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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

ERIC D. HARGAN, in his official capacity as Acting Secretary of the U.S. Department of Health and Human Service, et al.,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR JEANNE JUGAN RESIDENCE,

Defendant-Intervenor,

and,

MARCH FOR LIFE EDUCATION AND DEFENSE FUND,

Defendant- Intervenor.

**Pro hac vice forthcoming*

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

INTERVENOR'S NOTICE OF MOTION AND MOTION TO INTERVENE, WITH MEMORANDUM OF POINTS AND AUTHORITIES

Date: March 01, 2018
Time: 2:00 pm
Dept.: Courtroom 2
Judge: Hon. Haywood S. Gilliam, Jr.

Date Filed: December 08, 2017

Trial Date: Not yet set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitutional Provisions Statutes:

Regulations:

TO THE PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 01, 2018 in Courtroom 2 of the above-entitled Court, located at 1301 Clay Street, Oakland, California, March for Life Education and Defense Fund (hereinafter "March for Life") will and hereby does move this Court to permit it to intervene in this matter in order to protect and defend its right to operate its organization in a manner consistent with its moral convictions and its reason for being, free from the imposition of potentially crippling fines.

Proposed Defendant-Intervenor March for Life, pursuant to Federal Rule of Civil Procedure 24, seeks intervention as of right, or in the alternative, permissive intervention. Plaintiffs have stated that they are not prepared to stipulate to March for Life's intervention at this time, while Defendants take no position on it.

March for Life and certain of its employees filed suit against the federal government in July 2014, seeking relief from the contraceptive mandate rooted in the Affordable Care Act. That mandate would have required it to provide and receive health insurance coverage for abortifacient drugs and devices, in direct contravention of its moral convictions as well as its constitutional and statutory rights. Although March for Life eventually secured a permanent injunction from the United States District Court for the District of Columbia, the federal government appealed that judgment. Its case against the federal government is thus still ongoing, and March for Life continues to face the possibility that it will be bound by the contraceptive mandate and all its attendant legal and existential threats.

Meanwhile, in part because of the litigation efforts of March for Life and myriad similarly situated moral and religious organizations who object to the contraceptive mandate, the federal government recently revised its regulations in October 2017—in the form of two Interim Final Rules (hereinafter "IFRs")—to provide much-needed exemptions based upon the moral and religious beliefs of, *inter alia*, nonprofit organizations. But this action, filed by Plaintiff States, threatens to undo the protections contained in the federal government's revised regulations, and

produce a ruling that contradicts the injunctive relief already secured by March for Life. As a result, March for Life seeks to intervene in this matter to protect its interests.

March for Life is entitled to intervention as of right because its motion is timely; it has a significantly protectable interest in this action; the disposition of this action will almost certainly impair or impede its ability to protect its interest; and no parties will adequately represent its interests. In addition to March for Life being entitled to intervention as of right, it is also entitled to permissive intervention, because it has an independent ground for jurisdiction, it has a defense which shares a question of law and fact in common with Plaintiffs' claims, and its motion is timely.

WHEREFORE, March for Life respectfully requests that this Court grant it the right to intervene in this matter. This request is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the supporting declaration of Jeanne Mancini, President of March for Life, along with the papers, records, and evidence on file in this action, as well as any other written or oral evidence that may be presented at or before the time this motion is heard by the court. A proposed order has been filed herewith.

INTRODUCTION

The Affordable Care Act's (hereinafter "ACA") contraceptive mandate, by requiring March for Life to provide insurance coverage for abortifacient drugs and devices, compelled the organization to act contrary to its moral convictions. Those moral convictions include the position that all unborn children have inestimable worth and dignity and therefore should never be aborted. The federal government's recent revision of its regulations pertaining to the contraceptive mandate in October 2017—which now include exemptions based not only on religious beliefs but moral convictions as well—was a welcome sign that years of litigation and importuning the government for relief had finally borne fruit in producing a solution that respected the rights of all. Plaintiff States now threaten to upset that equipoise by bringing this suit, in which they seek a nationwide injunction that threatens to eviscerate the nascent exemptions granted by the federal government. In order to ensure that these exemptions remain intact and that its ongoing litigation efforts are not hampered by a potentially contradictory ruling, March for Life is entitled to intervene in this matter.

STATEMENT OF THE ISSUES

Whether Proposed Defendant-Intervenor March for Life should be granted intervention as of right to defend its interests in this matter, the resolution of which threatens to eliminate the exemptions recently granted by the federal government to non-religious non-profits which hold moral convictions against abortion. Alternatively, whether Defendant-Intervenor March for Life should be granted permissive intervention.

STATEMENT OF FACTS

A. Proposed Defendant-Intervenor March for Life

March for Life is a pro-life, non-religious non-profit advocacy organization that has existed for over 40 years precisely to oppose the destruction of human life at any stage before birth, including by abortifacient methods that may act after the union of a sperm and ovum. Mancini Decl. ¶¶ 3, 4, 6, 11. March for Life is one of the oldest pro-life organizations in the nation. *Id*. at ¶ 3. It was founded in 1973, following the Supreme Court's landmark decision in *Roe v. Wade*,

when a group of pro-life leaders gathered to express concern that the first anniversary of the decision would come and go with no recognition. *Id*. at ¶ 6. Based on scientific fact and medical knowledge, March for Life holds as a basic tenet that human life begins at conception, and thus each such life should be protected and certainly not intentionally terminated by abortion. *Id*. at ¶¶ 9-11. March for Life's founding documents and articles of incorporation list this belief as an underlying principle. *Id*. at ¶ 12.

The hallmark of March for Life is its annual march on the Supreme Court and United States Capitol, held every year on or around January 22, the anniversary of *Roe v. Wade*. March for Life generally organizes for the purpose of protecting the lives of unborn children, promoting respect for the worth and dignity of all unborn children, and opposing abortion in all its forms. *Id*. at ¶¶ 4, 7. March for Life's commitment to opposing all abortion includes moral opposition to providing coverage for abortion or abortifacients (and counseling in favor of the same) in their health insurance plan. *Id*. at ¶¶ 11, 15-17. March for Life believes that any hormonal drug or device within the ACA's contraceptive mandate is an abortifacient, because such drugs and treatments may prevent or dislodge the implantation of a human embryo after fertilization, thereby causing its death. *Id*. at 15. The provision of these abortifacients thus runs directly contrary to March for Life's moral conviction that life begins at conception and thus should be protected. *Id*. at ¶ 16.

B. The ACA, the Contraceptive Mandate, and March for Life

In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 30, 2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 (March 30, 2010), together known as the Affordable Care Act. The ACA regulates the national health insurance market by, *inter alia*, directly regulating "group health plans" and "health insurance issuers." The ACA requires that some health plans provide coverage for "preventive services," including "preventive care" "with respect to women." 42 U.S.C. § 300gg-13(a) & (a)(4). Although the ACA did not originally specify what preventive care for women included, the Health Resources and Services Administration (HRSA), within the Department of Health and Human Services (HHS), eventually issued

guidelines on August 1, 2011 providing that women's preventive care would include "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." HRSA, Women's Preventive Services Guidelines (Aug. 1, 2011). Among these items are included hormonal oral and implantable contraceptives, IUDs, and products categorized as emergency contraception, all of which March for Life believes can prevent the implantation of a newly conceived human embryo, thereby causing an abortion. Mancini Decl. ¶ 15.

On the same day that HRSA issued these guidelines, the federal government promulgated another regulation which exempted some entities that objected to providing contraceptive coverage. 76 Fed. Reg. 46,621 (Aug. 3, 2011); *see also* 45 C.F.R. § 147.130(a)(1)(iv)(A)-(B). This second regulation granted HRSA "discretion to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46,621, 46,623. The term "religious employer" referred, in general, to churches, religious orders, and their integrated auxiliaries. *See id.* at 46,626; 45 C.F.R. § 147.131(a) (final exemption). The exemption did not include non-religious entities like March for Life, even though its moral convictions mirror the religious beliefs of those churches opposing abortion. Mancini Decl. ¶ 15, 17.

More regulations followed. *See, e.g.*, 78 Fed. Reg. 8461 (Feb. 6, 2013) (attempting to simplify the religious employer exemption to exempt all churches, integrated auxiliaries, religious orders, and church congregations); 77 Fed. Reg. 16,501, 16,503 (Mar. 21, 2012) (presenting "questions and ideas" to "help shape" a discussion of how to "maintain the provision of contraceptive coverage without cost sharing," while accommodating the religious beliefs of non-exempt religious organizations); 78 Fed. Reg. at 8,463 (proposing to "accommodate" non-exempt religious organizations by allowing their plans not to cover the mandated items, but requiring the entities to submit a form causing their insurers and third party administrators to provide "separate" payments to their plan participants for the same objectionable items); 79 Fed. Reg. 51,092 (Aug. 27, 2014) (augmenting the "accommodation" for non-profit religious organizations by allowing them to

submit a letter to HHS instead of a form to their insurer as part of the accommodation); 79 Fed. Reg. at 51,122 (issuing proposed rules whereby the accommodation would be extended to include for-profit corporations who objected to the contraceptive mandate).

Notwithstanding this flurry of regulatory activity and the development of so-called "accommodations" and exemptions for religious and even for-profit corporations (some of which did not even object to abortion, abortifacient drugs or devices, or the contraceptive mandate),[1] the federal government never saw fit to accommodate or exempt pro-life, non-religious, non-profit organizations such as March for Life. This was so even though March for Life's moral convictions prevented it from complying with the contraceptive mandate and mirrored the beliefs of other organizations who were eventually "accommodated" or exempted.

C. March for Life Lawsuit

Given the arbitrary and capricious nature of the federal government's regulatory rollout of the ACA, and the unconstitutional imposition represented by the contraceptive mandate, March for Life filed suit against the government. *See* Dkt. No. 1, *March for Life, et al. v. Burwell, et al.*, No. 14-cv-1149 (July 7, 2014 D.D.C.). March for Life argued that the contraceptive mandate was arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. § 706(2)(A)) and constituted a violation of the Fifth Amendment's guarantee of equal protection. On August 31, 2015 the district court found that while it would be "difficult to imagine a more textbook example of the trait HHS purports to accommodate" in regulating the ACA than March for Life, the agency nonetheless was "excised from the fold because it is not 'religious.'" *March for Life, et al. v. Burwell, et al.*, 128 F. Supp. 3d 116, 127 (D.D.C. 2015). The Court found that such treatment was "nothing short of regulatory favoritism" and thus a violation of equal protection, and accordingly issued a permanent injunction in favor of March for Life. *Id.* at 127. On October 28, 2015 the federal government filed its notice of appeal, and on June 17, 2016 the Court of Appeals for the

[1] Which included exemptions for tens of millions of people by declaring that "grandfathered" health plans, even those administered by those with no religious or moral objection to abortion or abortifacient drugs, need not follow the preventive service mandate. 42 U.S.C. § 18011(3)-(4).

D.C. Circuit ordered that the case be held in abeyance pending the resolution of *Priests for Life v. HHS* (Nos. 13-5368, 13-5371, 14-5021) in the wake of the Supreme Court's remand in *Zubik v. Burwell*, 136 S. Ct. 1557 (2016). *See* Clerk's Order, *March for Life v. Burwell*, No. 15-5301 (D.C. Cir. Feb. 24, 2016). Thus March for Life's case is ongoing and its relief not cemented or final.

D. The Interim Final Rules Underlying this Case

President Trump signed an Executive Order pertaining to religious liberty on May 4, 2017, which order instructed HHS to "consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate." Exec. Order No. 13,798, 82 Fed. Reg. 21,675 (May 4, 2017). On October 16, 2017 HHS complied with that order by issuing the two IFRs central to this lawsuit. 82 Fed. Reg. at 47,792. The first IFR protects those with religious objections, while the second protects those with moral objections to the contraceptive mandate. The "moral" IFR, of particular note here because March for Life is a pro-life non-religious non-profit, exempts, *inter alia*, any nonprofit from having to provide contraceptive coverage in their health care plans "to the extent [that it objects] based on [its] sincerely held moral convictions." 45 C.F.R. § 147.133(a)(2). It represents the first instance in which the federal government has accommodated non-religious but morally convicted non-profits from the unconstitutional burden represented by the contraceptive mandate. In promulgating and justifying these new regulations, the federal government specifically noted the lawsuit filed by March for Life and concluded that the "United States has a long history of providing conscience protections in the regulation of health care for entities and individuals with objections based on religious beliefs *and* moral convictions." 82 Fed. Reg. at 47,792 (emphasis added).

E. The Instant Action

California filed this action on the very day the new IFRs were issued, seeking a declaration that the exemptions created by the IFRs are unlawful, and a nationwide injunction against them Dkt. 1. California then filed an amended complaint on November 1, 2017, adding the states of Delaware, Maryland, New York, and Virginia as co-plaintiffs. Dkt. 24. If Plaintiff States are granted the relief they seek in this litigation, March for Life and other non-religious, non-profits

may be compelled to choose between violating their moral convictions by providing health care coverage which provides abortifacients, or hewing to those convictions under pain of crippling fines leading to the likely extinction of their organizations and charitable missions. Mancini Decl. ¶¶ 16-20.

ARGUMENT

Federal Rule of Civil Procedure 24 allows both intervention as of right and permissive intervention. The Ninth Circuit has repeatedly expressed its strong preference for liberal evaluation of the requirements in favor of granting intervention. "[T]he requirements for intervention are broadly interpreted in favor of intervention," *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004), precisely because a "liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995) (internal citation omitted) (abrogated by further broadening of intervention under a specific statute in *Wilderness Soc'y v. United States Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011)). As shown below, March for Life satisfies all of the intervention requirements for intervention by right, as well as permissive intervention.

I. March for Life is Entitled to Intervene as of Right.

Given the Ninth Circuit's liberal policy in favor of intervention, a court must broadly construe the following four criteria when evaluating a request to intervene by right under Fed. R. Civ. P. 24(a)(2): (1) the application must be timely; (2) the applicant must have a significant protectable interest in the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest. *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006); *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Courts "are guided primarily by practical and equitable considerations" in assessing these criteria. *Donnelly*, 159 F.3d at 409.

A. March for Life's Motion is Timely.

The Ninth Circuit gauges timeliness by considering "three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997) (internal quotation marks and citations omitted). Even a motion filed four months after the filing of a lawsuit is considered "a very early stage" under Ninth Circuit jurisprudence. *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995).

Here, March for Life has filed its motion approximately two months after the original complaint, and approximately one month since the amended complaint was filed in this matter. No Defendant has yet filed an answer. Moreover, Proposed Defendant-Intervenor does not seek to alter any of the Court's current deadlines (briefing or otherwise), so there can be no argument that intervention by March for Life will result in any prejudice to the parties. *See Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 857 (9th Cir. 2016) (holding that "the only 'prejudice' that is relevant under this factor is that which flows from [the] prospective intervenor's" delay) (citation omitted). March for Life has therefore satisfied the timeliness factor.

B. March for Life Has a Significantly Protectable Interest in the Subject Matter of this Action.

A proposed intervenor will be found to have a "significant protectable interest in an action if (1) it asserts an interest that is protected under some law, and (2) there is a relationship between its legally protected interest and the plaintiff's claim." *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (quoting *Donnelly*, 159 F.3d at 409). Granting intervention is particularly appropriate where "the injunctive relief sought by plaintiff will have direct, immediate, and harmful effects upon [the proposed intervenor's] legally protectable interests." *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001).

Here, the Plaintiff States seek to enjoin the "moral" IFR (along with its religious counterpart), which now stands as a regulatory protection for March For Life and other like organizations who object to complying with the ACA's contraceptive mandate on moral, rather than religious,

grounds. Plaintiff States also seek to nullify through a declaratory judgment the federal government's recent and proper recognition—which comes as a result of the litigation efforts of March for Life and many others—that moral convictions, much like religious beliefs, are a proper predicate for granting exemptions to the contraceptive mandate. *See* Am. Compl., Dkt. No. 24 at 30 (seeking to have the IFRs entirely set aside as a violation of the APA). Put simply, the relief the Plaintiff States seek here would eliminate the very protections March for Life has been fighting for since the ACA passed. Granting such relief would compromise March for Life's ability to operate its organization and fulfill its mission in accord with its moral convictions. Indeed, such relief may force March for Life to decide between hewing to its convictions and suffering penury as a result, or complying with the contraceptive mandate and ignoring its moral conscience altogether. Because such a burden would clearly have "direct, immediate, and harmful effects upon" March for Life, the significant protectable interest factor is satisfied. *See, e.g.*, *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (finding a significant protectable interest where federal law "provide[d] an important layer of protection" to intervenors, and where intervenors would "likely . . . be forced to choose between adhering to their beliefs and losing their professional licenses" in the event such a law were to be struck down as a result of the underlying litigation). March for Life clearly has a substantial legal interest in seeing that the IFRs are not eliminated or even weakened by the relief Plaintiffs request.

C. March for Life's Ability to Protect Its Interest May Be Impaired.

A significantly protectable interest is very closely linked with the third requirement for intervention of right—that the outcome of the challenge may impair the proposed intervenor's interest. Indeed, once such an interest obtains, a court should have "little difficulty concluding that the disposition of th[e] case may, as a practical matter, affect" the intervenor. *Citizens for Balanced Use v. Montana Wilderness Association*, 647 F.3d 893, 898 (9th Cir. 2011) (citation omitted).

The distinct possibility of impairment is clear here. If the Plaintiff States prevail, March for Life would be stripped of a vital and hard-fought regulatory exemption that, going forward,

would permit it to work consistent with its moral convictions, unhindered by the looming prospect of crippling fines. Moreover, because March for Life's lawsuit is not yet resolved, any resolution that holds the "moral" IFR unlawful would be in tension with the injunctive relief previously granted to March for Life, potentially making it more difficult for March for Life to ultimately prevail in that case once it is actively resumed. Finally, if March for Life is not permitted to intervene here, it "will have no legal means to challenge [any] injunction" that might be granted by this Court. *Forest Conservation Council*, 66 F.3d at 1498; *see Lockyer*, 450 F.3d at 443 (finding impairment where proposed intervenors would have "no alternative forum . . . [to] . . . contest [the] interpretation" of a law that was "struck down" or had its "sweep substantially narrowed").[2] Under such circumstances, March for Life satisfies the impairment factor.

D. No Existing Parties to the Action Adequately Represent March for Life.

A proposed intervenor can establish this factor if it "shows that representation of [its] interest '*may be*' inadequate," and "the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972) (emphasis added). A proposed intervenor "should be treated as the best judge of whether the existing parties adequately represent . . . [its] interests, and . . . any doubt regarding adequacy of representation should be resolved in [its] favor." 6 Edward J. Brunet, Moore's Federal Practice § 24.03[4][a] (3d ed. 1997); *see also In Def. of Animals v. United States Dep't of the Interior*, No. 2-10-cv-1852, 2011 WL 1085991 (Mar. 21, 2011 E.D. Cal 2011) (same). As demonstrated below, the interests of March for Life are not adequately represented by any party in this action.

Although both seek to vindicate the new IFRs, the federal government's "representation of the public interest" is not "identical to the individual parochial interest" of March for Life in the instant action. *Citizens for Balanced Use*, 647 F.3d at 899 (internal quotations and citations omitted).

[2] March for Life also has an interest in this case in light of Plaintiff States' baseless allegation the new "moral" IFR "frustrat[es] the scheme and purpose of the ACA." Am. Compl. at ¶ 102. This allegation and others like it are directed at organizations like March for Life, which should be permitted to intervene to not only respond, but to fully develop the factual record regarding the claim that its moral convictions somehow frustrate the "scheme and purpose" of the ACA.

This distinction is sufficient, by itself, to merit a grant of intervention. *See Forest Conservation*, 66 F.3d at 1499 (finding minimal burden of establishing inadequate representation was met where federal government defendant was "not charged with a duty to represent . . . asserted interests [of proposed intervenor] in defending against injunction"); *see also Cal. Dump Truck Owners Ass'n v. Nichols*, 275 F.R.D. 303, 308 (E.D. Cal. 2011) (even when government agency and proposed intervenor shared the same "ultimate objective," finding inadequate representation where the former's interest was generally to account for the "economic impact its rules [would] have on the state *as a whole*," while the latter's interests were "more '*narrow and parochial*'") (emphasis added). Indeed, "[i]nadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public." *Id*. (quoting 3B Moore's Federal Practice, ¶ 24.07[4] at 24–78 (2d ed. 1995)). That is particularly the case here, where March for Life's interest lies solely in ensuring that it can operate its organization consistent with its moral conviction free from the looming threat of government fines, whereas the federal government's interest is far more expansive and generalized. *See, e.g.*, 82 Fed. Reg. at 47,793 (introducing the IFRs as a way of "balanc[ing] the Government's interest in ensuring coverage for contraceptive and sterilization services" with the need for "conscience protections for individuals and entities with sincerely held religious beliefs in certain health care contexts"); 82 Fed. Reg. at 47,821-47,822 (estimating the number of persons affected by, and considering the cost of, initiating new IFRs).

This conclusion is only bolstered by the fact that the IFRs were prompted in part by the litigation efforts of March for Life and other organizations which endured protracted litigation battles with the federal government to oppose the contraceptive mandate in the first place. *See* 82 Fed. Reg. 47,797-47,799 (discussing effects of past and still-pending litigation on the development of regulations, specifically citing to March for Life's lawsuit, and conceding that the new IFRs are a result of the government's "reexamin[ation of] the exemption and accommodation scheme currently in place for the Mandate"). Under such circumstances, where the federal government clearly acted in response to the litigation efforts of March for Life and others, inadequacy of

representation is patent. *See, e.g.*, *Citizens for Balanced Use*, 647 F.3d at 900 (finding inadequate representation where government "issued the Interim Order . . . only reluctantly in response to successful litigation by" proposed intervenors).

In sum, while their ultimate goal may be the same, the interests of March for Life and the federal defendants are clearly distinct, and the federal government issued the IFRs as a result of protracted litigation with organizations like March for Life. Given these facts, it is clear that federal defendants will neither "advance the same arguments as" March for Life, nor will they "simply confirm" the interests of March for Life in this action. *Berg*, 268 F.3d at 823.[3] The guidance of the Supreme Court and the Ninth Circuit on this factor thus compels a conclusion that March for Life has met its minimal burden to establish that no adequate representation exists to protect its narrow and parochial interest in seeing that the "moral" IFR survives this litigation whole and undefiled.

II. March for Life Should Alternatively be Granted Permissive Intervention.

In addition to satisfying the requirements for intervention as of right, March for Life also satisfies those for permissive intervention. Federal Rule of Civil Procedure 24(b)(1) provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." In making this determination a court must also consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. Civ. R. P. 24(b)(3).

As already established, March for Life's motion is timely filed and will cause no undue delay or prejudice to the original parties. *See supra* at 10. March for Life has concurrently filed an appropriate pleading and seeks no delay in any of the Court's pending scheduling orders. Moreover, it is clear that March for Life's defenses "share[] with the main action a common question of law or fact." March for Life intends to defend the propriety of the exemption created

[3] Indeed, March for Life is the only pro-life but non-religious, non-profit defending the "moral" IFR, as Proposed Defendant-Intervenor Little Sisters of the Poor is protected under the "religious" IFR.

by the "moral" IFR, which defense arises directly from the challenge brought by the Plaintiff States in their Amended Complaint. Finally, because March for Life is the only party which is a non-religious, non-profit objecting to the contraceptive mandate, it believes it can provide this Court with a perspective it might not otherwise hear, thereby aiding in the disposition of the case. Accordingly, March for Life respectfully requests that this Court grant it permissive intervention in the event it is denied intervention as of right.

CONCLUSION

For the foregoing reasons, the Court should grant March for Life's motion to intervene as of right, or in the alternative its motion for permissive intervention.

Respectfully submitted this 8th day of December, 2017.

By: s/Brian R. Chavez-Ochoa

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