

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

SYLVIA BURWELL, *et al.*,

Defendants.

No. 7:16-cv-00108-O

**Plaintiffs' Motion for
Partial Summary Judgment
or, in the Alternative,
Preliminary Injunction**

Plaintiffs respectfully move this Court for partial summary judgment pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.3 or, alternatively, for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65.

SUMMARY

This lawsuit challenges a new Rule issued by the Department of Health and Human Services (“HHS”) entitled Nondiscrimination in Health Programs & Activities, 81 Fed. Reg. 31375, 31392, 31384 (May 18, 2016) (codified at 45 C.F.R. pt. 92). Plaintiffs are entitled to summary judgment as a matter of law because HHS’s attempt to redefine “sex” violates the Administrative Procedure Act. Its attempt to force doctors to violate their religious beliefs violates the Religious Freedom Restoration Act. Its attempt to manipulate the States violates the Spending Clause. Its attempt to control doctors’ speech violates the Free Speech Clause. Its rule violates the Due Process Clause and the First Amendment for being hopelessly vague. And it violates Plaintiffs’ right under the Due Process Clause to refrain from performing invasive medical procedures that violate their conscience.

Alternatively, should the Court not be in a position to rule on the motion for partial summary judgment before January 1, 2017—which is when Plaintiffs will be forced to make significant, expensive changes to their insurance plans—Plaintiffs are entitled to a preliminary injunction against the Rule for the same reasons. Should the Court issue a preliminary injunction, Plaintiffs request that the Court waive the posting of a bond. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).

A brief in support of this Motion satisfying the requirements of Local Rule 56.3, an appendix, and a proposed order are filed contemporaneously with this Motion.

Dated: October 21, 2016

Respectfully submitted,

/s/ Luke W. Goodrich

Luke W. Goodrich

Bar No. 977736DC

Eric C. Rassbach (admission pending)

Mark L. Rienzi (admission pending)

Stephanie H. Barclay (admission pending)

The Becket Fund for Religious Liberty

1200 New Hampshire Ave. NW

Suite 700

Washington, DC 20036

Phone: (202) 955-0095

Fax: (202) 955-0090

lgoodrich@becketfund.org

*Counsel for Plaintiffs Christian Medical &
Dental Associations, Franciscan Alliance,
Inc., Specialty Physicians of Illinois, LLC*

CERTIFICATE OF CONFERENCE

On September 23, 2016, via telephone, counsel for Plaintiffs, Luke Goodrich and Austin Nimocks, asked Adam Grogg, counsel for Defendants, if Defendants would agree to a preliminary injunction of the Rule during the pendency of the litigation. On October 7, 2016, Mr. Grogg indicated via email that Defendants would not agree to a preliminary injunction.

On October 20, 2016, via email, counsel for Plaintiffs, Luke Goodrich, informed Adam Grogg and Emily Nestler, counsel for Defendants, that Plaintiffs would be filing this motion for partial summary judgment or, in the alternative, a preliminary injunction, and again asked if Defendants would agree to a preliminary injunction. On October 20, 2016, Ms. Nestler indicated via email that Defendants would not agree to a preliminary injunction and would oppose the motion.

/s/ Luke W. Goodrich
Luke W. Goodrich

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2016 the foregoing motion and accompanying brief in support was served on Defendants via the CM/ECF system.

/s/ Luke W. Goodrich
Luke W. Goodrich