

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

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The State of California, <i>et al.</i> ,))
))
Plaintiffs-Appellees,))
))
v.))
))
United States Department of Health)	
and Human Services, <i>et al.</i> ,)	Nos. 19-15072,
)	19-15118,
Defendants-Appellants,)	19-15150
)	
and)	
)	
The Little Sisters of the Poor Jeanne Jugan)	
Residence,)	
)	
Intervenor-Defendant-Appellant,)	
)	
and)	
)	
March for Life Education and Defense Fund,)	
)	
Intervenor-Defendant-Appellant.)	
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Appellants’ Joint Motion for Expedited Oral Argument

Defendants-appellants and intervenors-defendants-appellants respectfully request that oral argument in these expedited and consolidated preliminary-injunction appeals be held as soon as practicable following the conclusion of briefing. That will allow this Court to hear and resolve the expedited appeals from this preliminary injunction, which relate to the earlier appeals in the case, in a timely

manner. Expedited oral argument is warranted in light of the significance of the issues and the fact that the government is currently bound by a preliminary injunction, which entitles the appellants to expedited consideration of their appeals as a matter of right. *See* 28 U.S.C. § 1657(a). Expedited argument will also allow this Court to provide guidance to the district court before it issues final judgment and will conserve the resources of the Court and the parties.

In support of the motion, counsel for appellants state as follows:

1. These consolidated, expedited appeals seek review of a preliminary injunction that prohibits the federal defendants-appellants from implementing final rules that expand a religious exemption and create a moral exemption from the Affordable Care Act's contraceptive-coverage mandate.

In a previous ruling, this Court held that interim rules expanding a religious exemption and creating a moral exemption to the contraceptive-coverage mandate violated the Administrative Procedure Act because the agencies lacked authority to issue those rules without prior notice and comment. *See California v. Azar*, 911 F.3d 558 (9th Cir. 2018). In that ruling, the panel retained jurisdiction for any subsequent appeals arising from this case. *See id.* at 585.

Following the agencies' issuance of final rules finalizing the religious and moral exemptions, the district court issued a preliminary injunction barring implementation of the final rules in the plaintiff States. The federal defendants and

the intervenors appealed, and their appeals have been consolidated by the Court. Appellants filed their opening briefs on February 25, 2019. Plaintiffs-appellees' brief is currently due March 25, 2019, but appellees have filed a motion for a 21-day extension, which is currently pending before the Court. Appellants' reply briefs are due 21 days from service of appellees' brief.

2. On February 6, 2019, the district court set a schedule for summary-judgment briefing in this case and scheduled a hearing on the parties' summary-judgment motions for September 5, 2019.

In light of the September 5, 2019, hearing date, appellants respectfully request that this Court hold oral argument in these consolidated appeals as soon as practicable following the completion of briefing so that the Court can rule on these appeals before the district court rules on the parties' summary-judgment motions and provide meaningful guidance to the district court regarding issues that will be common to both these appeals and those summary-judgment motions. Doing so will conserve the resources of the Court and the parties as well as obviate any potential procedural complications from entry of final judgment while appeal of the preliminary injunction is still pending. Expedited oral argument also is supported by 28 U.S.C. § 1657(a), which provides that a court "shall expedite the consideration of . . . any action for temporary or preliminary injunctive relief."

3. A related appeal of a preliminary injunction entered by a Pennsylvania district court against the rules at issue here is currently pending in the Third Circuit. *See Pennsylvania v. President, United States*, Nos. 19-1129 and 19-1189 (3d Cir.). The Third Circuit has scheduled oral argument in that appeal for May 21, 2019.

4. Counsel for appellees have authorized us to represent the following with respect to appellees' position regarding this motion: Preliminary injunction appeals are already expedited as a matter of law. The States take no position on the motion. The States defer to the panel on the management of its oral argument calendar and are prepared to argue the appeals on whatever date the Court deems appropriate.

Conclusion

For the foregoing reasons, appellants in these consolidated appeals request that the Court hold oral argument as soon as practicable following the completion of briefing.

Respectfully submitted,

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Certificate of Compliance

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that the foregoing Motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(e)(1)(E) and the type-volume limitations of Federal Rule of Appellate Procedure 27(e)(2). The Motion contains 629 words as calculated by Microsoft Word, and has been prepared in a proportionately spaced typeface using Times New Roman 14-point font.

Certificate of Service

I hereby certify that on this 18th day of March, 2019, I filed the foregoing Motion by use of the Court's CM/ECF system. Service of the Motion will be made on counsel by that system.

s/Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.