

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,
STATE OF ALASKA,
STATE OF ALABAMA,
STATE OF ARKANSAS,
STATE OF FLORIDA,
STATE OF GEORGIA,
STATE OF INDIANA,
STATE OF IOWA,
STATE OF KANSAS,
STATE OF LOUISIANA,
STATE OF MISSOURI,
STATE OF MONTANA,
STATE OF NEBRASKA,
STATE OF SOUTH CAROLINA,
STATE OF SOUTH DAKOTA,
STATE OF UTAH, and
STATE OF WEST VIRGINIA,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official Capacity
as Secretary of Health and Human Services,
UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

CASE NO. 5:24-cv-00225-C

JOINT STATUS REPORT

The Plaintiff States of Texas, Alaska, Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Utah, and West Virginia (Plaintiffs) and Defendants Robert F. Kennedy, in his official capacity as Secretary of Health and Human Services, and the United States Department of Health and Human Services (Defendants) (together, the Parties), submit the following Joint Status Report in connection to the Court's Order, ECF No. 44. The Parties advise the Court as follows:

Defendants continue to evaluate their position in light of the President’s recent Executive Order, which provides that agencies shall not “promote or otherwise inculcate gender ideology.” *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, White House (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>. Accordingly, the Parties ask that the Court not disturb the current stay of briefing deadlines. No Party would be prejudiced by the continuation of the stay and it would preserve the resources of the Parties and the Court. The Parties propose to file a Joint Status Report with the Court on the twenty-first day of each month going forward.

Plaintiffs clarify that they have never moved—and do not plan to move—the Court to declare or enjoin Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as unconstitutional on its face. Plaintiffs have not sought and do not seek to enjoin the disbursement of funds from the Department on the basis that the statute is unconstitutional.

The context of the entire Complaint, ECF No. 1, shows that the meaning and scope of Count 3 asserting a claim under the Spending Clause—and the declaratory and injunctive relief sought in the demand—is an as-applied challenge to any purported application of Section 504 to funds that are not authorized by the Rehabilitation Act. Such alleged unconstitutional applications include the requirements the Final Rule imposes on recipients to adopt the “most integrated setting” and the “at serious risk of institutionalization” standards of care. 89 Fed. Reg. 40,066, 40,183, 40,120–21, 40,192 (May 9, 2024).

Nothing in Plaintiffs’ Complaint seeks to restrain the disbursement of federal funds from the Department on the basis that the statute is unconstitutional, or to otherwise prevent the Federal Government from allocating spending or applying the provisions of the Rehabilitation Act to any recipients of such funds.

Dated: February 19, 2025.

BRETT A. SHUMATE
Acting Assistant Attorney General

ELIZABETH TULIS
Assistant Branch Director

/s/ Jason K. Altabet
JASON K. ALTABET
Trial Attorney
(Md. Bar No. 2211280012)
U.S. Department of Justice
Civil Division,
Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
Tel: (202) 305-0727
Fax: (202) 616-8460
E-mail: jason.k.altabet2@usdoj.gov

COUNSEL FOR DEFENDANTS

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

RYAN D. WALTERS
Deputy Attorney General for Legal Strategy

RYAN G. KERCHER
Chief, Special Litigation Division

/s/ Zachary L. Rhines
ZACHARY L. RHINES
Special Counsel
Texas State Bar No. 24116957
zachary.rhines@oag.texas.gov

KYLE S. TEBO
Special Counsel
Texas State Bar No. 24137691
kyle.tebo@oag.texas.gov

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
Special Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 463-2100
Fax: 512-457-4410

COUNSEL FOR STATE OF TEXAS

TREG TAYLOR
Attorney General of Alaska

/s/ Christopher A. Robison

CHRISTOPHER A. ROBISON

Alaska Bar No. 2111126
Texas Bar No. 24035720

LAURA O. RUSSELL*
Alaska Bar No. 1311106

Assistant Attorneys General
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
Telephone: (907) 269-5100
chris.robison@alaska.gov
laura.russell@alaska.gov

COUNSEL FOR ALASKA
**Pro Hac Vice*

STEVE MARSHALL
Attorney General of Alabama

/s/ Edmund G. LaCour Jr.

EDMUND G. LACOUR JR.

Solicitor General
Office of the Attorney General of Alabama
501 Washington Avenue
Montgomery, Alabama 36130
Telephone: (334) 242-7300
edmund.lacour@alabamaag.gov

COUNSEL FOR ALABAMA

TIM GRIFFIN
Attorney General of Arkansas

/s/ Dylan L. Jacobs

DYLAN L. JACOBS

Solicitor General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
dylan.jacobs@arkansasag.gov

COUNSEL FOR ARKANSAS

JAMES UTHMEIER
Attorney General of Florida

/s/ Christine K. Pratt

CHRISTINE K. PRATT

Counselor to the Attorney General
Office of the Attorney General
The Capitol, Pl-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 410-2672
christine.pratt@myfloridalegal.com

COUNSEL FOR FLORIDA

CHRISTOPHER M. CARR
Attorney General of Georgia

/s/ Stephen J. Petrany

STEPHEN J. PETRANY*

Solicitor General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
Telephone: (404) 458-3408
spetrany@law.ga.gov

COUNSEL FOR GEORGIA
**Pro Hac Vice*

THEODORE E. ROKITA
Attorney General of Indiana

/s/ James A. Barta

JAMES A. BARTA*

Solicitor General
Indiana Attorney General's Office
IGCS – 5th Floor
302 W. Washington St.
Indianapolis, Indiana 46204
Telephone: (317) 232-0709
james.barta@atg.in.gov

COUNSEL FOR INDIANA
**Pro Hac Vice*

BRENNA BIRD
Attorney General of Iowa

/s/ Eric H. Wessan

ERIC H. WESSAN
Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
Telephone: (515) 823-9117
Facsimile: (515) 281-4209
eric.wessan@ag.iowa.gov

COUNSEL FOR IOWA

KRIS KOBACH
Attorney General of Kansas

/s/ James Rodriguez

JAMES RODRIGUEZ
20 SW 10th Ave, 2nd Floor,
Topeka, Kansas 66612-1597
Telephone: (785) 260-3960
jay.rodriguez@ag.ks.gov

COUNSEL FOR KANSAS

ELIZABETH B. MURRILL
Attorney General of Louisiana

s/ J. Benjamin Aguiñaga

J. BENJAMIN AGUIÑAGA*
Solicitor General
Office of the Attorney General
1885 N. 3rd St.
Baton Rouge, Louisiana 70802
Telephone: (225) 506-3746
aguinagab@ag.louisiana.gov

COUNSEL FOR LOUISIANA

**Pro Hac Vice*

ANDREW BAILEY
Attorney General of Missouri

/s/ Josh Divine

JOSH DIVINE
Solicitor General
Office of the Attorney General
815 Olive St., Suite 200
St. Louis, Missouri 63188
josh.divine@ago.mo.gov

COUNSEL FOR MISSOURI

AUSTIN KNUDSEN
Attorney General of Montana

CHRISTIAN B. CORRIGAN
Solicitor General

/s/ Peter M. Torstensen, Jr.

PETER M. TORSTENSEN, JR.*
Deputy Solicitor General
Montana Department of Justice
215 N. Sanders Street
Helena, Montana 59601
Telephone: (406) 444-2026
christian.corrigan@mt.gov
peter.torstensen@mt.gov

COUNSEL FOR MONTANA

**Pro Hac Vice*

MICHAEL T. HILGERS
Attorney General of Nebraska

/s/ Grant D. Strobl

GRANT D. STROBL
Assistant Solicitor General
2115 State Capitol
Lincoln, NE 68509
Telephone: (402) 471-2683
grant.strobl@nebraska.gov

COUNSEL FOR NEBRASKA

ALAN WILSON
Attorney General of South Carolina

/s/ J. Emory Smith, Jr.

JAMES EMORY SMITH, JR.*

Deputy Solicitor General
Office of the Attorney General
PO Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3642
Facsimile: (803) 734-3677
esmith@scag.gov

COUNSEL FOR SOUTH CAROLINA

**Pro Hac Vice*

MARTY JACKLEY
Attorney General of South Dakota

/s/ Aaron Salberg

AARON SALBERG*

Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
aaron.salberg@state.sd.us

COUNSEL FOR SOUTH DAKOTA

**Pro Hac Vice*

DEREK BROWN

Attorney General of Utah

Office of the Attorney General

PO Box 142320

Salt Lake City, Utah 84114-2320

/s/ Stanford Purser

STANFORD PURSER

160 E. 300 S., 5th floor

Salt Lake City, Utah 84111

Telephone: 801-366-0100

spurser@agutah.gov

COUNSEL FOR UTAH

JOHN B. MCCUSKEY

Attorney General of West Virginia

/s/ Michael R. Williams

MICHAEL R. WILLIAMS*

State Capitol Complex, Bldg. 1, Rm E-26

1900 Kanawha Blvd. E

Charleston, West Virginia 25305

Telephone: (681)-313-4511

Facsimile: (304) 558-0140

michael.r.williams@wvago.gov

COUNSEL FOR WEST VIRGINIA

**Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on February 19, 2025 and that all counsel of record were served by CM/ECF.

/s/ Zachary L. Rhines

ZACHARY L. RHINES