws.” 84 Fed. Reg. at 23175.
20 Specifically, it noted:

21 The 2011 Rule created confusion over what is and is not required
22 under Federal conscience and anti-discrimination laws and narrowed
23 OCR’s enforcement processes. Since November 2016, there has been a
24 significant increase in complaints filed with OCR alleging violations of
25 the laws that were the subject of the 2011 Rule, compared to the time
26 period between the 2009 proposal to repeal the 2008 Rule and
27 November 2016. The increase underscores the need for the Department
28 to have the proper enforcement tools available to appropriately enforce
all Federal conscience and anti-discrimination laws.

Id.

1 HHS received over 242,000 comments in response to the notice of proposed
2 rulemaking. *Id.* at 23180. The Final Rule generally reinstates the structure of the
3 2008 Rule, providing further definitions of terms, and requires certification and
4 enforcement provisions. *Id.* at 23179.

5 Section 88.2 includes the following definitions:

6 “Assist in the performance” means to take an action that has a specific,
7 reasonable, and articulable connection to furthering a procedure or a part of a
8 health service program or research activity undertaken by or with another person or
9 entity. This may include counseling, referral, training, or otherwise making
10 arrangements for the procedure or a part of a health service program or research
11 activity, depending on whether aid is provided by such actions. 45 C.F.R. § 88.2
12 (2019).

13 “Discriminate” or “discrimination” includes, as applicable to, and to the
14 extent permitted by, the applicable statute:

- 15 (1) To withhold, reduce, exclude from, terminate, restrict, or make
16 unavailable or deny any grant, contract, subcontract, cooperative
17 agreement, loan, license, certification, accreditation, employment,
18 title, or other similar instrument, position, or status;
- 19 (2) To withhold, reduce, exclude from, terminate, restrict, or make
20 unavailable or deny any benefit or privilege or impose any penalty;
21 or
- 22 (3) To utilize any criterion, method of administration, or site selection,
23 including the enactment, application, or enforcement of laws,
24 regulations, policies, or procedures directly or through contractual
25 or other arrangements, that subjects individuals or entities
26 protected under this part to any adverse treatment with respect to
27 individuals, entities, or conduct protected under this part on
28 grounds prohibited under an applicable statute encompassed by
this part. . .

Id.

1 “Entity” means a “person” as defined in 1 U.S.C. § 1; the Department; a
2 State, political subdivision of any State, instrumentality of any State or political
3 subdivision thereof; any public agency, public institution, public organization, or
4 other public entity in any State or political subdivision of any State; or, as
5 applicable, a foreign government, foreign nongovernmental organization, or
6 intergovernmental organization (such as the United Nations or its affiliated
7 agencies). *Id.*

8 “Health care entity” includes:

9 (1) For purposes of the Coats–Snowe Amendment (42 U.S.C. 238n)
10 and the subsections of this part implementing that law (§ 88.3(b)),
11 an individual physician or other health care professional, including
12 a pharmacist; health care personnel; a participant in a program of
13 training in the health professions; an applicant for training or study
14 in the health professions; a post-graduate physician training
15 program; a hospital; a medical laboratory; an entity engaging in
16 biomedical or behavioral research; a pharmacy; or any other health
17 care provider or health care facility. As applicable, components of
18 State or local governments may be health care entities under the
19 Coats–Snowe Amendment; and

20 (2) For purposes of the Weldon Amendment (*e.g.*, Department of
21 Defense and Labor, Health and Human Services, and Education
22 Appropriations Act, 2019, and Continuing Appropriations Act,
23 2019, Pub.L. 115–245, Div. B., sec. 507(d), 132 Stat. 2981, 3118
24 (Sept. 28, 2018)), Patient Protection and Affordable Care Act
25 section 1553 (42 U.S.C. 18113), and to sections of this part
26 implementing those laws (§ 88.3(c) and (e)), an individual
27 physician or other health care professional, including a pharmacist;
28 health care personnel; a participant in a program of training in the
health professions; an applicant for training or study in the health
professions; a post-graduate physician training program; a hospital;
a medical laboratory; an entity engaging in biomedical or
behavioral research; a pharmacy; a provider-sponsored
organization; a health maintenance organization; a health insurance
issuer; a health insurance plan (including group or individual
plans); a plan sponsor or third-party administrator; or any other
kind of health care organization, facility, or plan. As applicable,
components of State or local governments may be health care

1 entities under the Weldon Amendment and Patient Protection and
2 Affordable Care Act section 1553.

3 *Id.*

4 “Health service program” includes the provision or administration of any
5 health or health-related services or research activities, health benefits, health or
6 health-related insurance coverage, health studies, or any other service related to
7 health or wellness, whether directly; through payments, grants, contracts, or other
8 instruments; through insurance; or otherwise. *Id.*

9 “Referral” or “refer” for includes the provision of information in oral,
10 written, or electronic form (including names, addresses, phone numbers, email or
11 web addresses, directions, instructions, descriptions, or other information
12 resources), where the purpose or reasonably foreseeable outcome of provision of
13 the information is to assist a person in receiving funding or financing for, training
14 in, obtaining, or performing a particular health care service, program, activity, or
15 procedure. *Id.*

16 Section 88.3 sets forth the applicable requirements and prohibitions. 45
17 C.F.R. § 88.3 (2019). This section sets forth prohibitions and requirements and
18 refers to the specific provisions of the federal conscience and anti-discrimination
19 statutes, including the Church Amendments, the Coats-Snow Amendment, the
20 Weldon Amendments and the Affordable Care Act. Section 88.4 sets forth the
21 requirements for assurance and certification of compliance requirements.

22 Section 88.4 continues to delegate to the OCR the authority to facilitate and
23 coordinate the Department’s enforcement of the Federal conscience and anti-
24 discrimination laws. Section 88.4 sets forth the enforcement mechanisms:

25 (i) Resolution of matters.

26 (1) If an investigation or compliance review reveals that no
27 action is warranted, OCR will so inform any party who has been
28 notified of the existence of the investigation or compliance review, if
any, in writing.

(2) If an investigation or compliance review indicates a failure
to comply with Federal conscience and anti-discrimination laws or

1 this part, OCR will so inform the relevant parties and the matter will
2 be resolved by informal means whenever possible. Attempts to
3 resolve matters informally shall not preclude OCR from
4 simultaneously pursuing any action described in paragraphs (a)(5)
through (7) of this section.

(3) If OCR determines that there is a failure to comply with
5 Federal conscience and anti-discrimination laws or this part,
6 compliance with these laws and this part may be effected by the
7 following actions, taken in coordination with the relevant Department
8 component, and pursuant to statutes and regulations which govern the
9 administration of contracts (e.g., Federal Acquisition Regulation),
grants (e.g., 45 CFR part 75) and CMS funding arrangements (e.g.,
the Social Security Act):

- 10 (i) Temporarily withholding Federal financial assistance or other
11 Federal funds, in whole or in part, pending correction of the
deficiency;
 - 12 (ii) Denying use of Federal financial assistance or other Federal
13 funds from the Department, including any applicable matching
credit, in whole or in part;
 - 14 (iii) Wholly or partly suspending award activities;
 - 15 (iv) Terminating Federal financial assistance or other Federal
16 funds from the Department, in whole or in part;
 - 17 (v) Denying or withholding, in whole or in part, new Federal
18 financial assistance or other Federal funds from the Department
19 administered by or through the Secretary for which an
application or approval is required, including renewal or
20 continuation of existing programs or activities or authorization
of new activities;
 - 21 (vi) In coordination with the Office of the General Counsel,
referring the matter to the Attorney General for proceedings to
22 enforce any rights of the United States, or obligations of the
recipient or sub-recipient, under Federal law or this part; and
 - 23 (vii) Taking any other remedies that may be legally available.
- 45 C.F.R. § 88.7 (2019).

24 Thus, enforcement mechanisms where voluntary resolution cannot be
25 reached include termination of relevant funding, either in whole or part, funding
26 claw-backs to the extent permitted by law, voluntary resolution agreements,
27 referral to the Department of Justice, or other measures. *Id.* at 23180. Recipients
28

1 are responsible for their own compliance with federal conscience and anti-
2 discrimination laws and implementing regulations, was well as for ensuring their
3 sub-recipients comply with these laws. *Id.* at 23180.

4 Notably, the Final Rule contains no exceptions for emergency service.

5 **Plaintiff's Complaint**

6 Plaintiff is seeking declaratory and injunctive relief. Plaintiff argues such
7 relief is appropriate for the following reasons: (1) Defendants violated the APA
8 because the agency action was not in accordance with law and HHS's authority;
9 (2) Defendants violated the APA because the agency action was not in accordance
10 with other federal laws, including § 1554 of the ACA; contraceptive coverage
11 requirement of the ACA; the EMTALA; non-directive mandates of the ACA; and
12 Title VII; (3) Defendants violated the APA because the Final Rule resulted from
13 arbitrary and capricious agency action; (4) the Final Rule violates U.S.
14 Constitution's Spending Clause; (5) the Final Rule violates U.S. Constitution's
15 Separation of Powers; and (6) the Final Rule violates the Establishment Clause of
16 the U.S. Constitution.

17 **Judge Paul A. Engelmayer's Order**

18 One day before the Court was scheduled to hear oral argument on the
19 parties' Motions, Judge Paul A. Engelmayer of the United States District Court for
20 the Southern District of New York issued a well-reasoned and thorough order in
21 which he vacated the Rule in full. *State v. United States Dept. of Health and*
22 *Human Servs.*, __ F.Supp.3d __, 2019 WL 5781789 (S.D. N.Y. Nov. 6, 2019).

23 In his Order, Judge Engelmayer came to the following conclusions:

24 1. HHS lacked rulemaking authority to promulgate significant portions
25 of the Rule that gave substantive content to the Conscience Provisions. *Id.* at *20.
26 Specifically, with respect to the Church, Coats-Snowe, and Weldon Amendments,
27 HHS was never delegated and did not have substantive rule-making authority. *Id.*
28 at *66.

2. HHS lacked rulemaking authority empowering it to terminate all of a recipient's HHS funding in response to a violation of one of these provisions. *Id.* at *32.

3. The Rule is "not in accordance with law" because it conflicts with Title VII and it conflicts with the EMTALA. *Id.* at *35.

4. HHS acted arbitrarily and capriciously in promulgating the Rule because the stated reasons for undertaking rulemaking are not substantiated by the record before the agency; it did not adequately explain its change in policy; and it failed to consider important aspects of the problem before it. *Id.* at *67.

5. HHS did not observe proper rulemaking procedures in promulgating the Rule insofar as portions of the Rule that define "discriminate or discrimination" were not a "logical outgrowth" of HHS's notice of proposed rulemaking (NPRM). *Id.*

6. The Rule's authorization in § 88.7(i)(3)(iv), as a penalty available to HHS's OCR in the event of a recipient's non-compliance of the termination of all of the recipient's HHS funds, violated the Separation of Powers and the Spending Clause of the Constitution, U.S. Const. art. I § 8, cl. 1. *Id.*

Effect of Judge Engelmayer's Ruling

At the hearing, the Court questioned the parties as to whether the pending motions are moot. Both parties agreed that the issues before the Court were not moot and asked the Court to issue a ruling, given that it is likely Judge Engelmayer's order would be appealed. Additionally, the Ninth Circuit recently noted that continued litigation over the lawfulness of agency Rules will promote "the development of the law and the percolation of legal issues in the lower courts" and allow the Supreme Court, if it chooses to address the Rule, to do so "[with] the benefit of additional viewpoints from other lower federal courts and [with] a fully developed factual record." *East Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019) (quotation omitted).

After oral argument, the Court agreed with the parties that it would be appropriate for it to rule on the pending cross-motions for summary judgment. It adopted the conclusions of Judge Engelmayer, finding that first, it is appropriate for this Court to decide this issue on summary judgment; second, HHS exceeded its statutory authority in adopting this Rule; third, it acted arbitrary and capriciously because HHS's justifications for the Rule were contrary to the evidence in the record and because HHS failed to supply a reasoned explanation for its policy change from the previous Rule and finally, the Rule violated the U.S. Constitution—specifically the separation of powers and the Spending Clause. In doing so, the Court adopts the reasoning set forth in Judge Engelmayer's Order in making these findings.

Analysis

At the hearing, Plaintiff asked the Court to address three additional arguments that presented in challenging the Rule. First, the Court should interpret the Rule to find that it impermissibly encompasses moneys that are issued to the State of Washington by the Department of Labor and Department of Education; second, address the impact of the Rule on transgendered patients; third, address whether the Rule is irreconcilable with medical ethics; and fourth, address assess to care and the impact the Rule would have on vulnerable populations.

1. Threats to Unrelated Funding Streams

Plaintiff asserts the Rule authorizes HHS to withhold, deny, suspend, claw back, or terminate "Federal financial assistance or other Federal funds" if it determines there is a "failure to comply." Plaintiff reads this provision as placing at risk not only its receipt of all federal funds from HHS, but also federal funds from the Department of Labor and Department of Education that are implicated by the Weldon Amendment, including, potentially, funds entirely unrelated to health care. To the extent the Rule can be read to authorize the withholding of federal funds from the Department of Labor and Department of Education, HHS has acted

1 outside the scope of its lawful authority to do so. *Allentown Mack Sales & Serv.*,
2 522 U.S. at 374 (noting an agency's decreed result must be within the scope of its
3 lawful authority).

4 **2. Access to Care**

5 Plaintiff argues that in promulgating the Rule, HHS failed to consider
6 evidence showing the Rule will undermine the provision of medical services. The
7 Court agrees. While HHS indicated that access to care is a critical concern for the
8 Department, it concluded that the Rule would not harm access to care. 84 Fed.
9 Reg. at 23180. On the contrary, HHS stated the Rule will actually increase the
10 number of people and entities that enter or remain in the health care field, and
11 thereby presumably increase access to care. HHS's conclusion rests on the
12 assumptions that barriers exist, and that enforcement of the Rule will remove those
13 barriers to entry into the health care professions. The Rule will open the door to
14 more health care professionals with religious and moral objections to treating
15 patients from vulnerable populations.

16 It seems elementary that increasing the number of medical professionals
17 who would deny care based on religious or moral objections would not increase
18 access to care; instead, access to care will deteriorate, especially for those
19 individuals in vulnerable populations who will be the target of the religious or
20 moral objections.

21 Plaintiff has demonstrated that medical care will be negatively impacted by
22 the Rule. For example, if a pharmacist in a rural area refuses to dispense
23 pharmaceuticals, give accurate advice, or refer the person to another provider, it is
24 easy to imagine that this could deprive that person of critical, lifesaving services
25 since more travel time would be required to seek alternative access to
26 pharmaceuticals.

27 Similarly, the Court agrees with Plaintiff's position that the Rule is arbitrary
28 and capricious because HHS disregarded the comments and evidence showing the

1 Rule would severely and disproportionately harm certain vulnerable populations,
2 including women; lesbian, gay bisexual, and transgender people (LGBT
3 individuals); individuals with disabilities; and people living in rural areas. What is
4 particularly glaring is HHS’s willingness to rely on anecdotes of bias and animus
5 in the health care sector against individuals with religious beliefs and moral
6 convictions, *id.* at 23247, but disregarding “anecdotal accounts of discrimination
7 from LGBT” people, citing the lack of suitable data for estimating the impact of
8 the rule. *Id.* at 23251-52. HHS’s “internally inconsistent” treatment of the
9 anecdotal evidence—relying upon it when it supports the rule but dismissing it
10 when it does not—renders the rulemaking process arbitrary and capricious. *See*
11 *Nat. Res. Def. Council v. U.S. Nuclear Regulatory Comm’n*, 879 F.3d 1202, 1214
12 (D.C. Cir. 2018).

13 Finally, the Rule is arbitrary and capricious because HHS failed to conduct a
14 reasoned analysis of the requirements of basic medical ethics in adopting the Rule.
15 HHS failed to consider that the Rule’s new statutory definitions, which would
16 allow an employee to refuse to participate in life-saving treatment without notice
17 and permits health care entities and providers to withhold basic information from
18 patients, would contravene medical ethics and deprive patients of the ability to
19 provide informed consent.

20 3. Remedy

21 Defendant asks the Court to confine its holdings to the state of Washington.
22 The Court agrees, however, with Judge Engelmayer that “the APA violations are
23 numerous, fundamental, and far-reaching.” 2019 WL 5781789 at *69 (“that the
24 rulemaking exercise here was sufficiently shot through with glaring legal defects as
25 to not justify a search for survivors.”). Here, in making its decision, the Court did
26 not rely on facts or considerations that are specific to the State of Washington. On
27 the contrary, the violations of the APA and the Constitution found by Judge
28 Engelmayer and this Court would affect any person living in the United States and

1 would result in a miscarriage of justice, especially if the Rule could not be
2 implemented in Washington state, but could be in Idaho, 20 miles down the road.

3 The Court vacates the 2019 Rule in its entirety, pursuant to 5 U.S.C. §
4 706(2).

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Plaintiff's Motion for Preliminary Injunction, ECF No. 8, is **DENIED**,
7 as moot.
- 8 2. Defendants' Motion to Dismiss, or, in the Alternative for Summary
9 Judgment, ECF No. 44, is **DENIED**.
- 10 3. Plaintiff's Motion for Summary Judgment, ECF No 57, is **GRANTED**.
- 11 4. The District Court Executive is directed to enter judgment in favor of
12 Plaintiff and against Defendants.

13 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
14 forward copies to counsel and close the file.

15 **DATED** this 21st day of November 2019.



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A handwritten signature in blue ink, reading "Stanley A. Bastian".

21 Stanley A. Bastian
22 United States District Judge
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

No. C 19-02405 WHA

Plaintiff,

Related to

v.

No. C 19-02769 WHA

and

No. C 19-02916 WHA

ALEX M. AZAR II, Secretary of U.S.
Department of Health and Human Services;
ROGER SERVERINO, Director, Office for
Civil Rights, Department of Health and
Human Services; U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES; and
DOES 1–25,

**ORDER RE MOTIONS TO
DISMISS AND FOR SUMMARY
JUDGMENT AND REQUESTS
FOR JUDICIAL NOTICE**

Defendants.

INTRODUCTION

In these challenges to a final agency rule allowing those with religious, moral, or other conscientious objections to refuse to provide abortions and certain other medical services, federal defendants move to dismiss or, in the alternative, for summary judgment. Plaintiffs oppose and also move for their own summary judgment. For the following reasons, defendants’ motion to dismiss is **DENIED**. To the extent stated below, plaintiffs’ motion for summary judgment is **GRANTED**.

STATEMENT

Following *Roe v. Wade*, 410 U.S. 113 (1973), at least one religiously affiliated hospital became forced by a court to allow its facilities to be used for abortion procedures. *See, e.g.*,

Taylor v. St. Vincent's Hospital, 369 F. Supp. 948 (D. Mont. 1973). That provoked the first federal statute to ensure that federally-financed hospitals as well as doctors, among others, could refuse to perform such procedures on grounds of conscientious objection. Over the years, the right to refuse on such grounds has received yet more attention in further contexts via federal statutes. Defendant United States Department of Health and Human Services (HHS) has recently promulgated a rule that, plaintiffs say, expands these protections beyond what Congress intended and will hamstring the delivery of health care. Plaintiffs fear losing important federal grants as a result of their inability to comply with the new rule.

Under the new rule, to preview just one example, an ambulance driver would be free, on religious or moral grounds, to eject a patient en route to a hospital upon learning that the patient needed an emergency abortion. Such harsh treatment would be blessed by the new rule. One important question presented herein is the extent to which such scenarios conflict with the underlying statutes themselves. Although this order does not accept all of plaintiffs' criticisms, this order holds that the new rule conflicts with those statutes in a number of ways and upsets the balance drawn by Congress between protecting conscientious objections versus protecting the uninterrupted effective flow of health care to Americans.

1. HISTORY OF CONSCIENCE STATUTES.

Starting in 1973, Congress enacted laws providing certain protections to doctors and others who objected to performing abortions and certain other procedures. Relevant for our purposes are the following: (1) the Church Amendment; (2) the Coats-Snowe Amendment; (3) Medicaid and Medicare Advantage law; (4) the Weldon Amendment; and (5) the Patient and Affordable Care Act. Since the new rule purports to interpret these statutes, let's review them.

A. Church Amendment (1973).

Senator Frank Church of Idaho will be remembered by many for his opposition to the Vietnam War, his hearings exposing abuse by CIA surveillance of American citizens, and his championing of wilderness and environmental causes. For our immediate purposes, however, we remember him for the Church Amendment.

Following *Roe v. Wade*, as stated, a Montana district court issued a temporary injunction requiring a Catholic hospital to allow its facilities to be used for sterilization, specifically, a tubal ligation procedure. *Taylor*, 369 F. Supp. at 948. Senator Church stated the purpose of his amendment was, among other things, to clarify the intent of Congress as to “physicians, nurses, or institutions” who don’t perform “abortions or sterilization in religious affiliated hospitals where such operations are contrary to religious belief.” 119 Cong. Rec. 9595–97.

The Church Amendment provided that the receipt of federal funds by any individual or entity did not authorize any court or public official to require such individual to perform or assist in the performance of any sterilization procedure or abortion contrary to his religion or conscience, nor to require such entity to make its facilities available for sterilization or abortion if such procedure was prohibited by the entity on the basis of religious or moral convictions. Entities receiving federal funds were barred from discriminating “in the employment, promotion, or termination of employment” of physicians or health care personnel as well as from discriminating “in the extension of staff or other privileges” to physicians or “health care personnel” based upon their conscientious refusal to perform or assist in the performance of those procedures. The amendment also provided that “[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.” 42 U.S.C. § 300a-7. The statute gave no delegation of authority to any agency to issue legislative rules (or even interpretive rules, for that matter).

B. Coats-Snowe Amendment (1996).

Twenty-three years passed. No agency rule issued or was even proposed. In 1996, however, a new concern surfaced, namely that medical students felt coerced into learning how to perform abortions. Still, no agency acted — but Congress did act. A 1996 amendment drew sponsorship from Senators Olympia Snowe and Dan Coats. Until her recent retirement, Senator Snowe of Maine received notice for her finding bi-partisan ways forward through

1 contentious issues. Senator Dan Coats became known for sponsoring the “Don’t Ask, Don’t
2 Tell” policy of the early 1990s. He later served as Director of National Intelligence from
3 March 2017 to August 2019.

4 The Coats-Snowe Amendment prohibited, among other things, government entities
5 receiving federal financial assistance from discriminating against any “health care entity” that
6 “refuses to undergo training in the performance of induced abortions, to require or provide such
7 training, to perform such abortions, or to provide referrals for such training or such abortions”
8 or refusing to make arrangements for those activities. The amendment specifically defined the
9 term “health care entity” to include “an individual physician, a postgraduate physician training
10 program, and a participant in a program of training in the health professions.” 42 U.S.C. § 238n.

11 The Amendment also required government entities receiving federal financial instance to
12 accredit health care entities “that would be accredited but for the accrediting agency’s reliance
13 upon an accreditation standards that requires an entity to perform an induced abortion or require,
14 provide, or refer for training in the performance of induced abortions, or make arrangements for
15 such training.” The Amendment provided express rulemaking authority as to that provision
16 only. *Id.* at § 238n(b)(1).

17 **C. Medicaid and Medicare Advantage (1997).**

18 The following year, in 1997, Congress passed the Balanced Budget Act, which changed
19 key components of Medicaid and introduced Medicare Advantage. Of importance, the statute
20 stated that Medicaid-managed organizations and Medicare Advantage plans were not
21 required to “provide, reimburse for, or provide coverage of a counseling or referral service”
22 if the organization objected to the service on moral or religious grounds. 42 U.S.C.
23 §§ 1395w-22(j)(3)(B), 1396u-2(b)(3)(B). The Social Security Act provided express rulemaking
24 authority to HHS to implement the Medicaid and Medicare Advantage provisions. *Id.* at
25 §§ 1302(a); 1395w-26(b)(1).

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D. Weldon Amendment (2004).

In 2004 came the Weldon Amendment. Representative Dave Weldon, a doctor, made headlines for legislation regarding home ownership affordability, vaccine safety, and the prevention of human cloning.

The Weldon Amendment provided that no federal funds “may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, *provide coverage of, or refer for abortions.*” Importantly, it expressly defined the term “health care entity” for purposes of the Amendment to include “an individual physician or other *health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.*” See, e.g., Appropriations Act, Pub. L. No. 115-245, Div. B., § 507(d), 132 Stat. 2981, 3118 (2018) (emphasis added). This definition differed from the definition of the same phrase as used in the Coats-Snowe Amendment. The Weldon Amendment was meant to protect “health care entities” from being forced by the government to provide, cover, refer, or pay for abortions. HMOs and health insurance plans could not, under the amendment, be discriminated against with respect to federal funds on account of their refusal to cover abortions.

E. Patient Protection and Affordable Care Act (2010).

Finally, in 2010 came the Patient Protection and Affordable Care Act with several new conscience provisions. One such notable provision stated the federal government or any governmental agency that received federal financial assistance under the act “may not subject an individual or institutional health care entity to discrimination on the basis that the entity does not provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.” 42 U.S.C. § 18113. For that section only, the Act defined “health care entity” in the same way as the Weldon Amendment, to include, “an individual physician or other health care professional, a hospital, a provider-sponsored organization,

a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.” *Ibid.*

Another provision said that a State could prohibit abortion coverage in qualified health care plans, and that a qualified health care plan could not discriminate against a health care provider or entity that was unwilling to provide, pay for, provide coverage of, or refer for abortions. *Id.* § 18023. A further provision allowed individuals to seek exemption based on, among other things, their religion. *Id.* § 18081(b)(5)(A). The Act also provided HHS with express rulemaking authority to implement the Act. *Id.* § 18041(a)(1).

2. THE HISTORY OF AGENCY RULES REGARDING THESE STATUTES.

None of the foregoing statutes other than the Coats-Snowe Amendment, the Medicare/Medicaid laws, and the Affordable Care Act expressly delegated rulemaking authority to any agency. Even in those cases, the delegation remained limited. From 1973 until 2008, no agency issued any rule of any type concerning any health care conscience statute.

A. 2008 and 2011 Rules.

In August 2008, however, HHS first proposed an interpretive rule for the enforcement of the conscience statutes then in place. The comments in response to the proposed rule expressed many of the same concerns as plaintiffs express in this instant action, stating, for example, that the definitions of the terms “assist in the performance of” and “health care entity” were too broad. Critics also worried that the proposal conflicted with Medicaid, Title X (which required family planning projects to offer certain family planning services), and the Emergency Medical Training and Active Labor Act (EMTALA) (which required certain hospitals to stabilize or transfer patients in emergency situations). 42 U.S.C. §§ 300; 1395dd.

The 2008 rule defined many of the same statutory terms as does the 2019 rule at issue, such as “assist in the performance” and “health care entity,” to take only two examples. *See* Ensuring That HHS Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law, 73 Fed. Reg. at 78,082, 78,097 (Dec. 19, 2008). It ultimately prohibited HHS fund recipients from discriminating against health care entities that did not “provide, pay for, provide coverage of, or refer for abortions,” and further required HHS fund

1 recipients to certify compliance with the rule. For those that did not comply with the rule, HHS
2 stated it “intend[ed] to work with recipients . . . to ensure compliance with the requirements or
3 prohibitions promulgated in this regulation, and, if such assistance fails to achieve compliance,
4 the Department will consider all legal options, including termination of funding.” The rule
5 designated the Office of Civil Rights (OCR) to receive complaints of discrimination and
6 coercion based on the health care conscience protection statutes. *Id.* at 78,074–79, 93.

7 Three months after the rule took effect, however, and with a different administration in
8 office, HHS proposed to rescind the rule in order to review the regulation and “ensure its
9 consistency with current Administration policy and to reevaluate the necessity for regulation.”
10 74 Fed. Reg. 10,207 (Mar. 10, 2009). HHS received over 300,000 comments in response.
11 Many of these comments expressed concern the 2008 rule “unacceptably impacted patient rights
12 and restricted access to health care and conflicted with federal law, state law, and other
13 guidelines addressing informed consent.” Regulation for the Enforcement of Federal Health
14 Care Provider Conscience Protection Laws, 76 Fed. Reg. 9968, 9971 (Feb. 23, 2011). In 2011,
15 HHS rescinded in part and revised in part the 2008 rule. Of importance, the 2011 rule rescinded
16 the definitions “because of concerns that they may have caused confusion regarding the scope of
17 the federal health care provider conscience protection statutes” and stated “individual
18 investigations will provide the best means of answering questions about the application of the
19 statutes in particular circumstances.” The rule also stated “the certification requirements in the
20 2008 Final Rule are unnecessary to ensure compliance with the federal health care provider
21 conscience protection statutes, and that the certification requirements created unnecessary
22 additional financial and administrative burdens on health care entities.” The rule further
23 designated the OCR to receive complaints of discrimination and coercion based on the
24 conscience protection statutes and to coordinate the handling of complaints with the HHS
25 funding components. *Id.* at 9974.

26 **B. The Instant Rule.**

27 In May 2017, President Donald Trump issued an executive order instructing the Attorney
28 General to “issue guidance interpreting religious liberty protections in Federal law.” Promoting

Free Speech and Religious Liberty, 82 Fed. Reg. 21,675 (May 4, 2017). In October 2017, Attorney General Jeff Sessions issued a memorandum to “guide all administrative agencies and executive departments” in doing so. Federal Law Protections for Religious Liberty Attorney General Memorandum (Oct. 6, 2017). In January 2018, HHS proposed to resurrect most of the 2008 rule, stating that the 2011 rescission had “created confusion over what is and is not required under Federal conscience and anti-discrimination laws.” Protecting Statutory Conscience Rights in Health Care, 83 Fed. Reg. 3880 (Jan. 26, 2018). HHS received over 242,000 comments in response. Many comments expressed the same concerns as plaintiffs here, including among other things, that the rule would lead to a decrease in access to health care; that the proposed definitions for terms such as “health care entity,” “referral or refer for,” and “assist in the performance of” were too broad; and that the rule conflicted with laws such as EMTALA and Title X (*see, e.g.*, AR 006-58592, 008-187087, 008-187916, 008-191263).

In May 2019, HHS issued its final rule — the rule in suit. Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,170 (May 21, 2019). It defines various nouns, verbs, and phrases in the conscience statutes in an expansive way, as explained below, so as to inflate the scope of protections for conscientious objectors. The rule also provides compliance and certification provisions that require covered entities to certify their compliance with federal conscience statutes, anti-discrimination laws, *and the rule itself*. Covered entities that fail to abide by these requirements risk losing the *entirety* of their federal funding, not just categories of funding such as grants, loans, and insurance.

Plaintiff City and County of San Francisco filed the instant action, alleging the rule violated the Administrative Procedure Act (APA) and the Constitution. *City and County of San Francisco v. Alex M. Azar II, et al.*, C 19-02405 WHA. A few weeks later, plaintiff State of California filed an action making most of the same claims as San Francisco with an additional FOIA claim. *State of California v. Alex M. Azar II, et al.*, C 19-02769 WHA. A week later, plaintiffs County of Santa Clara and various health and LGBTQ organizations also filed an action challenging the rule, making the same claims. *County of Santa Clara, et al., v. U.S. Dept. of Health and Human Services, et al.*, C 19-02916 WHA. An order granted the parties’

stipulated request to postpone the effective date of the rule until November 22, 2019, thus obviating the need to consider any provisional relief. Defendants now move to dismiss under FRCP 12(b)(1) and 12(b)(6) or, in the alternative, for summary judgment. Plaintiffs also move for summary judgment (Dkt. Nos. 14, 66, 89, 136). The Court appreciates the briefing and argument by both sides and the notable contributions made by amici.

ANALYSIS

1. RULE 12(B)(1) MOTION TO DISMISS.

Defendants raise two jurisdictional arguments under FRCP 12(b)(1). *First*, they argue plaintiffs' spending clause and establishment clause claims are not ripe for review because they have not identified any specific enforcement actions against them. *Second*, they argue the physician plaintiffs in *Santa Clara* lack standing to bring free speech, equal protection, and due process claims on behalf of their patients.

A. Plaintiffs' Spending Clause and Establishment Clause Claims Are Ripe for Review.

Determining whether an action is ripe for judicial review requires an evaluation of: (1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented. *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998). Hardship can occur when the impact of the regulation can be felt immediately by those subject to it in conducting their day-to-day affairs. *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 164 (1967). Specifically, "where a regulation requires an immediate and significant change in the plaintiffs' conduct of their affairs with serious penalties attached to noncompliance," the claims are ripe for review. *Abbott Labs. v. Gardner*, 387 U.S. 136, 153 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977).

Defendants argue plaintiffs' establishment clause and spending clause claims are not ripe because the claims rest on contingent future events. In particular, they contend that plaintiffs have only provided speculative scenarios in which the two claims can be evaluated. Not so. Regardless of how the rule is interpreted, plaintiffs would need to conduct extensive inquiries

1 into hospitals and personnel to determine their compliance with not only the underlying statutes,
 2 but the rule itself. Plaintiffs have further provided examples of numerous hospital policies which
 3 contain provisions regarding discrimination that may need to be overhauled under the final rule.
 4 For example, Zuckerberg San Francisco General Hospital policies state (*State of California*, Dkt.
 5 No. 69 ¶ 8):

6 In the event a staff member feels reluctant to participate in an
 7 aspect of patient care because the patient's condition, treatment
 8 plan, or physician's orders are in conflict with the staff member's
 9 religious beliefs, cultural values, or ethics, the staff member's
 10 written request for accommodation will be considered if the
 11 request does not negatively affect the quality of patient's care.

12 Such policies would need to be rewritten and alternative business practices or procedures
 13 created to comply with the rule while also ensuring patients receive adequate care. Furthermore,
 14 if plaintiffs alternatively choose not to comply with the rule, they would need to prepare for the
 15 contingency of the termination of all federal funding. Although defendants have stated that the
 16 extent of enforcement in regard to funding is now unknown given the postponement of the rule,
 17 this does not change the fact that the whole point of the rule is to "clarify" the statutes in a way
 18 that will impose changes to comply. Accordingly, defendants' motion to dismiss plaintiffs'
 19 spending clause and establishment clause claims is **DENIED**.

18 **B. The Santa Clara Physician Plaintiffs Have Standing.**

19 Defendants challenge the standing of the *Santa Clara* physician plaintiffs in raising free
 20 speech, equal protection, and due process claims on behalf of their LGBTQ and abortion-seeking
 21 patients. Although plaintiffs generally must assert their own legal rights and interests, a third
 22 party may have standing depending on the relationship of the litigant to the person whose right
 23 he or she seeks to assert and the ability of the third party to assert his or her own rights.
 24 *Singleton v. Wulff*, 428 U.S. 106, 114–16 (1976).

25 Defendants attempt to distinguish *Singleton* from the instant case by stating its holding
 26 only applies to physicians who perform nonmedically indicated abortions and are asserting
 27 rights on behalf of pregnant women. Not so. *Singleton*'s holding is broader, as the Supreme
 28 Court found that the physicians had third party standing given the *confidential nature of the
 relationship between physicians and women seeking the abortion* as well as the obstacles women

1 have in asserting their right to an abortion. In particular, women generally cannot safely secure
2 abortions without the aid of physicians and “the constitutionally protected abortion decision is
3 one in which the physician is intimately involved.” *Singleton*, 428 U.S. at 115–17.

4 In the instant case, physicians are similarly asserting claims on behalf of women seeking
5 abortions and LGBTQ patients. Doctors and their patients have a confidential relationship,
6 especially when it comes to asserting rights related to invasive procedures and treatments.
7 Furthermore, most of the medical procedures at issue here such as abortions, gender-affirming
8 surgery, and HIV treatments cannot be safely secured without the aid of a physician. The rights
9 of the individual physician plaintiffs and their patients here are thus closely intertwined.
10 Because the physician plaintiffs in *Santa Clara* have standing, defendants’ motion to dismiss
11 the *Santa Clara* physician plaintiffs’ free speech, equal protection, and due process claims is
12 **DENIED.**

13 **2. RULES 12(B)(6) AND 56 — THE APA CLAIM.**

14 On the merits, this order holds that the new rule sets forth new definitions of statutory
15 terms that conflict with the statutes themselves — expansive definitions that would upset the
16 balance drawn by Congress between protecting conscientious objectors versus facilitating the
17 uninterrupted provision of health care to Americans.

18 With the minor exceptions noted below, the new rule is purely an interpretive rule,
19 not a legislative rule. An agency, of course, must interpret a statute under its care. But an
20 interpretation, even if cast in the form of a regulation, is nothing more than that —
21 an interpretation. The statute itself is what has the force of law, not the interpretation.
22 No interpretation can add or subtract from the actual scope of the statute itself. If the agency
23 misconstrues a statute, then the statute controls, not the interpretation.

24 The guiding principle, therefore, is that no interpretation, not even an agency
25 interpretation, can add or subtract from what the statute itself specifies. In a close case of
26 statutory construction, we might defer to the agency’s interpretation. But otherwise, we must
27 remain faithful to the statutes enacted by Congress. And while a legislative rule may add to a
28 statute, it cannot subtract from a statute. Fidelity to the statute is paramount.

In reading the statutes in question, the Court sees that Congress tried to strike a balance between two competing considerations. One consideration was recognition that, due to religious or ethical beliefs, some doctors, nurses, and hospitals, among others, wanted no part in the performing of abortions and sterilizations, among other medical procedures, and Congress wanted to protect them from discrimination for their refusal to perform them. The countervailing consideration was recognition of the need to preserve the effective delivery of health care to Americans, including to those seeking, for example, abortions and sterilizations. Every doctor or nurse, for example, who bowed out of a procedure for religious or ethical reasons became one more doctor or nurse whose shifts had to be covered by someone else, a burden on the healthcare system. Congress struck a balance between these two opposing considerations.

In reading the rule in question, the Court sees a persistent and pronounced redefinition of statutory terms that significantly expands the scope of protected conscientious objections. As laudable as that sounds, however, it would come at a cost — a burden on the effective delivery of health care to Americans in derogation of the actual balance struck by Congress.

A. Definitions.

The new rule includes five columns (in the Federal Register) of new definitions of statutory terms. These definitions, as will be seen, make the mischief. Then follow many columns of restatements of the statutes in question, which restatements remain largely true to the words used by Congress (but whose scope becomes expanded by the definitions). Finally come concluding columns imposing “assurance” and “compliance” certificate obligations on applicants for federal funds. This order will now turn to the definitions, the heart of the problem.

(1) “Assist in the Performance of.”

The reader will recall that the Church Amendment protected not only those individuals who “perform” abortions and sterilizations but also those individuals who “assist in the performance” of abortions and sterilizations. Only the Church Amendment used “assist in the performance of,” and it did so as follows:

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not

authorize any court or any public official or other public authority to require (1) such individual *to perform or assist in the performance of* any sterilization procedure or abortion if his *performance or assistance in the performance of* such procedure or abortion would be contrary to his religious beliefs or moral convictions; [. . .]

42 U.S.C. § 300a-7 (emphasis added).

The final rule now defines “assist in the performance” as:

[T]o take an action that has a specific, reasonable, and articulable connection to furthering a procedure or a part of a health service program or research activity undertaken by or with another person or entity. This may include counseling, referral, training, or otherwise making arrangements for the procedure or a part of a health service program or research activity, depending on whether aid is provided by such actions.

“Assist in the performance” was originally intended to cover *only those individuals in the operating room who actually assisted the physician in carrying out the abortion or sterilization procedure*. This is clear from the colloquy between Senator Russell Long and Senator Church on the floor prior to the passage of the amendment:

Mr. Long: The thought occurs to me that it would seem reasonable to say that where one seeks a sterilization procedure or an abortion, it could not be performed because there might be a nurse or an attendant somewhere in the hospital who objected to it. If it was not a matter of concern to that individual, it seems to me that that is getting to be a little far-fetched, that is, that someone who had nothing to do with the matter *and was not involved in it one way or the other, just someone who happened to be working in a hospital, and was not involved in an abortion or a sterilization procedure*, could veto the rights of a physician and the rights of patients to have a procedure which the Supreme Court has upheld.

Mr. Church: Let me make clear, Mr. President, that such is not my intention. I understand the basis for the expression of concern on the part of the Senator from Louisiana, but the words on line 19, “. . . of such physician or other health care personnel, . . .” relate back to the same words used on lines 12 and 13 and must be read in context with those words.

Mr. Long: If I understand what the Senator is saying, he is saying that a nurse or an attendant who has religious feelings contrary to sterilization or abortion should not be required and would not be required by any Federal activity to participate in any such procedure

to which they hold strong moral or religious convictions to the contrary.

Mr. Church: That is correct.

Mr. Long: So that this would not, in effect, say that one who sought such an operation would be denied it because someone working in the hospital objected *who had no responsibility, directly or indirectly with regard to the performance of that procedure. It would only be that one who was involved in performing the operation or in assisting to perform the operation could not be required to participate when he or she held convictions against that type of procedure.*

Mr. Church: *The Senator is correct.* The amendment is meant to give protection to the physicians, to the nurses, to the hospitals themselves, if they are religious affiliated institutions. So the fact Federal funds may have been extended will not be used as an excuse for requiring physicians, nurses, or institutions to perform abortions or sterilizations that are contrary to their religious precepts. That is the objective of the amendment. *There is no intention here to permit a frivolous objection from someone unconnected with the procedure to be the basis for a refusal to perform what would otherwise be a legal operation.*

119 Cong. Rec. 9597 (1973) (emphasis added). Accordingly, the phrase “assist in the performance” refers only to the assistance provided by nurses or other medical professionals involved in the procedure itself in the operating room, not the ambulance driver or anyone else outside the time and place of the procedure itself.

HHS nevertheless insists that “driving a person to a hospital or clinic for a scheduled abortion could constitute ‘assisting in the performance of’ an abortion, as would physically delivering drugs for inducing abortion.” 84 Fed. Reg. 23,188 (May 21, 2019). At recent oral argument for a similar challenge to the same rule in the United States District Court for the Southern District of New York, District Judge Paul Engelmayer presented counsel for HHS with the following situation:

A pregnant woman takes an ambulance across Central Park to Mt. Sinai Hospital and, midway through, from conversation with the ambulance driver, it becomes clear that she is headed there to terminate an ectopic pregnancy. The driver tells her to get out in the middle of the park, and the employer fires the ambulance driver for that. Is the ambulance driver assisting in the

performance of the procedure if the ambulance driver takes her to the hospital?

In response, government counsel insisted “[t]he rule protects an ambulance driver’s ability not to assist in the performance of a procedure to which the driver has an objection” (*State of California*, Dkt. No. 133, Exh. A at 116:21–25; 117:1–18). During oral argument in the instant action, HHS again insisted that ambulance drivers should and would be covered (*Id.*, Dkt. No. 139 at 48–52).

Under a proper reading of the Church Amendment, however, no driver or EMT could ever qualify, under any circumstance, as an individual who “assists in the performance of” an abortion or sterilization. The colloquy between Senators Church and Long demonstrated that the Church Amendment was meant to protect those who would be involved in carrying out the procedure itself, such as physicians, nurses assisting the physicians, and others in the operating room necessary for the procedure itself. An ambulance driver assists in no such way. Ambulance drivers and EMTs aboard ambulances transport and stabilize. Accordingly, neither an ambulance driver nor an EMT “assist in the performance” and thus fall outside the Church Amendment.

Also covered under HHS’s interpretation of the rule would be schedulers and housekeeping staff. HHS has stated “[s]cheduling an abortion or preparing a room and the instruments for an abortion are necessary parts of the process of providing an abortion, and it is reasonable to consider performing these actions as constituting ‘assistance.’” 84 Fed. Reg. 23,186–87 (May 21, 2019). Under the rule, a clerk scheduling surgeries for an operating room could refuse to reserve slots for abortions and sterilizations. So could an employee who merely sterilizes and places surgical instruments or ensures that the supply cabinets in the operating room are fully stocked in preparation for an abortion. For the reasons already stated, the Church Amendment was never intended to apply to those who have no role in the actual performance of the abortion or sterilization. Neither those who schedule abortions nor those who prepare an operating room assist in the performance of such a procedure under the Church Amendment.

HHS also states it disagrees with any interpretation of “assisting in the performance” that excludes pre- and post-operative support to an abortion patient. *Id.* at 23,187. But Senators

Long and Church agreed that it would be far-fetched for the amendment to cover situations in which “one seeks a sterilization procedure or an abortion, [and] it could not be performed because there might be a nurse or an attendant somewhere in the hospital who objected to it.” 119 Cong. Rec. 9597 (1973). Pre- and post-op tasks include monitoring and ensuring that a patient is stable and/or recovering following a procedure such as taking vitals and placing an intravenous line — tasks that are generic to surgeries in general, not specific to abortions or sterilization.¹

**(2) “Health Care Entity” For Purposes
of the Coats-Snowe Amendment.**

The reader will recall that the Coats-Snowe Amendment protected “health care entities” that refused to undergo or provide training for abortions against discrimination. The Coats-Snowe Amendment defined “health care entity” as including “an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions,” meaning, in short, doctors, residency programs, and medical students or residents. 42 U.S.C. 238n(c)(2). The Coats-Snowe Amendment followed a new standard by the Accrediting Council on Graduate Medical Education “indicating that failure to provide training for induced abortions could lead to loss of accreditation” for hospitals and training programs. The purpose of the amendment was thus to (1) ensure medical training programs such as schools and residencies were not required to provide abortion training in order to be accredited, and (2) extend conscience protections to students and faculty in the context of training for abortions as well as to extend the protection to state schools (not just religious schools). 142 Cong. Rec. 2264–65 (1996).

The final rule, however, redefines “health care entity” for purposes of the Coats-Snowe Amendment as:

(1) For purposes of the Coats-Snowe Amendment (42 U.S.C. 238n) and the subsections of this part implementing that law (§ 88.3(b)), an individual physician or other *health care*

¹ This order recognizes that the physical act of removing and disposing a fetus during and immediately following an abortion would be “assisting in its performance.” The definition proposed by HHS, however, goes well beyond such assistance and cannot be squared with the statute itself.

professional, including a pharmacist; health care personnel; a participant in a program of training in the health professions; an applicant for training or study in the health professions; a postgraduate physician training program; a hospital; a medical laboratory; an entity engaging in biomedical or behavioral research; a pharmacy; or any other health care provider or health care facility. As applicable, components of State or local governments may be health care entities under the Coats-Snowe Amendment.

84 Fed. Reg. 23,264 (May 21, 2019).

The problem with the redefinition in the rule is that it adds several new persons and entities beyond those in the actual statute (as italicized above). To be precise, the following did not appear in the Coats-Snowe Amendment (or its legislative history) but now surface in the redefinition of “health care entity”:

health care professional, a pharmacist, health care personnel, an applicant for training or study in the health professions, a hospital, medical laboratory, an entity engaging in biomedical or behavioral research, a pharmacy, or any other health care provider or health care facility.

To be sure, some of these entities appeared in *other* conscience statutes. For example, the Church Amendment protected “applicants for training or study in the health professions.” The Church Amendment also referenced entities engaging in biomedical or behavior research, but only as entities *that were prohibited from discriminating*. Under the final rule, however, they have been moved to the other side of the ledger — as entities protected *from discrimination* and, equally problematic, imported from a different statute.

Other additions, however, never appeared in any conscience statute. Let’s start with pharmacists and pharmacies. The rule states that “[a] pharmacy is a health care entity, considering the ordinary meaning of that term, because it provides pharmaceuticals and information, which are health care items and services.” 84 Fed. Reg. 23,196 (May 21, 2019). Nowhere in the text or legislative history of the Coats-Snowe Amendment, however, is a “health care entity” defined as one that provides health care items and services. Rather, when it comes to individuals (as opposed to organizations), the statute consistently includes only those engaging in or needing to engage in the actual performance of the procedure in question or assisting in the procedure, such as doctors and nurses.

The Coats-Snowe Amendment was aimed at protecting doctors, residents, and medical students in the context of training. Pharmacists, like ambulance drivers, don't fit. A pharmacist's only possible role in an abortion or sterilization procedure would be dispensing advance medication to facilitate the procedure or post-procedure medication to stabilize or heal the patient, such as pain medication. Dispensing such medication, however, is not specific to the performance of the procedure itself.

"Medical laboratories" is another term added into the new definition that did not appear in another statute. The Coats-Snowe Amendment, to repeat, expressly defined "health care entity" as "an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions." Medical laboratories run tests that assist in diagnosing or in analyzing the outcome of certain procedures. They do not fit the statutory definition. Medical laboratories are thus not health care entities as defined or contemplated by the Coats-Snowe Amendment and the final rule was wrong to include them.

HHS has made many other additions in defining the term and justified doing so by stating that the Coats-Snowe Amendment used the word "include." It is, of course, true that the statutory definition used the verb "include," and the Supreme Court has held that the word "include" can signal that the list that follows is meant to be illustrative rather than exhaustive. *Samantar v. Yousuf*, 560 U.S. 305, 317 (2010). But when interpreting Congress's intent or administrative regulations, the word "include" is nonetheless bounded by the intent expressed in the legislative history. See *United States v. \$215,587.22 in U.S. Currency Seized from Bank Account No. 100606401387436 held in the Name of JJ Szlavik Companies, Inc. at Citizens Bank*, 306 F. Supp. 3d 213, 218 (D.D.C. 2018). In other words, even when the listed terms in an inclusive definition are illustrative, a list still cannot be inflated with terms lacking the defining essence of those in the list, as has occurred here. See *Russell Motor Car Co. v. United States*, 261 U.S. 514, 519 (1923).

(3) "Health Care Entity" For Purposes of the Weldon Amendment and the Affordable Care Act.

The Weldon Amendment itself provided its own statutory definition of "health care entity," stating "[i]n this subsection, the term 'health care entity' includes an individual

physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization or plan.” Pub. L. No. 1154-245, Div. B., § 507(d)(2), 132 Stat. 2981, 3118 (2018). Note that this definition differed from the statutory definition of the same term in the Coats-Snowe Amendment. The final rule, however, redefines “health care entity” for purposes of the Weldon Amendment (and for purposes of the Affordable Care Act, discussed hereafter) as:

(2) For purposes of the Weldon Amendment (e.g., Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Pub. L. 115–245, Div. B., sec. 507(d), 132 Stat. 2981, 3118 (Sept. 28, 2018)), Patient Protection and Affordable Care Act section 1553 (42 U.S.C. 18113), and to sections of this part implementing those laws (§ 88.3(c) and (e)), an individual physician or other health care professional, including a pharmacist; health care personnel; a participant in a program of training in the health professions; an applicant for training or study in the health professions; a postgraduate physician training program; a hospital; a medical laboratory; an entity engaging in biomedical or behavioral research; a pharmacy; a provider-sponsored organization; a health maintenance organization; a health insurance issuer; a health insurance plan (including group or individual plans); a plan sponsor or third-party administrator; or any other kind of health care organization, facility, or plan. As applicable, components of State or local governments may be health care entities under the Weldon Amendment and Patient Protection and Affordable Care Act section 1553.

84 Fed. Reg. 23,264 (May 21, 2019). The following individuals and organizations did not appear in the Weldon Amendment (nor in its legislative history), but now appear as part of the expanded definition of “health care entity” for purposes of the Weldon Amendment:

pharmacist, health care personnel, a participant in a program of training in the health professions, an applicant for training or study in the health professions, a postgraduate physician training program, a medical laboratory, an entity engaging in biomedical or behavioral research; a pharmacy, a health insurance issuer, and a plan sponsor or third-party administrator.

In presenting the Amendment, Representative Weldon stated the following:

The reason I sought to include this provision in the bill is my experience as a physician, and I still see patients, is that the majority of nurses, technicians and doctors who claim to be pro-choice who claim to support *Roe v. Wade* always say to me that they would never want to participate in an abortion, perform an abortion, or be affiliated with doing an abortion. This provision

is meant to protect health care entities from discrimination because they choose not to provide abortion services.

In addressing Representative Zoe Lofgren’s concern that the “sweeping new legislation” would allow “any individual physician, health care professional, hospital, HMO, health insurance plan or any other kind of health care facility, organization, or plan from providing, paying for, or even referring a patient for abortion services,” Representative Weldon stated that, “[t]his provision is intended to protect the decisions of physicians, nurses, clinics, hospitals, medical centers, and even health insurance providers from being forced by the government to provide, refer, or pay for abortions.” 150 Cong. Rec. 25,044–45 (2004).

As with the Coats-Snowe Amendment, the redefinition for purposes of the Weldon Amendment adds a host of individuals and organizations under “health care entities.” Some of these terms come from conscience provisions in other statutes and others do not. Regardless, none of these additions was defined or contemplated in the underlying statute. For example, a pharmacist has again been included. As Representative Weldon stated, however, the protection against discrimination was only extended to “physicians, nurses, clinics, hospitals, medical centers, and even health insurance providers.” Unlike those listed individuals and entities, a pharmacist does not play a role specific to the performance of an abortion or sterilization procedure. The addition of individuals such as pharmacists and other such organizations like pharmacies fall outside the intent of the underlying statute and the final rule is wrong to include them.

* * *

The Affordable Care Act protected health care entities from discrimination in the context of assisted suicides. The ACA defined the term “health care entity” in exactly the same way as the Weldon Amendment. The same entities added in by the new rule for the Weldon Amendment was also added in for purposes of the ACA. Nonetheless, the definition of “health care entity” under the ACA presents a closer question, given the fact that the ACA applied to health care entities in the context of assisted suicides and not abortions and given that, unlike the other statutes, the ACA did delegate legislative rulemaking power to the agency. We can accept that a pharmacy is a “health care entity” for purposes of the ACA. Although

pharmacists do not play a significant role in treatment in the context of abortions and sterilizations, they do in assisted suicides. For example, one method of assisted suicide requires patients to ingest lethal amounts of barbitol capsules, and a pharmacist could be required to dispense such medication and ultimately cause the patient's death. In that context, it is clear that the pharmacist would have a role in the actual treatment of the patient. This order is thus unable to find a clear conflict of the definition of "health care entity" for purposes of the ACA in the challenged rule versus the definition in the ACA.

(4) "Entity."

At this point, let's return briefly to the Church Amendment. Although it did not use the term "health care entity," it did use the term "entity." It also used the term "individual." It consistently used those terms so as to distinguish "entities" from "individuals," the former being organizations and the latter being natural persons. This is quite evident from a simple reading of the statute.

The final rule, however, merges the two. Specifically, it defines "entity" to include, among others, "*a 'person' as defined in 1 U.S.C. 1.*" In turn, Section 1 defines "person" to include: "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, *as well as individuals*" (emphasis added). Therefore, the rule redefines "entity" to include "individual," exactly what the Church Amendment avoided. The new rule was wrong to do so.

(5) "Discriminate" or "Discrimination."

The final rule defines "discriminate or discrimination" to include:

- (1) To withhold, reduce, exclude from, terminate, restrict, or make unavailable or deny any grant, contract, subcontract, cooperative agreement, loan, license, certification, accreditation, employment, title, or other similar instrument, position, or status;
- (2) To withhold, reduce, exclude from, terminate, restrict, or make unavailable or deny any benefit or privilege or impose any penalty; or
- (3) To utilize any criterion, method of administration, or site selection, including the enactment, application, or enforcement of laws, regulations, policies, or procedures directly or through contractual or other arrangements, that subjects individuals or entities protected under this part to any adverse treatment with

respect to individuals, entities, or conduct protected under this part on grounds prohibited under an applicable statute encompassed by this part.

(4) Notwithstanding paragraphs (1) through (3) of this definition, an entity subject to *any prohibition* in this part shall not be regarded as having engaged in discrimination against a protected entity where the entity offers and the protected entity voluntarily accepts an effective accommodation for the exercise of such protected entity's protected conduct, religious beliefs, or moral convictions. In determining whether any entity has engaged in discriminatory action with respect to any complaint or compliance review under this part, OCR will take into account the degree to which an entity had implemented policies to provide effective accommodations for the exercise of protected conduct, religious beliefs, or moral convictions under this part and whether or not the entity took any adverse action against a protected entity on the basis of protected conduct, beliefs, or convictions before the provision of any accommodation.

(5) Notwithstanding paragraphs (1) through (3) of this definition, an entity subject to *any prohibition* in this part may require a protected entity to inform it of objections to performing, referring for, participating in, or assisting in the performance of specific procedures programs, research, counseling, or treatments, but only to the extent that there is a reasonable likelihood that the protected entity may be asked in good faith to perform, refer for, participate in, or assist in the performance of, any act or conduct just described. *Such inquiry may only occur after the hiring of, contracting with, or awarding of a grant or benefit to a protected entity, and once per calendar year thereafter, unless supported by a persuasive justification.*

(6) The taking of steps by an entity subject to *prohibitions* in this part to use alternate staff or methods to provide or further any objected-to conduct identified in paragraph (5) of this definition would not, by itself, constitute discrimination or a prohibited referral, if such entity does not require any additional action by, or does not take any adverse action against, the objecting protected entity (including individuals or health care entities), and if such methods do not exclude protected entities from fields of practice on the basis of their protected objections. Entities subject to prohibitions in this part may also inform the public of the availability of alternate staff or methods to provide or further the objected-to conduct, but such entity may not do so in a manner that constitutes adverse or retaliatory action against an objecting entity.

84 Fed. Reg. 23,263 (May 21, 2019). The problematic part of the new rule is its restriction on inquiry into conscientious objections during the hiring process (italicized above), something none of the underlying statutes expressly barred.

The Church Amendment, for example, provided that certain entities could not “discriminate in the employment, promotion, or termination of employment of any physician or

1 other health care personnel” or “discriminate in the extension of staff or other privileges to any
2 physician or other health care personnel,” 42 U.S.C. § 300a-7(c), but nowhere did it expressly
3 bar inquiry into any conscientious objections in the hiring process.

4 Plaintiffs attack the new definition because it does not include an “undue hardship”
5 exception. To be clear, however, no federal conscience statute ever defined “discriminate” or
6 “discrimination,” ever referred to Title VII, or itself provided any undue hardship exception.
7 At first blush, therefore, it is a bit hard to grasp plaintiffs’ grievance.

8 Plaintiffs showcase a Florida case wherein a pro-life nurse applied for employment at a
9 Title X health center. She applied for a position as an antepartum, laborist, postpartum, and
10 preventative care nurse. *Hellwege v. Tampa Family Health Centers*, 103 F. Supp. 3d 1303, 1306
11 (M.D. Fla. 2015). If the health center had not been able to inquire about any ethical objections
12 she had to doing those jobs, it is possible she could have been staffed on an abortion procedure
13 and only learned of her objection after she was on the job. Surely, the employer in such
14 circumstance can ask if the applicant would have any conscience objection to doing the very
15 job at issue. The district judge in *Hellwege* did not reach this issue, as she found the Church
16 Amendment did not provide a private right of action. But scenarios like this could jeopardize
17 federal funding under the challenged rule.

18 Plaintiffs are correct that Title VII, 42 U.S.C. § 2000e–2(a), provides protection for
19 applicants of employment against discrimination based on their religious beliefs, yet provides
20 an undue hardship exception. Specifically, Title VII defines the term “religion” to include “all
21 aspects of religious observance and practice, as well as belief, unless an employer demonstrates
22 that he is unable to reasonably accommodate an employee’s or prospective employee’s religious
23 observance or practice without undue hardship on the conduct of the employer’s business.” *Id.*
24 at § 2000e(j). The Supreme Court has held that an undue hardship is one where an
25 accommodation would have “more than a de minimis cost.” *Trans World Airlines, Inc. v.*
26 *Hardison*, 432 U.S. 63, 84 (1977).

27 In sum, Title VII allows an employer to inquire about religious beliefs that might impose
28 a hardship on the employer and allows the employer to reject an applicant whose religious

practices cannot be reasonably accommodated. The question here is whether the Title VII scheme should be read into the Church Amendment (and any other conscience statutes covering applicants for employment). After hewing to the words actually used in the Church Amendment (as plaintiffs themselves have argued), it would be ironic to veer from the actual text of the Church Amendment and to read concepts into it from the Civil Rights Act. But it's unnecessary to decide that point. Note well that the new rule includes an exception for "persuasive justification," meaning pre-employment inquiries can be made and applicants rejected when supported by a "persuasive justification." Although this term is not further defined by the rule, this order expects that any undue hardships would supply persuasive justification. Therefore, this order will not criticize the rule based on its definition of "discriminate" or "discrimination."

(6) "Referral" or "Refer for."

The final rule defines "referral" or "refer for" to include:

[T]he provision of information in oral, written, or electronic form (including names, addresses, phone numbers, email or web addresses, directions, instructions, descriptions, or other information resources), where the purpose or reasonably foreseeable outcome of provision of the information is to assist a person in receiving funding or financing for, training in, obtaining, or performing a particular health care service, program, activity, or procedure.

84 Fed. Reg. 23,264 (May 21, 2019).

The Church Amendment only addressed the performance and assistance in the performance of abortions, not referrals. The other conscience statutes, however, did use the terms "referral" or "refer for." The Coats-Snowe Amendment applied to health care entities that chose not to train "in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide *referrals for* such training or such abortions." 42 U.S.C. §238n(a)(1) (emphasis added). The Medicaid and Medicare laws stated that Medicaid-managed organizations and Medicare Advantage plans were not required to "provide, reimburse for, or provide coverage of a counseling or *referral service*" if the organization objected to the service on moral or religious grounds. 42 U.S.C. §§ 1395w-22(j)(3)(B), 1396u-2(b)(3)(B) (emphasis added). The Affordable Care Act prohibited qualified health care plans from discriminating against "any individual health care provider or health care facility

1 because of its unwillingness to provide, pay for, provide coverage of, or *refer for* abortions.”
 2 *Id.* at § 18023(b)(4) (emphasis added). The Weldon Amendment applied to health care entities
 3 that do not “pay for, provide coverage of, or *refer for*” abortions. Pub. L. No. 115-245, Div. B
 4 § 507 (d), 132 Stat. 2981, 3118 (2018) (emphasis added).

5 The term was not defined nor addressed in the legislative history of any of the conscience
 6 statutes. However, the legislative history of at least the Weldon Amendment provided some
 7 guidance. In explaining his purpose, Representative Weldon stated:

8 This provision is intended to protect the decisions of physicians,
 9 nurses, clinics, hospitals, medical centers, and even health
 10 insurance providers from being forced by the government to
 11 provide, *refer*, or pay for abortions.

12 * * *

13 This provision only applies to health care entities that refuse to
 14 provide abortion services. Furthermore, the provision only affects
 15 instances when a government requires that a health care entity
 16 provide abortion services. Therefore, contrary to what has been
 17 said, this provision will not affect access to abortion, *the provision*
 18 *of abortion-related information* or services by willing providers or
 19 the ability of States to fulfill Federal Medicaid legislation.

20 150 Cong. Rec. 25,044–45(2004) (emphasis added).

21 Therefore, Representative Weldon used the term “refer for” as separate from the
 22 provision of information, and further explicitly clarified that the Amendment was not meant to
 23 apply to the provision of abortion-related information.

24 Under the rule, however, the provision of any information by a “health care entity”
 25 that could reasonably lead to a patient obtaining the procedure at issue would be considered a
 26 “referral.” This means, for example, that an entity could lose all of its HHS funding if it fired a
 27 hospital front-desk employee for refusing to tell a woman seeking an emergency abortion for an
 28 ectopic pregnancy which floor she needed to go to for her procedure.

In justifying the need for this definition, HHS cites to *National Institute of Family and*
Life Advocates v. Becerra (NIFLA), a decision that addresses only the First Amendment
 concerns in providing information regarding abortions to patients. 138 S. Ct. 2361 (2018).
 Specifically in *NIFLA*, California enacted the FACT Act, which, in relevant part, required
 licensed clinics that offered pregnancy-related services to provide a government-drafted script

about the availability of state-sponsored services, including abortions. *Id.* at 2371. Although the Supreme Court found such provision of information to violate the First Amendment, it did not speak to whether the government-drafted script constituted a “referral” within the meaning of any conscience statute. *Id.* at 2365.

Instead, as to the Weldon Amendment at least, the legislative history is more instructive in determining whether the definition in the rule is appropriate. As quoted above, Representative Weldon explicitly stated his amendment was not meant to cover the provision of abortion-related information even though the rule covers exactly such provision of information (and more). Additionally, the Weldon Amendment used the term “referral” versus the general provision of information as separate things. This distinct use indicates that “referrals” are meant to cover narrower circumstances than the general provision of information.

The text and legislative histories of the remaining statutes do not provide any guidance regarding how “referral” or “refer for” should be defined. The use of the terms in the medical profession, however, does provides some guidance. In particular, medical professionals use the word “referral” as a term of art that ordinarily means a request from one physician to another to assume responsibility of a patient’s specified problems. *See, e.g.*, American Academy of Family Physicians Clinical Policies (2019);² 32 C.F.R. 199.2.³ In contrast, the informal provision of general information such as emails, names, and directions are simply recommendations. The definition of the term “referral” in the rule here thus goes beyond the meaning of the term as understood by the very industry HHS purports it is trying to protect.

3. INTERPRETIVE RULES VS. LEGISLATIVE RULES.

HHS claims that it has authority to promulgate a substantive, legislative rule, not a mere interpretive rule. But there is no delegation of authority, either explicit or implicit, in any of the underlying statutes to do so except in the limited instances noted above. An interpretive rule can

² “A referral is a request from one physician to another to assume responsibility for management of one or more of a patient’s specified problems.”

³ In the context of the Civilian Health and Medical Program of Uniformed Services (CHAMPUS), a *referral* relationship exists when a CHAMPUS beneficiary is sent, directed, assigned or influenced to use a specific CHAMPUS-authorized provider, or a specific individual or entity eligible to be a CHAMPUS-authorized provider.

never add to or subtract from a statute itself. A legislative rule can never subtract from a statute, though one can add to it if the addition falls within the delegation authority. No rule of either type can ever conflict with the statute itself. As shown above, the new definitions conflict with the underlying statutes in significant ways.

A. Explicit Rulemaking Authority.

Nothing in the Church or Weldon amendments provided that HHS could promulgate rules. Furthermore, the Coats-Snowe Amendment, Affordable Care Act and Medicare and Medicaid statutes cited by defendants conferred upon HHS authority to make and publish regulations only to a limited extent. For example, Section 1302 of Title 42 of the United States Code granted the Secretary explicit authority to publish rules regarding the impact of Medicare and Medicaid on small rural hospitals. Section 18113 furthermore explicitly designated HHS to receive complaints of discrimination based on the statute prohibiting discrimination on performing assisted suicides. HHS, of course, has rulemaking authority to implement the ACA and Medicare and Medicaid programs as well as the applicable conscience provisions. 42 U.S.C. §§ 18041, 1302, 1395w–26. But HHS does not have rulemaking authority to change, add to, or subtract from conscience provisions in other statutes such as the Church and Weldon Amendments.

Defendants further mistakenly rely on their “housekeeping authority” to support their authority to promulgate the rule. None of the statutes cited by defendants provide HHS with the authority to promulgate substantive rules. For example, 5 U.S.C. § 301 states:

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

The Supreme Court and our court of appeals has found this statute to empower an agency to create rules regarding internal procedure, practice, or organization, not substantive rules. *Chrysler Corp. v. Brown*, 441 U.S. 281, 310 (1979); *Exxon Shipping Co. v. U.S. Dep’t of Interior*, 34 F.3d 774, 777 (9th Cir. 1994). The challenged rule is not, however, a mere

1 housekeeping rule. The expansive definitions in the rule depart from the federal statutes, as
2 explained above, changing the rights and responsibilities of health care providers. Coupled with
3 the addition of the termination of all HHS funding as a consequence of noncompliance, the rule
4 is undoubtedly substantive.

5 HHS next cites Section 121(c) of Title 40 of the United States Code, which provides the
6 General Services Administrator (GSA) with authority to promulgate the Federal Acquisition
7 Regulation. Section 121(d) goes on to state that the GSA does not have “the authority to
8 prescribe regulations on matters of policy applying to executive agencies.” Statements on
9 matters of policy are generally those that explain how an agency will enforce a statute or
10 regulation. *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 251–52 (D.C. Cir. 2014).

11 HHS also invokes the Uniform Administrative Requirements (UAR). The UAR is the
12 Office of Management and Budget’s (OMB) guidance for funding instruments. In relevant part,
13 the UAR provides agencies with the authority to ensure that federal funding programs are
14 implemented in full accordance with federal statutory and public policy requirements. While it
15 is true that the UAR also provides agencies with the authority to require fund recipients to
16 comply with federal statutes and regulations, it only allows for termination of an entity’s “federal
17 award,” which is defined as “Federal financial assistance,” in instances of noncompliance. 45
18 C.F.R. § 75.371(c). This means failure to comply under the UAR would only allow HHS to
19 terminate limited categories of funding such as grants, loans, and insurance. Under the new rule,
20 however, failure to comply would allow HHS to terminate all of an entity’s funding including
21 Medicaid and Medicare reimbursements. For California, this would mean a single instance of
22 noncompliance could jeopardize, for example, the \$63 billion in federal funding it receives for
23 healthcare programs for one-third of Californians. There is no federal statute, UAR or
24 otherwise, that delegates to HHS the authority to promulgate a rule with such draconian
25 mechanisms.

B. Implicit Rulemaking Authority.

Nor do defendants have implicit authority to promulgate the instant rule. The Supreme Court has discussed the manner in which Congress may implicitly delegate legislative authority to an agency:

Congress [] may not have expressly delegated authority or responsibility to implement a particular provision or fill a particular gap. Yet it can still be apparent from the agency's *generally conferred authority and other statutory circumstances* that Congress would expect the agency to be able to speak with the force of law when it addresses ambiguity in the statute or fills a space in the enacted law.

United States v. Mead Corp., 533 U.S. 218, 229 (2001) (emphasis added). In other words, Congress may implicitly authorize an agency to promulgate a legislative regulation if it is apparent from the agency's generally conferred authority and other statutory circumstances that Congress would expect the agency to be able to speak with the force of law when addressing ambiguity in a statute it administers. Such authorization may be indicated by express congressional delegation of rulemaking or adjudicative authority, or by some other indication of comparable congressional intent.

To show this, HHS refers back to the UAR as well as 5 U.S.C. § 301 and 40 U.S.C. § 121(c) for the collective proposition that HHS has the authority to disburse funds and to condition such funds based on compliance with federal conscience provisions. There, nonetheless, exists a disconnect between HHS's ability to condition funds based on compliance with the law versus any ability to change the law. HHS attempts to bridge that disconnect by explaining that, if HHS can and sometimes must condition funds based on compliance with the statutes it administers, "it follows from these authorizations that HHS may . . . explain its interpretation of those statutes" (*State of California*, Dkt. No. 54 at 13).

True, any and all agencies must interpret the statutes under their care. But if their interpretations are wrong, then a court must set them aside. This order holds that Congress has not made any express or implicit delegation of authority for HHS to issue legislative rules (excepted in limited cases already cited) and thus it has no authority to add to the requirements of the underlying statutes. This order also holds that while HHS may interpret the statutes in

question, those interpretations may not add to or subtract from what the statutes themselves say. This order further holds that the rule in question does exactly that by adding expansive definitions in conflict with the statutes and imposing draconian financial penalties.

4. RELIEF.

When a rule is invalid, “[t]he reviewing court shall — hold unlawful and set aside agency action, findings, and conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” 5 U.S.C. § 706(2). For the foregoing reasons, this order holds the rule is “not in accordance with law,” by reason of conflict with the underlying statutes and is in conflict with the balance struck by Congress in harmonizing protection of conscience objections vis-a-vis the uninterrupted flow of health care to Americans. When a rule is so saturated with error, as here, there is no point in trying to sever the problematic provisions. The whole rule must go.

HHS has requested that the relief granted, if any, be limited to the parties. This order recognizes that in the past, our court of appeals has vacated nationwide preliminary injunctions when the record only demonstrated the impact the ruling would have on plaintiffs and not on the nation as a whole or when limited relief was sufficient to provide complete relief to the plaintiffs. *See, e.g., City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1244–45 (9th Cir. 2018); *California v. Azar*, 911 F.3d 558, 582–84 (9th Cir. 2018).

Those cases did not, however, involve motions for summary judgment in which an entire rule was finally set aside, as here. The rule is not being enjoined or severed. It is being vacated in its entirety based on the administrative record and not on any considerations specific to the plaintiffs. Importantly, HHS does not and cannot cite to instances where a rule has been vacated in its entirety, but limited only to the parties. All of the courts that have been presented with the possibility of such a remedy have rejected it. *E.g., O.A. v. Trump*, 2019 WL 3536334, at *29 (D.D.C. Aug. 2, 2019) (Judge Randolph Moss); *Desert Survivors v. U.S. Dep’t of the Interior*, 336 F. Supp. 3d 1131, 1134 (N.D. Cal. 2018). When reviewing courts have determined that a rule is facially invalid, the result is that the rule is vacated, “not that their application to the

individual petitioners is proscribed.” *Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989)); see also *Make the Rd. N.Y. v. McAleenan*, 2019 WL 4738070, at *49 (D.D.C. Sept. 27, 2019) (Judge Ketanji Brown Jackson) (finding that relief must not just be granted to the plaintiffs but to anyone to whom it could apply “so as to give interested parties (the plaintiff, the agency, and the public) a meaningful opportunity to try again”).

Setting aside the rule just for the plaintiffs in this case would not only go against the foregoing precedent, but would also be illogical given the fact that the APA violations found here would apply with equal force for any other plaintiff to whom the rule could apply. A rule cannot be vacated in its entirety on the ground that it is “not in accordance with law” for a limited group of parties only. It can only be vacated as to all applicable parties. And limiting relief would be especially illogical here given the fact that other courts have set aside the rule already.⁴

In light of the fact that the rule is vacated in its entirety, this order will and need not reach the remaining constitutional claims.

5. REQUESTS FOR JUDICIAL NOTICE, USE OF DECLARATIONS, AND MISCELLANEOUS MOTIONS.

Federal Rule of Evidence 201(b) permits courts to take judicial notice of any fact “that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” While a court may take judicial notice of matters of public record at the motion to dismiss stage, it cannot take judicial notice of disputed facts contained in such public records. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018).

Plaintiffs request judicial notice of the following documents: (1) the HHS Budget, (2) the HHS Guidelines for Regulatory Impact Analysis (2016), (3) the FDA’s “Importance of

⁴ On November 6, 2019, the United States District Court for the Southern District of New York vacated the rule in its entirety on a nationwide basis. *State of New York, et al. v. U.S. Dep’t of Health & Human Servs.*, C 19-04676 (Dkt. No. 248).

Influenza Vaccination for Health Care Personnel,” (4) HHS, Office of Population Affairs, definition of “sterilization,” (5) HHS “Factsheet, Final Conscience Regulation,” (6) White House, Remarks by President Trump at the National Day of Prayer Service, (7) excerpts from the congressional record from the 93rd Congress (Senate), and (8) excerpts from the congressional record from the 109th Congress (House of Representatives). Because these documents are appropriate subjects of judicial notice, plaintiffs’ unopposed request is **GRANTED**. Plaintiffs’ administrative motion to request judicial notice and their request to judicially notice the transcript of oral arguments of the *State of New York* case is also **GRANTED**. The transcript contains clarifications and concessions regarding the scope of the text of the rule that were relevant to this Court’s decisionmaking.

The government has also opposed plaintiffs’ use of declarations in their briefing. These declarations were not relevant in the determination of the Administrative Procedures Act claims and is thus **DENIED AS MOOT**.

The motions for preliminary injunction (*City and County of San Francisco* Dkt. No. 14; *State of California* Dkt. No. 11; *County of Santa Clara* Dkt. No. 36) and the State of California’s administrative motion for leave to exceed the page limit for their preliminary injunction motion (Dkt. No. 12) are **DENIED AS MOOT**.

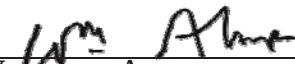
CONCLUSION

For the foregoing reasons, defendants’ motion to dismiss and for summary judgment is **DENIED**. To the extent stated above, plaintiffs’ motion for summary judgment is **GRANTED**.

The challenged rule is set aside and shall be unenforceable. This order gives plaintiffs substantially all the relief they seek, although it has not reached all the claims tendered. The undersigned judge accordingly believes this action is ready for appeal, and suggests that all sides stipulate to entry of final judgment with reservation of all issues not reached in this order in the event of a remand.

IT IS SO ORDERED.

Dated: November 19, 2019.


 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth 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

Consolidated Case Nos. 20-15398, 20-15399, 20-16045 and 20-35044

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, et al.,

Defendants-Appellants.

On Appeal from the United States District Courts
for the Northern District of California and the Eastern District of Washington

EXCERPTS OF RECORD VOLUME II

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¹ Electronic Case File numbers in *State of California v. Azar*, No. 3:19-cv-02769-WHA (N.D. Cal.); *City & County of San Francisco v. Azar*, No. 3:19-cv-02405-WHA (N.D. Cal.); *County of Santa Clara v. U.S. Department of Health & Human Services*, No. 3:19-cv-02916-WHA (N.D. Cal.); and *State of Washington v. Azar*, No. 2:19-cv-00183-SAB (E.D. Wash.).

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STATE OF CALIFORNIA,

Plaintiff,

v.

ALEX M. AZAR II, *in his official capacity as
Secretary of Health and Human Services,*
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, and
DOES 1–100,

Defendants.

No. 19-cv-2769-WHA

DEFENDANTS’ NOTICE OF APPEAL

Hon. William H. Alsup
Phillip Burton Federal Building & United
States Courthouse, Courtroom 12, 19th Fl.,
450 Golden Gate Ave., San Francisco, CA
94102

Notice is hereby given that Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, and the United States Department of Health and Human Services, defendants in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the day of May 26, 2020.

Dated: May 29, 2020

Respectfully Submitted,

JOSEPH H. HUNT
Assistant Attorney General

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

v.

ALEX M. AZAR II, *in his official capacity as
Secretary of Health and Human Services,*
ROGER SEVERINO, *in his official capacity
as Director of the United States Department of
Health and Human Services Office for Civil
Rights, and*

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

No. 19-cv-2405-WHA

DEFENDANTS' NOTICE OF APPEAL

Hon. William Alsup
Phillip Burton Federal Building & United
States Courthouse, Courtroom 12, 19th Fl.,
450 Golden Gate Ave., San Francisco, CA
94102

Notice is hereby given that Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, Roger Severino, in his official capacity as Director of the United States Department of Health and Human Services Office for Civil Rights, and the United States Department of Health and Human Services, defendants in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the day of January 8, 2020.

Dated: March 6, 2020

Respectfully Submitted,

JOSEPH H. HUNT
Assistant Attorney General

MICHELLE BENNETT
Assistant Branch Director
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Benjamin Takemoto

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

COUNTY OF SANTA CLARA et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 19-cv-2916-WHA

DEFENDANTS' NOTICE OF APPEAL

Hon. William Alsup

Phillip Burton Federal Building & United
States Courthouse, Courtroom 12, 19th Fl.,
450 Golden Gate Ave., San Francisco, CA
94102

Notice is hereby given that the United States Department of Health and Human Services and Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, defendants in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the day of January 8, 2020.

Dated: March 6, 2020

Respectfully Submitted,

JOSEPH H. HUNT
Assistant Attorney General

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Attorneys for Defendants

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 17, 2020

SEAN F. MCAVOY, CLERK

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Counsel for Defendants

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

STATE OF WASHINGTON,

No. 2:19-cv-0183-SAB

Plaintiff,

NOTICE OF APPEAL

v.

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

Defendants.

DEFENDANTS' NOTICE OF APPEAL

1 Defendants hereby give notice that they appeal to the United States Court
2 of Appeals for the Ninth Circuit from all aspects of this Court's order and final
3 appealable judgment entered on November 21, 2019—ECF Nos. 74 and 75—
4 and all prior orders and decisions that merge into those orders.

5
6 Dated: January 17, 2020

Respectfully submitted,

7 JOSEPH H. HUNT
Assistant Attorney General

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9 Deputy Assistant Attorney General

10 CHRISTOPHER A. BATES
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12 MICHELLE R. BENNETT
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22 *Counsel for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2020, 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
United States Department of Justice

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

v.

ALEX M. AZAR II, Secretary of U.S.
Department of Health and Human Services;
ROGER SERVERINO, Director, Office for
Civil Rights, Department of Health and
Human Services; U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES; and
DOES 1-25,

Defendants.

No. C 19-02405 WHA
Related to
No. C 19-02769 WHA
No. C 19-02916 WHA

**ORDER RE USE OF TERM
“ENTITY”**

BY TUESDAY AT NOON, each side shall advise the Court of the extent to which HHS contends (or has contended) that “entity” as used in the Church Amendment should be construed to include “health care entity” as defined in the challenged rule. Each side shall please limit its response to **THREE PAGES** or less and file simultaneously on Tuesday.

Dated: November 8, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 08, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

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

Defendants.

No. 2:19-cv-00183-SAB

**ORDER POSTPONING RULE'S
EFFECTIVE DATE; HOLDING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
IN ABEYANCE**

Before the Court is the parties' Stipulated Request for an Order to Postpone Rule's Effective Date; Hold Plaintiff's Motion For Preliminary Injunction in Abeyance, ECF No. 27. The Court considered the parties' request without oral argument.

The parties ask the Court to issue an order, pursuant to 5 U.S.C. § 705, that postpones the effective date of the Final Rule until November 22, 2019, at noon PST. They also ask that the Court hold Plaintiff's Motion for Preliminary

Injunction, ECF No. 8, in abeyance and vacate the briefing schedule set forth in its June 26, 2019 Order, ECF No. 21. Good cause exists to grant the request.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Request for an Order to Postpone Rule's Effective Date; Hold Plaintiff's Motion for Preliminary Injunction in Abeyance, ECF No. 27, is **GRANTED**.
2. The effective date of the Final Rule¹ is postponed until **November 22, 2019, noon PST**.
3. The briefing schedule set forth in the Court's June 26, 2019 Order, ECF No. 21, is **VACATED**.
4. The July 17, 2019 hearing on Plaintiff's Motion for Preliminary Injunction, ECF No. 8, is **STRICKEN**.
5. The Court holds Plaintiff's Motion for Preliminary Injunction, ECF No. 8, in **ABEYANCE**.
6. On or before **July 12, 2019**, the parties are directed to file a Joint Status Report addressing the schedule in this case going forward.

IT IS SO ORDERED. The Clerk of Court is directed to enter this Order and forward copies to counsel.

DATED this 8th day of July 2019.



Stanley A. Bastian

Stanley A. Bastian
United States District Judge

¹ *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23170 (May 21, 2019) (Final Rule).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

v.

ALEX M. AZAR II, Secretary of U.S.
Department of Health and Human Services;
ROGER SERVERINO, Director, Office for
Civil Rights, Department of Health and
Human Services; U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES; and
DOES 1-25,

Defendants.

No. C 19-02405 WHA
Related to
No. C 19-02769 WHA
No. C 19-02916 WHA

**ORDER RE STIPULATED
REQUEST AND BRIEFING
SCHEDULE**

With respect to the stipulated request, the Court enters the following order:

1. Pursuant to 5 U.S.C. § 705, this order approves the stipulated request and hereby orders that the effective date of the rule titled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23, 170 (May 21, 2019) is postponed to **NOON ON NOVEMBER 22, 2019**.
2. This order further approves the stipulated request to hold the preliminary injunction motions in abeyance. The preliminary injunction briefing schedule is **VACATED**.
3. The parties' requested summary judgment schedule is too generous to counsel and too stingy to the Court, meaning the judge is left with too

1 little time to hold a hearing and make a ruling by November 22.

2 Accordingly, the following schedule will be used.

- 3 a. **JULY 22, 2019:** HHS lodges the administrative record.
- 4 b. **AUGUST 21, 2019 AT NOON:** Defendants file their motion for
- 5 summary judgment.
- 6 c. **SEPTEMBER 12, 2019 AT NOON:** Plaintiffs file their opposition and
- 7 cross-motion for summary judgment.
- 8 d. **SEPTEMBER 26, 2019 AT NOON:** Defendants file their reply and
- 9 opposition.
- 10 e. **OCTOBER 10, 2019 AT NOON:** Plaintiffs file their reply.
- 11 f. **OCTOBER 30, 2019 AT 8:00A.M.:** The Court holds a hearing on the
- 12 cross-motions. The parties will hold available the entire day
- 13 because the Court may have trial on that day, and this hearing may
- 14 be postponed until later in the afternoon.

15

16 Defendants shall file a single opening brief limited to **40 PAGES** in 12 point font. The

17 Court realizes that on motions for preliminary injunction, the Court allowed defendants to file a

18 55-page opposition brief. However, that excessive page limit was allowed only because

19 defendants found themselves in a bind and needed to recycle essentially the same brief used in a

20 different court.

21 Plaintiffs shall file a single opposition and cross-motion for summary judgment limited to

22 **40 PAGES** in 12 point font.

23 Defendants' reply/opposition shall be limited to **20 PAGES** in 12 point font. Plaintiffs'

24 reply shall be limited to **20 PAGES** in 12 point font. Replies shall not include declarations or

25 evidentiary exhibits unless they are genuine rebuttals to points that could not have been foreseen

26 in the immediately preceding brief.

27 Defendants' amicus briefs shall be filed at or before their motion for summary judgment

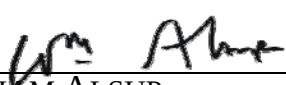
28 is due. Plaintiffs' amicus briefs shall be filed at or before their opposition and cross-motion for

summary judgment is due. Each amicus brief is limited to **15 PAGES** in 12 point font. There shall be no attachments or declarations.

Any declarant in any declaration must make themselves promptly available for deposition. The foregoing schedule presumes that a proper administrative record will be filed and that there will be no substantive litigation concerning the scope of the administrative record.

IT IS SO ORDERED.

Dated: July 1, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

v.

ALEX M. AZAR, et al.,

Defendants.

Case No. 19-cv-02405-JCS

**ORDER GRANTING MOTION TO
RELATE CASES**

Re: Dkt. No. 13

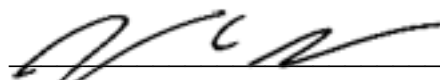
Pursuant to Civil Local Rule 3-12, the Court GRANTS California's Administrative Motion to Consider Whether Cases Should Be Related (Docket No. 13) and relates this case to the following cases:

- *State of California v. Azar, et al.*, Case No. 3:19-cv-02769 HSG
- *County of Santa Clara et al. v. U.S Dep't of Health and Human Svcs., et al.*, Case No. 5:19-cv-2916 NC

Because one or more parties have declined to consent to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c), the Clerk is instructed to reassign all three cases to a randomly selected district court judge.

IT IS SO ORDERED.

Dated: June 13, 2019



JOSEPH C. SPERO
Chief Magistrate Judge

1 Jeffrey T. Sprung, WSBA #23607
Martha Rodríguez López, WSBA #35466
2 Zachary P. Jones, WSBA #44557
Jeffrey C. Grant, WSBA #11046
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8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
9 **AT SPOKANE**

10 STATE OF WASHINGTON,

NO. 2:19-cv-00183

11 Plaintiff,

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

12 v.

13 ALEX M. AZAR II, in his official
capacity as Secretary of the United
States Department of Health and
14 Human Services; and UNITED
STATES DEPARTMENT OF
15 HEALTH AND HUMAN
SERVICES,
16

17 Defendants.
18
19
20
21
22

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I. INTRODUCTION

1. The State of Washington seeks to enjoin and set aside the U.S. Department of Health and Human Service’s (HHS) May 21, 2019 Final Rule,¹ which imposes the religious views of officials at HHS on Washingtonians and individuals across the country who seek timely, medically necessary care and information about reproductive health, LGBTQ health, and end-of-life care. Echoing these views, at a Rose Garden ceremony touting the release of the rule, President Trump said: “Together we are building a culture that cherishes the dignity and worth of human life. Every child, born and unborn is a sacred gift from God.”²

2. Washington law reflects a long tradition of respecting the religious beliefs of its citizens. At the same time, its laws have struck a balance so that no one’s religious views are imposed unwillingly on another. Therefore, Washington’s laws require that no health care provider’s conscience-based refusal results in the denial of timely access to information and services required by prevailing medical and ethical standards.

¹ *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23170 (May 21, 2019) (Final Rule), *see infra* at 33 n.6.

² <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-day-prayer-service/>, *see infra* at 33 n.5.

3. The Final Rule tramples Washington's careful balance of rights and interests. Instead, it imposes its absolute position on the State, its health care institutions, and its residents. In the Final Rule, HHS misinterprets several federal statutes to create a categorical, absolute right by health care providers or their employees to deny medical information and care solely on the basis of their religious or moral tenets, even when required by the corresponding medical standard of care. HHS's expansive new refusal right applies to *any* employee of a covered institution and extends its protections to non-health care providers like insurers and employers.

4. HHS assumes the power to impose its religious values on the most sensitive health decisions and relationships, purporting to preempt longstanding Washington laws protecting patients' rights. Under the Final Rule, an emergency room may refuse to provide emergency contraception to a victim of a violent sexual assault. An institution at which a pregnant women discovers that her fetus is anencephalic—developing without the major structures of the brain—may refuse counseling on all medically indicated options. A religious provider treating a patient suffering from a painful, terminal illness who desires to use the Washington Death With Dignity Act may refuse to transfer medical records to a non-objecting provider. A hospital scheduler or a health insurer's telephone representative could assert a moral objection to assisting gay or transgender individuals seeking medical care.

1 5. HHS’s legal interpretation violates numerous statutory limits on its
2 authority. In the Patient Protection and Affordable Care Act, the Emergency
3 Medical Treatment and Labor Act, and annual appropriations acts for the Title X
4 family planning program, Congress created national standards for certain health
5 care and health insurance coverage. The Final Rule disregards those standards.
6 Further, in a section of the ACA addressing HHS’s rulemaking authority,
7 Congress barred HHS from adopting regulations that impede access to health care
8 information or services, violate principles of informed consent, or undercut the
9 ethical standards of health care professionals. The Final Rule oversteps all of
10 these restrictions. And HHS interprets the statutory provisions that are the subject
11 of the Final Rule so broadly as to defy Congress’s clear intent, assertedly
12 preempting state laws on the books for decades.

13 6. Furthermore, in violation of statutory and constitutional limits, HHS
14 attempts to coerce Washington’s compliance with the Final Rule by subjecting it
15 to the risk of the loss of *all* federal health care funds—over \$10 billion per year—
16 if the State, its health care institutions, or its subrecipients violate the Final Rule.
17 The Final Rule puts Washington to the Hobson’s choice between enforcing its
18 patient protection and civil rights laws and jeopardizing the federal funds that
19 supports its Medicaid and children’s health insurance programs.

20 7. In placing its thumb on the scales to favor religious views at the
21 expense of patients’ guaranteed access to timely and complete health information
22

1 and care, HHS harms the most vulnerable Washingtonians. In rural areas in
2 eastern Washington, patients seeking urgent reproductive care, end-of-life
3 assistance, or gender-affirming surgery or treatment may be forced to travel
4 hundreds of miles for care. By imposing an absolute duty on health care providers
5 to accommodate the religious objections of any employee to providing *any*
6 service to *any* patient, the Final Rule invites and sanctions discrimination against
7 patients based on their sexual orientation or gender identity. Affluent patients will
8 nevertheless access care that is consistent with principles of informed consent,
9 but many rural patients and the working poor will be hostage to the particular
10 religious views of their health care providers.

11 8. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2),
12 empowers the Court to enjoin and set aside agency action that is contrary to
13 constitutional right or in excess of statutory authority, or is arbitrary, capricious,
14 an abuse of discretion, or otherwise not in accordance with law. To avert
15 irreparable injury to the State and its residents, Washington brings this suit to
16 declare unlawful and enjoin the Final Rule.

17 II. PARTIES

18 9. Plaintiff the State of Washington is represented by its Attorney
19 General, who is the State's chief legal adviser. The powers and duties of the
20 Attorney General include acting in federal court on matters of public concern to
21 the State.
22

1 10. Washington is directly affected by the Final Rule. Washington
2 brings this action to redress harms to its sovereign, proprietary, and
3 quasi-sovereign interests and its interests as *parens patriae* in protecting the
4 health and well-being of its residents.

5 11. Washington and its residents will suffer significant and
6 irreparable harm if the Final Rule goes into effect.

7 12. Defendant Alex M. Azar II is the Secretary of HHS (the
8 Secretary). He is sued in his official capacity.

9 13. Defendant HHS is the federal agency responsible for
10 implementing the Final Rule. HHS promulgated the Final Rule challenged in
11 this lawsuit. HHS's sub-agency, the Office of Civil Rights (OCR), administers
12 regulations created by the Final Rule.

13 **III. JURISDICTION AND VENUE**

14 14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action
15 arising under the laws of the United States), 28 U.S.C. § 1346 (United States as
16 a defendant), and 5 U.S.C. §§ 701–706 (APA). An actual controversy exists
17 between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court
18 may grant declaratory relief, injunctive relief, and other relief pursuant to 28
19 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 705–706.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this is a judicial district in which the State of Washington resides and this action seeks relief against federal agencies and officials acting in their official capacities. *See California v. Azar*, 911 F.3d 558, 569–70 (9th Cir. 2018).

IV. RELEVANT FACTS

A. Federal Statutory and Regulatory Background

17. Congress has enacted into law both affirmative requirements to ensure Americans' access to modern and effective health care and conscience protections for health care providers who refuse to perform certain services.

1. Federal laws that protect patients and assure access to modern health care

a. The Patient Protection and Affordable Care Act's contraceptive coverage requirement

18. In 2010, Congress enacted the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) (collectively, the ACA). The ACA imposes an obligation on insurers to provide contraceptive coverage. 42 U.S.C. § 300gg-13(a)(4).

19. A limited exemption from the contraceptive coverage mandate exists for religious employers (defined as “churches, their integrated auxiliaries, and conventions or associations of churches,” and “the exclusively religious activities of any religious order” that are organized and operate as nonprofit entities). In addition, for certain non-exempt employers with religious beliefs that conflict with the use of contraceptives, federal law contains an accommodation. This accommodation is intended to ensure, in the words of the Supreme Court, that eligible non-church organizations can follow “an approach going forward that accommodates [their] religious exercise while at the same time *ensuring that women covered by [their] health plans ‘receive full and equal health coverage, including contraceptive coverage.’*” *Zubik v. Burwell*, 136 S. Ct. 1557, 1559 (2016) (per curiam) (emphasis added).

20. Eight courts of appeals have concluded that requiring religious objectors to notify the government of their objection to providing contraceptive coverage, so that the government can ensure that the responsible insurer or third-party administrator steps in to meet the ACA’s requirements, does not impose a substantial burden on religious exercise.

b. The Emergency Medical Treatment and Labor Act

21. In 1986, Congress enacted the Emergency Medical Treatment and Labor Act (EMTALA) to ensure public access to emergency services regardless of a patient’s ability to pay. 42 U.S.C. § 1395dd.

22. Under EMTALA, a hospital must provide patients with a medical screening examination and, if the patient has an “emergency medical condition,” provide stabilizing treatment or execute an appropriate transfer. 42 U.S.C. § 1395dd; 42 C.F.R § 489.24. The term “emergency medical condition” includes “a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy” 42 U.S.C. § 1395dd(e)(1).

23. Hospitals and physicians violating EMTALA are subject to civil monetary penalties and the threat of Medicare decertification. 42 U.S.C. § 1395dd(d).

c. The mandate for non-directive pregnancy counseling in the appropriations acts applicable to the Title X family planning program

24. In 1970, Congress enacted the Family Planning Services and Population Research Act of 1970, 42 U.S.C. § 300, *et seq.*, which added Title X to the Public Health Service Act. Title X seeks to help low-income women reduce their rate of unintended pregnancies and exercise control over their economic lives and health by offering federally-funded access to effective contraception and reproductive health care. The statute requires the HHS Secretary to award grants to state or local governments and non-profit organizations for the

“establishment and operation of voluntary family planning projects” to provide contraception and other reproductive health care, with priority given to persons from low-income households. 42 U.S.C. §§ 300(a), 300(b), 300a-4(c)(1).

25. Since 1996, Congress has passed annual appropriations acts applicable to HHS requiring that all pregnancy counseling within a Title X program *must* be nondirective.³ Under this non-directive mandate, all recipients of Title X grant funds must ensure that patients determined to be pregnant receive “information on all available options without promoting, advocating, or encouraging one option over another.” 83 Fed. Reg. 25512, n.41 (Jun. 1, 2018).

³ See Pub. L. No. 115-245 (Sept. 28, 2018); Pub. L. No. 115-141 (Mar. 23, 2018); Pub. L. No. 115-31 (May 5, 2017); Pub. L. No. 114-113 (Dec. 18, 2015); Pub. L. No. 113-76 (Jan. 17, 2014); Pub. L. No. 113-235 (Dec. 16, 2014); Pub. L. No. 112-74 (Dec. 23, 2011); Pub. L. No. 111-117 (Dec. 16, 2009); Pub. L. No. 111-8 (Mar. 11, 2009); Pub. L. No. 111-322 (Dec. 22, 2010); Pub. L. No. 110-161 (Dec. 26, 2007); Pub. L. No. 109-149 (Dec. 30, 2005); Pub. L. No. 108-199 (Jan. 23, 2004); Pub. L. No. 108-7 (Feb. 20, 2003); Pub. L. No. 108-447 (Dec. 8, 2004); Pub. L. No. 107-116 (Jan. 10, 2002); Pub. L. No. 106-554 (Dec. 21, 2000); Pub. L. No. 106-113 (Nov. 29, 1999); Pub. L. No. 105-78 (Nov. 13, 1997); Pub. L. No. 105-277 (Oct. 21, 1998); Pub. L. No. 104-134 (Apr. 26, 1996); Pub. L. No. 104-208 (Sept. 30, 1996).

26. Congress’s non-directive mandate requires that pregnant Title X patients receive information on abortion upon request. HHS explicitly adopted recommendations made by the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics stating that “[i]f the patient indicates that the pregnancy is unwanted, she should be fully informed in a balanced manner about all options, including raising the child herself, placing the child for adoption, and abortion.” American Academy of Pediatrics & The American College of Obstetricians & Gynecologists (ACOG), Guidelines for Perinatal Care, p. 127 (7th ed. 2016).⁴ Congress did not create a conscience-based right for the voluntary applicants for Title X grants to refuse to comply with the non-directive mandate.

d. The ACA bars HHS regulations that deny patients timely access to medical care, interfere with provider-patient communications, or undermine informed consent or medical ethics

27. In passing the ACA in 2010, Congress enacted a statutory section that preserves the sanctity and integrity of the patient-provider relationship by prohibiting interference by federal regulators. Section 1554 bars HHS from

⁴ See *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs*, Morbidity and Mortality Weekly Report Vol. 63, No. 4 (April 25, 2014), available at <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf> (last accessed January 2, 2019).

1 adopting any regulations that impede patients’ access to medical information and
2 quality care. Section 1554 provides that the Secretary of HHS “shall not
3 promulgate any regulation” that, *inter alia*:

- 4 1. creates any unreasonable barriers to the ability of individuals
5 to obtain appropriate medical care;
- 6 2. impedes timely access to health care services;
- 7 3. interferes with communications regarding a full range of
8 treatment options between the patient and the provider;
- 9 4. restricts the ability of health care providers to provide full
10 disclosure of all relevant information to patients making
11 health care decisions; or
- 12 5. violates the principles of informed consent and the ethical
13 standards of health care professionals.

14 42 U.S.C. § 18114.

15 28. In addition to federal health care laws that balance conscience rights
16 with Americans’ right to timely and modern health care, federal civil rights laws
17 balance the protection of religious beliefs against employers’ needs to manage
18 their business affairs. Title VII of the Civil Rights Act of 1964 prohibits
19 discrimination in employment based on religious beliefs. 42 U.S.C. § 2000e-2(a).
20 It also provides that employers are not obligated to accommodate employees’
21 religious beliefs where they would cause “undue hardship” on the employer’s
22 business. 42 U.S.C. § 2000e(j). Freedom of religion “gives no one the right to
insist that in pursuit of their own interests others must conform their conduct to

his own religious necessities.” *Otten v. Baltimore & O.R. Co.*, 205 F.2d 58, 61 (2d Cir. 1953).

29. HHS expressly declined to incorporate an assessment of undue burden on employers in its categorical protection of conscience rights. 84 Fed. Reg. 23191 (May 21, 2019). The Final Rule fails to address how HHS will determine if Washington’s health care institutions engaged in “discrimination” where an employee’s absolute right to refuse information and care on conscience grounds conflicts with Title VII’s balancing test.

2. Federal refusal laws that protect conscience-based objections to providing certain health care services

a. The Church Amendments

30. Under the Church Amendments, entities that receive certain federal funds cannot require that individuals perform or assist in performing any sterilization procedure, abortion, or other health care programs or research if doing so would be contrary to religious beliefs or moral convictions. Entities cannot be required to make their facilities available for any sterilization procedure or abortion if the procedure is prohibited based on the entity’s religious beliefs or moral convictions.

31. Entities that receive certain federal funds (including those who receive HHS grants or contracts for biomedical or behavioral research) cannot discriminate in employment, promotion, termination, or the extension of staff or other privileges because a provider performed or assisted in the performance of

a lawful sterilization procedure or abortion—or refused to do so based on religious beliefs or moral convictions.

32. There are similar protections for those who apply to health care training or study programs, including internships and residencies. Individuals cannot be denied admission or discriminated against based on their willingness or unwillingness to counsel, suggest, recommend, assist, or participate in performing an abortion or sterilization if doing so is contrary to their religious beliefs or moral convictions.

b. The Coats-Snowe Amendment

33. The Coats-Snowe Amendment prohibits government entities that receive federal financial assistance from discriminating against health care entities (including physicians and those in health professional training programs) that refuse to undergo training to perform abortions, refuse to provide referrals for abortions or abortion training, or refuse to make arrangements for those activities. Discrimination could occur if, for instance, the government denied an entity a license to operate or refused financial assistance, services, or other benefits. This amendment also applies to the accreditation of postgraduate physician training programs.

c. The Weldon Amendment

34. The Weldon Amendment has been included in annual appropriations acts since 2004 and restricts the use of federal funds provided

through the Departments of Labor and HHS appropriations bill. The Weldon Amendment prohibits government entities from using these funds to discriminate against health care entities because they do not provide, pay for, cover, or refer for abortions. There are similar appropriations laws that prohibit HHS from barring a provider-sponsored organization from participating in Medicare Advantage because it will not provide, pay for, cover, or refer for abortions.

d. Refusal rights in the ACA

35. The ACA included a number of health care conscience provisions. Under Section 1303, health plans are not required to cover abortion services as part of the essential health benefits package and cannot discriminate against providers or facilities because of their unwillingness to provide, pay for, cover, or refer for abortions. The individual mandate includes a religious conscience exemption for members of a health care sharing ministry and organizations or individuals that oppose insurance benefits for religious reasons. Section 1553 of the ACA prohibits government entities that receive federal financial assistance under the ACA from discriminating against an individual or health care entity because of an objection to providing items or service related to assisted suicide.

e. Other federal statutory refusal rights

36. Other federal health care conscience laws prohibit Medicare and Medicaid providers, organizations, or employees—including hospitals, skilled nursing facilities, hospice programs, Medicaid managed care organizations, and

Medicare Advantage plans—from being required to inform or counsel an individual about a right to an item or service related to assisted suicide or advance directives. Medicare Advantage plans and Medicaid managed care organizations cannot be compelled to provide, reimburse for, or cover counseling or referrals that they object to on moral or religious grounds.

B. Washington Laws Guaranteeing Timely Access to Health Care and Respecting Conscience-Based Refusal Rights

1. Washington’s statutory conscience protection statute

37. Washington’s legislature has crafted a careful balance between individuals’ religious and moral beliefs and patients’ rights to health care.

38. Washington law states:

The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with plans containing the basic health plan services to receive the full range of services covered under the plan.

Wash. Rev. Code 48.43.065; *see also* Wash. Rev. Code 70.47.160.

39. Consistent with this legislative goal, the conscience protection statute clarifies that “[n]o individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion.” Wash. Rev. Code

48.43.065(2)(a). Nor are individuals or organizations with a religious or moral tenet “required to purchase [insurance] coverage for that service or services if they object to doing so for reason of conscience or religion.” Wash. Rev. Code 48.43.065(2)(b); *see also* Wash. Rev. Code 70.47.160(2)(b). The statute also protects persons from discrimination “in employment or professional privileges” because they assert a conscience objection. Wash. Rev. Code 48.43.065(2)(a); *see also* Wash. Rev. Code 70.47.160(2)(a).

40. While recognizing the right of conscientious objection to participating in specific health services, the statutes also recognize “the right of individuals enrolled with plans . . . to receive the full range of services covered under the plan.” Wash. Rev. Code 48.43.065(1); *see also* Wash. Rev. Code 70.47.160(1). The exercise of conscience rights cannot deprive an individual of “coverage” or “timely access to” medical services. Wash. Rev. Code 48.43.065(3)(b); *see also* Wash. Rev. Code 70.47.160(3)(b).

41. As discussed further, below, Washington public policy and health care statutes incorporate principles reflecting a recognition of conscience rights, while also respecting the rights of Washington residents to receive appropriate and fully informed medical care as required by federal law, state law, and longstanding medical standards and ethical rules.

2. The Reproductive Privacy Act, Wash. Rev. Code 9.02.100, et seq.

42. Washington’s longstanding public policy supports women’s access to a full range of reproductive health care services, including abortion. In 1970, three years before *Roe v. Wade*, 410 U.S. 113 (1973), Washington voters passed Referendum 20, becoming the first state to legalize elective abortion through the popular vote. Referendum 20 permitted abortions within the first four months of pregnancy when performed by, or under the supervision of, a licensed physician. Laws of 1970, 2d Ex. Sess., ch. 3, § 2. By the mid-1970s, the state was providing public funding for abortions for indigent women, which it continued to do after federal funding was eliminated.

43. In 1991, Washingtonians again voted in favor of abortion rights, adding detail and clarifying the proper role of the state. Laws of 1992, ch. 1, §§ 1–13. Initiative 120, the Reproductive Privacy Act, declares that the “right of privacy with respect to personal reproductive decisions” is a “fundamental right” of each individual. Wash. Rev. Code 9.02.100. The Act prohibits the state from discriminating against, denying, or interfering with a woman’s “right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.” Wash. Rev. Code 9.02.100(4), .110. Any restriction on abortion is valid only if it is medically necessary to protect the life or health of the woman, consistent with established medical practice, and the least restrictive of all available alternatives. Wash. Rev. Code 9.02.140.

44. Washington has always respected the conscience rights of providers who object to providing abortion services. The 1970 ballot measure legalizing elective abortion provided that “[n]o hospital, physician, nurse, hospital employee nor any other person shall be under any duty . . . to participate in a termination of pregnancy if such hospital or person objects to such termination.” Laws of 1970, 2d Ex. Sess., ch. 3, § 3. The 1991 Reproductive Privacy Act refined and replaced the language governing who may object, providing that “[n]o person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so doing.” Wash. Rev. Code 9.02.150.

3. The Reproductive Parity Act, Wash. Rev. Code 48.43.072–.073

45. In 2018, the Washington Legislature passed, and the Governor signed, SSB 6219 (codified as Wash. Rev. Code 48.43.072 and .073), entitled the Reproductive Parity Act. The Reproductive Parity Act requires that health plans provide contraceptive coverage, and that a health plan providing coverage for maternity care or services also include coverage for equivalent abortion services.

In the Act, the Washington Legislature declared that:

- Reproductive health care is the care necessary to support the reproductive system, the capability to reproduce, and the freedom and services necessary to decide if, when, and how often to do so, which can include contraception, cancer and disease screenings, abortion, preconception, maternity, prenatal, and postpartum care. This care is an essential part of primary care for women and teens, and often reproductive health issues are the primary reason they seek routine medical care;

- 1 • Neither a woman’s income level nor her type of insurance
2 should prevent her from having access to a full range of
3 reproductive health care, including contraception and
4 abortion services;
- 5 • Restrictions and barriers to health coverage for reproductive
6 health care have a disproportionate impact on low-income
7 women, women of color, immigrant women, and young
8 women, and these women are often already disadvantaged in
9 their access to the resources, information, and services
10 necessary to prevent an unintended pregnancy or to carry a
11 healthy pregnancy to term;
- 12 • This state has a history of supporting and expanding timely
13 access to comprehensive contraceptive access to prevent
14 unintended pregnancy;
- 15 • Nearly half of pregnancies in both the United States and
16 Washington are unintended. [. . .]
- 17 • Access to contraception has been directly connected to the
18 economic success of women and the ability of women to
19 participate in society equally.

20 Reproductive Parity Act, 2018 Wash. Sess. Laws, ch. 119 (SSB 6219).

21 46. Relevant here, the law has two parts. First, health plans issued or
22 renewed after January 1, 2019 must provide coverage for all contraceptives
approved by the federal Food and Drug Administration, voluntary sterilization
procedures, and any services necessary to provide the contraceptives. Wash. Rev.
Code 48.43.072(1). This coverage cannot be subject to cost sharing or a
deductible, unless the health plan is part of a health savings account. Wash. Rev.
Code 48.43.072(2)(a). Carriers cannot deny coverage because an enrollee
changed a contraceptive method changed within a twelve-month period, and the

1 health plan cannot impose any restrictions or delays on the enrollee’s ability to
2 receive this coverage. Wash. Rev. Code 48.43.072(3), (4). These benefits must
3 be offered to all enrollees, their enrolled spouses, and their enrolled dependents.
4 Wash. Rev. Code 48.43.072(5).

5 47. Second, health plans issued or renewed after January 1, 2019, that
6 provide coverage for maternity care or services must “also provide a covered
7 person with substantially equivalent coverage to permit the abortion of a
8 pregnancy.” Wash. Rev. Code 48.43.073(1).

9 48. During public testimony on SSB 6219, opponents argued that the
10 bill would “violate the constitutionally protected rights of religious organizations
11 and individuals.” Senate Bill Report, SSB 6219 at 5, *available at*
12 [http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/](http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/6219%20SBR%20WM%2018.pdf)
13 [6219%20SBR%20WM%2018.pdf](http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/6219%20SBR%20WM%2018.pdf) (last accessed May 23, 2019). Proponents
14 responded that the bill represented “a compromise . . . that protects religious
15 organizations but still protects women’s reproductive health.” *Id.* Those with
16 conscience or religious objections could still utilize the protections of Wash. Rev.
17 Code 48.43.065 to avoid purchasing services with which they hold a moral or
18 religious objection. Wash. House Health Care & Wellness Comm., Public Hrg.,
19 Feb. 7, 2018 at 33:12–39:30, *available at* [https://www.tvw.org/watch](https://www.tvw.org/watch/?eventID=2018021058)
20 [/?eventID=2018021058](https://www.tvw.org/watch/?eventID=2018021058) (last accessed Apr. 17, 2019).

49. The Insurance Commissioner has proposed new rules implementing SSB 6219. Office of the Insurance Commissioner, *Health Plan Coverage of Reprod. Healthcare and Contraception Stakeholder Draft*, Sept. 20, 2018, available at <https://www.insurance.wa.gov/sites/default/files/2018-09/2018-10-stakeholder-draft.pdf> (last accessed April 17, 2019). The proposed rules make clear that SSB 6219 does not preclude someone from exercising their rights under Wash. Rev. Code 48.43.065: “This subchapter does not diminish or affect any rights or responsibilities provided under [Wash. Rev. Code] 48.43.065.” *Id.* at 2.

4. Informed consent, Wash. Rev. Code 7.70.050–.060

50. Washington State also recognizes a patient’s right to determine the course of their own medical treatment. Under Washington law, providers are under a non-delegable fiduciary duty to obtain a patient’s informed consent before engaging in a course of treatment. Wash. Rev. Code 7.70.050.

51. Unless a patient has been provided all the information necessary to make a knowledgeable decision regarding their medical care, the patient’s “consent” to the course of action taken by the health care provider is not “informed.” The broad categories of information that must be disclosed to the patient include: (1) the nature, character and anticipated results of the treatment, (2) material risks inherent in the proposed treatment, and the (3) alternative courses of treatment and their attendant risks. Wash. Rev. Code 7.70.060(1).

52. Consequently, if medical evidence establishes that there is an alternative course of treatment, including nontreatment, the physician has a duty to inform the patient of that alternative. *Archer v. Galbraith*, 18 Wash. App. 369, 379, 567 P.2d 1155 (1977).

53. Washington hospitals also play a role in the informed consent process. They must ensure the patient’s right to be involved in all aspects of their care including obtaining informed consent. Wash. Admin Code 246-330-125 (requiring that ambulatory surgical facilities provide their patients with a copy of their rights which include, among other things, the right to “[b]e informed and agree to their care.”); Wash. Admin. Code 246-320-166(4)(c) (requiring hospitals to include “consent documents” as part of a patient’s medical records).

54. Washington’s informed consent statute is consistent with longstanding medical standard of care principles and medical ethics. By way of example, in the context of reproductive care, medical providers are ethically required to provide a patient with “pertinent medical facts and recommendations consistent with good medical practice.” ACOG, Code of Professional Ethics, available at <https://www.acog.org/About-ACOG/ACOG-Departments/Committees-and-Councils/Volunteer-Agreement/Code-of-Professional-Ethics-of-the-American-College-of-Obstetricians-and-Gynecologists> (last accessed May 23, 2019); see also American Medical Association, AMA Code of Medical Ethics (2016) available at <https://www.ama-assn.org/sites/ama-assn.org/>

1 [files/corp/media-browser/code-of-medical-ethics-chapter-2.pdf](https://www.acog.org/-/media/corp/media-browser/code-of-medical-ethics-chapter-2.pdf) (last accessed
 2 May 23, 2019) (a provider that withholds medical information is in violation of
 3 the medical code of ethics).

4 55. To that end, medical providers counseling pregnant patients must
 5 provide “complete, medically accurate and unbiased information and resources
 6 for all of their pregnancy options,” including prenatal care, abortion, and other
 7 options for which the patient may want information. ACOG Executive Board,
 8 Abortion Policy 2014 Statement Of Policy 1, *available at* [https://www.acog.org/-](https://www.acog.org/-/media/Statements-of-Policy/Public/sop069.pdf)
 9 [/media/Statements-of-Policy/Public/sop069.pdf](https://www.acog.org/-/media/Statements-of-Policy/Public/sop069.pdf) (last accessed May 23, 2019);
 10 *see also* ACOG, Comm. on Ethics, *Opinion No. 528, Adoption*, 119 *Obstetrics &*
 11 *Gynecology* 1320, 1320 (2012), *available at* [https://www.acog.org/Clinical-](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Adoption)
 12 [Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Adoption)
 13 [Adoption](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Adoption) (last accessed May 23, 2019) (reaffirmed in 2018). In order to be fully
 14 informed, the discussion between the health care provider and the patient must
 15 also take place in an environment free from personal bias, coercion, or undue
 16 influence.

17 56. Washington’s informed consent statute does not conflict with
 18 conscience principles. A medical provider does not have to participate in
 19 procedures to which they object on moral or religious grounds, but, as a matter
 20 of law, they have not obtained the requisite informed consent if they withhold
 21 information related to those medical procedures from their patient.
 22

5. Regulation of pharmacies’ responsibilities, Wash. Admin Code 246-869-010

57. The practice of pharmacy in the state of Washington is regulated by the Washington Pharmacy Quality Assurance Commission pursuant to a comprehensive regulatory scheme that directs the Commission, among other responsibilities, to “[r]egulate the practice of pharmacy and enforce all laws placed under its jurisdiction” and “[p]romulgate rules for the dispensing, distribution, wholesaling, and manufacturing of drugs and devices and the practice of pharmacy for the protection and promotion of the public health, safety, and welfare.” Wash. Rev. Code 18.64.005. The “practice of pharmacy” “includes the practice of and responsibility for: [i]nterpreting prescription orders [and] the compounding, dispensing, labeling, administering, and distributing of drugs and devices,” in addition to information-sharing and monitoring responsibilities. Wash. Rev. Code 18.64.011(11).

58. In January 2006, the predecessor to the Commission, the Washington Board of Pharmacy, became concerned with the lack of clear authority regarding destruction or confiscation of lawful prescriptions and refusals by pharmacists to dispense lawfully prescribed medications. Recognizing the importance of providing Washington patients timely access to all medications, the Board initiated a rulemaking process to address these issues. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1114 (9th Cir. 2009).

1 59. After considering a number of draft rules, the Board adopted two
2 rules by unanimous vote on April 12, 2007. The first rule, an amendment to
3 Wash. Admin. Code 246-863-095, governs pharmacists. Under this rule, a
4 pharmacist may be subject to professional discipline for destroying or refusing to
5 return an unfilled lawful prescription, violating a patient's privacy, or unlawfully
6 discriminating against, or intimidating or harassing a patient. The rule, however,
7 does not require an individual pharmacist to dispense medication in the face of a
8 personal objection.

9 60. The second rule, Wash. Admin. Code 246-869-010, governs
10 pharmacies. It requires pharmacies “to deliver lawfully prescribed drugs or
11 devices to patients and to distribute drugs and devices approved by the U.S. Food
12 and Drug Administration for restricted distribution by pharmacies . . . in a timely
13 manner consistent with reasonable expectations for filling the prescription.”
14 Wash. Admin Code 246-869-010(1). A pharmacy may substitute a
15 “therapeutically equivalent drug” or provide a “timely alternative for appropriate
16 therapy,” but apart from certain necessary exceptions, a pharmacy is prohibited
17 from refusing to deliver a lawfully prescribed or approved medicine. Wash.
18 Admin. Code 246-869-010(1), (3), (4). A pharmacy is also prohibited from
19 destroying or refusing to return an unfilled lawful prescription, violating a
20 patient’s privacy, unlawfully discriminating against, or intimidating or harassing
21 a patient. Wash. Admin Code 246-869-010(4).
22

1 61. In the Concise Explanatory Statement accompanying the
2 regulations, the Board noted that it created a right of refusal for individual
3 pharmacists by allowing a pharmacy to accommodate a pharmacist who has a
4 religious or moral objection. A pharmacy may not refer a patient to another
5 pharmacy to avoid filling a prescription because the pharmacy has a duty to
6 deliver lawfully prescribed medications in a timely manner. A pharmacy may
7 accommodate a pharmacist's personal objections in any way the pharmacy deems
8 suitable, including having another pharmacist available in person or by
9 telephone.

10 **6. Washington Charity Care Law, Wash. Rev. Code 70.170.060**

11 62. Washington has enacted charity care legislation that requires
12 hospitals to provide free or discounted inpatient and outpatient care to low
13 income patients. Washington's law requires that hospitals and their staff provide
14 emergency care to patients regardless of their ability to pay. Wash. Rev. Code
15 70.170.060. Similar to the federal EMTALA, a patient in an emergency medical
16 condition or active labor cannot be transferred unless by patient request or
17 because the hospital has limited medical resources. Wash. Rev. Code
18 70.170.060(2). A transfer must follow reasonable procedures, which include but
19 are not limited to confirming that the receiving hospital accepts the transfer. *Id.*

1 **7. Emergency contraception for sexual assault victims, Wash.**
2 **Rev. Code 70.41.350**

3 63. Emergency contraception prevents pregnancy, and is commonly
4 used after a sexual assault. Washington law (Wash. Rev. Code 70.41.350) and
5 the rules to enact it (Wash. Admin. Code 246-320-286) require all hospitals with
6 emergency rooms to provide emergency contraception as a treatment option to
7 any woman who seeks treatment as a result of a sexual assault.

8 64. Hospitals providing emergency care to a victim of sexual assault
9 must: (1) develop and implement policies and procedures regarding the provision
10 of twenty-four-hour/seven-days per week emergency care to victims of sexual
11 assault; (2) provide the victim of sexual assault with medically and factually
12 accurate and unbiased written and oral information about emergency
13 contraception; (3) orally inform each victim in a language she understands of her
14 option to be provided emergency contraception at the hospital; and (4)
15 immediately provide emergency contraception if the victim requests it, and if the
16 emergency contraception is not medically contraindicated. Wash. Admin. Code
17 246.320.286.

18 **8. Duty to comply with advanced directives, Wash. Rev. Code**
19 **70.122.030**

20 65. Washington residents may execute a directive that requires health
21 care providers to withhold or withdraw life-sustaining treatment if they are a
22 terminal or semi-conscious condition. Wash. Rev. Code 70.122.030. These
 directives become a part of the patient's medical records and are forwarded to the

patient's health care facility. Under Washington law, no nurse, physician or other health care provider can be required to participate in the withholding or withdrawal of life sustaining treatment if they have an objection. Wash. Rev. Code 70.122.060(2). When an attending physician or health care facility becomes aware of a patient's advance directive, however, they *must* inform the patient of any policy or practice that would preclude them from honoring the patient's directive. Wash. Rev. Code 70.122.060(2).

9. Information concerning end-of-life care options, Wash. Rev. Code 70.245

66. Washington State recognizes that residents suffering a terminal disease may make an informed decision to self-administer medication to end their own life in a humane and dignified manner. The Washington Death with Dignity Act, Initiative 1000 (DWDA), passed by popular vote on November 4, 2008 and went into effect on March 5, 2009. Wash. Rev. Code 70.245. Under the DWDA, terminally ill adults seeking to end their life may request lethal doses of medication from medical and osteopathic physicians.

67. The DWDA requires a patient to make two oral requests for life ending medications, and that they submit a written request with specific information which must be signed by two qualified witnesses. Wash. Rev. Code 70.245.030. Two physicians, a prescribing physician and a consulting physician, must confirm the patient's terminal diagnosis, the patient's intent to end their life, and the patient's capacity to make an informed decision. Wash. Rev. Code

1 70.245.070; *see also* Wash. Rev. Code 70.245.120. A patient must then wait
2 forty-eight hours before receiving life-ending medication, and must
3 self-administer the medication.

4 68. The DWDA acknowledges the conscience rights of providers,
5 explicitly stating that providers are not required to “participate” in a patient’s
6 request under the DWDA. Wash. Rev. Code 70.245.190. In addition, it allows
7 health care facilities to take adverse action against attending physicians,
8 consulting physicians and any individuals who perform a counseling function if
9 they participate in the DWDA despite knowing that the health care provider has
10 policies against providing DWDA services. Wash. Rev. Code 70.245.190(2)(b).
11 Among other things, a non-participating health care facility can terminate
12 privileges and employment. *Id.*

13 69. The DWDA defines “participation” narrowly, however, and does
14 not permit sanctions if the counselor, attending physician or consulting physician
15 is simply providing information about the Washington DWDA, or providing a
16 referral to another physician upon a patient’s request. Wash. Rev. Code
17 70.245.190(d). If a health care provider is unwilling to carry out the request, and
18 the patient transfers his or her care to a new health care provider, the non-
19 participating provider must transfer, upon request, a copy of the patient’s relevant
20 medical records. *Id.*

10. Services for LGBTQ individuals

70. In 2019, the Washington Legislature passed, and the Governor signed, 2SSB 5602, entitled “An Act relating to eliminating barriers to reproductive health care for all.” The Act resulted from a report submitted to the Legislature on January 1, 2019. The report was generated in response to a legislatively mandated review of barriers to reproductive health care. In response to this report, the Legislature found that “Washingtonians who are transgender and gender nonconforming have important reproductive health care needs . . . [which] go unmet when, in the process of seeking care, transgender and gender nonconforming people are stigmatized or are denied critical health services because of their gender identity or expression.” 2019 Wash. Sess. Laws, ch. 399, § 1(3). Thus, the Legislature found that “all Washingtonians, regardless of gender identity, should be free from discrimination in the provision of health care services, health care plan coverage, and in access to publicly funded health coverage.” *Id.* § 1(6).

71. Relevant here, the Act prohibits programs regulated by the Washington State Health Care Authority from discriminating based on gender identity or expression. The Washington State Health Care Authority is the largest health care purchaser in Washington and purchases health care for Washington residents through Apple Health (Medicaid), the Public Employees Benefits Board Program, and beginning in 2020, the School Employees Benefit Board

1 devote his best attention to the case until either medical attention is no longer
2 needed, he is discharged by the patient, or he has given the patient reasonable
3 notice of his intention to cease to treat the patient, so that another physician may
4 be obtained.” *Gray v. Davidson*, 15 Wash. 2d 257, 266–267, 130 P.2d 341 (1942).
5 Washington has incorporated these principles in a number of statutes and
6 regulations addressing the practice of medicine and the provision of medical
7 services. *E.g.*, Wash. Admin. Code 246-840-710 (abandoning a patient without
8 an appropriate transfer constitutes a violation of the standards of nursing conduct
9 and practice).

10 74. The Washington State Medical Association acknowledges that
11 physicians may choose whom to serve pursuant to their conscience objection.
12 However, “other principles balance this prerogative with obligations to respect
13 patients and their ability to access available medical care. Therefore, a
14 conscientious objection should, under most circumstances, be accompanied by a
15 referral to another physician or health care facility.” WSMA Policy
16 Compendium, available at [https://wsma.org/WSMA/About/Policies/Policies](https://wsma.org/WSMA/About/Policies/Policies.aspx)
17 [.aspx](https://wsma.org/WSMA/About/Policies/Policies.aspx) (last accessed May 23, 2019).
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C. HHS’s 2019 Final Rule

1. Background

75. On May 2, 2019, President Trump announced the finalization of the rule in a Rose Garden speech during the National Day of Prayer Service.⁵ Directly after that announcement, President Trump said, “Together we are building a culture that cherishes the dignity and worth of human life. Every child, born and unborn is a sacred gift from God.” That day, HHS published the text of the Final Rule on its website.

76. On May 21, 2019, HHS issued the Final Rule⁶ to expand and consolidate its Office of Civil Rights’ (OCR) enforcement authority over nearly

⁵ Remarks by President Trump at the National Day of Prayer Service, May 2, 2019, *available at* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-day-prayer-service/> (last accessed May 23, 2019).

⁶ *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23170 (May 21, 2019), *available at* https://www.govinfo.gov/content/pkg/FR-2019-05-21/pdf/2019-09667.pdf?utm_campaign=subscription%20mailing%20list&utm_source=federalregister.gov&utm_medium=email (last accessed May 22, 2019). The PDF version of the Final Rule on the Federal Register website, linked at note 1, erroneously dates it one year prior, May 21, 2018. The version posted on the Federal Register website

thirty federal health care conscience laws, including three parts of the ACA. These laws focus largely on abortion but some also address sterilization procedures, health care counseling, physician-assisted suicide, and advance directives, among other types of medical care.

77. The Final Rule dramatically expands the reach of the federal statutes it purports to interpret. It makes the refusal rights of individuals and institutions absolute and categorical. It broadly allows providers to refuse to engage in health care counseling, so that patients may not even know they are being denied knowledge of their full range of options. It applies not just to health care professionals but to any employee, so a clinic receptionist or a health insurer's customer representative may refuse to perform their normal work responsibilities. It also applies to non-health care providers such as insurance companies and non-health employers. And States are required to police their subrecipients' compliance with the Final Rule if they receive any federal funds, so that an unknown violation of the rule by a recipient of a pass-through of HHS financial assistance could result in the termination of the State's entire multi-billion dollar federal Medicaid match.

bears the correct date of May 21, 2019. See <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority> (last accessed May 23, 2019).

78. The substantive provisions of the Final Rule attempt to track the statutory language of the nearly thirty laws. However, the Rule defines many key terms—such as “discrimination,” “health care entity,” and “referral”—in ways that significantly broaden the prior application of these laws. The Final Rule now applies to entities that include state governments, federally recognized tribes, hospitals, skilled nursing facilities, home health care providers, doctor’s offices, front desk staff, insurance companies, ambulance providers, pharmacists, pharmacies, and many non-health employers that offer insurance to their employees.

2. Definitions section

79. The definitions section of the Final Rule includes a number of changes to prior definitions, as well as newly defined terms.

a. “Assist in the performance”

80. The Church Amendments prohibit individuals from being forced to perform or “assist in the performance” of procedures or health care services involving abortion or sterilization that are contrary to their religious beliefs or moral convictions. The Final Rule defines “assist in the performance” as taking an action that has a specific, reasonable, and articulable connection to furthering a procedure or part of a health service program or research activity undertaken by or with another person or entity. This may include counseling, referral,

1 training, or otherwise making arrangements for the procedure, program, or
2 research activity.

3 81. This definition extends to non-medical staff (such as front desk
4 staff) and other segments of the health care workforce (such as ambulance
5 drivers). HHS states that a person preparing a room for an abortion or scheduling
6 an abortion could fall under the definition—as could driving a person to a hospital
7 or clinic with a ruptured ectopic pregnancy, where termination of the pregnancy
8 is a reasonable likelihood. Emergency medical technicians and paramedics may
9 claim protection under the rule.

10 82. Two sections of this definitional section are dramatic in their
11 breadth. One purports to make options counseling completely discretionary for
12 providers and institutions with conscience-based objections, even if the options
13 are medically indicated for the patient’s condition. HHS defines “assist in the
14 performance” to encompass medical counseling, including informing patients of
15 their available options under the applicable standard of care. Final Rule § 88.2.
16 Thus, the Final Rule makes advising patients of their options in light of their
17 medical condition optional for those who refuse on conscience grounds to “assist
18 in” particular treatment.

19 83. Another section purports to allow providers and institutions to
20 interpose religious or moral refusals to services beyond abortion and sterilization,
21 the stated subjects of the Church Amendments, authorizing them to deny services
22

to members of the LGBTQ community. *See* 42 U.S.C. § 300a-7 (entitled “Sterilization or abortion”). The Final Rule prohibits discrimination against a person assisting “in any lawful health service” who asserts a conscience-based objection, Final Rule § 88.3(a)(2)(v), and prohibits covered entities from requiring any objecting person to assist in the performance of “any part of a health service program.” *Id.* § 88.3(a)(2)(vi).

b. “Discriminate” or “discrimination”

84. The Final Rule includes a definition for “discriminate” or “discrimination,” which was previously undefined. HHS defines these terms to include (1) withholding, reducing, excluding, terminating, restricting, or otherwise making unavailable or denying any grant, contract, subcontract, cooperative agreement, loan, license, certification, accreditation, employment, title, or other similar instrument, position, status, benefit, or privilege or imposing any penalty; and (2) using any criterion, method of administration, or site selection (including the enactment, application, or enforcement of laws, regulations, policies, or procedures directly or through contractual or other arrangements) that subjects protected individuals or entities to any adverse treatment.

85. The Final Rule partially incorporates Title VII’s approach to the reasonable accommodation of religion—but without the “undue hardship” exception. Entities will not have engaged in discrimination if they offer an

effective accommodation for the exercise of protected conduct, religious beliefs, or moral convictions (assuming that offer is voluntarily accepted). Employers can inform the public of the availability of alternate staff or methods but are not required to do so and cannot single out staff if doing so would be retaliatory.

86. Objecting employees can be required to disclose their objections to the employer if there is a reasonable likelihood that they would be asked to take this action.

c. “Entity” and “health care entity”

87. The Final Rule includes separate definitions for “entity” and “health care entity” and, in doing so, expands the application of federal conscience laws that refer to “entity.” Under the predecessor rule, the definition for “entity” and “health care entity” had been identical, limiting application of federal conscience laws to health care entities (such as health care professionals).

88. The definition of “entity” has been broadened to include “persons” (individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies), states, political subdivisions, state instrumentalities or political divisions, and any public agency, public institution, public organization, or other public entity.

89. Three of the statutes—the Weldon Amendment, the Coats-Snowe Amendment, and Section 1553 of the ACA—use the term “health care entity.” For all three statutes, “health care entity” includes an individual physician or

other health care professional (including a pharmacist); health care personnel; a participant in a health professions training program; an applicant for training or study in the health professions; a post-graduate physician training program; a hospital; a medical laboratory; an entity engaging in biomedical or behavioral research; a pharmacy; any other health care provider or facility; and (potentially) a component of state or local government. HHS added pharmacies and pharmacists in the Final Rule.

90. For purposes of the Weldon Amendment and Section 1553, a “health care entity” additionally includes provider sponsored-organizations, HMOs, issuers, group and individual health insurance plans, plan sponsors, and third-party administrators. The inclusion of plan sponsors in the definition applies to all employers that sponsor a group health plan even when they are not otherwise a “health care entity.”

d. “Health service program”

91. The Final Rule eliminated the definition of “health program or activity” and refers only to “health service program.” A health service program includes any health or health-related services or research activities, benefits, insurance coverage, studies, or any other service related to health or wellness. The definition includes programs provided or administered directly, through insurance, or through payments, grants, contracts, or other instruments.

e. “Referral” or “refer for”

92. The Final Rule defines “referral” or “refer for” to include providing information in oral, written, or electronic form (including names, addresses, phone numbers, email or web addresses, directions, instructions, descriptions, or other information resources) where the purpose or reasonably foreseeable outcome of providing that information is to assist a person in receiving funding or financing for, training in, obtaining, or performing a particular health care service, program, activity, or procedure.

93. Under this definition, an individual would not have to provide contact information of a physician or clinic that may provide an abortion, tell a patients that funding is available for abortion, or provide a phone number where they can be referred to abortion services or funding.

3. Assurance and certification

94. Under the Final Rule, every application for federal funding from HHS must include both an assurance and a certification that the applicant or recipient will comply with applicable federal conscience laws. Final Rule § 88.4(a).

4. Compliance and enforcement

95. HHS states that each recipient of HHS funds “has primary responsibility to ensure that it is in compliance with” the Final Rule. Final Rule § 88.6(a). Further, if HHS finds that a subrecipient of federal funds, such as a

1 clinic included in a state’s federally subsidized Title X network, violated the Final
2 Rule, the state “may be subject to the imposition of funding restrictions or any
3 appropriate remedies available under this part” *Id.*

4 96. OCR has discretion in choosing its means of enforcement, which
5 could range from informal resolution to more rigorous enforcement. In response
6 to a violation, OCR could terminate federal funds, withhold federal payments,
7 withhold new federal funds, suspend award activities, refer a matter to the
8 Department of Justice, or take other remedies.

9 **5. Preemption**

10 97. The Final Rule contains a provision that addresses preemption of
11 state laws. Final Rule § 88.8. This provision states that it does *not* preempt only
12 those state laws that are *equally or more protective of* religious freedom and
13 moral convictions. In contrast, HHS purports to preempt state laws, such as those
14 in Washington, that balance conscience objections with guarantees of patient
15 access to care. “To the extent State or local standards or laws conflict with the
16 Federal laws that are the subject of this rule, the Federal conscience and
17 antidiscrimination laws preempt such laws and standards” 48 Fed. Reg. at
18 23266.

D. The Final Rule’s Impact on Washington

1. Abrogation of Washington’s laws protecting patients

98. Washington has a sovereign interest in its “power to create and enforce a legal code.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982); *see also Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment*, 477 U.S. 41, 51 n.17 (1986) (there is “no question” that states have standing to sue to preserve their sovereignty where sovereign interests have been interfered with or diminished).

99. As reflected in numerous laws in Washington’s legal code, the Washington legislature has carefully balanced the right of individuals and organization to refuse to provide health care services because of conscience objections with Washingtonians’ rights “to receive the full range of services” covered under the state’s health insurance plans.” Wash. Rev. Code 48.43.065. These laws include the Reproductive Privacy Act, Wash. Rev. Code 9.02.100, *et seq.*; the Reproductive Parity Act, Wash. Rev. Code 48.43.072–.073; Washington’s Informed Consent statute, Wash. Rev. Code 7.7.050; Washington’s regulation governing pharmacies’ responsibilities, Wash. Admin. Code 246-869-010; its statute mandating emergency contraception for sexual assault victims, Wash. Rev. Code 70.41.350; the duty to counsel on advanced directives, Wash. Rev. Code 70.122.060(2); the duty to transfer medical records of patients seeking end-of-life care, Wash. Rev. Code 70.245.190(d); the statute

1 prohibiting health care-related discrimination based on gender identity, 2019
2 Wash. Sess. Laws, ch. 399, § 2(1); and Washington’s charity care law prohibiting
3 patient abandonment, among other laws. *See supra* at Section B.1.

4 100. The Final Rule purports to preempt these Washington laws,
5 impeding Washington from enforcing its legal code. Under the Final Rule, HHS
6 could argue that Washington is barred from taking action against a hospital that
7 refused to provide emergency contraception to a victim of sexual assault. HHS
8 could assert that the State is powerless to enforce its regulations ensuring that
9 pharmacies fill a person’s lawful prescription for contraception. It could impede
10 the Attorney General from acting under state civil rights laws against health care
11 providers who refused to provide medically indicated services to gay or
12 transgender patients because they had a moral objection to them. Further, it could
13 threaten Washington with the loss of over \$10 billion in HHS funding if the State
14 did not acquiesce, forcing it to choose between its civil rights laws and its
15 Medicaid and children’s health insurance programs.

16 2. Denied or delayed health care to Washingtonians

17 101. Washington has a quasi-sovereign interest in “ensuring that the State
18 and its residents are not excluded from the benefits that are to flow from
19 participation in the federal system.” *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 608.
20 “[F]ederal statutes creating benefits . . . create interests that a State will obviously
21 wish to have accrue to its residents.” *Id.* Washington’s quasi-sovereign interests
22

1 include “the health and well-being—both physical and economic—of its
2 residents in general,” and “assuring the benefits of the federal system are not
3 denied to its general population.” *Id.* at 607–08.

4 102. The Final Rule will jeopardize the health of Washington residents
5 and cause injury to patients seeking medically indicated reproductive care,
6 sterilization, options counseling, emergency contraception, and other forms of
7 health care. Washingtonians will be denied their guaranteed rights to prompt
8 health care consistent with applicable medical and ethical standards because of
9 conscience-based refusals. These refusals could come not only from medical
10 professionals but from orderlies, cabulance drivers, appointment schedulers, or
11 insurance company telephone representatives.

12 103. To illustrate the potential serious harm to Washington residents,
13 consider a hypothetical patient in Skagit County with a high-risk pregnancy who
14 regularly sees an OB/GYN high-risk specialist at the University of Washington.
15 Her OB/GYN determines that she is miscarrying and, under applicable standards
16 of care, she needs to be treated immediately to prevent infection, sepsis, and even
17 death. Washington law would prevent a hospital faced with a patient in an
18 emergency condition from refusing care and transferring the patient to a different
19 institution. Under the Final Rule, however, the nearest hospital could refuse to
20 admit her if it opposed pregnancy terminations on religious grounds, and it could
21 force the woman to be transported to Seattle for care.
22

104. As another illustration, consider an elderly resident of Benton County terminally ill with aggressive, stage four liver cancer, who seeks to avoid a painful end to his long life. He consults with a physician at the only healthcare system near his rural home and makes a request for life-ending medications consistent with the DWDA. Under the DWDA, a non-participating provider must inform the patient that it does not provide services under the DWDA, and it must transfer his records to a new health care provider. Under the Final Rule, however, the institution does not need to inform the patient that it declines to participate in the DWDA, and it could delay or refuse his request to transfer his records to a participating provider. The patient could experience an avoidable, painful death without ever learning that the facility does not participate in the DWDA.

105. Or, alternatively, consider a college student who is a victim of a violent sexual assault. She is transported to a hospital emergency room, and she requests the morning after pill. Washington law requires the hospital to immediately provide her emergency contraception. Under the Final Rule, however, the hospital may refuse to provide the medication because of a religious policy objecting to terminating pregnancies, and instead—against her wishes—it may counsel her on adoption or social services available to pregnant teens.

3. Impact on state health care institutions

106. “As a proprietor, [a state] is likely to have the same interests as other similarly situated proprietors . . . , [a]nd like other such proprietors it may at times

need to pursue those interests in court.” *Snapp*, 458 U.S. at 601–02. Washington operates numerous health care entities covered by the Final Rule. Consistent with state law and standards of medical ethics, Washington health care entities prioritize patient care and prohibit discrimination of care. By imposing an absolute duty on health care providers to accommodate the religious objections of any employee to providing any service to any patient—no matter the burden it imposes on the provider, other employees, or the patient—the Final Rule invites and sanctions discrimination against patients based on protected characteristics such as sexual orientation or gender identity.

4. Financial injury to Washington

107. “It is a bedrock proposition that ‘a relatively small economic loss—even an identifiable trifle—is enough to confer standing.’” *Massachusetts v. U.S. Dep’t of Health & Human Servs.*, No. 18-1514, 2019 WL 1950427, at *9 (1st Cir. May 2, 2019) (quoting *Katz v. Pershing, LLC*, 672 F.3d 64, 76 (1st Cir. 2012)). Washington faces far more than a small economic loss from the enforcement and penalty provisions of the Final Rule, which place at risk, alternatively, all “Federal financial assistance or other federal funds, in whole or in part,” Final Rule § 88.7(i)(3)(i), or “Federal financial assistance or other federal funds from the Department [of Health and Human Services], in whole or in part,” Final Rule § 88.7(i)(3)(ii), (iv), and (v).

1 108. Based on information maintained by the Washington Office of
2 Financial Management, in 2018 Washington received over \$10.5 billion annually
3 in financial assistance of other federal funds from HHS. The enforcement
4 provisions of the Final Rule allow HHS to withhold, deny, suspend, or terminate
5 billions of dollars in federal health care funds to Washington in HHS's discretion.
6 According to publicly available information on HHS's Tracking Accountability
7 in Government Grants System (TAGGS), Washington received over \$8.9 billion
8 in federal funding from HHS in the 2018 federal fiscal year for entities identified
9 as being at the state level in the TAGGS system. The Final Rule threatens this
10 funding should HHS determine, in its discretion, that Washington or any of its
11 subrecipients is not complying with the Final Rule or any of the statutes it
12 implements. Specifically, in fiscal year 2018, this money included:

13 a. \$8.2 billion in funding for Washington's Medicaid and
14 Children's Health Insurance Program.

15 b. Over \$64 million in funding to the Washington Department
16 of Health for a variety of programs and assistance including Title X,
17 Medicare Entitlement for Washington Health, TB Elimination and
18 Laboratory Cooperative Agreements, Universal Newborn Hearing
19 Screening, Maternal and Child Health Services, Washington State
20 Department of Health Integrated HIV Surveillance and Prevention
21 Programs, Hospital Preparedness Programs, and many others.
22

1 c. Over \$108 million in funding to the Washington Health Care
2 Authority for a variety of programs including Block Grants for Mental
3 Health Services, Substance Abuse Prevention and Treatment Block
4 Grants, Opioid Response Grants, and many others.

5 d. Several million dollars in funding to the Washington
6 Department of Social and Health Services for a variety of programs
7 including Refugee Cash and Medical Assistance, Refugee Social Services,
8 employment services to individuals suffering severe mental illness and co-
9 occurring substance disorders through the Becoming Employed Starts
10 Today program, and many others.

11 109. In addition to the denial of federal funds, the Final Rule will impose
12 other direct costs on Washington. The Final Rule gives HHS authority to
13 financially penalize Washington if a subrecipient of federal funds violates the
14 Final Rule. Final Rule § 88.6(a). As a result, Washington will be required to
15 expend added funds, staffing, and other resources to review and monitor
16 subrecipients' policies, compliance, and complaints regarding refusal rights. For
17 example, the Washington Department of Health (DOH) administers and co-funds
18 with HHS a family planning program comprised of eighty-five clinics providing
19 free or low-cost contraceptives and other reproductive health services to
20 low-income people in thirty-two of Washington's thirty-nine counties. This
21 network of clinics is operated by subrecipients that DOH compensates in part
22

with funds from HHS’s Title X grant to the State. The Final Rule will require DOH’s Family Planning Program to expend additional staff, resources, and funds on monitoring and ensuring compliance with the absolute refusal rights the Final Rule purports to create for its Title X family planning provider subgrantees.

V. CLAIMS FOR RELIEF

Count I

Violation of the Administrative Procedure Act Agency Action Not in Accordance with Law—Claimed HHS Authority

110. Washington realleges and reincorporates by reference the allegations set forth in each of the preceding paragraphs.

111. The APA requires that agency action that is “not in accordance with law” be held unlawful and set aside. 5 U.S.C. § 706(2).

112. The Final Rule violates the statutes HHS purports to interpret by adopting constructions of them not intended or authorized by Congress. HHS’s unlawfully broad interpretations of these statutes include making the refusal rights of individuals and institutions absolute and categorical; broadly allowing providers to refuse to engage in health care counseling; applying its provisions not just to health care professionals but to any employee; applying its provisions to non-health care providers such as insurance companies and non-health employers; and imposing on Washington the responsibility to police the compliance with the rule of its subrecipients of federal funds.

113. In addition, the Final Rule purports to create a mechanism that would allow HHS to impose financial penalties on Washington unauthorized by

1 the statutes HHS invokes. The Final Rule’s enforcement scheme would permit
2 HHS to withhold or deny Washington federal funding amounting to billions of
3 dollars if OCR determines that it or one of its subrecipients failed to comply with
4 the Final Rule.

5 114. Absent injunctive and declaratory relief vacating the Final Rule and
6 prohibiting it from going into effect, Washington and its residents will be
7 immediately, continuously, and irreparably harmed by Defendants’ illegal
8 actions.

9 **Count II**
10 **Violation of the Administrative Procedure Act**
11 **Agency Action Not in Accordance with Law—Other Federal Laws**

12 115. The State realleges and reincorporates by reference the allegations
13 set forth in each of the preceding paragraphs.

14 116. The APA requires that agency action that is “not in accordance with
15 law” be held unlawful and set aside. 5 U.S.C. § 706(2).

16 117. Section 1554 of the ACA provides that the HHS Secretary “shall not
17 promulgate any regulation” that “creates any unreasonable barriers to the ability
18 of individuals to obtain appropriate medical care”; “impedes timely access to
19 health care services”; “interferes with communications regarding a full range of
20 treatment options between the patient and the provider”; “restricts the ability of
21 health care providers to provide full disclosure of all relevant information to
22 patients making health care decisions”; or “violates the principles of informed

consent and the ethical standards of health care professionals.” 42 U.S.C. § 18114.

118. The Final Rule violates Section 1554 in numerous ways, including, among other ways, by creating “unreasonable barriers to the ability of individuals to obtain appropriate medical care” through the denial of counseling and referrals and sanctioning delays and denials of medically indicated care; “impeding timely access to health care services” by permitting delays in and denials of care required by applicable medical standards; “interfer[ing] with communications regarding a full range of treatment options between the patient and the provider” by unlawfully authorizing the denial of counseling and referrals; “restrict[ing] the ability of health care providers to provide full disclosure of all relevant information to patients making health care decisions”; and “violat[ing] the principles of informed consent and the ethical standards of health care professionals” by permitting medical professionals to withhold medically relevant information and violate medical ethical standards and other duties to their patients recognized by leading medical authorities. 42 U.S.C. § 18114.

119. The Final Rule violates the contraceptive coverage requirement in the ACA, 42 U.S.C. § 300gg-13(a)(4), with regard to non-exempt employers with religious beliefs that conflict with the use of contraceptives, by creating an absolute refusal right that conflicts with the accommodation created by HHS’s own regulations.

1 120. The Final Rule violates EMTALA by allowing hospitals to assert a
2 categorical objection to providing patients requiring certain services with a
3 medical screening examination and, if the patient has an “emergency medical
4 condition,” stabilizing treatment or providing an appropriate transfer. 42 U.S.C.
5 § 1395dd; 42 C.F.R § 489.24.

6 121. The Final Rule violates the Non-Directive Mandate in annual
7 appropriations acts applicable to HHS requiring that all pregnancy counseling
8 within a Title X program be nondirective. *See* Pub. L. No. 115-245 (Sept. 28,
9 2018). The Final Rule violates the Non-Directive Mandate by purporting to
10 permit objecting providers in Washington to refuse to ensure that patients
11 determined to be pregnant receive information on all available options without
12 promoting, advocating, or encouraging one option over another.

13 122. The Final Rule violates Title VII of the Civil Rights Act of 1964,
14 42 U.S.C. § 2000e(j), by eliminating the “undue hardship” exception for
15 employers who are required to accommodate employees’ religious beliefs and
16 avoid discrimination in employment based on religion.

17 123. Absent injunctive and declaratory relief vacating the Final Rule and
18 prohibiting it from going into effect, Washington and its residents will be
19 immediately, continuously, and irreparably harmed by Defendants’ illegal
20 actions.

Count III
Violation of the Administrative Procedure Act
Arbitrary and Capricious Agency Action

124. The State realleges and reincorporates by reference the allegations set forth in each of the preceding paragraphs.

125. The Final Rule is arbitrary and capricious in numerous respects. It reverses the Department's longstanding policies and interpretations of Title X with no evidentiary basis or cogent rationale, requires deviation from evidence-backed standards of care and medical ethical and fiduciary obligations, needlessly jeopardizes patients' lives, health, and well-being, disregards and/or is contrary to evidence before the agency, ignores many important aspects of the problem and the significant new problems it will create, relies on factors Congress did not intend the agency to consider, and is illogical and counterproductive.

126. One or more of these problems affects virtually every new provision of the Final Rule, rendering the Final Rule arbitrary and capricious in its entirety.

127. Absent injunctive and declaratory relief vacating the Final Rule and prohibiting it from going into effect, Washington and its residents will be immediately, continuously, and irreparably harmed by Defendants' illegal actions.

Count IV
Violation of the Spending Clause

128. The State realleges and reincorporates by reference the allegations set forth in each of the preceding paragraphs.

129. Article I, section 8, clause 1 of the United States Constitution, also known as the Spending Clause, states that “Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.”

130. The Final Rule violates the Spending Clause because the restrictions are unconstitutionally coercive, do not provide the State with adequate notice of what action or conduct will result in a withholding of federal health care funds, and impose sanctions that are not rationally related to the underlying federal programs.

131. When conditions on the payment to state or local governments of specific federal funds “take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes.” *Nat’l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 580 (2012). Here, the Final Rule threatens to terminate or withhold billions of dollars of healthcare federal funding that the State would otherwise receive, and in so doing, imposes conditions that “cross[] the line distinguishing encouragement from coercion.” *Id.* at 579. The Department’s threat to withhold or deny billions of dollars of healthcare funds, including funds unrelated to healthcare, is “much more than ‘relatively mild encouragement’—it is a gun to the head.” *Id.* at 581. A threat of this magnitude leaves the State “with no real option but to acquiesce” to the federal requirement. *Id.* at 582.

1 132. If Congress intends to condition a State’s receipt of federal funds, it
2 must do so unambiguously so that the State can exercise its choice knowingly
3 and voluntarily. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). Among other
4 things, the Final Rule uses terms that are vague, defines terms inconsistently with
5 the underlying federal statutes or long-standing usage, imposes new conditions
6 on the receipt of federal funds, and does not adequately describe the actions that
7 will lead to sanctions. The Final Rule is ambiguous and therefore
8 unconstitutional.

9 133. Federal funding conditions must also be rationally related to the
10 federal interest in the particular program that receives federal funds. The Final
11 Rule is unconstitutional under the Spending Clause because it places conditions
12 on the receipt of federal funds that are not “[r]elated to the federal interest in
13 particular national projects or programs” paid for by those funds. *Id.* at 207.

14 134. Absent injunctive and declaratory relief vacating the Final Rule and
15 prohibiting it from going into effect, Washington and its residents will be
16 immediately, continuously, and irreparably harmed by Defendants’ illegal
17 actions.

18 **Count VI**
 Separation of Powers

19 135. The State realleges and reincorporates by reference the allegations
20 set forth in each of the preceding paragraphs.

1 136. The United States Constitution exclusively grants the spending
2 power to Congress. U.S. Const. art. 1, § 8, cl. 1. Congress may delegate some
3 discretion to the Executive Branch, but the Executive Branch is not allowed to
4 amend or cancel Congressional appropriations.

5 137. The Final Rule permits Defendants to refuse to disburse money
6 appropriated by Congress, thereby violating constitutional separation of powers
7 principles.

8 138. Absent injunctive and declaratory relief vacating the Final Rule and
9 prohibiting it from going into effect, Washington and its residents will be
10 immediately, continuously, and irreparably harmed by Defendants' illegal
11 actions.

12 **Count VII**
 Violation of the Establishment Clause

13 139. The State realleges and reincorporates by reference the allegations
14 set forth in each of the preceding paragraphs.

15 140. Under the Establishment Clause of the First Amendment, the
16 “[g]overnment in our democracy, state and national, must be neutral in matters
17 of religio[n].” *Epperson v. Arkansas*, 393 U.S. 97, 103 (1968). The government
18 “may not aid, foster, or promote one religion or religious theory against another,”
19 *id.*, nor “religion over irreligion,” *McCreary Cty. v. ACLU of Kentucky*,
20 545 U.S. 844, 875 (2005). “When the government acts with the ostensible and
21 predominant purpose of advancing religion, it violates that central Establishment
22

Clause value of official religious neutrality” *Id.* at 860. The government also violates the Establishment Clause where it imposes an “absolute duty” on employers to “conform their business practices to the particular religious practices of [an] employee,” such that “religious concerns automatically control over all secular interests at the workplace.” *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709 (1985).

141. The Final Rule has the predominant purpose and effect of advancing, endorsing, and elevating individual health care workers’ religious beliefs above all other interests—including patients’ health, welfare, and choices (whether religious or secular). In doing so, the Final Rule imposes an absolute duty on medical providers—including state-operated entities—to accommodate employees’ asserted religious beliefs no matter what burdens doing so would impose on the providers, other employees, or patients. In promulgating the Final Rule, HHS has put its thumb on the scale to favor some religious beliefs over other beliefs, telling “nonadherents ‘that they are outsiders, not full members of the political community, and . . . adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000).

142. The Final Rule violates the Establishment Clause, causing harm to Washington’s sovereign and proprietary interests, and to its residents.

VI. PRAYER FOR RELIEF

Wherefore, the State of Washington prays that the Court:

a. Declare that the Final Rule is unauthorized by and contrary to the Constitution and laws of the United States;

b. Declare that the Final Rule is invalid and without force of law and vacate the Final Rule in full;

c. Issue preliminary and permanent injunctions prohibiting Defendants from implementing or enforcing the Final Rule;

d. Award the State of Washington its costs and reasonable attorneys' fees; and

e. Award such other and further relief as the interests of justice may require.

1 RESPECTFULLY SUBMITTED this 28th day of May 2019.

2 ROBERT W. FERGUSON
3 Attorney General

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COMPLAINT FOR
DECLARATORY AND
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

COUNTY OF SANTA CLARA, TRUST
WOMEN SEATTLE, LOS ANGELES LGBT
CENTER, WHITMAN-WALKER CLINIC,
INC. d/b/a WHITMAN-WALKER HEALTH,
BRADBURY-SULLIVAN LGBT
COMMUNITY CENTER, CENTER ON
HALSTED, HARTFORD GYN CENTER,
MAZZONI CENTER, MEDICAL STUDENTS
FOR CHOICE, AGLP: THE ASSOCIATION
OF LGBTQ+ PSYCHIATRISTS, AMERICAN
ASSOCIATION OF PHYSICIANS FOR
HUMAN RIGHTS d/b/a GLMA: HEALTH
PROFESSIONALS ADVANCING LGBTQ
EQUALITY, COLLEEN MCNICHOLAS,
ROBERT BOLAN, WARD CARPENTER,
SARAH HENN, and RANDY PUMPHREY,

Plaintiffs,

vs.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES and ALEX M. AZAR, II,
in his official capacity as SECRETARY OF
HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 5:19-cv-2916

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. When people go to an emergency room, clinic, or public health program seeking
3 treatment for illness or injury, they expect and trust that they will receive care appropriate to meet
4 their health needs, without regard to their sex, gender identity, sexual orientation, disability status,
5 or religion, or the type of healthcare they seek. Healthcare providers have adopted nuanced policies
6 that respect healthcare workers' religious and moral beliefs; protect patients' access to information
7 and timely, high-quality care; and satisfy healthcare providers' legal and professional duties of care
8 to all patients.

9 2. Now, however, the U.S. Department of Health and Human Services has issued a
10 new regulation (the "Denial-of-Care Rule") that upsets this thoughtful approach. Although
11 purporting to implement long-standing healthcare statutes with specific provisions affording
12 protections for the religious or moral beliefs of certain individuals and entities ("religious
13 objections"), the Rule instead creates a wholly new regime that elevates religious objections over
14 all other interests and values. The Rule invites a much larger universe of healthcare workers to
15 decline to serve patients based on religious objections, defines with unprecedented breadth the types
16 of activities to which they may object, and fails to reconcile objections with the needs and rights of
17 patients—even though doing so is critical in any regulatory scheme administering these laws. And
18 the Rule does not include emergency exceptions. As a result, the Rule endangers patients' health
19 in the name of advancing the religious beliefs of those who are entrusted with caring for them—a
20 result sharply at odds with the stated mission of the Department of Health and Human Services
21 ("HHS"), which is to "enhance and protect the health and well-being of all Americans" and to
22 "provid[e] for effective health and human services."

23 3. The Rule applies to hospitals, medical schools, public- and community-health
24 programs, and state and local governments throughout the Nation that are recipients or
25 subrecipients of certain federal funds. These healthcare providers must comply with the Rule or
26 risk incurring draconian penalties, including the withdrawal or clawback of all federal funding. Yet
27 the Rule offers scant guidance on how healthcare providers might satisfy the Rule's extreme
28 obligations while still reliably delivering patient care. And the Rule places vague and unworkable

1 limits on the reasonable measures that are necessary to protect patients (and comply with the
2 applicable standards of care and medical ethics) when accommodating objections. By failing to
3 provide for emergency exceptions or to address an array of other issues about the Rule's
4 requirements, the agency's action leaves healthcare providers utterly in the dark about what they
5 may or may not do to protect patients consistent with the Rule. If they guess wrong, they could lose
6 federal funding, which would frustrate their ability to provide adequate care to their most needy
7 patients.

8 4. The Rule specifically invites refusals to provide care to women seeking reproductive
9 healthcare and transgender and gender-nonconforming patients seeking gender-affirming care,
10 adversely affecting the healthcare entities that provide reproductive healthcare services and that
11 serve the lesbian, gay, bisexual, and transgender ("LGBT") community. The Rule stigmatizes and
12 shames these patients, depriving them of their constitutionally protected rights of access to
13 healthcare and their dignity and autonomy in seeking medically necessary healthcare central to their
14 self-determination. The Rule will delay and deny the provision of care and information to many
15 patients. It also will deter patients from disclosing their medical histories, gender identities, or
16 transgender status as they seek care; chill patients from expressing themselves in a manner
17 consistent with their gender identities; and render them less likely to seek healthcare services at all,
18 detrimentally affecting not only individual patients' mental and physical health, but public health
19 generally.

20 5. In adopting the Rule, HHS acted arbitrarily and capriciously, in excess of its
21 statutory authority, and in conflict with other laws. Among other problems, HHS failed adequately
22 to consider significant factors, including the Rule's lack of workability and its impact on patients,
23 despite numerous comments raising these concerns; it defined key statutory terms in a manner that
24 is contrary to the underlying statutes; and it ignored limitations contained in other federal laws on
25 HHS's authority to limit patient access to information and care, including emergency care.

26 6. The Rule infringes the constitutional rights of patients by impermissibly advancing
27 the religious beliefs of individual employees over the constitutional rights of patients, including
28 patients' rights to liberty and privacy guaranteed by the Fifth Amendment; their right to equal

1 protection of the laws; and their rights to free speech and expression. The Rule also infringes the
2 constitutional rights of healthcare providers and their patients not to be compelled by the
3 government to live and act in accordance with religious beliefs to which they do not subscribe.

4 7. The Rule is ill-considered and dangerous, and it puts us all at risk. It should be
5 declared unlawful and enjoined.

6 JURISDICTION AND VENUE

7 8. This Court has jurisdiction under 28 U.S.C. § 1331, as this case arises under the
8 United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and
9 challenges final agency action for which there is no other adequate remedy, 5 U.S.C. § 704.

10 9. The Court has the authority to issue declaratory and injunctive relief under the
11 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Administrative Procedure Act,
12 5 U.S.C. § 701 *et seq.*

13 10. Defendants are subject to suit in any federal jurisdiction in challenges to federal
14 regulations, and no real property is involved in this action. 42 U.S.C. §1391(e)(1).

15 11. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)
16 and (e)(1) because at least one Plaintiff resides in this district and each defendant is an agency of
17 the United States or an officer of the United States sued in his or her official capacity.

18 12. The challenged Rule is final and subject to judicial review under 5 U.S.C. §§ 702,
19 704, and 706.

20 PARTIES

21 A. Plaintiffs

22 13. Plaintiffs include a governmental entity that owns healthcare facilities (the County
23 of Santa Clara); five private healthcare facilities that provide reproductive-health services and
24 healthcare services for LGBT individuals (Trust Women Seattle, the Los Angeles LGBT Center,
25 Whitman-Walker Clinic, Inc. d/b/a Whitman-Walker Health, Hartford Gyn Center, and Mazzoni
26 Center) (“private-healthcare-provider Plaintiffs”); four individual physicians and a licensed
27 counselor who work for these entities (“individual-provider Plaintiffs”); three national associations
28 of medical professionals (Medical Students for Choice, AGLP: Association of LGBTQ

1 Psychiatrists, and American Association of Physicians for Human Rights d/b/a GLMA: Health
2 Professionals Advancing LGBTQ Equality) (“medical-association Plaintiffs”); and two
3 organizations that provide a wide range of services to the LGBT community (Bradbury-Sullivan
4 LGBT Community Center and Center on Halsted) (“LGBT-services Plaintiffs”).

5 14. The private-healthcare-provider and individual-provider Plaintiffs assert claims on
6 their own behalf and also on behalf of their patients and recipients of services, who face barriers to
7 asserting their own claims and protecting their own interests. The medical-association Plaintiffs
8 assert claims on behalf of themselves and their members.

9 15. Plaintiffs assert different but complementary interests, and share the common
10 objective of maintaining an effective, functioning healthcare system, one that protects patients’
11 dignity and their rights of access to health services as well as the dignity of healthcare workers who
12 raise religious objections. Plaintiffs also support the objective of providing informed access to
13 comprehensive reproductive healthcare and gender-affirming and medically appropriate care to
14 transgender and gender-nonconforming patients without discrimination based on a patient’s sex,
15 gender identity, or transgender status and in accordance with medical and ethical standards of care.

16 16. Plaintiff **County of Santa Clara** is a charter county and political subdivision of the
17 State of California, located in the Northern District of California. It is home to almost two million
18 residents, is more populous than 14 States, and employs more than 20,000 people.

19 17. The County, as part of its governmental responsibilities, is tasked with providing
20 critical safety-net and public health services. These core County functions are undertaken by a
21 network of County departments and programs, including several County-owned and -operated
22 hospitals, public pharmacies, a public health department, an emergency-medical-services
23 department, a behavioral-health-services department, and a publicly run health-insurance plan. The
24 County of Santa Clara Health System is the only public safety-net healthcare provider in Santa
25 Clara County, and it is the second largest such provider in the State of California.

26 18. To operate this network, and because of the County’s focus on serving indigent and
27 vulnerable populations whose insurance is paid through federally funded Medicare or Medicaid,
28 the County is dependent on hundreds of millions of dollars of federal funding from HHS. The

1 County also receives funding through a variety of other funding streams that pass through HHS,
2 including under the Public Health Services Act (“PHSA”). Because it receives this federal funding,
3 the County is subject to the Denial-of-Care Rule in its entirety.

4 19. At the center of the County’s health system are the County’s three hospitals. The
5 County owns and operates Santa Clara Valley Medical Center (“Valley Medical Center”), an acute-
6 care hospital with over 6,000 employees providing emergency medical services, primary care,
7 hospital care, and reproductive-health services. The mission of Valley Medical Center and its
8 satellite clinics is to provide high-quality, accessible, and compassionate care to all, regardless of
9 their socio-economic status or ability to pay. Last year, Valley Medical Center had an average daily
10 census of 363 patients and handled 3,087 births and 88,856 emergency department visits.

11 20. Valley Medical Center also operates a Gender Health Center that provides
12 (1) resources and psychological support for people of all ages, including children, teens, and young
13 adults, who seek to understand and explore their gender identity; (2) medical care, including
14 hormone treatments; and (3) primary care, including HIV and STI testing. Patient services at the
15 Gender Health Center include standard primary care and acute care, as well as specialized care for
16 the psychological and biological elements of gender transition. Valley Medical Center also operates
17 a family-planning clinic, which provides contraception and abortion services, and it operates a
18 dedicated clinic for LGBT patients.

19 21. In March 2019, the County purchased three additional major health facilities in
20 danger of closing—O’Connor Hospital, St. Louise Regional Hospital, and De Paul Health Center—
21 adding these critical local facilities to its safety net. O’Connor Hospital is the home of one of the
22 only family-medicine residency programs in the Bay Area. It provides emergency medical services,
23 urgent-care services, primary care, hospital care, and reproductive-health services. Last year,
24 O’Connor Hospital handled an estimated 51,948 emergency visits, 4,311 surgical cases, and 1,631
25 births.

26 22. St. Louise Regional Hospital, located in the City of Gilroy, operates the only acute-
27 care hospital in the southern part of Santa Clara County and specializes in maternal child-health
28 services, emergency services, women’s health, breast-cancer care, imaging, surgical procedures,

1 and wound care. St. Louise Regional Hospital is the only hospital in reasonable proximity to many
2 County residents living in the vast rural areas to the north, east, and south of the City of Gilroy.

3 23. De Paul Health Center, located in the City of Morgan Hill, provides urgent-care
4 services and a breast cancer clinic, and is also one of the key healthcare clinics close to many of
5 the rural residents in the County. In 2018, De Paul Health Center provided care for approximately
6 8,858 patients.

7 24. The County also operates the local public health department, which is responsible
8 for providing immunizations; tracking disease outbreaks; offering long-term case management for
9 patients with conditions such as active tuberculosis; providing testing, prevention, and treatment
10 services for sexually transmitted diseases; operating a needle-exchange program; and planning for
11 health emergencies. The 15 cities within the County—including the City of San José, the nation's
12 tenth largest city—lack their own public health departments and depend on the County to provide
13 all public health services.

14 25. To support its hospitals and public health department, the County operates numerous
15 pharmacies that supply essential medicines and treatments, including those used for contraceptive
16 care, abortions, hormone therapy as part of gender-transition-related care, sexually transmitted
17 infections, and HIV/AIDS. One County pharmacy provides free, donated medicine to individuals
18 who cannot afford the retail cost of needed medications. Another specializes in serving patients
19 with HIV/AIDS, patients with tuberculosis, patients from the Public Health Department's STD
20 clinic, and patients being discharged from the County jail. Staff at these pharmacies supports
21 communicable-disease control by procuring, storing, maintaining, and distributing essential
22 medications and vaccines during outbreaks and by distributing state-funded influenza vaccines for
23 administration at no charge to low-income and elderly residents.

24 26. The County also operates the local emergency-medical-services system, overseeing
25 all 911 ambulance response countywide. The County is also the sole accreditor in the county for
26 emergency responders, such as ambulance workers and firefighters.

27 27. The Santa Clara County Behavioral Health Services Department serves County
28 residents in need of mental-health and substance-use-treatment services. It provides needed

1 emergency and crisis care, short-term and long-term inpatient psychiatric care, outpatient mental-
2 health care, medication support, case-management services, and substance-abuse treatment. These
3 services are provided to many County residents from vulnerable populations, with a focus on
4 providing non-stigmatizing care to support those affected by mental illness and substance use.

5 28. The County also operates the only local publicly operated insurance plan, Valley
6 Health Plan. As a health-maintenance organization, Valley Health Plan offers various healthcare-
7 coverage plans that give enrolled members access to a range of medical services from physicians
8 and other healthcare providers within Valley Health Plan's network.

9 29. Plaintiff **Trust Women Seattle**, located in Seattle, Washington, is a clinic that
10 provides full-spectrum reproductive-health services, including abortion and transgender-health
11 services. Its mission is to expand access to abortion, healthcare for LGBT people, and reproductive
12 healthcare in underserved communities throughout the United States. In serving this mission, Trust
13 Women strives to treat all patients with dignity and compassion. Trust Women Seattle is a
14 subrecipient of federal Medicaid funding through the State of Washington and therefore is subject
15 to the Denial-of-Care Rule.

16 30. Plaintiff **Dr. Colleen McNicholas** is the Medical Director for Trust Women,
17 overseeing medical practice at Trust Women's Seattle, Oklahoma, and Kansas clinics.
18 Dr. McNicholas is involved in all aspects of medical decision-making with respect to abortion,
19 contraception, and transgender care offered at Trust Women Seattle. She provides full-spectrum
20 reproductive healthcare to her patients, including contraceptive care and abortion care into the
21 second trimester. In her hospital practice, Dr. McNicholas has developed a program to incorporate
22 gender-affirming gynecologic treatment for transgender children and adults. And she trains other
23 providers to provide abortion, contraception, and gender-affirming care. Dr. McNicholas is the
24 Director of the Ryan Residency Collaborative between Oklahoma University and Washington
25 University School of Medicine in St. Louis, Missouri, which offers formal training in abortion and
26 family planning to residents in obstetrics/gynecology; the Assistant Director of the Fellowship in
27 Family Planning at Washington University School of Medicine; and an Associate Professor at
28

1 Washington University School of Medicine, in the Department of Obstetrics and Gynecology's
2 Division of Family Planning.

3 31. Plaintiff **Los Angeles LGBT Center** is located in Los Angeles, California. Its
4 mission is to build a world in which LGBT people thrive as healthy, equal, and complete members
5 of society. The LA LGBT Center offers programs, services, and advocacy spanning four broad
6 categories: health, social services and housing, culture and education, and leadership and advocacy.
7 The LA LGBT Center has more than 650 employees and provides services for more LGBT people
8 than any other organization in the world, with about 500,000 patient visits per year. LA LGBT
9 Center receives funds under the PHSA. Approximately 80 percent of the LA LGBT Center's
10 funding originates from the federal government, including, but not limited to, funding under the
11 Ryan White Comprehensive AIDS Resources Emergency Act of 1990, 42 U.S.C. § 300ff *et seq.*
12 ("Ryan White funding"); direct funding from the Centers for Disease Control and Prevention,
13 discounts under the 340B Drug Discount Program, grants under section 330 of the PHSA; grants
14 from HHS-HRSA-Bureau of Primary Health Care under which the LA LGBT Center is a Federally
15 Qualified Health Center; and Medicaid and Medicare reimbursements. The LA LGBT Center
16 therefore is subject to the Denial-of-Care Rule.

17 32. Plaintiff **Dr. Robert Bolan** is the Chief Medical Officer of the LA LGBT Center.
18 He oversees the delivery of healthcare for approximately 9,000 patients who come to the LA LGBT
19 Center and personally treats approximately 300 patients. Over 90% of these patients identify as
20 LGBT, many of them coming from different areas of California and other States to obtain services
21 in a safe and affirming environment. Dr. Bolan also oversees the LA LGBT Center's Research
22 Department. Dr. Bolan and the providers he supervises treat patients who identify as transgender
23 and who require gender-affirming treatment, including medically necessary healthcare for gender
24 dysphoria. Many of Dr. Bolan's patients and many of the patients of the providers he supervises at
25 the LA LGBT Center already have experienced traumatic and discriminatory denials of healthcare
26 based on their sexual orientation, gender identity, transgender status, or HIV status at the hands of
27 providers outside the LA LGBT Center, including by healthcare providers who have expressed
28

1 religious or moral objections to treating them. Such experiences will increase as a result of the
2 Denial-of-Care Rule.

3 33. Plaintiff **Dr. Ward Carpenter** is the Co-Director of Health Services at the LA
4 LGBT Center. Dr. Carpenter is a nationally recognized expert in the field of transgender medicine.
5 In his role as Co-Director of Health Services, Dr. Carpenter oversees the healthcare of over 17,000
6 patients who come to the LA LGBT Center and personally treats 150 patients. All of Dr.
7 Carpenter's patients identify within the LGBT community, and approximately 30% of them are
8 people living with HIV. These patients come from different areas of California and other States to
9 obtain services in a safe and affirming environment. Dr. Carpenter's patient population is
10 disproportionately low-income and experiences high rates of chronic medical conditions,
11 homelessness, unstable housing, and extensive trauma history. In addition, many of Dr. Carpenter's
12 patients, as well as those of the other medical providers he supervises at the Center, already have
13 experienced traumatic and discriminatory denials of healthcare based on their sexual orientation,
14 gender identity, transgender status, or HIV status at the hands of providers outside the LA LGBT
15 Center, including by healthcare providers who have expressed religious or moral objections to
16 treating them. Such experiences will increase as a result of the Denial-of-Care Rule.

17 34. Plaintiff **Whitman-Walker Clinic, Inc. d/b/a Whitman-Walker Health**, located
18 in Washington, D.C., provides a range of services, including medical and community healthcare,
19 transgender care and services, behavioral-health services, dental-health services, legal services,
20 insurance-navigation services, and youth and family support. It has particular expertise in LGBT
21 and HIV care. The mission of Whitman-Walker is to offer affirming community-based health and
22 wellness services to all with a special expertise in LGBT and HIV care. Whitman-Walker
23 empowers all persons to live healthy, love openly, and achieve equality and inclusion. In 2018,
24 Whitman-Walker provided health care services to more than 20,700 individuals. Whitman-Walker
25 receives various forms of federal funding from HHS and from institutions affiliated with or
26 themselves funded by HHS, including but not limited to funds under the PHSA, direct grants, Ryan
27 White funding, funds under the 340b drug subsidy program, research grants from the Centers for
28 Disease Control and Prevention and the National Institutes of Health, and Medicaid and Medicare

1 reimbursements. For 2019, Whitman-Walker's federally funded research contracts and grants total
2 more than \$2 million. Whitman-Walker therefore is subject to the Denial-of-Care Rule.

3 35. Plaintiff **Dr. Sarah Henn** is the Chief Health Officer of Whitman-Walker. Dr. Henn
4 oversees all healthcare-related services at Whitman-Walker and maintains a panel of patients for
5 whom she provides direct care. Whitman-Walker's patient population, including patients to whom
6 Dr. Henn provides direct care and whose care she oversees, includes many patients who have
7 experienced refusals of healthcare or who have been subjected to disapproval, disrespect, or
8 hostility from medical providers outside of Whitman-Walker because of their actual or perceived
9 sexual orientation, gender identity, or transgender status. Many of Dr. Henn's patients and those
10 whose care she oversees are, therefore, apprehensive or fearful of encountering stigma and
11 discrimination in healthcare settings because of their past experiences. Such experiences will
12 increase as a result of the Denial-of-Care Rule. In addition to overseeing medical care of patients
13 and working with her own patients, Dr. Henn oversees Whitman-Walker's Research Department,
14 and is personally involved in a number of clinical research projects, including as the Leader of
15 Whitman-Walker's Clinical Research Site for the AIDS Clinical Trials Group funded by the
16 National Institutes of Health.

17 36. Plaintiff **Dr. Randy Pumphrey** is Senior Director of Behavioral Health at
18 Whitman-Walker. As Senior Director of Behavioral Health, Dr. Pumphrey oversees Whitman-
19 Walker's portfolio of mental-health services and substance-use-disorder-treatment services and
20 maintains a panel of patients for whom he provides direct behavioral healthcare. In 2018, Whitman-
21 Walker provided mental-health or substance-use-disorder-treatment services to over 2,300 patients,
22 many of whom identify as LGBT or are living with HIV. Many, if not most, of the patients to whom
23 Dr. Pumphrey provides direct care and whose behavioral healthcare he oversees face considerable
24 stigma and discrimination as people living with HIV, as sexual or gender minorities, or as people
25 of color and have experienced difficulty finding therapists or other mental-health or substance-use-
26 disorder professionals who are understanding and welcoming of their sexual orientation, gender
27 identity, or transgender status. Such experiences of discrimination will increase as a result of the
28 Denial-of-Care Rule.

1 37. Plaintiff **Center on Halsted** is a 501(c)(3) nonprofit organization based in Chicago
2 and incorporated in Illinois. Center on Halsted is a comprehensive community center dedicated to
3 securing the health and well-being of the LGBT people of the Chicago area. Center on Halsted
4 provides programs and services for the LGBT community, including HIV/HCV testing; behavioral
5 health services; case management, job development, social programming, meals, and housing for
6 seniors; housing, meals, counseling, and leadership for youth; and anti-violence services. Center
7 on Halsted also administers social programming for families and advises patrons on concerns
8 related to family planning. On average, more than 1400 community members visit Center on
9 Halsted each day. Center on Halsted receives various forms of pass-through federal funding from
10 HHS, including Ryan White funding and funding from the National Institutes of Health and the
11 Centers for Disease Control and Prevention. Center on Halsted also benefits from programs
12 governed by the Centers for Medicare through Medicare reimbursements.

13 38. Plaintiff **Hartford Gyn Center**, located in Hartford, Connecticut, is the only
14 independent, state-licensed family-planning clinic in Connecticut. Hartford Gyn Center provides
15 reproductive-health services, including contraception and abortion services through 21 weeks.
16 Hartford Gyn Center's mission is to provide women with compassionate reproductive-health
17 services and abortion care, to respect the autonomy of each patient, to support and strengthen
18 reproductive rights, and to effect corresponding social change. Hartford Gyn Center sees patients
19 from all walks of life, including low-income patients who cannot easily access care elsewhere, if at
20 all. Hartford Gyn is one of the only facilities in the region that trains physicians in abortion care,
21 especially in the second trimester. The clinic also operates a medical-residency and training
22 program. Hartford Gyn Center is a subrecipient of federal Medicaid funding through the State of
23 Connecticut and therefore is subject to the Denial-of-Care Rule.

24 39. Plaintiff **Bradbury-Sullivan LGBT Community Center** is a 501(c)(3) nonprofit
25 organization based in Allentown, Pennsylvania, and incorporated in Pennsylvania. It is dedicated
26 to securing the health and well-being of LGBTQ people of the Greater Lehigh Valley. It provides
27 a variety of programs and services for the LGBTQ community, including HIV/STI testing,
28 healthcare-enrollment events, family-planning services, support groups, and a free legal clinic.

1 Bradbury-Sullivan Center also provides referrals to LGBT-welcoming healthcare providers,
2 including providers engaged in family planning services. Patrons of Bradbury-Sullivan Center
3 often seek healthcare services from other healthcare organizations, including religiously affiliated
4 organizations. Bradbury-Sullivan Center works with patrons who have experienced discriminatory
5 treatment when seeking healthcare services from such organizations and it advocates on behalf of
6 those patrons by providing referrals to LGBT-welcoming agencies and providers, training agencies
7 to provide LGBT-welcoming services, and, when necessary, communicating with agencies to
8 inform them of their legal obligations to serve LGBT people. Bradbury-Sullivan Center also
9 conducts research documenting health disparities in the LGBT community and performs related
10 community-education efforts to improve public health within the LGBT community. Bradbury-
11 Sullivan Center receives pass-through funding from HHS through the Maternal and Child Health
12 Services Block Grant, and in the past also has received Ryan White funding. Bradbury-Sullivan
13 Center therefore is subject to the Denial-of-Care Rule.

14 40. Plaintiff **Mazzoni Center**, located in Philadelphia, Pennsylvania, is a multi-service,
15 community-based healthcare and social-service provider that primarily serves LGBTQ individuals
16 and individuals living with HIV. Its mission is to provide quality comprehensive health and
17 wellness services in an LGBTQ-focused environment, while preserving the dignity and improving
18 the quality of life of the individuals whom it serves. Mazzoni Center receives various forms of
19 federal funding, including Title X Family Planning, Centers for Disease Control, Department of
20 Justice, and Ryan White funding. Mazzoni Center therefore is subject to the Denial-of-Care Rule.

21 41. Plaintiff **American Association Of Physicians For Human Rights d/b/a GLMA:**
22 **Health Professionals Advancing LGBT Equality** (formerly known as the Gay & Lesbian
23 Medical Association) is a 501(c)(3) nonprofit membership organization based in Washington, D.C.,
24 and incorporated in California. GLMA is a national organization committed to ensuring health
25 equity for lesbian, gay, bisexual, transgender, queer, and all sexual and gender minority individuals,
26 and equality for health professionals in such communities in their work and learning environments.
27 To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary
28 membership to inform and drive advocacy, education, and research. GLMA represents the interests

1 of tens of thousands of LGBTQ health professionals and millions of LGBTQ patients and families
2 across the United States. GLMA's membership includes approximately 1,000 member physicians,
3 nurses, advanced-practice nurses, physician assistants, researchers and academics, behavioral-
4 health specialists, health-profession students, and other health professionals throughout the country.
5 Their practices represent the major healthcare disciplines and a wide range of health specialties,
6 including internal medicine, family practice, psychiatry, pediatrics, obstetrics/gynecology,
7 emergency medicine, neurology, and infectious diseases.

8 42. Plaintiff **Medical Students for Choice** is a 501(c)(3) nonprofit organization based
9 in Philadelphia, Pennsylvania. MSFC provides training in the provision of abortion services to
10 medical students and residents throughout the country, works to destigmatize abortion provision,
11 and advocates for medical schools and residency programs to include abortion as part of the
12 reproductive-health-services curriculum. MSFC's members include 163 chapters of medical
13 students and residents at medical schools in 45 States. MSFC has thousands of medical-student
14 members and thousands of alumni who are practicing physicians.

15 43. Medical students receive their clinical training disproportionately at academic
16 medical centers and teaching hospitals that receive significant federal funding. Likewise, residents
17 are almost entirely subsidized through federal funding from HHS, including through Medicare
18 grants. Residents receive salaries that are directly funded by Medicare, and hospitals bill Medicare
19 for services provided to patients by residents. MSFC guides student and resident members in how
20 to obtain abortion training and runs a reproductive-health externship program that places members
21 in abortion clinics for training. MSFC also runs its own educational programs, including a
22 competitive 400-student training institute taught by alumni. Because of resource constraints, the
23 institute is already limited to accepting fewer than half the students who apply for the program.

24 44. Many of MSFC's members receive various forms of federal funding directly or
25 indirectly via federal programs. MSFC's members are, thus, subject to the restrictions of the Denial-
26 of-Care Rule. Without federal funding, MSFC members may not have the resources to provide
27 proper treatment to their patients and have a reasonable fear that they could be sanctioned and lose
28 federal funding for providing and training others to provide abortion.

1 45. Through its student and resident members across the country and its alumni who are
2 practicing physicians at hospitals and clinics, MSFC is aware that many hospitals, healthcare
3 facilities, and educational programs no longer provide abortion care or training. Because the
4 Denial-of-Care Rule creates strong incentives for even more healthcare institutions to cease
5 providing abortion training (including by putting at risk federal funding for those institutions that
6 provide such training), the Rule will further strain MSFC's resources and threaten its mission of
7 ensuring that doctors receive training in abortions and abortion-related care.

8 46. Plaintiff **AGLP: The Association of LGBTQ Psychiatrists** is a 501(c)(3) nonprofit
9 organization based in Philadelphia, Pennsylvania. AGLP, the oldest association of LGBTQ+
10 professionals in the country, is a national organization of psychiatrists that educates and advocates
11 on LGBTQ mental-health issues. AGLP represents the interests of 450 LGBTQ+ psychiatrists
12 throughout the country who are members of the Association, and works to influence policies
13 relevant to the LGBTQ+ community, as well as to support its members and advocate for its
14 members' patients. AGLP also assists medical students and residents in their professional
15 development; encourages and facilitates the presentation of programs and publications relevant to
16 LGBTQ concerns at professional meetings; and serves as liaison with other minority and advocacy
17 groups within the psychiatric community. Many of AGLP's members receive various forms of
18 federal funding directly or indirectly via federal programs. AGLP's members therefore are subject
19 to the restrictions of the Denial-of-Care Rule. Without federal funding, AGLP members may not
20 have the resources to provide proper treatment to their patients or proceed with their medical-
21 research programs. AGLP's members, therefore, have a reasonable fear that they could be
22 sanctioned and lose federal funding for the work that they do in enforcing nondiscrimination
23 policies and ensuring patient care in accordance with medical standards of care and ethical
24 requirements, which are vital to providing proper care to patients.

25 **B. Defendants**

26 47. Defendant **HHS** is a cabinet department of the federal government, headquartered
27 in the District of Columbia. It has responsibility for, among other things, enhancing and protecting
28 Americans' health and well-being via the provision of health and human services.

48. Defendant **Alex M. Azar, II** is the Secretary of HHS and is sued in his official capacity. Secretary Azar is responsible for all aspects of the operation and management of HHS, including the adoption, administration, and enforcement of the Denial-of-Care Rule.

STATEMENT OF FACTS

A. Statutory Background

49. A network of federal statutes mandates nondiscriminatory treatment of patients and healthcare workers. Some statutes mandate that patients receive nondiscriminatory access to healthcare, information about treatment options, and emergency services. Other statutes allow individuals or entities to object to participating in certain medical procedures on religious or moral grounds and prohibit discrimination against them. These statutes, together with the patients' constitutional rights and healthcare providers' duties of care and ethical obligations, require healthcare providers to accommodate religious objections in a manner that does not interfere with the delivery of services or information to patients.

1. Laws Protecting Patients' Access to Care and Information

50. Congress has repeatedly recognized the paramount importance of providing patients with prompt and nondiscriminatory access to medical care and to information about all treatment options.

51. For example, Section 1554 of the Patient Protection and Affordable Care Act (ACA) provides that "[n]otwithstanding any other provision of this Act, the Secretary of Health and Human Services shall not promulgate any regulation that—

- (1) creates any unreasonable barriers to the ability of individuals to obtain appropriate medical care;
- (2) impedes timely access to healthcare services;
- (3) interferes with communications regarding a full range of treatment options between the patient and the provider;
- (4) restricts the ability of healthcare providers to provide full disclosure of all relevant information to patients making healthcare decisions;
- (5) violates the principles of informed consent and the ethical standards of healthcare professionals; or

1 (6) limits the availability of healthcare treatment for the full duration of a patient’s medical
2 needs.”

3 42 U.S.C. § 18114.

4 52. Section 1557 of the ACA, 42 U.S.C. § 18116, similarly protects against
5 discrimination in the provision of healthcare services. It provides: “[A]n individual shall not, on [a]
6 ground prohibited under title VI of the Civil Rights Act of 1964, title IX of the Education
7 Amendments of 1972, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation
8 Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to
9 discrimination under, any health program or activity, any part of which is receiving Federal
10 financial assistance.” This provision therefore prohibits discrimination based on sex, including
11 discrimination based on a patient’s failure to conform to sex stereotypes, gender identity, or
12 transgender status, all of which are forms of sex discrimination.

13 53. The Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd(b)(1)
14 (“EMTALA”) governs when and how a patient must be examined and offered treatment (including
15 medically necessary abortion services) while in an unstable medical condition. It requires a hospital
16 that “determines that [an] individual has an emergency medical condition” to “provide either—(A)
17 within the staff and facilities available at the hospital, for such further medical examination and
18 such treatment as may be required to stabilize the medical condition, or (B) for transfer of the
19 individual to another medical facility” *Id.*

20 54. The ACA, which respects certain religious objections to healthcare procedures,
21 makes clear that nothing in it may “be construed to relieve any healthcare provider from providing
22 emergency services as required by State or Federal law,” including EMTALA. 42 U.S.C.
23 § 18023(d).

24 55. Title X of the Public Health Service Act, 42 U.S.C. §§ 300-300a-6, provides federal
25 funding for family-planning services. Congress requires Title X grantees to operate “voluntary
26 family planning projects which shall offer a broad range of acceptable and effective family planning
27 methods and services.” 42 U.S.C. § 300(a). Title X appropriations bills, *e.g.*, 2019 Continuing
28 Appropriations Act, Pub. L. No. 115-245, Div. B., Tit. II, 132 Stat. 2981, 3070-71 (2018), require

1 that “all pregnancy counseling shall be nondirective”; in other words, funded projects are to offer
2 pregnant women neutral, nonjudgmental information and counseling regarding their options,
3 including prenatal care and delivery; infant care, foster care, or adoption; and pregnancy
4 termination.

5 2. Laws Protecting Religious Objectors

6 56. Certain statutes applicable to recipients of federal funds allow individuals to opt out
7 of participating in certain medical procedures, training, or research based on their religious beliefs
8 or moral convictions, and prohibit discrimination against individuals or entities for asserting such
9 objections. These laws include, among others, the Weldon Amendment, *e.g.*, Department of
10 Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and
11 Continuing Appropriations Act, 2019, Pub. L. 115-245, § 507(d)(2), 132 Stat. 2981, 3118 (2018);
12 the Coats-Snowe Amendment, 42 U.S.C. § 238n; and the Church Amendments, 42 U.S.C. § 300a-
13 7.

14 57. The Weldon Amendment is a rider that has been attached to the Labor, Health, and
15 Human Services, and Education, and Related Agencies Appropriations Act every year since 2004.
16 162 Cong. Rec. H4844, H4852 (July 13, 2016) (Rep. Weldon). It provides that none of the funds
17 appropriated under that Act “may be made available to a Federal agency or program, or to a State
18 or local government, if such agency, program, or government subjects any institutional or
19 individual healthcare entity to discrimination on the basis that the healthcare entity does not
20 provide, pay for, provide coverage of, or refer for abortions.” Pub. L. 115-245, § 507(d)(2), 132
21 Stat. 2981, 3118 (2018).

22 58. The Coats-Snowe Amendment prohibits abortion-related governmental
23 discrimination in the area of medical training. It provides that “[t]he federal government, and any
24 state or local government that receives Federal financial assistance,” may not discriminate against
25 a healthcare entity because “the entity refuses to undergo training in the performance of induced
26 abortions, to require or provide such training, to perform such abortions, or to provide referrals for
27 such training or such abortions,” 42 U.S.C. § 238n(a)(1); “refuses to make arrangements” for those
28

activities, *id.* § 238n(a)(2); or attends or attended a program that does not perform abortions or provide training in abortion care, *id.* § 238n(a)(3).

59. The Church Amendments, which were adopted in the 1970s, provide certain protections for religious and moral objections arising in medical research and training. One subsection provides that the receipt of certain federal funds by a healthcare provider does not authorize “any court or any public official or other public authority” to require an individual to perform or assist in the performance of an abortion or sterilization procedure, or to require an entity to make its facilities or personnel available for those procedures. 42 U.S.C. § 300a-7(b). Another subsection provides that an entity receiving federal funding for biomedical or behavioral research may not discriminate against personnel on the basis that they refused on religious or moral grounds to participate in a research or healthcare activity. 42 U.S.C. § 300a-7(c). A third subsection provides that an entity receiving certain federal funds may not discriminate against a physician or health care personnel in employment, promotion, termination, or the extension of staff or other privileges because he performed or refused to perform or assist in the performance of an abortion or sterilization procedure on the grounds that it would be contrary to his religious beliefs or moral convictions. 42 U.S.C. § 300a-7(c)(1). A fourth subsection prohibits discrimination by certain funding recipients against applicants for training or study based on their “reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in abortions or sterilizations” because of “the applicant’s religious beliefs or moral convictions.” 42 U.S.C. § 300a-7(e).

60. Subsection (d) of the Church Amendments provides that “[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.” 42 U.S.C. § 300a-7(d).

61. The ACA prohibits discrimination by any recipient of federal funds against persons or entities because of their refusal to cause or assist in suicide or euthanasia, 42 U.S.C. § 18113; provides that the ACA does not require a health-insurance plan to provide coverage for abortions, 42 U.S.C. § 18023(b)(1)(A); prohibits any “qualified health plan offered through an [Insurance]

Exchange” from “discriminat[ing] against any individual healthcare provider or facility because” it does not “provide, pay for, provide coverage of, or refer for abortions,” 42 U.S.C. § 18023(b)(4); and states that the ACA should not be construed to affect other federal laws regarding “conscience protection” or willingness or refusal to provide abortions, 42 U.S.C. § 18023(c)(2)(A)(i)-(iii).

62. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, prohibits discrimination against employees based on their religious beliefs and requires accommodation of religious practices. Importantly, employers’ ability to ensure reliable care for their patients is recognized as a “business necessity,” 42 U.S.C. § 2000e-2(k)(1)(A)(i), and religious accommodation is required only if, and only to the extent that, it does not create “undue hardship,” 42 U.S.C. § 2000e(j).

3. The Implementation and Enforcement of Religious-Objection Laws

63. The religious-objection laws described above are self-executing and do not require regulations to go into effect. Accordingly, healthcare providers covered by the laws, including both the County and the private-healthcare-provider Plaintiffs, have adopted policies that accommodate conscience interests without compromising patients’ access to care and information.

64. Nevertheless, HHS previously promulgated regulations purporting to clarify and implement the religious-objection laws. On December 19, 2008, more than nine years before it proposed the Denial-of-Care Rule, HHS promulgated a final rule that purported to implement the Church Amendments, the Weldon Amendment, and the Coates-Snowe Amendment. *See Ensuring That Dep’t of Health & Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law*, 73 Fed. Reg. 78,072 (Dec. 19, 2008). On January 20, 2009, the final rule went into effect.

65. On March 10, 2009, HHS proposed to rescind the January 2009 rule in its entirety. It noted that no statutory provision required promulgation of regulations and that commenters had raised numerous questions and concerns about the regulations. *See Rescission of the Regulation Entitled “Ensuring That Dep’t of Health & Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law”*; Proposal, 74 Fed. Reg. 10,207 (Mar. 10, 2009).

66. On February 23, 2011, HHS largely rescinded the regulations but retained provisions delegating to HHS's Office for Civil Rights ("OCR") the authority to receive complaints of violations of religious-objection laws. *See* Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 Fed. Reg. 9968 (Feb. 3, 2011).

67. The Rule challenged in this action is a centerpiece of the Trump Administration's concerted, aggressive effort to expand enforcement of religious-objection laws at the expense of patients. On January 18, 2018, the Acting Secretary of HHS established a new Conscience and Religious Freedom Division within OCR and delegated to this new Division the responsibility to enforce religious-objection laws. OCR then increased the budget of the Conscience and Religious Freedom division by \$1.546 million. OCR also modified its mission statement to emphasize a commitment to enforce "federal laws that guarantee the protection of conscience and free exercise of religion and prohibit coercion and religious discrimination in HHS-conducted or funded programs." When it promulgated the final Denial-of-Care Rule, HHS emphasized OCR's "singular and critical responsibility . . . to vigorously enforce" federal conscience laws. *See* Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,170, 23,178 (May 21, 2019) (to be codified at 45 C.F.R. Pt. 88).

C. The Proposed Denial-of-Care Rule

68. On January 26, 2018, the Acting Secretary proposed the Denial-of-Care Rule. *See* Protecting Statutory Conscience Rights in Health Care; Delegation of Authority, 83 Fed. Reg. 3880 (Jan. 28, 2018). The proposed Rule, like the final Rule, adopted an expansive construction of the religious-objection laws; ignored healthcare providers' obligations to ensure their patients' uninterrupted access to care and information and to advance the providers' own missions as healthcare institutions; imposed costly certification and recordkeeping requirements; would undermine Plaintiffs' ability to fulfill their missions; would require healthcare providers to rewrite and re-conceptualize their existing religious-objection policies; and threatened draconian penalties for violations without providing sufficient guidance on how to comply with the Rule.

69. During the 60-day notice-and-comment period, more than 72,000 comments were filed by interested parties, including medical associations, medical providers, civil-rights

1 organizations, states, and local governments. *See* 84 Fed. Reg. 23,170, 23,180 & n.41 (May 21,
2 2019). The comments explained that the proposed Rule's expansive new right-of-refusal provisions
3 were unworkable; that the Rule would upset well-developed practices by healthcare providers and
4 medical schools that respect religious objections without compromising patient care; that it
5 conflicted with federal and state laws and medical ethics; that it would violate patients' and
6 providers' constitutionally protected rights; that it would severely threaten access to reproductive
7 healthcare and LGBT healthcare; and that it threatened to deprive the nation's most vulnerable
8 citizens of healthcare by stripping States and hospitals of Medicare and Medicaid funds.¹

9 70. Commenters identified the following problems, among others, with the proposed
10 Rule:

11 (a) The Rule would conflict with long-standing practices by healthcare
12 providers and medical schools that protect both the interests of healthcare workers and entities with
13 religious objections and the rights of the patients whom they serve. Indeed, commenters explained,
14 the Rule's prohibitions are framed so broadly that they invite healthcare workers to deny
15 information and treatment to people without even alerting the medical facility or the patient that
16 they have done so, thereby preventing the facility or the patient from protecting the patient's
17 interests.²

18 (b) Because the Rule would interfere with the effective management of religious
19 objections, it would increase barriers to care and deprive some patients of care altogether—
20 including in emergency situations. Commenters demonstrated that when healthcare providers give
21
22

23 ¹ Medicare is the federal insurance program principally for elderly and disabled individuals.
24 Medicaid provides health coverage to millions of Americans, including eligible low-income adults,
25 children, pregnant women, elderly adults, and people with disabilities. Medicaid is administered by
26 the States, according to federal requirements, and is funded jointly by States and the federal
government.

27 ² *See, e.g.*, Comments of Lambda Legal HHS-OCR-2018-0002-72186; Comments of Office of the
28 County Counsel, County of Santa Clara HHS-OCR-2018-0002-54930; Comments of GLMA HHS-
OCR-2018-0002-71703; Comments of National Family Planning & Reproductive Health
Association HHS-OCR-2018-0002-70260.

1 religious concerns priority over patient well-being, patients are denied care and information about
2 treatment options.³

3 (c) The Rule would encourage discrimination by health professionals based on
4 sex, sexual orientation, gender identity, transgender status, and HIV status.

5 (d) Because it allows the imposition of catastrophic sanctions while failing to
6 articulate practicable methods of compliance, the Rule would cause many healthcare providers to
7 scale back their services drastically or close certain of their clinics completely, for fear of losing
8 hundreds of millions of dollars of funding for the rest of the medical services that they provide.⁴

9 (e) The Rule would impose significant administrative burdens on healthcare
10 providers, including burdens resulting from the rule's recordkeeping and other compliance
11 requirements.⁵

12 (f) The Rule would prevent medical schools from adequately training doctors
13 to meet their professional obligations and would impair the ability to run teaching hospitals and
14 research facilities.⁶

15 71. The American Medical Association (AMA), among others, urged HHS to withdraw
16 the Denial-of-Care Rule.⁷ The AMA stated that the Rule would "undermine patients' access to
17 medical care and information, impose barriers to physicians' and health care institutions' ability to
18 provide treatment, impede advances in biomedical research, and create confusion and uncertainty

19 ³ See, e.g., Comments of Office of the County Counsel, County of Santa Clara HHS-OCR-2018-
20 0002-54930; Comments of Center for Reproductive Rights HHS-OCR-2018-0002-71830;
21 Comments of Lambda Legal HHS-OCR-2018-0002-72186; Comments of Americans United for
22 Separation of Church and State HHS-OCR-2018-0002-71232; Comments of GLMA HHS-OCR-
23 2018-0002-71703.

24 ⁴ Comments of National Family Planning & Reproductive Health Association HHS-OCR-2018-
25 0002-70260; Comments of Wisconsin Hospital Association, Inc. HHS-OCR-2018-0002-66144.

26 ⁵ Comments of Wisconsin Hospital Association, Inc. HHS-OCR-2018-0002-66144.

27 ⁶ Comments of Association of American Medical Colleges HHS-OCR-2018-0002-67592 ("AAMC
28 Comment").

⁷ Comments American Medical Association HHS-OCR-2018-0002-70564, at 1. The AMA is the
largest association of doctors and medical students in the United States. The AMA's mission is "to
promote the art and science of medicine and the betterment of public health." The AMA maintains
the AMA Code of Medical Ethics, a guide to the ethical practice of medicine created by the AMA
in 1847.

1 among physicians, other health care professionals, and health care institutions about their legal and
2 ethical obligations to treat patients.” Similarly, the Association of American Medical Colleges
3 warned that adoption of the Rule would “result in harm to patients, undermine standards of medical
4 professionalism, and raise serious concerns regarding individuals’ rights that are protected by other
5 federal and state laws.”⁸

6 **D. The Final Denial-of-Care Rule**

7 72. Despite the significant concerns raised during the comment period, HHS published
8 the final Rule in the Federal Register on May 21, 2019. *See* Protecting Statutory Conscience Rights
9 in Health Care, 84 Fed. Reg. 23,170 (May 21, 2019). It is attached as Exhibit 1 and incorporated
10 by reference.

11 73. In adopting the final Rule, HHS failed adequately to address many of the serious
12 issues raised by commenters, including the practical difficulties associated with the Rule, its
13 conflict with obligations relating to emergency care and informed consent, and its detrimental
14 effects on patients. HHS also lacked data to support its decisions and conclusions, refused without
15 justification to credit the data that commenters submitted to it, and failed to consider alternatives to
16 the Rule that would impose fewer costs and burdens on patients and providers. Furthermore, HHS
17 repeatedly declined to clarify key issues or to provide guidance to regulated entities necessary for
18 them to implement the Rule, stating instead that it would consider numerous questions on a case-
19 by-case basis.

20 74. For example, HHS acknowledged that it “received comments expressing concern
21 about the impact of the rule on access to care in rural communities, underprivileged communities,
22 or other communities that are primarily served by religious healthcare providers or facilities.” 84
23 Fed. Reg. at 23,180. The agency responded by stating that finalizing the rule is appropriate even if
24 the rule “impact[s] overall or individual access to a particular service,” such as abortion or treatment

25 ⁸ AAMC Comment at 1. The AAMC is not-for-profit association of 151 accredited U.S. and 17
26 accredited Canadian medical schools; nearly 400 major teaching hospitals and health systems,
27 including 51 Department of Veterans Affairs medical centers; and more than 80 academic societies.
28 The AAMC serves more than 173,000 full-time faculty members, 89,000 medical students, 129,000
resident physicians, and more than 60,000 graduate students and postdoctoral researchers in the
biomedical sciences.

1 for gender dysphoria. *Id.* at 23,182. Although it acknowledged that it lacked data to support this
2 assumption, HHS asserted that the rule would be “reasonably likely to increase, not decrease, access
3 to care” in underserved communities by attracting providers who otherwise would not practice
4 medicine because of their religious objections. *Id.* at 23,180. In support, HHS cited a small,
5 outdated, and unreliable political poll, *id.* at 23,181, in which responders stated that they would not
6 practice medicine if doing so involved violation of their religious or moral convictions but said
7 nothing about *where* they would practice medicine. HHS cited no data showing that the Rule was
8 needed to keep providers from quitting or that it would attract any new providers to underserved
9 communities. HHS also failed to address how an increase in providers that refuse to provide care
10 would address the concern that patients will struggle to get the care that they need. Moreover,
11 HHS’s evaluation prefers certain types of care over others: The agency assumes that access to care
12 will increase, and cites this as a benefit of the Rule, but does not contradict comments asserting that
13 certain types of care, including reproductive healthcare and LGBT care, will be reduced, especially
14 in rural areas.

15 75. HHS rejected comments observing that the Rule conflicted with EMTALA. *See* 84
16 Fed. Reg. at 23,182-23,183. But it failed to address whether emergency exceptions are permissible,
17 and it cited cases where nurses with religious objections were required to assist patients in
18 emergencies as examples of discrimination that it was trying to remedy. *Id.* at 23,176. HHS also
19 stated that driving a patient to the hospital in an ambulance for an emergency procedure may qualify
20 as assisting in the performance of a procedure, *id.* at 23,188, without acknowledging that the
21 procedure (removal of an ectopic pregnancy) could be necessary to save the patient’s life. In so
22 doing, HHS failed to provide any clear rule for determining whether or when ambulance drivers
23 and paramedics might object under the Rule to caring for or transporting a patient, instead stating
24 that this determination depends on the facts and circumstances of each case. *Id.* HHS also failed to
25 acknowledge or address the risk to patients’ lives if paramedics or other individuals who provide
26 emergency care refuse to administer needed treatments or refuse to transport patients when no
27 alternate staff member is immediately available to perform the service.

76. HHS acknowledged that the Rule has the potential to harm patients. *See* 84 Fed. Reg. at 23,251 (“First, the patient’s health might be harmed if an alternative is not readily found, depending on the condition. Second, there may be search costs for finding an alternative. Third, the patient may experience distress associated with not receiving a procedure he or she seeks.”). Yet it made no efforts to craft provisions that would reduce the risk of harm to patients. Instead, without evidence, HHS downplayed the risks that patients would be harmed by assuming that various types of objections would not be raised. *See, e.g., id.* at 23,188 (stating that HHS is unaware of any medical professionals who would object to treating or transporting patients experiencing complications after an abortion); *id.* at 23,244 (stating that HHS “is unaware of any religious or ethical belief systems that prohibit treatment of a person on the basis of their HIV status”). It also suggested, without citing statutory language, that the enactment of religious-objection laws justified any harm to patients resulting from their enforcement. *See, e.g.,* 84 Fed. Reg. at 23,251 (recognizing that “some patients do experience emotional distress as a consequence of providers’ exercise of religious beliefs or moral convictions” but stating that Congress “did not establish balancing tests that weigh such emotional distress against the right to abide by one’s conscience”).

77. HHS asserted that any harm to patients was attributable not to the Denial-of-Care Rule but to the religious-objection statutes themselves. For that reason, HHS deemed it unnecessary to quantify the harm to patients. It concluded that “it is appropriate to finalize this rule . . . even though the Department and commenters do not have data capable of quantifying all of its effects on the availability of care.” 84 Fed. Reg. at 23,182. Again invoking purported congressional policy, the agency deemed religious refusals “worth protecting even if they impact overall or individual access to a particular service, such as abortion.” *Id.*; *see id.* at 23,251 (asserting that “objections based on potential (often temporary) lack of access to particular procedures as a result of enforcement of the law are really objections to policy decisions made by the people’s representatives in Congress”).

1. The Rule’s Overly Broad and Distorted Definitions

78. Although HHS repeatedly attributes the Rule’s harmful consequences to the underlying statutes, the Rule sharply departs from the will of Congress. The Rule contains

1 numerous prohibitions, applicable to specified funding recipients, that purport to implement the
2 religious-objection laws. *See* 84 Fed. Reg. at 23,264, § 88.3. But the Rule defines or redefines key
3 statutory terms, expanding their reach far beyond their ordinary meaning and congressional intent.
4 *See* 84 Fed. Reg. at 23,263-23,264, § 88.2.

5 79. Through these overly broad definitions, the Rule will encourage individuals or
6 institutional healthcare providers, or even someone with only a tangential connection to a procedure
7 (such as a receptionist, lab technician, bookkeeper, janitor, or volunteer), to claim an absolute right
8 to refuse to provide or have any connection whatsoever to providing healthcare and information
9 based on a religious or moral objection—regardless of the impact on patients and on other
10 healthcare providers. The Rule also invites these individuals to refuse to provide a referral to
11 another provider or even general information about services to which the refuser objects, thereby
12 denying patients critical information about their treatment options. Taken together, these definitions
13 will embolden almost any person or entity whose work has even a vague tie to healthcare delivery
14 to decline to provide and even to block needed medical care, services, administrative support,
15 advice, and information.

16 80. The Rule redefines key terms with extraordinary and unwarranted breadth,
17 distorting the underlying statutes' meaning. These terms are either undefined or more narrowly
18 defined in the underlying statutes. When read together, the definitions of “assist in the performance,”
19 “refer,” “health care entity,” and “discriminate” greatly expand the Rule’s prohibitions beyond the
20 authority granted in any of the statutes. The Rule therefore interconnects various, separately enacted
21 provisions of the Coates, Weldon, and Church Amendments to create an unlawful regulation that
22 expands religious refusals to an unworkable, dangerous degree. For example, as discussed more
23 fully below, the definition of “assist in the performance” includes the term “refer,” which in turn is
24 defined with unprecedented breadth.

25 81. The Rule prohibits all federal funding recipients, including subrecipients, from
26 “requir[ing]” any “individual to perform or **assist in the performance** of any part of a **health**
27 **service program or research activity** . . . if the individual’s performance or assistance in the
28 performance of such part of such program or activity would be contrary to his religious beliefs or

1 moral convictions.” 84 Fed. Reg. at 23,265, § 88.3(a)(2)(vi) (emphasis added). The Rule defines
2 the key terms with extraordinary and unwarranted breadth, thus distorting the underlying statutes’
3 meaning.

4 82. First, the Rule defines “**assist in the performance**” extremely broadly to include
5 activities only tangentially related to any healthcare procedure. Only the Church Amendments refer
6 to “assist[ing] in the performance” of an activity, and nothing in that statutory scheme envisions
7 the broad definition in the Rule. 42 U.S.C. § 300a-7. Under the Rule, however, to “assist in the
8 performance” means to “take an action that has a specific, reasonable, and articulable connection
9 to furthering a procedure or a part of a health service program or research activity undertaken by
10 or with another person or entity,” including “counseling, referral, training, or otherwise making
11 arrangements for the procedure or a part of a health service program or research activity, depending
12 on whether aid is provided by such actions.” 84 Fed. Reg. at 23,263, § 88.2.

13 83. HHS rejected arguments that the definition was too broad, explaining instead that
14 the agency intends the Rule to be defined expansively. 84 Fed. Reg. at 23,186-23,187. The agency
15 likewise defended its inclusion of counseling and referral within the definition of “assist in the
16 performance,” asserting without authority that these are “common and well understood forms of
17 assistance that help people reach desired medical ends.” *Id.* at 23,188. But Congress made specific
18 references to “counsel[ing]” in one of the Church Amendments’ provisions, “training” in the Coats-
19 Snowe Amendment, and “refer for” in the Weldon Amendment. The separation of these terms in
20 the statutes is evidence of Congress’s intent to distinguish them. Yet the Rule includes each
21 category of actions, which themselves are defined with incredible breadth, within the definition of
22 “assist in the performance.” The inclusion of a panoply of additional activities within the definition
23 of “assist in the performance” is contrary to the statutes.

24 84. Second, the Rule defines “**referral or refer**”—terms that are part of the definition
25 of “assist in the performance”—with extreme breadth. Expanding those terms beyond any
26 commonsense understanding or traditional meaning in the medical context, the Rule defines them
27 to include the “provision of information in oral, written, or electronic form (including names,
28 addresses, phone numbers, email or web addresses, directions, instructions, descriptions, or other

information resources), where the purpose or reasonably foreseeable outcome of provision of the information is to assist a person in receiving funding or financing for, training in, obtaining, or performing a particular health care service, program, activity, or procedure.” 84 Fed. Reg. at 23,264, § 88.2. This definition goes far afield from what is traditionally considered referral or counseling, instead expanding it to invite an individual worker—one who may lack the medical expertise or information about a patient’s medical history to understand the implications of this decision—to refuse to notify either the patient or the worker’s employer of the decision to deny information or care. When read in conjunction with the definition of “assist in the performance,” this definition empowers an unprecedented universe of individuals to deny care and information without providing these essential and ethically required notifications. The limited provisions of the Rule that permit healthcare providers to require certain, limited advance notice of refusals, discussed more fully below, are not sufficient to cure the unreasonable breadth and unworkability of this definition.

85. By defining participation in a procedure as any activity with “a specific, reasonable, and articulable connection” to a procedure; by explicitly including referrals, counseling, training, and arrangements for a procedure; and by defining “referral” to include the provision of any information that may foreseeably lead a person to obtain training, funding, or services, the Rule vastly expands the class of people who will be empowered to assert objections and the activities that may be the subject of objections.

86. The Rule defines “**workforce**” broadly to mean “employees, volunteers, trainees, contractors, and other persons whose conduct, in the performance of work for an entity or health care entity, is under the direct control of such entity or health care entity, whether or not they are paid by the entity or health care entity, as well as health care providers holding privileges with the entity or health care entity.” 84 Fed. Reg. at 23,264, § 88.3. The proposed Rule defined the word “individual”—a word used in several of the Rule’s prohibitions—to include any member of an entity’s workforce. 83 Fed. Reg. at 3924, § 88.2. That definition of “individual” was deleted from the Rule, but the definition of “workforce” was retained. And the preamble’s discussion of that decision makes clear that HHS’s Office for Civil Rights still asserts that it may interpret that term

1 to include members of the “workforce” as defined in the Rule, stating that “sometimes [the term
2 individual] refers to members of the workforce of an entity or health care entity. . . .”). 84 Fed. Reg.
3 at 23,199.

4 87. The preamble to the Rule makes clear that these definitions allow objections to be
5 raised by a receptionist who schedules an appointment, a janitor who prepares an operating room,
6 an orderly who provides patients with assistance in the recovery room, or an ambulance driver who
7 transports a patient to the hospital. *See* 84 Fed. Reg. at 23,186-23,187.

8 88. Indeed, the Rule could be read to cover virtually any healthcare-related task,
9 including providing information about treatment options and coverage information to allow for
10 informed consent; providing, collecting, or filing forms related to patients’ health history, insurance
11 information, or informed consent; escorting patients to treatment areas; cleaning or restocking
12 treatment rooms, operating rooms, ambulances, or other facilities to allow for treatment of patients;
13 billing, collecting fees for, and administering insurance reimbursements for treatment; and even
14 minor administrative, clerical, or supporting tasks such as scheduling appointments. Invoking the
15 definitions of “assist in the performance” and “refer,” a worker could feel empowered to object to
16 providing even basic information to a patient—such as information about insurance coverage, the
17 phone number of a medical office, or directions to a bus stop—on the theory that the worker would
18 thereby be “assisting in the performance” of a procedure to which the worker has a moral objection.

19 89. These terms reach even further when read in conjunction with the Rule’s definition
20 of “**discriminate.**” As noted above, several statutes prohibit discrimination based on the assertion
21 of religious objections in specified circumstances. The Rule includes prohibitions employing
22 language from these statutes (*e.g.*, 84 Fed. Reg. at 23,265, § 88.3(a)(2)(iv), citing 42 U.S.C. 300a-
23 7(c)(1)), but defines the word “discriminate” in an unreasonable and arbitrary manner, dramatically
24 expanding what the supposed authorizing statutes actually require or provide. That definition has
25 no basis in law and undermines policies designed to reconcile religious objections and the needs of
26 patients.

27 90. Under the Rule, “discriminate” means “(1) [t]o withhold, reduce, exclude from,
28 terminate, restrict, or make unavailable or deny any grant, contract, subcontract, cooperative

1 agreement, loan, license, certification, accreditation, employment, title, or other similar instrument,
2 position, or status; (2) [t]o withhold, reduce, exclude from, terminate, restrict, or make unavailable
3 or deny any benefit or privilege or impose any penalty; or (3) [t]o utilize any criterion, method of
4 administration, or site selection, including the enactment, application, or enforcement of laws,
5 regulations, policies, or procedures directly or through contractual or other arrangements, that
6 subjects individuals or entities protected under this part to any adverse treatment with respect to
7 individuals, entities, or conduct protected under this part on grounds prohibited under an applicable
8 statute encompassed by this part.” 84 Fed. Reg. at 23,263, § 88.2.

9 91. This definition appears to classify as prohibited discrimination any action having
10 the slightest negative effect, even if there is a compelling reason for that action. Although Title VII
11 of the Civil Rights Act of 1964 provides that employers need not provide accommodations for an
12 employee’s religious beliefs when the accommodation would cause undue hardship to the
13 employer, the Rule incorporates no such consideration and does not recognize any exception for
14 business necessity or acknowledge that employers may have legitimate, nondiscriminatory reasons
15 for an allegedly adverse employment action. As a result, it appears that a healthcare entity could be
16 deemed to have engaged in unlawful discrimination when it takes measures that are reasonably
17 necessary to ensure patient care notwithstanding the religious views of individual workers—such
18 as taking religious objections into account when making scheduling decisions, enforcing policies
19 requiring advance notice of religious objections, requiring employees to tell someone when they
20 have refused to provide care to a patient, or considering whether a job candidate is willing to
21 perform the essential duties of the position or deliver healthcare services critical to the providers’
22 mission when making hiring decisions.

23 92. HHS incorporated into the definition of “discrimination” exceptions that
24 purportedly allow certain methods, such as advance-notice requirements and use of alternate staff,
25 that providers use to reconcile objections with the needs of patients. But these provisions are
26 unreasonably narrow, vague, and unworkable.

27 93. First, the definition states that “an entity subject to any prohibition in this part shall
28 not be regarded as having engaged in discrimination against a protected entity where the entity

1 offers and the protected entity [*i.e.*, an employee or volunteer] voluntarily accepts an effective
2 accommodation for the exercise of such protected entity's protected conduct, religious beliefs, or
3 moral convictions." 84 Fed. Reg. at 23,263, § 88.2. The requirement that an accommodation be
4 "voluntarily accept[ed]" does not say what providers should do when an employee rejects an
5 offered accommodation and demands an accommodation that would put patients at risk or
6 otherwise compromise patient care.

7 94. The definition also states that "an entity subject to any prohibition in this part may
8 require a protected entity to inform it of objections to performing, referring for, participating in, or
9 assisting in the performance of specific procedures, programs, research, counseling, or treatments,
10 but only to the extent that there is a reasonable likelihood that the protected entity may be asked in
11 good faith to perform, refer for, participate in, or assist in the performance of, any act or conduct
12 just described. Such inquiry may only occur after the hiring of, contracting with, or awarding of a
13 grant or benefit to a protected entity, and once per calendar year thereafter, unless supported by a
14 persuasive justification." 84 Fed. Reg. at 23,263, § 88.2.

15 95. This provision sharply constrains providers' ability to require that workers provide
16 notice of their objections to procedures. Healthcare institutions may ask about "specific"
17 procedures, research, and treatment only; they may ask for advance notice of objections only if
18 there is "a reasonable likelihood" that the particular worker will be asked to participate in the
19 particular procedures; they may ask only *after* the worker is hired and then only once per year
20 thereafter. The Rule does not indicate how providers may handle unanticipated objections or
21 situations. Nor does it authorize providers to adopt policies requiring workers to alert them when
22 the workers decline to provide needed medical care or information to a patient, or (if the workers
23 have given such notice) when they decide to object to additional categories of patients or
24 procedures. And the Rule prohibits any questioning about religious objections before hiring,
25 notwithstanding the immense burden that would fall on a healthcare provider if it learned after
26 hiring a worker that the worker is unwilling to perform the critical and even primary aspects of the
27 job for which the worker was hired.

28

1 96. Finally, the Rule limits the ability of healthcare providers to ensure that patients are
2 not denied care because of a religious objection. The Rule states that “[t]he taking of steps by an
3 entity subject to prohibitions in this part to use alternate staff or methods to provide or further any
4 objected-to conduct . . . would not, by itself, constitute discrimination or a prohibited referral, if
5 such entity does not require any additional action by, or does not take any adverse action against,
6 the objecting protected entity (including individuals or health care entities), and if such methods do
7 not exclude protected entities from fields of practice on the basis of their protected objections.
8 Entities subject to prohibitions in this part may also inform the public of the availability of alternate
9 staff or methods to provide or further the objected-to conduct, but such entity may not do so in a
10 manner that constitutes adverse or retaliatory action against an objecting entity.” 84 Fed. Reg. at
11 23,263, § 88.2. By appearing to foreclose requiring any “additional action” by objectors, the Rule
12 suggests that providers may not even require objectors to assist in transferring patients to alternative
13 providers or to tell patients that an alternative provider is available. Instead, the Rule envisions that
14 providers will post public notices to inform patients about the availability of alternatives. That will
15 create anxiety by alerting patients that some of a healthcare facility’s staff may refuse to treat them.
16 The patients may have no idea that they may need a treatment to which a healthcare worker might
17 object. This inappropriately shifts to patients the burden of anticipating possible objections by
18 employees and finding a way to ensure that they still can receive needed care and information.

19 97. The Rule also expansively redefines “**health care entity**”—a phrase that is used in
20 both the Coats-Snowe Amendment and the Weldon Amendment and is specifically defined in each.
21 The Rule’s new definition expands “health care entity” to include new entities not covered by either
22 statute. In so doing, the Rule goes far beyond those statutes’ scope.

23 98. Under the Coats-Snowe Amendment, “health care entity” “includes an individual
24 physician, a postgraduate physician training program, and a participant in a program of training in
25 the health professions.” 42 U.S.C. § 238n(c)(2). Under the Rule, “health care entity” for purposes
26 of the Coats-Snowe Amendment includes “an individual physician or other health care
27 professional, including a pharmacist; health care personnel; a participant in a program of training
28 in the health professions; an applicant for training or study in the health professions; a post-graduate

1 physician training program; a hospital; a medical laboratory; an entity engaging in biomedical or
2 behavioral research; a pharmacy; or any other health care provider or health care facility.” 84 Fed.
3 Reg. at 23,264, § 88.2.

4 99. Under the Weldon Amendment, “‘health care entity’ includes an individual
5 physician or other health care professional, a hospital, a provider-sponsored organization, a health
6 maintenance organization, a health insurance plan, or any other kind of health care facility,
7 organization, or plan.” *E.g.*, Pub. L. 115-245, § 507(d)(2), 132 Stat. 2981, 3118 (2018). But in the
8 Rule, “health care entity” for purposes of the Weldon Amendment is defined to include “an
9 individual physician or other health care professional, including a pharmacist; health care
10 personnel; a participant in a program of training in the health professions; an applicant for training
11 or study in the health professions; a post-graduate physician training program; a hospital; a medical
12 laboratory; an entity engaging in biomedical or behavioral research; a pharmacy; a provider-
13 sponsored organization; a health maintenance organization; a health insurance issuer; a health
14 insurance plan (including group or individual plans); a plan sponsor or third-party administrator;
15 or any other kind of health care organization, facility, or plan.” 84 Fed. Reg. at 23,264, § 88.2.

16 100. Through these sweeping definitions, the Rule broadens the universe of potential
17 objectors to include individuals and entities not included in either of the statutory definitions of
18 “health care entity,” including applicants for training and study and pharmacists. And the Rule
19 expands the definition of “health care entity” for purposes of the Coats-Snowe Amendment to
20 include any healthcare professional, healthcare provider, or healthcare facility, notwithstanding that
21 such general terms do not appear in the statutory definition.

22 101. The Rule uses the term “**sterilization**” to describe medically necessary, gender-
23 affirming healthcare procedures sought by transgender patients. It does so to justify denials of care
24 to transgender and gender-nonconforming patients. But that understanding of the term sterilization
25 is inaccurate—it is contrary to current medical, traditional, and commonsense understandings of
26 the term. The Rule cites *Minton v. Dignity Health*, No. 17-558259 (Calif. Super. Ct. Apr. 19, 2017),
27 as justification for the Rule’s enactment. *See* 84 Fed. Reg. at 23,276, n.27. *Minton* concerned
28 whether a Catholic hospital was justified in blocking a surgeon’s performance of a hysterectomy

on a transgender patient as part of the patient’s prescribed course of treatment for gender dysphoria based on the hospital’s religious objection to “sterilization.” But equating treatment for gender dysphoria with sterilization is medically inaccurate. Procedures undertaken for the purpose of sterilization are distinct from medical procedures undertaken for other purposes that incidentally affect reproductive function. The Rule also expressly and improperly declines to rule out whether treatment for cancer, such as chemotherapy or surgical removal of testes or ovaries to treat cancerous tumors, could constitute “sterilization” simply because such treatment also could affect reproductive function. The Rule’s targeting of transgender patients by adopting a particular religious definition of “sterilization” violates statutory nondiscrimination requirements and medical and ethical standards of care, improperly endorses a particular religious belief, and threatens the provision of medically necessary healthcare to transgender patients, thereby threatening public health.

2. The Rule’s Inadequate Explanation of Emergency Exceptions, Compliance Certification, and Notice Requirements

102. The Rule contains no exception for emergencies. In the Rule’s preamble, HHS specifically contemplates that individuals will deny patients access to necessary care even in emergency situations in which no alternative provider is available. Further, HHS cites cases involving people being required to provide emergency care as evidence of the need for the Rule. *See, e.g.*, 84 Fed. Reg. at 23,176 (citing *Cenzon-Decarlo v. Mount Sinai Hosp.*, No. 09 CV 3120(RJD), 2010 WL 169485, at *1 (E.D.N.Y. Jan. 15, 2010), *aff’d*, 626 F.3d 695 (2d Cir. 2010) (only on-call nurse did not want to provide emergency care for patient suffering from severe preeclampsia)); *id.* at 23,176 n. 27 (citing *Means v. U.S. Conference of Catholic Bishops*, No. 1:15-CV-353, 2015 WL 3970046 (W.D. Mich. 2015) (hospital turned away patient, refusing to complete miscarriage following premature rupture of membranes, risking grave threats to patient’s health)). HHS also cites as evidence of the need for the rule a medical-ethics opinion requiring emergency care notwithstanding religious objections. *See* 83 Fed. Reg. at 3888 (citing, as evidence of the denial of conscience rights in medicine, an American Congress of Obstetricians and Gynecologists ethics opinion advising that providers have an obligation to provide emergency care in certain

1 circumstances). These examples illustrate HHS's intent to authorize the denial of care to patients
2 even in emergencies and in derogation of patients' constitutionally protected rights. HHS's only
3 response is that it will decide on a case-by-case basis how emergency needs and conscience
4 objections should be reconciled. 84 Fed. Reg. at 23,176.

5 103. The Rule requires funding recipients to certify their compliance with the Rule and
6 imposes recordkeeping requirements. 84 Fed. Reg. at 23,269-23,271, § 88.4-88.6. But the Rule
7 provides no practical guidance on compliance; it does not specify what form that the records should
8 take or how they should be maintained.

9 104. The Rule includes a notice requirement that will encourage individuals to
10 unilaterally refuse to provide care and information to patients. 84 Fed. Reg. at 23,270, § 88.5. The
11 notice purports to be "voluntary," but the Rule pressures recipients to post certain recommended
12 text. The Rule states that OCR "will consider an entity's voluntary posting of a notice of
13 nondiscrimination as non-dispositive evidence of compliance" with the Rule, as long as "such
14 notices are provided according to the provisions of this section." *Id.* The Department will take into
15 account where the notice is published—e.g., whether it is "[i]n a prominent and conspicuous
16 physical location" where it can be readily observed by the recipient's workforce and the public; in
17 personnel manuals; and in employment applications. *Id.* § 88.5(b). The Rule recommends that the
18 notice read: "You may have the right under Federal law to decline to perform, assist in the
19 performance of, refer for, undergo, or pay for certain health care-related treatments, research, or
20 services (such as abortion or assisted suicide, among others) that violate your conscience, religious
21 beliefs, or moral convictions." 84 Fed. Reg. at 23,272, App. A to Pt. 88. This recommended notice
22 does not suggest that the objector must comply with advance-notice requirements, that the objector
23 must cooperate in handing off the patient to another workforce member, or that the objector must
24 assist in an emergency. The posting of a notice in the recommended form therefore would
25 undermine policies designed to reconcile religious objections with the needs of patient care. Yet
26 the Rule does not state what the consequences will be for failing to post a notice in this form.

3. The Rule's Vague and Coercive Enforcement Provisions

105. The Denial-of-Care Rule threatens entities that violate the Rule with punitive sanctions, up to and including the total withdrawal and even clawback of Medicare and Medicaid reimbursements and all other federal funds. *See* 84 Fed. Reg. at 23,180 (emphasizing that remedies may include “termination of relevant funding, in whole or in part” and “funding claw backs to the extent permitted by law”); 84 Fed. Reg. at 23,271, § 88.7(i) (remedies for noncompliance with the Rule include withholding, denying, or terminating existing federal funding; denying or withholding new federal funding; and suspending award activities).

106. These penalties could be applied for even a single violation by a covered entity or a violation by a subrecipient or contractor. Direct recipients bear “primary responsibility to ensure that” their subrecipients are “in compliance with Federal conscience and anti-discrimination laws and this part, and shall take steps to eliminate any violations of the Federal conscience and anti-discrimination laws and this part.” 84 Fed. Reg. at 23,270, § 88.6(a). The Rule makes clear that if “a sub-recipient is found to have violated the Federal conscience and anti-discrimination laws, the recipient from whom the sub-recipient received funds may be subject to the imposition of funding restrictions or any appropriate remedies available under this part, depending on the facts and circumstances.” *Id.* The preamble further states that the conduct of contractors is attributable to States and local governments. 84 Fed. Reg. at 23,207 (“The conduct and activities of contractors engaged by the Department, a Departmental program, or a State or local government is attributable to such Department, program, or government for purposes of enforcement or liability under the Weldon amendment.”).

107. Moreover, although the Rule asserts that matters will be resolved informally “whenever possible,” it makes clear that loss of all funds can still be immediate: “Attempts to resolve matters informally shall not preclude OCR from simultaneously pursuing any action described in § 88.7.” 84 Fed. Reg. at 23,271-23,272, § 88.7(h)(2).

108. The preamble to the proposed Rule asserted that the Department may regulate an unspecified “broader range of funds or broader categories of covered entities” for “noncompliant entities.” 83 Fed. Reg. at 3898. In other words, HHS asserted the power to withhold not only federal

1 funds that are used for programs in which violations are occurring, but also federal funds used for
2 programs unrelated to any alleged offense. And the Rule provides that OCR may temporarily
3 withhold “Federal financial assistance or other Federal funds, in whole or in part, pending
4 correction of the deficiency,” without limiting that authority to funds from HHS, a limitation that
5 is present in other provisions of the same section. 84 Fed. Reg. at 23,272, § 88.7(i)(3)(i).

6 109. These draconian enforcement mechanisms will have the effect of intimidating and
7 coercing healthcare providers—leading them to adopt overly limiting constructions of ambiguous
8 provisions or to stop providing certain services altogether. Likewise, direct recipients that face
9 liability for violations by subrecipients will have little option but to regulate aggressively or to pull
10 funding from subrecipients, particularly those that provide abortion, contraception, or LGBT
11 healthcare, as well as those that will not alter their nondiscrimination or emergency policies.

12 110. The Rule provides no mechanisms for notice, a hearing, or an appeal before HHS
13 terminates or withholds funds for asserted violations of the Rule.

14 111. The Rule provides no guidelines as to which enforcement mechanisms HHS will
15 use in particular circumstances, instead leaving it entirely to the discretion of enforcement officials.
16 As a result, HHS officials could employ the most draconian punishments for even the most trivial
17 technical violations, and the healthcare provider would have no outlined avenue for appeal.

18 112. Moreover, the Rule threatens recipients and subrecipients with onerous compliance
19 and investigation requirements that infringe on patient privacy. *See* 84 Fed. Reg. at 23,270,
20 § 88.6(c) (each recipient and subrecipient “shall cooperate with any compliance review,
21 investigation, interview, or other part of OCR’s enforcement process, which may include the
22 production of documents, participation in interviews, response to data requests, and making
23 available of premises for inspection where relevant”). Investigations are mandatory whenever there
24 is a violation or “threatened” or “potential” violation, which can be demonstrated through “any
25 information.” *Id.* at 23,271, § 88.7(d) (“OCR shall make a prompt investigation, whenever a
26 compliance review, report, complaint, or any other information found by OCR indicates a
27 threatened, potential, or actual failure to comply with Federal health care conscience and associated
28 anti-discrimination laws or this part.”).

113. Each recipient or subrecipient is required to “permit access by OCR during normal business hours to such of its books, records, accounts, and other sources of information, as well as its facilities, as may be pertinent to ascertain compliance with this part.” The Rule expressly overrides patients’ privacy rights, stating that “[a]sserted considerations of privacy or confidentiality may not operate to bar OCR from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance reviews, investigations, or other enforcement activities shall not be disclosed except as required in formal enforcement proceedings or as otherwise required by law.” 84 Fed. Reg. at 23,271, § 88.5(c).

114. Given the expansiveness and vagueness of the Rule, and the severity of its penalty provisions, any individual or entity receiving federal funding—including direct recipients and subrecipients, hospitals, independent providers, contractors, and affiliates—faces a substantial risk of crippling sanctions. To avoid severe penalties, providers must either risk violating the laws (and ethical and professional obligations) that require them to provide timely and adequate access to information and care to patients, or cease offering services to which some employee or volunteer might potentially object, including reproductive-health services, care for LGBT patients, and end-of-life care.

115. The Rule thus creates especially strong disincentives for healthcare entities to provide reproductive-health services and services to LGBT patients, for fear that their funding (including their ability to obtain Medicare and Medicaid reimbursements) will be terminated and their ability to provide medical care to underserved populations will be severely reduced or curtailed.

116. The threat of punitive sanctions under the Rule also will deter healthcare facilities from taking remedial action against discrimination by an employee against patients or other employees, even when that discrimination is *not* tied to any religious belief.

E. The Rule’s Immediate and Irreparable Harms

1. Overview

117. The Denial-of-Care Rule will harm local governments, hospitals, small clinics, local providers, community centers, healthcare and professional associations and their members, and

1 their patients. These harms will occur nationwide. They will directly and irreparably injure
2 Plaintiffs, their members, their employees, and their patients.

3 118. The Rule privileges particular religious views over all other medical, legal, and
4 operational concerns, and it will force Plaintiff healthcare providers to rewrite their existing policies
5 to the extent that they are inconsistent with the Rule. Providers will have to choose between two
6 unacceptable courses of action: compromising their missions, operations, and medical ethics and
7 placing patients at risk by attempting to comply with the Rule, or jeopardizing the federal funding
8 supporting many of their most important functions and services. And even if providers attempt to
9 comply, the uncertainty created by the Rule will pose staffing, budgeting, and operational
10 dilemmas. The Rule fails to give providers necessary guidance on how the Rule will be applied. As
11 a result, it leaves providers unsure of what is required of them during emergencies, preventing them
12 from making critical judgments about the degree of redundant staffing and other measures that they
13 must implement to minimize the risk of harm to patients that may result from the Rule. The Rule
14 will further harm Plaintiffs' operations by undermining patient trust, constraining already limited
15 resources, and flooding Plaintiffs' facilities with patients denied care by other providers.

16 119. Patients will suffer the gravest harms. Some patients will be denied care (including
17 lifesaving care) or denied information needed for informed consent. Other patients will be exposed
18 to physical, mental, and dignitary harms, in violation of their constitutional rights. And many of the
19 most vulnerable patients will be afraid to give their providers information that is critical to
20 establishing the clinical relationship and guiding appropriate care—an unconstitutional chilling of
21 speech that harms patients and providers alike. If Plaintiffs are forced out of business or forced to
22 stop offering certain healthcare services, patients will be delayed in obtaining care and may be
23 entirely unable to obtain care.

24 120. The Rule threatens patients' ability to obtain needed and even emergency care in
25 accordance with their medical needs, and in some instances their own religious and moral beliefs,
26 particularly with respect to contraception, abortion, end-of-life care, and gender-affirming
27 healthcare. It encourages and in some instances may require the imposition of the beliefs of a single
28 employee on healthcare institutions and patients, thereby overriding or preventing patients' access

1 to healthcare. It also invites discrimination on the basis of sex, gender identity, transgender status,
2 and disabilities such as addiction and positive HIV status. It deprives patients in need of
3 reproductive healthcare and transgender and gender-nonconforming patients of their right to equal
4 dignity and stigmatizes them as second-class citizens. And it impermissibly burdens and chills
5 constitutionally protected speech by threatening to penalize certain individuals based on their
6 gender identity, gender expression, or medical history.

7 121. The harms imposed on Plaintiffs, their members, and their patients reflect the harms
8 that will be imposed on all similarly situated providers across the country. The Rule will be
9 unworkable for any hospital or facility committed to providing objective, compassionate, and
10 responsible abortion, contraception, or transition-related healthcare, because most, if not all,
11 hospitals rely on HHS for a large percentage of their funding. Smaller medical providers may be
12 forced to close or sacrifice elements of the care that they provide, compromising their core missions.
13 And if Plaintiffs are either forced out of business or forced to stop offering certain healthcare
14 services, patients will likewise be delayed in accessing care and in some instances will be entirely
15 unable to access care.

16 122. Hospitals, clinics, community health centers, and other facilities that are unprepared
17 to risk the loss of federal funding may entirely forgo providing abortion, contraception, or LGBT
18 services (including referrals to such services). Indeed, the Rule will chill the provision of care in
19 any medical facility that is unwilling or unable to take on the risks imposed by the Rule.

20 123. At facilities that do continue to provide services to which some staff members may
21 object, the delivery of that care will suffer. Patients will be more likely to experience discriminatory
22 treatment or be denied care altogether because a member of the workforce disapproves of them or
23 the treatment they seek.

24 2. Harms to the County of Santa Clara

25 124. The County, through its departments and agencies, is committed to delivering high-
26 quality care, including to underserved and vulnerable populations, in settings that protect and
27 respect patients, their families, and providers alike. County departments already have in place
28 nondiscrimination and conscience-objection policies that respect and comply with existing legal

1 requirements and medical ethics. If the Denial-of-Care Rule goes into effect, the County will
2 immediately need to rewrite and re-evaluate all of its conscience-objection policies, and it will need
3 to inquire as to the conscience objections of thousands of employees newly covered under the Rule.

4 125. For example, Valley Medical Center has a policy allowing its current and
5 prospective medical staff and employees to request in writing not to participate in certain patient
6 care that conflicts with staff members' cultural values, ethics, or religious beliefs. Once an
7 exemption is requested, the appropriate manager or director determines whether the request can be
8 granted in light of staffing levels and other relevant circumstances. If the request is granted, the
9 staff member's tasks, activities, and duties may be redistributed to ensure appropriate patient care.
10 The policy makes clear that requests for exemptions will not result in disciplinary or recriminatory
11 action. A manager or director may decline to accept an employee or medical-staff member for
12 permanent assignment, however, if the staff member has requested not to participate in an aspect
13 of care that is commonly performed in that assignment. The policy makes clear that patient care
14 must not be adversely affected by the granting of an exemption and that medical emergencies take
15 precedence over personal beliefs.

16 126. Valley Medical Center designed this policy to appropriately address the healthcare
17 needs of patients, including patients' rights to be treated in a nondiscriminatory manner, and Valley
18 Medical Center's need to plan in advance to ensure appropriate staffing, as well as to respect the
19 cultural values and ethical and religious beliefs of employees. Without prior notice and the ability
20 to plan assignments around conscience objections, the County would be unable to staff many of its
21 operations appropriately. Further, it is critical to patient care and to hospital functionality that
22 Valley Medical Center be able to rely on all medical staff to assist a patient in the event of an
23 emergency.

24 127. O'Connor and St. Louise Hospitals have similar policies regarding religious and
25 moral objections to providing certain patient care, with comparable requirements for advance notice
26 and attending to emergencies. In the near future, those facilities will transition to the Valley Medical
27 Center policy, as part of their ongoing integration into the County's health system.
28

1 128. The County is extremely concerned about the lack of an emergency exception on
2 the face of the Rule. An objector's refusal to assist in patient care during an emergency could lead
3 to delays in care and worse medical outcomes, including fatalities. If it cannot rely on all staff to
4 provide care in an emergency, the County will have to consider whether backup or double staffing
5 is necessary to protect patient welfare. Moreover, the Rule's lack of clarity about whether and when
6 an emergency exception exists creates unacceptable operational uncertainty, leaving the County in
7 the dark about what policies it would need to put in place around emergencies to be able to certify
8 compliance with the Rule.

9 129. Further, under a regime that permits only occasional inquiry into employees'
10 objections and only voluntarily accepted accommodations, the County will be unable to ensure
11 proper patient care. For example, at some County-run pharmacies, there is only one pharmacist on
12 site at any given time. Patients will be prevented from obtaining their prescribed medications if a
13 pharmacist unilaterally decides not to provide certain types of medication, or not to serve certain
14 people, without first discussing the issue with a manager and agreeing to some accommodation.

15 130. The requirement that accommodation be "voluntarily accept[ed]," 84 Fed. Reg. at
16 23,263, § 88.2—meaning that staff must consent to any reassignment or shifting of hours made to
17 account for religious objections—will similarly pose staffing challenges for the County's many
18 critical health-related programs. The County must ensure that there are sufficient non-objecting
19 staff members to cover each shift and ensure continuous patient care. If an employee's religious
20 objection is incompatible with that person's role, the person may need to be reassigned to another
21 role. And for some positions, no accommodation will be possible. For example, if a receptionist
22 objected to informing people that County hospitals provide contraceptive and abortion care and
23 also objected to connecting patients with someone who could discuss those options, there would be
24 no accommodation the County could offer that would avoid compromising access to care.

25 131. The Rule allows for an employer to ask for notice of an employee's religious or
26 moral objections once a year. But it does not address what should happen if an employee develops
27 an objection after having already told the employer that he or she has no objections. The County
28 must be able to obtain or require notice of all religious or moral objections; otherwise, it could face

1 a situation where a staff member unexpectedly objects to care, leading to staffing issues and lack
2 of continuous patient care. Under the Rule, the County could be wholly unaware that an objector
3 had ceased performing his or her assigned duties on the basis of a religious or moral objection,
4 which would gravely compromise patient care and the functioning of the County's health systems.
5 The Rule's failure to address these concrete logistical issues poses significant operational
6 challenges to the County and unacceptable health risks to patients.

7 132. The Rule will have grave effects on the County's Gender Health Center. The
8 Clinic's mission is to provide the care necessary for people of all ages to understand and explore
9 their gender identity. The Rule will imperil that mission because it will require the County to allow
10 employees who object on religious or moral grounds to the Clinic's mission to work in that setting.

11 133. The Rule's notice provision will adversely affect the County. The Rule's model
12 notice tells employees that they "have the right to decline to participate in, refer for, undergo, or
13 pay for certain health care-related treatments, research, or services . . . which violate your
14 conscience, religious beliefs, or moral convictions under Federal law." That might encourage or
15 suggest that it is permissible for employees to, for example, refuse to treat a transgender patient
16 who comes to the emergency room seeking care for a broken arm, based on the provider's "moral
17 convictions," even though refusal of service would violate federal nondiscrimination law and
18 EMTALA, 42 U.S.C. § 1395dd. And if the patient sees the notice, the patient would be discouraged
19 from communicating openly with the provider, for fear that services will be denied. Under the Rule,
20 the County must choose between displaying the model notice, or something like it, and risking loss
21 of federal funding for its decision not to display the model notice.

22 134. In the County's view, complying with the Denial-of-Care Rule is operationally
23 unworkable, endangers patient health, and creates insurmountable staffing challenges. Further, the
24 Rule will require the County to risk malpractice actions or other suits by patients whose healthcare
25 was negatively affected by a County employee's refusal to provide care. Were the County to fail to
26 provide care in an emergency situation because of an employee's religious or moral objection, the
27 County might run afoul of state and federal laws requiring hospital emergency departments to
28 provide evaluation and emergency aid and requiring its Behavioral Health Services Department to

1 provide timely access to an adequate network of mental-health care. *See* EMTALA, 42 U.S.C.
2 § 1395dd; Cal. Health & Safety Code §§ 1317-1317.10 (2008); 42 C.F.R. §§ 438.206-438.208.

3 135. The County faces withdrawal or even clawback of hundreds of millions of dollars
4 in federal funding annually if the Rule is enforced against it. 84 Fed. Reg. at 23,271, § 88.7(i).
5 Without federal funding, the County's ability to provide a broad range of quality health services to
6 many thousands of patients—including to infants and children, those with chronic diseases, the
7 indigent, and the elderly—would be greatly diminished or potentially eliminated. These vulnerable
8 patients would face increased healthcare costs and would likely have little choice but to forgo care
9 or to seek it in already crowded emergency rooms of other hospitals. And those patients may face
10 additional barriers to treatment at those hospitals if those hospitals are covered by the Rule.

11 136. Because Valley Medical Center and other County healthcare facilities are safety-net
12 providers that primarily serve low-income individuals, vulnerable communities will be severely
13 harmed by a loss of federal funding. For example, the Public Health Department's direct services
14 primarily benefit low-income persons, children, people of color, and people living with chronic
15 diseases such as HIV/AIDS. Because all 15 cities within the County are dependent on the County's
16 public health department, many, if not most, of these individuals simply would not get the care and
17 resources that they need without federally funded services from the Public Health Department.

18 137. Further, the Rule creates untenable budgetary uncertainty for the County as a whole,
19 because the County is unsure what the Rule requires and whether the County is able to comply with
20 the Rule. This makes it infeasible for the County entirely to mitigate the risk that noncompliance
21 with the Rule could cause the County to lose more than a billion dollars in necessary federal
22 funding.

23 2. Harms to Private Healthcare Providers

24 138. Plaintiffs include clinics and healthcare providers that operate independently from
25 other healthcare systems, each with missions that include providing comprehensive and
26 compassionate care. For example, Trust Women Seattle's mission is to treat patients with dignity,
27 empathy, and respect, to give them complete and accurate medical information and to empower
28 them to make decisions free from judgment or disruptions in their care. Likewise, the mission of

1 the LA LGBT Center—the Nation’s largest provider of LGBT medical and mental-health
2 services—is to provide a safe and affirming environment for LGBT people seeking healthcare
3 services. To fulfill that mission, the LA LGBT Center must be able to treat its patients with dignity,
4 empathy, and respect; to give them complete and accurate medical information; and to empower
5 them to make decisions free from judgment or disruptions in their care. At Hartford Gyn, clinic
6 procedures and practices are designed to ensure that patients receive the highest quality,
7 nonjudgmental care. Hartford Gyn and Trust Women have taken a public stance defending
8 reproductive rights. Abortion clinics and their patients are routinely targeted and harassed,
9 including by protestors outside clinics and by groups and individuals who pose grave security
10 threats to physicians, staff, and volunteers. Hartford Gyn and Trust Women have been targeted by
11 the anti-choice movement for harassment and threatened violence, and they are symbols of the
12 determined provision of constitutionally protected care. Ensuring the safety of everyone in the
13 clinic, including patients, is of paramount concern for both providers.

14 139. Whitman-Walker, Bradbury-Sullivan Center, Center on Halsted, and the Mazzoni
15 Center also are mission-driven healthcare providers and entities.

16 140. In the reproductive-healthcare and LGBT-healthcare settings, the Rule invites
17 individuals to deny patients care and information, which will threaten both the health of patients
18 and the sustainability of the providers’ operations. The Rule will frustrate these mission-driven
19 providers’ ability to hire personnel who will work to support their missions. By expanding the
20 definition of what it means to “assist in the performance” of a procedure to include people not
21 directly engaged in providing care, and by inviting religious or moral objections without notice to
22 patients or providers, the Rule threatens grave harms to the healthcare-provider Plaintiffs’
23 operations, provision of care to their patients, their core missions, and their reputations.

24 141. The Plaintiff healthcare providers seek to empower patients to make their own
25 decisions. But the Rule’s broad definitions invite an employee to substitute his or her own opinion
26 about a patient’s care for sound medical judgment and the patient’s consent. As with Santa Clara,
27 these providers could face situations in which a staff member unexpectedly objects to care, leading
28 to staffing issues and inadequate responses in an emergency. Even worse, Plaintiffs could be wholly

1 unaware that an objector has ceased performing his or her assigned duties on the basis of a religious
2 or moral objection, or has turned a patient away altogether, which would gravely compromise
3 patient care and Plaintiffs' missions. The Rule's failure to address these concrete logistical issues
4 poses unacceptable operational challenges and health risks to patients.

5 142. Small providers face a significant concern that staff members who assert
6 unanticipated objections will be able to unilaterally veto key aspects of patient care. This concern
7 affects even clinics devoted to providing reproductive or LGBT care. For example, someone willing
8 to process billing for pregnancy services may have objections to contraception or abortion, or
9 someone comfortable with scheduling an appointment for gay patients may have objections to
10 transgender patients. Because the Rule is designed to protect objectors from any consequences,
11 providers may be forced to reorganize their staffing structures, consume precious resources with
12 unnecessary workarounds, duplicate staffing in cost-prohibitive ways, unfairly burden
13 nonobjecting employees, reduce services, and even close programs in an attempt to reduce the risk
14 that a single employee will deny care or information to a patient.

15 143. Trust Women Seattle, for example, is a small business. It cross-trains clinical and
16 some nonclinical staff to serve multiple roles, many of which touch on providing information about
17 or scheduling, or directly providing abortion, contraception, or transgender healthcare. Likewise,
18 Hartford Gyn must operate efficiently because of its already limited income. In order to do so, all
19 staff must perform functions that touch on providing abortion and contraception. No alternative
20 human-resources structure could sustain the clinic.

21 144. At Trust Women Seattle, some employees monitor the provision of abortion care
22 and contraceptive care at the clinic. Others perform medication management, sanitize instruments,
23 and clean operating rooms and laboratories that may be used for general gynecological exams one
24 day and the provision of contraception or hormone therapy the next. Under the Rule, these sanitary
25 and custodial activities could fall within the definition of "assist in the performance," though they
26 do not involve the direct provision of care.

27 145. Further, Trust Women has an emergency policy requiring all office personnel to be
28 familiar with the facilities' agreements to transfer patients to other facilities in the case of an

1 emergency. This policy requires that any staff member assist in an emergency transfer, even if only
2 by calling ahead to the hospital. Hartford Gyn likewise has emergency practices requiring all staff
3 to be willing to help in an emergency. Trust Women also has a “no turn-away” policy for patients
4 and a nondiscrimination policy. To the extent that the Rule would prevent Trust Women and
5 Hartford Gyn from continuing to enforce these policies, it would be unworkable. To the extent that
6 they would be prevented from requiring that front-facing employees like receptionists (who do not
7 assist in procedures according to Trust Women’s current understanding) are compassionate and
8 supportive of the independent decision-making of patients, it would both undermine Trust
9 Women’s business and inhibit its patients’ access to healthcare.

10 146. The Rule will strain already limited resources. Because patients will fear refusal of
11 care at traditional healthcare facilities, providers such as the LA LGBT Center and Whitman-
12 Walker that specialize in reproductive and LGBT healthcare likely will see an increase in demand
13 resulting from patients’ hope that those clinics, which are designed to meet their specific needs,
14 will remain safe spaces. The same is true for plaintiffs who provide abortion and contraception
15 care. Such an increase will strain the limited resources of these providers. At the same time, the
16 providers will need to invest resources in educating the community about the Rule and in battling
17 the erosion of community members’ confidence in the healthcare system that will result from the
18 Rule’s application. These consequences will increase the LA LGBT Center’s and Whitman-
19 Walker’s operating costs and will take a toll on the health and well-being of the LGBT community.

20 147. In anticipation of the release of the Rule, Center on Halsted’s staff already has been
21 forced to devote resources to addressing the Rule. It has conducted additional “Know Your Rights”
22 programming regarding discrimination against LGBT people; sent and prepared staff to attend
23 meetings and events with other LGBT stakeholders in the city; and held internal training for staff
24 to manage the added strains on the mental health of Center on Halsted’s patients. This diversion
25 and additional expenditure of resources frustrates Center on Halsted’s efforts to counsel those
26 whom it serves and to advocate for them to receive necessary healthcare services from outside
27 organizations.

28

1 148. As a result of the Rule, Bradbury-Sullivan Center will be required to redirect its staff
2 and resources from providing its own services to assisting patrons in determining who among the
3 healthcare providers in the region will serve LGBT patients in a nondiscriminatory manner. Indeed,
4 Bradbury-Sullivan Center already has had to divert staff and resources from other program
5 activities to advocacy, policy analysis, and development of additional resources to address the ill
6 effects of the Rule.

7 149. Loss of funding threatens dire results for these Plaintiffs. For example, Trust Women
8 Seattle and Hartford Gyn are dependent on Medicaid funding to continue providing the full range
9 of services they offer patients and keep their doors open.

10 **3. Harms to Patients**

11 150. If implemented, the Rule will harm Plaintiffs' patients. The Rule attacks access to
12 reproductive and LGBT healthcare at hospitals, clinics, and other facilities throughout the country
13 and invites an unprecedented number of individuals to delay or deny care to patients, directly
14 affecting the patients' access to healthcare. As detailed in the comments to the proposed Rule,
15 discrimination against these patients already is widespread and well-known, as are the harms that
16 result from delayed and denied care.

17 **a. Harms to patients generally**

18 151. Healthcare refusals often result in significant costs for and harms to patients. Under
19 the Rule, an individual employee, because of that employee's morally or religiously motivated
20 refusal to provide care, may force a patient to choose between forgoing care or taking on the burden
21 of locating and traveling to a willing provider. When patients are turned away from a doctor's office
22 or a hospital without a referral or even basic information about their condition or treatment options,
23 they must find willing providers to provide the healthcare that they need. They incur additional
24 expenditures of time and money researching and trying other providers, including additional time
25 off work for new appointments. In areas with a limited number of affordable healthcare providers,
26 patients may need to travel long distances to find care, requiring additional travel expenses,
27 sometimes including overnight stays and childcare. The harms from the additional time and expense
28

1 fall most heavily on low-income individuals and those without the job flexibility to take paid sick
2 time. Some patients will lack the resources to continue to pursue the treatment they need.

3 152. Patients seeking treatment from healthcare entities of last resort, such as the County
4 and other Plaintiffs, may be entirely denied the care that they seek and desperately need.

5 153. The Rule may result in denials of time-sensitive or emergency care, putting patients'
6 health and even their very lives at substantial risk.

7 154. Because the Rule does not always require objecting providers to alert either their
8 employers or the patients about religious or moral objections (and permits healthcare employers to
9 require such notice only in limited circumstances), the Rule may mean not only that some patients
10 will be denied necessary care, but also that those patients will not know that they are being denied
11 that care on the basis of an employee's religious objection. That will be true even if the patient
12 chooses to go to a particular healthcare facility because the facility normally provides that care.
13 Either way, the patient is harmed. If patients know that they are being denied care because of who
14 they are or what services they seek, that is a stigmatizing and potentially traumatizing experience.
15 If patients do not know that they are being denied the care that they seek, they will not know to
16 seek it elsewhere and their healthcare needs will remain unmet.

17 **b. Special burdens on reproductive rights**

18 155. The Rule threatens to impede or eliminate access to abortion and contraception.

19 156. Patients who are denied contraception are less able to safeguard their own health
20 and welfare.

21 157. The ability to prevent or space pregnancy, facilitated by easy and affordable access
22 to contraception, has significant health benefits.

23 158. Abortion is a fundamental part of healthcare. It is a common medical procedure: one
24 in three women in the United States has undergone an abortion and an estimated one in four women
25 will need an abortion in the future. And it is extremely safe: it is 14 times safer than childbirth and
26 even safer than a shot of penicillin. But abortion care already is a marginalized healthcare service,
27 often provided at clinics that operate independently from other healthcare systems. Because of
28 increasing regulation and targeting of abortion clinics and their staff for violence and harassment,

1 there is a national shortage of abortion providers in the United States, and their numbers are
2 shrinking. As a result, a woman who is denied abortion care at a healthcare facility may find it
3 difficult to find an available provider in a reasonable timeframe. Eighty-nine percent of counties in
4 the United States do not have a single abortion clinic, and some counties that have a clinic provide
5 abortion services only on certain days. Several States have only one clinic that provides abortion
6 care anywhere within the State.

7 159. Reproductive choice is a reality for patients only when there are enough family
8 planning providers available to meet patients' needs and those providers are available in an
9 equitable distribution. Currently, the supply of those providers is not meeting the needs of U.S.
10 patients, in large part because facilities providing abortion are increasingly concentrated in cities,
11 and very few primary-care providers are skilled in family-planning services.

12 160. Four of the ten largest healthcare systems in the United States by hospital count are
13 now religiously sponsored, often because of hospital consolidations between Catholic or other
14 religious healthcare systems and secular institutions. As a result of hospital mergers and other
15 factors, significant parts of the Southern and Midwestern United States have deserts of abortion
16 training and care.

17 161. Hospitals across the United States are large businesses that demand significant
18 administrative resources. Many hospitals already decline to provide contraception and abortion
19 because of the effort required to accommodate refusals and the additional expense that they entail.
20 If the Rule goes into effect, the United States will see an even more dramatic reduction in the
21 number of large medical education institutions that provide abortions and teach students and
22 residents about it. Access to these services in the United States already is very limited, and the Rule
23 will immeasurably exacerbate the problem.

24 162. Because of the shortage of providers, patients already must travel long distances
25 (and incur the associated costs) to obtain abortion care. In addition, in some areas the shortage of
26 providers results in significantly increased wait times or leads to some patients' being turned away
27 altogether.

28

1 163. Delays in obtaining an abortion compound the logistical and financial burdens that
2 patients face and substantially increase the health risks to patients. On average, patients must wait
3 at least a week between initially attempting to make an appointment and receiving an abortion.
4 Delays also increase the cost of an abortion, because abortions during the second trimester are
5 substantially more expensive than during the first trimester: The median price of a surgical abortion
6 at ten weeks is \$508; the cost at 20 weeks rises to \$1,195. Other costs also increase with delays.
7 For example, one recent study found that Utah's mandatory waiting period caused 47 percent of
8 women having an abortion to miss an extra day of work. More than 60 percent of the women in the
9 study were negatively affected in other ways, including having to pay increased transportation
10 costs, lost wages, or having to disclose the abortion to someone whom they otherwise would not
11 have told. Delays in obtaining an abortion also mean that patients obtain that care in later stages of
12 pregnancy. Although abortion is a safe procedure, risks increase with later gestational ages. Patients
13 approaching legal limits in their State for obtaining a medical abortion may be forced to seek care
14 in another State. Because the Rule will create incentives for more healthcare providers to stop
15 offering abortion services, it will increase delays and add to the costs of obtaining an abortion.

16 164. The Rule also further stigmatizes abortion and contraception. Stigma has
17 tremendous impact on patients, fostering fear and psychological stress. When patients perceive the
18 community's disapproval of their choice, they feel the need to maintain secrecy around their
19 decisions and will be deterred from seeking care out of fear of judgment and discrimination.

20 165. Patients seeking treatment from healthcare entities of last resort, such as the County
21 and other Plaintiffs, may be entirely denied the care that they seek and desperately need, even in
22 emergency situations. This will put patients' health and even their lives at substantial risk. If
23 patients are denied care entirely, they will encounter a whole host of additional harms. Denying
24 someone an abortion and forcing them to carry to term increases the risk of serious health harms,
25 including eclampsia and death. In addition, denying someone an abortion may lead to increased
26 risk of life-threatening bleeding, cardiovascular complications, diabetes associated with pregnancy,
27 as well as all other risks of pregnancy. A pregnant person is 14 times more likely to die from giving
28 birth than from having an abortion.

1 166. Whether because patients encounter an objector, providers are forced to close their
2 doors, or patients are deterred from seeking care because of stigma and fear of discrimination,
3 individuals seeking abortion and contraception will be either delayed or totally denied such care
4 because of the Rule.

5 167. Objections to other types of procedures will also increase healthcare costs. For
6 example, a patient who has a cesarean section and wants to have a postpartum tubal ligation
7 immediately following delivery might be denied that option by an employee of a healthcare facility
8 who objects to the latter procedure—even though having the procedure at that time is medically
9 recommended, presents fewer risks to the patient, and is more cost-effective than delaying the
10 procedure. If the patient cannot have that procedure immediately following delivery, the patient
11 must first recover from the cesarean surgery and then schedule the tubal ligation at least six weeks
12 later, when the patient is busy caring for a newborn; the patient will be required to go to another
13 doctor and possibly a different hospital; will have to arrange for the transfer of medical records;
14 and will incur duplicative costs and duplicative risks, pain, and recovery time for the second round
15 of anesthesia and invasive surgery.

16 **c. Special burdens on LGBT patients**

17 168. The Rule imposes particular burdens on transgender and gender-nonconforming
18 people as well. Transgender people are defined as transgender because their gender identity does
19 not align with the sex that they were assigned at birth. Gender identity refers to an individual's
20 sense of being a particular gender, and constitutes an essential element of human identity. Everyone
21 possesses a gender identity, which is innate, has biological underpinnings, and is fixed at an early
22 age. An individual's sex is generally assigned at birth solely on the basis of visual observation of
23 external genitalia. Other sex-related characteristics such as chromosomes, hormone levels, internal
24 reproductive organs, secondary sex characteristics, and gender identity typically are not assessed
25 or considered during the assignment of sex at birth. Most people have a gender identity that matches
26 their sex assigned at birth and other sexual characteristics.

27 169. Where an individual's gender identity does not match that individual's sex assigned
28 at birth, gender identity is the critical determinant of sex. External genitalia are but one of several

1 sex-related characteristics and are not always indicative of a person's sex. A scientific consensus
2 recognizes that attempts to change an individual's gender to bring it into alignment with the sex
3 assigned at birth are ineffective and harmful.

4 170. The dissonance between individuals' gender identity and the sex that they were
5 assigned at birth can be associated with clinically significant distress, which is known as gender
6 dysphoria. Gender dysphoria is a medical condition recognized in the American Psychiatric
7 Association's Diagnostic and Statistical Manual of Mental Disorders and by leading medical and
8 mental-health professional groups, including the AMA and the American Psychological
9 Association (APA).

10 171. Gender dysphoria can be treated in accordance with internationally recognized
11 Standards of Care formulated by the World Professional Association for Transgender Health and
12 recognized as authoritative by national medical and behavioral health organizations such as the
13 AMA and APA.

14 172. The ability to live in a manner consistent with one's gender identity is critical to a
15 person's health and well-being and is a key aspect in the treatment of gender dysphoria. The process
16 by which transgender people come to live in a manner consistent with their gender identity, rather
17 than the sex they were assigned at birth, is known as transition. The steps that each transgender
18 person takes to transition are not identical, but usually include social, legal, and medical transition.
19 Medical transition includes treatments that bring transgender people's bodies into alignment with
20 their gender identity, such as hormone-replacement therapy or surgical care such as hysterectomy
21 or orchiectomy. Whether any particular treatment is medically necessary or even appropriate
22 depends on the medical needs of the individual.

23 173. All Plaintiffs, regardless of whether they provide particular transition-related
24 treatments and services, are committed to providing inclusive and individually tailored gender-
25 affirming care and services that respect each patient's gender identity and status without
26 discrimination, in accordance with medical and ethical standards of care.

27 174. LGBT individuals, and especially transgender and gender-nonconforming people,
28 already face particularly acute barriers to care and health disparities that will be compounded by

1 the Rule. A majority of LGBT patients fear going to a healthcare provider because of past
2 experiences of anti-LGBT bias in a healthcare setting. Many LGBT patients report negative
3 experiences, including hostility, discrimination, and denials of care, when they disclose to
4 healthcare providers their sexual orientation, history of sexual conduct, gender identity, transgender
5 status, or history of gender-affirming medical treatment, and related medical histories.

6 175. For example, multiple LGBT patients at Whitman-Walker have previously been
7 refused medical care, including routine care unrelated to gender dysphoria, by providers outside of
8 Whitman-Walker simply because they are transgender or gay. In one instance, a radiological
9 technician refused to perform an ultrasound for testicular cancer on a transgender patient. In
10 another, a healthcare worker at a dialysis clinic confronted a Whitman-Walker patient with end-
11 stage renal disease and objected to being involved in the patient's care because of hostility to his
12 sexual orientation. In another, after a Whitman-Walker patient—a transgender teenager—was
13 hospitalized in a local hospital following a suicide attempt, the staff would only address or refer to
14 the young person with pronouns inconsistent with their gender identity, exacerbating the teenager's
15 acutely fragile state of mind. Local hospitals and surgeons have refused to perform transition-
16 related surgeries on Whitman-Walker transgender patients, even when they routinely perform the
17 very same procedures on non-transgender patients, including in situations when the patient's
18 insurance would have covered the procedure or when the patient was able to pay for the procedure.
19 Many local primary-care physicians unaffiliated with Whitman-Walker have refused to prescribe
20 hormone therapy for transgender patients. And multiple Whitman-Walker patients have been
21 denied prescriptions by pharmacists. Behavioral-health providers at Whitman-Walker report that
22 the vast majority of transgender patients—as many as four out of five—report instances of
23 mistreatment or discrimination by healthcare providers, hospitals, clinics, doctors' offices, or other
24 facilities outside of Whitman-Walker.

25 176. Patients of the LA LGBT Center report similar experiences of discrimination by
26 other providers. One transgender patient, who developed profuse bleeding after surgery, was denied
27 treatment at an emergency room and arrived at the LA LGBT Center in distress three days later,
28 having lost a significant amount of blood. Another patient required extensive surgery to repair

1 damage caused by a prior silicone breast-augmentation procedure. But she was turned down by an
2 academic plastic-surgery center in Los Angeles because her surgeon there said that her health
3 problems were caused by her own poor decision-making and she therefore would not be considered
4 for treatment. By the time she was able to identify a surgeon who was willing to treat her, with the
5 assistance of a physician at the LA LGBT Center, years had passed and her condition had become
6 life-threatening. For patients at the LA LGBT Center, the ability to receive gender-affirming
7 medical care can mean the difference between life and death.

8 177. In many geographic regions, a majority of LGBT people lack a provider whom they
9 consider to be their personal doctor. As a result, when they seek healthcare services, they are likely
10 to encounter a healthcare provider with whom they do not have a relationship. This makes them
11 especially vulnerable to discriminatory treatment from providers who are not LGBT-affirming. For
12 some medical specialties, there are only a handful of healthcare providers in the region who have
13 the expertise necessary to treat a patient for a particular condition, so a denial of care from even
14 one provider could make it practically impossible for an LGBT patient to receive any care at all.

15 178. In a recent study, nearly one in five LGBT people, including 31 percent of
16 transgender people, said that if they were turned away from a hospital, it would be very difficult or
17 impossible to get the healthcare that they need elsewhere. The rate was substantially higher for
18 LGBT people living in non-metropolitan areas, with 41 percent reporting that it would be very
19 difficult or impossible to find an alternative provider. Even when they are able to get access to care,
20 many individuals report that healthcare professionals have used harsh language toward them,
21 refused to touch them, used excessive precaution, or blamed the individuals for their health status.

22 179. Consequently, LGBT patients are disproportionately likely to delay preventative
23 screenings and necessary medical treatment and therefore to end up with more acute health
24 problems and outcomes. Research has identified pervasive health disparities for LGBT people with
25 respect to cancer, HIV, obesity, mental health, tobacco use, and more. In other words, LGBT
26 people, who are disproportionately likely to need a wide range of routine medical care, already
27 have reason to fear, and often do fear, negative consequences of “coming out” to healthcare
28

1 providers about their sexual orientation, history of sexual conduct, gender identity, transgender
2 status, history of gender-affirming medical treatment, and related medical histories.

3 180. The Rule encourages these patients to remain closeted to the extent possible when
4 seeking medical care. But remaining closeted to a health care provider may result in significant
5 adverse health consequences. For instance, a patient who conceals or fails to disclose a same-sex
6 sexual history may not be screened for HIV or other relevant infections or cancers, or may not be
7 prescribed preventative medications such as Pre-Exposure Prophylaxis or PrEP, which is extremely
8 effective at preventing HIV transmission. Patients who fail fully to disclose their gender identity
9 and sex assigned at birth may not undergo medically indicated tests or screenings (such as tests for
10 cervical or breast cancer for some transgender men, or testicular or prostate cancer for some
11 transgender women). The barriers to care are particularly high for transgender individuals. Nearly
12 one-quarter of transgender individuals report delaying or avoiding medical care when sick or
13 injured, at least partially because of fear of discrimination by and disrespect from healthcare
14 providers.

15 181. In the past, OCR has investigated numerous complaints from transgender patients
16 about being denied certain health services, ranging from routine to life-saving care, because of the
17 patients' gender identities. The Rule will make it more likely that these patients will be denied care
18 or will avoid seeking care altogether.

19 **d. Harms to vulnerable populations**

20 182. The effects of refusals will fall particularly heavily on rural patients in need of
21 reproductive healthcare. These patients are four times more likely than urban dwellers to reside in
22 medically underserved communities. Reproductive-health services are especially difficult for rural
23 patients to obtain because obstetric and gynecologic services and other medical specialties are not
24 common in rural settings. Further, for healthcare providers such as the County of Santa Clara that
25 operate clinics and hospitals in rural communities, experience has shown that reproductive health
26 care and gender-affirming health care are frequently in demand, contrary to the Department's
27 assertion that patients in rural communities may be more likely to share providers' religious
28 objections and therefore are not likely to seek such care. *See* 84 Fed. Reg. 23,181. The inappropriate

1 expansion of refusals under the Denial-of-Care Rule will undoubtedly exacerbate the harms to these
2 individuals.

3 183. Patients and recipients of non-medical services coming to Trust Women Seattle,
4 Hartford GYN Center, Whitman-Walker, the LA LGBT Center, Bradbury-Sullivan Center, Center
5 on Halsted, and the Mazzoni Center have been disrespected and demeaned by other healthcare
6 providers for their reproductive and LGBT healthcare decisions and will have no other options if
7 they cannot obtain care from these providers. These Plaintiffs serve communities with already
8 limited options for healthcare services.

9 184. For example, in the region where Bradbury-Sullivan Center is located, there often
10 is only one or very few healthcare providers who have the specialty necessary to treat an LGBT
11 patient for a specific service, so a denial of care from that provider could make it practically
12 impossible for a patient to receive any care at all. And some of the region's healthcare providers
13 are religiously affiliated organizations that could claim religious objections to providing care to
14 LGBT people, exempting them under the Rule from adhering to existing nondiscrimination laws
15 and standards.

16 185. The Rule will chill the expressive rights of Plaintiffs' patients by causing them to
17 hide their identities and same-sex relationships when seeking healthcare services from other
18 organizations with religious objections to serving LGBT people.

19 186. Further, the additional demand for services and advocacy caused by discrimination
20 resulting from the Rule will drain the resources of these Plaintiffs.

21 4. Harms to Medical-Association Plaintiffs

22 a. AGLP

23 187. The Denial-of-Care Rule will harm AGLP, its members, and the patients whom they
24 treat because the Rule threatens AGLP's federal funding. AGLP's members depend on that funding
25 to provide vital services and to conduct critical medical research. In addition, the Rule will frustrate
26 AGLP's mission of achieving and enforcing safe workspaces for LGBT psychiatrists and
27 nondiscriminatory healthcare services for AGLP members' patients. The Rule also will frustrate
28 AGLP's mission of advocating for nondiscriminatory standards of care for patients, culturally

1 competent standards of care for treatment of LGBTQ patients, and nondiscriminatory work
2 environments for members that protect against discrimination on the basis of sexual orientation and
3 gender identity.

4 188. The Rule invites additional burdens, harassment, and even discriminatory treatment
5 of AGLP members in the workplace by fellow employees who will claim that that the Rule gives
6 them a right to accommodations for discriminatory behavior. AGLP members and their LGBTQ
7 patients are stigmatized and demeaned by the message communicated by the Rule—that their
8 government privileges beliefs that disparage transgender people and their medical needs, and
9 invites denials of care at the cost of the dignity and physical and mental health of patients based
10 solely on transgender status.

11 **b. MSFC**

12 189. The Rule will also cause severe harms to MSFC and its members.

13 190. First, medical students receive their clinical training disproportionately at academic
14 medical centers and teaching hospitals that receive significant federal funding. Likewise, residents
15 depend on federal funding for their continuing medical education. If HHS determines that the
16 institutions at which these individuals work are violating the Rule, their funding to continue
17 working at that institution may be reduced or eliminated. Those institutions also may stop providing
18 certain services or training in order to avoid risk of catastrophic sanctions under the Rule.

19 191. Second, MSFC is committed to creating the next generation of abortion providers.
20 There is already a shortage in training opportunities. For example, members of MSFC have reported
21 instances in which facilities across the nation have ceased providing these services based on the
22 religious or moral objection of select staff or funders or because of the stigma and controversy
23 surrounding these services. Even in progressive States, religious refusals by hospital leadership
24 have already pushed abortion training out of certain facilities. Further, mergers of secular teaching
25 hospitals with religiously affiliated facilities have reduced the number of facilities that provide
26 abortion training, and clinic closures across the country further threaten access to training and
27 services.
28

1 192. The Rule is so broad as to be unworkable for some hospitals and other facilities
2 providing abortion and contraception, creating incentives for institutions to stop providing and
3 training for abortion services. As a consequence, MSFC members will be able to acquire training
4 at a shrinking number of facilities. As training programs grow more limited, fewer new physicians
5 will be able to achieve competency in family planning sufficient to join existing practices or clinics
6 right out of medical school or residency. The result will be a shrinking pool of providers that will
7 be unable to replenish itself through normal training programs, significantly longer wait times even
8 for patients who are able to travel and can afford to obtain care from trained providers, and
9 decreased access to care for patients around the country.

10 **c. GLMA**

11 193. If not enjoined, the Denial-of-Care Rule will harm both GLMA members and the
12 LGBT patients whose interests GLMA represents. The Rule creates a safe haven for discrimination
13 and prevents GLMA from achieving its goals with professional accreditation bodies by preventing
14 such bodies from holding healthcare providers accountable for discrimination against LGBT people
15 and denial of care whenever the discriminatory conduct is ostensibly grounded in religious beliefs.

16 194. GLMA collaborates with professional accreditation bodies, such as The Joint
17 Commission, on the development, implementation, and enforcement of sexual-orientation and
18 gender-identity nondiscrimination policies as well as cultural-competency standards of care for
19 treatment of LGBT patients. GLMA has worked with The Joint Commission, and continues to work
20 with similar professional bodies and health-professional associations, on standards, guidelines, and
21 policies that address LGBT health and protect individual patient health and public health in general.

22 195. In order for a healthcare organization to participate in and receive federal payment
23 from Medicare or Medicaid programs, the organization must meet certain requirements, including
24 a certification of compliance with health and safety requirements. That certification is achieved
25 based on a survey conducted either by a state agency on behalf of the federal government, or by a
26 federally recognized national accrediting organization. Accreditation surveys include requirements
27 that healthcare organizations not discriminate on the basis of sex, sexual orientation, or gender
28 identity in providing services or in employment. A healthcare organization that discriminates in

1 those ways or that otherwise deviates from medical, professional, and ethical standards of care can
2 lose its accreditation.

3 196. As explained above, all of the leading health-professional associations, including
4 the AMA, have adopted policies stating that healthcare providers should not discriminate in
5 providing care for patients and clients because of sexual orientation or gender identity.

6 197. The Rule presents a direct conflict with nondiscrimination standards adopted by the
7 Joint Commission and all the major health-professional associations, which have recognized the
8 need to ensure that LGBT patients are treated with respect and without bias or discrimination in
9 hospitals, clinics, and other healthcare settings.

10 198. The Rule would prevent state agencies and other recipients of federal funds from
11 recognizing, to the extent allowed by law, the loss of accreditation of a healthcare organization
12 because of specified anti-LGBT beliefs and denials of care. The Rule therefore will frustrate
13 GLMA's mission of achieving and enforcing accreditation standards relating to nondiscrimination
14 on the basis of sexual orientation and gender identity and cultural competency standards of care for
15 treatment of LGBT patients.

16 199. Some members of GLMA are employed by religiously affiliated healthcare
17 organizations (such as hospitals, hospices, or ambulatory-care centers) that receive federal funding.
18 These healthcare providers treat LGBT patients. Members of GLMA employed by religiously
19 affiliated providers will experience additional burdens for adhering to their medical and ethical
20 obligations to treat all patients in a nondiscriminatory manner, including providing all medically
21 necessary care that is in the patient's best interests.

22 200. The Rule invites harassment and discriminatory treatment of GLMA members in
23 the workforce by fellow employees who will claim that the Rule gives them a right to
24 accommodation for discriminatory behavior. GLMA members and their LGBT patients are
25 stigmatized and demeaned by the Rule's message that their government privileges beliefs that result
26 in the disapproval and disparagement of LGBT people in the healthcare context.

27 201. As an organization of health professionals who often serve and care for patients
28 from the LGBT community, GLMA knows that discrimination against LGBT individuals in

1 healthcare access and coverage remains a pervasive problem and that too often this discrimination
2 is based on religious objections. GLMA members have reported numerous instances of
3 discrimination in care based on religious grounds. Since HHS issued the proposed Rule, GLMA
4 members shared with GLMA many ways that religious objections have been used to the detriment
5 of the healthcare of LGBT patients.

6 CAUSES OF ACTION

7 FIRST COUNT

8 Administrative Procedure Act, 5 U.S.C. § 706(2)(A) 9 Arbitrary And Capricious

10 202. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

11 203. Defendants are subject to the Administrative Procedure Act (APA), 5 U.S.C. § 551
12 *et seq.* See 5 U.S.C. § 703.

13 204. The Denial-of-Care Rule violates the APA, 5 U.S.C. § 706(2)(A), because it is
14 arbitrary, capricious, an abuse of discretion, and not in accordance with law, in that HHS failed
15 adequately to consider important aspects of the issue, including harm to patients, costs to healthcare
16 facilities, impracticability of the Rule for the efficient administration of healthcare facilities and
17 programs and for delivery of health services, and possible alternatives to the Rule.

18 205. Commenters showed that the Denial-of-Care Rule will cause substantial harms to
19 patients. The Rule nonetheless fails adequately to quantify and inappropriately disregards these
20 costs and harms, particularly in its cost-benefit analysis. HHS also has ignored that the Rule is
21 unnecessary and that current law provides sufficient protection for religious objectors while also
22 considering patients' rights to care and information. Notwithstanding the concerns raised by
23 commenters that the Rule would harm patients, HHS omitted from the Rule any provisions to lessen
24 the Rule's adverse effects on the delivery of healthcare and on patients' health and well-being,
25 instead opting to expand objection rights without regard to the practical effects of the rule on the
26 healthcare system. Further, by failing to address the many issues arising from its requirements, or
27 stating that they will be resolved on a case-by-case basis, the Rule leaves employers in the dark
28 about what they may or may not do without running afoul of the Rule's prohibitions.

206. In addition, HHS adopted an unprecedented, confusing, and unreasonable definition of what it means to “discriminate” against an individual or entity based on a religious or moral objection. HHS’s definition would consider virtually any action to manage objections to be “discriminatory” unless the action falls within narrowly drawn and unworkable exceptions. These provisions contain no undue-hardship exception or legitimate-nondiscriminatory-reason defense, and they unreasonably limit the measures providers can take to accommodate religious and moral objections without compromising patient care.

207. Although Commenters detailed the substantial and potentially unmanageable costs of compliance with the Rule and other administrative burdens on healthcare facilities and providers that the Rule would impose, the Rule fails to take account of these costs and burdens.

208. In adopting the final Rule, HHS failed to consider pertinent data and failed to articulate a reasoned or legally sufficient basis for the Rule.

209. In adopting the Rule, HHS failed to consider alternative ways of achieving the objectives of the underlying statutes.

210. Additionally, HHS failed to respond adequately to significant comments critical of the proposed Rule that were submitted during the notice-and-comment period.

SECOND COUNT

Administrative Procedure Act, 5 U.S.C. § 706(2)(C)

Exceeds Statutory Authority

211. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

212. The Denial-of-Care Rule violates the APA, 5 U.S.C. § 706(2)(C), because it is greatly in excess of statutory jurisdiction, authority, or limitation.

213. When read together, HHS’s definitions of critical statutory terms—including “assist in the performance,” “referral or refer,” “health care entity,” and “discrimination”—are inconsistent with the statutory provisions that HHS purports to be construing, as well as the plain, accepted meanings of those terms. As a result, HHS’s construction of the statutory provisions that it purports to be implementing is inconsistent with the plain scope and meaning of those provisions, rendering the Rule in excess of statutory jurisdiction and authority.

THIRD COUNT**Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Not in Accordance with Other Federal Laws**

214. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

215. The Denial-of-Care Rule violates the APA, 5 U.S.C. § 706(2), because it is arbitrary, capricious, an abuse of discretion, and not in accordance with law in that it conflicts with numerous federal laws. These laws include:

(a) 42 U.S.C. § 18114 (because the Rule will impede individuals' timely access to medical care and information about treatment options);

(b) EMTALA, 42 U.S.C. § 1395dd(b)(1) and its implementing regulations (because the Rule will provide blanket license to emergency-room personnel to decline to provide or assist in the provision of emergency services, to decline to facilitate patients' transfer to other facilities, or to decline to make referrals);

(c) ACA, 42 U.S.C. § 18023(d) (because the Rule contravenes the ACA's prohibition against construing right-of-conscience exemptions to relieve any healthcare provider of the legal obligation to provide emergency services as required by State or Federal law, including the EMTALA);

(d) ACA, 42 U.S.C. § 18116 (because the Rule contravenes the statutory provisions stating that "[a]n individual shall not, on [a] ground prohibited under title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance");

(e) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (because in creating such expansive religious-accommodation requirements and inviting employees to veto the types of accommodations that may be offered, the Rule may require employing healthcare entities to take actions that are contrary to the rights of other employees to be free from the forms of discrimination prohibited by Title VII); and

(f) Title X of the Public Health Service Act, 42 U.S.C. §§ 300-300a-6 (because the Rule contravenes Congress' requirement that Title X grantees operate "voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services," 42 U.S.C. § 300(a), and because Title X appropriations bills, *e.g.*, 2019 Continuing Appropriations Act, Pub. L. No. 115-245, Div. B., Tit. II, 132 Stat. 2981, 3070-71 (2018), require that "all pregnancy counseling shall be nondirective," meaning that funded projects are to offer pregnant women neutral, non-judgmental information and counseling regarding their options, including "prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination").

FOURTH COUNT
U.S. Constitution, First Amendment; Administrative Procedure Act,
5 U.S.C. § 706(2)(B)
Establishment Clause

216. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

217. The Denial-of-Care Rule is contrary to constitutional rights, powers, privileges, or immunities and therefore must be set aside under 5 U.S.C. § 706(2)(B).

218. The Establishment Clause of the First Amendment prohibits the government from favoring one religion over another or favoring religion over nonreligion.

219. The Establishment Clause permits government to afford religious accommodations or exemptions from generally applicable laws only if, among other requirements, the accommodation (1) lifts a substantial, government-imposed burden on the exercise of religion and (2) does not impose on innocent third parties the costs or burdens of accommodating another's religious exercise.

220. The Rule fails both of these requirements and therefore violates the Establishment Clause.

221. The Rule violates the Establishment Clause because it creates expansive religious exemptions for healthcare employees at the expense of third parties, namely, Plaintiffs, other providers, and, crucially, patients.

1 222. HHS's asserted statutory authority for the Rule cannot be read to authorize the Rule,
2 because if so read, those statutes would exceed Congress's legislative authority and constitute
3 unconstitutional religious preferences, both by granting religious exemptions for purported burdens
4 on religious exercise that are not of the federal government's own making, and by imposing costs
5 and burdens on third parties to accommodate the religious beliefs or exercise of objecting
6 employees.⁹

7 223. The effect of the Rule will be that patients who seek care at odds with the religious
8 beliefs of a provider's employee—or whose very identity is at odds with that employee's religious
9 beliefs—may be delayed in receiving care (including emergency care) or denied care altogether.
10 Patients will suffer the stigma of government-sanctioned discrimination. The Rule also will burden
11 Plaintiffs and other providers because by leaving them unable to treat patients in accord with their
12 own ethical and legal obligations and precluding them from carrying out their organizational
13 missions, based solely on the religious views of a single employee.

14 224. The Rule impermissibly advances religious beliefs in violation of the Establishment
15 Clause because it imposes on Plaintiffs an unqualified obligation to give preferential protection to
16 religious objections of their employees, regardless of the costs and harms to Plaintiffs, their
17 patients, and the greater public health.

18 225. The Denial-of-Care Rule further violates the Establishment Clause of the First
19 Amendment because, among other reasons, it:

20 (a) has the primary purpose of favoring, preferring, and endorsing certain
21 religious beliefs and certain religious denominations over others and over nonreligion;

22 (b) has the primary effect of favoring, preferring, and endorsing certain religious
23 beliefs and certain religious denominations over others and over nonreligion;

24
25 _____
26 ⁹ Attempts by HHS to mandate federal exemptions from burdens on religious exercise imposed by
27 state or local governments are permissible, only if (among other requirements) there is a clear
28 constitutional commitment of congressional power and express legislative authorization for the
federal action. Otherwise, HHS impermissibly intrudes on the States' traditional prerogatives and
general authority to regulate for the health and welfare of their citizens, exceeding the federal
government's statutory authority in violation of the APA. *See* Second Count, *supra*.

1 (c) has the primary purpose and primary effect of preferring the religious beliefs
2 of some people and institutions over the lives, health, and other rights and interests of third parties;

3 (d) impermissibly entangles government with religion;

4 (e) makes Plaintiffs, their patients, and other third parties bear the costs and
5 harms of objecting employees' religious beliefs or religious exercise; and

6 (f) imposes on Plaintiffs a requirement to accommodate employees' religious
7 objections without taking constitutionally required account of the actual burdens (if any) on the
8 objectors or the effects on or harms to Plaintiffs, their patients, or the greater public health.

9 **FIFTH COUNT**

10 **(Brought by Plaintiffs other than County of Santa Clara)**
11 **U.S. Constitution, Fifth Amendment; Administrative Procedure Act,**
12 **5 U.S.C. § 706(2)(B)**
13 **Substantive Due Process/Right To Privacy And Personal Autonomy**

14 226. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

15 227. The Denial-of-Care Rule is contrary to constitutional rights, powers, privileges, or
16 immunities and therefore must be set aside under 5 U.S.C. § 706(2)(B).

17 228. The Fifth Amendment's Due Process Clause protects individuals' substantive rights
18 to be free to make certain decisions central to privacy, bodily autonomy, integrity, self-definition,
19 intimacy, and personhood without unjustified governmental intrusion. Those decisions include the
20 right to abortion and other reproductive decision-making, as well as the right to live openly and
21 express oneself consistent with one's gender identity.

22 229. By imposing conditions on funding that require healthcare providers to interfere
23 with and unduly burden patients' access to medically necessary health care, including reproductive
24 healthcare and healthcare necessary to preserve health or life, the Rule violates the rights of
25 Plaintiffs' patients to privacy, liberty, dignity and autonomy guaranteed by the Fifth Amendment.

26 230. In particular, a person's gender identity and ability to live and express oneself
27 consistent with one's gender identity without unwarranted governmental interference constitutes a
28 core aspect of each person's autonomy, dignity, self-definition and personhood. By imposing
conditions on funding that interfere with patients' access to gender-affirming medical care,
including surgical procedures, hormone therapy, and other medically necessary care, and by

1 interfering with the ability of transgender and gender-nonconforming patients to live and express
2 themselves in accordance with their gender identities, the Rule infringes on patients' interests in
3 privacy, liberty, dignity, and autonomy protected by the Fifth Amendment.

4 231. There is no legitimate interest supporting the Rule's infringement on patients'
5 fundamental rights, let alone an interest that can survive the elevated scrutiny required to justify
6 infringement of these fundamental rights.

7 **SIXTH COUNT**
8 **(Brought by Plaintiffs Other Than County of Santa Clara)**
9 **U.S. Constitution, First Amendment; Administrative Procedure Act,**
10 **5 U.S.C. § 706(2)(B)**
11 **Free Speech**

12 232. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

13 233. The Denial-of-Care Rule is contrary to constitutional rights, powers, privileges, or
14 immunities and therefore must be set aside under 5 U.S.C. § 706(2)(B).

15 234. A person's disclosure of transgender or gender-nonconforming status, speech, or
16 expression that discloses gender identity, and the person's gendered speech and expressive conduct,
17 all receive constitutional protection under the First Amendment.

18 235. The Rule has the purpose and effect of chilling constitutionally protected First
19 Amendment activity. As a result of the Rule, an increased number of LGBT people will remain
20 closeted in healthcare settings and to doctors, nurses, and other healthcare providers, and will
21 decline to disclose their sexual orientation, transgender or gender-nonconforming status, or gender
22 identities. Further, an increased number of LGBT people will decline to engage in gendered speech
23 and expression, including by declining to disclose related medical histories—even when that self-
24 censorship impedes the ability of their healthcare providers to provide appropriate treatment and
25 results in negative health consequences to the patients and to public health.

26 236. The Rule imposes conditions on funding that invite denials of care to Plaintiffs'
27 patients based on religious or moral objections to these patients' identity or past or present
28 healthcare decisions and needs.

237. The Rule impermissibly chills patients who are seeking medical care from being
open about their reproductive-health histories and needs, including abortion and contraception.

1 238. The Rule will chill a patient of ordinary firmness from making such disclosures.

2 239. The Rule violates the Free Speech Clause of the First Amendment because it
3 impermissibly burdens the exercise of patients' constitutionally protected speech, expression and
4 expressive conduct based on the content and viewpoint of patients' speech.

5 240. Additionally, the Rule is overbroad because it will chill protected First Amendment
6 activity.

7 **SEVENTH COUNT**
8 **(Brought by Plaintiffs Other Than County of Santa Clara)**
9 **U.S.. Constitution, Fifth Amendment; Administrative Procedure Act,**
10 **5 U.S.C. § 706(2)(B)**
11 **Equal Protection**

12 241. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

13 242. The Denial-of-Care Rule is contrary to constitutional rights, powers, privileges, or
14 immunities and therefore must be set aside under 5 U.S.C. § 706(2)(B).

15 243. The Fifth Amendment's Due Process Clause provides that no person shall be
16 deprived of life, liberty, or property without due process of law.

17 244. That Clause includes within it a prohibition against the denial of equal protection of
18 the laws by the federal government, its agencies, or its officials or employees.

19 245. The purpose and effect of the Rule are to discriminate against Plaintiffs' patients
20 based on their sex, gender identity, transgender status, gender nonconformity, and exercise of
21 fundamental rights, including the rights to bodily integrity and autonomous medical decision-
22 making, the rights of access to abortion and contraceptives, and the rights to live and express oneself
23 consistent with one's gender identity.

24 246. Additionally, the purpose of the Rule is to facilitate, authorize, and encourage
25 private discrimination against Plaintiffs' patients on the basis of sex, gender identity, transgender
26 status, gender nonconformity, and exercise of fundamental rights, including the rights to abortion
27 and contraceptives and to live and express oneself consistent with one's gender identity.

28 247. Further, the Rule is intended to have, and will have, a disproportionate impact on
women and transgender people, people who exercise their rights to abortion and contraception, and

1 people who wish to live and express themselves consistent with their gender identity. The Rule
2 places an impermissible special burden on these individuals.

3 248. Discrimination based on sex is presumptively unconstitutional and subject to
4 heightened scrutiny.

5 249. Discrimination based on gender identity or transgender status also is presumptively
6 unconstitutional and subject to heightened scrutiny. Transgender people have suffered a long
7 history of discrimination and continue to suffer that discrimination; they are a discrete and insular
8 group and lack the power to protect their rights through the political process; a person's gender
9 identity or transgender status bears no relation to that person's ability to contribute to society;
10 gender identity is a core, defining trait that is so fundamental to a person's sense of self and
11 personhood that a person cannot be required to abandon it as a condition of equal treatment; and
12 efforts to change a person's gender identity through intervention have been widely condemned.

13 250. Discrimination based on the exercise of a fundamental right is presumptively
14 unconstitutional and is subject to strict scrutiny.

15 251. The Denial-of-Care Rule lacks even a rational or legitimate justification, let alone
16 the important or compelling one that is constitutionally required. The Rule also lacks adequate
17 tailoring under any standard of review.

18 252. Defendants' requirement of disparate treatment of patients and encouragement of
19 private discrimination deprives patients of their right to equal dignity and stigmatizes them as
20 second-class citizens in violation of equal protection.

21 **EIGHTH COUNT**
22 **(Brought only by County of Santa Clara)**
23 **Spending Clause**

24 253. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

25 254. The Denial-of-Care Rule violates the Spending Clause for at least four reasons.

26 (a) First, the Denial-of-Care Rule is vague and ambiguous, and it fails to provide
adequate notice of what conduct by a recipient would result in HSS withholding federal funds.

27 (b) Second, the Rule attaches new, after-the-fact conditions to Santa Clara's
28 receipt of federal funds, in violation of the Spending Clause.

1 (c) Third, the Rule is not rationally related to the federal interest in the particular
2 programs that receive federal funds. *See South Dakota v. Dole*, 483 U.S. 203 (1987); *Massachusetts*
3 *v. United States*, 435 U.S. 444, 461 (1978) (plurality op.) (conditioning federal grants illegitimate
4 if conditions are unrelated “to the federal interest in particular national projects or programs”). The
5 Rule places various federal grants at risk, but there is no rational relationship between the federal
6 religious-objection laws that Defendants seek to enforce and the federal interest in those programs.

7 (d) Fourth, the Rule unconstitutionally attempts to coerce state and local
8 government recipients, such as the County of Santa Clara, to adopt the federal government’s policy
9 by threatening to withhold, terminate, and claw back unprecedented levels of federal funding,
10 whether or not those funds are related to the provision of health care or to the specific violation
11 alleged. Such conditions on federal funding go beyond “relatively mild encouragement” to put a
12 “gun to the head” of public entities, coercing them to adopt federal policy in contravention of the
13 Spending Clause. *See National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 581
14 (2012).

15 **NINTH COUNT**
16 **(Brought only by County of Santa Clara)**
17 **Separation of Powers**

18 255. The Constitution vests the Spending Power in Congress, not in the Executive
19 Branch. U.S. Const. art. I, § 8, cl. 1.

20 256. Congress may delegate some discretion to the Executive Branch to decide how to
21 spend appropriated funds, but that discretion is cabined by the scope of the delegation. *City of*
22 *Arlington, Texas v. FCC*, 569 U.S. 290, 297 (2013).

23 257. The Executive Branch cannot amend or cancel appropriations that Congress has
24 duly enacted. *Clinton v. City of New York*, 524 U.S. 417, 439 (1998); *Train v. City of New York*,
25 420 U.S. 35, 38, 44 (1975).

26 258. The Rule imposes requirements not authorized by the underlying federal statutes
27 and would allow defendants to withhold, deny, suspend, or terminate federal financial assistance
28 for noncompliance with those requirements.

260. Defendants' violation causes ongoing harm to the County of Santa Clara and its residents.

261. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth.

262. The Denial-of-Care Rule will become effective on July 22, 2019, unless it is enjoined. Plaintiffs are entitled to a full, fair, and meaningful process to adjudicate the lawfulness of the Rule before being required to implement its far-reaching and harmful requirements.

263. Plaintiffs will suffer irreparable injury by implementation of the Rule, which would erode hard-won trust between vulnerable populations and their healthcare providers, stigmatize and traumatize patients, interfere with core governmental and medical operations, and result in delays and denials of care leading to physical harm and even death. Preliminary and permanent injunctive relief is therefore needed to ensure that Plaintiffs' injuries are fully remedied.

264. Injunctive relief is also needed to prevent the immediate harm resulting from the uncertainty created by the Rule about the policies and procedures guiding critical medical operations and the conditions being placed on huge swaths of federal funding. On the first day that this Rule takes effect, Plaintiff providers must know how to handle medical emergencies as they happen; they cannot wait to see how HHS chooses to interpret concededly confusing provisions in after-the-fact enforcement actions. The hospitals and clinics that Plaintiffs operate need to know how to staff their facilities, how staff must handle objections when they arise, and whether the providers can rely on continued receipt of federal funding that supports life-saving services. Patients need assurance that they will receive complete, accurate information and timely and responsive medical care in an environment that protects their constitutional rights and does not expose them to stigma and harm. This Court should step in to protect Plaintiffs' institutions, their

patients, and the foremost principle guiding medical providers in responding to those in need of assistance and care—first, do no harm.

265. Accordingly, to ensure that Plaintiffs receive meaningful relief should they prevail in this action, the Court should preliminarily and permanently enjoin Defendants from implementing the Denial-of-Care Rule.

REQUEST FOR RELIEF

Plaintiffs request that the Court grant the following relief:

(a) A declaratory judgment under 28 U.S.C. § 2201(a) and 5 U.S.C. § 706(a) that the Denial-of-Care Rule is unlawful and unconstitutional;

(b) Preliminary and permanent injunctions enjoining Defendants from implementing and enforcing the Denial-of-Care Rule;

(c) Attorneys' fees, costs, and expenses and other disbursements for this action; and

(d) Any further and additional relief that this Court deems just and proper.

Dated: May 28, 2019

Respectfully submitted,

By: /s/ Richard B. Katskee

By: /s/ Mary E. Hanna-Weir

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ADRMOP,APPEAL,CLOSED,RELATE

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:19-cv-02769-WHA**

State of California v. Azar et al
Assigned to: Judge William Alsup
Relate Case Cases: [3:19-cv-02405-WHA](#)
[3:19-cv-02916-WHA](#)
Case in other court: 9th Cirucuit Court of Appeals, 20-16045
Cause: 05:702 Administrative Procedure Act

Date Filed: 05/21/2019
Date Terminated: 05/26/2020
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review
or Appeal of Agency Decision
Jurisdiction: U.S. Government
Defendant

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Date Filed	#	Docket Text
05/21/2019	<u>1</u>	COMPLAINT for Declaratory and Injunctive Relief against Alex M. Azar, U.S. Department of Health and Human Services (Filing fee \$ 400.00, receipt number 0971-13367820.). Filed by State of California. (Attachments: # <u>1</u> Civil Cover Sheet) (Palma, Neli) (Filed on 5/21/2019) Modified on 5/23/2019 (gbaS, COURT STAFF). (Entered: 05/21/2019)
05/21/2019	<u>2</u>	Proposed Summons. (Palma, Neli) (Filed on 5/21/2019) (Entered: 05/21/2019)
05/21/2019	3	Case assigned to Magistrate Judge Joseph C. Spero. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 6/4/2019. (as, COURT STAFF) (Filed on 5/21/2019) (Entered: 05/21/2019)
05/23/2019	<u>4</u>	NOTICE of Appearance by Karli Ann Eisenberg (Eisenberg, Karli) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	<u>5</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 8/16/2019. Initial Case Management Conference set for 8/23/2019 02:00 PM in San Francisco, Courtroom G, 15th Floor. (gbaS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	<u>6</u>	NOTICE of Appearance by Stephanie Tao-Hsin Yu <i>Notice of Appearance of Counsel</i> (Yu, Stephanie) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	<u>7</u>	Summons Issued as to Alex M. Azar, U.S. Department of Health and Human Services. (gbaS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/30/2019	<u>8</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by State of California.. (Palma, Neli) (Filed on 5/30/2019) (Entered: 05/30/2019)
06/03/2019	<u>9</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (klhS, COURT STAFF) (Filed on 6/3/2019) (Entered: 06/03/2019)

06/04/2019	<u>10</u>	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Haywood S Gilliam, Jr for all further proceedings. Magistrate Judge Joseph C. Spero no longer assigned to case. Signed by the Clerk on 6/4/19. (srnS, COURT STAFF) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/04/2019	<u>11</u>	MOTION for Preliminary Injunction filed by State of California. Motion Hearing set for 10/10/2019 02:00 PM in Oakland, Courtroom 2, 4th Floor before Judge Haywood S Gilliam Jr.. Responses due by 6/18/2019. Replies due by 6/25/2019. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration, # <u>3</u> Declaration, # <u>4</u> Declaration, # <u>5</u> Declaration, # <u>6</u> Declaration, # <u>7</u> Declaration, # <u>8</u> Declaration, # <u>9</u> Declaration, # <u>10</u> Declaration, # <u>11</u> Declaration, # <u>12</u> Declaration, # <u>13</u> Declaration, # <u>14</u> Declaration, # <u>15</u> Declaration, # <u>16</u> Declaration, # <u>17</u> Declaration, # <u>18</u> Proposed Order)(Palma, Neli) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/04/2019	<u>12</u>	UNOPPOSED ADMINISTRATIVE MOTION For Leave to Exceed Page Limit For Plaintiff State of California's Motion For Preliminary Injunction filed by State of California. Responses due by 6/10/2019. (Yu, Stephanie) (Filed on 6/4/2019) Modified on 6/5/2019 (ajsS, COURT STAFF). . (Entered: 06/04/2019)
06/04/2019	<u>13</u>	DECLARATION of Stephanie Yu in Support of <u>12</u> ADMINISTRATIVE MOTION Exceed Page Limit For Plaintiff State of California's Motion For Preliminary Injunction filed byState of California. (Related document(s) <u>12</u>) (Yu, Stephanie) (Filed on 6/4/2019) Modified on 6/5/2019 (ajsS, COURT STAFF). (Entered: 06/04/2019)
06/04/2019	<u>14</u>	Proposed Order <i>Granting Unopposed Administrative Motion For Leave to Exceed Page Limit For Plaintiff State of California's Motion For Preliminary Injunction</i> by State of California. (Yu, Stephanie) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/04/2019	<u>15</u>	NOTICE of Appearance by Rebecca M. Kopplin (Kopplin, Rebecca) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/04/2019	<u>16</u>	MOTION to Shorten Time to Hear Plaintiff's Motion for Preliminary Injunction filed by State of California. (Yu, Stephanie) (Filed on 6/4/2019) Modified on 6/5/2019 (ajsS, COURT STAFF). (Entered: 06/04/2019)
06/04/2019	<u>17</u>	Declaration of Stephanie Yu in Support of Plaintiff State of California's Administrative Motion to Shorten Time to Hear Plaintiff's Motion For Preliminary Injunction filed byState of California. (Yu, Stephanie) (Filed on 6/4/2019) Modified on 6/5/2019 (ajsS, COURT STAFF). (Entered: 06/04/2019)
06/04/2019	<u>18</u>	[Proposed] Order Granting Plaintiff State of California's Administrative Motion to Shorten Time to Hear Plaintiff's Motion For Preliminary Injunction by State of California. (Yu, Stephanie) (Filed on 6/4/2019) Modified on 6/5/2019 (ajsS, COURT STAFF). (Entered: 06/04/2019)
06/05/2019	<u>19</u>	

		SUMMONS Returned Executed by State of California. Alex M. Azar served on 5/28/2019, answer due 6/18/2019. (Yu, Stephanie) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	<u>20</u>	SUMMONS Returned Executed by State of California. U.S. Department of Health and Human Services served on 5/28/2019, answer due 6/18/2019. (Yu, Stephanie) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	21	CLERK'S NOTICE SETTING CASE MANAGEMENT CONFERENCE FOR REASSIGNED CIVIL CASE. Notice is hereby given that a Case Management Conference has been set for August 27, 2019, before Judge Haywood S. Gilliam, Jr., at 2:00 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA. Case Management Statement due by August 20, 2019. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . All future filings should reflect the case number as 4:19-cv-02769-HSG. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ndrS, COURT STAFF) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019		<u>Electronic filing error</u> . Incorrect filing procedure regarding <u>12</u> UNOPPOSED ADMINISTRATIVE MOTION For Leave to Exceed Page Limit, <u>13</u> Declaration in Support, <u>14</u> Proposed Order, <u>16</u> MOTION to Shorten Time to Hear Plaintiff's Motion for Preliminary Injunction, <u>17</u> Declaration in Support, and <u>18</u> Proposed Order. When filing a motion, the declaration and proposed order should be attachments to the motion, not filed separately. For future filings, please comply. No further action is necessary. (ajsS, COURT STAFF) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/06/2019	<u>22</u>	NOTICE of Appearance by Benjamin Thomas Takemoto (Takemoto, Benjamin) (Filed on 6/6/2019) (Entered: 06/06/2019)
06/07/2019	<u>23</u>	CERTIFICATE OF SERVICE by State of California (Palma, Neli) (Filed on 6/7/2019) (Entered: 06/07/2019)
06/10/2019	<u>24</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Alex M. Azar, U.S. Department of Health and Human Services.. (Takemoto, Benjamin) (Filed on 6/10/2019) (Entered: 06/10/2019)
06/10/2019		<u>Electronic filing error</u> . No title Page. Certificate of Service e-filed separately and not as an attachment, require a title page. Please refer to Civil Local Rules 3-4 regarding first page requirement. This filing will not be processed by the clerks office. Please re-file in its entirety. Re: <u>23</u> Certificate of Service filed by State of California (ajsS, COURT STAFF) (Filed on 6/10/2019) (Entered: 06/10/2019)
06/11/2019	<u>25</u>	CERTIFICATE OF SERVICE by State of California (Palma, Neli) (Filed on 6/11/2019) (Entered: 06/11/2019)
06/13/2019	<u>26</u>	Order relating Case Numbers C-19-2405 JCS, C-19-02769 HSG and C-19-2916 NC. All three cases shall be randomly assigned to a district judge.

		Signed by Judge Joseph C. Spero on June 13, 2019. (jcs1c1S, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/13/2019	<u>27</u>	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge William Alsup for all further proceedings. Judge Haywood S Gilliam, Jr no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on 6/13/19. (Attachments: # <u>1</u> Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/14/2019	<u>28</u>	ORDER SETTING BRIEFING SCHEDULE ON MOTIONS FOR PROVISIONAL RELIEF AND SETTING HEARING FOR 7/17/2019 08:00 AM. Signed by Judge Alsup on 6/14/2019. (whalc1, COURT STAFF) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/14/2019	29	CLERK'S NOTICE SCHEDULING CMC ON REASSIGNMENT: Case Management Statement due by 7/10/2019. Initial Case Management Conference set for 7/17/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor. Standing orders can be downloaded from the Court's web page at www.cand.uscourts.gov/whaorders . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/19/2019	<u>30</u>	CERTIFICATE OF SERVICE by State of California (Palma, Neli) (Filed on 6/19/2019) (Entered: 06/19/2019)
06/21/2019	<u>31</u>	Consent MOTION to File Amicus Curiae Brief filed by Institute for Policy Integrity. Responses due by 7/5/2019. Replies due by 7/12/2019. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Grab, Denise) (Filed on 6/21/2019) (Entered: 06/21/2019)
06/21/2019	<u>32</u>	NOTICE of Appearance by Denise Antonia Grab (Grab, Denise) (Filed on 6/21/2019) (Entered: 06/21/2019)
06/24/2019	<u>33</u>	ORDER GRANTING MOTION TO FILE AMICUS CURIAE by Judge William Alsup (granting (41) in case 3:19-cv-02405-WHA, granting (31) in case 3:19-cv-02769-WHA, and granting (42) in case 3:19-cv-02405-WHA). (whalc1, COURT STAFF) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/25/2019	<u>34</u>	ADMINISTRATIVE MOTION to Establish a Summary Judgment Briefing Schedule or, in the Alternative, to Enlarge Time to File Preliminary Injunction Opposition filed by Alex M. Azar, U.S. Department of Health and Human Services. Responses due by 7/1/2019. (Attachments: # <u>1</u> Declaration Takemoto, # <u>2</u> Proposed Order)(Takemoto, Benjamin) (Filed on 6/25/2019) (Entered: 06/25/2019)
06/26/2019	<u>35</u>	OPPOSITION/RESPONSE (re <u>34</u> ADMINISTRATIVE MOTION to Establish a Summary Judgment Briefing Schedule or, in the Alternative, to Enlarge Time to File Preliminary Injunction Opposition) filed byState of California. (Attachments: # <u>1</u> Declaration of Neli Palma, # <u>2</u> Proposed Order Denying Admin Mot)(Palma, Neli) (Filed on 6/26/2019) (Entered: 06/26/2019)

06/27/2019	36	ORDER RE ADMINISTRATIVE MOTION TO ADJUST SCHEDULE (denying (50) in case 3:19-cv-02405-WHA; denying (34) in case 3:19-cv-02769-WHA; denying (45) in case 3:19-cv-02916-WHA) by Judge Alsup. (whalc1, COURT STAFF) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/27/2019	37	ADR Clerks Notice re: Non-Compliance with Court Order. The parties have failed to file an ADR Certification as required by the Initial Case Management Scheduling Order. Counsel shall comply promptly with the requirements of ADR L.R. 3-5(b) and shall file the ADR Certification. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cmfS, COURT STAFF) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/27/2019	38	ADMINISTRATIVE MOTION (Unopposed) to Enlarge Time to File Response to the Complaint filed by Alex M. Azar, U.S. Department of Health and Human Services. Responses due by 7/1/2019. (Attachments: # 1 Declaration Takemoto, # 2 Proposed Order)(Takemoto, Benjamin) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/28/2019	39	ORDER GRANTING 38 ADMINISTRATIVE MOTION TO ENLARGE TIME by Judge William Alsup. (whalc1, COURT STAFF) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	40	ORDER GRANTING (57) ADMINISTRATIVE MOTION TO ENLARGE PAGE LIMIT by Judge William Alsup in case 3:19-cv-02405-WHA. Associated Cases: 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/29/2019	41	ORDER RE (64) STIPULATED REQUEST by Judge William Alsup in case 3:19-cv-02405-WHA. Associated Cases: 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 6/29/2019) (Entered: 06/29/2019)
07/01/2019	42	ORDER RE STIPULATED REQUEST AND BRIEFING SCHEDULE. Signed by Judge Alsup on 7/1/2019. (whalc1, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/01/2019		Set/Reset Hearing re (51 in 3:19-cv-02916-WHA) Order: Preliminary Injunction Hearing and Initial Case Management Conference VACATED (tlhS, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/01/2019	43	STIPULATION WITH PROPOSED ORDER <i>JOINT ADMINISTRATIVE MOTION FOR RELIEF FROM AUTOMATIC REFERRAL TO THE ADR MULTI-OPTION PROGRAM</i> filed by State of California, Alex M. Azar, U.S. Department of Health and Human Services and Institute for Policy Integrity. (Attachments: # 1 Proposed Order Granting Joint Admin. Motion)(Palma, Neli) (Filed on 7/1/2019) Modified on 7/2/2019 (amgS, COURT STAFF). (Entered: 07/01/2019)
07/08/2019	44	ORDER GRANTING 43 STIPULATED REQUEST FOR RELIEF FROM AUTOMATIC REFERRAL TO THE ADR MULTI-OPTION PROGRAM by Judge William Alsup. (whalc1, COURT STAFF) (Filed on 7/8/2019) (Entered: 07/08/2019)

07/22/2019	47	ORDER AS MODIFIED RE (70) PRIVACY ACT MOTION. Associated Cases: 3:19-cv-02405-WHA, 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/22/2019	48	ORDER AS MODIFIED RE (69) ADMINISTRATIVE MOTION TO ENLARGE TIME by Judge William Alsup. Associated Cases: 3:19-cv-02405-WHA, 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/23/2019	49	Received Document Administrative record re (73 in 3:19-cv-02405-WHA) Notice (Other),. (amgS, COURT STAFF) (Filed on 7/23/2019) (Entered: 07/23/2019)
07/24/2019	50	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13547813.) filed by American College of Obstetricians and Gynecologists. (Attachments: # 1 Certificate of Good Standing)(Moody, Anna) (Filed on 7/24/2019) (Entered: 07/24/2019)
07/24/2019	51	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13547861.) filed by American College of Obstetricians and Gynecologists. (Attachments: # 1 Certificate of Good Standing)(Selden, Shannon) (Filed on 7/24/2019) (Entered: 07/24/2019)
07/29/2019	52	ANSWER to Complaint <i>re Plaintiff's FOIA Claims</i> by Alex M. Azar, U.S. Department of Health and Human Services. (Takemoto, Benjamin) (Filed on 7/29/2019) Modified on 7/30/2019 (amgS, COURT STAFF). (Entered: 07/29/2019)
08/16/2019	53	Letter from State of California <i>re Administrative Record</i> . (Palma, Neli) (Filed on 8/16/2019) (Entered: 08/16/2019)
08/21/2019	54	MOTION to Dismiss <i>or, in the alternative</i> , MOTION for Summary Judgment filed by Alex M. Azar, U.S. Department of Health and Human Services. Motion Hearing set for 10/30/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 9/12/2019. Replies due by 9/26/2019. (Takemoto, Benjamin) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/21/2019	55	ORDER RE BRIEFING. Signed by Judge Alsup on 8/21/2019. (whalc1, COURT STAFF) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/29/2019	56	Joint Proposal re 55 Order <i>re Briefing</i> by State of California, Alex M. Azar and U.S. Department of Health and Human Services. (Palma, Neli) (Filed on 8/29/2019) Modified on 8/30/2019 (amgS, COURT STAFF). Modified on 8/30/2019 (amgS, COURT STAFF). (Entered: 08/29/2019)
09/09/2019	57	Appendix <i>in Support of Plaintiffs Motion for Summary Judgment and in Opposition to Defendants' Motion to Dismiss or, in the Alternative, For Summary Judgment</i> filed by State of California. (Attachments: # 1 Exhibit Exhibits 1-40, # 2 Exhibits 41-95, # 3 Exhibits 96-105 (part 1 of 2), # 4 Exhibits 105 (part 2 of 2)-115, # 5 Exhibits 116-145, # 6 Exhibits 146-185, # 7 Exhibits 186-305, # 8 Exhibit 306, # 9 Exhibits 307-373, # 10 Exhibit 374 (part 1 of 4), # 11 Exhibit 374 (part 2 of 4), # 12 Exhibit 374 (part 3 of 4), # 13

		Exhibit 374 (part 4 of 4), # 14 Exhibit 375-397, # 15 Exhibit 398-400, # 16 Exhibit 401-405)(Palma, Neli) (Filed on 9/9/2019) Modified on 9/10/2019 (mclS, COURT STAFF). (Entered: 09/09/2019)
09/12/2019	58	Declaration of David H. Aizuss <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	59	Declaration of Lois Backus, M.P.H. <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	60	Declaration of Elizabeth Barnes <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	61	Declaration of Robert Bolan, M.D., <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	62	Declaration of Dr. Brad Buchman <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	63	Declaration of Julie Burkhart <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	64	Declaration of Mari Cantwell <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	65	Declaration of Ward Carpenter, M.D., <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	66	Declaration of Pete Cervinka <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	67	Declaration of Randie C. Chance <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)

09/12/2019	<u>68</u>	Declaration of Wendy Chavkin, M.D., <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>69</u>	Declaration of Dr. Alice Chen <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>70</u>	Declaration of Sara H. Cody, M.D., <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>71</u>	Declaration of Dr. Grant Colfax <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>72</u>	Declaration of Dr. Christopher Colwell <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>73</u>	Declaration of Darrel Cummings <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>74</u>	Declaration of Dr. Eleanor Drey <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>75</u>	Declaration of Dr. Randi C. Ettner <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>76</u>	Declaration of Mark Ghaly <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>77</u>	Declaration of Debra Halladay <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>78</u>	Declaration of Mary E. Hanna-Weir <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion</i>

		<i>to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>79</u>	Declaration of Roy Harker <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>80</u>	Declaration of Dr. Jeanne Harris-Caldwell <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>81</u>	Declaration of Sarah Henn,M.D., <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>82</u>	Declaration of Bruce Hinze <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>83</u>	Declaration of Kevin Kish <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>84</u>	Declaration of Ricardo Lara <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>85</u>	Declaration of Paul E. Lorenz <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>86</u>	Declaration of Alecia Manley <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>87</u>	Declaration of Colleen P. McNicholas, D.O. <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>88</u>	Declaration of Ken Miller <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)

09/12/2019	<u>89</u>	Declaration of Joseph Morris <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>90</u>	Declaration of Brandon Nunes <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>91</u>	Declaration of Neli N. Palma <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>92</u>	Declaration of Seth Pardo <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>93</u>	Declaration of Frances Parmalee <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>94</u>	Declaration of Rachel Phelps, M.D., <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>95</u>	Declaration of Denise Pines <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>96</u>	Declaration of Stirling Price <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>97</u>	Declaration of Randy Pumphrey <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>98</u>	Declaration of Ben Rosenfield <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>99</u>	Declaration of Naseema Shafi <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to</i>

		<i>Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>100</u>	<i>Declaration of Adrian Shanker in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>101</u>	<i>Declaration of Christine Siador in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>102</u>	<i>Declaration of Narinder Singh in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>103</u>	<i>Declaration of Jill Sproul in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>104</u>	<i>Declaration of Jay Sturges in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>105</u>	<i>Declaration of Diana Toche in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>106</u>	<i>Declaration of Toni Tullys in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>107</u>	<i>Declaration of Modesto Valle in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>108</u>	<i>Declaration of Hector Vargas in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>109</u>	<i>Declaration of Greg Wagner in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed byState of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)

09/12/2019	110	Declaration of Ron Weigelt <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed by State of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	111	Declaration of Christopher M. Zahn <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed by State of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	112	Declaration of Barry Zevin <i>in Support of Plaintiff's Motion for Summary Judgment and in Support of Their Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed by State of California. (Palma, Neli) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	113	MOTION for Summary Judgment <i>and Opposition to 54 Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i> filed by State of California. Motion Hearing set for 10/30/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 9/26/2019. Replies due by 10/10/2019. (Attachments: # 1 Requet for Judicial Notice, # 2 Proposed Order, # 3 Certificate/Proof of Service)(Palma, Neli) (Filed on 9/12/2019) Modified on 9/13/2019 (mclS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	114	NOTICE of Appearance by Susan Baker Manning (Manning, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	115	MOTION for Leave to File <i>Brief as Amici Curiae</i> filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBTQ Task Force, The National LGBT Cancer Network. (Attachments: # 1 Brief in Support of Plaintiff's Motion For Summary Judgment, # 2 Proposed Order)(Manning, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	116	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698329.) filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBTQ Task Force, The National LGBT Cancer Network. (Attachments: # 1 Certificate of Good Standing)(Edens, Geraldine) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	117	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698396.) filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBTQ Task Force, The National LGBT Cancer Network. (Attachments: # 1 Certificate of Good Standing)(Harris, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/18/2019	118	NOTICE by State of California <i>of Recent Decision</i> (Palma, Neli) (Filed on 9/18/2019) (Entered: 09/18/2019)
09/19/2019	119	

		ORDER by Judge William Alsup denying 50 Motion for Pro Hac Vice as to attorney Anna A. Moody. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	120	ORDER by Judge William Alsup denying 51 Motion for Pro Hac Vice as to attorney Shannon R. Selden. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	121	ORDER GRANTING 115 Motion for Leave to File Brief as Amici Curiae BY CALLEN LORDE COMMUNITY HEALTH CENTER, CARE RESOURCE COMMUNITY HEALTH CENTERS, INC., HOWARD BROWN HEALTH, LEGACY COMMUNITY HEALTH SERVICES, INC., NATIONAL LGBTQ TASK FORCE, AND THE NATIONAL LGBT CANCER NETWORK by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	122	ORDER by Judge William Alsup denying 116 Motion for Pro Hac Vice as to attorney Geraldine E. Edens. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	123	ORDER by Judge William Alsup denying 117 Motion for Pro Hac Vice as to attorney Susan Feigin Harris. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/20/2019	124	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698396.) Filing fee previously paid on 9/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBTQ Task Force, The National LGBT Cancer Network. (Attachments: # 1 Certificate of Good Standing)(Harris, Susan) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	125	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698329.) Filing fee previously paid on 9/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBTQ Task Force, The National LGBT Cancer Network. (Attachments: # 1 Certificate of Good Standing)(Edens, Geraldine) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	126	ORDER by Judge William Alsup granting 124 Motion for Pro Hac Vice as to attorney Susan Feigin Harris. (tlhS, COURT STAFF) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	127	ORDER by Judge William Alsup granting 125 Motion for Pro Hac Vice as to attorney Geraldine E. Edens. (tlhS, COURT STAFF) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/24/2019	128	NOTICE RE BRIEFING. Signed by Judge Alsup on 9/24/2019. (whalc1, COURT STAFF) (Filed on 9/24/2019) (Entered: 09/24/2019)
09/24/2019	129	NOTICE by State of California re 113 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or, in the Alternative, for</i>

		<i>Summary Judgment. Notice of Errata Re: Dkt. No. 113</i> (Palma, Neli) (Filed on 9/24/2019) (Entered: 09/24/2019)
10/10/2019	130	REPLY (re 113 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.</i>) filed by State of California. (Attachments: # 1 Request for Judicial Notice, # 2 Supplemental Appendix, # 3 Declaration of Neli N. Palma, # 4 Declaration of Randi C.Ettner)(Palma, Neli) (Filed on 10/10/2019) (Entered: 10/10/2019)
10/24/2019	131	NOTICE by State of California of <i>Recent Decision</i> (Palma, Neli) (Filed on 10/24/2019) (Entered: 10/24/2019)
10/29/2019	132	NOTICE RE ORAL ARGUMENT. Signed by Judge Alsup on 10/29/2019. (whalc1, COURT STAFF) (Filed on 10/29/2019) (Entered: 10/29/2019)
10/29/2019	133	ADMINISTRATIVE MOTION For Leave to File a Supplementary Request for Judicial Notice filed by State of California. Responses due by 11/4/2019. (Attachments: # 1 Exhibit Exhibit A, # 2 Declaration Karli Eisenberg, # 3 Proposed Order)(Eisenberg, Karli) (Filed on 10/29/2019) (Entered: 10/29/2019)
10/29/2019	134	OPPOSITION/RESPONSE (re 133 ADMINISTRATIVE MOTION For Leave to File a Supplementary Request for Judicial Notice) filed by Alex M. Azar, U.S. Department of Health and Human Services. (Attachments: # 1 Proposed Order)(Kopplin, Rebecca) (Filed on 10/29/2019) (Entered: 10/29/2019)
10/30/2019	135	Minute Entry for proceedings held before Judge William Alsup: Motion Hearing re (89 in 3:19-cv-02405-WHA) MOTION to Dismiss or, in the alternative MOTION for Summary Judgment, (54 in 3:19-cv-02769-WHA) MOTION to Dismiss or, in the alternative MOTION for Summary Judgment, (113 in 3:19-cv-02769-WHA) MOTION for Summary Judgment, (64 in 3:19-cv-02916-WHA) MOTION to Dismiss or, in the alternative MOTION for Summary Judgment. Matter taken under submission. Court to issue written order. (Total Time in Court: 3 hours 52 minutes.) Court Reporter: Debra Pas. Plaintiff Attorney: Jaime Delaye, Sara Eisenberg (C19-2405 City and County of San Francisco v. Azar II et al); Neli Palma, Stephanie Yu (C19-2769 State of CA v. Azar et al); Miriam Nemetz, Mary Hanna-Weir, Richard Katskee, Laura Trice, Camilla Taylor, Jamie Gliksberg, Genevieve Scott, Susan Greenberg (C19-2916 County of Santa Clara et al v. USDHHS et al). Defendant Attorney: Benjamin Takemoto, Vinita Andrapalliyal. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Date Filed: 10/30/2019) (Entered: 10/30/2019)
10/31/2019	136	TRANSCRIPT ORDER for proceedings held on 10/30/2019 before Judge William Alsup by State of California, for Court Reporter Debra Pas. (Palma, Neli) (Filed on 10/31/2019) (Entered: 10/31/2019)

10/31/2019	137	Letter from State of California <i>Re Possible Stipulation</i> . (Palma, Neli) (Filed on 10/31/2019) (Entered: 10/31/2019)
11/06/2019	138	NOTICE by State of California <i>OF RECENT DECISION</i> (Palma, Neli) (Filed on 11/6/2019) (Entered: 11/06/2019)
11/06/2019	139	Transcript of Proceedings held on 10-30-2018, before Judge William H. Alsup. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: Debra_Pas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (136 in 3:19-cv-02769-WHA) Transcript Order, (141 in 3:19-cv-02405-WHA) Transcript Order) Release of Transcript Restriction set for 2/4/2020. (pasdl50S, COURT STAFF) (Filed on 11/6/2019) (Entered: 11/06/2019)
11/07/2019	140	NOTICE by State of California <i>of Recent Decision</i> (Palma, Neli) (Filed on 11/7/2019) (Entered: 11/07/2019)
11/08/2019	141	ORDER RE USE OF TERM "ENTITY". Signed by Judge Alsup on 11/8/2019. (whalc1, COURT STAFF) (Filed on 11/8/2019) (Entered: 11/08/2019)
11/12/2019	142	RESPONSE re 141 Order <i>Re Use of Term "Entity"</i> by State of California. (Palma, Neli) (Filed on 11/12/2019) (Entered: 11/12/2019)
11/19/2019	143	ORDER RE MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT AND REQUESTS FOR JUDICIAL NOTICE by Judge William Alsup. (Related documents(s): (14) (89) MOTION in case 3:19-cv-02405-WHA; 11 12 54 113 133 MOTION in case 3:19-cv-02769-WHA; (36) (64) MOTION in case 3:19-cv-02916-WHA) (tlhS, COURT STAFF) (Filed on 11/19/2019) Modified on 11/19/2019 (tlhS, COURT STAFF). (Entered: 11/19/2019)
01/08/2020	144	MOTION for Entry of Judgment under Rule 54(b) filed by State of California. Motion Hearing set for 2/13/2020 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 1/22/2020. Replies due by 1/29/2020. (Attachments: # 1 Declaration Declaration of Neli Palma, # 2 Proposed Order Proposed Order)(Palma, Neli) (Filed on 1/8/2020) (Entered: 01/08/2020)
01/22/2020	145	OPPOSITION/RESPONSE (re 144 MOTION for Entry of Judgment under Rule 54(b)) filed by Alex M. Azar, U.S. Department of Health and Human Services. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Kopplin, Rebecca) (Filed on 1/22/2020) (Entered: 01/22/2020)
01/29/2020	146	

		REPLY (re 144 MOTION for Entry of Judgment under Rule 54(b)) filed byState of California. (Attachments: # 1 Declaration of Neli Palma)(Palma, Neli) (Filed on 1/29/2020) (Entered: 01/29/2020)
02/13/2020	147	Minute Entry for proceedings held before Judge William Alsup: Motion Hearing re 144 MOTION for Entry of Judgment under Rule 54(b) held on 2/13/2020. Simultaneous supplemental briefing (maximum 5 pages) due by 2/20/2020 at Noon. (Total Time in Court: 36 minutes.) Court Reporter: JoAnn Bryce. Plaintiff Attorney: Neli Palma. Defendant Attorney: Benjamin Takemoto. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Date Filed: 2/13/2020) (Entered: 02/13/2020)
02/13/2020	148	TRANSCRIPT ORDER for proceedings held on 2/13/20 before Judge William Alsup by Alex M. Azar, U.S. Department of Health and Human Services, for Court Reporter Jo Ann Bryce. (Takemoto, Benjamin) (Filed on 2/13/2020) (Entered: 02/13/2020)
02/14/2020	149	TRANSCRIPT ORDER for proceedings held on 02/13/2020 before Judge William Alsup by State of California, for Court Reporter Jo Ann Bryce. (Palma, Neli) (Filed on 2/14/2020) (Entered: 02/14/2020)
02/14/2020	150	Transcript of Proceedings held on 2/13/20, before Judge William H. Alsup. Court Reporter Jo Ann Bryce, telephone number 510-910-5888, joann_bryce@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction after 90 days. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 148 Transcript Order) Release of Transcript Restriction set for 5/14/2020. (Related documents(s) 148) (jabS, COURTSTAFF) (Filed on 2/14/2020) (Entered: 02/14/2020)
02/20/2020	151	REPLY (re 144 MOTION for Entry of Judgment under Rule 54(b)) <i>Supplemental Brief in Support of Plaintiff State of California's Motion for Entry of Partial Final Judgment under Rule 54(b)</i> filed byState of California. (Palma, Neli) (Filed on 2/20/2020) (Entered: 02/20/2020)
02/20/2020	152	Supplemental Brief re 144 MOTION for Entry of Judgment under Rule 54(b) filed byAlex M. Azar, U.S. Department of Health and Human Services. (Related document(s) 144) (Takemoto, Benjamin) (Filed on 2/20/2020) (Entered: 02/20/2020)
03/20/2020	153	ORDER RE 144 MOTION FOR ENTRY OF PARTIAL FINAL JUDGMENT UNDER RULE 54(B) by Judge Alsup. (whalc1, COURT STAFF) (Filed on 3/20/2020) (Entered: 03/20/2020)
05/26/2020	154	

		STIPULATION <i>for Dismissal of Claim with Prejudice</i> filed by State of California. (Palma, Neli) (Filed on 5/26/2020) (Entered: 05/26/2020)
05/26/2020	155	Proposed Order <i>Final Judgment</i> by State of California. (Palma, Neli) (Filed on 5/26/2020) (Entered: 05/26/2020)
05/26/2020	156	FINAL JUDGMENT. Signed by Judge Alsup on 5/26/2020. (whalc1, COURT STAFF) (Filed on 5/26/2020) (Entered: 05/26/2020)
05/29/2020	157	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Alex M. Azar, U.S. Department of Health and Human Services. (Appeal fee FEE WAIVED.) (Takemoto, Benjamin) (Filed on 5/29/2020) (Entered: 05/29/2020)
05/29/2020	158	USCA Case Number 20-16045 9th Circuit Court of Appeals for 157 Notice of Appeal filed by Alex M. Azar, U.S. Department of Health and Human Services. (msrS, COURT STAFF) (Filed on 5/29/2020) (Entered: 05/29/2020)
05/30/2020	159	Transcript Designation Form for proceedings held on October 30, 2019 and February 13, 2020 before Judge Alsup, (Takemoto, Benjamin) (Filed on 5/30/2020) (Entered: 05/30/2020)

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06/08/2020 20:03:41			
PACER Login:	loverbold:5962366:4299065	Client Code:	
Description:	Docket Report	Search Criteria:	3:19-cv-02769-WHA
Billable Pages:	17	Cost:	1.70

ADRMOP,APPEAL,CONSENT,RELATE

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:19-cv-02405-WHA**

City and County of San Francisco v. Azar II et al

Assigned to: Judge William Alsup

Relate Case Cases: [3:19-cv-02769-WHA](#)
[3:19-cv-02916-WHA](#)

Case in other court: **20-15398**

Cause: 46:1156 Administrative Procedure Act

Date Filed: 05/02/2019

Jury Demand: None

Nature of Suit: 899 Other Statutes:

Administrative Procedures Act/Review
or Appeal of Agency Decision

Jurisdiction: U.S. Government

Defendant

Plaintiff

City and County of San Francisco

represented by **Dennis J. Herrera**

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V.

Defendant

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Defendant

Roger Severino
*Director, Office for Civil Rights,
Department of Health and Human
Services*

represented by **Benjamin Thomas Takemoto**
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Defendant

**U.S. Department of Health and
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Defendant

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Date Filed	#	Docket Text
05/02/2019	<u>1</u>	COMPLAINT for Declaratory and Injunctive Relief against Alex M. Azar II, Roger Severino, U.S. Department of Health and Human Services (Filing fee \$ 400.00, receipt number 0971-13312627.). Filed by City and County of San Francisco. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet) (Herrera, Dennis) (Filed on 5/2/2019) Modified on 5/8/2019 (gbaS, COURT STAFF). (Entered: 05/02/2019)
05/02/2019	<u>2</u>	Proposed Summons. (Herrera, Dennis) (Filed on 5/2/2019) (Entered: 05/02/2019)

05/02/2019	<u>3</u>	Case assigned to Magistrate Judge Joseph C. Spero. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 5/16/2019. (srnS, COURT STAFF) (Filed on 5/2/2019) (Entered: 05/02/2019)
05/03/2019	<u>4</u>	NOTICE of Appearance of Counsel by Ronald P. Flynn (Flynn, Ronald) (Filed on 5/3/2019) Modified on 5/8/2019 (gbaS, COURT STAFF). (Entered: 05/03/2019)
05/03/2019	<u>5</u>	NOTICE of Appearance of Counsel by Sara Jennifer Eisenberg (Eisenberg, Sara) (Filed on 5/3/2019) Modified on 5/8/2019 (gbaS, COURT STAFF). (Entered: 05/03/2019)
05/03/2019	<u>6</u>	NOTICE of Appearance of Counsel by Jaime Marie Huling Delaye (Huling Delaye, Jaime) (Filed on 5/3/2019) Modified on 5/8/2019 (gbaS, COURT STAFF). (Entered: 05/03/2019)
05/03/2019	<u>7</u>	NOTICE of Appearance of Counsel by Yvonne Rosil Mere (Mere, Yvonne) (Filed on 5/3/2019) Modified on 5/8/2019 (gbaS, COURT STAFF). (Entered: 05/03/2019)
05/08/2019	<u>8</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 7/26/2019. Initial Case Management Conference set for 8/2/2019 02:00 PM in San Francisco, Courtroom G, 15th Floor. (gbaS, COURT STAFF) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/08/2019	<u>9</u>	Summons Issued as to Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. (gbaS, COURT STAFF) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/09/2019	<u>10</u>	CERTIFICATE OF SERVICE by City and County of San Francisco <i>Proof of Service</i> (Eisenberg, Sara) (Filed on 5/9/2019) (Entered: 05/09/2019)
05/14/2019	<u>11</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by City and County of San Francisco.. (Eisenberg, Sara) (Filed on 5/14/2019) (Entered: 05/14/2019)
05/14/2019	<u>12</u>	CERTIFICATE OF SERVICE by City and County of San Francisco re <u>11</u> Consent/Declination to Proceed Before a US Magistrate Judge <i>Proof of Service</i> (Eisenberg, Sara) (Filed on 5/14/2019) (Entered: 05/14/2019)

06/03/2019	<u>13</u>	MOTION to Relate Case filed by State of California, by and through Attorney General Xavier Becerra. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Declaration, # <u>3</u> Certificate/Proof of Service)(Boergers, Kathleen) (Filed on 6/3/2019) Modified on 6/8/2019 (gbaS, COURT STAFF). (Entered: 06/03/2019)
06/03/2019	<u>14</u>	MOTION for Preliminary Injunction filed by City and County of San Francisco. Motion Hearing set for 7/12/2019 10:30 AM in San Francisco, Courtroom G, 15th Floor before Magistrate Judge Joseph C. Spero. Responses due by 6/17/2019. Replies due by 6/24/2019. (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>15</u>	Declaration of Dr. Grant Colfax in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>16</u>	Declaration of Ben Rosenfield in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>17</u>	Declaration of Dr. Christopher Colwell in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>18</u>	Declaration of Dr. Alice Chen in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>19</u>	Declaration of Dr. Eleanor Drey in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>20</u>	Declaration of Shivaun Nestor in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>21</u>	Declaration of Christine Siador in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>22</u>	Declaration of Greg Wagner in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>23</u>	Declaration of Ron Weigelt in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>24</u>	Declaration of Seth Pardo in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	<u>25</u>	Declaration of Dr. Barry Zevin in Support of <u>14</u> MOTION for Preliminary Injunction filed by City and County of San Francisco. (Related document(s) <u>14</u>) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)

06/03/2019	26	Request for Judicial Notice re 14 MOTION for Preliminary Injunction filed by City and County of San Francisco. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N)(Related document(s) 14) (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/03/2019	27	Proposed Order re 14 MOTION for Preliminary Injunction by City and County of San Francisco. (Eisenberg, Sara) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/04/2019	28	CERTIFICATE OF SERVICE by City and County of San Francisco re 25 Declaration in Support, 24 Declaration in Support, 20 Declaration in Support, 26 Request for Judicial Notice, 16 Declaration in Support, 18 Declaration in Support, 15 Declaration in Support, 19 Declaration in Support, 27 Proposed Order, 22 Declaration in Support, 14 MOTION for Preliminary Injunction , 21 Declaration in Support, 23 Declaration in Support, 17 Declaration in Support (Eisenberg, Sara) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/04/2019	29	CLERK'S NOTICE Re: Consent or Declination: All Defendants shall file a consent or declination to proceed before a magistrate judge. Note that any party is free to withhold consent to proceed before a magistrate judge without adverse substantive consequences. The forms are available at: http://cand.uscourts.gov/civilforms . (Party/parties were also notified via telephone or email.) Consent/Declination due by 6/11/2019. (klhS, COURT STAFF) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/04/2019	30	NOTICE by County of Santa Clara re 13 MOTION to Relate Case Notice of Agreement of the Plaintiffs in the County of Santa Clara Case to California's Administrative Motion to Consider Whether Cases Should be Related (Rubin, Lee) (Filed on 6/4/2019) Modified on 6/8/2019 (gbaS, COURT STAFF). (Entered: 06/04/2019)
06/07/2019	31	NOTICE of Appearance by Rebecca M. Kopplin (Kopplin, Rebecca) (Filed on 6/7/2019) (Entered: 06/07/2019)
06/07/2019	32	OPPOSITION/RESPONSE (re 13 MOTION to Relate Case <i>TO CONSIDER WHETHER CASES SHOULD BE RELATED</i>) filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. (Kopplin, Rebecca) (Filed on 6/7/2019) (Entered: 06/07/2019)
06/07/2019	33	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services.. (Kopplin, Rebecca) (Filed on 6/7/2019) (Entered: 06/07/2019)
06/10/2019	34	CERTIFICATE OF SERVICE by City and County of San Francisco <i>SUPPLEMENTAL PROOF OF SERVICE</i> (Eisenberg, Sara) (Filed on 6/10/2019) (Entered: 06/10/2019)
06/11/2019	35	NOTICE of Appearance by Benjamin Thomas Takemoto (Takemoto, Benjamin) (Filed on 6/11/2019) (Entered: 06/11/2019)
06/12/2019	36	ADMINISTRATIVE MOTION Extend Time for Defendants to Respond to Plaintiff's Motion for a Preliminary Injunction filed by Alex M. Azar, II, Roger

		Severino, U.S. Department of Health and Human Services. Responses due by 6/17/2019. (Attachments: # 1 Declaration, # 2 Proposed Order)(Kopplin, Rebecca) (Filed on 6/12/2019) (Entered: 06/12/2019)
06/13/2019	37	ORDER by Judge Joseph C. Spero granting 13 Motion to Relate Case, relating this case to State of California v. Azar, et al., Case No. 3:19-cv-02769 HSG and County of Santa Clara et al. v. U.S Dept of Health and Human Svcs., et al., Case No. 5:19-cv-2916 NC. The Clerk is instructed to reassign all three of the related case to a randomly assigned district judge. (jcs1S, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/13/2019	38	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge William Alsup for all further proceedings. Magistrate Judge Joseph C. Spero no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on 6/13/19. (Attachments: # 1 Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/14/2019	39	ORDER SETTING BRIEFING SCHEDULE ON MOTIONS FOR PROVISIONAL RELIEF AND SETTING HEARING FOR 7/17/2019 08:00 AM. Signed by Judge Alsup on 6/14/2019. (whalc1, COURT STAFF) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/14/2019	40	CLERK'S NOTICE SCHEDULING CMC ON REASSIGNMENT: Case Management Statement due by 7/10/2019. Initial Case Management Conference set for 7/17/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor. Standing orders can be downloaded from the Court's web page at www.cand.uscourts.gov/whaorders . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/21/2019	41	Consent MOTION to File Amicus Curiae Brief filed by Institute for Policy Integrity. Responses due by 7/5/2019. Replies due by 7/12/2019. (Attachments: # 1 Exhibit Proposed Amicus Brief, # 2 Proposed Order)(Grab, Denise) (Filed on 6/21/2019) (Entered: 06/21/2019)
06/21/2019	42	NOTICE of Appearance by Denise Antonia Grab (Grab, Denise) (Filed on 6/21/2019) (Entered: 06/21/2019)
06/22/2019	43	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13460210.) filed by Institute for Policy Integrity. (Attachments: # 1 Certificate of good standing)(Gundlach, Justin) (Filed on 6/22/2019) (Entered: 06/22/2019)
06/24/2019	44	ORDER GRANTING MOTION TO FILE AMICUS CURIAE by Judge William Alsup (granting (41) in case 3:19-cv-02405-WHA, granting (31) in case 3:19-cv-02769-WHA, and granting (42) in case 3:19-cv-02405-WHA). (whalc1, COURT STAFF) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/24/2019	45	

		ORDER by Judge William Alsup denying 43 Motion for Pro Hac Vice as to attorney Justin Gundlach. (tlhS, COURT STAFF) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/24/2019	46	Second MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13460210.) Filing fee previously paid on 6/22/2019 filed by Institute for Policy Integrity. (Attachments: # 1 Certificate of good standing)(Gundlach, Justin) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/24/2019	47	ORDER by Judge William Alsup granting 46 Motion for Pro Hac Vice as to attorney Justin Gundlach. (tlhS, COURT STAFF) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/25/2019	48	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13464831.) filed by Institute for Policy Integrity. (Attachments: # 1 Exhibit Certificate of Good Standing)(Lienke, Jack) (Filed on 6/25/2019) (Entered: 06/25/2019)
06/25/2019	49	ORDER by Judge William Alsup granting 48 Motion for Pro Hac Vice as to attorney Jack Lienke. (tlhS, COURT STAFF) (Filed on 6/25/2019) (Entered: 06/25/2019)
06/25/2019	50	ADMINISTRATIVE MOTION to Establish a Summary Judgment Briefing Schedule or, in the Alternative, to Enlarge Time to File Preliminary Injunction Opposition filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. Responses due by 7/1/2019. (Attachments: # 1 Declaration Takemoto, # 2 Proposed Order)(Takemoto, Benjamin) (Filed on 6/25/2019) (Entered: 06/25/2019)
06/26/2019	51	OPPOSITION/RESPONSE (re 50 ADMINISTRATIVE MOTION to Establish a Summary Judgment Briefing Schedule or, in the Alternative, to Enlarge Time to File Preliminary Injunction Opposition) filed byCity and County of San Francisco. (Huling Delaye, Jaime) (Filed on 6/26/2019) (Entered: 06/26/2019)
06/26/2019	52	Declaration of Sara J. Eisenberg in Support of 51 Opposition/Response to Motion, <i>Declaration of Sara J. Eisenberg in Support of Plaintiff City and County of San Francisco's Opposition to Defendants' Administrative Motion</i> filed byCity and County of San Francisco. (Related document(s) 51) (Huling Delaye, Jaime) (Filed on 6/26/2019) (Entered: 06/26/2019)
06/26/2019	53	Proposed Order re 51 Opposition/Response to Motion, <i>[Proposed] Order In Support of Plaintiff City and County of San Francisco's Opposition to Defendants' Administrative Motion</i> by City and County of San Francisco. (Huling Delaye, Jaime) (Filed on 6/26/2019) (Entered: 06/26/2019)
06/27/2019	54	ORDER RE ADMINISTRATIVE MOTION TO ADJUST SCHEDULE (denying (50) in case 3:19-cv-02405-WHA; denying (34) in case 3:19-cv-02769-WHA; denying (45) in case 3:19-cv-02916-WHA) by Judge Alsup. (whalc1, COURT STAFF) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/27/2019	55	ADR Clerks Notice re: Non-Compliance with Court Order. The parties have failed to file an ADR Certification as required by the Initial Case Management Scheduling Order. Counsel shall comply promptly with the requirements of

		ADR L.R. 3-5(b) and shall file the ADR Certification. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cmfS, COURT STAFF) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/27/2019	<u>56</u>	STIPULATION <i>Joint Administrative Motion for Relief from Automatic Referral to the ADR Multi-Option Program</i> filed by City and County of San Francisco, County of Santa Clara, State of California, by and through Attorney General Xavier Becerra . (Attachments: # <u>1</u> Proposed Order)(Eisenberg, Sara) (Filed on 6/27/2019) Modified on 6/27/2019 (amgS, COURT STAFF). (Entered: 06/27/2019)
06/27/2019	<u>57</u>	ADMINISTRATIVE MOTION to Enlarge the Page Limit for Defendants' Preliminary Injunction Opposition filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. Responses due by 7/1/2019. (Attachments: # <u>1</u> Declaration Takemoto, # <u>2</u> Proposed Order)(Takemoto, Benjamin) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/28/2019	<u>58</u>	ERRATA re <u>57</u> ADMINISTRATIVE MOTION to Enlarge the Page Limit for Defendants' Preliminary Injunction Opposition by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. (Takemoto, Benjamin) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>59</u>	MOTION for Leave to File <i>Amicus Brief in support of Plaintiff's Motion for Preliminary Injunction</i> filed by Service Employees International Union, Local 1021. (Lopez, Xochitl) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>60</u>	Declaration of Sasha Cuttler in Support of <u>59</u> MOTION for Leave to File <i>Amicus Brief in support of Plaintiff's Motion for Preliminary Injunction</i> filed by Service Employees International Union, Local 1021. (Related document(s) <u>59</u>) (Lopez, Xochitl) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>61</u>	Declaration of Rachel Perry in Support of <u>59</u> MOTION for Leave to File <i>Amicus Brief in support of Plaintiff's Motion for Preliminary Injunction</i> filed by Service Employees International Union, Local 1021. (Related document(s) <u>59</u>) (Lopez, Xochitl) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>62</u>	Proposed Order re <u>59</u> MOTION for Leave to File <i>Amicus Brief in support of Plaintiff's Motion for Preliminary Injunction</i> by Service Employees International Union, Local 1021. (Lopez, Xochitl) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>63</u>	ORDER GRANTING (57) ADMINISTRATIVE MOTION TO ENLARGE PAGE LIMIT by Judge William Alsup in case 3:19-cv-02405-WHA. Associated Cases: 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/28/2019	<u>64</u>	STIPULATION WITH PROPOSED ORDER <i>to Postpone Final Rule's Effective Date; Hold Plaintiffs' Preliminary Injunction Motions in Abeyance; and Set Summary Judgment Briefing Schedule</i> filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services, City and County of San Francisco and State of California, by and through Attorney General Xavier Becerra. (Attachments: # <u>1</u> Declaration Takemoto)(Takemoto, Benjamin)

		(Filed on 6/28/2019) Modified on 7/1/2019 (amgS, COURT STAFF). (Entered: 06/28/2019)
06/29/2019	<u>65</u>	ORDER RE (64) STIPULATED REQUEST by Judge William Alsup in case 3:19-cv-02405-WHA. Associated Cases: 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 6/29/2019) (Entered: 06/29/2019)
07/01/2019	<u>66</u>	ORDER RE STIPULATED REQUEST AND BRIEFING SCHEDULE. Signed by Judge Alsup on 7/1/2019. (whalc1, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/01/2019		Set/Reset Hearing re (51 in 3:19-cv-02916-WHA) Order: Preliminary Injunction Hearing and Initial Case Management Conference VACATED (tlhS, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/01/2019	<u>67</u>	ORDER DENYING <u>59</u> MOTION FOR LEAVE TO FILE AMICUS BRIEF by Judge William Alsup. (whalc1, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/08/2019	<u>68</u>	ORDER GRANTING (56) JOINT ADMINISTRATIVE MOTION FOR RELIEF FROM AUTOMATIC REFERRAL TO THE ADR MULTI-OPTION PROGRAM by Judge William Alsup. (whalc1, COURT STAFF) (Filed on 7/8/2019) (Entered: 07/08/2019)
07/18/2019	<u>69</u>	ADMINISTRATIVE MOTION to Enlarge Time to File Response to the Complaints (<i>Unopposed</i>) filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. Responses due by 7/22/2019. (Attachments: # <u>1</u> Declaration Takemoto, # <u>2</u> Proposed Order)(Takemoto, Benjamin) (Filed on 7/18/2019) (Entered: 07/18/2019)
07/19/2019	<u>70</u>	ADMINISTRATIVE MOTION Entry of Order (<i>Unopposed</i>) filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. Responses due by 7/23/2019. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order)(Kopplin, Rebecca) (Filed on 7/19/2019) (Entered: 07/19/2019)
07/22/2019	<u>71</u>	ORDER AS MODIFIED RE (70) PRIVACY ACT MOTION. Associated Cases: 3:19-cv-02405-WHA, 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/22/2019	<u>72</u>	ORDER AS MODIFIED RE (69) ADMINISTRATIVE MOTION TO ENLARGE TIME by Judge William Alsup. Associated Cases: 3:19-cv-02405-WHA, 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/22/2019	<u>73</u>	NOTICE by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services of <i>Filing</i> (Attachments: # <u>1</u> Exhibit 1: A.R. Certification, # <u>2</u> Exhibit 2: A.R. Index, # <u>3</u> Exhibit 3: A.R.)(Takemoto, Benjamin) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/23/2019	<u>74</u>	Received Document Administrative record re (73 in 3:19-cv-02405-WHA) Notice (Other),. (amgS, COURT STAFF) (Filed on 7/23/2019) (Entered: 07/23/2019)

07/24/2019	<u>75</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13547553.) filed by American College of Obstetricians and Gynecologists. (Attachments: # <u>1</u> Certificate of Good Standing)(Moody, Anna) (Filed on 7/24/2019) (Entered: 07/24/2019)
07/24/2019	<u>76</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13547630.) filed by American College of Obstetricians and Gynecologists. (Attachments: # <u>1</u> Certificate of Good Standing)(Selden, Shannon) (Filed on 7/24/2019) (Entered: 07/24/2019)
08/01/2019	<u>77</u>	NOTICE by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services <i>of Supplemental Filing</i> (Attachments: # <u>1</u> Exhibit A.R.) (Takemoto, Benjamin) (Filed on 8/1/2019) (Entered: 08/01/2019)
08/06/2019	<u>78</u>	ORDER by Judge William Alsup denying <u>75</u> Motion for Pro Hac Vice as to attorney Anna A. Moody. (tlhS, COURT STAFF) (Filed on 8/6/2019) (Entered: 08/06/2019)
08/06/2019	<u>79</u>	ORDER by Judge William Alsup denying <u>76</u> Motion for Pro Hac Vice as to attorney Shannon R. Selden. (tlhS, COURT STAFF) (Filed on 8/6/2019) (Entered: 08/06/2019)
08/12/2019	<u>80</u>	NOTICE of Appearance by Sourabh Mishra (Mishra, Sourabh) (Filed on 8/12/2019) (Entered: 08/12/2019)
08/12/2019	<u>81</u>	MOTION for leave to appear in Pro Hac Vice <i>of Anna A. Moody</i> (Filing fee \$ 310, receipt number 26J1FVUR.) Filing fee previously paid on 7/24/2019 filed by American College of Obstetricians and Gynecologists. (Attachments: # <u>1</u> Certificate of Good Standing)(Moody, Anna) (Filed on 8/12/2019) (Entered: 08/12/2019)
08/12/2019	<u>82</u>	MOTION for leave to appear in Pro Hac Vice <i>of Shannon R. Selden</i> (Filing fee \$ 310, receipt number 26J1G2I0.) Filing fee previously paid on 7/24/2019 filed by American College of Obstetricians and Gynecologists. (Attachments: # <u>1</u> Certificate of Good Standing)(Selden, Shannon) (Filed on 8/12/2019) (Entered: 08/12/2019)
08/12/2019	<u>83</u>	ORDER by Judge William Alsup granting <u>81</u> Motion for Pro Hac Vice as to attorney Anna A. Moody. (tlhS, COURT STAFF) (Filed on 8/12/2019) (Entered: 08/12/2019)
08/12/2019	<u>84</u>	ORDER by Judge William Alsup granting <u>82</u> Motion for Pro Hac Vice as to attorney Shannon R. Selden. (tlhS, COURT STAFF) (Filed on 8/12/2019) (Entered: 08/12/2019)
08/19/2019	<u>85</u>	NOTICE by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services <i>of Supplemental Filing</i> (Attachments: # <u>1</u> Exhibit Supplement to A.R., # <u>2</u> Exhibit Certification, # <u>3</u> Declaration Humphreys, # <u>4</u> Exhibit Index)(Takemoto, Benjamin) (Filed on 8/19/2019) (Entered: 08/19/2019)
08/20/2019	<u>86</u>	NOTICE of Appearance by Jay Alan Sekulow (Sekulow, Jay) (Filed on 8/20/2019) (Entered: 08/20/2019)
08/20/2019	<u>87</u>	

		MOTION to File Amicus Curiae Brief filed by The American Center for Law and Justice. Responses due by 9/3/2019. Replies due by 9/10/2019. (Attachments: # 1 Proposed amicus brief, # 2 Proposed order)(Sekulow, Jay) (Filed on 8/20/2019) (Entered: 08/20/2019)
08/21/2019	88	NOTICE of Appearance by Denise Mayo Harle (Harle, Denise) (Filed on 8/21/2019) Modified on 8/21/2019 (amgS, COURT STAFF). (Entered: 08/21/2019)
08/21/2019	89	MOTION to Dismiss <i>or, in the alternative</i> , MOTION for Summary Judgment filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. Motion Hearing set for 10/30/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 9/12/2019. Replies due by 9/26/2019. (Takemoto, Benjamin) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/21/2019	90	MOTION for Leave to File <i>Amici Curiae Brief in Support of Defendants' Motion for Summary Judgment</i> filed by American Association of Pro-Life Obstetricians & Gynecologists, Catholic Medical Association, College of Pediatricians, National Catholic Bioethics Center. (Attachments: # 1 Proposed Amici Brief, # 2 Proposed Order)(Harle, Denise) (Filed on 8/21/2019) Modified on 8/21/2019 (amgS, COURT STAFF). (Entered: 08/21/2019)
08/21/2019	91	ORDER GRANTING 87 Motion to File Amicus Curiae Brief BY AMERICAN CENTER FOR LAW & JUSTICE by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/21/2019	92	ORDER GRANTING 90 Motion for Leave to File BY AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, CATHOLIC MEDICAL ASSOCIATION, COLLEGE OF PEDIATRICIANS, NATIONAL CATHOLIC BIOETHICS CENTER by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/21/2019	93	ORDER RE BRIEFING. Signed by Judge Alsup on 8/21/2019. (whalc1, COURT STAFF) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/22/2019	94	NOTICE of Appearance by Brian Ricardo Chavez-Ochoa (Chavez-Ochoa, Brian) (Filed on 8/22/2019) (Entered: 08/22/2019)
08/22/2019	95	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13640652.) filed by American Association of Pro-Life Obstetricians & Gynecologists, American College of Obstetricians and Gynecologists, Catholic Medical Association, National Catholic Bioethics Center. (Attachments: # 1 Certificate of Good Standing)(Theriot, Kevin) (Filed on 8/22/2019) (Entered: 08/22/2019)
08/23/2019	96	ORDER by Judge William Alsup granting 95 Motion for Pro Hac Vice as to attorney Kevin H. Theriot. (tlhS, COURT STAFF) (Filed on 8/23/2019) (Entered: 08/23/2019)
09/11/2019	97	

		NOTICE of Appearance by Marjorie Josel Menza <i>on Behalf of Amicus Curiae The American College of Obstetricians and Gynecologists</i> (Menza, Marjorie) (Filed on 9/11/2019) (Entered: 09/11/2019)
09/11/2019	<u>98</u>	NOTICE of Appearance by Rami Bachour <i>on Behalf of Amicus Curiae The American College of Obstetricians and Gynecologists</i> (Bachour, Rami) (Filed on 9/11/2019) (Entered: 09/11/2019)
09/12/2019	<u>99</u>	Unopposed Motion For Leave to File Amicus Brief; Amicus Brief in Support of Plaintiffs Motion For Summary Judgment filed by Service Employees International Union, Local 1021. (Attachments: # <u>1</u> Proposed Order Granting Motion For Leave to File Amicus Brief in Support of Plaintiffs Motion For Summary Judgment)(Lopez, Xochitl) (Filed on 9/12/2019) Modified on 9/13/2019 (gbaS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	<u>100</u>	MOTION for Leave to File <i>Amici Curiae Brief in Support of Plaintiffs' Cross-Motion for Summary Judgment</i> filed by Anti-Defamation League. (Attachments: # <u>1</u> Exhibit A - Proposed Amici Brief, # <u>2</u> Proposed Order) (Serota, Gilbert) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>101</u>	NOTICE of Appearance by Julie Wilensky <i>on behalf of proposed amici curiae National Center for Lesbian Rights et al.</i> (Wilensky, Julie) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>102</u>	MOTION for Leave to File <i>Brief of NCLR et al. as Amici Curiae</i> filed by National Center for Lesbian Rights. (Attachments: # <u>1</u> Exhibit Proposed Brief of Amici Curiae, # <u>2</u> Proposed Order)(Wilensky, Julie) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>103</u>	NOTICE of Appearance by Benjamin Thorman Halbig <i>as Counsel on Behalf of Amicus Curiae Anti-Defamation League</i> (Halbig, Benjamin) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>104</u>	*** DISREGARD. ERROR IN FILING. SEE <u>118</u> FOR CORRECTION. *** NOTICE of Appearance by Maxwell Vaughn Pritt (Pritt, Maxwell) (Filed on 9/12/2019) Modified on 9/13/2019 (amgS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	<u>105</u>	NOTICE of Appearance by Susan Baker Manning (Manning, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	<u>106</u>	MOTION for Leave to File <i>Brief as Amici Curiae</i> filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, National LGBT Cancer Network, The National LGBTQ Task Force and Legacy Community Health Services, Inc. (Attachments: # <u>1</u> Brief in Support of Plaintiff's Motion For Summary Judgment, # <u>2</u> Proposed Order)(Manning, Susan) (Filed on 9/12/2019) Modified on 9/12/2019 (amgS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	<u>107</u>	Unopposed MOTION to File Amicus Curiae Brief filed by Institute for Policy Integrity. Responses due by 9/26/2019. Replies due by 10/3/2019. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief)(Lienke, Jack) (Filed on

		9/12/2019) Modified on 9/13/2019 (gbaS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	108	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698080.) Filing fee previously paid on 09/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, The National LGBTQ Task Force. (Attachments: # 1 Certificate of Good Standing)(Edens, Geraldine) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	109	DISREGARD. ERROR IN FILING. SEE 119 FOR CORRECTED MOTION. *** MOTION for Leave to File <i>BRIEF OF AMICI CURIAE LOCAL GOVERNMENTS IN SUPPORT OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT</i> filed by City of Columbus. (Attachments: # 1 BRIEF OF AMICI CURIAE LOCAL GOVERNMENTS, # 2 Proposed Order)(Pritt, Maxwell) (Filed on 9/12/2019) Modified on 9/13/2019 (amgS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	110	Unopposed MOTION to File Amicus Curiae Brief filed by American College of Obstetricians and Gynecologists. Motion Hearing set for 10/30/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 9/26/2019. Replies due by 10/3/2019. (Attachments: # 1 Proposed Order)(Menza, Marjorie) (Filed on 9/12/2019) Modified on 9/13/2019 (gbaS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	112	<i>Brief In Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss Or, in the Alternative, for Summary Judgment</i> filed by American College of Obstetricians and Gynecologists. (Menza, Marjorie) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	113	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698377.) filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, The National LGBTQ Task Force. (Attachments: # 1 Certificate of Good Standing)(Harris, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	114	CORRECTED MOTION for Leave to Present Oral Argument of Leading Medical Organizations as Amici Curiae in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment filed by American College of Obstetricians and Gynecologists. (Menza, Marjorie) (Filed on 9/12/2019) Modified on 9/13/2019 (gbaS, COURT STAFF). (Entered: 09/12/2019)
09/12/2019	115	Proposed Order re 107 Consent MOTION to File Amicus Curiae Brief by Institute for Policy Integrity. (Lienke, Jack) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	116	NOTICE by City and County of San Francisco <i>Plaintiffs' Notice of Filing in State of California v. Azar, et al., No. 3:19-cv-02769 (N.D. Cal.)</i> (Eisenberg, Sara) (Filed on 9/12/2019) (Entered: 09/12/2019)

09/12/2019	117	MOTION for Leave to File <i>Amici Curiae Brief</i> filed by Scholars of the LGBT Population. (Attachments: # 1 Supplement Proposed Amicus Brief, # 2 Appendix List of Amici Curiae, # 3 Proposed Order)(Phillips, John) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	118	NOTICE of Appearance by Maxwell Vaughn Pritt <i>CORRECTION OF DOCKET # 104</i> (Pritt, Maxwell) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	119	MOTION for Leave to File <i>BRIEF OF AMICI CURIAE LOCAL GOVERNMENTS IN SUPPORT OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT CORRECTION OF DOCKET # 109, [109-1] and [109-2]</i> filed by City of Columbus. (Attachments: # 1 BRIEF OF AMICI CURIAE LOCAL GOVERNMENTS, # 2 Proposed Order)(Pritt, Maxwell) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/16/2019	120	Notice of Withdrawal of 114 <i>Motion for Leave to Present Oral Argument of Leading Medical Organizations as Amici Curiae In Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment</i> (Menza, Marjorie) (Filed on 9/16/2019) Modified on 9/19/2019 (tlhS, COURT STAFF). (Entered: 09/16/2019)
09/19/2019	121	ORDER GRANTING 99 Motion for Leave to File Amicus Brief BY SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021 by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	122	ORDER GRANTING 100 Motion for Leave to File Amicus Brief BY ANTI-DEFAMATION LEAGUE by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	123	ORDER GRANTING 102 Motion for Leave to File Amicus Brief BY NATIONAL CENTER FOR LESBIAN RIGHTS by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	124	ORDER GRANTING 106 Motion for Leave to File Amicus Brief BY CALLEN LORDE COMMUNITY HEALTH CENTER, CARE RESOURCE COMMUNITY HEALTH CENTERS, INC., HOWARD BROWN HEALTH, LEGACY COMMUNITY HEALTH SERVICES, INC., NATIONAL LGBT CANCER NETWORK, AND THE NATIONAL LGBTQ TASK FORCE by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	125	ORDER GRANTING 107 Motion to File Amicus Curiae Brief BY INSTITUTE FOR POLICY INTEGRITY by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	126	ORDER GRANTING 119 Motion for Leave to File Amicus Brief BY LOCAL GOVERNMENTS by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	127	ORDER by Judge William Alsup denying 108 Motion for Pro Hac Vice as to attorney Geraldine E. Edens. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)

09/19/2019	<u>128</u>	ORDER GRANTING <u>110</u> Motion to File Amicus Curiae Brief BY LEADING MEDICAL ORGANIZATIONS by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	<u>129</u>	ORDER by Judge William Alsup denying <u>113</u> Motion for Pro Hac Vice as to attorney Susan Feigin Harris. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	<u>130</u>	ORDER GRANTING <u>117</u> Motion for Leave to File Amicus Brief BY SCHOLARS OF THE LGBT POPULATION by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/20/2019	<u>131</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698377.) Filing fee previously paid on 9/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, The National LGBTQ Task Force. (Attachments: # <u>1</u> Certificate of Good Standing)(Harris, Susan) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	<u>132</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698080.) Filing fee previously paid on 9/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, The National LGBTQ Task Force. (Attachments: # <u>1</u> Certificate of Good Standing)(Edens, Geraldine) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	<u>133</u>	ORDER by Judge William Alsup granting <u>131</u> Motion for Pro Hac Vice as to attorney Susan Feigin Harris. (tlhS, COURT STAFF) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	<u>134</u>	ORDER by Judge William Alsup granting <u>132</u> Motion for Pro Hac Vice as to attorney Geraldine E. Edens. (tlhS, COURT STAFF) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/24/2019	<u>135</u>	NOTICE RE BRIEFING. Signed by Judge Alsup on 9/24/2019. (whalc1, COURT STAFF) (Filed on 9/24/2019) (Entered: 09/24/2019)
09/26/2019	<u>136</u>	REPLY (re <u>89</u> MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment) and <i>OPPOSITION to Plaintiffs' MOTION for Summary Judgment</i> filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14)(Takemoto, Benjamin) (Filed on 9/26/2019) (Entered: 09/26/2019)
10/10/2019	<u>137</u>	NOTICE by City and County of San Francisco <i>Plaintiff's Notice of Filing in State of California v. Azar, et al., No. 3:19-cv-02769 (N.D. CAL.)</i> (Eisenberg, Sara) (Filed on 10/10/2019) (Entered: 10/10/2019)
10/29/2019	<u>138</u>	

		NOTICE RE ORAL ARGUMENT. Signed by Judge Alsup on 10/29/2019. (whalc1, COURT STAFF) (Filed on 10/29/2019) (Entered: 10/29/2019)
10/29/2019	139	NOTICE of Appearance by Vinita Andrapalliyal (Andrapalliyal, Vinita) (Filed on 10/29/2019) (Entered: 10/29/2019)
10/30/2019	140	Minute Entry for proceedings held before Judge William Alsup: Motion Hearing re (89 in 3:19-cv-02405-WHA) MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment, (54 in 3:19-cv-02769-WHA) MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment, (113 in 3:19-cv-02769-WHA) MOTION for Summary Judgment, (64 in 3:19-cv-02916-WHA) MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment. Matter taken under submission. Court to issue written order. (Total Time in Court: 3 hours 52 minutes.) Court Reporter: Debra Pas. Plaintiff Attorney: Jaime Delaye, Sara Eisenberg (C19-2405 City and County of San Francisco v. Azar II et al); Neli Palma, Stephanie Yu (C19-2769 State of CA v. Azar et al); Miriam Nemetz, Mary Hanna-Weir, Richard Katskee, Laura Trice, Camilla Taylor, Jamie Gliksberg, Genevieve Scott, Susan Greenberg (C19-2916 County of Santa Clara et al v. USDHHS et al). Defendant Attorney: Benjamin Takemoto, Vinita Andrapalliyal. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Date Filed: 10/30/2019) (Entered: 10/30/2019)
10/31/2019	141	TRANSCRIPT ORDER for proceedings held on 10/30/2019 before Judge William Alsup by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services, for Court Reporter Debra Pas. (Andrapalliyal, Vinita) (Filed on 10/31/2019) (Entered: 10/31/2019)
10/31/2019	142	TRANSCRIPT ORDER for proceedings held on 10/30/2019 before Judge William Alsup by City and County of San Francisco, for Court Reporter Debra Pas. (Eisenberg, Sara) (Filed on 10/31/2019) (Entered: 10/31/2019)
11/06/2019	143	Transcript of Proceedings held on 10-30-2018, before Judge William H. Alsup. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: Debra_Pas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (136 in 3:19-cv-02769-WHA) Transcript Order, (141 in 3:19-cv-02405-WHA) Transcript Order) Release of Transcript Restriction set for 2/4/2020. (pasdl50S, COURT STAFF) (Filed on 11/6/2019) (Entered: 11/06/2019)
11/08/2019	144	

		ORDER RE USE OF TERM "ENTITY". Signed by Judge Alsup on 11/8/2019. (whalc1, COURT STAFF) (Filed on 11/8/2019) (Entered: 11/08/2019)
11/12/2019	145	NOTICE by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services re 144 Order (Kopplin, Rebecca) (Filed on 11/12/2019) (Entered: 11/12/2019)
11/12/2019	146	NOTICE by City and County of San Francisco re 144 Order <i>Plaintiffs' Response to Order Re Use of Term "Entity"</i> . (Eisenberg, Sara) (Filed on 11/12/2019) (Entered: 11/12/2019)
11/19/2019	147	ORDER RE MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT AND REQUESTS FOR JUDICIAL NOTICE by Judge William Alsup. (Related documents(s): 14 89 MOTION in case 3:19-cv-02405-WHA; (11) (12) (54) (113) (133) MOTION in case 3:19-cv-02769-WHA; (36) (64) MOTION in case 3:19-cv-02916-WHA) (tlhS, COURT STAFF) (Filed on 11/19/2019) Modified on 11/19/2019 (tlhS, COURT STAFF). (Entered: 11/19/2019)
01/07/2020	148	Letter from Plaintiff City and County of San Francisco . (Attachments: # 1 Proposed Order Proposed Final Judgment)(Eisenberg, Sara) (Filed on 1/7/2020) (Entered: 01/07/2020)
01/08/2020	149	JUDGMENT. Signed by Judge Alsup on 1/8/2020. (whalc1, COURT STAFF) (Filed on 1/8/2020) (Entered: 01/08/2020)
03/06/2020	150	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Alex M. Azar, II, Roger Severino, U.S. Department of Health and Human Services. Appeal of Judgment 149 (Appeal fee FEE WAIVED.) (Takemoto, Benjamin) (Filed on 3/6/2020) (Entered: 03/06/2020)
03/09/2020	151	USCA Case Number 20-15398 for 150 Notice of Appeal filed by Roger Severino, Alex M. Azar, II, U.S. Department of Health and Human Services. (gbaS, COURT STAFF) (Filed on 3/9/2020) (Entered: 03/09/2020)
03/31/2020	152	Transcript Designation Form for proceedings held on October 30, 2019 before Judge Alsup, re 150 Notice of Appeal Transcript due by 4/6/2020. (Takemoto, Benjamin) (Filed on 3/31/2020) (Entered: 03/31/2020)
06/02/2020	153	ORDER of USCA as to 150 Notice of Appeal 20-15398 filed by Roger Severino, Alex M. Azar, II, U.S. Department of Health and Human Services. <i>Appellee Trust Women Seattles motion to dismiss it from this appeal is granted.</i> (wsnS, COURT STAFF) (Filed on 6/2/2020) (Entered: 06/02/2020)

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ADRMOP,APPEAL,RELATE

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:19-cv-02916-WHA**

County of Santa Clara et al v. U.S. Department of Health
and Human Services et al

Assigned to: Judge William Alsup

Relate Case Cases: [3:19-cv-02405-WHA](#)
[3:19-cv-02769-WHA](#)

Case in other court: 9th Circuit, 20-15399

Cause: 05:702 Administrative Procedure Act

Date Filed: 05/28/2019

Jury Demand: None

Nature of Suit: 899 Other Statutes:

Administrative Procedures Act/Review
or Appeal of Agency Decision

Jurisdiction: U.S. Government

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ATTORNEY TO BE NOTICED

Plaintiff

Colleen McNicholas

represented by **Andrew E. Tauber**
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Camilla B Taylor
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Plaintiff

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Plaintiff

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Plaintiff

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Plaintiff

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Defendant

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Defendant

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**Care Resource Community Health
Centers, Inc.**

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**Legacy Community Health Services,
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National LGBTQ Task Force

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Date Filed	#	Docket Text

05/28/2019	<u>1</u>	COMPLAINT <i>for Declaratory and Injunctive Relief</i> against Alex M. Azar, II, U.S. Department of Health and Human Services (Filing fee \$ 400, receipt number 0971-13382887.). Filed by AGLP: The Association Of LGBTQ Psychiatrists, Center On Halsted, Trust Women Seattle, Sarah Henn, County of Santa Clara, Randy Pumphrey, Ward Carpenter, Bradbury-Sullivan LGBT Community Center, Los Angeles LGBT Center, Mazzoni Center, American Association Of Physicians For Human Rights, Robert Bolan, Colleen McNicholas, Hartford Gyn Center, Whitman-Walker Clinic, Inc., Medical Students For Choice. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Civil Cover Sheet)(Rubin, Lee) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>2</u>	MOTION for leave to appear in Pro Hac Vice <i>Jamie A. Gliksberg</i> (Filing fee \$ 310, receipt number 0971-13383206.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Gliksberg, Jamie) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>3</u>	MOTION for leave to appear in Pro Hac Vice <i>Camilla B. Taylor</i> (Filing fee \$ 310, receipt number 0971-13383260.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Taylor, Camilla) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>4</u>	Proposed Summons. (Rubin, Lee) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>5</u>	MOTION for leave to appear in Pro Hac Vice <i>Omar Gonzalez-Pagan</i> (Filing fee \$ 310, receipt number 0971-13383275.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Gonzalez-Pagan, Omar) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>6</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13383886.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Nemetz, Miriam) (Filed on 5/28/2019) (Entered: 05/28/2019)

05/28/2019	<u>7</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13383962.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Saharsky, Nicole) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>8</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13384036.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Scott, Genevieve) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>9</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13384077.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Muqaddam, Rabia) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>10</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13384102.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Parker, Christine) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>11</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13384485.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Katskee, Richard) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/28/2019	<u>12</u>	

		MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13384520.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing)(Upton, Kenneth) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/29/2019	<u>13</u>	Case assigned to Judge Nathanael M. Cousins. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 6/12/2019. (as, COURT STAFF) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/29/2019	<u>14</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 8/21/2019. Initial Case Management Conference set for 8/28/2019 10:00 AM in San Jose, Courtroom 5, 4th Floor. (sfbS, COURT STAFF) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/29/2019	<u>15</u>	Summons Issued as to Alex M. Azar, II, U.S. Department of Health and Human Services, U.S. Attorney and U.S. Attorney General (sfbS, COURT STAFF) (Filed on 5/29/2019) (Entered: 05/29/2019)
05/30/2019	<u>16</u>	CLERK'S NOTICE REGARDING Consent or Declination: All parties shall file a consent or declination to proceed before a magistrate judge by 6/13/2019. Note that any party is free to withhold consent to proceed before a magistrate judge without adverse substantive consequences. The forms are available at: http://cand.uscourts.gov/civilforms . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>17</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Jamie A. Gliksberg</i> Pro Hac Vice representing Plaintiffs <u>2</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>18</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Camilla B. Taylor</i> Pro Hac Vice representing Plaintiffs <u>3</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)

05/30/2019	<u>19</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Omar Gonzalez-Pagan</i> Pro Hac Vice representing Plaintiffs <u>5</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>20</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Miriam Nemetz</i> Pro Hac Vice representing Plaintiffs <u>6</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>21</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Nicole Saharski</i> Pro Hac Vice representing Plaintiffs <u>7</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>22</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Genevieve Scott</i> Pro Hac Vice representing Plaintiffs <u>8</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>23</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Rabia Muqaddam</i> Pro Hac Vice representing Plaintiffs <u>9</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>24</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Christine Parker</i> Pro Hac Vice representing Plaintiffs <u>10</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>25</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Richard Katskee</i> Pro Hac Vice representing Plaintiffs <u>11</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/30/2019	<u>26</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Kenneth Upton</i> Pro Hac Vice representing Plaintiffs <u>12</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/30/2019) (Entered: 05/30/2019)
05/31/2019	<u>27</u>	MOTION for leave to appear in Pro Hac Vice <i>Puneet Cheema</i> (Filing fee \$ 310, receipt number 0971-13397086.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Cheema, Puneet) (Filed on 5/31/2019) (Entered: 05/31/2019)
05/31/2019	<u>28</u>	ORDER GRANTING APPLICATION for Admission of Attorney <i>Puneet Cheema</i> Pro Hac Vice representing Plaintiffs <u>27</u> . Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 5/31/2019) (Entered: 05/31/2019)
06/03/2019	<u>29</u>	NOTICE of Appearance by Mary Elizabeth Hanna-Weir (Hanna-Weir, Mary) (Filed on 6/3/2019) (Entered: 06/03/2019)

06/03/2019	30	NOTICE of Appearance by Hannah Luke Edwards (Edwards, Hannah) (Filed on 6/3/2019) (Entered: 06/03/2019)
06/04/2019	31	NOTICE of Appearance by Rebecca M. Kopplin (Kopplin, Rebecca) (Filed on 6/4/2019) (Entered: 06/04/2019)
06/05/2019	32	NOTICE of Appearance by Susan Pearl Greenberg (Greenberg, Susan) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	33	MOTION for Leave to File Excess Pages filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # 1 Stipulation on Motion to Exceed Page Limitation, # 2 Proposed Order)(Rubin, Lee) (Filed on 6/5/2019) (Entered: 06/05/2019)
06/05/2019	34	Order granting 33 Motion for Leave to File Excess Pages entered by Judge Nathanael M. Cousins. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 06/05/2019)
06/06/2019	35	NOTICE of Appearance by Benjamin Thomas Takemoto (Takemoto, Benjamin) (Filed on 6/6/2019) (Entered: 06/06/2019)
06/11/2019	36	MOTION for Preliminary Injunction filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. Motion Hearing set for 7/17/2019 01:00 PM before Judge Nathanael M. Cousins. Responses due by 6/25/2019. Replies due by 7/2/2019. (Attachments: # 1 Declaration - Backus, Lois, # 2 Declaration - Barnes, Elizabeth, # 3 Declaration - Bolan, Robert, # 4 Declaration - Burkhart, Julie, # 5 Declaration - Butler, Bruce, # 6 Declaration - Carpenter, Ward, # 7 Declaration - Cody, Sara, # 8 Declaration - Cummings, Darrell, # 9 Declaration - Ettner, Randi, # 10 Declaration - Harker, Roy, # 11 Declaration - Henn, Sarah, # 12 Declaration - Lorenz, Paul, # 13 Declaration - Manley, Alecia, # 14 Declaration - McNicholas, Colleen, # 15 Declaration - Miller, Ken, # 16 Declaration - Nguyen, Phuong, # 17 Declaration - Phelps, Rachael, # 18 Declaration - Pumphrey, Randy, # 19 Declaration - Shafi, Naseema, # 20 Declaration - Shanker, Adrian, # 21 Declaration - Singh, Narinder, # 22 Declaration - Sproul, Jill, # 23 Declaration - Tullys, Toni, # 24 Declaration - Valle, Modesto, # 25 Declaration - Vargas, Hector, # 26 Declaration - Rubin, Lee, # 27 Proposed Order)(Rubin, Lee) (Filed on 6/11/2019) (Entered: 06/11/2019)
06/13/2019	37	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara,

		Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc... (Rubin, Lee) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/13/2019	<u>38</u>	Order relating Case Numbers C-19-2405 JCS, C-19-02769 HSG and C-19-2916 NC. All three cases shall be randomly assigned to a district judge. Signed by Judge Joseph C. Spero on June 13, 2019. (jcslc1S, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/13/2019	<u>39</u>	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge William Alsup for all further proceedings. Judge Nathanael M. Cousins no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on 6/13/19. (Attachments: # <u>1</u> Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 6/13/2019) (Entered: 06/13/2019)
06/14/2019	<u>40</u>	ORDER SETTING BRIEFING SCHEDULE ON MOTIONS FOR PROVISIONAL RELIEF AND SETTING HEARING FOR 7/17/2019 08:00 AM. Signed by Judge Alsup on 6/14/2019. (whalc1, COURT STAFF) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/14/2019	41	CLERK'S NOTICE SCHEDULING CMC ON REASSIGNMENT: Case Management Statement due by 7/10/2019. Initial Case Management Conference set for 7/17/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor. Standing orders can be downloaded from the Court's web page at www.cand.uscourts.gov/whaorders . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Filed on 6/14/2019) (Entered: 06/14/2019)
06/21/2019	<u>42</u>	Consent MOTION to File Amicus Curiae Brief filed by Institute for Policy Integrity. Responses due by 7/5/2019. Replies due by 7/12/2019. (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Proposed Order)(Grab, Denise) (Filed on 6/21/2019) (Entered: 06/21/2019)
06/21/2019	<u>43</u>	NOTICE of Appearance by Denise Antonia Grab (Grab, Denise) (Filed on 6/21/2019) (Entered: 06/21/2019)
06/24/2019	<u>44</u>	ORDER GRANTING MOTION TO FILE AMICUS CURIAE by Judge William Alsup (granting (41) in case 3:19-cv-02405-WHA, granting (31) in case 3:19-cv-02769-WHA, and granting (42) in case 3:19-cv-02405-WHA). (whalc1, COURT STAFF) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/25/2019	<u>45</u>	ADMINISTRATIVE MOTION to Establish a Summary Judgment Briefing Schedule or, in the Alternative, to Enlarge Time to File Preliminary Injunction Opposition filed by Alex M. Azar, II, U.S. Department of Health and Human Services. Responses due by 7/1/2019. (Attachments: # <u>1</u> Declaration Takemoto, # <u>2</u> Proposed Order)(Takemoto, Benjamin) (Filed on 6/25/2019) (Entered: 06/25/2019)
06/27/2019	<u>46</u>	

		ORDER RE ADMINISTRATIVE MOTION TO ADJUST SCHEDULE (denying (50) in case 3:19-cv-02405-WHA; denying (34) in case 3:19-cv-02769-WHA; denying (45) in case 3:19-cv-02916-WHA) by Judge Alsup. (whalc1, COURT STAFF) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/27/2019	47	ADR Clerks Notice re: Non-Compliance with Court Order. The parties have failed to file an ADR Certification as required by the Initial Case Management Scheduling Order. Counsel shall comply promptly with the requirements of ADR L.R. 3-5(b) and shall file the ADR Certification. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cmfS, COURT STAFF) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/27/2019	48	Joint ADMINISTRATIVE MOTION for Relief from Automatic Referral to the ADR Multi-Option Program filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. Responses due by 7/1/2019. (Attachments: # 1 Proposed Order)(Rubin, Lee) (Filed on 6/27/2019) (Entered: 06/27/2019)
06/28/2019	49	ORDER GRANTING (57) ADMINISTRATIVE MOTION TO ENLARGE PAGE LIMIT by Judge William Alsup in case 3:19-cv-02405-WHA. Associated Cases: 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 6/28/2019) (Entered: 06/28/2019)
06/29/2019	50	ORDER RE (64) STIPULATED REQUEST by Judge William Alsup in case 3:19-cv-02405-WHA. Associated Cases: 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 6/29/2019) (Entered: 06/29/2019)
07/01/2019	51	ORDER RE STIPULATED REQUEST AND BRIEFING SCHEDULE. Signed by Judge Alsup on 7/1/2019. (whalc1, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/01/2019		Set/Reset Hearing re (51 in 3:19-cv-02916-WHA) Order: Preliminary Injunction Hearing and Initial Case Management Conference VACATED (tlhS, COURT STAFF) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/02/2019	52	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13485619.) filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # 1 Certificate of Good Standing)(Tauber, Andrew) (Filed on 7/2/2019) (Entered: 07/02/2019)
07/05/2019	53	ORDER by Judge William Alsup denying 52 Motion for Pro Hac Vice as to attorney Andrew Tauber. (tlhS, COURT STAFF) (Filed on 7/5/2019) (Entered: 07/05/2019)

07/08/2019	<u>54</u>	ORDER GRANTING <u>48</u> JOINT ADMINISTRATIVE MOTION FOR RELIEF FROM AUTOMATIC REFERRAL TO THE ADR MULTI-OPTION PROGRAM by Judge William Alsup. (whalc1, COURT STAFF) (Filed on 7/8/2019) (Entered: 07/08/2019)
07/08/2019	<u>55</u>	MOTION & [PROPOSED] ORDER for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13485619.) Filing fee previously paid on 7/2/2019 filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # <u>1</u> Certificate of Good Standing) (Tauber, Andrew) (Filed on 7/8/2019) Modified on 7/9/2019 (aaaS, COURT STAFF). (Entered: 07/08/2019)
07/09/2019	<u>56</u>	ORDER by Judge William Alsup granting <u>55</u> Motion for Pro Hac Vice as to attorney Andrew Tauber. (tlhS, COURT STAFF) (Filed on 7/9/2019) (Entered: 07/09/2019)
07/22/2019	<u>59</u>	ORDER AS MODIFIED RE (70) PRIVACY ACT MOTION. Associated Cases: 3:19-cv-02405-WHA, 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/22/2019	<u>60</u>	ORDER AS MODIFIED RE (69) ADMINISTRATIVE MOTION TO ENLARGE TIME by Judge William Alsup. Associated Cases: 3:19-cv-02405-WHA, 3:19-cv-02769-WHA, 3:19-cv-02916-WHA (whalc1, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/23/2019	<u>61</u>	Received Document Administrative record re (73 in 3:19-cv-02405-WHA) Notice (Other),. (amgS, COURT STAFF) (Filed on 7/23/2019) (Entered: 07/23/2019)
07/24/2019	<u>62</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13547690.) filed by American College of Obstetricians and Gynecologists. (Attachments: # <u>1</u> Certificate of Good Standing)(Moody, Anna) (Filed on 7/24/2019) (Entered: 07/24/2019)
07/24/2019	<u>63</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13547720.) filed by American College of Obstetricians and Gynecologists. (Attachments: # <u>1</u> Certificate of Good Standing)(Selden, Shannon) (Filed on 7/24/2019) (Entered: 07/24/2019)
08/21/2019	<u>64</u>	MOTION to Dismiss <i>or, in the alternative</i> , MOTION for Summary Judgment filed by Alex M. Azar, II, U.S. Department of Health and Human Services. Motion Hearing set for 10/30/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 9/12/2019. Replies due by 9/26/2019. (Takemoto, Benjamin) (Filed on 8/21/2019) (Entered: 08/21/2019)
08/21/2019	<u>65</u>	ORDER RE BRIEFING. Signed by Judge Alsup on 8/21/2019. (whalc1, COURT STAFF) (Filed on 8/21/2019) (Entered: 08/21/2019)

09/12/2019	66	NOTICE of Appearance by Susan Baker Manning (Manning, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	67	MOTION for Leave to File <i>Brief as Amici Curiae</i> filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, National LGBTQ Task Force. (Attachments: # 1 Brief in Support of Plaintiff's Motion For Summary Judgment, # 2 Proposed Order) (Manning, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	68	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698362.) filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, National LGBTQ Task Force. (Attachments: # 1 Certificate of Good Standing)(Edens, Geraldine) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	69	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698415.) filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, National LGBTQ Task Force. (Attachments: # 1 Certificate of Good Standing)(Harris, Susan) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/12/2019	70	NOTICE by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc. <i>Plaintiffs' Notice of Filing In State Of California V. Azar, ET AL., NO. 3:19-CV-02769 (N.D. CAL.)</i> (Rubin, Lee) (Filed on 9/12/2019) (Entered: 09/12/2019)
09/19/2019	71	ORDER by Judge William Alsup denying 62 Motion for Pro Hac Vice as to attorney Anna A. Moody. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	72	ORDER by Judge William Alsup denying 63 Motion for Pro Hac Vice as to attorney Shannon R. Selden. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	73	ORDER GRANTING 67 Motion for Leave to File Amicus Brief BY CALLEN LORDE COMMUNITY HEALTH CENTER, CARE RESOURCE COMMUNITY HEALTH CENTERS, INC., HOWARD BROWN HEALTH, LEGACY COMMUNITY HEALTH SERVICES, INC., NATIONAL LGBT CANCER NETWORK, AND NATIONAL LGBTQ TASK FORCE by Judge William Alsup. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/19/2019	74	ORDER by Judge William Alsup denying 68 Motion for Pro Hac Vice as to attorney Geraldine E. Edens. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)

09/19/2019	<u>75</u>	ORDER by Judge William Alsup denying <u>69</u> Motion for Pro Hac Vice as to attorney Susan Feigin Harris. (tlhS, COURT STAFF) (Filed on 9/19/2019) (Entered: 09/19/2019)
09/20/2019	<u>76</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698362.) Filing fee previously paid on 9/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, National LGBTQ Task Force. (Attachments: # <u>1</u> Certificate of Good Standing)(Edens, Geraldine) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	<u>77</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13698415.) Filing fee previously paid on 9/12/2019 filed by Callen Lorde Community Health Center, Care Resource Community Health Centers, Inc., Howard Brown Health, Legacy Community Health Services, Inc., National LGBT Cancer Network, National LGBTQ Task Force. (Attachments: # <u>1</u> Certificate of Good Standing)(Harris, Susan) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	<u>78</u>	ORDER by Judge William Alsup granting <u>76</u> Motion for Pro Hac Vice as to attorney Geraldine E. Edens. (tlhS, COURT STAFF) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/20/2019	<u>79</u>	ORDER by Judge William Alsup granting <u>77</u> Motion for Pro Hac Vice as to attorney Susan Feigin Harris. (tlhS, COURT STAFF) (Filed on 9/20/2019) (Entered: 09/20/2019)
09/24/2019	<u>80</u>	NOTICE RE BRIEFING. Signed by Judge Alsup on 9/24/2019. (whalc1, COURT STAFF) (Filed on 9/24/2019) (Entered: 09/24/2019)
10/10/2019	<u>81</u>	NOTICE by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc. <i>Plaintiffs' Notice of Filing in State of California V. Azar, Et Al., NO. 3:19-CV-02769 (N.D. Cal.)</i> (Rubin, Lee) (Filed on 10/10/2019) (Entered: 10/10/2019)
10/29/2019	<u>82</u>	NOTICE RE ORAL ARGUMENT. Signed by Judge Alsup on 10/29/2019. (whalc1, COURT STAFF) (Filed on 10/29/2019) (Entered: 10/29/2019)
10/30/2019	83	Minute Entry for proceedings held before Judge William Alsup: Motion Hearing re (89 in 3:19-cv-02405-WHA) MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment, (54 in 3:19-cv-02769-WHA) MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment, (113 in 3:19-cv-02769-WHA) MOTION for Summary Judgment, (64 in 3:19-cv-02916-WHA) MOTION to Dismiss <i>or, in the alternative</i> MOTION for Summary Judgment. Matter taken under submission. Court to issue written order. (Total Time in Court: 3 hours 52 minutes.)

		Court Reporter: Debra Pas. Plaintiff Attorney: Jaime Delaye, Sara Eisenberg (C19-2405 City and County of San Francisco v. Azar II et al); Neli Palma, Stephanie Yu (C19-2769 State of CA v. Azar et al); Miriam Nemetz, Mary Hanna-Weir, Richard Katskee, Laura Trice, Camilla Taylor, Jamie Gliksberg, Genevieve Scott, Susan Greenberg (C19-2916 County of Santa Clara et al v. USDHHS et al). Defendant Attorney: Benjamin Takemoto, Vinita Andrapalliyal. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tlhS, COURT STAFF) (Date Filed: 10/30/2019) (Entered: 10/30/2019)
11/06/2019	84	Transcript of Proceedings held on 10-30-2018, before Judge William H. Alsup. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: Debra_Pas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (136 in 3:19-cv-02769-WHA) Transcript Order, (141 in 3:19-cv-02405-WHA) Transcript Order) Release of Transcript Restriction set for 2/4/2020. (pasdl50S, COURT STAFF) (Filed on 11/6/2019) (Entered: 11/06/2019)
11/08/2019	85	ORDER RE USE OF TERM "ENTITY". Signed by Judge Alsup on 11/8/2019. (whalc1, COURT STAFF) (Filed on 11/8/2019) (Entered: 11/08/2019)
11/12/2019	86	RESPONSE re 85 Order <i>Plaintiffs' Response to Order Re Use of Term "Entity"</i> by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc. (Rubin, Lee) (Filed on 11/12/2019) Modified on 11/12/2019 (amgS, COURT STAFF). (Entered: 11/12/2019)
11/19/2019	87	ORDER RE MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT AND REQUESTS FOR JUDICIAL NOTICE by Judge William Alsup. (Related documents(s): (14) (89) MOTION in case 3:19-cv-02405-WHA; (11) (12) (54) (113) (133) MOTION in case 3:19-cv-02769-WHA; 36 64 MOTION in case 3:19-cv-02916-WHA) (tlhS, COURT STAFF) (Filed on 11/19/2019) Modified on 11/19/2019 (tlhS, COURT STAFF). (Entered: 11/19/2019)

01/07/2020	88	NOTICE by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc. re 87 Order on Motion to Dismiss,, Order on Motion for Summary Judgment, (<i>Joint Letter Re: Proposed Final Judgment</i>) (Attachments: # 1 Proposed Final Judgment) (Nemetz, Miriam) (Filed on 1/7/2020) (Entered: 01/07/2020)
01/08/2020	89	JUDGMENT. Signed by Judge Alsup on 1/8/2020. (whalc1, COURT STAFF) (Filed on 1/8/2020) (Entered: 01/08/2020)
01/14/2020	90	STIPULATION WITH PROPOSED ORDER <i>Joint Stipulation and Proposed Order to Extend Time for Filing Application for Fees and Costs</i> filed by AGLP: The Association Of LGBTQ Psychiatrists, American Association Of Physicians For Human Rights, Robert Bolan, Bradbury-Sullivan LGBT Community Center, Ward Carpenter, Center On Halsted, County of Santa Clara, Hartford Gyn Center, Sarah Henn, Los Angeles LGBT Center, Mazzoni Center, Colleen McNicholas, Medical Students For Choice, Randy Pumphrey, Trust Women Seattle, Whitman-Walker Clinic, Inc.. (Attachments: # 1 Declaration)(Rubin, Lee) (Filed on 1/14/2020) (Entered: 01/14/2020)
01/15/2020	91	ORDER GRANTING 90 STIPULATED REQUEST TO EXTEND TIME FOR FILING APPLICATIONFOR FEES AND COSTS by Judge William Alsup. (whalc1, COURT STAFF) (Filed on 1/15/2020) (Entered: 01/15/2020)
03/06/2020	92	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Alex M. Azar, II, U.S. Department of Health and Human Services. Appeal of Judgment 89 (Appeal fee FEE WAIVED.) (Takemoto, Benjamin) (Filed on 3/6/2020) (Entered: 03/06/2020)
03/09/2020	93	USCA Case Number 20-15399 9th Circuit for 92 Notice of Appeal filed by Alex M. Azar, II, U.S. Department of Health and Human Services. (fabS, COURT STAFF) (Filed on 3/9/2020) (Entered: 03/09/2020)
03/31/2020	94	Transcript Designation Form for proceedings held on October 30, 2019 before Judge Alsup, re 92 Notice of Appeal Transcript due by 4/6/2020. (Takemoto, Benjamin) (Filed on 3/31/2020) (Entered: 03/31/2020)
06/02/2020	95	ORDER of USCA as to 92 Notice of Appeal 20-15399 filed by Alex M. Azar, II, U.S. Department of Health and Human Services. <i>Appellee Trust Women Seattles motion to dismiss it from this appeal is granted.</i> (wsnS, COURT STAFF) (Filed on 6/2/2020) (Entered: 06/02/2020)

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06/08/2020 20:05:12

PACER Login:	lovervold:5962366:4299065	Client Code:	
Description:	Docket Report	Search Criteria:	3:19-cv- 02916-WHA
Billable Pages:	30	Cost:	3.00

CLOSED,APPEAL,LC01

**Eastern District of Washington
U.S. District Court (Spokane)
CIVIL DOCKET FOR CASE #: 2:19-cv-00183-SAB**

State of Washington v. Azar II et al
Assigned to: Judge Stanley A Bastian
Case in other court: 9CCA, 20-35044
Cause: 05:551 Administrative Procedure Act

Date Filed: 05/28/2019
Date Terminated: 11/21/2019
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review
or Appeal of Agency Decision
Jurisdiction: U.S. Government
Defendant

Plaintiff

State of Washington

represented by **Lauryn K Fraas**
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V.

Defendant

Alex M Azar II

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Defendant

**United States Department of Health
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Date Filed	#	Docket Text
05/28/2019	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400; Receipt # 0980-3176630) Filed by State of Washington. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons)(Sprung, Jeffrey) (Entered: 05/28/2019)
05/28/2019		Notice of Judge Assignment. Judge Stanley A Bastian assigned to case. (PL, Case Administrator) (Entered: 05/28/2019)
05/28/2019	<u>2</u>	Summons Issued as to All Defendants. (Attachments: # <u>1</u> Summons U.S. Department of Health and Human Services)(PL, Case Administrator) (Entered: 05/28/2019)
05/31/2019	<u>3</u>	CERTIFICATE OF SERVICE as to <u>1</u> Complaint, <u>2</u> Summons Issued filed by State of Washington. (Sprung, Jeffrey) (Entered: 05/31/2019)
06/06/2019	<u>4</u>	NOTICE of Appearance by Bradley P Humphreys on behalf of All Defendants (Attorney Bradley P Humphreys added to party Alex M Azar II(pty:dft), Attorney Bradley P Humphreys added to party United States Department of Health and Human Services(pty:dft))(Humphreys, Bradley) (Entered: 06/06/2019)
06/12/2019	<u>5</u>	NOTICE of Appearance by Paul Michael Crisalli on behalf of State of Washington (Attorney Paul Michael Crisalli added to party State of Washington (pty:pla))(Crisalli, Paul) (Entered: 06/12/2019)
06/14/2019	<u>6</u>	NOTICE of Appearance by Rebecca Kopplin on behalf of Alex M Azar II, United States Department of Health and Human Services (Attorney Rebecca Kopplin added to party Alex M Azar II(pty:dft), Attorney Rebecca Kopplin added to party United States Department of Health and Human Services (pty:dft))(Kopplin, Rebecca) (Entered: 06/14/2019)
06/21/2019	<u>7</u>	MOTION to Expedite by State of Washington. Motion Hearing set for 6/24/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # <u>1</u> Proposed Order)(Crisalli, Paul) (Entered: 06/21/2019)
06/24/2019	<u>8</u>	MOTION for Preliminary Injunction by State of Washington. Motion Hearing set for 7/17/2019 at 01:30 PM in Yakima Courtroom 203 before Judge Stanley A Bastian. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order)(Crisalli, Paul) Modified to correct hearing location from Spokane to Yakima on 6/28/2019 (ES, Courtroom Deputy). (Entered: 06/24/2019)
06/24/2019	<u>9</u>	DECLARATION by Maureen Broom in Support re <u>8</u> MOTION for Preliminary Injunction filed by State of Washington. (Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	<u>10</u>	DECLARATION by Paul Crisalli in Support re <u>8</u> MOTION for Preliminary Injunction filed by State of Washington. (Attachments: # <u>1</u> Exhibit A, # <u>2</u>

		Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	11	DECLARATION by Mary Jo Currey in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Attachments: # 1 Exhibit 1)(Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	12	DECLARATION by Cynthia Harris in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	13	DECLARATION by Dr. Judy Kimelman in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7)(Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	14	DECLARATION by Mike Kreidler in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	15	DECLARATION by MaryAnne Lindeblad in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	16	DECLARATION by Bill Moss in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	17	DECLARATION by Steven Saxe in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	18	DECLARATION by Michael Schaub in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Attachments: # 1 Exhibit 1)(Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	19	DECLARATION by Ellen B. Taylor, Ph.D in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Crisalli, Paul) (Entered: 06/24/2019)
06/24/2019	20	DECLARATION by Christopher M. Zahn, MD in Support re 8 MOTION for Preliminary Injunction filed by State of Washington. (Attachments: # 1 Exhibit 1)(Crisalli, Paul) (Entered: 06/24/2019)
06/26/2019	21	ORDER GRANTING 7 PLAINTIFF'S MOTION TO EXPEDITE and Set Briefing Schedule on Motion for Preliminary Injunction. Signed by Judge Stanley A Bastian. (AN, Courtroom Deputy) (Entered: 06/26/2019)
07/01/2019	22	NOTICE of Appearance by Taylor Washburn on behalf of Institute for Policy Integrity at New York University School of Law (Attorney Taylor Washburn added to party Institute for Policy Integrity at New York University School of Law(pty:dft))(Washburn, Taylor) (Entered: 07/01/2019)
07/01/2019	23	MOTION to Appear Pro Hac Vice re Attorney: Justin Gundlach. Filing fee \$ 200, receipt number 0980-3202534. by United States Department of Health and Human Services. Motion Hearing set for 7/31/2019 Without Oral Argument

		before Judge Stanley A Bastian. (Attachments: # 1 Proposed Order)(Washburn, Taylor) (Entered: 07/01/2019)
07/01/2019	24	MOTION to Appear Pro Hac Vice re Attorney: Jack Lienke. Filing fee \$ 200, receipt number 0980-3202579. by United States Department of Health and Human Services. Motion Hearing set for 7/31/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Proposed Order)(Washburn, Taylor) (Entered: 07/01/2019)
07/01/2019	25	Unopposed MOTION for Leave to File <i>as Amicus Curiae in Support of Plaintiff's Motion for Preliminary Injunction</i> by Institute for Policy Integrity at New York University School of Law. Motion Hearing set for 7/17/2019 at 01:30 PM in Spokane Courtroom 755 before Judge Stanley A Bastian. (Attachments: # 1 Brief of The Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support of Plaintiff's Motion for Preliminary Injunction, # 2 Text of Proposed Order)(Washburn, Taylor) (Entered: 07/01/2019)
07/02/2019	26	The Institute for Policy Integrity's Motions for Admission <i>Pro Hac Vice</i> , ECF No. 23 , 24 , are GRANTED. Justin Gundlach and Jack Lienke are hereby admitted to practice in the United States District Court for the Eastern District of Washington in the above-captioned case. Pursuant to Local Rule 83.2(c), local counsel of record, Taylor Washburn, shall sign all pleadings, motions, and other papers prior to filing, and shall meaningfully participate in this case. The Institute for Policy Integrity's Unopposed Motion for Leave to File as <i>Amicus Curiae</i> in Support of Plaintiff's Motion for Preliminary Injunction, ECF No. 25 , is GRANTED. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (TR, Case Administrator) (Entered: 07/02/2019)
07/03/2019	27	Stipulated MOTION Request for Order <i>to Postpone Rule's Effective Date, Hold Plaintiff's Motion for Preliminary Injunction in Abeyance</i> by Alex M Azar II, United States Department of Health and Human Services. Motion Hearing set for 7/3/2019 Without Oral Argument before Judge Stanley A Bastian. (Kopplin, Rebecca) (Entered: 07/03/2019)
07/08/2019	28	ORDER POSTPONING RULES EFFECTIVE DATE; HOLDING PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION IN ABEYANCE ECF No. 8 Motion for Preliminary Injunction; granting ECF No. 27 The parties Stipulated Request for an Order to Postpone Rules Effective Date; Hold Plaintiffs Motion for Preliminary Injunction in Abeyance. Signed by Judge Stanley A Bastian. (TR, Case Administrator) (Entered: 07/08/2019)
07/12/2019	29	STATUS REPORT by State of Washington. (Sprung, Jeffrey) (Entered: 07/12/2019)
07/12/2019	30	NOTICE OF CANCELLATION - By Court - Text entry - no PDF document. The Motion Hearing scheduled July 17, 2019 at 1:30 p.m. is CANCELLED per ECF No. 28. (ES, Courtroom Deputy) (Entered: 07/12/2019)
07/16/2019	31	NOTICE by State of Washington (Attachments: # 1 Exhibit)(Sprung, Jeffrey) (Entered: 07/16/2019)

07/19/2019	32	Unopposed MOTION Entry of Order by Alex M Azar II, United States Department of Health and Human Services. Motion Hearing set for 7/19/2019 Without Oral Argument before Judge Stanley A Bastian. (Kopplin, Rebecca) (Entered: 07/19/2019)
07/22/2019	33	NOTICE by Alex M Azar II, United States Department of Health and Human Services <i>of filing</i> (Attachments: # 1 Exhibit Index to the administrative record, # 2 Exhibit Certification of the administrative record)(Kopplin, Rebecca) (Entered: 07/22/2019)
07/23/2019	34	The parties' Unopposed Motion for Entry of Order, ECF No. 32 , is GRANTED. Defendants are authorized to release materials as part of the administrative record, including any information that may be covered by the Privacy Act, 5 U.S.C. 552a. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (TR, Case Administrator) (Entered: 07/23/2019)
07/23/2019	35	ORDER SETTING BRIEFING SCHEDULE. Signed by Judge Stanley A Bastian. (TR, Case Administrator) (Entered: 07/23/2019)
07/23/2019	36	NOTICE of Hearing re ECF No. 35 Order Setting Briefing Schedule - Text entry; no PDF document. - By Court: In Court Hearing re cross- motions for summary judgment set for 11/7/2019 at 10:00 AM in Spokane Courtroom 755 before Judge Stanley A Bastian. (TR, Case Administrator) (Entered: 07/24/2019)
08/09/2019	37	NOTICE of Appearance by Daniel M Weiskopf on behalf of American College of Obstetricians and Gynecologists (Attorney Daniel M Weiskopf added to party American College of Obstetricians and Gynecologists(pty:am))(Weiskopf, Daniel) (Entered: 08/09/2019)
08/09/2019	38	MOTION to Appear Pro Hac Vice re Attorney: Anna Moody. Filing fee \$ 200. by American College of Obstetricians and Gynecologists. Motion Hearing set for 9/9/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order Proposed Order)(Weiskopf, Daniel) (Entered: 08/09/2019)
08/09/2019	39	MOTION to Appear Pro Hac Vice re Attorney: Shannon Selden. Filing fee \$ 200. by American College of Obstetricians and Gynecologists. Motion Hearing set for 9/9/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order Proposed Order)(Weiskopf, Daniel) (Entered: 08/09/2019)
08/09/2019		Payment Received. Receipt #spo 035306 in the amount of \$400.00 from Daniel Weiskopf of McNaul Ebel Nawrot & Helgren PLLC re Motions for PHV for Shannon Selden and Anna Moody. 38 39 (CLP, Case Administrator) (Entered: 08/09/2019)
08/14/2019	40	Joint MOTION for Leave to File Excess Pages by Alex M Azar II, United States Department of Health and Human Services. Motion Hearing set for 8/14/2019 Without Oral Argument before Judge Stanley A Bastian. (Kopplin, Rebecca) (Entered: 08/14/2019)

08/15/2019	41	ORDER - The parties Joint Motion for Extension of Pages, ECF No. 40 , is GRANTED. Defendants are granted leave to file a motion to dismiss, or, in the alternative, for summary judgment of up to 70 pages. Plaintiff is granted leave to file a consolidated opposition and cross-motion for summary judgment of up to 70 pages. Defendants are granted leave to file a consolidated opposition and reply of up to 40 pages. Plaintiff is granted leave to file a reply of up to 40 pages. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (VR, Courtroom Deputy) (Entered: 08/15/2019)
08/15/2019	42	ORDER - The American College of Obstetricians and Gynecologists Motions to Appear Pro Hac Vice for Anna Moody, ECF No. 38 , and Shannon Selden, ECF No. 39 , are GRANTED. Anna A. Moody and Shannon R. Selden are hereby admitted to practice in the United States District Court for the Eastern District of Washington in the above-captioned case. Pursuant to Local Rule 83.2(c), local counsel of record, Daniel M. Weiskopf, shall sign all pleadings, motions, and other papers prior to filing, and shall meaningfully participate in this case. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (VR, Courtroom Deputy) (Entered: 08/15/2019)
08/19/2019	43	NOTICE by Alex M Azar II, United States Department of Health and Human Services <i>Supplement to Administrative Record</i> (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Kopplin, Rebecca) (Entered: 08/19/2019)
08/19/2019	44	MOTION to Dismiss for Failure to State a Claim , MOTION to Dismiss for Lack of Jurisdiction , MOTION for Summary Judgment by Alex M Azar II, United States Department of Health and Human Services. Motion Hearing set for 11/7/2019 at 10:00 AM in Spokane Courtroom 755 before Judge Stanley A Bastian. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Text of Proposed Order)(Kopplin, Rebecca) (Entered: 08/19/2019)
09/17/2019	45	Amicus Curiae APPEARANCE entered by Raegen Nicole Rasnic on behalf of National Center for Lesbian Rights (Rasnic, Raegen) (Entered: 09/17/2019)
09/18/2019	46	MOTION to Appear Pro Hac Vice re Attorney: Julie Wilensky. Filing fee \$ 200, receipt number 0980-3265753. by National Center for Lesbian Rights. Motion Hearing set for 10/18/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order Granting Motion to Appear Pro Hac Vice for Julie Wilensky)(Rasnic, Raegen) (Entered: 09/18/2019)
09/18/2019	47	NOTICE of Appearance by R July Simpson on behalf of State of Washington (Attorney R July Simpson added to party State of Washington(pty:pla)) (Simpson, R) (Entered: 09/18/2019)
09/19/2019	48	Amicus Curiae APPEARANCE entered by Nancy L Isserlis on behalf of Scholars of the LGBT Population (Attorney Nancy L Isserlis added to party Scholars of the LGBT Population(pty:am))(Isserlis, Nancy) (Entered: 09/19/2019)
09/19/2019	49	MOTION to Appear Pro Hac Vice re Attorney: Adam Romero. Filing fee \$ 200, receipt number 0980-3266519. by Scholars of the LGBT Population. Motion

		Hearing set for 10/21/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order)(Isserlis, Nancy) (Entered: 09/19/2019)
09/19/2019	50	MOTION to Appear Pro Hac Vice re Attorney: Nneka Ukpai. Filing fee \$ 200, receipt number 0980-3266546. by Scholars of the LGBT Population. Motion Hearing set for 10/21/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order)(Isserlis, Nancy) (Entered: 09/19/2019)
09/19/2019	51	MOTION to Appear Pro Hac Vice re Attorney: David Valente. Filing fee \$ 200, receipt number 0980-3266583. by Scholars of the LGBT Population. Motion Hearing set for 10/21/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order)(Isserlis, Nancy) (Entered: 09/19/2019)
09/19/2019	52	NOTICE of Appearance by Nathan Bays on behalf of State of Washington (Attorney Nathan Bays added to party State of Washington(pty:pla))(Bays, Nathan) (Entered: 09/19/2019)
09/20/2019	53	MOTION for Leave to File <i>to File Amici Curiae Brief in Support of Plaintiff's Motion for Summary Judgment</i> by Scholars of the LGBT Population. Motion Hearing set for 11/7/2019 at 10:00 AM in Spokane Courtroom 755 before Judge Stanley A Bastian. (Attachments: # 1 Amici Curiae Brief, # 2 Appendix, # 3 Williams Institute Comment, # 4 AMA Comment, # 5 Santa Clara Comment, # 6 HRW Comment, # 7 HRC Comment, # 8 Lambda Comment, # 9 NCLR Comment, # 10 NCTE Comment, # 11 Text of Proposed Order)(Isserlis, Nancy) (Entered: 09/20/2019)
09/20/2019	54	NOTICE of Appearance by Lauryn K Fraas on behalf of State of Washington (Attorney Lauryn K Fraas added to party State of Washington(pty:pla))(Fraas, Lauryn) (Entered: 09/20/2019)
09/20/2019	55	MOTION for Leave to File <i>Amicus Brief</i> by National Center for Lesbian Rights. Motion Hearing set for 10/21/2019 Without Oral Argument before Judge Stanley A Bastian. (Attachments: # 1 Exhibit A - Amicus Brief, # 2 Exhibit B - Proposed Order Granting Motion for Leave to File Amicus Brief)(Rasnic, Raegen) (Entered: 09/20/2019)
09/20/2019	56	Unopposed MOTION for Leave to File <i>as Amicus Curiae in Support of Plaintiff's Cross-Motion for Summary Judgment</i> by Institute for Policy Integrity at New York University School of Law. Motion Hearing set for 11/7/2019 at 10:00 AM in Spokane Courtroom 755 before Judge Stanley A Bastian. (Attachments: # 1 Brief of Amicus Curiae, # 2 Proposed Order)(Washburn, Taylor) (Entered: 09/20/2019)
09/20/2019	57	MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or for Summary Judgment</i> by All Plaintiffs. Motion Hearing set for 11/7/2019 at 10:00 AM in Spokane Courtroom 755 before Judge Stanley A Bastian. (Attachments: # 1 Text of Proposed Order)(Sprung, Jeffrey) (Entered: 09/20/2019)
09/20/2019	58	

		DECLARATION by Alexa Kolbi-Molinas in Support re 57 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or for Summary Judgment</i> filed by State of Washington. (Attachments: # 1 Exhibit A-H)(Sprung, Jeffrey) (Entered: 09/20/2019)
09/20/2019	59	DECLARATION by Nathan K. Bays in Support re 57 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or for Summary Judgment</i> filed by State of Washington. (Attachments: # 1 Exhibit 1-21) (Sprung, Jeffrey) (Entered: 09/20/2019)
09/23/2019	60	TEXT ORDER - The National Center of Lesbian Rights' Motion for Leave to File Brief as Amici Curiae in Support of Plaintiff's Motion for Summary Judgment, ECF No. 55 , is GRANTED. The National Center of Lesbian Rights' Motion to Appear Pro Hac Vice for Julie Wilensky, ECF NO. 46 , is GRANTED. Julie Wilensky is hereby admitted to practice in the United States District Court for the Eastern District of Washington in the above-captioned case. Pursuant to Local Rule 83.2(c), the National Center of Lesbian Rights' local counsel of record, Raegen Rasnic, shall sign all pleadings, motions, and other papers prior to filing, and shall meaningfully participate in this case. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (AY, Case Administrator) (Entered: 09/23/2019)
09/23/2019	61	TEXT ORDER: The Unopposed Motion of the Institute for Policy Integrity at New York University School of Law for Leave to File as Amicus Curiae in Support of Plaintiffs cross-Motion for Summary Judgment, ECF No. 56 , is GRANTED. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (AY, Case Administrator) (Entered: 09/23/2019)
09/24/2019	62	The Scholars of the LBGT Populations' Unopposed Motion for Leave to File Amici Curiae Brief in Support of Plaintiff's Motion for Summary Judgment, ECF No. 53 , is GRANTED. The Scholars of the LBGT Populations' Motions for Admission Pro Hac Vice, ECF No. 49 , 50 , and 51 are GRANTED. Adam P. Romero, Nneka Ukpai, and David Valente are hereby admitted to practice in the United States District Court for the Eastern District of Washington in the above-captioned case. Pursuant to Local Rule 83.2(c), the Scholars of the LBGT Population's local counsel, Nancy Isserlis, shall sign all pleadings, motions, and other papers prior to filing, and shall meaningfully participate in this case. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (TR, Case Administrator) (Entered: 09/24/2019)
09/27/2019	63	Unopposed MOTION for Leave to File <i>Amicus Curiae Brief in Support of Plaintiff's Cross-Motion for Summary Judgment and Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment</i> by American College of Obstetricians and Gynecologists. Motion Hearing set for 11/7/2019 at 10:00 AM in Spokane Courtroom 755 before Judge Stanley A Bastian. (Attachments: # 1 Amicus Curiae Brief, # 2 Text of Proposed Order) (Weiskopf, Daniel) (Entered: 09/27/2019)

10/04/2019	64	MEMORANDUM of Points and Authorities in Opposition re 57 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or for Summary Judgment</i> , 44 MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment <i>and REPLY supporting Defendants' MOTION to Dismiss or for Summary Judgment</i> filed by Alex M Azar II, United States Department of Health and Human Services. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15)(Kopplin, Rebecca) (Entered: 10/04/2019)
10/07/2019	65	The Unopposed Motion for Leave to File Brief of Leading Medical Organizations as Amici Curiae, ECF No. 63 , is GRANTED. Signed by Judge Stanley A. Bastian. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. (TR, Case Administrator) (Entered: 10/07/2019)
10/18/2019	66	REPLY MEMORANDUM re 57 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or for Summary Judgment</i> filed by All Plaintiffs. (Sprung, Jeffrey) (Entered: 10/18/2019)
11/04/2019	67	NOTICE of Appearance by Benjamin Thomas Takemoto on behalf of All Defendants (Attorney Benjamin Thomas Takemoto added to party Alex M Azar II(pty:dft), Attorney Benjamin Thomas Takemoto added to party United States Department of Health and Human Services(pty:dft))(Takemoto, Benjamin) (Entered: 11/04/2019)
11/04/2019	68	NOTICE by All Plaintiffs <i>of Supplemental Authority and Proceedings in a Related Case</i> (Attachments: # 1 Exhibit Attachments A & B)(Sprung, Jeffrey) (Entered: 11/04/2019)
11/06/2019	69	NOTICE by All Plaintiffs <i>of Decision in Related Case</i> (Attachments: # 1 Exhibit Attachment A)(Sprung, Jeffrey) (Entered: 11/06/2019)
11/06/2019	70	RESPONSE re 68 Notice (Other) <i>of Supplemental Authority</i> by Alex M Azar II, United States Department of Health and Human Services. (Humphreys, Bradley) (Entered: 11/06/2019)
11/07/2019	71	Minute Entry for proceedings held before Judge Stanley A Bastian: Motion Hearing held on 11/7/2019 re 57 MOTION for Summary Judgment <i>and Opposition to Defendants' Motion to Dismiss or for Summary Judgment</i> filed by State of Washington, 44 MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment filed by Alex M Azar II, United States Department of Health and Human Services. (Reported/Recorded by: Ronelle F. Corbey) (ES, Courtroom Deputy) (Entered: 11/07/2019)
11/19/2019	72	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion Hearing. Proceedings held on 11/7/2019 in Spokane, Washington before Judge Stanley A Bastian. Page Numbers: 1 - 53

		Parties have seven (7) business days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court website at www.waed.uscourts.gov. To purchase a copy of the transcript contact Court Reporter/Transcriber Ronelle F. Corbey at 509-458-5283 or Ronelle_Corbey@waed.uscourts.gov. Redaction Request due 12/10/2019. Redacted Transcript Deadline set for 12/20/2019. Release of Transcript Restriction set for 2/18/2020. (Corbey, Ronelle) (Entered: 11/19/2019)
11/20/2019	73	NOTICE by State of Washington of <i>Decision in Related Case</i> (Attachments: # 1 Exhibit Attachment A)(Sprung, Jeffrey) (Entered: 11/20/2019)
11/21/2019	74	ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DENYING DEFENDANTS' MOTION TO DISMISS; denying ECF No. 44 Defendants' Motion to Dismiss, or, in the Alternative for Summary Judgment; granting ECF No. 57 Plaintiff's Motion for Summary Judgment; denied as moot ECF No. 8 Plaintiff's Motion for Preliminary Injunction. FILE CLOSED. Signed by Judge Stanley A Bastian. (TR, Case Administrator) (Entered: 11/21/2019)
11/21/2019	75	JUDGMENT in favor of State of Washington against United States Department of Health and Human Services, Alex M Azar II. (TR, Case Administrator) (Entered: 11/21/2019)
01/17/2020	76	LODGED NOTICE OF APPEAL from District Court decision as to 75 Clerk's Judgment, 74 Order on Motion to Dismiss for Failure to State a Claim,, Order on Motion to Dismiss/Lack of Jurisdiction,, Order on Motion for Summary Judgment,,,, Order on Motion for Preliminary Injunction, by United States Department of Health and Human Services, Alex M Azar II. Filing fee \$ 505, receipt number WAIVED. (Kopplin, Rebecca) (Entered: 01/17/2020)
01/17/2020	77	NOTICE OF APPEAL from District Court decision as to ECF No. 75 Clerk's Judgment, and ECF No. 74 Order granting Plaintiff's Motion for Summary Judgment, Denying Defendants' Motion to Dimiss by Alex M Azar II, United States Department of Health and Human Services. cc: Court Reporter: Ronelle Corbey. (TR, Case Administrator) Modified on 1/21/2020: 9CCA 20-35044 . (TR, Case Administrator). (Entered: 01/21/2020)
01/21/2020	78	9CCA Payment Notification form re ECF No. 77 Notice of Appeal. Fee Waived. (TR, Case Administrator) (Entered: 01/21/2020)
01/21/2020	79	

		Letter from Appeal Deputy Clerk to Rebecca Kopplin dated January 21, 2020. (Attachments: # 1 Notice of Appeal, # 2 Docket Sheet)(TR, Case Administrator) (Entered: 01/21/2020)
01/21/2020	80	9CCA Appeal Time Schedule and Case Number: 20-35044 for ECF No. 77 Notice of Appeal, filed by Alex M Azar II, United States Department of Health and Human Services. Designation Due: 2/18/2020. Transcript Due: 3/17/2020. Opening Brief Due: 4/27/2020. Appellees Brief Due: 5/26/2020. Mediation Questionnaire Due: 1/28/2020. cc: Court Reporter: Ronelle Corbey. (TR, Case Administrator) (Entered: 01/21/2020)
02/18/2020	81	TRANSCRIPT DESIGNATION of Record on Appeal by Alex M Azar II, United States Department of Health and Human Services re 77 Notice of Appeal, 76 Lodged Notice of Appeal,. Date Appeal Filed: 01/17/20. Court Reporter:Ronelle Corbey,. 9CCA: 20-35044. (Kopplin, Rebecca) (Entered: 02/18/2020)
06/01/2020	82	COPY OF 9CCA ORDER as to 77 Notice of Appeal, filed by Alex M Azar II, United States Department of Health and Human Services. 9CCA: 20-35044. (TR, Case Administrator) (Entered: 06/02/2020)

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth 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