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

MOST REVEREND DONALD W. TRAUTMAN, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, as Trustee for The Roman Catholic Diocese of Erie, a Charitable Trust; The ROMAN CATHOLIC DIOCESE OF ERIE; ST. MARTIN CENTER, INC., an affiliate nonprofit corporation of Catholic Charities of the Diocese of Erie; and PRINCE OF PEACE CENTER, INC., an affiliate nonprofit corporation of Catholic Charities of the Diocese of Erie,	
PLAINTIFFS,	CIVIL ACTION NO. 12-123 Erie
v.	
KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; HILDA SOLIS, in her official capacity as Secretary of the U.S. Department of Labor; TIMOTHY GEITHNER, in his official capacity as Secretary of the U.S. Department of Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF TREASURY,	JURY TRIAL DEMAND
DEFENDANTS.	

COMPLAINT

1. This lawsuit is about an unprecedented attack by the Government on 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 abortifacients, sterilization services, contraceptives, and related counseling services. It is about whether the Government may force

Plaintiffs—all Catholic entities—to subsidize, provide, and/or facilitate those services contrary to their firmly held religious beliefs. American history and tradition, embodied in the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act ("RFRA"), protect 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. Plaintiff, the Most Reverend Donald W. Trautman, is both Bishop and Trustee of Plaintiff The Roman Catholic Diocese of Erie (the "Diocese"), which is geographically, the largest diocese in Pennsylvania. The Diocese serves Catholic and non-Catholic residents of Northwestern Pennsylvania in three main ways: by educating children within the Diocese, by promoting spiritual growth, and by service to the community. The Diocese carries out this work both on its own and through the work of related organizations, including Plaintiffs St. Martin Center, Inc. ("St. Martin Center") and Prince of Peace Center, Inc. ("Prince of Peace Center").

3. Plaintiffs serve individuals in Northwestern Pennsylvania that the Government does not or cannot serve and who without Plaintiffs' assistance would be without food, shelter, and other basic life-sustaining services.

4. In every respect, Plaintiffs' work is guided by and consistent with the teaching of the Catholic Church, of which Plaintiffs are a constituent part. Among these core teachings is the Catholic tenet that life begins at conception and continues through natural death. As is well known, Catholic doctrine regards abortion, sterilization, and contraception as gravely contrary to the moral law.

5. Catholics also believe that, according to Christ's command, devotion to God is demonstrated through devotion to all people regardless of their faith or financial condition. Catholic social teaching requires Catholic individuals and organizations to work to create a more

just community by striving to meet needs wherever they arise. Plaintiffs meet needs in Northwestern Pennsylvania through their respective ministries.

6. The Diocese serves families in Northwestern Pennsylvania through the education of the students in its school system and by providing support to the charitable programs of Catholic Charities of the Diocese of Erie ("Catholic Charities"), including programs operated by Plaintiffs St. Martin Center and Prince of Peace Center.

7. Plaintiffs serve all people, regardless of faith or financial condition.

8. The Government is now attacking Plaintiffs' religious beliefs in an unprecedented manner—forcing Plaintiffs to choose between respecting the sanctity of all human life, on the one hand, and fulfilling their religious mission to provide opportunities and charitable support to all people regardless of their faith, on the other.

9. The Government, through "regulations" promulgated in violation of the Administrative Procedure Act ("APA"), has mandated that Plaintiffs provide health plans to their employees which include coverage for abortifacients, sterilization services, contraceptives, and related counseling services that the Church holds to be intrinsically immoral.

10. Defendants have promulgated various rules (collectively "the U.S. Government Mandate") that force Plaintiffs to violate their sincerely-held religious beliefs. Under the U.S. Government Mandate, many Catholic and other religious organizations are required to subsidize, provide, and/or facilitate the coverage of abortifacients, sterilization services, contraceptives, and related counseling services in their employee health plans in violation of their sincerely-held religious beliefs. Ignoring broader religious exemptions from other federal laws, the Government has crafted a narrow exemption to the U.S. Government Mandate for certain "religious employers" who can convince the Government that they satisfy 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. (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."

11. Thus, in order to safeguard their religious freedom, religious employers must plead with government bureaucrats for a determination that they are sufficiently "religious."

12. The Diocese does not know whether the Department of Health and Human Services will conclude that it satisfies the U.S. Government Mandate's narrow definition of "religious employer" under the impermissibly vague terms of the exemption. In order for the Diocese to learn whether or not it qualifies for the exemption, it must submit to an intrusive governmental investigation into whether, in the view of the Department of Health and Human Services, its "purpose" is the "inculcation of religious values," whether it "primarily" employs Catholics, and whether it "primarily" serves Catholics.

13. The definition of "religious employer," moreover, excludes St. Martin Center and Prince of Peace Center, even though they are "religious" organizations under any reasonable definition of the term.

14. Consequently, to even attempt to qualify as a "religious employer," these Plaintiffs may be required to stop serving non-Catholics, and fire non-Catholic employees — actions that would betray their religious commitment to serving all in need without regard to religion and threaten to undermine the Church's vaunted tradition of service to others.

15. The only other choice available to Plaintiffs is to disobey the law, either by refusing to provide the mandated services or dropping their health plans. In so doing, Plaintiffs

may well be subject to substantial fines and penalties, which would hamper the provision of important services and erode the funds that they use to carry out their educational and charitable missions.

16. The Government, therefore, has mandated that Plaintiffs either abandon their religious beliefs or abandon their religious commitment to serve all. The "options" imposed by the U.S. Government Mandate are therefore no "options" at all.

17. The regulations establishing the U.S. Government Mandate, including the narrow exemption, are existing law. Nevertheless, the Government has expressed an intent to implement a vaguely defined "accommodation" of certain religious organizations. Under this proposed accommodation, if a non-exempt religious organization objects to offering coverage for the mandated services, the Government would require that organization's insurance company (or another, as yet undefined third party) to directly and "automatically" provide coverage for those services to the organization's employees "free of charge."

18. Regardless, however, the promise that a third-party insurer or administrator will provide the illicit services "free of charge," even if implemented, would do nothing to change the actual effect of the U.S. Government Mandate.

19. Moreover, the accommodation is predicated on an accounting gimmick that would not affect the actual operation of the regulations as applied to religious organizations. The Diocese's purchase of an insurance policy will result in the subsidy, provision, and/or facilitation of coverage for abortifacients, sterilization services, contraceptives, and related counseling services, even if, as an accounting matter, the insurer or administrator putatively "pays" for those services or provides them for "free."

20. The Catholic Church's two-thousand-year-old objections to abortion, sterilization, and contraception, however, cannot be solved through such sleight of hand. Catholic teaching does not simply require Catholic institutions to avoid directly subsidizing practices that are viewed as intrinsically immoral. It also requires them to avoid facilitating those practices.

21. The U.S. Government Mandate forces Plaintiffs to take action subsidizing, providing, and/or facilitating coverage for abortifacients, sterilization services, contraceptives, and related counseling services in violation of their religious beliefs.

22. This unprecedented, direct assault on the religious beliefs of Catholics is irreconcilable with American law.

23. RFRA, the First Amendment, and the APA stand as bulwarks against such arbitrary governmental action.

24. RFRA and the First Amendment require the most compelling of interests to sustain such massive burdens on religion. Even then, both require the Government to adopt the most narrowly tailored means available to advancing that interest. The APA, moreover, requires that the Government use rational, lawful means for achieving any such goals in a transparent and accountable manner, and prohibits arbitrary means that target firmly held religious values simply because they are unpopular in certain quarters. The U.S. Government Mandate, however, cannot possibly satisfy these stringent legal standards.

25. Instead, the U.S. Government Mandate will hurt citizens in need, rob those ministered to by Plaintiffs of vital educational, service, and employment opportunities, and unfairly target Catholic organizations like Plaintiffs because of their moral views with an intolerable demand that they abandon their beliefs.

26. 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 are uncertain as to their rights and duties in planning, negotiating, and implementing their group health insurance plans, their hiring and retention programs, and their social, educational, and charitable programs and ministries, as described below.

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

I. PRELIMINARY MATTERS

28. Plaintiff Bishop Donald W. Trautman is Trustee for Plaintiff The Roman Catholic Diocese of Erie, a nonprofit Pennsylvania Charitable Trust with a principal place of administration in Erie, Pennsylvania. The Diocese is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

29. Plaintiff St. Martin Center is a nonprofit corporation with its principal place of business in Erie, Pennsylvania. It is an affiliate corporation of Catholic Charities. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

30. Plaintiff Prince of Peace Center is a nonprofit corporation with its principal place of business in Farrell, Pennsylvania. It is an affiliate corporation of Catholic Charities. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

A. Background on the Bishop and the Diocese

40. The Diocese of Erie encompasses thirteen counties in Northwestern Pennsylvania. It is led by Bishop Trautman, who has served as the Bishop of Erie for twenty-two years. The Diocese carries out its Christ-centered mission in three mains ways: by educating children within the Diocese, by promoting spiritual growth, and through community service.

41. The Diocese operates thirty elementary schools, three middle schools, and seven secondary schools, which educate over 7,500 students. The Diocese educates students of all

religions and offers tuition assistance for students who otherwise, would have no alternative to the public school system. This determination is based solely on financial need. Many non-Catholic students attend the Diocesan grade schools, middle schools, and secondary schools.

42. As for its role in promoting spiritual growth, the Diocese consists of 117 parishes serving a thirteen-county region, including a Catholic population of approximately 222,000 people. Geographically, it is the largest diocese in Pennsylvania.

43. Bishop Trautman publishes FAITH Magazine of the Catholic Diocese of Erie, the largest family publication in Northwestern Pennsylvania. FAITH Magazine is mailed to approximately 62,000 households in all thirteen counties of Northwestern Pennsylvania and focuses on religious issues, but also on other international, national, and local news. "The magazine is designed to touch the hearts of people both within and outside of the faith." About Us, FAITH Magazine, *available at* http://www.eriercd.org/faithabout.asp.

44. In addition to providing spiritual care to its Catholic residents through its parishes and providing education to Catholic and non-Catholic students, the Diocese serves many more thousands of Northwestern Pennsylvania residents through its social service arms.

45. Many non-Catholics are served by the Diocese's post-abortion ministry, prison ministry, family ministry, disability ministry, international Diocesan missions, various respect life organizations, and the numerous secular and religious charities that receive the Diocese's financial support, including:

a. St. Elizabeth Center, a food pantry, thrift store, and clothing shop for low-income individuals;

b. The Good Samaritan Center, a shelter for homeless men and provider of an emergency one-family apartment and other emergency assistance;

c. Better Homes for Erie, a provider of affordable housing to low-income families; and

d. Catholic Charities Counseling and Adoption Services, a provider of professional counseling, adoption counseling, pregnancy counseling, and refugee resettlement services.

46. These social service programs, which receive support from the Diocese, provide aid to approximately 56,000 people per year. And again, all of these services are provided without regard to religion, race, or financial condition. The provision of these social services is a central tenet of the Catholic faith.

47. Many of the individuals being served through these charitable programs are not being adequately served by the Government and without the support of the Diocese, would be without food, shelter, and other necessary services.

48. The Diocese would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

49. In summary, the Diocese has well over 50 employees, but does not know exactly how many of these employees are Catholic. The Diocese operates 40 schools. These schools serve over 7,500 students, many of whom are not Catholic. The Diocese supports numerous charitable missions, which serve over 56,000 persons who are homeless, elderly, or otherwise in need of material assistance. The Diocese serves all people in need, regardless of the faith of such individuals, and therefore does not know how many of the people it serves are Catholic. It is therefore unclear whether the Diocese qualifies for an exemption from compliance with the U.S. Government Mandate offered to organizations deemed "religious employers" under the U.S. Government Mandate's narrow exemption, discussed below.

50. In order to determine how many of the individuals the Diocese employs and serves are Catholic, the Diocese would be required to ask the religious affiliation of all individuals that it employs or serves. That inquiry, however, would substantially burden the Diocese's religious exercise.

51. Moreover, the process by which the Government proposes to determine whether an organization—such as the Diocese—qualifies for the exemption, will require the Government to engage in an intrusive inquiry into whether, in the view of HHS, (1) the Diocese's "purpose" is the "inculcation of religious values," (2) whether the Diocese "primarily" employs Catholics, and (3) whether it "primarily" serves Catholics. The standards are impermissibly vague and subjective. Regardless of outcome, the Diocese strongly objects to such an intrusive governmental investigation into its religious mission.

52. Finally, the Diocese operates a self-insured health plan. That is, the Diocese does not contract with a separate insurance company that provides health care coverage to its employees and the employees of its affiliated corporations. Instead, the Diocese itself functions as the insurance company underwriting the medical costs of its employees and the employees of its affiliated corporations.

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

54. The Diocesan health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. Indeed, the Diocese did not include a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii) for grandfathered plans.

55. Under the Diocesan health plan, each new plan year begins annually on July 1st.

B. Background on St. Martin Center, Inc.

56. Plaintiff St. Martin Center is a nonprofit, social service organization which has been providing individuals and families with resources to gain self-sufficiency for the last 50 years. Plaintiff provides the following services to the needy in the greater Erie, Pennsylvania community, regardless of religion:

a. Social services: an in-house pantry; vouchers for clothing items; assistance for rent, mortgage, and utility payments; assistance for obtaining life-sustaining prescriptions; vouchers for bus passes and gasoline; and guidance for creating a budget. Also, through St. Martin's Bishop's Breakfast Program, the needy in the community receive a hot breakfast every weekday.

b. Housing services: counseling for potential homebuyers; fair housing and predatory lending education; lead paint education; and foreclosure prevention counseling. Also, through the HOME Investment Partnership Program, first-time homebuyers can receive funds to bring a home into compliance with building codes.

c. An Early Learning Center, which serves as a preschool and provider of before and after school care. Childcare tuition assistance is available at the Early Learning Center.

d. Hospitality Industry Training to teach workforce kitchen skills to the underemployed, unemployed, and many resettled refugees. St. Martin

Center provides hands-on experience to such individuals through its catering program, Catering on Parade; and

e. PA WORKWEAR, a provider of men's clothing for interviewing and entering the workforce.

57. Many of the individuals being served through the programs of St. Martin Center are not being adequately served by the Government and without the support of these programs, would be without food and other necessary services which enable them to live a self-sufficient life.

58. St. Martin Center would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

59. St. Martin Center has over 50 full-time employees, but does not know how many of these employees are Catholic.

60. St. Martin Center employees are insured under the Diocesan health plan.

61. In summary, St. Martin Center has over 50 employees, but does not know how many of these employees are Catholic. St. Martin Center serves all people in need, regardless of the faith of such individuals, and therefore does not know how many of the people it serves are Catholic.

C. Background on Prince of Peace Center, Inc.

62. Plaintiff Prince of Peace Center is a nonprofit, social service organization which provides various social and self-sufficiency services to the needy in the greater Mercer County community. The services offered by Prince of Peace Center include:

a. Family support services through the HOPE Advocacy program (Help and Opportunity for Personal Empowerment) and Project RUTH (Resources, Understanding, Training, and Homes). HOPE Advocacy is a long term

support program (for up to 24 months) for individuals and families struggling with poverty. Project RUTH is a transitional housing program for single parents and their children, who meet the U.S. Department of Housing and Urban Development's definition of homeless. All of the individuals served by HOPE Advocacy and Project RUTH are given the opportunity to learn basic life skills necessary for self-sufficiency and family stability through intensive case management and monthly support groups. The case managers work closely with all participants and offer educational, supportive, and advocacy services.

b. Emergency Assistance programs, which provide food, clothing, furniture, appliances, and more to those in need at little to no cost. Prince of Peace Center's Emergency Assistance programs are funded by private donations. Through such donations, Prince of Peace Center is able to offer over $50,000 yearly to help the needy pay utility bills and offer any other necessary support to ensure that family units remain intact. As part of its Emergency Assistance Program, Prince of Peace Center runs a program entitled AWESOME (Assistance With Education, Shelter, Organization, Money management, and Employment). The AWESOME program is geared towards single men and women who have children and wish to attain self-sufficiency. The AWESOME program classes cover a variety of topics, including proper nutrition, decision making, and financial planning. Anyone who attends the AWESOME program classes is eligible for an emergency stipend towards payment of a utility bill.

c. Mission Thrift Store ("the Thrift Store"), which provides items such as clothing and furniture to the community at a low cost. The Thrift Store does not turn away anyone in need and supplies items to such individuals at no cost. The Thrift Store operates at a significant loss each year, but the mission of the store is to serve all in need, not to focus on sales or money.

d. PA WORKWEAR, a program which provides the needy with clothing, accessories, and training to prepare for job interviews. Those who successfully obtain employment are entitled to receive five additional days of work appropriate attire so that they can continue to present a professional image at their job.

e. Neighborhood Meal, a soup kitchen, which provides two meals per week to the needy. The soup kitchen serves approximately 5,700 individuals per year. The needy can come to the soup kitchen for Thanksgiving and Christmas dinner. During the summer months, a health fair is held at the soup kitchen to educate the needy about the benefits of a healthy lifestyle. Also, Prince of Peace Center sponsors Food Day, a program where the needy receive a monthly food distribution of groceries to supplement food stamps. An average of approximately 700 individuals receive food through this program each month.

f. Computer classes for adults and seniors. Students who pass the class receive a free donated and refurbished computer.

g. Various programs and charity drives for disadvantaged children in the Mercer County community are held throughout the year, including a

Christmas toy drive, Easter egg hunt, and school supplies and school clothing drive.

63. Prince of Peace Center does not inquire into the religious beliefs of the individuals it serves, as part of its mission is to strengthen families, build community, and reduce poverty among people of *all* ages, faiths, races, and backgrounds.

64. The majority of the individuals served by Prince of Peace Center are below the poverty level and are not being adequately served by the Government. Without the services of Prince of Peace Center, these individuals would be without food and shelter.

65. Prince of Peace Center would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

66. Prince of Peace Center employees are insured under the Diocesan health plan.

67. Prince of Peace Center does not know how many of its employees are Catholic.

68. In summary, Prince of Peace Center does not know how many of its employees are Catholic and serves all people in need, regardless of the faith of such individuals.

II. PLAINTIFFS' RELIGIOUS BELIEFS

69. None of the social service programs or schools described above are available only to Catholics. To the contrary, the schools of the Diocese are open to children of every religion. The social service programs of St. Martin Center, Prince of Peace Center, and of other organizations which the Diocese supports do not ask the religion of the people they serve. Instead, all of these schools and programs—like the Catholic Church that inspires the work of all Plaintiffs—are committed to serving anyone in need, regardless of religion.

70. Plaintiffs' commitments to teach and to serve all are part of a larger belief system that likewise proclaims Catholic teachings on the sanctity of human life and the dignity of all persons.

71. Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God," Catechism of the Catholic Church ¶ 1700, and that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* ¶ 2270.

72. Likewise, Plaintiffs adhere to Catholic teachings on the nature and purpose of human sexuality. Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the sexual union of spouses "achieves the twofold end of marriage: the good of the spouses themselves and the transmission of life. These two meanings or values of marriage cannot be separated without altering the couple's spiritual life and compromising the goods of marriage and the future of the family." *Id.* ¶ 2363.

73. Consequently, Plaintiffs believe that "every action," including artificial contraception and sterilization, "which . . . proposes, whether as an end or as a means, to render procreation impossible is intrinsically evil." *Id.* ¶ 2370.

74. Plaintiffs believe that "direct abortion," defined as "abortion willed as an end or as a means," is "gravely contrary to the moral law." *Id.* ¶¶ 2322, 2271.

75. Plaintiffs adhere to Catholic teachings which regard direct sterilization as "unacceptable." ¶¶ 2370, 2399.

76. The Diocese promulgates its beliefs that abortion, contraception, and sterilization are contrary to the moral law through its schools and programs run out of Diocesan headquarters. To support these beliefs, the Office of Education within the Diocese has an organization devoted solely to Natural Family Planning and Chastity Education and Bishop Trautman has recognized that natural family planning is consistent with Catholic doctrine.

77. The ability of the Diocese to impress upon its parishioners, students, and engaged couples its strong opposition—consistent with the strong opposition of the Catholic Church—to abortion, contraceptives, and sterilization would be seriously undermined if the Government succeeded in forcing the Diocese to provide its employees and the employees of its affiliated corporations with access to abortifacients, sterilization services, contraceptives, and related counseling services.

78. Plaintiffs have a duty, in accordance with Catholic social teachings, to promote the health and well-being of their employees and families.

79. To that end, Plaintiffs offer generous health insurance plans to their employees. Significantly, however, Plaintiffs have ensured that those plans do not include coverage for abortifacients, sterilization services, and related counseling services.

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

81. Plaintiffs cannot, without violating their sincerely-held religious beliefs, subsidize, provide, and/or facilitate these or other devices, drugs, procedures, or services that are inconsistent with the teachings of the Catholic Church.

III. STATUTORY AND REGULATORY BACKGROUND

A. Statutory Background

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

83. The Affordable Care Act established many new requirements for "group health plans," broadly defined as "employee welfare benefit plans" within the meaning of the Employee

Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provide[] medical care . . . to employees or their dependents." 42 U.S.C. § 300gg-91(a)(1).

84. The Affordable Care 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—(4) with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph." Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C. § 300gg-13(a)(4)).

85. 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.

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

87. Not every employer is required to comply with the U.S. Government Mandate. "Grandfathered" health plans are exempt from the "preventive care" mandate. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726, 41,731 (July 19, 2010) ("Interim Final Rules"); 42 U.S.C. § 18011. Such plans cannot undergo

substantial change after March 23, 2010 without losing grandfathered status. *Id.* HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

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

89. 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).

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

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

92. ERISA may provide for additional penalties. Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700. Similarly, the Secretary of Labor may bring an enforcement

action against group health plans of employers that violate the U.S. Government Mandate, 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).

93. The Affordable Care Act limits the Government's regulatory authority. The Act and an accompanying Executive Order reflect a clear congressional intent to exclude all abortion-related services from the Act and the regulations implementing it. The Act itself provides that "nothing in this title (or any amendment made by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." 42 U.S.C. § 18023(b)(1)(A)(i). And the Act left it to "the issuer of a qualified health plan," not the Government, "[to] determine whether or not the plan provides coverage of [abortion]." *Id.* § 18023(b)(1)(A)(ii).

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

95. The intent to exclude abortions was instrumental in the Affordable Care Act's passage, as cemented by an Executive Order without which the Act would not have passed.

Indeed, the Act's legislative history could not show a clearer congressional intent to prohibit the executive branch from requiring group health plans to provide abortion-related services. For example, the House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak prohibiting the use of federal funds for abortion services. *See* H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, lacked that restriction. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009). To avoid filibuster in the Senate, congressional proponents of the Act engaged in a procedure known as "budget reconciliation" that required the House to adopt the Senate version of the bill largely in its entirety. Congressman Stupak and other pro-life House members indicated that they would refuse to vote for the Senate version because it failed adequately to prohibit federal funding of abortion. To appease these Representatives, President Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. *See* Exec. Order No. 13,535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

96. The Act was, therefore, 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.*

B. The U.S. Government Mandate Was Promulgated Without Regard to Ordinary Rules of Procedure

97. It took the Defendants in this case less than two years to subvert this central premise of the Act. Over time, they issued interim rules and press releases—none of which followed notice-and-comment rulemaking—that required the federal funding of abortifacients, sterilization services, contraceptives, and related counseling services and commandeered religious organizations to facilitate those services as well.

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

99. Defendants improperly dispensed with notice-and-comment rulemaking for these rules. Even though federal law had never required coverage of abortifacients, sterilization services, contraceptives, and related counseling services, Defendants claimed both that the APA did not apply to the relevant provisions of the Affordable Care Act and that "it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice-and-comment process was completed." *Id.* at 41,730.

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

101. The interim final rules, however, failed to identify the women's "preventive care" that Defendants planned to require employer group health plans to cover, nor did the interim final rules give any notice as to how Defendants would identify those services. 42 U.S.C. § 300gg-13(a)(4). Instead, Defendants noted that "[t]he Department of HHS [was] developing

these guidelines and expects to issue them no later than August 1, 2011." Interim Final Rules, 75 Fed. Reg. at 41,731.

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

103. In response, several groups engaged in a lobbying effort to persuade Defendants to include various contraceptives and abortion-inducing drugs in the "preventive care" requirements for group health plans. *See, e.g.*, Press Release, Planned Parenthood, Planned Parenthood Supports Initial White House Regulations on Preventive Care (July 14, 2010), *available at* http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-supports-initial-white-house-regulations-preventive-care-highlights-need-new-33140.htm.

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

105. On August 1, 2011, HHS issued the "preventive care" services that group health plans would be required to cover. *See* Press Release, HHS, Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost (Aug. 1, 2011), *available at* http://www.hhs.gov/news/press/2011pres/08/20110801b.html. Again acting without notice-and-comment rulemaking, HHS announced these guidelines through a press release rather than

enactments in the Code of Federal Regulations or statements in the Federal Register. The press release made clear that the guidelines were developed by a non-governmental "independent" organization, the Institute of Medicine ("IOM"). *See id.*

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

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

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

109. Contraceptives approved by the FDA that qualify under these guidelines cause abortions. For example, the FDA has approved "emergency contraceptives" such as the morning-after pill (otherwise known as Plan B), which destroys the embryo by preventing it

from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or Ella), which likewise can induce abortions of living embryos.

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

111. Defendants issued the amendments again without notice-and-comment rulemaking on the same grounds (namely, that it would be "impracticable and contrary to the public interest to delay" putting the rules into effect) that they had provided for bypassing the APA with the original rules. *See id.* at 46,624.

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

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

114. Specifically, the regulatory "religious employer" exemption ignored definitions of "religious employer" already existing in federal law and, instead covered only those employers whose purpose is to inculcate religious values, and who employ and serve primarily individuals

of the same religion. It provides in full:

> (A) In developing the binding health plan coverage guidelines specified in this paragraph (a)(1)(iv), the Health Resources and Services Administration shall be informed by evidence and may establish exemptions from such guidelines with respect to group health plans established or maintained by religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers with respect to any requirement to cover contraceptive services under such guidelines.
>
> (B) For purposes of this subsection, a "religious employer" is an organization that meets all of the following criteria:
>
> (1) The inculcation of religious values is the purpose of the organization.
>
> (2) The organization primarily employs persons who share the religious tenets of the organization.
>
> (3) The organization serves primarily persons who share the religious tenets of the organization.
>
> (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

118. The religious employer exemption also uses impermissibly vague, undefined terms that extend that Agency's already broad discretion and fail to provide organizations with notice of their duties and obligations. There is no definition for the vague terms "inculcation of religious values," "purpose of the organization," "primarily," and "religious tenets." Similarly,

there is no indication of whether an entity with multiple purposes can determine whether it qualifies and how much overlap there must be for religious tenets to be "share[d]."

119. When issuing this interim final rule, Defendants did not explain why they issued such a narrow religious exemption. Nor did Defendants explain why they refused to incorporate other "longstanding Federal laws to protect conscience" that President Obama's executive order previously had promised to respect. *See* Exec. Order No. 13,535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

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

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

122. Suggesting that they were open to good-faith discussion, Defendants once again permitted parties to provide comments to the amended rules. Numerous organizations expressed the same concerns that they had before, noting that abortifacients, sterilization services, contraceptives, and related counseling services could not be viewed as "preventive care." They also explained that the religious exemption was "narrower than any conscience clause ever enacted in federal law, and narrower than the vast majority of religious exemptions from state contraceptive mandates." Comments of U.S. Conference of Catholic Bishops at 1-2 (Aug. 31,

2011), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf.

123. The Diocese published an article in its October 17, 2011 Life Issues Forum entitled "Standing Together for Conscience Rights," which asked parishioners to stand with the Bishops in support of religious freedom.

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

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

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

127. Taken together, these various rules and press releases amount to a mandate that requires most religiously affiliated organizations to subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services through the health plans that they offer employees. As noted by Cardinal Timothy Dolan, the release effectively gave objecting religious institutions "a year to figure out how to violate [their] consciences."

C. The White House Has Refused to Expand the Exemption

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

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

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

131. Despite continued objections that this "accommodation" did nothing of substance to protect the right of conscience, when asked if there would be further room for compromise, White House Chief of Staff Jacob Lew responded: "No, this is our plan." David Eldridge &

Cheryl Wetzstein, *White House Says Contraception Compromise Will Stand*, The Washington Times, Feb. 12, 2012, *available at* http://www.washingtontimes.com/news/2012/feb/12/white-house-birth-control-compromise-will-stand/print/.

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

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

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

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

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

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

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

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

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

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

142. For example, an employer that is self-insured—like the Diocese— must work with actuaries to evaluate its funding reserves and then must negotiate with its third-party administrator ("TPA").

143. Under normal circumstances, Plaintiffs must begin the process of determining their health care package for a plan year at least one year before the plan year begins. The multiple levels of uncertainty swirling around the U.S. Government Mandate and the ANPRM make the already lengthy process of preparing a health benefits package even more complex.

144. The U.S. Government Mandate, however, may require Plaintiffs to make significant, and revolutionary changes, to their employee health coverage. Plaintiffs, moreover,

may need to restructure their programs and health plans to fit within the U.S. Government Mandate's requirements. Such changes will require substantially more lead time.

145. Plaintiffs are already being affected by the U.S. Government Mandate in that they have expended resources learning about the U.S. Government Mandate, including the religious employer exemption and safe harbor, and how these provisions affect Plaintiffs.

146. Plaintiffs are currently, and for the foreseeable future will be, negotiating new and existing employee contracts that will be in force when the U.S. Government Mandate begins applying to Plaintiffs' health insurance plans. The fact that Plaintiffs are unsure of the status of their health insurance plans may impact employee recruitment efforts, which may in turn harm Plaintiffs' educational and social service functions.

147. Additionally, Plaintiffs' funding will likely be significantly impacted by the U.S. Government Mandate in that donors expect that Catholic organizations will act in accordance with Catholic doctrine in all manners.

148. Also, individuals who volunteer their time in support of the social service programs run by Plaintiffs may stop offering their volunteer services since volunteers expect that Catholic organizations will act in accordance with Catholic doctrine in all manners. As Plaintiffs rely on volunteers to help support their charitable programs, this could significantly impact the services they are able to offer to the community.

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

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

A. The U.S. Government Mandate Puts Plaintiffs in the Unconscionable Position of Having to Choose Between Complying with the Law or Abiding by their Religious Beliefs

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

151. The U.S. Government Mandate puts Plaintiffs—all Catholic employers—in an intolerable and unconscionable position. It forces Plaintiffs to choose between their religious beliefs (that abortion, sterilization, and contraception are immoral and strictly forbidden), their mission (educating, servicing, and employing individuals of all faith traditions to enrich and enlighten), and obeying the law.

152. The U.S. Government Mandate directly conflicts with Plaintiffs' sincere belief that strictly forbids, as intrinsically immoral, the subsidy, provision, and/or facilitation of coverage for abortifacients, sterilization services, contraceptives, and related counseling services that the U.S. Government Mandate forces upon them. Plaintiffs cannot, consistent with their Catholic identity, subsidize, provide, and/or facilitate such practices.

153. In order to fall within the exemption, Plaintiffs would have to primarily serve Catholics, which would violate their religious beliefs. For Catholics, love of God is demonstrated through service to others; the two are so closely related and dependent upon each other that they cannot be separated. Catholic doctrine recognizes that, "[l]iving faith 'work[s] through charity.'" Catechism of the Catholic Church ¶ 1814. Plaintiffs cannot be forced to give

up their devotion to all mankind without violating their religious beliefs and compromising their religious purpose.

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

155. Although the Government exempts some religious institutions from the requirement of subsidizing, providing, and/or facilitating the objectionable services, it has crafted such a narrow exception that thousands of sincere religious institutions and countless religious individuals are being forced to make this unconscionable "choice."

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

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

158. 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.

159. Furthermore, the U.S. Government Mandate is not narrowly tailored to promoting a compelling governmental interest. Even assuming the interest was compelling, the Government has numerous alternatives to furthering that interest other than forcing Plaintiffs to violate their religious beliefs.

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

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

162. The U.S. Government Mandate compels Plaintiffs to consider restructuring their admissions, employment, and service programs to discriminate on the basis of religion in an overt and potentially illegal fashion.

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

164. Financial aid programs designed to reach poor and underprivileged students regardless of religion would have to be similarly redesigned to exclude non-Catholics.

165. Meanwhile, Plaintiffs would potentially subject themselves to a host of employment discrimination suits if they restricted employment to coreligionists.

166. Moreover, any attempts by Plaintiffs to qualify for the narrow religious exemption by restricting their charitable and educational mission to Catholics would have devastating effects on the communities encompassed within the Diocese's borders.

167. Several of the public school systems located within the Diocese's boundaries are not strong, and few non-Catholic private schools are available. Forcing the non-Catholic students attending the Diocese's grade schools and high schools to leave the Catholic school system would deprive these students and their parents of a safe, positive, structured, and academically rigorous education in an area where there are very few comparable alternatives.

168. Many non-Catholics are also served by the Diocese's post-abortion ministry and the numerous secular and religious charities that receive the Diocese's financial support, including: Plaintiff St. Martin Center, Plaintiff Prince of Peace Center, a prison ministry, a homeless shelter and low-income housing program, soup kitchens, food pantries, an HIV/AIDS support group and four emergency assistance centers, counseling and adoption services at eleven sites, and refugee resettlement.

169. The vacuum left in Northwestern Pennsylvania by Plaintiffs' inability to serve non-Catholics would be impossible to fill.

170. In order to restrict the provision of services to Catholics, Plaintiffs would have to inquire about the religious beliefs and membership of any person who approached them or the programs which Plaintiffs support. Verifying the religious status of every poor, hungry, disabled, or otherwise underserved person asking for assistance from Plaintiffs would clearly present a logistical problem of significant proportions—and would seriously hamstring

Plaintiffs' ability to serve even those persons who were ultimately able to prove their membership in the Catholic Church.

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

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

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

172. The religious employer exemption destroys religious freedom by exempting only institutions that primarily employ and serve "persons who share the religious tenets of the organization." 45 C.F.R. § 147.130(a)(iv)(B)(2)-(3). This is inconsistent with the definition of religion under the Constitution and RFRA, and directly contradicts the Plaintiffs' sincerely-held religious beliefs of serving all people, regardless of whether or not they share the same faith.

173. Both the Constitution and RFRA protect religious institutions, whether or not their purpose is the "inculcation of religious values," and whether or not they "primarily" serve

and employ co-religionists. However, only institutions with such a narrow purpose qualify for the religious exemption under the U.S. Government Mandate. 45 C.F.R. § 147.130(a)(iv)(B)(1). The Constitution and RFRA cannot abide such a feigned attempt at preserving religious rights.

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

175. It is unclear whether the Diocese qualifies for the exemption.

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

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

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

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

180. Though the Government's position is unclear, it appears that if an entity qualifies as a "religious employer" for purposes of the exemption, any affiliated corporation that provides coverage to its employees through the exempt entity's group health plan would also receive the benefit of the exemption. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. at 16,502 (Mar. 21, 2012).

181. If the Diocese qualifies as a "religious employer" under the exemption to the U.S. Government Mandate, St. Martin Center and Prince of Peace Center thus also appear to receive the benefit of the exemption.

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

182. The U.S. Government Mandate's exemption further entangles the Government in defining the religious tenets of each organization and its employees and beneficiaries. The Government would have to decide Plaintiffs' "religious tenets," determine whether "the purpose" of the organization is to "inculcate" those tenets, and then conduct an inquiry into the practices and beliefs of the individuals that Plaintiffs ultimately employ and educate.

183. Indeed, President Obama all but conceded that the current state of the law fails to protect Plaintiffs' exercise of religion when, on February 10, 2012, he announced that his Administration intended to implement new regulations that "accommodate[] religious liberty." White House, *Fact Sheet*. But promises to change the law do not actually do so.

184. Nor would the few opaque statements publicly made about the proposed "accommodation" relieve Plaintiffs from the unconscionable position in which the U.S. Government Mandate currently puts them.

185. Plaintiffs object to being forced to provide plans which subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services they view as immoral even if Plaintiffs do not have to *directly* pay for such services.

186. Basing the definition of religion on the Government's assessment of the "purity" of an institution's religious purpose and limiting that purpose to inculcation, at the expense of other sincerely-held religious purposes, the U.S. Government Mandate usurps religious autonomy, injecting the Government into deciding what is and is not a valid religious purpose. The Government cannot make such determinations.

187. Under the U.S. Government Mandate's logic, the Diocese's programs in math, science, and the arts could be subject to cancellation if they were deemed by a government

administrator to be insufficiently "religious" or to lack sufficient religious "purpose." Regardless of outcome, this inquiry is unconstitutional, and the Diocese strongly objects to such an intrusive governmental investigation into its religious mission.

188. The U.S. Government Mandate's narrow, ungrounded exemption discriminates against Catholic religious institutions as well as among religions.

189. The U.S. Government Mandate targets Plaintiffs precisely because of their commitment to educate, serve, and employ all without regard to religion.

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

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

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

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

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

194. The Government has crafted a religious exemption to the U.S. Government Mandate that favors certain religions over others. As noted, it applies only to plans sponsored by religious organizations that have, as their "purpose," the "inculcation of religious values"; that "primarily" serve individuals that share their "religious tenets"; and that "primarily" employ such individuals. 45 C.F.R. § 147.130(a)(iv)(B)(1).

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

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

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

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

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

V. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

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

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

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

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

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

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

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

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

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

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

210. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

218. The U.S. Government Mandate is not a neutral law of general applicability because it is riddled with exemptions. It offers multiple exemptions from its requirement that employer-based health plans subsidize, provide, and/or facilitate coverage for abortifacients, sterilization services, contraceptives, and related counseling services.

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

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

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

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

223. 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.

224. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

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

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

234. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

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

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

244. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

249. 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.

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

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

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

253. 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.

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

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

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

257. 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 Free Exercise Clause of the First Amendment.

258. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

266. The U.S. Government Mandate would compel Plaintiffs to provide or sponsor health care plans to their employees that subsidize, provide, and/or facilitate coverage for practices that violate their religious beliefs.

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

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

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

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

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

272. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

278. Defendants, instead, wholly delegated their responsibilities for issuing preventive care guidelines to a non-governmental entity, the IOM.

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

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

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

282. Defendants also failed to engage in notice-and-comment rulemaking when issuing the interim final rules and the final rule incorporating the guidelines.

283. Defendants' stated reasons for promulgating these rules without engaging in formal notice-and-comment rulemaking do not constitute "good cause." Providing public notice and an opportunity for comment was not impracticable, unnecessary, or contrary to the public interest for the reasons claimed by Defendants.

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

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

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

287. Plaintiffs have no adequate remedy at law.

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

COUNT VIII
Arbitrary and Capricious Action in Violation of the APA

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

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

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

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

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

294. Defendants failed to consider the suggestion of many commentators that abortifacients, sterilization services, contraceptives, and related counseling services could not be viewed as "preventive care."

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

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

297. Defendants failed to consider the use of broader religious exemptions in many other federal laws and regulations.

298. Defendants' promulgation of the U.S. Government Mandate violates the APA.

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

300. Plaintiffs have no adequate remedy at law.

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

COUNT IX
Acting Illegally In Violation of the APA

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

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

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

305. 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).

306. The Affordable Care Act states that "nothing in this title (or any amendment by this title) shall be construed to require a qualified health plan to provide coverage of [abortion]

services . . . as part of its essential health benefits for any plan year." 42 U.S.C. § 18023(b)(1)(A)(i). It adds that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion.]" *Id.* § 18023(b)(1)(A)(ii).

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

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

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

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

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

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

313. Plaintiffs have no adequate remedy at law.

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

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully pray that this Court:

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

VII. DEMAND FOR JURY TRIAL

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

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

By: /s/ Paul M. Pohl

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