

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

STATE OF TEXAS; STATE OF MONTANA,

Plaintiffs-Appellees,

v.

ROBERT F. KENNEDY, JR., Secretary, U.S.  
Department of Health and Human Services;  
MELANIE FONTES RAINER, Director; CENTERS  
FOR MEDICARE AND MEDICAID SERVICES;  
UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Defendants-Appellants.

No. 24-40568

**JOINT MOTION TO HOLD APPEAL IN ABEYANCE  
FOR 90 DAYS**

Pursuant to Federal Rule of Appellate Procedure 27, the federal government and the States respectfully jointly move to hold this appeal in abeyance for 90 days, until and including Monday, May 19, 2025. In support of this motion, the parties state the following:

1. This appeal involves a rule issued by the U.S. Department of Health and Human Services (HHS) promulgating regulations to implement the prohibition on sex discrimination in health programs and activities that receive federal financial assistance under Section 1557 of the Affordable Care Act. *See Nondiscrimination in Health Programs*

*and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024). The district court stayed the effective date of the rule with respect to certain challenged provisions under 5 U.S.C. § 705. The federal government appealed and filed its opening brief on November 27, 2024. The States' response brief is currently due February 26, 2025.

2. Due to the recent change in administration on January 20, 2025, the Department of Justice and HHS are now under new leadership. New agency officials are still in the process of onboarding and familiarizing themselves with all of the issues presented by pending litigation.

3. To allow new officials sufficient time to become familiar with the issues in these cases and determine how they wish to proceed, the federal government and the States respectfully move to place this appeal in abeyance for 90 days, until and including Monday, May 19, 2025. The federal government proposes to update the Court with a status report by May 19.<sup>1</sup>

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<sup>1</sup> The requested abeyance would, if granted, remove the States' obligation to file a response brief by the current deadline of February 26.

FEBRUARY 19, 2025

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 264 words, according to the count of Microsoft Word.

/s/ McKaye L. Neumeister

McKaye L. Neumeister