

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

The Religious Sisters of Mercy; Sacred  
Heart Mercy Health Care Center  
(Jackson, MN); Sacred Heart Mercy  
Health Care Center (Alma, MI);  
SMP Health System; University of Mary;

and

State of North Dakota,

Plaintiffs,

vs.

Sylvia Burwell, Secretary of the United  
States Department of Health and  
Human Services; and United States  
Department of Health and Human Services,

Defendants.

**ORDER FOR CONSOLIDATION  
OF CASES**

Case No. 3:16-cv-386

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Catholic Benefits Association, Diocese  
of Fargo, and Catholic Charities North  
Dakota,

Plaintiffs,

vs.

Sylvia M. Burwell, Secretary of the  
United States Department of Health  
and Human Services; United States  
Department of Health and Human  
Services; Jenny R. Yang, Chair of the  
United States Equal Employment  
Opportunity Commission; and United  
States Equal Employment Opportunity  
Commission,

Defendants.

Case No. 3:16-cv-432

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Before the Court are two cases which concern essentially the same dispute over whether Section 1557 of the Affordable Care Act properly interprets sex discrimination as encompassing discrimination on the basis of gender identity and termination of pregnancy. In addition, the two pending cases were both recently filed within the last ninety (90) days. A court may consolidate cases pursuant to Rule 42 of the Federal Rules of Procedure, which provides in part as follows:

**(a) Consolidation.** If actions before the court involve a common question of law or fact, the court may:

- (1)** join for hearing or trial any or all matters at issue in the actions;
- (2)** consolidate the actions; or
- (3)** issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a). The Court finds it appropriate to consolidate the actions. Both cases concern common aspects of law and fact, and consolidation will conserve the resources of the parties and the Court. Accordingly, the Court makes the following **ORDER**:

- 1) Case No. 3:16-cv-386 and Case No. 3:16-cv-432 shall in all respects be **CONSOLIDATED**;
- 2) Case No. 3:16-cv-386 is designated as the lead case;
- 3) All future filings shall **only be filed in the lead case** (Case No. 3:16-cv-386); and
- 4) The caption of all future filings shall include the lead case (Case No. 3:16-cv-386), and may also reference Case No. 3:16-cv-432.

**IT IS SO ORDERED.**

Dated this 23rd day of January, 2017.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court