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VIA CM/ECF

July 28, 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 to address this Court's decision in *School of the Ozarks v. Biden*, No. 21-2270 (8th Cir.), which supports the government's argument that plaintiffs do not have standing.

School of the Ozarks involved a challenge to a Department of Housing and Urban Development (HUD) memorandum explaining that the Fair Housing Act's (FHA) prohibition on sex discrimination prohibits sexual-orientation and gender-identity discrimination. This Court held that the religious-college plaintiff did not have standing, rejecting the college's argument that "there is an imminent threat" "that the government will enforce the [FHA] against the College." Op. 7. This Court reasoned that the memorandum did not "require that HUD reach the specific enforcement decision that the College's current housing policies violate federal law." Op. 8. In particular, the memorandum "[said] nothing of how the Religious Freedom Restoration Act [RFRA]" "may limit enforcement of the [FHA's] prohibition on sex discrimination as applied to the College." *Id.*

Additionally, this Court reasoned that "it is speculative that HUD will file a charge of discrimination against the College." Op. 8. As this Court explained, the college assumed that a discrimination complaint will be filed; that "HUD will charge the College with sex discrimination, even though HUD has never enforced the [FHA's] sex-discrimination prohibition against" a similarly situated college in the past; and that the College will be "subject to penalties." Op. 10. This Court concluded that "[t]his is the kind of 'highly attenuated chain of possibilities' that 'does not satisfy the requirement that threatened injury must be certainly impending.'" Op. 10-11 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013)).

School of the Ozarks demonstrates that plaintiffs have not demonstrated a credible threat of enforcement sufficient to support standing. HHS and EEOC have not initiated or threatened

any Section 1557 or Title VII enforcement action against plaintiffs or any objecting religious entities; the agencies have made clear that they will take RFRA into account; and plaintiffs' alleged injury similarly relies on a "highly attenuated chain of possibilities." *Clapper*, 568 U.S. at 410.

Respectfully submitted,

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