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June 18, 2019

VIA CM/ECF

Patricia S. Dodszuweit, Clerk of Court
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Response to States' 28(j) Letter of June 11, 2019 in *Commonwealth of Pennsylvania v. President United States of America*, Nos. 17-3752, 18-1253, 19-1129, 19-1189 (3d Cir.)

Dear Ms. Dodszuweit:

The States urge this Court to exercise its Article III powers to uphold a nationwide injunction maintaining a "status quo" that no longer exists. States' 28(j) Letter 3.

As our briefs showed, the federal government has no ability to enforce the particular version of the mandate the States seek to re-impose. That is because all known religious objectors (a) have their own injunctions already, (b) can join existing open-ended classes, or (c) would succeed if they filed their own RFRA claims against the federal government. Little Sisters' Opening Br. 24-25, 37-38. The States have never explained how a nationwide preliminary injunction would actually protect their interests in light of these facts. But the States' unwillingness to answer that question does not mean that this Court can affirm an injunction without making clear exactly how such an injunction, in light of the undisputed facts on the ground, could actually protect the States' claimed interest.

The States' claim to a nationwide injunction is even more implausible in light of the recent decision in *DeOtte*. *DeOtte* is a permanent injunction

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that forbids the federal defendants from enforcing the contraceptive mandate or the accommodation against *any* religious objector nationwide. For this Court to affirm any injunction, including a nationwide preliminary injunction, the States would need to explain how the injunction could actually protect their interests, given the federal agencies' inability to enforce the mandate against religious objectors. While the States dispute whether *DeOtte* is correct, they do not dispute *DeOtte's* effect: yet another injunction barring the federal government from enforcing the mandate the States want to reimpose. The States' utter failure to provide any theory by which the relief they seek protects their interest requires reversal. Federal courts are not the place for futile gestures.

The "status quo" the States think their nationwide injunction keeps in place never existed during this case, and certainly does not exist now. On that basis alone, reversal is required.

Sincerely,

Word count: 321

/s/ Mark L. Rienzi

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system on June 18, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Mark L. Rienzi

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