Washington Attorney General's Federal Litigation Related to Healthcare

A Summary of four Cases

Disclaimer

Any opinions expressed are my own, and not an official position of the Attorney General or the Attorney General's Office.

These are not the only cases the Washington Attorney General has brought against the federal government that may implicate issues of concern to you. Recently launched is the Federal Litigation Tracker available at www.atg.wa.gov.

The Cases I'll Talk About Today

- *Washington et al. v. Trump et al.*, No. 2:25-cv-00244 (W.D. Wash) & *Washington v. Trump*, No. 25-1922 (9th Cir.) (gender-affirming care)
- *California v. Dept. of Health and Human Servs.*, No. 3:25-cv-05536 (N.D. Cal.) (Medicaid client data)
- *New York et al. v. Dept. of Justice et al.*, No. 1:25-cv-00345-MSM-PAS (D.R.I.) (PRWORA)
- *California et al. v. Kennedy et al.*, No. 1:25-cv-12019 (D. Mass.) (Marketplace Integrity Rule)

Format

- What did the federal government do?
- What did Washington and other states do in response?
- What is the current status?

Washington v. Trump (gender-affirming care)

- Executive Order 14168 issued on January 20, 2025.

Sec. 2. *Policy and Definitions.* It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality, and the following definitions shall govern all Executive interpretation of and application of Federal law and administration policy:

(f) "Gender ideology" replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true.

Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one's sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.

(e) Agencies shall remove all statements, policies, regulations, forms, communications, or other internal and external messages that promote or otherwise inculcate gender ideology, and shall cease issuing such statements, policies, regulations, forms, communications or other messages. Agency forms that require an individual's sex shall list male or female, and shall not request gender identity. Agencies shall take all necessary steps, as permitted by law, to end the Federal funding of gender ideology.

(g) Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.

Executive Order 14187 issued on January 28, 2025.

Accordingly, it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called ''transition'' of a child from one sex to another, and it will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures.

Sec. 2. *Definitions*. For the purposes of this order:

(a) The term "child" or "children" means an individual or individuals under 19 years of age.

(b) The term "pediatric" means relating to the medical care of a child.

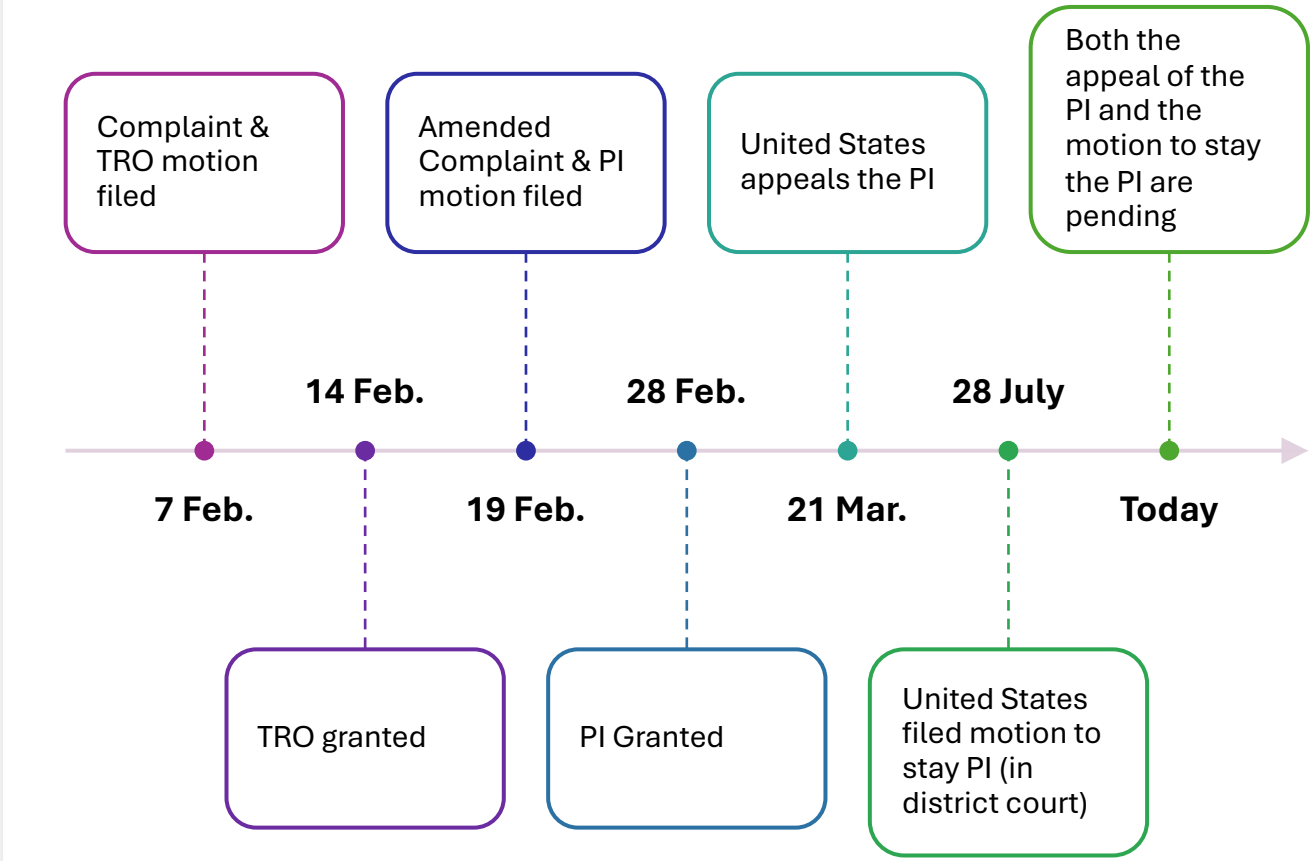
(c) The phrase "chemical and surgical mutilation" means the use of puberty blockers, including GnRH agonists and other interventions, to delay the onset or progression of normally timed puberty in an individual who does not identify as his or her sex; the use of sex hormones, such as androgen blockers, estrogen, progesterone, or testosterone, to align an individual's physical appearance with an identity that differs from his or her sex; and surgical procedures that attempt to transform an individual's physical appearance to align with an identity that differs from his or her sex or that attempt to alter or remove an individual's sexual organs to minimize or destroy their natural biological functions. This phrase sometimes is referred to as "gender affirming care."

Sec. 4. *Defunding Chemical and Surgical Mutilation.* The head of each executive department or agency (agency) that provides research or education grants to medical institutions, including medical schools and hospitals, shall, consistent with applicable law and in coordination with the Director of the Office of Management and Budget, immediately take appropriate steps to ensure that institutions receiving Federal research or education grants end the chemical and surgical mutilation of children.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF MINNESOTA; STATE OF OREGON; STATE OF COLORADO; PHYSICIAN PLAINTIFF 1; PHYSICIAN PLAINTIFF 2; and PHYSICIAN PLAINTIFF 3, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as the President of the United States; U.S. DEPARTMENT OF JUSTICE; PAM BONDI, in her official capacity as the	NO. 2:25-cv-00244-LK FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Washington v. Trump Timeline



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON et al.,

Plaintiffs,

v.

DONALD J. TRUMP et al.,

Defendants.

CASE NO. 2:25-cv-00244-LK

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR PRELIMINARY INJUNCTION

Instead of "tak[ing] Care that [such] Laws be faithfully executed," as is his duty under the Constitution, U.S. Const. art. II, § 3, President Trump issued two Executive Orders directing revocation of the funding for any grant recipients that "promote gender ideology," including by providing medical care for gender dysphoria. But the President "does not have unilateral authority to refuse to spend the funds" Congress appropriates, *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231–32 (9th Cir. 2018) (cleaned up), nor can he "switch the Constitution on or off at will" to advance his policy preferences, *Boumediene v. Bush*, 553 U.S. 723, 765 (2008). "Our basic charter cannot be contracted away like this." *Id.*

In sum, although the Medical Services EO purports to be premised on protecting "children" from regret associated with adults "chang[ing] a child's sex through a series of irreversible medical interventions," Dkt. No. 17-1 at 2, it is not limited to children, or to irreversible treatments, nor does it target any similar medical interventions performed on cisgender youth. It rejects the prevailing medical consensus without engaging with the basis for that consensus or weighing the relevant risks against the countervailing benefits established in the record. It insinuates without any evidentiary basis that gender-affirming care results in high rates of regret. And it prevents both transgender and cisgender youth and adults from obtaining necessary medical care completely unrelated to gender-affirming care.

For all of the above reasons, the Executive Order's means are not substantially related to, and in fact undermine, its stated objective. The Court finds it likely that Plaintiffs will succeed on the merits in showing that Section 4 of the Medical Services EO violates the Fifth Amendment's Equal Protection Clause.

This Executive Order—far more than the Medical Services EO—reflects a "bare desire to harm a politically unpopular group," *Romer*, 517 U.S. at 634 (cleaned up), as its underlying "actual purpose[]," *SmithKline Beecham Corp.*, 740 F.3d at 483. Its language, which declares that it is "false" that "males can identify as . . . women and vice versa" and that the only identity that is "true" in "reality" is one's biological sex, Dkt. No. 17-2 at 2, denies and denigrates the very existence of transgender people—despite the evidence that they do exist and have "as long as human history has been recorded." Dkt. No. 107 at 11 ("[S]imply stating gender is sex and that transgender people do not, or should not, exist does not make it so."). More than that, the Order aims to erase them, precluding them from accessing care for gender dysphoria from federally funded providers and eviscerating from the federal vocabulary any recognition of gender identity.

Plaintiffs' claim that Sections 3(e) and (g) of the Gender Ideology EO violate the equal protection guarantee is likely to succeed on the merits.

California v. Dept. of Health and Human Servs., No. 3:25-cv-05536 (N.D. Cal.)

STATE OF CALIFORNIA; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WASHINGTON, Plaintiffs, **v.** **U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY JR.,** in his official capacity as Secretary of Health and Human	Case No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Date: Time: Dept: Judge: Trial Date: Action Filed:

INFORMATION EXCHANGE AGREEMENT
BETWEEN
THE CENTERS FOR MEDICARE & MEDICAID SERVICES
AND
THE DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
FOR DISCLOSURE OF
IDENTITY AND LOCATION INFORMATION OF ALIENS

CMS Information Exchange Agreement No. 2025-80

Effective Date: July 9, 2025
Expiration Date: September 9, 2025

A. CMS's Responsibilities:
   1. CMS will provide direct access to the T-MSIS to a select set of ICE employees via CMS login credentials.

B. ICE's Responsibilities:
   1. ICE employees will access the CMS T-MSIS after receiving their CMS Login Credentials. To receive credentials, users must:
      a. Apply for CMS Enterprise User Administration (EUA) ID
      b. Complete Information System Security and Privacy Awareness training
      c. Sign the HHS/CMS Rules of Behavior for Use of Information & IT Resources.
   2. ICE employees will access the T-MSIS to receive information concerning the identification and location of aliens in the United States.

C. Data Elements

1. Medicaid recipients: Name, address, assigned Medicaid identification number, social security number (SSN), date of birth, sex, phone number, locality, ethnicity and race.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 25-cv-05536-VC

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR PRELIMINARY INJUNCTION

Re: Dkt. Nos. 43, 83, 89

Summary

- Expressed skepticism on contrary to law claims, but did not rule on them
- Held data sharing was arbitrary and capricious
- Forcing the federal government to go back to the drawing board

At the outset, it bears noting that there does not appear to be anything categorically unlawful about DHS obtaining data from agencies like HHS for immigration enforcement purposes. Several federal statutes appear to permit, and sometimes even require, agencies to provide such information to DHS upon request. *See, e.g.*, 5 U.S.C. § 522a(b)(7); 42 U.S.C. § 1306(a)(1); 6 U.S.C. §§ 122(a)–(b); 8 U.S.C. §§ 1360(b), 1373. As discussed at the hearing, there may be limits to what DHS can receive, and there may be prerequisites DHS must satisfy to ensure data is protected and not misused. But the parties have not given the Court enough information to fully understand this complicated statutory and regulatory landscape.

Regardless, under the Administrative Procedure Act, when federal agencies make policy changes, they may not do so arbitrarily. *See* 5 U.S.C. § 706(2)(A). Such changes must be the product of a reasoned decisionmaking process and must be properly explained. *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Although an agency need not demonstrate to a court's satisfaction that the new policy is better than the old one, more detailed justification is required when an agency changes a policy that "has engendered serious reliance interests." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also DHS v. Regents of the University of California*, 591 U.S. 1, 30, 32–33 (2020).

The record in this case strongly suggests that no such process occurred. To be sure, the Administration has made clear, through a series of Executive Orders and elsewhere, that immigration enforcement will become a higher priority in general. But using CMS data about Medicaid patients for immigration enforcement involves unique policy tradeoffs. As shown by the evidence presented by the states, using CMS data for immigration enforcement threatens to significantly disrupt the operation of Medicaid—a program that Congress has deemed critical for the provision of health coverage to the nation's most vulnerable residents. The evidence presented in this case indicates that HHS and DHS did not consider these tradeoffs before deviating from the agencies' longstanding policy of protecting Medicaid patient information from use for immigration enforcement. Nor is there any indication that the agencies considered whether to limit the scope of the data to which ICE has access (for example, allowing ICE to only access address information for people in the country illegally, rather than all private medical information about all Medicaid patients throughout the country). The agencies also implemented

information about all Medicaid patients throughout the country). The agencies also implemented this policy change without communicating it to the relevant participants in the federal-state Medicaid partnership, without considering whether the states should be given time to adjust before implementation, and without considering the extent to which the states, providers, and patients relied on assurances that patient data would not be used for immigration enforcement purposes. Thus, at least on this record, the states have demonstrated a likelihood of success on their "arbitrary and capricious" claim under the APA, which means that HHS and DHS likely must go back and engage in a reasoned decisionmaking process before adopting and implementing such a significant change.

Accordingly, DHS is preliminarily enjoined from using Medicaid data obtained from the plaintiff states for immigration enforcement purposes. This includes data already acquired from CMS. For clarity, these states are California, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.[4] Further, HHS is preliminarily enjoined from sharing Medicaid data obtained from the plaintiff states with DHS for immigration enforcement purposes.

This preliminary injunction will remain in place until the shorter of: (1) the termination of this litigation; or (2) 14 days after both DHS and HHS have completed a reasoned decisionmaking process (or rulemaking, if necessary) that considers the matters discussed in this ruling, along with any other relevant policy tradeoffs or legal considerations. Assuming the agencies complete a reasoned decisionmaking process or rulemaking before this litigation ends, they must inform the plaintiff states within 24 hours of completing that process and must file a status report on the docket within 48 hours of completing the process.

New York et al. v. Dept. of Justice et al. (PRWORA)

- Has to do with four notices interpreting the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, issued in mid-July
- At issue is the definition of "federal public benefit"

DEPARTMENT OF JUSTICE

[A.G. Order No. 6335–2025]

Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Department of Justice.

ACTION: Order.

SUMMARY: This document contains an Order of the Attorney General issued pursuant to sections 401 and 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (''PRWORA'' or the ''Act''). This Order withdraws the Attorney General's January 5, 2001, order issued pursuant to PRWORA.

DATES: The effective date of this Order is August 15, 2025.

PRWORA - Background

- “Federal public benefit” defined in 8 USC 1611(a)
- “Federal public benefits” are only available to citizens and qualified aliens
- Long interpreted to exclude US DOE funded public education and public assistance for which no application needed to be made, like emergency shelters and soup kitchens

PRWORA New Interpretation – No Exceptions

- Federal public benefit includes grants to States
- Includes assistance for which no application is made
- Includes noncash benefits or services
- Includes public education programs like Head Start
- Includes substance use treatment and prevention programs and similar programs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF NEW YORK; STATE OF WASHINGTON; STATE OF RHODE ISLAND; STATE OF ARIZONA; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; DISTRICT OF COLUMBIA; STATE OF HAWAI'I; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF OREGON; STATE OF VERMONT; STATE OF WISCONSIN,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE; PAMELA BONDI, in her official capacity as ATTORNEY GENERAL OF THE UNITED STATES; U.S.

Case No. _____

New York et al. v. Dept. of Justice et al. Current Status

- **July 21** – Complaint and Motion for PI Filed
- **Sept. 10** – PI Granted

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE, et al.,

Defendants.

C.A. No. 1:25-cv-00345-MSM-PAS

MEMORANDUM AND ORDER

Mary S. McElroy, United States District Judge.

At its face, this is primarily an administrative law case. It turns on mundane, technical questions far afield from the day-to-day concerns of ordinary people. Those questions circle around four new Notices that four federal agencies—the Department of Justice ("DOJ"), the Department of Labor ("DOL"), the Department of Education ("ED"), and the Department of Health and Human Services ("HHS")—issued about the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). The Plaintiff States argue that these Notices violate several provisions of the Administrative Procedure Act ("APA") and the Spending Clause of the United States Constitution.[1]

Required Notice and Comment Rulemaking

Ineffective because notice and comment was required

Also Arbitrary and Capricious

- Failed to consider reliance interests

Starting with the first argument, the States have the better of it. Because HHS was "not writing on a blank slate," it "was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020) (cleaned up).

Here, HHS failed to do any of that—and even seemed to spurn the thought of it. All HHS had to say about reliance interests was this:

> Some may argue that there are reliance interests that are affected by the Department's change in position. Some may argue that the Department's new position will negatively impact public health. However strong these hypothetical policy arguments may be, the Department has no power to override Congress's will, expressed in the clear statutory text of PROWRA.

The Court agrees that the ED Notice did not grapple with reliance interests at all. Again, like in *Regents*, the Government "should have considered those matters but did not," and "that failure was arbitrary and capricious in violation of the APA," even if the Government considered the program unlawful. 591 U.S. at 33. Nothing more is needed on the question.

And for the same reason—the lack of consideration of reliance interests—the Court holds that the DOL Notice is arbitrary and capricious. The Court notes also that, while the HHS and ED Notices at least attempted to justify their interpretations

Also contrary to law!

- Limited to programs with eligibility requirements
- Head Start not included
- Block grants to states not covered
- Health Center Program not covered
- Other programs affected by notices not covered

As to the first argument, the Court agrees with the States that PRWORA is limited to programs that have eligibility requirements. The statute first defines a "federal public benefit" as "any grant, contract, loan, professional license, or commercial license." 8 U.S.C. § 1611(c)(1)(A). By their nature, contracts, loans, professional licenses, and commercial licenses all require an application or a similar transaction in order to take effect. Those transactions necessarily require eligibility.

Second, the Court agrees with the States that Head Start, a program providing early childhood education for needy children, is not covered under the best reading of the statute. The Government argues that Head Start is covered because the statute extends to "any other similar benefit," a catch-all related to the preceding enumerated items of "retirement, welfare, health, disability public or assisted housing, postsecondary education, food assistance," and "employment benefit." (ECF No. 48 at 29.) Recognizing that the inclusion of "postsecondary education" implies the exclusion of secondary and presecondary education, the Government tries to hang its hat on Head Start being like a "welfare" benefit via the *ejusdem generis* canon. *Id.* at 29–30. But its appeals are unconvincing.

As to the fourth argument, the Court agrees that block grants to the states are not covered. 8 U.S.C. § 1611(a) states that "an alien who is not a qualified alien" is "not eligible for any Federal public benefit." A grant issued to a state is not provided to an alien, so PRWORA only applies if the State or local government itself funds payments or assistance that are "federal public benefits" under the statute. DOJ's

Finally, the Court agrees that the Health Center Program is exempted from PRWORA.[6] The statute governing the Health Center Program specifically requires that health centers receiving funding must "provide services for all residents within a catchment area" to receive funding. 42 U.S.C. § 254(b)(2). That is in direct tension with PRWORA's general requirement (cutting across federal law) that any alien who is not a "qualified alien" cannot receive "federal public benefits." 8 U.S.C. § 1611(a).

The Court thus holds that including WIOA II and Perkins V's non-postsecondary programs under PRWORA is contrary to law, because it finds no support in the statute.

The DOL Notice presents a much closer call than either the HHS or ED Notices. It may be that the Government has the better argument with respect to "light-touch services" based on a fair reading of the 2024 Guidance Letter. (ECF No. 4-7.) However, the States may well have the better argument that the language "all participant-level services are 'federal public benefits' under PRWORA, because they are the same or similar as benefits listed in PRWORA" sweeps too broadly and

includes programs specifically exempted by the statute such as those provided in a secondary school setting. That reading of the statute is contradicted by the clear text. The Court, reviewing the Notice as a whole may well find that in its broad language it is contrary to law. At this stage the States have made a sufficient showing that the DOL Notice is likely contrary to law. And, because the States need only show a likelihood of success on the merits on one of their claims to prevail at this stage, the Court need not address the specifics of the impacts of the DOL notice at this stage.

On Top of all That, Notices are Unconstitutional

- In violation of the Spending Clause

In all, because the PRWORA Notices failed to provide clear notice and imposed conditions that function as coercive ultimatums, the States have demonstrated a likelihood of success on the merits of their Spending Clause claim.

California et al. v. Kennedy et al.

Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS)

ACTION: Final rule.

- Final Rule published in the Federal Register June, 25 2025

What did it do (that we sued about)?

- Imposes a $5 per month charge for exchange auto-enrollees who would otherwise have $0 premiums
- Shortens the open enrollment period to nine weeks (Nov. 1 – Dec. 31)
- Requires 75% verification for special enrollment period enrollees
- Eliminate self-attestation of income for low-income enrollees
- Requires enrollees receiving advanced premium tax credits to file a tax return every year (instead of every two years)

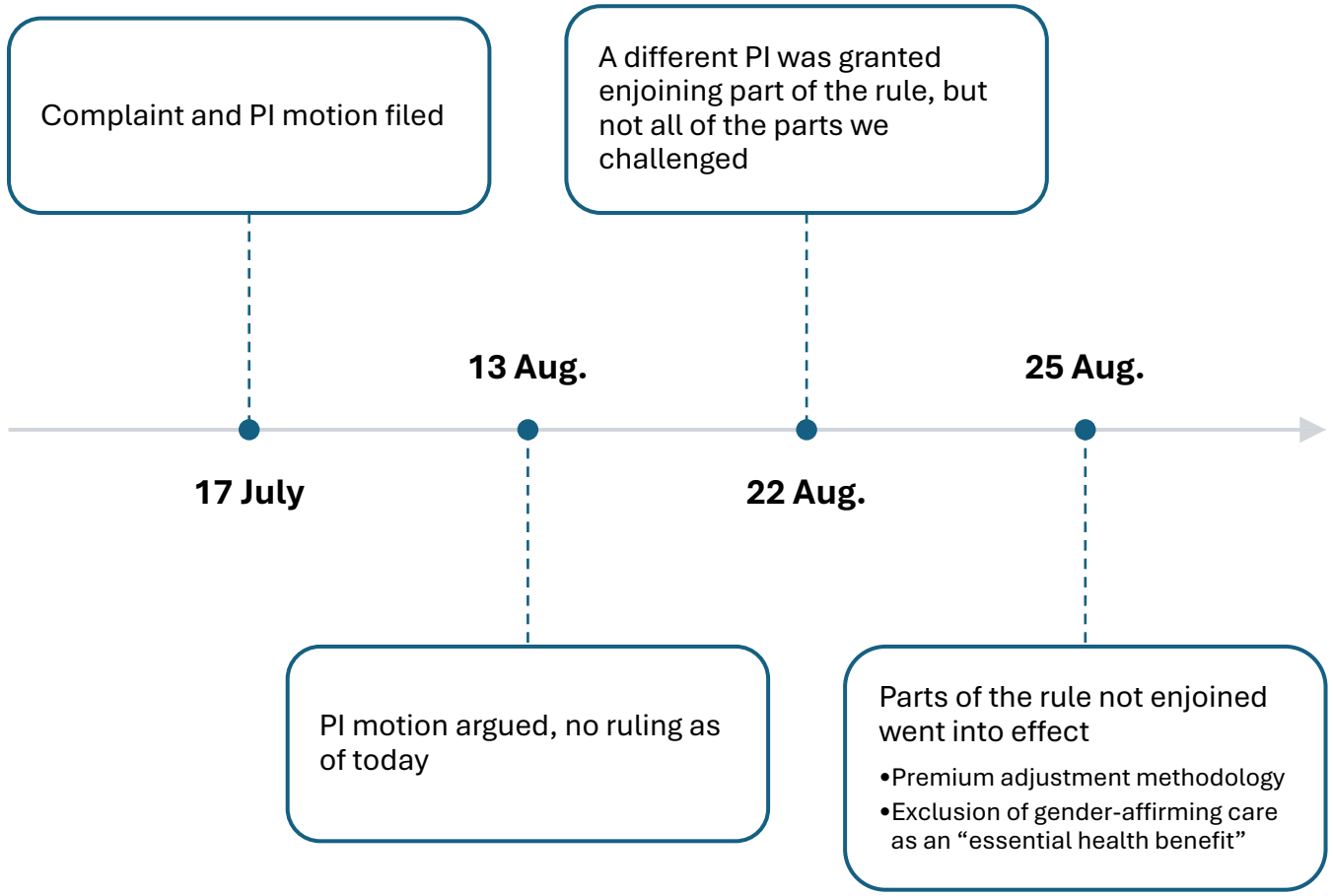
What did it do (that we sued about)? (cont.)

- Denies coverage to enrollees who owe past due premiums
- Makes health insurance more expensive by changing the premium adjustment methodology
- Increase the actuarial value range permitted in the plan tiers, essentially allowing insurers to offer lower value plans
- Prohibits “sex trait modification” (i.e., gender-affirming care) from inclusion as an essential health benefit

STATE OF CALIFORNIA, COMMONWEALTH OF MASSACHUSETTS, STATE OF NEW JERSEY, STATE OF ARIZONA, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEW MEXICO, STATE OF NEVADA, STATE OF NEW YORK, STATE OF OREGON, JOSH SHAPIRO, *in his official capacity as Governor of the Commonwealth of Pennsylvania,* STATE OF RHODE ISLAND, STATE OF VERMONT, STATE OF WASHINGTON, STATE OF

Civil Action No.: 25-12019

PI Filed and Argued . . . but still waiting!



So, what's this other case?

- *City of Columbus v. Kennedy*, No. 1:25-cv-02114 (D. Md.)
  - Brought by three cities
  - Two associations
- Injunction appealed
- Stay pending appeal denied by the district court and the Fourth Circuit

End

https://www.atg.wa.gov/washington-attorney-generals-federal-litigation-tracker