

20-539 OREGON V. BECERRA

DECISION BELOW: 950 F.3d 1067

LOWER COURT CASE NUMBER: 19-15974, 19-35386

QUESTION PRESENTED:

For fifty years, the federal government has funded family-planning and reproductive healthcare services for low-income and underserved patients through Title X of the Public Health Services Act, codified at 42 U.S.C. § 300 et seq. In 2019, the Department of Health and Human Services (HHS) promulgated a rule that, among other things, prohibits Title X providers from communicating certain abortion related information to their patients, and requires physical separation of Title X-funded care from healthcare facilities that provide abortion services or certain abortion-related information.

The questions presented are:

1. Does the Final Rule violate appropriations statutes requiring that “all pregnancy counseling” in the Title X program “shall be nondirective”?

2. Does the Final Rule violate § 1554 of the Affordable Care Act (ACA), which prohibits HHS from promulgating “any regulation” that creates “unreasonable barriers” to obtaining appropriate medical care; impedes “timely access” to such care; interferes with patient-provider communications “regarding a full range of treatment options”; restricts providers from disclosing “all relevant information to patients making health care decisions”; or violates providers’ ethical standards?

3. Is the Final Rule arbitrary and capricious, in violation of the Administrative Procedure Act, including by failing to respond adequately to concerns that (a) the rule requires medical professionals to violate medical ethics and (b) the counseling restrictions and physical-separation requirement impose significant costs and impair access to care?

CONSOLIDATED WITH 20-429 AND 20-454 FOR ONE HOUR ORAL ARGUMENT.
ORDER OF APRIL 26, 2021:

THE ACTING SOLICITOR GENERAL IS DIRECTED TO FILE A LETTER BRIEF ADDRESSING THE FOLLOWING QUESTION: WHETHER THE GOVERNMENT INTENDS TO CONTINUE TO ENFORCE THE CHALLENGED RULE AND REGULATIONS OUTSIDE THE STATE OF MARYLAND UNTIL THE COMPLETION OF NOTICE AND COMMENT; AND, IF FURTHER LITIGATION IS BROUGHT AGAINST THE CHALLENGED RULE AND REGULATIONS OUTSIDE OF MARYLAND, HOW THE GOVERNMENT WOULD INTEND TO RESPOND. THE BRIEF, NOT TO EXCEED THREE PAGES, IS TO BE FILED BY MONDAY, MAY 3, 2021. THE NON-FEDERAL PARTIES AND THE PROPOSED INTERVENORS MAY SUBMIT ANY RESPONSES IN LETTER BRIEFS, NOT TO EXCEED THREE PAGES EACH, BY MONDAY, MAY 10, 2021.

CERT. GRANTED *2/22/2021*