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

THE STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

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,

Defendant-Intervenor,

and,

MARCH FOR LIFE EDUCATION AND DEFENSE FUND,

Defendant-Intervenor.

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

**DEFENDANT-INTERVENORS
LITTLE SISTERS OF THE
POOR, ST. MARY'S HOME
AND MARCH FOR LIFE
EDUCATION AND DEFENSE
FUND'S SUPPLEMENTAL
BRIEF**

Pursuant to this Court’s order of August 27, 2025, ECF No. 547, Defendant-Intervenors, Little Sisters of the Poor, St. Mary’s Home and March for Life Education and Defense Fund, jointly submit this supplemental brief. The vacatur of the Final Rules by *Pennsylvania v. Trump* does not moot this case. Order at 2, *Pennsylvania v. Trump*, No. 2:17-cv-4540 (E.D. Pa. Aug. 13, 2025).

ARGUMENT

Three principles of mootness doctrine confirm that this case is not moot. First, the suspension of challenged conduct does not moot an action “unless it is ‘absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Lackey v. Stinnie*, 145 S. Ct. 659, 669 (2025) (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 609 (2001)); accord *Fikre v. FBI*, 35 F.4th 762, 770 (9th Cir. 2022), *aff’d* 601 U.S. 234 (2024). Second, a case is not moot unless “it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012)); accord *Greer v. Cnty. of San Diego*, 127 F.4th 1216, 1223 (9th Cir. 2025); *Coastal Env’t Rts. Found. v. Naples Rest. Grp., LLC*, 115 F.4th 1217, 1221 (9th Cir. 2024). Third, an exception to mootness doctrine exists when alleged harm is “capable of repetition, yet evading review.” *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016); accord *Native Village of Nuiqsut v. BLM*, 9 F.4th 1201, 1209 (9th Cir. 2021). This exception applies where “(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Kingdomware Techs.*, 579 U.S. at 170 (cleaned up); accord *Native Village of Nuiqsut*, 9 F.4th at 1209.

Each of these principles counsels against mootness. Here, the district court’s vacatur of the Final Rules has already been appealed to the Third Circuit. Following the outcome there, it is likely to go to the Supreme Court. It is therefore not remotely “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Lackey*, 145 S. Ct. at 669. In fact, the long history of the contraceptive mandate litigation—which now features over a decade of executive and judicial reversals (and reversals of reversals)—makes it absolutely clear that that the allegedly wrongful behavior *should* be expected to recur. That means that the plaintiff States—which have asked for

1 different and broader relief than was sought in Pennsylvania—can still obtain meaningful and lasting
2 relief in this Court that the Pennsylvania vacatur does not provide them. This is not a case of mere
3 voluntary cessation, where the government has chosen to suspend the Final Rules; instead, the
4 government wants its rules to remain in place and is “vigorously defend[ing]” them. *Parents Involved*
5 *in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 702 (2007). At the very least, this case fits
6 squarely within the Ninth Circuit’s understanding of government action that is “capable of repetition,
7 yet evading review,” since it already has repeated multiple times. *California v. HHS*, 941 F.3d 410,
8 418 (9th Cir. 2019), *overruled on other grounds by*, *Little Sisters of the Poor Saints Peter & Paul*
9 *Home v. Pennsylvania*, 591 U.S. 657 (2020).

10 This Court has previously addressed the closely related question of whether an injunction in
11 another court should moot this case. In 2019, this Court granted a preliminary injunction to Plaintiff-
12 Intervenor Oregon while a nationwide injunction existed in Pennsylvania. *California v. HHS*, 390
13 F.Supp.3d 1061, 1066 (N.D. Cal. 2019). This Court held that “the existence of another injunction—
14 particularly one in a different circuit that could be overturned or limited at any time—does not” moot
15 the case or even “negate” purported “irreparable harm” of the parties. *Id.* at 1066. The Court reasoned
16 that “overlapping injunctions appear to be a common outcome of parallel litigation, rather than a
17 reason for the Court to pass on exercising its duty to determine whether litigants are entitled to relief.”
18 *Id.* at 1065. Before that, on December 21, 2017, this Court granted a nationwide injunction against the
19 interim final rules that preceded the final rules at issue here six days after Judge Beetlestone granted a
20 similar nationwide injunction on December 15, 2017, without addressing mootness. *California v.*
21 *HHS*, 281 F. Supp. 3d 806, 832 (N.D. Cal. 2017); *Pennsylvania v. Trump*, 281 F. Supp. 3d 553, 585
22 (E.D. Pa. 2017).

23 The Ninth Circuit has also had multiple opportunities to consider the question of mootness in this
24 case. Reviewing this Court’s 2017 preliminary injunction of the Interim Final Rules, the Ninth Circuit
25 considered whether the case had become moot, not because of the existing nationwide injunction in
26 *Pennsylvania*, but due to the final rules which had been issued but had not yet taken effect by the time
27 of the decision. *California v. Azar*, 911 F.3d 558, 569 (9th Cir. 2018). The panel held that the case was
28 not moot because the Final Rules had not yet taken effect at the time of its decision, but that a

1 nationwide injunction was inappropriate. *Id.* at 569, 582. In so holding, the Ninth Circuit observed that
2 among the problems caused by nationwide injunctions is their potential to limit “development” of the
3 law in the “various courts of appeals” and to burden “the equities of non-parties.” *Id.* at 583. Far from
4 finding the case moot, the panel suggested that litigation should have also continued pending Ninth
5 Circuit review, saying that the above issues were “magnified” by not forging ahead despite both the
6 nationwide injunction and a Ninth Circuit appeal. *Id.* at 583-84.

7 In 2019, the Ninth Circuit reviewed this Court’s grant of a preliminary injunction against the Final
8 Rules now at issue here. The Ninth Circuit again considered whether the case was moot, this time
9 because of a nationwide preliminary injunction issued by Judge Beetlestone. *California*, 941 F.3d at
10 418; *Pennsylvania v. Trump*, 351 F. Supp. 3d 791, 797-798 (E.D. Pa. 2019). The Court found that “no
11 court has adopted the view that an injunction imposed by one district court against a defendant deprives
12 every other federal court of subject matter jurisdiction over a dispute in which a plaintiff seeks similar
13 equitable relief against the same defendant.” 941 F.3d at 421.

14 Alternatively, the Ninth Circuit concluded that the exception to mootness applied for “cases
15 capable of repetition, yet evading review.” *Id.* at 423. This was so because the time between the
16 Pennsylvania and California injunctions was “too short” to litigate the merits of the Final Rules, and
17 because the Pennsylvania injunction had been appealed, resulting in a “reasonable expectation” that
18 the Pennsylvania injunction would be reversed. *Id.* Both conditions are still true here, where the
19 Pennsylvania order has been in place less than a month, and it has been appealed by the defendants
20 and defendant-intervenor in that case. *See, e.g., Kingdomware Techs.*, 579 U.S. at 170 (“a period of
21 two years is too short to complete judicial review”).

22 The reasoning of this Court and the Ninth Circuit applies here, where a remedy imposed in
23 Pennsylvania overlaps with a potential remedy initiated in this Court. The Pennsylvania vacatur could
24 still be “overturned or limited at any time” and it does not relieve this Court of its “duty to determine”
25 these litigants’ rights to relief.

26 The repetitive history of this case also counsels that a snapshot of an out-of-circuit decision in
27 favor of other states does not moot this case until it is no longer subject to appeal. Litigation over the
28 contraceptive mandate has been ongoing in courts around the country since 2011, through four

1 presidential administrations, with the Supreme Court weighing in numerous times. *See Little Sisters*
2 *of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014); *Wheaton Coll. v. Burwell*, 573 U.S.
3 958 (2014); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Zubik v. Burwell*, 576 U.S.
4 1049 (2015); *Zubik v. Burwell*, 578 U.S. 403 (2016); *Little Sisters of the Poor*, 591 U.S. 657. The
5 parties have been litigating their claims in this Court for eight years now, and the issues in this case
6 are likely to return to the Supreme Court. The issues pressed by the States in this case, including claims
7 not present in the Pennsylvania litigation, will continue to be live until the appeals in each of the related
8 cases are exhausted, and this Court should not jettison years of litigation based on a snapshot of one
9 district court opinion that is already being appealed.

10 Nor is this case entirely unique. Other district court judges in the Ninth Circuit have issued similar
11 rulings in cases involving out-of-district nationwide injunctions under the APA. For example, Judge
12 Chen held that a recent injunction issued against Title X regulations in the Eastern District of
13 Washington did not “obviate this Court’s duty to resolve the dispute before it” relating to the same
14 regulations. *California v. Azar*, 385 F. Supp. 3d 960, 970 n. 1 (N.D. Cal. 2019), *rev’d on other grounds*,
15 950 F.3d 1067 (9th Cir. 2020). A Maryland district court subsequently found that a previous
16 nationwide injunction stopping restrictions on Title X funding did not preclude it from also enjoining
17 the regulations under the APA. *Mayor & City Council of Balt. v. Azar*, 392 F. Supp. 3d 602, 618-19
18 (D. Md. 2019) (“The earlier granting of a nationwide injunction does not prevent this Court from
19 entering an overlapping injunction if all of the preliminary injunction factors are met in this case.”).

20 Other federal courts have done the same in similar contexts. For example, when considering a
21 motion for preliminary injunction under the APA to pause the ending of the DACA program, an
22 Eastern District of New York judge found that an injunction already issued by the Northern District
23 of California did not eliminate irreparable harm. *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 418,
24 435 (E.D.N.Y. 2018). “Defendants cite no authority for the proposition that the Plaintiffs cannot
25 establish irreparable harm simply because another court has already enjoined the same challenged
26 action.” *Id.* at 435.

27 And, citing this Court’s preliminary injunction order, the District Court for the District of
28 Columbia held that “courts routinely grant follow-on injunctions against the Government, even in

instances when an earlier nationwide injunction has already provided plaintiffs in the later action with their desired relief.” *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 60 (D.D.C. 2020) (collecting cases); *see also Regeneron Pharms., Inc. v. HHS*, 510 F. Supp. 3d 29, 41 n.4 (S.D.N.Y. 2020) (similar). The only published case we are aware of holding to the contrary did so in the context of an injunction entered by another district court in the same circuit. *Washington v. Trump*, No. 2:17-cv-141, 2017 WL 4857088, at *6 (W.D. Wash. Oct. 27, 2017). It is not applicable here because a Third Circuit ruling in *Pennsylvania v. Trump* will not be binding on this Court.

The Northern District of Texas recently found this principle applies in the vacatur context. *Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, 4:24-cv-461, 2025 WL 1782572, at *1 & n.7 (N.D. Tex. Feb. 19, 2025) (citing a joint status report, attached as Exhibit A, where all parties agreed the case wasn’t moot despite a vacatur by another district court). That makes sense. Whether a district court order halts enforcement of a rule by enjoining the government or by vacating the rule, the kind of relief ordered has no bearing on whether “it is ‘absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Lackey*, 145 S. Ct. at 669. In either case, the behavior will recur if the district court is reversed by either its court of appeals or the Supreme Court. Indeed, if this case is dismissed as moot and the Third Circuit reverses the Pennsylvania vacatur, the States’ recourse would be to return to this Court with a new complaint and force the Defendants and Defendant-Intervenors to litigate this case again starting from square one.

Finally, a decision that this case is moot would have severe practical consequences, magnifying and mimicking the harms of nationwide injunctions that the Ninth Circuit and the Supreme Court have already recognized. *See California*, 911 F.3d at 583; *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2559 (2025). For example, the first district court judge to grant vacatur of a regulation could extinguish litigation in every other jurisdiction in the country, rewarding races to the courthouse, encouraging judicial decisions made in haste, depriving nonparties of the chance to present facts and arguments, and preventing both the percolation of splits of authority and “the development of [the] law.” *California*, 911 F.3d at 583. This is particularly true in this case, where the Supreme Court has already struck down preliminary injunctions entered against the Final Rules at issue here. If this case is dismissed because of the Pennsylvania injunction, the Supreme Court will only have an

“asymmetrical[]” vehicle from Pennsylvania. *Trump*, 145 S. Ct. at 2559. And parties that have already spent nearly a decade litigating this case, including the Plaintiff States and Defendant-Intervenors, will be without recourse in the Third Circuit case. These considerations—which neither the Ninth Circuit nor the Supreme Court suggested were limited to one and only one kind of relief—and the Ninth Circuit’s instructions not to stay proceedings, weigh against a mootness finding.

CONCLUSION

The case is not moot. Defendant-Intervenors respectfully request that the Court rule in their favor on the pending motions.

Dated: September 12, 2025

Respectfully submitted,

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/s/ Mark L. Rienzi

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Education and Defense Fund

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**CARROLL INDEPENDENT SCHOOL
DISTRICT,**

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
EDUCATION; DENISE CARTER**, in her
official capacity as Acting Secretary of
the United States Department of
Education; **ASSISTANT SECRETARY FOR
CIVIL RIGHTS AT THE UNITED STATES
DEPARTMENT OF EDUCATION**, in her
official capacity; **UNITED STATES
DEPARTMENT OF JUSTICE; PAM BONDI**,
in her official capacity as Attorney
General of the United States; and
**ASSISTANT ATTORNEY GENERAL FOR
THE CIVIL RIGHTS DIVISION OF THE
UNITED STATES DEPARTMENT OF
JUSTICE**, in her official capacity,

Defendants.

Case No.: 4:24-cv-00461-O

JOINT STATUS REPORT

Pursuant to this Court's February 11 order, ECF No. 84, the parties submit this joint status report. The parties agree that this case is not moot.

This lawsuit challenges a Department of Education rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 89 Fed. Reg. 33,474 (Apr. 29, 2024) ("2024 Title IX Rule"). On January 9, the United States District Court for the Eastern District of Kentucky entered judgment vacating the Rule. *See Tennessee v. Cardona*, No. 2:24-072-DCR, ECF No. 143, 2025 WL 63795, at *7 (E.D. Ky. Jan. 9, 2025), *judgment*

corrected, ECF No. 146 (Jan. 10, 2025). The deadline for Defendants to appeal that judgment is March 10, 2025. Fed. R. App. P. 4(a)(1)(B).

Accordingly, the parties agree that this case remains a live controversy until either (1) the *Tennessee* judgment is affirmed on appeal and no further appellate review is available, or (2) the deadline to appeal passes without Defendants noticing an appeal.

Respectfully submitted this 17th day of February, 2025.

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**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that on February 17, 2025, this document was served on all counsel of record via the Court's CM/ECF system.

/s/ Mathew W. Hoffmann

Mathew W. Hoffmann

Counsel for Plaintiff Carroll ISD