

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

THE RELIGIOUS SISTERS OF MERCY,  
*et al.*,

*Plaintiffs,*

v.

ALEX M. AZAR, Secretary of the United  
States Department of Health and Human  
Service, *et al.*,

*Defendants.*

No. 3:16-cv-386

THE CATHOLIC BENEFITS  
ASSOCIATION; DIOCESE OF FARGO;  
CATHOLIC CHARITIES NORTH  
DAKOTA; and CATHOLIC MEDICAL  
ASSOCIATION,

*Plaintiffs,*

v.

ALEX M AZAR, Secretary of the United  
States Department of Health and Human  
Service, *et al.*,

*Defendants.*

No. 3:16-cv-432

**CBA PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR  
PERMANENT INJUNCTIVE AND DECLARATORY RELIEF  
[ORAL ARGUMENT REQUESTED]**

The Catholic Benefits Association, Diocese of Fargo, Catholic Charities North Dakota, and Catholic Medical Association – Plaintiffs in Case No. 3:16-cv-432 – move for summary judgment on their claims under the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4

(“RFRA”), and request permanent injunctive and declaratory relief against Defendants. For the reasons more fully set out in their supporting memorandum filed contemporaneously herewith:

1. Plaintiffs ask the Court to find that the regulatory mandate promulgated by Defendants, which requires healthcare providers and employers to perform and provide coverage for health services related to gender transition and abortion (“Mandate”), violates Plaintiffs’ rights under RFRA and, as a result, Plaintiffs and their members are entitled to an exemption from the Mandate to enable them to continue providing health services and health coverage consistent with their religious beliefs.

2. Plaintiff The Catholic Benefits Association (“CBA”) is a Catholic organization whose religious mission is to help Catholic employers carry out their callings and operate their ministries and businesses in a way that complies with Catholic teaching. To be a member of the CBA, an organization must be a Catholic employer committed to providing no benefits inconsistent with Catholic values. CBA members sponsor or participate in health plans that provide medical benefits to employees, and some CBA members operated federally funded health programs or activities affected by the Mandate. Plaintiffs Diocese of Fargo, Catholic Charities North Dakota, and Catholic Medical Association are members of the CBA.

3. The CBA has standing to represent its members in this action, and it requests permanent injunctive and declaratory relief on behalf of itself and its present and future members.

4. Plaintiffs request that the Court enter summary judgment on Counts XI and XII of Plaintiffs’ Second Amended Complaint, and grant the following declaratory and permanent injunctive relief:

a. Make clear that the relief granted by the Court, as further set forth below, shall be restricted to Plaintiffs and all present and future members of The Catholic Benefits

Association, their respective health plans, and any insurers and third party administrators in connection with such members' health plans, so long as the CBA member meets the following criteria:

- (1) The employer is not yet protected from the Mandate by any other judicial order;
- (2) The CBA has determined that the employer meets the CBA's strict membership criteria;
- (3) The CBA's membership criteria have not changed since the CBA filed its initial complaint on December 28, 2016; and
- (4) The employer is not subject to an adverse ruling on the merits in another case involving the Mandate.

b. **DECLARE** unlawful (i) the Mandate and (ii) any implementation or interpretation of federal law, whether arising under Section 1557 of the Affordable Care, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, or otherwise, that coerces CBA members to provide, perform, or cover health services related to gender transition and abortion in violation of their sincerely held religious beliefs;

c. **DECLARE** that no federal law and no implementation or interpretation of federal law, including without limitation Section 1557, Title IX, and Title VII, shall infringe the CBA's or its members' right and power to request, design, contract for, adopt, and implement health plans and insurance policies that exclude coverage of health services for gender transition and abortion consistent with their religious convictions; and

d. **PERMANENTLY ENJOIN AND RESTRAIN** Defendants from all of the following:

i. Enforcing the Mandate or any similar implementation or interpretation of federal law against the CBA and its members;

ii. Charging or assessing fines, taxes, penalties, or other burdens against the CBA or its members for failure to provide, perform, pay for, cover, or facilitate access to health services for gender transition and abortion;

iii. Removing or threatening to remove federal funding, reimbursements, payments, or benefits of any kind from the CBA's members for failure to provide, perform, pay for, cover, or facilitate access to health services for gender transition and abortion;

iv. Removing or threatening to remove access to federal contracts, grants, and programs from the CBA's members for failure to provide, perform, pay for, cover, or facilitate access to health services for gender transition and abortion;

v. Enforcing the Mandate or any similar implementation or interpretation of federal law against CBA members' health plans and any insurers and third-party administrators in connection with members' health plans, or otherwise interfering with CBA members' relationships with such insurers and TPAs and members' efforts to contract for morally compliant health coverage and benefits administration for their employees.

For the reasons set forth herein and in Plaintiffs' supporting memorandum brief submitted herewith, Plaintiffs respectfully request that the Court enter summary judgment and permanent declaratory and injunctive relief as described above.

Plaintiffs also request the opportunity for oral argument on this motion.

Respectfully submitted November 23, 2020,

s/ Ian Speir

L. Martin Nussbaum

Ian Speir

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### **CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2020, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

s/ Ian Speir

Ian Speir