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1	IN THE UNITED STATE	S DISTRICT COURT		
12	FOR THE NORTHERN DISTRICT OF CALIFORNIA			
13	OAKLAND DIVISION			
15 16 17 18 19	STATE OF CALIFORNIA, et al., Plaintiffs, v. XAVIER BECERRA, Secretary of Health and Human Services, et al., Defendants,) (Case No.: 4:17-cv-5783-HSG) (JOINT STATUS REPORT) () () () () ()		
21 22 23 24	and, THE LITTLE SISTERS OF THE POOR, ST. MARY'S HOME, et al., Defendant-Intervenors)))))		
24 25 26 27 28	On August 17, 2021, the Court stayed this case and ordered the parties to file state reports every three months. ECF No. 467. On January 30, the Court directed the partie file status reports every 120 days. ECF No. 508. Defendants filed their most recent state.			

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report on May 29, 2024, ECF No. 510, and their next status report would have been due September 29, 2024. On September 5, 2024, the Court directed "Defendants to file a joint status report addressing the status of the rulemaking and the need for a continued stay by September 13, 2024." ECF No. 514. The parties report as follows:

- 1. This case concerns the validity of two rules, one creating a moral exemption and one expanding a religious exemption to the rules establishing the contraceptive coverage requirement. *See* Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
- 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366, 368, 370, as well as supplemental briefs addressing the Supreme Court's decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), *see* ECF Nos. 433, 435, 437, 438, 440.
- 3. On August 16, 2021, Federal Defendants announced that "[t]he Departments [of Health and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process." CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (available at https://perma.cc/2XH8-MDBX).
- 4. The Federal Defendants published a notice of proposed rulemaking on February 2, 2023, that would "amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act, which requires non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage to cover certain contraceptive services without cost sharing." U.S. Dep't of Treasury, U.S. Dep't of Labor, & Dep't of Health & Human Servs., *Coverage of Certain Preventive Services Under the Affordable Care Act* (Feb. 2, 2023) (available at

3, 2023. The Federal Defendants received over 44,000 comments to the proposed rule.
5. The Court held its most recent status conference in this matter on February 7,
2023. After the conference, the Court (1) ordered that the case should remain stayed and (2)

https://perma.cc/L58Q-VY4Q). The comment period for the proposed rule closed on April

- 2023. After the conference, the Court (1) ordered that the case should remain stayed and (2) directed the parties to attach to their next joint status report any comments on the notice of proposed rulemaking submitted by Plaintiffs or intervenors. ECF No. 489.
- 6. The parties filed a status report with the comments of the Plaintiffs and intervenors on the notice of proposed rulemaking on May 1, 2023. ECF No. 493. The parties filed further status reports on August 1, 2023, ECF No. 501; October 30, 2023, ECF No. 503; January 29, 2024, ECF No. 507; and May 29, 2024, ECF No. 510.
 - 7. The parties' May status report stated:

[T]he Office of Management and Budget periodically issues a Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda), which reports on administrative agencies' planned regulatory actions. The Fall 2023 Unified Agenda, which is the most recent Unified Agenda as of this filing, states that Federal Defendants expect to publish the Final Rule in August 2024. Executive Office of the President of the United States, Office of Information and Regulatory Affairs, Office of Management and Budget, HHS/CMS, Coverage of Certain Preventive Services Under the Affordable Care

Act, available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AU94.

ECF No. 510, at 3.

8. The Federal Defendants can report that review and assessment of the comments to the proposed rule, including comments from Plaintiffs and Intervenors, is ongoing. The expected publication date announced in the Fall 2023 Unified Agenda was not met because of the agencies' need to prioritize other critical rulemakings, including the final rules implementing the Mental Health Parity and Addiction Equity Act which were promulgated on September 9, 2024. See Centers for Medicare & Medicaid Servs., The Mental Health Parity and Addiction Equity Act, https://www.cms.gov/marketplace/private-health-insurance/mental-health-parity-addiction-equity#2024mhpaearegulations. The Spring 2024

Unified Agenda, which is the most recent Unified Agenda as of this filing, states that the Federal Defendants expect to publish the Final Rule in December 2024. Executive Office of the President of the United States, Office of Information and Regulatory Affairs, Office of Management and Budget, HHS/CMS, Coverage of Certain Preventive Services Under the Affordable Care Act. available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=0938-AU94.

- 9. Federal Defendants propose that this case remain stayed, with the parties to file a further status report on January 15, 2025.
 - Plaintiff States do not oppose the case remaining in its current posture. 10.
- 11. Intervenor The Little Sisters maintain their position that the stay should be lifted and the Court should decide the long-pending motions for summary judgment against the Plaintiff States and end this case.

The Plaintiff States have now demonstrated their willingness to live with the existing religious exemption in place for several years. That willingness proves, beyond any serious debate, that the Plaintiff States have no plausible claim that the religious exemption is causing them "irreparable harm."

The Little Sisters respectfully request that the Court resolve the matter against the Plaintiffs now or, at the latest, by January 19, 2025.

12. Intervenor-Defendant March for Life changes its previous position and now agrees with The little Sisters' ongoing position that the stay should be lifted and the motions for summary judgment decided given the extended delay in finalizing the proposed rule.

Dated: September 13, 2024 Respectfully submitted,

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