IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOST REVEREND DAVID A. ZUBIK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, as Trustee of The Roman Catholic Diocese of Pittsburgh, a Charitable Trust; The ROMAN CATHOLIC DIOCESE OF PITTSBURGH; CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., an affiliate nonprofit corporation of The Roman Catholic Diocese of Pittsburgh; and THE CATHOLIC CEMETERIES ASSOCIATION OF THE DIOCESE OF PITTSBURGH, an affiliate nonprofit corporation of The Roman Catholic Diocese of Pittsburgh, **PLAINTIFFS,** **v.** **KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; HILDA SOLIS, in her official capacity as Secretary of the U.S. Department of Labor; TIMOTHY GEITHNER, in his official capacity as Secretary of the U.S. Department of Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF TREASURY,** **DEFENDANTS.**	CIVIL ACTION NO. _____ JURY TRIAL DEMAND

COMPLAINT

1. This case is about an unprecedented government infringement on the religious liberties of religious organizations. This country was founded by those searching for religious

liberty and freedom from religious persecution. And since the founding of this country, religious organizations such as Plaintiffs have been free to fulfill their religious beliefs through service to all, including the underprivileged and underserved, without regard to the beneficiaries' religious views and have played a vital role in securing and protecting the civil liberties of all citizens. Plaintiffs alone serve tens of thousands of people annually that the Government does not or cannot serve and who without Plaintiffs' assistance would be without shelter, food, prenatal support and care, medical care, and vital educational services.

2. The U.S. Constitution and federal statutes protect religious organizations from governmental interference with their religious views—particularly minority religious views. The founders recognized, through their own experiences, that the mixture of government and religion is destructive to both institutions and divisive to the social fabric upon which the county depends. The Constitution and federal law thus stand as bulwarks against oppressive government actions even if supported by a majority of citizens. This "wall of separation between church and state" is critical to the preservation of religious freedom. As the Supreme Court has recognized, "[t]he structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority."

3. The Government is now attacking Plaintiffs' religious liberties. Current federal law described below (the "U.S. Government Mandate") requires religious organizations such as Plaintiffs to provide services that violate their long-standing teachings on abortion and the sanctity of human life by subsidizing, providing, and/or facilitating coverage for abortifacients, sterilization services, contraceptives, and related counseling services. The Government has not

shown any compelling need to force religious organizations to provide these services, and in fact, has chosen to make exemptions to the law both for religious and non-religious reasons.

4. Despite repeated requests from Church leaders, the Government has insisted that it will not change the core principle of the U.S. Government Mandate — that Plaintiffs must subsidize and/or facilitate the provision of certain drugs and services to their employees, which is contrary to Plaintiffs' religious beliefs.

5. Such an oppression of religious freedom violates Plaintiffs' clearly established federal constitutional and statutory rights and duties. The First Amendment also prohibits the Government from becoming excessively entangled in religious affairs and from interfering with a religious institution's internal decisions concerning the organization's religious structure, ministers, or doctrine. The U.S. Government Mandate tramples all of these rights.

6. An actual, justiciable controversy currently exists between Plaintiffs and Defendants. Absent a declaration resolving this controversy and the validity of the U.S. Government Mandate and religious employer exemption, Plaintiffs are uncertain as to their rights and duties in planning, negotiating, and/or implementing their group health insurance plans, their hiring and retention programs, and their social, educational, and charitable programs and ministries, as described below.

7. Accordingly, Plaintiffs seek an order vacating the U.S. Government Mandate and declaring that the U.S. Government Mandate cannot lawfully be applied to Plaintiffs. Additionally, Plaintiffs seek a permanent injunction against enforcement of the U.S. Government Mandate.

I. PRELIMINARY MATTERS

8. Plaintiff Most Reverend David A. Zubik, Bishop of The Roman Catholic Diocese of Pittsburgh, is the Trustee of The Roman Catholic Diocese of Pittsburgh, a Pennsylvania Charitable Trust. Bishop Zubik resides in Pittsburgh, Pennsylvania.

9. Plaintiff The Roman Catholic Diocese of Pittsburgh (the "Diocese") is a Pennsylvania Charitable Trust with a principal place of administration in Pittsburgh, Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

10. Plaintiff Catholic Charities of the Diocese of Pittsburgh, Inc. ("Catholic Charities") is a nonprofit corporation affiliated with the Diocese and with a principal place of administration in Pittsburgh, Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

11. Plaintiff The Catholic Cemeteries Association of the Diocese of Pittsburgh ("Catholic Cemeteries") is a nonprofit corporation affiliated with the Diocese and with a principal place of administration in Pittsburgh, Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

12. Defendant Kathleen Sebelius is the Secretary of the U.S. Department of Health and Human Services. She is sued in her official capacity.

13. Defendant Hilda Solis is the Secretary of the U.S. Department of Labor. She is sued in her official capacity.

14. Defendant Timothy Geithner is the Secretary of the U.S. Department of Treasury. He is sued in his official capacity.

15. Defendant U.S. Department of Health and Human Services ("HHS") is an executive agency of the United States within the meaning of the Religious Freedom Restoration Act ("RFRA") and the Administrative Procedure Act ("APA").

16. Defendant U.S. Department of Labor is an executive agency of the United States within the meaning of RFRA and the APA.

17. Defendant U.S. Department of Treasury is an executive agency of the United States within the meaning of RFRA and the APA.

18. This is an action for declaratory and injunctive relief under 5 U.S.C. § 702, 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 2000bb-1(c).

19. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(4), and 1346(a)(2).

20. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1).

A. Background on the Bishop and the Diocese

21. The Bishop in his capacity as Bishop of the Diocese also serves as Trustee for 206 parishes and their charitable trusts. The Diocese was established in 1843. The Diocese provides service throughout six counties in Southwestern Pennsylvania—Allegheny, Beaver, Butler, Greene, Lawrence, and Washington Counties—including a Catholic population of approximately 700,000 people.

22. The Bishop also oversees the multifaceted mission of spiritual, educational, and social service to residents of this six-county region, Catholic and non-Catholic alike.

23. The Diocese employs over 140 people, the majority of whom are full-time.

24. The Diocese employs individuals of all faiths.

25. The Diocese does not know whether the majority of its employees share its "religious tenets." In order to determine those statistics, the Diocese would be required to ask

the religious beliefs of all individuals that it employs. That inquiry, however, would substantially burden the Diocese's religious exercise.

26. The Diocese serves the community through its affiliated Catholic schools. The Diocese's Catholic schools include approximately 66 elementary schools, 11 high schools, two non-residential schools for individuals with disabilities, and various preschool programs. These schools educate approximately 22,000 students and provide inner-city children with an alternative to failing public education. Only three school districts in the entire Commonwealth of Pennsylvania educate more children than the Diocese.

27. The Diocesan schools are open to and serve all children, without regard to the students' religion, race, or financial condition.

28. The elementary schools within the Diocese are not exclusive to Catholics and educate many minority students. For example, Good Shepherd School, Northside Catholic School, and St. Bartholomew School educate many non-Catholic and minority students. Additionally, Sister Thea Bowman Catholic Academy and St. Benedict the Moor School educate predominantly non-Catholic students.

29. Eight Catholic high schools are affiliated with the Diocese, including Bishop Canevin High School, Central Catholic High School, North Catholic High School, Oakland Catholic High School, Quigley Catholic High School, Saint Joseph High School, Serra Catholic High School, and Seton-La Salle Catholic High School. Ninety-nine percent of senior high school students in the Diocesan schools graduate and 97% continue further education after high school.

30. The fact that Diocesan schools are open to all students in the greater Pittsburgh community is especially important since many of the Diocesan schools are located in districts

where the public schools are "failing." Indeed, Governor Tom Corbett has recognized that, "[w]here we have failing schools, we have failing students." If the Diocesan schools were forced to limit their admission to Catholic students, non-Catholic children residing within these failing schools districts would most likely be driven into these failing public schools.

31. The Diocese also provides numerous other social services to the residents of its six-county community. These services are provided without regard to national origin, race, color, sex, religion, age, or disability. For example, the Diocese provides crisis pregnancy assistance and post-abortion healing ministries.

32. The Diocese assists the work of many other local organizations, including organizations that provide support to the homeless, provide scholarships to disadvantaged children of all faiths, and provide counseling and support to struggling families.

33. The Diocese does not know whether a majority of the people served share its "religious tenets." In order to determine those statistics, the Diocese would be required to ask the religious beliefs of all individuals that it serves. That inquiry, however, would substantially burden the Diocese's religious exercise.

34. The Diocese operates a self-insured health plan through the Catholic Employers Benefits Plan Delaware Trust (the "Catholic Employers Benefits Plan"). That is, the Diocese does not contract with a separate insurance company that pays for the Diocesan employee health plans. Instead, the Trust functions as the insurance company underwriting the covered employees' medical costs, with all funding coming from the Diocese and its covered affiliates.

35. The Catholic Employers Benefits Plan insures employees of the Diocese of Pittsburgh, Catholic Cemeteries, all of the Diocesan parishes and schools, and several other affiliated entities.

36. Approximately 3,000 employees at the Diocese and its various affiliated entities are eligible for coverage under the Catholic Employers Benefits Plan. Approximately 2,200 employees are covered and approximately 3,500 individuals are covered, including dependents.

37. The Diocesan health plans are administered by Third Party Administrators, who are paid a flat fee for each covered individual for administering the plans but who do not pay for any services received by covered employees.

38. The next Diocesan plan year begins on January 1, 2013.

39. The health plans that the Diocese offers its employees are all "grandfathered." The Diocese has included a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii). While the Diocese's health plans are "grandfathered," the Diocese, as explained below, is presently injured by the U.S. Government Mandate.

40. Starting July 1, 2012, the Diocese will also start to insure its affiliated corporation, Catholic Charities, under the Catholic Employers Benefits Plan.

B. Background on Catholic Charities of the Diocese of Pittsburgh, Inc.

41. Plaintiff Catholic Charities is the primary social service agency of the Diocese under the leadership of Bishop Zubik.

42. The mission of Catholic Charities is to serve all regardless of religious affiliation in their time of greatest need.

43. Catholic Charities serves approximately 81,000 people, with approximately 130 employees, and with offices in all six counties that the Diocese serves.

44. Catholic Charities employs individuals of all faiths.

45. Catholic Charities serves the needy, underserved, and underprivileged in countless ways. Its programs and services include adoption, counseling, safety net and stability

services, health care for the uninsured, housing and homeless assistance, pregnancy and parenting support, and refugee and senior services. Catholic Charities also maintains crisis pregnancy assistance and post-abortion healing ministries.

46. Each of the county offices of Catholic Charities provides counseling and other support services to pregnant women and new mothers.

47. Catholic Charities is able to serve the Southwestern Pennsylvania community through its "Ambassadors of Hope," the hundreds of men, women, and teens who volunteer their time in support of the various social service programs run by Catholic Charities and thus answer the call of their faith to serve all in need, regardless of religious affiliation.

48. Through its various social service programs, in 2011, Catholic Charities provided approximately 70,966 meals to the hungry, 14,222 hours of case management to struggling individuals and families, and 6,882 hours of counseling.

49. Catholic Charities supports additional programs, including: the Catholic Charities Free Health Care Center, the Roselia Center, Neighborhood-Based Services, St. Joseph House of Hospitality, Team HOPE, and two centers for seniors.

50. Catholic Charities, through its wholly-owned subsidiary the Catholic Charities Free Health Care Center, provides quality medical and dental care at no cost to the working poor. The Free Health Care Center is the only free health care facility of its kind in the Pittsburgh region that serves low or moderate income individuals who do not have employer-sponsored health insurance, cannot afford private insurance, or who do not qualify for Medicaid or other types of assistance.

51. The Catholic Charities Free Health Care Center is critical to that underserved population who typically delay doctor visits, thereby magnifying health problems, overburdening

emergency rooms, and disrupting their employers' work flow. This segment of the population is not being served by the Government. The free health services provided at the Catholic Charities Free Health Care Center in 2011 are valued at approximately $1,542,230.

52. The Catholic Charities Free Health Care Center has been appropriately named "The Miracle on Ninth Street" by patients, volunteers, and staff. Since opening in 2007, the Catholic Charities Free Health Care Center has provided free, quality preventive and primary care to nearly 8,200 individuals during more than 23,000 patient visits. The Free Health Care Center treats clients without discrimination as to their race, religion, sex, national origin, age, or any disability.

53. Catholic Charities also supports the Roselia Center, which is a residential center for women who are homeless, single, pregnant, and parenting, as well as their infants. At the Roselia Center, women who are pregnant or have recently given birth are provided with safe, transitional housing as staff focus on teaching new mothers the skills necessary to obtain employment, live independently, and parent their children. The staff at the Roselia Center provide counseling services to pregnant women and new mothers. In 2011, 100% of the mothers who transitioned from Roselia Center to begin a life on their own were able to secure appropriate independent housing.

54. Catholic Charities supports Team HOPE (help on the path to empowerment), which provides individualized service plans to help the needy gain independence. A service plan includes programs focusing on workforce development, a "Life Skills University," and parenting support, in addition to other services.

55. Catholic Charities supports Neighborhood-Based Services (NBS), which helps individuals achieve and maintain independence through its Team HOPE program and which has

the mission of providing hope for vulnerable individuals in Pittsburgh's neighborhoods. Many of the individuals served by NBS are living with disabilities. NBS joins other Catholic Charities' offices in providing pregnancy and parenting services to more than 1,500 young women every year.

56. Catholic Charities supports St. Joseph House of Hospitality, a residential and transitional housing facility located in Pittsburgh's Hill District, which provides rooms, meals, and supportive services to men over 50 who are homeless or at risk for homelessness.

57. Catholic Charities also supports two centers for seniors. One of those centers is Challenges: Options in Aging, a facility located in Lawrence County that provides recreational, social, and educational services, as well as in-home services, to the aging. This facility served over 25,000 individuals in the past calendar year.

58. Donors are the life blood of Catholic Charities and make the mission of Catholic Charities, its programs, and its Free Health Care Center possible. Additionally, the Diocese provides funding to Catholic Charities, its programs, and the Free Health Care Center.

59. Currently, approximately 95 of Catholic Charities' approximately 136 employees participate in its group health plan, which is not self-insured.

60. Catholic Charities currently contracts with insurer Highmark Blue Cross Blue Shield to offer health coverage to its employees.

61. Catholic Charities' current health plans are not "grandfathered." Indeed, Catholic Charities did not include a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii) for grandfathered plans.

62. Starting on July 1, 2012, Catholic Charities' health plan will be covered by the Diocese's self-insurance, through the Catholic Employers Benefits Plan, and will be administered by a Third Party Administrator.

63. After July 2012, Catholic Charities' next plan year, under the Catholic Employers Benefits Plan, will begin on January 1, 2013.

C. Background on The Catholic Cemeteries Association of the Diocese of Pittsburgh

64. Catholic Cemeteries maintains resting places for the deceased in 16 Association-owned cemeteries throughout Allegheny and Washington Counties.

65. Additionally, Catholic Cemeteries provides burial-related services to individuals throughout Southwestern Pennsylvania.

66. Catholic Cemeteries provides indigents with free burial space, as well as free products and services connected with the burial, whenever asked.

67. Catholic Cemeteries also conducts weekly prayer services for the recently deceased and sponsors a monthly mass to commemorate all of the individuals buried that month. The decedents whose families have registered in Catholic Cemeteries' "Book of Life" are specifically mentioned at the monthly mass.

68. Catholic Cemeteries serves women and men dealing with issues of grief, anger, guilt, or forgiveness related to an abortion experience. It maintains a statue of Rachel Mourning in the Holy Innocents Plot section of the Calvary Cemetery. Catholic Cemeteries provides a granite stone with the child's first name and year of death that is placed in the Holy Innocents Plot. Catholic Cemeteries will arrange for the burial of the fetus if requested. These services are provided without disclosure, free of charge, and to all, without regard to religion.

69. Certain cemeteries owned by Catholic Cemeteries contain "Memorials to the Unborn" to provide a place for prayer in remembrance of aborted children and to remind all visitors to the cemeteries of the sincerity of the Church's religious beliefs in this regard.

70. Each cemetery owned by Catholic Cemeteries contains a section where children who die under the age of one are buried. Catholic Cemeteries provides burial services for these children at no charge.

71. Through its various services, Catholic Cemeteries provides essential spiritual support to the Diocese in that burying the dead is recognized by the Roman Catholic Church as both a religious rite and a corporal work of mercy. Catechism of the Catholic Church ¶ 2447.

72. While cemetery plots can only be owned by Catholics, anyone from any religion can be buried in the cemeteries.

73. The cemeteries owned by Catholic Cemeteries have over 400,000 interments and entombments and Catholic Cemeteries buries approximately 3,800 individuals per year.

74. Catholic Cemeteries has approximately 167 full-time employees and 40 seasonal, part-time employees. These employees perform services ranging from digging graves to maintenance to sales. Employment at Catholic Cemeteries is not limited to Catholics and Catholic Cemeteries does not inquire into its employees' religious beliefs.

75. Catholic Cemeteries currently provides its employees with four health plan options.

76. All four health plans are self-insured by the Catholic Employers Benefits Plan.

77. The next plan year for Catholic Cemeteries' health plans begins on January 1, 2013.

78. Three of Catholic Cemeteries' health plan options are grandfathered. For those plans, Catholic Cemeteries has included a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii). While these health plans are grandfathered, Catholic Cemeteries, as explained below, is presently injured by the U.S. Government Mandate.

79. One of Catholic Cemeteries' health plan options is not grandfathered, as Catholic Cemeteries changed its insurer for that plan between March 23, 2010 and November 15, 2010. This change was made, in part, to avoid adding contraceptive coverage to that plan. As a result, Catholic Cemeteries did not include a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii) for grandfathered plans.

II. STATUTORY AND REGULATORY BACKGROUND

A. Statutory Background

80. In March 2010, Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (collectively the "Affordable Care Act" or the "Act").

81. The Affordable Care Act established many new requirements for "group health plans," broadly defined as "employee welfare benefit plans" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provide[] medical care . . . to employees or their dependents." 42 U.S.C. § 300gg-91(a)(1).

82. The Act requires an employer's group health plan to cover certain women's "preventive care," leaving the definition of that term up to an agency within HHS. Specifically, it provides that "[a] group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum[,] provide coverage for and shall not impose any cost sharing requirements for—(4) with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources

and Services Administration for purposes of this paragraph." Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C. § 300gg-13(a)(4)).

83. Because the Act prohibits "cost sharing requirements," the health plan must pay for the full costs of these "preventive care" services without any deductible or co-payment.

84. Some provisions of the Affordable Care Act exempt individuals with religious objections. For example, individuals are exempt from the requirement to obtain health insurance if they are members of a "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds or are members of a "health care sharing ministry." 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii) (conscientious objectors); 5000A(d)(2)(b)(ii) ("health care sharing ministry").

85. Not every employer is required to comply with the U.S. Government Mandate. "Grandfathered" health plans are exempt from the "preventive care" mandate. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726, 41,731 (July 19, 2010) ("Interim Final Rules"); 42 U.S.C. § 18011. Such plans cannot undergo substantial change after March 23, 2010 without losing grandfathered status. *Id.* HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

86. Violations of the Affordable Care Act can subject an employer and an insurer to substantial monetary penalties.

87. Under the Internal Revenue Code, certain employers who fail to offer "full-time employees (and their dependants) the opportunity to enroll in minimum essential coverage under

an eligible employer-sponsored plan" will be exposed to significant annual fines of $2,000 per full-time employee. *See* 26 U.S.C. § 4980H(a), (c)(1).

88. Additionally, under the Internal Revenue Code, group health plans that fail to provide certain required coverage may be subject to an assessment of $100 a day per individual. *See* 26 U.S.C. § 4980D(b); *see also* Jennifer Staman & Jon Shimabukuro, Cong. Research Serv., RL 7-5700, Enforcement of the Preventive Health Care Services Requirements of the Patient Protection and Affordable Care Act (2012) (asserting that this assessment applies to employers who violate the "preventive care" provision of the Affordable Care Act).

89. Under the Public Health Service Act, the Secretary of HHS may impose a monetary penalty of $100 a day per individual where an insurer fails to provide the coverage required by the U.S. Government Mandate. *See* 42 U.S.C. § 300gg-22(b)(2)(C)(i); *see also* Cong. Research Serv., RL 7-5700 (asserting that this penalty applies to insurers who violate the "preventive care" provision of the Affordable Care Act).

90. ERISA may provide for additional penalties. Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700. Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the U.S. Government Mandate. *See* 29 U.S.C. § 1132(b)(3); *see also* Cong. Research Serv., RL 7-5700 (asserting that these penalties can apply to employers and insurers who violate the "preventive care" provision of the Affordable Care Act).

91. The Affordable Care Act limits the Government's regulatory authority. The Act and an accompanying Executive Order reflect a clear intent to exclude abortion-related services from the Act and the regulations implementing it. The Act itself provides that "nothing in this

title (or any amendment made by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." 42 U.S.C. § 18023(b)(1)(A)(i). The ability "[to] determine whether or not the plan provides coverage of" abortion is expressly reserved for "the issuer of a qualified health plan," not the Government. *Id.* § 18023(b)(1)(A)(ii).

92. Likewise, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits an agency from using Government funds to discriminate against an institution based on providing coverage for abortions. Specifically, "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011).

93. The intent to exclude abortions was instrumental in the Affordable Care Act's passage, as cemented by an Executive Order without which the Act would not have passed. Indeed, the Act's legislative history could not show a clearer congressional intent to prohibit the executive branch from requiring group health plans to provide abortion-related services. For example, the House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak prohibiting the use of federal funds for abortion services. *See* H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, lacked that restriction. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009). To avoid filibuster in the Senate, congressional proponents of the Act engaged in a procedure known as "budget

reconciliation" that required the House to adopt the Senate version of the bill largely in its entirety. Congressman Stupak and other pro-life House members indicated that they would refuse to vote for the Senate version because it failed to adequately prohibit federal funding of abortion. To appease these Representatives, President Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. *See* Exec. Order No. 13,535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

94. The Act was, therefore, passed based on the central premise that all agencies would uphold and follow "longstanding Federal laws to protect conscience" and to prohibit federal funding of abortion. *Id.*

B. Regulatory Background – Defining "Preventive Care" and the Narrow Exemption

95. Less than two years later, Defendants have subverted this central premise of the Act. Over that time, they issued interim rules and press releases—none of which followed notice-and-comment rulemaking—that required the federal funding of abortifacients, sterilization services, contraceptives, and related counseling services and commandeered religious organizations to facilitate those services as well.

96. Within four months of the Act's passage, on July 19, 2010, Defendants issued their initial interim final rules concerning § 300gg-13(a)(4)'s requirement that group health plans provide coverage for women's "preventive care." Interim Final Rules, 75 Fed. Reg. at 41,726.

97. Defendants improperly dispensed with notice-and-comment rulemaking for these rules.

98. Even though federal law had never required coverage of abortifacients, sterilization services, contraceptives, and related counseling services, Defendants claimed both that the APA did not apply to the relevant provisions of the Affordable Care Act and that "it would be impracticable and contrary to the public interest to delay putting the provisions in these

interim final regulations in place until a full public notice and comment process was completed." *Id.* at 41,730.

99. The interim final rules did not resolve what services constitute "preventive care;" instead, they merely track the Affordable Care Act's statutory language. They provide that "a group health plan . . . must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services: . . . (iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration." Interim Final Rules, 75 Fed. Reg. at 41,759 (codified at 45 C.F.R. § 147.130(a)(iv)).

100. The interim final rules did not identify the women's "preventive care" that the Defendants planned to require employer group health plans to cover, nor give any notice as to how it would identify those services. 42 U.S.C. § 300gg-13(a)(4). Instead, Defendants noted that "[t]he Department of HHS [was] developing these guidelines and expects to issue them no later than August 1, 2011." Interim Final Rules, 75 Fed. Reg. at 41,731.

101. Defendants permitted concerned entities to provide written comments about the interim final rules. *See id.* at 41,726. But, as Defendants have conceded, they did not comply with the notice-and-comment requirements of the APA. *Id.* at 41,730.

102. In response, several groups engaged in a lobbying effort to persuade Defendants to include various contraceptives and abortion-inducing drugs in the "preventive care" requirements for group health plans. *See, e.g.*, Press Release, Planned Parenthood, Planned Parenthood Supports Initial White House Regulations on Preventive Care (July 14, 2010),

available at http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-supports-initial-white-house-regulations-preventive-care-highlights-need-new-33140.htm.

103. Other commenters noted that "preventive care" could not reasonably be interpreted to include such practices. These groups explained that pregnancy was not a disease that needed to be "prevented," and that a contrary view would intrude on the sincerely-held beliefs of many religiously affiliated organizations by requiring them to pay for services that violate their religious beliefs. *See, e.g.*, Comments of U.S. Conference of Catholic Bishops, at 1-2 (Sept. 17, 2010), *available at* http://old.usccb.org/ogc/preventive.pdf.

104. On August 1, 2011, HHS issued the "preventive care" services that group health plans would be required to cover. *See* Press Release, HHS, Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost (Aug. 1, 2011), *available at* http://www.hhs.gov/news/press/2011pres/08/20110801b.html. Again acting without notice-and-comment rulemaking, HHS announced these guidelines through a press release rather than enactments in the Code of Federal Regulations or statements in the Federal Register. The press release made clear that the guidelines were developed by a non-governmental "independent" organization, the Institute of Medicine ("IOM"). *See id.*

105. In developing the guidelines, IOM invited certain groups to make presentations on preventive care. On information and belief, no groups that oppose government-mandated coverage of abortion, contraception, and related education and counseling were among the invited presenters. Comm. on Preventive Servs. for Women, Inst. of Med., Clinical Preventive Services for Women app. B at 217-21 (2011), http://www.nap.edu/openbook.php?record_id=13181&page=R1.

106. The IOM's own report, in turn, included a dissent that suggested that the IOM's recommendations were made on an unduly short time frame dictated by political considerations, through a process that was largely subject to the preferences of the committee's composition, and without the appropriate transparency for all concerned persons.

107. In stark contrast with the central premise necessary for the Affordable Care Act's passage and President Obama's promise to protect religious liberty, HHS's new guidelines required insurers and group health plans to cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *See* Health Res. Servs. Admin., Women's Preventive Services: Required Health Plan Coverage Guidelines, *available at* http://www.hrsa.gov/womensguidelines/.

108. Contraceptives approved by the FDA that qualify under these guidelines cause abortions. For example, the FDA has approved "emergency contraceptives" such as the morning-after pill (otherwise known as Plan B), which destroys the embryo by preventing it from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or Ella), which likewise can induce abortions of living embryos.

109. A few days later, on August 3, 2011, Defendants issued amendments to the interim final rules that they had previously enacted in July 2010. *See* Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011).

110. Defendants issued the amendments again without notice-and-comment rulemaking on the same grounds (namely, that it would be "impracticable and contrary to the

public interest to delay" putting the rules into effect) that they had provided for bypassing the APA with the original rules. *See id.* at 46,624.

111. When announcing the amended regulations, Defendants ignored the view that "preventive care" should exclude abortifacients, sterilization services, and contraceptives that do not prevent disease. Instead, they noted only that "commenters [had] asserted that requiring group health plans sponsored by religious employers to cover contraceptive services that their faith deems contrary to its religious tenets would impinge upon their religious freedom." *Id.* at 46,623.

112. Defendants sought "to provide for a religious accommodation that respect[ed]" only "the unique relationship between a house of worship and its employees in ministerial positions." *Id.*

113. Specifically, the regulatory "religious employer" exemption ignored definitions of "religious employer" already existing in federal law and, instead covered only those employers whose purpose is to inculcate religious values, and who employ and serve primarily individuals with the same religious tenets. It provides in full:

> (A) In developing the binding health plan coverage guidelines specified in this paragraph (a)(1)(iv), the Health Resources and Services Administration shall be informed by evidence and may establish exemptions from such guidelines with respect to group health plans established or maintained by religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers with respect to any requirement to cover contraceptive services under such guidelines.
>
> (B) For purposes of this subsection, a "religious employer" is an organization that meets all of the following criteria:
> (1) The inculcation of religious values is the purpose of the organization.
> (2) The organization primarily employs persons who share the religious tenets of the organization.
> (3) The organization serves primarily persons who share the religious tenets of the organization.

> (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

Id. at 46,626 (codified at 45 C.F.R. § 147.130(a)(iv)(A)-(B)).

114. This regulation delegates to a branch within Defendant HHS the job of issuing exemptions on an *ad hoc* and subjective basis by allowing that branch to determine which organizations meet this definition of "religious employer."

115. The religious employer exemption also mandates an unconstitutionally invasive inquiry into an organization's religious purpose, beliefs, and practices.

116. Similarly, the religious employer exemption further mandates an impermissibly invasive inquiry into the private religious beliefs of the individuals an organization employs and serves.

117. The religious employer exemption also uses impermissibly vague, undefined terms that extend the agency's already broad discretion and fail to provide organizations with notice of their duties and obligations. There is no definition for the vague terms "inculcation of religious values," "purpose of the organization," "primarily," and "religious tenets." Similarly, there is no indication of whether an agency with multiple purposes can qualify and how much overlap there must be for religious tenets to be "share[d]."

118. Defendants created such a narrow exemption that there is arguably no exemption for any religious organization that views its mission as providing charitable, educational, and employment opportunities to all those who request it, regardless of the requesters' religious faith.

119. When issuing this interim final rule, Defendants did not explain why they issued such a narrow religious exemption. Nor did Defendants explain why they refused to incorporate other "longstanding Federal laws to protect conscience" that President Obama's executive order

previously had promised to respect. *See* Exec. Order No. 13,535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

120. ERISA, for example, has long excluded "church plans" from its requirements, more broadly defined to cover civil law corporations, including entities, like Catholic Charities and Catholic Cemeteries, that share religious bonds with a church. *See* 29 U.S.C. §§ 1002(33)(C)(iv), 1003.

121. Nor did Defendants consider whether they had a compelling interest to require religiously affiliated employers' health plans to include services that violate the employers' religious beliefs, or whether Defendants could achieve their views of sound policy in a more religiously accommodating manner.

122. Suggesting that they were open to good-faith discussion, Defendants once again permitted parties to provide comments to the amended rules. Numerous organizations expressed the same concerns that they had before, noting that abortifacients, sterilization services, and contraceptives could not be viewed as "preventive care." They also explained that the religious exemption was "narrower than any conscience clause ever enacted in federal law, and narrower than the vast majority of religious exemptions from state contraceptive mandates." Comments of U.S. Conference of Catholic Bishops at 1-2 (Aug. 31, 2011), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf.

123. Bishop Zubik wrote to Secretary Sebelius opposing the Affordable Care Act noting that it was "so narrowly drawn that it is unprecedented in federal law" and that it "is an attack on Catholic beliefs and on the religious liberty of Catholics to adhere to their beliefs as they serve the community in which they live." Bishop Zubik also sent a letter to the parishioners

within the Diocese on September 22, 2011 explaining the narrow religious exemption and asking them to write to Secretary Sebelius opposing the Affordable Care Act.

124. Shortly thereafter, on October 5, 2011, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. NARAL Pro-Choice America is a pro-abortion organization that opposes many Catholic teachings. She told the pro-abortion audience that "we are in a war," apparently with opponents of either federal funding of abortifacients, sterilization services, contraceptives, and related counseling services or federal mandates requiring coverage for abortifacients, sterilization services, contraceptives, and related counseling services in health care plans.

125. Three months later, allegedly "[a]fter evaluating [the new] comments" to the interim final rules, the Defendants gave their response. They did not request further discussion or attempts at compromise. Nor did they explain the basis for their decision. Instead, Defendant Sebelius issued a short, Friday-afternoon press release. *See* Press Release, HHS, A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius (Jan. 20, 2012), *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html.

126. The press release announced a one-year "safe harbor" from enforcement. With little analysis or reasoning, HHS opted to keep the religious employer exemption unchanged, but indicated that "[n]onprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law." *Id.*

127. Taken together, these various rules and press releases amount to a mandate that requires most religiously affiliated organizations to sponsor, provide, and/or facilitate coverage for abortifacients, sterilization services, contraception, and related counseling services through

the health plans that they offer employees. As noted by Cardinal Timothy Dolan, the "safe harbor" effectively gave objecting religious institutions "a year to figure out how to violate [their] consciences." In the words of Bishop Zubik, "[t]he Obama administration has just told the Catholics of the United States, 'To Hell with you!'"

C. The White House Has Refused to Expand the Exemption

128. On February 10, 2012, given the continued public outcry to the U.S. Government Mandate and its exceedingly narrow conscience protections, the White House held a press conference and issued another press release about the U.S. Government Mandate, announcing that it had come up with a "solution" to their religious objections.

129. According to the White House, Defendants plan to issue regulations at some unspecified date prior to August 1, 2013 to exempt religious organizations that have religious objections to providing coverage for abortifacients, sterilization services, contraception, and related counseling services from *directly* paying for those services under the terms of their health plans.

130. When such religious organizations provide health plans to their employees, the "insurance company will be required to directly offer . . . contraceptive care free of charge." White House, Fact Sheet: Women's Preventive Services and Religious Institutions (Feb. 10, 2012), *available at* http://www.whitehouse.gov/the-press-office/2012/02/10/fact-sheet-women-s-preventive-services-and-religious-institutions.

131. The White House thus treats the sincerely-held beliefs of religious organizations as an issue of accounting. This "solution" uses accounting gimmicks that purport to prevent the "cost" of the services from showing up directly on the organizations' financial statements.

132. The "solution" ignores, however, that the religious organizations are opposed to *facilitating* these services. The "solution," therefore, does not address the actual religious liberty

issue—that the U.S. Government Mandate does not allow religious employers to purchase health plans that exclude coverage for abortifacients, sterilization services, contraceptives, and related counseling services.

133. Despite continued objections that this "accommodation" did nothing of substance to protect the right of conscience, when asked if there would be further room for compromise, White House Chief of Staff Jacob Lew responded: "No, this is our plan." David Eldridge & Cheryl Wetzstein, *White House Says Contraception Compromise Will Stand*, The Washington Times, Feb. 12, 2012, *available at* http://www.washingtontimes.com/news/2012/feb/12/white-house-birth-control-compromise-will-stand/print/.

134. Defendants have since finalized, "without change," the interim rules containing the religious employer exemption, 77 Fed. Reg. at 8,729 (Feb. 15, 2012), and issued guidelines regarding the previously announced "temporary enforcement safe harbor" for "non-exempted, non-profit religious organizations with religious objections to such coverage." *Id.* at 8,725; *see* Ctr. for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Feb. 10, 2012), *available at* http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf.

135. The U.S. Government Mandate is therefore the current, operative law.

136. The U.S. Government Mandate infringes Plaintiffs' religious liberty while ignoring the basic procedural safeguards that would give Plaintiffs notice of their duties and obligations, as well as recourse beyond the courts. The Government is proceeding without properly promulgated regulations, without definitions for key terms, and without a procedure for appeal.

137. Constitutional processes have been enacted for agencies to pass regulations, consistent with congressional direction, through notice-and-comment rulemaking. The Administration's insistence on regulation via press release and bureaucratic fiat violates separation of powers principles and destroys political accountability. That the Administration has retained discretion to unilaterally exempt some institutions only exacerbates the U.S. Government Mandate's constitutional infirmity. Plaintiffs should not have to beg the Administration for an exemption and enter a bureaucratic black hole where no procedure, decision making standards, or appellate rights exist. The Constitution and federal law demand more.

138. The Administration, moreover, has exceeded its authority under the very Act that it purports to be enforcing. By its terms, the Affordable Care Act cannot require health plans to cover abortion services. The Administration has ignored Congress' direction and has demanded that all health plans provide access to abortifacients, sterilization services, contraceptives, and related counseling services. The Administration is substituting its opinion—regardless of its justification—for that of Congress.

139. On March 16, 2012, the Government announced an Advance Notice of Proposed Rulemaking ("ANPRM"), seeking comment on various ways to structure the proposed accommodation. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501 (Mar. 21, 2012).

140. The ANPRM launches a 90-day comment period, to be followed by several other steps in the rulemaking process; it offers no clear end date other than repeating the assurance that an accommodation will be in place by August 1, 2013. *See id.*

141. The ANPRM's recurring theme is that the Government has not found a solution to the problems it created when it promulgated its U.S. Government Mandate.

142. In fact, the ANPRM contains little more than a recitation of proposals, hypotheticals, and "possible approaches." It offers almost no analysis of the relative merits of the various proposals. It is, in essence, an exercise in public brainstorming.

143. This "regulate first, think later" approach is not an acceptable method of rulemaking when the Government is regulating in a way that may require monumental changes of the regulated entities.

144. The ANPRM does not alter existing law. It merely states that the Government may do so at some point in the future. But a promise to change the law, whether issued by the White House or in the form of an ANPRM does not, in fact, change the law.

145. Nor does the ANPRM alter the scope of the narrow religious employer exemption.

146. The ANPRM does nothing of substance to avoid involving Plaintiffs in the subsidy, provision, and/or facilitation of coverage for abortifacients, sterilization services, contraceptives, and related counseling services or otherwise eliminate the constitutional infirmity of the U.S. Government Mandate.

147. Health plans do not take shape overnight. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement health plans for their employees.

148. For example, an employer that is self-insured—like the Diocese, Catholic Cemeteries, or Catholic Charities as of July 1, 2012— must work with actuaries to evaluate its funding reserves and then must negotiate with its third-party administrator ("TPA").

149. Under normal circumstances, in which Plaintiffs are only making minor changes to their employee health plans, Plaintiffs need more than twelve months lead time to analyze, vet, and implement plan changes. For example, the Diocese finalizes rates for the next plan year in early Fall. This means that in September, the Diocese will begin projecting costs for its 2013-2014 fiscal year, which includes the plan year that begins on January 1, 2014, but will not know what to factor into these projections because of the uncertainty surrounding the U.S. Government Mandate.

150. Thus, implementing even basic changes to Plaintiffs' health plans requires substantial lead time.

151. The U.S. Government Mandate, however, may require Plaintiffs to make significant, and likely revolutionary changes, to their employee coverage. Plaintiffs, moreover, may need to restructure their programs or health plans to fit within the U.S. Government Mandate's requirements. Such changes will require substantially more lead time.

152. Even assuming Plaintiffs are entitled to the benefit of the safe harbor, Plaintiffs must be prepared to implement modified health coverage, whatever that may end up being, for their employee health plans by January 1, 2014.

153. The U.S. Government Mandate thus imposes a present and ongoing hardship on Plaintiffs.

III. THE U.S. GOVERNMENT MANDATE, THE PROPOSED ACCOMMODATION, AND THE RELIGIOUS EMPLOYER EXEMPTION VIOLATE PLAINTIFFS' RELIGIOUS BELIEFS

A. The U.S. Government Mandate Violates Plaintiffs' Religious Beliefs

154. Plaintiffs have well-established religious beliefs that prohibit them from subsidizing, providing, and/or facilitating coverage for abortifacients, sterilization services, and contraceptives, as well as related counseling services.

155. The U.S. Government Mandate requires Plaintiffs to subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, and contraceptives, as well as related counseling services.

156. Plaintiffs' well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God." Catechism of the Catholic Church ¶ 1700.

157. One outgrowth of belief in human life and dignity is Plaintiffs' well-established belief that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* ¶ 2270. As a result, Plaintiffs believe that abortion is prohibited and that they cannot facilitate the provision of abortions. *Id.* ¶¶ 2271-72.

158. Plaintiffs adhere to Catholic teachings that prohibit any action which "render[s] procreation impossible" and which, more specifically, regard direct sterilization as "unacceptable." ¶¶ 2370, 2399.

159. The Church, however, does not oppose the use of drugs commonly used as contraceptives when a physician prescribes the medication not for the purpose of acting as a contraceptive, but rather with the intent of remedying another medical condition.

160. Consistent with Church teachings, Plaintiffs' employee health plans exclude coverage for abortion and sterilization.

161. Consistent with Church teachings, Plaintiffs' employee health plans cover drugs commonly used as contraceptives only when prescribed with the intent of treating another medical condition, not with the intent of preventing pregnancy.

162. Plaintiffs cannot, without violating their sincerely-held religious beliefs, offer coverage for these or other devices, drugs, procedures, or services that are inconsistent with the teachings of the Catholic Church.

163. The U.S. Government Mandate irreconcilably conflicts with Plaintiffs' well-established, sincerely-held beliefs that strictly forbid the subsidy, provision, and/or facilitation of coverage for abortifacients, sterilization services, contraceptives, and related counseling services that the U.S. Government Mandate forces upon them.

164. All of the required "contraceptive methods" and "sterilization procedures" violate Plaintiffs' well-established and sincerely-held religious beliefs that prohibit contraception and sterilization to inhibit procreation.

165. Refusal or failure to provide coverage for these drugs and services can expose Plaintiffs to substantial monetary penalties.

166. This unprecedented, direct assault on the religious beliefs of Plaintiffs and all Catholics is irreconcilable with American law.

167. Since the founding of this country, one of the basic freedoms central to our society and legal system is that individuals and institutions are entitled to freedom of conscience and religious practice. *See, e.g.*, James Madison, *Memorial and Remonstrance Against Religious Assessments*, ¶ 1 (1785).

168. Requiring Plaintiffs to subsidize, provide, and/or facilitate devices, drugs, procedures, or services that violate Plaintiffs' beliefs constitutes a substantial burden on Plaintiffs' free exercise of religion.

169. Indeed, the Government does not provide Plaintiffs the option of attempting to avoid the U.S. Government Mandate by exiting the health care market. Eliminating its employee group health plan would expose each Plaintiff to substantial fines.

170. It is no "choice" to leave their employees scrambling for health insurance while subjecting Plaintiffs to significant fines for breaking the law. Yet that is what the U.S. Government Mandate requires for Plaintiffs to adhere to their religious beliefs. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely-held religious beliefs by requiring them to subsidize, provide, and/or facilitate access to abortifacients, sterilization services, contraceptives, and related counseling services.

171. The Government itself has relieved numerous other employers from this requirement by exempting grandfathered plans and plans of employers it deems to be sufficiently religious. Moreover, these services are widely available in the United States. The U.S. Supreme Court has held that individuals have a constitutional right to use such services. And nothing that Plaintiffs do inhibits any individual from exercising that right.

172. The U.S. Government Mandate also seeks to compel Plaintiffs to fund "patient education and counseling for all women with reproductive capacity." It therefore compels Plaintiffs to provide, subsidize, and/or facilitate speech that is contrary to their firmly held religious beliefs.

173. Furthermore, the U.S. Government Mandate is not narrowly tailored to promoting a compelling governmental interest. Even assuming the interest was compelling, the

Government has numerous alternatives to furthering that interest other than forcing Plaintiffs to violate their religious beliefs.

174. For example, the Government could provide or pay for the objectionable services through expansion of its existing network of family planning clinics funded by HHS under Title X or through other programs established by a duly enacted law. Or, at a minimum, it could create a broader exemption for religious employers, such as those found in numerous state laws throughout the country and in other federal laws.

175. The Government therefore cannot possibly demonstrate that requiring Plaintiffs to violate their consciences is the least restrictive means of furthering its interest.

B. The Proposed Accommodation Provides No Protection

176. The Government has proposed an "accommodation" or "solution" whereby the insurer will purportedly pay for the required preventive care, at no cost to the religious employer.

177. The proposed accommodation acknowledges that it violates Plaintiffs' religious beliefs to pay directly for coverage of abortifacients, sterilization services, contraceptives, and related counseling services.

178. However, the accommodation fails to take into account that it violates Plaintiffs' religious beliefs to *subsidize, provide, and/or facilitate* the objectionable services.

179. Thus, under the logic of the "accommodation," these Plaintiffs are being forced to violate their religious beliefs.

180. The "accommodation" does not affect the narrow exemption applicable to "religious employers." Before they may even qualify for that narrow exemption, religious organizations must submit to an invasive governmental inquiry conducted by HHS, under the direction of Secretary Sebelius. Requiring Plaintiffs to submit to this government-conducted test

to determine if Plaintiffs are sufficiently religious is inappropriate and substantially burdens their firmly held religious beliefs.

181. Moreover, the proposed accommodation to the U.S. Government Mandate is predicated on an accounting gimmick that would not affect the actual operation of the regulations as applied to religious organizations.

182. Abortifacients, sterilization services, contraceptives, and related counseling services cost money. If the insurer or any other entity is required to pay for those drugs and services, it will pass those costs on to employers in some way.

183. Even if Plaintiffs will not be directly and immediately paying for these drugs and services, they ultimately will foot the bill for their cost.

184. Therefore, Plaintiffs are not assisted by the accommodation's accounting gimmicks.

185. Even if Plaintiffs do not end up paying for the prohibited drugs and services, they will still be forced to violate their religious beliefs by facilitating the provision of those drugs and services.

186. Plaintiffs' religious beliefs prohibit *facilitating* the provision of these drugs and services, not just directly paying for them.

187. The Catholic Church's consistent teaching in opposition to abortion, sterilization, and contraception cannot be addressed through such sleight of hand. Plaintiffs will be forced to subsidize, provide, and/or facilitate coverage for drugs, services, and education that violate their religious beliefs.

C. The U.S. Government Mandate's Religious Employer Exemption Aggravates the Constitutional and Statutory Violations

188. The constitutional and statutory violations of the U.S. Government Mandate are aggravated, not alleviated, by its "religious employer" exemption.

189. The religious employer exemption substantially burdens the religious exercise of Plaintiffs. The exemption forces Plaintiffs to choose between their religious beliefs (that abortion, sterilization, and contraception are strictly forbidden), their mission (educating, servicing, and employing individuals of all faith traditions to enrich and enlighten), and obeying the law.

190. In addition to believing in the sanctity of human life from conception, Plaintiffs believe that devotion to God is demonstrated through devotion to fellow man and service of others; the two are so closely related and dependent upon each other that they cannot be separated. Catholic doctrine recognizes that, "[l]iving faith 'work[s] through charity.'" Catechism of the Catholic Church ¶ 1814.

191. To effectuate this religious belief, Plaintiffs—like the Catholic Church that inspires their work—are committed to serving anyone in need, regardless of religion. The schools of the Diocese are open to children of every religion; the social service programs of Catholic Charities and its Free Health Care Center do not ask the religion of the people they serve; and Catholic Cemeteries employs and serves individuals of all faiths.

192. Although the Government exempts some religious institutions from the U.S. Government Mandate, it has crafted such a narrow exemption that thousands of religious institutions and countless religious individuals are being forced to make the unconscionable "choice" between violating their religious beliefs or violating the law.

193. Both the Constitution and RFRA protect religious institutions, whether or not their purpose is the "inculcation of religious values" and whether or not they "primarily" serve and employ people with shared "religious tenets."

194. However, only institutions with such a narrow purpose and with such limitations on employees and services qualify for the religious employer exemption under the U.S. Government Mandate. 45 C.F.R. § 147.130(a)(iv)(B)(1).

195. Forcing Plaintiffs to choose between violating their religious beliefs or violating the law constitutes a substantial burden on Plaintiffs' exercise of their religion, which is protected by the Constitution and RFRA.

196. The Government has not provided any process by which the Diocese can determine whether it fits within the exemption.

197. It is unclear whether the Diocese will qualify for the exemption.

198. It is unclear how the Government defines or will interpret religious "purpose."

199. It is unclear how the Government defines or will interpret vague terms, such as "primarily," "share" and "religious tenets."

200. It is unclear how the Government will ascertain the "religious tenets" of an entity, those it employs, and those it serves.

201. It is unclear how much overlap the Government will require for religious tenets to be "share[d]."

202. It is unclear whether the other Plaintiffs qualify for the exemption.

203. Though the Government's position is unclear, it appears that if an entity qualifies as a "religious employer" for purposes of the exemption, any affiliated corporation that provides coverage to its employees through the exempt entity's group health plan would also receive the

benefit of the exemption. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. at 16,502 (Mar. 21, 2012).

204. If the Diocese qualifies as a "religious employer" under the exemption to the U.S. Government Mandate, Catholic Charities and Catholic Cemeteries thus also appear to receive the benefit of the exemption.

205. The limited and ill-defined religious employer exemption provided in the U.S. Government Mandate conflicts with the Constitution.

206. Moreover, the process by which the Government proposes to determine whether an organization—such as the Diocese—qualifies for the exemption, will require the Government to engage in an intrusive inquiry into whether, in the view of HHS, the Diocesan "purpose" is the "inculcation of religious values" and whether the Diocese "primarily" employs and serves people who "share" its "religious tenets." The standards are impermissibly vague and subjective.

207. By basing the exemption on shared religious tenets, the U.S. Government Mandate compels Plaintiffs to consider restructuring their admissions, employment, and service programs to discriminate on the basis of religion in an overt and potentially illegal fashion.

208. Any attempt by Plaintiffs to qualify for the narrow religious employer exemption by restricting their charitable and educational mission to Catholics would have devastating effects on the communities encompassed within the Diocese's borders.

209. The Diocesan schools would be forced to inquire both into the nature and sincerity of the faith of prospective students, turning away Protestants, Muslims, Jews, atheists, and those that the Government may not find to be sufficiently Catholic—or at the very least, imposing strict quotas that ensure the Diocese does not "primarily" educate such students.

210. Financial and tuition assistance programs designed to reach poor and underprivileged families and students regardless of religion would have to be similarly redesigned to exclude non-Catholics. Access to a wide array of grants could be cut off, programs could be terminated, and the overall quality of education and services the Diocese could offer would sharply diminish.

211. Such a severe limitation on access to Catholic Charities alone would be devastating to the communities it serves. From housing and homelessness services to counseling and other neighborhood based services, Catholic Charities is the lifeblood of the communities it serves.

212. For more than 100 years, Catholic Charities has assisted people in their time of greatest need with safety net and stability services. These comprehensive services include assisting individuals and families with paying utility bills and other expenses all of which are especially significant given current unemployment and underemployment. The goal of these services is to stop the cycle of need and help people achieve a more stable life. Catholic Charities' myriad social service programs would be faced with the prospect of turning away desperately needy people.

213. These services are necessary to fill gaps in Government programs. As President Obama recognized in his February 10, 2012 announcement, church-related community services often do "more good for a community than a government program ever could." The U.S. Government Mandate, however, puts these good works in jeopardy.

214. Ironically, the U.S. Government Mandate's attempt to broaden access to healthcare would actually *narrow* that access for people in the Pittsburgh region by limiting the Free Health Care Center, which has served over 8,000 working, low, or moderate income

individuals regardless of religion, to serving primarily Catholics. Limiting the Free Health Care Center to Catholics would severely harm the excluded non-Catholics and undermine the Free Health Care Center's Catholic mission to serve all.

215. Moreover, the Free Health Care Center receives substantial funding from foundations and grants that could be jeopardized by excluding the treatment of sick people on the basis of their religion.

216. Using the Affordable Care Act to limit the services provided by the Free Health Care Center is especially ironic because the Center has stepped into the breach of serving the working poor who are not currently being served by the Government.

D. The U.S. Government Mandate's Religious Employer Exemption Excessively Entangles the Government In Religion, Interferes With Religious Institutions' Religious Doctrine, and Discriminates Against and Among Religions

217. The U.S. Government Mandate's religious employer exemption excessively entangles the Government in defining the religious tenets of each organization and its employees and beneficiaries.

218. In order to determine whether the Diocese—or any other religious organization—qualified for the exemption, the Government would have to decide the Diocese's "religious tenets" and determine whether "the purpose" of the organization is to "inculcate" people into those tenets.

219. The Government would then have to conduct an inquiry into the practices and beliefs of the individuals that the Diocese ultimately employs and educates.

220. The Government would then have to compare and contrast those religious practices and beliefs to determine whether and how many of them are "share[d]."

221. Regardless of outcome, this inquiry is unconstitutional, and the Diocese strongly objects to such an intrusive governmental investigation into its religious mission.

222. The religious employer exemption is based on an improper Government determination that "inculcation" is the only legitimate religious purpose.

223. The Government should not base an exemption on an assessment of the "purity" or legitimacy of an institution's religious purpose.

224. By limiting that legitimate purpose to inculcation, at the expense of other sincerely-held religious purposes, the U.S. Government Mandate interferes with religious autonomy. Plaintiffs have the right to determine their own religious purpose, including religious purposes broader than inculcation, without Government interference and without losing their religious liberties.

225. Likewise, the exemption seeks to improperly limit the definition of legitimate religious organizations to those who primarily employ and serve "persons who share the religious tenets of the organization." 45 C.F.R. § 147.130(a)(iv)(B)(2)-(3). This is inconsistent with the definition of religion under the Constitution and RFRA.

226. Defining religion based on primarily employing and serving people who share the organization's religious tenets directly contradicts with Plaintiffs' sincerely-held religious beliefs regarding their religious mission to serve all people, regardless of whether or not they share the same faith.

227. The U.S. Government Mandate and its extremely narrow religious employer exemption discriminate against Catholic religious institutions.

228. The U.S. Government Mandate targets Plaintiffs precisely because of their religious opposition to abortion, sterilization, and contraception.

229. The religious employer exemption targets Plaintiffs precisely because of their commitment to educate, serve, and employ all people without regard to religion.

230. Plaintiffs cannot be forced to give up their beliefs on abortion, sterilization, or contraception, nor their devotion to serving all mankind, without violating their religious beliefs and compromising their religious purpose.

231. The U.S. Government Mandate and its extremely narrow religious employer exemption discriminate among religions. The U.S. Government Mandate favors religions that do not oppose abortion or contraception by putting the Government imprimatur on those beliefs as correct.

232. Similarly, the religious employer exemption favors religions that do not believe in serving all humanity, by exempting them from its requirements and disfavors religions that believe in serving all humanity as part of their religious mission, by requiring them to subsidize, provide for, and/or facilitate the coverage of services which violate their religious beliefs.

233. As a result of such discrimination, the U.S. Government Mandate is subject to the strictest scrutiny under the Constitution.

234. Despite the efforts of the Government to divide religious institutions by targeting specific religious beliefs, Christian leaders in Pennsylvania, including all of the Catholic Bishops of Pennsylvania as members of the Pennsylvania Catholic Conference, have jointly recognized that the U.S. Government Mandate infringes on religious liberty and threatens all Christian institutions, no matter what the beliefs of the religious institution are as to abortion, sterilization, and contraception. In a joint letter from the Pennsylvania Catholic Conference dated March 7, 2012 and signed by the Roman Catholic Archbishop for Philadelphia, the Roman Catholic Bishops for Pittsburgh, Greensburg, Harrisburg, Erie, Allentown, Altoona-Johnstown, and Scranton, as well as the Metropolitan Archbishop for Ukrainians in the USA and the

Administrator of the Byzantine Catholic Archdiocese of Pittsburgh, the Christian leaders stated:

> Some falsely suggest that the HHS mandate is about contraception. This is primarily about religious liberty and our First Amendment rights to the free exercise of our religion. Make no mistake about it – this government mandate is a step which will inevitably lead to other mandates that continue to strike at the heart of our Faith and the constitutional liberties we have been guaranteed.

235. Additionally, on April 13, 2012, Christian Associates of Southwest Pennsylvania, one of the largest regional ecumenical agencies in the United States, which consists of leaders of 26 different sects of Christianity, issued a joint statement in opposition to the U.S. Government Mandate. The leaders expressed that:

> Our deep concern over this mandate does not arise from the varying convictions we have on the moral content of this mandate, but from our common commitment to the right of religious freedom that all people of faith expect to enjoy in this country. The Constitution of the United States guarantees every religious institution and its affiliated bodies **the inalienable right to define its own identity and ministries and to practice its own beliefs**, not just its freedom to worship.

E. The U.S. Government Mandate is Not a Neutral Law of General Applicability

236. The U.S. Government Mandate is not a neutral law of general applicability.

237. It offers multiple exemptions from its requirement that employer-based health plans subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services. For example, the U.S. Government Mandate exempts all "grandfathered" plans from its requirements until the plans lose that status.

238. It was, moreover, implemented by and at the behest of individuals and organizations who disagree with certain religious beliefs regarding abortion and contraception, and thus targets certain religious organizations and certain religions for disfavored treatment.

239. The Government has crafted a religious exemption to the U.S. Government Mandate that favors certain religions over others. As noted, it applies only to plans sponsored by

religious organizations that have, as their "purpose," the "inculcation of religious values"; that "primarily" serve individuals that share their "religious tenets"; and that "primarily" employ such individuals. 45 C.F.R. § 147.130(a)(iv)(B)(1).

240. This narrow exemption may protect some religious organizations. But it does not protect the many Catholic and other religious organizations that educate students of all faiths, provide vital social services to individuals of all faiths, and employ individuals of all faiths. The U.S. Government Mandate thus discriminates against such religious organizations because of their religious commitment to educate, serve, and employ people of all faiths.

241. The U.S. Government Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose Catholic teachings and beliefs regarding marriage and family.

242. For example, Defendant Sebelius has long been a staunch supporter of abortion rights and a vocal critic of Catholic teachings and beliefs regarding abortion and contraception.

243. On October 5, 2011, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. At that fundraiser, Defendant Sebelius criticized individuals and entities whose beliefs differed from those held by her and the other attendees of the NARAL Pro-Choice America fundraiser, stating: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely affordable contraceptive services? Not so much."

244. Consequently, on information and belief, Plaintiffs allege that the purpose of the U.S. Government Mandate, including the narrow exemption, is to discriminate against religious institutions and organizations that oppose abortion and contraception.

F. Plaintiffs Have Standing And Their Claims Are Ripe

245. Plaintiffs are already being affected by the U.S. Government Mandate. Plaintiffs have expended significant resources attempting to discern the U.S. Government Mandate, the

religious employer exemption, and the safe harbor, and how these provisions will affect Plaintiffs.

246. Plaintiffs are currently, and for the foreseeable future will be, negotiating new and existing employee contracts that will be in force when the U.S. Government Mandate begins applying to Plaintiffs' health insurance plans, and by doing so, face an untenable choice of whether to comply with the U.S. Government Mandate or alter their mission of serving all regardless of religious beliefs.

247. The fact that Plaintiffs are unsure of the status of their health insurance plans may impact employee recruitment efforts, which may in turn harm Plaintiffs' educational and social service functions.

248. Plaintiff Catholic Charities has been tangibly harmed by this uncertainty. Valued employees have left Catholic Charities for jobs that provide greater security in terms of benefits.

249. Catholic Charities' remaining employees are experiencing stress over the status of their health benefits.

250. Catholic Charities' hiring is also being affected. An applicant for a key management position did not accept the position because of the uncertainty of Catholic Charities' health plans and continuation as an organization with the mission to serve all.

251. Plaintiffs' funding will likely be significantly impacted by the U.S. Government Mandate because donors expect that Catholic organizations act in accordance with the teachings of the Catholic Church.

252. Catholic Charities' health plan and one health plan for Catholic Cemeteries are not "grandfathered." Therefore, those plans must comply with the U.S. Government Mandate for their first plan year after August 1, 2012, or if they qualify for the safe harbor, August 1,

2013. And Plaintiffs need substantial lead time in order to make changes to their employee health plans.

253. Plaintiffs who have grandfathered plans are nevertheless injured presently by the U.S. Government Mandate. These Plaintiffs can no longer alter their plans in the best interests of their employees, or because of changing economic circumstances, because such alterations would cost those Plaintiffs their grandfathered status. If Plaintiffs lose their grandfathered status, they will be forced to choose between complying with the law or abiding by their religious beliefs.

254. For example, the Diocese cannot increase its deductible or consider cost-shifting options without jeopardizing its grandfathered status.

255. In addition, one parish that is struggling financially to retain its level of benefits is considering increasing employee contributions for health coverage. But it cannot present its employees with the options of reduced coverage or increased costs, because either option would cost it grandfathered status and could jeopardize that status for the Diocese and other parishes.

256. Moreover, other parishes are considering addressing their financial struggles by altering employee contributions to family coverage, which costs significantly more than individual or even husband/wife coverage. But they cannot explore those options or present them to their employees without jeopardizing their and the Diocesan grandfathered status.

257. Finally, the plans of the Diocese and Catholic Cemeteries will lose grandfathered status in the near future because some changes will become essential. For example, as health care costs rise, plans will need to exceed the 5% limit on increasing their employee contribution rates.

258. Such changes are inevitable and impending, not speculative and remote. These changes will result in Plaintiffs losing grandfathered status and thus being forced to comply with the U.S. Government Mandate.

IV. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

259. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

260. RFRA prohibits the Government from substantially burdening an entity's exercise of religion, even if the burden results from a rule of general applicability, unless the Government demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb.

261. RFRA protects organizations as well as individuals from Government-imposed substantial burdens on religious exercise.

262. RFRA applies to all federal law and the implementation of that law by any branch, department, agency, instrumentality, or official of the United States.

263. The U.S. Government Mandate requires Plaintiffs to subsidize, provide, and/or facilitate practices and speech that are contrary to their religious beliefs.

264. In order to qualify for the "religious employer" exemption to the U.S. Government Mandate, Plaintiffs must submit to an intrusive government inquiry into their religious beliefs.

265. The U.S. Government Mandate substantially burdens Plaintiffs' exercise of religion.

266. The Government has no compelling governmental interest to require Plaintiffs to comply with the U.S. Government Mandate.

267. Requiring Plaintiffs to comply with the U.S. Government Mandate is not the least restrictive means of furthering a compelling governmental interest.

268. By enacting and threatening to enforce the U.S. Government Mandate against Plaintiffs, Defendants have violated RFRA.

269. Plaintiffs have no adequate remedy at law.

270. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT II
Substantial Burden on Religious Exercise in Violation of the Free Exercise Clause of the First Amendment

271. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

272. The Free Exercise Clause of the First Amendment prohibits the Government from substantially burdening an entity's exercise of religion.

273. The Free Exercise Clause protects organizations as well as individuals from Government-imposed burdens on religious exercise.

274. The U.S. Government Mandate requires Plaintiffs to subsidize, provide, and/or facilitate practices and speech that are contrary to their religious beliefs.

275. In order to qualify for the "religious employer" exemption to the U.S. Government Mandate, Plaintiffs must submit to an intrusive government inquiry into their religious beliefs.

276. The U.S. Government Mandate substantially burdens Plaintiffs' exercise of religion.

277. The U.S. Government Mandate is not a neutral law of general applicability, because it is riddled with exceptions. It offers multiple exemptions from its requirement that

employer-based health plans include or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services.

278. The U.S. Government Mandate is not a neutral law of general applicability because it discriminates against certain religious viewpoints and targets certain religious organizations for disfavored treatment. Defendants enacted the U.S. Government Mandate despite being aware of the substantial burden it would place on Plaintiffs' exercise of religion.

279. The U.S. Government Mandate implicates constitutional rights in addition to the right to free exercise of religion, including, for example, the rights to free speech and to freedom from excessive government entanglement with religion.

280. The Government has no compelling governmental interest to require Plaintiffs to comply with the U.S. Government Mandate.

281. The U.S. Government Mandate is not narrowly tailored to further a compelling governmental interest.

282. By enacting and threatening to enforce the U.S. Government Mandate, the Government has burdened Plaintiffs' religious exercise in violation of the Free Exercise Clause of the First Amendment.

283. Plaintiffs have no adequate remedy at law.

284. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT III
Excessive Entanglement in Violation of the Free Exercise and Establishment Clauses of the First Amendment

285. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

286. The Free Exercise Clause and the Establishment Clause of the First Amendment prohibit intrusive government inquiries into the religious beliefs of individuals and institutions, and other forms of excessive entanglement between religion and Government.

287. This prohibition on excessive entanglement protects organizations as well as individuals.

288. In order to qualify for the exemption to the U.S. Government Mandate for "religious employers," entities must submit to an invasive government investigation into an organization's religious beliefs, including whether the organization's "purpose" is the "inculcation of religious values" and whether the organization "primarily employs" and "primarily serves" individuals who share the organization's religious tenets.

289. The U.S. Government Mandate thus requires the Government to engage in intrusive inquiries and judgments regarding questions of religious belief or practice.

290. The U.S. Government Mandate results in an excessive entanglement between religion and Government.

291. The U.S. Government Mandate is therefore unconstitutional and invalid.

292. The enactment and impending enforcement of the U.S. Government Mandate violate the Free Exercise Clause and the Establishment Clause of the First Amendment.

293. Plaintiffs have no adequate remedy at law.

294. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT IV
Religious Discrimination in Violation of the Free Exercise and Establishment Clauses of the First Amendment

295. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

296. The Free Exercise and Establishment Clauses of the First Amendment mandate the equal treatment of all religious faiths and institutions without discrimination or preference.

297. This mandate of equal treatment protects organizations as well as individuals.

298. The U.S. Government Mandate's narrow exemption for certain "religious employers" but not others discriminates on the basis of religious views or religious status.

299. The U.S. Government Mandate's definition of religious employer likewise discriminates among different types of religious entities based on the nature of those entities' religious beliefs or practices.

300. The U.S. Government Mandate's definition of religious employer furthers no compelling governmental interest.

301. The U.S. Government Mandate's definition of religious employer is not narrowly tailored to further a compelling governmental interest.

302. The enactment and impending enforcement of the U.S. Government Mandate violate the Free Exercise Clause and the Establishment Clause of the First Amendment.

303. Plaintiffs have no adequate remedy at law.

304. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT V
Interference in Matters of Internal Church Governance in Violation of the Free Exercise and Establishment Clauses of the First Amendment

305. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

306. The Free Exercise Clause and Establishment Clause protect the freedom of religious organizations to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine.

307. Under these Clauses, the Government may not interfere with a religious organization's internal decisions concerning the organization's religious structure, ministers, or doctrine.

308. Under these Clauses, the Government may not interfere with a religious organization's internal decision if that interference would affect the faith and mission of the organization itself.

309. Plaintiffs are religious organizations affiliated with the Roman Catholic Church.

310. The Catholic Church views abortion, sterilization, and contraception as intrinsically immoral, and prohibits Catholic organizations from subsidizing, providing, and/or facilitating those practices.

311. Plaintiffs have abided and must continue to abide by the decision of the Catholic Church on these issues.

312. The Government may not interfere with or otherwise question the final decision of the Catholic Church that its religious organizations must abide by these views.

313. Plaintiffs have therefore made the internal decision that the health plans they offer to their employees may not subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services.

314. The U.S. Government Mandate interferes with Plaintiffs' internal decisions concerning their structure and mission by requiring them to subsidize, provide, and/or facilitate practices that directly conflict with Catholic beliefs.

315. The U.S. Government Mandate's interference with Plaintiffs' internal decisions affects their faith and mission by requiring them to facilitate practices that directly conflict with their religious beliefs.

316. Because the U.S. Government Mandate interferes with the internal decision making of Plaintiffs in a manner that affects Plaintiffs' faith and mission, it violates the Establishment Clause and the Free Exercise Clause of the First Amendment.

317. Plaintiffs have no adequate remedy at law.

318. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VI
Compelled Speech in Violation of
the Free Speech Clause of the First Amendment

319. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

320. The First Amendment protects against the compelled affirmation of any religious or ideological proposition that the speaker finds unacceptable.

321. The First Amendment protects organizations as well as individuals against compelled speech.

322. Expenditures are a form of speech protected by the First Amendment.

323. The First Amendment protects against the use of a speaker's money to support a viewpoint that conflicts with the speaker's religious beliefs.

324. Plaintiffs consistently hold and publicly proclaim that abortion, sterilization, and contraception violate fundamental tenets of their Catholic religion.

325. The U.S. Government Mandate would compel Plaintiffs to provide or sponsor health care plans to their employees that include or facilitate coverage of practices that violate their religious beliefs.

326. The U.S. Government Mandate would compel Plaintiffs to subsidize, provide, and/or facilitate education and counseling services regarding these practices.

327. By imposing the U.S. Government Mandate, Defendants are compelling Plaintiffs to publicly subsidize or facilitate the activity and speech of private entities that are contrary to their religious beliefs.

328. The U.S. Government Mandate is viewpoint-discriminatory and subject to strict scrutiny.

329. The U.S. Government Mandate furthers no compelling governmental interest.

330. The U.S. Government Mandate is not narrowly tailored to further a compelling governmental interest.

331. Plaintiffs have no adequate remedy at law.

332. The U.S. Government Mandate imposes an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VII
Failure to Conduct Notice-And-Comment Rulemaking and Improper Delegation in Violation of the APA

333. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

334. The Affordable Care Act expressly delegates to an agency within Defendant HHS, the Health Resources and Services Administration, the authority to establish guidelines concerning the "preventive care" that a group health plan and health insurance issuer must provide.

335. Given this express delegation, Defendants were required to engage in formal notice-and-comment rulemaking in a manner prescribed by law before issuing the guidelines that group health plans and insurers must cover. Proposed regulations were required to be published in the Federal Register and interested persons were required to be given an opportunity to participate in the rulemaking through the submission of written data, views, or arguments.

336. Defendants promulgated the "preventive care" guidelines without engaging in formal notice-and-comment rulemaking in a manner prescribed by law.

337. Defendants, instead, wholly delegated their responsibilities for issuing preventive care guidelines to a non-governmental entity, the IOM (the Institute of Medicine).

338. The IOM did not permit or provide for the broad public comment otherwise required under the APA concerning the guidelines that it would recommend. The dissent to the IOM report noted both that the IOM conducted its review in an unacceptably short time frame, and that the review process lacked transparency.

339. Within two weeks of the IOM issuing its guidelines, Defendant HHS issued a press release announcing that the IOM's guidelines were required under the Affordable Care Act.

340. Defendants have never explained why they failed to enact these "preventive care" guidelines through notice-and-comment rulemaking as required by the APA.

341. Defendants also failed to engage in notice-and-comment rulemaking when issuing the interim final rules and the final rule incorporating the guidelines. Defendants' stated reasons for promulgating these rules without engaging in formal notice-and-comment rulemaking do not constitute "good cause." Providing public notice and an opportunity for comment was not impracticable, unnecessary, or contrary to the public interest for the reasons claimed by Defendants.

342. Defendants have since undertaken a prolonged notice-and-comment process to promulgate amended regulations, which undermines their claim that good cause warranted abandoning notice-and-comment for the current regulations.

343. By enacting the "preventive care" guidelines and interim and final rules through delegation to a non-governmental entity and without engaging in notice-and-comment rulemaking, Defendants failed to observe a procedure required by law and thus violated 5 U.S.C. § 706(2)(D).

344. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

345. Plaintiffs have no adequate remedy at law.

346. The enactment of the U.S. Government Mandate without observance of a procedure required by law and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VIII
Arbitrary and Capricious Action in Violation of the APA

347. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

348. The APA condemns agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

349. The APA requires that an agency examine the relevant data and articulate an explanation for its action that includes a rational connection between the facts found and the policy choice made.

350. Agency action is arbitrary and capricious under the APA if the agency has failed to consider an important aspect of the problem before it.

351. A court reviewing agency action may not supply a reasoned basis that the agency itself has failed to offer.

352. Defendants failed to consider the suggestion of many commenters that abortifacients, sterilization services, contraceptives as well as counseling and education for these services could not be viewed as "preventive care."

353. Defendants failed adequately to engage with voluminous comments suggesting that the scope of the religious exemption to the U.S. Government Mandate should be broadened.

354. Defendants did not articulate a reasoned basis for their action by drawing a connection between facts found and the policy decisions they made.

355. Defendants failed to consider the use of broader religious exemptions in many other federal laws and regulations. Defendants' promulgation of the U.S. Government Mandate violates the APA.

356. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

357. Plaintiffs have no adequate remedy at law.

358. The U.S. Government Mandate imposes an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT IX
Acting Illegally in Violation of the APA

359. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

360. The APA requires that all Government agency action, findings, and conclusions be "in accordance with law."

361. The U.S. Government Mandate and its exemption are illegal and therefore in violation of the APA.

362. The Weldon Amendment states that "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011).

363. The Affordable Care Act states that "nothing in this title (or any amendment by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." 42 U.S.C. § 18023(b)(1)(A)(i). It adds that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion.]" *Id.* § 18023(b)(1)(A)(ii).

364. The Affordable Care Act contains no clear expression of an affirmative intention of Congress that employers with religiously motivated objections to the provision of health plans that include coverage for abortifacients, sterilization services, contraceptives, or related counseling services should be required to provide such plans.

365. The U.S. Government Mandate requires employer based-health plans to subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services. It does not permit employers or issuers to determine whether the plan covers abortion, as the Act requires. By issuing the U.S. Government Mandate, Defendants have exceeded their authority, and ignored the direction of Congress.

366. The U.S. Government Mandate violates RFRA.

367. The U.S. Government Mandate violates the First Amendment.

368. The U.S. Government Mandate is not in accordance with law and thus violates 5 U.S.C. § 706(2)(A).

369. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

370. Plaintiffs have no adequate remedy at law.

371. The enactment of the U.S. Government Mandate that is not in accordance with law and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

V. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under RFRA;
2. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under the First Amendment;
3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;
4. Enter an order vacating the U.S. Government Mandate;
5. Enter an injunction prohibiting the Defendants from enforcing the U.S. Government Mandate against Plaintiffs;
6. Award Plaintiffs their attorneys' and expert fees under 42 U.S.C. § 1988; and
7. Award all other relief as the Court may deem just and proper.

VI. **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiffs, by their counsel, and hereby demands a trial by jury as to all issues so triable.

Respectfully submitted, this 21st day of May, 2012.

By: /s/ Paul M. Pohl

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