

**U.S. Department of Justice**

Civil Division

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VIA CM/ECF

November 25, 2019

Ms. Patricia S. Connor  
Office of the Clerk  
United States Court of Appeals for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, VA 23219

Re: *Mayor and City Council of Baltimore v. Azar*, No. 19-1614

Dear Ms. Connor:

We write in response to petitioners' November 18, 2019 letter pursuant to Federal Appellate Rule 28(j) regarding the parties' cross-motions for summary judgment in the district court.

Plaintiff cites its own summary judgment briefing to claim as undisputed fact that the Rule requires medical providers to violate medical ethics. *See* 28(j) Letter 1. That briefing is, of course, outside the record on this appeal from a preliminary injunction.

Regardless, as explained in our appellate briefs (Op. Br. 26-27; Reply Br. 17), the Rule's restrictions on abortion referrals do not violate medical ethics, and plaintiff's letter does not demonstrate otherwise. Plaintiff has identified no evidence in any of its filings here or below that any state medical ethics authorities have determined that a medical provider violates medical ethics when (1) operating with the limited confines of a federally funded program, (2) he or she merely declines to provide a referral for abortion as a method of family planning upon

request, (3) even after having provided non-directive counseling about abortion (as the Rule allows). Indeed, if Plaintiff's view of medical ethics were correct, it is unclear why Congress and many States have excluded abortion referrals in variously publicly funded programs. *See, e.g.*, 42 U.S.C. § 300z-10(a); State Amicus Br. 23-24; ECF No. 112, at 35, *Washington v. Azar*, No. 1:19-cv-03040-SAB (Oct. 7, 2019). Moreover, the overwhelming majority of Title X providers have remained in the Title X program after the Rule went into effect, which is compelling real-world evidence that these providers recognize that the Rule is consistent with their ethical obligations. *See, e.g.*, HHS Issues Supplemental Grant Awards to Title X Recipients (Sept. 30, 2019), <https://www.hhs.gov/about/news/2019/09/30/hhs-issues-supplemental-grant-awards-to-title-x-recipients.html>.

Sincerely,

s/ Jaynie Lilley

Jaynie Lilley

Attorney

cc: all counsel (via CM/ECF)

**CERTIFICATE OF COMPLIANCE**

This letter complies with the word count limitation of Fed. R. App. 28(j), as its body contains 275 words as automatically totaled by Microsoft Word.

*s/ Jaynie Lilley*  
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JAYNIE LILLEY

**CERTIFICATE OF SERVICE**

I hereby certify that on November 25, 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*  
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JAYNIE LILLEY