

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CITY OF COLUMBUS, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

Case No. 1:26-cv-2215-BAH

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR
ENTRY OF FINAL JUDGMENT ON CERTAIN CLAIMS
UNDER FEDERAL RULES OF CIVIL PROCEDURE 54(b) AND 56**

For the reasons provided herein, Plaintiffs oppose Defendants' motion to convert portions¹ of the Court's July 16, 2026 Opinion and Order Granting Stay, ECF Nos. 30 and 31, to a final decision on the merits, and further oppose Defendants' request that the Court direct the entry of final judgment on those claims under Federal Rule of Civil Procedure 54(b).

Rule 54(b) permits courts to enter final judgment as to one or more, but not all, claims in a multicclaim case, opening the door for an appeal on those claims while litigation at the lower level continues. *Braswell Shipyards, Inc. v. Beazer E., Inc.*, 2 F.3d 1331, 1335 (4th Cir. 1993). Rule 54(b) certification, however, is "the exception rather than the norm." *Id.* It "should neither be

¹ Defendants specifically request relief as to claims identified in items two, three, and four of the Court's July 16, 2026, Opinion and Order Granting Stay:

- (2) The mandatory verification policy for low-income enrollees in the rule's revisions to 45 C.F.R. § 155.320(c)(3)(iii)(A) and (c)(3)(vi)(C)(2);
- (3) The revocation of the option for enrollees to attest to their income in the rule's rescission of 45 C.F.R. § 155.320(c)(5); and
- (4) The imposition of special enrollment period verification in the rule's revision to 45 C.F.R. § 155.420(g).

granted routinely, nor as an accommodation to counsel.” *Id.* (citing, *e.g.*, *Curtiss–Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10 (1980)). Rather, Rule 54(b) certification is reserved “for the unusual case in which the costs and risks of multiplying the number of proceedings and overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment as to some claims or parties.” *Id.* (quoting *Morrison–Knudsen Co. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981) (Kennedy, J.)).

The party seeking Rule 54(b) certification bears the burden to show that the case warrants permitting piecemeal appeals to go forward. *Id.* Rule 54(b) certification is proper only when there is “no just reason for delay” in the entry of judgment. To make this determination, the factors that courts consider include:

(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Id. at 1335-36 (citations omitted). This inquiry is “tilted from the start against fragmentation of appeals.” *Id.* at 1335 (quoting *Spiegel v. Trs. of Tufts Coll.*, 843 F.2d 38, 43 (1st Cir. 1988)).

Several factors weigh against granting Defendants’ motion for Rule 54(b) certification. First, even if certification were granted, the parties would continue to litigate cross-motions for summary judgment in this Court under an expedited schedule that calls for briefing to be completed by February 19, 2027, and that permits the Court to issue a final judgment by the end of March 2027. ECF No. 37; *see also* ECF No. 36, at 3 (noting Plaintiffs’ request for the Court to expedite its summary judgment ruling). “[I]t will be a rare case where Rule 54(b) can appropriately be

applied when the contestants on appeal remain contestants below.” *Kinsale Ins. Co. v. JDBC Holdings, Inc.*, 31 F.4th 870, 876 (4th Cir. 2022) (quoting *Braswell Shipyards*, 2 F.3d at 1336).

Second, Plaintiffs only recently received service of Defendants’ 11,498-page administrative record, ECF No. 40, just a few days after Defendants filed their Rule 54(b) motion. Although “Defendants have no new arguments to raise with respect to [the] claims” they seek to convert to a final judgment, ECF No. 38, at 2, Plaintiffs have not yet determined whether the administrative record would permit them to raise additional arguments related to those claims. Plaintiffs brought their motion for preliminary relief on the basis of comments that they were already aware had been before the agency, but a review of the entire administrative record will permit Plaintiffs to provide the Court with a more complete explanation of what Plaintiffs contend to be arbitrary and capricious rulemaking on Defendants’ part, and to prepare a full record on that score for appellate review.

Third, if a partial judgment were to be certified, the Fourth Circuit would likely face multiple appeals presenting overlapping issues. This Court’s final judgment in this case is likely to be appealed by one party or the other (or possibly both, in the event that one party or the other does not succeed on all claims). An appeal now, and a second appeal early next year, would likely require the Fourth Circuit to address similar issues in two rounds of briefing only months apart (in appeals that would most likely be consolidated for disposition). The proceedings that are currently pending before the Fourth Circuit are instructive. In the government’s appeal of this Court’s award of summary judgment in favor of the plaintiffs with respect to their challenge to provisions in a 2025 Centers for Medicare & Medicaid Services rulemaking, the government has broadly challenged the plaintiffs’ standing to bring any of their claims. *See* Br. for Appellants at 25, *City of Columbus v. Kennedy*, No. 26-1938 (4th Cir. July 29, 2026). Defendants may reasonably be

expected to raise similar arguments in any appeal, or appeals, arising from this case. In addition, in their forthcoming summary judgment briefing, Plaintiffs intend to explain how each of the provisions that they challenge in this year's rulemaking is part of a common pattern of decision-making by Defendants that discourages enrollment on the Exchanges and increases costs for the remaining enrollees. Rule 54(b) certification would result in the parties presenting these issues to the Fourth Circuit twice. Given "the possibility that the reviewing court might be obliged to consider the same issue[s] a second time," *Braswell Shipyards*, 2 F.3d at 1335, Rule 54(b) certification should be denied. *See also Fox v. Balt. City Police Dep't*, 201 F.3d 526, 531 (4th Cir. 2000) ("Certification should be avoided when further trial court proceedings might force an appellate court to revisit the issues relevant to the partially-resolved case."); *Kinsale Ins. Co.*, 31 F.4th at 876-77.

Fourth, Defendants have not carried their heavy burden to show that they face "pressing needs ... for an early and separate judgment" that could outweigh the "costs and risks" that piecemeal appeals would pose for the litigants, for this Court, and for the Fourth Circuit. *Braswell Shipyards*, 2 F.3d at 1335. Defendants assert (without supporting evidence) that federal expenditures on advance premium tax credits would decrease by more than one billion dollars per year if the rulemaking provisions at issue here were to go into effect. ECF No. 38, at 4. But these funds are simply the subsidies to which Affordable Care Act enrollees would be entitled when the statute is properly implemented, and "[i]t is well established that the Government cannot suffer harm from an injunction that merely ends an unlawful practice." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 218 (D.D.C. 2020) (cleaned up); *see also Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). Nor would Defendants' asserted costs of administering a governmental program in keeping with Congress's instructions amount to the sort of immediate

financial hardship, like insolvency, that typically warrants Rule 54(b) certification. *See CapitalSource Fin., LLC v. Delco Oil, Inc.*, 608 F. Supp. 2d 655, 679 (D. Md. 2009) (granting Rule 54(b) certification because defendant was in bankruptcy proceedings). In any event, certification now would do little to speed the resolution of Defendants' concerns, given the likelihood that a Rule 54(b) appeal would be consolidated into any appeal of the final judgment in this case.

Dated: October 1, 2026

Respectfully submitted,

/s/ Joel McElvain

Joel McElvain (Bar No. 31673)
Cortney Robinson Henderson (Bar No. 31968)
Christine L. Coogle (Bar No. 21846)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
(202) 935-2082
jmcelvain@democracyforward.org
crhenderson@democracyforward.org
ccoogle@democracyforward.org

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CITY OF COLUMBUS, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

Case No. 1:26-cv-2215-BAH

[PROPOSED] ORDER

Upon consideration of Defendants' Motion for Entry of Judgment on Certain Claims Under Federal Rules of Civil Procedure 54(b) and 56 and Plaintiffs' opposition thereto, it is hereby

ORDERED that the Motion is **DENIED**.

SO ORDERED.

_____, 2026

BRENDAN A. HURSON
U.S. DISTRICT JUDGE