

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

Susan Neese, M.D and **James Hurly, 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

MOTION FOR SUMMARY JUDGMENT

Plaintiffs Susan Neese and James Hurly respectfully move for summary judgment, as there are no genuine issues of material fact and the plaintiffs are entitled to judgment as a matter of law.

SUMMARY

In conformity with Local Rule 56.3(a)(1), the plaintiffs state the elements of each claim on which summary judgment is sought:

Claim 1: Secretary Becerra’s Notification of Interpretation and Enforcement of May 10, 2021, is “not in accordance with law” under section 706(2)(A) of the APA. To prevail on this claim, the plaintiffs must show that Secretary Becerra’s interpretation of section 1557 of the Affordable Care Act is inconsistent with the statutory definition of “sex” discrimination, as construed by the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

Claim 2: Section 1557 of the Affordable Care Act, as construed in *Bostock*, does not prohibit discrimination on account of “sexual orientation” and “gender

identity,” but only discrimination on account of “sex,” and it allows a health-care provider to take discriminatory actions with respect to homosexual, bisexual, or transgender patients as long as that provider would have acted in the same manner had the patient had been a member of the opposite biological sex. To prevail on this claim, the plaintiffs must show that the prohibition on “sex” discrimination in section 1557 of the Affordable Care Act encompasses only situations in which a provider would have acted differently toward an identically situated member of the opposite biological sex.

The accompanying brief sets forth our arguments and authorities. A proposed order is attached.

Respectfully submitted.

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Dated: August 5, 2022

CERTIFICATE OF SERVICE

I certify that on August 5, 2022, I served this document through CM/ECF upon:

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