

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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CATHOLIC BENEFITS ASSOCIATION

LCA, et al.,

Plaintiffs-Appellees/  
Cross-Appellants,

v.

Nos. 14-6163, 14-6171, 15-6029,  
15-6037, 15-6139, 16-6030,  
16-6217, 16-6313

THOMAS E. PRICE, M.D., et al.,

Defendants-Appellants/  
Cross-Appellees.

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**RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY  
AFFIRMANCE OR TO DISMISS APPEAL**

The government respectfully submits the following response in opposition to plaintiffs' motion for summary affirmance or to dismiss this appeal. As we explained in our status report of July 14, 2017, the new Administration has initiated the rulemaking process to amend the regulations at issue here. That process has not, however, reached conclusion. This Court has properly maintained abeyances in related cases while the rulemaking process proceeds, and it should do the same here. *See, e.g.,* Order, *Association of Christian Schools International v. Price*, No. 14-1492 (Jul. 17, 2017) (maintaining abeyance until September 12, 2017); Order, *Diocese of Cheyenne v. Price*, No. 14-8040 (Jul. 14, 2017) (same).

In arguing that the abeyance should be lifted, plaintiffs rely on what they describe as a “draft” rule that they state was “leaked to Vox, a news website.” Mot. 6. An unverified, purportedly leaked draft that appears in a news website is not an official statement of agency policy and does not mark the finalization of the rulemaking process.

Plaintiffs do not show that they will suffer any prejudice from further abeyance while the rulemaking process runs its course. Plaintiffs are protected by a preliminary injunction and are not presently subject to the challenged regulations. Accordingly, the motion should be denied.

Respectfully submitted,

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*/s/ Joshua M. Salzman*

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JULY 2017

### **CERTIFICATIONS OF COMPLIANCE**

I certify that (1) all required privacy redactions have been made; (2) any required paper copies are exact versions of the document filed electronically; and (3) that the electronic submission was scanned for viruses and found to be virus-free.

*s/ Joshua M. Salzman*  
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JOSHUA M. SALZMAN

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*s/ Joshua M. Salzman*  
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JOSHUA M. SALZMAN