

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

STATE OF KANSAS, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

No. 24-3097

**GOVERNMENT’S RESPONSE TO THE COURT’S FEBRUARY 4, 2025
ORDER AND UNOPPOSED MOTION TO POSTPONE ORAL
ARGUMENT AND HOLD APPEAL IN ABEYANCE**

On February 4, 2025, this Court issued an Order directing the Defendants-Appellants to notify the Court if they “anticipate a change in their position on the merits of this appeal due to the recent change in presidential administration.” In light of the Court’s Order, and pursuant to Federal Rules of Appellate Procedure 27 and 34(b), and Local Rules 27 and 34.1(3), the Department of Education respectfully moves to postpone the oral argument scheduled for March 19, 2025, and to hold this appeal in abeyance. This motion is unopposed.

1. In April 2024, the Department issued a rule making various changes to its regulations implementing Title IX of the Education Amendments of 1972, including changes related to gender-identity discrimination. *See* 89 Fed. Reg. 33,474 (Apr. 29, 2024). On July 2, 2024, the district court entered a preliminary injunction

barring the Department from enforcing the rule against plaintiffs. The Department appealed, and this Court set oral argument for March 19, 2025.

2. Following a change in administration, on January 20, 2025, President Trump issued Executive Order 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 20, 2025) (Order). The Order reflects the position of the United States and, among other things, provides that agencies shall not “promote or otherwise inculcate gender ideology.” *Id.* at 8619.

3. In light of these developments, and in response to the Court’s Order, the government respectfully moves to postpone the March 19 oral argument and to hold this case in abeyance. The Department is under new leadership, which requires time to become familiar with the final rule and the issues presented by this litigation as well as to determine how they wish to proceed, in consultation with the Acting Solicitor General if necessary. *See* 28 C.F.R. § 0.163 (addressing potential resolution of cases “in which the Solicitor General has authorized an appeal”). Postponement of oral argument will conserve judicial resources and promote the efficient and orderly disposition of this appeal, including by ensuring that any oral argument presented to this Court will reflect the views of current agency leadership. The government respectfully proposes to update the Court with a status report in no later than 60 days.

4. Counsel for plaintiffs has informed the undersigned that plaintiffs “agree to postpone the oral argument currently set for March 19th and hold the case in abeyance for 120 days.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ David L. Peters
David L. Peters

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 401 words, according to Microsoft Word.

/s/ David L. Peters
David L. Peters