

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

CITY OF COLUMBUS, *et al.*,

Plaintiffs-Appellees,

v.

ROBERT F. KENNEDY, JR., *in his official  
capacity as Secretary of the United States  
Department of Health and Human Services,  
et al.*,

Defendants-Appellants.

No. 26-1938

**CONSENT MOTION TO EXPEDITE APPEAL**

The government respectfully moves to expedite this appeal. Plaintiffs consent to the relief sought in this motion.

1. The Affordable Care Act (ACA) established health insurance Exchanges, which allow millions of Americans to purchase individual coverage every year. This litigation concerns a 2025 rule issued by the Department of Health and Human Services (HHS) to effect several technical changes to the regulations for consumers to access and for issuers to offer coverage through the Exchanges. *See* 90 Fed. Reg. 27,074 (June 25, 2025) (Final Rule).

Plaintiffs challenged ten provisions of the Final Rule under the Administrative Procedure Act, and the district court entered a final judgment vacating nine of those provisions. Dkt. 74. The government timely appealed. Dkt. 79.

This case has already been before this Court once. After the district court entered preliminary relief, the government appealed and sought a limited stay pending appeal; this Court denied the motion. *See City of Columbus v. Kennedy*, No. 25-2012, 2025 WL 4948067, at \*1 (4th Cir. Sept. 18, 2025). The district court entered final judgment and thus mooted out the interlocutory appeal before this Court could resolve it.

3. By statute, courts “shall expedite the consideration of . . . any action” for “good cause.” 28 U.S.C. § 1657(a). Good cause exists to expedite this appeal for two reasons.

First, a decision is needed by December 31, 2026, to avoid potential mootness. Several provisions of the Final Rule are slated to expire at the end of 2026 including at least one provision that will be the subject of this appeal.<sup>1</sup> If this time-limited policy expires on its own terms during the pendency of

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<sup>1</sup> See 90 Fed. Reg. at 27,221 (failure-to-file-and-reconcile policy limited to plan year 2026); *see also* Docketing Statement 3 (July 22, 2026).

this appeal, mootness concerns might be raised. *See, e.g., Kramer v. Mosbacher*, 878 F.2d 134, 136 (4th Cir. 1989) (challenge to expired fishing quota not moot because capable of repetition yet evading review). By expediting this appeal, this Court can protect its own jurisdiction to render a decision.

Second, the parties and the district court would benefit from this Court's resolution of key legal questions to aid in ongoing litigation and future regulation. HHS has already issued another set of regulations to govern ACA Exchanges. *See* 91 Fed. Reg. 29,526 (May 20, 2026). And plaintiffs in this litigation have also already sued to challenge various provisions of that 2026 rule and obtained preliminary relief against several of them. *See City of Columbus v. Kennedy*, No. 1:26-cv-2215, 2026 WL 2058183 (D. Md. July 16, 2026). The validity of some of the challenged provisions of the new rule may turn on issues that will be presented in this appeal. *See id.* at \*13-14 (staying effective date of new failure-to-file-and-reconcile policy). It would benefit the parties and the district court for this Court to interpret the scope of HHS's regulatory authority. Moreover, HHS will continue issuing annual payment notices to govern Exchanges, and this Court's guidance would give the agency and regulated parties alike more certainty for future

regulations. If this Court issues a decision before HHS proposes its next rule in early 2027, HHS can maximally benefit from that guidance.

4. Accordingly, the government proposes the following schedule to govern proceedings in this appeal:

- Opening brief due July 29, 2026
- Joint appendix due July 29, 2026
- Response brief due Sept. 1, 2026
- Reply brief due Sept. 18, 2026
- Oral argument Oct. 27–30, 2026 sitting

The government also respectfully requests that the Court issue a decision in this appeal by December 31, 2026.

5. We have consulted with Joel McElvain, counsel for plaintiffs, who stated that plaintiffs consent to the relief sought in this motion.

### CONCLUSION

This Court should grant the motion, enter the proposed briefing schedule, set this case for argument in its October sitting, and issue a decision before the end of the calendar year.

Respectfully submitted,

CHARLES W. SCARBOROUGH

/s/ Maxwell A. Baldi

MAXWELL A. BALDI

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JULY 2026

**CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 648 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century BT 14-point font, a proportionally spaced typeface.

*/s/ Maxwell A. Baldi*

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MAXWELL A. BALDI

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

**Directions:** Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

|                                      |                                               |
|--------------------------------------|-----------------------------------------------|
| <b>Appeal No. &amp; Caption</b>      | 26-1938, City of Columbus v. Kennedy          |
| <b>Originating No. &amp; Caption</b> | 1:25-cv-2114-BAH, City of Columbus v. Kennedy |
| <b>Originating Court/Agency</b>      | District of Maryland                          |

|                                                                |                                      |                          |
|----------------------------------------------------------------|--------------------------------------|--------------------------|
| <b>Jurisdiction</b> (answer any that apply)                    |                                      |                          |
| Statute establishing jurisdiction in Court of Appeals          | 28 U.S.C. 1291                       |                          |
| Time allowed for filing in Court of Appeals                    | 60 days                              |                          |
| Date of entry of order or judgment appealed                    | June 12, 2026                        |                          |
| Date notice of appeal or petition for review filed             | July 15, 2026                        |                          |
| If cross appeal, date first appeal filed                       |                                      |                          |
| Date of filing any post-judgment motion                        | June 15, 2026                        |                          |
| Date order entered disposing of any post-judgment motion       | June 16, 2026                        |                          |
| Date of filing any motion to extend appeal period              | N/A                                  |                          |
| Time for filing appeal extended to                             | N/A                                  |                          |
| Is appeal from final judgment or order?                        | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| If appeal is not from final judgment, why is order appealable? |                                      |                          |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------------------------|
| <b>Settlement</b> (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.) |                           |                                     |
| Is settlement being discussed?                                                                                                                                                                                                                                       | <input type="radio"/> Yes | <input checked="" type="radio"/> No |

| <b>Transcript</b> (transcript order must be attached if transcript is needed and not yet on file) |                                      |                                     |
|---------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------|
| Is transcript needed for this appeal?                                                             | <input type="radio"/> Yes            | <input checked="" type="radio"/> No |
| Has transcript been filed in district court?                                                      | <input checked="" type="radio"/> Yes | <input type="radio"/> No            |
| Is transcript order attached?                                                                     | <input type="radio"/> Yes            | <input checked="" type="radio"/> No |

| <b>Case Handling Requirements</b> (answer any that apply)                                                                       |                                                                                     |                                     |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------|
| Case number of any prior appeal in same case                                                                                    | 25-2012                                                                             |                                     |
| Case number of any pending appeal in same case                                                                                  | N/A                                                                                 |                                     |
| Identification of any case pending in this Court or Supreme Court raising similar issue                                         | N/A                                                                                 |                                     |
|                                                                                                                                 | If abeyance or consolidation is warranted, counsel must file an appropriate motion. |                                     |
| Is expedited disposition necessary?                                                                                             | <input checked="" type="radio"/> Yes                                                | <input type="radio"/> No            |
|                                                                                                                                 | If yes, motion to expedite must be filed.                                           |                                     |
| Is oral argument necessary?                                                                                                     | <input checked="" type="radio"/> Yes                                                | <input type="radio"/> No            |
| Does case involve question of first impression?                                                                                 | <input checked="" type="radio"/> Yes                                                | <input type="radio"/> No            |
| Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party | <input type="radio"/> Yes                                                           | <input checked="" type="radio"/> No |
|                                                                                                                                 | If yes, notice re: challenge to constitutionality of law must be filed.             |                                     |

| <b>Nature of Case</b> (Nature of case and disposition below. Attach additional page if necessary.)                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Plaintiffs challenged a rule issued by the Centers for Medicare &amp; Medicaid Services implementing regulatory changes to the operations of health insurance exchanges, 90 Fed. Reg. 27,074 (June 25, 2025). The district court entered a final judgment vacating nine provisions of the final rule.</p> |

**Issues** (Non-binding statement of issues on appeal. Attach additional page if necessary)

1. Whether plaintiffs have failed to establish Article III standing.
2. Whether HHS lawfully expanded the permissible range for actuarial values.
3. Whether HHS lawfully required enrollees to comply with a requirement to file tax returns and reconcile actual to projected income to maintain eligibility for advance premium tax credits.
4. Whether HHS lawfully rescinded an automatic 60-day grace period for verifying income-eligibility data.
5. Whether HHS lawfully standardized and shortened the open-enrollment period for Exchanges.

**Adverse Parties** (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party: City of Columbus

Attorney: Joel McElvain

Address: P. O. Box 34553  
Washington, DC 20043

E-mail: jmcelvain@democracyforward.org

Phone: 202-448-9090

Adverse Party: City of Chicago

Attorney: Joel McElvain

Address:

E-mail:

Phone:

**Adverse Parties (continued)**

Adverse Party: Mayor and City Council of Baltimore

Attorney: Joel McElvain

Address:

E-mail:

Phone:

Adverse Party: Doctors for America

Main Street Alliance

Attorney: Joel McElvain

Address:

E-mail:

Phone:

| <b>Appellant</b> (Attach additional page if necessary.)                                                                                                                                                                                                                                                                                                                                          |                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Name: Robert F. Kennedy<br><br>Attorney: Maxwell A. Baldi<br>Address: 950 Pennsylvania Ave NW Room 7513<br>Washington DC United States<br><br>E-mail: maxwell.baldi@usdoj.gov<br><br>Phone: 202-532-0211                                                                                                                                                                                         | Name: Mehmet Oz<br><br>Attorney: Maxwell A. Baldi<br>Address:<br><br>E-mail:<br><br>Phone:                               |
| <b>Appellant (continued)</b>                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                          |
| Name: U.S. Department of Health and Human Services<br><br>Attorney: Maxwell A. Baldi<br>Address:<br><br>E-mail:<br><br>Phone:                                                                                                                                                                                                                                                                    | Name: Center for Medicaid & Medicare Services<br><br>Attorney: Maxwell A. Baldi<br>Address:<br><br>E-mail:<br><br>Phone: |
| <b>Signature:</b> <u>/s/ Maxwell A. Baldi</u> <b>Date:</b> _____                                                                                                                                                                                                                                                                                                                                 |                                                                                                                          |
| <b>Counsel for:</b> <u>Appellants</u>                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                          |
| <b>Certificate of Service</b> (required for parties served outside CM/ECF): I certify that this document was served on _____ by <input type="checkbox"/> personal delivery; <input type="checkbox"/> mail; <input type="checkbox"/> third-party commercial carrier; or <input type="checkbox"/> email (with written consent) on the following persons at the addresses or email addresses shown: |                                                                                                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                          |
| Signature:                                                                                                                                                                                                                                                                                                                                                                                       | Date:                                                                                                                    |