



U.S. Department of Justice
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VIA CM/ECF

May 24, 2022

Mr. Michael E. Gans
Clerk of Court
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street
Room 24.329
St. Louis, MO 63102

RE: *Religious Sisters of Mercy v. Becerra*, No. 21-1890 (8th Cir.)

Dear Mr. Gans:

Pursuant to Federal Appellate Rule 28(j), we write in response to the *Religious Sisters* plaintiffs' May 20, 2022 letter advising this Court of the recent district court decision in *Christian Employers Alliance v. EEOC*, No. 1:21-195, 2022 WL 1573689 (D.N.D. May 16, 2022).

Christian Employers Alliance involves challenges by a Christian membership ministry to hypothetical future enforcement actions of the U.S. Department of Health and Human Services (HHS) and the U.S. Equal Employment Opportunity Commission (EEOC). The district court concluded that the plaintiff had associational standing and that its claims were ripe, and preliminarily enjoined HHS and EEOC from enforcing the prohibition of sex discrimination in Section 1557 of the Patient Protection and Affordable Care Act and Title VII of the Civil Rights Act of 1964 in a manner that would require that the plaintiff's members perform or provide insurance coverage for gender-transition procedures.

The government respectfully disagrees with the district court opinion in *Christian Employers Alliance* and is currently evaluating whether to appeal. The plaintiff in that case has not demonstrated a credible threat of enforcement sufficient to support standing, and its claims are not ripe, for the same reasons plaintiffs in this appeal have not demonstrated standing or ripeness. HHS and EEOC have not initiated or threatened any Section 1557 or Title VII enforcement action against plaintiffs or any entity with religious objections to performing or providing coverage for gender-transition procedures. The district court thus erred in enjoining the government from enforcing the relevant statutes based on positions that the government has not actually adopted. Such anticipatory injunctions based on hypothetical facts are at odds with core Article III and equitable principles. *See, e.g., Trump v. New York*, 141 S. Ct. 530, 535 (2020) (per curiam) (holding that both an absence of standing and a lack of ripeness impeded

judicial resolution where the plaintiffs' claims were "riddled with contingencies and speculation").

Plaintiffs' letter also cites *Franciscan Alliance, Inc. v. Becerra*, 553 F. Supp. 3d 361 (N.D. Tex. 2021). The government has appealed that decision. *Franciscan Alliance, Inc. v. Becerra*, No. 21-11174 (5th Cir.).

Respectfully submitted,

s/ Ashley A. Cheung
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cc: Counsel (via CM/ECF)