

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES et al.,

Defendants.

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Case No. 1:17-cv-11930-NMG

NOTICE OF APPEAL

Plaintiff Commonwealth of Massachusetts hereby appeals from the Final Judgment of the District Court, entered on January 19, 2021.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

MAURA HEALEY,
ATTORNEY GENERAL

/s/ Julia E. Kobick

Julia E. Kobick, BBO # 680194
Jon Burke, BBO # 673472
Assistant Attorneys General
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Date: January 27, 2021

CERTIFICATE OF SERVICE

I certify that this document filed through the CM/ECF system will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 27, 2021.

/s/ Julia E. Kobick
Julia E. Kobick
Assistant Attorney General

ABBREVIATED ELECTRONIC RECORD

District Court Number: 17cv11930-NMG

Transcripts Yes X No _____
If yes, document # 98

Other information:

PLEASE RETURN TO THE USDC CLERK'S OFFICE

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:17-cv-11930-NMG**

COMMONWEALTH OF MASSACHUSETTS v. U.S.
Dept. of Health & Human Services et al
Assigned to: Judge Nathaniel M. Gorton
Case in other court: USCA - First Circuit, 18-01514
Cause: 05:702 Administrative Procedure Act

Date Filed: 10/06/2017
Date Terminated: 01/19/2021
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review
or Appeal of Agency Decision
Jurisdiction: Federal Question

Plaintiff

**COMMONWEALTH OF
MASSACHUSETTS**

represented by **Julia E. Kobick**
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TERMINATED: 01/02/2020
ATTORNEY TO BE NOTICED

V.

Defendant

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and Human Services**

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TERMINATED: 07/02/2018
ATTORNEY TO BE NOTICED

Defendant

Donald Wright
*in his official capacity as Acting
Secretary of Health and Human
Services*
TERMINATED: 11/16/2017

represented by **Christopher R. Healy**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**United States Department of the
Treasury**

represented by **Daniel Riess**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Christopher R. Healy
(See above for address)
ATTORNEY TO BE NOTICED

Ethan P. Davis
(See above for address)
TERMINATED: 07/12/2018
ATTORNEY TO BE NOTICED

Jason C. Weida
(See above for address)
ATTORNEY TO BE NOTICED

Joel McElvain
(See above for address)
TERMINATED: 07/02/2018
ATTORNEY TO BE NOTICED

Defendant

Steven T Mnuchin

represented by **Daniel Riess**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Christopher R. Healy
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ATTORNEY TO BE NOTICED

Ethan P. Davis
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TERMINATED: 07/12/2018
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Jason C. Weida

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ATTORNEY TO BE NOTICED

Joel McElvain

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TERMINATED: 07/02/2018

ATTORNEY TO BE NOTICED

Defendant

United States Department of Labor

represented by **Daniel Riess**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Christopher R. Healy

(See above for address)

ATTORNEY TO BE NOTICED

Ethan P. Davis

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TERMINATED: 07/12/2018

ATTORNEY TO BE NOTICED

Jason C. Weida

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TERMINATED: 07/02/2018

ATTORNEY TO BE NOTICED

Defendant

R. Alexander Acosta

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TERMINATED: 07/12/2018

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Jason C. Weida

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ATTORNEY TO BE NOTICED

Joel McElvain
(See above for address)
TERMINATED: 07/02/2018
ATTORNEY TO BE NOTICED

Defendant

Eric Hargan
*in his official capacity as Acting
Secretary of Health and Human
Services*

represented by **Daniel Riess**
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LEAD ATTORNEY
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Christopher R. Healy
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Jason C. Weida
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Joel McElvain
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TERMINATED: 07/02/2018
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Defendant

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Intervenor Defendant

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Intervenor Defendant

**March for Life Education and
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Andrew D. Beckwith
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Amicus

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Massachusetts**

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Kathryn Rebecca Cook
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LEAD ATTORNEY
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Matthew Segal
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NARAL Pro-Choice Massachusetts

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Kathryn Rebecca Cook
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ACLU

represented by **Kathryn Rebecca Cook**
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ATTORNEY TO BE NOTICED

Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
10/06/2017	<u>1</u>	COMPLAINT against All Defendants (Fee Status: Local Government), filed by COMMONWEALTH OF MASSACHUSETTS. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Civil Cover Sheet, # <u>4</u> JS45)(Kobick, Julia) (Attachment <u>3</u> replaced on 10/10/2017) (Franklin, Yvonne). (Attachment <u>4</u> replaced on 10/10/2017) (Franklin, Yvonne). (Entered: 10/06/2017)
10/10/2017	<u>2</u>	ELECTRONIC NOTICE of Case Assignment. Judge Nathaniel M. Gorton assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Marianne B. Bowler. (adminn,) (Entered: 10/10/2017)
10/11/2017	<u>3</u>	Summons Issued as to R. Alexander Acosta, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury, Donald Wright. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Franklin, Yvonne) (Entered: 10/11/2017)
11/09/2017	<u>4</u>	NOTICE of Appearance by Jonathan B. Miller on behalf of COMMONWEALTH OF MASSACHUSETTS (Miller, Jonathan) (Entered: 11/09/2017)
11/09/2017	<u>5</u>	SUMMONS Returned Executed R. Alexander Acosta served on 11/1/2017, answer due 12/30/2017. (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/09/2017	<u>6</u>	SUMMONS Returned Executed United States Department of the Treasury served on 11/1/2017, answer due 12/30/2017. (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/09/2017	<u>7</u>	SUMMONS Returned Executed United States Department of Health and Human Services served on 11/1/2017, answer due 12/30/2017. (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/09/2017	<u>8</u>	SUMMONS Returned Executed Donald Wright served on 11/1/2017, answer due 12/30/2017. (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/09/2017	<u>9</u>	SUMMONS Returned Executed Steven T Mnuchin served on 11/1/2017,

		answer due 12/30/2017. (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/09/2017	10	SUMMONS Returned Executed United States Department of the Treasury served on 11/1/2017, answer due 12/30/2017. (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/09/2017	11	SUMMONS Returned Executed by COMMONWEALTH OF MASSACHUSETTS. (Miller, Jonathan) (Entered: 11/09/2017)
11/09/2017	12	SUMMONS Returned Executed as to US Attorney by COMMONWEALTH OF MASSACHUSETTS. (Miller, Jonathan) (Entered: 11/09/2017)
11/09/2017	13	SUMMONS Returned Executed United States Department of Labor served on 11/1/2017, answer due 12/30/2017 (Miller, Jonathan) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/09/2017)
11/13/2017	14	Set/Reset ASNWER Deadlines: R. Alexander Acosta 12/30/2017; Steven T Mnuchin 12/30/2017; United States Department of Labor 12/30/2017; United States Department of the Treasury 12/30/2017; Donald Wright 12/30/2017. (Caruso, Stephanie) Modified on 11/13/2017 (Caruso, Stephanie). (Entered: 11/13/2017)
11/13/2017	15	SUMMONS Returned Executed United States Department of Health and Human Services served on 11/1/2017, answer due 12/30/2017 (Miller, Jonathan) (Entered: 11/13/2017)
11/13/2017	16	Notice of correction to docket made by Court staff. Correction: Docket Entries 5-10 and 13 corrected because: Filed under incorrect CM/ECF Event, and incorrect service and answer dates reflected in entries. Date of Service corrected to 11/1/2017 and answer date corrected to 60 day deadline of 12/30/2017 for the United State defendants. (Caruso, Stephanie) (Entered: 11/13/2017)
11/16/2017	17	AMENDED COMPLAINT against United States Department of Labor, United States Department of the Treasury, Donald Wright, R. Alexander Acosta, United States Department of Health and Human Services, Steven T Mnuchin, filed by COMMONWEALTH OF MASSACHUSETTS. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Kobick, Julia) (Entered: 11/16/2017)
11/16/2017	18	Summons Issued as to Eric Hargan. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Caruso, Stephanie) (Entered: 11/16/2017)
11/17/2017	19	NOTICE of Appearance by Jonathan T. Burke on behalf of COMMONWEALTH OF MASSACHUSETTS (Burke, Jonathan) (Entered: 11/17/2017)
11/17/2017	20	NOTICE of Appearance by Daniel Riess on behalf of R. Alexander Acosta,

		Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury (Riess, Daniel) (Entered: 11/17/2017)
11/17/2017	21	MOTION for Summary Judgment by COMMONWEALTH OF MASSACHUSETTS. (Attachments: # 1 Affidavit of Sharon C. Boyle, # 2 Affidavit of Margret R. Cooke, # 3 Affidavit of Robert Pomales, # 4 Affidavit of Jennifer Childs-Roshak, # 5 Affidavit of Colleen Frost, # 6 Affidavit of Kristen Salera, # 7 Exhibit A of Salera Declaration, # 8 Exhibit B of Salera Declaration, # 9 Exhibit C of Salera Declaration, # 10 Exhibit D of Salera Declaration, # 11 Exhibit E of Salera Declaration, # 12 Exhibit F of Salera Declaration, # 13 Exhibit G of Salera Declaration, # 14 Exhibit H of Salera Declaration, # 15 Exhibit I of Salera Declaration, # 16 Exhibit J of Salera Declaration, # 17 Exhibit K of Salera Declaration, # 18 Exhibit L of Salera Declaration, # 19 Exhibit M of Salera Declaration, # 20 Exhibit N of Salera Declaration, # 21 Exhibit O of Salera Declaration, # 22 Exhibit P of Salera Declaration)(Kobick, Julia) (Entered: 11/17/2017)
11/17/2017	22	MEMORANDUM in Support re 21 MOTION for Summary Judgment filed by COMMONWEALTH OF MASSACHUSETTS. (Kobick, Julia) (Entered: 11/17/2017)
11/17/2017	23	Assented to MOTION for Leave to File Excess Pages by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 11/17/2017)
11/17/2017	24	NOTICE of Appearance by Jason C. Weida on behalf of R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury (Weida, Jason) (Entered: 11/17/2017)
11/20/2017	25	Judge Nathaniel M. Gorton: ENDORSED ORDER entered granting 23 Motion for Leave to File Excess Pages ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Caruso, Stephanie) (Entered: 11/20/2017)
11/20/2017	26	MEMORANDUM in Support re 21 MOTION for Summary Judgment filed by COMMONWEALTH OF MASSACHUSETTS. (Kobick, Julia) (Entered: 11/20/2017)
11/22/2017	27	ELECTRONIC NOTICE issued requesting courtesy copy for 26 Memorandum in Support of Motion. Counsel who filed this document are requested to submit a courtesy copy of it to the Clerk's Office. These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Lima, Christine) (Entered: 11/22/2017)
12/06/2017	28	Assented to MOTION for Leave to File by ACLUM. (Attachments: # 1 Exhibit Proposed Amicus Brief)(Cook, Kathryn) (Entered: 12/06/2017)
12/06/2017	29	NOTICE of Appearance by Kathryn Rebecca Cook on behalf of Planned

		Parenthood League of Massachusetts (Cook, Kathryn) (Entered: 12/06/2017)
12/06/2017	30	NOTICE of Appearance by Matthew Segal on behalf of ACLUM, NARAL Pro-Choice Massachusetts, Planned Parenthood League of Massachusetts (Segal, Matthew) (Entered: 12/06/2017)
12/06/2017	31	NOTICE of Appearance by Jessie J. Rossman on behalf of ACLUM, NARAL Pro-Choice Massachusetts, Planned Parenthood League of Massachusetts (Rossman, Jessie) (Entered: 12/06/2017)
12/08/2017	32	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , MOTION to Dismiss for Lack of Jurisdiction (Responses due by 12/22/2017), MOTION for Summary Judgment (Responses due by 12/29/2017) by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury.(Riess, Daniel) (Entered: 12/08/2017)
12/08/2017	33	MEMORANDUM in Support re 32 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment filed by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 12/08/2017)
12/08/2017	34	Opposition re 21 MOTION for Summary Judgment filed by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 12/08/2017)
12/08/2017	35	Assented to MOTION for Leave to File Excess Pages by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury.(Riess, Daniel) (Entered: 12/08/2017)
12/08/2017	36	NOTICE by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury of <i>Conventional Filing of Certified Administrative Record</i> (Attachments: # 1 Certification of the Rulemaking Record)(Riess, Daniel) (Entered: 12/08/2017)
12/11/2017	37	NOTICE - Parties are reminded to comply with Local Rule 7.1(b)(4). Memoranda of excessive length may be filed as attachments to motions for leave to file excess pages. (Caruso, Stephanie) (Entered: 12/11/2017)
12/11/2017	38	Remark - 10 discs containing The Administrative Record (9 discs) and The Certification of Administrative Record (1 Disc) have been received by the Clerk's Office. PDFs on the the CDs are too lengthy to docket. CDs will be added to the case file in the Clerk's Office. (Caruso, Stephanie) (Entered: 12/11/2017)

12/12/2017	39	Judge Nathaniel M. Gorton: ENDORSED ORDER entered granting 28 Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Caruso, Stephanie) (Entered: 12/12/2017)
12/12/2017	40	MOTION to Intervene by Dordt College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 12/12/2017)
12/12/2017	41	MEMORANDUM in Support re 40 MOTION to Intervene filed by Dordt College, March for Life Education and Defense Fund. (Attachments: # 1 Declaration of Jeanne Mancini, # 2 Declaration of Erik Hoekstra) (Beckwith, Andrew) (Entered: 12/12/2017)
12/12/2017	42	NOTICE of Appearance by Andrew D. Beckwith on behalf of Dordt College, March for Life Education and Defense Fund (Beckwith, Andrew) (Entered: 12/12/2017)
12/12/2017	43	AMICUS BRIEF filed by ACLUM, NARAL Pro-Choice Massachusetts, Planned Parenthood League of Massachusetts . (Cook, Kathryn) (Entered: 12/12/2017)
12/12/2017	44	MOTION for Leave to Appear Pro Hac Vice for admission of David A. Cortman Filing fee: \$ 100, receipt number 0101-6925138 by Dordt College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 12/12/2017)
12/12/2017	45	MOTION for Leave to Appear Pro Hac Vice for admission of Gregory S. Baylor Filing fee: \$ 100, receipt number 0101-6925156 by Dordt College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 12/12/2017)
12/12/2017	46	MOTION for Leave to Appear Pro Hac Vice for admission of Christen M. Price Filing fee: \$ 100, receipt number 0101-6925176 by Dordt College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 12/12/2017)
12/13/2017	47	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 35 Motion for Leave to File Excess Pages ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Caruso, Stephanie) Modified on 12/13/2017 (Caruso, Stephanie). (Entered: 12/13/2017)
12/13/2017	48	MEMORANDUM in Support re 32 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment filed by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 12/13/2017)

12/13/2017	49	Opposition re 21 MOTION for Summary Judgment filed by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 12/13/2017)
12/14/2017	50	ELECTRONIC NOTICE issued requesting courtesy copy for 48 Memorandum in Support of Motion, 49 Opposition to Motion. Counsel who filed these documents are requested to submit a courtesy copy of them to the Clerk's Office. These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Lima, Christine) (Entered: 12/14/2017)
12/18/2017	51	MOTION for Extension of Time to January 5, 2018 to Respond to Motion to Intervene by COMMONWEALTH OF MASSACHUSETTS.(Miller, Jonathan) (Entered: 12/18/2017)
12/18/2017	52	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered. The Court directs the parties to submit supplemental memoranda, not to exceed ten (10) pages, on or before Friday, December 22, 2017, as to the effect, if any, on this case of the preliminary injunction issued in Pennsylvania v. Trump, No. 2:17-cv-04540-WB, 2017 WL 6398465 (E.D. Pa. Dec. 15, 2017).(Caruso, Stephanie) (Entered: 12/18/2017)
12/19/2017	53	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 51 MOTION for Extension of Time to January 5, 2018 to Respond to Motion to Intervene (Caruso, Stephanie) (Entered: 12/19/2017)
12/20/2017	54	MOTION for Extension of Time to January 19, 2018 to Respond to Defendants' Combined Opposition to Motion for Summary Judgment and Cross-Motion to Dismiss or for Summary Judgment <i>filed December 8, 2017</i> by COMMONWEALTH OF MASSACHUSETTS.(Burke, Jonathan) (Entered: 12/20/2017)
12/22/2017	55	RESPONSE TO COURT ORDER by COMMONWEALTH OF MASSACHUSETTS re 52 Order, . (Kobick, Julia) (Entered: 12/22/2017)
12/22/2017	56	MEMORANDUM OF LAW by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 12/22/2017)
12/22/2017	57	MOTION for Leave to File Excess Pages by Dordt College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 12/22/2017)
12/22/2017	58	Proposed Opposition re 21 MOTION for Summary Judgment filed by Dordt College, March for Life Education and Defense Fund. (Beckwith, Andrew) (Entered: 12/22/2017)
12/27/2017	59	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 54 Motion for Extension of Time to File Response/Reply re 32 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment Responses due by

		1/19/2018 (Caruso, Stephanie) (Entered: 12/27/2017)
12/27/2017	60	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered denying 57 Motion for Leave to File Excess Pages (Caruso, Stephanie) (Entered: 12/27/2017)
01/02/2018	61	ELECTRONIC NOTICE Setting Hearing on Motion 21 MOTION for Summary Judgment : Motion Hearing set for 1/30/2018 11:00 AM in Courtroom 4 before Judge Nathaniel M. Gorton. (Lima, Christine) (Entered: 01/02/2018)
01/03/2018	62	NOTICE of Appearance by Elizabeth C. Carnes Flynn on behalf of COMMONWEALTH OF MASSACHUSETTS (Carnes Flynn, Elizabeth) (Entered: 01/03/2018)
01/05/2018	63	MEMORANDUM in Opposition re 40 MOTION to Intervene filed by COMMONWEALTH OF MASSACHUSETTS. (Miller, Jonathan) (Entered: 01/05/2018)
01/08/2018	64	Opposition re 21 MOTION for Summary Judgment filed by Dordt College, March for Life Education and Defense Fund. (Beckwith, Andrew) (Entered: 01/08/2018)
01/18/2018	65	Assented to MOTION for Leave to File Excess Pages by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 01/18/2018)
01/19/2018	66	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 65 Motion for Leave to File Excess Pages ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Caruso, Stephanie) (Entered: 01/19/2018)
01/19/2018	67	MEMORANDUM in Opposition re 32 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment <i>and Reply Brief in Support of 21 Motion for Summary Judgment</i> filed by COMMONWEALTH OF MASSACHUSETTS. (Attachments: # 1 Affidavit of Gabrielle Crossnoe, # 2 Affidavit of Caryn Dutton)(Kobick, Julia) (Entered: 01/19/2018)
01/22/2018	68	ELECTRONIC NOTICE issued requesting courtesy copy for 67 Memorandum in Opposition to Motion. Counsel who filed this document are requested to submit a courtesy copy of it to the Clerk's Office. These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Lima, Christine) (Entered: 01/22/2018)
01/23/2018	69	MOTION to Strike 64 Opposition to Motion by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 01/23/2018)
01/23/2018	70	Assented to MOTION to Continue January 30, 2018 Hearing to Next Available Date , Assented to MOTION for Extension of Time to Feb. 8, 2018 to File Response/Reply as to 32 MOTION TO DISMISS FOR

		FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment , 61 Notice of Hearing on Motion (Responses due by 2/6/2018) by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury.(Riess, Daniel) (Entered: 01/23/2018)
01/24/2018	71	Judge Nathaniel M. Gorton: ENDORSED ORDER entered granting 70 Motion to Continue Hearing and Motion for Extension of Time to File Response/Reply re 21 MOTION for Summary Judgment . Replies due by 2/8/2018. "Motion allowed; the hearing on the cross motions for summary judgment is postponed until Wed., March 7, 2018 at 11:00 A.M." (Lima, Christine) (Entered: 01/25/2018)
01/25/2018	72	ELECTRONIC NOTICE Resetting Hearing on Motion 21 MOTION for Summary Judgment : Motion Hearing set for 3/7/2018 11:00 AM in Courtroom 4 before Judge Nathaniel M. Gorton. (Lima, Christine) (Entered: 01/25/2018)
01/29/2018	73	Judge Nathaniel M. Gorton: ENDORSED ORDER entered. MEMORANDUM AND ORDER. For the foregoing reasons, the motion to intervene of Dordt College and March for Life Education and Defense Fund (Docket No. 40) is DENIED WITHOUT PREJUDICE. So ordered. (Franklin, Yvonne) (Entered: 01/29/2018)
02/08/2018	74	REPLY to Response to 32 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment filed by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 02/08/2018)
02/27/2018	75	Assented to MOTION for Leave to File <i>Amicus Brief</i> by Dordt College, March for Life Education and Defense Fund. (Attachments: # 1 Proposed Amicus Brief)(Beckwith, Andrew) (Entered: 02/27/2018)
02/28/2018	76	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered ALLOWED 75 Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Franklin, Yvonne) (Entered: 02/28/2018)
02/28/2018	77	AMICUS BRIEF filed by Dordt College, March for Life Education and Defense Fund . (Beckwith, Andrew) (Entered: 02/28/2018)
02/28/2018	78	MOTION for Leave to Appear Pro Hac Vice for admission of Kevin Theriot Filing fee: \$ 100, receipt number 0101-7029764 by Dordt College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 02/28/2018)
02/28/2018	79	MOTION for Leave to Appear Pro Hac Vice for admission of Kenneth Connelly Filing fee: \$ 100, receipt number 0101-7029774 by Dordt

		College, March for Life Education and Defense Fund.(Beckwith, Andrew) (Entered: 02/28/2018)
03/01/2018	80	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 78 Motion for Leave to Appear Pro Hac Vice Added Kevin Theriot. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Lima, Christine) (Entered: 03/01/2018)
03/01/2018	81	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 79 Motion for Leave to Appear Pro Hac Vice Added Kenneth J. Connelly. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Lima, Christine) (Entered: 03/01/2018)
03/01/2018	82	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 69 Motion to Strike 64 Opposition to Motion (Lima, Christine) (Entered: 03/01/2018)
03/05/2018	83	ELECTRONIC NOTICE Resetting Hearing on Motion 21 MOTION for Summary Judgment : Motion Hearing set for 3/7/2018 11:00 AM in Courtroom 3 before Judge Nathaniel M. Gorton. NOTE - CHANGE IS AS TO LOCATION ONLY. (Lima, Christine) (Entered: 03/05/2018)
03/05/2018	84	NOTICE by R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury of <i>Conventional Filing of Supplemental Administrative Record</i> (Attachments: # 1 Praecipe, # 2 Certification of the Supplemental Administrative Record) (Riess, Daniel) (Entered: 03/05/2018)
03/05/2018	86	Remark: 9 discs containing The Administrative Record and The Certification of Administrative Record have been received (3/5/18) by the Clerk's Office. PDFs on the CDs are too lengthy to docket. CDs will be added to the case file in the Clerk's Office. (Franklin, Yvonne) (Entered: 03/06/2018)
03/06/2018	85	NOTICE of Appearance by Ethan P. Davis on behalf of R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury (Davis, Ethan) (Entered: 03/06/2018)
03/07/2018	87	Electronic Clerk's Notes for proceedings held before Judge Nathaniel M. Gorton: Motion Hearing held on 3/7/2018 re 21 MOTION for Summary Judgment filed by COMMONWEALTH OF MASSACHUSETTS, 32 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction MOTION for Summary Judgment filed by R. Alexander Acosta, United States Department of the Treasury, Steven T Mnuchin, United States Department of Health and Human Services,

		United States Department of Labor, Eric Hargan. Court hears arguments from counsel and takes the matter under advisement. (Court Reporter: Debra Lajoie at lajoiedebra@gmail.com.)(Attorneys present: Kobick, Carnes Flynn, Burke, Miller, Riess, Davis, Weida, McElvain) (Lima, Christine) (Entered: 03/07/2018)
03/09/2018	88	NOTICE of Appearance by Joel McElvain on behalf of R. Alexander Acosta, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury (McElvain, Joel) (Entered: 03/09/2018)
03/12/2018	89	Judge Nathaniel M. Gorton: ENDORSED ORDER entered. MEMORANDUM AND ORDER. For the foregoing reasons, plaintiff's motion for summary judgment (Docket No. 21) is DENIED and defendants' motion for summary judgment (Docket No. 32) is ALLOWED . So Ordered. (Franklin, Yvonne) (Entered: 03/12/2018)
04/04/2018	90	Judge Nathaniel M. Gorton: ORDER entered. JUDGMENT (Lima, Christine) (Entered: 04/04/2018)
05/29/2018	91	NOTICE OF APPEAL as to 90 Judgment by COMMONWEALTH OF MASSACHUSETTS Fee Status: State or Local Government. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 6/18/2018. (Kobick, Julia) (Entered: 05/29/2018)
05/31/2018	92	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 91 Notice of Appeal (Paine, Matthew) (Entered: 05/31/2018)
06/04/2018	93	USCA Case Number 18-1514 for 91 Notice of Appeal filed by COMMONWEALTH OF MASSACHUSETTS. (Paine, Matthew) (Entered: 06/04/2018)
06/04/2018	94	Letter/request (non-motion) from Atty. Kobick re. #91 filing fee. (Franklin, Yvonne) (Entered: 06/05/2018)
06/05/2018	95	USCA Appeal Fees received \$ 505.00 receipt number 1BST068746 re 91 Notice of Appeal,,, filed by COMMONWEALTH OF MASSACHUSETTS (Vieira, Leonardo) (Entered: 06/05/2018)
06/20/2018	96	TRANSCRIPT ORDER FORM by COMMONWEALTH OF

		MASSACHUSETTS for proceedings held on 3/7/18 Judge Judge Nathaniel M. Gorton.. (Kobick, Julia) (Entered: 06/20/2018)
07/02/2018	97	NOTICE of Withdrawal of Appearance by Joel McElvain (McElvain, Joel) (Entered: 07/02/2018)
07/06/2018	98	Transcript of Motion Hearing held on March 7, 2018, before Judge Nathaniel M. Gorton. COA Case No. 18-1514. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Debra Lajoie at lajoiedebra@gmail.com Redaction Request due 7/27/2018. Redacted Transcript Deadline set for 8/6/2018. Release of Transcript Restriction set for 10/4/2018. (Scalfani, Deborah) (Entered: 07/06/2018)
07/06/2018	99	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at http://www.mad.uscourts.gov/attorneys/general-info.htm (Scalfani, Deborah) (Entered: 07/06/2018)
07/11/2018	100	NOTICE of Withdrawal of Appearance by Ethan P. Davis (Davis, Ethan) (Entered: 07/11/2018)
05/02/2019	101	OPINION of USCA as to 91 Notice of Appeal filed by COMMONWEALTH OF MASSACHUSETTS. (Paine, Matthew) (Entered: 05/02/2019)
05/02/2019	102	USCA Judgment as to 91 Notice of Appeal filed by COMMONWEALTH OF MASSACHUSETTS. The judgment of the district court is VACATED, and the matter is REMANDED for further proceedings consistent with the opinion issued this day. (Paine, Matthew) (Entered: 05/02/2019)
06/24/2019	103	MANDATE of USCA as to 91 Notice of Appeal filed by COMMONWEALTH OF MASSACHUSETTS. Appeal 91 Terminated (Paine, Matthew) (Entered: 06/25/2019)
07/02/2019	104	MOTION for Leave to File <i>Second Amended Complaint</i> by COMMONWEALTH OF MASSACHUSETTS. (Attachments: # 1 Exhibit A - Proposed Second Amended Complaint)(Kobick, Julia) (Entered: 07/02/2019)
07/08/2019	105	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered ALLOWING 104 Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Vieira, Leonardo) (Entered: 07/08/2019)

07/08/2019	106	AMENDED COMPLAINT against United States Department of Labor, R. Alexander Acosta, United States Department of Health and Human Services, United States Department of the Treasury, Steven T Mnuchin, Alex Azar, filed by COMMONWEALTH OF MASSACHUSETTS. (Kobick, Julia) (Entered: 07/08/2019)
07/09/2019	107	NOTICE OF MANUAL FILING by R. Alexander Acosta, Alex Azar, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury Supplemental Administrative Record (Attachments: # 1 Certification and Index)(Riess, Daniel) (Entered: 07/09/2019)
07/09/2019	108	Remark: The court has received the 12 CDs containing the Administrative Records. (Vieira, Leonardo) (Entered: 07/09/2019)
07/18/2019	109	Recommendations for Scheduling Order <i>for Merits Briefing</i> . (Attachments: # 1 Text of Proposed Order)(Riess, Daniel) (Entered: 07/18/2019)
07/18/2019	110	Consent MOTION for Leave to File Supplemental Administrative Record with the Clerk of Court in Conventional Manner re 107 Notice of Manual Filing, by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 07/18/2019)
07/19/2019	111	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered ALLOWING 110 Consent MOTION for Leave to File Supplemental Administrative Record with the Clerk of Court in Conventional Manner. (Vieira, Leonardo) (Entered: 07/19/2019)
07/25/2019	112	Assented to MOTION for Leave to File Excess Pages <i>for the Memorandum in Support of the Commonwealth's forthcoming Motion for Summary Judgment</i> by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 07/25/2019)
07/29/2019	113	Judge Nathaniel M. Gorton: ORDER entered re 109 Recommendations for Scheduling Order. (Vieira, Leonardo) (Entered: 07/29/2019)
07/31/2019	114	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 112 Motion for Leave to File Excess Pages ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Lima, Christine) (Entered: 07/31/2019)
07/31/2019	115	MOTION for Summary Judgment by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 07/31/2019)
07/31/2019	116	MEMORANDUM in Support re 115 MOTION for Summary Judgment filed by COMMONWEALTH OF MASSACHUSETTS. (Attachments: # 1 Affidavit of Sharon C. Boyle, # 2 Affidavit of Jennifer Childs-Roshak, # 3 Affidavit of Margret R. Cooke, # 4 Affidavit of Caryn Dutton, # 5 Affidavit of Colleen Frost, # 6 Affidavit of Robert Pomales)(Kobick, Julia) (Entered: 07/31/2019)

		07/31/2019)
08/01/2019	117	ELECTRONIC NOTICE issued requesting courtesy copy for 116 Memorandum in Support of Motion. Counsel who filed this document are requested to submit a courtesy copy of them to the Clerk's Office. These documents must be clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF. (Lima, Christine) (Entered: 08/01/2019)
08/15/2019	118	Assented to MOTION for Leave to File <i>Amicus Brief</i> by ACLUM, NARAL Pro-Choice Massachusetts, Planned Parenthood League of Massachusetts, ACLU. (Attachments: # 1 Exhibit Proposed Amicus Brief)(Cook, Kathryn) (Entered: 08/15/2019)
08/29/2019	119	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered granting 118 Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Lima, Christine) (Entered: 08/29/2019)
08/29/2019	120	AMICUS BRIEF filed by ACLU, ACLUM, NARAL Pro-Choice Massachusetts, Planned Parenthood League of Massachusetts . (Cook, Kathryn) (Entered: 08/29/2019)
08/29/2019		Case reopened. (adminn,) (Entered: 08/29/2019)
08/30/2019	121	MOTION to Dismiss <i>under Rule 12(b) and, in the Alternative, Motion for Summary Judgment Under Rule 56</i> by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury, Donald Wright.(Healy, Christopher) (Entered: 08/30/2019)
08/30/2019	122	MEMORANDUM in Support re 121 MOTION to Dismiss <i>under Rule 12 (b) and, in the Alternative, Motion for Summary Judgment Under Rule 56</i> filed by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury, Donald Wright. (Healy, Christopher) (Entered: 08/30/2019)
09/13/2019	123	Assented to MOTION for Extension of Time to 9/26/19 to file combined reply brief in support of the Commonwealth's motion for summary judgment and opposition to the defendant's motion to dismiss or cross-motion for summary judgment by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 09/13/2019)
09/16/2019	124	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered ALLOWING 123 Assented to MOTION for Extension of Time to 9/26/19. (Vieira, Leonardo) (Entered: 09/16/2019)
09/24/2019	125	Assented to MOTION for Leave to File Excess Pages by COMMONWEALTH OF MASSACHUSETTS.(Kobick, Julia) (Entered: 09/24/2019)

		09/24/2019)
09/25/2019	126	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered ALLOWING 125 Motion for Leave to File Excess Pages ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Vieira, Leonardo) (Entered: 09/25/2019)
09/26/2019	127	Opposition re 121 MOTION to Dismiss <i>under Rule 12(b) and, in the Alternative, Motion for Summary Judgment Under Rule 56 and Reply Brief in Support of the Commonwealth's Motion for Summary Judgment, ECF 115</i> filed by COMMONWEALTH OF MASSACHUSETTS. (Kobick, Julia) (Entered: 09/26/2019)
10/21/2019	128	REPLY to Response to 121 MOTION to Dismiss <i>under Rule 12(b) and, in the Alternative, Motion for Summary Judgment Under Rule 56</i> filed by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 10/21/2019)
10/25/2019	129	Notice of Supplemental Authorities re 115 MOTION for Summary Judgment (Burke, Jonathan) (Entered: 10/25/2019)
01/02/2020	130	NOTICE of Withdrawal of Appearance by Jonathan B. Miller (Miller, Jonathan) (Entered: 01/02/2020)
02/05/2020	131	Consent MOTION to Stay <i>Proceedings</i> by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury.(Riess, Daniel) (Entered: 02/05/2020)
02/07/2020	132	Judge Nathaniel M. Gorton: ORDER entered: Motion ALLOWED re: 131 Motion to Stay. Counsel are directed to submit a joint status report on August 31, 2020, and every six months thereafter. (Vieira, Leonardo) (Entered: 02/10/2020)
08/31/2020	133	Motion to Lift Stay <i>filed jointly by the parties</i> by COMMONWEALTH OF MASSACHUSETTS. (Kobick, Julia) Modified on 9/11/2020 to change event type. Please see Order 134 (Vieira, Leonardo). (Entered: 08/31/2020)
09/10/2020	134	Judge Nathaniel M. Gorton: ORDER entered:re: 133 Motion to Lift Stay. Treated as a Motion to Lift Stay and Establish a Briefing Schedule and Motion ALLOWED . (Vieira, Leonardo) (Entered: 09/11/2020)
09/29/2020	135	Supplemental MEMORANDUM in Support re 115 MOTION for Summary Judgment filed by COMMONWEALTH OF MASSACHUSETTS. (Kobick, Julia) (Entered: 09/29/2020)
10/14/2020	136	Consent MOTION for Extension of Time to Nov. 6, 2020 to File <i>Supplemental Brief</i> by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of

		the Treasury.(Riess, Daniel) (Entered: 10/14/2020)
10/15/2020	137	Judge Nathaniel M. Gorton: ELECTRONIC ORDER entered: ALLOWING 136 Motion for Extension of Time to File. (Vieira, Leonardo) (Entered: 10/15/2020)
11/06/2020	138	Supplemental MEMORANDUM in Support re 121 MOTION to Dismiss <i>under Rule 12(b) and, in the Alternative, Motion for Summary Judgment Under Rule 56</i> filed by R. Alexander Acosta, Alex Azar, Eric Hargan, Steven T Mnuchin, United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. (Riess, Daniel) (Entered: 11/06/2020)
01/15/2021	139	Judge Nathaniel M. Gorton: ORDER entered. MEMORANDUM AND ORDER: For the foregoing reasons, the motion of defendants for summary judgment (Docket No. 121) is ALLOWED . The motion of plaintiffs for summary judgment (Docket No. 115) is DENIED . So ordered.(Vieira, Leonardo) (Entered: 01/19/2021)
01/19/2021	140	Judge Nathaniel M. Gorton: ORDER entered. JUDGMENT. (Vieira, Leonardo) (Entered: 01/19/2021)
01/27/2021	141	NOTICE OF APPEAL as to 140 Judgment by COMMONWEALTH OF MASSACHUSETTS Fee Status: State or Local Government. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 2/16/2021. (Kobick, Julia) (Entered: 01/27/2021)

**United States District Court
District of Massachusetts**

Commonwealth of Massachusetts, Plaintiff, v. United States Department of Health and Human Services, et al., Defendants.	))))))))))))))	Civil Action No. 17-11930-NMG
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MEMORANDUM & ORDER

GORTON, J.

This case involves a dispute about the validity of two interim final rules (“IFRs”) and the subsequent final rules (“Final Rules”) issued by the United States Department of Health and Human Services, the United States Department of the Treasury and the United States Department of Labor (collectively “defendants” or “the Departments”). The Final Rules adopt the IFRS, which expanded the religious exemption to the contraceptive mandate of the Affordable Care Act (“ACA”) and created a new moral exemption to that mandate. The Commonwealth of Massachusetts (“plaintiff” or “the Commonwealth”) filed the instant action seeking to enjoin the implementation of the rules and to declare them invalid.

Pending before the Court are plaintiff's motion for summary judgment and defendants' cross-motion to dismiss or for summary judgment. Because the Commonwealth has not established that the Final Rules are statutorily or constitutionally invalid, defendants' motion for summary judgment will be allowed and plaintiff's motion will be denied.

I. Background

Many of the relevant facts are described in detail in the opinion of this Court allowing defendants' previous motion for summary judgment. See Massachusetts v. United States HHS, 301 F. Supp. 3d 248 (D. Mass. 2018). Because there have been important supervening developments since the issuance of that opinion and for the sake of completeness, the Court provides the following summary of facts relevant to the pending motions.

A. The Contraceptive Mandate

The Patient Protection and Affordable Care Act generally requires that employer-sponsored healthcare plans include a range of preventive care services on a no-cost basis. See 42 U.S.C. §§ 18022 & 300gg-13. That requirement mandates no-cost coverage

with respect to women, . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration ["HRSA"].

42 U.S.C. § 300gg-13(a)(4).

After soliciting recommendations from an expert panel at the Institute of Medicine (“IOM”), HRSA promulgated its Women’s Preventive Services Guidelines in August, 2011. Under those guidelines, non-exempt employers were required to provide

coverage, without cost sharing, [for] [a]ll Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.

(“the contraceptive mandate”). Those guidelines went into effect in August, 2012. The HRSA updated the Women’s Preventive Services Guidelines in December, 2016, reaffirming that the Guidelines should continue to require full coverage for contraceptive care and services.

B. Accommodations for Religious Objections to the Contraceptive Mandate

In 2011 and 2012, the Departments issued regulations automatically exempting churches and their integrated auxiliaries, conventions and associations of churches and the exclusively religious activities of religious orders from the contraceptive mandate. The “Church Exemption” corresponds to a category of employers defined in the Internal Revenue Code. See 77 Fed. Reg. 8725, 8726 (citing 26 U.S.C. §§ 6033(a)(3)(A)(i) and (iii)). The Departments recognized that “certain non-exempted, non-profit organizations” also had religious objections to covering contraceptive services but determined that exempting such employers was not required by the Religious

Freedom Restoration Act (“RFRA”) and was inconsistent with the ACA. 77 Fed. Reg. 8725, 8728. Internal church decisions are, as the Departments explained in later regulations, afforded a “particular sphere of autonomy” that does not extend to other religious employers. 80 Fed. Reg. 41,318, 41,325.

In 2013, the Departments issued regulations providing an accommodation for objecting religious, non-profit organizations and institutions of higher education. The accommodation created a system whereby insurers and third parties paid the full cost of contraceptive care and employees received seamless coverage (“the accommodation process”). That process was expanded to cover closely-held, for-profit companies in response to the decision in Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014), in which the United States Supreme Court (“Supreme Court”) ruled that the contraceptive mandate violated RFRA for certain closely-held, for-profit employers. The Court held that the “HHS contraceptive mandate substantially burden[ed] the exercise of religion.” Id. at 2775 (internal quotation omitted) (citing 42 U.S.C. § 2000bb-1(a)). The accommodation process was purportedly a “less restrictive means” of furthering the government interest and thus RFRA required that the accommodation be expanded to include certain closely-held corporations. Id. at 2780-82.

In a separate series of cases, organizations such as religiously-affiliated universities and healthcare providers that did not perform “exclusively religious activities” challenged the legality of the accommodation process itself. See Zubik v. Burwell, 136 S. Ct. 1557 (2016). In May, 2016, those cases were remanded to their respective circuit courts for further consideration of whether the accommodation process could be amended to address the religious employers’ concerns while still providing seamless contraceptive coverage. In January, 2017, after reviewing more than 50,000 comments, the Departments announced that the short answer to the comprehensive question was “No.” No alternative, the Departments explained, would pose a lesser burden on religious exercise while ensuring contraceptive coverage.

C. The Interim Final Rules and the Final Rules

In October, 2017, the Departments issued the two IFRs at issue in this case. See 82 Fed. Reg. 47,792 (“Religious Exemption IFR”); 82 Fed. Reg. 47,838 (“Moral Exemption IFR”).

The IFRs created an expanded religious exemption, in part, to address the concerns of the managers of some entities who believed the accommodation rendered them complicit in the provision of contraceptive coverage. See 82 Fed. Reg. 47,792 (“We know . . . that many religious entities have objections to

complying with the accommodation based on their sincerely held religious beliefs."); Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2376-78 (2020). The HRSA exempts objecting entities "from any guidelines' requirements that relate to the provision of contraceptive services." 45 C.F.R. § 147.132(a). The Religious Exemption IFR expanded the definition of objecting entities to include any non-governmental plan sponsor that objects to

establishing, maintaining, providing, offering, or arranging (as applicable) coverage, payments, or a plan that provides coverage or payments for some or all contraceptive services, based on its sincerely held religious beliefs.

45 C.F.R. § 147.132(a)(2).

The religious exemption also applies to institutions of higher education in their arrangement of student health insurance coverage to the extent of that institution's sincerely held religious beliefs. 45 C.F.R. § 147.132(a)(ii). It exempts all employers with a religious objection, as opposed to the prior Church Exemption which covered churches, associations of churches and the exclusively religious activities of religious orders. It also affects religious non-profit organizations in that objecting organizations, formerly subject to the accommodation process, may now apply for the exemption.

Under the preceding Administration, no moral exemption to the contraceptive mandate existed in any form. The Moral Exemption IFR provided an exemption for nonprofit organizations and for-profit entities with no publicly traded ownership interests that object to

establishing, maintaining, providing, offering, or arranging (as applicable) coverage or payments for some or all contraceptive services, or for a plan, issuer, or third party administrator that provides or arranges such coverage or payments, based on its sincerely held moral convictions.

45 C.F.R. § 147.133(a)(2).

The IFRs were superseded by the Final Rules issued in November, 2018, which became effective in January, 2019. See 83 Fed. Reg. 57,536 (“Religious Exemption Rule”); 83 Fed. Reg. 57,592 (“Moral Exemption Rule”). The Final Rules maintain and formally codify the expanded exemptions adopted in the IFRs without substantive change.

D. The Supreme Court’s Decision in Little Sisters

In January, 2020, the Supreme Court granted certiorari to review a decision by the Third Circuit Court of Appeals (“Third Circuit”) to uphold a lower court ruling which enjoined the implementation of the Final Rules. Shortly thereafter, the parties in the instant action sought, and this Court granted, a stay of the proceedings pending the Supreme Court’s decision because it was anticipated that the ruling would have a

Following the decision in Little Sisters, the parties requested that the stay in this case be lifted which it was in September, 2020.

In October, 2017, shortly before the IFRs were to become effective, the Commonwealth filed the instant action seeking a declaration that the IFRs are unlawful and to enjoin their implementation and enforcement. After consideration of cross-motions for summary judgment, this Court granted judgment to the Departments, ruling that the Commonwealth lacked Article III

standing to challenge the IFRs. The Commonwealth timely appealed that decision.

In May, 2019, the First Circuit Court of Appeals (“First Circuit”) vacated this Court’s decision and remanded the case for further proceedings. The First Circuit held that the Commonwealth had established Article III standing by demonstrating a sufficiently imminent fiscal injury fairly traceable to the IFRs that likely would be redressed by a decision favorable to the Commonwealth.

On remand, the Commonwealth filed an amended complaint in July, 2019, alleging that 1) the Departments did not engage in notice and comment rulemaking before issuing the Final Rules in violation of the APA, 5 U.S.C. § 553, 2) the Final Rules exceed the Departments’ authority under the ACA and are arbitrary and capricious in violation of the APA, 5 U.S.C. § 706, 3) the Final Rules violate the Establishment Clause of the First Amendment to the United States Constitution and 4) the Final Rules violate the equal protection guarantee of the Due Process Clause of the Fifth Amendment thereof.

The parties filed cross-motions for summary judgment before the case was stayed in February, 2020. After the stay was lifted in September, 2020, they filed supplemental memoranda in support of their previously-filed cross-motions.

II. Analysis

A. Legal Standard

The role of summary judgment is “to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” Mesnick v. Gen. Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991). The burden is on the moving party to show, through the pleadings, discovery and affidavits, “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is material if it “might affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where the evidence with respect to the material fact in dispute “is such that a reasonable jury could return a verdict for the nonmoving party.” Id.

If the moving party has satisfied its burden, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine, triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The Court must view the entire record in the light most favorable to the non-moving party and indulge all reasonable inferences in that party's favor. O'Connor v. Steeves, 994 F.2d 905, 907 (1st Cir. 1993). Summary judgment is appropriate if, after viewing the record in

the non-moving party's favor, the Court determines that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.

In the administrative law context, the summary judgment rubric has a “special twist”. Assoc’d Fisheries of Me., Inc. v. Daley, 127 F.3d 104, 109 (1st Cir. 1997). In this context, a court reviews “an agency action not to determine whether a dispute of fact remains but, rather, to determine” whether the agency acted lawfully. Boston Redevelopment Auth. v. Nat’l Park Serv., 838 F.3d 42, 47 (1st Cir. 2016) (citing Mass. Dep’t of Pub. Welfare v. Sec’y of Agric., 984 F.2d 514, 526 (1st Cir. 1993)). Where the parties treat the matter as a petition for judicial review of agency action, the district court should “follow[] the parties’ lead and adjudicate[] the case in that manner.” Boston Redevelopment Auth. v. Nat’l Park Serv., 838 F.3d 42, 47 (1st Cir. 2016). Here, the Commonwealth urges this Court to treat its motion for summary judgment as “a vehicle to tee up [the] case for judicial review” and defendants do not dispute that characterization. Accordingly, the Court will do as requested.

B. Application

The Commonwealth concedes, and this Court agrees, that Little Sisters addressed and adversely disposed of two of

plaintiff's claims, namely that 1) the Departments failed to follow properly the procedural requirements of the APA in promulgating the Final Rules (Count I) and 2) the Final Rules exceed the Departments' authority under the ACA (Count II). Because the Supreme Court rejected both such arguments, there is no need to address further either claim and defendants are entitled to summary judgment on Count I and the portion of Count II addressing their authority under the ACA.

The Commonwealth continues, however, to press its claims that the Final Rules 1) are arbitrary and capricious under the APA, 2) violate the Establishment Clause of the First Amendment and 3) violate the equal protection guarantee implicit in the Fifth Amendment. Each of those claims will be addressed seriatim.

1. Arbitrary and Capricious under the APA

The Departments contend that, as a preliminary matter, to the extent the amended complaint asserts an arbitrary and capricious claim, the Commonwealth has waived it by failing to raise the claim in its motion for summary judgment and that it has improperly raised new theories in its supplemental memorandum. Although defendants' assertion would normally have traction, because of the importance of the intervening Supreme

The APA requires agencies to engage in “reasoned decisionmaking” and instructs courts to “hold unlawful and set aside” agency actions found to be arbitrary or capricious. Dep’t of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1905 (2020); 5 U.S.C. § 706(2)(A). The standard of review is “narrow,” however, and “a court is not to substitute its judgment for that of the agency.” FCC v. Fox Television Stations, Inc., 556 U.S. 502, 513 (2009) (internal quotations and citations omitted). Instead, a reviewing court should assess only

whether the [agency's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.

Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

When an agency revises existing regulations, the agency “must show there are good reasons for the new policy.” FCC, 556 U.S. at 515. Yet it need not demonstrate that the reasons for the new policy are better than those supporting the old one. Rather, it is sufficient that

the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.

Id.

a. Tailoring to the Scope of the Problem

The Commonwealth avers that the Departments did not engage in reasoned decisionmaking when issuing the Final Rules because they are insufficiently tailored to the scope of the subject problem. It protests defendants' decision to exempt all employers with objections to the mandate even if the accommodation would have met their religious concerns. Defendants have made it clear, however, that expanding the accommodation, without more, "would not adequately address religious objections to compliance with the [contraceptive] Mandate." 83 Fed. Reg. 57,544. After "further consideration of the issues and review of the public comments," evincing reasoned judgment, the Departments concluded that "a broader exemption, rather than a mere accommodation, is the appropriate response."

Id.

Plaintiff also confronts the scope of the Moral Exemption Rule, specifically noting that the Departments were aware of only three nonprofit organizations that have voiced a moral objection to the contraceptive mandate. The Commonwealth does not, however, cite any law indicating that it was improper for the Departments to consider that additional objecting employers "might come into existence," 83 Fed. Reg. 57,626, in formulating

the Moral Exemption Rule. Furthermore, the APA does not “require agencies to tailor their regulations as narrowly as possible” to the issues sought to be addressed by the regulations. Associated Dog Clubs of N.Y. State, Inc. v. Vilsack, 75 F. Supp. 3d 83, 92 (D.D.C. 2014).

The Departments did consider alternatives, as discussed below, and came to the reasonable conclusion that broader exemptions were appropriate to address sincere religious objections to the contraceptive mandate. Accordingly, the Commonwealth has not demonstrated that the Final Rules are overbroad in violation of the APA.

b. Reliance Interests

Plaintiff contends that the Final Rules are arbitrary and capricious because the Departments failed to consider the reliance interests of women who stand to lose contraceptive coverage due to the expanded exemptions.

Defendants respond, first, that they were not required to consider such reliance interests because RFRA compels the religious exemption. The Supreme Court in Little Sisters expressly did not consider the argument that RFRA prescribes the religious exemption, see 140 S. Ct. at 2382, and this Court likewise takes no position on that issue.

Defendants next submit, and this Court agrees, that the Departments adequately considered the relevant reliance interests in promulgating the Final Rules.

It is clear that an agency must provide a “more detailed explanation” than may otherwise be warranted when pivoting from a prior policy that has “engendered serious reliance interests.” FCC, 556 U.S. at 515. Here, the Departments detailed their review of comments and evidence that the contraceptive mandate “promotes the health and equality of women,” including that “coverage of contraceptives without cost-sharing has increased use of contraceptives” and has led to “decreases in unintended pregnancies.” 83 Fed. Reg. 57,556. After considering “the comments, including studies . . . either supporting or opposing these expanded exemptions,” the Departments concluded that

it is not clear that merely expanding exemptions as done in these rules will have a significant effect on contraceptive use and health, or workplace equality, for the vast majority of women benefitting from the Mandate. There is conflicting evidence regarding whether the Mandate alone, as distinct from birth control access more generally, has caused increased contraceptive use, reduced unintended pregnancies, or eliminated workplace disparities, where all other women's preventive services were covered without cost sharing.

Id.; see also 83 Fed. Reg. 57,613.

The Commonwealth insists that defendants did not properly consider the hardship that some women who have relied on the contraceptive mandate may experience if it is attenuated, but it

has not shown that the Departments failed to assess such concerns and weigh them against the intended benefits of the Final Rules.

For instance, in response to defendants' assertion that some women who may lose coverage will be able to secure replacement coverage through safety net programs, such as Title X clinics, the Commonwealth contends that the Departments did not meaningfully consider that such programs are poorly positioned to meet the increased demand that could result from the implementation of the Final Rules. The Departments reply, explicitly, that they have considered the limitations of those programs and decided nonetheless that the benefits of the rules outweigh those limitations. See 83 Fed. Reg. 57,551-56 (noting that commenters "contended that many women in employer-sponsored coverage might not qualify for [safety net] programs . . . because the programs were not intended to absorb privately insured individuals" but concluding the rules are warranted to "provide tangible protections for religious liberty, and [to] impose fewer governmental burdens").

c. Reasonable Alternatives

The Commonwealth further contends that the Final Rules are arbitrary and capricious because the Departments failed to

consider reasonable alternatives that would purportedly limit the harm to women.

An agency must “consider responsible alternatives” and “give a reasoned explanation for its rejection of such alternatives.” Brookings Municipal Tel. Co. v. FCC, 822 F.2d 1153, 1169 (D.C. Cir. 1987). Nevertheless, an agency

need not consider every alternative proposed nor respond to every comment made. Rather, an agency must consider only significant and viable and obvious alternatives.

Nat'l Shooting Sports Found., Inc. v. Jones, 716 F.3d 200, 215 (D.C. Cir. 2013) (internal quotations and citations omitted).

Although plaintiff offers a litany of alternatives that the Departments could have pursued instead of promulgating the Final Rules, the Departments correctly point out that the Commonwealth offers little evidence that the proposed alternatives were obvious or suggested by any commenter prior to the issuance of the rules.

Several of plaintiff’s proposed alternatives involve expanding the existing accommodation but the Departments have been clear that they considered such an alternative, noting that they “discussed public comments concerning whether [they] should have merely expanded the accommodation” rather than expanding the exemptions. 83 Fed. Reg. 57,569. After deliberation, the Departments concluded that expanding the accommodation without

expanding the exemptions “would not adequately address religious objections to compliance with the Mandate.” 83 Fed. Reg. 57,544.

Plaintiff also suggests that the Moral Exemption Rule need not have been expanded to be as broad as the Religious Exemption Rule. The Commonwealth recognizes, however, that the Departments “dedicated an entire section of the Rule to discussing” the appropriateness of treating moral and religious objectors in a similar manner. See 83 Fed. Reg. 57,598-602.

Ultimately, even if the Departments did not consider every conceivable alternative, such vigorous analysis is not required under the APA. See Jones, 716 F.3d at 215. Defendants fulfilled their obligation by properly considering a number of reasonable alternatives and offering an explanation for why they were rejected. Although the decision to issue the Final Rules may be one of “less than ideal clarity,” the rules are valid under the APA because the Departments’ rationale “may reasonably be discerned.” Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 285-86 (1974).

2. The Establishment Clause of the First Amendment

The Commonwealth submits that the Religious Exemption Rule impermissibly grants employers a religious veto over their employees’ access to healthcare in violation of the Establishment Clause of the First Amendment.

The Establishment Clause “commands a separation of church and state.” Cutter v. Wilkinson, 544 U.S. 709, 719 (2005). Yet it

do[es] not require the government to be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice.

Bd. of Educ. v. Grumet, 512 U.S. 687, 705 (1994). Indeed, the Supreme Court has long recognized that “the government may (and sometimes must) accommodate religious practices” without violating the Establishment Clause. Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 334 (1987). Further, it is permissible for the government to “accommodate religion beyond free exercise requirements, without offense to the Establishment Clause.” Cutter, 544 U.S. at 713 (internal quotations and citations omitted).

There is, however, a point at which an “accommodation may devolve into an unlawful fostering of religion.” Id. at 334-35. To analyze whether a government act is consistent with the Establishment Clause, the Supreme Court has instructed courts to use the three-part test established in Lemon v. Kurtzman, 403 U.S. 602 (1971):

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the

statute must not foster an excessive government entanglement with religion.

403 U.S. at 612-13.

As a preliminary matter, two Justices of the Supreme Court have already observed that “there is no basis for an argument” that the Religious Exemption Rule violates the Establishment Clause. Little Sisters, 140 S. Ct. at 2396 n.13 (Alito, J., concurring in which Gorsuch, J., joined). Nevertheless, this Court independently concludes that there has been no showing of an Establishment Clause violation in the instant action.

First, the requirement that the challenged act have a secular legislative purpose “does not mean that the law's purpose must be unrelated to religion.” Amos, 483 U.S. at 335 (adding that “the Establishment Clause has never been so interpreted”). Under this prong of the Lemon test, a court may invalidate a government act “only if it is motivated wholly by an impermissible purpose”. Bowen v. Kendrick, 487 U.S. 589, 602 (1988).

The Commonwealth has not shown that the Departments intended to advance a particular religion or to promote religion in general. The Supreme Court has held that it is a permissible purpose under the Lemon analysis

to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.

Amos, 483 U.S. at 335. Here, the Departments have evinced a similar desire to maintain neutrality and reduce interference with religious decisionmaking in promulgating the Final Rules. See, e.g., 83 Fed. Reg. 57,542 (“[T]he Departments conclude it is appropriate to maintain the [IFR] exemptions . . . to avoid instances where the [contraceptive] Mandate is applied in a way that violates the religious beliefs of certain [entities].”). Consequently, the Departments have identified the requisite “burden on the exercise of religion that can be said to be lifted by the government action.” Amos, 483 U.S. at 348 (O’Connor, J., concurring).

Second, the requirement in Lemon that the challenged government act neither advance nor inhibit religion as its primary effect does not mean that a law cannot permit religious entities to advance religion. See id. at 337. Rather, it is impermissible for the government itself to advance religion “through its own activities and influence.” Id.

The Commonwealth has not shown that the principal effect of the Final Rules is the advancement of religion by the government. Employers and plan sponsors with sincere religious objections are not better able to “propagate [their] religious doctrine,” id., now that the Religious Exemption Rule permits them to refrain from specific action that would violate their

beliefs. Permitting entities to practice their beliefs as they would in the absence of the relevant government-imposed regulations does not, in this instance, rise to an unconstitutional violation of the Establishment Clause.

The Commonwealth's argument that the objectives behind Religious Exemption Rule could be accomplished by other means, namely through the existing accommodations process, is unavailing. The Departments have reiterated that the accommodations process is insufficient to address the objections of employers such as those who brought suit in Little Sisters, who complain that requesting an accommodation renders them complicit in the provision of contraceptive coverage to employees against their religious beliefs. See 82 Fed. Reg. 47,799; 83 Fed. Reg. 57,546-48.

Although plaintiff is correct that a religious exemption should not override other significant interests, Cutter, 544 U.S. at 722, it does not follow that the Final Rules must be invalid under the Establishment Clause because they may result in a loss of contraceptive coverage for some employees. See Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 18 n.8 (1989) (observing that a religious exemption that resulted in "some adverse effect" on certain parties was constitutional because it "prevented potentially serious encroachments on protected

religious freedoms"). Therefore, the Religious Exemption Rule does not impermissibly advance religion even if it may burden non-adherents to some extent.

Finally, the Commonwealth has not demonstrated that the Final Rules constitute excessive government entanglement with religion. Plaintiff points to Larkin v. Grendel's Den, 459 U.S. 116, 125-27 (1982) to support its argument that the rules create an unconstitutional entanglement with religion by granting to religious employers a "veto power" over access to a statutory benefit. The facts underlying the Larkin decision, however, make it inapplicable to the instant case.

In Larkin, a restaurant owner sued state licensing commissions with respect to the constitutionality of a state statutory provision which granted to churches and schools a veto power over applications for nearby liquor licenses. In striking down the challenged provision, the Supreme Court expressed concern regarding "the entanglement implications of a statute vesting significant governmental authority in churches." 459 U.S. at 126. Here, the Final Rules do not vest significant (or any) governmental authority in religious entities by creating an exemption from a statutory mandate.

Accordingly, the Commonwealth has not shown that the Final Rules violate the Establishment Clause.

3. The Equal Protection Guarantee of the Fifth Amendment

The Commonwealth contends that the Final Rules discriminate against women in violation of the equal protection guarantee of the Fifth Amendment.

Although plaintiff brings its equal protection claim under the Fifth Amendment, the analysis is similar to such claims brought under the Fourteenth Amendment. See Sessions v. Morales-Santana, 198 L. Ed. 2d 150, 159 n.1 (2017). In analyzing an equal protection claim, the first step is to identify whether the challenged classification is explicitly based upon sex or neutral on its face. If the challenged law or regulation is facially neutral, a viable equal protection claim exists only when the plaintiff can demonstrate the existence of a disparate impact and an intent to discriminate on the basis of sex. See Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 272-74 (1979).

Sex-based classifications, whether overt or otherwise, are subject to intermediate scrutiny, which means the Court must

determine whether the proffered justification is "exceedingly persuasive." The burden of justification is demanding and it rests entirely on the [defendants]. The [defendants] must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives. The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely

on overbroad generalizations about the different talents, capacities, or preferences of males and females.

United States v. Virginia, 518 U.S. 515, 532-33 (1996) (internal citations and quotations omitted). In contrast, classifications that do not discriminate on the basis of sex are analyzed under rational basis review. See Heller v. Doe, 509 U.S. 312, 319 (1993) (“[A] classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity.”). Such classifications

must be upheld against [an] equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

Id. at 320.

The parties disagree as to the nature of the classification in the Final Rules. The Commonwealth contends that the Final Rules “overtly single out women for disadvantageous treatment” and cannot survive heightened scrutiny. The Departments respond that the Final Rules are sex-neutral because they expand exemptions that apply based on sincerely held religious and moral beliefs and are intended to minimize government burdens in the regulation of health insurance. The only sex-based distinction, defendants explain, “flow[s] from the statute requiring preventative services for women only” rather than from the rules promulgated under the statute. Defendants insist that

plaintiff cannot succeed on its equal protection claim in the absence of a showing of discriminatory intent.

This Court is skeptical that the Final Rules facially differentiate on the basis of sex. Defendants are correct that the underlying statutory provision requiring coverage for additional preventative services pertains only to such services for women. See generally 42 U.S.C. § 300gg-13(a)(4). Consequently, any regulation under that provision would necessarily impact only women but that does not mean that such a regulation facially differentiates on the basis of sex. Defendants emphasize that the Final Rules serve a sex-neutral purpose, differentiating “on the basis of the religious or moral objections” of various entities and “not on the basis of [sex].” Under the circumstances, the Final Rules are more logically viewed as having a disparate impact on women, which means that a showing of discriminatory intent is required to maintain the equal protection claim. See Feeney, 442 U.S. at 272-74. The Commonwealth has failed to demonstrate any discriminatory intent behind the Departments’ decision to issue the Final Rules and thus does not have a viable equal protection claim based on disparate impact.

The issue of which standard of scrutiny applies need not be conclusively decided, however, because the Final Rules survive

judicial review even under heightened scrutiny. The Commonwealth contends that the Final Rules go “well beyond what is necessary to relieve any alleged burden” on religious or moral beliefs and therefore the rules cannot satisfy heightened scrutiny. In so arguing, however, the Commonwealth mischaracterizes what is required under intermediate scrutiny. As Justice Scalia noted in Virginia,

[i]ntermediate scrutiny has never required a least-restrictive-means analysis, but only a ‘substantial relation’ between the classification and the state interests that it serves.

518 U.S. at 573 (Scalia, J., dissenting). Accordingly, the Departments are not required to employ the least restrictive means of accomplishing their stated goal of better accommodating religious and moral objections to the contraceptive mandate. The Supreme Court has indicated, and the Commonwealth does not dispute, that the accommodation of sincerely held religious and moral beliefs is an important government interest. See Amos, 483 U.S. at 334 (declaring “the government may (and sometimes must) accommodate religious practices”); see generally Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014). Furthermore, expanding existing exemptions to cover a broader range of entities with sincere religious and moral objections to the contraceptive mandate is indubitably related to that goal of accommodating such objectors.

Accordingly, the Departments have met their burden under intermediate scrutiny and the Commonwealth has not established that it is entitled to judgment with respect to its equal protection claim.

ORDER

For the foregoing reasons, the motion of defendants for summary judgment (Docket No. 121) is **ALLOWED**. The motion of plaintiffs for summary judgment (Docket No. 115) is **DENIED**.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated January 15, 2021

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Commonwealth Of Massachusetts
Plaintiff

v.

CIVIL ACTION NO.:
17-cv-11930-NMG

U.S. Dept. of Health & Human Services et al
Defendant.

JUDGMENT
January 19, 2021

Gorton, .D.J.

In accordance with the Memorandum and Order entered on January 15, 2021,
ALLOWING Motion for Judgment ECF 121.

JUDGMENT is entered for the Defendants.

SO ORDERED.

/s/ Nathaniel M. Gorton

NATHANIEL M. GORTON

United States District Judge

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES et al.,

Defendants.

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Case No. 1:17-cv-11930-NMG

NOTICE OF APPEAL

Plaintiff Commonwealth of Massachusetts hereby appeals from the Final Judgment of the
District Court, entered on January 19, 2021.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

MAURA HEALEY,
ATTORNEY GENERAL

/s/ Julia E. Kobick

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Date: January 27, 2021

CERTIFICATE OF SERVICE

I certify that this document filed through the CM/ECF system will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 27, 2021.

/s/ Julia E. Kobick
Julia E. Kobick
Assistant Attorney General

United States Court of Appeals For the First Circuit

No. 21-1076

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; NORRIS
COCHRAN, in his official capacity as Acting Secretary of Health and Human Services;
UNITED STATES DEPARTMENT OF THE TREASURY; JANET LOUISE YELLEN, in her
official capacity as Secretary of the Treasury; UNITED STATES DEPARTMENT OF LABOR;
AL STEWART, in his official capacity as Acting Secretary of Labor,

Defendants - Appellees.

CASE OPENING NOTICE

Issued: January 28, 2021

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption (unless modified or amended as reflected in the heading of future court notices or orders) should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Appellant must complete and return the following forms to the clerk's office by **February 11, 2021** to be deemed timely filed:

- [Appearance Form](#)
- [Transcript Report/Order Form](#) (Please carefully read the instructions for completing and filing this form.)
- [Docketing Statement](#)

These forms are available on the court's website at www.ca1.uscourts.gov, under "Forms & Notices." Failure to comply with the deadlines set by the court may result in dismissal of the appeal for lack of diligent prosecution. See 1st Cir. R. 3.0, 10.0, and 45.0.

Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Unless the appellant was already determined to be in forma pauperis in the underlying district court action, or was determined to be financially unable to obtain an adequate defense in a criminal case, see Fed. R. App. P. 24(a)(3), a filing fee is due within seven days of filing the notice of appeal. An appellant not already determined to be indigent, who seeks to appeal in forma pauperis, must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. For an appellant not already determined to be indigent, failure to pay the filing fee or file a motion seeking in forma pauperis status with the district court within fourteen days of the date of this notice, may result in the appeal being dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission using the court's Case Management/Electronic Case Files ("CM/ECF") system prior to filing an appearance form. 1st Cir. R. 46.0(a). *Pro se* parties are not required to file an appearance form.

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notice(s) listed below:

- [Notice to Counsel and Pro Se Litigants](#)
- [Transcript Notice](#)

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Maria R. Hamilton, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Alistair - (617) 748-4664

United States Court of Appeals For the First Circuit

NOTICE OF ELECTRONIC AVAILABILITY OF CASE INFORMATION

The First Circuit has implemented the Federal Judiciary's Case Management/Electronic Case Files System ("CM/ECF") which permits documents to be filed electronically. In addition, most documents filed in paper are scanned and attached to the docket. In social security and immigration cases, members of the general public have remote electronic access through PACER only to opinions, orders, judgments or other dispositions of the court. Otherwise, public filings on the court's docket are remotely available to the general public through PACER. Accordingly, parties should not include in their public filings (including attachments or appendices) information that is too private or sensitive to be posted on the internet.

Specifically, Fed. R. App. P. 25(a)(5), Fed. R. Bank. P. 9037, Fed. R. Civ. P. 5.2 and Fed. R. Cr. P. 49.1 require that parties not include, or partially redact where inclusion is necessary, the following personal data identifiers from documents filed with the court unless an exemption applies:

- **Social Security or Taxpayer Identification Numbers.** If an individual's social security or taxpayer identification number must be included, only the last four digits of that number should be used.
- **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- **Dates of Birth.** If an individual's date of birth must be included, only the year should be used.
- **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- **Home Addresses in Criminal Cases.** If a home address must be included, only the city and state should be listed.

See also 1st Cir. R. 25.0(m).

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend caption to redact the identifier.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, and sensitive security information as described in 49 U.S.C. § 114.

Attorneys are urged to share this notice with their clients so that an informed decision can be made about inclusion of sensitive information. The clerk will not review filings for redaction.

Filers are advised that it is the experience of this court that failure to comply with redaction requirements is most apt to occur in attachments, addenda, or appendices, and, thus, special attention should be given to them. For further information, including a list of exemptions from the redaction requirement, see <http://www.privacy.uscourts.gov/>.

United States Court of Appeals For the First Circuit

NOTICE TO COUNSEL REGARDING MANDATORY REGISTRATION AND TRAINING FOR ELECTRONIC FILING (CM/ECF)

On August 21, 2017, the U.S. Court of Appeals for the First Circuit upgraded its CM/ECF system to NextGen CM/ECF, the latest iteration of the electronic case filing system. Use of the electronic filing system is mandatory for attorneys. If you intend to file documents and/or receive notice of docket activity in this case, please ensure you have completed the following steps:

- **Obtain a NextGen account.** Attorneys who had an e-filing account in this court prior to August 21, 2017 are required to update their legacy account in order to file documents in the NextGen system. Attorneys who have never had an e-filing account in this court must register for an account at www.pacer.gov. For information on updating your legacy account or registering for a new account, go to the court's website at www.ca1.uscourts.gov and select *E-Filing (Information)*.
- **Apply for admission to the bar of this court.** Attorneys who wish to e-file must be a member of the bar of this court. For information on attorney admissions, go to the court's website at www.ca1.uscourts.gov and select *Attorney Admissions* under the *Attorney & Litigants* tab. Bar admission is not required for attorneys who wish to receive notice of docket activity, but do not intend to e-file.
- **Review Local Rule 25.** For information on Loc. R. 25.0, which sets forth the rules governing electronic filing, go to the court's website at www.ca1.uscourts.gov and select *First Circuit Rulebook* under the *Rules & Procedures* tab.

cc:

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United States Court of Appeals For the First Circuit

NOTICE TO ALL CM/ECF USERS REGARDING "NATIVE" PDF REQUIREMENT

All documents filed electronically with the court must be submitted as "native" Portable Document ("PDF") files. See 1st Cir R. 25.0. A **native PDF file** is created by electronically converting a word processing document to PDF using Adobe Acrobat or similar software. A **scanned PDF file** is created by putting a paper document through an optical scanner. Use a scanner ONLY if you do not have access to an electronic version of the document that would enable you to prepare a native PDF file. If you fail to file a document in the correct format, you will be asked to resubmit it.