

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

ANDREA YOUNG, *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, *et al.*,

Defendants.

Civil Action No. 1:19-cv-3526 (JEB)

NOTICE BY FEDERAL DEFENDANTS

The Federal Defendants file this notice in response to this Court's order instructing the parties to indicate whether they believe that "the approval of Michigan's work and community engagement requirements [are] materially different from that of Kentucky's or Arkansas's" or whether "a D.C. Circuit merits affirmance in the Arkansas case would also bar the work and community requirements here." Jan. 20, 2020 Order, ECF No. 14.

The Federal Defendants respectfully submit that, under the reasoning of this Court's decision in *Stewart v. Azar*, 366 F. Supp. 3d 125 (D.D.C. 2019), as incorporated into *Gresham v. Azar*, 363 F. Supp. 3d 165, 181 (D.D.C. 2019), the Secretary's approval of the work and community engagement component of the Healthy Michigan Plan ("HMP") is not materially different from the approval of the work and community engagement components challenged in *Stewart* and *Gresham*. See *Gresham*, 363 F. Supp. 3d at 181 (opining that because the Secretary's explanation in *Stewart* "does not even justify affirmance of Kentucky's project, it cannot support upholding a different state's project"). Accordingly, if the D.C. Circuit in *Gresham v. Azar*, No. 19-5094 (D.C. Cir.) were to issue a straight merits affirmance of this Court's reasoning in *Stewart* and *Gresham*, on the same grounds set forth by this Court, and did not include additional, different, or more limited reasoning, the Secretary's approval of HMP's work and community engagement requirement would be unlawful under circuit precedent, absent further judicial review. However, in light of HMP's procedural history, the Federal Defendants submit that the other components of HMP, such as the waiver of retroactive eligibility and monthly premium requirement, were lawfully approved by the Secretary and should not be vacated even if the work and community engagement requirement is determined to be unlawful. Further, HMP's Healthy Behaviors Incentives Program, a project component that plaintiffs also challenge, is unique from the other components previously considered by this Court and similarly should not be vacated. Thus, in accord with the Court's order, the Federal Defendants intend to file a brief by February 25, 2020, addressing these issues.

Dated: January 28, 2020

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/s/ Vinita B. Andrapalliyal

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