

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-Z

**MOTION FOR CLASS CERTIFICATION**

Plaintiffs Susan Neese and James Hurly respectfully move to certify the following  
class under Rule 23(b)(2) of the federal rules of civil procedure:

All health-care providers subject to section 1557 of the Affordable Care  
Act.

The accompanying brief provides our arguments and authorities.

Respectfully submitted.

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Dated: August 5, 2022

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### CERTIFICATE OF SERVICE

I certify that on August 5, 2022, I served this document through CM/ECF upon:

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**[PROPOSED] ORDER GRANTING PLAINTIFFS’  
MOTION FOR CLASS CERTIFICATION**

The plaintiffs’ motion for class certification is granted.

The Court certifies the following class under Rule 23(b)(2) of the federal rules of civil procedure:

All health-care providers subject to section 1557 of the Affordable Care Act.

Susan Neese and James Hurly are appointed class representatives. Jonathan F. Mitchell is appointed class counsel under FRCP 23(g). The class claims are:

1. Whether Secretary Becerra’s interpretation of section 1557 of the Affordable Care Act, which appears in his Notification of Interpretation and Enforcement of May 10, 2021, is inconsistent with the statutory definition of “sex” discrimination, as construed by the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).
2. Whether the prohibition on “sex” discrimination in section 1557 of the Affordable Care Act encompasses only situations in which a provider would have acted differently toward an identically situated member of the opposite biological sex.

Dated: \_\_\_\_\_

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MATTHEW J. KACSMARYK  
UNITED STATES DISTRICT JUDGE