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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA**

STATE OF WASHINGTON,

Plaintiff,

v.

NORRIS COCHRAN, *et al.*,

Defendants.

NO. 1:19-cv-3040-SAB

JOINT STATUS REPORT
PURSUANT TO THE COURT'S
OCTOBER 19, 2020 ORDER
(ECF NO. 155)

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NATIONAL FAMILY PLANNING &
REPRODUCTIVE HEALTH
ASSOCIATION, *et al.*,

Plaintiffs,

v.

NORRIS COCHRAN, *et al.*,

Defendants.¹

¹ Acting Secretary Cochran has been substituted as defendant, in his official capacity, by operation of Federal Rule of Civil Procedure 25(d).

1 The parties file this Joint Status Report pursuant to the Court’s October 19,
2 2020 Order, ECF No. 155. The parties respectfully ask that the Court continue to
3 hold the proceedings in abeyance pending further developments.

4 On October 1, 2020, a number of national and state health care
5 organizations and providers, including the two private-party organization
6 plaintiffs in this case and Dr. Oyer, filed petitions for a writ of certiorari seeking
7 Supreme Court review of the Ninth Circuit’s decision. Relatedly, the federal
8 government defendants also petitioned for a writ of certiorari seeking Supreme
9 Court review of the en banc Fourth Circuit decision that conflicts with the Ninth
10 Circuit ruling.

11 On February 22, 2021, the Supreme Court granted the petitions for review
12 of both those appellate decisions. In addition, on January 28, 2021, President
13 Biden issued a memorandum directing the Department of Health and Human
14 Services to “review the 2019 Title X rule and . . . consider, as soon as practicable,
15 whether to suspend, revise, or rescind, or publish for notice and comment
16 proposed rules suspending, revisiting, or rescinding, those regulations, consistent
17 with applicable law, including the Administrative Procedure Act.”²

18 As the parties have reported previously to this Court, *see* ECF No. 151, the
19 parties disagree about the extent to which the Ninth Circuit’s February 2020
20 decision in the preliminary injunction appeal forecloses certain of Plaintiffs’

21 _____
22 ² *See* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/>.

1 arbitrary-and-capricious claims, but agree that the decision did not expressly
2 address all of the claims Plaintiffs have asserted in these matters. The parties also
3 agree that it would be inefficient for this Court to proceed now to consider and to
4 decide the unaddressed claims on cross-motions for summary judgment while
5 review of the Ninth Circuit decision is pending before the Supreme Court and the
6 Defendants are conducting the review and consideration required by President
7 Biden's memorandum.

8 For all the reasons set forth in our earlier and more detailed joint
9 submission, *see* ECF No. 147, the parties continue to believe that it would
10 conserve judicial resources and the parties' resources for this Court to hold the
11 matter in abeyance while the Ninth Circuit decision is under review by the
12 Supreme Court and the challenged regulation is under review by HHS. If the
13 cases in the Supreme Court reach final resolution there, and the challenged rule is
14 still in effect, this Court can then turn to the merits and decide the full scope of
15 the case, as it exists at that point, if necessary.

16 CONCLUSION

17 The parties therefore request that the Court continue to hold the
18 proceedings in this case in abeyance pending the Supreme Court's consideration
19 of the Ninth Circuit's decision. The parties propose to provide this Court with
20 another joint status report within 14 days after a Supreme Court merits decision
21 or another action that resolves or dismisses the appeals now pending in that
22 court.

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Dated: March 8, 2021

Respectfully submitted,

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