

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BAGLY, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 20-cv-11297-PBS

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully notify the Court of the Order and Opinion Granting Motion to Dismiss in *State of New York v. United States Department of Health and Human Services*, No. 1:20-cv-05583-AKH (S.D.N.Y. Nov. 12, 2024), ECF No. 196 (“Order and Op.”), which was issued subsequent to the motion hearing held in this case on November 7, 2024, ECF No. 179.

The plaintiffs in *New York* raised essentially the same claims for relief with respect to the 2020 Rule promulgated by the United States Department of Health and Human Services (“HHS”) as Plaintiffs here.¹ And like the Plaintiffs in this case, the *New York* plaintiffs sought to avoid mootness by citing various district court orders precluding HHS from enforcing parts of a superseding rule.

In its two-page Order and Opinion, the *New York* court found that the case was moot. Order and Op. The court explained that “[t]he fact that some district courts have issued orders preliminarily enjoining parts of the 2024 Rule does not alter the fact that it superseded the 2020 Rule” and “[a]ny opinion regarding the 2020 Rule would be ‘merely advisory’ and violate Article III’s case or controversy requirement.” Order and Op. at 2 (citation omitted). A copy of the *New York* Order and Opinion Granting Motion to Dismiss is attached for the Court’s convenience.

¹ The *New York* plaintiffs have also participated as amicus in this case. ECF No. 147.

Dated: November 13, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

/s/ Liam C. Holland
LIAM C. HOLLAND (BBO #704799)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
(202) 514-4964
liam.c.holland@usdoj.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK ET AL,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES ET AL,

Defendants.

ORDER AND OPINION
GRANTING MOTION TO
DISMISS

20 Civ. 5583 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Defendants assert that this action should be dismissed for mootness. ECF No.

180. The underlying lawsuit challenges a 2020 Rule promulgated by the United States Department of Health and Human Services (“HHS”) that interpreted Section 1557 of the Affordable Care Act. *See* 85 Fed. Reg. 37,160 (June 19, 2020) (codified at 45 C.F.R. pt. 92); *see also* 42 U.S.C. § 18116(a). On May 6, 2024, HHS promulgated a new rule replacing its prior interpretations of Section 1557, including the 2020 Rule. *See* 89 Fed. Reg. 37,522 (May 6, 2024).

When an agency “replace[s] a challenged regulation, litigation over the legality of the original regulation becomes moot.” *Alaska v. U.S. Dep’t of Agric.*, 17 F.4th 1224, 1226 (D.C. Cir. 2021); *see also Nat’l Mining Ass’n v. U.S. Dep’t of Interior*, 251 F.3d 1007, 1010-11 (D.C. Cir. 2001) (dismissing as moot a lawsuit challenging an “old set of rules” because they were replaced by new rules and noting that “any opinion regarding the former rules would be merely advisory”). The Sixth Circuit, in *Am. Coll. of Pediatricians v. Becerra*, was confronted with a similar lawsuit challenging an earlier interpretation of Section 1557, and found that the action

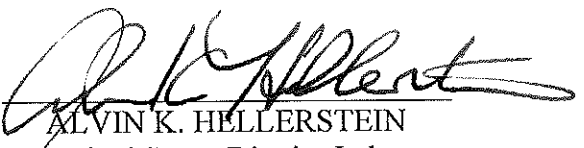
was rendered moot by HHS's promulgation of the 2024 Rule. *See* 2024 WL 3206579, at *1 (6th Cir. June 27, 2024) (noting that the 2024 Rule "wiped the slate clean on Section 1557"). The lawsuit before me is moot for the same reason.

The fact that some district courts have issued orders preliminarily enjoining parts of the 2024 Rule does not alter the fact that it superseded the 2020 Rule. Plaintiffs have not identified any specific provision of the 2020 Rule that is currently in force, and no live controversy still exists. Any opinion regarding the 2020 Rule would be "merely advisory" and violate Article III's case or controversy requirement. *See Nat'l Mining Ass'n*, 251 F.3d at 1011.

Defendants' motion to dismiss is granted. The Clerk shall terminate the case.

SO ORDERED.

Dated: November 12, 2024
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge