

No. 19-35394

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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STATE OF WASHINGTON,

Plaintiff-Appellee,

v.

ALEX M. AZAR II, in his official capacity as Secretary of the United States Department of Health and Human Services; and UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants-Appellants.

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NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, in his official capacity as Secretary of the United States Department of Health and Human Services, et al.,

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

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**OPPOSITION TO EMERGENCY MOTION FOR A TEMPORARY  
ADMINISTRATIVE STAY**

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This Court should deny plaintiffs' extraordinary requests for an administrative stay while this expedited appeal proceeds. Neither motion identifies any instance in which this Court has granted rehearing en banc on an order staying a preliminary injunction pending appeal—let alone an administrative stay to consider whether to grant such a rehearing—and we are aware of none.

This case should not be the one to break new ground. As the panel's decision acknowledged, the regulations challenged here are materially indistinguishable from—if not less restrictive than—the ones that the Supreme Court upheld in *Rust v. Sullivan*, 500 U.S. 173 (1991). Plaintiffs do not seriously dispute this, nor do they provide any compelling reason why extraordinary measures from this Court are necessary to address regulations essentially identical to ones that the Supreme Court has already upheld. Although plaintiffs (wrongly) contend that subsequent laws have implicitly abrogated the Supreme Court's decision, the unanimous panel's careful decision explained the flaws in that theory, and in any event, plaintiffs' mere disagreement with the panel does not warrant the extraordinary relief they now seek. And although plaintiffs may object—strongly—to the effect of these regulations, the current state of affairs is not meaningfully different from the status quo in the wake of the Supreme Court's decision in *Rust*. Again, while plaintiffs may disagree with the unanimous panel's conclusions on this issue, that is no justification for the novel relief they seek.

For the reasons above, as well as those given in the panel's decision, this Court should deny plaintiffs' motions for an administrative stay.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 264 words. It complies with the typeface and the type style requirements of Federal Rule of Appellate Procedure 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Garamond typeface.

s/ Jaynie Lilley \_\_\_\_\_  
JAYNIE LILLEY

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2019, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/Jaynie Lilley  
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