

FILED

FOR PUBLICATION

JUL 11 2019

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

STATE OF CALIFORNIA, by and
through Attorney General Xavier Becerra,

Plaintiff-Appellee,

v.

ALEX M. AZAR II, in his Official
Capacity as Secretary of the U.S.
Department of Health & Human Services;
U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES,

Defendants-Appellants.

Nos. 19-15974

D.C. No. 3:19-cv-01184-EMC
Northern District of California,
San Francisco

ORDER

ESSENTIAL ACCESS HEALTH, INC.;
MELISSA MARSHALL, M.D.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, Secretary of U.S.
Department of Health and Human
Services; UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants-Appellants.

Nos. 19-15979

D.C. No. 3:19-cv-01195-EMC
Northern District of California,
San Francisco

STATE OF OREGON; et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II; et al.,

Defendants-Appellants.

No. 19-35386

D.C. Nos. 6:19-cv-00317-MC
6:19-cv-00318-MC
District of Oregon,
Eugene

STATE OF WASHINGTON; et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, in his official capacity
as Secretary of the United States
Department of Health and Human
Services; et al.,

Defendants-Appellants.

Nos. 19-35394

D.C. Nos. 1:19-cv-03040-SAB
1:19-cv-03045-SAB
Eastern District of Washington,
Yakima

Before: THOMAS, Chief Judge, and LEAVY, WARDLAW, W. FLETCHER, PAEZ, BYBEE, CALLAHAN, M. SMITH, JR., IKUTA, MILLER, AND LEE, Circuit Judges.

Pending before the en banc court are several emergency motions for an administrative stay of the three-judge panel order staying the district courts’

preliminary injunction orders. *See Oregon, et. al. v. Azar*, No. 19-35386 (Dkt. nos. 59 and 66); *Washington, et. al. v. Azar*, No. 19-35394 (Dkt. nos. 35, 37, and 40).

Pursuant to prior order of the Court upon granting reconsideration en banc, the three-judge panel Order on Motions for Stay Pending Appeal in these cases was ordered not be cited as precedent by or to any court of the Ninth Circuit. However, the order granting reconsideration en banc did not vacate the stay order itself, so it remains in effect. Thus, the motions for administrative stay remain pending and were not mooted by the grant of reconsideration en banc.

After due consideration of the emergency motions, the motions for administrative stay of the three-judge panel order are DENIED. The en banc court will proceed expeditiously to rehear and reconsider the merits of the Appellants' motions for stay of the district courts' preliminary injunction orders pending consideration of the appeals on the merits. Until further order of the Court, no further briefing is required of the parties for the en banc court's reconsideration of the three-judge panel order. The briefing schedule established for the merits appeal shall remain as originally ordered.

Chief Judge Thomas and Judges Wardlaw, W. Fletcher, and Paez would grant the motions for administrative stay and therefore respectfully dissent from this order.