

No. 20-10093

In the United States Court of Appeals for the Fifth Circuit

FRANCISCAN ALLIANCE, INC., ET AL.,
Plaintiffs-Appellants,

v.

ALEX AZAR II, SECRETARY OF THE UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,
Defendants-Appellees,

v.

AMERICAN CIVIL LIBERTIES UNION OF TEXAS, ET AL.,
Intervenors-Appellees.

On Appeal from the U.S District Court for the
Northern District of Texas, Wichita Falls Division
No. 7:16-cv-00108-O

**PLAINTIFFS-APPELLANTS' AND DEFENDANTS-APPELLEES'
JOINT MOTION TO STAY**

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Plaintiffs-Appellants Franciscan Alliance, Inc.; Christian Medical and Dental Society; and Specialty Physicians of Illinois, LLC; together with Defendants-Appellees Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services; and the United States Department of Health and Human Services (together, “HHS”), jointly move to stay proceedings in this case for 30 days pending ongoing settlement negotiations. Appellants’ opening brief is currently due on **July 6, 2020**. However, Appellants and HHS anticipate that in light of ongoing settlement negotiations, they may jointly seek to dismiss this appeal under Fed. R. App. P. 42, potentially resolving the appeal without the need for briefing, argument, or decision in this Court. Intervenor-Appellees American Civil Liberties Union of Texas et al. do not oppose this motion.

This case involves Appellants’ challenge to HHS regulations defining “sex” discrimination in healthcare under the Patient Protection and Affordable Care Act to include discrimination based on “gender identity” and “termination of pregnancy.” Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31376 (the “Rule”).

On May 28, 2020, before filing their opening brief, Appellants sought to stay further proceedings in this Court until 21 days after the Supreme Court’s decision in *Bostock v. Clayton County* (No. 17-1618), *Altitude Express, Inc. v. Zarda* (No. 17-1623), and *R.G. & G.R. Harris Funeral Home,*

Inc. v. EEOC (No. 18-107). On June 2, 2020, this Court granted the stay request.

On June 12, 2020, HHS issued a new final rule citing the lower court's decision in this case and repealing the relevant provisions of the 2016 Rule. Three days later, the Supreme Court decided *Bostock*. Given these developments, Appellants and HHS have initiated settlement discussions which may be able to resolve this appeal without further briefing, argument, or decision in this court. They now seek to stay further proceedings in this appeal for an additional 30 days to allow sufficient time for those negotiations to proceed. If the Court so orders, Appellants' opening brief would be due on **August 5, 2020**.

CONCLUSION

The Court should stay proceedings in this case for 30 days.

Respectfully submitted,

MARLEIGH D. DOVER

/s/ Joshua Dos Santos

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CERTIFICATE OF CONFERENCE

On July 1, 2020, undersigned counsel conferred with counsel for Intervenor-Appellees, who advised that they do not oppose the relief sought in this motion.

/s/ Luke W. Goodrich
Luke W. Goodrich
Attorney for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 349 words; and (2) the typeface and type style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word.

/s/ Luke W. Goodrich
Luke W. Goodrich
Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I certify that on July 2, 2020, I filed the foregoing motion by causing a digital version to be filed electronically via the Court's CM/ECF system. The participants in this case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

I further certify that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of any required paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned for viruses.

/s/ Luke W. Goodrich

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