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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,
ST. MARY'S HOME, *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://perma.cc/2XH8-MDBX>).
- 22 5. On August 17, 2021, the Court held a case management conference. The Court
23 granted Federal Defendants’ request to stay the case and directed “counsel . . . to
24 e-file a joint status report every three months.” ECF No. 467.
- 25 6. The Federal Defendants published a notice of proposed rulemaking on February
26 2, 2023, that would “amend regulations regarding coverage of certain preventive
27 services under the Patient Protection and Affordable Care Act, which requires
28

1 non-grandfathered group health plans and non-grandfathered group or individual
2 health insurance coverage to cover certain contraceptive services without cost
3 sharing.” U.S. Dep’t of Treasury, U.S. Dept’t of Labor, & Dep’t of Health &
4 Human Servs., *Coverage of Certain Preventive Services Under the Affordable*
5 *Care Act* (Feb. 2, 2023) (available at <https://perma.cc/L58Q-VY4Q>).

- 6 7. The Court held another status conference on February 7, 2023. After the
7 conference, the Court (1) ordered that the case should remain stayed and (2)
8 directed the parties to attach to this joint status report any comments on the notice
9 of proposed rulemaking submitted by Plaintiffs or intervenors. ECF No. 489.
- 10 8. The comment period for the proposed rule closed on April 3, 2023. The Federal
11 Defendants received more than 44,000 comments on the proposed rule.
- 12 9. Attached as Exhibit A to this status report are the comments of the Plaintiff States
13 on the proposed rule. Attached as Exhibit B to this status report are the comments
14 of the Becket Fund, counsel to Intervenor-Defendant Little Sisters of the Poor St.
15 Mary’s Home, on the proposed rule. Attached as Exhibit C to this status report
16 are the comments of Alliance Defending Freedom, counsel to Intervenor-
17 Defendant March for Life, on the proposed rule.
- 18 10. To allow time for a full evaluation of the more than 44,000 comments received,
19 Federal Defendants propose that the case remain stayed and that Federal
20 Defendants continue to file status reports every 90 days to apprise the Court of
21 the status of the rulemaking and their position on the need for a continued stay.
22 The next status report will therefore be due on August 1, 2023.
- 23 11. Plaintiff States do not oppose the case remaining in its current posture.
- 24 12. Intervenor-Defendant March for Life concurs in the federal government’s
25 proposal of a continued stay.
- 26 13. Intervenor-Defendant Little Sisters of the Poor believe the stay should be lifted
27 and the Court should decide the long-pending motions for summary judgment.
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1 The religious exemption is the law of the land, and it has been now for years. The
2 federal government plans to keep it in place, and the States still purport to
3 challenge it. Waiting an unknown number of months, for unknown tweaks to the
4 law that may or may not ever be made, does not make sense. The 2024
5 presidential election is already starting and the contraceptive mandate issue is now
6 in danger of lingering into a fourth presidential administration.
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1 Dated: May 1, 2023

Respectfully submitted,

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