

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

SUSAN NEESE, M.D., *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

Civil Action No. 2:21-cv-163-Z

DEFENDANTS' PROPOSED JUDGMENT

Pursuant to the Opinion and Order the Court issued concerning the parties' motions for summary judgment, ECF No. 66, at 26 ("Opinion and Order"), Defendants Xavier Becerra, in his official capacity as Secretary of the United States Department of Health and Human Services, and the United States of America (collectively, "Defendants") hereby submit a proposed judgment. Defendants respectfully disagree with the Court's Opinion and Order insofar as it grants relief to Plaintiffs. In complying with the Court's order to submit a proposed judgment consistent with the Opinion and Order, Defendants do not waive any rights and instead expressly preserve all rights, including the right to appeal any orders or judgments of the Court, including the Opinion and Order, any resulting judgment, and the Court's order certifying a class, ECF No. 65.

[DEFENDANTS' PROPOSED] JUDGMENT

On October 14, 2022, the Court entered an order granting Plaintiffs' Motion for Class Certification and certifying a class (the "Class") of "[a]ll health-care providers subject to section 1557 of the Affordable Care Act." ECF No. 65; ECF No. 44 (class certification motion). On November 11, 2022, the Court entered an Opinion and Order GRANTING IN PART and DENYING IN PART Plaintiffs' Motion for Summary Judgment and GRANTING IN PART and DENYING IN PART Defendants' Motion for Summary Judgment. ECF No. 66. Consistent with the Opinion and Order, the Court:

- GRANTS summary judgment for Plaintiffs and the Class and DENIES summary judgment for Defendants on Count I of the First Amended Complaint insofar as Plaintiffs and the Class seek to hold unlawful and set aside the U.S. Department of Health and Human Services's Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Educational Amendments of 1972, 86 Fed. Reg. 27,984 (May 25, 2021) ("Notification");
- GRANTS summary judgment for Defendants and DENIES summary judgment for Plaintiffs and the Class on Count I of the First Amended Complaint insofar as Plaintiffs and the Class seek injunctive relief;
- GRANTS summary judgment for Plaintiffs and the Class and DENIES summary judgment for Defendants on Count II of the First Amended Complaint;
- DECLARES that the Notification is unlawful as to Plaintiffs and the Class; and
- SETS ASIDE the Notification as to the Plaintiffs and the Class.

The Court DENIES all other relief not expressly granted herein. This judgment applies to Plaintiffs, the Class, and Defendants.

Judgment is rendered accordingly.

November __, 2022

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

Dated November 21, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MICHELLE BENNETT
Assistant Branch Director

/s/ Jeremy S.B. Newman
Jeremy S.B. Newman (Mass. Bar No. 688968)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street N.W.
Washington, DC 20005
Tel: (202) 532-3114
Email: jeremy.s.newman@usdoj.gov

CHAD E. MEACHAM
United States Attorney

/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney
Texas Bar No. 24060668
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214-659-8626
Facsimile: 214-659-8807
brian.stoltz@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

On November 21, 2022, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Brian W. Stoltz