

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

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

*Plaintiffs,*

v.

XAVIER BECERRA, *et al.*,

*Defendants.*

No. 3:16-cv-386

THE CATHOLIC BENEFITS ASSOCI-  
ATION; DIOCESE OF FARGO; CATH-  
OLIC CHARITIES NORTH DAKOTA;  
and CATHOLIC MEDICAL ASSOCIA-  
TION,

*Plaintiffs,*

v.

XAVIER BECERRA, *et al.*,

*Defendants.*

No. 3:16-cv-432

**CATHOLIC BENEFITS ASSOCIATION'S MOTION TO SEAL DECLARATIONS  
ESTABLISHING THE CBA'S ASSOCIATIONAL STANDING**

The Catholic Benefits Association, one of the plaintiffs in Case No. 16-cv-432, respectfully submits this motion to seal the declarations of three of its members, which establish the CBA's associational standing under the new criterion of associational standing announced by the Eighth Circuit in the appeal of this case. Redacted version of the declarations, which remove any identifying information are submitted here as **Exhibit 1-3**. A fourth, non-redacted declaration of a CBA member that is a named plaintiff, Catholic Charities of North Dakota, is attached as **Exhibit 4**.

Finally, a declaration of the CBA attesting to the harm it and its members will suffer if its members names are made public is attached here as **Exhibit 5**.

### **LEGAL STANDARD**

The public has a well-established right of access to court records. *See, e.g., Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). Whether to seal a document is left to the sound discretion of the court. *See Webster Groves Sch. Dist. v. Pulitzer Publ'g Co.*, 898 F.2d 1371, 1376 (8th Cir. 1990). The court must consider less restrictive alternatives and must explain any decision to seal documents. *See In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988); *In re Sealed Documents*, Standing Order (D.N.D. Sept. 18, 2019).

The Eighth Circuit has stated that “only the most compelling reasons can justify non-disclosure of judicial records.” *In re Neal*, 461 F.3d 1048, 1053 (8th Cir. 2006) (internal quotation marks omitted). “[E]ven where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason.” *Shane Group, Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (citing *Press-Enter. Co. v. Super. Ct. of Cal.*, 464 U.S. 501, 509-11 (1984)). Therefore, the party seeking sealing must “analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Baxter*, 297 F.3d at 548.

### **DISCUSSION**

This protracted case concerns the Catholic Benefits Association Plaintiffs’ effort to enjoin the Department of Health and Human Services and the EEOC from interpreting Section 1557 of the Affordable Care Act and Title VII of the Civil Rights Act to require the members of the Catholic Benefits Association to cover and provide “gender-transition services” in violation of their

religious beliefs. The Government Defendants have never contested the merits of the CBA or its named-Plaintiff members' claims. The Government has instead focused on whether the CBA's members face a credible threat of enforcement and thus have standing to sue.

On appeal of this Court's order granting the Plaintiffs' motions for summary judgment, the Eighth Circuit held that the individual Plaintiffs in the case, CBA's named-plaintiff members, the Diocese of Fargo, Catholic Charities of North Dakota, and Catholic Medical and Dental Association; as well the Religious Sisters of Mercy Plaintiffs (plaintiffs in Case No. 16-cv-386) face a credible threat of enforcement and thus have standing. *See Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 606-08 (8th Cir. 2022).

As to the CBA itself, the Eighth Circuit determined that the evidence of associational standing relied upon by this Court was insufficient to establish associational standing, because at least one additional member must be identified who (1) has standing in its own right and (2) is not a named plaintiff. *Id.* at 602 (“Other than the three named plaintiffs who are CBA members—the Diocese, Catholic Charities, and CMA—the CBA has otherwise failed to identify members who have suffered the requisite harm. Accordingly, we hold that the CBA lacks associational standing to sue on behalf of unnamed members.”). The Eighth Circuit then entered a general remand to this Court “for further proceedings consistent with this opinion.” *Id.* at 609.

As explained by the Supplemental Argument to the Court's Question Regarding its Authority to Receive Evidence of the CBA's Associational Standing on Remand filed simultaneously herewith, the CBA believes that the best way to resolve this case is to permit the CBA to file a motion for summary judgment, attaching declarations of non-named-plaintiff members who have standing and thus confer on the CBA associational standing per the Eighth Circuit's decision. To that end,

the CBA has attached hereto four declarations which establish the CBA's associational standing as a matter of law. These non-named-plaintiff members include:

- (1) a consortium of Catholic health clinics that receive Medicare and Medicaid funding (federal financial assistance requisite to trigger Section 1557) and employ nineteen individuals (greater than Title VII's fifteen-employee threshold);
- (2) a Catholic-owned pediatric clinic that employs eighteen individuals (Title VII standing) and receives Medicaid funding (Section 1557 standing);
- (3) a Catholic Ministry that provides care for senior services, employs 382 individuals (Title VII standing) and receives Medicare and Medicaid funding (Section 1557 standing); and
- (4) Catholic Charities of North Dakota, which employs 82 individuals (Title VII standing) and receives Medicare and Medicaid funding (Section 1557 standing).<sup>1</sup>

These CBA members object to providing or covering "gender transition services" and would have standing to sue in their own right to challenge the Government's interpretations of Section 1557 and Title VII.

The CBA respectfully moves the Court for an order permitting it to file the first three of these declarations under seal and order that only attorneys in the Case No. 16-cv-432 may view the declarations. The CBA members who have submitted declarations have substantial concern that if their identities are made known to the public and the government, they face substantial threat of adverse action and harassment. *See Exhibit 5*, Declaration of Doug Wilson at ¶ 6. The CBA's

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<sup>1</sup> The CBA has identified this member by name because it is one of the original plaintiffs in this case and has approved identifying itself in this case. Although Catholic Charities of North Dakota verified the CBA's second amended complaint, it did not provide a separate declaration as required by the Eighth Circuit on appeal. Its declaration is attached hereto as **Exhibit 4**.

ability to advocate on behalf of its members' First Amendment rights will be substantially harmed if its members' identities are made public. *Id.* at ¶ 7.

Just recently, the Supreme Court reaffirmed that forced disclosure of the identities of members of an expressive association like the CBA can “constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (quoting *NAACP v. Alabama*, 357 U.S. 449, 462 (1958)). This is because “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association,” *id.*, and because there exists a “vital relationship between freedom to associate and privacy in one’s associations.” *Id.* (quoting *NAACP*, 357 U.S. at 460, 462). Indeed, long-time federal practice has permitted an association to establish through submission of “Jane Doe,” anonymous member affidavits for precisely these reasons. *E.g.*, *National Treasury Employees Union v. U.S. Department of Treasury*, 25 F.3d 237, 242 (5th Cir. 1994) (permitting an organizational plaintiff whose members fear identifying themselves to the government to demonstrate standing by submitting a “Jane Doe” affidavit from a member explaining how it would be injured by the government action at issue.”). As explained, the CBA’s First Amendment expression will be substantially chilled if its members identities are released. Further, the CBA has filed publicly available redacted versions of the member affidavits, which ensures the Court is sealing nothing more than is necessary to protect the CBA’s members’ First Amendment rights.

WHEREFORE, the CBA respectfully requests the Court permit it file under seal **Exhibits 1-3** and further limit access to those exhibits to attorneys' eyes only.

Respectfully submitted July 21, 2023,

/s/ Andrew Nussbaum

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No. 3:16-cv-432

**Declaration of** [REDACTED]

1. My name is [REDACTED] I am over 21 and capable of making this declaration. I have not been convicted of a felony or crime involving dishonesty. The facts herein are within my personal knowledge. If I were called upon to testify to these facts, I could and would competently do so.

2. I serve as the [REDACTED] for [REDACTED]

[REDACTED] and its Affiliates.

3. [REDACTED] is a section 501(c)(3) Catholic ministry listed in THE OFFICIAL CATHOLIC DIRECTORY. It seeks to improve the quality of life of the elderly within the community of [REDACTED] by providing a wide range of social, health care, housing, and pastoral services.

4. [REDACTED] accomplishes this in coordination with a number of affiliates, including: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (collectively, the “Affiliates”). I serve as [REDACTED] for each of these. [REDACTED] and [REDACTED] are separately incorporated, §501(c)(3) Catholic ministries. [REDACTED] and [REDACTED] operate as ministries of [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] are listed in THE OFFICIAL CATHOLIC DIRECTORY.

5. We do this work out of respect and reverence for the dignity of each person we serve. Respect for human dignity is the core of Catholic social teaching. *See Life and Dignity of the Human Person*, United States Conference of Catholic Bishops (“The Catholic Church proclaims that human life is sacred and that the dignity of the human person is the foundation of a moral vision for society. This belief is the foundation of all the principles of [Catholic] social teaching.”) (available at <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/life-and-dignity-of-the-human-person>). Similarly, [REDACTED]’s purpose, [REDACTED] is “promoting the dignity of human life within a variety of high-quality, specialized communities while providing older adults the programs and community-based services to fully live their best lives.” [REDACTED]

6. We describe the ministry of [REDACTED] and its Affiliates [REDACTED] like this:

[REDACTED]

7. [REDACTED] has 382 employees. [REDACTED] has 193 employees. Our [REDACTED] has fifteen employees. [REDACTED] has forty-five employees. [REDACTED] has eighteen employees. [REDACTED] has forty employees. [REDACTED] and its Affiliates, together, have 693 employees.

8. [REDACTED] provides a wide range of administrative services for each of its Affiliates.

9. [REDACTED] is a 130-bed skilled nursing center. Inspired by the teachings of Jesus Christ, it specializes in short-term rehabilitation, long-term nursing care, memory care, hospice and palliative care, and respite stays. As our website says, [REDACTED]

[REDACTED] Its services include memory care, physical speech and occupational therapies.

[REDACTED] receives Medicare funding for around 50% of its budget.

10. With 207 apartments for older adults, [REDACTED] not only provides homes for its residents, it also promotes friendships and provides many social activities so that they might live as independently as possible. [REDACTED] receives Medicare and Medicaid funding for some of the outpatient services it provides.

11. [REDACTED] provides 122 assisted living apartments including four memory care communities. Our residents at [REDACTED] are given a wide range of activities, classes, lectures, arts, and games. [REDACTED] receives Medicare funding for some of its outpatient services.

12. [REDACTED] is an all-inclusive assisted living home that serves older adults with limited incomes. [REDACTED] It has a chapel for Mass and for nondenominational services, and it provides hot meals three times a day. Its nursing staff is available twenty-four hours per day. Its services include a beauty salon and barber shop, mental health and outpatient medical care, and various types of therapy. It often receives Medicaid or Medicare reimbursement for some of its services. Medicare and Medicaid payments constitute 17% of [REDACTED] budget.

13. [REDACTED] provides affordable housing at ten sites for a total of 700 residents. These sites are the [REDACTED] [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; [REDACTED] also provides meals, transportation, and outpatients services. The latter is sometimes reimbursed by Medicare or Medicaid constituting 2% of [REDACTED] [REDACTED] budget.

14. In accordance with our Catholic identity, [REDACTED] and its Affiliates provide a health plan for their respective full-time employees through a health plan sponsored by the Archdiocese of [REDACTED]. Catholic social teaching holds that access to health care, including health insurance, is a basic and universal human right and a demand of the common good. Catechism of the Catholic Church, para. 2288. This is due to the sanctity and dignity that every single human life possesses as made in the image and likeness of God, and as an object of God's particular love. Our health plan excludes abortion, puberty blockers, cross-sex hormones and surgeries intended to provide patients the appearance of the opposite sex, as well as other types of care inconsistent with Catholic values.

15. [REDACTED] and its Affiliates welcome persons of all faiths and do not discriminate on the grounds of sex, race, color, national origin or disability. *See* [REDACTED]. Our nondiscrimination policy is grounded not only upon reason, but also upon the Catholic conviction that every single human being is made in the image and likeness of God and thereby possessed of intrinsic and inalienable dignity. It is further grounded in the Catholic belief that

human beings are to love one another in the manner of Jesus Christ, and according to the model of the Good Samaritan who cares for the person in need strewn upon his path (*Lk* 10:29-37).

16. The Catholic Church teaches that “Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life.” Catechism of the Catholic Church, para. 2270. Therefore, the Church instructs that “Formal cooperation in an abortion constitutes a grave offense [and] a crime against human life.” *Id.*, para. 2272. Thus, paying for abortion in our health plan would violate our Catholic belief.

17. Catholic teaching opposes transgender medicine because it contradicts God’s creative sovereignty and confounds human beings’ understanding of their own dignity as well as their development as body-soul unities. Catholics believe that as sovereign Creator, God does not place any human being in the “wrong body.” Rather, the Book of Genesis states that after making humankind “male and female,” “in his image,” God “looked at everything he had made, and found it very good” (*Gen* 1: 27, 31). Thus, Catholics also believe that God makes every human being; we do not make ourselves. Catholicism further teaches that God creates every human being as an inseparable unity of body and soul. Consequently, a human being’s failure to accept his or her bodily sex would impede self-understanding and development at the biological, physiological, emotional, mental and spiritual levels, all of which are interrelated.

18. Any governmental regulation or policy requiring [REDACTED] or its Affiliates to cover abortion or gender transition services and cross-sex hormones in their employee health plan violates our deeply-held Catholic values and beliefs. Our ability to care for elderly clients and residents would be devastated if we no longer received Medicare and Medicaid funding because

we, in good conscience, chose not to comply with such a regulation or policy. Furthermore, were [REDACTED] or its Affiliates to pay for, cover, or facilitate access to abortion or transgender medicine, it would be powerfully communicating by word and deed to its employees, clients, and the public at large, that it no longer believed in God's creative sovereignty, a central tenet of its faith.

19. The [REDACTED] and its Affiliates have been members of the Catholic Benefits Association, without interruption, since December 23, 2016.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on May 25, 2023, at [REDACTED]

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**Declaration of** [REDACTED]

1. My name is Dr. [REDACTED] I am over 21 and capable of making this declaration pursuant. I have not been convicted of a felony or crime involving dishonesty. The facts herein are within my personal knowledge. If I were called upon to testify to these facts, I could and would competently do so.

2. I am a medical doctor and board-certified pediatrician. I earned my M.D. from the University of [REDACTED] Medical School and completed a residency in pediatrics at the Children's Hospital in [REDACTED] I served a year thereafter as the [REDACTED] of that program.

3. I am the sole owner of the medical practice called [REDACTED] in [REDACTED]

4. [REDACTED] provides a broad range of medical care to pediatric patients through my work and the work of others on our staff including a second pediatrician, two physician assistants, a family nurse practitioner, and others. Altogether, [REDACTED] has eighteen employees.

5. [REDACTED] receives payment for its services from various medical insurers, from self-funded employee health plans, from [REDACTED] from Medicaid, and from patients and their families. Our practice's ability to serve low income or indigent patients would be severely impacted if we were unable to receive compensation through Medicaid.

6. Our patients, almost all of whom are minors, come to us with a host of illnesses, injuries, and social and mental health issues. It is not uncommon that some—especially teenaged girls—report symptoms consistent with gender dysphoria. These patients sometimes seek to explore receiving puberty blockers, cross-sex hormones, and even one or more “top” or “bottom” surgeries. In our care of such patients, I have found it critically important to listen carefully to them, to encourage their parents compassionately to stay engaged and know their child's friends and social media practices. We have also had patients come to us with unwanted pregnancies.

7. I am a practicing Catholic. I am active in my parish and have served on the advisory board for our parish school. It is important to me to integrate my faith and Catholic values in all that I do, in my marriage and family, in my civic activities, in my care of patients, and in [REDACTED]. At [REDACTED] we practice medicine consistently with our Catholic values. I also am active in the Catholic Medical Association and currently serve both as its [REDACTED] and as a [REDACTED]. I do public speaking, often at a parish level, on how parents and families can integrate their Catholic faith into the healthcare they need.

8. [REDACTED] serves patients from birth through college and “does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.” See [REDACTED] website. Its nondiscrimination policy is grounded not only upon reason, but also upon the Catholic conviction that every single human being is made in the image and likeness of God and thereby possessed of intrinsic and inalienable dignity. It is further grounded in the Catholic belief that human beings are to love one another in the manner of Jesus Christ, and according to the model of the Good Samaritan who cares for the person in need strewn upon his path (*Lk* 10:29-37).

9. Catholic teaching opposes abortion because it is the taking of innocent human life.

10. Catholic teaching opposes transgender medicine because it contradicts God’s creative sovereignty and confounds human beings’ understanding of their own dignity as well as their development as body-soul unities. Catholics believe that as Creator, God does not place any human being in the “wrong body.” They also believe that God makes every human being; we do not make ourselves. Catholicism further teaches that God creates every human being as an inseparable unity of body and soul. Consequently, a human being’s failure to accept his or her bodily sex would impede self-understanding and development at the biological, physiological, emotional, mental and spiritual levels, all of which are interrelated.

11. Catholic beliefs as stated in the previous paragraph are consistent with scientific evidence that every person is either male or female and the fact that humans—like all mammals—are designed to produce gametes necessary for reproduction with males designed to produce sperm, and females to produce eggs. There is also a growing body of medical evidence concerning the uncertainties and risks associated with transgender medicine, especially when performed upon pediatric patients. That evidence demonstrates how transgender medicine leads to sterilization, impotence, loss of sexual satisfaction, and life-long medicalization. It also

documents: the virtual impossibility of obtaining genuine informed consent from pediatric patients regarding these consequences; how frequently its effects are irreversible and linked with suicidal ideation and suicides; and the growing number of patients requesting “detransitioning” on the grounds of their dissatisfaction with the effects of such medical interventions. Several European countries and medical establishments are currently retrenching their support especially for the performance of transgender procedures upon pediatric patients, on the basis of this evidence. Catholic values thus align with the core Hippocratic value of “first do no harm.”

12. Being required to pay for, perform, cover, or facilitate access to abortion or transgender medicine violates the overlapping professional and Catholic convictions of [REDACTED] about the proper medical care patients are owed. Professional and Catholic medical standards provide that healthcare should at the very least do no harm. It should aim to prevent or cure or at least alleviate a medical condition. It should not destroy or make dysfunctional a healthy bodily part or system. But transgender services do not meet these standards. They are *defined* by their destroying or making dysfunctional human body parts or systems. There does not exist sound evidence that they prevent or cure or alleviate the underlying medical conditions. It is also increasingly evident that it is virtually impossible to obtain genuine informed consent for transgender procedures from pediatric patients, who cannot be expected knowledgeably to agree to permanent future sterility, impotence, continuous medical treatment, and loss of sexual pleasure. There is growing evidence that transgender procedures lead to additional mental, psychological and physical harms. Consequently, transgender medicine cannot be said to meet either professional standards of medical care, or the additional standard observed by health care providers desiring to observe the central Catholic norm: to embody the healing ministry of Jesus Christ, at the physical, mental, and spiritual levels. *Ethical and Religious Directives for Catholic Health Care*, p. 6.

13. Any governmental regulation or policy requiring [REDACTED] to cover gender transition services and cross-sex hormones in its employee health plan or to perform such services or prescribe such drugs when it was competent to do so violates our deeply-held Catholic values and beliefs.

14. Without an exemption from the requirement to perform, cover, or facilitate access to abortion and transgender medicine, [REDACTED] Catholic values would be undercut in severe, ongoing, immediate, and irreparable manners. Catholics hold and teach that God is the sovereign Creator. This means that the human being is not self-made and never in “the wrong body.” Rather, the Book of Genesis states that after making humankind “male and female,” “in his image,” God “looked at everything he had made, and found it very good” (*Gen 1: 27, 31*). Were [REDACTED] to perform, pay for, cover, or facilitate access to abortion or transgender medicine, it would be powerfully communicating by word and deed to its employees, patients, and the public at large, that it no longer believed in God’s creative sovereignty, a central tenet of my faith.

15. [REDACTED] has been a member of the Catholic Benefits Association, without interruption, since 2017.

I declare under penalty of perjury that the statements herein are true and correct to the best of my knowledge.

Executed on the third day of May 2023, at [REDACTED]

[REDACTED]

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Declaration of [REDACTED]

1. My name is Dr. [REDACTED] I am over 21 and capable of making this declaration. I have not been convicted of a felony or crime involving dishonesty. The facts herein are within my personal knowledge. If I were called upon to testify to these facts, I could and would competently do so.

2. I serve as the [REDACTED] and one of three [REDACTED] of the [REDACTED] [REDACTED] I earned my M.D. from [REDACTED] University Medical Center in [REDACTED] and my Ph.D. in chemistry from University of [REDACTED] in [REDACTED] I completed residencies in

Internal Medicine and Pediatrics at [REDACTED] University Medical Center, and I am board certified both in internal medicine and pediatrics.

3. We founded [REDACTED] as a § 501(c)(3) nonprofit corporation to serve patients as a [REDACTED]  
[REDACTED]  
[REDACTED] Our Catholic values provide both the impetus for our service and the guide for how we serve patients.

4. We see patients at its [REDACTED] and [REDACTED] [REDACTED] locations. In addition to our volunteers, we have nineteen employees including four medical doctors, an osteopathic doctor, a psychiatric nurse practitioner, three registered nurses, and others.

5. In accordance with our Catholic values, [REDACTED] provides a health plan for our full-time employees. Catholic social teaching holds that access to health care, including health insurance, is a basic and universal human right and a demand of the common good. (*Catechism of the Catholic Church*, ¶ 2288). This, too, honors the dignity of every person.

6. Because of these Catholic beliefs and values, [REDACTED] health plan excludes abortion, cross-sex hormones and surgeries intended to provide patients the appearance of the opposite sex, physician-assisted suicide, and other care inconsistent with Catholic values.

7. The [REDACTED] serves low-income individuals. This, too, is part of our Catholic witness. In the [REDACTED] information sheet [REDACTED] regarding the Clinic, we wrote:

By caring for the sick and placing the sick at the head of the line and in the position of honor, [REDACTED] is directly aligned with the purpose and mission of the Catholic Church. We offer medical services to the poor and the sick in our communities. Additionally, our coordination with [REDACTED] demonstrates our alignment with Blessed Fra' Gerard, a Benedictine brother in the 11th century, who saw the misery of poor and sick pilgrims of all faiths in Jerusalem. We too

are extending Benedictine hospitality to the streets; we also organize men and women to minister to the poor and sick in [REDACTED]

8. [REDACTED] provides medical services across the “entire life span,” and is “open to all comers.” Our nondiscrimination policy is grounded upon reason and the Catholic conviction that every single human being is made in the image and likeness of God and thereby has intrinsic and inalienable dignity. It is further grounded in the Catholic belief that human beings are to love one another in the manner of Jesus Christ, and according to the model of the Good Samaritan who cares for the person in need strewn upon his path (*Lk* 10:29-37).

9. Our Information Sheet also explains:

Since September 2020, we have 13,000 patient visits with at least 16% uninsured and the majority recipients of Medicaid and Medicare or county health insurance programs. We are adding 100 new patients each month.

We have served approximately 300 homeless by [REDACTED] through the [REDACTED] suffering from mental health disorders, substance abuse, skin infections, chronic conditions med refills (diabetes, HTN, holdover meds). Dr. [REDACTED] IS the homeless ministry in our community.

Sixty percent of our revenue is from Medicare and Medicaid funding.

10. Our physicians, each of whom is Catholic, have also made great personal sacrifice so that the Clinic can serve those in need without regard to their financial status and without regard to whether they have insurance. Our updated 2022 Information Sheet explains:

Each of our providers has personally sown time and resources into this ministry. Dr. [REDACTED] gifted \$30,000, Dr. [REDACTED] gifted \$270,000 . . . , the [REDACTED] gifted \$50,000, [and] Dr. [REDACTED] gifted \$50,000. We provide free services to the uninsured, and we are credentialed with all insurers in our area, including Medicaid and Medicare.

All of our physicians have worked without receiving a salary of any kind for the first year, and only in the past year have we been able to offer them a meager stipend. Our nursing staff, medical assistants, and billing and receptionists are all paid at market wages or volunteering their expertise for free. As we have received some insurance payments from services provided in 2021, we began to offer our providers a small monthly stipend. Our physicians have volunteered a market equivalent of over \$1.5 million . . . ; that’s approximately 13,000 hours of physician time. As a whole we are fully invested - our time, our money, and our hearts – into this ministry.



development as body-soul unities. Catholics believe that as sovereign Creator, God does not place any human being in the “wrong body.” We also believe that God makes every human being; we do not make ourselves. Catholicism further teaches that God creates every human being as an inseparable unity of body and soul. Consequently, a human being’s failure to accept his or her bodily sex would impede self-understanding and development at the biological, physiological, emotional, mental and spiritual levels, all of which are interrelated.

15. Being required to pay for, perform, cover, or facilitate access to abortion or transgender medicine violates the overlapping professional and Catholic convictions of the [REDACTED] [REDACTED] about the proper medical care patients are owed. Professional and Catholic medical standards provide that healthcare should at the very least do no harm. It should aim to prevent or cure or at least alleviate a medical condition. It should not destroy or make dysfunctional a healthy bodily part or system. But transgender services do not meet these standards. They are *defined* by their destroying or making dysfunctional human body parts or systems. There does not exist sound evidence that they prevent or cure or alleviate the underlying medical conditions. It is also increasingly evident that it is virtually impossible to obtain genuine informed consent for transgender procedures from pediatric patients, who cannot be expected knowledgeably to agree to permanent future sterility, impotence, continuous medical treatment, and loss of sexual pleasure. There is growing evidence that transgender procedures lead to additional mental, psychological and physical harms. Consequently, transgender medicine cannot be said to meet either professional standards of medical care, or the additional standard observed by Catholic health care providers to embody the healing ministry of Jesus Christ, at the physical, mental and spiritual levels. *Ethical and Religious Directives for Catholic Health Care*, p. 6.

16. [REDACTED] is a member of the Catholic Benefits Association and has been, without interruption, since April 2020.

17. Any governmental regulation or policy requiring [REDACTED] to cover abortion or gender transition services and cross-sex hormones in its employee health plan or to perform such services or prescribe such drugs when it was competent to do so violates our deeply-held Catholic values and beliefs.

18. Our care for low income and elderly patients would be devastated if we no longer received Medicare and Medicaid funding. Without an exemption from a requirement to perform, pay for, cover, or facilitate access to abortion or transgender medicine, [REDACTED] [REDACTED] would be undercut in severe, ongoing, immediate, and irreparable manners. Catholics hold and teach that God is the sovereign Creator. This means that the human being is not self-made and that God cannot mistakenly put a person in “the wrong body.” Rather, the Book of Genesis states that after making humankind “male and female,” “in his image,” God “looked at everything he had made, and found it very good” (*Gen* 1: 27, 31). Were [REDACTED] [REDACTED] to perform, pay for, cover, or facilitate access to transgender medicine, it would be powerfully communicating by word and deed to its employees, clients, and the public at large, that it no longer believed in God’s creative sovereignty, a central tenet of its faith.

Executed on the 2d day of May 2023, at [REDACTED] [REDACTED]

[REDACTED]

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

**Declaration of Deacon Anthony Ternes**

1. My name is Anthony Ternes. I am over 21 and capable of making this declaration. I have not been convicted of a felony or crime involving dishonesty. The facts herein are within my personal knowledge. If I were called upon to testify to these facts, I could and would competently do so.

2. I serve as Chairman of the Board of Directors for Catholic Charities North Dakota (“CCND”).

3. CCND is the social services arm of the Catholic Church throughout North Dakota. Its roots go back 100 years to when Father Vincent Ryan began, in 1923, providing services to working and unmarried mothers in the Fargo area. Its locations, the scope of its services, and the numbers of its employees and volunteers have grown over the years. CCND now has eighty-two employees with offices in Grand Forks, Bismarck, Minot, and Fargo.

4. As part of our observance of our Catholic mission, CCND provides a health plan for our full-time employees. Catholic social teaching holds that access to health care, including health insurance, is a basic and universal human right and a demand of the common good. (*Catechism of the Catholic Church*, para. 2288). This is due to the sanctity and dignity that every single human life possesses as made in the image and likeness of God, and as an object of God's love.

5. CCND's services include Adults Adopting Special Kids that facilitates adoption of children in foster care; Pregnancy, Parenting, and Adoption Services to help place children in permanent homes; Guardianship Services for vulnerable adults and for those with intellectual disabilities; Post-Adoption Search Services; and Disaster Relief.

6. CCND also provides Counseling Services for individuals, couples, and families. Our counseling services assist those struggling with important decisions, those needing extra support or guidance in difficult situations; those seeking to improve their quality of life; and those with marital or other relationship difficulties. Our clients come to us for counseling regarding addiction, relationship, mental health, sexual, financial, and other issues. We have counseled individuals as young as two and as old as ninety-four.

7. At Catholic Charities North Dakota, we provide counseling services that respect the dignity and uniqueness of each human being as a sacred image of God, in accordance with

Catholic Social Teaching. We do not offer services that contradict these principles. We listen to our clients' stories and experiences, and help them identify their strengths, goals, and areas for growth. We value feedback from clients on the therapeutic process using Feedback Informed Treatment and tailor our interventions accordingly. We offer evidence-based, and holistic counseling services for individuals, couples, and families who are facing various mental health challenges, such as anxiety, depression, trauma, grief, and more. We also strive to make our services accessible and affordable by offering sliding scale fees and accepting most insurance plans.

8. As our website says, CCND provides counseling services “regardless of sex, race, color, religion, political view, national origin, social status, financial resources, or inability to pay for services” (Catholic Charities North Dakota website). Our nondiscrimination policy is grounded in the Catholic conviction that every single human being is made in the image and likeness of God and thereby possessed of intrinsic and inalienable dignity. It is also grounded in the Catholic belief that human beings are to love one another in the manner of Jesus Christ, and according to the model of the Good Samaritan who cares for the person in need strewn upon his path (Lk 10:29-37). Furthermore, as the United States Conference of Catholic Bishops' Ethical and Religious Directives for Catholic Health Care Services (“ERD”) state: “A Catholic institutional health care service is a community that provides health care to those in need of it.” (ERD 1). Likewise, these directives insist that Catholic health care must distinguish itself by its attention to service to those “particularly vulnerable to discrimination.” (ERD 3).

9. Catholic Charities receives payment for its counseling services from various medical insurers, from self-funded employee health plans, from Medicare, Medicaid, and from patients and their families. Our ability to serve low income or indigent patients with counseling

services would be severely impacted if we were unable to receive compensation through Medicare and Medicaid.

10. All of our services are part of our ministry of charity. It is, as our website says and as Pope Benedict XVI taught, charity is one of the fundamental responsibilities of the Catholic Church. Thus, in accordance with our Catholic identity, such therapy excludes all assistance, guidance, advice, recommendations, or help inconsistent with Catholic values, including support for or facilitation of abortion or gender transition.

11. Because God is the Creator of all things including human life and because human life made in the image and likeness of God, men and women, girls and boys have a unique dignity. Thus, Catholic teaching has long taught that abortion is sinful as the taking of innocent human life.

12. Catholics oppose transgender medicine because it contradicts God's creative sovereignty and confounds human beings' understanding of their own dignity as well as their development as body-soul unities. Catholics believe that as sovereign Creator, God does not place any human being in the "wrong body." They also believe that God makes every human being; we do not make ourselves. Catholicism further teaches that God creates every human being as an inseparable unity of body and soul. Consequently, a human being's failure to accept his or her bodily sex would impede self-understanding and development at the biological, physiological, emotional, mental and spiritual levels, all of which are interrelated.

13. In 2016, the U.S. Department of Health and Human Services issued its regulation that required CCND to cover gender transition services and cross-sex hormones in its employee health plan. The regulation also required health care providers to perform such services or

prescribe such drugs when it was competent to do so. CCND could not do either of these things without violating our deeply-held Catholic values and beliefs.

14. Without an exemption from a requirement to cover, or facilitate access to abortion or transgender medicine, CCND's Catholic identity and values would be undercut in severe, immediate, ongoing, and irreparable manners. Catholics hold and teach that God is the sovereign Creator. This means that the human being is not self-made and that God cannot mistakenly put a person in "the wrong body." Rather, the Book of Genesis states that after making humankind "male and female," "in his image," God "looked at everything he had made, and found it very good" (*Gen* 1: 27, 31). Were Catholic Charities to perform, cover, or facilitate access to abortion or transgender medicine, it would be powerfully communicating by word and deed to our employees and volunteers, clients, and our donors (many of whom are Catholic).

15. CCND has been a member of the Catholic Benefits Association, without interruption, since July 1, 2014.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on the 5 day of May 2023, at Fargo, North Dakota.

  
Deacon Anthony Ternes

**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  
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*Defendants.*

No. 3:16-cv-386

THE CATHOLIC BENEFITS  
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*Plaintiffs,*

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

*Defendants.*

No. 3:16-cv-432

**Declaration of Douglas G. Wilson Jr.**

1. My name is Douglas G. Wilson, Jr. I am over 21 and capable of making this declaration. I have not been convicted of a felony or crime involving dishonesty. The facts herein are within my personal knowledge. If I were called upon to testify to these facts, I could and would competently do so.

2. I serve as the Chief Executive Officer of the Catholic Benefits Association (“CBA”).

3. The CBA is a § 501(c)(3) nonprofit corporation and Catholic ministry. Its articles of incorporation state that it is “organized for charitable purposes” that are “consistent with Catholic values, doctrine, and canon law.” Specifically, they state that the CBA is organized “[t]o support Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values”; and “[t]o work and advocate for religious freedom of Catholic and other employers seeking to conduct their ministries and businesses according to their religious values.

4. The CBA currently has among its members over 6,000 Catholic parishes plus 1,336 other member employers including 81 Catholic dioceses and archdioceses. The CBA membership also includes schools, colleges, hospitals, nursing homes, clinics, medical practices, Catholic-owned business, and others. Many of its members receive Medicare and Medicaid funds and other federal financial assistance.

5. All CBA members joined the CBA with the understanding that their identities would remain confidential.

6. Given the present cultural moment where cancellation and other adverse action--whether by social media, boycott, government action, or otherwise--is commonplace, CBA members have substantial concern that if their identities were made public they would face significant adverse action and distraction from their missions because of their Catholic beliefs and their efforts to align their actions with those beliefs.

7. If the CBA was forced to disclose its members’ identities, it would substantially chill the ability of the CBA to advocate for its members First Amendment rights.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on July 21, 2023, at Castle Rock, Colorado.

A handwritten signature in black ink, appearing to read "DW", with a horizontal line extending to the right from the end of the signature.

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Doug Wilson