Nos. 20-429, 20-454, 20-539

In the Supreme Court of the United States

AMERICAN MEDICAL ASSOCIATION, *ET AL.*,
Petitioners,

v.

NORRIS COCHRAN, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN SUPPORT OF INTERVENTION OF PROPOSED INTERVENORS OHIO AND 18 OTHER STATES

DAVE YOST
Ohio Attorney General

BENJAMIN M. FLOWERS*
**Counsel of Record*
Ohio Solicitor General
DIANE R. BREY
STEPHEN P. CARNEY
Deputy Solicitors General
30 E. Broad St., 17th Fl.
Columbus, Ohio 43215
614-466-8980
bflowers@ohioattorneygeneral.gov

Counsel for the State of Ohio

[Caption continues on inside cover | additional counsel listed at end of the brief]

NORRIS COCHRAN, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*,
Petitioners,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OREGON, *ET AL.*,
Petitioners,

v.

NORRIS COCHRAN, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE

Ohio and 18 other States respectfully move for leave to file a supplemental brief in support of their pending Motion to Intervene. Days after the States moved to intervene in these cases, and before this Court had a chance to rule on those motions, the parties filed stipulated dismissals. They did so in an attempt to block the Court from deciding the important questions that these cases present. This short supplemental filing urges the Court to rule on the States' Motion to Intervene, along with a similar intervention motion filed by a group of private entities, before deciding whether dismissal is appropriate.

Respectfully submitted,

Dave Yost
Ohio Attorney General

Benjamin M. Flowers*
*Counsel of Record
Ohio Solicitor General
Diane R. Brey
Stephen P. Carney
Deputy Solicitors General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
614-466-8980
bflowers@
ohioattorneygeneral.gov

Counsel for State of Ohio

[Additional counsel for other States listed at end of Supplemental Brief below]

SUPPLEMENTAL BRIEF IN SUPPORT OF INTERVENTION OF PROPOSED INTERVENORS OHIO AND 18 OTHER STATES

The Court should grant the motion that Ohio and 18 other States filed to intervene in these cases. If there were any doubt about that, the events of the last few days dispelled it.

The Court granted *certiorari* in these cases to resolve a circuit split. That split concerns the legality of HHS-promulgated rules that govern the administration of Title X. Shortly after the Court granted *certiorari*, Ohio and 18 other States moved to intervene. They did so because, in light of a recent presidential memorandum, they feared the current administration would "decline to defend the rules' legality." Ohio *et al.*, Mot. to Intervene at 1.

Days later, the Solicitor General proved the States right. Friday evening, the United States—which had itself requested *certiorari* in one of these cases—jointly stipulated to dismissal with the adverse parties. It is no mystery why the United States asked the Court to dismiss a case that it only recently succeeded in having granted: it feared the intervention motions filed by the States and by a group of private intervenors might succeed. That would allow the Court to hear these cases, which would allow the Court to clarify the scope of Title X, which could (depending on the result) undermine the new administration's freedom to pursue the Title X policies it would like.

The private intervenors have already explained why this Court should postpone any decision regarding dismissal until the still-pending intervention motions are resolved. *See* AAPLOG, *et al.*, Mot. for Leave to File Supplemental Brief. The States adopt

the private intervenors' reasoning, and will not burden the Court by repeating that reasoning here. The States add this one point: unless there is a price to be paid for gamesmanship like this, it will not stop. As the States explained in their intervention motion, the Executive Branch, over the past decade, has "maneuvered to keep this Court from reaching issues that might thwart" a current administration's "preferred policies." Ohio *et al.*, Mot. to Intervene at 13; *see also Tex. Dep't of Hous & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 552 n.4 (2015) (Thomas, J., dissenting). The President of the United States is constitutionally obligated to "take Care that the Laws be faithfully executed." U.S. Const., art. II, §3. His subordinates are dutybound to help him do so. Whatever the Take Care Clause means, it does not permit affirmatively undermining federal law—here, Title X—by entering collusive agreements that keep this Court from saying what the law is.

To avoid rewarding such behavior, this Court should not resolve the stipulated dismissal until it first decides whether to grant intervention. Rule 46.1 allows for dismissal of cases if "all parties" agree in writing "that a case be dismissed." If the Court grants intervention, then the States (or the private groups) will become parties to the case, at which point the Court will no longer have an agreement to dismiss from "all parties." Dismissal would thus be improper.

Respectfully submitted,

Steve Marshall
Attorney General
State of Alabama

Mark Brnovich
Attorney General
State of Arizona

Leslie Rutledge
Attorney General
State of Arkansas

Christopher M. Carr
Attorney General
State of Georgia

Theodore E. Rokita
Attorney General
State of Indiana

Derek Schmidt
Attorney General
State of Kansas

Daniel Cameron
Attorney General
State of Kentucky

Jeff Landry
Attorney General
State of Louisiana

Dave Yost
Ohio Attorney General

Benjamin M. Flowers*
**Counsel of Record*
Ohio Solicitor General
Diane R. Brey
Stephen P. Carney
Deputy Solicitors General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
614-466-8980
bflowers@
ohioattorneygeneral.gov

Lynn Fitch
Attorney General
State of Mississippi

Eric Schmitt
Attorney General
State of Missouri

Austin Knudsen
Attorney General
State of Montana

Douglas J. Peterson
Attorney General
State of Nebraska

Mike Hunter
Attorney General
State of Oklahoma

Alan Wilson
Attorney General
State of South Carolina

Jason Ravnsborg
Attorney General
State of South Dakota

Herbert H. Slatery III
Attorney General
and Reporter
State of Tennessee

Ken Paxton
Attorney General
State of Texas

Patrick Morrisey
Attorney General
State of West Virginia