

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs,

-v-

DEPARTMENT OF HEALTH AND HUMAN
SERVICES, *et al.*,

Defendants.

Case No. 1:13-cv-01261-EGS

**PLAINTIFFS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

STATEMENT OF MATERIAL FACTS

I. The Contraceptive Services Mandate.

1. The contraceptive services mandate operates by virtue of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), *amended by* Healthcare and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (hereinafter “Affordable Care Act” or “Act”).

2. Under the Affordable Care Act, there are exemptions from the insurance requirement for certain religions, *see* 26 U.S.C. § 5000A(d)(2)(a)(i) & (ii) (providing that the mandate to purchase insurance does not apply to members of a “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds), and for certain individuals, *see* 26 U.S.C. § 5000A(d)(3) & (4) (providing that the mandate to purchase insurance does not apply to “[i]ndividuals not lawfully present” and “[i]ncarcerated individuals”).

3. Under the Affordable Care Act, grandfathered health care plans are exempt from the insurance mandates, including the contraceptive services mandate. *See* 42 U.S.C. § 18011 (grandfathering of existing health care plans).

4. Defendants created a regulatory exemption to the contraceptive services mandate for a narrow category of religions organizations. 78 Fed. Reg. 39870, 39874 (July 2, 2013).

5. None of the exemptions from the contraceptive services mandate apply to Priests for Life. (Fr. Pavone Decl. at ¶¶ 3-5 [Ex. 1 at Doc. No. 7-1]).

6. Pursuant to 42 U.S.C. § 300gg-13, “[a] group health plan and a health insurance issuer offering group or individual health insurance coverage *shall, at a minimum provide coverage for* and shall not impose any cost sharing requirements for . . . (4) with respect to

women, such additional preventive care and screenings not described in paragraph (1) 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) (emphasis added).

7. On July 19, 2010, the Department of Health and Human Services (“HHS”), along with the Department of Labor and the Department of the Treasury, published interim final regulations “implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding preventive health services.” 75 Fed. Reg. 41726 (July 19, 2010).

8. The interim final regulations required health insurers to cover “preventive care” for women as “provided for in comprehensive guidelines supported by the Health Resources and Services Administration.” 75 Fed. Reg. at 41759.

9. On July 19, 2011, the Institute of Medicine (“IOM”) published a report of its study regarding preventive care for women. Among other things, IOM recommended that preventive services include “[t]he full range of Food and Drug Administration-approved contraceptive methods [and] sterilization procedures.” (Muisse Decl. at ¶ 2, Ex. A [“Clinical Preventive Services for Women: Closing the Gaps”], at Ex. 4).¹

10. FDA approved contraceptive methods include devices and procedures, birth control pills, prescription contraceptive devices, Plan B (also known as the “morning after pill”), and ulipristal (also known as “ella” or the “week after pill”). Plan B and ella, as well as certain intrauterine devices (“IUD”), can prevent the implantation of a human embryo in the wall of the uterus and can thus cause the death of an embryo, thereby operating as abortifacients. (Fr. Pavone Decl. at ¶ 16, Ex. A [FDA Birth Control Guide], [Ex. 1 at Doc. No. 7-1]).

¹ For ease of reference, Plaintiffs have numbered their exhibits consecutively, starting with the exhibits filed in support of Plaintiffs’ motion for a preliminary injunction.

11. On August 1, 2011, HHS's Health Resources and Services Administration ("HRSA") announced that it was supporting "the IOM's recommendations on preventive services that address health needs specific to women and fill gaps in existing guidelines." HRSA entitled the recommendations, "Women's Preventive Services: Required Health Plan Coverage Guidelines" (hereinafter "Guidelines"). (Muisse Decl. at ¶ 3, Ex. B [Guidelines], at Ex. 4).

12. The Guidelines include "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." (Muisse Decl. at ¶ 3, Ex. B [Guidelines], at Ex. 4).

13. On August 3, 2011, HHS, along with the Department of Labor and the Department of the Treasury, published interim final regulations which, among other things, mandate that every "group health plan, or a health insurance issuer offering group or individual health insurance coverage health plans . . . provide benefits for and prohibit the imposition of cost-sharing: With respect to women, preventive care and screening provided for in comprehensive guidelines supported by HRSA . . . which will be commonly known as HRSA's Women's Preventive Services: Required Health Plan Coverage Guidelines." 76 Fed. Reg. 46621, 46623 (Aug. 3, 2011); 45 C.F.R. § 147.130; (*see also* Muise Decl. at ¶ 3, Ex. B [Guidelines], at Ex. 1).

14. The August 3, 2011, interim final regulations noted that "several commenters [to the July 19, 2010, interim final regulations] asserted that requiring group health plans sponsored by religious employers to cover contraceptive services that their faith deems contrary to its religious tenets would impinge upon their religious freedom." Accordingly, "the Departments seek to provide for a religious accommodation that respects the unique relationship *between a house of worship and its employees in ministerial positions*. . . . [T]he Departments are

amending the interim final rules to provide HRSA additional *discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned.” 76 Fed. Reg. at 46623 (emphasis added).

15. For purposes of this *earlier* version of the “discretionary” exemption, a “religious employer is one that: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization under section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii).” 76 Fed. Reg. at 46623; 45 C.F.R. § 147.130.

16. Priests for Life did not qualify for this earlier exemption. (Fr. Pavone Decl. at ¶ 3 [Ex. 1 at Doc. No. 7-1]).

17. Defendants also introduced a “temporary enforcement safe harbor” provision, which is a self-imposed stay of the contraceptive services mandate by the government for certain non-exempt, nonprofit organizations. *See* 77 Fed. Reg. 16501, 16504 (Mar. 21, 2012).

18. The “safe harbor” was revised on August 15, 2012, (*see* Muise Decl. at ¶ 4, Ex. C [“Guidance on the Temporary Enforcement Safe Harbor”], at Ex. 4), and again on July 2, 2013, as part of the recently announced final rules for non-exempt religious organizations, *see* 78 Fed. Reg. at 39872.

19. Pursuant to the recent revision, the “safe harbor” was extended to encompass plan years beginning on or after August 1, 2013, and *before* January 1, 2014. 78 Fed. Reg. at 39872; *see also* ¶ 26 *infra*.

20. Priests for Life will be subject to the contraceptive services mandate when its policy renews on January 1, 2014. (Fr. Pavone Decl. at ¶¶ 13, 36 [Ex. 1 at Doc. No. 7-1]).

21. Defendants rejected considering a broader exemption from the contraceptive services mandate because they believe that such an exemption “would lead to more employees having to pay out of pocket for contraceptive services, *thus making it less likely that they would use contraceptives*, which would undermine the benefits [of requiring the coverage].” According to Defendants, “Employers that do not primarily employ employees who share the religious tenets of the organization are more likely to employ individuals who have no religious objection to the use of contraceptive services and therefore are more likely to use contraceptives. Including these employers within the scope of the exemption would subject their employees to the religious views of the employer, limiting access to contraceptives, thereby inhibiting the use of contraceptive services and the benefits of preventive care.” 77 Fed. Reg. 8725, 8728 (Feb. 15, 2012) (emphasis added).

22. As stated by Defendants, the ultimate goal of the contraceptive services mandate is to increase the “use of contraceptive services” by compelling *access* to these services and to ensure that employees, including employees of religious organizations such as Priests for Life, are not “subject” to the employer’s religious beliefs regarding such “contraceptive services.” 77 Fed. Reg. at 8728.

II. The Revised Mandate for Religious Organizations.

23. On June 28, 2013, the Obama administration announced that it had issued final rules on contraceptive coverage and religious organizations. (Muisse Decl. at ¶ 5, Ex. D [Press Release], at Ex. 4).

24. These final rules were published in the Federal Register on July 2, 2013, and became effective on August 1, 2013. 78 Fed. Reg. at 39870.

25. With the exception of the amendments to the religious employer exemption (described in paragraph 27 below), which apply to group health plans and health insurance issuers for plan years beginning on or after August 1, 2013, these final regulations apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014. 78 Fed. Reg. at 39870.

26. Accordingly, Defendants extended the “temporary enforcement safe harbor” to encompass plan years beginning on or after August 1, 2013, and *before* January 1, 2014. 78 Fed. Reg. at 39872.

27. Pursuant to the final regulations, the definition of “religious employer” for purposes of the only exemption from the contraceptive services mandate for organizations that object to it on religious grounds includes only those organizations that fall under Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. 78 Fed. Reg. at 39874.

28. These “exempt” organizations are essentially churches and religious orders—a very narrow class of nonprofit organizations. *See* IRC §§ 6033(a)(3)(A)(i) & (iii)

29. Priests for Life, while a nonprofit religious organization, does not qualify for this narrow exemption. (Fr. Pavone Decl. at ¶ 3 [Ex. 1 at Doc. No. 7-1]).

30. The final rules also provide a so-called “accommodation” for certain “eligible organizations.” 78 Fed. Reg. at 39874

31. An “eligible organization” is an organization that satisfies all of the following requirements: (1) the organization opposes providing coverage for some or all of any contraceptive services required to be covered by the challenged mandate on account of religious objections; (2) the organization is organized and operates as a nonprofit entity; (3) the organization holds itself out as a religious organization; and (4) the organization self-certifies, in

a form and manner specified by HHS, that it satisfies the criteria in (1) through (3) above, and makes such self-certification available for examination upon request by the first day of the first plan year to which the “accommodation” applies. This self-certification must be executed by a person authorized to make the certification on behalf of the organization, and the organization must retain a record of this self-certification. 78 Fed. Reg. at 39874, 39896.

32. A group health plan established or maintained by an “eligible organization” that provides benefits through one or more group health insurance issuers complies with the “eligible organization” requirements by furnishing a copy of the self-certification to each issuer that would otherwise provide coverage in connection with the group health plan. 78 Fed. Reg. at 39896.

33. A group health plan issuer who receives a copy of the self-certification must, *inter alia*, (1) exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan and (2) provide separate payments for any contraceptive services required to be covered for plan participants and beneficiaries so long as they remain enrolled in the plan. 78 Fed. Reg. at 39896.

34. With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or impose any premium, fee, or other charge, or any portion thereof, directly or indirectly, on the “eligible organization,” the group health plan, or plan participants or beneficiaries. 78 Fed. Reg. at 39896.

35. Consequently, should Priests for Life deliver a “self-certification” to its insurer, this would trigger the insurer’s obligation to make “separate payments for contraceptive services directly for plan participants and beneficiaries.” 78 Fed. Reg. at 39876; *see also* 78 Fed. Reg. at 39896.

36. Additionally, Priests for Life would have to identify its employees to its insurer for the distinct purpose of enabling and facilitating the government's objective of promoting the use of contraceptive services (and related education and counseling) pursuant to the mandate. 78 Fed. Reg. at 39896; (*see* Fr. Pavone Decl. at ¶¶ 27-29 [Ex. 1 at Doc. No. 7-1]).

37. Based on its sincerely held religious beliefs, Priests for Life refuses to participate in this scheme to advance and facilitate the government's objective of promoting the use of contraceptive services—an objective which Priests for Life considers immoral. (Fr. Pavone Decl. at ¶¶ 27-29 [Ex. 1 at Doc. No. 7-1]).

38. The insurer's obligation to make direct payments for contraceptive services pursuant to the mandate would continue only "for so long as the participant or beneficiary remains enrolled in [Priests for Life's] plan." 78 Fed. Reg. at 39876.

39. Consequently, Priests for Life will be required to coordinate with its insurer when adding or removing employees and beneficiaries from its health care plan to ensure that these individuals receive coverage for contraceptive services under the challenged mandate. 78 Fed. Reg. at 39876; (*see also* Fr. Pavone Decl. at ¶¶ 27-29 [Ex. 1 at Doc. No. 7-1]).

40. For each plan year to which the "accommodation" applies, an issuer required to provide payments for contraceptive services must provide to Priests for Life's plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. 78 Fed. Reg. at 39897.

41. The notice must specify, *inter alia*, that the issuer provides coverage for contraceptive services, and it must provide contact information for questions and complaints regarding such services. 78 Fed. Reg. at 39897.

42. The implementing regulations, therefore, require Priests for Life to directly coordinate with its insurer to further the government's objective of promoting the use of contraceptive services required by the mandate. 78 Fed. Reg. at 39897; (Fr. Pavone Decl. at ¶ 28 [objecting to providing notice or information] [Ex. 1 at Doc. No. 7-1]).

43. Under the "accommodation," Priests for Life will play a central and indispensable role in facilitating the government's objective of promoting the use of contraceptive services required by the mandate, contrary to Plaintiffs' sincerely held religious beliefs. (*See* Fr. Pavone Decl. at ¶¶ 7-10, 12, 18, 26-29, 35-37, 40, 41 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 8, 10-12, 19-22 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 7, 9-11, 20-23 [Ex. 3 at Doc. No. 7-3]).

44. Because Priests for Life provides its employees with a health care plan, the government mandate forces Priests for Life to provide the means and mechanism by which contraception, sterilization, and abortifacients (and related education and counseling) are provided to its employees (and beneficiaries), which is unacceptable to Plaintiffs because it violates their sincerely held religious beliefs. (*See* Fr. Pavone Decl. at ¶¶ 7-10, 12, 18, 26-29, 35-37, 40, 41 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 8, 10-12, 19-22 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 7, 9-11, 20-23 [Ex. 3 at Doc. No. 7-3]).

45. Defendants claim that providing payments for contraceptive services under the challenged mandate will *eventually* be "cost neutral for issuers." 78 Fed. Reg. at 39877.

46. Even if payments *over time* become cost neutral, there will be up-front costs for making the payments. *See, e.g.*, 78 Fed. Reg. at 39877-78 (discussing ways in which insurers can cover such costs).

47. If cost savings arise that make it cheaper for an employer to insure an employee, one would expect those savings to be passed on to the employer by way of a reduced premium. However, Defendants suggest that in order to maintain this “cost neutrality,” the insurers should retain such savings by “set[ting] the premium for an eligible organization’s large group policy as if no payments for contraceptive services had been provided to plan participants and beneficiaries,” 78 Fed. Reg. at 39877, thereby encouraging insurers to artificially inflate the eligible organization’s premiums.

48. Under Defendants’ methodology, the eligible organization will ultimately bear the cost of the required payments for the mandated contraceptive services. *See* 78 Fed. Reg. at 39877-78.

49. Under the “accommodation,” all non-exempt health care plans must still include contraceptive services among their covered benefits. Consequently, religious employers, such as Priests for Life, are still paying an insurer to provide their employees (and beneficiaries) access to a product (*i.e.*, contraceptives, sterilization, and abortifacients) that violates their religious convictions. 78 Fed. Reg. at 39874-76, 39896-97; (Fr. Pavone Decl. at ¶¶ 7-10, 12, 18, 26-29, 35-37, 40, 41 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 8, 10-12, 19-22 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 7, 9-11, 20-23 [Ex. 3 at Doc. No. 7-3]).

50. By refusing to cooperate with—and thus refusing to facilitate—Defendants’ contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for contraceptive services and related education and counseling required by the

mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of \$100 per employee per day, 26 U.S.C. § 4980D, as well as potential enforcement lawsuits, 29 U.S.C. § 1132. (*See* Fr. Pavone Decl. at ¶ 29 [Ex. 1 at Doc. No. 7-1]).

51. The contraceptive services mandate threatens the very existence of Priests for Life as an effective, pro-life organization (and association of pro-life supporters, including Father Pavone and Plaintiffs King and Morana) that advocates for the culture of life. (*See* Fr. Pavone Decl. at ¶¶ 27-29, 37-42 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 12, 19-22 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 11, 20-23 [Ex. 3 at Doc. No. 7-3]).

III. Plaintiffs' Sincerely Held Religious Beliefs.

52. Priests for Life is a nonprofit corporation. (Fr. Pavone Decl. at ¶ 3 [Ex. 1 at Doc. No. 7-1]).

53. Priests for Life is a religious organization that was founded in 1991 to do one of the most important tasks in the Catholic Church today: to help spread the Gospel of Life to people throughout the world. (Fr. Pavone Decl. at ¶ 3, 14-15, 19-20 [Ex. 1 at Doc. No. 7-1]).

54. The Gospel of Life, which is an expression of the Catholic Church's position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. (Fr. Pavone Decl. at ¶ 15 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 5 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 5 [Ex. 3 at Doc. No. 7-3]).

55. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way. (Fr. Pavone Decl. at ¶¶ 3, 6-10, 14-16, 18, 26-37 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 5, 8 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 5, 7 [Ex. 3 at Doc. No. 7-3]).

56. Father Pavone is the National Director of Priests for Life. (Fr. Pavone Decl. at ¶ 2 [Ex. 1 at Doc. No. 7-1]).

57. In his capacity as National Director and through Priests for Life and those who associate with Priests for Life for the purpose of advancing and promoting its religious mission, Father Pavone engages in expressive activity to spread the Gospel of Life. This activity is a religious exercise for Father Pavone. (Fr. Pavone Decl. at ¶¶ 2, 14, 17 [Ex. 1 at Doc. No. 7-1]).

58. Father Pavone is the “face” of Priests for Life, and he uses the media of television, radio, and the printed press to spread Priests for Life’s message of life. (Fr. Pavone Decl. at ¶¶ 17, 24-25 [Ex. 1 at Doc. No. 7-1]).

59. For example, Father Pavone hosts the *Defending Life* television series on the Eternal Word Television Network (EWTN). (Fr. Pavone Decl. at ¶¶ 17, 24, 25 [Ex. 1 at Doc. No. 7-1]).

60. Based on his sincerely held religious beliefs, Father Pavone objects to the government forcing Priests for Life to provide, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients, and he objects to the government forcing Priests for Life to facilitate, support, and cooperate in the government’s immoral objective of promoting the use of contraceptive services. (Fr. Pavone Decl. at ¶¶ 18, 37 [Ex. 1 at Doc. No. 7-1]).

61. Father Pavone is covered under Priests for Life’s health care plan. (Fr. Pavone Decl. at ¶ 2 [Ex. 1 at Doc. No. 7-1]).

62. Plaintiff King is a full-time employee of Priests for Life. (King Decl. at ¶ 2 [Ex. 2 at Doc. No. 7-2]).

63. Plaintiff King is currently the Pastoral Associate and Director of African-American Outreach. Plaintiff King is also a voice for the Silent No More Awareness Campaign, which is the world's largest mobilization of women and men who have lost children to abortion, sharing her testimony of two abortions, God's forgiveness, and healing. (King Decl. at ¶ 2 [Ex. 2 at Doc. No. 7-2]).

64. Through Priests for Life and those who associate with Priests for Life for the purpose of advancing and promoting its religious mission, Plaintiff King engages in expressive activity to spread the Gospel of Life. This activity is a religious exercise for Plaintiff King. (King Decl. at ¶¶ 2-4 [Ex. 2 at Doc. No. 7-2]).

65. Plaintiff King uses the media of television, radio, and the printed press to spread Priests for Life's message of life. (King Decl. at ¶¶ 6, 9 [Ex. 2 at Doc. No. 7-2]).

66. Based on her sincerely held religious beliefs, Plaintiff King objects to the government forcing Priests for Life to provide, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients, and she objects to the government forcing Priests for Life to facilitate, support, and cooperate in the government's immoral objective of promoting the use of contraceptive services. (King Decl. at ¶¶ 5, 8, 10-14, 16-19 [Ex. 2 at Doc. No. 7-2]).

67. Plaintiff King is currently covered under Priests for Life's health care plan, which is an "employer-sponsored" plan under the Affordable Care Act. (King Decl. at ¶ 3 [Ex. 2 at Doc. No. 7-2]).

68. If Priests for Life were forced out of the health care market, Plaintiff King would be forced to purchase a costly, individual insurance plan as a result of the "individual mandate" provision of the Act. (King Decl. at ¶ 3 [Ex. 2 at Doc. No. 7-2]).

69. Plaintiff King's individual health care plan will necessarily include the immoral contraceptive services coverage because the mandate applies to individual plans. (King Decl. at ¶ 3 [Ex. 2 at Doc. No. 7-2]).

70. Plaintiff Janet Morana is a full-time employee of Priests for Life. (Morana Decl. at ¶ 2 [Ex. 3 at Doc. No. 7-3]).

71. Plaintiff Morana is currently the Executive Director, and she is also the Co-Founder of the Silent No More Awareness Campaign. (Morana Decl. at ¶ 2 [Ex. 3 at Doc. No. 7-3]).

72. Through Priests for Life and those who associate with Priests for Life for the purpose of advancing and promoting its religious mission, Plaintiff Morana engages in expressive activity to spread the Gospel of Life. This activity is a religious exercise for Plaintiff Morana. (Morana Decl. at ¶¶ 2, 4, 5 [Ex. 3 at Doc. No. 7-3]).

73. Plaintiff Morana uses the media of television, radio, and the printed press to spread Priests for Life's message of life. (Morana Decl. at ¶ 6 [Ex. 3 at Doc. No. 7-3]).

74. For example, Plaintiff Morana is featured on Father Pavone's *Defending Life* television series, and she is the co-host of the *The Catholic View for Women*, also seen on EWTN. Plaintiff Morana is also a weekly guest on EWTN Global Catholic Radio with Teresa Tomeo and numerous other media outlets. (Morana Decl. at ¶¶ 6, 8 [Ex. 3 at Doc. No. 7-3]).

75. Based on her sincerely held religious beliefs, Plaintiff Morana objects to the government forcing Priests for Life to provide, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients, and she objects to the government forcing Priests for Life to facilitate, support, and cooperate in the government's immoral

objective of promoting the use of contraceptive services. (Morana Decl. at ¶¶ 7, 9-13, 17-23 [Ex. 3 at Doc. No. 7-3]).

76. Plaintiff Morana is covered under Priests for Life's health care plan. (Morana Decl. at ¶ 3 [Ex. 3 at Doc. No. 7-3]).

77. If Priests for Life were forced out of the health care market, Plaintiff Morana would be forced to purchase a costly, individual insurance plan as a result of the "individual mandate" provision of the Act. (Morana Decl. at ¶ 3 [Ex. 3 at Doc. No. 7-3]).

78. Plaintiff Morana's individual health care plan will necessarily include the immoral contraceptive services coverage because the mandate applies to individual plans. (Morana Decl. at ¶ 3 [Ex. 3 at Doc. No. 7-3]).

79. Plaintiffs hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. (Fr. Pavone Decl. at ¶ 30 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 13 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 12 [Ex. 3 at Doc. No. 7-3]).

80. In accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, Plaintiffs believe that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." Plaintiffs believe and actively profess the Catholic Church teaching that "[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." (Fr. Pavone Decl. at ¶ 30 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 13 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 12 [Ex. 3 at Doc. No. 7-3]).

81. Plaintiffs believe and teach that “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means”—including contraception and sterilization—is a grave sin. (Fr. Pavone Decl. at ¶ 30 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 13 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 12 [Ex. 3 at Doc. No. 7-3]).

82. Plaintiffs believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that “man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion.” Consequently, Plaintiffs believe that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually. (See Fr. Pavone Decl. at ¶ 31 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 14 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 13 [Ex. 3 at Doc. No. 7-3]).

83. Plaintiffs King and Morana have firsthand experience regarding the harmful effects of “contraceptive services.” (See King Decl. at ¶ 15 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶14-16 [Ex. 3 at Doc. No. 7-3]).

84. Plaintiff King, who is the niece of civil rights leader Martin Luther King, Jr., is someone who has witnessed up close the civil rights movement in this country. (King Decl. at ¶ 7 [Ex. 2 at Doc. No. 7-2]).

85. Plaintiff King firmly believes that the contraceptive services mandate is an affront to civil rights because efforts to control the population always target minority and lower-income groups and because there are racist and eugenic roots to policies and programs that promote

contraceptive services, such as the contraceptive services mandate of the Affordable Care Act. (See King Decl. at ¶ 7 [Ex. 2 at Doc. No. 7-2]).

86. Plaintiffs also hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. They believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, Plaintiffs believe and teach that abortion ends a human life and is a grave sin. (Fr. Pavone Decl. at ¶ 32 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 16 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 17 [Ex. 3 at Doc. No. 7-3]).

87. Plaintiffs subscribe to authoritative Catholic Church teaching about the proper nature and aims of healthcare and medical treatment. For example, Plaintiffs believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that “[c]ausing death’ can never be considered a form of medical treatment,” but rather “runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life.” (Fr. Pavone Decl. at ¶ 33 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 17 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 18 [Ex. 3 at Doc. No. 7-3]).

88. Based on the teaching of the Catholic Church, and their own sincerely held beliefs, Plaintiffs do not believe that contraception, sterilization, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, Plaintiffs believe these procedures involve gravely immoral practices. (Fr. Pavone Decl. at ¶ 34 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 18 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 19 [Ex. 3 at Doc. No. 7-3]).

89. Plaintiffs are morally prohibited based on their sincerely held religious convictions from cooperating, directly or indirectly, with evil. (Fr. Pavone Decl. at ¶ 37 [Ex. 1 at

Doc. No. 7-1]; King Decl. at ¶ 19 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 20 [Ex. 3 at Doc. No. 7-3]).

90. Accordingly, Plaintiffs object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraception, sterilization, and abortifacients, all of which are prohibited by their religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Plaintiffs. Contraception, sterilization, and abortifacients are immoral regardless of their cost. (Fr. Pavone Decl. at ¶ 37 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 19 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 20 [Ex. 3 at Doc. No. 7-3]).

91. Plaintiffs object to the government forcing them into a moral and economic dilemma with regard to their relationship as employer and employees, which, in turn, adversely affects their association as an effective, pro-life organization. (Fr. Pavone Decl. at ¶ 37 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 19 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 20 [Ex. 3 at Doc. No. 7-3]).

92. Plaintiffs object to being forced by the government to facilitate, support, and cooperate in its immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and Plaintiffs' sincerely held religious beliefs. (Fr. Pavone Decl. at ¶¶ 26-29, 37 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶ 19 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶ 20 [Ex. 3 at Doc. No. 7-3]).

93. Priests for Life's health care policy must be renewed by January 1, 2014, and at that time it will be subject to the contraceptive services mandate, which will then force Plaintiffs to support and provide access to coverage for contraception, sterilization, and abortifacients (as well as related education and counseling) and to further facilitate, support, and cooperate in the

government's immoral objective of promoting the use of contraceptive services in violation of their sincerely held religious beliefs. (Fr. Pavone Decl. at ¶¶ 4, 13, 18, 27-29, 35-42 [Ex. 1 at Doc. No. 7-1]; *see also* King Decl. at ¶¶ 8, 10-12 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 7, 9-11 [Ex. 3 at Doc. No. 7-3]).

94. Priests for Life can only avoid this consequence by either paying crippling fines or leaving the health care insurance market altogether, both of which threaten the very survival of Priests for Life as an effective, pro-life organization. (Fr. Pavone Decl. at ¶¶ 18, 26-29, 35-42 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 12, 20-22 [Ex. 2 at Doc. No. 7-2]; Morana at ¶¶ 11, 21-23 [Ex. 3 at Doc. No. 7-3]).

95. As a result of the contraceptive services mandate, Defendants are forcing Priests for Life to either leave the healthcare market or face crippling fines because of its sincerely held religious beliefs, both of which constitute a direct harm in and of themselves and an indirect harm in that the option of leaving the market will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace. (Fr. Pavone Decl. at ¶¶ 18, 26-29, 35-42 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 12, 20, 21 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 11, 21, 22 [Ex. 3 at Doc. No. 7-3]).

96. Additionally, leaving the healthcare market will directly harm Priests for Life's employees, including Plaintiffs King and Morana, since they will no longer receive health care insurance from their employer and will, therefore, be forced to either purchase a costly individual plan pursuant to the "individual mandate" or pay a penalty. (Fr. Pavone Decl. at ¶¶ 29, 38-42 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 3, 20, 21 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 3, 21, 22 [Ex. 3 at Doc. No. 7-3]); *see also* ¶ 97 *infra*.

97. If Priests for Life is forced to drop its healthcare coverage to follow its sincerely held religious beliefs, many, if not all, of Priests for Life's employees, including Plaintiffs King and Morana, will be subject to the "penalty" tax for not having health insurance since they will no longer be eligible for the "employer-sponsored" health care plan exemption, *see* 26 U.S.C. § 5000A(f)(1)(B), thereby causing further harm to Plaintiffs. (Fr. Pavone Decl. at ¶¶ 38, 41 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 3, 20, 21 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 3, 21, 22 [Ex. 3 at Doc. No. 7-3]).

98. Because of the contraceptive services mandate, Priests for Life must now make business decisions that will affect its ability to continue the services it provides. (Fr. Pavone Decl. at ¶¶ 40-42 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 21, 22 [Ex. 2 at Doc. No. 7-2]; Morana Decl. at ¶¶ 22, 23 [Ex. 3 at Doc. No. 7-3]).

99. As a nonprofit organization, Priests for Life funds its operations almost entirely through tax-deductible donations. (Fr. Pavone Decl. at ¶¶ 11, 40 [Ex. 1 at Doc. No. 7-1]).

100. Priests for Life's donors will not support an organization that facilitates, supports, or cooperates in the government's immoral objective of promoting the use of contraceptive services—an objective that run counter to Priests for Life's mission, goals, and message—the very basis for the donations in the first instance. (Fr. Pavone Decl. at ¶¶ 11-12, 40 [Ex. 1 at Doc. No. 7-1]).

101. The contraceptive services mandate is causing Plaintiffs to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on their religious beliefs and practices. (Fr. Pavone Decl. at ¶¶ 35-42 [Ex. 1 at Doc. No. 7-1]; King Decl. at ¶¶ 21, 22 [Ex. 2 at Doc. No. 7-2]; Morana at ¶¶ 22, 23 [Ex. 3 at Doc. No. 7-3]).

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: none.

AMERICAN FREEDOM LAW CENTER

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