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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
ST. MARY'S HOME, *et al.*,

Defendant-Intervenors

Case No.: 4:17-cv-5783-HSG

JOINT STATUS REPORT

On August 17, 2021, the Court stayed this case and ordered the parties to file status reports every three months. ECF No. 467. The parties report as follows:

1. This case concerns the validity of two rules which create a moral exemption, and expand a religious exemption, to the rules establishing the contraceptive coverage

- 1 requirement. *See* Religious Exemptions and Accommodations for Coverage of
2 Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15,
3 2018); Moral Exemptions and Accommodations for Coverage of Certain
4 Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
- 5 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366,
6 368, 370, as well as supplemental briefs addressing the Supreme Court’s decision
7 in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct.
8 2367 (2020), *see* ECF Nos. 433, 435, 437, 438, 440.
- 9 3. On August 16, 2021, Federal Defendants announced that “[t]he Departments [of
10 Health and Human Services, Treasury, and Labor] intend to initiate rulemaking
11 within 6 months to amend the 2018 final regulations and obtaining public input
12 will be included as part of the Departments’ rulemaking process.” CMS.Gov,
13 Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48)
14 (Aug. 16, 2021) (available at <https://perma.cc/2XH8-MDBX>).
- 15 4. The Federal Defendants published a notice of proposed rulemaking on February
16 2, 2023, that would “amend regulations regarding coverage of certain preventive
17 services under the Patient Protection and Affordable Care Act, which requires
18 non-grandfathered group health plans and non-grandfathered group or individual
19 health insurance coverage to cover certain contraceptive services without cost
20 sharing.” U.S. Dep’t of Treasury, U.S. Dept’t of Labor, & Dep’t of Health &
21 Human Servs., *Coverage of Certain Preventive Services Under the Affordable*
22 *Care Act* (Feb. 2, 2023) (available at <https://perma.cc/L58Q-VY4Q>). The
23 comment period for the proposed rule closed on April 3, 2023. The Federal
24 Defendants received over 44,000 comments to the proposed rule.
- 25 5. The Court held its most recent status conference in this matter on February 7,
26 2023. After the conference, the Court (1) ordered that the case should remain
27 stayed and (2) directed the parties to attach to their next joint status report any
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comments on the notice of proposed rulemaking submitted by Plaintiffs or intervenors. ECF No. 489.

6. The parties filed a status report with the comments of the Plaintiffs and intervenors on the notice of proposed rulemaking on May 1, 2023. ECF No. 493.
7. The Federal Defendants can report that review and assessment of the comments to the proposed rule, including comments from Plaintiffs and Intervenor, is ongoing.
8. Regarding the timing of the release of the Final Rule, the Office of Management and Budget periodically issues a Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda), which reports on administrative agencies' planned regulatory actions. The Unified Agenda represents Federal Defendants' statement of their expectations regarding the timeline for rulemaking. The Fall 2023 Unified Agenda, which is the most recent Unified Agenda as of this filing, states that Federal Defendants expect to publish the Final Rule in August 2024. Executive Office of the President of the United States, Office of Information and Regulatory Affairs, Office of Management and Budget, HHS/CMS, Coverage of Certain Preventive Services Under the Affordable Care Act, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AU94>.
9. Federal Defendants propose that this case remain stayed, with the parties to file a further status report on May 1, 2024.
10. Plaintiff States do not oppose the case remaining in its current posture.
11. Intervenor-Defendant March for Life agrees with the Federal Defendants' proposal.
12. Intervenor The Little Sisters maintain their position from prior filings that the stay should be lifted and the motions for summary judgment decided, particularly with yet another presidential election now upon us.

Dated: January 29, 2024

Respectfully submitted,

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