



**U.S. Department of Justice**  
Civil Division  
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VIA CM/ECF

August 15, 2019

Ms. Molly C. Dwyer  
Clerk, United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *Oregon, et al. v. Alex M. Azar II, et al.*, No. 19-35386

Dear Ms. Dwyer:

We write in response to the Planned Parenthood plaintiffs' letter of August 14, 2019, renewing their earlier requests for reconsideration by the full Court of the en banc panel's order maintaining the motions panel's stay of the preliminary injunction, and for an administrative stay. *See also* AMA Emergency Motion (July 25, 2019). This Court should decline plaintiffs' requests, which seek extraordinary, if not unprecedented, relief, based on self-inflicted harms.

Plaintiffs' request that the full Court act before the en banc panel has completed its review of the stay order would short circuit this Court's en banc process and undermine the purpose behind the Court's reliance on limited en banc panels. Any en banc reconsideration is by definition exceptional, and review by the full Court is to our knowledge unprecedented. The full Court certainly should not do so for the first time merely to second-guess an interlocutory stay order by a unanimous three-judge panel that has been maintained by an eleven-judge en banc panel. Indulging plaintiffs' request would invite litigants to try to skip the limited en banc panel stage whenever they were disappointed by interlocutory decisions of a randomly-selected panel. At a minimum, the full Court should not take any action while the issue is still pending before the limited en banc panel.

Plaintiffs argue that additional extraordinary relief is warranted now that HHS, consistent with this Court's orders, has begun taking steps to bring grantees in compliance with the Rule. Letter of 8/14/2019 at 2. Plaintiffs attempt to suggest some changed circumstance, but they are merely attempting to relitigate the stay itself. The entire premise of HHS's stay application, and this Court's orders granting and maintaining the stay, is that HHS would then commence enforcement of the Rule, which it is now set to do after giving Title X grantees a reasonable period of time to prepare for compliance. The alleged harms raised by Plaintiffs remain the same as they have always been.

Those asserted harms do not remotely warrant second-guessing the stay. To be perfectly clear, nothing in the Rule will lead to the "expulsion from the Title X program" of Planned Parenthood or any other grantee. Letter of 8/14/2019 at 1. As relevant here, the Rule merely requires grantees to refrain from providing referrals for abortions. If the seven Planned Parenthood direct grantees insist on providing abortion referrals even within a federally funded program, and feel so strongly that they would withdraw from the program and the public they serve, that is their own choice, not a consequence of the Rule. Although plaintiffs try to portray their ideological decision as compelled by medical ethics, the government has demonstrated the fallacy of that position, *see, e.g., Oregon Gov. Br. 37-39*—and that fallacy is starkly confirmed by the fact that as of this date, no direct grantees and only nine sub-grantees (located in only two states) have withdrawn from the Title X program. The full Court should not countenance plaintiffs' attempt to obtain a stay of a Rule merely prohibiting abortion referrals by invoking harms to the public from their gratuitous withdrawal from the program in protest. In all events, as the three-judge panel correctly observed, any harm that might be imposed ultimately "is minor relative to the harms to the Government" from being "forced to allow taxpayer dollars to be spent in a manner that it has concluded violates the law, as well as the Government's important policy interest ... in ensuring that taxpayer dollars do not go to fund or subsidize abortion." Op. 24-25.

Sincerely,

s/ Jaynie Lilley

Jaynie Lilley

Attorney

cc: all counsel (via CM/ECF)

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*s/ Jaynie Lilley*  
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JAYNIE LILLEY