IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ROMAN CATHOLIC DIOCESE OF FORT WORTH; UNIVERSITY OF DALLAS; OUR LADY OF VICTORY CATHOLIC SCHOOL; CATHOLIC CHARITIES, DIOCESE OF FORT WORTH, INC.,	)	
Plaintiffs,	)	
v.	)	
KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor, JACOB J. LEW, 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,	)	**Civil Action No. 4:12-CV-314-Y**
Defendants.	)	**DEMAND FOR JURY TRIAL**

FIRST AMENDED COMPLAINT

1. This lawsuit is about one of America's most cherished freedoms: the freedom to practice one's religion without government interference. It is not about whether people have a right to abortion-inducing products, sterilization, and contraception. Those products and services are widely available in the United States, and nothing prevents the Government itself from making them more widely available. Here, however, the Government seeks to require Plaintiffs—all of which are Catholic entities—to violate their sincerely held religious beliefs by providing, paying for, and/or facilitating access to those products and services. American history

and tradition, embodied in the First Amendment to the United States Constitution and the Religious Freedom Restoration Act ("RFRA"), safeguard religious entities from such overbearing and oppressive governmental action. Plaintiffs therefore seek relief in this Court to protect this most fundamental of American rights.

2. Plaintiffs provide a wide range of spiritual, educational, and social services to members of their communities, Catholic and non-Catholic alike. Plaintiff Roman Catholic Diocese of Fort Worth (the "Diocese"), not only provides pastoral care and spiritual guidance for thousands of Catholics, but also serves individuals throughout the Dallas-Fort Worth area through its schools and multiple charitable programs. Likewise, Plaintiff Our Lady of Victory Catholic School ("OLV") is devoted to providing high-quality educational services to a diverse student body. Plaintiff Catholic Charities, Diocese of Fort Worth, Inc. ("Catholic Charities") offers a host of social services to thousands in need throughout the greater Dallas-Fort Worth area. For its part, Plaintiff University of Dallas (the "University") offers approximately 2,500 undergraduate and graduate students a rigorous education, while at the same time serving the larger community through, *inter alia*, its intellectual offerings and charitable outreach.

3. Plaintiffs' work is in every respect guided by and consistent with Roman Catholic belief, including the requirement that they serve those in need, regardless of their religion. This is perhaps best captured by words attributed to St. Francis of Assisi: "Preach the Gospel at all times. Use words if necessary." As Pope Benedict XVI has more recently put it, "[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." As Plaintiff Catholic Charities notes, "We like to say that we serve people because of our faith, not

theirs. Our faith calls us to serve others, regardless of their personal faith traditions." Thus, Catholic individuals and organizations consistently work to create a more just community by serving any and all neighbors in need.

4. Catholic Church teachings also uphold the firm conviction that sexual union should be reserved to married couples who are open to the creation of life; thus, artificial interference with the creation of life, including through abortion, sterilization, and contraceptives, is contrary to Catholic doctrine.

5. Defendants have promulgated various rules (collectively, "the U.S. Government Mandate") that force Plaintiffs to violate their sincerely held religious beliefs. These rules, first proposed on July 19, 2010, require Plaintiffs and other Catholic and religious organizations to provide, pay for, and/or facilitate access to abortion-inducing products, sterilization, and contraception, in violation of their sincerely held religious beliefs. In response to the intense public criticism that the Government's original proposal provoked, including by some of the current Administration's most ardent supporters, the Government proposed changes to the rules that, it asserted, were intended to eliminate the substantial burden that the Mandate imposed on religious beliefs. In fact, however, these changes made that burden worse by significantly *increasing* the number of religious organizations subject to the U.S. Government Mandate, and by driving a wedge between religious organizations, such as Plaintiff Diocese, and equally religious charitable and educational arms of the Church, such as Plaintiff OLV.

6. In its final form, the U.S. Government Mandate contains three basic components:

7. First, it requires employer group health plans to cover, without cost-sharing requirements, all "FDA-approved contraceptive methods and contraceptive counseling"—a term

that includes abortion-inducing products, contraception, sterilization, and related counseling and education.

8. Second, the Mandate creates a narrow exemption for certain "religious employers," defined to include only organizations that are "organized and operate[] as a nonprofit entity and [are] referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." The referenced Code section does not, nor is it intended to, address religious liberty. Instead, it is a paperwork-reduction provision that addresses whether and when tax-exempt nonprofit entities must file an annual informational tax return, known as a Form 990. As the Government has repeatedly affirmed, this exemption is intended to protect only "the unique relationship between a house of worship and its employees in ministerial positions." 78 Fed. Reg. 8,456, 8,461 (Feb. 6, 2013); see also 78 Fed. Reg. 39,870, 39,874 (July 2, 2013). Consequently, the only organizations that qualify for the exemption are "churches, synagogues, mosques, and other houses of worship, and religious orders." 78 Fed. Reg. at 8,461. This is the narrowest "conscience exemption" ever adopted in federal law. It grants the Government broad discretion to sit in judgment of which groups qualify as "religious employers," thus favoring certain religious organizations over others and entangling the Government in matters of religious faith and practice.

9. Third, the U.S. Government Mandate creates a second class of religious entities that, in the Government's view, are not sufficiently "religious" to qualify for the "religious employer" exemption. These religious entities, deemed "eligible organizations," are subject to a so-called "accommodation" that is intended to eliminate the burden that the Mandate imposes on their religious beliefs. The "accommodation," however, is illusory: it continues to require

"eligible organizations" to participate in a new employer-based scheme to provide, pay for, and/or facilitate access to the objectionable products and services for their employees.

10. In particular, Catholic Charities, OLV, and the University of Dallas do not qualify under the Government's narrow definition of "religious employers," even though they are religious organizations under any reasonable definition of the term. Instead, they are "eligible organizations" subject to the so-called "accommodation." But notwithstanding the "accommodation," these Plaintiffs are required to enter into a contract with an insurance company (or, for self-insured organizations, a third-party administrator), which, as a direct result, is required to provide or procure abortion-inducing products, contraception, sterilization, and related counseling for Plaintiffs' employees. Consequently, the religious organizations' actions are the trigger and but-for cause of the provision of the objectionable products and services. Plaintiffs cannot avoid facilitating the provision of the objectionable products and services—for example, by contracting with an insurance company that will not provide or procure the objectionable products and services or even dropping their health-insurance plans altogether—without subjecting themselves to crippling fines and/or lawsuits by individuals and governmental entities.

11. Plaintiffs, moreover, must facilitate the provision of the objectionable services in other ways that further exacerbate their religiously impermissible cooperation in the provision of the objectionable products and services. For example, in order to be eligible for the so-called "accommodation," Plaintiffs must provide a "certification" to their insurance provider setting forth their religious objections to the Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the insurance provider to provide or procure the objectionable products and services for Plaintiffs' employees. A religious organization's

self-certification, therefore, is a trigger and but-for cause of the provision of the objectionable products and services.

12. Indeed, notwithstanding the "accommodation," the U.S. Government Mandate "requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage." Comments of U.S. Conference of Catholic Bishop, at 3 (Mar. 20, 2013), *available at http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.* The Government asserts that the provision of the objectionable products and services will be "cost-neutral." This assertion, however, ignores the regulatory and administrative costs that will inevitably force insurance companies and third-party administrators to increase the prices they charge religious employers subject to the "accommodation." The Government's assertion of "cost neutrality" is also based on the implausible (and morally objectionable) assumption that "lower costs" from "fewer childbirths" will offset the cost of the contraceptive services. 78 Fed. Reg. at 8463. More importantly, even if the Government's assumption were correct, it simply means that premiums previously going toward childbirths will be redirected to contraceptive and related services in order to achieve the (objectionable) goal of "fewer childbirths."

13. In short, the "accommodation" requires non-exempt religious organizations, including Plaintiffs, to provide, pay for, and/or facilitate access to abortion-inducing products, contraception, sterilization, and related counseling, contrary to their sincerely-held religious beliefs.

14. The Diocese appears to qualify as a "religious employer," and, as such, is eligible for the "religious employer" exemption from the Mandate. However, the Diocese operates an insurance plan that encompasses not only individuals directly employed by the Diocese itself,

but, in addition, individuals employed by Catholic organizations including, but not limited to, Plaintiff OLV. Because OLV does not itself appear to qualify as an exempt "religious employer," the Government's newly minted interpretation of the Mandate requires that the Diocese must either (1) sponsor a plan that will provide, pay for, and/or facilitate the provision of the objectionable products and services to the employees of OLV and other organizations, or (2) no longer extend its plan to these organizations, subjecting them to massive fines if they do not contract with another insurance provider that will offer the objectionable coverage.

15. This reflects a change from the Government's original interpretation of the Mandate. That interpretation allowed OLV to remain on the Diocese's plan, which, in turn, would have shielded it from the Mandate if the Diocese were exempt. *See* 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012). The Final Rule, in contrast, removes this protection and thereby *increases* the number of religious organizations subject to the Mandate. And in so doing, the Mandate seeks to divide the Catholic Church, artificially separating its "houses of worship" from its faith in action, directly contrary to Pope Benedict's admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

16. The U.S. Government Mandate is irreconcilable with the First Amendment, RFRA, the Administrative Procedure Act, and other laws. The Government has not demonstrated any compelling interest in forcing Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, sterilization, and contraception. Nor has the Government demonstrated that the U.S. Government Mandate is the least restrictive means of advancing any interest it has in increasing access to these products and services, which are already widely available and which the Government could make more widely available without conscripting Plaintiffs as vehicles for the dissemination of products and services to which they so strongly object. The Government,

therefore, cannot justify its decision to force Plaintiffs to provide, pay for, and/or facilitate access to these products and services in violation of their sincerely held religious beliefs.

17. Accordingly, Plaintiffs seek a declaration that the U.S. Government Mandate cannot lawfully be applied to Plaintiffs, an injunction barring its enforcement, and an order vacating the Mandate.

I. PRELIMINARY MATTERS

18. Plaintiff Roman Catholic Diocese of Fort Worth is a nonprofit religious organization organized and existing according to the Code of Canon Law of the Roman Catholic Church and recognized by the State of Texas. The Diocese includes Roman Catholic parishes, schools, and organizations in and around Fort Worth, Texas. The principal office of the Diocese is located in Fort Worth, Texas. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

19. Plaintiff OLV is a nonprofit corporation incorporated in the State of Texas. Its principal place of business is in Fort Worth, Texas. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

20. Plaintiff Catholic Charities is a nonprofit corporation incorporated in the State of Texas. Its principal place of business is in Fort Worth, Texas. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

21. Plaintiff University of Dallas is a Texas nonprofit corporation with a principal place of business in Irving, Texas. It is organized exclusively for charitable, religious, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal

Revenue Code. It is also an educational organization under Section 170(b)(1)(A)(1) of the Internal Revenue Code.

22. Defendant Kathleen Sebelius is the Secretary of the U.S. Department of Health and Human Services ("HHS"). She is sued in her official capacity.

23. Defendant Thomas Perez is the Secretary of the U.S. Department of Labor. He is sued in his official capacity.

24. Defendant Jacob J. Lew is the Secretary of the U.S. Department of the Treasury. He is sued in his official capacity.

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

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

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

28. 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.

29. 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, Plaintiffs will be required to provide, pay for, and/or facilitate access to objectionable products and services in contravention of their sincerely held religious beliefs, as described below.

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

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

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

A. The Diocese

33. The Diocese of Fort Worth encompasses 87 parishes and two missions and serves a region that comprises 28 counties (spanning 23,950 square miles) in North Texas, with a population of approximately 3,260,246, including 710,000 Roman Catholics. The counties within the Diocese are Archer, Baylor, Bosque, Clay, Comanche, Cooke, Denton, Eastland, Erath, Foard, Hardeman, Hill, Hood, Jack, Johnson, Knox, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Tarrant, Throckmorton, Wichita, Wilbarger, Wise, and Young Counties. The region was originally served by The Roman Catholic Diocese of Dallas, beginning in 1890, and subsequently by The Roman Catholic Diocese of Dallas-Fort Worth, beginning in 1953. On August 9, 1969, Pope Paul VI established the Diocese of Fort Worth to serve these 28 counties. The parishes and missions of the Diocese and its 20 schools are part of the Diocese.

34. The Diocese is currently without a bishop and is being led in the interim by Monsignor Stephen J. Berg.

35. Monsignor Berg is assisted in his ministry by eight Deans and a staff of numerous clergypersons, religious brothers and sisters, and lay people. The Diocese employs over 2,000 people, over 1,000 of whom are currently eligible for health plan benefits offered through the Diocese. The Diocese employs Catholic and non-Catholic persons, and it does not generally track how many of its employees are Catholic, members of other religious faiths, or non-religious.

36. The Diocese carries out a tripartite spiritual, educational, and social service mission, reflecting the several dimensions of its ministry. The spiritual ministry of the Diocese

is conducted largely through its parishes. Through the ministry of its priests, the Diocese ensures the regular availability of the sacraments to all Catholics living in or visiting Fort Worth and the surrounding 28 counties. It also provides numerous other opportunities for prayer, worship, and faith formation. In addition to overseeing the sacramental life of its parishes, the Diocese coordinates Catholic campus ministries for thousands of students at six colleges and universities within its borders, as well as hospital and other ministries throughout the region. Further, the Diocese works closely with the Military Archdiocese and the Personal Ordinariate of the Chair of St. Peter to ensure that the needs of their members who reside within the boundaries of the Diocese of Fort Worth are met.

37. The Diocese conducts much of its educational mission through its schools. The first Catholic school opened in Fort Worth in 1879, before public education was officially organized in the City. With a focus on faith formation, rigorous academics, and service to others, the Diocese's schools are committed to assisting parents in preparing their children to meet the challenges of the modern world. Students of diocesan schools are provided opportunities to develop basic academic and physical skills, to pursue knowledge, and to critically study and analyze the world in which they live. The schools of the Diocese follow curriculum standards based upon national Catholic education standards, core curriculum standards, and the social teachings of the Catholic Church. Each of the 20 Catholic schools within the Diocese is fully accredited through the Texas Catholic Conference Accreditation Commission. All high schools hold additional accreditation through the Southern Association of Colleges and Schools.

38. There are twenty diocesan schools, which educate approximately 6,500 high school and elementary students. The Diocese and its parishes operate nineteen of these

schools—two secondary schools, two combined secondary/elementary schools, and fifteen elementary schools—which employ approximately 900 teachers and other school staff. The remaining elementary school is operated separately from the Diocese, although its employees are eligible for health plan benefits provided through the Diocese.

39. The schools of the Diocese offer a unique educational experience unlike any other in the area. In the words of former Bishop Kevin Vann, "With the Faith well lived as the Catholic school's primary goal, every facet of our Catholic school curriculum and program leads our students to know the loving presence of our God and directs them toward a commitment to a lifetime of service to others." To that end, diocesan schools have established three priorities that make them stand out from other educational institutions. Students are taught faith—not just the basics of Christianity, but how to have a relationship with God that will remain with them after they leave their Catholic school. Service, the giving of one's time and effort to help others, is taught as both a requirement of faith and good citizenship. Finally, high academic standards help each student reach his or her potential. Nationally, over 99% of students in Catholic high schools graduate.

40. The success of this approach is demonstrated by Cassata High School, a non-traditional diocesan school that offers a second chance for students who have not succeeded in a traditional educational setting. The school has agreements with local independent school districts and other traditional high schools to educate students who are struggling within their education system. The school emphasizes service and family spirit, and it provides *individualized* educational programs to meet the level and needs of its students. Under this approach, a high degree of success is achieved. Although students normally come to Cassata

with lower than normal performance, nearly 100 percent of students graduate and sustain that positive success after graduation.

41. Cassata's mission is to provide effective, quality education that enables students of all faiths, cultures and socio-economic backgrounds to raise their educational level and complete their secondary education. Indeed, over half of Cassata's students are not Catholic, and approximately 90% of Cassata students received tuition assistance from the Diocese.

42. The Catholic educational system has demonstrated a particular dedication to teaching the underserved. For example, Our Mother of Mercy Catholic School was founded in 1929 when Bishop Patrick J. Lynch sought to establish a parish to serve the African-American community of southeast Fort Worth. Today, the school continues to serve a diverse student body, all or nearly all of whom are from minority backgrounds and 85% of whom are not Catholic.

43. Schools like Our Mother of Mercy are no less an expression and outgrowth of genuine Catholic belief because they primarily serve non-Catholics. Indeed, quite the opposite: the Diocese sees these schools as a vital part of its mission to offer to every student, in every place, a safe, morally sound, and academically rigorous education. As diocesan superintendent Donald Miller says, "We don't do this because they are Catholic, but because we are." Kathy Cribari Hamer, *Catholic school change young peoples' lives, bring them to Jesus, while educating for a better life*, COMMUNIO, Sept. 10, 2009, at 7, *available at* http://www.fwdioc.org/files/9-10-09-communio-english.pdf.

44. Indeed, diocesan schools welcome students in all financial conditions, from all backgrounds, and of any or no faith. Forty percent of students in diocesan schools are from minority backgrounds, and many diocesan students are not Catholic. To make a Catholic

education available to as many children as possible, the Diocese and its parishes and schools expend substantial funds in tuition assistance programs. During the 2011-2012 school year, the Diocese and its parishes and schools awarded approximately $2 million in tuition assistance. Tuition assistance from the Diocese is awarded to Catholic and non-Catholic students on the basis of need and without regard to religious belief. Olga Ferris, Ed.D., former principal of St. George Catholic School in Fort Worth, has remarked, "If our parents demonstrate a real desire for Catholic education for their children, then lack of finances will not stand in the way." *Id.* And Charlene Hymel, former principal of St. Rita Catholic School and presently the Assistant Superintendent of Schools recently observed, "We are breaking the cycle of poverty. We had one mother who volunteered at St. Rita's and while she was helping in class, she listened and learned to read. Now she and her daughter read together." *Id.*

45. Much of the social service and charitable work of the Diocese is performed through its 89 parishes and missions, which, like the 20 schools discussed above, are organized as part of the Diocese. The parishes within the Diocese maintain their own charitable efforts, serving the needs of their communities with programs including ESL classes, food pantries for the poor, adopt-a-family programs at Christmas, meals served to the homeless, outreach and support for women in crisis pregnancies, health-care assistance programs, pastoral care to the sick, prisoner and immigrant ministry, and visits to nursing homes and hospitals.

46. In summary, the Diocese of Fort Worth, a nonprofit religious organization organized and existing according to the Code of Canon Law of the Roman Catholic Church and recognized by the State of Texas, employs approximately 2,000 persons, over 1,000 of whom are eligible for health plan benefits offered through the Diocese. The Diocese includes 20 diocesan schools that serve approximately 6,500 students. These schools employ approximately 700

teachers and other staff. And through its parishes, the Diocese serves an indeterminate number of persons who are homeless, hungry, elderly, or otherwise in need of material, educational, or other assistance, without regard to religious belief.

47. The Diocese qualifies as a "religious employer" under the narrow exemption from compliance with the U.S. Government Mandate.

48. The Diocese provides health insurance coverage to employees through the Christian Brothers Employee Benefit Trust, a self-funded church plan which serves employers of the Catholic Church by providing medical benefits to health plan participants. Health plan materials specifically state that "the Trust works within the framework of the tenets of the Catholic Church." To that end, the Trust health plan does not cover abortion or sterilization drugs or services, nor does it cover contraceptives except when prescribed to treat a medical illness and approved by the Trust.

49. Moreover, the Christian Brothers Employee Benefit Trust health plan offered by the Diocese does not meet the definition of a "grandfathered" plan under the Patient Protection and Affordable Care Act. Since March 2010, changes to the health plan have resulted in increases to plan deductible amounts that exceed "medical inflation" as defined in 26 C.F.R. § 549815-1251T. Additionally, health plan materials provided to participants or beneficiaries have not included a statement that the plan is believed to be a grandfathered plan, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).

50. Plaintiff OLV offers coverage through the Diocese's insurance plan.

51. The plan year for the Diocese (and the organizations participating in its plan) begins on July 1.

B. Our Lady of Victory Catholic School

52. OLV has served students in Fort Worth since its founding in 1910 by the Sisters of Saint Mary of Namur. Originally a school for girls, OLV eventually transitioned into a coeducational institution for all students from preschool through eighth grade. OLV was also Fort Worth's first fully integrated school.

53. OLV's self-described mission is "to educate the whole child in a Roman Catholic, Christ-centered environment; to enable the child to grow spiritually, intellectually, responsibly; and to facilitate the learning and sharing of God-given gifts in service to others."

54. To that end, OLV offers its diverse student body a rigorous education in a supportive learning environment. OLV "makes demands of the student, assumes he/she is motivated, and requires that he/she be actively involved in the learning process. High standards are expected from OLV students because the world for which they are preparing demands so much."

55. Consistent with its Catholic identity, OLV teaches its students to integrate faith and life, aiming to "foster[] a belief in the moral and social justice teachings of Jesus Christ." It stresses the importance of building a just society and provides numerous opportunities for students to participate in charitable work.

56. OLV welcomes students in all financial conditions, from all backgrounds, and of any or no faith. It has a co-ed student body of 85 students, and provides between $150,000 and $175,000 in student financial aid each year.

57. OLV has 23 employees, nine of whom are part of OLV's insurance plan. Like the Diocese, OLV employs individuals of all faiths.

58. OLV does not qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, OLV does not qualify as a "religious employer" under

the exemption to the U.S. Government Mandate. OLV is not an integrated auxiliary of the Diocese.

59. OLV employees are offered health insurance through the Diocese's health plan.

C. Catholic Charities

60. Catholic Charities, one of the largest nongovernmental social service providers in the region, annually provides services to over 110,000 people. It "is a faith-driven, service-driven, and forward-driven organization committed to living out the commission of Jesus Christ throughout the diocese of Fort Worth by welcoming the stranger, caring for children, and strengthening families."

61. To that end, it carries out the mandates of the Gospel and the social teaching of the Church through works of Christian charity, service, and social justice by providing competent and caring social services, special assistance to those in great need, and programs of community outreach and advocacy using the skills and talents of professional staff and volunteers. Catholic Charities pursues these goals through its own programs and through partnerships with parishes, community groups, and governmental agencies.

62. Over forty programs run by Catholic Charities provide a panoply of services to the community. These programs are "designed to combat poverty by promoting self sufficiency through a range of solutions including helping the homeless, sheltering at-risk children, teaching financial literacy courses, resettling refugees, and much more." They are available to people in need without regard to their religion.

63. For example, International Foster Care (IFC) provides foster care for unaccompanied refugee and asylee minors, who do not have adult caregivers, by partnering with foster families to provide a safe, nurturing, and culturally sensitive environment. Currently, the program is working with 36 children between the ages of 10 and 21 from Africa, Southeast Asia,

Central America, and South America. IFC partners with their foster families to equip and empower these young people to reach their full potential.

64. As another example, Catholic Charities' Vocation Program provides individuals with the resources and opportunities needed to obtain living-wage employment, including educational opportunities in targeted industries and job placement services. Launching into its second year, this program already has 27 individuals enrolled—13 participating in the Certificate Program and 14 pursuing their Associate's Degrees.

65. Catholic Charities has approximately 272 full-time and 60 part-time employees. Like the Diocese, Catholic Charities employs individuals of all faiths.

66. Catholic Charities is a member-director corporation.

67. Catholic Charities does not qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, Catholic Charities does not qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

68. Catholic Charities employees are offered health insurance through CIGNA. The plan does not cover abortion, contraceptives, or sterilization.

69. Due to plan changes in 2010 and 2011, the group health insurance plan offered by Catholic Charities to its employees does not meet the definition of a "grandfathered" plan within the meaning of the Affordable Care Act. Additionally, health plan materials provided to participants or beneficiaries have not included a statement that the plan is believed to be a grandfathered plan, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).

70. Catholic Charities' plan year begins August 1.

D. The University of Dallas

71. Plaintiff University of Dallas is an academic community of higher learning, organized as a private, independent Catholic, co-educational, liberal arts university in Irving,

Texas. Incorporated in 1955 and founded in 1956 by the Western Province of the Sisters of Saint Mary to be a co-educational institution welcoming students of all faiths and backgrounds, the University seeks to provide a Catholic environment that prepares students spiritually and intellectually for their future vocations and careers.

72. As described in its mission statement, "The University as a whole is shaped by the long tradition of Catholic learning and acknowledges its commitment to the Catholic Church and its teaching. The University is dedicated to the recovery of the Christian intellectual tradition, and to the renewal of Catholic theology in fidelity to the Church and in constructive dialogue with the modern world. It seeks to maintain the dialogue of faith and reason in its curriculum and programs without violating the proper autonomy of each of the arts and sciences."

73. Faith is at the heart of the University's educational mission. The apostolic constitution *Ex Corde Ecclesiae*, which governs and defines the role of Catholic colleges and universities, provides that "the objective of a Catholic University is to assure . . . Fidelity to the Christian message as it comes to use through the Church."

74. In accordance with the *Ex Corde Ecclesiae*, the University believes and teaches that "besides the teaching, research and services common to all Universities," it must "bring[] to its task the inspiration and light of the Christian message." "Catholic teaching and discipline are to influence all university activities," and "[a]ny official action or commitment of the University [must] be in accord with its Catholic identity."

75. "In a word, being both a University and Catholic, it must be both a community of scholars representing various branches of human knowledge, and an academic institution in which Catholicism is vitally present and operative."

76. Composed of four schools, including Constantin College, Braniff Graduate School, the School of Ministry, and the College of Business, the University embraces the riches of the Catholic intellectual tradition. The foundation of the undergraduate curriculum at the University is a set of approximately twenty core courses that are taken by all students. The courses are designed to expose all students to the great deeds, ideas, and works of Western Civilization—including in particular those expressive of its Christian character—in the belief that these are the surest guides in the search for truth and virtue.

77. The University offers 29 undergraduate majors and 26 graduate-level programs and pursues the highest academic achievement in every discipline, integrating faith and reason in pursuit of truth. Graduate programs include Masters of Arts in Psychology, Philosophy, Theology, and Humanities, as well as a Master of Religious Education, a Master of Catholic School Leadership, a Master of Catholic School Teaching, a Master of Pastoral Ministry, a Master of Theological Studies, a Master of Business Administration, and a Master of Science. In addition, the University offers doctoral programs in Literature, Politics, and Philosophy.

78. Though committed to remaining a distinctly Catholic institution, the University opens its doors to students, academics, and prospective employees of all faiths and creeds.

79. Over 1,300 students are currently enrolled in the University's undergraduate programs, and another 1,300 are enrolled in its graduate programs. The school maintains a full-time faculty of approximately 125 members and over 100 adjunct faculty members. In total, the University employs approximately 500 full- and part-time individuals, 356 of whom were benefits-eligible as of August 2013.

80. The University's mission to educate and serve others extends beyond the borders of its campus. For example, the University has developed numerous faith-based charitable

programs in which its students and faculty participate. These programs serve individuals regardless of faith, race, or financial condition and range from volunteer opportunities in Dallas (where students can participate in a variety of activities, such as repairing homes for low-income citizens or volunteering in hospitals) to service trips abroad (where students have assisted the underprivileged in communities from Georgia and Missouri to Peru and Ecuador). The University also hosts a number of educational events, lectures, and programs on its campus that are open to the public.

81. Faith is at the heart of all of the University's efforts, and the University's commitment to Catholic teachings permeates campus life. Many undergraduates are housed on campus in residence halls that are predominantly single-sex, and rooms for male students and female students in co-educational residence halls are separated by floor or wing. The University maintains visiting hours that forbid male students from being in female dormitories overnight and vice versa.

82. The University does not make contraception available to its students, faculty, or staff at its on-campus health care facility.

83. The University's Catholic educational mission is furthered by its leadership. The President of the University has always been a Catholic, and the University's President from 1996–2003 was a cleric, Monsignor Milam J. Joseph. The University's Board of Trustees is entrusted with supervising the management of the University and determining University policy. A majority of the Trustees on the University's Board are Catholic, and two clerics currently serve as trustees: Most Reverend Kevin F. Farrell, Bishop of Dallas; and Monsignor Greg Kelly.

84. Approximately 94% of full-time undergraduate students receive some form of financial aid, with the University distributing over $15 million in institutional grants and

scholarships as well as nearly $2.5 million in federal and state grant funds to undergraduate students in the 2011–2012 school year**.**

85. A significant percentage of the University's annual funds are raised from Catholics, including alumni, who donated, and continue to donate, to further its mission.

86. The University does not qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, it does not qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

87. The University is a member of a healthcare consortium called Collegiate Association REsource of the Southwest ("CARES"). The University is part of a partially self-insured benefits plan with a voluntary employees' beneficiary association trust offered to employees through the CARES consortium. The University pays a premium to the CARES consortium. That premium is placed in a pool designated for the University that is used to pay the claims of its employees and their eligible dependents, reserve requirements, administrative expenses, and stop loss insurance. Under this plan, the University pays for its employees' claims, including all claims for covered preventive services, subject to an individual stop-loss limit.

88. For medical benefits, the CARES plan is administered by a third-party administrator, Blue Cross/Blue Shield of Texas. Prescription-drug benefits, however, are administered by Express Scripts, a separate third-party administrator.

89. The group health insurance plan offered by the University to its employees does not cover abortion-inducing products or sterilization. Consistent with Church teachings, the University's plan covers products commonly used as contraceptives only when prescribed with the intent of treating a medical condition, not with the intent to prevent pregnancy.

90. The group health insurance plan offered by the University provides rich coverage with a very low cost to employees. Co-pays and employee premiums are very low, especially given the University's size. The generosity of the plans springs from the University's mission.

91. The University's employee health plan year begins on January 1.

92. The group health insurance plan offered by the University to its employees does not meet the definition of a "grandfathered" plan within the meaning of the Affordable Care Act. The plan was changed after March 23, 2010. In January 2011, the University changed plan administrators from CIGNA to Blue Cross / Blue Shield of Texas. In addition, the University has not included a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(i).

93. The University also makes several health plans available to its students and their eligible dependants. For domestic students enrolled at the University's Irving campus, the University offers a health plan provided by AETNA. International students enrolled at the University's Irving campus are offered a health plan provided by Starr Indemnity & Liability Co. Domestic students studying at the University's overseas campus in Rome can receive insurance through STA Travel/ISIC Basic Travel Insurance Plan.

94. Like the University's employee plan, the plans offered to its students do not cover abortion-inducing products or sterilization. The health plans the University offers to its students covers products commonly used as contraceptives only when prescribed with the intent of treating a medical condition, not with the intent to prevent pregnancy or induce abortion.

95. The plan years for the University's student health plans begin on August 1.

96. The health plans offered by the University to its students do not meet the Affordable Care Act's definition of "grandfathered" plans. The University has not included and

does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plans are grandfathered health plans within the meaning of section 1251 of the Affordable Care Act. *See, e.g.*, 26 C.F.R. § 54.9815-1251T(a)(2)(i).

II. STATUTORY AND REGULATORY BACKGROUND

A. Statutory Background

97. In March 2010, Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (collectively, the "Affordable Care Act" or the "Act"). The Affordable Care Act established many new requirements for "group health plan[s]," broadly defined as "employee welfare benefit plan[s]" 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).

98. As relevant here, the Act requires an employer's group health plan to cover certain women's "preventive care." Specifically, it indicates 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 . . . 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." 42 U.S.C. § 300gg-13(a)(4). 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.

99. "[T]he Affordable Care Act preserves the ability of individuals to retain coverage under a group health plan or health insurance coverage in which the individual was enrolled on March 23, 2010." 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. These so-called "grandfathered health plans do not have to meet the requirements" of the U.S. Government Mandate. 75 Fed. Reg. at 41,731. HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

100. Federal law provides several mechanisms to enforce the requirements of the Act, including the U.S. Government Mandate. For example:

a. Under the Internal Revenue Code, certain employers who fail to offer "full-time employees (and their dependents) 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).

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

c. 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.

d. Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the U.S. Government Mandate, as

incorporated by ERISA. *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).

101. Several of the Act's provisions, along with other federal statutes, reflect a clear congressional intent that the executive agency charged with identifying the "preventive care" required by § 300gg-13(a)(4) should exclude all abortion-related services.

102. For example, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits certain agencies from discriminating against an institution based on that institution's refusal to provide abortion-related services. Specifically, it 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). The term "health care entity" is defined to include "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, *a health insurance plan*, or any other kind of health care facility, organization, or plan." *Id.* § 507(d)(2) (emphasis added).

103. The legislative history of the Act also demonstrates a clear 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 a 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, however, indicated that they would refuse to vote for the Senate version because it failed to adequately prohibit federal funding of abortion. In an attempt to address these concerns, President Barack Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. *See* Exec. Order No. 13535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

104. The Act, therefore, was passed 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.* That executive order was consistent with a 2009 speech that President Obama gave at the University of Notre Dame, in which he indicated that his Administration would honor the consciences of those who disagree with abortion, and draft sensible conscience clauses.

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

105. In a span of less than two years, Defendants promulgated the U.S. Government Mandate, subverting the Act's clear purpose to protect the rights of conscience. The Mandate immediately prompted intense criticism and controversy, in response to which the Government has undertaken various revisions. None of these revisions, however, alleviates the burden that the Mandate imposes on Plaintiffs' religious beliefs. To the contrary, these revisions have resulted in a final rule that is significantly worse than the original one.

(1) The Original Mandate

106. On July 19, 2010, Defendants issued interim final rules addressing the statutory requirement that group health plans provide coverage for women's "preventive care." 75 Fed. Reg. 41,726 (citing 42 U.S.C. § 300gg-13(a)(4)). Initially, the rules did not define "preventive care," instead noting that "[t]he Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011." *Id.* at 41,731.

107. To develop the definition of "preventive care," HHS outsourced its deliberations to the Institute of Medicine ("IOM"), a non-governmental "independent" organization. The IOM in turn created a "Committee on Preventive Services for Women," composed of 16 members who were selected in secret without any public input. At least eight of the Committee members had founded, chaired, or worked with "pro-choice" advocacy groups (including five different Planned Parenthood entities) that have well-known political and ideological views, including strong animus toward Catholic teachings on abortion and contraception.

108. Unsurprisingly, the IOM Committee invited presentations from several "pro-choice" groups, such as Planned Parenthood and the Guttmacher Institute (named for a former president of Planned Parenthood), without inviting any input from groups that oppose government-mandated coverage for abortion, contraception, and sterilization. Instead, opponents were relegated to lining up for brief open-microphone sessions at the close of each meeting.

109. At the close of this process, on July 19, 2011, the IOM issued a final report recommending that "preventive care" for women be defined to include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for [all] women with reproductive capacity." Inst. Of Med., Clinical Preventive Services for Women: Closing the Gaps," at 218-219 (2011).

110. The extreme bias of the IOM process spurred one member of the Committee, Dr. Anthony Lo Sasso, to dissent from the final recommendation, writing: "[T]he committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy." *Id*. at 232.

111. At a press briefing the next day, the chair of the IOM Committee fielded a question from a representative of the U.S. Conference of Catholic Bishops regarding the "coercive dynamic" of the Mandate, asking whether the Committee considered the "conscience rights" of those who would be forced to pay for coverage that they found objectionable on moral and religious grounds. In response, the chair illustrated her cavalier attitude toward the religious-liberty issue, stating bluntly: "[W]e did not take into account individual personal feelings." *See* Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women, Press Briefing (July 20, 2011), *available at* http://www.iom .edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx. The chair later expressed concern to Congress about considering religious objections to the Mandate because to do so would risk a "slippery slope" that could occur by "opening up that door" to religious liberty. *See* Executive Overreach: The HHS Mandate Versus Religious Liberty: Hearing Before the H. Comm. On the Judiciary, 112th Cong. (2012) (testimony of Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women).

112. Less than two weeks after the IOM report, without pausing for notice and comment, HHS issued a press release on August 1, 2011, announcing that it would adopt the IOM's definition of "preventive care," including all "FDA-approved contraception methods and contraceptive counseling." *See* U.S. Dept. of Health and Human Services, "Affordable Care Act

Ensures Women Receive Preventive Services at No Additional Cost," *available at* http://www.hhs.gov/news/press/2011pres/08/20110801b.html. HHS ignored the religious, moral and ethical dimensions of the decision and the ideological bias of the IOM Committee and stated that it had "relied on independent physicians, nurses, scientists, and other experts" to reach a definition that was "based on scientific evidence." Under the final "scientific" definition, the category of mandatory "preventive care" extends to "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *See* "Women's Preventive Services: Required Health Plan Coverage Guidelines," http://www.hrsa.gov/womensguidelines.

113. The Government's definition of mandatory "preventive care" also includes abortion-inducing products. For example, the FDA has approved "emergency contraceptives" such as the morning-after pill (otherwise known as Plan B), which can prevent an embryo from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or ella), which likewise can induce abortions.

114. Shortly after announcing its definition of "preventive care," the Government proposed a narrow exemption from the Mandate for a small category of "religious employers" that met all of the following four 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"; and "(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." 76 Fed. Reg. 46,621, 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(iv)(B)).

115. As the Government itself admitted, this narrow exemption was intended to protect only "the unique relationship between a house of worship and its employees in ministerial positions." *Id.* at 46,623. It provided no protection for religious universities, elementary and secondary schools, hospitals, and charitable organizations.

116. The sweeping nature of the Mandate was subject to widespread and withering criticism. Religious leaders from across the country protested that they should not be punished or considered less religious simply because they chose to live out their faith by serving needy members of the community who might not share their beliefs. For example, the University of Dallas urged the Government to "expand the existing religious *employer* exemption to include religious *institutions* . . . beyond just churches and religious orders." Comments of the University of Dallas at 2.

117. Despite such pleas, the Government at first refused to reconsider its position. Instead, the Government "finalize[d], without change," the narrow exemption as originally proposed. 77 Fed. Reg. at 8,729 (Feb. 15, 2012). At the same time, the Government announced that it would offer a "a one-year safe harbor from enforcement" for religious organizations that remained subject to the Mandate. *Id.* at 8,728. As noted by then-Bishop Farrell, the promised safe harbor effectively gave objecting religious institutions "one year to violate their consciences." Most Reverend Kevin J. Farrell, D.D., The War Against Religious Freedom Escalates (Jan. 23, 2012), *available at* http://bishopkevinfarrell.org/blog/2012/01/the-war-against-religious-freedom-escalates/ (last visited August 15, 2013).

118. A month later, under continuing public pressure, the Government issued an Advance Notice of Proposed Rulemaking ("ANPRM") that, it claimed, set out a solution to the religious-liberty controversy created by the Mandate. 77 Fed. Reg. 16,501 (Mar. 21, 2012). The

ANPRM did not revoke the Mandate, and in fact reaffirmed the Government's view at the time that the "religious employer" exemption w*ould* not be changed. *Id.* at 16,501-08. Instead, the ANPRM offered hypothetical "possible approaches" that would, in the Government's view, somehow solve the religious-liberty problem without granting an exemption for objecting religious organizations. *Id.* at 16,507. As the U.S. Conference of Catholic Bishops soon recognized, however, any semblance of relief offered by the ANPRM was illusory. Although it was designed to "create an appearance of moderation and compromise, it [did] not actually offer any change in the Administration's earlier stated positions on mandated contraceptive coverage." *See* Comments of U.S. Conference of Catholic Bishops, at 3 (May 15, 2012), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-on-advance-notice-of-proposed-rulemaking-on-preventive-services-12-05-15.pdf.

(2) The Government's Final Offer and the Empty "Accommodation"

119. On February 1, 2013, the Government issued a Notice of Proposed Rulemaking ("NPRM"), setting forth in further detail its proposal to "accommodate" the rights of Plaintiffs and other religious organizations. The NPRM, like the Government's previous proposals, was once again met with strenuous opposition, including over 400,000 comments. For example, the U.S. Conference of Catholic Bishops stated that "the 'accommodation' still requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments." Comments of U.S. Conference of Catholic Bishop, at 3 (Mar. 20, 2013), *available at http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.*

120. Despite this opposition, on June 28, 2013, the Government issued a final rule that adopted substantially all of the NPRM's proposal without significant change. See 78 Fed. Reg. 39870 (July 2, 2013) ("Final Rule").

121. The Final Rule makes three changes to the Mandate. As described below, even the revised Mandate places unlawful burdens on Plaintiffs and other religious organizations. Indeed, one change significantly *increases* that burden by significantly increasing the number of religious organizations subject to the Mandate.

122. *First*, the Final Rule makes what the Government concedes to be a non-substantive, cosmetic change to the definition of "religious employer." In particular, it eliminates the first three prongs of that definition, such that, under the new definition, an exempt "religious employer" is simply "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 78 Fed. Reg. at 39,874 (codified at 45 C.F.R. § 147.131(a)). As the Government has admitted, this new definition does "not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. at 8,461. Instead, it continues to "restrict[]the exemption primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders." *Id.* In this respect, the Final Rule mirrors the intended scope of the original "religious employer" exemption, which focused on "the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. at 46,623. Religious organizations that have a broader mission are still not, in the Government's view, "religious employers."

123. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the Mandate, while denying this

favorable treatment to all other religious groups. The exemption applies only to those groups that are referred "to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code." This category includes only (i) "churches, their integrated auxiliaries, and conventions or associations of churches," and (iii) "the exclusively religious activities of any religious order." The IRS has adopted an intrusive 14-factor test to determine whether a group meets these qualifications. *See Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009). Among these 14 factors is whether the group has " a recognized creed and form of worship," "a definite and distinct ecclesiastical government," "a formal code of doctrine and discipline," "a distinct religious history," "an organization of ordained ministers" "a literature of its own," "established places of worship," "regular congregations, "regular religious services," "Sunday schools for the religious instruction of the young," and "schools for the preparation of its ministers." *Id.* Not only do these factors favor some religious groups at the expense of others, but they also require the Government to make intrusive judgments regarding religious beliefs, practices, and organizational features to determine which groups fall into the favored category.

124. *Second*, the Final Rule establishes an illusory "accommodation" for certain nonexempt objecting religious entities that qualify as "eligible organizations." To qualify as an "eligible organization," a religious entity must (1) "oppose[] providing coverage for some or all of [the] contraceptive services," (2) be "organized and operate[] as a non-profit entity"; (3) "hold[] itself out as a religious organization," and (4) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance company or, if the religious organization is self-insured, to its third-party administrator. 26 C.F.R. § 54.9816-2713A(a). The provision of this self-certification then automatically requires the insurance issuer or third-party administrator to provide or arrange "payments for contraceptive services" for the

organization's employees, without imposing any "cost-sharing requirements (such as a copayment, coinsurance, or a deductible)." *Id*. § 54.9816-2713A(b)(2), (c)(2). The objectionable coverage, moreover, is directly tied to the organization's health plan, lasting only as long as the employee remains on that plan. *See* 29 C.F.R. § 2590.715-2713A(d); 45 C.F.R. § 147.131(c)(2)(i)(B). In addition, self-insured organizations are prohibited from "directly or indirectly, seek[ing] to influence the[ir] third party administrator's decision" to provide or procure contraceptive services. 26 C.F.R. § 54.9815–2713.

125. This so-called "accommodation" fails to relieve the burden on religious organizations. Under the original version of the Mandate, a non-exempt religious organization's decision to offer a group health plan resulted in the provision of coverage for abortion-inducing products, contraception, sterilization, and related counseling. Under the Final Rule, a non-exempt religious organization's decision to offer a group health plan still results in the provision of coverage—now in the form of "payments"—for abortion-inducing products, contraception, sterilization, and related counseling. *Id*. § 54.9816-2713A(b)-(c). In both scenarios, Plaintiffs' decision to provide a group health plan triggers the provision of "free" contraceptive coverage to their employees in a manner contrary to their beliefs. The provision of the objectionable products and services are directly tied to Plaintiffs' insurance policies, as the objectionable "payments" are available only so long as an employee is on the organization's health plan. *See* 29 C.F.R. § 2590.715-2713A(d) (for self-insured employers, the third-party administrator "will provide or arrange separate payments for contraceptive services . . . for so long as [employees] are enrolled in [their] group health plan"); 45 C.F.R. § 147.131(c)(2)(i)(B) (for employers that offer insured plans, the insurance issuer must "[p]rovide separate payments for any contraceptive services . . . for plan participants and beneficiaries for so long as they remain enrolled in the plan"). For self-

insured organizations, moreover, the self-certification constitutes the religious organization's "*designation* of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits." 78 Fed. Reg. at 39,879 (emphasis added). Thus, employer health plans offered by non-exempt religious organizations are the vehicle by which "free" abortion-inducing products, contraception, sterilization, and related counseling are delivered to the organizations' employees.

126. Needless to say, this shell game does not address Plaintiffs' fundamental religious objection to improperly facilitating access to the objectionable products and services. The Mandate coerces Plaintiffs, through threats of crippling fines and other pressure, into facilitating access to contraception, abortion-inducing products, sterilization, and related counseling for their employees, contrary to their sincerely held religious beliefs.

127. The so-called "accommodation," moreover, requires Plaintiffs to cooperate in the provision of objectionable coverage in other ways as well. For example, in order to be eligible for the so-called "accommodation," Plaintiffs must provide a "certification" to their insurance provider setting forth their religious objections to the Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the insurance provider to provide Plaintiffs' employees with the objectionable coverage. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage.

128. The Mandate also requires Plaintiffs to subsidize the objectionable products and services.

129. For organizations that procure insurance through a separate insurance provider, the Government asserts that the cost of the objectionable products and services will be "cost neutral" and, therefore, that Plaintiffs will not actually be paying for it, notwithstanding the fact

that Plaintiffs' premiums are the only source of funding that their insurance providers will receive for the objectionable products and services.

130. The Government's "cost-neutral" assertion, however, is implausible. It rests on the assumption that cost "savings" from "fewer childbirths" will be at least as large as the direct costs of paying for contraceptive products and services and the costs of administering individual policies. 78 Fed. Reg. at 8,463. Some employees, however, will choose not to use contraception notwithstanding the Mandate. Others would use contraception regardless of whether it is being paid for by an insurance company. And yet others will shift from less expensive to more expensive products once coverage is mandate and cost-sharing is prohibited. Consequently, there can be no assurance that cost "savings" from "fewer childbirths" will offset the cost of providing contraceptive services.

131. More importantly, even if the Government's "cost-neutral" assertion were true, it is irrelevant. The so-called "accommodation" is nothing more than a shell game. Premiums previously paid by the objecting employers to cover, for example, "childbirths," will now be redirected to pay for contraceptive products and services. Thus, the objecting employer is still required to pay for the objectionable products and services.

132. For self-insured organizations, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that third-party administrators required to provide or procure the objectionable products and services will be compensated by reductions in user fees that they otherwise would pay for participating in federally-facilitated health exchanges. *See* 78 Fed. Reg. at 39,882. Such fee reductions are to be established through a highly regulated and bureaucratic process for evaluating, approving, and monitoring fees paid in compensation to third-party administrators. Such regulatory regimes, however, do not fully compensate the

regulatory entities for the costs and risks incurred. As a result, few if any third-party administrators are likely to participate in this regime, and those that do are likely to increase fees charged to the self-insured organizations.

133. Either way, as with insured plans, self-insured organizations likewise will be required to subsidize contraceptive products and services notwithstanding the so-called "accommodation."

134. For all of these reasons, the U.S. Government Mandate continues to require Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, contraception, sterilization, and related education and counseling, in violation of their sincerely-held religious beliefs.

135. *Third,* the Final Rule actually *increases* the number of religious organizations that are subject to the Mandate. Under the Government's initial interpretation of the "religious employer" exemption, if a nonexempt religious organization "provided health coverage for its employees through" a plan offered by a separate, "affiliated" organization that was "exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees." 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012).

136. For example, the Diocese operates an insurance plan that covers not only the Diocese itself, but other Catholic organizations—including Plaintiff OLV. Under the Government's initial interpretation of the religious employer exemption, if the Diocese was an exempt "religious employer," then OLV received the benefit of that exemption, regardless of whether it independently qualified as a "religious employer," since it could continue to participate in the Diocese's exempt plan. OLV, therefore, could benefit from the Diocese's exemption even

if by itself it could not meet the Government's unprecedentedly narrow definition of "religious employer."

137. The Final Rule eliminates this safeguard. Instead, it provides that "each employer" must "independently meet the definition of eligible organization or religious employer in order to take advantage of the accommodation or the religious employer exemption with respect to its employees and their covered dependents." 78 Fed. Reg. at 39,886. *See also* 78 Fed. Reg. at 8,467. Since OLV does not meet the Government's narrow definition of a "religious employer," it is now subject to the U.S. Government Mandate.

138. Moreover, since OLV is part of the Diocese's insurance plan, the Diocese is now required by the Mandate to do one of two things: since OLV participates in the diocesan insurance plan, the Diocese would be forced to sponsor a plan that will provide OLV's employees with access to "free" contraception, abortion-inducing products, sterilization, and related counseling. Alternatively, the Diocese must expel OLV from its insurance plan and thereby subject OLV to massive fines unless it enters into an arrangement with another insurance provider that will, in turn, provide or procure the objectionable products and services.

139. In this respect, the Mandate seeks to divide the Catholic Church. The Church's faith in action, carried out through its charitable and educational arms, is every bit as central to the Church's religious mission as is the administration of the Sacraments. In the words of Pope Benedict, "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Yet the Mandate seeks to separate these consubstantial aspects of the Catholic faith, treating one as "religious" and the other as not. The Mandate therefore deeply intrudes into internal Church governance.

140. In sum, the revised Mandate imposes a burden on the Plaintiffs' religious beliefs; it in fact makes that burden significantly worse by increasing the number of religious organizations that are subject to the Mandate. The U.S. Government Mandate, therefore, requires Plaintiffs to act contrary to their sincerely held religious beliefs.

III. THE U.S. GOVERNMENT MANDATE IMPOSES A SUBSTANTIAL BURDEN ON PLAINTIFFS' RELIGIOUS LIBERTY

A. The U.S. Government Mandate Substantially Burdens Plaintiffs' Religious Beliefs

141. Since the founding of this country, our law and society have recognized that individuals and institutions are entitled to freedom of conscience and religious practice. Absent a compelling reason, no government authority may compel any group or individual to act contrary to their religious beliefs. As noted by Thomas Jefferson, "[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."

142. The U.S. Government Mandate violates Plaintiffs' rights of conscience by forcing them to participate in an employer-based scheme to provide access to products and services to which they strenuously object on moral and religious grounds.

143. It is a core tenet of Plaintiffs' religion that abortion, contraception, and sterilization are serious moral wrongs.

144. Plaintiffs' Catholic beliefs therefore prohibit them from providing, paying for, and/or facilitating access to abortion-inducing products, contraception, or sterilization.

145. As a corollary, Plaintiffs' Catholic beliefs prohibit them contracting with an insurance company or third-party administrator that will, as a result, provide or procure the objectionable products and services to Plaintiffs' employees.

146. Plaintiffs' beliefs are deeply and sincerely held.

147. The U.S. Government Mandate, therefore, requires Plaintiffs to do precisely what their sincerely held religious beliefs prohibit—provide, pay for, and/or facilitate access to objectionable products and services or else incur crippling sanctions.

148. The U.S. Government Mandate therefore imposes a substantial burden on plaintiffs' religious beliefs.

149. The Mandate's exemption for "religious employers" does not alleviate the burden.

150. The "religious employers" exemption does not apply to Plaintiffs OLV, Catholic Charities, or the University of Dallas.

151. Although the Diocese is a "religious employer," the Mandate still forces it either to (1) sponsor a plan that will provide OLV and other affiliated Catholic organizations with access to the objectionable products and services, or (2) no longer extend its plan to these organizations, subjecting them to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage.

152. The first option forces the Diocese to act contrary to its sincerely-held religious beliefs. The second option compels the Diocese to submit to the government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

153. The so-called "accommodation" does not alleviate the burden on Plaintiffs' sincerely held religious beliefs.

154. Notwithstanding the so-called "accommodation," Plaintiffs are still required to provide, pay for, and/or facilitate access to the objectionable products and services.

155. Plaintiffs' Catholic beliefs do not simply prohibit them from using or directly paying for the objectionable coverage. Their beliefs also prohibit them from facilitating access to the objectionable products and services in the manner required by the Mandate.

156. Finally, the Plaintiffs cannot avoid the U.S. Government Mandate without incurring significant adverse consequences. If they eliminate their employee health plans, they are subject to annual fines of $2,000 per full-time employee and would suffer a disandvantage in employee recruitment and retention. If they keep their health plans but refuse to provide or facilitate the objectionable coverage, they are subject to daily fines of $100 a day per affected beneficiary. These adverse consequences therefore coerce Plaintiffs into violating their religious beliefs.

157. In short, while the President claims to have "found a solution that works for everyone" and that ensures that "religious liberty will be protected," his promised "accommodation" does neither. Unless and until this issue is definitively resolved, the U.S. Government Mandate does and will continue to impose a substantial burden on Plaintiffs' religious beliefs.

B. The U.S. Government Mandate Is Not a Neutral Law of General Applicability

158. The U.S. Government Mandate is not a neutral law of general applicability. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate coverage for abortion-inducing products, sterilization, contraception, and related education and counseling. It was, moreover, implemented by and at the behest of individuals and organizations who disagree with Plaintiffs' religious beliefs regarding abortion and contraception, and thus targets religious organizations for disfavored treatment.

159. For example, the Mandate exempts all "grandfathered" plans from its requirements, thus excluding tens of millions of people from the mandated coverage. As the

government has admitted, while the numbers are expected to diminish over time, "98 million individuals will be enrolled in grandfathered group health plans in 2013." 75 Fed. Reg. 41726,41732 (July 19, 2010). Elsewhere, the government has put the number at 87 million. See "Keeping the Health Plan You Have" (June 14, 2010), http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html. And according to one district court last year, "191 million Americans belong[ed] to plans which may be grandfathered under the ACA." *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1291 (D. Colo. 2012).

160. Similarly, small employers (*i.e.*, those with fewer than 50 employees) are exempt from certain enforcement mechanisms to compel compliance with the Mandate. *See* 26 U.S.C. § 4980H(a) (exempting small employers from the assessable payment for failure to provide health coverage).

161. In addition, the Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the Internal Revenue Code. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not of Plaintiffs and other religious organizations that remain subject to the Mandate.

162. The U.S. Government Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose certain Catholic teachings and beliefs. For example, on October 5, 2011, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. Defendant Sebelius has long supported abortion rights and criticized Catholic teachings and beliefs regarding abortion and contraception. NARAL Pro-Choice America is a pro-abortion organization that likewise opposes many Catholic

teachings. 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 available, widely affordable contraceptive services? Not so much." In addition, the Mandate was modeled on a California law that was motivated by discriminatory intent against religious groups that oppose contraception.

163. Consequently, 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.

C. The U.S. Government Mandate Is Not the Least Restrictive Means of Furthering a Compelling Governmental Interest

164. The U.S. Government Mandate is not narrowly tailored to serve a compelling governmental interest.

165. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely held religious beliefs by requiring them to participate in a scheme for the provision of abortion-inducing products, sterilization, contraceptives, and related education and counseling. 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.

166. Even assuming the interest was compelling, the Government has numerous alternative means of furthering that interest without forcing Plaintiffs to violate their religious beliefs. For example, the Government could have provided or paid for the objectionable services

itself through other programs established by a duly enacted law. Or, at a minimum, it could have created a broader exemption for religious employers, such as those found in numerous state laws throughout the country and in other federal laws. The Government therefore cannot possibly demonstrate that requiring Plaintiffs to violate their consciences is the least restrictive means of furthering its interest.

167. The U.S. Government Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the wide variety of social and educational services that Plaintiffs provide. As President Obama acknowledged in his announcement of February 10, 2012, religious organizations like Plaintiffs do "more good for a community than a government program ever could." The U.S. Government Mandate, however, puts these good works in jeopardy.

168. That is unconscionable. Accordingly, Plaintiffs seek a declaration that the U.S. Government Mandate cannot lawfully be applied to Plaintiffs, an injunction barring its enforcement, and an order vacating the Mandate.

IV. THE U.S. GOVERNMENT MANDATE THREATENS PLAINTIFFS WITH IMMINENT INJURY THAT SHOULD BE REMEDIED BY A COURT

169. The U.S. Government Mandate is causing serious, ongoing hardship to Plaintiffs that merits relief now.

170. On June 28, 2013, Defendants finalized the U.S. Government mandate, including the narrow "religious employer" exemption and the so-called "accommodation" proposed in the NPRM. By the terms of the Final Rule, Plaintiffs must comply with the Mandate for their plan years beginning on or after January 1, 2014.

171. For the University of Dallas, the next plan year for its employee health insurance plan begins on January 1, 2014. Its next student plan years will begin on August 1, 2014.

172. The Diocese and OLV's next plan years begin on July 1, 2014. Catholic Charities' next plan year begins August 1, 2014.

173. Defendants have given no indication that they will not enforce the essential provisions of the Mandate that impose a substantial burden on Plaintiffs' rights. Consequently, absent the relief sought herein, Plaintiffs will be required to provide, pay for, and/or facilitate access to contraception, abortion-inducing products, sterilization, and related education and counseling, in violation of their sincerely held religious beliefs.

174. The U.S. Government Mandate is also harming Plaintiffs in other ways.

175. Health plans do not take shape overnight. A number of analyses, negotiations, and decisions must occur each year before Plaintiffs can offer a health benefits package to their employees. For example, an employer using an outside insurance issuer must work with actuaries to evaluate its funding reserves, and then negotiate with the insurer to determine the cost of the products and services it wants to offer its employees. An employer that is self-insured, after consulting with its actuaries, must similarly negotiate with its third-party administrator ("TPA").

176. Under normal circumstances, Plaintiffs must begin the process of determining their health care package for a plan year at least several months before the plan year begins. The multiple levels of uncertainty surrounding the U.S. Government Mandate make this already lengthy process even more complex.

177. In addition, if Plaintiffs do not comply with the U.S. Government Mandate, they may be subject to government fines and penalties. Plaintiffs require time to budget for any such additional expenses.

178. The U.S. Government Mandate and its uncertain legality, moreover, undermine Plaintiffs' ability to hire and retain employees, thus placing them at a competitive disadvantage

in the labor market relative to organizations that do not have a religious objection to the Mandate.

179. Plaintiffs therefore need judicial relief now in order to prevent the serious, ongoing harm that the U.S. Government Mandate is already imposing on them.

V. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

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

181. 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.

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

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

184. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, contraception, sterilization procedures, and related counseling, in a manner that is directly contrary to their religious beliefs.

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

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

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

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

189. The U.S. Government Mandate also requires student health plans, including those currently offered by the University, to facilitate access to abortion-inducing products, sterilization, contraception, and related education and counseling in a manner that is directly contrary to its religious beliefs..

190. To require the University's student health plans to facilitate access to services that violate the University's religious beliefs substantially burdens its exercise of religion.

191. The Government has no compelling government interest to require the University's student health plans to facilitate access to services that violate the University's religious beliefs.

192. Requiring the University's student health plans to facilitate access to services that violate the University's religious beliefs is not the least restrictive means of furthering a compelling government interest.

193. Plaintiffs have no adequate remedy at law.

194. Defendants are imposing 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

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

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

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

198. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, contraception, sterilization procedures, and related counseling, in a manner that is directly contrary to their religious beliefs.

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

200. The U.S. Government Mandate is not a neutral law of general applicability, because it is riddled with exemptions for which there is not a consistent, legally defensible basis. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate access to abortion-inducing products, sterilization, contraception, and related education and counseling.

201. The U.S. Government Mandate is not a neutral law of general applicability because it was passed with discriminatory intent.

202. 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, free association, and freedom from excessive government entanglement with religion.

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

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

205. 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.

206. The Government also requires student health plans, including those currently offered by the University, to facilitate access to abortion-inducing products, sterilization, contraception, and related education and counseling in a manner that is directly contrary to its religious beliefs.

207. To require the University's student health plans to facilitate access to products and services that violate its religious beliefs substantially burdens the University's exercise of religion.

208. The Government has no compelling government interest to require the University's student health plans to facilitate access to products and services that violate its religious beliefs.

209. Requiring the University's student health plans to facilitate access to products and services that violate its religious beliefs is not the least restrictive means of furthering a compelling government interest.

210. Plaintiffs have no adequate remedy at law.

211. Defendants are imposing an immediate and ongoing harm on Plaintiffs that warrants relief.

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

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

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

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

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

216. The First Amendment speakers from being forced to support a viewpoint that conflicts with their religious beliefs.

217. The U.S. Government Mandate would compel Plaintiffs to provide health care plans to their employees that include or facilitate access to products and services that violate their religious beliefs.

218. The U.S. Government Mandate would compel Plaintiffs to subsidize, promote, and facilitate education and counseling services regarding these objectionable products and services.

219. The U.S. Government Mandate would compel Plaintiffs to issue a certification of its beliefs that, in turn, would result in the provision of access to objectionable products and services to Plaintiffs' employees.

220. 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, and compelling Plaintiffs to engage in speech that will result in the provision of access to objectionable products and services to Plaintiffs' employees.

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

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

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

224. For the same reasons, Defendants' requirement that student health plans, like those currently offered by the University, facilitate access to abortion-inducing products, sterilization, contraception, and related education and counseling, also violates the Free Speech Clause of the First Amendment.

225. Plaintiffs have no adequate remedy at law.

226. Defendants are imposing an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT IV
Prohibition of Speech
in Violation of the First Amendment

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

228. The First Amendment protects the freedom of speech, including the right of religious groups to speak out to persuade others to refrain from engaging in conduct that may be considered immoral.

229. The Mandate violates the First Amendment freedom of speech by imposing a gag order that prohibits Plaintiffs from speaking out in any way that might "influence," "directly or indirectly," the decision of a third-party administrator to provide or procure contraceptive products and services to Plaintiffs' employees.

230. Plaintiffs have no adequate remedy at law.

231. Defendants are imposing an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT V
Official "Church" Favoritism and Excessive Entanglement with Religion
in Violation of the Establishment Clause of the First Amendment

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

233. The Establishment Clause of the First Amendment prohibits the Government from adopting an official definition of a "religious employer" that favors some religious groups while excluding others.

234. The Establishment Clause also prohibits the Government from becoming excessively entangled in the affairs of religious groups by scrutinizing their beliefs, practices, and organizational features to determine whether they meet the Government's favored definition.

235. The "religious employer" exemption violates the Establishment Clause in two ways.

236. First, it favors some religious groups over others by creating an official definition of "religious employers." Religious groups that meet the Government's official definition receive favorable treatment in the form of an exemption from the Mandate, while other religious groups do not.

237. Second, even if it were permissible for the Government to favor some religious groups over others, the "religious employer" exemption would still violate the Establishment Clause because it requires the Government to determine whether groups qualify as "religious employers" based on intrusive judgments about their beliefs, practices, and organizational features. The exemption turns on an intrusive 14-factor test to determine whether a group meets the requirements of section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. These 14 factors probe into matters such as whether a religious group has "a distinct religious history" or "a recognized creed and form of worship." But it is not the Government's place to determine whether a group's religious history is "distinct," or whether the group's "creed and form of worship" are "recognized." By directing the Government to partake

of such inquiries, the "religious employer" exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion.

238. Plaintiffs have no adequate remedy at law.

239. Defendants are imposing an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VI
Interference in Matters of Internal Church Governance in Violation of the Religion Clauses of the First Amendment

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

241. The Free Exercise Clause and Establishment Clause and the Religious Freedom Restoration Act protect the freedom of religious organizations to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.

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

243. 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.

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

245. The Catholic Church views abortion, sterilization, and contraception as intrinsically immoral, and prohibits Catholic organizations from condoning or facilitating those practices.

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

247. 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.

248. Plaintiffs have therefore made the internal decision that the health plans they offer to their employees may not cover, subsidize, or facilitate access to abortion, sterilization, or contraception.

249. The Diocese has further made the internal decision that other religious entities, including OLV, may offer their employees health-insurance coverage through the Diocese's plan, which allows the Diocese to ensure that these organizations do not offer access to services that are contrary to Catholic teaching.

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

251. 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.

252. 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 and the Religious Freedom Restoration Act.

253. For the same reasons, Defendants' requirement that student health plans, like those currently offered by the University, include access to abortion-inducing products, sterilization, contraception, and related education and counseling, also violates the Establishment

Clause and the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act.

254. Plaintiffs have no adequate remedy at law.

255. Defendants are imposing an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VII
Illegal Action in Violation of the APA

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

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

258. The U.S. Government Mandate, its exemption for "religious employers," and its so-called "accommodation" for "eligible" religious organizations are illegal and therefore in violation of the APA.

259. 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).

260. 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 access to abortion-inducing products, sterilization, contraception, or related education and counseling should be required to provide such plans.

261. The U.S. Government Mandate requires employer-based health plans to provide access to abortion-inducing products, contraception, sterilization, and related education. 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.

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

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

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

265. For the same reasons, Defendants' requirement that student health plans, like those offered by the University, must provide access to abortion-inducing products, sterilization, contraception, and related education and counseling, also violates RFRA, the First Amendment, the Weldon Amendment, and the APA. The requirement therefore is not in accordance with law and thus violates 5 U.S.C. § 706(2)(A).

266. In addition, the Affordable Care Act states that, "nothing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education . . . from offering a student health insurance plan . . . ." 42 U.S.C. § 18118(c). This provision has been interpreted as prohibiting any law that has the effect of prohibiting an institution of higher education from offering a student health plan. 76 Fed. Reg. 7,767, 7,769 (Feb. 11, 2011). The requirement that student health plans offered through a health insurance issuer facilitate access to abortion-inducing products, sterilization, contraception, and related education and

counseling, however, has the effect of prohibiting the University from offering student health insurance plans. Defendants' requirement that student health plans offered through a health insurance issuer include abortion-inducing products, sterilization, contraception, and related education and counseling, therefore, also violates 42 U.S.C. § 18118(c) and thus is not in accordance with law under 5 U.S.C. § 706(2)(A).

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

268. Plaintiffs have no adequate remedy at law.

269. Defendants' failure to act in accordance with law imposes an immediate and ongoing harm on Plaintiffs that warrants relief.

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 injunction prohibiting the Defendants from enforcing the U.S. Government Mandate against Plaintiffs;
5. Enter an order vacating the U.S. Government Mandate;
6. Enter a declaratory judgment that Defendants' requirement that student health plans facilitate access to abortion-inducing products, sterilization,

contraception, and related education and counseling violates Plaintiffs' rights under RFRA and the First Amendment; enter an injunction prohibiting the Defendants from enforcing that requirement against Plaintiffs; and enter an order vacating the requirement;

7. Award Plaintiffs attorneys' and expert fees under 42 U.S.C. § 1988; and

8. Award all other relief as the Court may deem just and proper.

Respectfully submitted, this the 22nd day of August, 2013.

By: /s/ Terence M. Murphy

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CERTIFICATE OF SERVICE

I certify that on August 22, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Basheer Y. Ghorayeb
Basheer Y. Ghorayeb

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