

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

The Religious Sisters of Mercy; Sacred
Heart Mercy Health Care Center
(Jackson, MN); Sacred Heart Mercy
Health Care Center (Alma, MI);
SMP Health System; University of Mary;

and

State of North Dakota,

Plaintiffs,

vs.

Sylvia Burwell, Secretary of the United
States Department of Health and
Human Services; and United States
Department of Health and Human Services,

Defendants.

**AMENDED ORDER
STAYING ENFORCEMENT**

Case No. 3:16-cv-386

Catholic Benefits Association, Diocese
of Fargo, and Catholic Charities North
Dakota,

Plaintiffs,

vs.

Sylvia M. Burwell, Secretary of the
United States Department of Health
and Human Services; United States
Department of Health and Human
Services; Jenny R. Yang, Chair of the
United States Equal Employment
Opportunity Commission; and United
States Equal Employment Opportunity
Commission,

Defendants.

Case No. 3:16-cv-432

Before the Court are the Defendants' motions to amend/correct the Court's order dated December 30, 2016, staying enforcement of Section 1557 of the Affordable Care Act as against the named Plaintiffs filed on January 6, 2017. See Docket No. 26 in Case No. 3:16-cv-386 and Docket No. 12 in Case No. 3:16-cv-432. The Plaintiffs in both cases filed responses on January 20, 2017. See Docket No. 34 in Case No. 3:16-cv-386 and Docket No. 15 in Case No. 3:16-cv-432.

The Defendants contend injunctive relief should be narrowly tailored and the Court's stay should be limited to two aspects of Section 1557 which have been challenged; that is whether Section 1557 properly interprets sex discrimination as encompassing discrimination on the basis of gender identity and termination of pregnancy. The Court agrees with the Defendants.

On December 31, 2016, another federal district court in Texas issued a nationwide preliminary injunction against the same HHS regulations the Plaintiffs challenge here: HHS's final rule under Section 1557 of the Affordable Care Act. See Franciscan Alliance, Inc. v. Burwell, Case No. 7:16-CV-108, slip op. (N.D. Tex., Dec. 31, 2016); Docket No. 14-1 in Case No. 3:16-cv-432. As in this case, the plaintiffs in *Franciscan Alliance* include Catholic institutions who object to HHS's regulations on moral grounds and claim the regulation violates both the Administrative Procedure Act and the Religious Freedom Restoration Act. In *Franciscan Alliance*, the court noted only the challenged provisions relating to "gender identity" and "termination of pregnancy" were being enjoined. Id. at 46. The Court finds the order issued in *Franciscan Alliance* to be thorough and well-reasoned.

Accordingly and for good cause shown, the Defendants' motions to amend/correct are **GRANTED**. The Court's Order dated December 30, 2016, is amended to make clear that it temporarily stays enforcement, as to the named Plaintiffs, of Section 1557's prohibitions against

discrimination on the bases of gender identity and termination of pregnancy. In addition there is currently in place a nationwide preliminary injunction against the very regulations being challenged in this case which enjoins the HHS from enforcing the Rule's provisions.

IT IS SO ORDERED.

Dated this 23rd day of January, 2017.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court