

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-4254, 20-31, 20-32, 20-41 Caption [use short title]

Motion for: removal from the oral argument calendar and placement in abeyance

Set forth below precise, complete statement of relief sought: The federal government moves to remove these consolidated appeals from the Court's oral argument calendar and place them in abeyance while new leadership at the U.S. Department of Health & Human Services evaluates the issues the cases present. Oral argument is currently scheduled for March 16, 2021.

State of New York v. U.S. Department of Health & Human Services

MOVING PARTY: U.S. Dep't of Health & Human Services et al. OPPOSING PARTY: State of New York et al.

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Sarah Carroll OPPOSING ATTORNEY: Steven Wu U.S. Department of Justice New York State Office of the Attorney General 950 Pennsylvania Ave. NW, Washington, DC 20530 28 Liberty St., New York, NY 10005 202-514-4027; sarah.w.carroll@usdoj.gov 212-416-8656; steven.wu@ag.ny.gov

Court- Judge/ Agency appealed from: S.D.N.Y.; Hon. Paul A. Engelmayer

Please check appropriate boxes: Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain): Oposing counsel's position on motion: Unopposed Opposed Don't Know Does opposing counsel intend to file a response: Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL: Has this request for relief been made below? Yes No Has this relief been previously sought in this court? Yes No Requested return date and explanation of emergency:

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted) Has argument date of appeal been set? Yes No If yes, enter date: March 16, 2021

Signature of Moving Attorney: /s/ Sarah Carroll Date: 2/4/2021 Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, et al.,

Plaintiffs-Appellees,

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC., et al.,

Consolidated-Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES, et al.,

Defendants-Appellants,

DR. REGINA FROST, et al.,

Intervenor-Defendants-Appellants,

ROBINSUE FROHBOESE,¹ et al.,

Consolidated-Defendants-
Appellants.

Nos. 19-4254, 20-31, 20-32,
20-41

**UNOPPOSED MOTION TO REMOVE CONSOLIDATED APPEALS
FROM THE ORAL ARGUMENT CALENDAR
AND PLACE APPEALS IN ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 27 and Second Circuit Local Rules 27.1 and 34.1(e), the federal government moves to remove these consolidated

¹ Acting Director Frohboese has been automatically substituted for Roger T. Severino pursuant to Federal Rule of Appellate Procedure 43(c)(2).

appeals from the Court's oral argument calendar and place them in abeyance while new leadership at the U.S. Department of Health & Human Services (HHS) evaluates the issues the cases present. Oral argument is currently scheduled for March 16, 2021. This motion is unopposed.

1. These consolidated appeals concern the validity of a final rule that HHS promulgated in 2019. The rule, entitled Protecting Statutory Conscience Rights in Health Care, 84 Fed. Reg. 23,170 (May 21, 2019), implicates various federal statutes that protect individuals and other entities with religious or moral objections to providing certain health-care-related services in connection with government-provided or government-funded health care programs. In these appeals, the federal government and intervenor-defendants sought review of a district court decision vacating the rule.

2. The consolidated appeals are fully briefed. On January 31, 2021, this Court scheduled oral argument for March 16, 2021.

3. New leadership at HHS is currently in the process of arriving at the agency and plans to reassess the issues that these cases present. It would therefore conserve the resources of the Court and the parties to remove the consolidated appeals from the Court's argument calendar and place the appeals in abeyance while HHS undertakes this reassessment. New leadership began arriving at HHS and the U.S. Department of Justice on January 20, 2021 and will need additional time to review the rule in question and the multiple legal issues that are involved in these consolidated

appeals; consult with all interested federal agencies and offices; and determine the appropriate course going forward. Given the recent change of administration and the complexity and importance of the issues presented by the rule and in these appeals, these extraordinary circumstances support postponing the oral argument and holding the consolidated appeals in abeyance. *See* 2d Cir. Local R. 34.1(e) (“After a case has been set for oral argument, it may be postponed only by order of the court on a showing of extraordinary circumstances, and not by stipulation of the parties.”).

We note that, on January 29, 2021, the U.S. Court of Appeals for the Ninth Circuit, which had scheduled oral argument for February 8, 2021 in consolidated appeals raising similar issues regarding the validity of the rule, granted a motion for the same relief sought here. *See* Order, *City & County of S.F. v. Cochran*, Nos. 20-15398 et al. (Jan. 29, 2021) (removing cases from the oral argument calendar and requiring the parties to provide a status report within 60 days).

4. The federal government proposes to file a status report with the Court within 60 days of the order placing the appeals in abeyance.

5. Plaintiffs-appellees and consolidated-plaintiffs-appellees have authorized us to state that they consent to this motion. Intervenor-defendants-appellants have authorized us to state that they do not oppose this motion.

CONCLUSION

For the foregoing reasons, the Court should remove these consolidated appeals from the oral argument calendar for March 16, 2021 and place the appeals in abeyance.

Respectfully submitted,

MICHAEL RAAB
LOWELL V. STURGILL

/s/ Sarah Carroll

SARAH CARROLL
LEIF OVERVOLD

Attorneys, Appellate Staff
Civil Division, Room 7511
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 514-4027
sarah.w.carroll@usdoj.gov

FEBRUARY 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 606 words, according to the count of Microsoft Word.

/s/ Sarah Carroll

SARAH CARROLL

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2021, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Sarah Carroll

SARAH CARROLL