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Selected docket entries for case 23–5053

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Filed	Document Description	Page	Docket Text
05/07/2024	<u>41</u>		ADDITIONAL CITATION filed by Ms. McKaye Lea Neumeister for Xavier Becerra, Office for Civil Rights of the U.S. Department of Health and Human Services, Lisa J. Pino and HHS. Certificate of Service: 05/07/2024. [23–5053] (MLN)
	<u>41</u> additional citation (28j)	2	
	41 Additional Document <b>DOCUMENT COULD NOT BE RETRIEVED!</b>		



**U.S. Department of Justice**  
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May 7, 2024

VIA CM/ECF

Kelly L. Stephens, Clerk of Court  
U.S. Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202

RE: *American College of Pediatricians, et al. v. Becerra, et al.*, No. 23-5053 (argued December 6, 2023)

Dear Ms. Stephens:

We write pursuant to Rule 28(j) to inform the Court that on May 6, 2024, the Department of Health and Human Services (HHS) promulgated a final rule regarding Section 1557 of the Affordable Care Act, which will be effective as of July 5, 2024. *See* HHS, *Final Rule: Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024) (Final Rule).

The Final Rule reinforces the conclusion that the district court correctly dismissed plaintiffs' claims. In holding that plaintiffs lacked standing, the court observed that "the availability of a religious exemption to protect [plaintiffs' members] from enforcement cuts against any argument that they face a credible threat of prosecution." Op., R. 61, PageID 1222; *see* Gov't Br. 28-30. And in holding that plaintiffs' claims were unripe, the court relied in part upon "the unlikelihood that the injury would ever come to pass in light of the [Religious Freedom Restoration Act (RFRA)] exemption and the lack of threatened or actual enforcement." Op., R. 61, PageID 1223 n.5; *see* Gov't Br. 41-42.

The Final Rule confirms the ability of healthcare providers to rely on federal religious freedom and conscience protections (including RFRA) and additionally sets

forth a process by which providers can request a written assurance from HHS's Office of Civil Rights of their religious- or conscience-based exemptions with respect to specific conduct. 45 C.F.R. §§ 92.3(c), 92.302; *see* 89 Fed. Reg. at 37,655-61, 37,693, 37,701-02. HHS's express recognition that healthcare providers like plaintiffs' members can rely on such protections—and also obtain assurances of their RFRA exemptions—underscores that those members are unlikely to ever be harmed by a future Section 1557 enforcement action.

Sincerely,

/s/ McKaye L. Neumeister  
McKaye L. Neumeister  
U.S. Department of Justice  
Appellate Staff, Civil Division

cc (via CM/ECF): Counsel of Record