

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

XAVIER BECERRA, in his official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES; and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 1:19-cv-01672-GLR

JOINT STATUS REPORT

The parties submit this joint status report pursuant to the Court's April 18, 2023 order, ECF No. 135, to provide an update regarding the status of related appellate proceedings and the forthcoming rule.

Second Circuit Proceedings

As the parties have reported to the Court, Defendants filed notices of appeal to the United States Court of Appeals for the Second Circuit of the final judgments in the United States District Court for the Southern District of New York that vacated the rule that Plaintiff challenges in this case. *See State of New York v. U.S. Dep't of Health & Human Servs.*, No. 1:19-cv-4676-PAE, Notice of Appeal, ECF No. 255 (S.D.N.Y.) (*New York*); *Planned Parenthood Fed'n of Am., Inc. v. Azar*, No. 1:19-cv-5433-PAE, Notice of Appeal, ECF No. 123 (S.D.N.Y.) (*Planned Parenthood*); *Nat'l Family Planning & Reproductive Health Ass'n v. Azar*, No. 1:19-cv-5435-PAE, Notice of Appeal, ECF No. 129 (S.D.N.Y.) (*NFPRHA*). Intervenors in the Southern District of New York litigation also filed notices of appeal. *See New York*, Notice of Appeal, ECF No. 254; *Planned Parenthood*, Notice of Appeal, ECF No. 122; *NFPRHA*, Notice of Appeal, ECF No. 128.

On December 7, 2022, the parties stipulated, pursuant to Federal Rule of Appellate Procedure 42(b)(1) and Second Circuit Rule 42.1, that the consolidated appeals should be dismissed “without prejudice to any party’s ability to reinstate one or more of the appeals within 60 days after HHS completes the process of revisiting the rule entitled Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,170 (May 21, 2019).” The Second Circuit adopted the parties’ stipulated order on December 8, 2022.

Ninth Circuit Proceedings

Defendants also appealed to the United States Court of Appeals for the Ninth Circuit, seeking review of the final judgment in the United States District Court for the Eastern District of Washington vacating the challenged rule on November 21, 2019, *Washington v. Azar*, No. 2:19-CV-00183-SAB (E.D. Wash.), as well as of the final judgments entered in three cases in the United States District Court for the Northern District of California where the court also vacated the challenged rule, *City & County of San Francisco v. Azar*, No. 3:19-cv-2405-WHA (N.D. Cal.); *California v. Azar*, No. 3:19-cv-2769-WHA (N.D. Cal.); *County of Santa Clara v. U.S. Dep’t of Health & Human Servs.*, No. 3:19-cv-2916-WHA (N.D. Cal.). The Ninth Circuit initially scheduled oral argument for February 8, 2021 but removed the consolidated cases from its argument calendar upon Defendants’ motion. The government subsequently filed periodic status reports requesting that the appeal continue to be held in abeyance, and those requests were granted.

Most recently, on September 29, 2023, the government requested that the court continue to hold the appeals in abeyance for a period of six months, or until thirty days after the issuance of a new final rule, to replace the one at issue in this litigation, whichever is sooner. The government further requested that, at the end of that period, the parties be permitted to file motions to govern further proceedings. Plaintiffs in the Ninth Circuit proceedings did not oppose the government’s

motion.

Rulemaking

The period for public comment on the proposed rule closed on March 6, 2023. *See* 88 Fed. Reg. at 820. The Department of Health and Human Services (HHS) has reviewed the tens of thousands of comments that it received regarding the proposed rule and is proceeding with the requirements for finalizing the rule. As part of that process, HHS has now submitted a draft final rule to OIRA, a component of the Office of Management and Budget, for review and approval. *See* OIRA, Office of Management and Budget, Reginfo.gov, <https://www.reginfo.gov/public/do/eoDetails?rrid=335262>.¹

Dated: October 16, 2023

Respectfully submitted,

By: /s/ Jane Lewis

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¹ OIRA is the entity responsible for coordinating interagency Executive Branch review of regulations and ensuring compliance with Executive Order 12866. *See* Executive Order 12866.

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