

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

---

UNITED STATES HOUSE OF REPRESENTATIVES,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 14-cv-01967-RMC
	)	
ERIC D. HARGAN, in his official capacity as	)	
Acting Secretary of Health and Human Services;	)	
U.S. Department of Health and Human Services;	)	
STEVEN T. MNUCHIN, in his official capacity as	)	
Secretary of the Treasury; U.S. Department of the	)	
Treasury,	)	
	)	
<i>Defendants.</i>	)	

---

**JOINT MOTION FOR INDICATIVE RULING**

Pursuant to Federal Rules of Civil Procedure 60(b) and 62.1 and the attached conditional settlement agreement, and in light of changed circumstances, Plaintiff the U.S. House of Representatives and Defendants Eric D. Hargan, Acting Secretary of Health and Human Services, the U.S. Department of Health and Human Services, Steven T. Mnuchin, Secretary of the Treasury, and the U.S. Department of the Treasury (collectively, “the parties”) respectfully request that this Court issue an indicative ruling stating that, if the case is remanded by the court of appeals, this Court will vacate the portion of its final order providing that “reimbursements paid to issuers of qualified health plans for the cost-sharing reductions mandated by Section 1402 of the Affordable Care Act, Pub. L. 111-148, are ENJOINED pending an appropriation for such payments.” ECF No. 74, *United States House of Representatives v. Burwell, et al.*, No. 1:14-cv-

01967-RMC (D.D.C.). The States that intervened on appeal have authorized the parties to represent that the States support this motion.

The Federal Rules authorize relief from a judgment on the grounds that “applying it prospectively is no longer equitable” or for “any other reason.” Fed. R. Civ. P. 60(b)(5) & (6). The law is clear that district courts possess equitable discretion to grant vacatur of judgments in appropriate circumstances, including at the request of the parties in furtherance of a settlement. *See, e.g., Doe v. U.S. Dep’t of Labor*, No. Civ.A. 05-2449(RBW), 2007 WL 1321116 (D.D.C. Mar. 22, 2007); *Kim v. United States*, 903 F. Supp. 1546 (S.D.N.Y. 1995); *see also U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 29 (1994) (“[E]ven in the absence of, or before considering the existence of, extraordinary circumstances, a court of appeals presented with a request for vacatur of a district-court judgment may remand the case with instructions that the district court consider the request, which it may do pursuant to Federal Rule of Civil Procedure 60(b).”). Partial vacatur of judgments or orders in furtherance of settlement is likewise permissible. *See, e.g., Hospira, Inc. v. Sandoz Inc.*, No. 09-4591 (MLC), 2014 WL 794589 (D.N.J. Feb. 27, 2014); *Fund for Animals v. Babbitt*, 967 F. Supp. 6 (D.D.C. 1997).

Where a district court cannot modify its order because it has been divested of jurisdiction by a pending appeal, it may nonetheless issue an “indicative ruling” indicating that it would do so if the court of appeals remanded for such purpose. *See* Fed. R. Civ. P. 62.1 (“If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may . . . state . . . that it would grant the motion if the court of appeals remands for that purpose . . . .”); *Hoai v. Vo*, 935 F.2d 308, 312 (D.C. Cir. 1991) (“[W]hen both a Rule 60(b) motion and an appeal are pending simultaneously, appellate review may continue uninterrupted. At the same time, the District Court may consider the 60(b) motion

and, if the District Court indicates that it will grant relief, the appellant may move the appellate court for a remand in order that relief may be granted.”); *West v. Holder*, 309 F.R.D. 54, 56 (D.D.C. 2015) (same); *see also* 11 Charles Alan Wright et al., *Federal Practice & Procedure* § 2911 (3d ed.) (discussing Rule 62.1).<sup>1</sup>

Equitable considerations strongly favor granting the requested relief here. The parties have reached a negotiated resolution of their dispute, contingent on partial vacatur of the judgment. “Settlement is highly favored,” *United States v. Hyundai Motor Co.*, 77 F. Supp. 3d 197, 199 (D.D.C. 2015), because “[n]ot only the parties, but the general public as well, benefit from the saving of time and money that results from the voluntary settlement of litigation.” *Citizens for a Better Env’t v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983). That is particularly true here, because granting the relief requested in order to effectuate the parties’ conditional settlement will obviate the need for the courts to decide a dispute between the political branches that those branches are now prepared to resolve amicably. Accordingly, the relief requested by the parties is clearly in the public interest.

For the foregoing reasons, the Court should issue an indicative ruling stating that, if the case is remanded by the court of appeals, in furtherance of the parties’ conditional settlement agreement this Court will vacate the portion of its final order providing that “reimbursements paid to issuers of qualified health plans for the cost-sharing reductions mandated by Section 1402 of the Affordable Care Act, Pub. L. 111-148, are ENJOINED pending an appropriation for such

---

<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 12.1, if the district court states that it would grant the motion, the court of appeals may then “remand for further proceedings but retain[] jurisdiction unless it expressly dismisses the appeal.”

payments.” ECF No. 74, *United States House of Representatives v. Burwell, et al.*, No. 1:14-cv-01967-RMC (D.D.C.).

Respectfully submitted.

/s/ James M. Burnham

James M. Burnham  
CIVIL DIVISION  
U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Ave., NW, Rm. 3611  
Washington, DC 20530  
Telephone: (202) 353-2793  
james.m.burnham@usdoj.gov

*Counsel for Defendants*

/s/ Thomas G. Hungar

Thomas G. Hungar, *General Counsel*  
OFFICE OF GENERAL COUNSEL  
U.S. HOUSE OF REPRESENTATIVES  
219 Cannon House Office Building  
Washington, D.C. 20515  
Telephone: (202) 225-9700  
Facsimile: (202) 226-1360  
thomas.hungar@mail.house.gov

*Counsel for Plaintiff*

December 15, 2017

**CERTIFICATE OF SERVICE**

I certify that on December 15, 2017, I caused the foregoing Joint Motion to be filed via the Court's CM/ECF system, which I understand caused delivery of a copy to all registered parties.

/s/ Thomas G. Hungar  
Thomas G. Hungar

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

---

UNITED STATES HOUSE OF REPRESENTATIVES,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 14-cv-01967-RMC
	)	
ERIC D. HARGAN, in his official capacity as	)	
Acting Secretary of Health and Human Services;	)	
U.S. Department of Health and Human Services;	)	
STEVEN T. MNUCHIN, in his official capacity as	)	
Secretary of the Treasury; U.S. Department of the	)	
Treasury,	)	
	)	
<i>Defendants.</i>	)	

---

**EXHIBIT A**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between (a) the United States House of Representatives (the “House”); (b) the United States Department of Health and Human Services, the United States Department of the Treasury, and their respective Secretaries (the “Agencies”); and (c) the States of California, New York, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Mexico, North Carolina, Pennsylvania, Vermont, Virginia, and Washington, and the District of Columbia (the “States”).

1. In light of changed circumstances, the House, the Agencies, and the States have determined to resolve the dispute that is pending before the U.S. Court of Appeals for the D.C. Circuit (“Court of Appeals”) in *United States House of Representatives v. Hargan, et. al*, No. 16-5202 (D.C. Cir.).

2. By no later than two business days after execution of this Agreement, the House and the Agencies (collectively, “the Parties”) will submit to the district court a request that the district court issue an indicative ruling pursuant to Rule 62.1 of the Federal Rules of Civil Procedure stating that, if the case is remanded by the court of appeals, the district court will vacate the portion of its final order providing that “reimbursements paid to issuers of qualified health plans for the cost-sharing reductions mandated by Section 1402 of the Affordable Care Act, Pub. L. 111-148, are ENJOINED pending an appropriation for such payments.” ECF No. 74, *United States House of Representatives v. Burwell, et al.*, No. 1:14-cv-01967-RMC (D.D.C.). If the district court grants that motion, the Parties and the States will file a motion that asks the court of appeals to remand the case to allow the district court to grant the motion as provided in its indicative ruling.

3. The Parties recognize that the Executive Branch of the United States Government (“Executive Branch”) continues to disagree with the district court’s non-merits holdings, including its conclusion that the House had standing and a cause of action to bring this suit. The Parties agree that because subsequent developments have obviated the need to resolve those issues in an appeal in this case, the district court’s holdings on those issues should not in any way control the resolution of the same or similar issues should they arise in other litigation between the House and the Executive Branch. The Parties also recognize that the States continue to disagree with the district court’s merits holding. Accordingly, if the court of appeals grants the Joint Motion, the Parties agree that the district court’s holding on the merits should not in any way control the resolution of the same or similar issues should they arise in other litigation, and hereby waive any right to argue that the judgment of the district court or any of the district court’s orders or opinions in this case have any preclusive effect in any other litigation.

4. If the district court grants the motion described in paragraph 2 above and, following remand from the D.C. Circuit, the district court vacates its injunction in accordance with its indicative ruling, the Parties and the States agree that this litigation will have been resolved. The Parties and the States will bear their own fees and costs.

5. If the district court declines to grant the motion described in paragraph 2 above, or indicates that it would enter other relief not jointly supported by the Parties, this Agreement shall be of no force and effect and the Parties and the States shall be returned to their respective positions prior to execution of this Agreement.

6. **FULL AUTHORITY TO SIGN.** Each person signing this Agreement represents and warrants that he or she has full authority to execute the Agreement on behalf of himself or herself, or on behalf of the party or entity on whose behalf he or she signs this Agreement.



7. EXECUTION IN COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement may be executed and delivered in counterparts, and may be executed by electronic signature, and if so, shall be considered an original. Each counterpart, when executed, shall be considered one and the same instrument, which shall comprise the Agreement, which takes effect on the date of execution by all parties to the Agreement.

/s/ Thomas G. Hungar  
Thomas G. Hungar  
General Counsel

OFFICE OF GENERAL COUNSEL  
U.S. HOUSE OF REPRESENTATIVES  
219 Cannon House Office Building  
Washington, D.C. 20515  
202/225-9700 (telephone)  
*Counsel for Appellee*

Executed this 15th day of December, 2017, in Washington, D.C.

/s/ Chad A. Readler  
Chad A. Readler  
Acting Assistant Attorney General

U.S. DEPARTMENT OF JUSTICE  
Civil Division  
950 Pennsylvania Ave., Room 3601  
Washington, D.C. 20530  
202/353-7830 (telephone)  
*Counsel for Appellants*

Executed this 15th day of December, 2017, in Washington, D.C.

FOR THE STATE OF CALIFORNIA:

Xavier Becerra  
Attorney General of California

By: /s/ Edward C. DuMont  
Edward C. DuMont  
Solicitor General

CALIFORNIA DEPARTMENT OF JUSTICE  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94114  
(415) 703-2540

Executed this 15th day of December, 2017, in San Francisco, CA

FOR THE STATE OF NEW YORK:

Eric Schneiderman  
Attorney General of New York

By: /s/ Steven C. Wu  
Steven C. Wu  
Deputy Solicitor General

OFFICE OF THE NEW YORK ATTORNEY  
GENERAL  
120 Broadway, 25<sup>th</sup> Floor  
New York, NY 10271  
(212) 415-6312

Executed this 15th day of December, 2017, in New York, NY

FOR THE STATE OF CONNECTICUT:

George Jepsen  
Attorney General of Connecticut

By: /s/ Joseph Rubin  
Joseph Rubin  
Associate Attorney General

OFFICE OF THE CONNECTICUT ATTORNEY  
GENERAL  
55 Elm Street  
Hartford, CT 06106  
(860) 808-5261

Executed this 15th day of December, 2017, in Hartford, CT

FOR THE STATE OF DELAWARE:

/s/ Aaron R. Goldstein  
Aaron R. Goldstein  
State Solicitor

DELAWARE DEPARTMENT OF JUSTICE  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8400

Executed this 15th day of December, 2017, in Wilmington, DE

FOR THE STATE OF HAWAII:

Douglas S. Chin  
Attorney General of Hawaii

By: /s/ Donna H. Kalama  
Donna H. Kalama  
Deputy Attorney General

HAWAII DEPARTMENT OF THE ATTORNEY  
GENERAL  
425 Queen Street  
Honolulu, HI 96813  
(808) 586-1224

Executed this 15th day of December, 2017, in Honolulu, HI

FOR THE STATE OF ILLINOIS:

Lisa Madigan  
Attorney General of Illinois

By: /s/ David Franklin

David Franklin  
Solicitor General

OFFICE OF THE ILLINOIS ATTORNEY  
GENERAL  
100 West Randolph Street, 12<sup>th</sup> Floor  
Chicago, IL 60601

Executed this 15th day of December, 2017, in Chicago, IL

FOR THE STATE OF IOWA:

Thomas J. Miller  
Attorney General of Iowa

By: /s/ Nathan Blake

Nathan Blake  
Deputy Attorney General

1305 East Walnut Street  
Hoover State Office Building, Second Floor  
Des Moines, IA, 50319  
(515) 281-4325

Executed this 15th day of December, 2017, in Des Moines, IA

FOR THE COMMONWEALTH OF KENTUCKY:

Andy Beshear  
Attorney General of Kentucky

By: /s/ S. Travis Mayo

S. Travis Mayo  
Executive Director  
Office of Civil and Environmental Law

OFFICE OF THE ATTORNEY GENERAL  
700 Capital Avenue, Suite 119  
Frankfort, KY 40601  
(502) 696-5300

Executed this 15th day of December, 2017, in Frankfort, KY

FOR THE STATE OF MARYLAND:

Brian E. Frosh  
Attorney General of Maryland

By: /s/ Steven M. Sullivan  
Steven M. Sullivan  
Solicitor General

OFFICE OF THE ATTORNEY GENERAL OF  
MARYLAND  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, MD 21201  
(410) 576-6427

Executed this 15th day of December, 2017, in Baltimore, MD

FOR THE COMMONWEALTH OF MASSACHUSETTS:

Maura Healy  
Attorney General of Massachusetts

/s/ Mary A. Beckman  
Mary A. Beckman  
Chief, Health Care and Fair Competition Bureau

OFFICE OF THE MASSACHUSETTS ATTORNEY  
GENERAL  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
(617) 963-2110

Executed this 15th day of December, 2017, in Boston, MA

FOR THE STATE OF MINNESOTA:

/s/ Katherine T. Kelly  
Katherine T. Kelly  
  
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL OF THE  
STATE OF MINNESOTA  
445 Minnesota Street, Suite 1200  
St. Paul, MN 55101  
(651) 757-1308

Executed this 15th day of December, 2017, in St. Paul, MN

FOR THE STATE OF NEW MEXICO:

Hector H. Balderas  
Attorney General of New Mexico

By: /s/ Nicholas M. Sydow  
Nicholas M. Sydow  
Assistant Attorney General

OFFICE OF THE NEW MEXICO ATTORNEY  
GENERAL  
201 Third St. NW, Suite 300  
Albuquerque, NM 87102  
(505) 717-3571

Executed this 15th day of December, 2017, in Albuquerque, NM

FOR THE STATE OF NORTH CAROLINA:

Josh Stein  
Attorney General of North Carolina

By: /s/ Matthew W. Sawchak  
Matthew W. Sawchak  
Solicitor General

NORTH CAROLINA DEPARTMENT OF JUSTICE  
114 W. Edenton Street  
Raleigh, NC 27603

Executed this 15th day of December, 2017, in Raleigh, NC

FOR THE COMMONWEALTH OF PENNSYLVANIA:

Josh Shapiro

Attorney General of Pennsylvania

By: /s/ Jonathan Scott Goldman  
Jonathan Scott Goldman  
Executive Deputy Attorney General

PENNSYLVANIA OFFICE OF THE ATTORNEY  
GENERAL  
Strawberry Square, 15<sup>th</sup> Floor  
Harrisburg, PA 17120  
(717) 787-8058

Executed this 15th day of December, 2017, in Harrisburg, PA

FOR THE STATE OF VERMONT:

Thomas J. Donovan  
Attorney General of Vermont

By: /s/ Benjamin D. Battles  
Benjamin D. Battles  
Solicitor General

OFFICE OF THE VERMONT ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT 05609  
(802) 828-5500

Executed this 15th day of December, 2017, in Montpelier, VT

FOR THE COMMONWEALTH OF VIRGINIA:

Mark Herring  
Attorney General of Virginia

By: /s/ Trevor Cox  
Trevor Cox  
Acting Solicitor General

OFFICE OF THE ATTORNEY GENERAL OF  
VIRGINIA  
202 North Ninth Street  
Richmond, VA 23219

Executed this 15th day of December, 2017, in Richmond, VA

FOR THE STATE OF WASHINGTON:

Robert W. Ferguson  
Attorney General of Washington

By: /s/ Jeffrey T. Sprung  
Jeffrey T. Sprung  
Assistant Attorney General

OFFICE OF THE WASHINGTON ATTORNEY  
GENERAL  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 326-5492

Executed this 15th day of December, 2017, in Seattle, WA

FOR THE DISTRICT OF COLUMBIA:

Karl A. Racine  
Attorney General for the District of Columbia

By: /s/ Loren L. AliKhan  
Loren L. AliKhan  
Acting Solicitor General

OFFICE OF THE ATTORNEY GENERAL FOR THE  
DISTRICT OF COLUMBIA  
441 4<sup>th</sup> Street, NW  
Suite 600 South  
Washington, D.C. 20001

Executed this 15th day of December, 2017, in Washington, D.C.