

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA**

IRISH 4 REPRODUCTIVE HEALTH  
*et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
*et al.*,

Defendants.

Case No. 3:18-cv-0491-PPS-JEM

**JOINT MOTION FOR A STAY OF PROCEEDINGS**

On August 12, the Court dismissed a number of the claims at issue in this case, leaving pending only Plaintiffs' arbitrary and capricious challenge to the Final Rules. Op. and Order, ECF No. 137. The parties have conferred and, given that the defendant-agencies intend to initiate further rulemaking regarding the contraceptive coverage requirement within the next six months, the parties respectfully request that this case be stayed pending the rulemaking to conserve the resources of the Court and the parties.

1. The remaining claim in this case is an arbitrary and capricious challenge to the Final Rules the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See* Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).

2. Federal Defendants (now the only defendants remaining in the case) have previously filed a partial motion for summary judgment on the arbitrary and capricious claim, ECF No. 114, and Plaintiffs' opposition to that motion would otherwise be due October 11, 2021. ECF No. 135.

3. The Court has the inherent power to stay this case to save "time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

4. Earlier this month, Federal Defendants announced that they intend to initiate a rulemaking regarding the contraceptive coverage requirement within 6 months. *See* CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021), [https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable\\_Care\\_Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act), Ex. 1) ("The Departments [of Health and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process.").

5. Now that only an APA claim relating to the Final Rules remains in this case, this case is similarly situated to pending cases in California and Pennsylvania, which are both currently stayed. *See California v. HHS*, No. 4:17-cv-5783 (N.D. Cal.) (motions held in abeyance Mar. 2, 2021, ECF No. 454); *Pennsylvania v. Biden*, No. 2:17-cv-4540 (E.D. Pa.) (stayed Mar. 8, 2021, ECF No. 271).

6. Accordingly, the parties agree that staying this case pending the agencies' rulemaking would conserve the resources of the Court and the parties, and respectfully request a stay of proceedings. The parties propose that Federal Defendants file a status report with the Court on or before November 17, 2021 and every 90 days thereafter.

In accordance with the Local Rules of this Court, a proposed order is attached hereto.

Dated: August 24, 2021

/s/ Janice Mac Avoy

Janice Mac Avoy (admitted *pro hac vice*)  
Anne S. Aufhauser (admitted *pro hac vice*)  
Kellie P. Desrochers (admitted *pro hac vice*)  
FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
One New York Plaza  
New York, NY 10004  
Telephone: (212) 859-8000  
janice.macavoy@friedfrank.com  
anne.aufhauser@friedfrank.com  
kellie.desrochers@friedfrank.com

Jeffrey A. Macey  
Macey Swanson LLP  
445 N. Pennsylvania Street, Suite 401  
Indianapolis, IN 46204  
Telephone: (317) 637-2345  
jmacey@MaceyLaw.com

*Counsel for all Plaintiffs*

Richard B. Katskee (admitted *pro hac vice*)  
*Americans United for Separation of  
Church and State*  
1310 L Street, NW, Suite 200  
Washington, DC 20005  
Telephone: (202) 466-3234  
katskee@au.org

Fatima Goss Graves (admitted *pro hac vice*)  
Gretchen Borchelt (admitted *pro hac vice*)  
Sunu Chandy (admitted *pro hac vice*)  
Michelle Banker (admitted *pro hac vice*)  
Lauren Gorodetsky (admitted *pro hac vice*)  
*National Women's Law Center*  
11 Dupont Circle, NW, Suite 800  
Washington, DC 20036  
Telephone: (202) 588-5180  
fgraves@nwlc.org  
gborchelt@nwlc.org  
schandy@nwlc.org  
mbanker@nwlc.org  
lgorodetsky@nwlc.org

*Counsel for Plaintiffs Irish 4 Reproductive*

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

/s/ Rebecca M. Kopplin  
REBECCA M. KOPPLIN  
Trial Attorney (California Bar No. 313970)  
JUSTIN M. SANDBERG  
Senior Trial Counsel  
MICHAEL GERARDI  
CHRISTOPHER R. HEALY  
DANIEL RIESS  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20005  
Telephone: (202) 514-3953  
Facsimile: (202) 616-8470  
Email: Rebecca.M.Kopplin@usdoj.gov

*Counsel for Federal Defendants*

*Health and Jane Doe 1*

Emily Nestler (admitted *pro hac vice*)

Jessica Sklarsky (admitted *pro hac vice*)

Caroline Sacerdote (admitted *pro hac vice*)

Jen Samantha D. Rasay (admitted *pro hac vice*)

*Center for Reproductive Rights*

199 Water Street, 22nd Floor

New York, NY 10038

Telephone: (917) 637-3600

enestler@reprorights.org

jsklarsky@reprorights.org

csacerdote@reprorights.org

jasay@reprorights.org

*Counsel for Plaintiffs Natasha Reifenberg,*

*Jane Doe 2, and Jane Doe 3*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Joint Motion for a Stay of Proceedings was served on counsel for all parties using the Court's CM/ECF system on August 24, 2021.

*/s/ Rebecca M. Kopplin*  
REBECCA M. KOPPLIN  
*Counsel for Federal Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA**

IRISH 4 REPRODUCTIVE HEALTH,  
*et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
*et al.*,

Defendants.

Case No. 3:18-cv-0491-PPS-JEM

**[PROPOSED] ORDER**

Upon consideration of the parties' Joint Motion for a Stay of Proceedings, it is hereby **ORDERED** that the motion is **GRANTED** and the case is **STAYED**. Federal Defendants shall file a status report on or before November 17, 2021, and every 90 days thereafter.

**SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE PHILIP P. SIMON  
United States District Judge