

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

STATE OF TENNESSEE, STATE OF MIS-)
SISSIPPI, STATE OF ALABAMA, STATE)
OF GEORGIA, STATE OF INDIANA,)
STATE OF KANSAS, COMMONWEALTH)
OF KENTUCKY, STATE OF LOUISIANA,)
STATE OF NEBRASKA, STATE OF OHIO,)
STATE OF OKLAHOMA, STATE OF)
SOUTH CAROLINA, STATE OF SOUTH)
DAKOTA, COMMONWEALTH OF VIR-)
GINIA, AND STATE OF WEST VIRGINIA,)

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity)
as Secretary of the United States Department)
of Health and Human Services; UNITED)
STATES 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 MEDI-)
CAID SERVICES; and CHIQUITA)
BROOKS-LASURE, in her official capacity)
as Administrator of the Centers for Medicare)
and Medicaid Services,)

Defendants.

Civil Action No. 1:24-cv-161-LG-BWR

**PLAINTIFFS' URGENT AND NECESSITOUS MOTION FOR
§ 705 RELIEF AND A PRELIMINARY INJUNCTION
AND FOR EXPEDITED CONSIDERATION**

The Plaintiff States challenge the U.S. Department of Health and Human Services' latest attempt to redefine sex discrimination under Section 1557 of the Affordable Care Act to encompass gender identity. *See* HHS, *Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024) ("2024 Rule"). As explained in Plaintiffs' Complaint [ECF 1] and in the accompanying

memorandum, HHS's 2024 Rule—set to take effect July 5, 2024—is contrary to law, beyond the agency's statutory authority, unconstitutional, and violates the Administrative Procedure Act.

The Plaintiff States bring this motion to seek preliminary relief from the unlawful 2024 Rule under 5 U.S.C. § 705, which allows courts to stay the effective date of a challenged rule pending judicial review, as well as under Federal Rule of Civil Procedure 65. Without preliminary relief, the 2024 Rule will impose unrecoverable compliance costs, interfere with States' longstanding authority to regulate the practice of medicine within their borders, require compliance with regulations that conflict with States' duly enacted laws protecting vulnerable citizens from risky and unproven medical interventions, and force States to subsidize those costly interventions through their state-sponsored insurance plans. If a State or healthcare provider balks at HHS's gender-identity agenda, they risk losing all federal funding. For the States, that could amount to a loss of *hundreds of billions of dollars* in aid for some of their most vulnerable citizens. Both the balance of the equities and the public interest also favor temporarily maintaining the status quo pending judicial review of the 2024 Rule.

Accordingly, the Plaintiff States request the entry of an order:

- a. Declaring the 2024 Rule's redefinition of sex discrimination likely unlawful under Section 1557 of the Affordable Care Act, the Administrative Procedure Act, and the U.S. Constitution;
- b. Staying the effective date of the 2024 Rule, pursuant to 5 U.S.C. § 705, as it pertains to the provisions set forth at 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; and any other provision of the 2024 Rule applied with respect to "sex" discrimination that encompasses gender identity;
- c. Preliminarily enjoining HHS, and any other agency or employee of the United States, from enforcing, relying on, implementing, or otherwise acting pursuant to the 2024 Rule's challenged provisions; and
- d. Granting any and all other preliminary relief the Court deems proper.

In support of the instant motion, the Plaintiff States rely on their Complaint [ECF 1], the accompanying memorandum of law, and the following exhibits attached hereto:

Exhibit A – Declaration of Stephen Smith (Tennessee);

Exhibit B – Declaration of Cody Smith (Mississippi);

Exhibit C – Declaration of Kimberly Sullivan (Louisiana);

Exhibit D – Declaration of Jeremy Brunssen (Nebraska);

Exhibit E – Declaration of Cheryl Roberts (Virginia); and

Exhibit F – Declaration of Steven Voigt (Ohio);

Exhibit G – Declaration of Robert Kerr (South Carolina);

Exhibit H – Declaration of Wanda Davis (Alabama);

Exhibit I – Declaration of Michael Althoff (South Dakota); and

Exhibit J – Declaration of Stephanie Azar (Alabama).

Given the 2024 Rule's effective date of July 5, 2024, the Plaintiff States respectfully request expedited consideration of their motion pursuant to Local Rule 7(b)(8). The Plaintiff States would propose the following briefing schedule, which would align the preliminary-motions schedule in this case with that of a related case pending before this Court, *McComb Children's Clinic, Ltd. v. Becerra*, Civil Action No. 5:24-cv-48:

- June 13, 2024 Plaintiff States' Motion for § 705 Stay and Preliminary Injunction Filed
- June 24, 2024 Defendants' Response Due
- June 26, 2024 Plaintiff States' Reply Brief Due

Counsel for the Plaintiff States has conferred with Counsel for the Defendants, Sarah M. Suwanda, who represented that the Defendants oppose this Motion and expedited consideration of the same. The Plaintiff States further requested that Defendants agree to a temporary stay of any enforcement of the 2024 Rule against the Plaintiff States until the end of July to provide additional time for briefing of the instant motion, but Defendants object to any such stay.

Dated: June 13, 2024

Respectfully submitted,

LYNN FITCH

Attorney General

/s/ Scott G. Stewart

SCOTT G. STEWART

Solicitor General

Bar No. 106359

JUSTIN L. MATHENY

Deputy Solicitor General

Bar No. 100754

MISSISSIPPI ATTORNEY GENERAL'S OFFICE

P.O. Box 220

Jackson, Mississippi 39205

(601) 359-3680

scott.stewart@ago.ms.gov

justin.matheny@ago.ms.gov

Counsel for Plaintiff State of Mississippi

JONATHAN SKRMETTI

Attorney General & Reporter

/s/ Steven J. Griffin

STEVEN J. GRIFFIN

Senior Counsel for Strategic Litigation

Bar No. 103218

WHITNEY HERMANDORFER*

Director of Strategic Litigation

HARRISON GRAY KILGORE*

Strategic Litigation Counsel and Assistant Solicitor General

OFFICE OF THE TENNESSEE ATTORNEY GENERAL

P.O. Box 20207

Nashville, Tennessee 37202

(615) 741-3491

steven.griffin@ag.tn.gov

whitney.hermandorfer@ag.tn.gov

harrison.kilgore@ag.tn.gov

Counsel for Plaintiff State of Tennessee

STEVE MARSHALL

Attorney General

/s/ A. Barrett Bowdre

A. BARRETT BOWDRE*

Principal Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA

501 Washington Avenue

P.O. Box 300152

Montgomery, Alabama 36130-0152

(334) 242-7300

barrett.bowdre@AlabamaAG.gov

Counsel for Plaintiff State of Alabama

CHRISTOPHER CARR

Attorney General

/s/ Stephen Petrany

STEPHEN PETRANY*

Solicitor General

OFFICE OF THE ATTORNEY GENERAL OF
GEORGIA

Georgia Department of Law

40 Capitol Square SW

Atlanta, Georgia 30334

(404) 458-3408

spetrany@law.ga.gov

Counsel for Plaintiff State of Georgia

THEODORE E. ROKITA

Attorney General

/s/ James A. Barta

JAMES A. BARTA*

Solicitor General

INDIANA ATTORNEY GENERAL'S OFFICE
IGCS – 5th Floor
302 W. Washington St.
Indianapolis, Indiana 46204
(317) 232-0709
James.Barta[atg.in.gov
Counsel for Plaintiff State of Indiana

KRIS W. KOBACH

Attorney General

/s/ Jay Rodriguez

JAY RODRIGUEZ*

Assistant Attorney General

OFFICE OF THE KANSAS ATTORNEY GENERAL
120 SW 10th Ave.
Topeka, Kansas 66612
(785) 296-4733
jay.rodriguez[atg.ks.gov
Counsel for Plaintiff State of Kansas

RUSSELL COLEMAN

Attorney General

/s/ Justin D. Clark

JUSTIN D. CLARK*

Civil Chief

LINDSEY R. KEISER**

Assistant Attorney General

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
(502) 696-5300
justind.clark[ky.gov
lindsey.keiser[ky.gov
Counsel for Plaintiff Commonwealth of Kentucky

ELIZABETH B. MURRILL

Attorney General

/s/ Kelsey L. Smith

KELSEY L. SMITH**

Deputy Solicitor General

OFFICE OF THE LOUISIANA ATTORNEY GENERAL
1885 N. 3rd St.
Baton Rouge, Louisiana 70802
(225) 428-7432
smithkel[atg.louisiana.gov
Counsel for Plaintiff State of Louisiana

MICHAEL T. HILGERS

Attorney General

/s/ Lincoln J. Korell

LINCOLN J. KORELL*

Assistant Solicitor General

OFFICE OF THE ATTORNEY GENERAL OF NEBRASKA
2115 State Capitol
Lincoln, Nebraska 68509
(402) 471-2682
lincoln.korell@nebraska.gov
Counsel for Plaintiff State of Nebraska

DAVE YOST

Attorney General

/s/ T. Elliot Gaiser

T. ELLIOT GAISER*

Solicitor General

OFFICE OF THE OHIO ATTORNEY GENERAL
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
Thomas.Gaiser@ohioago.gov
Counsel for the State of Ohio

GENTNER DRUMMOND

Attorney General

/s/ Garry M. Gaskins, II

GARRY M. GASKINS, II**

Solicitor General

OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

313 NE 21st Street

Oklahoma City, Oklahoma 73105

(405) 312-2451

Garry.Gaskins@oag.ok.gov

Counsel for the State of Ohio

ALAN WILSON

Attorney General

/s/ Thomas T. Hydrick

THOMAS T. HYDRICK*

Assistant Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
OF SOUTH CAROLINA

1000 Assembly Street

Columbia, South Carolina 29201

(803) 734-4127

thomashydrick@scag.gov

Counsel for Plaintiff State of South Carolina

MARTY J. JACKLEY

Attorney General

/s/ Clifton Katz

CLIFTON KATZ*

Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH DAKOTA

1302 E. Hwy. 14, Suite #1

Pierre, South Dakota 57501

(605) 773-3215

clifton.katz@state.sd.us

Counsel for Plaintiff State of South Dakota

JASON S. MIYARES

Attorney General

/s/ Kevin M. Gallagher

KEVIN M. GALLAGHER*

Principal Deputy Solicitor General

BRENDAN T. CHESTNUT*

Deputy Solicitor General

VIRGINIA ATTORNEY GENERAL'S OFFICE

202 North 9th Street

Richmond, Virginia 23219

(804) 786-2071

kgallagher@oag.state.va.us

bchestnut@oag.state.va.us

Counsel for Plaintiff Commonwealth of Virginia

PATRICK MORRISEY

Attorney General

/s/ Michael R. Williams

MICHAEL R. WILLIAMS*

Principal Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL OF
WEST VIRGINIA

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25301

(304) 558-2021

michael.r.williams@wvago.gov

Counsel for Plaintiff State of Virginia

*Admitted *Pro Hac Vice*

**Pro Hac Vice Application Forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2024, a true and correct copy of the foregoing document was served via the Court's electronic filing system, which sent notice of filing to all counsel of record.

/s/ Steven J. Griffin

STEVEN J. GRIFFIN

Office of the Tennessee Attorney General

P.O. Box 20207

Nashville, Tennessee 37202

steven.griffin@ag.tn.gov

Counsel for Plaintiff State of Tennessee