

[NOT SCHEDULED FOR ORAL ARGUMENT]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SAMUEL PHILBRICK, et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, et al.,

Defendants-Appellants,

Nos. 19-5293 & 19-5295

**UNOPPOSED MOTION TO HOLD APPEALS IN ABEYANCE PENDING
THIS COURT'S DECISIONS IN RELATED APPEALS**

For the following reasons, the federal defendants-appellants respectfully request that these consolidated appeals be held in abeyance pending this Court's decisions in *Gresham v. Azar*, Nos. 19-5094 & 19-5096, and *Stewart v. Azar*, Nos. 19-5095 & 19-5097, where oral argument was heard on October 11, 2019 before Circuit Judges Pillard, Edwards and Sentelle. Counsel for the state defendants-appellants and counsel for plaintiffs-appellees have authorized us to state that this abeyance motion is unopposed.

1. In *Stewart*, the district court (Boasberg, J.), vacated the approval of a Kentucky demonstration project that (*inter alia*) required certain adult Medicaid recipients to engage in work-oriented activities as a condition of eligibility. In

Gresham, the district court vacated the approval of a similar Arkansas demonstration project. The federal and state defendants appealed, and oral argument was heard on October 11 before Circuit Judges Pillard, Edwards and Sentelle.

2. In this case, the district court vacated the approval of a New Hampshire demonstration project that also required (*inter alia*) certain adult Medicaid recipients to engage in work-oriented activities as a condition of eligibility. See *Philbrick v. Azar*, No. 1:19-cv-773 (D.D.C. July 29, 2019) (Boasberg, J.). The district court entered a Rule 54(b) judgment on August 27. The federal and state defendants appealed, and this Court consolidated the appeals.

3. We respectfully request that the appeals in this case be held in abeyance pending this Court's decisions in *Gresham* and *Stewart*, which may control the disposition of this case and, at a minimum, will inform its resolution. Counsel for the state-defendants and counsel for the plaintiffs-appellees have authorized us to indicate that this abeyance motion is unopposed.

Respectfully submitted,

MARK B. STERN

s/ Alisa B. Klein

ALISA B. KLEIN

(202) 514-1597

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave., NW, Rm. 7235

Washington, DC 20530

NOVEMBER 2019

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 272 words.

/s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2019, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Alisa B. Klein

Alisa B. Klein