

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

FRANCISCAN ALLIANCE, INC.;  
SPECIALTY PHYSICIANS OF ILLI-  
NOIS, LLC;  
CHRISTIAN MEDICAL & DENTAL  
ASSOCIATIONS;

- and -

STATE OF TEXAS;  
STATE OF NEBRASKA;  
COMMONWEALTH OF KEN-  
TUCKY, by and through Governor  
Matthew G. Bevin;  
STATE OF KANSAS;  
STATE OF LOUISIANA;  
STATE OF ARIZONA; and  
STATE OF MISSISSIPPI,

*Plaintiffs,*

v.

XAVIER BECERRA, Secretary of  
the United States Department of  
Health and Human Services; and  
UNITED STATES DEPARTMENT  
OF HEALTH AND HUMAN SER-  
VICES,

*Defendants.*

No. 7:16-cv-00108-O

**JOINT STATUS REPORT  
REGARDING PROCEEDINGS  
ON REMAND**

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The parties jointly submit this status report in accordance with this Court's Or-  
der of April 15, 2021 (ECF No. 194).

On April 15, 2021, following Private Plaintiffs' appeal, the Fifth Circuit remanded  
this case to this Court. *Franciscan All., Inc. v. Becerra*, \_\_\_ F. App'x \_\_\_, 2021 WL

1440102 (5th Cir. Apr. 15, 2021) (per curiam). The Fifth Circuit’s mandate issued on April 22.

The parties submit that “they believe the case should proceed” (ECF No. 194) by way of supplemental briefing. *See M.D. by Stukenberg v. Abbott*, 929 F.3d 272, 276 (5th Cir. 2019) (“After *Stukenberg I* issued, the district court promptly requested briefing on how to comply with *Stukenberg I*.”). However, they have not been able to reach agreement on the issues the supplemental briefing should address or on a proposed briefing schedule. The position of each party follows:

### **Private Plaintiffs**

The Fifth Circuit’s opinion explained that:

On appeal, [Private Plaintiffs] argue that the district court should have granted them injunctive relief against the 2016 rule and the underlying statute, that they still suffer a substantial threat of irreparable harm under the 2016 rule, and that the subsequent developments have only made it clear that an injunction should have been granted in the first place. In response, the government contends that the case is moot and that the providers never asked the district court for relief against the underlying statute.

*Id.* at \*2. The Fifth Circuit concluded that “[o]n remand, the district court should consider these issues.” *Id.*

Plaintiffs submit that the case should proceed by way of supplemental briefing on the specific issues identified in the Fifth Circuit’s opinion to be considered on remand—namely, whether the “relief” Private Plaintiffs should be granted includes “injunctive relief against the 2016 rule and the underlying statute,” particularly given the “significant[]” “shift[s]” in “the legal landscape”; or, alternatively, whether “the case is moot” or Private Plaintiffs “never asked the district court for relief against the underlying statute.” *Id.* at \*1-2.

To that end, Private Plaintiffs propose the following briefing schedule:

<b>Filing</b>	<b>Deadline</b>	<b>Page Limit</b>
Private Plaintiffs' supplemental brief	21 days from the date of this Court's order setting briefing schedule on remand	25 pages
Defendants' and Intervenor Defendants' supplemental briefs	21 days from the deadline for Private Plaintiffs' supplemental brief	25 pages each
Private Plaintiffs' combined response to all Defendants' supplemental briefs	14 days from the deadline for Defendants' and Intervenor Defendants' supplemental briefs	20 pages

### **State Plaintiffs**

State Plaintiffs understand the judgment on their claims to be final and not at issue in the appeal or on remand. *See, e.g., Jacked Up, L.L.C. v. Sara Lee Corp.*, 807 F. App'x 344, 349-50 (5th Cir. 2020) (district court on remand “can consider whatever [the Fifth Circuit] directs—no more, no less” (internal quotation marks omitted; collecting cases)). Thus, State Plaintiffs do not anticipate filing a supplemental brief.

### **Federal Defendants and Intervenor-Defendants**

Federal Defendants propose the following addition to Private Plaintiffs' proposed briefing schedule to provide for equitable briefing among the parties:

Defendants' and Intervenor Defendants' reply to Private Plaintiffs' combined response to all Defendants' supplemental briefs	14 days from the deadline for Private Plaintiffs' combined response to all defendants' supplemental briefs	10 pages each
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### **CONCLUSION**

The Court should set a schedule for supplemental briefing and address the issues identified by the Fifth Circuit on remand.

Respectfully submitted this 22nd day of April, 2021.

/s/ Luke W. Goodrich

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<sup>1</sup> After the Court entered final judgment, Governor Bevin left office.

*Counsel for Intervenor-Defendants  
ACLU of Texas and River City  
Gender Alliance*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2021, the foregoing status report was served on all parties via ECF.

*/s/ Luke W. Goodrich*  
Luke W. Goodrich