

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, the 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 2023. Federal Defendants reported that they had published a notice of proposed rulemaking that would "amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act, which requires non-grandfathered group health

plans and non-grandfathered group or individual health insurance coverage to cover certain contraceptive services without cost sharing.” U.S. Dep’t of Treasury, U.S. Dep’t of Labor, & U.S. Dep’t of Health & Human Servs., Coverage of Certain Preventive Services Under the Affordable Care Act, 88 Fed. Reg. 7236 (Feb. 2, 2023), <https://federalregister.gov/documents/2023/02/02/2023-01981/coverage-of-certain-preventive-services-under-the-affordable-care-act>. The comment period for the proposed rule closed on April 3, 2023. The Federal Defendants received over 44,000 comments to the proposed rule.

9. The Federal Defendants can report that review and assessment of the comments to the proposed rule is ongoing. To allow time for a full evaluation of regulatory and policy options, 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.
10. Plaintiffs have advised that they do not oppose keeping the litigation in its current posture.

Dated: July 24, 2023

Respectfully Submitted,

BRIAN NETTER

Deputy Assistant Attorney General

MICHELLE R. BENNETT

Assistant Director, Federal Programs Branch

/s/ Rebecca M. Kopplin

REBECCA M. KOPPLIN

MICHAEL J. GERARDI

DANIEL RIESS

Trial Attorneys

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L St. NW

Washington DC 20005

202 514 3953

rebecca.m.kopplin@usdoj.gov