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Little Sisters of Poor brief asks court to extend injunction on mandate

by Catholic News Service

Denver — The Little Sisters of the Poor religious order has asked the 10th U.S. Circuit Court of Appeals to extend an injunction blocking enforcement of a federal mandate to provide contraceptive coverage in employee health insurance.

A brief filed Feb. 24 with the appeals court in Denver said the injunction is necessary "to prevent the impermissible government pressure" on the order to offer an employee health benefits plan consistent with their Catholic faith, which is against contraceptives.

"For the Little Sisters, an injunction ... is necessary to spare (them) from the illegal coercion" forcing them to provide coverage they oppose, said the brief, filed on behalf of the Colorado-based order and their co-plaintiffs -- Christian Brothers Services and Christian Brothers Employee Benefits Trust.

The filing follows the Supreme Court's Jan. 24 order affirming -- for the time being -- an injunction handed down by Justice Sonia Sotomayor within hours of the mandate taking effect at midnight Jan. 1. Noncompliance by that date would have meant thousands of dollars in daily fines levied against the Little Sisters.

Under rules issued by the U.S. Department of Health and Human Services, the mandate requires nearly all employers to cover contraceptives, sterilizations and some abortion-inducing drugs for all employees in their company health plan. It includes a narrow exemption for some religious employers that fit certain criteria.

Religious employers who are not exempt -- such as the Little Sisters of the Poor -- can comply with an

accommodation, meaning they fill out a government form directing a third-party -- such as the administrator of their health plan -- to provide the coverage.

The U.S. government argues that by directing a third party to be responsible for the coverage, the Little Sisters are informing HHS of their religious identity and their objections to the mandate.

"The government asserts that forcing the appellants to sign and deliver the form would have no effect of advancing the government's objectives," said the brief.

Lawyers for the Little Sisters argue that by filling out the form to direct third-party coverage, the sisters are still involved in providing coverage they find morally objectionable.

"Even without the government's express agreement," the brief said, "class-wide relief would be appropriate here in light of the scope of the harm to be prevented ... until a trial on the merits can be held."

"We are hopeful the 10th Circuit will give (the order) more lasting protection," said Mark Rienzi, senior counsel at the Becket Fund for Religious Liberty and lead counsel for the religious order.

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"The federal government is a massive entity that has lots of ways to deliver contraceptives to people -- it doesn't need to force the Little Sisters to participate," he said in a statement.

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