

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, STATE OF CALIFORNIA, COMMONWEALTH OF MASSACHUSETTS, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAII, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF NORTH CAROLINA, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, and STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX M. AZAR II, *in his official capacity as Secretary of Health and Human Services*, and ROGER SEVERINO, *in his official capacity as Director of the Office for Civil Rights at the United States Department of Health and Human Services*,

Defendants.

Civil Action No. 1:20-cv-5583-AKH

PLAINTIFFS' NOTICE OF MOTION

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 56, Plaintiffs hereby move the Court for partial summary judgment with respect to Plaintiffs' claims for relief under the Administrative Procedure Act in Plaintiffs' complaint in this action. *See* Compl.

¶¶ 257-279, ECF No. 1.

Plaintiffs request that the Court declare that Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) (“2020 Rule”) is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A); declare that the 2020 Rule is in excess of the U.S. Department of Health and Human Services’ statutory jurisdiction, authority, or limitations, or short of statutory right within the meaning of 5 U.S.C. § 706(2)(C); vacate and set aside the 2020 Rule; and enjoin Defendants and all their officers, employees, and agents, and anyone acting in concert with them, from implementing, applying, or taking any action whatsoever under the 2020 Rule.

In support of this motion, Plaintiffs rely on the accompanying Memorandum of Law; their Local Rule 56.1 Statement of Undisputed Material Facts; the Declaration of Joseph Wardenski dated September 10, 2020, and the exhibits attached thereto; the pleadings and papers on file in this action; and any argument and evidence that is presented on the hearing of this motion.

Dated: September 10, 2020

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

Matthew Colangelo
Chief Counsel for Federal Initiatives

Elena Goldstein
Deputy Chief, Civil Rights Bureau

By: /s/ Joseph J. Wardenski
Joseph J. Wardenski, *Senior Trial Counsel*
Fiona J. Kaye, *Assistant Attorney General*
Travis England, *Assistant Attorney General*
Marissa Lieberman-Klein, *Special Assistant Attorney General***
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
(212) 416-8441
Joseph.Wardenski@ag.ny.gov

Attorneys for the State of New York

XAVIER BECERRA
Attorney General of California

MAURA HEALEY
Attorney General of Massachusetts

Renu R. George*
Senior Assistant Attorney General
Kathleen Boergers*
Supervising Deputy Attorney General

By: /s/ Amanda Hainsworth
Amanda Hainsworth, *Assistant Attorney General**
Kimberly A. Parr, *Assistant Attorney General**
Office of the Massachusetts Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
(617) 963-2618
amanda.hainsworth@state.ma.us

By: /s/ Neli Palma
Neli N. Palma, *Deputy Attorney General**
Lily Weaver, *Deputy Attorney General**
Martine D'Agostino, *Deputy Attorney General**
Office of the California Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 210-7522
Neli.Palma@doj.ca.gov

Attorneys for the Commonwealth of Massachusetts

Attorneys for the State of California

PHILIP J. WEISER
Attorney General of Colorado

By: /s/ Eric R. Olson

Eric R. Olson, *Solicitor General**
Office of the Colorado Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
(720) 508-6000
eric.olson@coag.gov

Attorneys for the State of Colorado

KARL A. RACINE
*Attorney General
District of Columbia*

By: /s/ Kathleen Konopka

Kathleen Konopka
*Deputy Attorney General, Public Advocacy
Division*
Office of the Attorney General for the District of
Columbia
441 4th St., N.W. Suite 630S
Washington, DC 20001
(202) 724-6610
Kathleen.Konopka@dc.gov

Attorneys for the District of Columbia

CLARE E. CONNORS
Attorney General of Hawaii

By: /s/ Kaliko 'onalani D. Fernandes

Kaliko 'onalani D. Fernandes, *Deputy Solicitor
General**
Office of the Hawaii Attorney General
425 Queen Street
Honolulu, HI 96813
(808) 586-1360
kaliko.d.fernandes@hawaii.gov

Attorney for the State of Hawaii

WILLIAM TONG
*Attorney General
State of Connecticut*

By: /s/ Joshua Perry

Joshua Perry
Special Counsel for Civil Rights
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5372
Joshua.perry@ct.gov

Attorneys for the State of Connecticut

KATHLEEN JENNINGS
Attorney General of Delaware

By: /s/ Vanessa L. Kassab

Christian Douglas Wright, *Director of Impact
Litigation*
Vanessa L. Kassab, *Deputy Attorney General**
Delaware Department of Justice
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8600
Vanessa.Kassab@delaware.gov

Attorneys for the State of Delaware

KWAME RAOUL
Attorney General of the State of Illinois

By: /s/ Joyce Otuwa

Joyce C. Otuwa, *Assistant Attorney General**
Office of the Illinois Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
(312) 857-8386
JOtuwa@atg.state.il.us

Attorney for the State of Illinois

AARON M. FREY
Attorney General of Maine

By: /s/ Susan P. Herman
Susan P. Herman*
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8814
susan.herman@maine.gov

Attorneys for Plaintiff State of Maine

DANA NESSEL
Attorney General of Michigan

By: /s/ Toni L. Harris
Fadwa A. Hammoud*
Solicitor General
Toni L. Harris*
Tracy Van den Bergh*
Assistant Attorneys General
Michigan Department of Attorney General
P.O. Box 30758
Lansing, MI 48909
(517) 335-7603
HammoudF1@michigan.gov
Harrist19@michigan.gov
VandenBerghT@michigan.gov

Attorneys for Plaintiff State of Michigan

BRIAN E. FROSH
Attorney General of Maryland

By: /s/ Kimberly S. Cammarata
Kimberly S. Cammarata*
Director, Health Education and Advocacy Unit
200 St. Paul Place
Baltimore, MD 21202
(410) 576-7038
kcammarata@oag.state.md.us

Attorneys for the State of Maryland

KEITH ELLISON
Attorney General of Minnesota

By: /s/ Megan J. McKenzie
Megan J. McKenzie*
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2128
(651) 757-1405
megan.mckenzie@ag.state.mn.us

Attorneys for Plaintiff State of Minnesota

AARON D. FORD
Attorney General
State of Nevada

By: /s/ Heidi Parry Stern

Heidi Parry Stern
Solicitor General

Craig A. Newby
Deputy Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
HStern@ag.nv.gov

Attorneys for the State of Nevada

HECTOR BALDERAS
Attorney General of New Mexico

By: /s/ Tania Maestas

Tania Maestas*
Chief Deputy Attorney General
New Mexico Attorney General
PO Drawer 1508
Santa Fe, New Mexico 87504-1508
(505) 490-4060
tmaestas@nmag.gov

*Attorneys for Plaintiff State of New Mexico,
by and through Attorney General Hector Balderas*

GURBIR S. GREWAL
Attorney General of New Jersey

Mayur P. Saxena, *Assistant Attorney General*
Melissa Medoway, *Section Chief, Deputy Attorney
General**

By: /s/ Marie Soueid

Marie Soueid, *Deputy Attorney General*
John T. Passante, *Deputy Attorney General**
New Jersey Attorney General's Office
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
(609) 376-2564

Attorneys for Plaintiff State of New Jersey

JOSHUA H. STEIN
Attorney General of North Carolina

By: /s/ Sripriya Narasimhan

Sripriya Narasimhan*
Deputy General Counsel
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
(919) 716-6421
SNarasimhan@ncdoj.gov

Attorneys for the State of North Carolina

ELLEN F. ROSENBLUM
Attorney General of the State of Oregon

By: /s/ Brian A. de Haan

Brian A. de Haan
Senior Assistant Attorney General
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
(971) 673-3806
brian.a.dehaan@doj.state.or.us

Attorneys for the State of Oregon

PETER F. NERONHA
Attorney General of the State of Rhode Island

By: /s/ Michael W. Field

Michael W. Field*
Assistant Attorney General
Rhode Island Office of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400 x 2380
mfield@riag.ri.gov

Attorneys for State of Rhode Island

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania

By: /s/ Amber Sizemore

Amber Sizemore, Deputy Attorney General*
Jacob Boyer, Deputy Attorney General*
Pennsylvania Office of Attorney General
Strawberry Square, 14th Floor
Harrisburg, PA 17120
(717) 705-6938
asizemore@attorneygeneral.gov
jboyer@attorneygeneral.gov

Attorneys for the Commonwealth of Pennsylvania

THOMAS J. DONOVAN, JR.
Attorney General of Vermont

By: /s/ Benjamin Battles

Benjamin Battles, *Solicitor General*
Emily Adams, *Assistant Attorney General*
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-5500
benjamin.battles@vermont.gov

Attorneys for the State of Vermont

MARK R. HERRING
Attorney General of Virginia

By: /s/ Ryan S. Hardy
Ryan S. Hardy, *Assistant Attorney General**
Office of the Attorney General of Virginia
202 North 9th Street
Richmond, Virginia 23219
(804) 786-0969
rhardy@oag.state.va.us

Attorneys for the Commonwealth of Virginia

JOSHUA L. KAUL
Attorney General of Wisconsin

By: /s/ Steven C. Kilpatrick
Steven C. Kilpatrick, *Assistant Attorney General**
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1792
kilpatricksc@doj.state.wi.us

Attorneys for State of Wisconsin

**Appearing pro hac vice or application for admission pro hac vice forthcoming*

*** Application for admission to SDNY forthcoming*