

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**STATE OF TENNESSEE, et  
al.**

**PLAINTIFFS**

**v.**

**CAUSE NO. 1:24cv161-LG-BWR**

**XAVIER BECERRA, in his  
official capacity as Secretary  
of the United States  
Department of Health and  
Human Services, et al.**

**DEFENDANTS**

**ORDER TAKING UNDER ADVISEMENT PLAINTIFFS'  
MOTION FOR ENTRY OF BRIEFING SCHEDULE  
AND REQUIRING BRIEFS FROM THE PARTIES**

**BEFORE THE COURT** is the [32] Motion for Entry of Briefing Schedule filed by Plaintiffs in this lawsuit challenging a final rule issued by the United States Department of Health and Human Services on May 6, 2024. *See* Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) (45 C.F.R. pt. 92).

On July 3, 2024, the Court issued a Preliminary Injunction staying the effective date of the Rule nationwide in so far as it is “intended to extend discrimination on the basis of sex to include discrimination on the basis of gender identity in the following regulations: 42 C.F.R. §§ 438.3, 438.206, 440.262, 460.98, 460.112; 45 C.F.R. §§ 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206-211, 92.301, 92.303, 92.304.” [30 p. 1]. The Court further enjoined Defendants nationwide “from enforcing, relying on, implementing, or otherwise acting pursuant to the final rule . . . to the extent that [it] provides that ‘sex’ discrimination encompasses gender

identity.” *Id.* at 1–2. Defendants opposed Plaintiffs’ Motion for a Briefing Schedule, and they filed a [42] Notice of Appeal concerning the Preliminary Injunction on August 30, 2024.

The Fifth Circuit has explained:

It is the general rule that a district court is divested of jurisdiction upon the filing of the notice of appeal with respect to any matters involved in the appeal. However, where an appeal is allowed from an interlocutory order, the district court may still proceed with matters not involved in the appeal.

*Alice L. v. Dusek*, 492 F.3d 563, 564–65 (5th Cir. 2007). As a result, the parties are ordered to submit briefs to the Court concerning whether any part of this case can proceed while the appeal of the Court’s [30] Preliminary Injunction is pending.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the [32] Motion for Entry of Briefing Schedule filed by Plaintiffs is **TAKEN UNDER ADVISEMENT**.

**IT IS FURTHER ORDERED AND ADJUDGED** that, on or before **October 2, 2024**, the parties shall provide the Court with briefs concerning whether any part of this litigation can proceed while the appeal of the Court’s Preliminary Injunction is pending.

**SO ORDERED AND ADJUDGED** this the 25<sup>th</sup> day of September, 2024.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE