August 14, 2019

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Molly C. Dwyer, Clerk of Court
Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103

By ECF

Re: *American Medical Association et al. v. Azar et al.*, No. 19-35386

Dear Ms. Dwyer:

I write on behalf of the Planned Parenthood Plaintiffs to inform the Court that, absent emergency judicial relief, all Planned Parenthood direct grantees will be forced to withdraw from the Title X program by the close of business on Monday, August 19, 2019. Moreover, Planned Parenthood subgrantees are being similarly forced to withdraw from the program as their grantees face the same compliance deadline. That fast-approaching deadline—the direct consequence of recent enforcement decisions by Defendants—underscores the importance of Plaintiffs' pending emergency motion for full Court or limited en banc reconsideration of the limited en banc Court's July 11, 2019 order.

On July 11, the limited en banc Court issued a divided order reinstating a stay of three district courts' preliminary injunctions against the Rule. Dkt. 118 at 2-3. That order also denied Plaintiffs' motion for temporary administrative relief, stating that the Court would "proceed expeditiously to rehear and reconsider" HHS's stay motion. *Id.* at 3. The Court has since scheduled oral argument for the week of September 23. Dkt. 127.

The effect of the July 11 order was to allow HHS to enforce the Rule—despite the full Court's grant of en banc reconsideration on July 3. To prevent expulsion from the Title X program, Plaintiffs filed on July 25 an emergency motion for full Court or limited en banc reconsideration of the July 11 order, which as of this filing remains pending. *See* Dkts. 125-1, 125-2. Among other things, Plaintiffs explained that HHS was requiring compliance with the Rule as of July 15; that HHS threatened "enforcement actions" against those failing to make "good-faith

efforts to comply with" the Rule; and that HHS directed all grantees to provide "written assurance" and an "action plan describing the steps that they will take to come into compliance with all aspects of the" Rule by August 19. Dkt. 125-2 at 10; *see* Dkt. 125-1 at 21.

Because of HHS's actions, in letters dated July 24 (attached to Plaintiffs' emergency motion), Planned Parenthood direct grantees informed HHS that they had stopped using Title X funds to provide services to their patients—using emergency sources of non-Title X funds instead—while continuing to seek emergency judicial relief. Dkt. 125-2 at 19-32; *see* Dkt. 125-1 at 21. But the direct grantees did not formally withdraw from the Title X program at that time. By sending those letters, they sought to preserve their ability to immediately resume providing services under the Title X program should this Court order the requested emergency relief.

On August 9, however, defendant Diane Foley responded to those July 24 letters. *See* Ex. A. Dr. Foley stated as follows:

> Our guidance of July 20, 2019 explained that grantees must demonstrate good-faith efforts to comply with the Final Rule by August 19, 2019. Your proposal to remain in the Title X program without complying with the Final Rule, even in the absence of drawing down or using Title X grant funds, is inconsistent with that guidance.

Planned Parenthood has long been firmly committed to its Title X patients and to the Title X program, which it has served for nearly 50 years. With deep regret, however, its direct grantees now have no option but to withdraw from the Title X program. Absent emergency judicial relief, they must do so by the close of business on Monday, August 19—less than a week away.

We would appreciate your circulating this letter to the full Court.

Respectfully submitted,

/s/ Alan E. Schoenfeld
Alan E. Schoenfeld

cc: All Counsel of Record (by ECF)