



October 25, 2018

Molly Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *State of California, et al. v. Little Sisters of the Poor, et al.*, No. 18-15144 (9th Cir.) (consolidated with Nos. 18-15166, 18-15255)

Dear Ms. Dwyer,

Pursuant to Rule 28(j) and as requested at oral argument, the Little Sisters submit this letter advising the Court that the Office of Management and Budget has indicated that the religious exemption rule is in the “Final Rule Stage” of rulemaking. See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=0938-AT54>. Though this is the last stage of rulemaking, there is no indication whether the final rule will be published soon. Compare, e.g., <https://www.reginfo.gov/public/do/eoDetails?rriid=127928> (pending in final rule stage since March 17, 2018).

This development is not a reason for the Court to delay its decision, even if a new rule is issued soon. First, a new rule will not eliminate the question of standing, which the parties have fully briefed. Second, the States do not rely solely on their arguments about interim final rules under the Administrative Procedure Act, but have challenged the religious exemption as illegal on its merits. See Resp. Br. 53-55; Little Sisters Reply Br. 15-27.

Accordingly, even if and when the agencies issue yet another version of their rule, this Court should rule on the critical legal questions raised by this appeal. See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2766 (2014) (ruling on appeal of preliminary injunction decision concerning rule that changed during the litigation).

Without a ruling on standing or the likelihood of success on the merits, the parties would have to re-litigate those questions below and return to this Court on the same questions of law. Ruling on these fully-briefed issues now will help move the case to conclusion and provide certainty to the Little Sisters about their constitutional and statutory civil rights.

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Respectfully submitted,

/s/ Mark Rienzi

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