

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

-v-

UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/1/19

19 Civ. 4676 (PAE)

19 Civ. 5433 (PAE)

19 Civ. 5435 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

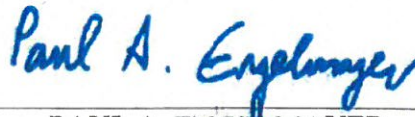
The Court has today issued the agreed-upon Order proposed by the parties at Dkt. 87-1. The Court's Order postpones the effective date of the United States Department of Health and Human Services' ("HHS") rule at issue in this litigation ("Final Rule") until November 22, 2019. The Order further vacates the preliminary injunction briefing schedule set forth in the Court's June 7, 2019, Dkt. 27, and June 13, 2019, Dkt. 38, Orders. In light of the above, it is no longer necessary for the conference scheduled for Friday, July 12, 2019 to serve as a hearing on plaintiffs' preliminary injunction motions.

The Court wishes, however, promptly to put in place a schedule in this matter. The Court directs counsel for all parties in the consolidated cases comprising this litigation forthwith to meet and confer with the goals of (1) proposing a briefing schedule on plaintiffs' preliminary injunction motions, and (2) exploring whether a viable schedule can be agreed to that would permit the legality of HHS's Final Rule to be resolved instead on motions or cross-motions for summary judgment and, if so, proposing such a schedule. In considering a suitable schedule for any contemplated motion, the Court expects counsel to be mindful of the Court's interest in

having sufficient time, following the completion of briefing, to hold oral argument and to consider and thoughtfully resolve the important and complex questions presented.

The Court directs counsel to submit a joint letter, due at 12 noon on Wednesday, July 10, 2019, setting forth the parties' joint proposals—or, if agreement is not reached, the parties' alternative proposals—as to such schedules. If the Court determines that further consultation would assist it in setting a schedule, the Court will use the conference currently scheduled for Friday, July 12, 2019, at 2:00 p.m., to take up such questions with counsel. The Court accordingly asks lead counsel to remain available to attend a conference at that date and time, in courtroom 1305 of the Thurgood Marshall United States Courthouse, at 40 Centre Street.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: July 1, 2019
New York, New York

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ALEX M. AZAR II, *in his official capacity as*
Secretary of the United States Department of
Health and Human Services; and UNITED
STATES OF AMERICA,

Defendants.

No. 1:19-cv-04676-PAE
(consolidated with 1:19-cv-05433-PAE;
1:19-cv-05435-PAE)

**STIPULATED REQUEST FOR AN
ORDER TO POSTPONE RULE'S
EFFECTIVE DATE; TO SUSPEND
DEFENDANTS' DEADLINE TO
RESPOND TO PLAINTIFFS'
PRELIMINARY INJUNCTION
MOTIONS; AND TO VACATE THE
CURRENT BRIEFING SCHEDULE
AND HEARING DATE
[5 U.S.C. § 705]**

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC.; and PLANNED
PARENTHOOD OF NORTHERN NEW
ENGLAND, INC.,

Plaintiffs,

v.

ALEX M. AZAR II, *in his official capacity as*
Secretary, United States Department of
Health and Human Services; UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES; ROGER
SEVERINO, *in his official capacity as*
Director, Office for Civil Rights, United
States Department of Health and Human
Services; and OFFICE FOR CIVIL RIGHTS,
United States Department of Health and
Human Services,

Defendants.

No. 1:19-cv-05433-PAE
(consolidated with 1:19-cv-0476-PAE;
1:19-cv-05435-PAE)

USDC SDNY
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NATIONAL FAMILY PLANNING AND)	
REPRODUCTIVE HEALTH)	No. 1:19-cv-05435-PAE
ASSOCIATION; and PUBLIC HEALTH)	(consolidated with 1:19-cv-0476-PAE;
SOLUTIONS,)	1:19-cv-05433-PAE)
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
ALEX M. AZAR II, in his official capacity as)	
Secretary of the U.S. Department of Health)	
and Human Services; U.S. DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES;)	
ROGER SEVERINO, in his official capacity)	
as Director of the Office for Civil Rights of)	
the U.S. Department of Health and Human)	
Services; OFFICE FOR CIVIL RIGHTS of)	
the U.S. Department of Health and Human)	
Services,)	
)	
<i>Defendants.</i>)	
)	
)	

Subject to the Court’s approval, the parties through their undersigned counsel of record
HEREBY STIPULATE as follows:

1. At present, Defendants’ opposition to Plaintiffs’ motions for a preliminary injunction is due on June 28, 2019, Plaintiffs’ reply is due on July 5, 2019, and a hearing is scheduled on July 12, 2019.
2. The U.S. Department of Health and Human Services (“HHS”) agrees to postpone the effective date of the rule titled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019) (“Final Rule”), until November 22, 2019. HHS stipulates to this postponement because it is the most efficient way to adjudicate the Final Rule on the merits. HHS does not concede that Plaintiffs are “likely to succeed on the merits,

that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, [or] that an injunction is in the public interest.” See *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

3. Plaintiffs maintain that—for the reasons expressed in their motions for a preliminary injunction and their opposition to Defendants’ motion to continue the deadline to respond to Plaintiffs’ motions—Plaintiffs would suffer various irreparable injuries were the Final Rule’s effective date not postponed.

4. The parties request that the Court issue an order, pursuant to 5 U.S.C. § 705, that the effective date of the Final Rule is postponed until November 22, 2019.

5. The parties further request, in light of this postponement, that the Court suspend the June 28, 2019 deadline for Defendants’ opposition brief and set a new and more protracted schedule for submission of the remaining briefs on Plaintiffs’ preliminary injunction motions.

6. The parties agree to meet and confer to determine whether they can reach an agreement on a proposed schedule to resolve this case through cross-motions for summary judgment prior to the Final Rule’s new November 22, 2019 effective date.

Dated: June 28, 2019

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***Pro hac vice* motion forthcoming

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* Application for admission forthcoming
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~~(PROPOSED)~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. The effective date of the Final Rule is postponed until November 22, 2019. *See* 5 U.S.C. § 705. Defendants' June 28, 2019 deadline to respond to Plaintiffs' preliminary injunction motions is suspended, and the preliminary injunction briefing schedule and hearing date set forth in the Court's June 7, 2019 and June 13, 2019 Orders is vacated. This order is without prejudice to the merits.

Dated: June 28, 2019

Paul A. Engelmayer
PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE