

High court accepts AMA petition to review Title X gag rule decision

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What's the news: The U.S. Supreme Court has agreed to review *American Medical Association v. Cochran*, a case brought forth by the AMA, the Oregon Medical Society and others to protest the Trump administration's gag rule that unlawfully dictates what physicians practicing at facilities funded under the Title X family planning grant program can't say and must say.

The rule was upheld by the 9th Circuit but overturned by the 4th Circuit last year.

"We welcome the U.S. Supreme Court's decision to review the 9th Circuit's erroneous opinion upholding a Trump administration rule that imposed drastic changes on the Title X federal family planning program," says the joint statement from the AMA, Planned Parenthood Federation of America, National Family Planning & Reproductive Health Association, American Civil Liberties Union and Essential Access Health.

"In a petition to the high court last fall, we urged a review of the Title X 'gag rule,' which, among many harmful restrictions, inappropriately interferes with the patient-physician relationship and conflicts with the ethical obligations of physicians and other health care providers—ultimately jeopardizing patient access to safe care," the statement says.

Why it's important: The case, formerly known as *AMA v. Azar*, is one of three involving a federal rule that restricts the ability of physicians to communicate freely with their patients about family planning health concerns—particularly referrals for abortion services—and violates statutory and constitutional protections for open communications between physicians and patients, according to the Litigation Center for the American Medical Association and State Medical Societies.

"This rule continues to bring immense harm to people across the country who depend on affordable reproductive health care like birth control, breast and cervical cancer screenings, and STI testing and treatment, among other essential health services that Title X provides," says the joint statement, which

also notes the rule's inequitable impact.

Implementation of the 2019 rule has had a devastating impact, as about one-fourth of all Title X service sites withdrew from the program—endangering access to care provided to some 1.6 million patients across the country. The AMA petition notes that, for six in 10 women who obtain contraceptive care at a Title X-funded site, that provider was their only source of medical care over the past year.

The petition notes that the rule violates opinions in the *AMA Code of Medical Ethics* that physicians should not mislead or confuse patients, or subject them to irrelevant information.

The gag rule, however, clearly directs physicians in Title X facilities to do so by mandating that, if a patient asks for contact information for local abortion providers, information given to them must include names of providers who do not perform abortions.

Also, while the San Francisco-based 9th Circuit allowed the gag rule to stand, the 4th Circuit, based in Richmond, Virginia, “found that decision flawed and reached opposite conclusions, holding the rule both arbitrary and capricious and contrary to law,” the AMA petition notes.

Because of the 4th Circuit ruling, the gag rule was suspended in Maryland, but is in effect everywhere else in the U.S.

What's next: The Supreme Court hasn't yet set a date for oral arguments in the case.

Meanwhile, the Biden administration has said it will consider suspending, revising or rescinding the rule or publishing a notice for comment on doing so “as soon as practicable.”

The administration's Jan. 28 Memorandum on Protecting Women's Health at Home and Abroad also noted that any action taken will be “consistent with applicable law, including the Administrative Procedure Act.”

This means there is a chance the case may be moot by the time of the yet-to-be-scheduled oral argument, but it's unclear when the Biden administration will begin the process of unwinding the Title X gag rule or how long that process will take.