

**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-1630 (JEB)

**PLAINTIFFS' NOTICE OF ADDITIONAL DEVELOPMENTS IN  
FRANCISCAN ALLIANCE LITIGATION**

Plaintiffs, through undersigned counsel, hereby submit the following notice regarding additional developments in *Franciscan Alliance, Inc. v. Azar*, No. 7:16-cv-00108 (N.D. Tex.), *appeal docketed*, No. 20-10093 (5th Cir.).

On August 11, 2020, the U.S. Court of Appeals for the Fifth Circuit removed the case from abeyance and set a briefing schedule. Briefing Notice, *Franciscan Alliance, Inc. v. Azar*, No. 20-10093 (5th Cir. Aug. 11, 2020), Doc. No. 00515523417.

For context, although the government did not appeal the district court judgment vacating the 2016 Final Rule, the private plaintiffs in *Franciscan Alliance* did appeal. The private plaintiffs appealed to the Fifth Circuit the final judgment vacating the 2016 Final Rule in part and remanding the rule to HHS for further consideration, as well as the order modifying the final judgment and the order granting in part and denying in part the private plaintiffs' renewed motion for partial summary judgment. The notice of appeal does not indicate the scope of the appeal. Private Plaintiffs' Notice of Appeal, *Franciscan Alliance, Inc. v. Azar*, No. 20-10093 (5th Cir. Jan. 24, 2020), Doc. No. 00515285306.

After filing their notice of appeal, the private plaintiffs-appellants moved to stay the briefing schedule and other proceedings until twenty-one days after the U.S. Supreme Court's decision in *Bostock*, representing to the Fifth Circuit that

[g]iven that courts often look to Title VII to understand Title IX, and given that the ACA incorporates Title IX's prohibition on "sex" discrimination, the Supreme Court's decision in *Bostock*, *Zarda*, and *Harris* may have a direct bearing on this case.

Plaintiffs-Appellants' Unopposed Motion to Stay, *Franciscan Alliance, Inc. v. Azar*, No. 20-10093 (5th Cir. May 28, 2020), Doc. No. 00515432394 (internal citation omitted).

Following the Supreme Court's decision in *Bostock* and HHS's publication of the Revised Rule, the government agreed with the private plaintiffs-appellants about the bearing of *Bostock* on the appeal and joined them in seeking a further stay of the briefing. After noting that "[t]his case involves Appellants' challenge to HHS regulations defining 'sex' discrimination in healthcare under the Patient Protection and Affordable Care Act to include discrimination based on 'gender identity' and 'termination of pregnancy,'" the parties stated they had "initiated settlement discussions which may be able to resolve this appeal without further briefing, argument, or decision in this court," given *Bostock* and the 2020 Revised Rule, and they requested an extension of the stay of the proceedings. Plaintiffs-Appellants' and Defendants-Appellees' Joint Motion to Stay, *Franciscan Alliance, Inc. v. Azar*, No. 20-10093 (5th Cir. July 2, 2020), Doc. No. 00515475949.

On August 11, 2020, the court removed the case from abeyance and set a briefing schedule.

Dated: August 12, 2020

Respectfully submitted,

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.

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\*\* Application for admission to U.S. District  
Court for the District of Columbia forthcoming.