

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

STATE OF TENNESSEE; STATE OF MISSISSIPPI;  
STATE OF ALABAMA; STATE OF GEORGIA;  
STATE OF INDIANA; STATE OF KANSAS;  
COMMONWEALTH OF KENTUCKY; STATE OF  
LOUISIANA; STATE OF NEBRASKA; STATE OF  
OHIO; STATE OF OKLAHOMA; STATE OF  
SOUTH CAROLINA; STATE OF SOUTH  
DAKOTA; COMMONWEALTH OF VIRGINIA;  
STATE OF WEST VIRGINIA,

Plaintiffs-Appellees,

v.

DOROTHY FINK, Acting Secretary, U.S. Department  
of Health and Human Services; UNITED STATES  
DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; MELANIE FONTES RAINER, in her  
official capacity as the Director of the Office for Civil  
Rights; CENTERS FOR MEDICARE AND  
MEDICAID SERVICES; CHIQUITA BROOKS-  
LASURE, in her official capacity as Administrator of  
the Centers for Medicare and Medicaid Services,

Defendants-Appellants.

No. 24-60462

**UNOPPOSED MOTION TO HOLD APPEAL IN ABEYANCE  
FOR 60 DAYS**

Pursuant to Federal Rule of Appellate Procedure 27, the federal government respectfully moves to hold this appeal in abeyance for 60 days, until and including Monday, April 14, 2025. Plaintiffs-Appellees consent to this motion.

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 and preliminarily enjoined HHS from enforcing them nationwide to the extent those provisions recognize that sex discrimination includes gender-identity discrimination. The federal government appealed and filed its opening brief on November 21, 2024. Plaintiffs-Appellees' response brief is currently due February 21, 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 respectfully moves to place this appeal in abeyance for 60 days, until and including Monday, April 14, 2025. The federal government proposes to update the Court with a status report by April 14.<sup>1</sup>

4. Counsel for Plaintiffs-Appellees have authorized the undersigned counsel to state that they consent to this abeyance request.

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<sup>1</sup> The requested abeyance would, if granted, remove Plaintiffs-Appellees' obligation to file a response brief by the current deadline of February 21.

Respectfully submitted,

CHARLES W. SCARBOROUGH

*/s/ McKaye L. Neumeister*

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FEBRUARY 2025

## 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 284 words, according to the count of Microsoft Word.

/s/ McKaye L. Neumeister

McKaye L. Neumeister