

BRIAN NETTER
Deputy Assistant Attorney General
STEPHANIE HINDS
United States Attorney
MICHELLE R. BENNETT
Assistant Branch Director
REBECCA M. KOPPLIN, Cal. Bar No. 313970
MICHAEL GERARDI
CHRISTOPHER R. HEALY
DANIEL RIESS
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
Telephone: (202) 514-3953
Email: rebecca.m.kopplin@usdoj.gov
Counsel for Federal Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE, *et al.*,

Defendant-Intervenors

Case No.: 4:17-cv-5783-HSG

JOINT STATUS REPORT

On August 17, 2021 the Court stayed this case and ordered the parties to file status reports every three months. ECF No. 467. The parties report as follows:

1. This case concerns the validity of two rules which create a moral exemption, and

- 1 expand a religious exemption, to the rules establishing the contraceptive coverage
2 requirement. *See* Religious Exemptions and Accommodations for Coverage of
3 Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15,
4 2018); Moral Exemptions and Accommodations for Coverage of Certain
5 Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
- 6 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366,
7 368, 370, as well as supplemental briefs addressing the Supreme Court’s decision
8 in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct.
9 2367 (2020), *see* ECF Nos. 433, 435, 437, 438, 440.
- 10 3. On August 3, 2021, the parties filed a joint status report, in which Federal
11 Defendants asked the Court to stay the case to permit the defendant agencies to
12 evaluate the issues presented by this litigation, as well as their regulatory and
13 policy options. ECF No. 462. The Court had once previously held the motions
14 in abeyance. ECF No. 454. Plaintiffs and intervenor March for Life did not object
15 to the request. Intervenor Little Sisters objected.
- 16 4. On August 16, 2021, Federal Defendants announced that “[t]he Departments [of
17 Health and Human Services, Treasury, and Labor] intend to initiate rulemaking
18 within 6 months to amend the 2018 final regulations and obtaining public input
19 will be included as part of the Departments’ rulemaking process.” CMS.Gov,
20 Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48)
21 (Aug. 16, 2021) (available at [https://www.cms.gov/CCIIO/Resources/Fact-](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)
22 [Sheets-and-FAQs#Affordable_Care_Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)).
- 23 5. On August 17, 2021, the Court held a case management conference. The Court
24 granted Federal Defendants’ request to stay the case and directed “counsel . . . to
25 e-file a joint status report every three months.” ECF No. 467.
- 26 6. The Court held another status conference on May 17, 2022.
- 27 7. On July 8, 2022, Federal Defendants submitted a draft proposed rule to the Office
28

1 of Management and Budget (OMB) for review by its Office of Information and
2 Regulatory Affairs (OIRA) pursuant to Executive Order 12866. See Coverage of
3 Certain Preventive Services Under the Affordable Care Act (CMS-9903),
4 <https://www.reginfo.gov/public/do/eoDetails?rrid=254114>.

- 5 8. The Federal Defendants report that they are continuing to work with OIRA to
6 prepare the Notice of Proposed Rulemaking for publication as quickly as is
7 possible consistent with ongoing resource limitations and prudent decision-
8 making.
- 9 9. Federal Defendants propose that the case remain stayed and that Federal
10 Defendants continue to file status reports every 90 days to apprise the Court of
11 the status of the rulemaking and their position on the need for a continued stay.
- 12 10. Plaintiff States do not object to the Federal Defendants' proposal.
- 13 11. Intervenor Little Sisters of the Poor maintains that this lawsuit should resume and
14 be resolved against the Plaintiff States, for the reasons it has previously given the
15 Court. The Little Sisters respectfully request a status conference to discuss
16 resuming the case and setting an appropriate schedule.
- 17 Furthermore, on September 2, 2022, counsel for Proposed Intervenor Little Sisters
18 of the Poor, St. Mary's Home (the "Little Sisters Chicago"), filed a motion to
19 intervene. Intervenor-Defendant Little Sisters of the Poor Jeanne Jugan Residence
20 (the "San Pedro Home") expects to sell its home and cease operations within the
21 next year. Therefore, the Little Sisters Chicago seek intervention to maintain a
22 defense of the Final Rule and any religious exemption granted by the federal
23 government, especially given the federal government's uncertain commitment to
24 defending the current rule. In so doing, the Little Sisters Chicago fully adopts the
25 positions and existing briefing and filings of the San Pedro Home.
- 26 The motion to intervene is fully briefed and ripe for decision. A hearing date for
27 the motion is set for January 19, 2023.
- 28

12. Intervenor March for Life does not oppose the Federal Defendants' proposal.

1 Dated: November 1, 2022

Respectfully submitted,

2 BRIAN NETTER
Deputy Assistant Attorney General

3 STEPHANIE HINDS
4 United States Attorney

5 MICHELLE R. BENNETT
Assistant Branch Director

6 /s/ Rebecca M. Kopplin
7 REBECCA M. KOPPLIN
8 Cal. Bar No. 313970
9 MICHAEL J. GERARDI
CHRISTOPHER R. HEALY
DANIEL RIESS
Trial Attorneys
10 United States Department of Justice
Civil Division
11 Federal Programs Branch
1100 L Street NW
12 Washington, D.C. 20005
Telephone: (202) 514-3953
13 Email: rebecca.m.kopplin@usdoj.gov
14 Counsel for Federal Defendants

15 /s/ Mark L. Rienzi
Eric C. Rassbach – No. 288041
16 Mark L. Rienzi – *pro hac vice*
Lori H. Windham – *pro hac vice*
17 Diana Verm Thomson – *pro hac vice*
Adèle Auxier Keim – *pro hac vice*
18 Daniel L. Chen – No. 312576
The Becket Fund for Religious Liberty
19 1919 Pennsylvania Ave. NW, Suite
20 400
Washington, DC 20036
21 Telephone: (202) 955-0095
22 Facsimile: (202) 955-0090
erassbach@becketlaw.org
23 Counsel for Defendant-Intervenor The
24 Little Sisters of the Poor
25
26
27
28

1 Dated: November 1, 2022

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 KATHLEEN BOERGERS
5 Supervising Deputy Attorney General
6 KETAKEE KANE
7 Deputy Attorney General

8 /s/ Karli Eisenberg
9 KARLI EISENBERG
10 Supervising Deputy Attorney General
11 *Attorneys for Plaintiff the State of*
12 *California*

13 WILLIAM TONG
14 Attorney General of Connecticut
15 MAURA MURPHY OSBORNE
16 Assistant Attorney General
17 *Attorneys for Plaintiff the State of*
18 *Connecticut*

19 KATHLEEN JENNINGS
20 Attorney General of Delaware
21 CHRISTIAN DOUGLAS WRIGHT
22 Director of Impact Litigation
23 JESSICA M. WILLEY
24 Deputy Attorney General
25 *Attorneys for Plaintiff*
26 *the State of Delaware*

27 KARL A. RACINE
28 Attorney General of the
District of Columbia
KATHLEEN KONOPKA
Deputy Attorney General,
Public Advocacy Division
Attorneys for Plaintiff the District of
Columbia

CLARE E. CONNORS
Attorney General of Hawaii
ERIN N. LAU
Deputy Attorney General
Attorneys for Plaintiff
the State of Hawaii

KWAME RAOUL
Attorney General of Illinois
HARPREET K. KHERA
Deputy Bureau Chief,
Special Litigation Bureau

ELIZABETH MORRIS
Assistant Attorney General,
Special Litigation Bureau
*Attorneys for Plaintiff
the State of Illinois*

BRIAN E. FROSH
Attorney General of Maryland
CAROLYN A. QUATTROCKI
Deputy Attorney General
STEVE M. SULLIVAN
Solicitor General
KIMBERLY S. CAMMARATA
Director, Health Education
and Advocacy
*Attorneys for Plaintiff
the State of Maryland*

KEITH ELLISON
Attorney General of Minnesota
JACOB CAMPION
Assistant Attorney General
*Attorney for Plaintiff
the State of Minnesota,
by and through its
Department of Human Services*

LETITIA JAMES
Attorney General of New York
LISA LANDAU
Bureau Chief, Health Care Bureau
STEVEN C. WU
Deputy Solicitor General
*Attorneys for Plaintiff
the State of New York*

JOSHUA H. STEIN
Attorney General of North Carolina
SRIPRIYA NARASIMHAN
Deputy General Counsel
*Attorneys for Plaintiff
the State of North Carolina*

PETER F. NERONHA
Attorney General of Rhode Island
MICHAEL W. FIELD
Assistant Attorney General
*Attorneys for Plaintiff
the State of Rhode Island*

T.J. DONOVAN
Attorney General of Vermont
ELEANOR SPOTTSWOOD
Assistant Attorney General

*Attorneys for Plaintiff
the State of Vermont*

ROBERT F. FERGUSON
Attorney General of Washington
JEFFREY T. SPRUNG
Assistant Attorney General
*Attorneys for Plaintiff
the State of Washington*

Dated: November 1, 2022

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General of Oregon

/s/ J. Nicole DeFever
(as authorized on 08/01/22)
J. NICOLE DEFEVER,
CA Bar No. 191525
Senior Assistant Attorney General
*Attorneys for Plaintiff-Intervenor
the State of Oregon*

/s/ Kenneth J. Connelly
KENNETH J. CONNELLY, AZ Bar
No. 25420
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
Telephone: (480) 444-0020
Facsimile: (480) 444-0028
Email: kconnelly@ADFlegal.org
*Counsel for Defendant-Intervenor
March for Life Education and Defense
Fund*