



COMMONWEALTH OF PENNSYLVANIA  
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May 3, 2019

Patricia S. Dodszuweit  
Clerk of Court  
U.S. Court of Appeals for the Third Circuit  
21400 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

By CM/ECF

**Re: *Commonwealth of Pennsylvania & State of New Jersey v. President United States of America et al., Nos. 17-3752, 18-1253, 19-1129, 19-1189***

Dear Ms. Dodszuweit:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees Commonwealth of Pennsylvania and State of New Jersey respectfully submit this letter to advise the Court that the Court of Appeals for the First Circuit issued a decision yesterday reversing the dismissal, on standing grounds, of a challenge brought by Massachusetts to the exemption rules at issue in this case.

*Massachusetts v. HHS*, 2019 WL 1950427 (1st Cir. May 2, 2019). Both appellate courts to address the question have now concluded, as the district court did here, that states have standing to challenge the rules. *Id.* at \*9–13; *California v. Azar*, 911 F.3d 558, 571–72 (9th Cir. 2018).

Massachusetts alleged imminent fiscal injury from the “substantial risk that the rules will cause women in the Commonwealth to lose their contraceptive coverage” and “substantial likelihood that some of these women will then obtain state-funded contraceptive services or prenatal and postnatal care for unintended pregnancies.” *Massachusetts*, 2019 WL 1950427, at \*9. The First Circuit held that Defendants’ own estimates of women who will lose coverage and Defendants’ own

assumptions that litigating and accommodated entities located in Massachusetts were likely to use the exemptions established “a substantial risk that *some* women in Massachusetts will lose coverage due to the regulations.” *Id.* at \*10–11. The First Circuit further concluded that the existence of state-funded contraceptive services available to a portion of Massachusetts women, coupled with the undisputed public costs of unintended pregnancies, created a “substantial risk” that the rules would cause Massachusetts to incur costs. *Id.* at \*12–13.

The States have made the same showing here. Resp. Br. 36–43. Defendants do not disclaim their own estimates of impacted women, Def. Br. 31–32, nor do they dispute that a number of litigating and accommodated entities operate in the States, Def. Br. 25–28; *see* J.A. 223, 350–90, 622. And Defendants do not dispute that the States fund contraceptive services that will be available to eligible women who will lose contraceptive coverage. Def. Br. 30–31; *see* Resp. Br. 36–38.

A copy of the decision is attached.

Respectfully submitted,

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cc (by CM/ECF): Counsel of Record

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document, and any attachments thereto, to be electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: May 3, 2019

/s/ Michael J. Fischer  
MICHAEL J. FISCHER