

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, Secretary
of Health and Human Services, *et al.*,

Defendants.

No. 7:16-cv-00108-O

DEFENDANTS' RESPONSE TO ORDER OF THE COURT

Defendants hereby respond to the Court's August 7, 2019 Order, which required briefing from the parties on whether, in light of *Town of Chester, N.Y. v. Laroe Estates, Inc.*, __ U.S. __, 137 S. Ct. 1645 (2017), permissive intervenors who seek judicial relief different from that sought by a party must themselves have standing. That question, as far as Defendants are aware, has not been squarely resolved by the Supreme Court. The Court's reasoning in *Town of Chester* would seem to apply equally to permissive intervenors who seek judicial relief different from a party with standing. *See id.* at 1651 ("For all relief sought, there must be a litigant with standing . . ."). It is far from clear based on *Town of Chester*, however, that a party intervening as a defendant and seeking only to have the plaintiffs' request for relief denied would need standing.

Defendants also note that the Court need not rule on the putative intervenors' motion at this time. As Defendants have explained, the May 24, 2019 Notice of Proposed Rulemaking, if finalized, would likely moot this case. Defendants respectfully submit that postponing ruling on the motion to intervene would therefore promote judicial economy.

DATED: August 12, 2019

Respectfully submitted,

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/s/ Bradley P. Humphreys
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, a copy of the foregoing was filed electronically via the Court's ECF System, which effects service upon counsel of record.

/s/ Bradley P. Humphreys
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