

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WHITMAN-WALKER CLINIC, INC., *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Case No. 1:20-cv-01630 (JEB)

DECLARATION OF OMAR GONZALEZ-PAGAN

I, Omar Gonzalez-Pagan, declare as follows:

1. I am a Senior Attorney at Lambda Legal Defense and Education Fund, Inc. and counsel of record for the plaintiffs in this action.

2. I am a member of the bar of the Commonwealth of Massachusetts and State of New York, and have been admitted *pro hac vice* to this court.

3. I submit this declaration, based on my personal knowledge, in support of Plaintiffs' Motion for a Preliminary Injunction to prevent the revised regulation under Section 1557 of the Affordable Care Act ("ACA"), published by the U.S. Department of Health and Human Services ("HHS") on June 19, 2020 (the "Revised Rule"), from taking effect.

4. Attached as **Exhibit 1** to this declaration is a true and correct copy of Defendants' Motion for Voluntary Remand and Stay in *Franciscan Alliance v. Price*, Case No. 7:16-cv-00108 (N.D. Tex., filed May 2, 2017).

5. Attached as **Exhibit 2** to this declaration is a true and correct copy of Defendants' Memorandum in response to Plaintiffs' Motion for Summary Judgment in *Franciscan Alliance v. Azar*, Case No. 7:16-cv-00108 (N.D. Tex., filed Apr. 5, 2019).

6. Attached as **Exhibit 3** to this declaration is a true and correct copy of Defendants' Motion to Modify Final Judgment in *Franciscan Alliance v. Azar*, Case No. 7:16-cv-00108 (N.D. Tex., filed Nov. 12, 2019).

7. Attached as **Exhibit 4** to this declaration is a true and correct copy of the court's Order in *Franciscan Alliance v. Azar*, Case No. 7:16-cv-00108 (N.D. Tex., filed Nov. 21, 2019), modifying the judgment.

8. Attached as **Exhibit 5** to this declaration is a true and correct copy of the comments by Lambda Legal Defense and Education Fund, Inc. in response to the Notice of Proposed Rulemaking, "Nondiscrimination in Health and Health Education Programs or Activities," 84 Fed. Reg. 27,846 (June 14, 2019), published by the U.S. Department of Health and Human Services ("HHS") and the Centers for Medicaid and Medicare Services ("CMS").

9. Attached as **Exhibit 6** to this declaration is a true and correct copy of the comments by GLMA: Health Professionals Advancing LGBTQ Equality in response to the Notice of Proposed Rulemaking, "Nondiscrimination in Health and Health Education Programs or Activities," 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

10. Attached as **Exhibit 7** to this declaration is a true and correct copy of the comments by the American Psychiatric Association in response to the Notice of Proposed Rulemaking, "Nondiscrimination in Health and Health Education Programs or Activities," 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

11. Attached as **Exhibit 8** to this declaration is a true and correct copy of the comments by the American College of Obstetricians and Gynecologists in response to the Notice of Proposed Rulemaking, "Nondiscrimination in Health and Health Education Programs or Activities," 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

12. Attached as **Exhibit 9** to this declaration is a true and correct copy of the comments by the State Insurance Commissioners of California, Connecticut, Colorado, Delaware, District of Columbia, Illinois, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin in response to the Notice of Proposed Rulemaking, “Nondiscrimination in Health and Health Education Programs or Activities,” 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

13. Attached as **Exhibit 10** to this declaration is a true and correct copy of the comments by the Cities of New York, Chicago, Baltimore, Bloomington, Los Angeles, Portland, Providence, and Seattle in response to the Notice of Proposed Rulemaking, “Nondiscrimination in Health and Health Education Programs or Activities,” 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

14. Attached as **Exhibit 11** to this declaration is a true and correct copy of the comments by the National Center for Transgender Equality in response to the Notice of Proposed Rulemaking, “Nondiscrimination in Health and Health Education Programs or Activities,” 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

15. Attached as **Exhibit 12** to this declaration is a true and correct copy of the comments by The California Endowment in response to the Notice of Proposed Rulemaking, “Nondiscrimination in Health and Health Education Programs or Activities,” 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

16. Attached as **Exhibit 13** to this declaration is a true and correct copy of the comments by the American Psychological Association in response to the Request for Information, “Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients,” 82 Fed. Reg. 26,885 (June 12, 2017).

17. Attached as **Exhibit 14** to this declaration is a true and correct copy of the letter of James L. Madara, MD, Executive Vice President and CEO of the American Medical Association, to Roger Severino, Director, Office of Civil Rights, HHS, dated September 1, 2017 regarding the administration's reevaluation of "current policy addressing discrimination in health care programs on the basis of sex as outlined in the final rule implementing Section 1557 of the Affordable Care Act."

18. Attached as **Exhibit 15** to this declaration is a true and correct copy of the comments by the New York Legal Assistance Group (NYLAG) in response to the Notice of Proposed Rulemaking, "Nondiscrimination in Health and Health Education Programs or Activities," 84 Fed. Reg. 27,846 (June 14, 2019), published by HHS and CMS.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 29th day of July, 2020.



Omar Gonzalez-Pagan