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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

DIOCESE OF CHEYENNE; CATHOLIC CHARITIES OF WYOMING; SAINT JOSEPH'S CHILDREN'S HOME; ST. ANTHONY TRI-PARISH CATHOLIC SCHOOL; JOHN PAUL II CATHOLIC SCHOOL AT ST. MATTHEWS; WYOMING CATHOLIC COLLEGE

***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 the Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; U.S. DEPARTMENT OF THE TREASURY

Defendants.

Civil Action No. 14-CV-21-S

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 Diocese of Cheyenne[1] (the "Diocese"), not only provides pastoral care and spiritual guidance for nearly 58,000 Catholics, but also serves individuals throughout the State of Wyoming through its schools and multiple charitable programs. Plaintiff Catholic Charities of Wyoming ("Catholic Charities") offers a host of social services to those in need throughout the State. In a similar vein, Plaintiff St. Joseph's Children's Home ("St. Joseph's Home") provides comprehensive behavioral services to children and families in Wyoming and the surrounding region. Likewise, Plaintiffs St. Anthony Tri-Parish Catholic School ("St. Anthony School") and John Paul II Catholic School at St. Matthews ("JPIICS") provide children with a rigorous education rooted in the faith and teachings

[1] The Diocese of Cheyenne encompasses the entire State of Wyoming.

of the Roman Catholic Church in Casper and Gillette respectively. For its part, Plaintiff Wyoming Catholic College, located in Lander ("WCC" or "College"), offers a Catholic liberal-arts education, fostering a community of scholars dedicated to the intellectual tradition and moral teachings of the Catholic Church.

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 Emeritus Benedict XVI has 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." And as Pope Francis has indicated: "By her very nature the Church is missionary; she abounds in effective charity and a compassion which understands, assists and promotes." 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 exercise. 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 their equally religious charitable arms, such as Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS. In particular, contrary to its initial interpretation, the Government now asserts that the U.S. Government Mandate prohibits the Diocese from ensuring that its religious affiliates provide health insurance consistent with Catholic doctrine.

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 . . . nonprofit entit[ies] 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. 8456, 8461 (Feb. 6, 2013). Consequently, the only organizations that qualify for the exemption are "churches, synagogues, mosques, and other houses of worship, and religious orders." *Id.* 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 and denominations 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 provide, pay for, and/or facilitate access to the objectionable products and services for their employees.

10. In particular, Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, JPIICS, and WCC do not qualify under the Government's narrow definition of "religious employer," 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 identify and contract with an insurance company (or, for self-insured organizations, a third-party administrator), which, as a

result, is required to provide or procure "free" abortion-inducing products, contraception, sterilization, and related counseling for these particular Plaintiffs' employees upon receipt of a self-certification. Consequently, the religious organizations' actions authorize the provision of the "free" objectionable products and services. Plaintiffs cannot avoid facilitating the provision of the objectionable products and services without subjecting themselves to fines, other negative consequences, 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 who do not qualify for the "religious employer" exemption must provide a "certification" to their insurance provider or third-party administrator setting forth their religious objections to the Mandate. Once this "certification" is provided, it automatically triggers an obligation on the part of the insurance provider or third-party administrator to provide or procure the objectionable products and services for these Plaintiffs' employees. For self-insured Plaintiffs, moreover, before they can even provide the certification, they must first find and identify a third party administrator who is willing to provide the very coverage Plaintiffs find objectionable, and their 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 (emphases added). Plaintiffs' actions, therefore, directly result in the provision of the objectionable products and services to their employees, contrary to their sincerely held religious beliefs.

12. Plaintiff Diocese appears to qualify as a "religious employer," and, as such, is eligible for the "religious employer" exemption. However, the Diocese operates a self-insured group health plan that encompasses not only individuals directly employed by the Diocese itself, but, in addition, individuals employed by other Catholic organizations including Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS. Because Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS do not themselves appear to qualify as exempt "religious employers," the U.S. Government Mandate requires that the Diocese 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 Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS and other organizations, or (2) no longer extend its plan to these organizations, subjecting them to fines or other negative consequences if they do not contract with another insurance provider that will provide the objectionable coverage.

13. This appears to be a reversal of the Government's original interpretation of the Mandate. As originally understood, the exemption would have allowed Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS to remain on the Diocese's plan, which, in turn, would have shielded them from the Mandate if the Diocese was exempt. *See* 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012). The Government's revised interpretation of the Mandate, as contained in the Final Rule, removes this protection and thereby *increases* the number of religious organizations subject to the Mandate. In so doing, the Mandate seeks to divide the Catholic Church, artificially separating its "houses of worship" from its ministries, directly contrary to Pope Emeritus Benedict XVI's admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

14. 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 conduits 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.

15. 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

16. The Diocese is a nonprofit corporation incorporated in Wyoming. Its principal place of business is in Cheyenne, Wyoming. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

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

18. Plaintiff St. Joseph's Home is a nonprofit corporation incorporated in Wyoming. Its principal place of business is in Torrington, Wyoming. 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 St. Anthony School is a nonprofit corporation incorporated in Wyoming. Its principal place of business is in Casper, Wyoming. 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 JPIICS is a nonprofit corporation incorporated in Wyoming. Its principal place of business is in Gillette, Wyoming. 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 WCC is a nonprofit corporation incorporated in Wyoming. Its principal place of business is in Lander, Wyoming. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) 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. Plaintiff Diocese of Cheyenne encompasses thirty-six parishes and thirty-six missions serving the State of Wyoming, including the nearly 58,000 Catholics residing therein. The ministries of the Diocese are performed through a number of separate corporations, including (among others) its parishes, Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS.

34. The Diocese has been led since 2009 by Bishop Paul D. Etienne. Bishop Etienne is assisted in his ministry by a staff of clergymen, religious brothers and sisters, and lay people. The Diocese has sixteen full-time employees.

35. The Diocese itself 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 individual parishes: through the ministry of its priests, the Diocese ensures the regular availability of the sacraments to all Catholics living in or visiting the State of Wyoming. It also provides numerous other opportunities for service, prayer, worship, and faith formation.

36. The Diocese conducts its educational mission through parish schools. Much of the Diocese's educational mission is performed through seven schools. Those schools serve over eight hundred and sixty students and employ over one hundred teachers (including principals) and an additional number of school staff. The educational work of the Diocese is also carried out through St. Anthony School and JPIICS, among others, which are schools managed and operated as separate, affiliated corporations.

37. Wyoming Catholic schools welcome students in all financial conditions, from all backgrounds, and of any or no faith.

38. Catholic Schools located in the Diocese offer a unique educational experience. Such schools have established 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 true faith and good citizenship. Finally, high academic standards help each student reach his or her potential.

39. The social service work of the Diocese is performed largely through its parishes. The parishes maintain their own charitable efforts, serving the needs of their communities with programs such as food banks, thrift stores, and care of sick and elderly, among others.

40. The Diocese offers its employees a health plan through the RETA Trust, which is a self-insurance trust set up by the Catholic bishops of California in 1999 for the purpose of providing medical coverage consistent with Catholic moral teaching. Consistent with Church teachings, the RETA Trust shares the Diocese's religious objections to providing, procuring, or facilitating access to abortion-inducing products, abortion, sterilization, or contraceptives. Accordingly, the Diocese's plan offered through the RETA Trust only covers products prescribed with the intent of treating a medical condition, not with the intent to prevent pregnancy or to induce abortion.

41. The third-party administrator for the Diocese's plan through the RETA Trust is Aetna.

42. Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS also offer coverage through the Diocese's self-insurance plan.

43. The Diocese's self-insured health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The Diocese's plan underwent significant changes in benefits effective January 1, 2013. Moreover, the Diocese has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it

believes its plan is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act. *See, e.g.*, 26 C.F.R. § 54.9815-1251T(a)(2)(i).

44. The plan year for the Diocese (and the organizations it insures) begins on July 1.

B. Catholic Charities

45. Catholic Charities is a licensed non-profit adoption agency created in 1964 which serves those of all faiths throughout the state of Wyoming. Its purpose is to carry 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 to those in need.

46. Catholic Charities provides a panoply of services, including assistance for parents faced with a crisis pregnancy; infant and special needs adoption services; aid with international adoptions; group, individual and family psychotherapy; psychological evaluations; and aftercare and foster care services.

47. Catholic Charities also helps to administer affordable housing facilities for low income elderly.

48. Catholic Charities, although an independent non-profit corporation, is affiliated with the Diocese.

49. Catholic Charities has six full-time employees.

50. Catholic Charities does not appear to 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.

51. Catholic Charities employees are offered health insurance through the Diocese's health plan.

C. St. Joseph's Children's Home

52. Since 1930, St. Joseph's Home has served as an agency of social ministry in the Catholic tradition. Originally founded as an orphanage, it now provides treatment programs for emotionally disturbed children. Its mission is to provide comprehensive behavioral services to children and families in Wyoming and the surrounding region.

53. To that end, St. Joseph's Home provides services for up to 62 youth ages six to eighteen, offering an accredited psychiatric residential treatment program complete with 24-hour supervision, social skills training, psychotherapy, educational services, and chemical dependency services.

54. Children referred to St. Joseph's Home exhibit a variety of serious concerns including physical and sexual abuse or parental neglect, depression and suicide attempts, oppositional behavior and defiance of authority, runaway and substance abuse problems, excessive fear and anger, aggressive or sexually inappropriate behavior, and involvement with the juvenile court system. St. Joseph's Home exists to help residents identify challenges and develop the action plans necessary to assist in resolving problems. Support for the transformation of its residents into productive adults flows from openness, honesty, encouragement and providing all the tools necessary for this to occur.

55. St. Joseph's Home, although an independent non-profit corporation, is affiliated with the Diocese.

56. St. Joseph's Home serves people in need without regard to their religion.

57. St. Joseph's Home has one hundred and thirty full-time employees.

58. St. Joseph's Home does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, St. Joseph's Home does not qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

59. St. Joseph's Home employees are offered health insurance through the Diocese's health plan.

D. St. Anthony Tri-Parish Catholic School

60. St. Anthony School, in Casper, Wyoming, prepares children for lives of service to God and neighbor, through a rigorous academic program rooted in the faith and teachings of the Roman Catholic Church.

61. St. Anthony School educates students from preschool through eighth grade. It provides students with a well-rounded curriculum, which meets or exceeds Wyoming state academic standards while offering students a Gospel-based perspective. Students participate annually in outdoor and off-site educational programs and take part in a variety of hands-on learning experiences. Parents are highly involved in the school, working in the classrooms and fundraising to provide support for students in need of tuition assistance. Along with daily religion classes, students also participate in a weekly mass celebrated in the school's chapel. Lessons in faith and church history are also integrated into students' daily activities.

62. Consistent with its Catholic identity, St. Anthony School teaches its students to integrate faith and life. It stresses the importance of building a just society and provides numerous opportunities for students to participate in charitable work. For example, students annually participate in a number of service projects that support the poor of the community by

collecting non-perishable food items, gathering school supplies and personal care products, providing outreach to local retirement centers, and fundraising for special educational projects.

63. St. Anthony School welcomes students in all financial conditions, from all backgrounds, and of any or no faith. It has a co-ed student body of approximately 300 students.

64. St. Anthony School has forty-one full-time employees.

65. St. Anthony School, although an independent non-profit corporation, is affiliated with the Diocese.

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

67. St. Anthony School employees are offered health insurance through the Diocese's health plan.

E. John Paul II Catholic School

68. The mission of JPIICS in Gillette, Wyoming, is to provide its students with a strong Catholic foundation of faith, family, community, and academics in a warm and welcoming, caring and Christ-centered environment

69. JPIICS educates students from preschool through the sixth grade. It holds its students to the highest academic standards to enable them to reach their highest potential. Small class sizes provide students with a personalized learning environment, and students are given the opportunity to participate in daily language classes and various extracurricular activities.

70. It also instills in its students the importance of service, giving time, talent and effort to help others as an expression of both faith and good citizenship. It thus provides

numerous opportunities for students to participate in charitable work, including volunteering at soup kitchens, spending time with the elderly, and taking part in local food drives.

71. JPIICS welcomes students in all financial conditions, from all backgrounds, and of any or no faith. It has a co-ed student body of approximately two hundred students.

72. JPIICS has twenty full-time employees.

73. JPIICS, although an independent non-profit corporation, is affiliated with the Diocese.

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

75. JPIICS's employees are offered health insurance through the Diocese's health plan.

F. Wyoming Catholic College

76. Established in 2005, WCC is a four-year coeducational Catholic college whose primary educational objective is to offer a traditional liberal arts education that schools the whole person in all three dimensions—mind, body, and spirit.

77. With respect to the mind, this mission is accomplished through a great books curriculum that includes history, literature, writing, reasoning, oratory, Latin, art history, music, mathematics, natural science, philosophy, and theology. With respect to the body, students participate in numerous outdoor educational programs, including horsemanship. With respect to the spirit, students are exposed to the benefits of living in Catholic community and offered daily opportunities for Mass, Confession, and Adoration.

78. WCC embraces the riches of the Catholic intellectual tradition."It is dedicated to research, to teaching, and to various kinds of service in accordance with its cultural mission." At the same time, Catholic ideals, principles, and attitudes inform all research, teaching, and activities carried out by the school. In other words, "Catholic teaching and discipline . . . influence all [college] activities, while the freedom of conscience of each person is . . . fully respected. Any official action or commitment of the [school must] be in accord with its Catholic identity."

79. Though committed to remaining a distinctly Catholic institution, the College opens its doors to students, academics, and prospective employees of all faiths and creeds. WCC currently has one hundred and twelve full-time students enrolled in its four-year program of Catholic liberal education. Including faculty and staff, the school has thirty-two full-time employees.

80. The College's mission to educate and serve others extends beyond the borders of WCC's campus. For example, the College has a robust outdoor leadership program, which includes expeditions across the Rocky Mountains as well as service-oriented trips to Denver, Colorado. The College's choir also travels regularly to Denver and Salt Lake City, Utah, for performances.

81. Faith is at the heart of all of the WCC's efforts. Indeed, the College's commitment to Catholic teachings permeates campus life. The College's student handbook reminds students that the College is committed to the teachings and moral values of the Catholic Church.

82. WCC's Catholic educational mission is furthered by its leadership. Two-thirds of all board members, faculty, and staff must be practicing Catholics in good standing. The bishop of the Diocese of Cheyenne is also an ex officio member of the Board of the Directors.

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

84. WCC offers its employees health coverage through a self-funded church plan provided by Christian Brothers Employee Benefit Trust.

85. WCC's plan does not cover abortion-inducing products or sterilization. Consistent with Church teachings, WCC'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.

86. WCC's plan year begins on July 1.

87. The health plan offered by WCC to its employees does not meet the Affordable Care Act's definition of a "grandfathered" plan. It 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

88. 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).

89. 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.

90. "[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." 75 Fed. Reg. 41,726, 41,731 (July 19, 2010); 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.

91. 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 Preventive 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).

92. 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.

93. 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).

94. 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).

95. 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

96. 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

97. 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.

98. 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.

99. 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.

100. 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." IOM, Clinical Preventive Services for Women: Closing the Gaps 164–65 (2011), *available at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx.

101. 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.

102. 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).

103. 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. Dep't of Health & Human Servs., "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* U.S. Dep't of Health & Human Servs., "Women's Preventive Services: Required Health Plan Coverage Guidelines," http://www.hrsa.gov/womensguidelines.

104. 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.

105. 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)).

106. 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 most religious universities, elementary and secondary schools, hospitals, and charitable organizations.

107. 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. As Cardinal Donald Wuerl later wrote, "HHS's conception of what constitutes the practice of religion is so narrow that even Mother Teresa would not have qualified."

108. 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 8725, 8729 (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 8728. As noted by Cardinal Timothy Dolan, the "safe harbor" effectively gave religious groups "a year to figure out how to violate our consciences."

109. 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. The ANPRM did not

revoke the Mandate, and in fact reaffirmed the Government's view at the time that the "religious employer" exemption would 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"

110. 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. Contrary to the Government's previous assurances, however, the NPRM adopted the proposals contained in the ANPRM. 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.

111. Defendants apparently gave no consideration to these or other comments submitted in opposition to the NPRM's proposed "accommodation."

112. In fact, on April 8, 2013, the same day the notice-and-comment period ended, Defendant Sebelius indicated that the accommodation would be implemented, regardless of opposition. She stated: "We have just completed the open comment period for the so-called accommodation, and by August 1st of this year, every employer will be covered by the law with one exception. Churches and church dioceses as employers are exempted from this benefit. But Catholic hospitals, Catholic universities, other religious entities will be providing coverage to their employees starting August 1st. . . . [A]s of August 1st, 2013, every employee who doesn't work directly for a church or a diocese will be included in the benefit package." The Forum at Harvard School of Public Health, A Conversation with Kathleen Sebelius, U.S. Secretary of Health and Human Services, Apr. 8, 2013, *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius (Episode 9 at 2:25) (last visited July 12, 2013) (emphases added).

113. Unsurprisingly, therefore, 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. 39,870 (July 2, 2013) ("Final Rule").

114. The Final Rule makes three changes to the Mandate. As described below, none of these changes relieves the unlawful burdens placed on Plaintiffs and other religious organizations. Indeed, one of them appears to significantly *increase* that burden by significantly increasing the number of religious organizations subject to the Mandate.

115. *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 39,896 (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 8461. 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."

116. 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 "refer[red] to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code." This category, however, 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, moreover, has adopted an intrusive 14-factor test to determine whether a group meets these qualifications. *See Found. of Human Understanding v. United States*, 88 Fed. Cl. 203, 220

(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 denominations and organizations 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 entities fall into the favored category.

117. *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. § 54.9815-2713A(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. § 2590.715-2713 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.

118. 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, coupled with a self-certification, 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' actions authorize the provision of "free" contraceptive coverage to their employees in a manner contrary to their beliefs. The provision of the objectionable products and services is 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 (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.

119. Needless to say, this shell game does not address Plaintiffs' fundamental religious objection to improperly facilitating access to the objectionable products and services. As before, Plaintiffs are coerced, through threats of 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.

120. 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," non-exempt Plaintiffs must provide a "certification" to their insurance provider or third-party administrator setting forth their religious objections to the Mandate. For self-insured Plaintiffs, before they can even provide the certification, they must first find and identify a third party administrator who is willing to provide the very coverage Plaintiffs find objectionable. Once this "certification" is provided, it automatically triggers an obligation on the part of the insurance provider or third-party administrator to provide or procure the objectionable products and services for these Plaintiffs' employees. Moreover, it is only through Plaintiff Diocese's contractual relationship with the third party administrator that any employee of the "eligible" Plaintiffs will receive the objectionable coverage.

121. The U.S. Government Mandate also requires Plaintiffs to subsidize the objectionable products and services.

122. 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.

123. 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 8463. 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 mandated 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.

124. 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.

125. For self-insured organizations, the Government's "cost-neutral" assumption appears to be similarly 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. 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 regulated 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.

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

127. 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.

128. *Third,* the Government's interpretation of the Final Rule appears to actually *increase* the number of religious organizations that are subject to the U.S. Government 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. at 16,502.

129. For example, Plaintiff Diocese offers a self-insured group health plan that covers not only the Diocese itself, but other Catholic organizations—including Plaintiffs Catholic Charities, St. Joseph's, St. Anthony, and JPIICS. Under the original interpretation of the

exemption, if the Diocese was an exempt "religious employer," then Catholic Charities, St. Joseph's, St. Anthony, and JPIICS received the benefit of that exemption, regardless of whether they independently qualified as "religious employers," since they could continue to participate in the Diocese's exempt plan. These affiliated organizations, therefore, could benefit from the Diocese's exemption even if they, themselves, could not meet the Government's unprecedentedly narrow definition of "religious employer."

130. The Final Rule eliminates this safeguard. Instead, it interprets the exemption to require "each employer" to "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 8467 (NPRM). Since Plaintiffs Catholic Charities, St. Joseph's, St. Anthony, and JPIICS do not appear to meet the Government's narrow definition of "religious employers," they are now subject to the U.S. Government Mandate.

131. Moreover, since Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS are part of the Diocese's self-insured group health plan, the Diocese is now required by the Mandate to do one of two things: sponsor a plan that will provide the employees of these organizations with "free" contraception, abortion-inducing products, sterilization, and related counseling, or, alternatively, decline to extend its plan to these organizations, subjecting them to fines or other negative consequences if they do not contract with another insurance provider that will provide the objectionable coverage.

132. 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.

133. 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 Emeritus Benedict XVI, "[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.

134. In sum, the Final Rule not only fails to alleviate the burden that the U.S. Government Mandate imposes on 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 Exercise

135. 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."

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

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

138. Plaintiffs' Catholic beliefs therefore prohibit them from providing, paying for, and/or facilitating access to abortion-inducing products, contraception, or sterilization, including by 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. Likewise, Plaintiffs object to being forced to take other actions that facilitate access to the objectionable products and services, including the Mandate's self-certification requirement.

139. Catholic teaching not only prohibits Catholic organizations from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from authorizing a third-party to do so, even if the third party ultimately has the discretion not to provide such payments and/or coverage.

140. Plaintiffs' beliefs are deeply and sincerely held.

141. 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 fines or other negative consequences.

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

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

144. The "religious employer" exemption does not apply to Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, JPIICS, and WCC.

145. Although Plaintiff Diocese is a "religious employer," the Mandate still requires it either to (1) sponsor a plan that will provide Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, JPIICS, and other Catholic organizations, with access to the objectionable products and services, or (2) no longer extend its plan to these organizations, subjecting them to fines or other negative consequences if they do not contract with another insurance provider that will provide the objectionable coverage.

146. The first option forces the Diocese to act contrary to its sincerely-held religious beliefs.

147. 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.

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

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

150. 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.

151. Finally, the Plaintiffs cannot avoid the U.S. Government Mandate without incurring fines or other negative consequences. If they eliminate their employee health plans, for

those Plaintiffs with more than fifty employees, they are subject to annual fines of $2,000 per full-time employee. 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.

152. Potential liability for significant fines and uncertainty regarding Plaintiffs' ability to offer and provide health benefits undermines Plaintiffs' ability to retain and recruit employees. Were Plaintiffs to stop offering health benefits, they would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

153. These fines and other negative consequences therefore coerce Plaintiffs into violating their religious beliefs.

154. 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

155. 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.

156. 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, "98 million individuals will be enrolled in grandfathered group health plans in 2013." 75 Fed. Reg. at 41,732. Elsewhere, the government has put the number at 87 million. *See* Healthcare.gov, "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, "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).

157. 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).

158. 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.

159. 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."

160. In addition, the Mandate was modeled on a California law that was motivated by discriminatory intent against religious groups that oppose contraception.

161. The IOM Committee that initially adopted the definition of "preventive care" was overwhelmingly stacked with individuals who similarly oppose many Catholic teachings, leading the lone dissenter on the Committee to lament that the Committee's recommendation reflected the members' "subjective determinations filtered through a lens of advocacy." IOM, *supra*, at 232.

162. 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

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

164. 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.

165. 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.

166. 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. Plaintiffs Diocese, St. Anthony School, and JPIICS educate children whose families want an alternative to the public school system, while Plaintiffs Catholic Charities, and St. Joseph's Home, provide a range of social services to the citizens of the State. Likewise, Plaintiff WCC provides its students with a high-quality education in numerous fields of study. 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 negative consequences resulting from a refusal to comply with the U.S. Government Mandate, however, would undermine these good works.

167. 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. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

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

169. 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.

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

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

172. 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.

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

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

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

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

177. Plaintiffs have no adequate remedy at law.

178. 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

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

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

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

182. 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.

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

184. 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.

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

186. 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.

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

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

189. 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.

190. Plaintiffs have no adequate remedy at law.

191. 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

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

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

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

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

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

197. 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.

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

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

200. 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 objectionable products and services to Plaintiffs' employees.

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

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

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

204. Plaintiffs have no adequate remedy at law.

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

COUNT IV
Prohibition of Speech
in Violation of the First Amendment

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

207. 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.

208. 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.

209. Plaintiffs have no adequate remedy at law.

210. 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

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

212. 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.

213. 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.

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

215. First, it favors some religious groups over others by creating an official definition of "religious employers" that excludes legitimate religious ministries. 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. This also has the effect of discriminating among religious denominations.

216. Second, the "religious employer" exemption also violates 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 engage

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

217. Plaintiffs have no adequate remedy at law.

218. 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

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

220. 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.

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

222. 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.

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

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

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

226. 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.

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

228. Plaintiff Diocese has further made the internal decision that its affiliated religious entities, including those affiliates who are Plaintiffs in this case, should offer their employees health-insurance coverage through the Diocese's plan, which allows the Diocese to ensure that these affiliates do not offer coverage for services that are contrary to Catholic teaching.

229. 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.

230. 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.

231. 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.

232. Plaintiffs have no adequate remedy at law.

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

COUNT VII
Illegal Action in Violation of the APA

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

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

236. 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.

237. 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).

238. 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).

239. The U.S. Government Mandate requires employer-based health plans to provide coverage for abortion-inducing products, contraception, sterilization, and related education. By

issuing the U.S. Government Mandate, Defendants have exceeded their authority, and ignored the direction of Congress.

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

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

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

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

244. Plaintiffs have no adequate remedy at law.

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

COUNT VIII
Erroneous interpretation of the exemption with respect to multi-employer plans

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

247. The Mandate explicitly exempts "group health plan[s] established or maintained by a religious employer (and health insurance coverage provided in connection with a group health plan established or maintained by a religious employer)" from "any requirement to cover contraceptive services." 45 C.F.R. § 147.131(a).

248. In the ANPRM, Defendants acknowledged that the religious employer exemption was "available to religious employers in a variety of arrangements." 77 Fed. Reg. at 16,502.

249. Specifically, Defendants indicated that a nonexempt entity could "provide[] health coverage for its employees through" a plan offered by a separate, "affiliated" organization that is a "distinct common-law employer." *Id.*

250. In such a situation, Defendants stated that if the "affiliated" organization 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." *Id.*

251. This reading reflects the plain and unambiguous text of the regulation, which by its terms exempts "group health plan[s]" so long as they are "established or maintained by a religious employer."

252. Nonetheless, when issuing the Final Rule, Defendants reversed course, rejecting a "plan-based approach" and adopting an "employer-by-employer approach" whereby "each employer [must] independently meet the definition of religious employer . . . in order to avail itself of the exemption." 78 Fed. Reg. at 39,886.

253. An employer-based approach contradicts the plain text of the regulation, which exempts "group health plan[s]," not individual employers.

254. The Diocese meets the Mandate's definition of a religious employer, and therefore, the group health plan it has "established or maintained" is exempt from providing coverage for abortion-inducing products, sterilization, contraception, and related education and counseling.

255. The Defendants erroneous interpretation of the religious employer exemption, however, precludes the Diocese's affiliated entities, including Plaintiffs Catholic Charities, St. Joseph's Home, St. Anthony School, and JPIICS from obtaining the benefit of the exemption by participating in the exempt group health plan established and maintained by the Diocese.

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

257. Plaintiffs have no adequate remedy at law.

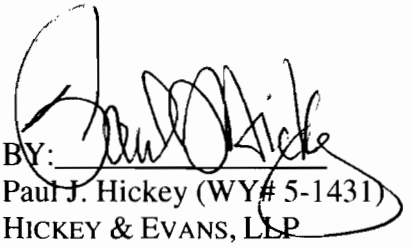
258. Defendants' erroneous interpretation imposes an immediate and ongoing harm on Plaintiffs that warrants relief.

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 have erroneously interpreted the scope of the religious employer exemption, and that nonexempt organizations may obtain the benefit of the religious employer exemption if they provide insurance through a group health plan established and maintained by a religious employer.
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 30th day of January, 2014.



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**Application for Pro Hac Vice Admission Pending*