

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

COMPLAINT—CLASS ACTION

Section 1557 of the Affordable Care Act prohibits “sex” discrimination in any health program or activity that receives federal financial assistance. *See* 42 U.S.C. § 18116. On May 10, 2021, Secretary Becerra announced that the Department of Health and Human Services (HHS) will “interpret and enforce” section 1557 to prohibit: (1) “discrimination on the basis of sexual orientation”; and (2) “discrimination on the basis of gender identity.” *See* Exhibit 1. The Secretary’s interpretation of section 1557 is incompatible with the statutory language, and the Court should declare it so and enjoin the Secretary from using or enforcing this interpretation of section 1557.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

PARTIES

3. Plaintiff Susan Neese, M.D., is a citizen of Texas who resides in Potter County.

4. Plaintiff James Hurly, M.D., is a citizen of Texas who resides in Potter County.

5. Defendant Xavier Becerra is the U.S. Secretary of Health and Human Services. He may be served at his office at 200 Independence Avenue SW, Washington, D.C. 20201. Secretary Azar is sued in his official capacity.

6. Defendant United States of America is the federal government of the United States of America.

STATEMENT OF FACTS

7. Section 1557 of the Affordable Care Act provides:

[A]n individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 794 of title 29, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).

42 U.S.C. § 18116(a).

8. None of the anti-discrimination statutes mentioned in section 1557 prohibit discrimination on account of “sexual orientation” or “gender identity.”

9. In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that Title VII’s prohibition on “sex” discrimination prohibits employers from firing or refusing to hire individuals “for being homosexual or transgender.”

10. *Bostock* explained that an employer who fires an employee for conduct or personal attributes that it would tolerate in a person of the opposite biological sex has

made the employee's sex the "but-for cause" of his discharge, and that (in the Court's view) automatically violates the statutory command of Title VII. The Court explained:

If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

Bostock, 140 S. Ct. at 1741–42.

11. *Bostock* also makes clear that an employer does *not* violate Title VII if it fires an employee for conduct or personal attributes that it would not tolerate in an employee of the opposite biological sex:

Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent.

Bostock, 140 S. Ct. at 1742.

12. *Bostock* does not prohibit employers from discriminating on account of sexual orientation or gender identity, so long as they do not engage in "sex" discrimination when doing so.

13. For example, *Bostock*'s interpretation of Title VII does not prohibit discrimination against bisexual employees or job applicants, so long as the employer regards bisexual behavior or orientation as equally unacceptable in a man or a woman. *See, e.g., Bostock v. Clayton County*, 140 S. Ct. 1731, 1742 (2020) ("Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait

in a man, Title VII stands silent.”); *see also id.* at 1740 (“[F]iring [a] person for actions or attributes it would tolerate in an individual of another sex . . . discriminates against that person in violation of Title VII.”). Discrimination against a bisexual employee or job applicant is certainly discrimination on account of “sexual orientation,” but it is not discrimination on account of “sex.”

14. *Bostock* also allows employers to discriminate against homosexual or transgender employees or job applicants, so long as they do so according to rules that apply equally to both sexes and would lead to the same result if the employee’s biological different were different. An employer, for example, may decide that he will not employ any person, male or female, who takes testosterone supplements—regardless of whether those supplements are being taken by a biological woman who wants to appear as a man, or by a biological man who wants bigger muscles. Or he may decide that he will not employ any person, male or female, who has undergone surgery to modify their genitals. Policies of that sort obviously discriminate against transgender individuals, but they do not constitute “sex” discrimination as defined in *Bostock* because the rules apply equally to both biological sexes. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1746–47 (2020) (“We agree that homosexuality and transgender status are distinct concepts from sex.”).

15. Secretary Becerra’s edict of May 10, 2021, wrongly equates discrimination on account of sexual orientation and gender identify with “sex” discrimination. Yet there are many ways in which health-care providers can deny or withhold controversial treatments demanded by homosexual, bisexual, or transgender patients without engaging in “sex” discrimination as defined in *Bostock*.

16. Consider a health-care provider who refuses to prescribe testosterone hormone to a biological woman who wishes to appear as a man. If that provider would have equally refused to prescribe those hormones to a biological man, then there is no “sex” discrimination under *Bostock*.

17. Or consider a health-care provider who refuses to refer a biological man for a sex-change operation that would remove his penis and testicles. As long as that provider would have equally refused to refer a biological female for that identical operation, then there is no “sex” discrimination under *Bostock*.

18. Or consider a health-care provider who refuses to prescribe Truvada or PrEP drugs to homosexual men because he does not wish to facilitate homosexual sodomy, which he regards as immoral or contrary to his religious beliefs. So long as that provider would likewise refuse to prescribe Truvada or PrEP drugs to female patients, then he has not engaged in “sex” discrimination of any sort.

19. Yet the Becerra edict would consider this a violation of section 1557, because it falsely states that *Bostock* prohibits all forms of discrimination on the basis of “sexual orientation” or “gender identity.” *See* Exhibit 1 at 2 (“The *Bostock* majority concluded that the plain meaning of “because of sex” in Title VII necessarily included discrimination because of sexual orientation and gender identity.”). *Bostock* held nothing of the sort. It remains perfectly legal after *Bostock* to “discriminate” against homosexual or transgender individuals, so long as one does not engage in “sex” discrimination when doing so—*i.e.*, so long as one does not treat a biological man differently from how he would treat an identically situated biological woman.

FACTS RELATED TO STANDING

20. Plaintiff Susan Neese, M.D., is an internal medicine specialist in Amarillo, Texas. She is affiliated with Baptist Saint Anthony’s Hospital, which receives federal money and is subject to section 1557.

21. Dr. Neese’s views on transgenderism are nuanced. She has treated patients suffering from gender dysphoria in the past and has on occasion prescribed hormone therapy for them. But she does not believe that hormone therapy or sex-change op-

erations are medically appropriate for everyone who asks for them, even if those individuals are suffering from gender dysphoria, and she will on occasion decline to prescribe hormone therapy or provide referrals for sex-change operations, consistent with her Hippocratic Oath to do no harm.

22. Secretary Becerra's interpretation of section 1557 interferes with Dr. Neese's ability to conduct her medical practice, thereby inflicting injury in fact. This injury is traceable to Secretary Becerra, and it will be redressed by the declaratory and injunctive relief sought in this lawsuit.

23. Plaintiff James Hurly, M.D., is a board-certified pathologist in Amarillo, Texas. He is employed by the Amarillo Pathology Group, which receives federal money and is subject to section 1557.

24. Dr. Hurly's views on transgenderism are nuanced. Although he recognizes that some biological men may identify as women (and vice versa), he has encountered situations in his medical practice when he must insist that a patient acknowledge his biological sex rather than the gender identity that he asserts. For example, Dr. Hurly once diagnosed a biological male patient with prostate cancer, but the patient refused to accept Dr. Hurly's diagnosis because he identified as a woman and insisted that he could not have a prostate. Dr. Hurly had to firmly explain to this patient that he was indeed a biological man with a prostate, and that he needed to seek urgent medical treatment for his prostate cancer.

25. Secretary Becerra's interpretation of section 1557 interferes with Dr. Hurly's ability to conduct his medical practice, thereby inflicting injury in fact. This injury is traceable to Secretary Becerra, and it will be redressed by the declaratory and injunctive relief sought in this lawsuit.

CLASS-ACTION ALLEGATIONS

26. The plaintiffs bring this class action under Rule 23(b)(2) of the federal rules of civil procedure.

27. Dr. Neese and Dr. Hurly seek to represent a class of all health-care providers subject to section 1557 of the Affordable Care Act.

28. The number of members in the class makes joinder of the individual class members impractical.

29. There are questions of law common to the class, including whether Secretary Becerra's Notification of Interpretation and Enforcement of May 10, 2021, correctly interprets section 1557 and *Bostock*.

30. Dr. Neese and Dr. Hurly's claims are typical of other members of the class, as each of them wishes to preserve the autonomy of their medical practice.

31. Dr. Neese and Dr. Hurly adequately represent the interests of the class, and they have no interests antagonistic to either of the classes.

32. A class action is appropriate under Rule 23(b)(2) because the defendants are acting on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

Claim 1: Administrative Procedure Act

33. 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, because it wrongly equates discrimination on account of sexual orientation and gender identity with "sex" discrimination.

34. The Court should "hold unlawful and set aside" the Notification of Interpretation and Enforcement of May 10, 2021, and it should enjoin the Secretary from enforcing its interpretation of section 1557.

35. The plaintiffs bring this claim under sections 702, 704, and 706 of the APA. *See* 5 U.S.C. §§ 702, 704, 706.

Claim 2: Declaratory Judgment Act

36. Section 1557 and *Bostock* do not prohibit discrimination on account of sexual orientation and gender identity. They prohibit only discrimination on account of “sex,” and they allow health-care providers to take discriminatory actions with respect to homosexual, bisexual, or transgender patients as long as they would have acted in the same manner had the patient had been a member of the opposite biological sex.

37. The Court should therefore declare that section 1557 does not prohibit discrimination on account of sexual orientation and gender identity, as Secretary Becerra claims, but that it prohibits only “sex” discrimination, which means that provider would have acted differently toward an identically situated member of the opposite biological sex.

38. The plaintiffs bring this claim under 28 U.S.C. § 2201.

DEMAND FOR RELIEF

39. The plaintiffs respectfully request that the court:

- a. certify the class described in paragraph 27;
- b. hold unlawful and set aside Secretary Becerra’s Notification of Interpretation and Enforcement of May 10, 2021;
- c. enjoin Secretary Becerra from using or enforcing the interpretation of section 1557 that appears in the Notification of Interpretation and Enforcement of May 10, 2021;
- d. award the declaratory relief described in paragraph 37;
- e. award costs and attorneys’ fees;
- f. award all other relief that the Court deems just, proper, or equitable.

Respectfully submitted.

GENE P. HAMILTON
Virginia Bar No. 80434
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

MARVIN W. JONES
Texas Bar No. 10929100
CHRISTOPHER L. JENSEN
Texas Bar No. 00796825
Sprouse Shrader Smith PLLC
701 S. Taylor, Suite 500
Amarillo, Texas 79101
(806) 468-3335 (phone)
(806) 373-3454 (fax)
marty.jones@sprouselaw.com
chris.jensen@sprouselaw.com

Dated: August 25, 2021

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

Counsel for Plaintiffs

Billing Code: XXXX-XX-X

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 U.S.C. § 18116(a)

Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972

AGENCY: Office of the Secretary, HHS.

ACTION: Notification of Interpretation and Enforcement.

SUMMARY: This Notification is to inform the public that, consistent with the Supreme Court's decision in *Bostock* and Title IX, beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce Section 1557's prohibition on discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. This interpretation will guide OCR in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

DATES: This Notification is effective May 10, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619-0403 or (800) 537-7697 (TDD).

SUPPLEMENTARY INFORMATION: HHS is informing the public that, consistent with the Supreme Court's decision in *Bostock*¹ and Title IX², beginning May 10, 2021, the Department of

¹ *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

² Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.* <https://www.govinfo.gov/content/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1-part86.pdf>

Health and Human Services (HHS) will interpret and enforce Section 1557's³ prohibition on discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity.

I. Background

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (the Department) is responsible for enforcing Section 1557 of the Affordable Care Act (Section 1557) and regulations issued under Section 1557, protecting the civil rights of individuals who access or seek to access covered health programs or activities. Section 1557 prohibits discrimination on the bases of race, color, national origin, sex, age, and disability in covered health programs or activities. [42 U.S.C. § 18116\(a\)](#).

On June 15, 2020, the U.S. Supreme Court held that Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII)⁴'s prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender identity. [*Bostock v. Clayton County, GA*, 140 S. Ct. 1731 \(2020\)](#). The *Bostock* majority concluded that the plain meaning of “because of sex” in Title VII necessarily included discrimination because of sexual orientation and gender identity. *Id.* at 1753-54.

Since *Bostock*, two federal circuits have concluded that the plain language of Title IX of the Education Amendments of 1972's (Title IX) prohibition on sex discrimination must be read similarly. See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as*

³ Section 1557 of the Patient Protection and Affordable Care Act. <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapVI-sec18116.pdf>

⁴ Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (41 CFR Part 60-20). <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01422.pdf>

amended (Aug. 28, 2020),⁵ *reh’g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert. filed*, [No. 20-1163 \(Feb. 24, 2021\)](#); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh’g en banc pending*, No. 18-13592 (Aug. 28, 2020).⁶ In addition, on March 26, 2021, the Civil Rights Division of the U.S. Department of Justice issued a memorandum to Federal Agency Civil Rights Directors and General Counsel⁷ concluding that the Supreme Court’s reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972. As made clear by the Affordable Care Act, Section 1557 prohibits discrimination “on the grounds prohibited under . . . Title IX.” [42 U.S.C. § 18116\(a\)](#).

Consistent with the Supreme Court’s decision in *Bostock* and Title IX, beginning today, OCR will interpret and enforce Section 1557’s prohibition on discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. This interpretation will guide OCR in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

In enforcing Section 1557, as stated above, OCR will comply with the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*,⁸ and all other legal requirements. Additionally, OCR will comply with all applicable court orders that have been issued in litigation involving the Section 1557 regulations, including *Franciscan Alliance, Inc. v. Azar*, 414 F. Supp. 3d 928

⁵ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020).
<https://www.ca4.uscourts.gov/opinions/191952.P.pdf>

⁶ *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020).
<https://media.ca11.uscourts.gov/opinions/pub/files/201813592.pdf>

⁷ March 26, 2021, the Civil Rights Division of the U.S. Department of Justice memorandum to Federal Agency Civil Rights Directors and General Counsel re: Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972. <https://www.justice.gov/crt/page/file/1383026/download>

⁸ Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap21B-sec2000bb-1.pdf>

(N.D. Tex. 2019)⁹; *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 485 F. Supp. 3d 1 (D.D.C. 2020)¹⁰; *Asapansa-Johnson Walker v. Azar*, No. 20-CV-2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020)¹¹; and *Religious Sisters of Mercy v. Azar*, No. 3:16-CV-00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021)¹².

OCR applies the enforcement mechanisms provided for and available under Title IX when enforcing Section 1557's prohibition on sex discrimination. [45 C.F.R. § 92.5\(a\)](#). Title IX's enforcement procedures can be found at [45 C.F.R. § 86.71](#) (adopting the procedures at 45 C.F.R. §§ 80.6 through 80.11 and 45 C.F.R. Part 81).

If you believe that a covered entity violated your civil rights, you may file a complaint at <https://www.hhs.gov/ocr/complaints>.

Dated:

Xavier Becerra,

Secretary, Department of Health and Human Services

⁹ *Franciscan Alliance, Inc. v. Azar*, 414 F. Supp. 3d 928 (N.D. Tex. 2019).
https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_20-cv-02834/pdf/USCOURTS-nyed-1_20-cv-02834-0.pdf

¹⁰ *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 485 F. Supp. 3d 1 (D.D.C. 2020).
<http://www.ca5.uscourts.gov/opinions/unpub/20/20-10093.0.pdf>

¹¹ *Asapansa-Johnson Walker v. Azar*, No. 20-CV-2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020).
https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_20-cv-02834/pdf/USCOURTS-nyed-1_20-cv-02834-0.pdf

¹² *Religious Sisters of Mercy v. Azar*, No. 3:16-CV-00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021).
<https://www.hhs.gov/sites/default/files/document-124-memorandum-opinion-and-order.pdf>

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Susan Neese, M.D., and James Hurly, M.D., on behalf of themselves and others similarly situated

(b) County of Residence of First Listed Plaintiff Potter

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jonathan F. Mitchell, Mitchell Law PLLC, 111 Congress Avenue, Suite 400, Austin, Texas 78701, (512) 686-3940; Gene P. Hamilton, America First Legal Foundation 300 Independence Avenue SE, Washington, DC 20003, (202) 964-3721

DEFENDANTS

Xavier Becerra, in his official capacity as Secretary of Health and Human Services, United States of America

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | |
| | | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | | |
| | | IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 2201; 5 U.S.C. § 706

Brief description of cause:

APA challenge to Biden Administration's interpretation of section 1557 of the Affordable Care Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

August 25, 2021

SIGNATURE OF ATTORNEY OF RECORD

Jonathan F. Mitchell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 2:21-cv-00163-Z Document 1-2 Filed 08/25/21 Page 2 of 2 PageID 15
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.