



U.S. Department of Justice
Civil Division
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VIA CM/ECF

July 10, 2019

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *State of California, et al. v. Alex M. Azar II, et al.*, Nos. 19-15974 &
19-15979
State of Oregon, et al. v. Alex M. Azar II, et al., No. 19-35386
State of Washington, et al. v. Alex M. Azar II, et al., No. 19-35394

Dear Ms. Dwyer:

We write about the status of the government’s motion for a stay pending appeal in the above-captioned cases. Between April 25-29, the district courts in these cases enjoined regulations that are materially indistinguishable from the ones upheld by the Supreme Court in *Rust v. Sullivan*, 500 U.S. 173 (1991). Between May 10-13, the government sought stays from this Court of the preliminary injunctions pending appeal. On June 20, a motions panel of this Court issued a unanimous per curiam order granting the government’s motion. Plaintiffs filed emergency motions for en banc reconsideration of the panel’s stay order and, on July 3, this Court “ordered that these cases be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3,” and directed that the panel’s stay order “shall not be cited as precedent.” In the week since that order was issued, the Court has given no further indication how it intends to proceed or what the timeline for resolving the government’s stay motion may be.

We respectfully request that the Court act on the government's stay motion within the next two weeks. Expeditious resolution of the motion is warranted, given the ongoing and irreparable harm caused by the district court's injunctions, which were issued more than two months ago. As the panel found in its now-vacated stay order, "HHS and the public at large are likely to suffer irreparable harm in the absence of a stay," because "HHS will be forced to allow taxpayer dollars to be spent in a manner that it has concluded violates the law" and is contrary to "the Government's important policy interest" in not "fund[ing] or subsidiz[ing] abortions." Op.24. That harm is all the greater because two of the preliminary injunctions on appeal enjoined application of the regulations nationwide. Briefing on the government's motion was completed on May 28, and, in the government's view, no further briefing is necessary to decide the issue. We therefore respectfully request that the Court act upon the government's motion no later than July 24, to give the government an opportunity to seek timely Supreme Court review, if warranted.

Sincerely,

s/ Jaynie Lilley
Jaynie Lilley
Attorney

cc: all counsel (via CM/ECF)

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Jaynie Lilley

JAYNIE LILLEY