

**In the  
Supreme Court of the United States**

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AMERICAN MEDICAL ASSOCIATION, et al.,

*Petitioners,*

v.

ALEX M. AZAR, II, Secretary of Health and Human Services, et al.,

*Respondents.*

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BRIEF FOR RESPONDENTS THE STATES OF OREGON, NEW YORK, CALIFORNIA,  
COLORADO, CONNECTICUT, DELAWARE, HAWAI‘I, ILLINOIS, MARYLAND,  
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO,  
NORTH CAROLINA, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, AND  
WISCONSIN, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITIONERS

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## INTRODUCTION

This response is submitted on behalf of respondents Oregon, New York, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin, and the District of Columbia (“the state respondents”). The state respondents and the petitioners in the above-captioned case were aligned below, as plaintiffs-appellees in separate cases resolved by the same court of appeals judgment. *See* No. 20-429, Pet. App. 1a–94a. Pursuant to Supreme Court Rule 12.6, the state respondents submit this brief in support of the petition for certiorari in the above-captioned case. The state respondents have also submitted their own petition for certiorari from the judgment of the court of appeals. *See Oregon v. Azar*, No. 20-539.

The petitions for certiorari in No. 20-429 and No. 20-539 seek review of an en banc decision of the U.S. Court of Appeals for the Ninth Circuit that upheld a final rule promulgated by the Department of Health and Human Services. Among other things, the final rule prohibits providers providing services funded under Title X of the Public Health Services Act (Title X) from communicating certain abortion-related information to their patients, and requires physical separation of Title X–funded care from healthcare facilities that provide abortion services or information related to abortion services. The state respondents, like the petitioners, challenged the final rule as contrary to law and arbitrary and capricious. The preliminary injunctions entered in their respective cases were reviewed together by the court of appeals and

vacated in the same judgment, which also upheld the final rule on the merits. As the petitions in No. 20-429 and No. 20-539 explain, the en banc decision of the Ninth Circuit squarely conflicts with the Fourth Circuit’s en banc decision in *Mayor of Baltimore v. Azar*, 973 F.3d 258 (4th Cir. 2020) (en banc). The Secretary of Health and Human Services and related federal officials and agencies—who are respondents in No. 20-429 and No. 20-539—have filed a petition for certiorari from the Fourth Circuit’s en banc decision. *See Azar v. Mayor of Baltimore*, No. 20-454.

## ARGUMENT

If the Court decides to review the legality of the final rule, the state respondents request that it grant the petitions for certiorari in the above-captioned case and in No. 20-539—and that it do so instead of, or at least in addition to, any grant of the petition in No. 20-454. The underlying case in No. 20-454 was brought by a single municipality. In contrast, the petitioners in this case include the largest professional association of physicians, residents, and medical students in the United States, a leading network of family planning providers, a major Title X grantee, and an organization representing a majority of the public entities and nonprofit organizations in the Title X network. *See American Medical Association v. Azar*, No. 20-429, Pet. for Cert. 6-7. The state respondents here (who are also the petitioners in No. 20-539) comprise twenty-one States and the District of Columbia, and represent a broad spectrum of Title X stakeholders, including Title X grantees, medical providers, and public health officials. *See Oregon v. Azar*, No. 20-539, Pet. for Cert. 11, 26. A number of these States were direct Title X grantees when the final rule was

promulgated. *Id.* at 26. Over 2.4 million patients in these States were receiving Title X services every year before the final rule's promulgation. *Id.* These decades-long experiences with Title X, and the range of roles that petitioners and the state respondents have played within the Title X system, will allow them to best assist the Court in understanding the final rule's effects on providers, patients, and public health.

### CONCLUSION

The petitions for a writ of certiorari in this case and in *Oregon v. Azar*, No. 20-539 should be granted.

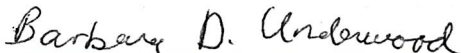
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