

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

**AMERICAN COLLEGE OF  
PEDIATRICIANS**, on behalf of its  
members;  
**CATHOLIC MEDICAL ASSOCIATION**,  
on behalf of its members; and  
**JEANIE DASSOW, M.D.**,

*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**; **ROBINSUE  
FROHBOESE**, in her official capacity as  
Acting Director and Principal Deputy of the  
Office for Civil Rights of the U.S. Department  
of Health and Human Services; and **OFFICE  
FOR CIVIL RIGHTS OF THE U.S.  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**,

*Defendants.*

Civil Action No. 1:21-cv-195

**COMPLAINT**

**Jury Trial Demanded**

**PLAINTIFFS' COMPLAINT**

Plaintiff American College of Pediatricians, on behalf of its members; Plaintiff Catholic Medical Association, on behalf of its members; and Plaintiff Jeanie Dassow, M.D. (collectively, Plaintiffs), for the complaint against Defendants, state as follows:

**INTRODUCTION**

1. This case challenges whether the federal government can make medical doctors perform gender-transition surgeries, prescribe gender-transition drugs, and speak and write about patients according to gender identity, rather than biological reality—regardless of doctors' medical judgment or conscientious objections.

2. The U.S. Department of Health and Human Services (HHS) has re-interpreted Section 1557 of the Affordable Care Act (ACA), which prohibits sex

discrimination, to require doctors to perform such interventions by prohibiting discrimination on the basis of gender identity. Under the government's overreaching interpretation, doctors now face an untenable choice: either act against their medical judgment and deeply held convictions by performing controversial and often medically dangerous gender-transition interventions, or succumb to huge financial penalties, lose participation in Medicaid and other federal funding, and, as a practical matter, lose the ability to practice medicine in virtually any setting.

3. Federal statutes do not support the imposition of this gender identity mandate. As a result, the mandate violates the Administrative Procedure Act, and is also a violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1, the First Amendment's Free Speech and Free Exercise of Religion Clauses, and other constitutional doctrines.

4. Plaintiffs are two medical associations, which together represent three thousand physicians and health professionals, and one medical doctor in Chattanooga, Tennessee. Unless the court issues injunctive and declaratory relief halting this mandate, they will incur irreparable harm to their practices. Two courts have already recognized that this mandate is illegal and enjoined it in favor of plaintiffs in those cases. *Franciscan Alliance, Inc. v. Becerra*, No. 7:16-cv-00108-O 2021 WL 3492338 (N.D. Tex. Aug. 9, 2021); *Religious Sisters of Mercy v. Azar*, 513 F. Supp. 3d 1113, 1139 (D.N.D. 2021). But both injunctions protect only the plaintiffs in those cases, not the plaintiffs or their members here. Therefore a preliminary and permanent injunction under the Administrative Procedure Act and the Religious Freedom Restoration Act are needed to shield Plaintiffs from the federal government's crippling penalties that threaten to drive thousands of doctors out of practice.

## JURISDICTION & VENUE

5. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and federal law.

6. This Court also has jurisdiction under 28 U.S.C. § 1346(a) because this is a civil action against the United States.

7. Additionally, this Court has jurisdiction under 28 U.S.C. § 1361 to compel an officer of the United States or any federal agency to perform his or her duty.

8. This Court has jurisdiction to review Defendants' unlawful actions and enter appropriate relief under the APA, 5 U.S.C. §§ 553, 701–706, and the Regulatory Flexibility Act, 5 U.S.C. § 611.

9. This Court has inherent jurisdiction to review and enjoin ultra vires or unconstitutional agency action through an equitable cause of action. *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689–71 (1949).

10. This case seeks declaratory and other appropriate relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, 5 U.S.C. § 705 & 706, Federal Rule of Civil Procedure 57, and the Court's inherent equitable powers.

11. This Court may award costs and attorneys' fees under the Religious Freedom Restoration Act, 42 U.S.C. 1988(b) and the Equal Access to Justice Act, 28 U.S.C. § 2412.

12. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district, and a substantial part of property that is the subject of the action is situated here, because this district is where Plaintiffs American College of Pediatricians and Dr. Jeanie Dassow are situated and are regulated by Defendants' actions. Defendants are United States agencies or officers sued in their official capacities. A substantial part of the events or omissions giving rise to the Complaint occur within the Eastern District of Tennessee.

## **PARTIES**

### **I. American College of Pediatricians (ACPeds)**

13. Plaintiff American College of Pediatricians (ACPeds) is a national organization of pediatricians and other healthcare professionals.

14. ACPeds is a nonprofit organization founded in 2002, incorporated in the State of Tennessee, and has its registered agent in Tennessee.

15. ACPeds has members in Tennessee.

16. Most ACPeds members provide medical care in health programs and activities receiving federal financial assistance under 42 U.S.C. § 18116.

17. ACPeds seeks relief on behalf of its current and future members.

### **II. Catholic Medical Association**

18. Plaintiff the Catholic Medical Association (CMA) is the largest association of Catholic individuals in healthcare.

19. CMA is a nonprofit organization incorporated in Virginia, and its registered agent is in Virginia.

20. CMA has three member guilds in Tennessee: in Clarksville, the Immaculate Conception Catholic Medical Guild; in Memphis, the Catholic Medical Association of Memphis Guild; and in Nashville, the Nashville Guild. It hosted its annual national conference in 2019 in Nashville.

21. CMA has individual members in Tennessee.

22. Most CMA members provide medical care in health programs and activities receiving federal financial assistance under 42 U.S.C. § 18116.

23. CMA seeks relief on behalf of its current and future members.

### **III. Jeanie Dassow, M.D.**

24. Plaintiff Jeanie Dassow, M.D., is a board-certified obstetrician and gynecologist in Chattanooga, Tennessee.

25. Dr. Dassow serves as the Clerkship Director and Assistant Professor of Obstetrics and Gynecology at the University of Tennessee Chattanooga – College of Medicine.

26. Dr. Dassow practices medicine in Chattanooga at UT Erlanger Women's Health, a medical clinic, and also travels to rural clinics to treat patients.

27. Dr. Dassow provides medical care in health programs and activities receiving federal financial assistance under 42 U.S.C. § 18116.

#### **IV. Defendants**

28. Defendant Xavier Becerra is the Secretary of the U.S. Department of Health and Human Services. Defendant Becerra is sued in his official capacity. Defendant Becerra is responsible for the overall operations of HHS, including the Department's administration of Section 1557 of the ACA. *E.g.*, 42 U.S.C. § 18116. His address is 200 Independence Ave SW, Washington, DC 20201.

29. Defendant U.S. Department of Health and Human Services (HHS) is a federal cabinet agency within the executive branch of the U.S. government and is an agency under 5 U.S.C. § 551 and 701(b)(1). Its address is 200 Independence Ave SW, Washington, DC 20201. HHS is responsible for implementing and enforcing 42 U.S.C. § 18116.

30. Defendant Robinsue Frohboese is the Acting Director and Principal Deputy for the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services. As head of OCR, Defendant Frohboese is responsible for enforcing 42 U.S.C. § 18116 on behalf of HHS. Her address is 200 Independence Ave SW, Washington, DC 20201.

31. Defendant the Office for Civil Rights is a component of the U.S. Department of Health and Human Services. Its address is 200 Independence Ave SW, Washington, DC 20201. OCR is responsible for implementing and enforcing 42 U.S.C. § 18116 on behalf of HHS.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.