

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF THE TREASURY; STEVEN T. MNUCHIN, in his official capacity as Secretary of the Treasury; UNITED STATES DEPARTMENT OF LABOR; and PATRICK PIZZELLA, in his official capacity as Acting Secretary of Labor, Defendants. Case No. 17-cv-11930-NMG

COMMONWEALTH OF MASSACHUSETTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56(a), the Commonwealth of Massachusetts moves for summary judgment on each of the four claims in its Second Amended Complaint. That complaint seeks judicial review, under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, of two Final Rules issued by the Defendants on November 15, 2018. See 83 Fed. Reg. 57536 ("Religious Exemption Rule"); 83 Fed. Reg. 57592 ("Moral Exemption Rule"). The Rules unlawfully create new religious and moral exemptions to the provisions of the Patient Protection and Affordable Care Act ("ACA") that guarantee women full and equal coverage for preventive health care—specifically contraceptive care and services.

In support of its motion, the Commonwealth states: (1) there are no triable issues of

material fact; and (2) as set forth in the accompanying memorandum of law, it is entitled to judgment on each of its claims. Briefly, as to the first claim (Count One—Procedural Violation of the Administrative Procedure Act (“APA”)), the Defendants issued the Final Rules without following the notice-and-comment rulemaking process required by the APA; as to the second (Count Two—Substantive Violations of the APA—Arbitrary, Capricious, Not in Accordance with the Law, and In Excess of Statutory Authority), the Defendants do not have statutory authority to create the exemptions in the Rules because the ACA requires that employer-sponsored group health plans provide women with coverage for preventive care services, including contraception; as to the third (Count Three—Violation of the Establishment Clause), the Religious Exemption Rule constitutes an endorsement of religion in violation of the Establishment Clause; and as to the fourth (Count Four—Violation of Equal Protection), the Rules discriminate against women in violation of the equal protection guarantee implicit in the Fifth Amendment. As grounds and in further support of this motion, the Commonwealth relies upon its Memorandum in Support of Its Motion for Summary Judgment.

The Commonwealth requests that this Court waive the requirement in Local Rule 56.1 that it submit a statement of undisputed facts in support of its motion. Because this case is brought pursuant to the APA and judicial review of the Rules is based upon the administrative record, *see* 5 U.S.C. § 706, a statement of undisputed facts is not necessary to the disposition of the motion. *See Boston Redevelopment Auth. v. Nat’l Park Serv.*, 838 F.3d 42, 47 (1st Cir. 2016) (in a case brought pursuant to the APA, court does not “determine whether a dispute of fact remains,” but rather reviews the claims under the standard set forth in 5 U.S.C. § 706(2)). The administrative record has been filed by the Defendants.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), the Commonwealth requests a hearing on this motion, on the ground that oral argument is likely to be of assistance to the Court.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

By its attorneys,

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ATTORNEY GENERAL

/s/ Julia E. Kobick

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Dated: July 31, 2019

**CERTIFICATE OF SERVICE**

I certify that this document filed through the CM/ECF system will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 31, 2019.

/s/ Julia E. Kobick

Julia E. Kobick

Assistant Attorney General

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)**

I certify that, on July 31, 2019, I conferred with Daniel Riess, counsel for the defendants, who represented that the defendants do not assent to this motion.

/s/ Julia E. Kobick

Julia E. Kobick

Assistant Attorney General