

Arnold & Porter

Andrew Tutt
+1 202.942.5242 Direct
Andrew.Tutt@arnoldporter.com

February 17, 2020

Via CM/ECF

Ms. Patricia S. Connor
Office of the Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3538

Re: *Mayor and City Council of Baltimore v. Azar*, No. 19-1614 (4th Cir.)
FRAP 28(j) Notice of Supplemental Authority

Dear Ms. Connor:

On February 14, 2020, the court below granted each of the parties' motions for summary judgment in part and ordered the Rule permanently enjoined in the State of Maryland. The court's Memorandum Opinion ("Op.") and Order are enclosed with this letter. The Court's key holding is as follows:

Having carefully reviewed the Administrative Record in this case, this Court is compelled to find that HHS's promulgation of the Final Rule was arbitrary and capricious for three key reasons. First, HHS has inadequately explained its decision to "disagree" with comments by every major medical organization regarding the Final Rule's contravention of medical ethics. Second, HHS inadequately considered the "reliance interests" that would be disrupted by its change in policy. Finally, HHS inadequately considered the likely costs and benefits of the physical separation requirement.

Op.15-16. The court held that HHS's conclusory rejection of medical ethics concerns was "plainly arbitrary and capricious," Op.22, held that "HHS entirely ignored the evidence that raised concerns about the Final Rule's reducing access to Title X services nationwide," Op.24, and held that HHS's "conclusory response to commenters' evidence-backed concerns about the serious problems the physical separation requirement [would] cause [flew] in the face of established APA principles," Op.25.

The court below did not address the Non-Interference Mandate and Nondirective Mandate claims because "they remain on appeal in connection with the Fourth Circuit's review of this Court's preliminary injunction." Op.15-16 n.5.

Arnold & Porter

Andre M. Davis
City Solicitor

Suzanne Sangree
*Senior Counsel for Public Safety &
Director of Affirmative Litigation*

CITY OF BALTIMORE
DEPARTMENT OF LAW
City Hall, Room 109
100 N. Holliday Street
Baltimore, MD 21202
443-388-2190
andre.davis@baltimorecity.gov
suzanne.sangree2@baltimorecity.gov

Stephanie Toti
LAWYERING PROJECT
25 Broadway, Fl. 9
New York, NY 10004
646-490-1083
stoti@lawyeringproject.org

Respectfully Submitted,

By /s/ Andrew Tutt
Andrew T. Tutt
Drew A. Harker
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
Telephone: (202) 942-5000
andrew.tutt@arnoldporter.com

Priscilla J. Smith
REPRODUCTIVE RIGHTS &
JUSTICE PROJECT
YALE LAW SCHOOL
319 Sterling Place
Brooklyn, NY 11238
priscilla.smith@ylsclinics.org

Faren M. Tang
REPRODUCTIVE RIGHTS &
JUSTICE PROJECT
YALE LAW SCHOOL
127 Wall Street
New Haven, CT
faren.tang@ylsclinics.org

Counsel for Appellee Mayor and City Council of Baltimore

cc: all counsel (via CM/ECF)

enclosures