



XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7913
Facsimile: (916) 324-5567
E-Mail: Karli.Eisenberg@doj.ca.gov

October 24, 2018

Judges Wallace, Kleinfeld, and Graber
U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

Re: *State of California, et al. v. Azar, et al.*
U.S. Court of Appeals for the Ninth Circuit, Case Nos. 18-15144, 18-15166, 18-15255
Oral Argument: October 19, 2018 (San Francisco)

Dear Judges Wallace, Kleinfeld, and Graber:

As requested during the oral argument, the Office of Management and Budget's website reflects that both the Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act (CMS-9940-F2) Rule (RIN 0938-AT54) (the Religious Rule) and the Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act (CMS-9925-F) Rule (RIN 0938-AT46) (the Moral Rule) are currently "pending review." See <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>. Specifically, the Religious Rule is located here: <https://www.reginfo.gov/public/do/eoDetails?rrid=128541>. The Moral Rule is located here: <https://www.reginfo.gov/public/do/eoDetails?rrid=128540>. According to the website, both Rules have been pending since October 11, 2018.

Although in reviewing the district court's grant of a preliminary injunction this Court cannot "re-weigh the evidence," it can nevertheless take judicial notice of information appearing on governmental websites where such information may impact the jurisdiction of the Court. *Fyock v. Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015) (explaining the limitations to interlocutory appeals given the "narrow scope of [this Court's] review"); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (taking judicial notice of information displayed on government entity website).

//

October 24, 2018

Page 2

Sincerely,

s/ Karli Eisenberg

KARLI EISENBERG
Deputy Attorney General

For XAVIER BECERRA
Attorney General
Attorneys for the State of California

(Counsel listing continues on next page)

October 24, 2018

Page 3

MATTHEW P. DENN
Attorney General of Delaware
ILONA KIRSHON
Deputy State Solicitor
JESSICA M. WILLEY
DAVID J. LYONS
Deputy Attorneys General
Attorneys for the State of Delaware

BRIAN E. FROSH
Attorney General of Maryland
CAROLYN A. QUATTROCKI
Deputy Attorney General
STEVEN M. SULLIVAN
Solicitor General
KIMBERLY S. CAMMARATA
Director, Health Education and Advocacy
Attorneys for the State of Maryland

BARBARA D. UNDERWOOD
Attorney General of New York
STEVEN C. WU
Deputy Solicitor General
ESTER MURDUKHAYEVA
Assistant Solicitor General
LISA LANDAU
Bureau Chief, Health Care Bureau
SARA HAVIVA MARK
Special Counsel
ELIZABETH CHESLER
Assistant Attorney General
Attorneys for the State of New York

MARK R. HERRING
Attorney General of Virginia
SAMUEL T. TOWELL
Deputy Attorney General
Attorneys for the Commonwealth of Virginia

October 24, 2018

Page 4

CERTIFICATE OF SERVICE

I certify that on October 24, 2018, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that services will be accomplished by the appellate EM/EC system.

Date: October 24, 2018

s/Karli Eisenberg

KAE:

SA2018100331
FINAL Letter re OMB website.docx (002).docx