

**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 the State of North Dakota,

Plaintiffs,

vs.

M.D. Thomas E. Price, Secretary of the
United States Department of Health and
Human Services; and United States
Department of Health and Human Services,

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY**

Case No. 3:16-cv-386

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

Plaintiffs,

vs.

M.D. Thomas E. Price, Secretary of the
United States Department of Health
and Human Services; United States
Department of Health and Human
Services; Victoria Lipnic, Acting Chair of
the United States Equal Employment
Opportunity Commission; and United
States Equal Employment Opportunity
Commission,

Defendants.

Case No. 3:16-cv-432

Before the Court is the Defendant United States Department of Health and Human Services’
 (“HHS”) motion for voluntary remand and stay. See Docket No. 45. The Plaintiffs Catholic

Benefits Association, Diocese of Fargo, Catholic Charities North Dakota, and Catholic Medical Association (“CBA”) filed, in lieu of a response to HHS’s motion, a motion for additional stay of enforcement by the EEOC on May 30, 2017. See Docket No. 46. The Plaintiffs 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 the State of North Dakota (“North Dakota”) filed a response in support of HHS’s proposed stay but in opposition to remand on June 9, 2017. See Docket No. 50. The Defendant Equal Employment Opportunity Commission (“EEOC”) filed a response in support of HHS’s motion and in opposition to the CBA’s motion for additional stay on June 13, 2017. See Docket No. 51. The CBA filed a reply on June 20, 2017. See Docket No. 52. The HHS filed a notice of supplemental authority on July 12, 2017. See Docket No. 53.

The Court has carefully reviewed the parties’ filings and agrees that a stay is warranted AND appropriate so that the agency can revisit Section 1557 of the Affordable Care Act, codified at 45 C.F.R. § 92.4 (“the Rule”). A remand is unnecessary as HHS has the inherent authority to reconsider Rule 1557 regardless of whether there is a remand or not. Accordingly, HHS’s motion (Docket No. 45) for a stay is **GRANTED** and its motion for remand is **DENIED** as moot. The nationwide preliminary injunction which enjoins the same HHS regulations remains in full force and in effect. See Docket No. 36. On July 10, 2017, the federal district court in Texas stayed that litigation in the case of Franciscan Alliance, Inc. v. Burwell, Case No. 7:16-cv-108, Docket No. 105.

These consolidated cases in North Dakota shall also be stayed in all respects until further Order of the Court in order to allow HHS to reconsider the controversial rules and regulations at issue. The Court shall retain jurisdiction over all pending claims asserted, and all pending motions in the consolidated cases shall be held in abeyance until further order of the Court. HHS and the

EEOC shall file status reports with the Court every ninety (90) days from the date of this order concerning all rulemaking proceedings initiated as to the challenged rule as well as any contemplated enforcement actions.

IT IS SO ORDERED.

Dated this 24th day of August, 2017.

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