

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

IRISH 4 REPRODUCTIVE HEALTH, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, et al.,

Defendants.

Case No. 3:18-cv-491-PPS-MGG

Judge Philip P. Simon

PLAINTIFFS' NOTICE OF VOLUNTARY WITHDRAWAL OF CERTAIN CLAIMS

WHEREAS, on December 5, 2018, Plaintiffs filed an amended complaint in the above-captioned action, ECF No. 43 (the “Amended Complaint”);

WHEREAS, on July 8, 2020, the Supreme Court issued its decision in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania et al.*, 2020 WL 3808424 (July 8, 2020) (“*Little Sisters*”);

WHEREAS, the *Little Sisters* decision affects some of Plaintiffs’ claims in this action; Plaintiffs hereby voluntarily withdraw portions of their claims in the Amended Complaint as follows:

- Count I, insofar as Plaintiffs claimed that the Settlement Agreement violates the Administrative Procedure Act (“APA”) because the Settlement Agreement is not in accordance with the Affordable Care Act (“ACA”) requirement that group health plans and individual health insurance cover the preventive-care services identified in HRSA’s Women’s Preventive Service Guidelines (¶ 173)¹, is withdrawn;
- Count I, insofar as Plaintiffs claimed that the Government Defendants exceeded their statutory authority by executing a Settlement Agreement that is not in accordance with the ACA requirement for coverage of contraceptives without cost-sharing (¶ 174), is withdrawn;

¹ All “¶” citations refer to the Amended Complaint.

- Count I, insofar as Plaintiffs claimed that the Settlement Agreement violates the APA because the Settlement Agreement is not in accordance with the U.S. Supreme Court's Orders in *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), and *Univ. of Notre Dame v. Burwell*, 136 S. Ct. 2007 (2016) (¶¶ 170-172), is withdrawn;
- Count III (¶¶ 189-198) is withdrawn;
- Count IV, insofar as Plaintiffs claimed that the Rules violate the APA because the Rules are not in accordance with the ACA requirement that group health plans and individual health insurance cover the preventive-care services identified in HRSA's Women's Preventive Service Guidelines (¶ 206), is withdrawn; and
- Count IV, insofar as Plaintiffs claimed that the Government Defendants exceeded their statutory authority by issuing Rules that do away with the ACA requirement for coverage of contraceptives without cost-sharing (¶ 207), is withdrawn.

This notice shall not otherwise affect Plaintiffs' rights with respect to any of its claims or causes of action.

Dated: July 31, 2020

Respectfully submitted,

/s/ R. David Gallo
Janice Mac Avoy (admitted *pro hac vice*)
Anne S. Aufhauser (admitted *pro hac vice*)
R. David Gallo (admitted *pro hac vice*)
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP
One New York Plaza
New York, NY 10004
Telephone: (212) 859-8000
janice.macavoy@friedfrank.com
anne.aufhauser@friedfrank.com
david.gallo@friedfrank.com

Jeffrey A. Macey
Macey Swanson LLP
445 N. Pennsylvania Street, Suite 401
Indianapolis, IN 46204
Telephone: (317) 637-2345
jmacey@MaceyLaw.com

Counsel for all Plaintiffs

Richard B. Katskee (admitted *pro hac vice*)
Americans United for Separation of
Church and State
1310 L Street, NW, Suite 200
Washington, DC 20005
Telephone: (202) 466-3234
katskee@au.org

Fatima Goss Graves*
Gretchen Borchelt (admitted *pro hac vice*)
Sunu Chandy (admitted *pro hac vice*)
Michelle Banker (admitted *pro hac vice*)
Lauren Gorodetsky*
National Women's Law Center
11 Dupont Circle, NW, Suite 800
Washington, DC 20036
Telephone: (202) 588-5180
fgossgregaves@nwlc.org
gborchelt@nwlc.org
schandy@nwlc.org
mbanker@nwlc.org
lgorodetsky@nwlc.org

*Counsel for Plaintiffs Irish 4 Reproductive Health
and Jane Doe 1*

Emily Nestler (admitted *pro hac vice*)
Jessica Sklarsky (admitted *pro hac vice*)
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
Telephone: (917) 637-3600
enestler@reprorights.org
jsklarsky@reprorights.org

*Counsel for Plaintiffs Natasha Reifenberg, Jane
Doe 2, and Jane Doe 3*

* Motion for *pro hac vice* admission forthcoming.