

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

STATE OF FLORIDA; FLORIDA AGENCY  
FOR HEALTH CARE ADMINISTRATION;  
FLORIDA DEPARTMENT OF  
MANAGEMENT SERVICES; CATHOLIC  
MEDICAL ASSOCIATION, on behalf of its  
current and future members,

*Plaintiffs,*

No. 8:24-cv-1080-WFJ-TGW

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; XAVIER BECERRA,  
in his official capacity as Secretary of the  
Department of Health and Human Services;  
MELANIE FONTES RAINER, in her official  
capacity as the Director of the Office for Civil  
Rights; CENTERS FOR MEDICARE AND  
MEDICAID SERVICES; CHIQUITA  
BROOKS-LASURE, in her official capacity as  
Administrator of the Centers for Medicare and  
Medicaid Services,

*Defendants.*

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**PLAINTIFFS' PARTIAL OPPOSITION TO DEFENDANTS' MOTION FOR  
EXTENSION**

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Plaintiffs respectfully submit this partial opposition to Defendants' request for a 15-day extension to respond to Plaintiffs' pending motion for a stay or preliminary injunction.

*First*, as a threshold matter, Plaintiffs provide an important correction to Defendants' motion, which erroneously claims Plaintiffs seek relief "that would seemingly preclude the Department of Health and Human Services ('HHS') from

taking any action against health care providers and covered entities across the country for denying care or denying insurance coverage—whether for a sore throat, a broken bone, or cancer—just because of the patient’s *race, color, national origin, sex, age, or disability*.” HHS Mot. 1 (emphasis added). As their motion makes clear, Plaintiffs have asked only that this Court “stay the effective date of the provisions of the 2024 Rules that implement HHS’s reading of Title IX as incorporated in Section 1557, as well as its reading of the SSA to prohibit disparate impacts.” Stay Mot. 24. That deals with Defendants’ attempts to equate “sex” with “transgender status” or “gender identity.” It does not address prohibitions on discrimination on the basis of things like “race, color, [or] national origin.”

If any further clarity were needed, Plaintiffs’ motion expressly stated: “Section 1557, moreover, is self-executing, so staying or enjoining enforcement of the 2024 Rules won’t interfere with HHS’s legitimate law-enforcement interests” in prohibiting other forms of discrimination not herein challenged. ECF No. 12 at 25.

All of this is clear from the text and context of Plaintiffs’ motion. Defendants’ mischaracterizations are unhelpful and unwarranted.

*Second*, turning to the merits of the extension request itself, Plaintiffs do not object to an extension *per se*, but a 15-day extension will create significant time pressure for this Court because the 2024 Rules that Plaintiffs challenge—which will irreparably harm Plaintiffs, as explained in their motion for a stay or injunction—will take effect on July 5, 2024. 89 Fed. Reg. 37,522 37,522 (May 6, 2024).

As Plaintiffs’ motion for a stay or preliminary injunction explains, they therefore face imminent and irreparable harm from the 2024 Rules, including being “caught between the 2024 Rules and Florida law.” ECF No. 12 at 20. Indeed, the federal government has already told the Eleventh Circuit that Florida’s Medicaid rule restricting public spending on certain interventions, Fla. Admin. Code r. 59G-1.050(7), is preempted by Section 1557, asserting that HHS’s then-proposed (and now final) rules make this clear by prohibiting “categorical” limits on gender-transition interventions. ECF No.12 at 23 (citing United States’ brief at the Eleventh Circuit in *Dekker v. Fla. Agency for Health Care Admin.*). There is no need to read between the lines or guess as to whether Defendants believe the 2024 Rules preempt Florida state law, contrary to the implication in Defendants’ motion for an extension.

The Eleventh Circuit has held that a State faces an “actual and imminent” injury when it cannot enforce its own law because of a federal regulation. *Ne. Fla. Chapter of Ass’n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). The U.S. Supreme Court has held the same: “A state retains a sovereign interest in enacting and enforcing state law, and the ‘inability to enforce [the State’s] duly enacted plans clearly inflicts irreparable harm on the State.’” *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018)); *see Florida v. Nelson*, 576 F. Supp. 3d 1017, 1039 (M.D. Fla. 2021). And Plaintiffs will face several other forms of imminent injury, as well. *See* ECF No. 12 at 24. Those harms will be incurred when the 2024 Rules become effective on July 5.

*Third*, Defendants claim there is no risk of imminent harm because they announced their new views in a May 2021 notice and now claim that Plaintiffs have

“fail[ed] to allege or identify a single enforcement action for discriminating on the basis of gender identity in the past three years since HHS issued that notification.” Mot. 3. Just one problem with Defendants’ argument: that May 2021 notice was vacated by a federal court in 2022—a fact Defendants obviously are aware of and which is also alleged in the Complaint in this case. Complaint, ECF No. 1, ¶ 59; *see Neese v. Becerra*, No. 2:21-cv-163-Z, 2022 WL 16902425, at \*1–2 (N.D. Tex. Nov. 11, 2022). Given this, it’s no wonder HHS hasn’t brought such an enforcement action.

*Fourth*, under Defendants’ proposed briefing schedule, Plaintiffs’ reply will not be due until June 20, leaving only a couple of weeks for the Court to consider the full briefing (and potential oral argument) before the 2024 Rules become effective and impose what the Eleventh Circuit and Supreme Court have repeatedly held is imminent and irreparable harm on Florida’s sovereign interests. Given this, Plaintiffs’ counsel consented to a 7-day extension for Defendants’ opposition but believe any further extension is unwarranted.

Plaintiffs’ counsel alternatively stated they would consent to a 15-day extension if Defendants would agree to a narrow stay of the effective date only of the challenged portions of the 2024 Rules, and only as applied to Plaintiffs and their members. That would eliminate the time crunch that *Defendants themselves have created* by setting an unreasonably imminent effective date for the 2024 Rules, coupled with a request for a lengthy extension on briefing before this Court. But Defendants’ counsel declined this alternative approach, even though it would have provided a reasonable solution for all involved, including the Court.

For these reasons, Plaintiffs respectfully request that the Court either grant only a 7-day extension, or issue an administrative stay limited to Plaintiffs and their members for only those portions of the 2024 Rules challenged in the pending motion for a stay or injunction, and only until such time as the Court rules on that motion. *See* ECF No. 12 at 26; *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring in denial of applications to vacate stay) (courts “frequently issue[] an administrative stay to permit time for briefing and deliberation”); 5 U.S.C. § 705 (authorizing Court in APA case to “issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings”); 28 U.S.C. § 1651.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2024, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties who have registered with CM/ECF and filed an appearance in this action.

/s/ R. Trent McCotter

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