

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
EASTERN DIVISION

CATHOLIC BENEFITS ASSOCIATION,  
DIOCESE OF FARGO, and CATHOLIC  
CHARITIES NORTH DAKOTA,

Plaintiffs,

v.

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-00432

DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING  
ORDER

The United States Department of Justice, Civil Division, Federal Programs Branch, on behalf of all defendants (collectively the "United States"), submits the attached Letter from Sheila Lieber, United States Department of Justice, Civil Division, Federal Programs Branch, to the Honorable Judge Ralph R. Erickson, dated December 29, 2016 ("Attachment 1"), in response to Plaintiffs' Emergency Motion for Temporary Restraining Order, filed as Document 3.

As indicated in Attachment 1, the United States respectfully requests the Court allow the United States to incorporate by reference its arguments in Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, previously filed as Document 10 in The Religious Sisters of Mercy, et al. v. Burwell, et al., U.S. District Court, District of North Dakota Case No. 3:16-cv-00386, which is currently pending before this Court.

Dated this 29th day of December, 2016.

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**U.S. Department of Justice**  
Federal Programs Branch  
Civil Division  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20530

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December 29, 2016

The Honorable Judge Ralph R. Erickson  
U.S. District Court for North Dakota  
655 1st Avenue North, Suite 410  
Fargo, ND 58102-4952

Re: *Catholic Benefits Association v. Burwell, et al.*, No. 3:16-cv-00432 (D.N.D.)  
and *Religious Sisters of Mercy v. Burwell, et al.*, No. 3:16-cv-00386 (D.N.D.)

Dear Chambers of Judge Erickson:

The undersigned just received the Court's notice regarding potential recusal in *Catholic Benefits Association*, Case No. 3:16-cv-00432. Due to the holidays and the absence of DOJ officials who would need to be consulted before deciding Defendants' position regarding recusal, we will need the seven days the Court has allowed us for filing a response.

In light of the potential recusal, it may be that no response to Plaintiffs' Motion for Temporary Restraining Order in *Catholic Benefits Association* is needed at this time. But to the extent a response is necessary, Defendants wish to inform the Court they oppose the TRO but that due to the timing of the Motion for Temporary Restraining Order by the Plaintiffs in *Catholic Benefits Association*, filed yesterday, and the above-noted absence from the office for the holidays, as well as lack of computer access of the Department of Justice trial attorneys most familiar with the issues in this case, the Federal Defendants will be unable to prepare a written response to the Motion for Temporary Restraining Order at this time. Instead, we will rely on the arguments made in our Opposition to the Motion for Preliminary Injunction previously filed in *Religious Sisters of Mercy*, Case No. 3:16-cv-00386, without conceding any arguments not made in that Opposition that would apply in the new case.

However, we wish to point out that most parts of the challenged regulation have already been in effect since May, and that to the extent any of the *Catholic Benefits Association* Plaintiffs' next insurance plan year begins on January 1, 2017, Plaintiffs have been aware of that fact ever since the regulation was published in May.

Sincerely,

/s/ Sheila M. Lieber  
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