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

THE STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

Case No. 4:17-cv-05783-HSG

THE STATE OF OREGON, *et al.*,

Plaintiff-Intervenors,

**DEFENDANT-INTERVENOR
LITTLE SISTERS OF THE
POOR, ST. MARY'S HOME'S
NOTICE OF SUPPLEMENTAL
AUTHORITY**

v.

ROBERT F. KENNEDY JR., in his Official Capacity as
Secretary of the U.S. Department of Health & Human
Services, *et al.*

Defendants,

and,

THE LITTLE SISTERS OF THE POOR, ST. MARY'S
HOME, *et al.*,

Defendant-Intervenors.

1 The Little Sisters of the Poor St. Mary’s Home (Little Sisters) submit this notice of supplemental
 2 authority as relevant to the pending motions to dismiss or, in the alternative, to grant summary
 3 judgment (ECF Nos. 311, 366, 368, 370, 437).

4 On June 5, 2025, in *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review*
 5 *Commission*, the Supreme Court unanimously held that Wisconsin violated the Religion Clauses of
 6 the First Amendment by excluding Catholic Charities from a religious exemption from the state’s
 7 unemployment insurance tax. No. 24-154, 2025 WL 1583299 (U.S. June 5, 2025). *CCB* confirms that
 8 the Religion Clauses require judgment in favor of the Little Sisters, because this Court cannot
 9 constitutionally provide the relief sought by the States, which is the reimposition of a prior version of
 10 the Mandate that exempted churches but not the Little Sisters. *Little Sisters of the Poor Saints Peter*
 11 *& Paul Home v. Pennsylvania*, 591 U.S. 657, 666, 672 (2020).

12 In *CCB*, Wisconsin offered an exemption from its unemployment compensation program for
 13 “nonprofits ‘operated primarily for religious purposes.’” *CCB*, 2025 WL 1583299, at *2. The
 14 Wisconsin Supreme Court found that Catholic Charities Bureau did not qualify for the exemption
 15 because it does not “engage in proselytization” or “serve only Catholics.” *Id.* The U.S. Supreme Court
 16 unanimously reversed, with Justice Sotomayor’s opinion for the Court holding that the exemption
 17 denial violated “[t]he clearest command of the Establishment Clause’ ... that the government may
 18 not ‘officially prefe[r] one religious denomination over another’ by ‘differentiating between religions
 19 based on theological lines.’” *Id.* at *2, *5. The Court further held that this discrimination did not
 20 withstand strict scrutiny, in part because the lines drawn by the program were “vastly underinclusive
 21 when it comes to ensuring unemployment coverage for its citizens.” *Id.* at *8.¹

22 This decision reaffirms the Little Sisters’ argument that the Mandate—the one the plaintiff States
 23 ask this Court to re-impose—unconstitutionally discriminates between religions, triggering strict
 24 scrutiny under the First Amendment. *See* ECF No. 437 at 8-9; ECF No. 370 at 22-23. In *CCB*, the
 25 Catholic diocese was exempt, but Catholic Charities was not, because it engaged in service to those in
 26 need. *See CCB*, 2025 WL 1583299, at *15 (Thomas, J., concurring). Like the Wisconsin program, the
 27

28 ¹ The United States participated in the case as amicus in support of CCB.

1 Mandate the States ask this Court to reimpose offers an exemption to some religious groups, but not
2 others. The prior Mandate exempted “churches, their integrated auxiliaries, and conventions or
3 associations of churches, as well as ... *the exclusively religious activities* of any religious order.” 78
4 Fed. Reg. 39,870, 39,874 (July 2, 2013) (emphasis added). But under the prior Mandate, the Little
5 Sisters’ service to the elderly poor does not constitute exclusively religious activities. *See Little Sisters*
6 *of the Poor Saints Peter & Paul Home*, 591 U.S. at 666. The Little Sisters’ faith “requires provision
7 of charitable services,” rather than the exclusively religious activities envisioned by the Mandate’s
8 prior exemption. *CCB*, 2025 WL 1583299, at *6. The Little Sisters’ eligibility for the prior exemption
9 thus “turns on inherently religious choices ... not “secular criteria.”” *Id.* at *7. Because the Mandate’s
10 prior exemption “excludes religious organizations from an accommodation” based on their decisions
11 to serve the elderly poor and not to be run by a church, the Mandate “imposes a denominational
12 preference by differentiating between religions based on theological choices.” *Id.* at *7-8. It must
13 therefore withstand strict scrutiny.

14 *CCB* also bears on the application of strict scrutiny. In *CCB*, the Supreme Court held that
15 Wisconsin’s line-drawing was not “narrowly tailored to advance” its interests in “ensuring
16 unemployment coverage for its citizens” and in “avoid[ing] entangling the state with employment
17 decisions” regarding ministers. *Id.* at *8. The Court held that Wisconsin’s rule was both “vastly
18 underinclusive” and “overinclusive.” *Id.* at *8-9.

19 Wisconsin’s mandate was “vastly underinclusive” because it offered exemptions for “over 40
20 forms of ‘employment,’” and some of those exemptions “cover[ed] religious entities that provide
21 charitable services in a similar manner to petitioners.” *Id.* at *8. The same is true here. The Mandate
22 offers exemptions to businesses employing millions of American workers. ECF No. 370 at 4. Those
23 employers include churches ministering to the elderly poor but who are exempt “because the work is
24 done directly by the church itself or its ministers, rather than by a separate nonprofit organization
25 controlled by the church.” *CCB*, 2025 WL 1583299, at *8. Thus, the prior Mandate suffers from the
26 same kind of underinclusivity as the religious exemption in *CCB*.

27 *CCB* held that Wisconsin’s interest in limiting its exemption to ministerial employees was
28 overinclusive because it could not “explain why it declined to craft an exemption limited to employees

1 who are in fact tasked with inculcating religious doctrine.” *Id.* The prior Mandate similarly exempted
 2 churches as employers without differentiating between employees. 78 Fed. Reg. at 39,874.
 3 Wisconsin’s church exemption and the Mandate’s church exemption are both overinclusive because
 4 they “function[] at an organizational level, covering both the janitor and the priest in equal measure.”
 5 *CCB*, 2025 WL 1583299, at *8.

6 Now that the Supreme Court has unequivocally ruled that the type of system the States seek is
 7 unconstitutional, this Court should enter judgment against all the States’ claims and bring this 8-year-
 8 old lawsuit to a close without further delay.

9 Dated: June 10, 2025

Respectfully submitted,

10
 11 /s/ Mark L. Rienzi

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