

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

Plaintiff,
v.

JOSEPH R. BIDEN, in his official capacity as
President of the United States, *et al.*

Defendants.

Civil Action No. 2:17-cv-4540 (WB)

STATUS REPORT

On August 2, 2021, the Court entered an order staying this case and instructing Federal Defendants to file a status report on or before October 29, 2021, and every 90 days thereafter. ECF No. 281. And on January 3, 2022, the Court issued an order directing that the case remain stayed, and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283. Federal Defendants report the following:

1. This case involves a challenge to final rules the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA*, 83 Fed. Reg. 57,536 (Nov. 15, 2018); *Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA*, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
2. This Court entered a preliminary injunction; the judgment was reversed and remanded by the Third Circuit on August 21, 2020, following the Supreme Court's decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

3. This Court has before it fully briefed dispositive motions. *See, e.g.*, ECF Nos. 252, 254, 255.
4. On July 30, 2021, Federal Defendants filed a motion asking the Court to stay the case to permit them to evaluate the issues presented by this litigation, as well as their regulatory and policy options. ECF No. 279. The Court had previously granted two other similar motions made by Federal Defendants. *See* ECF Nos. 271, 275.
5. On August 2, 2021, the Court granted Federal Defendants' motion and entered an order staying the case. ECF No. 281. In that order, the Court also instructed Federal Defendants to file a "status report on or before October 29, 2021, and every 90 days thereafter." *Id.*
6. On August 16, 2021, Federal Defendants announced that "[t]he Departments [of Health and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process." CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act).
7. On January 3, 2022, the Court issued an order directing that the case remain stayed and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283.
8. Federal Defendants filed their last status report at the end of April 2022. Federal Defendants reported that they continued to work toward rulemaking, but that their progress was affected by (1) limited resources and many competing and extraordinary

demands on those resources, particularly in light of the ongoing pandemic and public health emergency; and (2) their ongoing evaluation of regulatory and policy options.

9. Federal Defendants have made meaningful progress toward publishing a Notice of Proposed Rulemaking to amend the 2018 final regulations. Specifically, on July 8, 2022, Federal Defendants submitted a draft proposed rule to the Office of Management and Budget (OMB) for review by its Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order 12866. *See Coverage of Certain Preventive Services Under the Affordable Care Act (CMS-9903),* <https://www.reginfo.gov/public/do/eoDetails?rrid=254114>. Federal Defendants intend to publish the new Notice of Proposed Rulemaking in the Federal Register upon completion of that review.
10. Federal Defendants cannot control the timing of OIRA's review, but they recognize the importance of moving this case forward and will continue to work toward publishing the new Notice of Proposed Rulemaking as quickly as is possible consistent with ongoing resource limitations and prudent decision-making.
11. Federal Defendants propose that the case remain stayed and that Federal Defendants continue to file status reports every 90 days to apprise the Court of the status of the rulemaking and their position on the need for a continued stay.
12. Plaintiffs have advised that they do not oppose keeping the litigation in its current posture.

Dated: July 26, 2022

Respectfully Submitted,

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/s/ Christopher R. Healy

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