

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Appellee,

v.

NORRIS COCHRAN, Acting Secretary of U.S.
Department of Health and Human Services; et
al.,¹

Defendants-Appellants.

No. 20-15398

COUNTY OF SANTA CLARA; et al.,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES; NORRIS COCHRAN, in
his official capacity as Acting Secretary of Health
and Human Services,

Defendants-Appellants.

No. 20-15399

¹ Acting Secretary Cochran has been automatically substituted for Alex M. Azar II pursuant to Federal Rule of Appellate Procedure 43(c)(2).

STATE OF CALIFORNIA,

Plaintiff-Appellee,

v.

NORRIS COCHRAN, in his official capacity as
Acting Secretary of the U.S Department of Health
& Human Services, and U.S. DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Defendants-Appellants.

No. 20-16045

STATE OF WASHINGTON,

Plaintiff-Appellee,

v.

NORRIS COCHRAN and U.S. DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Defendants-Appellants.

No. 20-35044

**JOINT MOTION TO REMOVE CONSOLIDATED APPEALS FROM THE
ORAL ARGUMENT CALENDAR AND PLACE APPEALS IN ABEYANCE**

Pursuant to Ninth Circuit Rule 27-1, all parties to these consolidated appeals jointly move to remove the appeals from the Court's oral argument calendar and place them in abeyance while new leadership at the U.S. Department of Health & Human Services (HHS) evaluates the issues the cases present. Oral argument is currently scheduled for Monday, February 8, 2021.

1. These consolidated appeals concern the validity of a final rule that HHS promulgated in 2019. The rule, entitled Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,170 (May 21, 2019), implicates various federal statutes that protect individuals and other entities with religious or moral objections to providing certain health-care-related services in connection with government-provided or government-funded health care programs. In these appeals, the federal government sought review of decisions in which two district courts—one in the Eastern District of Washington and one in the Northern District of California—vacated the rule.

2. The consolidated appeals are fully briefed, and the Court has scheduled oral argument for Monday, February 8, 2021.

3. New leadership at HHS is currently in the process of arriving at the agency and plans to reassess the issues that these cases present. All parties agree that it would conserve the resources of the Court and the parties to remove the consolidated appeals from the Court's argument calendar and place the appeals in abeyance while HHS undertakes this reassessment. New leadership began arriving at HHS and the U.S. Department of Justice only 19 days before the scheduled oral argument and will need additional time to review the rule in question and the multiple legal issues that are involved in these consolidated appeals; consult with all interested federal agencies and offices; and determine the appropriate course going forward. Given the recent change of administration and the complexity and importance of the issues presented

by the rule and in these appeals, these exceptional circumstances support postponing the oral argument and holding the consolidated appeals in abeyance. *See* 9th Cir. R. 34-2 (“No change of the day or place assigned for hearing will be made except by order of the Court for good cause. Only under exceptional circumstances will the Court grant a request to vacate a setting within 14 days of the date set.”).

The parties propose to file status reports with the Court within 60 days of the order placing the appeals in abeyance.

CONCLUSION

For the foregoing reasons, the parties jointly request that the Court remove these consolidated appeals from the oral argument calendar for Monday, February 8, 2021, and place the appeals in abeyance.

Respectfully submitted,

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JANUARY 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 587 words, according to the count of Microsoft Word.

s/ Sarah Carroll

SARAH CARROLL

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2021, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Sarah Carroll
SARAH CARROLL