

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Case 1:19-cv-02478-LTB

CORNELIUS D. MAHONEY and BARBARA MORRIS, MD

Plaintiff,

v.

CENTURA HEALTH CORPORATION, a Colorado non-profit corporation.

Defendant.

MOTION TO DISMISS

Defendant, Centura Health Corporation (“Centura Health”), through undersigned counsel, respectfully submits this Motion to Dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As grounds for dismissal, Defendant states as follows:

BACKGROUND

Centura Health is a religious organization organized to "Extend the Healing Ministry of Christ" to the people and communities its employees and facilities serve.¹ Centura Health is

¹ See, *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (Tenth Cir. 2017), in which the Tenth Circuit Court of Appeals confirmed that Centura and its sponsors are religious organizations. (“Centura is a joint venture between CHI [Catholic Health Initiatives] and Adventist Health System . . . Centura’s two sole corporate members are [CHI Colorado] . . . and PorterCare Adventist Health System . . . Both CHIC’s and PorterCare’s facilities are tax exempt and each operates in accordance with the teachings of its respective founding church.” Id. at 1229. Because the hospital by which Dr. Morris was employed is a Catholic hospital, this Motion focuses on the Catholic religious principles, though the Catholic principles do not differ from Seventh-day Adventist principles on the points at issue in this case. While Centura's position in this Motion is squarely based on religious principles, we would suggest that those organizations or individuals who have a strongly held desire to opt out of providing euthanasia or assisted suicide services on a personal ethical basis that is not tied to any religious organization should also have that desire honored.

sponsored by the Catholic and Seventh-day Adventist healthcare ministries. The religious doctrines of those churches are core principles that govern, direct and inform the activities of Defendant. When Dr. Morris signed her Physician Employment Agreement with Centura Health-St. Anthony Hospital in 2017, (attached as Exhibit A), she expressly agreed in Section 1.12 that she would not provide any services "that are in violation of the Ethical and Religious Directives for Catholic Health Care Services." The Ethical and Religious Directives for Catholic Health Care Services, adopted and published by the United States Conference of Catholic Bishops ("Religious Directives") are attached as Exhibit B. The Religious Directives reference the Pastoral Letter of the American Catholic Bishops, *Health and Health Care* (attached as Exhibit C):

These Directives presuppose our statement *Health and Health Care* published in 1981. There we presented the theological principles that guide the Church's vision of health care, called for all Catholics to share in the healing mission of the Church, expressed our full commitment to the health care ministry, and offered encouragement to all those who are involved in it. Now, with American health care facing even more dramatic changes, we reaffirm the Church's commitment to health care ministry and the distinctive Catholic identity of the Church's institutional health care services.

Ex. B, at 4.

As a matter of religious doctrine, the Religious Directives declare that suicide and euthanasia are never morally acceptable options. *Id.*, at 20. They define euthanasia as "an action or omission that of itself or by intention causes death in order to alleviate suffering" and declare that "Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way." *Id.*, at 21-22, Directives 60 and 61. Since those institutions can only act through the people they employ, that prohibition obviously applies to their employees. The Religious Directives finally counsel against any cooperation in a morally unacceptable health care

activity that might "lead people to conclude that those activities are morally acceptable." *Id.*, at 24.

On July 22, 2019, Dr. Morris first met with Cornelius Mahoney (who prefers to be called Neil) who was referred to her for advice regarding his desire to receive Aid-In-Dying medication. Dr. Morris, as an employee of Centura Health- St. Anthony Hospital, condoned and supported an option that she knew was morally unacceptable to her employer. Upon learning of these activities after the filing of her lawsuit against Centura Health, she was advised, on August 26, 2019, that it was her employer's religious judgment that her conduct in relation to Mr. Mahoney violated the religious principles upon which the Hospital operates and warranted the termination of her employment, effective immediately.

The Plaintiffs Complaint, filed in the District Court for Arapahoe County sought a declaratory judgment to the effect that, under Colorado's End of Life Options Act ("EOLOA"), Centura Health- St. Anthony Hospital, cannot lawfully discipline her for conduct in her employment that violates its religious principles. Plaintiff's Complaint for Declaratory Judgment, at page 13, seeks the following "**RELIEF REQUESTED**":

1. Declare that Defendant may not lawfully prohibit Dr. Morris from, or sanction or penalize Dr. Morris for, providing AID [Aid In Dying] related services to Neil, including but not limited to, prescribing AID medication to Neil... .

Because the case raises significant federal questions, Centura removed the case to this Court.

ISSUES

1. Can the state statute, EOLOA, compel a religious health care organization to continue the employment of an employee who has participated in encouraging a patient to intentionally hasten his natural death when she knows the organization's religious beliefs hold such conduct to be morally unacceptable and when she has publicly disavowed those beliefs?
2. Whether EOLOA's prohibition of discipline is preempted by the federal statutory exemption of Section 702 of the Civil Rights Act that explicitly exempts religious organizations from claims that arise from discipline of employees on religious grounds?
3. Whether the declaration sought would violate the principles taught by the United States Supreme Court unanimously upholding "the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions"? *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, et. al., v. Amos, et. al.*, 483 U.S. 327 (107 S.Ct. 2862) (1987).

ARGUMENT

I. Centura's delivery of health care in the Catholic and Seventh-day Adventist ministries is a pervasively religious activity, motivated by Christian principles and carried out under ecclesiastical directives.

A. The Catholic Church has a strong biblical and theological basis for its beliefs regarding healing and health care that have a long tradition in its health care ministry.

In *Health and Health Care*, the American Catholic Bishops described the theological basis for its health care ministry and the Church's long tradition of religious activity in providing health care services:

In the earthly ministry of Jesus, the acts of healing stand out as dramatic high points. His teaching and preaching were not done in isolation but were accompanied by frequent manifestations of his healing power. ... He demonstrated that illness could be an occasion to prove God's love for his people. ... Through his life and ministry he proclaimed the kingdom of God on earth and reached out to touch and heal our wounded humanity. ... The healing ministry of Christ is historically embodied in the church. From the earliest traditions of the church to the present day, **the mission of evangelization to which Jesus sent his followers has included healing as a major part.**

Ex. C, at 4. (emphasis added)

Since the time of Christ's life on earth, the healing ministry has been as central to Christian faith as is preaching of the gospel. That religious healing ministry has continued in the Catholic Church:

Led by religious congregations of women, the church was a pioneer in the development of health care services in America. Thanks to the thousands of women and men who heroically and competently built this legacy, the Catholic hospital has become for generations of American Catholics and for many other citizens a familiar symbol of the healing apostolate of the church.

Id., at 9.

Maintaining the religious nature of the Catholic health care facilities was and is important to the Bishops:

[S]ome issues arise for Catholic health care facilities precisely because of their commitment to Christian and Catholic values. We hope that these institutions will consciously and creatively work to strengthen their Catholic identity and to reflect the values that are unique to our tradition.

The question of Catholic identity also involves certain medical-moral issues that confront Catholic health care facilities. ... We specifically wish to call attention to the *Ethical and Religious Directives for Catholic Health Care Facilities* issued by the bishops several years ago at the request of those working in the Catholic health field. These directives are revised when necessary and particular pronouncements on specific topics are issued; ... These directives serve as firm standards to be followed in the protection of Catholic values and in the continuing affirmation of Catholic identity. We call for faithful commitment to them.

By its very nature a Catholic health care facility aims to take on the character of a Christian community. All who work there are participants in the Catholic health apostolate.

Christians know that pain permeates the human condition. ... In the end, since the limitations of the human condition impose a degree of suffering and ultimately death for all of us, those involved in the healing mission of Christ render a unique service by bringing a faith dimension to these crucial moments.

Id., at 11, 12-13, 15, 19.

B. The Religious Directives of the Catholic Church, with which Dr. Morris agreed to comply, specifically provide that "Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way."

The Religious Directives, as noted above, set forth the current ecclesiastical teachings regarding the core religious activity of extending the healing ministry of Christ:

Health care in the United States is marked by extraordinary change. ... At the same time, there are a number of developments within the Catholic Church affecting the ecclesial mission of health care. ... [A] body of moral principles has emerged that expresses the Church's teaching on medical and moral matters... .

The moral teachings that we profess here flow principally from the natural law, understood in the light of the revelation Christ has entrusted to his Church.

Exhibit B, at 4. The Religious Directives then proceed to give the theological basis and the specific directives that are relevant to the euthanasia issue:

The mystery of Christ casts light on every facet of Catholic health care: to see Christian love as the animating principle of health care; to see healing and compassion as a continuation of Christ's mission; to see suffering as a participation in the redemptive power of Christ's passion, death, and resurrection; and to see death, transformed by the resurrection, as an opportunity for a final act of communion with Christ.

For the Christian, our encounter with suffering and death can take on a positive and distinctive meaning through the redemptive power of Jesus' suffering and death. As St. Paul says, we are "always carrying about in the body the dying of Jesus, so that the life of Jesus may also be manifested in our body" (2 Cor 4:10). This truth does not lessen the pain and fear, but gives confidence and grace for bearing suffering rather than being overwhelmed by it.

Id., at 6.

60. Euthanasia is an action or omission that of itself or by intention causes death in order to alleviate suffering. Catholic institutions may never condone or participate in euthanasia or assisted suicide in any way. Dying patients who request euthanasia should receive loving care, psychological and spiritual support, and appropriate remedies for pain and other symptoms so that they can live with dignity until the time of natural death.

Id., at 21.

C. Dr. Morris has condoned euthanasia or assisted suicide and publicly disavowed the Religious Directives.

It is undisputed that Dr. Morris has supported Mr. Mahoney in his desire to take the Aid-In-Dying medication and has taken the extraordinary step of seeking a judicial declaration of a right to do what she voluntarily agreed not to do. As a consequence, her employer, Centura Health-St. Anthony Hospital, concluded that, as a matter of religious principle, it could not continue to employ her in its health care ministry when she has publicly disavowed the Religious Directives.

II. Plaintiffs' requested declaration would violate the First Amendment's Free Exercise and Establishment clauses by applying EOLOA's prohibition against disciplining an employee for engaging in conduct that encourages the intentional hastening of a person's natural death to a religious organization whose beliefs hold such conduct to be morally unacceptable.

In *Powell v. Stafford*, 859 F.Supp. 1343, (D. Colo. 1994), this Court held that application of the Age Discrimination in Employment Act to a Catholic high school would violate the Free Exercise and Establishment Clauses of the First Amendment and dismissed the Plaintiff's claims as a matter of law. In that case, as in this, the Plaintiff was employed to carry out functions that were pervasively religious. *Id.*, at 1346 In that case, however, the Plaintiff's job was eliminated because of "a need for fewer teachers." It was not alleged that Mr. Powell had done anything that

violated the religious beliefs that were the basis of the school's religious functions. Notwithstanding that fact, the Court found that judging his qualifications for continued employment would constitute a "religious reason" that would implicate the First Amendment. *Id.*, at 1348. This case is far more clear on that point. It is undisputed that Dr. Morris has taken actions to support and encourage a patient to go forward with what the Church considers a morally unacceptable euthanasia. She has publicly disavowed the Church's position on a significant moral issue that is clearly set forth in its Religious Directives. The only reason for the termination of her employment is a "religious reason."

To hold that the state statute, EOLOA, could be applied to prevent Dr. Morris' religious employer from disciplining her under these circumstances would interfere with the Centura's Free Exercise rights, by preventing it from carrying out the Church's mission according to the religious dictates of the United States Conference of Catholic Bishops and would entangle the Court in religious matters, in violation of the Establishment Clause. The Court simply must not compel a religious organization to employ an individual to carry out its religious mission against its will, especially where the individual has made it clear that she does not agree with the religious directives that guide the employees who are to carry out that mission.

III. The Colorado EOLOA is preempted by the federal statutory exemption of Section 702 of the Civil Rights Act of 1964 that, while generally prohibiting religious discrimination in employment, explicitly exempts religious organizations from claims that arise from employee discipline on religious grounds.

As noted above, this is not a case like *Powell*, that involved claimed discrimination on the basis of a religion-neutral characteristic like age. It is a claim that squarely involves a religious employer taking an action on the basis of failure to support religious doctrine and directives. In that context, this case raises a classic Title VII issue- discipline on the basis of religion. When the

Civil Rights Act of 1964 was originally enacted, its prohibition against discrimination in employment on the basis of religion was subject to an exemption:

EXEMPTION. This title shall not apply to ... a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities ...

Pub.L 88-352, Title VII, § 702, July 2, 1964. (Emphasis added)

After Courts became entangled in the task of trying to decide what activities of a religious organization were "religious," Congress amended the exemption to remove the word "religious" that preceded "activities," so that the exemption applied to all activities of religious organizations. Thus, under current federal law that generally prohibits employers from taking disciplinary actions against employees on the basis of religious reasons, there is now a blanket exemption for religious organizations. Federal law expressly allows religious organizations to make employment decisions on religious grounds in all of their activities in order to avoid the entanglement and free exercise problems that arise when secular courts try to second guess their religious decisions.

Under the Supremacy Clause in Article VI of the United States Constitution, “[f]ederal law preempts state law ... ‘to the extent of any [state-law] conflict with a federal statute.’ ” *In re Universal Serv. Fund Tel. Billing Practice Litig.*, 619 F.3d 1188, 1195–96 (10th Cir. 2010) (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000)).” See *Wagner v. CHER, LLC*, 2018 WL 6046432, (D.Colo. November 19, 2018).

In *Fasano v. Federal Reserve Bank of New York*, 457 F.3d 274, 283-284 (3rd Cir. 2006) the Court summarized the law of conflict preemption:

Conflict preemption arises in the absence of specific preemption language, where an individual is unable to follow both federal and state laws simultaneously, or where the state law “would frustrate the federal scheme.” *Allis-Chalmers Corp. v.*

Lueck, 471 U.S. 202, 209, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985); see also *English*, 496 U.S. at 79, 110 S.Ct. 2270 (“where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”). We recently explained that “federal and state law need not be contradictory on their faces for preemption to apply. It is sufficient that the state law ‘impose[s] ... additional conditions’ not contemplated by Congress.” *Surrick v. Killion*, 449 F.3d 520, 532 (3d Cir.2006) (quoting *Sperry v. Florida*, 373 U.S. 379, 385, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963)).

In the Colorado EOLOA, there are specific provisions that conflict with the Congressional intent of eliminating the entanglement of courts in religious organizations' employment decisions, as reflected in the amended Title VII religious organization blanket exemption. C.R.S. 25-48-118(1) limits the ability of Centura Health- St. Anthony Hospital or any other religious organization to control its employees' actions to circumstances in which the employee prescribes an aid-in-dying medication for use on the facility's premises. Physicians employed by St. Anthony cannot, consistent with the Religious Directives, prescribe life ending medications for use anywhere. Subsection (2) of that section contains a blanket prohibition against disciplining any employee for participation in the euthanasia allowed by the statute without any exemption for religious organizations. In doing so, it not only violates the First Amendment, but also conflicts with the Congressional intent to provide a blanket exemption to religious organizations that take employment actions for religious reasons.

IV. The declaration sought by Plaintiffs would violate the principles taught by the United States Supreme Court in *Amos*, upholding "the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions."

The United States Supreme Court has unanimously upheld Title VII's amended exemption that is based on "the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Corporation*

of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, et. al., v. Amos, et. al., 483 U.S. 327, 335 (107 S.Ct. 2862) (1987). The Court rejected the lower court's intrusion into the religious organization's employment decision: "It cannot be seriously contended that impermissibly entangles church and state; the statute effectuates a more complete separation of the two and avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case." *Id.* at 340. *See, also*, Concurring Opinion, 483 U.S. at 341-344: "[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.' ... Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is thus a means by which a religious community defines itself. ... Furthermore, the prospect of government intrusion raises concern that a religious organization may be chilled in its free exercise activity. While a church may regard the conduct of certain functions as integral to its mission, a court may disagree. ... A case-by-case analysis for all activities therefore would both produce excessive government entanglement with religion and create the danger of chilling religious activity." (citations omitted.) Because this case, like *Amos*, involves an employee whose employment was terminated solely for religious reasons, it is directly on point. This Court should dismiss the Plaintiffs' claims without an intrusive inquiry into matters of religious belief.

CONCLUSION

Application of the state statute, EOLOA, to Centura Health- St. Anthony Hospital, as requested by Plaintiffs' Declaratory Judgment action would compel a religious health care organization to continue the employment of Dr. Morris after she has publicly disavowed the

Religious Directives and has participated in encouraging a patient to intentionally hasten his natural death in contravention of those directives. The Free Exercise and Establishment Clauses of the First Amendment prohibit that result. EOLOA's prohibition of discipline is also preempted by the federal statutory exemption of Section 702 of the Civil Rights Act that explicitly exempts religious organizations from claims that arise from discipline of employees on religious grounds. The declaration Plaintiffs seek would violate the principles taught in *Amos* by the United States Supreme Court unanimously upholding "the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions."

WHEREFORE, for the reasons set forth above, Defendant Centura Health Corporation respectfully moves this Court to dismiss the Plaintiffs' Complaint For Declaratory Relief.

Respectfully submitted this 11th day of September, 2019.

HALL, RENDER, KILLIAN, HEATH & LYMAN, P.C.

s/ Melvin B. Sabey

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 11th day of September, 2019, a true and correct copy of the foregoing was filed via the CM/ECF with service upon the following:

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