

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SISTERS OF LIFE,	:
	:
Plaintiff,	:
	:
-against-	:
	:
JAMES V. MCDONALD, Commissioner of the New	:
York State Department of Health, in his official	:
capacity,	:
	:
Defendant.	:
-----X	

No. 22-cv-7529 (JHR)

**STIPULATION AND
ORDER OF SETTLEMENT**

This Stipulation and Order of Settlement (the “Stipulation and Order”) is entered into, by and between plaintiff Sisters of Life (“Plaintiff”) and defendant James V. McDonald in his official capacity as the Commissioner of the New York State Department of Health (“Defendant” or “DOH”), and ordered by this Court, as follows:

WHEREAS, on June 13, 2022, the New York State Legislature enacted Chapter 17 of the New York Laws of 2022 (the “Statute”), which authorizes and directs the Commissioner of DOH “to conduct a study and issue a report examining the unmet health and resource needs facing pregnant women in New York and the impact of limited service pregnancy centers on the ability of women to obtain accurate, non-coercive health care information and timely access to a comprehensive range of reproductive and sexual health care services” and directed the Statute to take effect immediately; and

WHEREAS, the Statute authorizes the Commissioner of DOH, for purposes of conducting the study and issuing the required report, to request “data and information” from “limited service pregnancy centers” “and other relevant sources,” and directs the Commissioner of DOH to issue the report and to publish it on DOH’s public website; and

WHEREAS, on September 2, 2022, Plaintiff Sisters of Life commenced the above-captioned action against Defendant Mary T. Bassett, in her official capacity as the then-Commissioner of DOH,¹ asserting a facial and as-applied challenge to the Statute under the First and Fourth Amendments to the U.S. Constitution; and

WHEREAS the parties want to avoid further litigation and settle the disputes between them without any admission of fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys of record for the parties, that this action is settled, subject to the approval of the Court, on the following terms and conditions:

1. As of the date that this Stipulation and Order is executed by all parties and so-ordered by the Court (“Effective Date”), all claims asserted by Plaintiff in this action shall be dismissed, with prejudice and without payments, attorney’s fees, costs, disbursements, or expenses, pursuant to Fed. R. Civ. P. 41(a).

2. Defendant agrees and is hereby ordered not to take any enforcement action of any kind against Plaintiff based on Plaintiff’s nonresponse to or noncompliance with any survey, document request, or information request of any kind authorized by or issued by Defendant pursuant to the Statute.

3. The jurisdiction of this Court to assure compliance with the Stipulation and Order shall terminate upon the date when the report mandated by the Statute is issued and published on DOH’s public website, whereupon Defendant agrees that its authority to request data and information pursuant to the Statute, and to take any enforcement action relating thereto, ends.

¹ On January 1, 2023, Mary T. Bassett resigned as Commissioner of DOH, and on June 10, 2023 James V. McDonald was confirmed by the State Senate as Commissioner of DOH. Pursuant to Fed. R. Civ. P. 25(d), Commissioner McDonald is automatically substituted as defendant in this action.

Provided, however, if Plaintiff, prior to Defendant's issuance and publication of the mandated report, provides written notice of any alleged noncompliance of this Stipulation and Order to Defendant's counsel pursuant to Paragraph 4, or moves pursuant to Paragraph 4 for enforcement of this Stipulation and Order, jurisdiction of the Court shall continue until (a) the time for Plaintiff to make a motion pursuant to Paragraph 4 expires; (b) any such motion is decided; (c) if any such motion is decided favorably for Plaintiff, until such time as directed by the Court; or (d) such time as may be extended upon written agreement by Plaintiff and Defendant and so-ordered by the Court in modification of this Stipulation and Order.

4. The parties to this Stipulation and Order will endeavor in good faith to informally resolve any differences regarding compliance and interpretation of this Stipulation and Order prior to making any motion to the Court and agree that the jurisdiction of the Court following the Effective Date is maintained solely for purposes of enforcing the terms of this Stipulation and Order. During the period between the Effective Date and the date when the report mandated by the Statute is issued by Defendant and published on DOH's public website, if Plaintiff believes that Defendant has not complied with Paragraph 2 of this Stipulation and Order, Plaintiff shall notify Defendant's counsel in writing of the nature and specifics of the alleged noncompliance. Such written notice shall be accompanied by copies of any documents relied upon by Plaintiff for the claimed noncompliance. Plaintiff's counsel and Defendant's counsel shall meet as early as practicable within the five (5) days following such notice to Defendant's counsel to discuss the claimed noncompliance and possible solutions. If no resolution is reached within five (5) days following such meeting, Plaintiff may move this Court for an order for all appropriate injunctive relief, provided that any such motion must be made no later than by fifteen (15) days after the date when written notice of any alleged noncompliance is provided by Plaintiff's counsel to

Defendant's counsel. The parties agree that the aforementioned deadlines for meeting and resolving any potential disputes may be extended by mutual written agreement of the parties. If Plaintiff has moved this Court for injunctive relief pursuant to this paragraph, upon notice of the motion, Defendant agrees to cease the conduct that is the subject of Plaintiff's motion until the Court resolves the motion.

5. In the event of any change in federal, state, or local laws, statutes, ordinances, rules or regulations including Centers for Medicare and Medicaid Services requirements that Defendant believes changes his responsibilities pursuant to this Stipulation and Order, Defendant shall so notify Plaintiff's counsel in writing and the parties shall attempt to come to an agreement as to any modifications of the Stipulation and Order that are warranted by any such changes. If no resolution is reached within fourteen (14) days following the written notice, Defendant may move this Court for an order for all appropriate relief pursuant to Rule 60(b) of the Federal Rules of Civil Procedure or any other applicable rule or procedure, and Plaintiff may oppose any such motion by Defendant.

6. Nothing in this Stipulation and Order shall be deemed to constitute a custom, policy, or practice of DOH, the State of New York (including, but not limited to, any agencies, departments, and subdivisions thereof), or any of their officials, employees or agents. Nothing contained in this Stipulation and Order, and no action taken pursuant to this Stipulation and Order, shall be deemed to be an admission of Plaintiff's allegations by Defendant or any agency, office, official, employee, or agent of the State of New York, nor an admission by Defendant that he has in any manner or way violated Plaintiff's rights. Similarly, nothing contained in this Stipulation and Order, and no action taken pursuant to this Stipulation and Order, shall be deemed a waiver or admission that Plaintiff's allegations are not meritorious or that Defendant is not liable for a violation of Plaintiff's rights. By entering into this Stipulation and Order, Defendant in no way

admits any violation of law or any liability whatsoever to Plaintiff, all such liability being expressly denied. Similarly, by entering into this Stipulation and Order, Plaintiff in no way waives or admits that Defendant is not liable for violating Plaintiff's constitutional rights. Rather, Plaintiff and Defendant enter into this Stipulation and Order to avoid further protracted litigation and to resolve and settle all disputes.

7. This Stipulation and Order shall have no precedential value and shall not be used or admissible in this or any other action or proceeding as evidence, except in an action or proceeding to enforce the terms of this Stipulation and Order, provided that Plaintiff is not precluded from referencing the existence of this Stipulation and Order or its terms.

8. This Stipulation and Order embodies the entire agreement of the parties in this matter and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceedings, shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

9. This Stipulation and Order is final and binding upon the parties and their respective officials, agents, employees, successors, and assigns.

10. Each party agrees to bear its own attorney's fees and costs.

11. This Stipulation and Order may be executed in any number of counterparts, all of which taken together shall constitute one stipulation, and may be executed by facsimile or electronically-transmitted signature.

12. This Stipulation and Order may be filed with the Court by any party without further notice.

13. Each signatory to this Stipulation and Order hereby represents and warrants that the

signatory has the requisite authority to enter into this Stipulation and Order and has not previously assigned or transferred any rights or interests with respect to the matters covered by this Stipulation and Order.

14. Any date set forth herein may be extended by mutual written agreement of the parties through their counsel. This Stipulation and Order may not otherwise be amended, changed, modified, superseded, altered, or canceled, and the terms and conditions hereof may not be waived, except by a written instrument signed by each of the parties expressly stating that it is intended to amend.

15. No waiver of any provision of this Stipulation and Order or the breach thereof shall be effective unless expressed in a writing signed by the waiving party. The waiver by any party of any of the provisions of the Stipulation and Order or of the breach thereof shall not operate or be construed as a waiver of any other provision or breach thereof.

16. The parties represent and warrant that: (i) they have had reasonable opportunity to consult with counsel, have consulted with counsel regarding the terms of this Stipulation and Order and its execution, and have read and understand all provisions of this Stipulation and Order; (ii) they have freely and voluntarily entered into this Stipulation and Order with an intent to bind themselves to its terms; and (iii) no promises or representations were made to them by any person to induce them to enter into this Stipulation and Order (other than the express terms set forth herein).

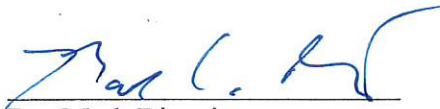
17. In computing any time period specified by this Stipulation and Order, the following rules apply: (i) exclude the day of the event that triggers the period; (ii) count every day, excluding intermediate Saturdays, Sundays, and New York State (“NYS”) legal holidays; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or NYS legal holiday, the period

continues to run until the end of the next day that is not a Saturday, Sunday, or such NYS legal holiday.

IN WITNESS WHEREOF, the parties hereto acknowledge that they have read this Stipulation and Order and accept and agree to the provisions contained herein, and have each duly executed this Stipulation and Order on the day and date indicated below.

Dated: 11/8, 2023

THE BECKET FUND FOR
RELIGIOUS LIBERTY
Attorney for Plaintiff



By: Mark Rienzi
Rebekah Ricketts
Angela Wu Howard
Daniel Chen
1919 Pennsylvania Avenue, N.W. Suite 400
Washington, DC 20006

Dated: 11/1, 2023

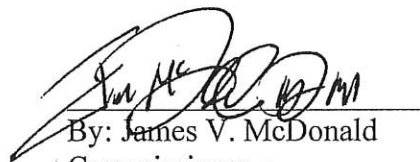
LETITIA JAMES
Attorney General
State of New York
Attorney for Defendant



By: Linda Fang
Special Litigation Counsel
28 Liberty Street
New York, NY 10005

Dated: 11/3, 2023

NEW YORK STATE
DEPARTMENT OF HEALTH

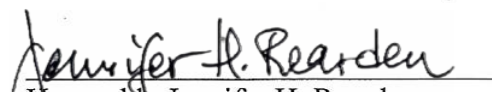


By: James V. McDonald
Commissioner
Corning Tower Empire State Plaza
Albany, New York 12237

SO ORDERED:

Dated: New York, New York
11/8, 2023

The Clerk of Court is directed to close this case.


Honorable Jennifer H. Rearden
United States District Judge