

No. 13-1540

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**In the United States Court of Appeals for the Tenth Circuit**

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LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, a Colorado non-profit corporation, LITTLE SISTERS OF THE POOR, BALTIMORE, INC., a Maryland non-profit corporation, by themselves and on behalf of all others similarly situated, CHRISTIAN BROTHERS SERVICES, an Illinois non-profit corporation, and CHRISTIAN BROTHERS EMPLOYEE BENEFIT TRUST,

*Appellants,*

v.

THOMAS PRICE, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, EDWARD HUGLER, Acting Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, STEVEN MNUCHIN, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

*Appellees.*

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**On Appeal from the United States District Court  
for the District of Colorado, Hon. William J. Martinez  
Civ. No. 1:13-cv-02611-WJM-BNB**

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**PLAINTIFFS-APPELLANTS' STATUS REPORT**

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Plaintiffs-Appellants (collectively the “Little Sisters”) provide the following status report:

Recent changes in the government’s position suggest that this matter should be resolved soon. Accordingly, the Little Sisters respectfully suggest that the parties report back to the Court on their progress in 15 days.

Among other things, it is now clear that Defendants agree with the Little Sisters—and with Judges Gorsuch, Hartz, Holmes, Kelly, and Tymkovich—that the Mandate imposes a substantial burden on the Little Sisters’ religious exercise. *See Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell*, 799 F.3d 1315 (10th Cir. 2015) (Hartz, J., dissenting from denial of rehearing en banc).

First, on January 20, 2017, President Trump issued Executive Order No. 13765, which orders Defendant HHS to grant waivers and exemptions from requirements under the ACA “to the maximum extent permitted by law.” In particular, the Executive Order states:

Sec. 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the

implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.

E.O. 13765 of January 20, 2017, 82 Fed. Reg. 8351. This exemption-friendly approach runs directly counter to the anti-accommodation position taken by the government when it last appeared before this Court.

Second, on February 10, 2017, Dr. Thomas Price was confirmed as Secretary of Health and Human Services. See <https://www.congress.gov/nomination/115th-congress/33>. Dr. Price has already taken the position at the United States Supreme Court that the Mandate violates RFRA. Dr. Price's *amicus* brief in support of the Little Sisters explained:

- “The Government’s defense of its so-called “accommodation” for religious non-profits—an ‘accommodation’ that requires petitioners to take an action they believe to be morally wrong—cannot satisfy the strict demands of RFRA.”
- “The petitioners sincerely believe they would be morally complicit if they take the actions HHS requires. As long as that belief is sincere—and the Government admits that it is—the Government may not second guess it.”

- “When an organization faces substantial penalties for refusing to engage in conduct it sincerely believes is wrong, its religious exercise is necessarily substantially burdened.”

Brief of *Amici Curiae* 207 Members of Congress 9-10, 29, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (Nos. 14-1418, 14-1453, 14-505, 15-35, 15-105, 15-119, 15-191).

Third, it is clear that Defendant Price’s view of the Mandate is shared by the President. President Trump has referred to the Rule as an “onerous mandate” and its impact on the Little Sisters as “a hostility to religious liberty you will never see in a Trump Administration.” Letter from Donald J. Trump to Catholic Leadership Conference, October 5, 2016, available at [http://www.catholicnewsagency.com/pdf/DJT\\_catholic\\_leadership\\_conference\\_letter.pdf](http://www.catholicnewsagency.com/pdf/DJT_catholic_leadership_conference_letter.pdf). Furthermore, the President declared “I will make absolutely certain religious orders like the Little Sisters of the Poor are not bullied by the federal government because of their religious beliefs.” *Id.*

For these reasons, the Little Sisters expect that this dispute should be resolved soon and respectfully request that the parties file a joint status report as to their progress in 15 days.

Respectfully submitted,

/s/ Mark Rienzi

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I certify that (1) all required privacy redactions have been made; (2) any required paper copies are exact versions of the document filed electronically; and (3) that the electronic submission was scanned for viruses and found to be virus-free.

/s/ Mark L. Rienzi

Mark L. Rienzi

**Certificate of Service**

I hereby certify that on March 15, 2017, I electronically filed the foregoing with the Clerk of Court by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Mark L. Rienzi

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