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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA**

STATE OF WASHINGTON,

Plaintiff,

v.

ALEX M. AZAR II, et al.,

Defendants.

NO. 1:19-cv-03040-SAB

STATE OF WASHINGTON’S
UNOPPOSED MOTION TO
CONSOLIDATE FOR PRETRIAL
PROCEEDINGS

March 20, 2019
Without Oral Argument

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 On March 5 and 7, 2019, respectively, the State of Washington and other
3 plaintiffs filed two separate suits challenging a final rule issued by Defendants
4 Alex Azar and the United States Department of Health and Human Services
5 (collectively, HHS): *State of Washington v. Azar, et al.*, No. 1:19-cv-3040-SAB
6 and *National Family Planning & Reproductive Health Ass’n, et al., v. Azar, et*
7 *al.*, No. 19-cv-03045-SAB. The final rule, published on March 4, 2019, adopts
8 new regulations governing the nation’s family planning program under Title X
9 of the Public Health Services Act. 84 Fed. Reg. 7714 (Mar. 4, 2019). Both cases
10 have been assigned to this Court. The State now submits this motion pursuant to
11 Fed. R. Civ. P. 42(a) to consolidate the two cases for scheduling and other pretrial
12 purposes. No party opposes consolidation.
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15 **II. ARGUMENT**

16 Under Federal Rule of Civil Procedure 42(a), “[i]f actions before the court
17 involve a common question of law or fact, the court may: (1) join for hearing or
18 trial any or all matters at issue in the actions; (2) consolidate the actions; or
19 (3) issue any other orders to avoid unnecessary cost or delay.” “The district court
20 has broad discretion . . . to consolidate cases pending in the same district.”
21 *Inv’rs Research Co. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 877 F.2d 777, 777
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1 (9th Cir. 1989). In determining whether to consolidate cases, the court should
2 “weigh the interest of judicial convenience against the potential for delay,
3 confusion and prejudice.” *Zhu v. UCBH Holdings, Inc.*, 682 F. Supp. 2d 1049,
4 1052 (N.D. Cal. 2010); *see also Huene v. United States*, 743 F.2d 703, 704
5 (9th Cir.), *on reh’g*, 753 F.2d 1081 (9th Cir. 1984) (“The district court, in
6 exercising its broad discretion to order consolidation of actions presenting a
7 common issue of law or fact under Rule 42(a), weighs the saving of time and
8 effort consolidation would produce against any inconvenience, delay, or expense
9 that it would cause.”). While consolidation of the cases allows the parties to
10 reduce repetition between the two cases, “the law is clear that an act of
11 consolidation does not affect any of the substantive rights of the parties.”
12 *J.G. Link & Co. v. Continental Cas. Co.*, 470 F.2d 1133, 1138 (9th Cir. 1972).

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15 The subject cases involve common questions of fact and law, though they
16 are not identical. The cases involve the same rulemaking and the same
17 administrative record, including the same extensive public comments in the
18 rulemaking process. Both cases raise legal claims that the final rule violates the
19 Administrative Procedure Act and three additional statutes, is arbitrary and
20 capricious, and is unconstitutional. Both cases seek declaratory and injunctive
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1 relief against the same Defendants. Consolidating the scheduling and preliminary
2 proceedings in the two cases will further judicial economy and benefit all parties.

3 The primary difference between the two cases is that they involve plaintiffs
4 with distinct interests: the State of Washington, on one hand, and the National
5 Family Planning and Reproductive Health Association (NFPRHA) and related
6 parties (NFPRHA Plaintiffs), on the other. This difference does not reduce the
7 benefits of consolidation. The State of Washington represents the state agency
8 that administers Washington's network of family planning clinics and the nearly
9 100,000 rural and low-income Washington residents who receive contraception,
10 cancer screening, and other family planning services at those clinics. NFPRHA
11 is a national membership organization suing on behalf of Title X providers across
12 the country. NFPRHA's members operate or administer more than 3500 health
13 centers providing family planning services to more than 3.7 million patients each
14 year. NFPRHA's co-plaintiffs are a Washington-based NFPRHA member
15 organization and two health care professionals, all suing on behalf of themselves
16 and their patients. While the interests of the administrator of a state health care
17 program on one hand and health centers and providers on the other are distinct,
18 both sets of plaintiffs will be affected similarly by the changes to the Title X
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1 family planning program introduced by the final rule, and the relief they request
2 is consistent.

3 Consolidation would promote convenience, efficiency, and judicial
4 economy at the pretrial stage. Counsel for the United States would have the
5 benefit of litigating related cases pending in the same judicial district on the same
6 schedule. Both sets of plaintiffs intend to move for preliminary injunctive relief,
7 and it would streamline proceedings if the motions were briefed and heard on the
8 same schedule (though each set of plaintiffs will file its own brief and primary
9 accompanying documents) and decided by the Court after oral argument held all
10 at once. After the motions are decided, consolidation would allow the parties to
11 coordinate the schedule for next steps, including dispositive motions, and address
12 in a streamlined fashion any common legal or factual issues that may arise.

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15 Counsel for the State of Washington and the NFPRHA Plaintiffs will
16 continue to make separate appearances for their clients and file separate
17 substantive briefs, as appropriate. Nevertheless, scheduling and other procedural
18 matters can occur jointly.

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20 At present, there are no countervailing concerns that consolidation would
21 cause prejudice, delay, or confusion. The cases were filed two days apart, so there
22 is no risk that consolidation will delay one case or the other. And the legal claims

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and factual allegations (based on the same administrative record) are aligned in both complaints, ensuring that there will be no prejudice or confusion.

III. CONCLUSION

Because consolidation of Case Nos. 1:19-cv-03040-SAB and 1:19-cv-03045-SAB would promote convenience and judicial economy and would not prejudice any party, the State requests that the Court enter the proposed order submitted herewith consolidating the proceedings for pretrial purposes.

DATED this 18th day of March, 2019.

ROBERT W. FERGUSON
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 18th day of March, 2019, at Seattle, Washington.

/s/ Jeffrey T. Sprung
JEFFREY T. SPRUNG, WSBA #23607
Assistant Attorney General