

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

The Religious Sisters of Mercy; Sacred  
Heart Mercy Health Care Center  
(Jackson, MN); Sacred Heart Mercy  
Health Care Center (Alma, MI);  
SMP Health System; University of Mary;

and

State of North Dakota,

Plaintiffs,

vs.

Sylvia Burwell, Secretary of the United  
States Department of Health and  
Human Services; and United States  
Department of Health and Human Services,

Defendants.

**AMENDED ORDER  
STAYING ENFORCEMENT**

Case No. 3:16-cv-386

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Catholic Benefits Association, Diocese  
of Fargo, and Catholic Charities North  
Dakota,

Plaintiffs,

vs.

Sylvia M. Burwell, Secretary of the  
United States Department of Health  
and Human Services; United States  
Department of Health and Human  
Services; Jenny R. Yang, Chair of the  
United States Equal Employment  
Opportunity Commission; and United  
States Equal Employment Opportunity  
Commission,

Defendants.

Case No. 3:16-cv-432

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Before the Court are the Defendants' motions to amend/correct the Court's order dated December 30, 2016, staying enforcement of Section 1557 of the Affordable Care Act as against the named Plaintiffs filed on January 6, 2017. See Docket No. 26 in Case No. 3:16-cv-386 and Docket No. 12 in Case No. 3:16-cv-432. The Plaintiffs in both cases filed responses on January 20, 2017. See Docket No. 34 in Case No. 3:16-cv-386 and Docket No. 15 in Case No. 3:16-cv-432.

The Defendants contend injunctive relief should be narrowly tailored and the Court's stay should be limited to two aspects of Section 1557 which have been challenged; that is whether Section 1557 properly interprets sex discrimination as encompassing discrimination on the basis of gender identity and termination of pregnancy. The Court agrees with the Defendants.

On December 31, 2016, another federal district court in Texas issued a nationwide preliminary injunction against the same HHS regulations the Plaintiffs challenge here: HHS's final rule under Section 1557 of the Affordable Care Act. See Franciscan Alliance, Inc. v. Burwell, Case No. 7:16-CV-108, slip op. (N.D. Tex., Dec. 31, 2016); Docket No. 14-1 in Case No. 3:16-cv-432. As in this case, the plaintiffs in *Franciscan Alliance* include Catholic institutions who object to HHS's regulations on moral grounds and claim the regulation violates both the Administrative Procedure Act and the Religious Freedom Restoration Act. In *Franciscan Alliance*, the court noted only the challenged provisions relating to "gender identity" and "termination of pregnancy" were being enjoined. Id. at 46. The Court finds the order issued in *Franciscan Alliance* to be thorough and well-reasoned.

Accordingly and for good cause shown, the Defendants' motions to amend/correct are **GRANTED**. The Court's Order dated December 30, 2016, is amended to make clear that it temporarily stays enforcement, as to the named Plaintiffs, of Section 1557's prohibitions against

discrimination on the bases of gender identity and termination of pregnancy. In addition there is currently in place a nationwide preliminary injunction against the very regulations being challenged in this case which enjoins the HHS from enforcing the Rule's provisions.

**IT IS SO ORDERED.**

Dated this 23rd day of January, 2017.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court