

1 John Midgley, WSBA No. 6511  
2 AMERICAN CIVIL LIBERTIES UNION  
3 OF WASHINGTON FOUNDATION  
4 P. O. Box 2728  
5 Seattle, WA 98111  
6 Phone: (206) 623-9454  
7 Email: jmidgley@aclu-wa.org

8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF WASHINGTON**  
10 **AT YAKIMA**

11 STATE OF WASHINGTON,

12 Plaintiff,

13 v.

14 ALEX M. AZAR II, et al.,

15 Defendants.

No. 1:19-cv-03040-SAB

THE PARTIES' JOINT STATUS  
REPORT PURSUANT TO THE  
COURT'S MARCH 6, 2020,  
ORDER (ECF NO. 148)

16 NATIONAL FAMILY PLANNING &  
17 REPRODUCTIVE HEALTH  
18 ASSOCIATION, et al.,

19 Plaintiffs,

20 v.

21 ALEX M. AZAR II, et al.,

22 Defendants.

1 On March 6, 2020, the Court ordered that this matter be held in abeyance  
2 pending any further appellate review of the Ninth Circuit’s February 24, 2020,  
3 decision. ECF No. 148. On March 6, 2020, the Court also requested a joint status  
4 report from the parties on or before June 5, 2020. ECF No. 148. The parties now  
5 provide that report.

6 **A. Developments Since the Parties’ Last Submission to the Court**

7 On April 8, 2020, the State of Washington and the National Family Planning  
8 & Reproductive Health Association (“NFPRHA”) Plaintiffs jointly petitioned for  
9 en banc or full Ninth Circuit rehearing of the February 24 decision. The plaintiffs  
10 litigating the parallel actions in California and Oregon each filed joinders to that  
11 petition for rehearing.

12 On May 8, 2020, rehearing of the Ninth Circuit’s decision was denied.  
13 Plaintiffs now have until October 5, 2020, to petition for certiorari in the U.S.  
14 Supreme Court. (The time period for petitioning has been extended to 150 days  
15 because of the COVID-19 pandemic.)

16 **B. Next Steps Regarding Potential Appellate Review**

17 Plaintiffs are currently considering whether to petition for review in the U.S.  
18 Supreme Court. They are also monitoring any actions by litigants in the parallel  
19 Ninth Circuit cases and in another challenge to the 2019 Title X Rule now pending  
20 before the en banc Fourth Circuit, which could influence whether Plaintiffs  
21 themselves petition for review or seek to join efforts initiated by others. The  
22 appeal in the Fourth Circuit case was argued on May 7, 2020.  
23

1 As the parties have reported previously to this Court, *see* ECF No. 147, the  
2 parties disagree about the extent to which the Ninth Circuit’s decision forecloses  
3 certain of Plaintiffs’ arbitrary-and-capricious claims, but agree that the decision did  
4 not expressly address all of the claims Plaintiffs have asserted in these matters.  
5 The parties also agree that it would be inefficient for this Court to proceed right  
6 now to consider and to decide the unaddressed claims on cross-motions for  
7 summary judgment while Plaintiffs seek further appellate review of significant  
8 rulings by the Ninth Circuit. For all the reasons set forth in our earlier and more  
9 detailed joint submission, ECF No. 147, the parties continue to believe that it  
10 would conserve judicial resources and the parties’ resources for the preliminary  
11 injunction appeal to reach its final resolution before the Court turns to the merits  
12 and decides the full scope of the case, as it exists at that point, if necessary.

13 **CONCLUSION**

14 The parties therefore request that the Court continue to hold the proceedings  
15 in this case in abeyance pending any further appellate review of the Ninth Circuit’s  
16 decision. The parties propose to provide the Court with another joint status report  
17 on or before October 9, 2020, at the end of the week when any petition for  
18 certiorari from the Ninth Circuit’s decision is due.

1 DATED: June 5, 2020

2 Respectfully submitted,

3  
4 Joe Shaeffer, WSBA No. 33273  
5 MACDONALD HOAGUE &  
6 BAYLESS  
7 705 Second Ave., Ste. 1500  
8 Seattle, WA 98104  
9 joe@mhb.com

By: /s/ John Midgley  
John Midgley, WSBA No. 6511  
AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON  
FOUNDATION  
P. O. Box 2728  
Seattle, WA 98111  
jmidgley@aclu-wa.org

Ruth E. Harlow\*  
Brigitte Amiri\*  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004  
rharlow@aclu.org  
bamiri@aclu.org

12 \*Admitted *Pro hac vice*

13  
14 *Attorneys for the NFPRHA Plaintiffs*

15 ROBERT W. FERGUSON  
16 Attorney General

17 /s/ Kristin Beneski  
18 KRISTIN BENESKI, WSBA No. 45478  
19 JEFFREY T. SPRUNG, WSBA No. 23607  
20 PAUL M. CRISALLI, WSBA No. 40681  
21 Assistant Attorneys General  
22 800 Fifth Avenue, Suite 2000  
23 Seattle, WA 98014  
(206) 464-7744  
kristin.beneski@atg.wa.gov  
jeff.sprung@atg.wa.gov  
paul.crisalli@atg.wa.gov

*Attorneys for Plaintiff State of Washington*

1 JOSEPH H. HUNT  
Assistant Attorney General  
2 MICHELLE R. BENNETT  
Assistant Branch Director

3 */s/ R. Charlie Merritt*

4 BRADLEY P. HUMPRHEYS  
R. CHARLIE MERRITT (VA Bar No. 89400)

5 Trial Attorneys  
U.S. Department of Justice  
6 Civil Division, Federal Programs Branch  
1100 L Street, NW  
7 Washington, DC 20005  
Tel: (202) 305-0878  
8 Fax: (202) 616-8098  
Email: robert.c.merritt@usdoj.gov

9 *Counsel for Defendants*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the court's CM/ECF system, which will serve a copy of this document upon all counsel of record.

Dated: June 5, 2020

*/s/ Kristin Beneski*

---

KRISTIN BENESKI, WSBA No. 45478  
Assistant Attorney General