

**U.S. Department of Justice**

Civil Division

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VIA CM/ECF

May 11, 2020

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*, Nos. 19-1614 & 20-1215

Dear Ms. Connor:

Pursuant to FRAP 28(j), we write to notify the Court that the Ninth Circuit has denied petitions for rehearing of its decision upholding the Rule against the very same challenges that Baltimore presses here. The Ninth Circuit's order underscores that Baltimore's criticisms of the Ninth Circuit en banc panel's decision lack merit, and confirms that the Rule is reasonable as a matter of law. This Court should avoid a conflict with the Ninth Circuit's decision and likewise reject Baltimore's challenges to the Rule.

The Ninth Circuit's denial of those petitions for rehearing also underscores the impropriety of granting relief beyond Baltimore's borders. The district court's order provides the State of Maryland the same relief that it has failed to obtain in the Ninth Circuit. And Baltimore's request for nationwide relief (which was not properly presented to this Court) would effectively nullify the en banc Ninth Circuit's considered decision within its own jurisdiction.

Sincerely,

s/ Joshua Dos Santos

Joshua Dos Santos

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 152 words as automatically totaled by Microsoft Word.

s/ Joshua Dos Santos

JOSHUA DOS SANTOS

FILED

UNITED STATES COURT OF APPEALS

MAY 8 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STATE OF CALIFORNIA, by and
through Attorney General Xavier Becerra,

Plaintiff-Appellee,

v.

ALEX M. AZAR II, in his Official
Capacity as Secretary of the U.S.
Department of Health & Human Services;
U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES,

Defendants-Appellants.

No. 19-15974

D.C. No. 3:19-cv-01184-EMC
Northern District of California,
San Francisco

ORDER

ESSENTIAL ACCESS HEALTH, INC.;
MELISSA MARSHALL, M.D.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, Secretary of U.S.
Department of Health and Human
Services; UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants-Appellants.

No. 19-15979

D.C. No. 3:19-cv-01195-EMC
Northern District of California,
San Francisco

STATE OF OREGON; et al., Plaintiffs-Appellees, v. ALEX M. AZAR II; et al., Defendants-Appellants.	No. 19-35386 D.C. Nos. 6:19-cv-00317-MC 6:19-cv-00318-MC District of Oregon, Eugene
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STATE OF WASHINGTON; et al., Plaintiffs-Appellees, v. ALEX M. AZAR II, in his official capacity as Secretary of the United States Department of Health and Human Services; et al., Defendants-Appellants.	No. 19-35394 D.C. Nos. 1:19-cv-03040-SAB 1:19-cv-03045-SAB Eastern District of Washington, Yakima
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Before: THOMAS, Chief Judge, and LEAVY, WARDLAW, W. FLETCHER, PAEZ, BYBEE, CALLAHAN, M. SMITH, IKUTA, MILLER and LEE, Circuit Judges.

A majority of the panel has voted to deny the Petition of Plaintiffs-Appellees Essential Access Health, Inc. and Melissa Marshall, M.D. for Full Court or Limited En Banc Court Rehearing (Case No. 19-15974, ECF No. 139; Case No. 19-15979,

ECF No. 135); the Petition of the State of California et al. for En Banc or Full Court Rehearing (Case No. 19-15974, ECF No. 139; Case No. 19-15979, ECF No. 131; Case No. 19-35386, ECF No. 180); the Petition of Plaintiffs-Appellees National Family Planning & Reproductive Health Association et al. for Full Court or Limited En Banc Court Rehearing (Case No. 19-35394, ECF No. 139); the Petition of Plaintiffs-Appellees American Medical Association et al. for Full Court or Limited En Banc Court Rehearing (Case No. 19-35386, ECF No. 179) (collectively, the “Petitions”).

Judges Leavy, Bybee, Callahan, M. Smith, Ikuta, Miller, and Lee voted to deny the Petitions. Judge Paez voted to grant the Petitions.

The full court has been advised of the Petitions, and no Judge has requested a vote on whether to rehear the matter as a full court. Fed. R. App. P. 35.

The Petitions are DENIED.