

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

**Susan Neese, M.D; James Hurly,
M.D.; and Jeffrey Barke, M.D.**, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

Xavier Becerra, in his official capacity as
Secretary of Health and Human
Services; **United States of America**,

Defendants.

Case No. 2:21-cv-00163-Z

NOTICE TO THE COURT

On March 31, 2022, Assistant Attorney General Kristen Clarke sent a letter to all state attorneys general that endorses Secretary Becerra's interpretation of section 1557 and warns that "restricting an individual's ability to receive medically necessary care, *including gender-affirming care*, from their health care providers solely on the basis of their sex assigned at birth or their gender identity may also violate Section 1557." (emphasis added). A copy of this letter is attached as Exhibit 1. The Department of Health and Human Services' Office of Population Affairs has explained in a document that "[g]ender-affirming care is a supportive form of healthcare. It consists of an array of services that may include medical, surgical, mental health, and non-medical services for transgender and nonbinary people." *See* Exhibit 2. The same document goes on to list categories of "gender-affirming care," including puberty blockers, hormone therapy, and gender-affirming surgeries. *Id.*

This letter from Ms. Clarke is another example of the current administration's efforts to impose its interpretation of section 1557 through guidance documents, and

its continued efforts to threaten health-care providers who refuse to provide puberty blockers or hormone treatments to children. Although the plaintiffs are not seeking relief against Ms. Clarke's letter in this lawsuit, it nonetheless aggravates the *in terrorem* effects created by Secretary Becerra's notification of May 10, 2021, and heightens the need for pre-enforcement relief from this Court.

Respectfully submitted.

GENE P. HAMILTON
Virginia Bar No. 80434
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721 (phone)
gene.hamilton@aflegal.org

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

H. DUSTIN FILLMORE III
Texas Bar No. 06996010
CHARLES W. FILLMORE
Texas Bar No. 00785861
The Fillmore Law Firm, LLP
201 Main Street, Suite 801
Fort Worth, Texas 76102
(817) 332-2351 (phone)
(817) 870-1859 (fax)
dusty@fillmorefirm.com
chad@fillmorefirm.com

Dated: April 4, 2022

*Counsel for Plaintiffs and
the Proposed Classes*

CERTIFICATE OF SERVICE

I certify that on April 4, 2022, I served this document through CM/ECF upon:

CHRISTOPHER D. DODGE
JORDAN L. VON BOKERN
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street N.W.
Washington, DC 20005
(202) 305-7919 (phone)
(202) 616-8460 (fax)
jordan.l.von.bokern2@usdoj.gov

Counsel for the Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Proposed Classes*