

NOS. 14-1418, -1453, -1505, 15-35, -105, -119, & -191

In the Supreme Court of the United States

DAVID A. ZUBIK, ET AL.

v.

SYLVIA BURWELL, ET AL.

PRIESTS FOR LIFE, ET AL.

v.

DEPARTMENT OF HEALTH & HUMAN SERVICES, ET AL.

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, ET AL.

v.

SYLVIA BURWELL, ET AL.

EAST TEXAS BAPTIST UNIVERSITY, ET AL.

v.

SYLVIA BURWELL, ET AL.

LITTLE SISTERS OF THE POOR HOME FOR THE AGED,
DENVER, COLORADO, ET AL.

v.

SYLVIA BURWELL, ET AL.

SOUTHERN NAZARENE UNIVERSITY, ET AL.

v.

SYLVIA BURWELL, ET AL.

GENEVA COLLEGE

v.

SYLVIA BURWELL, ET AL.

**On Writ of Certiorari to the U.S. Courts of Appeals
for the Third, Fifth, Tenth and D.C. Circuits**

JOINT APPENDIX VOLUME I OF III

**PETITIONS FOR CERTIORARI FILED MAY 29, JUNE 9,
JUNE 19, JULY 8, JULY 23, JULY 24, AUGUST 11, 2015
CERTIORARI GRANTED NOVEMBER 6, 2015**

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No. 14-1418

CLOSED

U.S. District Court
Western District of Pennsylvania (Pittsburgh)
CIVIL DOCKET FOR CASE #: 2:13-cv-01459-
AJS

ZUBIK et al v.	Date Filed: 10/08/2013
SEBELIUS et al	Date Terminated:
Assigned to: Judge	12/20/2013
Arthur J. Schwab	Jury Demand: Plaintiff
related Cases:	Nature of Suit: 440 Civil
2:13-cv-00930-AJS	Rights: Other
2:14-cv-00681-AJS	Jurisdiction: U.S.
Case in other court:	Government Defendant
USCA, 14-01377	
Cause: 42:2000 Civil	
Rights: Other	

10/08/2013	1	COMPLAINT	against
		JACOB J. LEW, THOMAS	
		PEREZ,	KATHLEEN
		SEBELIUS,	U.S.
		DEPARTMENT	OF
		HEALTH AND HUMAN	
		SERVICES,	U.S.
		DEPARTMENT OF LABOR,	
		U.S. DEPARTMENT OF	
		TREASURY (Filing fee,	
		including Administrative fee,	
		\$400, receipt number 0315-	
		2955420), filed by THE	
		ROMAN CATHOLIC	
		DIOCESE	OF
		PITTSBURGH, DAVID A.	
		ZUBIK,	CATHOLIC

CHARITIES OF THE
DIOCESE OF
PITTSBURGH, INC.
(Attachments: # 1 Civil
Cover Sheet, # 2 Summons
US Attorney General, # 3
Summons US Attorney, # 4
Summons Sebelius, # 5
Summons Perez, # 6
Summons Lew, # 7 Summons
Dept. of HHS, # 8 Summons
Dept. of Labor, # 9 Summons
Dept. of Treasury) (jsp)
(Entered: 10/08/2013)

* * *

10/08/2013	4	<p>MOTION for Expedited Preliminary Injunction by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Proposed Order, # 2 Index of Exhibits, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5 Part 1, # 8 Exhibit 5 Part 2, # 9 Exhibit 5 Part 3, # 10 Exhibit 6, # 11 Exhibit 7, # 12 Exhibit 8, # 13 Exhibit 9, # 14 Exhibit 10, # 15 Exhibit 11) (jsp) (Entered:</p>
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10/08/2013)

* * *

10/08/2013 6 BRIEF in Support re 4
 Motion for Expedited
 Preliminary Injunction, 5
 Motion for Expedited
 Scheduling Order or
 Expedited Status Conference
 filed by CATHOLIC
 CHARITIES OF THE
 DIOCESE OF
 PITTSBURGH, INC., THE
 ROMAN CATHOLIC
 DIOCESE OF
 PITTSBURGH, DAVID A.
 ZUBIK. (jsp) (Entered:
 10/08/2013)

* * *

10/29/2013 23 BRIEF in Opposition re 4
 Motion for Preliminary
 Injunction, filed by JACOB J.
 LEW, THOMAS PEREZ,
 KATHLEEN SEBELIUS,
 U.S. DEPARTMENT OF
 HEALTH AND HUMAN
 SERVICES, U.S.
 DEPARTMENT OF LABOR,
 U.S. DEPARTMENT OF
 TREASURY. (Humphreys,
 Bradley) (Entered:
 10/29/2013)

* * *

11/01/2013 29 BRIEF of Amici Curiae in
 Opposition re 4 Motion for

Preliminary Injunction, filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF PENNSYLVANIA. (Walczak, Witold) Modified on 11/4/2013. (jsp) (Entered: 11/01/2013)

* * *

11/05/2013 38 REPLY BRIEF re 4 Motion for Preliminary Injunction, filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) (Entered: 11/05/2013)

* * *

11/07/2013 43 STIPULATION to Undisputed Facts by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) Modified on 11/8/2013. (jsp) (Entered: 11/07/2013)

* * *

11/08/2013	49	<p>MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>or, in the Alternative, for Summary Judgment</i> by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley). Added MOTION for Summary Judgment on 11/13/2013 (jsp). (Entered: 11/08/2013)</p>
11/08/2013	50	<p>BRIEF in Support re 49 Motion to Dismiss for Failure to State a Claim, <i>or, in the Alternative, Motion for Summary Judgment</i> filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) Modified on 11/13/2013. (jsp) (Entered:</p>

11/08/2013)

* * *

11/12/2013	52	DEPOSITION of Gary M. Cohen taken on April 16, 2013 by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	53	DEPOSITION of Cardinal Timothy Dolan taken on November 7, 2013 by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Exhibit A) (Pohl, Paul) (Entered: 11/12/2013)
11/12/2013	54	DEPOSITION of Shawn Braxton taken on November 8, 2013 by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC

DIOCESE OF
 PITTSBURGH, DAVID A.
 ZUBIK. (Attachments: # 1
 Exhibit A, # 2 Exhibit B)
 (Pohl, Paul) (Entered:
 11/12/2013)

11/12/2013 55 NOTICE of Filing of
Plaintiffs' Exhibits Admitted
into Evidence at the
November 12, 2013 Hearing
on Plaintiffs' Motion for
Preliminary Injunction by
 CATHOLIC CHARITIES OF
 THE DIOCESE OF
 PITTSBURGH, INC., THE
 ROMAN CATHOLIC
 DIOCESE OF
 PITTSBURGH, DAVID A.
 ZUBIK (Attachments: # 1
 P1, # 2 P2, # 3 P3, # 4 P4, # 5
 P5, # 6 P6, # 7 P7, # 8 P8, # 9
 P10, # 10 PI 1, # 11 P12, # 12
 P13, # 13 P14, # 14 P15, # 15
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 - part 4, # 40 P46 - part 5, #
 41 P46 -part 6, # 42 P46 -

part 7, # 43 P46 - part 8, # 44
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 10, # 46 P51, # 47 P75, # 48
 P79, # 49 P85, # 50 P86, # 51
 P87, # 52 P88, # 53 P89, # 54
 P90, # 55 P91, # 56 P92)
 (Pohl, Paul) (Entered:
 11/12/2013)

11/12/2013	56	<p>Minute Entry for proceedings held before Judge Arthur J. Schwab: Motion Hearing held on 11/12/2013 re 4 MOTION for Preliminary Injunction filed by DAVID A. ZUBIK, THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC. Defendants to file their Response to Motion to Strike (doc no. 51 at 13-1459 and doc no 50 at 13-303 Erie) by 11/15/13; Reply due 11/18/13. Supplemental Briefing to Motion for Preliminary Injunction from all parties including amicus due 11/15/13 by 5:00 PM. Briefs limited to 10 pages. (Court Reporter: Richard Ford/Shirley Hall) (lck) (Entered: 11/13/2013)</p>
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11/12/2013	57	EXHIBITS Shown at Hearing on Motion for Preliminary Injunction held on 11/12/13. (lck) (Entered: 11/13/2013)
11/13/2013		Minute Entry for proceedings held before Judge Arthur J. Schwab: Case Management Conference held on 11/13/2013. Plaintiffs' shall file a new proposed Case Management Order. Case is exempt from ADR requirement. Text-only entry; no PDF document will issue. This text-only entry constitutes the Court's order or notice on the matter. Signed by Judge Arthur J. Schwab on 11/13/13. (Court Reporter: R. Ford) (ms) (Entered: 11/13/2013)
		* * *
11/13/2013	59	ADDITIONAL STIPULATED FACTS by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) Modified on 11/15/2013. (jsp) (Entered: 11/13/2013)

* * *

11/13/2013 60 Minute Entry for proceedings held before Judge Arthur J. Schwab: Motion Hearing held on 11/13/2013 re 4 MOTION for Preliminary Injunction filed by DAVID A. ZUBIK, THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC. The Court hears argument from the parties. The Court rules that Exhibit No. P 93 is Admitted. Defense Counsel may file a supplement to Ex. No. P93 by 11/15/13. Parties agree on exhibits admitted into the record. (Court Reporter: Richard Ford) (lck) (Entered: 11/13/2013)

* * *

11/15/2013 67 JOINT SUPPLEMENTAL BRIEF in Support re: 6 Brief in Support of re: 4 Motion for Preliminary Injunction, filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF

PITTSBURGH, DAVID A. ZUBIK. (Pohl, Paul) Modified on 11/18/2013. (plh) (Entered: 11/15/2013)

11/15/2013 68 BRIEF in Opposition to 4 MOTION for Preliminary Injunction, filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 11/15/2013)

* * *

11/21/2013 75 MEMORANDUM OPINION RE: 4 Plaintiffs' Motions for Expedited Preliminary Injunction. An appropriate Order follows. Signed by Judge Arthur J. Schwab on 11/21/2013. (lcb) (Entered: 11/21/2013)

11/21/2013 76 ORDER OF COURT GRANTING 4 Plaintiffs' Motions for Expedited Preliminary Injunction. Signed by Judge Arthur J. Schwab on 11/21/2013. (lcb) (Entered: 11/21/2013)

12/13/2013 77 BRIEF in Opposition re 49

		<p>Motion to Dismiss for Failure to State a Claim, Motion for Summary Judgment, filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Index to Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D) (Pohl, Paul) (Entered: 12/13/2013)</p>
12/20/2013	78	<p>Unopposed MOTION for Permanent Injunction by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A. ZUBIK. (Attachments: # 1 Proposed Order) (Pohl, Paul) (Entered: 12/20/2013)</p>
12/20/2013	79	<p>BRIEF in Support re 78 Motion for Permanent Injunction filed by CATHOLIC CHARITIES OF THE DIOCESE OF PITTSBURGH, INC., THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH, DAVID A.</p>

		ZUBIK. (Pohl, Paul) (Entered: 12/20/2013)
12/20/2013	80	NOTICE of <i>Non-Opposition to Plaintiffs' Motion to Convert Preliminary Injunction into Permanent Injunction</i> by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY re 78 Motion for Permanent Injunction (Humphreys, Bradley) (Entered: 12/20/2013)
12/20/2013	81	ORDER GRANTING 78 Unopposed Motion for Permanent Injunction. Signed by Judge Arthur J. Schwab on 12/20/13. (lck) (Entered: 12/20/2013)
02/11/2014	82	NOTICE OF APPEAL as to 81 Order on Motion for Permanent Injunction by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR,

U.S. DEPARTMENT OF
TREASURY. Motion for IFP
N/A. Certificate of
Appealability N/A. Court
Reporter(s): Richard Ford.
The Clerk's Office hereby
certifies the record and the
docket sheet available
through ECF to be the
certified list in lieu of the
record and/or the certified
copy of the docket entries.
The Transcript Purchase
Order form will NOT be
mailed to the parties. The
form is available on the
Court's internet site.
(Humphreys, Bradley)
(Entered: 02/11/2014)

**U.S. DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
(ERIE)
CIVIL DOCKET FOR CASE #: 1:13-cv-00303-AJS**

PERSICO et al. v.	Date Filed: 10/08/2013
SEBELIUS et al.	Date Terminated:
Assigned to: Judge Arthur J. Schwab	12/20/2013
related Case: 2:13-cv-00930-AJS	Jury Demand: Plaintiff
Case in other court: USCA, 14-01376	Nature of Suit: 440 Civil
Cause: 42:2000 Civil	Rights: Other
Rights: Other	Jurisdiction: U.S.
	Government Defendant

10/08/2013 1 COMPLAINT against All Defendants (Filing fee, including Administrative fee, \$400, receipt number 0315-2955338), filed by THE ROMAN CATHOLIC DIOCESE OF ERIE, PRINCE OF PEACE CENTER, INC., ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, ST. MARTIN CENTER, INC. (Attachments: # 1 Civil Cover Sheet) (dm) (Entered: 10/08/2013)

* * *

10/08/2013 6 MOTION for Expedited Preliminary Injunction by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T.

PERSICO, PRINCE OF PEACE
CENTER, INC., ST. MARTIN
CENTER, INC., THE ROMAN
CATHOLIC DIOCESE OF ERIE.
(Attachments: # 1 Proposed Order)
(dm) (Entered: 10/08/2013)

* * *

10/08/2013 8 BRIEF in Support re 6 Motion for
Preliminary Injunction, 7 Motion
for Expedited Scheduling Order or
Expedited Status Conference filed
by ERIE CATHOLIC
PREPARATORY SCHOOL,
LAWRENCE T. PERSICO,
PRINCE OF PEACE CENTER,
INC., ST. MARTIN CENTER,
INC., THE ROMAN CATHOLIC
DIOCESE OF ERIE. (dm)
(Entered: 10/08/2013)

10/08/2013 9 EXHIBITS in Support of 6 Motion
for Expedited Preliminary
Injunction, by ERIE CATHOLIC
PREPARATORY SCHOOL,
LAWRENCE T. PERSICO,
PRINCE OF PEACE CENTER,
INC., ST. MARTIN CENTER,
INC., THE ROMAN CATHOLIC
DIOCESE OF ERIE. (Attachments:
1 Exhibit 1, # 2 Exhibit 2, # 3
Exhibit 3, # 4 Exhibit 4, # 5 Exhibit
5 Part 1, # 6 Exhibit 5 Part 2, # 7
Exhibit 5 Part 3, # 8 Exhibit 6, # 9
Exhibit 7, # 10 Exhibit 8, # 11
Exhibit 9, # 12 Exhibit 10, # 13

Exhibit 11, # 14 Exhibit 12) (dm)
(Entered: 10/08/20 13)

* * *

10/29/2013 28 BRIEF in Opposition re 6 Motion
for Preliminary Injunction filed by
JACOB J. LEW, THOMAS PEREZ,
KATHLEEN SEBELIUS, U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, U.S.
DEPARTMENT OF LABOR, U.S.
DEPARTMENT OF TREASURY.
(Humphreys, Bradley) (Entered:
10/29/2013)

* * *

11/05/2013 34 REPLY BRIEF re 6 Motion for
Preliminary Injunction filed by
ERIE CATHOLIC PREPARATORY
SCHOOL, LAWRENCE T.
PERSICO, PRINCE OF PEACE
CENTER, INC., ST. MARTIN
CENTER, INC., THE ROMAN
CATHOLIC DIOCESE OF ERIE.
(Pohl, Paul) (Entered: 11/05/2013)

* * *

11/07/2013 39 STIPULATION of *Undisputed*
Facts by ERIE CATHOLIC
PREPARATORY SCHOOL,
LAWRENCE T. PERSICO,
PRINCE OF PEACE CENTER,
INC., ST. MARTIN CENTER,
INC., THE ROMAN CATHOLIC
DIOCESE OF ERIE. (Pohl, Paul)
(Entered: 11/07/2013)

* * *

- 11/08/2013 48 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *or, in the Alternative, for Summary Judgment* by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley). Added MOTION for Summary Judgment on 11/12/2013 (dm). (Entered: 11/08/2013)
- 11/08/2013 49 BRIEF in Support re 48 Motion to Dismiss for Failure to State a Claim, *or, in the Alternative, for Summary Judgment* filed by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. (Humphreys, Bradley) (Entered: 11/08/2013)
- * * *
- 11/12/2013 51 DEPOSITION of Gary M. Cohen taken on April 16, 2013 by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE.

- (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
- 11/12/2013 52 DEPOSITION of Cardinal Timothy Dolan taken on November 7, 2013 by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # 1 Exhibit A) (Pohl, Paul) (Entered: 11/12/2013)
- 11/12/2013 53 DEPOSITION of Shawn Braxton taken on November 8, 2013 by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Pohl, Paul) (Entered: 11/12/2013)
- 11/12/2013 54 NOTICE of *Filing of Plaintiffs' Exhibits Admitted into Evidence at the November 12, 2013 Hearing on Plaintiffs' Motion for Preliminary Injunction* by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER,

INC., THE ROMAN CATHOLIC
 DIOCESE OF ERIE (Attachments:
 # 1 P1, # 2 P2, # 3 P3, # 4 P4, # 5
 P5, # 6 P6, # 7 P7, # 8 P8, # 9 P10,
 # 10 P11, # 11 P12, # 12 P13, # 13
 P14, # 14 P15, # 15 P16, # 16 P17, #
 17 P18, # 18 P19, # 19 P20, # 20
 P21, # 21 P23, # 22 P24, # 23 P25, #
 24 P26, # 25 P27, # 26 P28, # 27
 P29, # 28 P30, # 29 P31, # 30 P32, #
 31 P33, # 32 P34, # 33 P35, # 34
 P36, # 35 P44, # 36 P46 – part 1, #
 37 P46 – part 2, # 38 P46 – part 3,
 # 39 P46 – part 4, # 40 P46 – part
 5, # 41 P46 – part 6, # 42 P46 –
 part 7, # 43 P46 – part 8, # 44 P46
 – part 9, # 45 P46 – part 10, # 46
 P51, # 47 P75, # 48 P79, # 49 P85, #
 50 P86, # 51 P87, # 52 P88, # 53
 P89, # 54 P90, # 55 P91, # 56 P92)
 (Pohl, Paul) (Entered: 11/12/2013)

11/12/2013 55 Minute Entry for proceedings held
 before Judge Arthur J. Schwab:
 Motion Hearing held on 11/12/2013
 re 6 MOTION for Preliminary
 Injunction filed by ERIE
 CATHOLIC PREPARATORY
 SCHOOL, PRINCE OF PEACE
 CENTER, INC., THE ROMAN
 CATHOLIC DIOCESE OF ERIE,
 LAWRENCE T. PERSICO, ST.
 MARTIN CENTER, INC.
 Defendants to file their Response to
 Motion to Strike (doc no. 51 at 13–

1459 and doc no *50* at 13–303 Erie) by 11/15/13; Reply due 11/18/13; Supplemental Briefing to Motion for Preliminary Injunction from all parties including amicus due 11/15/13 by 5:00 PM. Briefs limited to 10 pages. (Court Reporter: Richard Ford/Shirley Hall) (lck) (Entered: 11/13/2013)

11/12/2013 56 EXHIBITS Shown at Hearing on Motion for Preliminary Injunction held on 11/12/13. (lck) (Entered: 11/13/2013)

11/13/2013 Minute Entry for proceedings held before Judge Arthur J. Schwab: Case Management Conference held on 11/13/2013. Plaintiffs' shall file a new proposed Case Management Order. Case is exempt from ADR requirement. Text-only entry; no PDF document will issue. This text-only entry constitutes the Court's order or notice on the matter. Signed by Judge Arthur J. Schwab on 11/13/13. (Court Reporter: R. Ford) (ms) (Entered: 11/13/2013)

* * *

11/13/2013 58 STIPULATION *Additional*
Stipulated Facts by ERIE
 CATHOLIC PREPARATORY
 SCHOOL, LAWRENCE T.
 PERSICO, PRINCE OF PEACE
 CENTER, INC., ST. MARTIN
 CENTER, INC., THE ROMAN
 CATHOLIC DIOCESE OF ERIE.
 (Pohl, Paul) (Entered: 11/13/2013)

* * *

11/13/2013 59 Minute Entry for proceedings held
 before Judge Arthur J. Schwab:
 Motion Hearing held on 11/13/2013
 re MOTION for Preliminary
 Injunction filed by ERIE
 CATHOLIC PREPARATORY
 SCHOOL, PRINCE OF PEACE
 CENTER, INC., THE ROMAN
 CATHOLIC DIOCESE OF ERIE,
 LAWRENCE T. PERSICO, ST.
 MARTIN CENTER, INC. The
 Court hears argument from the
 parties. The Court rules that
 Exhibit No. P 93 is Admitted.
 Defense Counsel may file a
 supplement to Ex. No. P93 by
 11/15/13. Parties agree on exhibits
 admitted into the record. (Court
 Reporter: Richard Ford) (lck)
 (Entered: 11/13/2013)

* * *

11/15/2013 66 BRIEF in Support re 6 Motion for
 Preliminary Injunction (*Joint,*
Supplemental) filed by ERIE

- CATHOLIC PREPARATORY
SCHOOL, LAWRENCE T.
PERSICO, PRINCE OF PEACE
CENTER, INC., ST. MARTIN
CENTER, INC., THE ROMAN
CATHOLIC DIOCESE OF ERIE.
(Pohl, Paul) (Entered: 11/15/2013)
- 11/15/2013 67 BRIEF in Opposition to 6 MOTION
for Preliminary Injunction,
Supplemental filed by JACOB J.
LEW, THOMAS PEREZ,
KATHLEEN SEBELIUS, U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, U.S.
DEPARTMENT OF LABOR, U.S.
DEPARTMENT OF TREASURY.
(Humphreys, Bradley) (Entered:
11/15/2013)
- * * *
- 11/21/2013 75 MEMORANDUM OPINION RE: 6
Plaintiffs' Motions for Expedited
Preliminary Injunction. An
appropriate Order follows. Signed
by Judge Arthur J. Schwab on
11/21/2013. (lcb) (Entered:
11/21/2013)
- 11/21/2013 76 ORDER OF COURT GRANTING 6
Plaintiffs' Motions for Expedited
Preliminary Injunctions. Signed by
Judge Arthur J. Schwab on
11/21/2013. (lcb) (Entered:
11/21/2013)
- 12/13/2013 77 BRIEF in Opposition re 48 Motion
to Dismiss for Failure to State a

Claim, Motion for Summary Judgment, filed by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D) (Pohl, Paul) (Entered: 12/13/2013)

12/20/2013 78 Unopposed MOTION for Permanent Injunction by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Attachments: # 1 Proposed Order) (Pohl, Paul) (Entered: 12/20/2013)

12/20/2013 79 BRIEF in Support re 78 Motion for Permanent Injunction, filed by ERIE CATHOLIC PREPARATORY SCHOOL, LAWRENCE T. PERSICO, PRINCE OF PEACE CENTER, INC., ST. MARTIN CENTER, INC., THE ROMAN CATHOLIC DIOCESE OF ERIE. (Pohl, Paul) (Entered: 12/20/2013)

12/20/2013 80 NOTICE of Non-Opposition to Plaintiffs' Motion to Convert Preliminary Injunction into

Permanent Injunction by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY re 78 Motion for Permanent Injunction. (Humphreys, Bradley) (Entered: 12/20/2013)

12/20/2013 81 ORDER GRANTING 78 Unopposed Motion for Permanent Injunction. Signed by Judge Arthur J. Schwab on 12/20/13. (lck) (Entered: 12/20/2013)

02/11/2014 82 NOTICE OF APPEAL as to 81 Order on Motion for Permanent Injunction by JACOB J. LEW, THOMAS PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF TREASURY. Motion for IFP N/A. Certificate of Appealability N/A. Court Reporter(s): Richard Ford. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. The Transcript Purchase Order form will NOT be mailed to the parties. The form is

available on the Court's internet
site. (Humphreys, Bradley)
(Entered: 02/11/2014)

Third Circuit Court of Appeals

Court of Appeals Docket #:	Docketed: 02/24/2014
14-1377	Termed: 02/11/2015
Nature of Suit: 2440 Other	
Civil Rights	
David Zubik, et al v.	
Secretary United States	
Depart, et al	
Appeal From: United States	
District Court for the	
Western District of	
Pennsylvania	
Fee Status: NA	

Current Cases:

	Lead	Member	Start	End
joined	13-3536	14-1374	05/01/2014	
	13-3536	14-1376	05/01/2014	
	13-3536	14-1377	05/01/2014	

02/24/2014 CIVIL CASE DOCKETED. Notice filed by Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Labor and United States Department of the Treasury in District Court No. 2-13-cv-01459. (ARR)

* * *

02/24/2014 CLERK ORDER consolidating the
actions at Nos. 14-1376 and 14-1377 for

all purposes. The parties are advised that all case opening forms, motions and briefs must be electronically filed in all 14-1376] (ARR)

* * *

03/18/2014 ORDER (Clerk) Motion by Appellants to Consolidate Appeal Nos. 13-3536, 14-1374, 14-1376 and 14-1377 for purposes of filing a single opening brief and single reply brief and Responses are referred to a motions panel, filed. [13-3536, 13-2814, 14-1374, 14-1376, 14-1377] (TMM)

* * *

06/10/2014 ECF FILER: ELECTRONIC BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of Service dated 06/10/2014 by ECF. [Entry has been spread to case no. 14-1377] [13-3536, 14-1374, 14-1376, 14-1377]--[Edited 06/10/2014 by EMA] (ABK)

* * *

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Americans United for

Separation of Church and State in support of Appellant/Petitioner. Certificate of Service dated 06/17/2014. [13-3536, 14-1374, 14-1376, 14-1377] (ANK)

* * *

06/17/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Amici National Women's Law Center; American Association of University Women (AAUW); American Federation of State Health; Feminist Majority Foundation; Legal Momentum, Merger Watch; NARAL Pro Choice America; National Organization for Women (NOW) Foundation; National Partnership for Women and Planned Parenthood of Central and Greater Northern New Jersey, Inc.; Planned Parenthood of Delaware; Planned Parenthood Keystone; Planned Parenthood of Metropolitan New Jersey; Plan Parenthood of Southern New Jersey; Planned Parenthood of Western Pennsylvania; Population Connection; Raising Women's Voices for the Health Care We Need; Service Employees Internat Appellant/Petitioner. Certificate of Service dated 06/17/2014. [13-3563, 14-1374, 14-1376, 14-1377] (CED)

06/17/2014 ECF FILER: ELECTRONIC

AMICUS/INTERVENOR BRIEF on behalf of Amici Julian Bond, American Civil Liberties Union, and American Civil Liberties Union of Pennsylvania in support of App ECF. [13-3536, 14-1374, 13-1376 & 13-1377] (SJR)

* * *

07/08/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Proposed Amici-Appellants American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice Los Angeles, California Womens Law Center, Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Hispanic Medical Association, National Latina Institute for Reproductive Health, National Womens Health Network and Sexuality Information & Education Council of the United States in 13-3536, 14-1374, 14-1376, Proposed Amici-Appellants American Public Health Association, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice, Asian Americans Advancing Justice Los Angeles, California Womens Law Center,

Forward Together, HIV Law Project, Ipas, National Asian Pacific American Women Forum, National Family Planning & Reproductive Health Association, National Health Law Program, National Hispanic Medical Association, National Womens Health Network, Sexuality Information & Education Council of the United States and Proposed Intervenor-Appellant National Latina Institute for Reproductive Health in 14-1377 Amicus National Health Law Program, et al. in support of Appellant/Petitioner, filed. Certificate of Service dated 06/17/2014 by ECF. [13-3536, 14-1374, 14-1376, 14-1377] (SS)

* * *

07/28/2014 ECF FILER: ELECTRONIC BRIEF on behalf of Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377, filed. Certificate of Service dated 07/28/2014 by ECF. [Removed from 13-3536]--[Edited 07/29/2014 by EAF] (PMP)

* * *

08/06/2014 ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of Proposed Amici-Appellees American Bible Society, Association for Christian Schools International, Association of Gospel Rescue Missions, Christian Legal Society, Ethics and Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance, Lutheran Church Missouri Synod, National Association of Evangelicals and Prison Fellowship Ministries in 14-1376, 14-1377 in support of Appellee/Respondent, filed. Certificate of Service dated 08/06/2014 by ECF. F.R.A.P. 29(a) Permission: NO. [14-1376, 14-1377] (KWC)

* * *

08/11/2014 ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed. Certificate of Service dated 08/11/2014 by ECF. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

* * *

- 09/23/2014 ECF FILER: Letter dated 09/23/2014 , filed pursuant to Rule 28(j) from counsel for Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377. This document will be SENT TO THE MERITS PANEL, if/when applicable. [13-3536, 14-1374, 14-1376, 14-1377] (PN)
- 09/24/2014 ECF FILER: Response filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to Rule 28(j) letter. Certificate of Service dated 09/24/2014. This document will be SENT TO THE MERITS PANEL, if/when applicable. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)
- 09/25/2014 ECF FILER: ARGUMENT ACKNOWLEDGMENT filed by Attorney Paul M. Pohl, Esq. for Appellees Lawrence T. Persico, Roman Catholic Diocese of Erie, St Martin

Center Inc, Prince of Peace Center Inc. and Erie Catholic Preparatory School in 14-1376, Attorney Paul M. Pohl, Esq. for Appellees Roman Catholic Diocese of Pittsburgh, David A. Zubik and Catholic Charities Diocese of Pittsburgh Inc in 14-1377. Certificate of Service dated 09/25/2014. [14-1376, 13-3536, 14-1374, 14-1377] (PMP)

09/25/2014 ECF FILER: ARGUMENT ACKNOWLEDGMENT filed by Attorney Patrick Nemeroff, Esq. for Appellants Secretary United States Department of Labor, Secretary United States Department of the Treasury, United States Department of the Treasury, HHS, Secretary United States Department of Health and Human Services and United States Department of Labor in 13-3536, 14-1374, 14-1376, 14-1377. Certificate of Service dated 09/25/2014. [13-3536, 14-1374, 14-1376, 14-1377] (PN)

* * *

10/21/2014 ECF FILER: ELECTRONIC SUPPLEMENTAL BRIEF on behalf of Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh

and David A. Zubik in 14-1377, filed. Certificate of Service dated 10/21/2014 by ECF, US mail. [14-1376, 14-1377] (PMP)

10/21/2014 ECF FILER: ELECTRONIC SUPPLEMENTAL BRIEF on behalf of Appellants Secretary United States Department of Health and Human Services, Secretary United States Department of Labor, Secretary United States Department of the Treasury, HHS, United States Department of Labor and United States Department of the Treasury in 13-3536, 14-1374, 14-1376, 14-1377, filed in accordance to the Court's letter of 10/07/2014. Certificate of Service dated 10/21/2014 by ECF. [13-3536, 14-1374, 14-1376, 14-1377]--[Edited 10/21/2014 by TLG] (PN)

* * *

11/19/2014 ARGUED on Wednesday, November 19, 2014. Panel: McKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges. Gregory S. Baylor arguing for Appellees Geneva College, Wayne Hepler and Carrie E. Kolesar; Paul M. Pohl arguing for Appellees Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and Roman Catholic Diocese of Pittsburgh; Mark B. Stern arguing for Appellants Secretary United States Department of

the Treasury, United States Department of Health and Human Services and United States Department of Labor. [13-3536, 14-1374, 14-1376, 14-1377] (TLG)

* * *

- 02/11/2015 PRECEDENTIAL OPINION Coram: MCKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges. Total Pages: 49. Judge: RENDELL Authoring. [13-3536, 14-1374, 14-1376, 14-1377] (PDB)
- 02/11/2015 JUDGMENT, Reversed. Costs taxed against Appellees. All of the above in accordance with the Opinion of this Court. [13-3536, 14-1374, 14-1376, 14-1377] (PDB)
- 03/26/2015 ECF FILER: Petition filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 for Rehearing before original panel and the court en banc. Certificate of Service dated 03/26/2015. [14-1376, 14-1377]--[Edited 03/27/2015 by TMM] (PMP)
- 04/06/2015 ORDER (MCKEE, Chief Judge, RENDELL, AMBRO, FUENTES, SMITH, FISHER, CHAGARES,

JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, SHWARTZ, KRAUSE and *SLOVITER, Circuit Judges) denying Petition for En Banc and for Panel Rehearing filed by Appellees Lawrence T. Persico, Roman Catholic Diocese of Erie, St Martin Center Inc, Prince of Peace Center Inc. and Erie Catholic Preparatory School, Appellees Roman Catholic Diocese of Pittsburgh, David A. Zubik and Catholic Charities Diocese of Pittsburgh Inc, filed. Rendell, Authoring Judge. (*Judge Sloviter is limited to Panel Rehearing Only.) [14-1376, 14-1377] (CJG)

04/09/2015 ECF FILER: Motion filed by Appellees Erie Catholic Preparatory School, Lawrence T. Persico, Prince of Peace Center Inc., Roman Catholic Diocese of Erie and St Martin Center Inc in 14-1376, Appellees Catholic Charities Diocese of Pittsburgh Inc, Roman Catholic Diocese of Pittsburgh and David A. Zubik in 14-1377 to stay mandate. Certificate of Service dated 04/09/2015. [14-1376, 14-1377] (PMP)

04/15/2015 ORDER (MCKEE, Chief Judge, RENDELL and SLOVITER, Circuit Judges) Appellees' Motion to stay mandate pending Petition for Writ of Certiorari is denied, filed. McKee, Authoring Judge. [14-1376, 14-1377] (TMM)

- 04/15/2015 MANDATE ISSUED, filed. [14-1376, 13-3536, 14-1374, 14-1377] (TMM)
- 04/16/2015 ORDER (Clerk) By order entered April 15, 2015, the Supreme Court of the United States order that the mandate issued by the Third Circuit Court of Appeals be recalled and stayed pending receipt of a response and further order of the Supreme Court. In accordance with this directive, it is hereby ORDERED that the mandate issued in this matter is hereby recalled, filed. [14-1376, 14-1377] (TMM)
- 06/03/2015 NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by Lawrence T. Persico on 05/29/2015 and placed on the docket 06/02/2015 as Supreme Court Case No. 14-1418. [14-1376, 14-1377] (CND)
- 06/29/2015 NOTICE of Order from U.S. Supreme Court dated 06/29/2015 The application for an order recalling and staying the issuance of the mandate of the Court of Appeals pending the filing and disposition of a petition for a writ of certiorari having been submitted to Justice Alito and by him referred to the Court, the application as presented as denied. (CRG)

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

MOST REVEREND)	
LAWRENCE T. PERSICO,	)	CIVIL ACTION
BISHOP OF THE ROMAN	)	NO. 1:13-00303
CATHOLIC DIOCESE OF)	
ERIE, et al.,)	
PLAINTIFFS	)	JUDGE ARTHUR
	)	J. SCHWAB
v.)	
KATHLEEN SEBELIUS,)	
et al.,)	
DEFENDANTS.)	
)	
)	

MOST REVEREND	)	CIVIL ACTION
DAVID A. ZUBIK,	)	NO. 2:13-cv-01459
BISHOP OF THE ROMAN)	
CATHOLIC DIOCESE OF)	
PITTSBURGH, et al.,	)	JUDGE ARTHUR
PLAINTIFFS,	)	J. SCHWAB
)	
v.)	
KATHLEEN SEBELIUS,)	
et al.,)	
DEFENDANTS.)	
)	

STIPULATION TO UNDISPUTED FACTS

The following facts are undisputed for the Court's consideration of Plaintiffs' pending Motions for Preliminary Injunctions:

I. STATUTORY AND REGULATORY HISTORY

A. Statutory Background

1. In March 2010, Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (collectively, the “Affordable Care Act,” “ACA,” or the “Act”).
2. The Act established new requirements for “group health plan[s],” broadly defined as “employee welfare benefit plan[s]” within the meaning of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1002(1), that “provide[] medical care . . . to employees or their dependents.” 42 U.S.C. § 300gg-91(a)(1).
3. Section 1001 of the Patient Protection and Affordable Care Act (“ACA”) requires all group health plans and health insurance issuers that offer non-grandfathered, non-exempt group or individual health coverage to provide coverage for certain preventive services without cost-sharing, including, “[for] women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration [(HRSA)].” 42 U.S.C. § 300gg-13(a)(4).
4. The Affordable Care Act provides that certain of its provisions apply to “grandfathered health plans” and certain of its provisions, including 42 U.S.C. § 300gg-13, do not apply to “grandfathered health plans.” 42 U.S.C. § 18011.

B. Regulatory Background

**(1) Rulemaking from July 2010 to
March 2012**

5. On July 19, 2010, Defendants issued interim final rules, incorporating the statutory requirement that group health plans provide coverage for women's "preventive care." 75 Fed. Reg. 41,726 (citing 42 U.S.C. § 300gg-13(a)(4)).
6. These initial rules did not define "preventive care," noting that "[t]he Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011." *Id.* at 41,731.
7. At that time, there were no existing HRSA guidelines relating to preventive care and screening for women.
8. The Department of Health and Human Services ("HHS") tasked the Institute of Medicine ("IOM"), a non-governmental organization, with "review[ing] what preventive services are necessary for women's health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women." IOM Report at 2, AR at 300.
9. On July 19, 2011, the IOM Committee released a report entitled "Clinical Preventive Services for Women: Closing the Gaps 19-20, 109 (2011) ("IOM Report") (AR at 317-18).
10. The IOM Report recommended that the HRSA guidelines include, among other things, "the full range of [FDA]-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity" ("Preventive Services"). IOM Report at 10-12, AR at 308-10.

11. FDA-approved contraceptive methods include diaphragms, oral contraceptive pills, emergency contraceptives (such as Plan B and Ella), and intrauterine devices (“IUDs”). *See id.* at 105, AR at 403.
12. The IOM Report included a dissent from Committee member Anthony Lo Sasso.
13. On August 1, 2011, HHS issued a press release announcing that it would adopt the recommendations of the IOM Report. U.S. Dept. of Health and Human Services, “Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost,” *available at* <http://www.hhs.gov/news/press/2011pres/08/20110801b.html>.
14. Also on August 1, 2011, HRSA adopted guidelines consistent with IOM’s recommendations, encompassing all FDA-approved “contraceptive methods, sterilization procedures, and patient education and counseling,” as prescribed by a health care provider, subject to an exemption relating to certain religious employers authorized by regulations issued that same day (the “2011 amended interim final regulations”). *See* HRSA, Women’s Preventive Services: Required Health Plan Coverage Guidelines (“HRSA Guidelines”), AR at 283-84.
15. In August 2011, Defendants issued interim final rules implementing the statutory requirement that group health plans provide coverage for women’s “preventive care and screenings . . . as provided for in comprehensive guidelines supported by [HRSA].” 76 Fed. Reg. 46,621, 46,623 (Aug. 3, 2011).

16. The August 2011 interim final rules also amended the July 19, 2010 to provide HRSA additional discretion to exempt “religious employers” from the contraceptive coverage requirement. *Id.*
17. To qualify for the religious employer exemption contained in the 2011 amended interim final regulations, an employer had to meet the following criteria:
 - a. The inculcation of religious values is the purpose of the organization;
 - b. the organization primarily employs persons who share the religious tenets of the organization;
 - c. the organization serves primarily persons who share the religious tenets of the organization; and
 - d. 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 46,623, AR at 220.

18. Defendants sought “to provide for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions.” *Id.*
19. In February 2012, the Government “finalize[d], without change,” the exemption as originally proposed in the August 2011 interim final rules. 77 Fed. Reg. at 8,729 (Feb. 15, 2012).
20. In February 2012, the Government also created a “one-year safe harbor from enforcement” for non-

grandfathered group health plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage. *See* 77 Fed. Reg. 8725, 8726-28 (Feb. 15, 2012), AR at 213-14.

21. The Government undertook a new rulemaking during the safe harbor period to adopt new regulations applicable to non-grandfathered non-profit religious organizations with religious objections to covering Preventive Services. *Id.* at 8728, AR at 215.
22. On March 21, 2012, the Government issued an Advance Notice of Proposed Rulemaking (“ANPRM”) that stated it was part of Defendants effort “to develop alternative ways of providing contraceptive coverage without cost sharing in order to accommodate non-exempt, non-profit religious organizations with religious objections to such coverage.” 77 Fed. Reg. 16,501, 16,503 (Mar. 21, 2012).

(2) Rulemaking from February to July 2013

23. On February 1, 2013, Defendants issued a Notice of Proposed Rulemaking (“NPRM”), setting forth a proposal that stated it was to “amend the criteria for the religious employer exemption to ensure that an otherwise exempt employer plan is not disqualified because the employer’s purposes extend beyond the inculcation of religious values or because the employer serves or hires people of different religious faiths,” and to “establish accommodations for health coverage established or maintained by eligible organizations, or arranged by eligible organizations that are religious institutions of higher education, with religious

objections to contraceptive coverage.” *See* 78 Fed. Reg. 8456 (Feb. 6, 2013).

24. Defendants received over 400,000 comments (many of them standardized form letters) in response to the proposals set forth in the NPRM. 78 Fed. Reg. 39,870, 39,872 (July 2, 2013).
25. On June 28, 2013, the Government issued final rules adopting and/or modifying proposals in the NPRM. *See* 78 Fed. Reg. 39,870 (“Final Rule”).
26. The regulations challenged here (the “2013 final rules”) include the new regulations issued by the Government and applicable to non-grandfathered non-profit religious organizations with religious objections to covering Preventive Services. *See* 78 Fed. Reg. 39,870, AR at 1-31; *see also* 77 Fed. Reg. 16,501 (ANPRM), AR at 186-93; 78 Fed. Reg. 8456 (NPRM), AR at 165-85.

a. The 2013 Final Rules’ Religious Employer Exemption

27. The Final Rule states that it “simplif[ied] and clarif[ied] the definition of “religious employer.” 78 Fed. Reg. at 39,871.
28. Under the new definition, an exempt “religious employer” is “an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.” 78 Fed. Reg. 39874 (codified at 45 CFR § 147.131(a)).
29. The groups that are “referred] to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code,” are:
 - a. (i) “churches, their integrated auxiliaries, and conventions or associations of churches,” and

- b. “(iii) the exclusively religious activities of any religious order.”

26 U.S.C. § 6033(a)(3)(A)(i) or (iii).

30. Section 6033 of the Internal Revenue Code addresses whether and when nonprofit entities that are exempt from paying taxes under the Code must file “annual information [tax] return[s].” 26 C.F.R. § 1.6033-2(a).

31. The new definition of “religious employer” does “not expand the universe of religious employers that qualify for the exemption beyond that which was intended in the 2012 final regulations.” 78 Fed. Reg. at 39,874 (citing 78 Fed. Reg. 8461).

32. Entities that are included in Section 6033(a)(3)(A) are exempt from filing an annual Form 990 with the IRS.

33. The IRS has developed a non-exhaustive list of fourteen facts and circumstances that may be considered, in addition to “any other facts and circumstances that may bear upon the organization’s claim for church status,” in assessing whether an organization is a “church” under section 6033(a)(3)(A)(i) of the Internal Revenue Code, *see Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009); Internal Revenue Manual 7.26.2.2.4, which includes a determination of whether the group has:

- a. “a recognized creed and form of worship,”
- b. “a definite and distinct ecclesiastical government,”

- c. “a formal code of doctrine and discipline,”
- d. “a distinct religious history,”
- e. “an organization of ordained ministers”
- f. “a literature of its own,”
- g. “established places of worship,”
- h. “regular congregations,
- i. “regular religious services,”
- j. “Sunday schools for the religious instruction of the young,” and
- k. “schools for the preparation of its ministers.” *Id.*

34. In 26 C.F.R. § 1.6033-2(h), the Treasury Regulations provide a 3-factor test to determine whether a group is an “integrated auxiliary” under section 6033(a)(3)(A)(i) of the Internal Revenue Code. The organization must be:

- a. “Described in both sections 501(c)(3) and 509(a)(1), (2), or (3);”
- b. “Affiliated with a church or a convention or association of churches;” and
- c. “Internally supported.”

35. An organization is internally supported includes only if it:

- a. “Offers admissions, goods, services or facilities for sale,” only “on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an

insubstantial portion of the cost);
and”

- b. “Normally receives” 50 percent or less “of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.”

- 36. An entity’s eligibility for exemption as a religious employer is determined on an employer-by-employer basis. *See* 78 Fed. Reg. at 39,886.
- 37. An entity that offers a health plan to its employees that is administered by a qualified religious employer must independently qualify for the religious employer exemption to be exempt. 78 Fed. Reg. 39,886; *see also* 78 Fed. Reg. at 8456, 8463.
- 38. The 2013 final rules’ amendments to the religious employer exemption apply to group health plans and group health insurance issuers for plan years beginning on or after August 1, 2013, *see id.* at 39,871, AR at 3.

**b. The 2013 Final Rules’
“Accommodation”**

- 39. The 2013 final rules establish regulations regarding the contraceptive coverage requirement for group health plans established or maintained by “eligible organizations.” 78 Fed. Reg. at 39,875-80, AR at 7-12; 45 C.F.R. § 147.131(b).

40. An “eligible organization” is an organization that satisfies the following criteria:

- a. The organization opposes providing coverage for some or all of any contraceptive services required to be covered under § 147.130(a)(1)(iv) on account of religious objections.
- b. The organization is organized and operates as a nonprofit entity.
- c. The organization holds itself out as a religious organization.
- d. The organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the criteria in paragraphs (b)(1) through (3) of this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (c) of this section applies.

45 C.F.R. § 147.131(b); *see also* 78 Fed. Reg. at 39,874-75, AR at 6-7.

41. The 2013 final rules state that an eligible organization is not required “to contract, arrange, pay, or refer for contraceptive coverage” to which it has religious objections. 78 Fed. Reg. at 39,874, AR at 6.

42. To be relieved of the obligations that otherwise apply to non-grandfathered non-exempt employers, the 2013 final rules require that an eligible organization complete a self-certification form, certifying that it is an eligible organization and

provide a copy of that self-certification to its insurer or TPA. *Id.* at 39,878-79.

43. For self-insured organizations, the self-certification “will afford the [TPA] notice of [its] obligations” under the 2013 final rules, “and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA.” 78 Fed. Reg. at 39,879.
44. Section 3(16) of ERISA provides the definition of “administrator” under ERISA. 29 U.S.C. § 1002(16).
45. Under the 2013 final rules, in the case of an eligible organization with a self-insured group health plan, the organization’s TPA, upon receipt of the self-certification, will provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan without cost-sharing, premium, fee, or other charge to plan participants or beneficiaries, or to the eligible organization or its plan. *See id.* at 39,879-80, AR at 11-12; 26 C.F.R. § 54.9816-2713A(b)(2), (c)(2).
46. Under the 2013 final rules, costs incurred by TPAs relating to the coverage of Preventive Services for employees of eligible organizations will be reimbursed through an adjustment to Federally-facilitated Exchange (FFE) user fees. *See* 78 Fed. Reg. at 39,880, AR at 12.
47. The payments for Preventive Services required by the challenged regulations applicable to employer-sponsored health insurance plans are available to an employee only while the employee is on an organization’s health plan. 29 C.F.R. § 2590.715-2713; 45 C.F.R. § 147.131(c)(2)(i)(B).

48. Self-insured religious employers and eligible organizations are prohibited from “directly or indirectly, seek[ing] to influence the[ir] third party administrator’s decision” to provide or procure Preventive Services. 26 C.F.R. § 54.9815-2713.
49. The 2013 final rules’ “accommodation” applies to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014. *See id.* at 39,872, AR at 4.

(3) Enforcement of the Regulations

50. Federal law provides four mechanisms to enforce the challenged regulations:
 - a. Certain employers whose group health plans fail to provide certain required coverage may be subject to a penalty of \$100 a day per affected beneficiary. *See* 26 U.S.C. § 4980D(b).
 - b. Participants in ERISA-covered plans can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B), and an action for other appropriate equitable relief to address violations of ERISA or plan terms, 29 U.S.C. § 1132(a).
 - c. The Secretary of Labor may bring an enforcement action against ERISA-covered group health plans of employers that violate the challenged regulations, as incorporated by ERISA. *See* 29 U.S.C. § 1132(a)(5), (b)(3).

- d. The Secretary of HHS may impose a civil monetary penalty on insurers that provide group health plans that fail to provide certain required coverage. 42 U.S.C. § 300gg-22(b)(2)(C)(i).

51. Federal law also provides that certain employers who do not offer “minimum essential coverage” are subject to an assessable payment approximately equal to an annual amount of \$2,000 per full time employee, after the first 30 employees, provided that at least one of its full-time employees enrolls in a qualified health plan through a federal Exchange and qualifies for the premium tax credit or cost sharing reductions. See 26 U.S.C. § 4980H(a), (c)(1).

II. PLAINTIFF-SPECIFIC FACTS

A. *Persico* Plaintiffs

- 52. For purposes of ruling on Plaintiffs’ motion for preliminary injunction, the Government does not contest the declarations of the following individuals:
- 53. Declaration of Fr. Scott W. Jabo for Erie Catholic Preparatory School. (Ex. 1.)
- 54. Declaration of Mary Maxwell for St. Martin Center, Inc. and Prince of Peace Center, Inc. (Ex. 2.)
- 55. Declaration of David J. Murphy for the Roman Catholic Diocese of Erie, St. Martin Center, Inc., Price of Peace Center, Inc., and Erie Catholic Preparatory School. (Ex.3.)
- 56. Declaration of Fr. Scott Detisch for the Roman Catholic Diocese of Erie, St. Martin Center, Inc.,

Price of Peace Center, Inc., and Erie Catholic Preparatory School (Ex.4.)

(1) Diocese of Erie

57. The Diocese encompasses thirteen counties in Northwestern Pennsylvania.
58. The Diocese carries out its Christ-centered mission in three main ways:
59. by educating children within the Diocese;
60. by promoting spiritual growth, including conducting religious services, operating seminaries and hosting religious orders.
61. through community service.
62. The Diocese operates thirty elementary schools, three middle schools, and six secondary schools, which educate over 6,400 students.
63. The Diocese educates students of all religions and offers tuition assistance for students who otherwise would have no alternative to the public school system.
64. Tuition assistance determinations made for Diocesan students are based solely on financial need.
65. The Diocese consists of 117 parishes serving a thirteen-county region, including a Catholic population of approximately 187,500 people.
66. Geographically, it is the largest diocese in Pennsylvania.
67. Bishop Persico publishes FAITH Magazine of the Catholic Diocese of Erie, the largest family publication in Northwestern Pennsylvania.
68. 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>.

69. The Diocese serves many more thousands of Northwestern Pennsylvania residents through its social service arms.
70. Many Northwestern Pennsylvania residents are served by the Diocese’s prison ministry, family ministry, disability ministry, international Diocesan missions, various respect life organizations, pregnancy counseling services, work with new mothers, and the numerous secular and religious charities that receive the Diocese’s financial support, including:
 71. *St. Elizabeth Center*, a food pantry, thrift store, and clothing shop for low-income individuals;
 72. *The Good Samaritan Center*, a shelter for homeless men and provider of an emergency one-family apartment and other emergency assistance;
 73. *Better Homes for Erie*, a provider of affordable housing to low-income families; and
 74. *Catholic Charities Counseling and Adoption Services*, a provider of professional counseling, adoption counseling, pregnancy counseling, and refugee resettlement services.
75. These social service programs, which receive support from the Diocese, provide aid to approximately 56,000 people per year.
76. Many of the individuals being served through these charitable programs would be without food, shelter, and other necessary services without the support of the Diocese.

77. 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.

(2) Prince of Peace Center, Inc. and St. Martin Center, Inc.

78. 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.

79. 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.

80. The services offered by Prince of Peace Center include:

81. *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.

82. *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.
83. *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.
84. *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.

85. *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. 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.
86. *Computer classes* for adults and seniors. Students who pass the class receive a free donated and refurbished computer.
87. *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.
88. The services provided by St. Martin Center include:
89. *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.
90. *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.

91. *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.
92. *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
93. *PA WORKWEAR*, a provider of men's clothing for interviewing and entering the workforce.
94. The majority of the individuals served by Prince of Peace Center and St. Martin Center are below the poverty line and would be without food and shelter, and other necessary services if not for the Prince of Peace Center and St. Martin Center.
95. Prince of Peace Center and 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.

(3) Erie Catholic Preparatory School

96. Erie Catholic Preparatory School is an affiliated corporation of the Diocese.
97. The Diocese directly oversees the management of Erie Catholic Preparatory School.
98. Erie Catholic Preparatory School was formed in 2010 by a merger between the formerly co-educational, but now all-female Villa Maria

Academy and the all-male Cathedral Preparatory School.

99. Villa Maria Academy and Cathedral Preparatory School, which together form Erie Catholic Preparatory School, have separate single-sex campuses.
100. In the early 1890's, Father Thomas Casey donated property for a school for females to be operated by the Sisters of St. Joseph. This institution soon became known as Villa Maria Academy.
101. Villa Maria Academy is the oldest of the three Catholic high schools in Erie.
102. The original Cathedral Preparatory School for Boys was formed in 1921 by Bishop John Mark Gannon recognizing that "[m]any Catholics, although highly intelligent and deserving, were denied the chance to receive a preparatory education because they were poor."
103. Its vision is "[s]teeped in Gospel values and the mission of the Catholic Church, Cathedral Preparatory School and Villa Maria Academy will excel as a teaching and learning community fostering service, strong moral character, global leadership, and esteemed academic success."
104. As part of the spiritual life at Erie Catholic Preparatory School, mass is celebrated daily.
105. Students of Erie Catholic Preparatory School are required to take four years of Theology.
106. Each year, students are required to complete a service project including verification of 25 hours of qualified community service and a reflection component.

107. Erie Catholic Preparatory School offers religious retreats and publicizes volunteer opportunities for its students.
108. Erie Catholic Preparatory School currently has approximately 870 students, with approximately 550 students attending Cathedral Preparatory School and approximately 320 students attending Villa Maria Academy.
109. In 2013, 100 percent of Cathedral Preparatory School's 143 graduates were accepted to four-year colleges.
110. In the past two years, 96 percent of Villa Maria Academy graduates enrolled in a college or university.
111. The Diocese offers financial aid to students of Erie Catholic Preparatory School through the Bishop Assistance plan and the STAR Foundation.
112. Erie Catholic Prep is exempt from filing Form 990. 26 C.F.R. § 1.6033-2(g)(vii)
113. Erie Catholic Prep is not exempt from the challenged regulations because it is not an "integrated auxiliary" under the definition in 26 C.F.R. § 1.6033-2(h).

B. *Zubik* Plaintiffs

114. For purposes of ruling on Plaintiffs' motion for preliminary injunction, the Government does not contest the declarations of the following individuals:
115. Declaration of Susan Rauscher for Catholic Charities of the Diocese of Pittsburgh, Inc. (Ex. 5.)
116. Declaration of David S. Stewart for the Roman Catholic Diocese of Pittsburgh and Catholic Charities of the Diocese of Pittsburgh, Inc. (Ex. 6.)

117. Declaration of Fr. Ronald P. Lengwin for the Roman Catholic Diocese of Pittsburgh and Catholic Charities of the Diocese of Pittsburgh, Inc. (Ex. 7.)

(1) The Diocese of Pittsburgh

118. The Bishop in his capacity as Bishop of the Diocese also serves as Trustee for 200 parishes and their charitable trusts.

119. The Diocese provides services throughout six counties in Southwestern Pennsylvania—Allegheny, Beaver, Butler, Greene, Lawrence, and Washington Counties—including a Catholic population of approximately 700,000 people.

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

121. The Diocese serves the community through its affiliated Catholic schools.

122. The Diocese's Catholic schools include approximately 11 high schools, 66 elementary schools, two non-residential schools for individuals with disabilities, and various preschool programs.

123. The Diocese's schools educate approximately 22,000 students.

124. Only three school districts in the entire Commonwealth of Pennsylvania educate more children than the Diocese.

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

126. Eight Catholic high schools are affiliated with the Diocese, including Bishop Canevin High School, Central Catholic High School, Cardinal Wuerl North Catholic High School, Oakland Catholic High School,

Quigley Catholic High School, Saint Joseph High School, Serra Catholic High School, and Seton-La Salle Catholic High School.

127. Ninety-nine percent of senior high school students in the Diocesan schools graduate and 97% continue further education after high school.

128. Many of the Diocesan schools are located in districts where the public schools are “failing.”

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

130. The challenged regulations will result in the elementary schools within the Diocese being treated differently, in that certain elementary schools within the Diocese will be exempt from compliance with the regulations while others will not.

131. The Diocese also provides numerous other social services to the residents of its six-county community. These services are provided without regard to national origin, race, color, sex, religion, age, or disability.

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

133. The Catholic Benefits Trust was formed in June 2013 by an agreement between the Diocese of Pittsburgh, the Diocese of Altoona-Johnstown, and

the Diocese of Greensburg (the “Trust Agreement”) in an effort to pool resources with regard to health benefits.

134. The Catholic Benefits Trust provides coverage to “Diocesan Entit[ies],” defined in the Trust Agreement as “any Agency, Parish, School, seminary or other similar entity subject to the supervision, or administrative and pastoral care, of a Diocese.”

(2) Catholic Charities of the Diocese of Pittsburgh, Inc.

135. Catholic Charities provides approximately 230,000 acts of service for people in need in Southwestern Pennsylvania.

136. Catholic Charities has approximately 115 employees.

137. Catholic Charities has offices in all six counties that the Diocese serves.

138. Catholic Charities serves the needy, underserved, and underprivileged in countless ways. Its programs and services include adoption, counseling, safety net and stability services, health care for the uninsured, housing and homeless assistance, pregnancy and parenting support, and refugee and senior services. Catholic Charities also maintains crisis pregnancy assistance and post-abortion healing ministries.

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

140. Catholic Charities offer a post-abortion healing retreat to individuals struggling with the emotional and spiritual pain of abortion.

141. Catholic Charities is able to serve the Southwestern Pennsylvania community through

its “Ambassadors of Hope,” the hundreds of men, women, and teens who volunteer their time in support of the various social service programs run by Catholic Charities and answer the call of their faith to serve all in need, regardless of religious affiliation.

142. Through its various social service programs, in 2012, Catholic Charities provided approximately 68,141 meals to the hungry, 14,430 hours of case management to struggling individuals and families, and participated in 16,542 patient visits.
143. Catholic Charities supports additional programs, including: the Catholic Charities Free Health Care Center, St. Joseph House of Hospitality, Team HOPE, and two centers for seniors.
144. Catholic Charities, through its wholly-owned subsidiary the Catholic Charities Free Health Care Center, provides quality medical and dental care at no cost to the working poor.
145. The Free Health Care Center is the only free health care facility of its kind in the Pittsburgh region that serves low or moderate income individuals who do not have employer-sponsored health insurance, cannot afford private insurance, or who do not qualify for Medicaid or other types of assistance.
146. The Catholic Charities Free Health Care Center is critical to that underserved population who typically delay medical and dental visits, thereby magnifying health problems, overburdening emergency rooms, and disrupting their employers’ work flow. The free health services provided at the

Catholic Charities Free Health Care Center in 2012 are valued at nearly \$1.5 million.

147. Since opening in November 2007, the Catholic Charities Free Health Care Center has provided free, quality preventive and primary care to nearly 15,000 individuals during more than 35,000 patient visits.
148. Like all Catholic Charities' programs, the Free Health Care Center treats clients without discrimination as to their race, religion, sex, national origin, age, or any disability.
149. Catholic Charities also supports a pregnancy and parenting support program throughout the six counties of the Diocese of Pittsburgh. Last year, 2,545 parents accessed these services.
150. Catholic Charities supports Team HOPE (help on the path to empowerment), which provides individualized service plans to help the needy gain independence. In a 2012 audit by Allegheny County, a funder of the program, Team HOPE was congratulated for achieving outstanding results having exceeded in enrollment in the program by 108% and helping 93% of participants in the program find employment in the first 6 months.
151. Catholic Charities supports St. Joseph House of Hospitality, a residential and transitional housing facility located in Pittsburgh's Hill District, which provides rooms, meals, and supportive services to men over 50 who are homeless or at risk for homelessness.
152. Catholic Charities also supports two centers for seniors. One of those centers is Challenges: Options in Aging, a facility located in Lawrence County that provides recreational, social,

protective, and educational services, as well as in-home services, to the aging. This program provided 167,721 acts of service to older individuals in the past calendar year.

153. Donors are the life blood of Catholic Charities and make the mission of Catholic Charities, its programs, and its Free Health Care Center possible.

154. The Diocese provides funding to Catholic Charities, its programs, and the Free Health Care Center.

Dated: November 7, 2013 Respectfully submitted,

STUART F. DELERY

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General

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MOST REVEREND DAVID) CIVIL
A. ZUBIK, BISHOP OF THE) ACTION NO.
ROMAN CATHOLIC) 2:13-cv-01459
DIOCESE OF PITTSBURGH,) JUDGE
et al.,) ARTHUR J.
PLAINTIFFS,) SCHWAB
v.)
KATHLEEN SEBELIUS,)
et al.,)
DEFENDANTS.)

Plaintiffs give notice of filing the following materials as part of the record in the above-captioned matters:

1. The final transcript and exhibits from the deposition of Cardinal Timothy Dolan taken on November 7, 2013 are attached as Exhibit A to this filing.

Dated: November 12, 2013

Respectfully submitted,

/s/ Paul M. Pohl

Paul M. Pohl (PA ID No. 21625)

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

MOST REVEREND
LAWRENCE T. PERSICO,
BISHOP OF THE ROMAN
CATHOLIC DIOCESE OF
ERIE, et al.,

Plaintiffs,

v.

KATHLEEN SEBELIUS, et al.,
Defendants.

CIVIL ACTION
NO.
1:13-00303

MOST REVEREND DAVID A.
ZUBIK, BISHOP OF THE
ROMAN CATHOLIC DIOCESE
OF PITTSBURGH, et al., :

Plaintiffs,

v.

KATHLEEN SEBELIUS, et al.,
Defendants.

CIVIL ACTION
NO.
2:13-cv-01459

* * *

**VIDEOTAPED DEPOSITION OF
CARDINAL TIMOTHY MICHAEL DOLAN**

* * *

November 7, 2013
3:30 p.m.

Reported by:

Monique Vouthouris, CCR, RPR, CRR

* * *

[35]

Q. Okay. Now, you've raised, I think in an earlier answer a minute ago, you raised an additional point with respect to the exemption in the regulation for houses of worship and the definitions used in the related regulations for what has been called religious employers. You mentioned the houses of worship.

Now, can you explain for the Court whether the practice of the Catholic faith is limited to just prayer and worship in a house of worship or a church?

[36]

A. It isn't. And it's not just Catholic. I would maintain it's the Christian world view. Jesus said: Let your light shine before the world. So what we do in worship for an hour on Sunday morning is meant to radiate in everything that we do. The last words we hear at Sunday mass in our—we don't use the term "house of worship," but the last word we would hear in our parish church would be: Go live the mass. And when we came back to mass the next Sunday the first thing we do is now call to mind the ways you haven't lived up to what you—what you professed this last week and ask God's mercy.

The crux of religion is what happens on Monday, not what happens on Sunday. We don't call them house—I don't say I belong to the cathedral house of worship. My people would say: I belong to St. Patrick's Cathedral parish, because a parish for a Catholic, yeah, it's—it's worship on Sunday, but it's also the school, it's also the soup kitchen, it's also the homeless shelter, it's also the—the food bank. It's

everything that we do as followers of Jesus Christ. To separate that from worship is, first of all, would be contrary to our view of what Our Lord intended, and, secondly, is no business of government to make that distinction.

[37]

Q. So, in view of those factors you just outlined, do the new definitions being used in the preventive services mandate in connection with religious employers who are exempt and those who can seek an accommodation, does that adversely affect the Catholic Church?

MR. HUMPHREYS: Objection; leading.

Q. Or not?

A. I'm sorry, the—

Q. Does this new definition that splits houses of worship off from other Catholic organizations that practice their faith in other ways, does that impact the Catholic Church adversely at all?

A. Sure, it does. You want me to give examples?

Q. Please.

A. Yeah. Now, so, what, in the exemption the secretary at the parish is going to be exempt. The one that works in the—in the soup kitchen is not. Now, that's—that's a distinction that is alien to us as believers and that's a distinction that we bristle at the government telling us is—is one that we have to live by.

Q. Is this the first time, to your

[38]

knowledge, that the U.S. Government has sought to split the exercise of the Catholic or Christian faith in this fashion?

A. I like the word “free exercise.” You’re the lawyers at the table; you know more about it than I do. But I like the word “free exercise”. Okay. So we’re talking about exercising our faith. I think the Constitution uses freedom of religion and not freedom of worship. I don’t know. I think it’s—it’s freedom of religion. And that to us means everything. That’s your daily life. That’s everything we do, dream, believe, breathe, wake, sleep, is our—is our faith.

And to your direct question, I’m unaware of any time the Government of the United States has ever tried to make that distinction. In fact, as a historian of the Catholic Church of the United States, that’s one of the reasons my ancestors came here, is because this was a country that said we will respect the sanctuary of conscience and we don’t have any business defining your religion for you.

* * *

**DECLARATION OF SUSAN RAUSCHER FOR
CATHOLIC CHARITIES OF THE DIOCESE OF
PITTSBURGH, INC.**

2. I am employed as the Executive Director of Catholic Charities of the Diocese of Pittsburgh, Inc. ("Catholic Charities"). I have been so employed since 2008. Prior to that time, I was employed as the

Secretary for Social Concerns for the Roman Catholic Diocese of Pittsburgh.

3. Based upon my job responsibilities and experience, I am personally familiar with employee relations at Catholic Charities, including benefit packages offered to employees.

4. Additionally, based on my job responsibilities and experience, I am personally familiar with the role of the Bishop and the Diocese in overseeing the Membership Board of Catholic Charities, an affiliated non-profit corporation of the Diocese. Catholic Charities is run by a Membership Board, which oversees a Board of Directors to manage the daily affairs of the corporation. Catholic Charities is an integral entity within the Diocese, as the primary social service agency of the Diocese under the leadership of the Bishop. The Diocesan Bishop, Vicar General of the Diocese, and an appointed priest representative from each county all serve on the Membership Board of Catholic Charities. The Bishop serves as Chairman of the Membership Board. Catholic Charities is therefore required to adhere to Catholic doctrine at all times and in all manners.

5. I am also personally familiar with the social services that Catholic Charities provides throughout Southwestern Pennsylvania and the resources necessary to sustain those social services.

6. The facts set forth herein are based upon my personal knowledge and information available to me in the above-referenced capacity, and if I were called upon to testify to them, I could and would competently do so.

I. *Catholic Charities' Health Plan*

7. Catholic Charities currently provides health insurance coverage to approximately 80 full-time employees and their dependants (for a total of approximately 300 insured individuals) through one of the Diocese's current employee health plan options ("Catholic Charities' Health Plan") that is self-insured by the Diocese through the Catholic Benefits Trust (the "Trust"). Third-party administrators ("TPAs") Highmark Inc. and UPMC administer that plan.

8. Catholic Charities' Health Plan complies with Catholic teachings on abortion-inducing products, sterilization, and contraception ("objectionable services"). Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, all of the plans provide coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

9. Catholic Charities' health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan.

10. Catholic Charities' next plan year begins on January 1, 2014 with open enrollment beginning November 1, 2013.

II. *Injuries Related To The Final Rule*

11. The regulations at issue in this lawsuit (the "Mandate"), including the final rule issued by Defendants on June 28, 2013 (the "Final Rule"), injure Catholic Charities. Pursuant to the Final

Rule, Catholic Charities is not exempt from compliance with the Mandate. As a result, Catholic Charities may be forced to, on pain of substantial financial penalties, violate its sincerely-held religious beliefs by facilitating access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through its employee health plans.

12. The originally proposed regulations allowed Catholic organizations such as Catholic Charities, which provides health insurance to its employees through the health plan of an affiliated, exempt “religious employer” (here, the Diocesan health plan), to receive the benefit of that exemption regardless of whether the entity independently qualified as a “religious employers.” However, the Final Rule eliminates that safeguard.

13. The so-called “accommodation” in the Final Rule for nonexempt religiously affiliated entities like Catholic Charities does not resolve Catholic Charities’ religious objection to compliance with the Mandate. The Mandate, even in its revised form, forces Catholic Charities to facilitate access to products and services the use of which is antithetical to the Catholic faith. Catholic Charities’ employees will only receive “free” abortion-inducing drugs, sterilization services, contraceptives, and related counseling services by virtue of the employees’ participation in an insurance plan offered by Catholic Charities. In its final form, the Mandate requires Catholic Charities to authorize the TPA of the Diocesan health plan to pay for the provision of the objectionable services for its employees, despite—and indeed as a consequence of—Catholic Charities’

religious objection to the Mandate. In other words, Catholic Charities' decision to provide a group health plan will trigger the provision of objectionable services to its employees in a manner contrary to its religious beliefs.

14. Additionally, by signing the self-certification form, Catholic Charities is designating Plaintiffs' TPA as its plan administrator for the provision of the objectionable services.

15. If the Diocese is forced to expel Catholic Charities from its health plan to avoid sponsoring a health insurance plan that provides access to "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services, Catholic Charities would have to obtain health insurance for its employees on its own, while still facilitating the provision of these objectionable services or facing punitive fines.

16. This injury strikes at the core of Catholic Charities' mission of providing good works to those in need. Catholic Charities has a responsibility to bear witness to the Church's teachings, particularly as they are defined by the Diocese. Catholic Charities and its employees bear witness to those teachings not only by word, but primarily by deed. If Catholic Charities were to provide health insurance plans that trigger the provision of objectionable services to its employees in compliance with the Mandate, Catholic Charities would be forced to act in a way inconsistent with the very teachings of the Roman Catholic Church. Catholic Charities cannot bear witness to its teachings and at the same time act in a way that

thwarts the transmission of life. Catholic Charities will not, in short, be able to practice what it preaches.

17. Compliance with the Mandate—and, specifically, facilitating the provision of objectionable services—is also contrary to Catholic Charities’ beliefs regardless of whether it directly funds the provision of these objectionable services. Any use of Catholic Charities’ funds to comply with the Mandate, including through increased premiums or other costs associated with the provision of objectionable services, to provide the mandated products and services would only exacerbate the violation of its religious beliefs.

18. Further, as I understand it, the manner in which the Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government’s prediction of a decrease in the number of births due to a predicted increase in the number of individuals utilizing the products and services that Catholic Charities finds objectionable. The Mandate thus forces Catholic Charities to not only directly facilitate access to objectionable products and services, but also to participate in a government scheme specifically designed to thwart the transmission of life contrary to its religious beliefs.

19. Additionally, Catholic Charities believes that contraception is immoral, and by expressing that conviction it routinely seeks to “influence” or persuade their fellow citizens of that view. It is violative of Catholic Charities’ religious beliefs to force it to facilitate counseling seeking to influence or educate citizens regarding services which are

contrary to Catholic doctrine, including abortion-inducing drugs, sterilization services, and contraceptives.

20. In sum, the Mandate violates Roman Catholic doctrine and Catholic Charities' sincerely-held religious beliefs and mission. It thus violates a core foundational principle of our country which protects the freedom of religion.

21. Finally, the Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable component, the former which receives the exemption and the latter which does not-preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an essential component of the Catholic faith, however, worship cannot be separated from providing good works, which are also essential and integral components of the Catholic faith and are at the heart of the mission of Catholic Church.

III. Catholic Charities Is Currently Preparing For Enforcement Of The Mandate Starting January 1, 2014

22. Catholic Charities and its Membership Board, of which the Bishop is Chairman, is presently being forced to consider whether to: (1) drop its employee health plan; (2) offer coverage for the objectionable services in violation of Catholic beliefs; or (3) incur penalties for refusing to self-certify and offer the objectionable coverage.

23. Catholic Charities' Membership Board is currently considering whether to sign the

self-certification. The Board is aware that Catholic Charities is between a rock and a hard place in that failure to sign the self-certification will mean that it must comply with the Mandate without any accommodation. Thus, whether or not Catholic Charities signs the self-certification, it will still be faced with a forced violation of its religious beliefs. Catholic Charities, as a Catholic institution under the leadership of Bishop Zubik, cannot act in a manner inconsistent with Catholic doctrine.

24. Executives at Catholic Charities are planning to meet with their employees to discuss benefits in late October and, at that point, will have to know what benefits will be offered starting January 1, 2014.

IV. *Harm To Catholic Charities' Ability To Provide Public Health Services To Those In Need*

25. Through its Free Health Care Center and Roselia program, Catholic Charities provides significant public health services in the greater Pittsburgh community. For example, Catholic Charities provides pregnancy and parenting support through its Roselia program, which provides care and counseling for women who are in need and pregnant or parenting.

26. In addition to the services that Catholic Charities offers to mothers and pregnant women, it provides free health care services to those in need. For example, the Free Health Care Center provides free, quality primary and preventative medical and dental care to the working poor. The free health care services provided at the Center in 2012 are valued at

nearly \$1.5 million. The people that Catholic Charities serves at the Free Health Care Center do not qualify for Medicaid or other government assistance and cannot afford health insurance.

27. Without a workable alternative for religious objectors to the Mandate, many people in the greater Pittsburgh area risk losing the access to the counseling, medical, and dental services that Catholic Charities and its Free Health Care Center provide.

28. Catholic Charities has approximately 115 benefits-eligible employees. If it ceases offering employee health plans or fails to provide the required coverage, Catholic Charities would face fines of \$2,000 per employee after the first 30 employees per year or \$100 per individual per day. Such fines against Catholic Charities would close its doors, denying thousands in the local community its charitable services.

29. As a result, donations are likely to drop in that donors will be concerned about the continued operation of Catholic Charities if it is subject to fines for noncompliance with the Mandate.

30. The generous employee benefits provided by Catholic Charities, including Catholic Charities' Health Plan, are a significant factor in employee retention. Catholic Charities has been in direct communication with its employees since August 2011 about the possible effects of the Mandate. Based on that dialogue with its employees, Catholic Charities has a significant fear that dropping its generous employee health plan would likely lead to the departure of many valued, creative, irreplaceable, and highly effective staff.

I hereby certify under penalty of perjury that the foregoing is true and correct.

/s/ Susan Rauscher
Susan Rauscher

Executed on: September 30, 2013

MOST REVEREND :

DAVID A. ZUBICK, :

BISHOP OF THE ROMAN :

CATHOLIC DIOCESE OF :

PITTSBURGH, *et al.*, :

Plaintiffs, :

v. :

KATHLEEN SEBELIUS, :

***et al.*,** :

Defendants. :

Civil Action No. :

ELECTRONICALLY :

FILED :

I, David S. Stewart, A.R.M., pursuant to 28 U.S.C. § 1746, depose and state as follows:

2. I am employed as the Risk/Benefits Manager for the Roman Catholic Diocese of Pittsburgh (the

“Diocese”). I have been so employed since 1991. I have been employed by the Diocese since 1982 when I began my career in the Financial Services Office.

3. Based upon my job responsibilities and experience, I am personally familiar with planning and budgeting relating to health benefits for the Diocese and Catholic Charities of the Diocese of Pittsburgh, Inc. (“Catholic Charities”) (hereinafter collectively, “Plaintiffs”).

I. *Diocesan Health Plan*

4. The Diocese of Pittsburgh operates a self-insured health plan through the Catholic Benefits Trust (or the “Trust”).

5. The Dioceses of Pittsburgh, Altoona-Johnstown, and Greensburg are the Beneficial Owners of the Catholic Benefits Trust, which is split into three series: the Pittsburgh series, the Altoona-Johnstown series, and the Greensburg series. Each Diocese is sole “Beneficial Owner” and sole beneficiary of its respective series. Accordingly, the Diocese of Pittsburgh is the sole Beneficial Owner and sole beneficiary of the Pittsburgh series of the Trust.

6. The Diocese currently provides health insurance coverage to approximately 130 full-time employees and their dependants, for a total of approximately 200 insured individuals. The Diocese provides its employees eight insurance plan options, all of which are self-insured through the Catholic Benefits Trust. Third-party administrators (“TPAs”) Highmark Inc. and UPMC each administer four of the plans.

7. The Diocese offers a separate health plan for the employees of Catholic Charities.

8. In total, approximately 3,600 individuals are insured through the Pittsburgh series of the Trust. This includes employees of Catholic Charities, and other organizations affiliated with the Diocese, as well as their dependents.

9. All of the Diocese's current employee health plan options comply with Catholic teachings on abortion-inducing drugs, sterilization services, contraceptives, and related counseling services ("objectionable services"). Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, all of the plans provide coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

10. The health plans that the Diocese offers its employees and the employees of its affiliates—Catholic Charities excluded—are all "grandfathered." The Diocese has included a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).

11. The Diocese cannot make necessary changes to its plans without losing grandfathered status. For example, a parish that is struggling financially declined to raise employee contributions out of fear of losing grandfathered status. As a result, the Diocese and its affiliated entities are foregoing conservatively \$900,000 annually in additional funds to stay

grandfathered—funds they could otherwise use in providing their charitable services.

12. The next plan year for all health plans offered through the Diocese begins on January 1, 2014. Accordingly, all Plaintiffs must be prepared to comply with the regulations at issue in this lawsuit by January 1, 2014.

II. *The Diocese Is Forced To Facilitate Coverage Of The Objectionable Services*

13. Consistent with Church teachings regarding the sanctity of life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

14. In the past, the Diocese has notified its TPA that it would not cover the objectionable services. But it never designated the TPA to provide those services for the Diocese or any of its affiliates. And, the Diocese's notification never before triggered the provision of the objectionable services.

15. The regulations at issue in this lawsuit (the "Mandate"), including the final rules issued by Defendants on June 28, 2013 (the "Final Rule"), injure the Diocese by requiring it to facilitate access to the objectionable services.

16. Though the Diocese meets the Mandate's definition of a religious employer and is thus exempt from facilitating access to the objectionable services for its own employees, this exemption does not apply to the employees of nonexempt, affiliated entities, which are insured through the Diocese, including Plaintiff Catholic Charities.

17. The Mandate requires employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans, in violation of Catholic beliefs.

18. As a result, the Diocese, which provides coverage to employees of nonexempt, affiliated entities such as Catholic Charities, is forced to either: (1) provide the employees of Catholic Charities with a separate insurance policy that covers abortion-inducing drugs, contraception, sterilization, and related counseling, or (2) refuse to continue offering coverage to the employees of Catholic Charities thereby forcing Catholic Charities to enter into an arrangement with another insurance provider that will, in turn, provide the objectionable coverage. Either alternative violates the Diocese's sincerely-held religious beliefs, and will jeopardize the ability of the Diocese to continue to operate in its current fashion of providing affordable, quality health insurance. The first option forces the Diocese to act contrary to its sincerely-held religious beliefs. The second option not only makes the Diocese complicit in the provision of objectionable coverage, by forcing Catholic Charities out of its plan and to obtain the objectionable coverage through another insurance provider, but also compels the Diocese to submit to the Government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

19. If the Diocese takes the second option and refuses to continue offering insurance to Catholic Charities, and Catholic Charities does not provide

coverage for the objectionable services, it could be subject to fines which could reduce its ability to provide charitable services.

20. If the Diocese does not expel Catholic Charities from one of its current employee health plans and Catholic Charities fails to self-certify and offer the objectionable services, the Diocese as Beneficial Owner of the Pittsburgh Series of the Catholic Benefits Trust will be liable for any punitive fines leveled against Catholic Charities.

21. The Mandate results in further facilitation harms. Currently, “Catholic Benefits Trust” appears on the health insurance cards of Catholic Charities’ employees and their dependents. Accordingly, should the Diocese continue to offer insurance to Catholic Charities, the Diocese will be implicated if an individual insured through Catholic Charities uses their health insurance card to obtain the objectionable services.

22. The Diocese also will have to provide Plaintiffs’ TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiff Catholic Charities. Providing these names enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the objectionable services.

23. The Mandate also results in increased administrative burdens for the Diocese. Currently, in addition to offering coverage for both exempt and nonexempt entities, the Diocese, through the Catholic Benefits Trust, provides both grandfathered and

non-grandfathered health plans depending on the entity as issue. The Mandate imposes significant administrative burdens on the Diocese by requiring it to: (1) offer coverage for exempt entities, which offer contraceptive coverage when medically necessary as is consistent with Catholic beliefs; (2) offer coverage for nonexempt entities which then have to comply with the Mandate in violation of Catholic beliefs; and (3) maintain grandfathered status for nonexempt entities to prevent these entities being subject to the Mandate. Administratively, the burdens of this coverage scheme are significant.

III. Injuries Relating To Past And Current Planning And Time Needed For Future Planning And Budgeting

24. Injuries relating to altering the Diocesan health plan are imminent and impending. Plaintiffs must have any benefit changes finalized by the next plan year starting on January 1, 2014. Open enrollment will begin in November 2013. Accordingly, in the months leading up to November 2013, the Diocese will begin planning for open enrollment and will notify plan participants of benefit changes. The Diocese must know what benefits it will offer in order to plan for open enrollment.

25. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement health plans for their employees. Plaintiffs have already expended and continue to expend significant personnel hours and costs attempting to discern the scope of the Mandate, the parameters of the religious employer exemption, the qualifications for the safe harbor, and how all of these impact Plaintiffs.

26. If the Diocese no longer offers coverage to Catholic Charities, the Diocese and other entities insured through the Diocese may well have to pay more for health insurance because each organization would be pooling financial resources in a smaller group. Catholic Charities also would have to pay more to obtain its own insurance, should it choose to do so. To the extent the Diocese and Catholic Charities are able to continue providing healthcare to their employees, the benefits would certainly not be as cost-efficient nor as comprehensive as what is currently provided.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ David S. Stewart
David S. Stewart

Executed on: September 27, 2013

DECLARATION OF ER RONALD P. LENGWIN

3. As Vicar General, I serve as the delegate of the Most Reverend David A. Zubik, Bishop of the Roman

Catholic Diocese of Pittsburgh and have authority to act on behalf of the Bishop. The Bishop is final arbiter of ecclesiastic matters in the Diocese. My role as Vicar General includes implementing the Bishop's determinations and analyzing how those determinations impact the Diocese and other entities within the Diocese, such as Plaintiff Catholic Charities of the Diocese of Pittsburgh, Inc. ("Catholic Charities"). As General Secretary, I serve as the spokesman for the Diocese.

4. The Magisterium, which consists of the Pope and the College of Bishops in union with the Pope, decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the world, including how that mission occurs within the settings of Catholic agencies and other institutions. Bishop Zubik is responsible for carrying out that mission in the Diocese and is final arbiter of ecclesiastic matters in the Diocese.

5. The Bishop directly oversees the administration of Plaintiff Catholic Charities through representation on its Membership Board. Plaintiff Catholic Charities is run by a Membership Board, which oversees a Board of Directors to manage the daily affairs of the corporation. Catholic Charities is an integral entity within the Diocese, as the primary social service agency of the Diocese under the leadership of the Bishop. The Bishop serves as Chairman of the Membership Board of Catholic Charities. In this role, the Bishop oversees the management of Catholic Charities, and ensures that Catholic Charities adheres to Catholic doctrine at all times and in all manners.

6. In the Bishop's role on the Membership Board, he is ultimately responsible for approving policies of the Board of Directors, including ensuring that all policies comply with Catholic doctrine.

I. *Diocesan Health Plan*

7. The Diocese of Pittsburgh operates a self-insured health plan through the Catholic Benefits Trust (or the "Trust").

8. The Dioceses of Pittsburgh, Altoona-Johnstown, and Greensburg are the Beneficial Owners of the Catholic Benefits Trust, which is split into three series: the Pittsburgh series, the Altoona-Johnstown series, and the Greensburg series. Each Diocese is sole "Beneficial Owner" and sole beneficiary of its respective series. Accordingly, the Diocese of Pittsburgh is the sole Beneficial Owner and sole beneficiary of the Pittsburgh series of the Trust.

9. The Diocese, through the Catholic Benefits Trust, offers health insurance coverage for its employees, in addition to the employees of affiliated entities, such as Catholic Charities.

II. *Plaintiffs' Religious Objections To The Mandate*

10. Catholic religious teaching prohibits subsidizing, providing, and/or facilitating coverage for abortion-inducing drugs, sterilization services, contraceptives, and related counseling services. The term contraceptives refers to artificial contraceptives, as opposed to Natural Family Planning, which is consistent with Catholic teachings. These well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the

Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons.

11. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the “dignity of the human person is rooted in his creation in the image and likeness of God.” Catechism of the Catholic Church ¶ 1700.

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

13. Furthermore, Plaintiffs adhere to Catholic teachings that prohibit any action which “render[s] procreation impossible” and which, more specifically, regard direct sterilization as “unacceptable.” *Id.* ¶¶ 2370, 2399. Plaintiffs also believe that contraception is immoral, and by expressing that conviction they routinely seek to “influence” or persuade their fellow citizens of that view.

14. Consistent with Church teachings regarding the sanctity of human life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

15. The regulations at issue in this lawsuit (the “Mandate”), require employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives,

and related counseling services through their employee health plans. Freedom of religion includes not just freedom to practice religion, but also freedom from coercion by civil authorities that would violate the principles adhered to by a religion.

16. Plaintiffs have determined that the Mandate violates Catholic doctrine and that complying with the Mandate would result in Plaintiffs facilitating the provision of the objectionable services.

17. It violates Plaintiffs' religious beliefs to facilitate the objectionable coverage and services, even if Plaintiffs do not have to contract, arrange, pay, or refer for the objectionable coverage and services.

18. When Plaintiffs are prohibited from engaging in certain conduct, they are equally prohibited from designating or assisting someone else to do it for them. Here, Plaintiffs are themselves prohibited from providing this coverage, including for abortion-inducing drugs which Plaintiffs believe to be a grave moral evil, and are equally prohibited from designating or assisting their third-party administrator ("TPA") in providing the coverage. This constitutes immoral material cooperation in the grave moral evil. This is true even though Plaintiffs do not intend the immoral act, since Plaintiffs are being forced to act with knowledge that a grave moral evil will result from their conduct. In past years, however, there have been no religious violations in informing their TPA of Plaintiffs' religious beliefs because it did not trigger the violation of those beliefs.

19. There is no prohibition in paying a salary to Plaintiffs' employees, even if those employees may use the money to act contrary to Catholic doctrine. But that is completely different from the situation here since it does not constitute material cooperation with a grave immoral act. For example, when the Diocese pays an employee's salary, it does not designate the employee to purchase pornography, does not designate the employee to administer a program that supplies pornography, and does not trigger the provision of pornography.

20. Accordingly, Plaintiffs cannot facilitate coverage for the objectionable services through their TPA nor can the Membership Board of Catholic Charities approve any policies that would result in such facilitation.

21. Moreover, as final arbiter of ecclesiastic matters in the Diocese, the Bishop cannot facilitate coverage of the objectionable services for nonexempt entities, such as Plaintiff Catholic Charities.

III. Plaintiffs Are Forced To Facilitate Coverage Of The Objectionable Services

22. The so-called "accommodation" does not resolve Plaintiffs' religious objection. The Mandate forces Plaintiffs' to facilitate access to products and services antithetical to the Catholic faith.

23. Indeed, it is Catholic Charities' decision to provide group health plans to its employees which results in facilitation of the objectionable services in violation of Plaintiffs' religious beliefs.

24. In order to be eligible for the so-called "accommodation," Plaintiff Catholic Charities must provide a "certification" to Plaintiffs' TPA setting

forth its religious objections to the Mandate. The provision of this “certification,” in turn, automatically triggers an obligation on the part of the TPA to provide or obtain the objectionable coverage for the employees of Catholic Charities.

25. The self-certification form also designates the TPA as Catholic Charities’ plan administrator for the provision of the objectionable services. Without the self-certification form, the TPA is prohibited from providing coverage for the objectionable services to Catholic Charities’ employees.

26. A religious organization’s self-certification, therefore, is a trigger and but-for cause of the objectionable coverage. In other words, under the final version of the Mandate, Catholic Charities’ decision to participate in the Diocesan health plan triggers the provision of contraceptive benefits to its employees in a manner contrary to its beliefs. This direct causal connection to immoral activity is material cooperation in contravention of Plaintiffs’ religious beliefs. Therefore, it is morally improper for Catholic Charities to execute the self-certification, which will result in facilitating the provision of the objectionable services to its employees.

27. While the Diocese is exempt from compliance with the Mandate, both the Bishop and the Diocese will be forced to facilitate coverage for the objectionable services through their participation in the operation of the Catholic Benefits Trust. The Diocese, through the Bishop, has the power to manage, oversee, and direct the Pittsburgh series of the Trust in its role as sole Beneficial Owner and beneficiary of that series. The Bishop and the

Diocese will be forced to facilitate provision of the objectionable services because nonexempt entities currently included in the Trust, such as Plaintiff Catholic Charities, will be forced to comply with the Mandate.

28. The Trust Agreement provides that “each Director” of the Board of Directors of the Trust shall be “appointed by the Bishop of each Diocese that is or becomes a Beneficial Owner” of the Trust. The Board of Directors is then responsible for “[t]he management of the Trust[.]” Thus, the Bishop is forced to appoint a Director to the Board of the Trust with the knowledge that, under the Mandate, the Director must then allow the Trust to facilitate provision of the objectionable services for accommodated entities. The Bishop knows that his appointee will be forced to violate the Catholic faith.

29. While “all powers to manage the business and affairs of the Trust and each Series shall be exclusively vested in the Board and the Board may exercise all powers of the Trust[.]” “a majority of the Beneficial Owners may amend [the Trust] Agreement in writing at any time and thereby broaden or limit the Board’s power and authority[.]” Accordingly, while the Board of Directors manages the daily affairs of the Trust, the Dioceses and their Bishops have ultimate decision-making authority and ultimately are forced to facilitate provision of the objectionable services to the employees of nonexempt entities within the Trust.

30. Additionally, it is the Diocese, as operator and sole Beneficial Owner of the Pittsburgh series of the Trust, which decides whether nonexempt entities

should be permitted to continue participating in the Trust. The Trust Agreement provides that: “Each Beneficial Owner may allow such Diocesan Entities to benefit in such Series in respect of which such Beneficial Owner is the holder of the sole Interest in accordance with the terms and conditions established by such Beneficial Owner in consultation with its advisors.” Since nonexempt, non-grandfathered entities, like Plaintiff Catholic Charities, currently participate in the Trust, the Diocese will be facilitating coverage of the objectionable services for the employees of these nonexempt entities by permitting these entities to participate in the Trust. The Diocese is now faced with the decision of whether to expel these nonexempt entities from the Trust.

31. Moreover, the Bishop oversees the governance of Catholic Charities in his role as Chairman of its Membership Board, and is forced to facilitate coverage of the objectionable services when Catholic Charities, an organization which he oversees, provides the “self-certification” to Plaintiffs’ TPA. That “certification” triggers an obligation on the part of the TPA to obtain the objectionable coverage for Catholic Charities’ employees.

32. The Diocese is forced to further facilitate evil by providing Plaintiffs’ TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiff Catholic Charities. By providing these names, the Diocese enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the

objectionable services. This is material cooperation in violation of Catholic beliefs.

33. Currently, “Catholic Benefits Trust” appears on the health insurance cards of Catholic Charities’ employees and their dependents. Accordingly, should the Diocese continue to offer insurance to Catholic Charities, the Diocese will be implicated if an individual insured through Catholic Charities uses their health insurance card to obtain the objectionable services.

34. The Diocese’s provision of health benefits to its employees and to the employees of affiliated entities, such as Plaintiff Catholic Charities, reflects the Catholic social teaching that healthcare is among those basic rights which flow from the sanctity and dignity of human life. For the Diocese to expel nonexempt entities from the Diocesan health plan or for nonexempt entities to have to drop healthcare benefits—in order to avoid the provision of the objectionable services—would inhibit Plaintiffs’ ability to follow this teaching.

35. As Catholic entities, Plaintiffs believe that they must bear witness, including in their deeds, to the beliefs of the Catholic Church and that it would be scandal to act inconsistently with those beliefs. Plaintiffs bear witness to those teachings not only by word, but also by deed, including their actions regarding the provision of employee health insurance. Were Plaintiffs to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable services, Plaintiffs would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

Plaintiffs cannot bear witness to their teachings and at the same time act in a way that thwarts the transmission of life.

36. Moreover, Plaintiffs regularly speak out against abortions and the Mandate requires Plaintiffs to facilitate the provision of abortion-inducing drugs, sterilization services, contraceptives, and related counseling services in direct contradiction of Plaintiffs' speech.

IV. The Religious Employer Exemption Does Not Work And Seeks To Divide The Church

37. The Mandate artificially splits the Catholic Church in two, dividing the essential worship component from the equally essential charitable component, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an indispensable component of the Catholic faith, however, worship cannot be separated from providing good works, which are also indispensable and integral components of the Catholic faith and are at the heart of the mission of Catholic Church. Plaintiffs exercise the Catholic faith through worship and through good works. In sum, the mission of the Church, which is accomplished through good works, necessarily flows from the nature of the Catholic religion and cannot be separated from it.

38. By providing insurance to Catholic Charities, the Bishop and Diocese have been able to ensure that the health benefits provided by Catholic Charities were consistent with Catholic teachings. However,

now, the Diocese is forced to either refuse to continue offering coverage to Catholic Charities or facilitate coverage that does not comply with Catholic teaching.

39. The Diocese may well be forced to expel Catholic Charities from the Diocesan health plan to avoid facilitating coverage of the objectionable services, beginning January 1, 2014. If so, Catholic Charities would be forced to go out and obtain its own insurance so that its employees would still have access to healthcare benefits.

40. Even if Catholic Charities did obtain insurance separate from the Diocese, it would still need to provide the self-certification to its new TPA or insurer. Therefore, it still would be facilitating coverage of the objectionable services in violation of its religious beliefs, while at the same time being subject to higher costs for insurance. In his role on the Membership Board of Catholic Charities, Bishop Zubik could not approve any policies that would result in such facilitation.

41. If Plaintiff Catholic Charities failed to comply with the Mandate, it could be exposed to fines. Such fines would likely cripple Catholic Charities and its ability to provide social services to thousands in the local community.

42 Moreover, the Diocese, as sole Beneficial Owner of the Pittsburgh series of the Trust, is ultimately responsible for any fines incurred by nonexempt entities as a result of non-compliance with the Mandate. Under the Trust Agreement, “[a] particular Series shall be charged with the liabilities of that Series, and all expenses, costs, charges and

reserves attributable to any particular Series shall be borne by such Series.”

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ *Ronald P. Lengwin*

Father Ronald P. Lengwin

Executed on: October 4, 2013

**DECLARATION OF FATHER SCOTT W.
JABO FOR ERIE CATHOLIC PREPARATORY
SCHOOL**

2. I am the President of Erie Catholic Preparatory School (“Erie Catholic” or “the School”) (doing business as Cathedral Preparatory School and

Villa Maria Academy) and have served in this role since 2010.

3. As a Roman Catholic priest in the Roman Catholic Diocese of Erie (the “Diocese”) and President of Erie Catholic, I am very familiar with the School’s Catholic mission, as well as its health insurance plan.

4. Erie Catholic’s mission statement clearly states that “Cathedral Preparatory School and Villa Maria Academy form a Christ-centered, co-institutional, college preparatory Catholic school of the Diocese of Erie.” As a college preparatory Catholic school of the Diocese and as part of the Roman Catholic Church, Erie Catholic is thus part of the Church’s teaching mission. Erie Catholic, therefore, has the responsibility of teaching and upholding Catholic doctrine. Longstanding doctrines of the Catholic church include that life begins at the moment of conception, that sexual union should be reserved to a committed marital relationship in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral. All of these doctrines have been consistently taught by the School since its inception.

I. *Erie Catholic’s Health Plan*

5. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services is inconsistent with the core moral and religious beliefs of the Roman Catholic Church and Erie Catholic.

6. Accordingly, Erie Catholic has historically excluded health insurance coverage for abortion,

abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

7. Erie Catholic offers health coverage to its approximately 90 employees through the Diocese's self-insured health plan ("Diocesan health plan").

II. *Injuries Related to the Final Rule*

8. The regulations at issue in this lawsuit (the "Mandate"), including the final rule issued by Defendants on June 28, 2013 (the "Final Rule"), injure Erie Catholic. Pursuant to the Final Rule, Erie Catholic is not exempt from compliance with the Mandate. As a result, Erie Catholic may be forced to restructure its health insurance plan or, on pain of substantial financial penalties, violate its sincerely-held religious beliefs by facilitating access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through its employee health plan.

9. The originally proposed regulations allowed a Catholic organization such as Erie Catholic, which provides health insurance to its employees through the health plan of an affiliated, exempt "religious employer" (here, the Diocesan health plan), to receive the benefit of that exemption regardless of whether it independently qualified as a "religious employer." However, the Final Rule eliminates that safeguard.

10. The so-called "accommodation" in the Final Rule for nonexempt religiously affiliated entities like Erie Catholic does not resolve the School's religious objection to compliance with the Mandate. The Mandate, even in its revised form, forces Erie

Catholic to facilitate access to products and services the use of which is antithetical to the Catholic faith. Its employees will only receive “free” abortion-inducing drugs, sterilization services, contraceptives, and related counseling services by virtue of the employees’ participation in an insurance plan offered by the School. In its final form, the Mandate requires Erie Catholic to authorize the third-party administrator of the Diocesan health plan to pay for the provision of the objectionable services for the School’s employees, despite—and indeed as a consequence of—the School’s religious objection to the Mandate. In other words, Erie Catholic’s decision to provide a group health plan will trigger the provision of objectionable services to employees in a manner contrary to the School’s religious beliefs.

11. Additionally, by signing the self-certification form, Erie Catholic is designating Plaintiffs’ TPA as its plan administrator for the provision of the objectionable services.

12. If the Diocese is forced to expel Erie Catholic from its health plan to avoid sponsoring a health insurance plan that provides access to “free” abortion-inducing drugs, sterilization services, contraceptives, and related counseling services, the School would have to obtain health insurance for its employees on its own, while still facilitating the provision of these objectionable services or facing punitive fines.

13. This injury strikes at the core of Erie Catholic’s educational mission. As a Catholic high school, Erie Catholic’s mission is to educate students in not only academic subjects, but also in the Catholic

faith. Erie Catholic has a responsibility to bear witness to the Church's teachings, particularly as they are defined by the Diocese, within which the School principally undertakes its ministry to educate young people. Erie Catholic and its employees, including its teachers, bear witness to those teachings not only by word, but also by deed. Those doctrines are upheld and integrated into every aspect of the school and in every subject area. If Erie Catholic were to provide a health insurance plan that triggers the provision of objectionable services to its employees in compliance with the Mandate, the School would be forced to act in a way inconsistent with the very teachings of the Roman Catholic Church that Erie Catholic undertakes to instill in its students. Erie Catholic cannot bear witness to its teachings and at the same time act in a way that thwarts the transmission of life. Erie Catholic will not, in short, be able to practice what it preaches.

14. Compliance with the Mandate—and, specifically, facilitating the provision of objectionable products and services—is also contrary to Erie Catholic's beliefs regardless of whether the School directly funds the provision of these objectionable services. Any use of the School's funds to comply with the Mandate, including through increased premiums or other costs associated with the provision of objectionable services, to provide the mandated products and services would only exacerbate the violation of its religious beliefs.

15. Further, as I understand it, the manner in which the Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government's prediction of a decrease in the

number of births due to a predicted increase in the number of individuals utilizing the products and services that Erie Catholic finds objectionable. The Mandate thus forces Erie Catholic to not only directly facilitate access to objectionable products and services, but also to participate in a government scheme specifically designed to thwart the transmission of life contrary to the School's religious beliefs.

16. Additionally, Erie Catholic believes that contraception is immoral, and by expressing that conviction it routinely seeks to "influence" or persuade its fellow citizens of that view. It is violative of Erie Catholic's religious beliefs to force it to facilitate counseling seeking to influence or educate citizens regarding services which are contrary to Catholic doctrine, including abortion-inducing drugs, sterilization services, and contraceptives.

17. In sum, the Mandate violates Roman Catholic doctrine and Erie Catholic's sincerely-held religious beliefs and mission. It thus violates a core foundational principle of our country which protects the freedom of religion.

18. Finally, the Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable and educational components, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an essential component of the Catholic faith, however, worship

cannot be separated from providing good works and education, which are also essential and integral components of the Catholic faith and are at the heart of the mission of Catholic Church.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Scott W. Jabo

Father Scott W. Jabo

Executed on: October 4, 2013

Defendants.

Civil Action No.:

ELECTRONICALLY
FILED

2. I am employed as the Executive Director of Catholic Charities of the Diocese of Erie ("Catholic Charities"). I have been so employed since 2004. I have been affiliated with the Roman Catholic Diocese

of Erie (the “Diocese”) for 34 years. In 1979, I established the Diocesan Family Life Office, where I served as Director until 2004.

3. Plaintiffs St. Martin Center, Inc. (“St. Martin Center”) and Prince of Peace Center, Inc. (“Prince of Peace Center”) are both non-profit corporations run by a Membership Board, which oversees a Board of Directors to manage the daily affairs of the corporations. St. Martin Center and Prince of Peace Center are both integral entities within the Diocese. The Diocesan Bishop, Vicar General of the Diocese, Executive Director of Catholic Charities, and Chancellor of the Diocese all serve on the Membership Boards of St. Martin Center and Prince of Peace Center. The Bishop serves as Chairman of the Membership Boards. St. Martin Center and Prince of Peace Center are therefore required to adhere to Catholic doctrine at all times and in all manners.

4. In my role as Executive Director of Catholic Charities, I serve on the Membership Boards of St. Martin Center and Prince of Peace Center.

5. Based upon my job responsibilities and experience, I am personally familiar with the various social services which St. Martin Center and Prince of Peace Center provide throughout Northwestern Pennsylvania, including how these services are administered and funded.

I. *The Diocesan Health Plan*

6. The Diocese operates a self-insured health plan (“Diocesan health plan”). Highmark Inc. (“Highmark”) is the current third-party administrator (“TPA”) for the Diocesan health plan.

7. The employees of St. Martin Center and Prince of Peace Center are offered health insurance through the Diocesan health plan, which complies with Catholic teachings on abortion-inducing drugs, sterilization services, contraceptives, and related counseling services (the “objectionable services”). Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, the Diocesan health plan provides coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

8. The Diocesan health plan does not meet the Affordable Care Act’s definition of a “grandfathered” plan.

II. Injuries Related To The Final Rule

9. The regulations at issue in this lawsuit (the “Mandate”), including the final rule issued by Defendants on June 28, 2013 (the “Final Rule”), injure St. Martin Center and Prince of Peace Center. Pursuant to the Final Rule, St. Martin Center and Prince of Peace Center are not exempt from compliance with the Mandate. As a result, St. Martin Center and Prince of Peace Center may be forced to restructure their health insurance plan or, on pain of substantial financial penalties, violate their sincerely-held religious beliefs by facilitating access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans.

10. The originally proposed regulations allowed Catholic organizations such as St. Martin Center and Prince of Peace Center, which provide health insurance to their employees through the health plan of an affiliated, exempt “religious employer” (here, the Diocesan health plan), to receive the benefit of that exemption regardless of whether they independently qualified as a “religious employers.” However, the Final Rule eliminates that safeguard.

11. The so-called “accommodation” in the Final Rule for nonexempt religiously affiliated entities like St. Martin Center and Prince of Peace Center does not resolve their religious objection to compliance with the Mandate. The Mandate, even in its revised form, forces St. Martin Center and Prince of Peace Center to facilitate access to products and services the use of which is antithetical to the Catholic faith. Their employees will only receive “free” abortion-inducing drugs, sterilization services, contraceptives, and related counseling services by virtue of the employees’ participation in an insurance plan offered by St. Martin Center or Prince of Peace Center. In its final form, the Mandate requires St. Martin Center and Prince of Peace Center to authorize the TPA of the Diocesan health plan to pay for the provision of the objectionable services for their employees, despite—and indeed as a consequence of—their religious objection to the Mandate. In other words, St. Martin Center’s and Prince of Peace Center’s decision to provide a group health plan will trigger the provision of objectionable services to their employees in a manner contrary to their religious beliefs.

12. Additionally, by signing the self-certification form, St. Martin Center and Prince of Peace Center are designating Plaintiffs' TPA as their plan administrator for the provision of the objectionable services.

13. If the Diocese is forced to expel St. Martin Center and Prince of Peace Center from its health plan to avoid sponsoring a health insurance plan that provides access to "free" abortion-inducing drugs, sterilization services, contraceptives, and related counseling services, St. Martin Center and Prince of Peace Center would have to obtain health insurance for their employees on their own, while still facilitating the provision of these objectionable services or facing punitive fines.

14. This injury strikes at the core of St. Martin Center's and Prince of Peace Center's mission of providing good works to those in need. St. Martin Center and Prince of Peace Center have a responsibility to bear witness to the Church's teachings, particularly as they are defined by the Diocese. St. Martin Center, Prince of Peace Center, and their employees bear witness to those teachings not only by word, but also by deed. If St. Martin Center and Prince of Peace Center were to provide health insurance plans that trigger the provision of objectionable services to their employees in compliance with the Mandate, St. Martin Center and Prince of Peace Center would be forced to act in a way inconsistent with the very teachings of the Roman Catholic Church. St. Martin Center and Prince of Peace Center cannot bear witness to their teachings and at the same time act in a way that thwarts the transmission of life. St. Martin Center

and Prince of Peace Center will not, in short, be able to practice what they preach.

15. Compliance with the Mandate—and, specifically, facilitating the provision of objectionable services—is also contrary to St. Martin Center’s and Prince of Peace Center’s beliefs regardless of whether the entities directly funds the provision of these objectionable services. Any use of St. Martin Center’s and Prince of Peace Center’s funds to comply with the Mandate, including through increased premiums or other costs associated with the provision of objectionable services, to provide the mandated products and services would only exacerbate the violation of their religious beliefs.

16. Further, as I understand it, the manner in which the Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government’s prediction of a decrease in the number of births due to a predicted increase in the number of individuals utilizing the products and services that St. Martin Center and Prince of Peace Center find objectionable. The Mandate thus forces St. Martin Center and Prince of Peace Center to not only directly facilitate access to objectionable products and services, but also to participate in a government scheme specifically designed to thwart the transmission of life contrary to their religious beliefs.

17. Additionally, St. Martin Center and Prince of Peace Center believe that contraception is immoral, and by expressing that conviction they routinely seek to “influence” or persuade their fellow citizens of that view. It is violative of St. Martin Center’s and Prince

of Peace Center's religious beliefs to force them to facilitate counseling seeking to influence or educate citizens regarding services which are contrary to Catholic doctrine, including abortion-inducing drugs, sterilization services, and contraceptives.

18. In sum, the Mandate violates Roman Catholic doctrine and St. Martin Center's and Prince of Peace Center's sincerely-held religious beliefs and mission. It thus violates a core foundational principle of our country which protects the freedom of religion.

19. Finally, the Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable and educational components, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an essential component of the Catholic faith, however, worship cannot be separated from providing good works and education, which are also essential and integral components of the Catholic faith and are at the heart of the mission of Catholic Church.

III. *Harm To The Ability Of St. Martin Center and Prince of Peace Center To Provide Social Services To Those in Need*

20. St. Martin Center and Prince of Peace Center provide significant public health services in their communities. Because of the stiff fines under the Mandate, St. Martin Center and Prince of Peace Center may be forced to limit services, or take more drastic action, thus denying the public critical health services in the local communities.

21. Several times every week, needy individuals, who have been referred by the Pennsylvania Department of Public Welfare, call Catholic Charities in Erie. If St. Martin Center and Prince of Peace Center are forced to limit services (or otherwise), they will no longer be able provide for these individuals who are not being served currently by the Government.

22. Without a workable alternative for religious objectors to the Mandate, many people in Northwestern Pennsylvania risk losing the social services that St. Martin Center and Prince of Peace Center currently provide.

23. Moreover, any fines incurred as a result of noncompliance with the Mandate are likely to affect employee retention in that fines are likely to require downsizing. Fines are also likely to result in a reduction of donations because donors will be concerned that their money will be used to pay fines as opposed to in support of charitable services. Ultimately, loss of employees and donations will hinder the ability of St. Martin Center and Prince of Peace Center to serve the community in their current capacity.

24. Because of rising poverty and unemployment in the thirteen-county region the Diocese serves, Catholic Charities is planning to expand the social services that it provides, such as the types of services provided by agencies St. Martin Center and Prince of Peace Center. While Catholic Charities can plan for this expansion, it cannot take any significant steps towards actually expanding because of impending fines due to the Mandate.

25. The leadership team and various boards within Catholic Charities are currently meeting to discuss a long-term project to expand the social services which Catholic Charities and its agencies currently provide. The leadership team and various boards are planning to add social service sites in counties which currently lack direct access to these social services.

26. The fact that enforcement of the Mandate is looming is a hazard for this long-term project. Catholic Charities, St. Martin Center, and Prince of Peace Center may not be able to continue in a manner consistent with their current mission and certainly will not be able to expand their charitable efforts if or when they face fines for non-compliance with the Mandate. Accordingly, the Mandate is impairing Catholic Charities and its agencies' efforts to expand their services.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Mary Maxwell

Mary Maxwell

Executed on: October 4, 2013

**DECLARATION OF DAVID J. MURPHY FOR
THE ROMAN CATHOLIC DIOCESE OF ERIE,
ST. MARTIN CENTER, INC., PRINCE OF
PEACE CENTER, INC., AND ERIE CATHOLIC
PREPARATORY SCHOOL**

1. I am over the age of 18 and competent to make this declaration in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am employed as Chief Financial Officer of the Roman Catholic Diocese of Erie (the “Diocese”). I have been so employed since 1977.

3. Based upon my job responsibilities and experience, I am personally familiar with health benefits for the Diocese, St. Martin Center, Inc. (“St. Martin Center”), Prince of Peace Center, Inc. (“Prince of Peace Center”), and Erie Catholic Preparatory School (“Erie Catholic”) (hereinafter collectively, “Plaintiffs”).

I. *The Diocesan Health Plan*

4. The Diocese operates a self-insured health plan (“Diocesan health plan”). St. Martin Center, Prince of Peace Center, and Erie Catholic are all insured through the Diocesan health plan. Highmark Inc. (“Highmark”) is the current third-party administrator (“TPA”) for the Diocesan health plan.

5. The Diocese currently has approximately 75 full-time equivalent employees.

6. There are currently approximately 774 employees and approximately 980 individuals insured through the Diocesan health plan, including those employed directly by the Diocese, as well as those employed by the parishes, schools (including Plaintiff Erie Catholic), and charitable agencies of the Diocese (including Plaintiffs St. Martin Center and Prince of Peace Center), and their dependants.

7. All of Plaintiffs’ current employee health plan options comply with Catholic teachings on abortion-inducing drugs, sterilization services, contraceptives, and related counseling services (the “objectionable services”). Specifically, abortion and sterilization are

not covered. Contraceptives are not covered when prescribed for contraceptive purposes. But, hormone therapies for non-contraceptive purposes are covered, even therapies that otherwise function as contraceptives. For example, all of the plans provide coverage for properly-prescribed, medically-necessary treatments for ovarian cysts.

8. The Diocesan health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The Diocese, and therefore all Plaintiffs that get insurance through the Diocesan health plan, changed its insurance carrier between March 23, 2010 and November 15, 2010. Specifically the Diocese changed its insurer on July 1, 2010 and became at that time a fully-insured health plan. As a result, Plaintiffs could not and did not include a statement describing their grandfathered status in their plan materials, as required by 26 C.F.R. § 54.9515-1251T(a)(2)(ii) for grandfathered plans. On July 1, 2011, the Diocese switched back to operating—as noted earlier in paragraph 4—a self-insured health plan. Accordingly, the Diocesan health plan is currently a self-insured health plan.

9. The next Diocesan plan year begins on July 1, 2014. However, the next *administrative* year for the Diocesan health plan—which is the date by which *all* benefits for the July 1, 2014 plan year must be implemented—begins on January 1, 2014. Accordingly, all Plaintiffs must be prepared to comply with the regulations at issue in this lawsuit (the "Mandate"), by January 1, 2014.

II. *The Religious Employer Exemption Does Not Work And Seeks To Divide The Church*

10. The Mandate artificially splits the Catholic Church in two, dividing the worship component from the charitable and educational components, the former which receives the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings.

11. Though the Diocese meets the Mandate's definition of a religious employer and is thus exempt from facilitating access to the objectionable services for its own employees, this exemption does not apply to the employees of nonexempt, affiliated entities such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, which participate in the Diocesan health plan.

12. This is true despite the fact that the Diocese, through Bishop Persico), directly oversees the management of Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, as integral components of the Diocese and Catholic Church.

13. Additionally, Erie Catholic does not qualify for the religious employer exemption, even though it is exempt from the tax-reporting obligations supposedly used as the basis for the exemption. Erie Catholic does not qualify merely because it is exempt under 26 C.F.R. § 1.6033-2(g)(1)(vii), as opposed to under Section 6033 of the Internal Revenue Code. The Government's religious employer exemption does not

work and rather divides the Catholic Church based on artificial distinctions.

III. Plaintiffs Are Forced To Facilitate Coverage Of The Objectionable Services

14. Consistent with Church teachings regarding the sanctity of life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

15. In the past, the Diocese has notified its TPA that it would not cover the objectionable services and it has never designated the TPA to provide those services for the Diocese or any of its affiliates. The Diocese's notification never before triggered the provision of the objectionable services.

16. The Mandate requires employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans, in violation of Catholic beliefs.

17. As a result, the Diocese, which provides coverage to employees of nonexempt, affiliated entities such as Plaintiffs St Martin Center, Prince of Peace Center, and Erie Catholic, is forced to either: (1) provide the employees of these entities with a separate insurance policy that triggers coverage of abortion-inducing drugs, contraception, sterilization, and related counseling, or (2) expel these entities from the Diocesan health plan and thereby force these entities to enter into an arrangement with another insurance provider that will, in turn, provide

the objectionable coverage. Either alternative violates the Diocese's sincerely-held religious beliefs, and will jeopardize the ability of the Diocese to continue to operate in its current fashion of providing affordable, quality health insurance. The first option forces the Diocese to act contrary to its sincerely-held religious beliefs. The second option not only makes the Diocese complicit in the provision of objectionable coverage, by forcing Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic out of its plan and to obtain the objectionable coverage through another insurance provider, but also compels the Diocese to submit to the Government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

18. If the Diocese takes the second option and expels Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic from the Diocesan health plan, and the expelled entities did not provide coverage for the objectionable services, they could be subject to fines which could reduce their ability to provide charitable services and to educate young men and women of the community.

19. Currently, all entities insured through the Diocesan health plan are provided three health plan options with three different levels of benefits. Thus, there are three different group health plan numbers which cover all individuals insured through the Diocesan health plan with no differentiation based on the employer of the insured individual. Now, Plaintiffs' TPA has requested that, on or about October 14, 2013, the Diocese supply information to enable the TPA to divide those entities within the

Diocese that fall within the Government's definition of what constitutes a "religious employer" from those entities which do not meet this definition.

20. Specifically, Plaintiffs' TPA has requested that, on or about October 14, 2013, Plaintiffs the Diocese, St. Martin Center, Prince of Peace Center, and Erie Catholic provide certifications as to whether they fall within the "religious employer exemption."

CERTIFICATION	
As the Authorized Representative for	

(Print Name of Group)	
I, _____, certify that my	
(Print Name of Employer's	
Authorized Representative)	
response to the following question truthfully	
represents the above named group's characteristics	
that correspond to the definition of a religious	
employer.	
CHECK ONE	
The entity is a nonprofit	<input type="checkbox"/> True <input type="checkbox"/> False
organization as described in	
section 6033(a)(i) and section	
6033(a)(3)(A)(I) or (iii) of the	
Internal Revenue Code.	
Employer's Authorized Representative Signature:	

Date: _____	

21. Those Plaintiffs which do not fall within the exemption then will be forced to provide the self-certification to Plaintiffs' TPA. Accordingly, on or around October 14, 2013, Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic must decide whether they will sign the self-certification, thereby triggering the provision of the objectionable services to their employees as of the new administrative year starting on January 1, 2014.

22. The Diocese, in response to a request from Plaintiffs' TPA, then will have to create three new group health plan numbers, which will be reserved for employees of nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic. Employees of exempt entities, such as the Diocese, will retain their original group health plan numbers.

23. In addition to creating three new group health plan numbers in order to segregate the nonexempt entities, the Diocese also will have to provide Plaintiffs' TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic. Providing these names enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the objectionable services.

IV. *Injuries Relating To Past And Current Planning As Well As Time Needed For Future Planning And Budgeting*

24. The Diocese is currently being injured in being forced to alter its health plan to segregate exempt entities from nonexempt entities, as outlined above.

25. Other injuries relating to altering the Diocesan health plan are imminent and impending. Plaintiffs must have any benefit changes finalized by the next administrative year starting on January 1, 2014. Open enrollment for the January 1, 2014 administrative year will begin in November 2013. Accordingly, in the months leading up to November 2013, the Diocese will begin planning for open enrollment and will notify plan participants of benefit changes. The Diocese must know what benefits it will offer in order to plan for open enrollment.

26. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement health plans for their employees. Plaintiffs have already expended and continue to expend significant personnel hours and costs attempting to discern the scope of the Mandate, the parameters of the religious employer exemption, the qualifications for the safe harbor, and how all of these impact Plaintiffs.

27. Expelling nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, from the Diocesan health plan may well result in increased costs for the Diocese and the expelled entities because each organization would be pooling financial resources in a smaller group. Currently, approximately 280 employees insured through the Diocesan health plan are employed by

nonexempt entities. This means that the Diocese could be forced to expel approximately one-third of its current plan participants. To the extent the Diocese and expelled entities are able to continue providing healthcare to their employees, the benefits would certainly not be as cost-efficient nor as comprehensive as what is currently provided.

28. The Diocese is currently discussing with its broker the cost projections associated with coming into compliance with the Mandate, despite the fact that Plaintiffs maintain that to do so would violate their core, sincerely-held religious beliefs. The Diocese also is currently discussing with its broker what the potential ramifications of non-compliance would be. Any plan changes must be discussed first with the broker, and then, they must be communicated and discussed with Highmark.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ David J. Murphy

David J. Murphy

Executed on: October 4, 2013

Defendants.

Civil Action No.:

ELECTRONICALLY
FILED

2. I have a doctorate degree in Systematic Theology. I am serving as a theological advisor to Most Reverend Lawrence T. Persico, Bishop of the Roman Catholic Diocese of Erie on matters of Catholic doctrine, including moral theology. I am

advising the Bishop on ecclesiastic and theological matters affecting the Diocese and entities and individuals within the Diocese.

3. I currently serve as an Adjunct Faculty Member at Saint Mary Seminary & Graduate School of Theology, where I teach Systematic Theology. I have served as the Director of the Center for Pastoral Studies at Gannon University in Erie, Pennsylvania. Additionally, I am currently the pastor of Holy Cross Roman Catholic Church in Fairview, Pennsylvania.

4. The Magisterium, which consists of the Pope and the College of Bishops in union with the Pope, decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the world, including how that mission occurs within the settings of Catholic schools, agencies, and other institutions. Bishop Persico is responsible for carrying out that mission in the Diocese and is final arbiter of ecclesiastic matters in the Diocese.

5. The Bishop directly oversees the administration of Plaintiffs St. Martin Center, Inc. ("St. Martin Center"), Prince of Peace Center, Inc. ("Prince of Peace Center"), and Erie Catholic Preparatory School ("Erie Catholic") through representation on the Membership Boards of these entities. The Bishop serves as Chairman of the Membership Boards of St. Martin Center and Prince of Peace Center, and has certain reserved powers in his role on the Membership Board of Erie Catholic. The Bishop oversees the management of St. Martin Center, Prince of Peace Center, and Erie Catholic,

and ensures that they adhere to Catholic doctrine at all times and in all manners.

6. In the Bishop's role on the Membership Boards, he is ultimately responsible for approving policies of the Board of Directors, including ensuring that all policies comply with Catholic doctrine.

I. *Plaintiffs' Religious Objections To The Mandate*

7. Catholic religious teaching prohibits subsidizing, providing, and/or facilitating coverage for abortion-inducing drugs, sterilization services, contraceptives, and related counseling services. The term contraceptives refers to artificial contraceptives, as opposed to Natural Family Planning, which is consistent with Catholic teachings. These well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons.

8. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God." Catechism of the Catholic Church ¶ 1700.

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

10. Furthermore, Plaintiffs adhere to Catholic teachings that prohibit any action which “render[s] procreation impossible,” and which, more specifically, regard direct sterilization as “unacceptable.” *Id.* ¶¶ 2370, 2399. Plaintiffs also believe that contraception is immoral, and by expressing that conviction they routinely seek to “influence” or persuade their fellow citizens of that view.

11. Consistent with Church teachings regarding the sanctity of human life, the Diocesan health plan has historically excluded coverage for abortion-inducing drugs, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

12. The regulations at issue in this lawsuit (the “Mandate”), require employers, on pain of substantial financial penalties, to facilitate access to abortion-inducing drugs, sterilization services, contraceptives, and related counseling services through their employee health plans. Freedom of religion includes not just freedom to practice religion, but also freedom from coercion by civil authorities that would violate the principles adhered to by a religion.

13. Plaintiffs have determined that the Mandate violates Catholic doctrine and that complying with the Mandate would result in Plaintiffs facilitating the provision of the objectionable services.

14. It violates Plaintiffs’ religious beliefs to facilitate the objectionable coverage and services, even if Plaintiffs do not have to contract, arrange, pay, or refer for the objectionable coverage and services.

15. When Plaintiffs are prohibited from engaging in certain conduct, they are equally prohibited from designating or assisting someone else to do it for them. Here, Plaintiffs are themselves prohibited from providing this coverage, including for abortion-inducing drugs which Plaintiffs believe to be a grave moral evil, and are equally prohibited from designating or assisting their third-party administrator (“TPA”) in providing the coverage. This constitutes immoral material cooperation in the grave moral evil. This is true even though Plaintiffs do not intend the immoral act, since Plaintiffs are being forced to act with knowledge that a grave moral evil will result from their conduct. In past years, however, there have been no religious violations in informing their TPA of Plaintiffs’ religious beliefs because it did not trigger the violation of those beliefs.

16. There is no prohibition in paying a salary to Plaintiffs’ employees, even if those employees may use the money to act contrary to Catholic doctrine. But that is completely different from the situation here since it does not constitute material cooperation with a grave immoral act. For example, when the Diocese pays an employee’s salary, it does not designate the employee to purchase pornography, does not designate the employee to administer a program that supplies pornography, and does not trigger the provision of pornography.

17. Accordingly, Plaintiffs cannot facilitate coverage for the objectionable services through their TPA nor can the Membership Boards of the entities approve any policies that would result in such facilitation.

18. Moreover, as final arbiter of ecclesiastic matters in the Diocese, the Bishop cannot facilitate coverage of the objectionable services for nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic.

II. Plaintiffs Are Forced To Facilitate Coverage Of The Objectionable Services

19. The so-called “accommodation” does not resolve Plaintiffs’ religious objection. The Mandate forces St. Martin Center, Prince of Peace Center, and Erie Catholic to facilitate access to products and services antithetical to the Catholic faith.

20. Indeed, it is St. Martin Center’s, Prince of Peace Center’s, and Erie Catholic’s decision to provide group health plans to their employees which results in facilitation of the objectionable services in violation of Plaintiffs’ religious beliefs.

21. In order to be eligible for the so-called “accommodation,” Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic must provide a “certification” to Plaintiffs’ third-party administrator (“TPA”) setting forth their religious objections to the Mandate. The provision of this “certification,” in turn, automatically triggers an obligation on the part of the TPA to provide or obtain the objectionable coverage for the employees of St. Martin Center, Prince of Peace Center, and Erie Catholic.

22. The self-certification form also designates the TPA as Plaintiffs’ plan administrator for the provision of the objectionable services. Without the self-certification form, the TPA is prohibited from providing coverage for the objectionable services to Plaintiffs’ employees.

23. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage. In other words, under the final version of the Mandate, St Martin Center's, Prince of Peace Center's, and Erie Catholic's decision to participate in the Diocesan health plan triggers the provision of contraceptive benefits to their employees in a manner contrary to their beliefs. This direct causal connection to immoral activity is material cooperation in contravention of Plaintiffs' religious beliefs. Therefore, it is morally improper for St. Martin Center, Prince of Peace Center, and Erie Catholic to execute the self-certification, which will result in facilitating the provision of the objectionable services to their employees.

24. The Diocese is forced to further facilitate evil by providing Plaintiffs' TPA with the names of individuals insured through the Diocesan health plan, who are employees or dependents of employees of nonexempt entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic. By providing these names, the Diocese enables, and indeed triggers, the TPA reaching out to these individuals to notify them that the TPA will arrange for coverage and provision of the objectionable services. This is material cooperation in violation of Catholic beliefs.

25. The Diocese's provision of health benefits to its employees and to the employees of affiliated entities, such as Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic, reflects the Catholic social teaching that healthcare is among those basic rights which flow from the sanctity and dignity of human life. For the Diocese to expel nonexempt entities

from the Diocesan health plan or for nonexempt entities to have to drop healthcare benefits—in order to avoid the provision of the objectionable services—would inhibit Plaintiffs’ ability to follow this teaching.

26. As Catholic entities, Plaintiffs believe that they must bear witness, including in their deeds, to the beliefs of the Catholic Church and that it would be scandal to act inconsistently with those beliefs. Plaintiffs bear witness to those teachings not only by word, but also by deed, including their actions regarding the provision of employee health insurance. Were Plaintiffs to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable services, Plaintiffs would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings. Plaintiffs cannot bear witness to their teachings and at the same time act in a way that thwarts the transmission of life.

27. Moreover, Plaintiffs regularly speak out against abortions and the Mandate requires Plaintiffs to facilitate the provision of abortion-inducing drugs, sterilization services, contraceptives, and related counseling services in direct contradiction of Plaintiffs’ speech.

III. *The Religious Employer Exemption Does Not Work And Seeks To Divide The Church*

28. The Mandate artificially splits the Catholic Church in two, dividing the essential worship component from the equally essential charitable and educational components, the former which receives

the exemption and the latter which does not—preventing the Church from exercising supervisory authority over its constituents in a way that ensures compliance with Church teachings. Religious worship is an indispensable component of the Catholic faith, however, worship cannot be separated from providing good works and education, which are also indispensable and integral components of the Catholic faith and are at the heart of the mission of Catholic Church. Plaintiffs exercise the Catholic faith through worship, good works, and by providing education. In sum, the mission of the Church, which is accomplished through good works and education, necessarily flows from the nature of the Catholic religion and cannot be separated from it.

29. By providing insurance to St. Martin Center, Prince of Peace Center, and Erie Catholic through the Diocesan health plan, the Diocese has been able to ensure that the health benefits provided by these entities were consistent with Catholic teachings. However, now, the Diocese is forced to either expel these entities from its health plan or facilitate coverage that does not comply with Catholic teaching.

30. The Diocese may well be forced to expel Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic from the Diocesan health plan to avoid facilitating coverage of the objectionable services, beginning January 1, 2014. If so, these Plaintiffs would be forced to go out and obtain their own insurance so that their employees would still have access to healthcare benefits.

31. Even if St. Martin Center, Prince of Peace Center, and Erie Catholic did obtain insurance

separate from the Diocese, they would still need to provide the self-certification to their new TPA or insurer. Therefore, they still would be facilitating coverage of the objectionable services in violation of their religious beliefs, while at the same time being subject to higher costs for insurance. In his role on the Membership Boards of St. Martin Center, Prince of Peace Center, and Erie Catholic, Bishop Persico could not approve any policies that would result in such facilitation.

32. If Plaintiffs St Martin Center, Prince of Peace Center, and Erie Catholic failed to comply with the Mandate, they could be exposed to fines. Such fines would likely cripple Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic and their ability to provide social and educational services to thousands in the local community.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Scott Detisch

Father Scott Detisch, Ph.D.

Executed on: October 4, 2013

MOST REVEREND)	
LAWRENCE T. PERSICO,)	
BISHOP OF THE ROMAN)	
CATHOLIC DIOCESE OF)	
ERIE, <i>et al.</i>,	)	CIVIL ACTION NO.:
	)	1:13-cv-00303
PLAINTIFFS,	)	JUDGE ARTHUR J.
v.	)	SCHWAB
KATHLEEN SEBELIUS,)	
<i>et al.</i> ,)	
DEFENDANTS.)	
<hr/>		
MOST REVEREND DAVID)	
A. ZUBIK, BISHOP OF)	
THE ROMAN CATHOLIC)	
DIOCESE OF)	
PITTSBURGH, <i>et al.</i>,	)	CIVIL ACTION NO.:
	)	2:13-cv-01459
PLAINTIFFS,	)	JUDGE ARTHUR J.
v.	)	SCHWAB
KATHLEEN SEBELIUS,)	
<i>et al.</i> ,)	
DEFENDANTS.)	

I. STIPULATIONS REGARDING SCOPE OF EXEMPTIONS

1. The challenged regulations—or, collectively, “the Mandate”—do not apply to qualifying

“grandfathered” healthcare plans already existing as of March 23, 2010—the date the Affordable Care Act was enacted. *See* 75 Fed. Reg. 34,538, 34,540 (June 17, 2010).

2. A grandfathered health plan is not required to comply with the preventive services coverage requirement at 42 U.S.C. § 300gg-13.

3. A grandfathered health plan may maintain its grandfathered status so long as, if, compared to its existence on March 23, 2010, it does not eliminate all or substantially all benefits to diagnose or treat a particular condition, does not increase a percentage cost-sharing requirement, does not significantly increase a fixed-amount cost-sharing requirement, does not significantly reduce the employer’s contribution, or does not impose or tighten an annual limit on the dollar value of any benefits. 26 C.F.R. § 54.9815-1251T(a), (g)(1); 29 C.F.R. § 2590.715-1251(a), (g)(1); 45 C.F.R. § 147.140(a), (g)(1).

4. Based on the Government’s estimates in 2010, their mid-range estimate was that, by the end of 2013, 49% of all employer plans will still retain their grandfathered status. 75 Fed. Reg. 34,538, 34,550-53 (June 17, 2010).

5. According to survey data from the Kaiser Family Foundation and Health Research & Educational Trust, 58 percent of firms had at least one grandfathered health plan in 2012, down from 72 percent in 2011, and 48 percent of covered workers were in grandfathered health plans in 2012, down from 56 percent in 2011. Employer Health Benefits 2012 Annual Survey at 7-8, 190, *available at* <http://ehbs.kff.org/pdf/2012/8345.pdf>.

6. Defendants' mid-range estimate has been that approximately 98 million individuals will be enrolled in grandfathered group health plans in 2013. 75 Fed. Reg. 41,726, 41,732 (July 19, 2010).

7. On February 15, 2012, defendants created a temporary enforcement safe harbor for non-grandfathered plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage that did not qualify for the religious employer exemption (and any associated group health insurance coverage). 77 Fed. Reg. 8725, 8727 (Feb. 15, 2012).

8. Small employers are exempt from the employer responsibility provision, which means that, starting in 2015, such employers are not subject to the possibility of assessable payments if they do not provide health coverage to their full-time employees and their dependents. 26 U.S.C. § 4980H(c)(2).

9. Small businesses that do offer non-grandfathered health coverage to their employees are required to provide coverage for recommended preventive services, including contraceptive services, without cost-sharing. 78 Fed. Reg. at 39,870, 39,887 n.49 (July 2, 2013).

10. On July 2, 2013, the Government announced that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. Mark J. Mazur, *Continuing to Implement the ACA in a Careful, Thoughtful Manner*, Treasury Notes (July 2, 2013) (Plaintiffs' Exhibit P40).

11. The Congressional Budget Office (CBO) estimates that roughly 1 million fewer people are

expected to be enrolled in employment-based coverage in 2014 than the number that had been projected in CBO's May 2013 baseline, primarily because of the one-year delay in penalties on employers. Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Representative Paul Ryan, Chairman, Committee on the Budget at 4 (July 30, 2013) (Plaintiffs' Exhibit P41).

12. CBO estimates that of those who would otherwise have obtained employment-based coverage, roughly half will be uninsured and the others will obtain coverage through the exchanges or will enroll in Medicaid or the Children's Health Insurance Program (CHIP). *Id.*

II. STIPULATIONS REGARDING PENALTIES

13. Regarding the fine for providing coverage without the objectionable preventive services, the parties have already stipulated that one of the "mechanisms to enforce the challenged regulations" is that "[c]ertain employers whose group health plans fail to provide certain required coverage may be subject to a penalty of \$100 a day per affected beneficiary. *See* 26 U.S.C. § 4980D(b)." *Zubik*, Doc. No. 39 at ¶ 50(a).

14. It is not possible to determine the exact amount of tax Plaintiffs could be assessed under this penalty.

**III. STIPULATIONS REGARDING
PREVENTIVE SERVICES TO WHICH
PLAINTIFFS OBJECT**

15. The Health Resources and Services Administration's Women's Preventive Services Guidelines specifies eight categories of preventive services which must generally be covered by group health plans with no cost sharing. HRSA, *Women's Preventive Service Guidelines* (Aug. 1, 2011), *available at* <http://www.hrsa.gov/womensguidelines/> (Plaintiffs' Exhibit P85).

16. Plaintiffs object to only one of these eight categories as a result of their sincerely held religious beliefs. *Id.*

17. The category of preventive services to which Plaintiffs object, titled "contraceptive methods and counseling," covers "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *Id.*

18. Plaintiffs do not object to the other seven categories of preventive services. *Id.*

Dated: November 13, 2013

Respectfully submitted,

/s/ Paul M. Pohl

Paul M. Pohl (PA ID No. 21625)

John D. Goetz (PA ID No.
47759)

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

MOST REVEREND DAVID A. ZUBIK, et al.,	Plaintiffs,	Civil Action No. 13-1459 (Zubik)
vs.		
KATHLEEN SEBELIUS, et al.,	Defendants.	No. 13-303E (Persico)

MOST REVEREND LAWRENCE T. PERSICO, et al.,	Plaintiffs,	
vs.		
KATHLEEN SEBELIUS, et al.,	Defendants.	

**Transcript of proceedings on November
12, 2013, United States District Court,
Pittsburgh, Pennsylvania, before Arthur J.
Schwab, District Judge**

APPEARANCES:

For the Plaintiffs:	Paul M. Pohl, Esq. John D. Goetz, Esq. Leon F. DeJulius, Esq. Ira M. Karoll, Esq. Mary Pat Stahler, Esq.
For the Defendants:	Brad P. Humphreys, Esq.
Court Reporter:	Richard T. Ford, RMR, CRR 6260 U.S. Courthouse Pittsburgh, PA 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription

* * *

[Page 16]

[Testimony of Bishop David A. Zubik]

Q. Please describe exactly what the role and responsibilities of a diocesan bishop are under the laws and precepts of the Catholic Church?

A. First and foremost—it is important to note that a person becomes the bishop of a diocese by decision of the pope. So when one is appointed as a shepherd of the diocese, one is responsible for everything that's Catholic within that diocese. So that means for everything that comprises the six counties of southwestern Pennsylvania and the Diocese of Pittsburgh I'm responsible.

I think, technically speaking, bishop is responsible to teach, to govern, and to sanctify to make sure you can get as many people into heaven as possible.

Governing means to lead people in a way that will reflect the integrity of the church.

And teaching, clearly, means reflecting what are the effects of the universal traditions of the church. That is kind of technical.

But probably the best way and the way most people in the Court would say, most people would say the spiritual father of the people in southwestern

Pennsylvania and to help them understand their faith and to help them to grow in holiness.

THE COURT: We are going to have to slow the witness down. You have to slow down because he has to take down everything you say and we want that to be accurate, and if you speed up, then it makes it more difficult.

THE WITNESS: Your Honor, I will try my best.

THE COURT: Thank you.

THE WITNESS: You're welcome.

BY MR. POHL:

Q. Bishop, approximately how many Catholics are there in your diocese?

A. Nearly 700,000.

Q. Now, you have talked about what the role and responsibilities are of a bishop. I want to focus on one of those three points. What specifically is your responsibility with regard to the teachings, as the teacher authority in the diocese?

A. Well, not only that in my own teaching and preaching that I reflect what in fact are the tenets of the Catholic Church, but to provide for many avenues in our schools, in our parish, adult formation programs, in any of the documents that I may write that they would be reflective of what the Catholic Church believes.

Q. As a Plaintiff in this case, am I correct that you are seeking at this point a preliminary injunction to block the effectiveness of what has been called the preventive services mandate, a series of regulations promulgated pursuant to the Affordable Care Act, is that right?

A. That is correct.

Q. Now, let's talk for a few moments about Catholic Charities of the Diocese of Pittsburgh. What is your role in relation to the co-Plaintiff Catholic Charities of the Diocese of Pittsburgh?

A. I am not only one of the members, but I am the chair of the membership.

Q. Do you have additional responsibilities as bishop and in that role on the membership board to be sure that what Catholic Charities does in every respect is consistent with the teachings of the church?

A. Absolutely. And I refer back to my original answer of what the pope expects when he appoints a person who is a bishop of a diocese.

MR. POHL: I would note for the record, Your Honor, that the bylaws of Catholic Charities are an exhibit in evidence now by agreement, noted at the beginning of the proceeding.

THE COURT: Give us an exhibit number, please, since that seems to be your delegated task.

MR. GOETZ: I will get it in a second for you, Your Honor. 12, Your Honor, P12.

THE COURT: Thank you.

BY MR. POHL:

Q. You talked about your responsibilities as chair of the membership board and you talked about insuring that Catholic Charities does its work consistent with the teaching of the church. Do you also watch and monitor and govern in your role as bishop and chair of the board what Catholic Charities

can or cannot do with regard to subjects such as abortion, sterilization, and contraception?

A. Absolutely.

Q. Do you have frequent communication with Catholic Charities and its executive director?

A. I do.

Q. Is the role which you have described one which is set forth in one or more governance documents of the Catholic Church?

A. It is.

MR. POHL: I would like now, Your Honor, to direct the witness' attention to, and the Court's attention, to Exhibit 3, which we can call up on the screen.

BY MR. POHL:

Q. You should have it, Bishop, in the book in front of you. Do you have the hard copy there?

A. I do not.

MR. DEJULIUS: I have it, Your Honor. May I approach?

THE COURT: Sure. You don't need to ask.

BY MR. POHL:

Q. It should be in the Plaintiffs' exhibit book 3. No. 3.

A. Okay, thank you.

Q. On the screen, just it should say. Apostolic letter issued *motu proprio* of the Supreme Pontiff Benedict XVI on the service of charity.

A. I have it in front of me.

Q. What is an apostolic letter issued *motu proprio*?

A. *Motu proprio* means it is a directive. It is an expectation, it's a requirement. It's not in contradistinction to, it's not a response to a question that's asked, but a directive that the pope would in fact give to bishops throughout the world.

Q. All right. Would this be something that you received from the pope that directs you as the bishop of what your obligations are in respect to a charitable organization like Catholic Charities?

A. Yes.

Q. I just want to call your attention to a couple specific provisions and ask you to explain a bit how you understand them and implement them.

If you look at the second paragraph on the first page, in the introduction, can you read the first two lines down to the semicolon in the middle of the second line. That's where I want to start.

A. The service of charity is also a constitutive element of the church's mission and an indispensable expression of her very being.

Q. All right. Can you explain how you understand and apply that in your dealing as the bishop and chair of the board in dealing with Catholic Charities?

A. It means living one's faith. It follows directly on the gospel expectation from Jesus that we are not only going to worship God, but we live the faith that is ours.

Q. That goes beyond—does it go beyond just prayer and worship in a house of worship?

A. It does, to use Cardinal Dolan's expression, it is what we do between Sunday and the next Sunday.

Q. If you look, please, at Page 2 of Plaintiffs' hearing Exhibit 3, and if you can, please read the first four lines down to the phrase, "intentions of the faithful." A. Is this on the first paragraph on Page 2?

Q. The bottom paragraph on Page 2.

A. Nevertheless, to the extent that such activities are promoted by the hierarchy itself or are explicitly supported by the authority of the church's pastors, there is a need to ensure that they are managed in conformity with the demands of the church's teaching and the intentions of the faithful, and that they likewise respect the legitimate norms laid down by civil authorities.

Q. All right. Now, how do you understand an attempt to implement that directive to you as the bishop and the chairman of the board at Catholic Charities?

A. It coincides with my responsibilities as a teacher of the faith, which means that the practice of charity has to reflect the teachings of the church.

Q. All right. Now, if you will, please, look at Page 3, Article 1, Section 3. If you can please read Section 3, I am going to ask you a question or two about it.

A. In addition to observing the canonical legislation, the collective charitable initiatives to which this *motu proprio* refers are required to follow Catholic principles in their activity and they may not accept commitments which could in any way affect the observance of those principles.

Q. How do you understand and apply that to Catholic Charities?

A. The Catholic teaching and tradition and its teachings has to be observed in all instances.

Q. And it's your responsibility to be sure that happens?

A. Correct.

Q. All right. Now, if we go down to the bottom of that page. Would you read the first three lines of Section 2, please.

A. Of Article 3?

Q. Yes. No—Article 3, Section 2, yes.

A. For agencies not approved at the national level, even though they operate in different dioceses, the competent authority is understood to be the diocesan bishop of the place where the agency has its principal office. In any event, the agency has the duty to inform the bishops of other dioceses where it operates and to respect the guidelines for the activities of the various charitable agencies present in those dioceses.

Q. As you understand and apply that, what are your responsibilities under that section?

A. Clearly means that I have an obligation to make sure that Catholic Charities and the Diocese of Pittsburgh follows the teachings of the church.

Q. If you will—I just have two more here. If you will read, please, Article 4, Section 3, of Exhibit 3.

A. It is the responsibility of the diocesan bishop to ensure that in the activities and management of these agencies the norms of the church's universal and particular law are respected, as well as the intentions of the faithful who made donations or bequests for these specific purposes.

Q. And how do you understand and apply that responsibility?

A. It means that the Catholic Charities has to be integral with the teachings of the church and that we cannot be in a position where we provide scandal.

Q. Finally, if you will look at Article 9, Section 3, which is at the top of the next page. If you can read that, please, and I am going to ask you a question about it.

A. It is the duty of the diocesan bishop and respective parish priests to see that in this area the faithful are not led into error or misunderstanding. Hence, they are to prevent publicity being given through parish or diocesan structures to initiatives which, while presenting themselves as charitable, propose choices or methods at odds with the church's teaching.

Q. All right. Please explain what you understand your responsibilities to be under that section of the directive.

A. Once again, it is my responsibilities as bishop to maintain the integrity of the church's teachings in all matters, especially when it comes to charitable acts.

Q. Do you conscientiously try to follow those directives in your dealings with Catholic Charities?

A. I do.

Q. All right. Do you also, in addition to the role you serve with respect to co-Plaintiff Catholic Charities and the Diocese of Pittsburgh, as the bishop and chair of the membership board and the leading teaching authority, do you have any

responsibilities relating to Catholic Charities organizations through the US Conference of Catholic Bishops?

A. I do.

Q. Can you explain for the Court what that is?

A. It's just within the last several weeks I have been appointed as the liaison between the US Conference of Catholic Bishops and Catholic Charities USA. As a matter of fact, I am going to begin to work on those responsibilities tomorrow.

Q. I will ask a very basic question, Bishop. Why does the diocese operate Catholic Charities?

A. It's an absolute essential of living out the gospel. As we so often publicly will make reference, Catholic Charities is the charitable arm of the church. It's not an option. It's an absolute necessity for us to be church and to be true to the teachings of Jesus.

Q. Is Catholic Charities of the Diocese of Pittsburgh the only separately incorporated affiliate you oversee as the head of the diocese?

A. It is not.

Q. Give me an example of other incorporated entities—

A. Saint Anthony's School programs that work with children who have some disabilities. Some of the Catholic high schools, for example, would be an example of that as well too.

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CROSS-EXAMINATION

BY MR. HUMPHREYS:

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Q. You testified that the diocese provides health insurance to its employees. In the past has the diocese ever informed its third party administrator, Highmark or UPMC, that it does not want to include coverage for contraceptive services?

A. Absolutely. That's the arrangement since we have the two third party administrators and we are self-insured, and the self-insured plans have reflected Catholic belief.

Q. Did informing Highmark or UPMC of that belief and that desire, did that violate your religious beliefs in informing them of that?

A. It was an obligation that we had to inform them.

Q. So it did not violate your religious beliefs?

A. No.

Q. Also, in the past in order to insure that the diocese's health plan is extended to its various employees and to the employees of Catholic Charities, it is true, is it not, that the diocese informed Highmark or UPMC of who the diocese or Catholic Charities employees are?

A. Correct.

Q. Did doing that violate your religious beliefs?

A. No.

Q. It is also true, isn't it, that the diocese would have to inform Highmark or UPMC when an employee is no longer employed by the diocese?

A. That's correct.

Q. In your role as chair of the membership of Catholic Charities—membership board, excuse me, and your oversight of that organization, do you know what percentage of Catholic Charities employees share the religious beliefs of their employer?

A. I do not.

Q. Do you know what percentage of those employees use contraception in their personal life?

A. I do not.

* * *

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THE COURT: Any objection to my asking a couple questions?

MR. POHL: None at all, Your Honor.

MR. HUMPHREYS: Not at all, Your Honor.

THE COURT: I am not Roman Catholic, so I am not used to some of your terminology. Can you help me understand the relationship between faith and works in the Roman Catholic tenets and documents.

THE WITNESS: Your Honor, they are integral. I think to use the analogy of Cardinal Dolan's testimony here this morning, it is a matter of when we leave mass on Sundays we're called forth to go forth and live our faith. That's absolutely critically important. We argue that the purpose of faith is not simply what we do in our churches on the weekend, but what we do at our work places and especially how

we have the obligation to be reaching out to people who are in need. So that's an absolute essential to our faith and there is no split between the two.

THE COURT: Okay. Is it your intent to instruct the head of Catholic Charities not to sign the self-certification form?

THE WITNESS: I would, Your Honor, although my understanding is that I would have to sign that I think as the chairman of the board.

THE COURT: Is it your intent that you will not sign the self-certification form?

THE WITNESS: That's my—that would be my intent.

THE COURT: You are willing to suffer the consequences that could flow from there?

THE WITNESS: Well, I think the—I wouldn't be able to live with myself to know that we would be contradicting what our beliefs are.

* * *

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[Testimony of Susan Rauscher]

THE COURT: You may call your next witness, please.

MR. GOETZ: Yes, Your Honor. Plaintiffs call Susan Rauscher.

SUSAN RAUSCHER, a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOETZ:

Q Good morning, Mrs. Rauscher.

A Good morning.

Q Where are you currently employed?

A Catholic Charities of the Diocese of Pittsburgh.

Q And what is your title?

A I'm the executive director.

* * *

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Q Has Catholic Charities' health care plan ever covered the preventive services addressed in the final rule of the mandate?

A No.

Q Has any employee of Catholic Charities, Miss Rauscher, ever asked you for or complained about not having these preventive services in Catholic Charities' health care plan?

A No.

Q Are you familiar with any Catholic Charities employees who have suffered negative health consequences as a result of the health care plan's exclusion of the objectionable preventive services?

A No.

* * *

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Q Miss Rauscher, would it constitute a burden to you as executive director of Catholic Charities in the exercise of Catholic life to sign a self-certification form?

A It would.

Q In your view would the burden of signing the form be a substantial one?

A It would.

Q Do you hold these views sincerely as the executive director of Catholic Charities?

A I do.

Q Does Catholic Charities need approval to sign this self-certification form from Bishop—Bishop Zubik?

A It does.

Q Have you spoken with the Bishop about whether or not he will allow the signature?

A We have not talked particularly about actually allowing the signature. We've talked about the implication of the signature and all of the various options that are before us.

Q What will happen in your understanding, Miss Rauscher, to Catholic Charities if it does not sign the self-certification form?

A Um, my sense would be that we would continue to provide health care services to our employees and begin to incur the fines.

Q Do you know how much the fines will be?

A They are \$100 per day per eligible employee.

Q Do you have an estimate, Miss Rauscher, about what the total fines would be for Catholic Charities in a year for failing to sign the self-certification form?

A Um, without specifics we could be anywhere between \$2 and \$4 million a year.

Q And what is the operating budget in total for Catholic Charities?

A Ten million dollars.

Q So is it true that a significant portion of your funds would have to be spent on these fines?

A Absolutely.

Q Is there any way in your view as executive director that Catholic Charities could absorb and pay these fines?

A Not without significant changes to the organization. We take very seriously the money that's entrusted to us. We consider ourselves good stewards of those resources; and to have to use those resources to pay Government fines as opposed to providing health and human services would be very problematic.

Q Could you give us some specific examples of what would happen to Catholic Charities if it were subject to paying these fines?

A If we would no longer be able to have enough resources to cover our expenses, it would mean, quite simply, laying off staff and closing programs.

Q What are some of the programs that have budgets in the neighborhood of the estimate of fines that you provided to the Court?

A Our Free Health Care Center for the Uninsured, which sees about—they provide about 800 dental and medical appointments each month. Our St. Joe's House of Hospitality, which is a residence for homeless older men and has 60 residents at all times and a waiting list. Absolutely our safety net and stability service where we provide

resources to individuals to keep the heat on, provide food, clothing, those kind of things. Those would be our bigger programs that would have budgets near those numbers.

Q And what would the consequences be to the community, Miss Rauscher, of curtailing or shutting down the programs you just testified to?

A For us it's really tangible. It would be fewer people would be sheltered, fewer meals would be served, health care wouldn't be available to people who were uninsured, families would be in homes that were not heated, no electricity, no lights, emergency food assistance wouldn't be available.

Q Would there be any consequences to the employees to Catholic Charities of the failure to sign a self-certification form?

A Well, we wouldn't be able to maintain the same number of employees that we currently have, so we would be laying off staff.

Q The pressure that you testified to earlier between signing the form and violating your faith and payment of fines, do you know how you will reconcile that conflict?

A I can't say that I can—I can tell you one way or the other up here. I think we'd have to look at absolutely every possibility, and we are sitting here before this Court looking for the protection that we believe we deserve.

Q Now, earlier today, while you were sitting in the gallery as a—as executive director of Catholic Charities, Cardinal Dolan spoke about the mandate's effect of splitting the church between the worship

wing and the service wing. Do you remember that testimony?

A I do.

Q As executive director of Catholic Charities, is that consistent with your operation of the agency?

A Absolutely. When we—when we do the work that we do at Catholic Charities, we do it consistent with Catholic teaching. All of our employees, when they start with us, receive that as part of their orientation and every year they take a pledge to perform their duties in accord with Catholic teaching.

Q Is it possible to split the faith from service?

A No.

Q In Bishop Zubik's role as chairman of the membership board of Catholic Charities, has he followed that vision in overseeing Catholic Charities as an organization?

A He has.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q I have just a few questions. Catholic Charities currently provides health insurance to its employees, is that correct?

A It does.

Q And you testified that Catholic Charities has informed its TPA that it objects to coverage for contraceptive services and therefore doesn't want those services in the plan, correct?

A Correct, uh-huh.

Q And did it violate Catholic Charities' religious beliefs to inform the TPA of that?

[65]

A No.

Q You also keep track of who works at Catholic Charities and who doesn't?

A We do.

Q And you've informed the plan's TPA of who works for Catholic Charities so the TPA provides payment for services under the plan.

A Correct.

Q And does it violate your religious beliefs or Catholic Charities' religious beliefs to do that?

A No.

Q Do you know the percentage of Catholic Charities employees that share the religious beliefs of Catholic Charities?

A I do not. We don't ask our employees to share their faith with us. The only position that needs to be Catholic is my position.

Q And you don't know the percentage of employees who use contraceptives in their personal lives?

A I do not.

* * *

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[Testimony of Bishop Lawrence Persico]

Q I want to ask you a few questions about the co-plaintiffs in the Erie case. What is your role in

relation to St. Martin Center, Prince of Peace Center and Erie Catholic Preparatory School?

A In all three of those entities I am the chair of the board of members that has oversight over these entities.

Q Could you explain what oversight you have over these organizations as the chair of the membership committee?

A Well, it's my responsibility to insure that they are following the teachings, the philosophy, the doctrine of the Catholic church as they perform their services in the various parts of the Diocese where these centers are located.

Q Does this responsibility include conforming to the teachings of the Catholic church with respect to abortion, sterilization and contraception?

A Absolutely.

Q Is the role which you've just described for the Diocese of Erie generally and with regard to these three organizations consistent with governance documents of the Catholic church?

A Yes.

Q Let me show you what was marked earlier as Plaintiff's Exhibit 3. Do you recognize this document, Bishop Persico?

A I do.

Q Could you describe it for us, please.

A Okay. This is a Motu proprio, an epistolic letter by Pope Benedict XVI, issued just recently on November 11th, 2012. It's a relatively new document.

Q Do you, Bishop Persico, as the Bishop of the Diocese of Erie, do you agree with the provisions of this exhibit as they may apply to St. Martin Center, Prince of Peace, and Erie Catholic Preparatory School?

A Yes, I do.

Q Bishop Zubik talked about several of the provisions earlier, and we don't want to repeat that testimony. Do you agree with the statements of Bishop Zubik earlier?

A Yes, I do.

Q Are there any other provisions of this exhibit that are relevant to you or specifically instructive to you as the Bishop for the Diocese of Erie?

A Well, one aspect in particular would be the third paragraph, and it begins in the middle where it says: Although the Directory for the Pastoral Ministry of Bishops—this is a directory that the Holy Father issued in the past, and it was sort of guidelines, directions for Bishops, but here it goes into—where it says: Explore more specifically the duty of charity as a responsibility incumbent upon the whole church and upon the Bishop and his Diocese.

That is essential, that I have that responsibility to maintain the teaching of the church on faith and good works. And I think that that just re-enforces that whole aspect that the—the Holy Father is calling us to, which is found obviously in scripture and the teachings of the church.

Q In your role of governance of St. Martin Center, Prince of Peace and Erie Catholic, do you try

to follow and apply these directives to those organizations?

A I do.

Q Are there any other provisions in this exhibit that you'd like to highlight specifically?

THE COURT: We're on Exhibit 3, correct?

MR. GOETZ: Exhibit 3, yes, Your Honor.

THE WITNESS: Yes. Again, I think Bishop Zubik mentioned it, but it would be Article 10, Paragraph 3—

BY MR. GOETZ:

Q Article 10 or Article 4—

A Article 10, yes.

Q Article 10, okay.

A Yeah.

Q Go ahead, I'm sorry.

A And I think this goes to the heart of the matter, too. In particular, the Diocesan Bishop is to insure the charitable agencies dependent upon him do not receive financial support from groups or institutions that pursue ends contrary to the church's teaching. Similarly, lest scandal be given to the faithful, the Diocesan Bishop is to insure that these charitable agencies do not accept contributions—I'm sorry, that is not the one I wanted to point to.

Q Okay. Bishop Zubik talked about Article 4, Section 3. Do you see that?

A Ah, yes, that's the one I wanted to refer to.

Q Okay. Does this section have significance to you, Bishop Persico, as the Bishop for the Diocese of Erie; and, if so, how?

A Well, in the fact that the Diocesan Bishop is to insure, again, that there—what the agencies do, do not become a source of scandal.

Q Why does the Diocese of Erie operate organizations such as St. Martin Center, Prince of Peace, or Erie Catholic Preparatory School?

A The Diocese operates these agencies as a way in which we put our faith into action, that we have—that charity and education are really good works of our faith, so they are key and essential in living out our faith life.

Q Is it possible in your role as Bishop of Erie to divide the works of St. Martin Center, Prince of Peace, and Erie Catholic from the worship of the Catholic faith?

A Well, if we look at scripture, faith without good works is dead, so I don't see how we can separate it. It's essential. It's who we are as Christians.

Q Are St. Martin Center, Prince of Peace and Erie Catholic the only separately incorporated affiliates you oversee as the head of the Diocese of Erie?

A No, there are others, too.

Q Okay. Like such as? Can you give us some examples?

A That I have oversight over?

Q Types of NAs.

A The Diocesan Savings and Loan, there are—
offhand, I can't think of the other ones.

* * *

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Q In your view, Bishop Persico, can St. Martin Center, Prince of Peace, and Erie Catholic sign this self-certification form and otherwise participate in the accommodation process consistent with Catholic teaching?

A I don't see how we can do it.

Q Would signing the form in your view constitute the facilitation of evil?

A Absolutely.

Q Could you describe the impact on the religious organizations in Erie that the Government has—has put on them by the self-certification form.

A Well, just taking St. Martin Center and Prince of Peace Center, just as an example, they service the poor, the homeless. They provide for the needs of the people. Much of the funding that they receive is charitable contributions. If we don't sign this, then they're going to be forced to pay fines, fines that will limit their works of charity of, you know, feeding the—feeding the hungry, clothing the poor and naked; and I don't know how else they're going to be able to do that. That's just Prince of Peace down in Mercer County.

St. Martin Center in the County of Erie will be severely crippled in what it's able to do with these funds in its work of charity within Erie County and the City of Erie.

Q Would it be a burden on the exercise of your Catholic faith, Bishop Persico, to sign the self-certification form that you have in front of you as Exhibit 10?

MR. HUMPHREYS: Objection, calls for a legal conclusion.

THE COURT: Overruled. Again, you can have a standing objection.

MR. HUMPHREYS: Thank you.

THE WITNESS: I would have. I would have a real moral issue in signing that because I would be afraid of giving scandal to the faithful.

BY MR. GOETZ:

Q Would the burden of signing the form be substantial to your exercise of the Catholic faith?

A Well, it would. It would. For me, it would be a contradiction because I'm teaching one thing and then my action said something else.

Q You referenced the term "scandal." Is that what you mean by the term "scandal" under the Catholic faith?

A Well, to the people and the faithful it would seem as a contradiction, that I'm teaching one thing and behaving in another manner.

Q And what about the claim, Bishop Persico, that signing this form would only take a few minutes? Do you agree with that?

A It doesn't take a few—it—yes, it takes a few minutes to sign, but the ramifications are eternal.

Q Does the fact that if St. Martin Center, Prince of Peace and Erie Catholic go through the

accommodation process, won't actually have to bear the cost of the coverage, does that solve the moral dilemma in front of you now?

A If they sign?

Q Yes, and it doesn't cost them anything. Does that solve the dilemma?

A It's not about money. It's the moral teaching here that is at issue.

Q As the chairman of the membership board of the three organizations that we've discussed, can you direct the heads of those organizations to sign the self-certification form and trigger the accommodation process?

A If you're asking me that question right now, I would have a very difficult time in doing that. I don't see how I could.

Q And what is your understanding if they do not sign the form?

A They will be fined.

Q Couldn't these organizations just eliminate their health care coverage?

A They'll be fined.

Q Cardinal Dolan spoke about splitting the Catholic church under the final rule between a worship wing and a service wing. Do you agree with that testimony as applied to the Diocese of Erie?

A I do.

Q Is it possible in your role as Bishop for the Diocese of Erie to split the Catholic faith between a worship wing and a service wing?

A I think I would be going against scripture and teaching of the church when we're told that it's faith and good works. You don't have two separate, that they don't co-exist. It's all part of the same.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q The Diocese provides insurance to its own employees and to the employees of the other entities that are Plaintiffs in this case, is that correct?

A That is correct.

Q And prior to the issuance of these regulations challenged here, the Diocese informed the TPA, Highmark, that it did not intend to include coverage for contraceptive services; is that correct?

A That's correct.

Q And did informing the TPA of that violate the Diocese or the other entities' religious beliefs?

A No, because we informed them not to have that coverage.

Q Prior to the regulations, also, did the Diocese keep track of who works for the Diocese and for the other entity Plaintiffs?

A Yes.

Q And did you provide a list prior to the regulations of those employees to the TPA so they could determine who is on—

A Who would be covered, yes.

Q —who is on the Diocese plan and who is not?

THE COURT: Let him finish the question, first.

THE WITNESS: Okay.

THE COURT: Please.

THE WITNESS: Yes.

BY MR. HUMPHREYS:

Q And did you also inform the TPA, Highmark, when an employee was no longer in the Diocese or the other entities' employ?

A That's correct.

Q And did doing those things violate the Diocese or the other organizations' religious beliefs?

A No.

Q Do you know what percentage of the employees of St. Martin Center share the religious beliefs of St. Martin Center?

A I do not.

Q What about for Prince of Peace?

A I do not.

Q Catholic Preparatory School, Erie Catholic Preparatory School, do you know that information?

A I—I don't have numbers for that, no.

Q And for any of the employees of those entities do you know the percentage that actually use contraceptive services personally?

A No.

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[Testimony of Father Scott Jabo]

DIRECT EXAMINATION

BY MR. DeJULIUS:

Q Good morning, Scott—Father Scott. Can you introduce yourself to the Court.

A My name is Father Scott Jabo.

Q And where are you currently employed?

A Erie Catholic Preparatory School in Erie, Pennsylvania.

Q Is that also known as Erie Catholic Prep?

A Yes, you can refer to it as Erie Catholic Prep.

Q Okay. What is Erie Catholic Prep?

A Erie Catholic Prep is a co-institutional college preparatory school, Catholic school, of the Diocese of Erie. It's a merged entity of Villa Maria Academy and Cathedral Preparatory School which merged to form a co-institutional—one school, two campuses—college preparatory school.

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* * *

Q Have any of your employees ever asked for these objectionable services?

A I have never been asked by any of our employees.

Q Have any of your employees ever complained to you about not being provided these services in their health plan?

A Never.

Q Are you aware of any Erie Catholic Prep employee who has suffered negative health consequences as a result of the health plan not providing these objectionable services?

A No one.

Q Father, has anybody actually ever told you anything about the health plans?

A Actually, we get compliments about the good coverage that our employees get. Some of our employees got cancer, been in accidents, broken legs, they've been in the hospital for extended periods of time; their coverage they consider to be very good. It is one of the features that attract employees to our school, and it's a way of us taking care of our employees, and our employees have expressed their gratitude for the coverage that we provide to them.

* * *

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Q Does this type—or the decision to sign this form, does it fall underneath the Bishop's reserve powers?

A It is the Bishop. The Bishop would be the one who would give us permission or authority to sign this document.

Q Have you received permission from the Bishop to sign the certification form?

A I have not.

Q What will happen to Erie Catholic Prep if you don't sign the self-certification form?

A My understanding is that if we do not sign the self-certification form, that we will be heavily fined. My understanding is \$100 per beneficiary per day.

Q In a round about number, how much or what's the amount of fines that we would be talking about?

A We're talking, rough estimate, probably around \$2.8 million per year.

Q What's the total operating budget for Erie Catholic Prep?

A Approximately \$10 million per year.

Q So how would Erie Catholic Prep pay those fines?

A We would have no way of paying those fines. Our budget is balanced. We take care of every dollar that comes in, and we don't have extra money around. We have no way of paying fines like that.

Q What will happen if you get those fines, then?

A Well, the first steps in trying to react to those fines would be try to shut down some of our programs, lay off people, but that would only sustain us for a very short period of time. In essence we'd have to shut our doors completely because we cannot sustain ourselves. As a school with a budget, limited resources, we would close our doors.

Q Father, in your view what message would signing the self-certification form, participating in the accommodation process, send to your students and benefactors?

A As I mentioned, we are a Catholic school. I have the responsibility of insuring that everything we do as a school follows Catholic church teachings. Therefore, what we provide to our employees, health care, is important. We provide those services to our—health insurance to our employees. Signing this self-certification makes me a hypocrite because I'm teaching one thing, instilling in our students one thing, Catholic world teaching that we cannot

facilitate or participate in moral evil. We're very clear in instructing our students in that line of thinking, all of our students, part of what they receive throughout their formation of—at our school.

For me to sign this is now saying I'm teaching one thing, but I'm doing something else because I'm now facilitating or participating in moral evil. I would become a hypocrite and the school would become a hypocrisy, so it's a contradiction.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q You testified that the school does provide insurance for its employees, is that correct?

A That is correct.

Q And prior to the issuance of the regulations here, the school informed the TPA that it objects to providing contraceptive services.

A That is correct.

Q And did informing the TPA prior to the regulations violate the school's religious beliefs?

A It did not.

Q Prior to the regulations, did the—excuse me, did the school keep track of who works for it and who doesn't, who its employees are?

A Yes, it does.

Q And did the school provide a list of those employees to the TPA so the TPA could determine who is entitled to coverage under the plan?

A Yes.

Q And did the school inform the TPA when an employee was no longer in the Diocese employ—excuse me, in the school's employ?

A Yes, that's correct.

Q Do you know the percentage of the school's employees that share the school's religious beliefs?

A Meaning that they are Catholic?

Q Well—let's make it specific to shares the school's objection to contraceptive services.

A I don't know what percentage.

Q Do you know what percentage of the school's employees use contraceptives personally?

A I have no idea.

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[Testimony of Mary Maxwell]

MR. DeJULIUS: One more witness, Your Honor. Call Mary Maxwell.

MARY CLAIRE MAXWELL, a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DeJULIUS:

Q Good morning, Miss Maxwell.

A Good morning.

Q Where are you currently employed?

A Catholic Charities of the Diocese of Erie.

Q And what's your title there?

A I am the executive director.

* * *

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Q Has the Diocesan plan always covered the employees of St. Martin Center and Prince of Peace Center?

A In my tenure it has; I don't know about before that.

Q And is the Diocesan plan consistent with Catholic teaching and doctrine?

A Yes.

Q Okay. And how do you believe the Diocesan plan is consistent with Catholic teaching and doctrine?

A We are—basically our teaching is about the sanctity of life, and everything in that policy is consistent with that teaching.

Q Now, Miss Maxwell, are you generally familiar with the Government's definition of preventive services?

A I am.

Q And are some portion of what the Government defines as preventive services inconsistent with Catholic doctrine?

A Yes.

Q How so?

A Well, there are basic provisions of that, the contraception, the sterilization, the abortifacients, and the counseling that is required that would be objectionable to Catholic teaching.

Q Has the Diocesan plan at Prince of Peace Center, St. Martin Center ever covered these services?

A Not to my knowledge.

Q Has any employee of St. Martin Center or Prince of Peace Center ever asked for these objectionable services?

A Not to my knowledge.

Q Has any employee of St. Martin Center or Prince of Peace Center complained about not having these objectionable services in their health plan?

A I have never heard of it if it's so.

Q Miss Maxwell, are you familiar with any Prince of Peace Center or St. Martin Center employee who has suffered negative health consequences as a result of the health plan's failure to include these objectionable preventive services?

A No.

* * *

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Q What will happen to Prince of Peace Center and St. Martin Center if they do not sign the self-certification form and participate in the accommodation?

A I understand they will be fined.

Q And do you have a ballpark figure about how big these fines would be?

A Combined, the agencies, would be several million.

Q And what is the operating budget for St. Martin Center?

A The operating budget is in the neighborhood of 5 million—4 million, excuse me. St. Martin Center is 4 million.

Q What about the operating budget for Prince of Peace Center?

A That is only 800,000.

Q So a significant portion of your funds would be spent on these fines, correct?

A They can't be spent on those fines; but, yeah, it would be a significant amount.

Q Well, what would happen to St. Martin Center, Prince of Peace Center if they were subject to these fines?

A If—if we were subject—this would be devastating. It would be—it would be devastating for all of our clients, the poor—these are single women, children. I didn't talk about our children's program, the elderly, populations that we haven't even talked about here. We have a significant refugee program. These are people who count on the Catholic church, who count on our agencies to listen and to do what we can to help them. And it would be drastic if—if these fines had to be dealt with.

It would—people would lose jobs. Our community of Erie counts on St. Martin Center. It—it would be devastating for all concerned, for our church. It just—it—it isn't something that we could cope with.

* * *

CROSS EXAMINATION

BY MR. HUMPHREYS:

Q It's true that St. Martin Center and Prince of Peace both provide health insurance to their employees, is that correct?

A Correct.

Q And prior to the issuance of the regulations, both St. Martin Center and Prince of Peace informed their TPA they did not want to provide contraceptive services in that coverage. Is that correct?

A Through our Diocesan office, yes.

Q Okay. And did informing the TPA of that fact violate either of the entities' religious beliefs?

A It—you mean informing them that these services are not acceptable, did that violate—

Q Exactly, yes, that's what I'm asking.

A Um, informing them that we cannot accept them did not violate our faith.

Q Right. So when you informed the TPA prior to the issuance of the regulations that St. Martin Center and Prince of Peace Center did not want to include contraceptive coverage on its plan to its insureds—excuse me—to its employees, that didn't—

A Correct.

Q —that didn't violate your religious beliefs, thank you.

And prior to the regulations, did Prince of Peace Center and St. Martin Center keep track of who works for each organization?

A Yes.

Q And were those entities required to inform the TPA of who works for them at any given time?

A Yes.

Q Did that violate the entities' religious beliefs to inform the TPA of who was working for them?

A No.

Q Did the entities have to inform the TPA when an employee left the employ of one of the two entities so the TPA could stop coverage?

A I'm sure.

Q And did that violate the religious beliefs of the entities to do that?

A No.

Q Do you know the percentage of employees at St. Martin Center who share the religious beliefs of the center itself?

A I do not know; we don't ask.

Q What about for Prince of Peace?

A Same answer.

Q And for the employees of either entity, do you know what percentage use contraceptive services personally?

A No.

* * *

[Page 134]

THE COURT: On behalf of the Defendant, what would you like to offer in the Defendants' case in chief?

MR. HUMPHREYS: Defendants have moved—ask to have moved into evidence the 16 exhibits in the exhibit list, Defendants’ exhibits, which are all from the administrative record.

THE COURT: Any objection?

MR. GOETZ: No, Your Honor. D1 through D16 as listed on the joint exhibit list, we have no objection.

MR. HUMPHREYS: No further evidence, Your Honor.

THE COURT: You have no live testimony, is that correct?

MR. HUMPHREYS: That’s correct.

THE COURT: So does the Defendant rest—Defendants rest their case in chief?

MR. HUMPHREYS: Yes, the Defendants rest their case in chief.

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

MOST REVEREND DAVID A. ZUBIK, et al., Plaintiffs, vs. KATHLEEN SEBELIUS, et al., Defendants.	Civil Action No. 13-1459 (Zubik) No. 13-303E (Persico)
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MOST REVEREND LAWRENCE T. PERSICO, et al., Plaintiffs, vs. KATHLEEN SEBELIUS, et al., Defendants.	
--	--

**Transcript of proceedings on November
13, 2013, United States District Court,
Pittsburgh, Pennsylvania, before Arthur J.
Schwab, District Judge**

APPEARANCES:

For the Plaintiffs:	Paul M. Pohl, Esq. John D. Goetz, Esq. Leon F. DeJulius, Esq. Ira M. Karoll, Esq. Mary Pat Stahler, Esq. Alison M. Kilmartin, Esq.
For the Defendants:	Brad P. Humphreys, Esq.
Court Reporter:	Richard T. Ford, RMR, CRR 6260 U.S. Courthouse

Pittsburgh, PA 15219
(412) 261-0802

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription

* * *

[Page 54]

THE COURT: In your words, what do you believe are the sincerely held beliefs of the Plaintiff as it applies to this case?

MR. HUMPHREYS: I would be very hesitant to characterize Plaintiffs' own religious beliefs.

THE COURT: Does the Government accept the facilitation of evil tenet that we heard about as being a sincerely held belief?

MR. HUMPHREYS: We don't question that the Plaintiffs sincerely believe everything to which they testified yesterday, and, yes, that includes the facilitation of evil.

THE COURT: Does it include the belief that, as was testified, that signing the self-certification form would, according to their testimony, facilitate evil?

MR. HUMPHREYS: The Government has no reason to question that, Your Honor.

THE COURT: So what do you do with the substantial burden test as applies to Plaintiffs' sincerely held belief that signing the self-certification would facilitate evil?

MR. HUMPHREYS: I think you look at whether or not the test articulated by the Supreme Court, whether or not it, as I said, forces the Plaintiff to perform acts that are at odds with its religious beliefs

or if it requires one to substantially change one's behavior.

THE COURT: But does that then require—you need to help me understand. If it's sincerely held that signing that self-certification form violates their tenets, then requiring them to do that would put me in a position to be judging whether that's not it's sincerity, but whether that has any meaning.

MR. HUMPHREYS: I don't mean to suggest this is an easy task or an easy case, certainly not, but in looking at the statute, which this is a statutory question, not a constitutional question, we have to look at what Congress meant by using the words "substantial burden."

Now, yes, it's true that that incorporated a lot of pre-Smith free exercise jurisprudence, but I think Plaintiffs' alternate sort of understanding of what substantial burden means isn't particularly helpful either. They say it means only the penalties involved. But in that position the Court would also have to make difficult line-drawing decisions that is \$100 substantial, is \$10,000 substantial.

I think the better reading of that—and Plaintiffs haven't suggested any sort of amount of money that would not be substantial.

THE COURT: So are you saying that I—it is really I need to evaluate what's asked, and if signing a piece of paper to me seems like—that only takes a second to do, that what you are being required to do only takes a second or a minute or two pounds or whatever, that that's what the test is, that's what substantial is by how much time one needs to spend to do an act?

MR. HUMPHREYS: I wouldn't put it in terms of the time is the only factor, but I think that it's clear if the statute—excuse me, if the regulation requires nothing more than what you already did previously or what Catholic Charities already did, which is to inform its TPA that it objects, that continuing to do that same thing is not a substantial burden.

You can also look at the effect of what happens after you sign the certification to the degree that Catholic Charities will still not be required to contract for, pay for, or refer for any of the things to which they object to those services. Simply a third party is involved in the provision of the things to which they object, and RFRA can't be used as a sword to prevent the Government from creating alternate mechanisms to essentially protect the rights of employees and to make sure that they are receiving important services.

THE COURT: Okay. Let's now talk about least restrictive means.

MR. HUMPHREYS: Certainly.

THE COURT: Is that a label you're comfortable with or would you prefer to use a different one?

MR. HUMPHREYS: That's good, Your Honor.

THE COURT: What in the portion of the administrative record that's been put into evidence in this case, which are Defendants' exhibits, in those pages which are about two and a half inches thick, is there any discussion of alternatives to the accommodations? Is there anything that tells how—I mean, somebody came up with an accommodation. What were the other options, if any, that were considered? Why was accommodation chose as

opposed to broadening the definition of religious employer, as opposed to not requiring the form to be signed, but just telling every TPA in America if historically you have not provided X services, you just now need to do it on your own, but you don't need to contact the employer? Is there anything in those two and a half inches of paper that deal with that?

MR. HUMPHREYS: There is a discussion in the final rule of the Plaintiffs' least—the Government's least restrictive means analysis and why other proffered least means were not viable.

THE COURT: What exhibit is it, do you know?

MR. HUMPHREYS: I can find it.

THE COURT: Do you know the exhibit number?

MR. HUMPHREYS: It should be Exhibit No. 1, Your Honor.

THE COURT: You said Defendants' Exhibit 1?

MR. HUMPHREYS: Yes, Your Honor. That would be on Page 39,888, starting at the very beginning of the page with fifth.

THE COURT: Thank you. Anyplace else in the Plaintiffs' exhibits?

MR. HUMPHREYS: Not that I am aware of at the moment, Your Honor, but I may submit it in supplemental briefing that is due this Friday if that's okay with you.

THE COURT: It uses the expression on Page 39,888, quote, all of these proposals were considered, close quote.

Now, where is the documentation as to that consideration?

MR. HUMPHREYS: Well, this is the documentation, Your Honor. I mean, the policy makers in considering the comments submitted in response to the requests for notice and comment conducted that analysis.

I mean, I think what's important to recognize here in the discussion is that in the analysis the Defendants lack statutory authority to make the changes that were proffered in the notice and comment period. The statute itself requires, and Congress required, that the provision of preventive services work through the employee based system.

THE COURT: All right. So, is the Government's position that because of the way the statute is written, the ACA, that no other means were available but for the accommodation?

MR. HUMPHREYS: Certainly none of the means that Plaintiffs put forth that would not involve employer—that it would be based on the existing employer based system. So, yes, Congress said that preventive services have to come through—have to be required by employer plans, and then the Defendants developed an accommodation such that the employee—excuse me, the employers could fulfill that obligation through the self-certification mechanism, and the TPA then comes in and provides the services to the employees themselves. But it still works within that employer based framework.

THE COURT: Wasn't another alternative to broaden the definition of religious employer? I am not saying that that should have been adopted, but why isn't that another alternative?

MR. HUMPHREYS: That would not be less restrictive. It would not—in order to be less restrictive means, that means still has to satisfy or it has to fulfill the Government's compelling interest to further it. Simply broadening the religious employer exemption to cover a larger group of employers would not do that because then those employees would not have access to the services that Congress considered important. If you have no further questions, Your Honor?

* * *

No. 14-1453

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #:
1:13-cv-01261-EGS**

PRIESTS FOR LIFE et al v.	Date Filed:
UNITED STATES	08/19/2013
DEPARTMENT OF	Date Terminated:
HEALTH AND HUMAN	12/20/2013
SERVICES et al	Jury Demand: None
Assigned to: Judge Emmet	Nature of Suit: 440
G. Sullivan	Civil Rights: Other
Case in other court:	Jurisdiction: U.S.
13-05368	Government
Cause: 42:2000 Religion	Defendant

08/19/2013 1 COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 0090-3437070) filed by ALVEDA KING, FRANK PAVONE, JANET MORANA, PRIESTS FOR LIFE. (Attachments: # 1 Civil Cover Sheet, # 2 Summons U.S. Department of Health & Human Services, # 3 Summons HHS Secretary Kathleen Sebelius, # 4 Summons U.S. Department of the Treasury, # 5 Summons Treasury Secretary Jacob J. Lew, # 6 Summons U.S. Department of Labor, # 7 Summons Labor Secretary Thomas E. Perez, # 8 Summons U.S. Attorney General, # 9 Summons U.S. Attorney) (Muisse, Robert) (Entered: 08/19/2013)

* * *

09/19/2013 7 MOTION for Preliminary Injunction by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Attachments: # 1 Exhibit 1--Declaration of Father Pavone / Priests for Life, # 2 Exhibit 2--Declaration of Dr. Alveda King, # 3 Exhibit 3--Declaration of Janet Morana, # 4 Text of Proposed Order) (Muisse, Robert) (Entered: 09/19/2013)

* * *

10/01/2013 8 MOTION for Summary Judgment by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Attachments: # 1 Statement of Facts, # 2 Exhibit Declaration of Robert J. Muise with Exhibits A through D) (Muisse, Robert) (Entered: 10/01/2013)

* * *

10/17/2013 12 ADMINISTRATIVE RECORD Notice of Filing by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Certification of Administrative Record, # 2 Index of Administrative Record) (Berwick, Benjamin)

(Entered: 10/17/2013)

10/17/2013 13 Memorandum in opposition to re 8 MOTION for Summary Judgment filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Statement of Facts Defendants' Response to Plaintiffs' Statement of Facts) (Berwick, Benjamin) (Entered: 10/17/2013)

10/17/2013 14 MOTION to Dismiss, MOTION to Dismiss for Lack of Jurisdiction, Cross MOTION for Summary Judgment by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Statement of Facts, # 2 Memorandum in Support, # 3 Text of Proposed Order) (Berwick, Benjamin) (Entered: 10/17/2013)

* * *

10/25/2013 18 AMICUS BRIEF by AMERICAN CIVIL LIBERTIES UNION. (jf,)

(Entered: 10/27/2013)

* * *

10/31/2013 19 RESPONSE re 14 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Attachments: # 1 Statement of Facts Plaintiffs' Response to Defendants' Statement of Material Facts, # 2 Exhibit 5--Supplemental Declaration of Priests for Life, # 3 Exhibit 6--Supplemental Declaration of Robert J. Muise w/ Exhibits A through D)(Muise, Robert) Modified on 10/31/2013 (jf,). (Entered: 10/31/2013)

10/31/2013 20 REPLY to opposition to motion re 8 MOTION for Summary Judgment filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muise, Robert) (Entered: 10/31/2013)

* * *

11/12/2013 22 SUPPLEMENTAL MEMORANDUM to re Order, *directing the parties to address the impact of Gilardi v U.S. Dep't of Health & Human Services on the case* filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muise, Robert) (Entered: 11/12/2013)

11/12/2013 23 REPLY to opposition to motion re 14 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction Cross MOTION for Summary Judgment filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Berwick, Benjamin) (Entered: 11/12/2013)

* * *

11/19/2013 24 NOTICE OF SUPPLEMENTAL AUTHORITY by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Muisse, Robert) (Entered: 11/19/2013)

11/25/2013 25 NOTICE OF SUPPLEMENTAL AUTHORITY by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE (Muisse, Robert) (Entered: 11/25/2013)

11/25/2013 26 RESPONSE re 24 NOTICE OF SUPPLEMENTAL AUTHORITY filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT

OF THE TREASURY. (Berwick, Benjamin) (Entered: 11/25/2013)

* * *

- 12/02/2013 27 RESPONSE re 25 NOTICE OF SUPPLEMENTAL AUTHORITY filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Berwick, Benjamin) (Entered: 12/02/2013)
- 12/02/2013 28 SUPPLEMENTAL MEMORANDUM to re Order, *directing the parties to address the impact, vel non, of the U.S. Supreme Court granting petitions for writs of certiorari in Hobby Lobby & Conestoga* cases filed by ALVEDA KING, JANET MORANA, FRANK PAVONE, PRIESTS FOR LIFE. (Muisse, Robert) (Entered: 12/02/2013)
- 12/03/2013 29 RESPONSE TO ORDER OF THE COURT re Order, *directing the parties to address the impact, vel non, of the U.S. Supreme Court granting petitions for writs of certiorari in Hobby Lobby & Conestoga* cases filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, UNITED STATES DEPARTMENT

OF HEALTH AND HUMAN
SERVICES, UNITED STATES
DEPARTMENT OF LABOR,
UNITED STATES DEPARTMENT
OF THE TREASURY. (Berwick,
Benjamin) (Entered: 12/03/2013)

* * *

12/09/2013 Minute Entry for proceedings held
before Judge Emmet G. Sullivan.
Motion Hearing held on 12/9/2013 re
14 MOTION to Dismiss 8 MOTION
for Summary Judgment and 7
MOTION for Preliminary Injunction.
(Court Reporter BRYAN WAYNE.)
(mac) (Entered: 12/09/2013)

* * *

12/13/2013 31 SUPPLEMENTAL MEMORANDUM
to re Order, filed by JACOB J. LEW,
THOMAS E. PEREZ, KATHLEEN
SEBELIUS, UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, UNITED
STATES DEPARTMENT OF LABOR,
UNITED STATES DEPARTMENT
OF THE TREASURY. (Berwick,
Benjamin) (Entered: 12/13/2013)

12/16/2013 32 SUPPLEMENTAL MEMORANDUM
to re Order, filed by ALVEDA KING,
JANET MORANA, FRANK PAVONE,
PRIESTS FOR LIFE. (Muisse, Robert)
(Entered: 12/16/2013)

12/16/2013 33 NOTICE OF SUPPLEMENTAL
AUTHORITY by ALVEDA KING,

JANET MORANA, FRANK PAVONE,
PRIESTS FOR LIFE (Attachments: #
1 Memorandum Decision &
Order)(Muisse, Robert) (Entered:
12/16/2013)

- 12/17/2013 34 RESPONSE re 33 NOTICE OF
SUPPLEMENTAL AUTHORITY filed
by JACOB J. LEW, THOMAS E.
PEREZ, KATHLEEN SEBELIUS,
UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES, UNITED STATES
DEPARTMENT OF LABOR,
UNITED STATES DEPARTMENT
OF THE TREASURY. (Berwick,
Benjamin) (Entered: 12/17/2013)
- 12/19/2013 35 ORDER granting 14 Defendants'
Motion to Dismiss; denying as moot 8,
14 the parties' cross motions for
summary judgment. Signed by Judge
Emmet G. Sullivan on December 19,
2013. (lcegs4) (Entered: 12/19/2013)
- 12/19/2013 36 MEMORANDUM AND OPINION.
Signed by Judge Emmet G. Sullivan
on December 19, 2013. (lcegs4)
(Entered: 12/19/2013)
- 12/19/2013 37 NOTICE OF APPEAL TO DC
CIRCUIT COURT as to 35 Order on
Motion for Preliminary Injunction,
Order on Motion for Summary
Judgment, Order on Motion to
Dismiss, Order on Motion to
Dismiss/Lack of Jurisdiction, by

ALVEDA KING, JANET MORANA,
FRANK PAVONE, PRIESTS FOR
LIFE. Filing fee \$ 505, receipt
number 0090-3570500. Fee Status:
Fee Paid. Parties have been notified.
(Muisse, Robert) (Entered: 12/19/2013)

* * *

GENERAL DOCKET
UNITED STATES COURT OF APPEALS FOR
DISTRICT OF COLUMBIA CIRCUIT

Court of Appeals Docket #: 13-15368		Docketed: 12/19/2013		
Nature of Suit: 2440 Other Civil Rights Priests For Life, et al v. HHS, et al.		Termed: 11/14/2014		
Appeal From: United States District Court for the District of Columbia				
Current Cases:				
	Lead	Member	Start	End
Cross-appeal				
	13-5368	13-5371	01/23/2014	
	13-5368	14-5021	01/23/2014	

12/19/2013 US CIVIL CASE docketed. [13-5368]

12/19/2013 NOTICE OF APPEAL filed [1471416] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life seeking review of a decision by the U.S. District Court in 1:13-cv-01261-EGS. Assigned USCA Case Number [13-5368]

* * *

12/20/2013 *EMERGENCY* MOTION filed [1471703] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life for injunction. (Response to Motion served by mail due on 01/02/2014) [Service Date: 12/20/2013 by CM/ECF NDA] Pages: 16-20. [13-5368] (Muisse, Robert)

- 12/20/2013 PER CURIAM ORDER filed [1471854] consideration of the emergency motion for injunction pending appeal, it is ORDERED that appellees file a response to the emergency motion for injunction [1471703-2] by noon on Tuesday, 12/24/2013. Appellants shall file any reply by 10:00 a.m. on Friday, 12/27/2013. The parties are directed to hand deliver the paper copies of their submissions to the court by the time and date. Before Judges: Henderson, Brown and Tatel. [13-5368]
- 12/24/2013 RESPONSE IN OPPOSITION FILED [1472281] by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA to motion for injunction [1471703-2] [Service Date: 12/24/2013 by CM/ECF NDA] Pages 16-20. [13-5368] (Jed, Adam)
- 12/26/2013 REPLY FILED [1472593] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life to response [1472281-2] [Service Date: 12/26/2013 by CM/ECF NDA] Pages: 1-10. [13-5368] (Muisse, Robert)
- 12/27/2013 LETTER FILED [1472702] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life pursuant to FRAP 28j advising of additional authorities [Service Date: 12/27/2013] [13-5368] (Muisse, Robert)
- 12/30/2013 LETTER FILED [1472900] by Jacob J.

Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/30/2013] [13-5368] (Jed, Adam)

12/30/2013 LETTER FILED [1473102] by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/31/2013] [13-5368] (Jed, Adam)

12/31/2013 PER CURIAM ORDER filed [1473216] granting emergency motions for injunction [1471703-2], [1471948-2]; consolidating cases 13-5371 (Consolidation started 12/31/2013) with 13-5368; directing that appellants show cause why they should not be required to file one joint opening brief limited to 14,000 words and one joint reply brief limited to 7,000 words. Response to Order due 01/14/2014. Before Judges: Henderson, Tatel,* and Brown. (*Circuit Judge Tatel would deny the emergency motions for injunction pending appeal for the reasons in the attached statement.) [13-5368, 13-5371]

* * *

01/14/2014 LETTER filed [1475847] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and

placed on the docket on 01/14/2014 as No. 13-829. [13-5371, 13-5368]

01/23/2014 CLERK'S ORDER filed [1476407] consolidating case 14-5021 (Cross-appeal started 01/23/2014) with 13-5368 [13-5368, 13-5371, 14-5021]

* * *

01/27/2014 LETTER filed [1477875] b the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 01/27/2014 as No. 13-891. [13-5368, 13-5371, 14-5021]

* * *

02/28/2014 *JOINT* APPELLANT BRIEF [1482089] filed by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. in 13-5371, Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368 [Service Date: 02/28/2014] Length of Brief: 15,975 words. [13-5371,

13-5368, 14-5021] (Francisco, Noel)

02/28/2014 *JOINT* APPENDIX [1482090] filed by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, Victory Housing, Inc. and DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, Thomas Aquinas College, HHS and TREA in 13-5371, Alveda King, Janet Morana, Father Frank Pavone, Priests For Life and Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA in 13-5368, DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, TREA and Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman

Catholic Archbishop of Washington, Thomas Aquinas College and Victory Housing, Inc. in 14-5021. [Volumes: 2] [Service Date: 02/28/2014] [13-5371, 13-5368, 14-5021] (Francisco, Noel)

* * *

- 03/07/2014 *CORRECTED* AMICUS FOR APPELLANT BRIEF [1482856] filed by American Bible Society, Association of Christian Schools International, Association of Rescue Gospel Missions, Christian Legal Society, Ethics and Religious Liberty Commission of the Southern Baptist Convention, Institutional Religious Freedom Alliance, Lutheran Church-Missouri Synod, National Association of Evangelicals and Prison Fellowship Ministries in 13-5368, 13-5371 [Service Date: 03/07/2014] Length of Brief: 6,888. [13-5368, 13-5371, 14-5021] (Colby, Kimberlee)
- 03/14/2014 CLERK'S ORDER filed [1484058] scheduling oral argument before Judges BROWN, GRIFFITH, MILLETT on Tuesday, 05/13/2014 [13-5368, 13-5371, 14-5021]
- 3/28/2014 APPELLEE & CROSS-APPELLANT BRIEF [1486033] filed by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA in 13-5368, DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA in

13-5371, 14-5021 [Service Date: 03/28/2014] Length of Brief: 13,815 words. [13-5368, 13-5371, 14-5021] (Jed, Adam)

03/31/2014 LETTER filed [1486592] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 13-829: The petition for writ of certiorari before judgment was denied on 03/31/2014. [13-5371, 13-5368, 14-5021]

03/31/2014 LETTER filed [1486593] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 13-891: The petition for writ of certiorari before judgment was denied on 03/31/2014. [13-5368, 13-5371, 14-5021]

* * *

04/02/2014 MODIFIED EVENT FROM FILED TO LODGED—AMICUS FOR APPELLEE BRIEF [1486692] LODGED by Americans United for Separation of Church and State [Service Date: 04/02/2014] Length of Brief: 6,928 Words. [13-5371, 13-5368, 14-5021]—[Edited 04/03/2014 by AY] (Khan, Ayesha)

04/03/2014 MODIFIED PARTY FILER—MOTION filed [1486791] by Service Employees International Union, Raising Womens Voices for the Health Care We Need, Population Connection, Planned

Parenthood of Metropolitan Washington, DC, Inc., Planned Parenthood of Maryland, Inc., Planned Parenthood Federation of America, National Partnership for Women and Families, National Organization for Women Foundation, NARAL Pro-Choice America, MergerWatch, Ibis Reproductive Health, American Federation of State, County and Municipal Employees, American Association of University Women and National Womens Law Center in 13-5368, 13-5371, 14-5021 to participate as amicus curiae. [Disclosure Listing: Attached] [Service Date: 04/03/2014] [13-5368, 13-5371, 14-5021] —[Edited 04/03/2014 by LMC] (Davidow, Charles)

04/04/2014 MODIFIED PARTY FILER—MOTION filed [1487033] by California Women's Law Center, National Women and AIDS Collective, HIV Law Project, Sexuality Information and Education Council of the U.S., Ipas, Forward Together, Black Women's Health Imperative, Asian & Pacific Islander American Health Forum, Asian Americans Advancing Justice— Los Angeles, Asian Americans Advance Justice—AAJC, National Asian Pacific American Women's Forum, National Latina Institute for Reproductive Health, National Women's Health Network, National Family Planning &

Reproductive Health Association,
 American Public Health Association
 and National Health Law Program in
 13-5368, 13-5371, 14-5021 to
 participate as amicus curiae.
 [Disclosure Listing: Attached] [Service
 Date: 04/04/2014] [13-5368, 13-5371,
 14-5021]—[Edited 04/04/2014 by LMC]
 (Perkins, Martha)

* * *

- 04/04/2014 PER ABOVE ORDER lodged Amicus brief [1487122-2], Amicus brief [1487082-2], Amicus brief [14-86692-2] is filed [13-5368, 13-5371, 14-5021]
- 04/10/2014 PER CURIAM ORDER filed [1487771] granting the motion of National Health Law Center, et al. to participate as amici curiae [1487033-2], granting the motion of National Women's Law Center, et al. to participate as amici curiae [1486791-2], granting the motion of Americans United for Separation of Church and State to participate as amici curiae [1486691-2]; The Clerk is directed to file the lodged Amici briefs [1487122-2], [1487082-2], [1486692-2] Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]
- 04/11/2014 *JOINT* APPELLANT REPLY AND CROSS APPELLEE BRIEF [1488135] filed by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc.,

Catholic Information Center, Inc.,
 Catholic University of America,
 Consortium of Catholic Academies of
 the Archdiocese of Washington, Inc.,
 Don Bosco Cristo Rey High School of
 the Archdiocese of Washington, Inc.,
 Mary of Nazareth Roman Catholic
 Elementary School, Inc., Roman
 Catholic Archbishop of Washington and
 Victory Housing, Inc. in 13-5371,
 Alveda King, Janet Morana, Father
 Frank Pavone and Priests For Life in
 13-5368, Archbishop Carroll High
 School, Inc., Catholic Charities of the
 Archdiocese of Washington, Inc.,
 Catholic Information Center, Inc.,
 Catholic University of America,
 Consortium of Catholic Academies of
 the Archdiocese of Washington, Inc.,
 Don Bosco Cristo Rey High School of
 the Archdiocese of Washington, Inc.,
 Mary of Nazareth Roman Catholic
 Elementary School, Inc., Roman
 Catholic Archbishop of Washington,
 Thomas Aquinas College and Victory
 Housing, Inc. in 14-5021 [Service Date:
 04/11/2014] Length of Brief: 7,998
 words. [13-5371, 13-5368, 14-5021]
 (Francisco, Noel)

* * *

05/08/2014 ORAL ARGUMENT HELD before
 Judges Rogers, Pillard and Wilkins.
 [13-5368, 13-5371, 14-5021]

* * *

- 06/12/2014 LETTER FILED [1497364] by Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS, LABR and TREA in 13-5368, DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/12/2014] [13-5368, 13-5371, 14-5021] (Jed, Adam)
- 06/16/2014 *JOINT* LETTER FILED [1497876] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College and HHS in 13-5371, Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of

the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/16/2014] [13-5371, 13-5368, 14-5021] (Francisco, Noel)

06/30/2014 *JOINT LETTER FILED* [1500113] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/30/2014] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

06/30/2014 *JOINT LETTER FILED* [1500114] by Alveda King, Janet Morana, Father Frank Pavone, Priests For Life and

Sylvia Mathews Burwell in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371 pursuant to FRAP 28j advising of additional authorities [Service Date: 06/30/2014] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

07/08/2014 LETTER FILED [1501429] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371

pursuant to FRAP 28j advising of additional authorities [Service Date: 07/08/2014] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

08/22/2014 LETTER FILED [1509018] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 08/22/2014] [13-5368, 13-5371, 14-5021] (Barbero, Megan)

08/26/2014 LETTER FILED [1509274] by Sylvia Mathews Burwell, DOL, Jacob J. Lew and Thomas E. Perez in 13-5371, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 08/26/2014] [13-5368, 13-5371, 14-5021] (Klein, Alisa)

09/02/2014 PER CURIAM ORDER filed [1510195] ORDERED, on the court's own motion, that appellants/cross-appellees and appellees/cross-appellants are directed to file supplemental briefs on the impact on this appeal of those authorities, including but not limited to *Burwell v. Hobby Lobby*, 134 S. Ct. 2751 (2014), *Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014), and the

Interim Final Rules published and in effect as of August 27, 2014 (“interim rules”), see Coverage of Certain Preventive Services Under the Affordable Care Act, 79 Fed. Reg. 51092 (Aug. 27, 2014). While not otherwise limited, the parties are directed to address the following issues: (1) The effect, if any, of the interim rules on the plaintiffs’ RFRA claims, including how the amendment of the regulations by the interim rules affects the substantial burden analysis; and (2) Whether the Supreme Court’s recent decisions and the interim rules affect the analysis of whether the challenged regulations further any compelling government interest(s) and whether they constitute the least restrictive means of so doing. The supplemental briefs may not exceed 6,250 words and are due on or before September 16, 2014. The parties are directed to hand-deliver paper copies of their submissions to the court on the date due. Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

09/16/2014 *JOINT* APPELLANT
 SUPPLEMENTAL BRIEF [1512508]
 filed by Alveda King, Janet Morana,
 Father Frank Pavone and Priests For
 Life in 13-5368, Archbishop Carroll
 High School, Inc., Catholic Charities of
 the Archdiocese of Washington, Inc.,

Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371 [Service Date: 09/16/2014] Length of Brief: 6,249 words. [13-5368, 13-5371, 14-5021] (Francisco, Noel)

09/16/2014 APPELLEE & CROSS-APPELLANT SUPPLEMENTAL BRIEF [1512536] filed by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 [Service Date: 09/16/2014] Length of Brief: 5,180 words. [13-5368, 13-5371, 14-5021] (Jed, Adam)

09/17/2014 LETTER FILED [1512821] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 09/17/2014] [13-5368, 13-5371, 14-5021] (Jed, Adam)

11/14/2014 PER CURIAM JUDGMENT filed [1522268] that the judgment of the District Court appealed from in case No. 13-5368 be affirmed; and the judgment of the District Court appealed in case Nos. 13-5371 and 14-5021 be vacated with respect to the grant of summary judgment for Thomas Aquinas College and its holding as to the unconstitutionality of the non-interference provision, and be affirmed as to the remainder of the decision for the reasons in the accompanying opinion. Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

11/14/2014 OPINION filed [1522271] (Pages: 86) for the Court by Judge Pillard [13-5368, 13-5371, 14-5021]

* * *

12/26/2014 *JOINT* PETITION filed [1529249] by Appellants Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Appellants Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School,

Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Appellee Thomas Aquinas College in 13-5371, Appellees Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 for rehearing en banc. [Service Date: 12/26/2014 by CM/ECF NDA] Pages: 21—30. [13-5368, 13-5371, 14-5021] (Francisco, Noel)

* * *

01/15/2015 RESPONSE FILED [1532352] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 to petition for rehearing en banc [1529249-2] [Service Date: 01/15/2015 by CM/ECF NDA] Pages: 21-30. [13-5368, 13-5371, 14-5021] (Jed, Adam)

- 02/12/2015 LETTER FILED [1537422] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 02/12/2015] [13-5368, 13-5371, 14-5021] (Jed, Adam)
- 02/18/2015 LETTER FILED [1537940] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth

Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 02/18/2015] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

03/10/2015 JOINT LETTER FILED [1541563] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School,

Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 03/10/2015] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

03/11/2015 LETTER FILED [1541833] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 pursuant to FRAP 28j advising of additional authorities [Service Date: 03/11/2015] [13-5368, 13-5371, 14-5021] (Klein, Alisa)

05/04/2015 *JOINT* LETTER FILED [1550499] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371

pursuant to FRAP 28j advising of additional authorities [Service Date: 05/04/2015] [13-5368, 13-5371, 14-5021] (Francisco, Noel)

05/05/2015 RESPONSE FILED [1550939] by Sylvia Mathews Burwell, Jacob J. Lew, Thomas E. Perez, HHS, LABR and TREA in 13-5368, Sylvia Mathews Burwell, DOL, Jacob J. Lew, Thomas E. Perez, HHS and TREA in 13-5371, 14-5021 to letter Rule 28j authorities [1550499-2], letter [1550499-3] [Service Date: 05/05/2015 by CM/ECF NDA] Pages: 1-10. [13-5368, 13-5371, 14-5021] (Jed, Adam)

05/20/2015 PER CURIAM ORDER, En Banc, filed [1553491] denying appellants/cross-appellees' joint petition for rehearing en banc [1529249-2]. Before Judges: Garland, Henderson, Rogers, Tatel, Brown**, Griffith, Kavanaugh**, Srinivasan*, Millett*, Pillard and Wilkins (* Circuit Judges Srinivasan and Millett did not participate in this matter. ** Circuit Judges Brown and Kavanaugh would grant the petition.) [13-5368, 13-5371, 14-5021]

05/20/2015 Publishing En Banc Order [1553491-2]. [13-5368, 13-5371, 14-5021]

05/22/2015 MOTION filed [1553911] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368, Archbishop Carroll High School, Inc.,

Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Victory Housing, Inc. and Thomas Aquinas College in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 to stay mandate (Response to Motion served by mail due on 06/04/2015) [Service Date: 05/22/2015 by CM/ECF NDA] Pages: 16—20. [13-5368, 13-5371, 14-5021] (Francisco, Noel)

* * *

06/10/2015 PER CURIAM ORDER filed [1556699] granting the motion to stay mandate pending petition for writ of certiorari

[1553911-2]. The Clerk is directed to withhold the mandate through August 26, 2015. If, within the period of the stay, appellants/cross-appellees notify the Clerk of writing that a petition for writ of certiorari has been filed, the Clerk is directed to withhold issuance of the mandate pending the Supreme Court's final disposition. See Fed. R. App. R. 41(d)(2)(B); D.C. Cir. Rule 41(a)(2). Before Judges: Rogers, Pillard and Wilkins. [13-5368, 13-5371, 14-5021]

06/11/2015 LETTER FILED [1557057] by Alveda King, Janet Morana, Father Frank Pavone and Priests For Life in 13-5368 notifying Clerk per Court's order granting stay of mandate that petition for writ of certiorari was filed. [Service Date: 06/11/2015] [13-5368, 13-5371, 14-5021] (Muisse, Robert)

* * *

06/22/2015 LETTER FILED [1558950] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of

Washington, The Catholic University of America and Victory Housing, Inc. in 13-5371, Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington, The Catholic University of America, Thomas Aquinas College and Victory Housing, Inc. in 14-5021 regarding case status [Service Date: 06/22/2015] [13-5371, 14-5021] (Francisco, Noel)

06/24/2015 LETTER received [1559437] from the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 06/22/2015 as No. 14-1505. [13-5371, 13-5368, 14-5021]

11/06/2015 LETTERS [1582951] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case Nos. 14-1453 and 14-1505: The petitions for writ of certiorari were granted on 11/06/2015. [13-5368, 13-5371, 14-5021]

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs,

-v-

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

Defendants.

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

**DECLARATION
OF FATHER
FRANK PAVONE
AND PRIESTS
FOR LIFE**

I, Father Frank Pavone, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge. I also make this declaration on behalf of Priests for Life and thus based on information known by me and information provided to me by the organization.

1. I am an adult citizen of the United States and a plaintiff in this case.

2. I am an ordained, Roman Catholic priest and the National Director of Priests for Life. I am currently covered under Priests for Life's health care plan.

3. Priests for Life is a nonprofit corporation that is incorporated under the laws of the State of New York. It is recognized by the Internal Revenue Service as a Section 501(c)(3) organization. Priests for Life is a religious organization. However, it is *not* a church or a religious order. In short, it is not an organization that is referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

Consequently, Priests for Life is not a “religious employer” for purposes of the contraceptive services mandate of the Patient Protection and Affordable Care Act (hereinafter “Affordable Care Act” or “Act”) and is therefore *not* exempt from the contraceptive services mandate.

4. As part of its commitment to Catholic social teaching, Priests for Life promotes the health and well-being of its employees. In furtherance of this commitment, Priests for Life provides health insurance for its employees through an insurer.

5. Priests for Life’s health care plan is not a “grandfathered” plan under the Affordable Care Act for multiple reasons, including, but not limited to, the following: (1) the health care plan does not include the required “disclosure of grandfather status” statement; (2) Priests for Life does not take the position that its health care plan is a grandfathered plan and thus does not maintain the records necessary to verify, explain, or clarify its status as a grandfathered plan nor will it make such records available for examination upon request; and (3) the health care plan has an increase in a percentage cost-sharing requirement measured from March 23, 2010.

6. Priests for Life ensures that its insurance policies do not cover, promote, or provide access to drugs, devices, services, or procedures inconsistent with its faith, including contraception.

7. Priests for Life cannot provide health insurance that supports, whether directly or indirectly, artificial contraception, sterilization, abortifacients, abortion, or related education and

counseling without violating its sincerely held religious beliefs.

8. Priests for Life cannot provide health insurance that provides access to and makes available contraception, sterilization, abortifacients, abortion, or related education and counseling without violating its sincerely held religious beliefs.

9. Priests for Life cannot provide information or guidance to its employees about other locations at which they can access artificial contraception, sterilization, abortifacients, abortion, or related education and counseling without violating its sincerely held religious beliefs.

10. In sum, neither Priests for Life nor I can facilitate, promote, or support in any way, whether directly or indirectly, the federal government's objective of promoting and increasing the use of contraceptive services without violating our sincerely held religious beliefs.

11. Priests for Life is funded almost exclusively through tax-deductible donations. Donors who give to Priests for Life do so with an understanding of Priest for Life's mission and with the assurance that Priests for Life will continue to adhere to, disseminate, and report reliable Catholic teaching on the sanctity of life and human sexuality.

12. Priests for Life cannot use donated funds for purposes known to be morally repugnant to its donors and in ways that would violate the implicit trust of the purpose for their donations, such as using these funds to facilitate, promote, or support in any way the use of contraceptive services.

13. Priests for Life's next plan year will commence on January 1, 2014.

14. Through my association with Priests for Life, I engage in various expressive activities to advance and promote Priests for Life's religious mission, which includes, at its core, spreading the Gospel of Life. This activity is a religious exercise for me, as I am called by my priestly vocation to evangelize and spread the Gospel of Life.

15. The Gospel of Life, which is an expression of the Catholic Church's position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way.

16. The contraceptive services mandate of the Affordable Care Act requires coverage for, and promotes the use of, all Food and Drug Administration ("FDA") approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity. FDA approved contraceptive methods include devices and procedures, birth control pills, prescription contraceptive devices, Plan B (also known as the "morning after pill"), and ulipristal (also known as "ella" or the "week after pill"). Plan B and ella, as well as certain intrauterine devices ("IUD"), can prevent the implantation of a human embryo in the wall of the uterus and can thus cause the death of an embryo, thereby operating as

abortifacients. See a true and correct copy of the FDA's Birth Control Guide, attached to this declaration as Exhibit A. All of these FDA approved methods and procedures are gravely immoral and contrary to Priests for Life's and my sincerely held religious beliefs.

17. To advance the mission of Priests for Life and, ultimately, the mission of the Church, I often use the media of television, radio, and the printed press to promote the culture of life. For example, I host the *Defending Life* television series on the Eternal Word Television Network (EWTN). Indeed, my life and my vocation are dedicated to spreading the Gospel of Life and thus building a culture of life.

18. Consequently, I strongly object to the federal government forcing Priests for Life, the organization with which I associate and through which I tirelessly work to build the culture of life, to provide or facilitate, whether directly or indirectly, *any* support for, or access to, contraception, sterilization, and abortifacients and related education and counseling based on my sincerely held religious beliefs. Further, I strongly object to the federal government forcing Priests for Life to facilitate, support, or cooperate in any way with the government's immoral objective of promoting the use of contraceptive services—an objective that is squarely at odds with my religious beliefs and which directly undermines the very work that I do.

19. Priests for Life is a private association of the faithful, recognized and approved under the Canon Law of the Catholic Church. It works in harmony

with the goals of the Bishops' Pro-Life Committee and the local diocesan respect life offices.

20. Priests for Life was founded in 1991 to do one of the most important tasks in the Church today: to help spread the Gospel of Life.

21. The mission of Priests for Life is to unite and encourage all clergy to give special emphasis to the life issues in their ministry. It also seeks to help them take a more vocal and active role in the pro-life movement. *Priests for Life exists to fight the culture of death.*

22. Pursuant to its Mission Statement, Priests for Life seeks to: (1) unite, encourage, and provide ongoing training to priests and deacons who give a special emphasis to the "life issues," especially abortion and euthanasia, in their ministries; (2) instill a sense of urgency in all clergy to teach about these issues and to mobilize their people to help stop abortion and euthanasia; (3) assist clergy and laity to work together productively for the cause of life; and (4) provide ongoing training and motivation to the entire pro-life movement.

23. Priests for Life offers a wide range of audios, videos, and brochures, and regularly uses the media of television, radio, and the printed press to spread the message of life.

24. As the National Director of Priests for Life, I, along with my associates, including Dr. Alveda King and Ms. Janet Morana, travel the country full time to meet with priests, pro-life groups, and others to express, teach, and spread the Gospel of Life.

25. As the primary spokesman for Priests for Life, I use the media of television, radio, and the printed

press to spread Priests for Life's message of life. Through my media appearances and other expressive activities, I promote the culture of life and actively oppose the culture of death and its support for contraception, sterilization, abortifacients, and abortion.

26. Priests for Life, a Catholic organization, is morally prohibited based on its sincerely held religious convictions from cooperating with evil. Priests for Life objects to being forced by the federal government to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by its religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Priests for Life. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And Priests for Life objects to the federal government forcing it into a moral dilemma with regard to its relationship with its employees and associates, including Dr. King, Ms. Morana, and me. Indeed, the contraceptive services mandate of the federal government threatens the very survival of Priests for Life as an effective, pro-life organization.

27. Priests for Life has a moral and religious obligation to resist and oppose actions designed to advance and promote the use of contraceptive services. As such, Priests for Life will not submit to any requirements imposed by the federal government that will promote the use of contraceptive services, including any requirement to provide a "self-certification" to its insurer that will then trigger the insurer's obligation to make "separate payments for

contraceptive services directly for plan participants and beneficiaries” of Priests for Life’s health care plan.

28. Pursuant to its moral and religious obligations, Priests for Life will not provide any notice or information to its insurer, its employees, or to the beneficiaries of its health care plan that is designed to promote or facilitate the use of contraceptive services.

29. Therefore, by refusing to cooperate with, and thus facilitate, the government’s immoral contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for immoral contraceptive services and related education and counseling required by the mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of \$100 per day per employee.

30. Priests for Life and I hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI’s 1968 encyclical *Humanae Vitae*, we believe that human sexuality has two primary purposes: to “most closely unit[e] husband and wife” and “for the generation of new lives.” We believe and actively profess the Catholic Church teaching that “[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will.” Therefore, we believe and teach that “any action which either before, at the

moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means”—including contraception and sterilization—is a grave sin.

31. Priests for Life and I believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that “man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion.” Consequently, we believe and profess that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually.

32. Priests for Life and I also hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. We believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, we believe and teach that abortion, which includes abortifacients, ends a human life and is a grave sin.

33. Further, we subscribe to authoritative Catholic teaching about the proper nature and aims of healthcare and medical treatment. For example, we believe, in accordance with Pope John Paul II’s 1995 encyclical *Evangelium Vitae*, that “[c]ausing death’ can never be considered a form of medical treatment,” but rather “runs completely counter to the healthcare profession, which is meant to be an impassioned and unflinching affirmation of life.”

34. Based on the teaching of the Catholic Church, and our own sincerely held beliefs, Priests for Life and I do not believe that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, we believe these procedures involve gravely immoral practices.

35. Priests for Life's health care policy must be renewed by January 1, 2014, and at that time it will be subject to the contraceptive services mandate of the Affordable Care Act, which will then force Priests for Life and me through my association with Priests for Life to facilitate, support, and provide access to coverage for contraception, sterilization, and abortifacients and to further facilitate, support, and cooperate in the government's immoral objective of promoting the use of contraceptive services.

36. Consequently, as of January 1, 2014, Priests for Life will be required by the federal government to provide contraceptive, sterilization, and abortifacient coverage as part of its health care plan contrary to Priests for Life's and my sincerely held religious beliefs.

37. Priests for Life and I are morally prohibited based on our sincerely held religious convictions from cooperating, directly or indirectly, with evil. Thus, we strongly object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by our religious convictions. This is true whether the immoral services are paid for directly,

indirectly, or even not at all by Priests for Life or me. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And Priests for Life and I strongly object to the government forcing us into a moral and economic dilemma with regard to Priests for Life's relationship as employer with its employees and those who associate with Priests for Life for the purpose of promoting its religious mission. Moreover, Priests for Life and I object to being forced by the government to facilitate, support, and promote the government's immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and with our sincerely held religious beliefs.

38. In addition, if Priests for Life were forced out of the healthcare market, many of its employees, including Dr. King and Ms. Morana, would be forced to purchase a costly, individual insurance plan as a result of the "minimum coverage" provision of the Affordable Care Act. As a result, these employees will now be forced to purchase, and thus contribute to, contraception coverage because this mandate applies to individual plans.

39. In sum, the federal government is now forcing religious employers, including Priests for Life, out of the healthcare market because of their sincerely held religious beliefs, which is both a direct harm in and of itself and an indirect harm in that it will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace.

40. Because of the contraceptive services mandate, including the so-called “accommodation,” Priests for Life must now make business decisions that will affect its ability to continue the services it provides. As a nonprofit organization, Priests for Life funds its operations almost entirely through tax-deductible donations, including planned giving. Priests for Life must make business decisions now based on what it expects to receive in donations in the future. This requires Priests for Life to look several years ahead to determine what its budget will be and thus what services it will be capable of providing. Priests for Life’s donors will not support an organization that provides its employees with access to contraception, sterilization, or abortifacients—practices that run counter to Priests for Life’s mission, goals, and message—the very basis for the donations in the first instance.

41. Indeed, the current mandate with its limited religious employer exemption and so-called “accommodation” will force Priests for Life out of the market for health care services and thus adversely affect it as an organization. Many of Priests for Life’s valued employees, without whom Priests for Life could not provide its much needed services, may be forced to leave Priests for Life and seek other employment that provides health care benefits.

42. The contraceptive services mandate is causing Priests for Life and me to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on our religious beliefs and practices.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 12th day of September, 2013.

/s/ *Fr. Frank Pavone*
Father Frank Pavone

EXHIBIT A

This guide gives the basic facts about the different kinds of FDA-approved medicines and devices for birth control. Ask your doctor to tell you about all of the risks and benefits of using these products.



If you do not want to get pregnant, there are many birth control options to choose from. No one product is best for everyone. The only sure way to avoid pregnancy and sexually transmitted infections (STIs or STDs) is not to have any sexual contact (abstinence). This guide lists FDA-approved products for birth control. Talk to your doctor, nurse, or pharmacist about the best method for you.

There are different kinds of medicines and devices for birth control:

Barrier Methods	4
Hormonal Methods	10
Emergency Contraception	16
Implanted Devices	18
Permanent Method for Men	21
Permanent Methods for Women	22

To Learn More:

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change. To get the most recent information for your birth control go to:

Drugs

Go to
<http://www.accessdata.fda.gov/scripts/cder/drugsatfda>
 (type in the name of your drug)

Devices

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm> (type in the name of your device)

Some things to think about when you choose birth control:

- Your health
- How often you have sex.
- How many sexual partners you have.
- If you want to have children in the future.
- If you will need a prescription or if you can buy the method over-the-counter.
- The number of pregnancies expected per 100 women who use a method for 1 year. For comparison, about 85 out of 100 sexually active women who do not use any birth control can expect to become pregnant in a year.
- This booklet lists pregnancy rates of **typical use**. Typical use shows how effective the different methods are during actual use (including sometimes using a method in a way that is not correct or not consistent).
- For more information on the chance of getting pregnant while using a method, please see Trussell, J. (2011). "Contraceptive failure in the United States." *Contraception* 83(5):397-404.

Tell your doctor, nurse, or pharmacist if you:

- Smoke.
- Have liver disease.
- Have blood clots.
- Have family members who have had blood clots.
- Are taking any other medicines, like antibiotics.
- Are taking any herbal products, like St. John's Wort.

To avoid pregnancy:

- No matter which method you choose, it is important to follow all of the directions carefully. If you don't, you raise your chance of getting pregnant.
- The best way to avoid pregnancy and sexually transmitted infections (STIs) is to practice total abstinence (do not have any sexual contact).

BARRIER METHODS

Block sperm from reaching the egg

Male Condom

(Latex or Polyurethane)

**What is it?**

- A thin film sheath placed over the erect penis.
- How do I use it?
- Put it on the erect penis right before sex.
- Pull out before the penis softens.
- Hold the condom against the base of the penis before pulling out.
- Use it only once and then throw it away.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

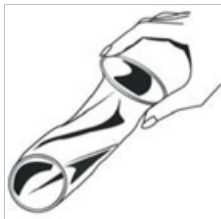
- Out of 100 women who use this method, 18 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

Some Risks

- Irritation
- Allergic reactions (If you are allergic to latex, you can try condoms made of polyurethane).

Does it protect me from sexually transmitted infections (STIs)?

- Except for abstinence, latex condoms are the best protection against HIV/AIDS and other STIs.

Female Condom**What is it?**

- A lubricated, thin polyurethane pouch that is put into the vagina.

How do I use it?

- Put the female condom into the vagina right before sex.
- Use it only once and then throw it away.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 21 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

Some Risks

- Irritation
- Allergic reactions

Does it protect me from sexually transmitted infections (STIs)?

- May give some protection against STIs, but more research is needed.
- Not as effective as male latex condoms.

BARRIER METHODS

Block sperm from reaching the egg

Diaphragm with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



What is it?

- A dome-shaped flexible disk with a flexible rim.
- Made from latex rubber or silicone.
- It covers the cervix.

How do I use it?

- You need to put spermicidal jelly on the inside of the diaphragm before putting it into the vagina.
- You must put the diaphragm into the vagina before having sex.
- You must leave the diaphragm in place at least 6 hours after having sex.
- It can be left in place for up to 24 hours. You need to use more spermicide every time you have sex.

How do I get it?

- You need a prescription.
- A doctor or nurse will need to do an exam to find the right size diaphragm for you.
- You should have the diaphragm checked after childbirth or if you lose more than 15 pounds. You might need a different size.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 12 may get pregnant.

Some Risks

- Irritation, allergic reactions, and urinary tract infection.
- If you keep it in place longer than 24 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No.

Sponge with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

**What is it?**

- A disk-shaped polyurethane device with the spermicide nonoxynol-9.

How do I use it?

- Put it into the vagina before you have sex.
- Protects for up to 24 hours. You do not need to use more spermicide each time you have sex.
- You must leave the sponge in place for at least 6 hours after having sex.

- You must take the sponge out within 30 hours after you put it in. Throw it away after you use it.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, 12 to 24 may get pregnant.
- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the sponge may not fit as well.

Some Risks

- Irritation
- Allergic reactions
- Some women may have a hard time taking the sponge out.
- If you keep it in place longer than 24-30 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No.

BARRIER METHODS

Block sperm from reaching the egg

Cervical Cap with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

**What is it?**

- A soft latex or silicone cup with a round rim, which fits snugly around the cervix.
- How do I use it?
- You need to put spermicidal jelly inside the cap before you use it.
- You must put the cap in the vagina before you have sex.
- You must leave the cap in place for at least 6 hours after having sex.
- You may leave the cap in for up to 48 hours.
- You do NOT need to use more spermicide each time you have sex.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 17 to 23 may get pregnant.

- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the cap may not fit as well.

Some Risks

- Irritation, allergic reactions, and abnormal Pap test.
- You may find it hard to put in.
- If you keep it in place longer than 48 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

Does it protect me from sexually transmitted infections (STIs)? No

Spermicide Alone

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.

**What is it?**

- A foam, cream, jelly, film, or tablet that you put into the vagina.

How do I use it?

- You need to put spermicide into the vagina 5 to 90 minutes before you have sex.

- You usually need to leave it in place at least 6 to 8 hours after sex; do not douche or rinse the vagina for at least 6 hours after sex.
- Instructions can be different for each type of spermicide. Read the label before you use it.

How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

Chance of getting pregnant with typical use

(Number of pre (Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 28 may get pregnant.
- Different studies show different rates of effectiveness.

Some Risks

- Irritation
- Allergic reactions
- Urinary tract infection
- If you are also using a medicine for a vaginal yeast infection, the spermicide might not work as well.

Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

Oral Contraceptives (Combined Pill)

“The Pill”



What is it?

- A pill that has 2 hormones (estrogen and progestin) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps the sperm from getting to the egg.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects

- Changes in your cycle (period)

- Nausea
- Breast tenderness
- Headache

Less Common Serious Side Effects

- It is not common, but some women who take the pill develop high blood pressure.
- It is rare, but some women will have blood clots, heart attacks, or strokes.

Does it protect me from sexually transmitted infections (STIs)? No.

Oral Contraceptives (Progestin-only)

“The Mini Pill”



What is it?

- A pill that has only 1 hormone, a progestin.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- Less often, it stops the ovaries from releasing eggs.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.

- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

- Irregular bleeding
- Headache
- Breast tenderness
- Nausea
- Dizziness

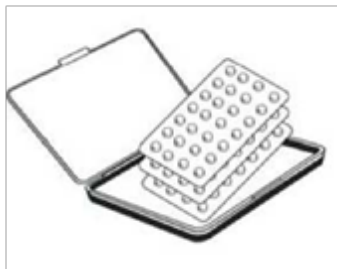
Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

Oral Contraceptives (Extended/Continuous Use)

“The Pill”



What is it?

- A pill that has 2 hormones (estrogen and progestin) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.
- These pills are designed so women have fewer or no periods.

How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

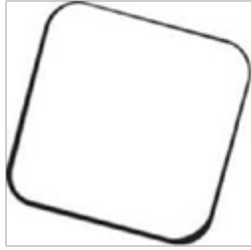
- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

- Risks are similar to other oral contraceptives with estrogen and progestin.
- You may have more light bleeding and spotting between periods than with 21 or 24 day oral contraceptives.
- It may be harder to know if you become pregnant, since you will likely have fewer periods or no periods.

Does it protect me from sexually transmitted infections (STIs)? No.

Patch



What is it?

- This is a skin patch you can wear on the lower abdomen, buttocks, or upper arm or back.
- It has hormones (estrogen and progestin) that stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You put on a new patch and take off the old patch once a week for 3 weeks (21 total days).
- Don't put on a patch during the fourth week. Your menstrual period should start during this patch-free week.
- If the patch comes loose or falls off, you may need to use another method of birth control, like a condom.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Risks

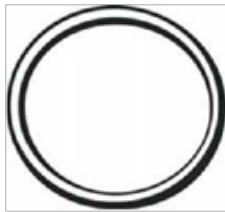
- It will expose you to higher levels of estrogen compared to most combined oral contraceptives.
- It is not known if serious risks, such as blood clots and strokes, are greater with the patch because of the greater exposure to estrogen.

Does it protect me from sexually transmitted infections (STIs)? No.

HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

Vaginal Contraceptive Ring



What is it?

- It is a flexible ring that is about 2 inches around.
- It releases 2 hormones (progestin and estrogen) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

How do I use it?

- You put the ring into your vagina.
- Keep the ring in your vagina for 3 weeks and then take it out for 1 week. Your menstrual period should start during this ring-free week.
- If the ring falls out and stays out for more than 3 hours, replace it but use another method of birth control, like a condom, until the ring has been in place for 7 days in a row.
- Read the directions and talk to your doctor, nurse or pharmacist about what to do.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

Some Side Effects and Risks

- Vaginal discharge, discomfort in the vagina, and mild irritation.
- Other risks are similar to oral contraceptives (combined pill).

Does it protect me from sexually transmitted infections (STIs)? No.

Shot/Injection

**What is it?**

- A shot of the hormone progestin, either in the muscle or under the skin.

How does it work?

- The shot stops the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps the sperm from getting to the egg.

How do I get it?

- You need 1 shot every 3 months from a health care provider.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, including women who don't get the shot on time, 6 may get pregnant.

Some Risks

- You may lose bone density if you get the shot for more than 2 years in a row.
- Bleeding between periods
- Headaches
- Weight gain

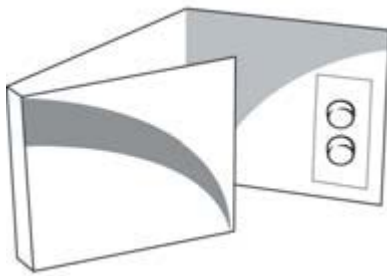
- Nervousness
- Abdominal discomfort

Does it protect me from sexually transmitted infections (STIs)? No.

EMERGENCY CONTRACEPTION

May be used if you did not use birth control or if your regular birth control fails. It should not be used as a regular form of birth control.

Plan B, Plan B One-Step and Next Choice (Levonorgestrel)



What is it?

- These are pills with the hormone progestin.
- They help prevent pregnancy after birth control failure or unprotected sex.

How does it work?

- It works mainly by stopping the release of an egg from the ovary. It may also work by preventing fertilization of an egg (the uniting of sperm with the egg) or by preventing attachment (implantation) to the womb (uterus).

- For the best chance for it to work, you should take the pill(s) as soon as possible after unprotected sex.
- You should take emergency contraception within 3 days after unprotected sex.

How do I get it?

- You can get Plan B, Plan B One-Step and Next Choice without a prescription if you are 17 years or older.
- If you are younger than 17, you need a prescription.

Chance of getting pregnant with typical use

- 7 out of every 8 women who would have gotten pregnant will not become pregnant after taking Plan B, Plan B One-Step, or Next Choice.

Some Risks

- Nausea
- Vomiting
- Abdominal pain
- Fatigue
- Headache

Does it protect me from sexually transmitted infections (STIs)? No.

Ella (ulipristal acetate)



What is it?

- A pill that blocks the hormone progesterone.

- It helps prevent pregnancy after birth control failure or unprotected sex.

How does it work?

- It works mainly by stopping or delaying the ovaries from releasing an egg. It may also work by changing the lining of the womb (uterus) that may prevent attachment (implantation).
- For the best chance for it to work, you should take the pill as soon as possible after unprotected sex.
- You should take Ella within 5 days after having unprotected sex.

How do I get it?

- You need a prescription.

Chance of getting pregnant with typical use

- 6 or 7 out of every 10 women who would have gotten pregnant will not become pregnant after taking Ella.

Some Risks

- Headache
- Nausea
- Abdominal pain
- Menstrual pain
- Tiredness
- Dizziness

Does it protect me from sexually transmitted infections (STIs)? No.

IMPLANTED METHODS

Inserted/implanted into the body and can be kept in place for several years

Copper IUD



What is it?

- A T-shaped device that is put into the uterus by a healthcare provider.

How does it work?

- The IUD prevents sperm from reaching the egg, from fertilizing the egg, and may prevent the egg from attaching (implanting) in the womb (uterus).
- It does not stop the ovaries from making an egg each month.
- The Copper IUD can be used for up to 10 years.
- After the IUD is taken out, it is possible to get pregnant.

How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Cramps
- Irregular bleeding

Uncommon Risks

- Pelvic inflammatory disease
- Infertility

Rare Risk

- IUD is stuck in the uterus or found outside the uterus.
- Life-threatening infection

Does it protect me from sexually transmitted infections (STIs)? No.

IUD with progestin



What is it?

- A T-shaped device that is put into the uterus by a healthcare provider.

How does it work?

- It may thicken the mucus of your cervix, which makes it harder for sperm to get to the egg, and also thins the lining of your uterus.

- After a doctor or other healthcare provider puts in the IUD, it can be used for up to 5 years.
- After the IUD is taken out, it is possible to get pregnant.

How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Irregular bleeding
- No periods
- Abdominal/pelvic pain
- Ovarian cysts

Uncommon Risks

- Pelvic inflammatory disease
- Infertility

Rare Risk

- IUD is stuck in the uterus or found outside the uterus.
- Life-threatening infection

Does it protect me from sexually transmitted infections (STIs)? No.

IMPLANTED METHODS

Inserted/implanted into the body and can be kept in place for several years

Implantable Rod



What is it?

- A thin, matchstick-sized rod that contains the hormone progestin.
- It is put under the skin on the inside of your upper arm.

How does it work?

- It stops the ovaries from releasing eggs.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- It can be used for up to 3 years.

How do I get it?

- After giving you local anesthesia, a doctor or nurse will put it under the skin of your arm with a special needle.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Side Effects

- Changes in bleeding patterns

- Weight gain
- Breast and abdominal pain

Does it protect me from sexually transmitted infections (STIs)? No.

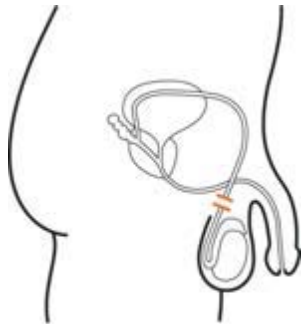
PERMANENT METHODS

For people who are sure they never want to have a child or do not want any more children.

Sterilization Surgery for Men

Vasectomy

This method is for men who are sure they never want to have a child or do not want any more children. If you are thinking about reversal, vasectomy may not be right for you. Sometimes it is possible to reverse the operation, but there are no guarantees. Reversal involves complicated surgery that might not work.



What is it?

- This is a surgery a man has only once.
- It is permanent.

How does it work?

- A surgery blocks a man's vas deferens (the tubes that carry sperm from the testes to other glands).

- Semen (the fluid that comes out of a man's penis) never has any sperm in it.
- It takes about 3 months to clear sperm out of a man's system. You need to use another form of birth control until a test shows there are no longer any sperm in the seminal fluid.

How do I get it?

- A man needs to have surgery.
- Local anesthesia is used.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women whose partner has had a vasectomy, less than 1 may get pregnant.

Some Risks

- Pain
- Bleeding
- Infection

Does it protect me from sexually transmitted infections (STIs)? No.

The success of reversal surgery depends on:

- The length of time since the vasectomy was performed.
- Whether or not antibodies to sperm have developed.
- The method used for vasectomy
- Length and location of the segments of vas deferens that were removed or blocked.

PERMANENT METHODS

For people who are sure they never want to have a child or do not want any more children.

Sterilization Surgery for Women

Surgical Implant (also called trans-abdominal surgical sterilization)



What is it?

- A device is placed on the outside of each fallopian tube.

How does it work?

- One way is by tying and cutting the tubes — this is called tubal ligation. The fallopian tubes also can be sealed using an instrument with an electrical current. They also can be closed with clips, clamps or rings. Sometimes, a small piece of the tube is removed.
- The woman's fallopian tubes are blocked so the egg and sperm can't meet in the fallopian tube. This stops you from getting pregnant.
- This is a surgery a woman has only once.
- It is permanent.

How do I get it?

- This is a surgery you ask for.

- You will need general anesthesia.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Risks

- Pain
- Bleeding
- Infection or other complications after surgery
- Ectopic (tubal) pregnancy

Does it protect me from sexually transmitted infections (STIs)? No.

Can it be reversed?

- Reversals require complicated surgery. Even though tubes can sometimes be rejoined, there are no guarantees. For many women, reversals are not possible because there is not enough of their tubes left to reconnect.

Sterilization Implant for Women

Transcervical Surgical Sterilization Implant



What is it?

- Small flexible, metal coil that is put into the fallopian tubes through the vagina.
- The device works by causing scar tissue to form around the coil. This blocks the fallopian tubes and stops you from getting pregnant.

How does it work?

- The device is put inside the fallopian tube with a special catheter.
- You need to use another birth control method during the first 3 months. You will need an X-ray to make sure the device is in the right place.
- It is permanent.

How do I get it?

- The devices are placed into the tubes using a camera placed in the uterus.
- Once the tubes are found, the devices are inserted.
- Since it is inserted through the vagina, no skin cutting (incision) is needed.
- You may need local anesthesia.

Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

Some Risks

- Mild to moderate pain after insertion
- Ectopic (tubal) pregnancy

Does it protect me from sexually transmitted infections (STIs)? No.



<http://www.fda.gov/birthcontrol>

To Learn More:

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change. To get the most recent information for your birth control go to:

Drugs

Go to
<http://www.accessdata.fda.gov/scripts/cder/drugsatfda>
 (type in the name of your drug)

Devices

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm>
 (type in the name of your device)

UPDATED AUGUST 2012

TAKE TIME TO CARE ... For yourself, for those who need you.

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs

-v-

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

Defendants.

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

**DECLARATION OF
DR. ALVEDA KING**

I, Dr. Alveda King, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge.

1. I am an adult citizen of the United States and a plaintiff in this case.

2. I am a full-time employee of Priests for Life, and I am currently the Pastoral Associate and Director of African-American Outreach for Priests for Life. I am also a voice for the Silent No More Awareness Campaign, which is the world's largest mobilization of women and men who have lost children to abortion, sharing my testimony of two abortions, God's forgiveness, and healing.

3. I am covered under Priests for Life's health care plan, which, upon information and belief, is an "employer-sponsored" plan under the Patient Protection and Affordable Care Act. If Priests for Life were forced out of the health care market, I would be forced to purchase a costly, individual

insurance plan as a result of the “individual mandate” provision of the Act. This individual health care plan will necessarily include the immoral “contraceptive services” coverage because, as I understand it, the mandate applies to individual plans.

4. Through my association with Priests for Life, I engage in various expressive activities to advance and promote Priests for Life’s religious mission, which includes, at its core, spreading the Gospel of Life. This activity is a religious exercise for me, as I am called by my faith to evangelize and spread the Gospel of Life.

5. The Gospel of Life, which is an expression of the Christian position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way.

6. To advance the mission of Priests for Life and, ultimately, the mission of the Church, I often use the media of television, radio, and the printed press to promote the culture of life.

7. I am the niece of civil rights leader Martin Luther King, Jr. As someone who has witnessed firsthand and up close the civil rights movement in this country, I firmly believe that the contraceptive services mandate is an affront to civil rights. Efforts to control the population always target minority and lower-income groups. Indeed, there are racist and

eugenic roots to policies and programs that promote contraceptive services, such as the federal government's mandate at issue here.

8. I strongly object to the federal government forcing Priests for Life, the organization with which I associate and through which I tirelessly work to build the culture of life, to provide or facilitate, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients and related education and counseling based on my sincerely held religious beliefs. Further, I strongly object to the federal government forcing Priests for Life to facilitate, support, or cooperate in any way with the government's immoral objective of promoting the use of contraceptive services—an objective that is squarely at odds with my religious beliefs and which directly undermines the very work that I do.

9. As the Pastoral Associate and Director of African-American Outreach for Priests for Life, I, along with my associates, including Father Pavone and Janet Morana, travel the country full time to meet with priests, pro-life groups, and others to express, teach, and spread the Gospel of Life.

10. As a Christian organization, Priests for Life has a moral and religious obligation to resist and oppose actions designed to advance and promote the use of contraceptive services. As such, Priests for Life cannot submit to any requirements imposed by the federal government that will promote the use of contraceptive services, including any requirement to provide a "self-certification" to its insurer that will then trigger the insurer's obligation to make

“separate payments for contraceptive services directly for plan participants and beneficiaries” of Priests for Life’s health care plan.

11. Pursuant to its moral and religious obligations, Priests for Life cannot provide any notice or information to its insurer, its employees, or to the beneficiaries of its health care plan that is designed to promote or facilitate the use of contraceptive services.

12. Consequently, upon information and belief, by refusing to cooperate with, and thus facilitate, the government’s immoral contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for immoral contraceptive services and related education and counseling required by the mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of \$100 per day per employee. This will no doubt adversely affect the viability of Priests for Life as an organization, and thereby adversely affect me as a Pastoral Associate and Director, as an employee, and as an advocate for the culture of life.

13. I hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI’s 1968 encyclical *Humanae Vitae*, I believe that human sexuality has two primary purposes: to “most closely unit[e] husband and wife” and “for the generation of new lives.” I believe and actively profess the Christian teaching that “[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to

contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will.” Therefore, I believe and teach that “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means”—including contraception and sterilization—is a grave sin.

14. I Believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that “man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion.” Consequently, I believe and profess that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually. Indeed, my personal experiences attest to the harm that the contraceptive services mandate will have on women.

15. When the chemical birth control given to me by Planned Parenthood gave me a blood clotting disorder called phlebitis, I was not immediately taken off the pill. Instead, they experimented with various dosages. I was also given a diaphragm and free condoms in an effort to prevent subsequent pregnancies. And I was given an IUD, which caused cervical damage. All the birth control failed me. The pills made me sick. The alternatives did not work. I got pregnant anyway and ended up having two abortions as a result. I also had a miscarriage related to the harmful impact of my prior abortions

and the chemical and invasive birth control methods I had used. I had to have cervical surgery, and the lingering impact of phlebitis remained through the years to remind me of the harmful impact of artificial contraception, such as those contraceptive services mandated by the federal government pursuant to the Affordable Care Act. I have since had a conversion of faith.

16. Pursuant to my Christian faith, I hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. I believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, I believe and teach that abortion, which includes abortifacients, ends a human life and is a grave sin.

17. Further, I subscribe to the Christian teaching about the proper nature and aims of healthcare and medical treatment. For example, I believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

18. Based on my sincerely held Christian beliefs, I do not believe that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, I believe these procedures involve gravely immoral practices.

19. Based on my sincerely held religious convictions, I am morally prohibited from cooperating, directly or indirectly, with evil. Thus, I strongly object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by my religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Priests for Life or me. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And I strongly object to the government forcing me into a moral and economic dilemma with regard to my relationship with Priests for Life. Moreover, I strongly object to being forced by the government to facilitate, support, and promote the government's immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and with my sincerely held religious beliefs.

20. As a result of the contraceptive services mandate, the federal government is forcing Priests for Life out of the healthcare market because of its sincerely held religious beliefs, which is both a direct harm in and of itself and an indirect harm in that it will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace.

21. The current mandate with its limited religious employer exemption and so-called “accommodation” will force Priests for Life to either leave the market for health care services or pay crippling fines, either of which will adversely affect it as an organization,

and thus adversely affect me both spiritually—in that it will harm my ability to spread the Gospel of Life—and financially. Many of Priests for Life’s valued employees, without whom Priests for Life could not provide its much needed services, may be forced to leave Priests for Life and seek other employment that provides health care benefits. Indeed, the contraceptive services mandate threatens the very survival of Priests for Life as an effective, pro-life organization.

22. In sum, the contraceptive services mandate is causing Priests for Life and me to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on our religious beliefs and practices.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 13th day of September, 2013.

/s/ Alveda King
Alveda King

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs

-v-

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

Defendants.

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

**DECLARATION OF
JANET MORANA**

I, Janet Morana, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge.

1. I am an adult citizen of the United States and a plaintiff in this case.

2. I am a full-time employee of Priests for Life, and I am currently the Executive Director. I am also the Co-Founder of the Silent No More Awareness Campaign, which is the world's largest mobilization of women and men who have lost children to abortion.

3. I am covered under Priests for Life's health care plan, which, upon information and belief, is an "employer-sponsored" plan under the Patient Protection and Affordable Care Act. If Priests for Life were forced out of the health care market, I would be forced to purchase a costly, individual insurance plan as a result of the "individual mandate" provision of the Act. This individual health

care plan will necessarily include the immoral “contraceptive services” coverage because, as I understand it, the mandate applies to individual plans.

4. Through my association with Priests for Life, I engage in various expressive activities to advance and promote Priests for Life’s religious mission, which includes, at its core, spreading the Gospel of Life. This activity is a religious exercise for me, as I am called by my faith to evangelize and spread the Gospel of Life.

5. The Gospel of Life, which is an expression of the Catholic Church’s position and central teaching regarding the value and inviolability of human life, affirms and promotes the culture of life and actively opposes and rejects the culture of death. Contraception, sterilization, abortifacients, and abortion are all instruments of the culture of death, and their use can never be approved, endorsed, facilitated, promoted, or supported in any way.

6. To advance the mission of Priests for Life and, ultimately, the mission of the Church, I often use the media of television, radio, and the printed press to promote the culture of life. For example, I am often featured on Father Frank Pavone’s *Defending Life* television series on the Eternal Word Television Network (EWTN), and I am the co-host of *The Catholic View for Women*, also seen on EWTN. I am also a weekly guest on EWTN Global Catholic Radio with Teresa Tomeo and numerous other media outlets. Indeed, my life is dedicated to spreading the Gospel of Life and thus building a culture of life.

7. Consequently, I strongly object to the federal government forcing Priests for Life, the organization with which I associate and through which I tirelessly work to build the culture of life, to provide or facilitate, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients and related education and counseling based on my sincerely held religious beliefs. Further, I strongly object to the federal government forcing Priests for Life to facilitate, support, or cooperate in any way with the government's immoral objective of promoting the use of contraceptive services—an objective that is squarely at odds with my religious beliefs and which directly undermines the very work that I do.

8. As the Executive Director of Priests for Life, I, along with my associates, including Father Pavone and Dr. Alveda King, travel the country full time to meet with priests, pro-life groups, and others to express, teach, and spread the Gospel of Life.

9. As a Catholic organization, Priests for Life has a moral and religious obligation to resist and oppose actions designed to advance and promote the use of contraceptive services. As such, Priests for Life cannot submit to any requirements imposed by the federal government that will promote the use of contraceptive services, including any requirement to provide a "self-certification" to its insurer that will then trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries" of Priests for Life's health care plan.

10. Pursuant to its moral and religious obligations, Priests for Life cannot provide any notice or information to its insurer, its employees, or to the beneficiaries of its health care plan that is designed to promote or facilitate the use of contraceptive services.

11. Consequently, upon information and belief, by refusing to cooperate with, and thus facilitate, the government's immoral contraceptive services scheme and objective and by further refusing to provide coverage in its health care plan for immoral contraceptive services and related education and counseling required by the mandate, all based on its sincerely held religious beliefs, Priests for Life will be subject to crippling fines of \$100 per day per employee. This will no doubt adversely affect the viability of Priests for Life as an organization, and thereby adversely affect me as the Executive Director, as an employee, and as an advocate for the culture of life.

12. I hold and actively profess religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, I believe that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." I believe and actively profess the Catholic Church teaching that "[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." Therefore, I believe and teach that

“any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means”—including contraception and sterilization—is a grave sin.

13. I believe, as Pope Paul VI prophetically stated in *Humanae Vitae*, that “man, growing used to the employment of anticonceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion.” Consequently, I believe and profess that the contraceptive services mandate harms women physically, emotionally, morally, and spiritually. Indeed, my personal experiences attest to the harm that the contraceptive services mandate will have on women.

14. I was first given birth control pills by a gynecologist when I was in high school (1966-68). Although I was not sexually active, I stayed on the pills for about two years, then on the advice of a doctor stopped taking them. I again took birth control pills when I was engaged for about three years (1974-1977). I stopped the pills again to have children. In 1980, I went back on birth control pills for about three years, but then on the advice of my physician I stopped. He told me that because of a history of strokes in my family, it was not advisable for me to stay on birth control pills as they could cause me serious physical harm. I would never have taken the pills had I been advised of the risk.

15. In 1989, when I returned to practicing my Catholic faith, I learned of the abortifacient qualities of birth control pills, which caused me great distress. The thought that I could have been aborting new life was psychologically damaging to me. Feelings of guilt set in. I later also found out that the birth control pill was classified as a group 1 carcinogen by the World Health Organization in 1995 and later reaffirmed as such in 2006.

16. Because of the negative impact taking these pills had on my life, I sought counseling. I attended a Rachel's Vineyard retreat and Hope Alive Counseling to help me deal with my anxiety and grief.

17. Pursuant to my Catholic faith, I hold and actively profess religious beliefs that include traditional Christian teaching on the sanctity of life. I believe and teach that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, I believe and teach that abortion, which includes abortifacients, ends a human life and is a grave sin.

18. Further, I subscribe to authoritative Catholic teaching about the proper nature and aims of healthcare and medical treatment. For example, I believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

19. Based on the teaching of the Catholic Church, and my own sincerely held beliefs, I do not believe

that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, healthcare, or a means of providing for the well-being of persons. Indeed, I believe these procedures involve gravely immoral practices.

20. Based on my sincerely held religious convictions, I am morally prohibited from cooperating, directly or indirectly, with evil. Thus, I strongly object to the federal government forcing Priests for Life to purchase a health care plan that provides its employees with access to contraceptives, sterilization, and abortifacients, all of which are prohibited by my religious convictions. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Priests for Life or me. Contraception, sterilization, and abortifacients are immoral regardless of their cost. And I strongly object to the government forcing me into a moral and economic dilemma with regard to my relationship with Priests for Life. Moreover, I strongly object to being forced by the government to facilitate, support, and promote the government's immoral objective of promoting the use of contraceptive services—an objective that is directly at odds with the mission and purpose of Priests for Life and with my sincerely held religious beliefs.

21. As a result of the contraceptive services mandate, the federal government is forcing Priests for Life out of the healthcare market because of its sincerely held religious beliefs, which is both a direct harm in and of itself and an indirect harm in that it will put Priests for Life at a competitive disadvantage vis-à-vis employers offering health care plans in the employee marketplace.

22. The current mandate with its limited religious employer exemption and so-called “accommodation” will force Priests for Life to either leave the market for health care services or pay crippling fines, either of which will adversely affect it as an organization, and thus adversely affect me both spiritually—in that it will harm my ability to spread the Gospel of Life—and financially. Many of Priests for Life’s valued employees, without whom Priests for Life could not provide its much needed services, may be forced to leave Priests for Life and seek other employment that provides health care benefits. Indeed, the contraceptive services mandate threatens the very survival of Priests for Life as an effective, pro-life organization.

23. In sum, the contraceptive services mandate is causing Priests for Life and me to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on our religious beliefs and practices.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 13th day of September, 2013.

/s/ Janet Morana

Janet Morana

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs,

-v-

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

Defendants.

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

**DECLARATION OF
ROBERT J. MUISE**

I, Robert J. Muiсе, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and/or verifiable information and belief.

1. I am an adult citizen of the United States and co-lead counsel for Plaintiffs in the above-captioned case.

2. Attached to this declaration as Exhibit A is a true and correct copy of the Institute of Medicine’s (“IOM”) report published in 2011 regarding preventive care for women. The report is entitled, “Clinical Preventive Services for Women: Closing the Gaps,” and it can be found at <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>. This website was last visited on September 29, 2013.

3. Attached to this declaration as Exhibit B is a true and correct copy of the “Women’s Preventive Services: Required Health Plan Coverage Guidelines” (hereinafter “Guidelines”). These Guidelines can be

found at <http://www.hrsa.gov/womensguidelines/>. This website was last visited on September 29, 2013.

4. Attached to this declaration as Exhibit C is a true and correct copy of the Department of Health and Human Services' "Guidance on the Temporary Enforcement Safe Harbor" issued on August 15, 2012.

5. Attached to this declaration as Exhibit D is a true and correct copy of the press release issued on June 28, 2013, in which the Obama administration announced that it had issued final rules on contraceptive coverage and religious organizations. This press release can be found at <http://www.hhs.gov/news/press/2013pres/06/20130628a.html>. This website was last visited on September 29, 2013.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of September, 2013.

/s/ Robert J. Muise

Robert J. Muise, Esq.

EXHIBIT A

REPORT BRIEF JULY 2011

INSTITUTE OF MEDICINE
OF THE NATIONAL ACADEMIES

Advising the nation • Improving health

For more information visit www.iom.edu/preventiveserviceswomen**Clinical Preventive
Services for Women**
Closing the Gaps

As a centerpiece of the *Patient Protection and Affordable Care Act* (ACA) of 2010, the focus on preventive services is a profound shift from a reactive system that primarily responds to acute problems and urgent needs to one that helps foster optimal health and well-being. Women stand to benefit from this shift given their longer life expectancies, reproductive and gender-specific conditions, and historically greater burden of chronic disease and disability. And, for the same reasons, they will benefit economically since the ACA removes cost-sharing requirements for specified preventive services—eliminating out-of-pocket costs that often put screenings, coun-

Women stand to benefit from this shift given their longer life expectancies, reproductive and gender-specific conditions, and historically greater burden of chronic disease and disability.

seling and procedures supporting health out of reach for moderate- and lower-income women.

Given the magnitude of change, the U.S. Department of Health and Human Services (HHS) charged the Institute of Medicine (IOM) with reviewing what preventive services are important to women's health and well-being and then recommending which of these should be considered in the development of comprehensive guidelines. The IOM convened a committee of experts to identify critical gaps in the preventive services already identified in the ACA, which are based on recommendations developed by three independent bodies: the United States Preventive Services Task Force, the American Academy of Pediatrics' Bright Futures recommendations for adolescents, and the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices.

The committee defined preventive health services as measures—including medications, procedures, devices, tests, education, and counseling—shown to improve well-being and/or decrease the likelihood or delay the onset of a targeted disease or condition. To guide its deliberations in determining gaps in preventive services not included in existing guidelines, the committee developed four overarching questions:

- Are high-quality systematic evidence reviews available which indicate that the service is effective in women?

- Are quality peer-reviewed studies available that demonstrate effectiveness of the service in women?
- Has the measure been identified as a federal priority to address in women's preventive services?
- Are there existing federal, state, or international practices, professional guidelines, or federal reimbursement policies that support the use of the measure?

Preventive measures recommended by the IOM committee for preventive coverage consideration met the following criteria:

- The condition to be prevented affects a broad population;
- The condition to be prevented has a large potential impact on health and well-being; and
- The quality and strength of the evidence is supportive.

The committee took seriously its task of focusing on women's unique health needs. Throughout the study process, the committee repeatedly questioned whether the disease or condition was significant to women and, especially, whether it was more common or more serious in women than in men or whether women experienced different outcomes or benefited from different interventions than men.

Protecting Women's Health

The committee found sufficient evidence to endorse eight recommendations for specific preventive services and screenings that support women's overall health.

For sexually active women, the committee found that current recommendations of screening for cervical cancer, counseling for sexually transmitted infections, and HIV counseling and screening are too limited in scope and should be expanded. It also made several recommendations that support women's reproductive health. These include a fuller range of contraceptive education, counseling, methods, and services so that women can better avoid unwanted pregnancies and space their pregnancies to promote optimal birth outcomes. Additional recommendations address needs of pregnant women, including screening for gestational diabetes and lactation counseling and equipment to help women who choose to breastfeed to do so successfully.

The committee recommended including at least one well-woman preventive care visit annually for women to receive comprehensive services. Depending on a woman's health status, health needs, and risk factors, multiple visits might be recommended to provide the full range of preventive services.

Finally, the committee recommended that all women and adolescent girls be screened and counseled for interpersonal and domestic violence in a culturally sensitive and supportive manner. An estimated five million women are physically, sexually, or emotionally abused by their partners each year in the United States. Screening for risk of abuse is central to women's safety, as well as to addressing current health concerns and preventing future health problems.

Keeping Preventive Care Up-to-Date

The committee made several recommendations that will enable HHS to periodically update the review of preventive services covered under the ACA. The committee recommends developing the structures within HHS that involve accountability and processes to ensure that preventive services meeting the requisite criteria will be considered in the future, as science emerges. Further, HHS should establish an independent commission to support the process.

The committee noted that the public health system and community-based preventive services are important to achieving the aims of preventive health services. Community-based health services can play significant roles in providing preventive care to many different populations. The committee encourages HHS to consider widening the proposed commission's scope of authority so that public health efforts work in coordination with the new and existing bodies that are charged with overseeing other elements of the ACA.

Conclusion

Positioning preventive care as the foundation of the U.S. healthcare system is critical to ensuring Americans' health and well-being. Although the ACA addresses preventive services for both men and women of all ages, women particularly stand to benefit from additional preventive health services. The inclusion of evidence-based screenings, counseling, and procedures that address women's greater need for services over the course of a lifetime

may have a profound impact for individuals and the nation as a whole.

The committee defined preventive health services as measures—including medications, procedures, devices, texts, education, and counseling—shown to improve well-being and/or to improve well-being and/or decrease the likelihood or delay the onset of a targeted disease or condition.

Recommendation for Preventive Health Care Services for Women that Should be Considered by the U.S. Department of Health and Human Services

Recommendation 5.1: Screening for gestational diabetes in pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.

Recommendation 5.2: The addition of high-risk human papillomavirus DNA testing in addition to cytology testing in women with normal cytology results. Screening should begin at 30 years of age and should occur no more frequently than every 3 years.

Recommendation 5.3: Annual counseling on sexually transmitted infections for sexually active women.

Recommendation 5.4: Counseling and screening for human immunodeficiency virus infection on an annual basis for sexually active women.

Recommendation 5.5: The full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.

Recommendation 5.6: Comprehensive lactation support and counseling and costs of renting breastfeeding equipment. A trained provider should provide counseling services to all pregnant women and to those in the postpartum period to ensure the successful initiation and duration of breastfeeding. (The ACA ensures that breastfeeding counseling is covered; however, the committee recognizes that interpretation of this varies.)

Recommendation 5.7: Screening and counseling for interpersonal and domestic violence. Screening and counseling involve elicitation of information from women and adolescents about current and past violence and abuse in a culturally sensitive and supportive manner to address current health concerns about safety and other current or future health problems.

Recommendation 5.8: At least one well-woman preventive care visit annually for adult women to obtain the recommended preventive services, including preconception and prenatal care. The committee also recognizes that several visits may be needed to obtain all necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.

Committee on Preventive Services for Women

Linda Rosenstock (Chair)

Dean, School of Public Health, University of California, Los Angeles

Alfred O. Berg

Professor, Department of Family Medicine, University of Washington School of Medicine, Seattle

Claire D. Brindis

Professor of Pediatrics and Health Policy, Department of Pediatrics and Department of Obstetrics, Gynecology and Reproductive Health Services, and Director, Philip R. Lee Institute for Health Policy Studies, School of Medicine, University of California, San Francisco

Angela Diaz

Jean C. and James W. Crystal Professor of Adolescent Health, Department of Pediatrics and Community Preventative Medicine, Mount Sinai Medical Center, New York

Francisco Garcia

Distinguished Outreach Professor of Public Health, and Obstetrics and Gynecology; Director, University of Arizona Center of Excellence in Women's Health; and Codirector of

the Cancer Disparities Institute, University of Arizona,
Tucson

Kimberly Gregory

Vice Chair of Women's Healthcare Quality and Performance
Improvement, and Department of Obstetrics and Gynecology,
Cedars-Sinai Medical Center, Los Angeles

Paula A. Johnson

Executive Director, Connors Center for Women's Health and
Gender Biology, and Chief, Division of Women's Health,
Brigham and Women's Hospital, Boston

Anthony Lo Sasso

Professor and Senior Research Scientist, Division of Health
Policy and Administration, University of Illinois at Chicago
School of Public Health

Jeanette H. Magnus

Cecile Usdin Professor in Women's Health and Chair,
Department of Community Health Sciences, School of Public
Health and Tropical Medicine, Tulane University, New
Orleans

Heidi D. Nelson

Research Professor of Medical Informatics and Clinical
Epidemiology and Medicine, Oregon Health and Science
University, and Medical Director for Cancer Prevention and
Screening, Providence Cancer Center, Providence Health &
Services, Portland

Roberta B. Ness

Dean and M. David Low Chair in Public Health, School of
Public Health, University of Texas, Houston

Magda G. Peck

Professor of Public Health and Pediatrics and Associate Dean
for Community Engagement and Public Health Practice,
College of Public Health, University of Nebraska Medical
Centers, Omaha

E. Albert Reece

Vice President for Medical Affairs, University of Maryland,
and John Z. and Akiko K. Bowers Distinguished Professor

and Dean, University of Maryland School of Medicine,
Baltimore

Alina Salganicoff

Vice President and Director, Women's Health Policy, Henry
J. Kaiser Family Foundation, Menlo Park, California

Sally W. Vernon

Division Director, Health Promotion and Behavioral
Sciences, Blair Justice, Ph.D. Professorship in Mind-Body
Medicine and Public Health, and Professor of Epidemiology
and Behavioral Sciences, University of Texas School of Public
Health, Houston

Carol S. Weisman

Distinguished Professor of Public Health Sciences and
Obstetrics and Gynecology and Associate Dean for Faculty
Affairs, Pennsylvania State College of Medicine, Hershey

Study Staff

Karen Helsing

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Chelsea Frakes

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Rebekah E. Gee

Institute of Medicine Anniversary Fellow

Amy Pryzbocki

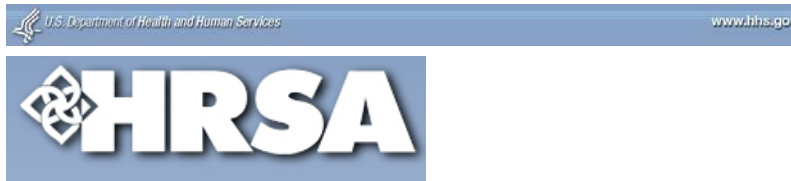
Financial Associate

Rose Marie Martinez

Director, Board on Population Health and Public Health
Practice

Study Sponsor

The Department of Health and Human Services

EXHIBIT B**Health Resources and Services Administration
Women's Preventive Services
Guidelines****Affordable Care Act Expands Prevention
Coverage for Women's Health and Well-Being**

The Affordable Care Act—the health insurance reform legislation passed by Congress and signed into law by President Obama on March 23, 2010—helps make prevention affordable and accessible for all Americans by requiring health plans to cover preventive services and by eliminating cost sharing for those services. Preventive services that have strong scientific evidence of their health benefits must be covered and plans can no longer charge a patient a copayment, coinsurance or deductible for these services when they are delivered by a network provider.

**Women's Preventive Services Guidelines
Supported by the Health Resources and
Services Administration**

Under the Affordable Care Act, women's preventive health care—such as mammograms, screenings for cervical cancer, prenatal care, and other services—generally must be covered by health plans with no cost sharing. However, the law recognizes and HHS

understands the need to take into account the unique health needs of women throughout their lifespan.

The HRSA-supported health plan coverage guidelines, developed by the Institute of Medicine (IOM), will help ensure that women receive a comprehensive set of preventive services without having to pay a co-payment, co-insurance or a deductible. HHS commissioned an IOM study to review what preventive services are necessary for women's health and well-being and therefore should be considered in the development of comprehensive guidelines for preventive services for women. HRSA is supporting the IOM's recommendations on preventive services that address health needs specific to women and fill gaps in existing guidelines.

Health Resources and Services Administration Women's Preventive Services Guidelines

Non-grandfathered plans (plans or policies created or sold after March 23, 2010, or older plans or policies that have been changed in certain ways since that date) generally are required to provide coverage without cost sharing consistent with these guidelines in the first plan year (in the individual market, policy year) that begins on or after August 1, 2012.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Well-woman visits.	Well-woman preventive care visit annually for adult women to obtain the	Annual, although HHS recognizes that several visits may be needed to obtain all

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
	recommended preventive services that are age and developmentally appropriate, including preconception care and many services necessary for prenatal care. This well-woman visit should, where appropriate, include other preventive services listed in this set of guidelines, as well as others referenced in section 2713.	necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.* (see note)
Screening for gestational diabetes.	Screening for gestational diabetes.	In pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.
Human papillomavirus testing.	High-risk human papillomavirus DNA testing in women with normal cytology results.	Screening should begin at 30 years of age and should occur no more frequently than every 3 years.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Counseling for sexually transmitted infections.	Counseling on sexually transmitted infections for all sexually active women.	Annual.
Counseling and screening for human immune-deficiency virus.	Counseling and screening for human immune-deficiency virus infection for all sexually active women.	Annual.
Contraceptive methods and counseling.** (see note)	All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.	As prescribed.
Breastfeeding support, supplies, and counseling.	Comprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding	In conjunction with each birth.

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
	equipment.	
Screening and counseling for interpersonal and domestic violence.	Screening and counseling for interpersonal and domestic violence.	

* Refer to guidance issued by the Center for Consumer Information and Insurance Oversight entitled *Affordable Care Act Implementation FAQs, Set 12, Q10*. In addition, refer to recommendations in the July 2011 IOM report entitled *Clinical Preventive Services for Women: Closing the Gaps* concerning distinct preventive services that may be obtained during a well-woman preventive services visit.

** The guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers. Effective August 1, 2013, a religious employer is defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. HRSA notes that, as of August 1, 2013, group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the requirement to cover contraceptive services under section 2713 of the Public Health Service Act, as incorporated into the Employee

Retirement Income Security Act and the Internal Revenue Code. HRSA also notes that, as of January 1, 2014, accommodations are available to group health plans established or maintained by certain eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations, with respect to the contraceptive coverage requirement. See Federal Register Notice: *Coverage of Certain Preventive Services Under the Affordable Care Act* (PDF - 327 KB)

EXHIBIT C

DEPARTMENT OF HEALTH & HUMAN SERVICES

Washington, DC 20201

Date: August 15, 2012¹

From: Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS)

Title: Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code

¹ This bulletin was originally issued on February 10, 2012, to describe the temporary enforcement safe harbor. In reissuing this bulletin, CMS is not changing the February 10 policy; it is only clarifying three points: (1) that the safe harbor is also available to non-profit organizations with religious objections to some but not all contraceptive coverage, as clarified herein; (2) that group health plans that took some action to try to exclude or limit contraceptive coverage that was not successful as of February 10, 2012, are not for that reason precluded from eligibility for the safe harbor, as clarified herein; and (3) that the safe harbor may be invoked without prejudice by non-profit organizations that are uncertain whether they qualify for the religious employer exemption, as clarified herein. Organizations that have already completed the certification or issued the notice from the February 10, 2012 bulletin are not required by this revised bulletin to recertify or reissue the notice.

I. Purpose

Section 2713(a)(4) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires non-grandfathered group health plans and health insurance issuers to provide coverage for recommended women's preventive health services without cost sharing. The Affordable Care Act also added section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act (including section 2713) into ERISA and the Code to make them applicable to group health plans.

Interim final regulations were issued by the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury (collectively, the Departments) on July 19, 2010 (codified at 26 CFR §54.9815-2713T; 29 CFR §2590.715-2713; and 45 CFR §147.130), which provide that a non-grandfathered group health plan or health insurance issuer must cover certain items and services, without cost sharing, as recommended by the U.S. Preventive Services Task Force (USPSTF), the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the Health Resources and Services Administration (HRSA). Among other things, the interim final regulations provide that, if a new recommendation or guideline is issued, a plan or issuer must provide coverage consistent with the new recommendation or guideline (with no cost sharing) for plan years (or, in the individual market, policy years) that begin on or after the date that is one year

after the date on which the new recommendation or guideline is issued. HRSA was charged by statute with developing comprehensive guidelines for preventive care and screenings with respect to women, to the extent not already recommended by USPSTF. On August 1, 2011, HRSA adopted and released guidelines for women's preventive services based on recommendations developed by the Institute of Medicine at the request of HHS (Women's Preventive Services: Required Health Plan Coverage Guidelines, or HRSA Guidelines). One of HRSA's recommendations is that all Food and Drug Administration-approved contraceptives for women, as prescribed by a provider, be covered by non-grandfathered group health plans and health insurance issuers without cost sharing.

That same day, the Departments issued an amendment to the interim final regulations that provided HRSA discretion to exempt group health plans established or maintained by certain religious employers (and any group health insurance provided in connection with such plans) from any requirement to cover contraceptive services. The Departments' amended interim final regulations specified that, for purposes of this exemption, a religious employer is one that: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to

the exclusively religious activities of any religious order. The definition of religious employer, as set forth in the amended interim final regulations, was based on existing definitions used by some States that exempt group health insurance coverage of certain religious employers from having to comply with State insurance law requirements to cover contraceptive services. This discretion to exempt the group health plans established or maintained by these religious employers (and any group health insurance coverage provided in connection with such plans) from any requirement to cover contraceptive services was exercised by HRSA in the HRSA Guidelines, consistent with the Departments' amended interim final regulations. Therefore, this exemption now applies to any group health plan established or maintained by a qualifying religious employer (and any group health insurance coverage provided in connection with such a plan).

For all non-exempted, non-grandfathered plans and policies, the regulations require coverage of the recommended women's preventive services, including the recommended contraceptive services, without cost sharing, for plan years (or, in the individual market, policy years) beginning on or after August 1, 2012.

On January 20, 2012, Secretary Sebelius reaffirmed the exemption authorized in the amended interim final regulations. In doing so, the Secretary indicated that a temporary enforcement safe harbor would be provided to non-exempted, non-grandfathered group health plans established and maintained by non-profit organizations with religious objections to contraceptive coverage (and any health insurance coverage offered in connection with such plans). This

bulletin describes the temporary enforcement safe harbor. It is available to non-exempted, non-grandfathered group health plans established or maintained by non-profit organizations whose plans have consistently not covered all or the same subset of contraceptive services for religious reasons at any point from the original issuance date of this bulletin (i.e., February 10, 2012) onward, consistent with any applicable State law (and any group health insurance coverage provided in connection with such plans), as described herein. This temporary enforcement safe harbor provides an additional year for these group health plans and group health insurance issuers (i.e., until the first plan year beginning on or after August 1, 2013).

The Department of Labor and the Department of the Treasury agree with the need for such transitional relief and will not take any enforcement action against an employer or group health plan that complies with the conditions of the temporary enforcement safe harbor described herein.

II. Temporary Enforcement Safe Harbor

The temporary enforcement safe harbor will be in effect until the first plan year that begins on or after August 1, 2013. Neither employers, nor group health plans, nor group health insurance issuers will be subject to any enforcement action by the Departments for failing to cover some or all of the recommended contraceptive services without cost sharing in non-exempted, non-grandfathered group health plans established or maintained by an organization, including a group or association of employers within the meaning of section 3(5) of

ERISA, (and any group health insurance coverage provided in connection with such plans) meeting all of the following criteria:

1. The organization is organized and operates as a non-profit entity.
2. From February 10, 2012 onward, the group health plan established or maintained by the organization has consistently not provided all or the same subset of the contraceptive coverage otherwise required at any point, consistent with any applicable State law, because of the religious beliefs of the organization.
3. As detailed below, the group health plan established or maintained by the organization (or another entity on behalf of the plan, such as a health insurance issuer or third-party administrator) must provide to participants the attached notice, as described below, which states that some or all contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.²
4. The organization self-certifies that it satisfies criteria 1—3 above, and documents its self-certification in accordance with the procedures detailed herein.

With respect to the second criterion above, the following exception applies. A group health plan will be considered not to have provided all or the same subset of the contraceptive coverage otherwise

² Nothing in this bulletin precludes employers or others from expressing their opposition, if any, to the final regulations or to the use of contraceptives.

required if it took some action to try to exclude or limit such coverage that was not successful as of February 10, 2012. Accordingly, such coverage will not disqualify an employer, a group health plan, or a group health insurance issuer from eligibility for the safe harbor. To qualify, the organization must certify that it (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action. Section IV describes the specifications for the certification.

Any employer that potentially qualifies for the religious employer exemption may, if eligible, opt to invoke the temporary enforcement safe harbor. Doing so would not preclude the employer from later invoking the exemption, if eligible.

III. Notice

The attached notice must be in any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of the first plan year that is on or after August 1, 2012.³ (For example, for a calendar year plan with an open enrollment period beginning November 1, the notice must be in any

³ CMS has determined that the notice is not a collection of information under the Paperwork Reduction Act because it is “[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.” 5 CFR §1320.3(c)(2).

application materials provided to participants on or after November 1, 2012.).

This notice is required to be provided by the group health plan (although the plan may ask another entity, such as a health insurance issuer or third-party administrator, to accept responsibility for providing the notice on its behalf). With respect to insured coverage, unless it accepts in writing the responsibility for providing the notice, a group health insurance issuer does not lose its protection under the temporary enforcement safe harbor solely because the notice is not distributed by the plan as described herein, or because the issuer relies in good faith on a representation by the plan that turns out to be incorrect.

Organizations that exclude some contraceptive coverage must use the term “some” in the notice where indicated.

IV. Certification

A certification must be made by the organization described in section II.⁴ The certification must be signed by an organizational representative who is authorized to make the certification on behalf of the organization. The specifications for the certification are attached.

⁴ CMS has determined that the certification is not a collection of information under the Paperwork Reduction Act because, although it is a third-party disclosure, it is a certification that does not entail burden other than that necessary to identify the respondent, the date, the respondent’s address, and the nature of the instrument. 5 CFR §1320.3(h)(1).

The certification must be completed and made available for examination by the first day of the plan year to which the temporary enforcement safe harbor applies.

Where to get more information:

If you have any questions regarding this bulletin, contact CCHIO at CMS at 410-786-1565 or at phig@cms.hhs.gov.

NOTICE TO PLAN PARTICIPANTS

The organization that sponsors your group health plan has certified that it qualifies for a temporary enforcement safe harbor with respect to the Federal requirement to cover contraceptive services without cost sharing. During this one-year period, coverage under your group health plan will not include coverage of [some] contraceptive services.



CERTIFICATION

This form is to be used to certify that the group health plan established or maintained by the organization listed below qualifies for the temporary enforcement safe harbor, as described in HHS bulletin entitled “Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code,” pertaining to coverage of FDA-approved contraceptive services for women without cost sharing.

Please fill out this form completely.

	Name of the organization sponsoring the plan
	Name of the individual who is authorized to make, and makes, this certification on behalf of the organization
	Mailing and email addresses and phone number for

	the individual listed above
<p><i>(Check the applicable box)</i></p> <p>___ I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, the plan has consistently not provided all or the same subset of the contraceptive coverage otherwise required, consistent with any applicable State law, because of the religious beliefs of the organization.</p> <p>___ I certify that the organization (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action, and that, but for that coverage, I could make the certification above.</p> <p><i>I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.</i></p> <p>_____</p> <p>Signature of the individual listed above</p> <p>_____</p> <p>Date</p>	
<p>Failure to provide the requisite notice to plan participants renders a group health plan ineligible for the temporary enforcement safe harbor.</p>	

EXHIBIT D

News

FOR IMMEDIATE RELEASE

June 28, 2013

Contact: HHS Press

Office

(202) 690-6343

Administration issues final rules on contraception coverage and religious organizations

Today, the Obama administration issued final rules that balance the goal of providing women with coverage for recommended preventive care—including contraceptive services prescribed by a health care provider—with no cost-sharing, with the goal of respecting the concerns of non-profit religious organizations that object to contraceptive coverage. The final rules reflect public feedback received in response to the Notice of Proposed Rulemaking issued in February 2013.

“The health care law guarantees millions of women access to recommended preventive services at no cost,” said Health and Human Services Secretary Kathleen Sebelius. “Today’s announcement reinforces our commitment to respect the concerns of houses of worship and other non-profit religious organizations that object to contraceptive coverage, while helping to ensure that women get the care they need, regardless of where they work.”

Today’s final rules finalize the proposed simpler definition of “religious employer” for purposes of the exemption from the contraceptive coverage requirement in response to concerns raised by some religious organizations. These employers, primarily

houses of worship, may exclude contraceptive coverage from their health plans for their employees and their dependents.

The final rules also lay out the accommodation for other non-profit religious organizations—such as non-profit religious hospitals and institutions of higher education—that object to contraceptive coverage. Under the accommodation these organizations will not have to contract, arrange, pay for or refer contraceptive coverage to which they object on religious grounds, but such coverage is separately provided to women enrolled in their health plans at no cost. The approach taken in the final rules is similar to, but simpler than, that taken in the proposed rules, and responds to comments made by many stakeholders.

With respect to an insured health plan, including a student health plan, the non-profit religious organization provides notice to its insurer that it objects to contraception coverage. The insurer then notifies enrollees in the health plan that it is providing them separate no-cost payments for contraceptive services for as long as they remain enrolled in the health plan.

Similarly, with respect to self-insured health plans, the non-profit religious organization provides notice to its third party administrator that objects to contraception coverage. The third party administrator then notifies enrollees in the health plans that it is providing or arranging separate no-cost payments for contraceptive services for them for as long as they remain enrolled in the health plan.

The final rules provide more details on the accommodation for both insurers and third party administrators.

The final rules strike the appropriate balance between respecting the religious considerations raised by non-profit religious organizations and increasing access to important preventive services for women.

The final rules are available here:
http://www.ofr.gov/OFRUpload/OFRData/2013-15866_PI.pdf

For more information about today's final rules visit:
<http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womenspreven-02012013.html>

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Note: All HHS press releases, fact sheets and other news materials are available at <http://www.hhs.gov/news>.

Like HHS on Facebook , follow HHS on Twitter @HHSgov , and sign up for HHS Email Updates.

Follow HHS Secretary Kathleen Sebelius on Twitter @Sebelius.

Last revised: August 5, 2013

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs

-v-

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

Defendants.

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

**SUPPLEMENTAL
DECLARATION OF
PRIESTS FOR
LIFE**

I, Father Frank Pavone, make this declaration pursuant to 28 U.S.C. § 1746. This supplemental declaration is made on behalf of Priests for Life and thus based on information known by me and information provided to me by the organization.

1. I am an adult citizen of the United States, a Roman Catholic priest, and a plaintiff in this case.

2. I am the National Director of Priests for Life, which is a nonprofit corporation that is incorporated under the laws of the State of New York. It is recognized by the Internal Revenue Service as a Section 501(c)(3) organization.

3. Priests for Life is a religious organization that follows the teachings of the Roman Catholic Church. However, Priests for Life is not a church or a religious order and thus *not* an organization that is referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. As a result, Priests for Life does not qualify for the “religious employer”

exemption from the contraceptive services mandate, which is the subject of this litigation.

4. This supplemental declaration is made to ensure that there is no mistake regarding Priests for Life's religious objection to the contraceptive services mandate and its so-called "accommodation."

5. Priests for Life cannot and will not submit to *any* requirement imposed by the federal government that has the purpose or effect of providing access to or increasing the use of contraceptive services. This specifically includes the requirement under the so-called "accommodation" that Priests for Life provide its healthcare insurer with a "self-certification" that will then trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries" of Priests for Life's health care plan. This "self-certification" is the moral and factual equivalent of an "authorization" by Priests for Life to its insurer to provide coverage for contraceptive services to its plan participants and beneficiaries. Priests for Life is prohibited based on its sincerely held religious beliefs from cooperating in this manner with the federal government's immoral objectives.

6. These sincerely held religious beliefs, which prohibit Priests for Life from executing the "self-certification," are neither trivial nor immaterial, but rather central to the teaching and core moral admonition of our faith, which requires us to avoid mortal sin. Thus, neither Plaintiffs nor Priests for Life can condone, promote, or cooperate with the government's illicit goal of increasing access to and utilization of contraceptive services—the express goal

of the challenged mandate and the government's so-called "accommodation."

7. Because Priests for Life cannot and will not authorize coverage for contraceptive services to its plan participants and beneficiaries via the government's "self-certification" requirement, Priests for Life will have to decide whether to drop its healthcare coverage, which will adversely affect it as an organization and its employees, including Dr. Alveda King and Ms. Janet Morana, both of whom are plaintiffs in this case, or pay the fines associated with having a healthcare plan that does not include coverage for contraceptive services. These penalties, which I understand to be \$100 per day per employee, will cripple Priests for Life financially. Consequently, these penalties will not only adversely affect Priests for Life as an organization, they will adversely affect Priests for Life's employees, either through a drastic reduction in their salaries or the loss of employment simply because Priests for Life will no longer be able to sustain itself financially.

8. Finally, the government's refusal to truly accommodate Priests for Life's religious objections to the contraceptive services mandate by exempting the organization from its requirements altogether is confounding, and this particularly true since the Anglican Church, for example, which does not oppose contraceptive services, is automatically eligible for the "religious employer" exemption, but Priests for Life is not. This is religious discrimination pure and simple.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 29th day of October, 2013.

/s/ *Father Frank Pavone*

Father Frank Pavone

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs

-v-

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

Defendants.

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

**SUPPLEMENTAL
DECLARATION OF
ROBERT J. MUISE**

I, Robert J. MuiSE, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and/or verifiable information and belief.

1. I am an adult citizen of the United States and co-lead counsel for Plaintiffs in the above-captioned case.

2. Attached to this declaration as Exhibit A is true and correct copy of a news release from the U.S. Department of the Treasury dated July 2, 2013, in which the Obama administration announced “that it will provide an additional year before the ACA mandatory employer and insurer reporting requirement begins” and that it was “extending this transition relief to the employer shared responsibility payments.” Consequently, “[t]hese payments will not apply for 2014. Any employer shared responsibility payment will not apply until 2015.” This news release was posted on the official website of the U.S. Department of the Treasury and can be found here: <http://www.treasury.gov/connect/blog/pages/continuin>

g-to-implement-the-aca-in-a-careful-thoughtful-manner.aspx. This website was last visited on October 30, 2013.

3. Attached to this declaration as Exhibit B is a true and correct copy of a “News Release” dated January 20, 2012, and titled, “A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius,” which was posted on the official website of the U.S. Department of Health & Human Services and can be found here: <http://www.hhs.gov/news/press/2012pres/01/20120120a.html>. This website was last visited on October 28, 2013.

4. Attached to this declaration as Exhibit C is a true and correct copy of a CNS News report titled, “Sebelius: Decrease in Human Beings Will Cover Cost of Contraception Mandate.” The news report, which also contains an embed video of the testimony of Secretary Sebelius before the House Energy and Commerce Subcommittee on Health, can be found here: <http://cnsnews.com/news/article/sebelius-decrease-human-beings-will-cover-cost-contraception-mandate>. This website was last visited on October 28, 2013.

5. Attached to this declaration as Exhibit D are two resolutions from the Lambeth Conference, which is an assembly of Anglican bishops. The first resolution is from the 1930 conference. During this conference, the Anglican Church announced that contraception would be permissible in some circumstances. A true and accurate copy of Resolution 15 from the 1930 conference is attached as part of Exhibit D and can be found here:

<http://www.lambethconference.org/resolutions/1930/1930-15.cfm>. The second resolution is from the 1958 conference. During this conference, the Anglican Church affirmed that contraception was not morally impermissible. A true and accurate copy of Resolution 115 from the 1958 conference is attached as part of Exhibit D and can be found here: <http://www.lambethconference.org/resolutions/1958/1958-115.cfm>. This website was last visited on October 28, 2013. In short, unlike the Catholic Church, the Anglican Church does not hold that the use of contraception is intrinsically evil and, therefore, prohibited.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of October, 2013.

/s/ Robert J. Muise

Robert J. Muise, Esq.

EXHIBIT A

U.S. DEPARTMENT OF THE TREASURY

Treasury Notes

Continuing to Implement the ACA in a Careful, Thoughtful Manner**By: Mark J. Mazur 7/2/2013**

Over the past several months, the Administration has been engaging in a dialogue with businesses—many of which already provide health coverage for their workers—about the new employer and insurer reporting requirements under the Affordable Care Act (ACA). We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively. We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so. We have listened to your feedback. And we are taking action.

The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin.

This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. Within the next week, we will publish formal guidance describing this transition. Just like the Administration's effort to turn the initial 21-page application for health insurance into a three-page application, we are working hard to adapt and to be

flexible about reporting requirements as we implement the law.

Here is some additional detail. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders—including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements—in an effort to minimize the reporting, consistent with effective implementation of the law.

Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015.

During this 2014 transition period, we strongly encourage employers to maintain or expand health coverage. Also, our actions today do not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA).

Mark J. Mazur is the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury.

Posted in: Tax Policy

EXHIBIT B

News Release

FOR IMMEDIATE
RELEASE
January 20, 2012

Contact: HHS Press
Office
(202) 690-6343

**A statement by U.S. Department of Health and
Human Services Secretary Kathleen Sebelius**

In August 2011, the Department of Health and Human Services issued an interim final rule that will require most health insurance plans to cover preventive services for women including recommended contraceptive services without charging a co-pay, co-insurance or a deductible. The rule allows certain non-profit religious employers that offer insurance to their employees the choice of whether or not to cover contraceptive services. Today the department is announcing that the final rule on preventive health services will ensure that women with health insurance coverage will have access to the full range of the Institute of Medicine's recommended preventive services, including all FDA-approved forms of contraception. Women will not have to forego these services because of expensive co-pays or deductibles, or because an insurance plan doesn't include contraceptive services. This rule is consistent with the laws in a majority of states which already require contraception coverage in health plans, and includes the exemption in the interim final rule allowing certain religious organizations not to provide contraception coverage. Beginning August 1, 2012, most new and renewed health plans will be

required to cover these services without cost sharing for women across the country.

After evaluating comments, we have decided to add an additional element to the final rule. Nonprofit 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. Employers wishing to take advantage of the additional year must certify that they qualify for the delayed implementation. This additional year will allow these organizations more time and flexibility to adapt to this new rule. We intend to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support. We will continue to work closely with religious groups during this transitional period to discuss their concerns.

Scientists have abundant evidence that birth control has significant health benefits for women and their families, is documented to significantly reduce health costs, and is the most commonly taken drug in America by young and middle-aged women. This rule will provide women with greater access to contraception by requiring coverage and by prohibiting cost sharing.

This decision was made after very careful consideration, including the important concerns some have raised about religious liberty. I believe this proposal strikes the appropriate balance between

respecting religious freedom and increasing access to important preventive services. The administration remains fully committed to its partnerships with faith-based organizations, which promote healthy communities and serve the common good. And this final rule will have no impact on the protections that existing conscience laws and regulations give to health care providers.

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EXHIBIT C

Sebelius: Decrease in Human Beings Will Cover Cost of Contraception Mandate

(CNSNews.com) — Health and Human Services Secretary Kathleen Sebelius told a House panel Thursday that a reduction in the number of human beings born in the United States will compensate employers and insurers for the cost of complying with the new HHS mandate that will require all health-care plans to cover sterilizations and all FDA-approved contraceptives, including those that cause abortions.

“The reduction in the number of pregnancies compensates for the cost of contraception,” Sebelius said. She went on to say the estimated cost is “down not up.”

Sebelius took questions from the House Energy and Commerce Subcommittee on Health about President Barack Obama’s fiscal year 2013 budget proposal.



Health and Human Services Secretary Kathleen Sebelius said on Nov. 14, 2011 that \$1 billion in health care grants were a way of ‘sparking’ the U.S. economy.
(CNSNews.com/Penny Starr)

Because the Catholic church teaches that sterilization, contraception or abortion are wrong and that Catholics must not be involved in them, the regulation forces Catholics—and members of other religious denominations that share those views—to act against the teachings of their faith. Numerous lawsuits have already been asserting that the rule violates the First Amendment’s guarantee to the free exercise of religion. Many of the nation’s Catholic bishops have published letters saying: “We cannot—we will not—comply with this unjust law.”

Sebelius, however, insisted that the mandate “upholds religious liberty.”

“The rule which we intend to promulgate in the near future around implementation will require insurance companies, not a religious employer, but the insurance company to provide coverage for contraceptives,” Sebelius told the subcommittee.

The Catholic bishops have called for the regulation to be rescinded in its entirety, so that no employer, insurer or individual is forced to act against his or her conscience.

During the subcommittee hearing, Rep. Tim Murphy (R-Pa.) said that contraception provided by insurance companies to people employed by religious organizations under the future form of the rule Sebelius described would not be was not free.

“Who pays for it? There’s no such thing as a free service,” Murphy asked.

Sebelius responded that that is not the case with insurance.

“The reduction in the number of pregnancies compensates for cost of contraception,” Sebelius answered.

Murphy expressed surprise by the answer.

“So you are saying, by not having babies born, we are going to save money on health care?” Murphy asked. Sebelius replied, “Providing contraception is a critical preventive health benefit for women and for their children.”

Murphy again sought clarification.

“Not having babies born is a critical benefit. This is absolutely amazing to me. I yield back,” he said.

Sebelius responded, “Family planning is a critical health benefit in this country, according to the Institute of Medicine.”

Rep. Brett Guthrie (R-Ky.), a member of the subcommittee, said after the hearing that if mandating contraception saves money there shouldn’t be a need for a mandate.

“Their argument is this: Health insurance companies will offer it for free because they make money. You reduce the number of people getting pregnant therefore you reduce the cost of pregnancy, or low birth weight pregnancies or other kind of pregnancies,” Guthrie told CNSNews.com.

“If you think about it, why don’t health insurance companies provide it now if the argument is health insurance companies are going to make a lot of money? If the health insurance companies were really acting in their own best interest, they would be giving these pills out for free, if it really saved money,” Guthrie added.

Despite the controversy over whether the mandate is constitutional, Sebelius told Rep. Marsha Blackburn (R-Tenn.) during the hearing that the administration never sought a legal opinion about the regulation from the Department of Justice.

[cns-donate]

EXHIBIT D

Resolutions from 1930**Resolution 15****The Life and Witness of the Christian Community—Marriage and Sex**

Where there is clearly felt moral obligation to limit or avoid parenthood, the method must be decided on Christian principles. The primary and obvious method is complete abstinence from intercourse (as far as may be necessary) in a life of discipline and self-control lived in the power of the Holy Spirit. Nevertheless in those cases where there is such a clearly felt moral obligation to limit or avoid parenthood, and where there is a morally sound reason for avoiding complete abstinence, the Conference agrees that other methods may be used, provided that this is done in the light of the same Christian principles. The Conference records its strong condemnation of the use of any methods of conception control from motives of selfishness, luxury, or mere convenience.

Voting: For 193; Against 67.

Resolutions from 1958**Resolution 115****The Family in Contemporary Society—Marriage**

The Conference believes that the responsibility for deciding upon the number and frequency of children has been laid by God upon the consciences of parents everywhere; that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, is a right and important factor in

Christian family life and should be the result of positive choice before God. Such responsible parenthood, built on obedience to all the duties of marriage, requires a wise stewardship of the resources and abilities of the family as well as a thoughtful consideration of the varying population needs and problems of society and the claims of future generations.

No. 14-1505

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-01441-
ABJ

ROMAN CATHOLIC Date Filed: 09/20/2013
 ARCHBISHOP OF Date Terminated:
 WASHINGTON et al v. 01/27/2014
 SEBELIUS et al Jury Demand: None
 Assigned to: Judge Amy Nature of Suit: 440 Civil
 Berman Jackson Rights: Other
 Case: 1:12-cv-00815- Jurisdiction: U.S.
 ABJ Government Defendant
 Case in other court:
 13-05371
 14-05021
 Cause: 28:2201
 Declaratory Judgment

09/20/2013 COMPLAINT against JACOB J.
 LEW, THOMAS E. PEREZ,
 KATHLEEN SEBELIUS, U.S.
 DEPARTMENT OF HEALTH
 AND HUMAN SERVICES, U.S.
 DEPARTMENT OF LABOR, U.S.
 DEPARTMENT OF THE
 TREASURY (Filing fee \$ 400
 receipt number 0090-3474476)
 filed by VICTORY HOUSING,
 INC., CONSORTIUM OF
 CATHOLIC ACADEMIES OF
 THE ARCHDIOCESE OF
 WASHINGTON, INC., ROMAN
 CATHOLIC ARCHBISHOP OF

WASHINGTON, CATHOLIC
 CHARITIES OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC.,
 ARCHBISHOP CARROLL HIGH
 SCHOOL, INC., CATHOLIC
 UNIVERSITY OF AMERICA,
 CATHOLIC INFORMATION
 CENTER, INC., DON BOSCO
 CRISTO REY HIGH SCHOOL OF
 THE ARCHDIOCESE OF
 WASHINGTON, INC., THOMAS
 AQUINAS COLLEGE, MARY OF
 NAZARETH ROMAN CATHOLIC
 ELEMENTARY SCHOOL, INC.,
 (Attachments: # 1 Civil Cover
 Sheet, # 2 Supplement Related
 Case Form, # 3 Summons, # 4
 Summons, # 5 Summons, # 6
 Summons, # 7 Summons, # 8
 Summons, # 9 Summons, # 10
 Summons) (Francisco, Noel)
 (Entered: 09/20/2013)

* * *

09/24/2013

MOTION for Preliminary
 Injunction by ARCHBISHOP
 CARROLL HIGH SCHOOL, INC.,
 CATHOLIC CHARITIES OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., CATHOLIC
 INFORMATION CENTER, INC.,
 CATHOLIC UNIVERSITY OF
 AMERICA, CONSORTIUM OF
 CATHOLIC ACADEMIES OF

THE ARCHDIOCESE OF
 WASHINGTON, INC., DON
 BOSCO CRISTO REY HIGH
 SCHOOL OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., MARY OF
 NAZARETH ROMAN CATHOLIC
 ELEMENTARY SCHOOL, INC.,
 ROMAN CATHOLIC
 ARCHBISHOP OF
 WASHINGTON, THOMAS
 AQUINAS COLLEGE, VICTORY
 HOUSING, INC. (Attachments: #
 1 Memorandum in Support, # 2
 Affidavit Exhibit A, # 3 Affidavit
 Exhibit B, # 4 Affidavit Exhibit C,
 # 5 Affidavit Exhibit D, # 6
 Affidavit Exhibit E, # 7 Affidavit
 Exhibit F, # 8 Affidavit Exhibit G,
 # 9 Affidavit Exhibit H, # 10
 Affidavit Exhibit I, # 11 Affidavit
 Exhibit J, # 12 Text of Proposed
 Order) (Francisco, Noel) (Entered:
 09/24/2013)

* * *

10/10/2013 13 ADMINISTRATIVE RECORD by
 JACOB J. LEW, THOMAS E.
 PEREZ, KATHLEEN SEBELIUS,
 U.S. DEPARTMENT OF HEALTH
 AND HUMAN SERVICES, U.S.
 DEPARTMENT OF LABOR, U.S.
 DEPARTMENT OF THE
 TREASURY. (See Docket Entry
 12 to view document) (jf.) (Entered:

10/10/2013)

* * *

10/11/2013 22 ENTERED IN
 ERROR.....MOTION to Dismiss *or*,
in the alternative, MOTION for
 Summary Judgment by JACOB J.
 LEW, THOMAS E. PEREZ,
 KATHLEEN SEBELIUS, U.S.
 DEPARTMENT OF HEALTH
 AND HUMAN SERVICES, U.S.
 DEPARTMENT OF LABOR, U.S.
 DEPARTMENT OF THE
 TREASURY (Attachments: # 1
 Memorandum in Support, # 2
 Statement of Facts, # 3 Text of
 Proposed Order)(Pruski, Jacek)
 Modified on 10/15/2013 (jf,).
 (Entered: 10/11/2013)

* * *

10/15/2013 25 AMICUS BRIEF by AMERICAN
 CIVIL LIBERTIES UNION. (jf,)
 (Entered: 10/16/2013)

10/16/2013 26 Amended MOTION to Dismiss *or*,
*In the Alternative, For Summary
 Judgment*, MOTION for Summary
 Judgment by JACOB J. LEW,
 THOMAS E. PEREZ, KATHLEEN
 SEBELIUS, U.S. DEPARTMENT
 OF HEALTH AND HUMAN
 SERVICES, U.S. DEPARTMENT
 OF LABOR, U.S. DEPARTMENT
 OF THE TREASURY
 (Attachments: # 1 Memorandum in
 Support, # 2 Statement of Facts, #

3 Text of Proposed Order)(Pruski, Jacek) (Entered: 10/16/2013)

10/25/2013 27 Cross MOTION for Summary Judgment by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC. (Attachments: # 1 Memorandum in Support, # 2 Statement of Facts, # 3 Declaration, # 4 Appendix Part 1, # 5 Appendix Part 2, # 6 Appendix Part 3, # 7 Text of Proposed Order)(Francisco, Noel) (Entered: 10/25/2013)

10/25/2013 28 Memorandum in opposition to re 26 Amended MOTION to Dismiss

or, In the Alternative, For Summary Judgment MOTION for Summary Judgment filed by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, THOMAS AQUINAS COLLEGE, VICTORY HOUSING, INC., (Attachments: # 1 Statement of Facts Response to Defendants' Statement of Facts, # 2 Text of Proposed Order)(Francisco, Noel) (Entered: 10/25/2013)

10/28/2013 29 REPLY to opposition to motion re 6 MOTION for Preliminary Injunction , filed by ARCHBISHOP CARROLL HIGH

SCHOOL, INC., CATHOLIC
 CHARITIES OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., CATHOLIC
 INFORMATION CENTER, INC.,
 CATHOLIC UNIVERSITY OF
 AMERICA, CONSORTIUM OF
 CATHOLIC ACADEMIES OF
 THE ARCHDIOCESE OF
 WASHINGTON, INC., DON
 BOSCO CRISTO REY HIGH
 SCHOOL OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., MARY OF
 NAZARETH ROMAN CATHOLIC
 ELEMENTARY SCHOOL, INC.,
 ROMAN CATHOLIC
 ARCHBISHOP OF
 WASHINGTON, THOMAS
 AQUINAS COLLEGE, VICTORY
 HOUSING, INC., (Francisco, Noel)
 Modified on 10/29/2013 (jf).
 (Entered: 10/28/2013)

* * *

11/05/2013 31 Memorandum in opposition to re
 27 Cross MOTION for Summary
 Judgment *filed by JACOB J. LEW,*
THOMAS E. PEREZ, KATHLEEN
SEBELIUS, U.S. DEPARTMENT
OF HEALTH AND HUMAN
SERVICES, U.S. DEPARTMENT
OF LABOR, U.S. DEPARTMENT
OF THE TREASURY.
(Attachments: # 1 Defs.' Response

to Pls.' Statement of Facts)(Pruski, Jacek) Modified on 11/6/2013 (jf,). (Entered: 11/05/2013)

11/06/2013 Minute Entry for proceedings held before Judge Amy Berman Jackson: Telephone Conference held in Courtroom #3 on 11/6/2013. (Court Reporter Vicki Eastvold) (jth) (Entered: 11/06/2013)

11/06/2013 32 REPLY to opposition to motion re 26 Amended MOTION to Dismiss or, *In the Alternative, For Summary Judgment* MOTION for Summary Judgment filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (Pruski, Jacek) (Entered: 11/06/2013)

* * *

11/12/2013 33 REPLY to opposition to motion re 27 Cross MOTION for Summary Judgment filed by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF

THE ARCHDIOCESE OF
WASHINGTON, INC., DON
BOSCO CRISTO REY HIGH
SCHOOL OF THE
ARCHDIOCESE OF
WASHINGTON, INC., MARY OF
NAZARETH ROMAN CATHOLIC
ELEMENTARY SCHOOL, INC.,
ROMAN CATHOLIC
ARCHBISHOP OF
WASHINGTON, THOMAS
AQUINAS COLLEGE, VICTORY
HOUSING, INC., (Attachments: #
1 Exhibit Archdiocese
Supplemental Affidavit, # 2
Exhibit CCA Supplemental
Affidavit, # 3 Exhibit ACHS
Supplemental Affidavit, # 4
Exhibit Don Bosco Supplemental
Affidavit, # 5 Exhibit Mary of
Nazareth Supplemental Affidavit,
6 Exhibit Catholic Charities
Supplemental Affidavit, # 7
Exhibit Victory Housing
Supplemental Affidavit, # 8
Exhibit CIC Supplemental
Affidavit, # 9 Exhibit CUA
Supplemental Affidavit, # 10
Exhibit TAC Supplemental
Affidavit)(Francisco, Noel)
(Entered: 11/12/2013)

11/22/2013

Minute Entry for Proceedings held
before Judge Amy Berman
Jackson: Motions Hearing held on

11/22/2013 re: Defendants' 26 Amended Motion to Dismiss *or, In the Alternative, For Summary Judgment*, and Plaintiffs' 27 Cross Motion for Summary Judgment. The Motions 26 27 were Heard and Taken Under Advisement. (Court Reporter Chantal Geneus) (jth) (Entered: 11/22/2013)

* * *

12/4/2013 36 RESPONSE TO ORDER OF THE COURT re 35 Order filed by JACOB J. LEW, THOMAS E. PEREZ, KATHLEEN SEBELIUS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF THE TREASURY. (Pruski, Jacek) (Entered: 12/04/2013)

12/11/2013 39 RESPONSE TO ORDER OF THE COURT re 37 Order filed by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH

SCHOOL OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., MARY OF
 NAZARETH ROMAN CATHOLIC
 ELEMENTARY SCHOOL, INC.,
 ROMAN CATHOLIC
 ARCHBISHOP OF
 WASHINGTON, THOMAS
 AQUINAS COLLEGE, VICTORY
 HOUSING, INC.,(Francisco, Noel)
 (Entered: 12/11/2013)

12/11/2013 40 RESPONSE TO ORDER OF THE
 COURT re 37 Order filed by
 JACOB J. LEW, THOMAS E.
 PEREZ, KATHLEEN SEBELIUS,
 U.S. DEPARTMENT OF HEALTH
 AND HUMAN SERVICES, U.S.
 DEPARTMENT OF LABOR, U.S.
 DEPARTMENT OF THE
 TREASURY. (Pruski, Jacek)
 (Entered: 12/11/2013)

* * *

12/17/2013 42 RESPONSE TO ORDER OF THE
 COURT re Order filed by ROMAN
 CATHOLIC ARCHBISHOP OF
 WASHINGTON. (Francisco, Noel)
 (Entered: 12/17/2013)

* * *

12/20/2013 47 ORDER granting in part and
 denying in part 26 Defendants'
 Motion to Dismiss, or in the
 alternative, for Summary
 Judgment, and granting in part
 and denying in part 27 Plaintiffs'

Cross-Motion for Summary Judgment. (SEE ORDER FOR DETAILS). Signed by Judge Amy Berman Jackson on 12/20/2013. (lcabj1) (Entered: 12/20/2013)

12/20/13 48 MEMORANDUM AND OPINION. Signed by Judge Amy Berman Jackson on 12/20/2013. (lcabj1) (Entered: 12/20/2013)

12/21/2013 49 MOTION for Injunction Pending Appeal by ARCHBISHOP CARROLL HIGH SCHOOL, INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF WASHINGTON, INC., CATHOLIC INFORMATION CENTER, INC., CATHOLIC UNIVERSITY OF AMERICA, CONSORTIUM OF CATHOLIC ACADEMIES OF THE ARCHDIOCESE OF WASHINGTON, INC., DON BOSCO CRISTO REY HIGH SCHOOL OF THE ARCHDIOCESE OF WASHINGTON, INC., MARY OF NAZARETH ROMAN CATHOLIC ELEMENTARY SCHOOL, INC., ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, VICTORY HOUSING, INC. (Attachments: # 1 Text of Proposed Order)(Francisco, Noel) (Entered: 12/21/2013)

12/21/2013 50 NOTICE OF APPEAL TO DC
 CIRCUIT COURT as to 47 Order
 on Motion to Dismiss, Order on
 Motion for Summary Judgment 48
 Memorandum & Opinion by
 ARCHBISHOP CARROLL HIGH
 SCHOOL, INC., CATHOLIC
 CHARITIES OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., CATHOLIC
 INFORMATION CENTER, INC.,
 CATHOLIC UNIVERSITY OF
 AMERICA, CONSORTIUM OF
 CATHOLIC ACADEMIES OF
 THE ARCHDIOCESE OF
 WASHINGTON, INC., DON
 BOSCO CRISTO REY HIGH
 SCHOOL OF THE
 ARCHDIOCESE OF
 WASHINGTON, INC., MARY OF
 NAZARETH ROMAN CATHOLIC
 ELEMENTARY SCHOOL, INC.,
 ROMAN CATHOLIC
 ARCHBISHOP OF
 WASHINGTON, VICTORY
 HOUSING, INC.. Filing fee \$ 505,
 receipt number 0090-3572949. Fee
 Status: Fee Paid. Parties have
 been notified. (Francisco, Noel)
 (Entered: 12/21/2013)

* * *

12/23/2013 52 ORDER denying 49 Motion
 Injunction Pending Appeal. (SEE
 ORDER FOR DETAILS). Signed

by Judge Amy Berman Jackson on
12/23/2013. (lcabj1) (Entered:
12/23/2013)

* * *

01/17/14 55 NOTICE OF APPEAL TO DC
CIRCUIT COURT by KATHLEEN
SEBELIUS, JACOB J. LEW, U.S.
DEPARTMENT OF THE
TREASURY, THOMAS E. PEREZ,
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES, U.S.
DEPARTMENT OF LABOR. Fee
Status: No Fee Paid. Parties have
been notified. (Pruski, Jacek)
(Entered: 01/17/2014)

01/21/14 56 Transmission of the Notice of
Appeal, Order Appealed, and
Docket Sheet to US Court of
Appeals. The Court of Appeals
docketing fee was not paid because
the fee was an Appeal by the
Government re 55 Notice of Appeal
to DC Circuit Court,. (znmw)
(Entered: 01/21/2014)

* * *

**U.S. Court of Appeals for the District of
Columbia Circuit**

Court of Appeals Docket #: 13-5371

ROMAN CATHOLIC	Docketed: 12/23/2013
ARCHBISHOP, et al v.	Terminated: 11/14/2014
BURWELL, et al	Nature of Suit: 2440
Trial Judge: Amy	Other Civil Rights
Berman Jackson	Case Type Information:
Case: 1:13-cv-01441-ABJ	1) civil
	2) USA as party
	3)

12/23/2013 US CIVIL CASE docketed. [13-5371]

12/23/2013 NOTICE OF APPEAL filed [1471908] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. seeking review of a decision by the U.S. District Court in 1:13-cv-01441-ABJ. Assigned USCA Case Number [13-5371]

* * *

- 12/23/2013 MODIFIED EVENT FROM FILED TO
LODGED—MOTION LODGED
[1471948] by Archbishop Carroll High
School, Inc., Catholic Charities of the
Archdiocese of Washington, Inc.,
Catholic Information Center, Inc.,
Catholic University of America,
Consortium of Catholic Academies of
the Archdiocese of Washington, Inc.,
Don Bosco Cristo Rey High School of
the Archdiocese of Washington, Inc.,
Mary of Nazareth Roman Catholic
Elementary School, Inc., Roman
Catholic Archbishop of Washington and
Victory Housing, Inc. for injunction.
(Response to Motion served by mail due
on 01/06/2014). (Response to Motion
served by hand due on 01/02/2014)
- 12/23/2013 LETTER FILED [1472052] by
Archbishop Carroll High School, Inc.,
Catholic Charities of the Archdiocese of
Washington, Inc., Catholic Information
Center, Inc., Catholic University of
America, Consortium of Catholic
Academies of the Archdiocese of
Washington, Inc., Don Bosco Cristo Rey
High School of the Archdiocese of
Washington, Inc., Mary of Nazareth
Roman Catholic Elementary School,
Inc., Roman Catholic Archbishop of
Washington and Victory Housing, Inc.
pursuant to FRAP 28j advising of
additional authorities [Service Date:

12/23/2013] [13-5371] (Francisco, Noel)

12/23/2013 PER CURIAM ORDER filed [1472128] granting motion to exceed page limits [1471929-2]; The Clerk is directed to file the lodged motion for injunction [1471948-2]; It is FURTHER ORDERED, that the federal appellees file a response to the emergency motion, not to exceed 25 pages, by 10:00 am on Friday, December 27, 2013. Apepellants' reply, if any, is due by 10:00 am on Monday, December 30, 2013. The parties are directed to hand deliver the paper copies of their submissions to the court by the time and date due. Before Judges: Henderson and Tatel. [13-5371]

* * *

12/27/2013 RESPONSE IN OPPOSITION FILED [1472628] by DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA to motion for injunction [1471948-2] [Service Date: 12/27/2013 by CM/ECF NDA] Pages: 21-30. [13-5371] (Jed, Adam)

12/27/2013 REPLY FILED [1472781] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey

High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of Washington and Victory Housing, Inc. to response [Service Date: 12/27/2013 by CM/ECF NDA] Pages: 1-10. [13-5371] (Francisco, Noel)

12/30/2013 LETTER FILED [1472901] by DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, HHS and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/30/2013] [13-5371] (Jed, Adam)

12/31/2013 LETTER FILED [1473105] by DOL, Jacob J. Lew, Thomas E. Perez, Kathleen Sebelius, Thomas Aquinas College, HHS and TREA pursuant to FRAP 28j advising of additional authorities [Service Date: 12/31/2013] [13-5371] (Jed, Adam)

12/31/2013 LETTER FILED [1473135] by Archbishop Carroll High School, Inc., Catholic Charities of the Archdiocese of Washington, Inc., Catholic Information Center, Inc., Catholic University of America, Consortium of Catholic Academies of the Archdiocese of Washington, Inc., Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc., Mary of Nazareth Roman Catholic Elementary School, Inc., Roman Catholic Archbishop of

Washington and Victory Housing, Inc.
pursuant to FRAP 28j advising of
additional authorities [Service Date:
12/31/2013] [13-5371] (Francisco, Noel)

12/31/2013 PER CURIAM ORDER filed [1473216]
granting emergency motions for
injunction [1471703-2], [1471948-2];
consolidating cases 13-5371
(Consolidation started 12/31/2013) with
13-5368; directing that appellants show
cause why they should not be required
to file one joint opening brief limited to
14,000 words and one joint reply brief
limited to 7,000 words. Response to
Order due 01/14/2014. Before Judges:
Henderson, Tatel,* and Brown.
(*Circuit Judge Tatel would deny the
emergency motions for injunction
pending appeal for the reasons in the
attached statement.) [13-5368, 13-5371]

* * *

**[Case consolidated with *Priests for Life*. Please
see docket entries at JA 201]**

Excerpts from Complaint in *Roman Catholic
Archbishop of Washington v. Sebelius*, No. 1:13-cv-
01441 (D.D.C.)

* * *

115. Though committed to remaining a distinctly Catholic institution, the University opens its doors to students, academics, and prospective employees of all faiths and creeds. Over 3600 students are currently enrolled in the University's undergraduate programs, and nearly 3300 are enrolled in its graduate and law programs. The school maintains a regular (full-time) faculty of 426 members and an additional 417 temporary faculty members. CUA also employs approximately 923 staff members.

* * *

128. The College welcomed its first freshman class in 1971, and it has remained faithful to its founding mission ever since. The College currently has 370 full-time students enrolled in its four-year program of Catholic liberal education.

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**AFFIDAVIT OF THE ARCHDIOCESE OF
WASHINGTON**

I, Jane G. Belford, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I serve as the Chancellor of the Archdiocese of Washington (the "Archdiocese"). I have been so employed in this capacity since 2001.

3. The Chancellor of a diocese/archdiocese is a canonical position that is appointed by a decree of the Archbishop. Chancellor is the highest ecclesiastical or decision-making position a lay person can hold in the church. Under canon law, the principal duty of

the Chancellor is to ensure that the acts and instruments of the diocese are drawn up and faithfully recorded, authenticated and safeguarded. The Chancellor's writing or signature establishes authenticity for such acts and instruments.

4. In the Archdiocese of Washington, the Chancellor has been assigned additional duties by the Archbishop. The Chancellor is designated in the bylaws of every affiliated archdiocesan corporation as one of the three corporate members of that corporation, who, by law, have certain reserved powers that are exercised over every archdiocesan affiliated corporation with regard to their mission, governance, operations, and Catholic identity.

5. Apart from these canonical roles and responsibilities, I also serve as senior legal advisor to the Archdiocese of Washington and provide advice and counsel in all aspects of the Church's civil operations. I report directly to the Archbishop of Washington, Cardinal Donald Wuerl.

6. As Chancellor, I am very familiar with the Archdiocese's mission and religious beliefs. I also am very familiar with the Archdiocese's self-insured health plan. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

7. The Archdiocese is a nonprofit corporation sole, incorporated by Congress in 1948. It is considered to be a Washington, D.C., corporation; its principal place of business is in Hyattsville, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the

meaning of Section 501(c)(3) of the Internal Revenue Code.

8. The Archdiocese has approximately 2,100 benefits-eligible employees.

9. The Archdiocese is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the Archdiocese.

10. Offering a health insurance plan that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the Archdiocese.

11. The Archdiocese operates a self-insured health plan, recognized under the Employee Retirement Income Security Act as a “church plan.” The Archdiocese’s plan is administered by a third party administrator, National Capital Administrative Services, Inc.

12. The Archdiocese’s self-insured health plan does not meet the Affordable Care Act’s definition of a “grandfathered” plan. The Archdiocese has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plan is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act.

13. The plan year for the Archdiocese begins on January 1.

14. The Archdiocesan plan includes the employees of archdiocesan-affiliated ministries such as Plaintiffs Archbishop Carroll High School, the Consortium of Catholic Academies, Don Bosco Cristo Rey High School, Mary of Nazareth Roman Catholic Elementary School, Catholic Charities, Victory Housing, and the Catholic Information Center. Although separately incorporated, these affiliated ministries of education and social service are integral to the exercise of our Catholic faith, participate directly in the Church's mission to minister to God's people, especially the poor and those in need, and are required to remain faithful to the Church's teachings and beliefs.

15. Consistent with Catholic teaching, the Archdiocese has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its church plan.

16. Consistent with the requirements of canon law, the Archdiocese ensures that its separately incorporated ministries remain faithful to the teachings of the Catholic Church. In order to maintain this communion, the Archbishop, the Moderator of the Curia (a canonical position reserved for clergy), and the Chancellor serve as the corporate members of each of these affiliated entities and exercise certain reserved powers such as oversight and authentication of each corporation's mission, the adoption or amendment of a mission statement, and the amendment of articles of incorporation and bylaws. These powers assist the Archdiocese in fulfilling its duty before God to protect the integrity of the Catholic faith as believed and practiced within

the local Church, most especially in its affiliated religious corporations.

17. The regulations at issue in this lawsuit (the “Mandate”), require employers, on pain of substantial and ruinous financial penalties, to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling through their employer health-care plan.

18. Though the Archdiocese meets the Mandate’s definition of a religious employer and is thus exempt from facilitating access to the mandated products and services for its own employees, this exemption does not apply to the employees of our affiliated ministries, such as Plaintiffs Archbishop Carroll High School, the Consortium of Catholic Academies, Don Bosco Cristo Rey High School, Mary of Nazareth Roman Catholic Elementary School, Catholic Charities, Victory Housing, and the Catholic Information Center, that participate in the Archdiocese’s health plan. They are not exempt from the Mandate.

19. The Mandate thus forces the Archdiocese to either (1) sponsor a plan that will provide the employees of its non-exempt, affiliate ministries with access to “free” contraception, abortion-inducing products, sterilization, and related counseling, or (2) no longer extend its plan to these ministries, subjecting them to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage. The first option forces the Archdiocese to act contrary to its sincerely-held religious beliefs. The second option compels the Archdiocese to submit to the government’s

interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

20. Moreover, as a Catholic entity, the Archdiocese bears a particular responsibility to witness to the Church's teachings. The Archdiocese bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance.

21. Taking action that would trigger the provision of the objectionable products and services for the employees of its affiliated entities would be contrary to the Archdiocese's beliefs even in the event that the Archdiocese does not directly fund the objectionable coverage. Of course, any use of the Archdiocese's funds to provide the mandated products and services would only exacerbate the violation of the Archdiocese's religious beliefs.

22. The Archdiocese's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit the Archdiocese's ability to follow this teaching.

23. Potential liability for significant fines and uncertainty regarding the Archdiocese's ability to offer and provide health benefits undermines Archdiocese's ability to retain and recruit employees. Were the Archdiocese to stop offering health benefits, it would be at a competitive disadvantage to

institutions who do not have religious objections to the Mandate.

24. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on the Archdiocese to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Jane G. Belford
Jane G. Belford

STATE OF MARYLAND)
COUNTY OF Calvert)

Sworn to and subscribed before me this 20th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**AFFIDAVIT OF THE CONSORTIUM OF
CATHOLIC ACADEMIES OF THE
ARCHDIOCESE OF WASHINGTON, INC.**

I, Marguerite Conley, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the Executive Director of The Consortium of Catholic Academies of the Archdiocese of Washington, Inc ("CCA" or the "Consortium"). I have been in that position since June 2010.

3. I am very familiar with the Consortium's mission, religious beliefs, and health insurance

policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. CCA is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Hyattsville, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. CCA employs approximately 119 teachers and staff.

6. I have been informed that CCA does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. CCA is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the Consortium.

9. Accordingly, though CCA provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except

when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, the Consortium's employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by CCA to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CCA's sincere religious beliefs..

11. The so-called "accommodation" does not resolve CCA's religious objection. The Mandate, even in its revised form, forces CCA to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, CCA's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CCA's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on CCA (or the Archdiocese, through whose plan CCA provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CCA's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CCA's employees only for so long as they remain on CCA's plan, and CCA (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, *inter alia*, identifying CCA's benefits-eligible employees for

the third party administrator. Ultimately, under both the original and final versions of the Mandate, CCA is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, CCA bears a particular responsibility to witness to the Church's teachings. CCA bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were the Consortium to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, CCA would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to the Consortium's beliefs even in the event that CCA does not directly fund the objectionable products and services. Of course, any use of the Consortium's funds to provide the mandated products and services would only exacerbate the violation of CCA's religious beliefs.

14. CCA's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit CCA's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding the Consortium's ability to

offer and provide health benefits undermines CCA's ability to retain and recruit employees and students. Were CCA to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on CCA to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Marguerite Conley

Marguerite Conley

STATE OF INSERT) Maryland

COUNTY OF) Calvert

INSERT

Sworn to and subscribed before me this 19th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	

Defendants.

**AFFIDAVIT OF ARCHBISHOP CARROLL
HIGH SCHOOL**

I, Mary Elizabeth Blaufuss, being duly sworn,
declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the President/CEO of Archbishop Carroll High School. ("ACHS"). I have been the school's CEO since October 2012. Since 2006, I had been Vice- Principal for Academic Affairs at ACHS.

3. I am very familiar with ACHS's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal

knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. ACHS is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. ACHS has seventy employees.

6. I have been informed that ACHS does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. ACHS is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of ACHS.

9. Accordingly, though ACHS provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, ACHS employees

are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by ACHS to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to ACHS's sincere religious beliefs..

11. The so-called "accommodation" does not resolve ACHS's religious objection. The Mandate, even in its revised form, forces ACHS to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, ACHS's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of ACHS's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on ACHS (or the Archdiocese, through whose plan ACHS provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is ACHS's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to ACHS's employees only for so long as they remain on ACHS's plan, and ACHS (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying ACHS's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, ACHS is forced, in violation of its sincerely held

religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, ACHS bears a particular responsibility to witness to the Church's teachings. ACHS bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were ACHS to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, ACHS would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to ACHS's beliefs even in the event that ACHS does not directly fund the objectionable products and services. Of course, any use of ACHS's funds to provide the mandated products and services would only exacerbate the violation of ACHS's religious beliefs.

14. ACHS's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit ACHS's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding the school's ability to offer and provide health benefits undermines ACHS's ability to retain and recruit employees and students. Were ACHS to stop offering health benefits, it would be at

a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on ACHS to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Mary Elizabeth Blaufuss

Mary Elizabeth Blaufuss

STATE OF INSERT) Maryland
COUNTY OF) Calvert
INSERT

Sworn to and subscribed before me this 18th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	

Defendants.

**AFFIDAVIT OF DON BOSCO CRISTO REY
HIGH SCHOOL OF THE ARCHDIOCESE OF
WASHINGTON, INC.**

I, Reverend Steve Shafran, being duly sworn,
declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as President of Don Bosco Cristo Rey High School, Inc. I have
been so employed since July 1, 2006.

3. I am very familiar with Don Bosco's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I

were called upon to testify to them, I could and would competently do so.

4. Don Bosco is a nonprofit corporation incorporated in Maryland. Its principal place of business is in Takoma Park, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code.

5. Don Bosco has 51 employees.

6. I have been informed that Don Bosco does not appear to qualify as an entity described in section 6033(a)(3)(A){i} or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. Don Bosco is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Don Bosco.

9. Accordingly, though Don Bosco provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Don Bosco’s

employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Don Bosco to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Don Bosco's sincere religious beliefs.

11. The so-called "accommodation" does not resolve Don Bosco's religious objection. The Mandate, even in its revised form, forces Don Bosco to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Don Bosco's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Don Bosco's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Don Bosco (or the Archdiocese, through whose plan Don Bosco provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Don Bosco's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Don Bosco's employees only for so long as they remain on Don Bosco's plan, and Don Bosco (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, *inter alia*, identifying Don Bosco's benefits-eligible employees for the third party administrator. Ultimately, under both the original

and final versions of the Mandate, Don Bosco is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Don Bosco bears a particular responsibility to witness to the Church's teachings. Don Bosco bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Don Bosco to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Don Bosco would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Don Bosco's beliefs even in the event that Don Bosco does not directly fund the objectionable products and services. Of course, any use of Don Bosco's funds to provide the mandated products and services would only exacerbate the violation of Don Bosco's religious beliefs.

14. Don Bosco's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit Don Bosco's ability to follow this teaching.

15. Potential liability for significant fines and uncertainty regarding Don Bosco's ability to offer and provide health benefits undermines Don Bosco's ability to retain and recruit employees. Were Don

Bosco to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate.

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Don Bosco to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s Fr. Steve Shafran

President

STATE OF INSERT) Maryland

COUNTY OF) Calvert

INSERT

Sworn to and subscribed before me this 20th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	

Defendants.

**AFFIDAVIT OF MARY OF NAZARETH ROMAN
CATHOLIC ELEMENTARY SCHOOL, INC.**

I, Michael Friel, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as Principal of Mary of Nazareth Roman Catholic Elementary School. I have been so employed since 2003.

3. I am very familiar with Mary of Nazareth's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Mary of Nazareth is a nonprofit-corporation incorporated in Maryland. Its principal place of business is in Darnestown, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. Mary of Nazareth has 44 employees.

6. I have been informed that Mary of Nazareth does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. Mary of Nazareth is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Mary of Nazareth.

9. Accordingly, though Mary of Nazareth provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Mary of Nazareth’s employees are offered

health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Mary of Nazareth to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Mary of Nazareth's sincere religious beliefs.

11. The so-called "accommodation" does not resolve Mary of Nazareth's religious objection. The Mandate, even in its revised form, forces Mary of Nazareth to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Mary of Nazareth's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Mary of Nazareth's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Mary of Nazareth (or the Archdiocese, through whose plan Mary of Nazareth provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Mary of Nazareth's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Mary of Nazareth's employees only for so long as they remain on Mary of Nazareth's plan, and Mary of Nazareth (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, *inter alia*, identifying Mary of Nazareth's benefits-eligible

employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Mary of Nazareth is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Mary of Nazareth bears a particular responsibility to witness to the Church's teachings. Mary of Nazareth bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Mary of Nazareth to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Mary of Nazareth would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Mary of Nazareth's beliefs even in the event that Mary of Nazareth does not directly fund the objectionable products and services. Of course, any use of Mary of Nazareth's funds to provide the mandated products and services would only exacerbate the violation of Mary of Nazareth's religious beliefs.

14. Mary of Nazareth's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit Mary of Nazareth's ability to follow this teaching.

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

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Mary of Nazareth to violate its sincerely held religious beliefs. FURTHER AFFIANT SAYETH NOT.

/s/ Michael Friel

9/18/13

STATE OF INSERT) Maryland
COUNTY OF) Montgomery
INSERT

Sworn to and subscribed before me this 18th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**AFFIDAVIT OF CATHOLIC CHARITIES OF
THE ARCHDIOCESE OF WASHINGTON**

I, Rev. Msgr. JohnENZler, being duly sworn,
declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the President and CEO at Catholic Charities of the Archdiocese of Washington, Inc. ("Catholic Charities"). I have been so employed since July 2011.

3. I am very familiar with Catholic Charities' mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me,

and if I were called upon to testify to them, I could and would competently do so.

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

5. Catholic Charities has approximately 890 employees.

6. I have been informed that Catholic Charities does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. Catholic Charities is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Catholic Charities.

9. Accordingly, though Catholic Charities’ provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-

contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Catholic Charities' employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Catholic Charities to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Catholic Charities' sincere religious beliefs.

11. The so-called "accommodation" does not resolve Catholic Charities' religious objection. The Mandate, even in its revised form, forces Catholic Charities to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Catholic Charities' employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Catholic Charities' decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Catholic Charities (or the Archdiocese, through whose plan Catholic Charities provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Catholic Charities' self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Catholic Charities' employees only for so long as they remain on Catholic Charities' plan, and Catholic Charities

(or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, inter alia, identifying Catholic Charities' benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Catholic Charities is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Catholic Charities bears a particular responsibility to witness to the Church's teachings. Catholic Charities bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Catholic Charities to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Catholic Charities would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Catholic Charities' beliefs even in the event that Catholic Charities does not directly fund the objectionable products and services. Of course, any use of Catholic Charities' funds to provide the mandated products and services would only exacerbate the violation of Catholic Charities' religious beliefs.

14. Catholic Charities' provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the

provision of objectionable drugs and services—would inhibit Catholic Charities’ ability to follow this teaching.

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

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Catholic Charities to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ John J. Enzler

Rev. Msgr. John Enzler

District of Columbia)

COUNTY OF)

INSERT

Sworn to and subscribed before me this 19th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

AFFIDAVIT OF VICTORY HOUSING, INC.

I, James A. Brown, Jr., being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as President of Victory Housing, Inc. I have been so employed since 1991.

3. I am very familiar with Victory Housing's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify them, I could and would competently do so.

4. Victory Housing is a nonprofit corporation incorporated in Maryland. Its principal place of business is in Rockville, Maryland. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

5. Victory Housing has approximately 184 employees.

6. I have been informed that Victory Housing does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. Victory Housing is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of Victory Housing.

9. Accordingly, though Victory Housing provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, Victory Housing’s

employees are offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by Victory Housing to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Victory Housing's sincere religious beliefs.

11. The so-called "accommodation" does not resolve Victory Housing's religious objection. The Mandate, even in its revised form, forces Victory Housing to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, Victory Housing's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Victory Housing's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Victory Housing (or the Archdiocese, through whose plan Victory Housing provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Victory Housing's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Victory Housing's employees only for so long as they remain on Victory Housing's plan, and Victory Housing (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, *inter alia*, identifying Victory Housing's benefits-eligible employees for the

third party administrator. Ultimately, under both the original and final versions of the Mandate, Victory Housing is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, Victory Housing bears a particular responsibility to witness to the Church's teachings. Victory Housing bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were Victory Housing to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, Victory Housing would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to Victory Housing's beliefs even in the event that Victory Housing does not directly fund the objectionable products and services. Of course, any use of Victory Housing's funds to provide the mandated products and services would only exacerbate the violation of Victory Housing's religious beliefs.

14. Victory Housing's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services would inhibit Victory Housing's ability to follow this teaching.

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

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on Victory Housing to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ James A. Brown, Jr.

James A. Brown, Jr.

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

Sworn to and subscribed before me this 18th day of
September, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.		

**AFFIDAVIT OF CATHOLIC INFORMATION
CENTER, INC.**

I, Reverend Anne A. Panula, being duly sworn,
declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as Director of the Catholic Information Center. I have been so employed since 2007.

3. I am very familiar with CIC's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I

were called upon to testify to them, I could and would competently do so.

4. CIC is a nonprofit corporation incorporated in Washington, D.C. Its principal place of business is in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code

5. CIC has approximately 9 employees.

6. I have been informed that CIC does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a “religious employer.”

7. CIC is part of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

8. Offering a health insurance policy that provides coverage for or facilitates access to abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of CIC.

9. Accordingly, though CIC provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan. Currently, CIC’s employees are

offered health insurance through the Archdiocese of Washington's health plan.

10. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by CIC to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CIC's sincere religious beliefs.

11. The so-called "accommodation" does not resolve CIC's religious objection. The Mandate, even in its revised form, forces CIC to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, CIC's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CIC's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on CIC (or the Archdiocese, through whose plan CIC provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CIC's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CIC's employees only for so long as they remain on CIC's plan, and CIC (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, *inter alia*, identifying CIC's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, CIC is forced, in violation of its sincerely held religious beliefs, to

participate in a scheme that provides its employees with access to contraceptive benefits.

12. Moreover, as a Catholic entity, CIC bears a particular responsibility to witness to the Church's teachings. CIC bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of employee health insurance. Were CIC to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, CIC would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

13. Compliance with the Mandate would be contrary to CIC's beliefs even in the event that CIC does not directly fund the objectionable products and services. Of course, any use of CIC's funds to provide the mandated products and services would only exacerbate the violation of CIC's religious beliefs.

14. CIC's provision of health benefits to its employees reflects the Catholic social teaching that health care is among those basic rights which flow from the sanctity and dignity of human life. To drop health care benefits—in order to avoid the provision of objectionable drugs and services—would inhibit CIC's ability to follow this teaching.

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

16. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on CIC to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ (Rev.) Anne Panula

Director, Catholic

Information Center (CIC)

DISTRICT OF COLUMBIA

Sworn to and subscribed before me this 20th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No.
)	_____
)	
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	

Defendants.

**AFFIDAVIT OF THE CATHOLIC UNIVERSITY
OF AMERICA**

I, Frank G. Persico, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the Chief of Staff and Vice President for University Relations at The Catholic University of America (hereinafter "CUA" or "University"). I have been so employed in this capacity, under different titles, since 2000 and have worked for the University in a variety of executive capacities, including as dean of students, executive director of alumni relations and associate dean of the University's law school since 1974.

3. As Chief of Staff and Vice President for University Relations, I am responsible for or aware of most aspects of the University's day-to-day operations, I coordinate the senior staff, and personally advise the University president.

4. I am very familiar with CUA's mission, religious beliefs, and health insurance policies. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. CUA is a nonprofit Washington, D.C., corporation with its principal place of business in Washington, D.C. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

6. I have been informed that CUA does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7. CUA maintains a regular (full-time) faculty of 437 members and an additional 417 temporary faculty members. CUA employs about 923 staff members.

8. CUA's employees are offered health care plans provided by United Healthcare.

9. The plan year for CUA's employer health plan begins on December 1.

10. CUA makes available to its students a health plan provided by Aetna.

11. The plan year for CUA's student health plan begins on August 14.

12. The health plans offered by CUA to its employees do not meet the Affordable Care Act's definition of a "grandfathered" plan. CUA has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plans are grandfathered health plans within the meaning of section 1251 of the Affordable Care Act.

13. CUA adheres to the teachings and philosophies of the Roman Catholic Church. The Church teaches that life begins at the moment of conception, that sexual union should be reserved to committed marital relationships in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with life and conception are immoral.

14. Offering a health insurance policy that provides coverage for or facilitates access to abortion—inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the University.

15. Accordingly, though CUA provides health insurance to its employees, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plans.

16. The regulations at issue in this lawsuit (the "Mandate"), however, require health insurance policies provided by the University to facilitate access

to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CUA's sincere religious beliefs.

17. The so-called "accommodation" does not resolve CUA's religious objection. The Mandate, even in its revised form, forces the University to take actions that facilitate access to products and services antithetical to the Catholic faith. Among other things, the University's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CUA's decision to provide health coverage. CUA also bears the burden of locating and identifying an insurance company willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CUA's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CUA's employees only for so long as they remain on the University's plan, and the University will be forced to further facilitate access to the mandated coverage by, among other things, identifying its benefits-eligible employees for the insurance company. Ultimately, under both the original and final versions of the Mandate, CUA is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

18. For similar reasons, facilitating access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling through its student health-care plan in

the manner required by the Mandate would also violate CUA's sincerely held religious beliefs.

19. Moreover, as a Catholic entity, CUA bears a particular responsibility to witness to the Church's teachings. CUA bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of health insurance. Were the University to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, CUA would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

20. Compliance with the Mandate would be contrary to CUA's beliefs even in the event that the University did not directly fund the objectionable products and services. Of course, any use of CUA's funds to provide the mandated products and services would only exacerbate the violation of the University's religious beliefs.

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

22. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on CUA to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

/s/ Frank Persico

Frank G. Persico

DISTRICT OF COLUMBIA

/s/ Susan M Weir

Sworn to and subscribed before me this 19th day of
November, 2013

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

**ROMAN CATHOLIC
ARCHBISHOP OF
WASHINGTON, a
corporation sole, *et
al.*,**

Plaintiffs

v.

**KATHLEEN
SEBELIUS, *et al.*,**

Defendants.

Civil Action No. ____

AFFIDAVIT OF THOMAS AQUINAS COLLEGE

I, Peter L. DeLuca III, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am one of the founders of Thomas Aquinas College (hereinafter the "College"). I have taught at the College since the College opened in 1971 and have served in numerous executive capacities since then including Interim President and Vice President for Development. I am currently employed as Vice President for Finance and Administration and have served in this capacity since 1995. As a founder I am also a permanent member of the College's Board of Governors, its governing body, and serve as the College's Secretary and Treasurer.

3. As Vice President for Finance and Administration, I am responsible for the College's day-to-day operations and financial affairs, I supervise the building construction program, and I personally advise the College's president.

4. I am very familiar with the College's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. The College is a non-profit California corporation with its principal place of business in Santa Paula, California. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

6. I have been informed that the College does not appear to qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and that it therefore does not qualify as a "religious employer."

7. The College has 78 employees.

8. The College offers its employees a health plan through the RETA Trust, which is a self-insurance trust set up by the Catholic bishops of California for the purpose of providing medical coverage consistent with Catholic moral teaching. The third-party administrator for the RETA Trust is Benefit Allocation Systems.

9. The College's plan year begins on July 1.

10. The health plan offered by the College does not meet the Affordable Care Act's definition of a "grandfathered" plan. The RETA Trust has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plans are grandfathered health plans within the meaning of section 1251 of the Affordable Care Act.

11. The College adheres to the teachings and philosophies of the Roman Catholic Church. The Church teaches that human life begins at the moment of conception, that sexual union should be reserved to marriages in which the husband and wife are open to the transmission of life, and, therefore, that artificial interference with conception is immoral.

12. Providing health insurance coverage that includes coverage for, or facilitates access to, abortion-inducing products, contraceptives, sterilization, and related education and counseling is thus inconsistent with the core moral and religious beliefs of the College.

13. Accordingly, though the College provides fully-paid health coverage to its employees and dependants, it has historically excluded coverage for abortion, contraceptives (except when used for non-contraceptive purposes), sterilization, and related education and counseling from its health plan.

14. The regulations at issue in this lawsuit (the "Mandate"), however, require the health coverage provided by the College to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related

counseling in a manner contrary to the College's sincere religious beliefs.

15. The so-called "accommodation" does not resolve the College's religious objection. The Mandate, even in its revised form, forces the College to take actions that facilitate access to products and services antiethical to the Catholic faith. Among other things, the College's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of the College's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on the College to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is the College's self-certification of its religious objection that authorized provision of the mandate coverage. This coverage will be made available to the College's employees only for so long as they remain on the College's plan, and the College will be forced to further facilitate access to the mandated coverage by, inter alia, identifying its benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, the College is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

16. Moreover, as a Catholic entity, the College bears a particular responsibility to witness to the Church's teachings. The College bears witness to those teachings not only by word, but also by deed, including its actions regarding the provision of health

coverage. Were the College to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable products and services, the College would commit further offense of giving scandal by acting in a way inconsistent with Church teachings.

17. Compliance with the Mandate would be contrary to the College's beliefs even in the event that the College does not directly fund the objectionable products and services. Of course, any use of the College's funds to provide the mandated products and services would only exacerbate the violation of the College's religious beliefs.

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

19. Significant fines and other negative consequences that would flow from a refusal to provide access to the objectionable products and services place substantial pressure on the College to violate its sincerely held religious beliefs.

FURTHER AFFIANT SAYETH NOT.

s/Peter L. DeLuca III
Peter L. DeLuca III

STATE OF CALIFORNIA)
COUNTY OF VENTURA)

Sworn to and subscribed before me
this ____th day of ____ 2013



Office of the General Counsel
3211 FOURTH STREET NE •
WASHINGTON DC 20017-
1194 • 202-541-3300 • FAX 202-541-
3337

March 20, 2013

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking on Preventive
Services File Code No. CMS-9968-P

Dear Sir or Madam:

On behalf of the United States Conference of Catholic Bishops, we respectfully submit the following comments on the Notice of Proposed Rulemaking (“NPRM”) on preventive services. 78 Fed. Reg. 8456 (Feb. 6, 2013).

The current proposal, like previous ones, would mandate coverage of abortifacient drugs, contraceptives, sterilization procedures for women, and related education and counseling in health plans.¹ The comments we file today reflect the same

¹ We use the term “mandate” or “contraceptive mandate” as shorthand for the requirement that plans cover the aforementioned items. We use the

basic themes as the comments we filed on earlier Administration proposals on this topic:²

- Like earlier iterations, the latest proposed regulation requires coverage of sterilization, contraception, and drugs and devices that can cause abortions. These are items and procedures that, unlike other mandated “preventive services,” do not prevent disease. Instead, they are associated with an increased risk of adverse health outcomes, including conditions that other “preventive services” are designed to prevent. The proposed regulation is therefore at odds with the purpose of the preventive services provision of the Affordable Care Act (“ACA” or “the Act”) upon which that regulation purports to be based. In addition, insofar as the regulation requires coverage of drugs that can operate to cause an abortion, the mandate violates the following: (a) provisions of ACA on abortion and non-preemption, (b) a distinct federal law forbidding government discrimination against health plans that do not cover abortion, and (c) the Administration’s own public assurances, both before and after enactment of ACA,

term “contraceptive coverage,” as the NPRM does, to mean coverage of all these items.

² Our previous comments, filed in August 2011 and May 2012, are available at <http://www.usccb.org/about/general-counsel/rulemaking>. Also available at the same link are our September 2010 comments, which predate the mandate but explain why contraceptives and sterilization procedures are not appropriately viewed as “preventive services” and should not be mandated.

that the Act does not require, and would not be construed to require, coverage of abortion. We have raised all these issues previously.

- Under the current proposal, no exemption or accommodation is available at all for the vast majority of individual or institutional stakeholders with religious or moral objections to contraceptive coverage. Virtually all Americans who enroll in a health plan will ultimately be required to have contraceptive coverage for themselves and their dependents, whether they want it or not. Likewise, unless it qualifies as a “religious employer,” every organization that offers a health plan to its employees (including many religious organizations) will be required to fund or facilitate contraceptive coverage, whether or not the employer or its employees object to such coverage. This requirement to fund or facilitate produces a serious moral problem for these stakeholders. We have raised all these issues previously.

- Although the definition of an exempt “religious employer” has been revised to eliminate some of the intrusive and constitutionally improper government inquiries into religious teaching and beliefs that were inherent in an earlier definition, the current proposal continues to define “religious employer” in a way that—by the government’s own admission—excludes a wide array of employers that are undeniably religious. Those employers therefore remain subject to the mandate. Generally the nonprofit religious organizations that fall on the “non-exempt” side of this religious gerrymander include those organizations that contribute most visibly to the common good through the provision of health,

educational, and social services. We have previously raised problems associated with dividing the religious community into those “religious enough” to qualify for the exemption from the mandate, and those not—especially when that division falsely assumes that preaching one’s faith is “religious,” while living it out is not. We have likewise previously raised objections to linking the exemption to provisions of the tax code that have nothing to do with health care or conscience.

- The Administration has offered what it calls an “accommodation” for nonprofit religious organizations that fall outside its narrow definition of “religious employer.” The “accommodation” is based on a number of questionable factual assumptions. Even if all of those assumptions were sound, the “accommodation” still requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments. We have raised these problems previously, and we raise them again here.

- The mandate continues to represent an unprecedented (and now sustained) violation of religious liberty by the federal government. As applied to individuals and organizations with a religious objection to contraceptive coverage, the mandate violates the First Amendment, the Religious Freedom Restoration Act, and the Administrative Procedure Act. We are willing, now as always, to work with the Administration to reach a just and lawful resolution of these issues. In the meantime,

along with others, we will continue to look for resolution of these issues in Congress³ and in the courts.⁴

Our more detailed comments follow.

I. *The Mandate is Unchanged.*

The NPRM makes no change in the underlying mandate. For reasons discussed more fully in our earlier comments, we believe the mandate should be rescinded. Contraceptives and sterilization procedures, unlike other mandated “preventive services,” do not “prevent” disease. Instead, they disrupt the healthy functioning of the human reproductive system. Furthermore, various contraceptives are associated with adverse health outcomes, including an increased risk of such serious conditions as breast cancer, cardiac failure, and stroke. *See* our comments of August 31, 2011, at 3-4; *see also* our comments of September 17, 2010, at 4. The contraceptive mandate is therefore at war with the statutory provision on which it claims to be based, a provision that seeks to ensure coverage of services that prevent disease, rather than increase the risk of it.

Insofar as it requires coverage of *abortifacient* drugs and devices in particular, the mandate also violates: (a) a provision of ACA dealing with abortion

³ *See* H.R. 940, Health Care Conscience Rights Act of 2013, introduced March 4, 2013 by Rep. Diane Black. Currently the bill has over a hundred co-sponsors.

⁴ At least 50 lawsuits, with over 150 plaintiffs, have been filed to date challenging the mandate. *See* <http://www.becketfund.org/hhsinformationcentral/>.

coverage; (b) a provision of ACA dealing with non-preemption of state law; (c) a federal law (the Weldon Amendment) that forbids government discrimination against health plans that do not cover abortion; and (d) the Administration's own public assurances that ACA does not require abortion coverage. The mandate runs afoul of these laws *wholly apart from* the various religious freedom issues that the mandate also creates. We have raised these issues previously, and we raise them again here.

A. *Violation of ACA's Abortion Provision.*

Section 1303(b)(1)(A) of ACA states that “nothing in this title”—*i.e.*, title I of the Act, which includes the provision dealing with “preventive services”—“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.” As Section 1303 goes on to state, it is “the issuer” of a plan that “shall determine whether or not the plan provides coverage of [abortion] services....” Thus, under ACA, it is not the government, but plan issuers, that have the authority to decide whether a plan covers abortion.

There is no indication in the text or legislative history of ACA that Congress intended on the one hand to bar coverage of surgical abortion, but on the other hand to permit—indeed, mandate—coverage of so-called medical (*i.e.*, drug-induced) abortion. Indeed, Congress itself drew no distinction between surgical and medical abortion when, in ACA, it decided to give plans the discretion whether or not to cover abortion. To impute this senseless distinction

to Congress would be an unreasonable construction of the Act.

In particular, one drug approved by the FDA for “emergency contraception” and therefore covered by the mandate, Ella or ulipristal, is said to be just as effective in avoiding a sustained pregnancy even if taken almost a week after sexual activity. Ella is a close analogue to the abortion drug RU-486, described by many medical authorities as having the same ability to induce an abortion even after implantation. In fact, if the FDA in the future were to approve RU-486 for “emergency contraception,” a step recommended by officials of the World Health Organization (“WHO”), the Administration’s proposed regulation would automatically mandate coverage of RU-486 as well.⁵

⁵ On Ella’s close similarity in formula and mode of action to the abortion drug RU-486, see the sources cited in our August 2011 comment letter (p. 5 n.10), and European Medicines Agency, *Evaluation of Medicines for Human Use: CHMP Assessment for Ellaone* (2009), at 8 (“Ulipristal acetate prevents progesterone from occupying its receptor, thus the gene transcription normally turned on by progesterone is blocked, and the proteins necessary to begin and maintain pregnancy are not synthesized”) and 16 (in animal tests “ulipristal acetate is embryotoxic at low doses”). WHO experts now call RU-486 itself the “method of choice” for “emergency contraception.” S. Mittal and P. Aggarwal, *Interventions for emergency contraception: RHL commentary* (last revised: 1 November 2012), the WHO Reproductive Health Library (Geneva: World

B. *Violation of ACA's Non-Preemption Provision.*

Insofar as it requires coverage of any abortifacient drug, the mandate also conflicts with State laws in at least 21 states that restrict abortion coverage in all plans or in all exchange-participating plans.⁶ Section 1303(c)(1) of ACA states that nothing in the Act preempts, or has any effect on, any State law

Health Organization), available at http://apps.who.int/rhl/fertility/contraception/cd001324_mittals_com/en/index.html. If the FDA follows suit, the drug universally known as “the abortion pill” will automatically be included in the “contraceptive” mandate.

⁶ Those states are Alabama, Arizona, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wisconsin. *See* Ala. Code §§ 26-23C-1 to 26-23C-4; Ariz. Rev. Stat. Ann. § 20-121; Fla. Stat. Ann. §§ 627.64995, 627.66996, 641.31099; Idaho Code Ann. §§ 41-1848, 41-2142, 41-2210A, 41-3439; Ind. Code Ann. §§ 27-8-33-1, 27-8-33-4; Kan. Stat. Ann. § 40-2,190; Ky. Rev. Stat. Ann. § 304.5-160; La. Rev. Stat. Ann. § 22:1014; Miss. Code Ann. §§ 41-41-95 to 41-41-99; Mo. Ann. Stat. § 376.805; Neb. Rev. Stat. §§ 44-8401 to 44-8404; N.D. Cent. Code § 14-02.3-03; Ohio Rev. Code Ann. § 3901.87; Okla. Stat. Ann. tit. 63, § 1-741.3; R.I. Gen. Laws Ann. § 27-18-28; S.C. Code Ann. § 38-71-238; S.D. Codified Laws § 58-17-147; Tenn. Code Ann. § 56-26-134; Utah Code Ann. § 31A-22-726; Va. Acts 2011, c. 823; Wis. Stat. Ann. § 632.8985.

regarding abortion coverage. It follows that any construction of the Act that would preempt State law precluding abortion coverage would violate Section 1303(c)(1). Yet this is precisely what the Administration has done by mandating coverage of abortifacient drugs under the preventive services provision of ACA. As to such drugs, therefore, the mandate is invalid where it conflicts with any state law restricting abortion coverage.

C. Violation of the Weldon Amendment.

Under the Weldon Amendment, which has been included in every Labor/HHS appropriations law since 2004, no Labor/HHS funds may be made available to any government agency (including HHS) that discriminates against any health plan on the basis that the plan does not provide abortion coverage.⁷ Obviously, to require that plans cover any form of abortion, as a condition for being offered at all, is the most direct form of abortion-based discrimination against plans that seek to exclude such coverage. Insofar as the mandate requires such coverage, it violates the Weldon Amendment.

D. Violation of Administration Assurances Against Mandatory Coverage of Abortion.

The mandate violates the Administration's public assurances, both before and after enactment of ACA, that the Act would not be construed to require coverage of abortion. Such assurances played a major role in securing final passage of the bill, and

⁷ For the text of the Weldon Amendment, see Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. F, § 507(d) (2012).

were formalized in an Executive Order issued by the President. See Executive Order 13535, “Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act,” 75 Fed. Reg. 15599 (Mar. 24, 2010).

II. *The NPRM Offers No Exemption or Accommodation of Any Kind for Most Stakeholders.*

Well-deserved attention has been paid to the mandate’s impact on religious organizations, and the scope of any related exemption or accommodation. This, however, should not obscure the fact that, for the overwhelming majority of stakeholders, the proposed regulation offers *no exemption or accommodation of any kind whatsoever*. Those without an exemption or accommodation include conscientiously-opposed individuals, for-profit employers (whether secular or religious), nonprofit employers that are not explicitly religious organizations (even in cases where their objection is religious in nature), insurers, and third-party administrators. Respect for their consciences demands some adequate legal protection, but under the current proposed regulation they have none.

A. *Institutions.*

For-profit organizations (whether religiously-affiliated or not) and nonprofit organizations having no explicit religious affiliation receive no exemption or accommodation under the proposed regulation. To take one example, even a publisher of Bibles is forbidden to offer its employees a health plan that complies with the publisher’s espoused Biblical values. The contraceptive mandate has been

preliminarily enjoined in just such a case. *Tyndale Home Publishers v. Sebelius*, No. 12-1635 (RBW), 2012 WL 5817323 (D.D.C. Nov. 16, 2012) (granting preliminary injunction).

Courts have recognized that the mandate violates religious freedom in other cases as well. So far, at least eleven other *for-profit* plaintiffs with religious objections to covering sterilization, contraceptives, or abortifacient drugs have obtained either preliminary or temporary injunctive relief against the mandate. *Annex Medical v. Sebelius*, No. 13-1118 (8th Cir. Feb. 1, 2013) (granting motion for preliminary injunction pending appeal); *Grote v. Sebelius*, No. 13-1077, 2013 WL 362725 (7th Cir. Jan. 30, 2013) (same); *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. Dec. 28, 2012) (same); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357 (8th Cir. Nov. 28, 2012) (granting stay pending appeal); *Monaghan v. Sebelius*, No. 12-15488 (E.D. Mich. Mar. 14, 2013) (granting preliminary injunction); *Sioux Chief Mfg. Co. v. Sebelius*, No. 13-0036-CV-W-ODS (W.D. Mo. Feb. 28, 2013) (same); *Triune Health Group v. U.S. Dep't of Health & Human Servs.*, No. 12 C 6756 (N.D. Ill. Jan. 3, 2013) (same); *Sharpe Holdings v. U.S. Dep't of Health & Human Servs.*, No. 2:12-CV-92-DDN, 2012 WL 6738489 (E.D. Mo. Dec. 31, 2012) (granting temporary restraining order); *Am. Pulverizer Co. v. U.S. Dep't of Health & Human Servs.*, No. 12-3459-CV-S-RED, 2012 WL 6951316 (W.D. Mo. Dec. 20, 2012) (granting preliminary injunction); *Legatus v. Sebelius*, No. 12-12061, 2012 WL 5359630 (E.D. Mich. Oct. 31, 2012) (same); *Newland v. Sebelius*, No. 1:12-cv-1123-JLK, 2012 WL 3069154 (D. Colo. July 27, 2012) (same). The cited

cases, though not yet finally dispositive on the merits, only tend to confirm the existence and gravity of the religious freedom problems we have repeatedly highlighted. And because courts have been willing to recognize the problem so clearly in the for-profit context, we would expect recognition at least as widespread and strong in cases brought by nonprofit and religious organizations, which generally have yet to reach the merits.

In addition, the proposed regulation fails to recognize the religious and moral objections of insurers and third-party administrators (“TPAs”). All insurers and third-party administrators will be required to provide, or administer and arrange for, respectively, a plan with contraceptive coverage, with the narrow exception of insurers and TPAs that serve only exempt “religious employers.”

B. Individuals.

Under the Administration’s proposal, virtually all Americans who purchase a health plan will ultimately be required to have coverage for contraceptives and sterilization procedures for themselves and their dependents, whether they want such coverage or not. Even the employees of religious organizations that do not qualify as exempt “religious employers” will have no choice in the matter, for the NPRM indicates they are to be “automatically” enrolled in a plan that covers the mandated items. 78 Fed. Reg. at 8463.⁸ This appears to be a change

⁸ Language indicating that the separate coverage will be mandatory rather than voluntary appears throughout the preamble of the NPRM and in the

from the Administration's earlier proposal to have

text of the proposed regulation. *See, e.g.*, 78 Fed. Reg. at 8473 (stating in the proposed regulation that for insured plans, the issuer “must automatically provide health insurance coverage for ... contraceptive services ... through a separate health insurance policy ... for each plan participant and beneficiary”); *id.* at 8474 (same); *id.* at 8475 (same); *id.* at 8473 (stating in the proposed regulation that insurers must inform group plan participants and beneficiaries that “[y]ou and any covered dependents will be enrolled” in the contraceptive-only policy); *id.* at 8474 (same); *id.* at 8475 (same); *id.* at 8463 (stating in the preamble that for insured plans the “issuer would automatically enroll plan participants and beneficiaries” in an individual contraceptive-only policy); *id.* (stating in the preamble that for self-insured plans “a third party administrator ... would automatically arrange” such policies). On the other hand, the language of “offer” does appear once in the preamble of the NPRM in reference to this coverage. *See id.* (stating that for insured plans, contraceptive-only coverage “would be offered ... to plan participants and beneficiaries”). The heavy preponderance of language in both the ANPRM and NPRM, and in the actual text of the proposed regulation, seem to indicate a shift away from voluntary and toward mandatory coverage of contraception for employees of “accommodated” employers. In any event, a clarification is necessary, and we urge the Administration to resolve any ambiguity in favor of giving women the choice to opt out of this coverage.

insurers “*offer* contraceptive coverage directly to the employer’s plan participants (and their beneficiaries) *who desire it*.” 77 Fed. Reg. 8725, 8728 (Feb. 15, 2012) (emphasis added).⁹ While some argue that the mandate vindicates the value of individual women’s choice over the religious values of their employers, in fact women will have no freedom of choice either – not the freedom to decline such coverage, nor even the freedom to keep their own minor children from being offered “free” and “private” contraceptive services and related “education and counseling” without their consent.¹⁰ The mandate therefore

⁹ President Obama reinforced this message the same day, stating: “Every woman should be in control of the decisions that affect her own health. Period. ... [I]f a woman’s employer is a charity or a hospital that has a religious objection to providing contraceptive services as part of their [sic] health plan, the insurance company – not the hospital, not the charity – will be required to *reach out and offer* the woman contraceptive care free of charge, without co-pays and without hassles.” Remarks of the President on Preventive Care, February 10, 2012, at www.whitehouse.gov/the-press-office/2012/02/10/remarks-president-preventive-care (emphasis added).

¹⁰ In addition, in the case of an insured plan, employees of “eligible organizations” who themselves have a religious objection to contraceptive coverage will be contributing to a pool of funds from which the insurer will draw to pay claims for contraceptives and sterilization procedures (as no other pool of funds is available from which to pay such claims). Thus,

poses a threat not only to the rights of employers, religious and secular, but to the religious freedom and parental rights of individuals as well.

III. *Though Improved Slightly in One Respect, the “Religious Employer” Exemption Is Worsened in Another Respect and Remains Problematic in Several Others.*

A. *The Government’s Proposed Definition of “Religious Employer” Eliminates Some Problematic Language.*

Under the exemption finalized in February 2012, an exempt “religious employer” was one that met each of four criteria: (1) its purpose is the inculcation of religious values, (2) it primarily hires persons who share the organization’s religious tenets, (3) it primarily serves persons who share those tenets, and (4) it is a nonprofit organization of a type described in section 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.¹¹ The proposed regulation would eliminate prongs (1) through (3) of this four-

those employees of “eligible organizations” who share their employer’s religious objection to such coverage, like the employer itself, will ultimately be paying for *other people’s* contraceptives and sterilization procedures, even if they themselves and their dependents do not use such items or undergo such procedures. We describe the funding problem in greater detail below in Part IV.A. of our comments.

¹¹ Section 6033(a)(3)(A)(i) and (iii) refer to churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of a religious order.

pronged test. As a result, some of the intrusive and constitutionally improper government inquiries that were inherent in the earlier definition have been eliminated. Although this represents a small improvement in the definition, it continues to be highly objectionable, as discussed further below.

B. *The Government's Proposed Definition of "Religious Employer" Still Excludes Most Bona Fide Religious Employers and Therefore Is Still Too Narrow.*

The Administration continues to exclude from the definition of "religious employer" a wide array of organizations that undeniably are "religious" and undeniably "employ" people. Just as before the NPRM, most Catholic ministries of service—such as Catholic hospitals, charities, and schools—are deemed not to be "religious employers" and therefore remain subject to the mandate. By its own admission, the NPRM's change to the definition of "religious employer" will "not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. at 8461. The exemption was too narrow before the NPRM, and having changed only slightly in scope, it remains too narrow. Instead, the definition of "religious employer" should include all *bona fide* religious employers.

C. *The Government's Proposed Definition of "Religious Employer" Still Reduces Religious Freedom to Freedom of Worship by Limiting the Exemption Almost Exclusively to Houses of Worship.*

As the NPRM itself explains, “the primary goal” of the original definition of “religious employer” was “to exempt the group health plans of houses of worship,” and the proposed change to that original definition is designed to achieve that same goal more effectively. *See* 78 Fed. Reg. at 8461. That goal continues to pose a great religious freedom problem, for it continues to create a division—alien to our tradition—between our houses of worship and our ministries of service, and continues to treat the latter as if they had secondary religious importance.¹² Moreover, providing full protection only to houses of worship implies that only the activities of houses of worship are entitled to such protection. But just as religion is not limited to worship, the freedom of religion is not limited to the freedom of worship. Religious freedom must also include the freedom to abide by Church teachings, even outside the four walls of the sanctuary.¹³

¹² *See* USCCB Administrative Committee, “United for Religious Freedom” (Mar. 14, 2012) (reaffirmed by acclamation of full body of U.S. Catholic Bishops on June 13, 2012).

¹³ From the earliest centuries of the Christian church, “the exercise of charity became established as one of her essential activities, along with the administration of the sacraments and the proclamation of the word: love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel.” Pope Benedict XVI, Encyclical Letter *Deus caritas est* (2005), no. 22.

As explained further below, the operative language of the Church Amendment of 1973 is the only complete solution to the problem of improperly defining our religious community, for that language avoids entirely the question of which people or groups are deserving of religious freedom protection.¹⁴ The identity of the person or group having the religious freedom objection should not matter; what should matter instead is whether the person or group faces government coercion to violate conscience. Religious freedom is for *all* who face this threat, not just some.

D. The Government's Proposed Definition of "Religious Employer" Still Cannot Be Reconciled with the Longstanding Precedent of Generous Federal Government Conscience Protection in the Health Care Context.

Although the new proposed definition of “religious employer”—the fourth part of the original four-part test—does derive from existing federal law, it is wholly unprecedented in its use as a conscience

¹⁴ Obviously, we are not urging the government simply to “cut and paste” the Church Amendment into the regulations, but instead to apply its core principle in this context. The key point is that conscience protection, as reflected in the Church Amendment and countless other federal laws affording protection to those with religious or moral objections, should continue to be available to *all* individuals and entities with such objections, as they have been over the last several decades, and not simply to some subset of the political community (let alone to some subset of the religious community).

protection at the federal level. The fourth prong describes some (but not all) of the religious institutions that are exempt from the general requirement that nonprofit organizations file the IRS Form 990. In that context, that definition served to reduce the church-state entanglement issues inherent in mandating financial reporting and accountability on the part of churches and religious organizations. However, it does not, and was never intended to, protect against a government requirement that may violate conscience. The Form 990 filing exemptions therefore have no relevance whatsoever to church welfare or benefit plans.

Indeed, if ultimately implemented, the new proposed definition would represent the narrowest protection of conscience in health care anywhere in federal law. As we have noted repeatedly in prior comments, federal conscience protections in the health care context are typically robust. Foremost among these is the Church Amendment of 1973, 42 U.S.C. §300a-7. Its operative language—which protects against government coercion of conduct that “would be contrary to [the] religious beliefs or moral convictions” of individuals or entities—has enjoyed broad bipartisan support, and has been repeated in numerous federal conscience laws over the forty years since its original passage.¹⁵ As we have urged repeatedly before, language like this represents the

¹⁵ See USCCB Secretariat of Pro-Life Activities, “Current Federal Laws Protecting Conscience Rights” (2012) (available at <http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf>).

only complete solution to the religious freedom problems caused by the mandate.

The NPRM's proposed definition not only disregards this leading option in continuity with the strong, bipartisan tradition of generous federal conscience protection, it disregards an alternative exemption that, while still substantially flawed, would represent a far less radical break from the past. Other prominent commenters have proposed a definition of "religious employer" based on the category of employers whose benefit plans may qualify as "Church Plans" under the Employee Retirement Income Security Act (ERISA). *See* I.R.C. § 414(e). USCCB has declined to endorse this proposal, because it would not extend protection to all nonprofit religious employers,¹⁶ or to any for-profit employers with a religious objection. On the other hand, it is at least based on a law that has some—rather than absolutely no—bearing on health insurance plans, and it would cover substantially more employers than the currently proposed exemption.

¹⁶ We note that the NPRM's proposed definition of "eligible organization"—if it described the scope of an exemption from the mandate, rather than an "accommodation"—would also represent a substantial improvement in relation to the current proposed definition of "religious employer," since it would encompass all self-identified, nonprofit, religious employers with a religious objection. Unfortunately, this definition instead represents still another less constrictive understanding of "religious employer" that has been needlessly bypassed.

In sum, the revised exemption proposed in the NPRM continues the persistent refusal to follow in the mainstream of federal conscience protection language, or even to opt for a relatively modest departure from that mainstream. If the “houses of worship”—focused approach to conscience protection survives in this context, it will soon spread to others. Regulatory assurances to the contrary are ineffectual, as they cannot and do not control what may happen beyond the present rulemaking process. Once again, we urge the Administration in the strongest possible terms to reject this radical departure, and to return instead to the bipartisan consensus of the last forty years, which is embodied in the core language of the Church Amendment and the numerous federal conscience protection laws that have followed it.

E. *The Government’s Proposed Definition of “Religious Employer” Would Narrow the Exemption Further by Excluding Otherwise Exempt Employers That Extend Their Coverage to the Employees of Other Employers.*

In at least one significant respect the modified definition may make the universe of eligible plans *smaller*. Previously, the Administration suggested that the employees of a non-exempt religious organization might be enrolled in the health plan of an affiliated, exempt religious employer; such a plan would not be required to include contraceptive coverage. 77 Fed. Reg. 16501, 16502 (March 21, 2012) (advance notice of proposed rulemaking); see our comments of May 15, 2012, p. 18 (requesting clarification on this issue). In its latest proposed regulation, however, the Administration states that

such opportunities will not be available. 78 Fed. Reg. at 8467 (stating that any exemption or accommodation will be available only on an “employer-by-employer basis”). Thus, under this latest proposed regulation, the range of organizations exempt from the mandate would actually shrink.

F. *The Government’s Proposed Definition of “Religious Employer” Is Not Reasonably Related to a Legitimate Government Objective.*

As explained above, the proposed test for deciding whether an organization is a “religious employer” is lifted from an entirely different statutory context, one having no bearing whatsoever on health plans or conscience protection. Congress’s concern in enacting the Form 990 filing exemptions was financial accountability and tax administration—not health insurance or conscience. As the proposed test for deciding whether an organization is a “religious employer” bears no rational relationship to any legitimate governmental interest that the mandate or the exemption purports to advance, it does not withstand constitutional scrutiny.

As it happens, religious employers that do not fit the regulation’s definition of “religious employer” include those organizations that contribute most visibly to the common good through the provision of health, educational, and social services, including Catholic hospitals, colleges, universities, and charities. The Administration claims that employees of such organizations are less likely than the employees of churches, conventions and associations of churches, integrated auxiliaries and religious

orders to share their employer's views about contraceptives and sterilization. 78 Fed. Reg. at 8461-62. What knowledge the government could have about employees' individual religious beliefs seems entirely speculative, as well as irrelevant to the question whether the mandate infringes on the employer's own religious convictions and those of at least some of its employees.

In any event, the Administration's claim of a disparity in religious belief between employee and employer ignores four facts: (1) employees of religiously-affiliated hospitals, colleges, universities, and charities have *chosen* to be employed by such organizations and therefore, as to any employee benefits that those employers provide, have implicitly agreed to the employer's terms of employment, including compensation and benefits; (2) with the rare exception of employee-pay-all coverage, the employees' health coverage is offered, sponsored and paid for in part *by the employer*; (3) employees who disagree with their employer's objection to contraceptive and sterilization coverage are not foreclosed from obtaining such coverage *on their own and from another source* (including through a group or individual plan that they can purchase on the Exchange); and (4) the workplaces of exempt and nonexempt religious organizations in many instances are comparable in terms of the services they provide, and the religious reasons why they provide them.

The last point requires elaboration. The Administration concedes that "if a church maintains a soup kitchen that provides free meals to low-income individuals," that should have no effect on its exempt status. 78 Fed. Reg. at 8461. However, if the very

same church forms an unaffiliated separate corporation through which devout believers can provide free meals to low-income individuals in compliance with Jesus' call to feed the hungry, then that organization is *not* exempt even though it does precisely what the church would do directly had it not housed the services under a separate organization. Thus, the availability of an exemption from the contraceptive mandate will often depend upon, as it were, the accident of corporate form rather than what the church believes and does. In our example, the church and separately-incorporated organization provide the same services. Each is motivated by the same religious belief. Given those similarities, we fail to see how the government's interest in ensuring access to health coverage while accommodating conscience is furthered by denying an exemption, based solely on how the organization providing soup kitchen services is structured.

As another example of the lack of reasonable relation between the Form 990 filing requirement and the exemption, consider the activities of a religious order. If the order engages in "exclusively religious" activities, its health plan is exempt from the mandate. But if the very same religious order runs a religious bookstore, sells fruit preserves, or performs some other work as a means of supporting itself, any health coverage offered in connection with the latter is not exempt from the contraceptive mandate even if the only employees are the devout members of the order or lay people who share its beliefs.

Even if an exemption from the Form 990 filing requirement bore a reasonable relation to the

exemption from the mandate (which, we explain above, is not the case), the latter is under-inclusive. Many organizations, including “educational organizations” below the college level that are affiliated with a church or operated by a religious organization, are exempt from the requirement to file an annual return. *See* 26 C.F.R. § 1.6033-2(g). But these organizations, exempt as they are from the filing requirement, are not exempt from the mandate because they are not churches, conventions or associations of churches, integrated auxiliaries, or the exclusively religious activities of religious orders. If exemption from the Form 990 filing requirement is a reasonable proxy for exemption from the mandate, then why are churches, conventions and associations of churches, integrated auxiliaries, and the exclusively religious activities of religious orders the *only* non-filers exempt from the mandate?

IV. *The Accommodation Described in the NPRM Does Not Appear to Meaningfully Accommodate Even Those Stakeholders That Qualify for It.*

Now as before, it does not appear that what the Administration describes as an “accommodation” for “eligible organizations” (those religious employers that do not qualify for an exemption) will actually relieve them of the burden on religious liberty that the mandate creates.

A. *Insured plans.*

Under the proposed regulation, the plan sponsor (the employer) and enrollees (employees and their dependents) would pay for a group plan that excludes contraceptive coverage. The issuer of the group plan would then “automatically” issue a “separate”

individual policy to each enrollee for contraceptive coverage. 78 Fed. Reg. at 8462-63. The NPRM recites that the issuer would assume “sole responsibility, independent of the eligible organization and its plan,” for providing such an individual policy, and would do so “without cost sharing, premium, fee, or other charge to plan participants and beneficiaries.” *Id.* at 8462. In addition, the NPRM states that “no fee or other charge in connection with [the contraceptive] coverage is imposed on the eligible organization or its [group] plan.” *Id.*

If there is no charge to the plan sponsor or enrollees, the question arises: what funds will the insurer use to pay for contraceptives, sterilization procedures, and related education and counseling? The NPRM does not say, but says only that “such ... coverage is *cost neutral* because [the insurer] would be insuring the *same set of individuals* under both policies and would experience lower costs from improvements in women’s health and fewer childbirths.” *Id.* at 8463 (emphasis added).

This cost-neutral assumption ignores the insurer’s additional administrative costs in administering the companion contraceptive coverage program. In any event, even if this assumption were valid, there is only one funding stream from which contraceptives, sterilization procedures, and related education and counseling for these enrollees can be paid: contributions made by the sponsor of the group plan and its enrollees. It necessarily follows that, even though contraceptive coverage is housed under “separate” individual plans, it is not truly separate, and the objecting employer and enrollees are ultimately paying for the objectionable services

through their contributions. As there is no statutory authority, and there would appear to be legal constraints, for requiring an insurer to pay for contraceptives and sterilization procedures out of *other* clients' resources, employer and employee contributions to the group plan provide the only pool of funds from which payments for contraceptives and sterilization under the individual contraceptive-only policies can be made.

This seems especially obvious when, as here, the cost savings of reduced childbirths are cited by the Administration as paying for contraceptives and sterilization. As the NPRM itself points out, this only makes sense if the reimbursements come from funds paid *for those same individuals* for childbirth coverage. And those premiums for coverage of childbirth came from the employee and employer. In other words, some of the funds the employer and employee paid for childbirth coverage will, arguably, not be needed for childbirths, and so will be available to reimburse for contraceptives and sterilization instead.¹⁷

¹⁷ In pointing out this implication of the Administration's statements, of course, we are not endorsing the apparent assumption that contraceptive coverage necessarily "saves" the "costs" of childbirth, that children are ultimately a burden on rather than a contribution to the economic and other aspects of American well-being, or that, in a society where overall fertility rates are already below replacement levels, there is a compelling or even legitimate government interest in persuading religious Americans or their employees to have fewer

Thus, notwithstanding the Administration's claim that the issuer cannot, "directly or indirectly" (78 Fed. Reg. at 8473), charge the employer or employee for contraceptive coverage, there still seems to be a funding tie between the employer and the objectionable coverage. In addition, the attempted segregation of contraceptive and sterilization procedures is ineffective because plan premiums (and adjustments to premiums) are ultimately based on total claims history, which will now include claims for contraceptives and sterilization procedures—regardless of whether the organization objects to the coverage of those items, and regardless of whether those services are listed in the plan summary or other plan documents.

Put in other terms, if there are actually reduced claims against the employer's main plan as a result of its employees having separate contraceptive-only plans, then in the ordinary course, those cost savings would result in the accommodated employer's paying

children. On the implications of the plunging U.S. birthrate, see T. Bahrapour, "U.S. birthrate plummets to its lowest level since 1920," *The Washington Post*, November 29, 2012, at http://articles.washingtonpost.com/2012-11-29/local/35585758_1_birthrate-immigrant-women-population-growth ("The decline could have far-reaching implications for U.S. economic and social policy. A continuing decrease could challenge long-held assumptions that births to immigrants will help maintain the U.S. population and create the taxpaying workforce needed to support the aging baby-boom generation.").

reduced premiums in subsequent years. But under the proposed accommodation for insured plans, if claims against the main plan actually are reduced, the employer would *not* pay a reduced premium for that plan. Instead, the employer's premium would remain as high as previously, even though its claims experience should result in a lower premium. And it is precisely that increment of premium over the actual experience-based cost that would pay for the separate contraceptive-only policy. In this way, the accommodated employer's (and employees') premiums for the main health plan are paying for the contraceptive-only policy.

Even apart from the proposed rule's flawed accounting mechanisms, the claimed "accommodation" still requires religious organizations to facilitate access to objectionable services in direct contravention of their sincerely-held religious beliefs. Insofar as the insurer is providing *individual* policies for contraceptive coverage by virtue of the participants' enrollment in the *group* plan, the purchase of contraceptives and sterilization procedures is ultimately facilitated by the group plan which the religious objector has offered to, and purchased for, its employees. So even if the purchaser's premiums were somehow segregated to eliminate the funding tie, it is not evident that it would resolve the moral problem. In effect, offering a group health plan would operate automatically as a "ticket" or "trigger" for contraceptive coverage. The employee (and her dependents such as female minor children) will receive this "entitlement" whether she wants it or not, triggered by her enrollment in a health plan from her religious employer (albeit not a

“religious employer” as the Administration defines it).

As we have pointed out before, this is different from a situation in which an employee uses his or her salary for purposes the employer believes to be intrinsically evil. The difference is that the employee’s salary is not earmarked for the purchase of anything – once paid, those funds simply belong to the employee. Health care premiums, by contrast, are paid specifically for the purchase of a health plan. And the fact that the insurer provides contraceptives for “free” under policies that are provided automatically because of enrollment in the employer-sponsored group plan would likewise seem sufficient to establish a burden on the employer’s religious freedom.¹⁸

¹⁸ It is also morally problematic that the group plan is serving as a gateway for speech (“related education and counseling”), including persuasive speech to minor children, that squarely contradicts the plan sponsor’s religious or moral beliefs and possibly those of the adult employee as well. See, e.g., *Keller v. State Bar of California*, 496 U.S. 1 (1990) (holding that state bar members could not be compelled to finance political and ideological activities with which they disagree); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) (holding that state employees could not be required, consistent with the First Amendment, to provide financial support for ideological union activities unrelated to collective bargaining).

Our comments on this proposal are not new. We pointed to the problems of both funding *and* facilitating contraceptive coverage when the idea of having insurers provide contraceptive coverage was first aired. See our comments of May 15, 2012, pp. 10-18. As we pointed out then (pp. 12-13), suppression of religious freedom can take at least two forms. It can take the form of making conscientious objectors actively *cooperate with what they see as morally forbidden*. But it can also take the form of depriving those objectors of the right (a right that others continue to exercise) *to do what they see as morally required*. Under the proposed regulation, those who favor contraceptive coverage will retain the right they have always had as employers to provide a health plan consistent with their values. Objecting employers, including many religious organizations, will lose that right, because any plan they offer will be turned into a conduit for the objectionable coverage. The practical outcome for employees and their children is exactly the same as if the organization had no objection. Employees who share the objecting organization's religious tenets are similarly deprived of the freedom to choose a workplace organized according to their own values, and are forced to accept coverage for their families to which they have their own religious or moral objection.¹⁹

¹⁹ We should also point out that because all enrollees in the contraceptive-free group plan are provided with individual contraceptive-only policies, *both* the plan sponsor *and* all contributing employees in the group plan are, ultimately, paying for and facilitating

B. *Self-insured plans.*

As described in the NPRM,²⁰ the Administration proposes that the plan sponsor and employees may pay for a self-insured group plan that excludes contraceptive coverage. However, the third-party administrator (“TPA”) is then to find an insurer that will automatically issue individual contraceptive-only plans to all persons enrolled in the group plan (that is, all employees and their dependents). 78 Fed. Reg.

access to contraceptives and sterilization procedures *even if* many of the enrolled employees and their dependents do not personally make use of the contraceptive-only policy by obtaining contraceptives. In other words, the individual contraceptive-only policies function like one large contraceptive-only group plan, for the persons enrolled in the non-contraceptive group plan are *identical* in all respects to the persons enrolled in the contraceptive-only policies (whether characterized as individual policies or as one large group policy). As a result, conscientiously-opposed employers and employees are, in the aggregate, paying for and facilitating *other* employees’ contraceptives and sterilization procedures.

²⁰ The NPRM does not include the text of a proposed regulation with respect to self-insured plans, but the preamble includes a description of how enrollees in such plans would obtain contraceptive coverage. Our analysis is based on that description. Further comment must await publication of a proposed regulation on self-insured plans.

at 8463.²¹ Since the insurer is not providing these individually-insured persons with group coverage of other (non-contraceptive) items and services, the Administration cannot (and does not) make any claim of cost savings as a result of enrollment in the self-insured group plan. As described in the NPRM, however, issuers of contraceptive-only plans will be given an adjustment in the Federally-facilitated Exchange (“FFE”) user fee they would otherwise be required to pay to participate in that Exchange.²²

²¹ The first of the three options described for self-insured plans states only that TPAs will have an “economic incentive” to arrange for contraceptive coverage (which could be read to mean something less than a “requirement” to make such arrangements); elsewhere, the NPRM states that under *all three* options, contraceptive coverage will be provided “automatically.” 78 Fed. Reg. at 8463. Obviously we believe contraceptive coverage should not be required, and we ask for clarification on this point.

²² A recently published regulation defines an FFE as “an Exchange established and operated within a State by the Secretary [of HHS] under section 1321(c)(1) of the Affordable Care Act.” 78 Fed. Reg. 15410, 15532 (March 11, 2013). Section 1321(c)(1) authorizes the Secretary to establish an FFE if a state fails to do so. In support of such FFEs, the Administration has proposed that participating issuers pay a monthly user fee. *Id.* at 73213. It is this fee that the Administration now proposes to adjust, as a mechanism for encouraging insurers to offer individual contraceptive-only policies and as a

The insurer, in turn, is required to share a portion of that adjustment with the TPA to offset the latter's administrative cost in arranging individual contraceptive-only coverage.

A number of assumptions are built into this proposal. For example, the proposal assumes that (a) the plan sponsor with a religious or moral objection to contraceptive coverage does not self-administer the plan, (b) the sponsor will be both willing and able to find a TPA that does not share its objection and is willing to arrange such coverage, and (c) TPAs in turn will be willing and able to find an insurer to provide such coverage, and only as consideration for an adjustment in the insurer's FFE user fee. This, in turn, assumes that (d) there is a market of willing insurers that participate, or have an affiliate that participates, in the FFE for which (e) the costs of contraceptives and sterilization procedure will not outpace the adjustment in the insurer's (or its affiliate's) FFE user fee.²³ There may be other assumptions built into the Administration's proposal that would be familiar to those who sell or administer plans and on which they can comment further.²⁴

means of paying for such policies and the items they cover.

²³ The Administration's promise to "assist in identifying issuers" of contraceptive-only policies (78 Fed. Reg. at 8463) does not, of course, ensure that there will be an economically viable market for such issuers.

²⁴ See, e.g., NPRM Comments from the Self-Insurance Institute of America, Inc. (Feb. 25, 2013).

Even if all these assumptions were sound, which we question, the underlying approach would still pose a moral problem because *the group plan itself* continues to facilitate access to items and procedures to which the employer has a religious or moral objection. In other words, even if the objecting employer's monetary contributions did not directly pay for contraceptives and sterilization procedures, the plan itself would continue to function as a morally objectionable gateway or "ticket" to such coverage.²⁵ Thus, as described earlier in the context of insured plans, the self-insured plan (and the self-certification of non-coverage that the sponsor provides to the TPA) would automatically trigger contraceptive coverage. The moral dilemma for the plan sponsor with a religious or moral objection to such coverage lies in being forced to trigger the objectionable coverage *even if* the funds paying for

²⁵ This is especially explicit in some of the proposed ways for making this intricate proposal function. For example, one scenario envisions that the employer's simple act of self-certifying that it objects to contraceptive coverage "would have the effect of designating the third party administrator as the plan administrator under section 3(16) of ERISA solely for the purpose of fulfilling the requirement that the plan provide contraceptive coverage without cost sharing." 78 Fed. Reg. at 8464. In other words, the plan sponsor's very act of stating its religious objection to this coverage is what gives the TPA the legal authority under ERISA to impose such coverage on all of the sponsor's employees and their dependents.

the group plan are not also used to pay for the contraceptive coverage.

The particular ways in which the proposed regulation calls on various parties to facilitate coverage to which they may have a religious or moral objection only deepens the dilemma. The sponsor must (1) identify a TPA able and willing to arrange the objectionable coverage; (2) provide the TPA with a certification that the group plan does not include the objectionable coverage; and (3) provide the TPA, as it usually does, with the names and identifying information of enrollees so the TPA can administer the plan, which in this case will include arranging for an individual contraceptive-only plan for those enrollees, the very thing that the sponsor objects to.²⁶

²⁶ The NPRM notes that, under one of three alternative proposals for self-insured plans, “there would be no obligation on a third party administrator to enter into or continue a third party administration contract with an eligible organization if the third party administrator were to object” to arranging for contraceptive-only coverage. 78 Fed. Reg. at 8464. Though not explicitly stated, this also appears to be equally true of the two other alternative proposals for self-insured plans. Obviously, if a TPA refuses for conscientious reasons to enter into or to continue a TPA contract with an eligible organization, that organization must find another TPA, specifically one that does not share its (or its previous TPA’s) objection to contraceptive coverage. And the TPA that shares the employer’s religious beliefs, in turn, is being told that it must either violate those beliefs or exit the marketplace. Indeed, some TPAs may

Again, our views on this are not new. We pointed out the problem of improperly facilitating contraceptive coverage when the idea of having TPAs arrange such coverage was first aired. See our comments of May 15, 2012, pp. 13-18. As we observed then, the problem relates not only to cooperation with what the plan sponsor views as immoral. Here, as in the case of insured plans, it is also an infringement of religious freedom for government to deprive stakeholders of the opportunity (which others continue to enjoy) to do what they regard as a necessary good—namely, to offer, buy, or enroll in a health plan that conforms to their most basic religious or moral convictions.²⁷ As we said in previous comments, protecting a religious organization from being forced to act immorally, by depriving it of the ability to act at all, is no way to serve religious freedom.

V. *Conclusion.*

The proposed regulation keeps in place a regulatory definition of “preventive” health care which includes items that do not prevent disease, but rather are intended to render a woman temporarily or permanently infertile, and may be associated with

themselves be religious organizations, but they receive no exemption under the proposed regulation.

²⁷ It is especially difficult to understand why the Administration would present many employers with the Hobson’s choice of abandoning its conscientious beliefs or ceasing to offer a health plan at all, when one of ACA’s central goals is to *improve* access to health plans.

adverse health outcomes. Under the proposed regulation, most stakeholders are offered no exemption or accommodation. The proposed regulation creates an exemption that artificially and arbitrarily carves up the religious community into those deemed “religious enough” for the exemption and those that are not, generally excluding those who practice their faith by most visibly serving the common good. Finally, under the proposed “accommodation” for non-exempt religious organizations, plan premiums or the plan, or both, would continue to serve as the source or conduit for the objectionable “services.”

In short, the Administration continues to propose: (a) an unjust and unlawful mandate; (b) no exemption or “accommodation” at all for most stakeholders in the health insurance process, such as individual employees and for-profit employers; (c) an unreasonably and unlawfully narrow exemption for some nonprofit religious organizations, mostly houses of worship; and (d) an “accommodation” that still requires *bona fide* religious employers that fall outside the narrow government definition of “religious employer” to fund or facilitate the objectionable coverage.

Once again, we urge the Administration to reconsider this proposed course.

Respectfully submitted,

s/ Anthony R. Picarello, Jr.
Anthony R. Picarello, Jr.
Associate General

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Secretary &
General Counsel

s/ Michael F. Moses

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROMAN CATHOLIC :
ARCHBISHOP OF :
WASHINGTON, a : **CIVIL ACTION**
corporation sole, *et al.*, : **NO. 13-1441**
Plaintiffs, : **Hon. Amy Berman**
v. : **Jackson**
KATHLEEN SEBELIUS, : **ELECTRONIC-**
***et al.*,** : **ALLY FILED**
Defendants. :

AFFIDAVIT OF REVEREND CARTER GRIFFIN

I, Reverend Carter Griffin, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. I am over the age of eighteen (18) and competent to make this declaration in support of Plaintiffs' Reply in Support of Their Motion for Preliminary Injunction, Opposition to Defendants' Motion to Dismiss, or, in the Alternative, for Summary Judgment, and Memorandum of Law in Support of Plaintiffs' Cross-Motion for Summary Judgment in the above-captioned matter. I am familiar with and have personal knowledge of the facts set forth in this declaration. If called to testify, I would testify in a manner consistent with the statements set forth below.

2. I am a priest of the Archdiocese of Washington. I have a Doctorate in Theology. I serve as a theological advisor to Cardinal Donald Wuerl, Archbishop of Washington, on matters of Catholic

doctrine, including moral theology. I have advised the Cardinal on ecclesiastic and theological matters affecting the Archdiocese and entities and individuals within the Diocese.

3. I earned a bachelor of arts from Princeton University in 1994, served for four years as a line officer in the United States Navy, attended Mount St. Mary's Seminary in Emmitsburg, MD, for two years of philosophy, and attended the North American College in Rome for five years of theology. I was ordained to the priesthood in 2004, served as the personal assistant to the Archbishop of Washington for three years, and completed my doctoral studies in Rome at the University of the Holy Cross in 2010. I currently serve as the Vocations Director of the Archdiocese of Washington and the Vice-Rector of the Blessed John Paul II Seminary in Washington, D.C.

4. The Magisterium, which consists of the Pope and the College of Bishops in union with the Pope, decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church's mission in the world, including how that mission occurs within the settings of Catholic schools, agencies, and other institutions that claim Catholic identity. Cardinal Donald Wuerl is responsible for carrying out that mission in the Archdiocese of Washington and is, within the parameters of Catholic teaching, the final arbiter of ecclesiastic matters in the Archdiocese.

5. The Cardinal has oversight over the administration of Plaintiffs Consortium of Catholic Academies of the Archdiocese of Washington ("CCA"),

Archbishop Carroll High School, Inc. (“ACHS”), Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc. (“Don Bosco”), Mary of Nazareth Roman Catholic Elementary School, Inc. (“Mary of Nazareth”), Catholic Charities of the Archdiocese of Washington, Inc. (“Catholic Charities”), Victory Housing, Inc. (“Victory Housing”), and the Catholic Information Center, Inc. (“CIC”), as a corporate member and the chairman of the membership of each entities’ corporation. The Cardinal has an obligation under canon law—Catholic Church law—to require that those entities adhere to Catholic doctrine.

6. In the Cardinal’s role as a member of these organizations, he is ultimately responsible for requiring that policies adopted by the Board of Directors of those entities comply with Catholic doctrine.

7. In the Cardinal’s role as final arbiter of ecclesiastic matters in the Archdiocese, he also decides what is required, allowed, and forbidden regarding the elements of worship, doctrines of faith and morals, and the fulfillment of the Church’s mission in the Archdiocese.

8. Catholic religious teaching prohibits subsidizing, providing, and/or facilitating coverage for abortion-inducing products, sterilization services, contraceptives, and related counseling services in the manner required by the Mandate. These well-established religious beliefs flow from a unified system of beliefs articulated in the Catechism of the Catholic Church. One of the central tenets of this system is belief in the sanctity of human life and the dignity of all persons.

9. Thus, Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the “dignity of the human person is rooted in his creation in the image and likeness of God.” *Catechism of the Catholic Church* ¶ 1700:

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

11. Furthermore, Plaintiffs adhere to Catholic teachings that prohibit any action which intentionally “render[s] procreation impossible” and, more specifically, regard direct sterilization as “unacceptable.” *Id.* ¶¶ 2370, 2399. Plaintiffs also believe that contraception is immoral.

12. Consistent with Church teachings regarding the sanctity of human life, the Archdiocesan health plan excludes coverage for abortion-inducing products, sterilization services, contraceptives (except when used for non-contraceptive purposes), and related counseling services.

13. The regulations at issue in this lawsuit (the “Mandate”), require employers, on pain of substantial financial penalties or other negative consequences, to facilitate access to abortion-inducing products, sterilization services, contraceptives, and related counseling services through their employer health plan.

14. Plaintiffs have determined that the Mandate violates Catholic doctrine and that complying with

the Mandate would result in Plaintiffs impermissibly facilitating the provision of these objectionable products and services.

15. When Plaintiffs are prohibited from engaging in certain conduct, they are equally prohibited from designating or assisting someone else to do it for them. Here, Plaintiffs are themselves prohibited from providing the mandated coverage, and are equally prohibited from authorizing a third party administrator or insurance company to provide that coverage. Thus, the so-called “accommodation” does not resolve Plaintiffs’ religious objection.

16. Under the accommodation, Plaintiffs must provide a “certification” to a third party administrator or insurance company setting forth their religious objections to this Mandate. The provision of this “certification” in turn, triggers an obligation on the part of the third party administrator or insurance company to provide or obtain the objectionable coverage for Plaintiffs’ employees. In other words, Plaintiffs must find a third party willing to provide the mandated coverage, contract with that party, and subsequently authorize that party to provide the very products and services to which Plaintiffs object. Those products and services would be offered to Plaintiffs’ employees only so long as they remain on Plaintiffs’ health plans, and only by virtue of Plaintiffs’ authorization of a third party to provide the coverage.

17. Plaintiffs’ religious doctrine holds that participation in this scheme would constitute cooperation in a grave moral evil. Plaintiffs would never freely take such actions and should not be

forced to by a coercive government mandate in the first place. It would therefore violate Plaintiffs' religious beliefs to execute the self-certification and to take the steps outlined above.

18. Conversely, Plaintiffs are not forbidden from providing a salary to their employees, even if those employees may use the money to act contrary to Catholic doctrine. Such action does not constitute cooperation with a grave immoral act. For example, when the Archdiocese pays an employee's salary that the employee uses to purchase illegal drugs, the Archdiocese is not complicit in the employee's action because it has no concrete basis for expecting the salary to be used for that purpose—unlike the mechanism established by the accommodation, in which the payment made by the third-party administrator to the employee is specifically designated for a morally objectionable use.

19. Likewise, although Plaintiffs believe, as a matter of policy, that the federal government should not provide Plaintiffs' employees with the mandated products and services, government programs that provide such products and services without Plaintiffs' participation do not compel Plaintiffs to violate their religious beliefs.

20. As Catholic entities, Plaintiffs believe that they must bear witness, including in their deeds, to the beliefs of the Catholic Church and that it would be scandalous to act inconsistently with those beliefs. The Catholic Church teaches that health care is a human right flowing from the sanctity and dignity of human life. (*See* Blessed Pope John XXIII, *Pacem in Terris*, *Encyclical of Pope John XXIII, on*

Establishing Universal Peace in Truth, Justice, Charity, and Liberty, April 11, 1963). Plaintiffs bear witness to those teachings not only by word, but also by deed, including their actions regarding the provision of employee health insurance. Were Plaintiffs to comply with the Mandate, in addition to impermissibly facilitating access to the objectionable services, Plaintiffs would commit the further offense of giving scandal by acting in a way inconsistent with Church teachings.

21. Moreover, the Mandate artificially splits the Catholic Church in two, dividing an essential worship component from equally essential charitable and educational components, the former of which receives the exemption and the latter of which does not—preventing the Church from exercising supervisory authority over its constituent parts in a way that ensures compliance with Church teachings. Religious worship is an indispensable component of the Catholic faith, of course, but worship cannot be separated from providing the charitable and educational services that are also indispensable and integral components of the Catholic faith and are at the heart of the mission of Catholic Church. In other words, Plaintiffs exercise their Catholic faith both through worship and through acts of charity.

22. This integral component of the Catholic faith—caring for one’s neighbor through acts of charity—began with the words of Jesus, “Love the Lord your God with all your heart and with all your soul and with all your mind.’ This is the first and greatest commandment. And the second is like it: ‘Love your neighbor as yourself.’” (Gospel of Matthew 22:37-39). Since the time of Jesus, the Catholic Church has

taught love of neighbor through charitable service. This aspect of the faith, which connects love of neighbor, human dignity, and charitable service, lies at the heart of all Catholic social teachings, and has been reaffirmed over centuries through the Church's preaching of the Gospel and consistent social justice teaching as referenced in numerous papal encyclicals (See Gospel of Matthew 22:37-29 and 25:31-46; Blessed Pope John XXIII, *Pacem in Terris* (Peace on Earth) (1963); Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes* (Joy and Hope) (1966); Pope Paul VI, *Message to the International Conference on Human Rights, Teheran* (1968); Blessed Pope John Paul II, *Sollicitudo Rei Socialis* (On Social Concern) (1987), *Centesimus Annus* (One Hundred Years of Catholic Social Teaching) (1991), and *Evangelium Vitae* (The Gospel of Life) (1995); Pope Emeritus Benedict XVI, *Deus Caritas Est* (God is Love) (2005). It is, therefore, a theological impossibility to separate the call to charitable service from the obligation to worship God. To assert that charitable service can be detached and isolated from worship of God is to deny a body of doctrine and tradition that persists throughout Christian history and which constitutes the Catholic faith.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Reverend Carter Griffin

Reverend Carter Griffin

STATE OF MARYLAND)

COUNTY OF CALVERT)

Sworn to and subscribed before me
this 25 day of October, 2013.

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

**ROMAN CATHOLIC
ARCHBISHOP OF
WASHINGTON., a
corporation sole, *et*
al.,**

Plaintiffs

v.

**KATHLEEN
SEBELIUS, *et al.*,
Defendants.**

CIVIL ACTION NO. 13-
1441-ABJ

**SUPPLEMENTAL AFFIDAVIT OF THE
ARCHDIOCESE OF WASHINGTON**

I, Jane G. Belford, being duly sworn, declare and state as follows;

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I serve as Chancellor of the Archdiocese of Washington (the “Archdiocese”). I have been so employed in this capacity since 2001.

3. As Chancellor, I am very familiar with the Archdiocese’s mission and religious beliefs. I also am very familiar with the Archdiocese’s self-insured health plan. The facts set forth herein are based upon my personal knowledge and information

available to me, and if I were called upon to testify to them, I could and would competently do so.

4. The Archdiocese has 1825 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require the Archdiocese to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to the Archdiocese's sincere religious beliefs. The Mandate forces the Archdiocese to either (1) sponsor a plan that will provide the employees of its non-exempt, affiliated ministries with access to "free" contraception, abortion-inducing products, sterilization, and related counseling, or (2) no longer extend its plan to these ministries, subjecting them to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage. The first option forces the Archdiocese to act contrary to its sincerely-held religious beliefs. The second option compels the Archdiocese to submit to the government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

6. I understand that the Government has argued it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate would still require

Catholic entities to act contrary to their sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide the entity's employees with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide the entity's employees or beneficiaries with payments for products and services that the entity cannot provide directly and that the third party administrator cannot provide unless it receives both the mandated authorization and related information about the entity's employees or beneficiaries. Catholic teaching, however, not only prohibits Catholic organizations from providing payments and/or coverage for abortion-inducing products, contraception, sterilization and related counseling, but also from providing a certification that authorizes a third-party administrator to do so - even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

7. This is further exacerbated by the regulation that prohibits objecting organizations from "directly or indirectly, seek[ing] to interfere with a third party administrators arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, objecting organizations are barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party

administrator may *not* provide the objectionable payments and/or coverage to the organization's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

s/Jane G. Belford

STATE OF MARYLAND)
COUNTY OF ANNE ARUNDEL)

Sworn to and subscribed before me
this 12th day of November, 2013

s/ Mirna Rustrian-Plazza

MIRNA RUSTRIAN-PLAZZA
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
MY COMMISSION EXPIRES OCTOBER 17, 2016

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL AFFIDAVIT OF THE
CONSORTIUM OF CATHOLIC ACADEMIES OF
THE ARCHDIOCESE OF WASHINGTON, INC.**

I, Marguerite Conley, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as the Executive Director of The Consortium of Catholic Academies of the Archdiocese of Washington, Inc ("CCA" or the "Consortium"). I have been in that position since June 2010.

3. I am very familiar with the Consortium's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. CCA has 89 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require CCA to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CCA's sincere religious beliefs..

6. Among other things, CCA's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CCA's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls—on CCA (or the Archdiocese, through whose plan CCA provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is CCA's self- certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CCA's employees only for so long as they remain on CCA's plan, and CCA (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things,

identifying CCA's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, CCA is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires CCA to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide CCA's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide CCA's employees or beneficiaries with payments for products and services that CCA cannot provide directly and that the third party administrator cannot provide unless CCA submits both the mandated authorization and related information about CCA's employees. CCA's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of CCA's religious beliefs is further exacerbated by the regulation that prohibits CCA from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, CCA is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to CCA's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ Marguerite Conley

Marguerite Conley

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before me this 12th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.		

**SUPPLEMENTAL AFFIDAVIT OF
ARCHBISHOP CARROLL HIGH SCHOOL**

I, Mary Elizabeth Blaufuss, being duly sworn,
declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as the President of Archbishop Carroll High School. ("ACHS"). I have been so employed since October 2012. Since 2006, I had been Vice-Principal for Academic Affairs at ACHS.

3. I am very familiar with ACHS's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal

knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. ACHS has 66 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require ACHS to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to ACHS's sincere religious beliefs.

6. Among other things, ACHS's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of ACHS's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on ACHS (or the Archdiocese, through whose plan ACHS provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is ACHS's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to ACHS's employees only for so long as they remain on ACHS's plan, and ACHS (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying ACHS's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate,

ACHS is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires ACHS to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide ACHS's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide ACHS's employees or beneficiaries with payments for products and services that ACHS cannot provide directly and that the third party administrator cannot provide unless ACHS submits both the mandated authorization and related information about ACHS's employees. ACHS's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of ACHS's religious beliefs is further exacerbated by the regulation that prohibits ACHS from "directly or indirectly, seek[ing]

to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, ACHS is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to ACHS's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ Mary Elizabeth Blaufuss

Mary Elizabeth Blaufuss

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before me this 12th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.		

**SUPPLEMENTAL AFFIDAVIT OF DON BOSCO
CRISTO REY HIGH SCHOOL OF THE
ARCHDIOCESE OF WASHINGTON, INC.**

I, Reverend Steve Shafran, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as President of Don Bosco Cristo Rey High School, Inc. I have been so employed since July 1, 2006.

3. I am very familiar with Don Bosco's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal

knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Don Bosco has 49 full-time equivalent employees. It is thus my understanding that it is not subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees. Since it does provide health insurance to its employees, however, my understanding is that it is required to provide coverage for abortion-inducing products, sterilization, contraception, and related counseling or pay a fine of \$100 a day per affected beneficiary.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), thus require Don Bosco to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Don Bosco's sincere religious beliefs.

6. Among other things, Don Bosco's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Don Bosco's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Don Bosco (or the Archdiocese through whose plan Don Bosco provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Don Bosco's certification of its religious objection that authorizes provision of the mandated coverage. This

coverage will be made available to Don Bosco's employees only for so long as they remain on Don Bosco's plan, and Don Bosco (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by among other things, identifying Don Bosco's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Don Bosco is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Don Bosco to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Don Bosco's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Don Bosco's employees or beneficiaries with payments for products and services that Don Bosco cannot provide directly and that the third party administrator not to provide unless Don Bosco submits both the mandated authorization and related information about Don Bosco's employees. Don Bosco's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling,

but also from providing a certification that authorizes a third-party administrator to do so-even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of Don Bosco's religious beliefs is further exacerbated by the regulation that prohibits Don Bosco from "directly or indirectly, seeking to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, Don Bosco is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Don Bosco's employees or beneficiaries.

9. Furthermore, as I noted in my prior affidavit, potential liability for significant fines and uncertainty regarding Don Bosco's ability to offer and provide health benefits undermines Don Bosco's ability to retain and recruit employees. Were Don Bosco to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate. Indeed, the failure to offer health insurance would be ruinous, as it would make it impossible to attract qualified faculty and staff.

FURTHER AFFIANT SAYETH NOT.

/s. Fr. Steve Shafran

Rev. Steve Shafran

STATE OF INSERT) Maryland

COUNTY OF INSERT) Anne Arundel

Sworn to and subscribed before me this 12th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL AFFIDAVIT OF MARY OF
NAZARETH ROMAN CATHOLIC
ELEMENTARY SCHOOL, INC.**

I, Michael Friel, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as Principal of Mary of Nazareth Roman Catholic Elementary School. I have been so employed since 2003.

3. I am very familiar with Mary of Nazareth's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my

personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Mary of Nazareth has 54.15 full-time equivalent employees (this includes 37 full-time employees and 17.15 full-time equivalents). It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require Mary of Nazareth to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Mary of Nazareth's sincere religious beliefs.

6. Among other things, Mary of Nazareth's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Mary of Nazareth's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Mary of Nazareth (or the Archdiocese, through whose plan Mary of Nazareth provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Mary of Nazareth's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Mary of Nazareth's employees only for so long as they remain on Mary of Nazareth's plan, and Mary of Nazareth

(or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying Mary of Nazareth's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Mary of Nazareth is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Mary of Nazareth to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Mary of Nazareth's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Mary of Nazareth's employees or beneficiaries with payments for products and services that Mary of Nazareth cannot provide directly and that the third party administrator cannot provide unless Mary of Nazareth submits both the mandated authorization and related information about Mary of Nazareth's employees. Mary of Nazareth's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a

certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of Mary of Nazareth's religious beliefs is further exacerbated by the regulation that prohibits Mary of Nazareth from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, Mary of Nazareth is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Mary of Nazareth's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ Michael J. Friel

Michael Friel

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before me this 12th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL AFFIDAVIT OF CATHOLIC
CHARITIES OF THE ARCHDIOCESE OF
WASHINGTON**

I, Rev. Msgr. John Enzler, being duly sworn,
declare and state as follows:

1. I am over the age of 21 and competent to make
this statement. I submit this affidavit in support of
Plaintiffs' Motion for Preliminary Injunction and
Motion for Summary Judgment in the above-
captioned matter.

2. I am employed as the President and CEO at
Catholic Charities of the Archdiocese of Washington,
Inc. ("Catholic Charities"). I have been so employed
since July 2011.

3. I am very familiar with Catholic Charities'
mission, religious belief, and health insurance policy.

The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

4. Catholic Charities has 687 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require Catholic Charities to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Catholic Charities' sincere religious belief.

6. Among other things, Catholic Charities' employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Catholic Charities' decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Catholic Charities (or the Archdiocese, through whose plan Catholic Charities provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Catholic Charities' self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Catholic Charities' employees only for so long as they remain on Catholic Charities' plan, and Catholic Charities

(or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying Catholic Charities' benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Catholic Charities is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Catholic Charities to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Catholic Charities' employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Catholic Charities' employees or beneficiaries with payments for products and services that Catholic Charities cannot provide directly and that the third party administrator cannot provide unless Catholic Charities submits both the mandated authorization and related information about Catholic Charities' employees. Catholic Charities' sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a

certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of Catholic Charities’ religious beliefs is further exacerbated by the regulation that prohibits Catholic Charities from “directly or indirectly, seek[ing] to interfere with a third party administrator’s arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator’s decision to make any such arrangements.” Under this latter requirement, Catholic Charities is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Catholic Charities’ employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ John J. Enzler

Rev. Msgr. John Enzler

STATE OF INSERT)
COUNTY OF)
INSERT

Sworn to and subscribed before me this 11th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL AFFIDAVIT OF VICTORY
HOUSING, INC.**

I, James A. Brown, Jr., being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as President of Victory Housing, Inc. I have been so employed since 1991.

3. I am very familiar with Victory Housing's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me,

and if I were called upon to testify to them, I could and would competently do so.

4. Victory Housing has 89 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), require Victory Housing to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to Victory Housing's sincere religious beliefs..

6 Among other things, Victory Housing's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of Victory Housing's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on Victory Housing (or the Archdiocese, through whose plan Victory Housing provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located, perversely, it is Victory Housing's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to Victory Housing's employees only for so long as they remain on Victory Housing's plan, and Victory Housing (or the Archdiocese) will be forced to further facilitate access to the mandated coverage by, among other things, identifying Victory Housing's benefits-eligible

employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, Victory Housing is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires Victory Housing to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide Victory Housing's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide Victory Housing's employees or beneficiaries with payments for products and services that Victory Housing cannot provide directly and that the third party administrator cannot provide unless Victory Housing submits both the mandated authorization and related information about Victory Housing's employees. Victory Housing's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has

the discretion not to provide such payments and/or coverage.

8. This forced violation of Victory Housing's religious beliefs is further exacerbated by the regulation that prohibits Victory Housing from "directly or indirectly, seek[ing] to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, Victory Housing is barred from, for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to Victory Housing's employees or beneficiaries.

FURTHER AFFIANT SAYETH NOT.

/s/ James A. Brown, Jr.

James A. Brown, Jr.

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

Sworn to and subscribed before me this 12th day of
November, 2013

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

ROMAN CATHOLIC)	
ARCHBISHOP OF)	
WASHINGTON, a corporation)	
sole, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	CIVIL ACTION
	)	NO. 13-1441-
	)	ABJ
KATHLEEN SEBELIUS, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL AFFIDAVIT OF CATHOLIC
INFORMATION CENTER, INC.**

I, Reverend Anne A. Panula being duly sworn declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Judgment and Motion for Summary Judgment in the above-captioned matter.

2. I am employed as Director of the Catholic Information Center ("CIC"). I have been so employed since 2007.

3. I am very familiar with CIC's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I

were called upon to testify to them, could and would competently do so.

4. CIC has 3 full-time employees. It is thus my understanding that it is not subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees. Since it does provide health insurance to its employees, however, my understanding is that it is required to provide coverage for abortion-inducing products, sterilization, contraception, and related counseling or pay a fine of \$100 a day per affected beneficiary.

5. As explained in my initial affidavit, the regulations at issue in this lawsuit (the "Mandate"), thus require CIC to facilitate access to abortion-inducing products, artificial contraception, medical sterilization procedures, and related counseling in a manner contrary to CIC's sincere religious beliefs.

6. Among other things, CIC's employees would only receive free contraceptives, sterilization, abortifacients, and related counseling by virtue of CIC's decision to provide health coverage. Because third party administrators are under no obligation to participate in the accommodation, the burden falls on CIC (or the Archdiocese, through whose plan ere provides insurance) to locate and identify a third party willing to provide the very services it deems objectionable. Once such an organization is located perversely, it is CIC's self-certification of its religious objection that authorizes provision of the mandated coverage. This coverage will be made available to CIC's employees only for so long as they remain on CIC's plan, and ere (or the Archdiocese) will be forced to further facilitate access to the mandated coverage

by, among other things, identifying CIC's benefits-eligible employees for the third party administrator. Ultimately, under both the original and final versions of the Mandate, CIC is forced, in violation of its sincerely held religious beliefs, to participate in a scheme that provides its employees with access to contraceptive benefits.

7. I understand that the Government has argued that it lacks the regulatory authority to require the third party administrators of self-insured church plans to make separate payments for contraceptive services for participants and beneficiaries in such plans. Even if this is true, the Mandate still requires CIC to act contrary to its sincerely held religious beliefs. Absent the certification, the third party administrator is not authorized to provide CIC's employees or beneficiaries with payments for the objectionable products and services. The certification, however, provides that authorization. It is therefore a "permission slip" for the third party administrator to provide CIC's employees or beneficiaries with payments for products and services that CIC cannot provide directly and that the third party administrator cannot provide unless CIC submits both the mandated authorization and related, information about CIC's employees. CIC's sincerely held religious beliefs, however, not only prohibit it from providing payments and/or coverage for abortion-inducing products, contraception, sterilization, and related counseling, but also from providing a certification that authorizes a third-party administrator to do so—even if the third party administrator ultimately has the discretion not to provide such payments and/or coverage.

8. This forced violation of CIC's religious beliefs is further exacerbated by the regulation that prohibits CIC from "directly or indirectly, seek[ing]to interfere with a third party administrator's arrangements to provide or arrange separate payments for. contraceptive services for participants or beneficiaries, [or], directly or indirectly, seek[ing] to influence the third party administrator's decision to make any such arrangements." Under this latter requirement, CIC is barred from., for example, directing the third party administrator that, notwithstanding the certification, the third party administrator may not provide the objectionable payments and/or coverage to CIC's employees or beneficiaries.

9. Furthermore, as I noted in my prior affidavit, potential liability for significant fines and uncertainty regarding CIC's ability to offer and provide health benefits undermines CIC's ability to retain and recruit employ. Were CIC to stop offering health benefits, it would be at a competitive disadvantage to institutions who do not have religious objections to the Mandate. Indeed. the failure to offer health insurance would be ruinous, as it would make it Impossible to attract qualified staff.

FURTHER AFFIANT SAYETH NOT.

/s/ Anne Panula

Reverend Anne A. Panula

STATE OF INSERT) Maryland
COUNTY OF) Anne Arundel
INSERT

Sworn to and subscribed before me this 12th day of
November, 2013

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

**ROMAN CATHOLIC
ARCHBISHOP OF
WASHINGTON, a
corporation sole, *et
al.*,**

Plaintiffs,

v.

**KATHLEEN
SEBELIUS, *et al.*,
Defendants.**

CIVIL ACTION NO. 13-
1441-ABJ

**SUPPLEMENTAL AFFIDAVIT OF THE
CATHOLIC UNIVERSITY OF AMERICA**

I, Frank G. Persico, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter.

2. I am employed as the Chief of Staff and Vice President for University Relations at The Catholic University of America (hereinafter "CUA" or "University"). I have been so employed in this capacity, under different titles, since 2000 and have worked for the University in a variety of executive capacities, including as dean of students, executive director of alumni relations and associate dean of the university's law school since 1974.

3. As Chief of Staff and Vice President for University Relations, I am responsible for or aware of

most aspects of the University's day-to-day operations, I coordinate the senior staff, and personally advise the University president.

4. I am very familiar with CUA's mission, religious beliefs, and health insurance policies. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

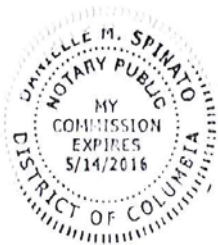
5. CUA has 1,292 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

FURTHER AFFIANT SAYETH NOT.

s/Frank G. Persico
Frank G. Persico

s/Danielle M. Spinato
Danielle M. Spinato

Sworn to and subscribed before me
this 8th day of November 2013



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

**ROMAN CATHOLIC
ARCHBISHOP OF
WASHINGTON., a
corporation sole, *et*
al.,**

Plaintiffs

v.

**KATHLEEN
SEBELIUS, *et al.*,
Defendants.**

CIVIL ACTION NO. 13-
1441-ABJ

**SUPPLEMENTAL AFFIDAVIT OF THOMAS
AQUINAS COLLEGE**

I, Peter L. DeLuca III, being duly sworn, declare and state as follows:

1. I am over the age of 21 and competent to make this statement. I submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment in the above-captioned matter.

2. I am one of the founders of Thomas Aquinas College (hereinafter the "College"). I have taught at the College since the College opened in 1971 and have served in numerous executive capacities since then including Interim President and Vice President for Development. I am currently employed as Vice President for Finance and Administration and have served in this capacity since 1995. As a founder I am also a permanent member of the College's Board of

Governors, its governing body, and serve as the College's Secretary and Treasurer.

3. As Vice President for Finance and Administration, I am responsible for the College's day-to-day operations and financial affairs, I supervise the building construction program, and I personally advise the College's president.

4. I am very familiar with the College's mission, religious beliefs, and health insurance policy. The facts set forth herein are based upon my personal knowledge and information available to me, and if I were called upon to testify to them, I could and would competently do so.

5. The College has 77 full-time employees. It is thus my understanding that it is subject to the Affordable Care Act's mandate that large employers provide health insurance plans to their employees.

6. The health plan the College offers to its employees is a self-insured health plan, but it is not recognized under the Employee Retirement Income Security Act as a "church plan."

FURTHER AFFIANT SAYETH NOT.

s/Peter L. DeLuca III
Peter L. DeLuca III

STATE OF CALIFORNIA)
COUNTY OF VENTURA)

Sworn to and subscribed before me
this 8th day of November, 2013.

**REPORTER'S OFFICIAL TRANSCRIPT OF
MOTIONS HEARING BEFORE THE
HONORABLE AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE**

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RPR, CRR
Certified Realtime Reporter
Registered Professional Reporter
United States District Court
333 Constitution Avenue, NW
Washington, DC 20001
Proceedings reported by machine shorthand.
Transcript produced by computer-aided transcription.

* * *

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exercise within the meaning of RFRA. Plaintiffs are wrong for several reasons.

First, as the Court mentioned, the Archdiocese is exempt under the religious employer exemption. The remaining plaintiffs, it's not disputed, are eligible for the accommodation.

Now, seven of those additional plaintiffs are part of the Archdiocese's self-insured church plan, which means that their TPA isn't required to provide contraceptive coverage at all. And not only—so, therefore, not only is there no substantial burden, but there's also no Article III injury as to those plaintiffs.

As to the remaining two plaintiffs—

THE COURT: So are you saying that if these organizations get their health insurance through the church, that none of this applies to them? The

accommodation—nothing—doesn't apply to them and they are essentially exempt?

MR. PRUSKI: I wouldn't—not exactly. As to the plaintiffs that are on the Archdiocese self-insured church plan who don't qualify for religious employer exemption, they are still subject to the contraceptive coverage requirement.

Now, the defendants have made clear that they lack regulatory authority to require their TPAs to make the payments. However, the accommodation is still available to these plaintiffs, so they must still complete the self-certification requirement and once they do that, they have complied with the contraceptive coverage requirement. However, their TPA isn't required to provide the separate payments.

So to the extent they're claiming an injury based on facilitating access to contraceptive coverage, that injury simply doesn't exist here, and it certainly isn't a substantial burden on their religious exercise.

THE COURT: So the self-certification won't accomplish—won't inexorably lead, as they say, to the provision of coverage to their employees?

MR. PRUSKI: No. Their TPAs aren't required to make the payments. The regulations don't require their TPAs to do anything. However, the accommodation is still available to them, so they will have met—because the statutory requirement is still applicable to those seven plaintiffs.

THE COURT: But if they made the choice to self-insure otherwise, then that would be covered and then the next steps would flow?

MR. PRUSKI: If I understand Your Honor's question, you're asking if they left the Archdiocese's plan and self-insured otherwise, then, yes, then the accommodation would still be available to them, but if they completed the self-certification requirement and provide it to their TPA, their TPA would then be required to make the payments by the regulations.

THE COURT: Why didn't this come up in your first pleading in response to their motion for preliminary injunction when you moved to dismiss and moved for summary judgment yourself, that this didn't come up until two or three pleadings down the road?

MR. PRUSKI: Your Honor, it did come up in our reply brief, which was our second brief, and it wasn't—this issue wasn't raised in their complaint or in their brief, and I didn't notice it, frankly, in writing the opening brief. But we raised it as soon as I became aware of it when reading their statement of facts and then referring back to their affidavits.

Because the Court had consolidated with the merits, we were primarily responding to the arguments they made in the brief in the preliminary injunction, but we raised the issue as soon as we became aware of it. And that's been true in all of the similar cases like this.

THE COURT: All right. Well, let me ask you some foundational questions, because I really think what it is that these regulations actually do, as opposed to how the parties characterized the regulations, is—has to be the foundation for my ruling.

The regulations divide the eligible employers into two categories: Those insured under a group health

insurance plan, in which case, under the regulations, the coverage has to be expressly excluded from the plan, and then it's the insurer who becomes obligated to provide the services without passing the costs along in any way.

That much is correct.

MR. PRUSKI: Right.

THE COURT: Okay. Then there are those who are self-insured, in which case, it's the third-party administrator that's obligated to arrange for separate payments for the contraceptive services without any cost to the eligible organization.

So the third-party administrator's duty is triggered by his own agreement to contract with the religious organization, having been advised of the religious organization's objection, right?

MR. PRUSKI: I wouldn't put it in terms of an agreement to contract with. They're already in a relationship with the self-insured employer.

They are not required, upon receiving the self-certification, to make the payments. They can walk away from the relationship entirely. But if they remain in the relationship, then, yes, upon receiving the self-certification form, the third-party administrator—I'll just called them the TPA going forward—the TPA is then—becomes a plan administrator solely for the purpose of providing the separate payments, and it is the TPA's responsibility entirely to make those payments for contraceptive coverage. And as Your Honor referenced, the TPA is not permitted to charge, and in fact is expressly prohibited from charging the employer any premium or costs associated with those payments.

THE COURT: But his duty to do that only arises by virtue of the fact that he has a contract with the religious organizations?

MR. PRUSKI: Yes. They become a plan administrator and are required to make these payments by virtue of the fact that they receive the self-certification form from the employer.

THE COURT: All right. So if the regulations permit the—I've got "third-party administrator" written in my notes all over the place,

* * *

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monetary penalties, yes. But I mean, I think all I would say, again, is that we're not raising that particular argument that the Court is articulating.

THE COURT: All right. Well, we've talked about this at the micro level, but I want to step back and just look at the big picture for a second.

If the whole purpose behind the mandate is to facilitate greater access to preventive services for all the many good reasons you enumerate, how do you respond to plaintiffs' argument, then, that this regulation forces them to facilitate access to contraception, and, thereby, it compels them to do something that their religion forbids? Have you really cut them out of the process completely with this accommodation?

MR. PRUSKI: Well, we understand the plaintiffs believe that participating in the accommodation requires facilitation of contraceptive coverage and that that's a violation of their religious beliefs. We

don't question that. We're not asking Your Honor to question that either.

But courts, nevertheless, have an obligation in determining whether there's a substantial burden to look at the way the law operates in practice from an objective perspective, and a case like *Kaemmerling* or

* * *

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effort that the government has made to substantially accommodate religious organizations.

We have not raised the argument that Your Honor is suggesting in our briefs. I don't think the Court is necessarily precluded from making that determination.

In our reply brief, the government did note that we were not advancing the compelling interest and restrictive means arguments that we had raised earlier in light of *Gilardi*, and we want to preserve those arguments, of course.

THE COURT: Well, I guess my question to you is: Everyone has said that with respect to the burden and whether it governs or not, *Gilardi* is limited to the facts that were before *Gilardi*.

Why isn't that true with respect to where we are now?

MR. PRUSKI: May I take one moment, Your Honor?

THE COURT: Yes.

(Discussion held off the record.)

MR. PRUSKI: So, Your Honor, I think we would have to concede that, as to compelling interests, that

the *Gilardi* opinion does reject the arguments that we've made in this case. And, again, we want to preserve them. We don't agree with the *Gilardi* decision, of course, but as things stand in the circuit right now, we think that our compelling interests arguments are foreclosed by *Gilardi*.

THE COURT: And it has to be compelling interests and narrowly tailored?

MR. PRUSKI: Yes. It's not an either/or, correct.

THE COURT: All right.

I think those are really the questions I had for you. If you have anything else that you want to say in response to their argument, briefly...

MR. PRUSKI: Thank you, Your Honor.

The one very brief point which Your Honor asked about whether motive is relevant to the neutrality and general applicability analysis, and Mr. Francisco cited the *Lukumi* case.

Actually, the *Lukumi* case suggests actually the opposite. Only two members of the Court signed on the section of opinion that goes into looking at motive, so I just wanted to make that clear to the Court.

If there are no further questions, thank you, Your Honor.

THE COURT: I don't think so. I'm going to

* * *



ARCHDIOCESE OF WASHINGTON

Archdiocesan Pastoral Center: 5001 Eastern Avenue, Hyattsville, MD 20782-3447
Mailing Address: Post Office Box 29260, Washington, DC 20017-0260
301-853-4500 TDD 301-853-5300

Submitted Electronically

April 4, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking on Preventive Services File Code No. CMS- 9968-P

Dear Sir or Madam:

The Archdiocese of Washington (the “Archdiocese”) respectfully submits the following comments on the Notice of Proposed Rulemaking (“NPRM”) on preventive services. 78 Fed. Reg. 8456 (Feb. 6, 2013). The Archdiocese is the local arm of the Roman Catholic Church in Washington, D.C., and five counties in Maryland: Montgomery, Prince George’s, Calvert, Charles, and St. Mary’s. The Archdiocese serves a religious community of Roman Catholics under the leadership of Cardinal Donald Wuerl and provides a wide range of spiritual, educational, and social services to residents in the greater Washington, D.C., community, Catholic and non-Catholic alike. The Archdiocese not only provides

pastoral care and spiritual guidance for nearly 600,000 Catholics, but also serves individuals throughout the D.C. area through its schools and multiple charitable programs.

The Archdiocese has long expressed its concern that the regulations at issue here (the “Mandate”), which require the provision of insurance coverage for abortion-inducing drugs, contraception, sterilization, and related education and counseling, force faithful Catholics to choose between facilitating services and speech that violate their religious beliefs or exposing their organizations to devastating penalties. Indeed, the Archdiocese itself has filed a lawsuit challenging the Mandate, *Roman Catholic Archbishop of Washington v. Sebelius*, No. 12-cv-0815, 2013 WL 285599 (D.D.C. Jan. 25, 2013), and has previously commented on prior iterations of that regulation, *see, e.g., Comments of Archdiocese of Washington* (Sept. 30, 2011), *available at* <http://www.dol.gov/ebsa/pdf/1210-AB44a-14694.pdf>.

Regrettably, the proposals contained in the NPRM fail to resolve the serious religious liberty issues presented by the Mandate. The NPRM does not expand the scope of the “religious employer” exemption in any meaningful way. The so-called “accommodation” for nonexempt religious organizations is an accounting maneuver that likewise effects no substantive change to existing law. And the NPRM actually removes an existing, important protection that allows a “religious employer” to include within its insurance plan affiliated religious organizations with which the employer “shares common religious bonds and

convictions.” Consequently, the proposals in the NPRM are, in fact, demonstrably worse than the regulations that they are intended to replace. Moreover, as a practical matter, the NPRM creates insurmountable administrative and logistical difficulties for organizations, such as the Archdiocese and its affiliates, that operate or participate in large self-insured plans that provide coverage for multiple affiliated employers.

Accordingly, the Archdiocese continues to strenuously oppose the Mandate, including the proposed changes set forth in the NPRM. Instead, the Archdiocese urges the Government to (1) adopt a definition of “religious employer” that recognizes that religious organizations do far more than operate “houses of worship”; and (2) abandon its proposal to rescind the ability of “religious employers” to include affiliated religious organizations in their insurance plans and thereby shield them from the Mandate.

I. THE NPRM INCREASES THE BURDEN THAT THE MANDATE IMPOSES ON RELIGIOUS LIBERTY

The NPRM does not offer any meaningful relief to religious organizations, like the Archdiocese’s affiliates, that are morally opposed to providing, paying for, and/or facilitating access to abortion-inducing drugs, contraception, sterilization, and related education and counseling. First, the NPRM fails to expand, in any meaningful way, the scope of the “religious employer” exemption. Second, the so-called “accommodation” likewise offers no relief of substance; it still requires religious organizations to provide, pay for, and/or facilitate access to

objectionable products and services. Third, the NPRM proposes to reverse existing law in a way that substantially *narrows* the number of religious entities who may seek shelter under the already impermissibly cramped definition of “religious employer,” and, therefore, is significantly *worse* than existing law. Each of these issues is explained in greater detail below.

A. The changes to the “religious employer” exemption provide little, if any, substantive relief to Catholic social service organizations.

The NPRM first proposes a revised definition of “religious employer” that would be used to determine which entities would be completely exempt from compliance with the Mandate. Currently, the religious employer definition exempts organizations that meet four criteria: “(1) The inculcation of religious values is the purpose of the organization”; “(2) The organization primarily employs persons who share the religious tenets of the organization”; “(3) The organization serves primarily persons who share the religious tenets of the organization”; and “(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.” 45 C.F.R. § 147.130(a)(iv)(B). The NPRM would eliminate the first three prongs of this definition. Consequently, under the NPRM, an exempt “religious employer” would be “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.” *See* 78 Fed. Reg. at 8461.

This proposed modification does not, nor is it intended to, accomplish any significant change to the scope of existing law. Indeed, the NPRM candidly admits as much, conceding that this change “would *not* expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules.” *See id.* (emphasis added). Instead, this proposal would continue to “restrict[] the exemption primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders.” *Id.* In this respect, the NPRM is little different from the existing “religious employer” exemption, which was intended to focus on “the unique relationship between a house of worship and its employees in ministerial positions.” 76 Fed. Reg. 46,621, 46,623 (Aug. 3, 2011). Religious organizations that have a broader mission are still not, in the Government’s view, “religious employers.”

Practically speaking, this cramped definition of religious employer would continue to exclude numerous organizations, such as Catholic hospitals, charitable organizations, universities, and elementary and secondary schools that are indisputably religious. While these revisions may ensure that the Archdiocese itself would be exempt from the Mandate, the NPRM offers no such guarantee to many of the distinct diocesan corporations the Archdiocese has established to carry out its ministries. Indeed, the decision to exempt the Archdiocese, but not all of its ministries, flows from a fundamentally misguided view of religious liberty. Freedom of religion means far more than the freedom to worship, and religious exercise is not confined

within the four walls of a parish church. As Pope Benedict explained, “[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word.” Pope Benedict XVI, *Deus Caritas Est* ¶ 22 (2006). Ignoring this reality, the NPRM persists in separating the Archdiocese from the ministries it has established to care for the “widows[,] orphans, prisoners, and the sick and needy of every kind,” awarding an exemption to the former, but not to the latter. The Catholic organizations that carry out the Church’s charitable mission, however, are no less “religious” than the Archdiocese itself.

Finally, it makes no sense for the NPRM to adopt Section 6033 as the dividing line between organizations that are, or are not, deemed sufficiently “religious” to warrant exemption from the Mandate. Section 6033 was never intended to distinguish among religious organizations for purposes of the provision of health care. Instead, it merely addresses whether and when nonprofit entities that are exempt from paying taxes under the Code must file an annual informational tax return, known as a Form 990. 26 C.F.R. § 1.6033-2(a). The choice of this provision is all the more puzzling since there are myriad provisions in federal law that, unlike Section 6033, are intended to protect religious freedom. *See, e.g.*, 42 U.S.C. § 300a-7 (protecting hospitals and individuals that receive federal funds in various health programs from participating in abortion and sterilization procedures if such participation is

“contrary to [their] religious beliefs or moral convictions”); 29 U.S.C. § 1002(33) (defining “church plans”). The decision to adopt Section 6033, rather than these other provisions, seems to be based solely upon a desire to define a “religious employer” as narrowly as possible and thereby force objecting religious organizations to abandon sincerely held religious beliefs with which the Government disagrees. This would be unconscionable in almost any context. It is particularly so where, as here, the regulations target religious organizations precisely because their religious mission includes charitable outreach that extends beyond the four walls of their “houses of worship.”

B. The proposed “accommodation” is an accounting maneuver that still requires religious organizations to provide, pay for, and/or facilitate access to contraception, abortion-inducing drugs, sterilization, and related education and counseling.

The NPRM also proposes an “accommodation” for nonexempt objecting religious nonprofit organizations that do not qualify as “religious employers.” Under that proposal—which largely parrots the prior and inadequate proposal contained in the Advance Notice of Proposed Rulemaking (“ANPRM”), 77 Fed. Reg. 16,501 (Mar. 21, 2012)—a nonexempt, nonprofit religious entity (deemed an “eligible organization”) that objects to providing the mandated coverage as part of its group health plan must self-certify its objection to contraceptive coverage. The self-certification then “automatically” requires a third-party entity—either the nonprofit’s

insurance company or its third-party administrator (“TPA”)—to provide or procure the objectionable coverage “at no additional cost.” *See* 78 Fed. Reg. at 8462–64. Coverage is automatic; female employees and employees with female dependents do not have the option to reject it.

This so-called “accommodation” is an accounting maneuver that, like the cosmetic changes to the “religious employer” definition, offers no meaningful relief to religious organizations opposed to the Mandate. Like existing law, the “accommodation” still requires Catholic organizations to provide, pay for, and/or facilitate access to the objectionable services. The following example illustrates this point:

- Under the Mandate as it now exists, a Catholic organization contracts with an insurance company, and the insurance company must provide the Catholic organization’s employees with an insurance policy that covers contraception, abortion-inducing drugs, sterilization, and related counseling.
- Under the NPRM, a Catholic organization contracts with an insurance company, and the insurance company must provide the Catholic organization’s employees with two different insurance policies, simultaneously: one that does not cover contraception, abortion-inducing drugs, sterilization, and related counseling, and one that does.

There is no material difference between these two scenarios. In both instances, the Catholic organization’s contract with the insurance company

automatically results in insurance coverage for the objectionable services. The fact that, as an accounting matter, the coverage comes in two policies rather than one does not solve the moral problem.

Thus, the Government's assurances that the objecting employer's premiums will not flow to the payment of contraceptives are irrelevant; either way, the Catholic organization's contract with the insurance company triggers the provision of objectionable insurance coverage. These assurances are, in any event, implausible in at least two respects.

First, according to the NPRM, the provision of contraceptive coverage will be "at least cost neutral" for insurance companies, because insurers will "experience lower costs from improvements in women's health and fewer childbirths." 78 Fed. Reg. at 8463. This, the NPRM claims, will allow insurance companies to offer contraceptive coverage at "no *additional* cost" to employers. *Id.* (emphasis added).¹ In other words, insurance companies will

¹ The source cited by the NPRM contains similar language. See John Bertko et al., *The Cost of Covering Contraceptives Through Health Insurance* (February 9, 2012) ("[A]vailable data indicate that providing contraceptive coverage as part of a health insurance benefit *does not add* to the cost of providing insurance coverage." (emphasis added)), *available* at <http://aspe.hhs.gov/health/reports/2012/contraceptive/s/ib.shtml>; *id.* (stating that in one instance, "there was no need to adjust premium levels because *there was no cost increase* as a result of providing coverage

not have to charge employers more to provide contraceptive coverage. Presumably, their premiums will remain the same. But this means that even granting the NPRM's assumptions about contraceptive coverage being cost neutral—which, as discussed immediately below, are themselves implausible—the “accommodation” is nothing more than a shell game. Premiums previously paid by the objecting employers to cover, for example, “childbirths,” will now be redirected to pay for contraceptive coverage.² Thus, not only would an objecting employer *trigger* the coverage of contraceptive services by providing a health plan, but the employer would also actually be *paying* for such services.

Second, industry experts have expressed deep “skeptical[ism]” that it will be “cost neutral for insured plans to bear the cost of contraceptive coverage.”³

of contraceptive services” (emphasis added)); *id.* (indicating that in another instance a “mandate did not appear to increase insurance costs” (emphasis added)).

² The NPRM also suggests that providing contraceptive coverage “may result in cost-savings.” 78 Fed. Reg. at 8463. But there is certainly no guarantee that will take place, nor does there appear to be any requirement that insurance companies lower premiums for religious objectors should such savings be realized.

³ *Insurers May Incur Significant Costs from Proposal on Contraceptive Benefit Opt-Out*, AIS's Health Reform Week, Feb. 11, 2013, at 1.

Creating “individual policies for contraceptive coverage would be a significant undertaking,” involving “administrative hassles such as setting up and getting state approval for new individual insurance products” and potentially “significant” costs in providing notice to eligible employees.⁴ In some cases, the creation of these “individual polic[ies] covering only one service” would conflict with state law.⁵ Simply put, “insurers aren’t going to give away such coverage for free,” and may well “raise the premium for the religious employer opting out of coverage” without including a “separate line item on the bill.”⁶ Consequently, the assumption that the addition of contraceptive coverage will be cost-neutral is implausible.

The proposal for self-insured entities, while more opaque, appears to be similarly troubling. It is, of course, difficult to comment meaningfully on this proposal, since the NPRM has not articulated any specific regulatory language; instead, it has merely describes several “alternative approaches” under “consider[ation].” 78 Fed. Reg. at 8463. “[U]nder all approaches,” however, employers would be required to self-certify their religious objection to their third party administrator, who would then “automatically arrange separate individual health insurance policies for contraceptive coverage from an [insurance company] providing such policies.” *Id.* All related costs would allegedly be offset by fee adjustments

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

from Federally Facilitated Exchanges. *Id.*⁷ It is doubtful that the administrative “offsets” would, in fact, fully compensate the TPAs, in which case it is likely that the costs would be passed back to the employer. In addition, it is again the employer’s provision of health insurance in the first place that triggers the TPA’s obligation to procure the objectionable coverage.⁸ Finally, the NPRM does not

⁷ “Under the first approach [described in the NPRM], a third party administrator receiving the copy of the self-certification would have *an economic incentive to voluntarily* arrange for the separate individual health insurance policies for contraceptive coverage for plan participants and beneficiaries because it would be compensated for a reasonable charge for automatically arranging for the contraceptive coverage through payment by the issuer of the contraceptive coverage.” 78 Fed. Reg. at 8463–64 (emphasis added). This language seems to suggest that a TPA would “voluntarily” arrange contraceptive coverage because it would have an “economic incentive” to do so. *Id.* This appears to be in tension with other portions of the NPRM that states that “under all approaches” a TPA would “automatically” arrange separate coverage. *Id.* at 8463. It is therefore unclear what, exactly, the Government’s “first approach” entails.

⁸ See Comments of the U.S. Conference of Catholic Bishops at 22 (Mar. 20, 2013), *available at* <http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf> (“The moral dilemma for the plan sponsor with a religious or moral objection

address how it would work if the TPA is, itself, a religious organization that objects to providing the mandated coverage.

In short, the NPRM's division between "religious employers," who are exempt from the Mandate, and other equally religious organizations, who are subject to the so-called "accommodation," is no solution at all to the Mandate's infringement on religious liberty. The Government's attempt to drive a wedge between these religious organizations, moreover, is all the more objectionable given the Government's stated purpose for doing so. According to the NPRM, the Government drew a distinction between "religious employers" and organizations that are eligible for the "accommodation" based on a belief that "the participants and beneficiaries [of eligible organizations' plans] . . . may be less likely than participants and beneficiaries in group health plans established or maintained by religious employers to share [the] religious objections of the eligible organizations." 78 Fed. Reg. at 8461–62. It cannot be, however, that an organization's religious freedom turns on the beliefs of its employees. It is, after all, the religious organization's beliefs that are protected by the Religious Freedom Restoration Act ("RFRA") and the First Amendment; the organization's employees have no corollary right to force the religious organization to subsidize the employees' contrary beliefs. Nor can it be that the Government

to such coverage lies in being forced to trigger the objectionable coverage even if the funds paying for the group plan are not also used to pay for the contraceptive coverage.").

is permitted to parcel out the protections of RFRA and the First Amendment based on its speculation about whether an organization's employees are more or less likely to be devout believers. Consequently, the so-called "accommodation" does not alleviate the burden that the Mandate imposes on religious freedom.

Finally, it is unclear whether the agencies even have the statutory authority to promulgate the accommodation. The statute states that "group health plan[s]" must provide coverage for "preventive care." 42 U.S.C. § 300gg-13(a)(4). It is, therefore, unclear whether, once "preventive care" is defined to include contraception, the so-called "accommodation" can require that contraception be provided separate and apart from the group plans in which plan participants are enrolled. In addition, it is unclear how the statute could be construed as authorizing the agencies to force group-plan insurers to provide contraception completely free of charge. The statute provides that preventive-care coverage must be provided without "cost sharing requirements," *id.*, but the accommodation goes much further, requiring contraception to be provided "without cost sharing, *premium, fee, or other charge* to plan participants and beneficiaries." 78 Fed. Reg. at 8462 (emphasis added). The authority for this sweeping prohibition on all premiums, fees, or other charges is not apparent.

C. The NPRM actually makes the problem worse by eliminating an important protection that Catholic organizations previously had under existing law.

Not only does the NPRM propose a “solution” that does not alleviate religious objectors’ core concerns, but in at least one significant respect, it would actually make their situation even worse than existing law. In the ANPRM, the Government acknowledged that the religious employer exemption was “available to religious employers in a variety of arrangements.” 77 Fed. Reg. at 16,502. It specifically stated that a nonexempt entity could thus “provide[] health coverage for its employees through” a plan offered by a separate, “affiliated” organization that is a “distinct common-law employer.” *Id.* And in that situation, if the “affiliated” organization was “exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees.” *Id.*

For example, the Archdiocese operates a self-insurance plan that covers not only the Archdiocese itself, but numerous other affiliated Catholic organizations—including Archbishop Carroll High School, Inc., the Consortium of Catholic Academies of the Archdiocese of Washington, Inc. (the “Consortium”), Catholic Charities of the Archdiocese of Washington, Inc. (“Catholic Charities”), and dozens of additional Catholic organizations. Under the existing religious employer exemption, if the Archdiocese is an exempt “religious employer,” then these other Catholic organizations get the benefit of that exemption, regardless of whether they independently qualify as “religious employers,” so long as they continue to participate in the Archdiocese’s exempt plan. These affiliated religious organizations, therefore, could benefit from the

Archdiocese's exemption even if they, themselves, could not meet the NPRM's unprecedentedly narrow definition of "religious employer."

The NPRM proposes to *eliminate* this protection. It provides that "each employer would have to independently meet the definition of eligible organization or religious employer in order to take advantage of the accommodation or the religious employer exemption with respect to its employees and their covered dependents." *See* 78 Fed. Reg. at 8467. Thus, if, as the NPRM suggests, the Archdiocese is an exempt "religious employer," Catholic Charities, Archbishop Carroll High School, and the Consortium of Catholic Academies would be unable to obtain the benefit of the exemption simply by participating in the archdiocesan plan. Instead, unless they independently qualify as "religious employers," under the NPRM, they would be forced to facilitate access to contraceptives, abortion-inducing drugs, sterilization, and related education and counseling, contrary to their sincerely held religious beliefs. In this respect, the NPRM is significantly *worse* than existing law. Moreover, as explained further below, this proposal drives a wedge between the various entities that comprise the Catholic Church and, in so doing, poses insurmountable administrative challenges for the Archdiocese's self-insured church health plan. *See infra* Part III.

D. Catholic private employers and business owners do not even get the benefit of the illusory "accommodation."

The NPRM also fails to address the concern that the Mandate includes no conscience protection at all

for individuals seeking to live in accordance with their faith. Private employers continue to be denied their right to make decisions that reflect their religious beliefs. Numerous courts have correctly recognized that this infringes on the religious freedom of these individuals. Indeed, many have awarded preliminary relief to private employers challenging the Mandate. *See, e.g., Gilardi v. U.S. Dep't of Health & Human Servs.*, No. 13-5069 (D.C. Cir. Mar. 29, 2013) (Dkt. # 24) (granting injunction pending appeal); *Annex Med., Inc. v. Sebelius*, No. 13-1118, 2013 U.S. App. LEXIS 2497 (8th Cir. Feb. 1, 2013) (same); *Grote v. Sebelius*, No. 13-1077, 2013 WL 362725 (7th Cir. Jan. 30, 2013) (same); *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. Dec. 28, 2012) (same); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357 (8th Cir. Nov. 28, 2012) (granting stay pending appeal); *Hall v. Sebelius*, No. 13-00295 (D. Minn. Apr. 2, 2013) (Dkt. # 12) (granting preliminary injunction); *Bick Holdings Inc. v. U.S. Dep't of Health & Human Servs.*, No. 4:13-cv-00462 (E.D. Mo. Apr. 1, 2013) (Dkt. # 21) (same); *Lindsay v. U.S. Dep't of Health & Human Servs.*, No. 13-1210 (N.D. Ill. Mar. 20, 2013) (same); *Monaghan v. Sebelius*, No. 12-15488, 2013 WL 1014026 (E.D. Mich. Mar. 14, 2013) (same); *Sioux Chief Mfg. Co. v. Sebelius*, No. 13-0036-CV-W-ODS (W.D. Mo. Feb. 28, 2013) (same); *Triune Health Group v. U.S. Dep't of Health & Human Servs.*, No. 12 C 6756 (N.D. Ill. Jan. 3, 2013) (same); *Sharpe Holdings v. U.S. Dep't of Health & Human Servs.*, No. 2:12-CV-92-DDN, 2012 WL 6738489 (E.D. Mo. Dec. 31, 2012) (granting temporary restraining order); *Am. Pulverizer Co. v. U.S. Dep't of Health &*

Human Servs., No. 12-3459-CV-S-RED, 2012 WL 6951316 (W.D. Mo. Dec. 20, 2012) (granting preliminary injunction); *Legatus v. Sebelius*, No. 12-12061, 2012 WL 5359630 (E.D. Mich. Oct. 31, 2012) (same); *Newland v. Sebelius*, 881 F. Supp. 2d 1287 (D. Colo. 2012) (same).

II. THE MANDATE, INCLUDING THE NPRM, CONSTITUTES AN UNCONSTITUTIONAL AND ILLEGAL INFRINGEMENT ON RELIGIOUS FREEDOM

As the proposals contained in the NPRM do not resolve the religious liberty issues presented by the Mandate, implementation of the NPRM is unlikely to resolve the lawsuits that Catholic and other organizations have filed across the country. As these lawsuits allege, the Mandate violates RFRA, the First Amendment, the Administrative Procedure Act (“APA”), and other federal statute.⁹ To date,

⁹ See, e.g., Compl., *Roman Catholic Archbishop of Washington v. Sebelius*, No. 12-cv-0815 (D.D.C. May 21, 2012) (Dkt. # 1), attached as Exhibit A. The arguments set out in the Complaint are incorporated herein by reference. The proposals in the NPRM are illegal for many of the same grounds asserted therein, including but not limited to the fact that these proposals: (1) violate the Free Exercise Clause, *id.* ¶¶ 194–232; (2) violate the Establishment Clause, *id.* ¶¶ 213–32; (3) violate RFRA, *id.* ¶¶ 177–93; (4) impermissibly interfere with internal church governance, *id.* ¶¶ 233–47; (5) violate the Speech Clause, *id.* ¶¶ 248–61; (4) violate the APA, *id.* ¶¶ 262–305; and (5) violate the Weldon Amendment,

numerous courts have held that the current form of the Mandate likely violates RFRA in challenges brought by for-profit companies. *See supra* p. 8 (citing cases). For the reasons discussed below, the same reasoning applies to the Mandate even if revised as proposed in the NPRM.

RFRA prohibits the Government from “substantially burden[ing] a person’s exercise of religion” unless the burden “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a)–(b). In order to determine whether a substantial burden exists, courts must (1) identify the religious exercise at issue, and (2) determine whether the government has placed “substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981). In identifying the relevant exercise of religion, a court must accept the “line” drawn by plaintiffs as to the nature and scope of their religious beliefs. *Id.* at 715. After plaintiffs’ beliefs have been identified, the court must then determine whether the challenged regulation substantially pressures plaintiffs to violate those beliefs.

Significantly, RFRA protects “*any* exercise of religion, whether or not compelled by, or central to, a

Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011), as well as the Affordable Care Act itself, 42 U.S.C. § 18118(c); *see also* Compl. ¶¶ 291–305.

system of religious belief.” 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A) (emphasis added). It is therefore irrelevant whether the religious objection is to the direct funding of contraceptive services under current law or to the funding and facilitation of those services as contemplated by the NPRM. The refusal to take either action is a protected exercise of religion for purposes of RFRA. *See supra* p. 8 (citing cases).

Thus, if the NPRM were implemented, there would be little, if any, change in the RFRA calculus. If an organization’s religious beliefs forbid it from compliance with the Mandate as modified by the NPRM, the question for a federal court would simply be whether the Mandate places substantial pressure on that organization to violate its religious beliefs. As numerous courts have found, putting organizations to the choice of breaching their faith or paying the substantial penalties imposed by the Mandate is the epitome of a substantial burden. Moreover, these courts have likewise concluded that this burden cannot be justified by a compelling interest, nor is the Mandate the least restrictive means to achieve the Government’s stated ends. *See supra* p. 8 (citing cases).

Therefore, unless the NPRM is changed significantly before implementation, it, like the current Mandate, would violate RFRA (as well as the First Amendment, the APA, and other federal statutes).

III. THE NPRM’S PROPOSALS FOR SELF-INSURED ENTITIES ARE UNWORKABLE

As discussed above, in at least one significant respect, the NPRM actually makes the problem worse

for entities, such as the Archdiocese and its affiliates, that operate or participate in large self-insured plans that provide coverage for multiple affiliated religious employers. *See supra* Part I.C. Previously, affiliated religious organizations that did not independently qualify as “religious employers” could nonetheless obtain the benefit of the exemption through their participation in a plan sponsored by an exempt “religious employer.” The NPRM, however, would rescind this protection, proposing instead that “each employer [participating in the group plan] would have to independently meet the definition of . . . religious employer in order to take advantage of . . . the religious employer exemption with respect to its employees and their covered dependents.” 78 Fed. Reg. at 8467. Thus, although the Catholic organizations currently participating in the Archdiocese’s self-insured health plan all share common religious bonds and convictions with the Archdiocese, the NPRM would require each of them to separately qualify for the “religious employer” exemption.

This requirement, however, is completely unworkable. Perhaps more importantly, it is based on a fundamentally flawed understanding of religious liberty that fails to acknowledge the varied means by which the Catholic Church carries out its mission. In practical effect, it would deny the benefits of the religious employer organization and self-insurance to indisputably religious entities and prevent the Archdiocese from ensuring that all of its affiliated religious corporations remain faithful to Catholic teaching.

A. The NPRM is administratively unworkable.

The NPRM's proposals are completely unworkable for self-insured entities like the Archdiocese. Indeed, in all likelihood, the Archdiocese's self-insured group health plan will not be able to exist and operate as it does today under the changes that would be required by the NPRM. Thus, contrary to President Obama's repeated assurances that "if you like your plan, you can keep it,"¹⁰ if the Mandate remains unchanged, many participants in the Archdiocese's self-insurance plan will *not* be able to retain their existing insurance plan.

The Archdiocese maintains a Catholic self-insured health plan for its own and for other Catholic organizations' eligible employees. The Archdiocese chooses to self-insure so that it can customize its plan to meet the healthcare needs of its employees consistent with the teachings of the Catholic faith. In addition, since it operates in two jurisdictions, self-insuring allows the Archdiocese to avoid the conflicting state health insurance regulations and mandates of D.C. and Maryland. The Archdiocese sponsors the group health plan, effectively making the Archdiocese the insurer for its employees and

¹⁰ Press Release, U.S. Dep't of Health & Human Servs., U.S. Departments of Health and Human Services, Labor, and Treasury Issue Regulation on "Grandfathered" Health Plans Under the Affordable Care Act (June 14, 2010), *available at* <http://www.hhs.gov/news/press/2010pres/06/20100614e.html>.

those of its affiliated organizations. The Archdiocese is solely liable for payment of all benefits provided to its participants under the plan. For practical purposes of administering the plan and handling claims, the Archdiocese contracts with National Capital Administrative Services, LLC (“NCAS”). NCAS is a third party administrator that administers participating employees’ claims and provides access to the CareFirst BlueCross BlueShield provider network of doctors.

Among the associated Church entities that participate in the Archdiocese’s health plan are archdiocesan parishes and schools, as well as Catholic organizations that are associated with the Archdiocese. Included among these entities are separately incorporated educational, health care, and social service ministries of the Archdiocese.

All of the entities in the Archdiocese’s health plan share common Catholic religious bonds and convictions that are central to their operating principles. Their Catholic identity and communion with the Church are established in their governing documents and in their listing in the Official Catholic Directory. Recognizing the ecclesial authority of the Church, archdiocesan affiliated corporations reserve certain powers in their corporate members, which in all cases include the Archbishop, the Moderator of the Curia (a canonical position reserved for clergy), and the Chancellor (a canonical position that may be filled by either clergy or a layperson). Those reserved powers include the oversight and authentication of the corporation’s mission, the adoption or amendment of a mission statement, and the amendment of articles of incorporation and bylaws.

In addition, all of these affiliates are bound by the Archdiocese's *Policies for Archdiocesan Corporations*, which provide:

Every Catholic and each agency, entity, or program that claims to carry on the work of the Church must maintain communion with the Church through communion with the bishops The touchstone for the unity of the local Church is the bishop In [some] cases, the bishop's responsibility for oversight is carried out through the several separately incorporated affiliated agencies [that] participate in the Church's mission through education and the corporal works of mercy.

Policies for Archdiocesan Corporations at 1. Consequently, each of these affiliated archdiocesan corporations participates in, and is integral to, the Archdiocese's overall religious mission.

Nevertheless, under the NPRM, each of these religious entities that are separately incorporated would have to independently assess at the beginning of each plan year whether they qualify for the "religious employer" exemption. The NPRM, moreover, suggests that if they do not independently qualify as a "religious employer," they would be unable to participate in the archdiocesan health plan, since that plan will not offer coverage for abortion-inducing drugs, contraception, sterilization, and related education and counseling. In that case, these indisputably religious organizations would be forced to find replacement group health insurance. But without the benefit of pooled financial resources, many of these religious entities would likely be

unable to secure the benefits of self-insurance. Instead, they would have to turn to commercial plans, and would then be exposed not only to the demands of the Mandate that conflict with their religious beliefs, but also to state insurance regulations and mandates from which self-insured plans are currently exempt.

Without the option of a self-insured plan, Catholic organizations with less than fifty employees in the District of Columbia would be required to purchase insurance through the D.C. Exchange.¹¹ This, in turn, would subject them to the numerous mandates imposed under D.C. law.¹² In addition, it has been reported that this will restrict the ability of these employers to select plans tailored to their needs and may increase costs and premiums to a degree that employers may be forced to choose between dropping their health plans altogether or paying the exorbitant costs of providing coverage.¹³ Consequently,

¹¹ See Ben Fischer, *D.C. Health Insurance Board Moves to Phase in Exchange Mandate*, Wash. Bus. J., Mar. 13, 2013, available at <http://www.bizjournals.com/washington/blog/2013/03/dc-health-insurance-board-moves-to-delay.html?page=all>.

¹² Victoria Craig Bunce & J.P. Wieske, *Health Insurance Mandates in the States 3* (2010) (citing twenty-seven health mandates under D.C. law and sixty-seven health mandates under Maryland law).

¹³ See Dennis Bass, *The Bad News for Small Business in D.C.'s Obamacare Plan*, Wash. Post, Oct. 12, 2012, available at

employees of these organizations would not only be losing their affordable coverage under the Archdiocese's plan, but they would also face the possibility of losing coverage altogether and being forced to procure individual insurance policies on the D.C., or in some cases, Maryland Exchanges. (This is also why, unless the Mandate is changed, affiliated religious organizations will need a substantial period of time to procure new insurance policies.)

Even if the final rule were to ultimately permit nonexempt religious organizations to participate in an exempt employers' plan, the logistical hurdles to such participation still appear insurmountable. These nonexempt entities would have to ensure that their employees receive access to contraceptive

http://articles.washingtonpost.com/2012-10-12/opinions/35499292_1_small-employers-higher-costs-aca; Philip Klein, A Talk with D.C.'s Health Exchange Board, Wash. Examiner, Nov. 18, 2012, available at <http://washingtonexaminer.com/a-talk-with-d.c.s-health-exchange-board/article/2513796>; Mercer Consulting, District of Columbia Health Insurance Exchange Marketplace Report (2011), available at <http://www.naifanet.com/100000/Mercer%20Report%20D13%20and%20D16%20Market%20Report%20and%20Summary%20Plan.pdf?CFID=1910208&CFTOKEN=68781248>; Letter to Dr. Mohammad Akhter, Chair, D.C. Health Benefit Exchange Authority Executive Board (Sept. 13, 2012), available at <http://www.naifanet.com/100000/Small%20Employer%20Letter%20FINAL%20with%20addendum%2010-3-2012.pdf?CFID=1910208&CFTOKEN=68781248>.

services through the NPRM's proposed "accommodation." But it is unclear how such services could be provided if the nonexempt entity was part of the archdiocesan plan. These nonexempt organizations have no contractual relationship with the plan's TPA, whose contract is with the Archdiocese. And the TPA's contract with the Archdiocese does not, and would not, authorize the TPA to procure insurance for the objectionable services. Certainly, the Archdiocese, as an exempt "religious employer," would not and could not be forced to participate in the process of providing objectionable insurance coverage to the employees of the Archdiocese's religiously affiliated corporations.

Thus, regardless of whether nonexempt entities could remain on the archdiocesan health plan, it is evident that under the NPRM, the Archdiocese's health plan could not be maintained in a manner consistent with its prior practices and religious beliefs.

B. The NPRM reflects a flawed and arbitrary understanding of religious liberty.

The proposal contained in the NPRM also draws arbitrary distinctions between identically situated employees based solely on the corporate structure of their respective employers. As noted above, the NPRM purports to draw these distinctions based on a belief that employees of a nonexempt entity "may be less likely than participants and beneficiaries in group health plans established or maintained by religious employers" to share their employers' religious beliefs. 78 Fed. Reg. at 8461–62. This assertion is baseless. Compare, for instance, a

religion teacher at St. Augustine's School, an archdiocesan Catholic school that is not separately incorporated, to a religion teacher at St. Francis Xavier Academy, an archdiocesan Catholic school that is part of the Consortium of Catholic Academies, a separate civil corporation. These two Catholic school teachers each teach the same religion curriculum and are equally devoted to the task of teaching the Catholic faith through word and example. The corporate structure of the two archdiocesan Catholic schools that employ these teachers is not a reliable proxy for answering the question of "how Catholic" their jobs' duties are or "how devout" they as individuals are likely to be.

The Archdiocese has created separately incorporated organizations to carry out certain aspects of its ministry, not because those particular ministries are any less central to the Catholic faith, but rather for many of the same practical and legal reasons that ordinary civil corporations assume multi-tiered structures. The Consortium of Catholic Academies, for instance, was separately incorporated in part so that it could more thoroughly and effectively devote itself to the challenges of educating the often underserved children of inner city Washington. Surely it is not the Government's contention that employees of schools that serve disadvantaged youth are less likely to be faithful Catholics than teachers at schools in more affluent communities. That, however, is the precise implication of the arbitrary rule the NPRM seeks to establish.

Moreover, the Archdiocese has a special responsibility to ensure that these entities, whatever

the corporate structure, remain faithful to the teachings of the Catholic Church. As noted above, the Archbishop, the Moderator of the Curia, and the Chancellor are the corporate members of each of these affiliated entities. In order to ensure each affiliate's Catholic identity and communion with the Church, the affiliated entities reserve certain powers in their corporate members, including oversight and authentication of the corporation's mission, the adoption or amendment of a mission statement, and the amendment of articles of incorporation and bylaws. In addition, all of these entities remain subject to canon law requirements regarding their Catholic identity, mission and fidelity to Catholic doctrine, as well as the Archdiocese's *Policies for Archdiocesan Corporations*. In short, each separately incorporated affiliate's communion with the archbishop originates in the prescriptions of canon law and is reflected in their civil organizational documents.

The Mandate as revised by the NPRM would destroy this communion and would prevent the Archdiocese from ensuring that each of its affiliated entities acts in accordance with Catholic teachings. It would create division where canon law commands unity, and would undermine the Archdiocese's duty before God to protect the integrity of the Catholic faith as believed and practiced within the local Church, most especially in its affiliated religious corporations. The Government has provided no plausible basis for so deeply (and unconstitutionally) intruding into the religious structure and beliefs of the Archdiocese and other similarly-situated Catholic entities.

IV. PROPOSED ALTERNATIVES TO THE NPRM

For the reasons explained above, the Mandate, including the proposals in the NPRM, would deeply intrude into the religious freedom and religious autonomy of the Archdiocese, its affiliated religious entities, and other similar organizations. Set forth below are two proposals that, if adopted, would mitigate these infringements on religious liberty.

First, the portion of the NPRM that requires each employer participating in a group health plan to independently qualify for the religious employer exemption should be rescinded. Instead, the Archdiocese's affiliated religious corporations should continue to be free to participate in the Archdiocese's insurance plan in the same way that they did prior to the NPRM. There is simply no reason to deny affiliated Catholic organizations the benefits conferred on entities like the Archdiocese merely due to the fact that they are independently incorporated. As discussed above, such a distinction rests on a flawed view of religious liberty and would significantly impair the Church's ability to carry out its mission.

Second, and perhaps even more importantly, the scope of the "religious employer" exemption must be expanded. The following are several alternatives to that end—not all perfect, but all far better than the proposal contained in the NPRM.

1. *Conscience Clause:* Federal law is replete with conscience clauses that prevent individuals and entities from being forced to violate their religious

beliefs. For example, the “Church Amendment,” 42 U.S.C. § 300a-7, protects hospitals and individuals that receive federal funds in various health programs from participating in abortion and sterilization procedures if such participation is “contrary to [their] religious beliefs or moral convictions.” *Id.* Indeed, even the Federal Employees Health Benefit Program, while mandating contraception coverage, nevertheless provides a conscience clause that exempts objecting plans and carriers. *See, e.g.,* Consolidated Appropriations Act, Pub. L. No. 112-74, div. C, tit. VII, § 727, 125 Stat. 786, 936 (2011); *see also* Consolidated Appropriations Act, Pub. L. No. 108-199, div. C, tit. IV, § 424, 118 Stat 3 (2004) (“[I]t is the intent of Congress that any legislation enacted on such issue [of contraceptive coverage by health insurance plans within the District of Columbia] should include a ‘conscience clause’ which provides exceptions for religious beliefs and moral convictions.”).

Accordingly, the Government should adopt the following conscience clause, modeled after the Church Amendment: “Nothing in these regulations shall require the coverage of contraceptive services if the employer objects to such coverage on the basis of religious

beliefs.” As the U.S. Conference of Catholic Bishops has noted, this is the only alternative that will completely alleviate the religious liberty concerns raised by the Mandate.¹⁴

2. *State Law Analogue:* Several states define “religious employer” more broadly than the Mandate. For example, West Virginia defines a “religious employer” as “an entity whose sincerely held religious beliefs or sincerely held moral convictions are central to the employer’s operating principles, and the entity is an organization listed under 26 U.S.C. 501(c)(3), 26 U.S.C. 3121, or listed in the Official Catholic Directory published by P. J. Kennedy and Sons.” W. Va. Code § 33-16E-2. Arizona defines a “religious employer” as “[a]n entity whose articles of incorporation clearly state that it is a religiously motivated organization and whose religious beliefs are central to the organization’s operating principles.” Ariz. Rev. Stat. § 20-1057.08(G)(2).

A definition modeled along these lines would be a substantial improvement over that contained in the NPRM.

For example, the following proposed definition draws on federal conscience

¹⁴ Comments of the U.S. Conference of Catholic Bishops, *supra* note 8, at 11.

clause language and the language found in the Arizona and West Virginia statutes:

Section 1. “Religious Employer” is an entity that is exempt from tax under section 501 of title 26 and whose articles of incorporation clearly state that the entity’s sincerely held religious beliefs or sincerely held moral convictions are part of the employer’s operating principles.

Section 2. Nothing in these regulations shall require the coverage of contraceptive methods, sterilization procedures, and related patient education and counseling if a “Religious Employer” objects to such coverage on the basis of religious beliefs.

3. *ERISA “Church Plans”*: Finally, “religious employers” could be defined to include employers that maintain health insurance plans that would qualify as “church plans” under ERISA. A “church plan” is a pension or welfare plan established and maintained “for its employees (or their beneficiaries) by a church or by a convention or association of churches.” 29 U.S.C. § 1002(33)(A). Significantly, “church plans” also include those maintained by organizations that are “controlled by or

associated with” churches. *Id.* § 1002(33)(C).

Some federal courts, however, have adopted unduly narrow constructions of ERISA’s “church plan” provisions, making this a less than optimal solution. *See Chronister v. Baptist Health*, 442 F.3d 648, 653 (8th Cir. 2006); *Lown v. Cont’l Cas. Co.*, 238 F.3d 543, 548 (4th Cir. 2001). Accordingly, if the Government adopts this proposal, a statement should be included in the preamble to any final rule indicating that the Government intends for this definition to apply to all religious organizations that are affiliated with a church, notwithstanding the narrow standards applied by the Eighth and Fourth Circuits, cited above. While this option is less preferable than the preceding alternatives, it too, would be a substantial improvement over the NPRM.

V. CONCLUSION

Ultimately, the NPRM does not address the problems created by the Mandate; indeed, it makes them worse. The result is a proposal that, if implemented, would continue to violate the rights of religious organizations under the First Amendment, RFRA, and numerous other federal statutes. Accordingly, the Archdiocese strongly urges the Government to reconsider its course and, instead, adopt the proposals outlined above.

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Sincerely,

/s/ Jane G. Belford

Jane G. Belford

Chancellor

**CLINICAL PREVENTIVE
SERVICES FOR WOMEN**

CLOSING THE GAPS

**COMMITTEE ON PREVENTIVE SERVICES FOR
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Clinical Preventive Services for Women: Closing the
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Summary

BACKGROUND

The Patient Protection and Affordable Care Act of 2010 (ACA) holds much promise—beyond the expansion of health care coverage—for millions of Americans. The preventive health care services and screenings specified in the legislation will be fully

covered without requiring a patient copayment. These include the services with Grade A and B recommendations made by the United States Preventive Services Task Force (USPSTF), the Bright Futures recommendations for adolescents from the American Academy of Pediatrics (AAP) in cooperation with the U.S. Department of Health and Human Services (HHS), and vaccinations specified by the Centers for Disease Control and Prevention's (CDC's) Advisory Committee on Immunization Practices (ACIP). These three sets of guidelines provide a list of preventive services, such as blood pressure measurement, diabetes and cholesterol tests, and mammography and colonoscopy screenings. As part of the ACA, the list of preventive services specific to women's health was requested to be reviewed.

CHARGE TO THE COMMITTEE

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of HHS provided funds for the Institute of Medicine (IOM) to conduct a review of effective preventive services to ensure women's health and well-being. The charge to the committee for the project is presented in Box S-1.

BOX S-1

Statement of Task to the Committee on Preventive Services for Women

The Institute of Medicine will convene an expert committee to review what preventive services are necessary for women's health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women. The committee will also provide guidance on

a process for regularly updating the preventive screenings and services to be considered. In conducting its work, the committee will: conduct a series of meetings to examine existing prevention guidelines, obtain input from stakeholders, identify gaps that may exist in recommended preventive services for USPSTF Grade A and B preventive services guidelines for women and in Bright Futures and USPSTF Grade A and B guidelines for adolescents, and highlight specific services and screenings that could supplement currently recommended preventive services for women. Specifically, the committee will consider the following questions:

- What is the scope of preventive services for women not included in those graded A and B by the USPSTF?
- What additional screenings and preventive services have been shown to be effective for women? Consideration may be given to those services shown to be effective but not well utilized among women disproportionately affected by preventable chronic illnesses.
- What services and screenings are needed to fill gaps in recommended preventive services for women?
- What models could HHS and its agencies use to coordinate regular updates of the comprehensive guidelines for preventive services and screenings for women and adolescent girls?

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) on behalf of the U.S. Department of Health and Human Services (HHS)

has been charged to examine recommendations for women's preventive services. ASPE will use the information and recommendations from the committee's report to guide policy and program development related to provisions in the Affordable Care Act addressing preventive services for women.

In response, the IOM convened a committee of 16 members—including specialists in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines—to develop a set of recommendations for consideration by the ASPE of HHS.

The committee sought clarification from ASPE on a number of issues regarding its charge. In summary:

- **Preventive services were specified to be applicable to females aged 10 to 65 years;**
- **The mammography screenings specified in the ACA legislation used USPSTF guidelines from 2002, which specify that such screenings be performed every one to two years for women aged 40 years and older;**
- **The cost-effectiveness of screenings or services could not be a factor for the committee to consider in its analyses leading to its recommendations;**
- **The committee was not intended to duplicate the processes used by the USPSTF and thus should look to other bodies of evidence beyond systematic evidence-based reviews; and**

- Preventive services were specified for clinical settings, and thus community-based prevention activities were considered beyond the scope of committee consideration.

COMMITTEE'S APPROACH TO ITS CHARGE

The committee met five times within six months. The committee held three open information-gathering sessions at which the members heard from a diverse group of stakeholders, researchers, members of advocacy organizations, and the public. Box S-2 provides the committee definition of preventive health services.

BOX S-2

Definition of Preventive Health Services

For the purposes of this study, the Committee on Preventive Services for Women defines preventive health services to be measures—including medications, procedures, devices, tests, education and counseling—shown to improve wellbeing, and/or decrease the likelihood or delay the onset of a targeted disease or condition.

COMMITTEE'S METHODOLOGY

The committee's methodology to identify preventive services necessary for women's health and well-being and to identify specific services that could supplement the current list of recommended preventive services for women under the ACA follows.

The committee's first step was to review and reach an understanding of existing guidelines. The second step was to assemble and assess additional evidence,

including reviews of the literature, federal health priority goals and objectives, federal reimbursement policies, and the clinical guidelines of health care professional organizations. The committee also considered the public comments that it received. Finally, the committee formulated a list of recommendations to be considered by the Secretary of HHS in developing a comprehensive package of preventive services for women to be included under the ACA.

USPSTF Recommendations

The USPSTF process for developing recommendations is a disease-focused one. The intent of its recommendations has been to provide guidance to primary care providers. The IOM committee's approach to identifying gaps in existing services accounts for contextual issues beyond traditional research evidence used by the USPSTF. The committee looked at women's preventive service needs more broadly to account for women's health and well-being. The committee found that its interpretation of the Grade A and B recommendations was important in those cases in which ambiguity was found regarding periodicity of screenings. Furthermore, the committee compared USPSTF guidelines with those of numerous health care professional organizations to identify potential gaps.

The committee recognized that USPSTF Grade C recommendations and I statements warranted further analysis because the USPSTF did not develop and has not used these grades as support to offer or deny coverage of a preventive service. The USPSTF

Grade C recommendations are made when the balance of potential benefits and harms does not strongly favor the clinician recommending the preventive service to all patients, although it may be appropriate in some cases.

The USPSTF I statements identify services for which the evidence is insufficient to suggest the effectiveness of a service because evidence is lacking, of lower quality, or conflicting. The committee notes that from a coverage perspective, the evidence supporting many clinical interventions in common use, whether in prevention or in general medical practice, is insufficient or unclear, and coverage decisions may be or have been made on the basis of other factors.

For example, although physician knowledge of the evidence of the benefits associated with a counseling service will inform a physician's decision for each patient, in many instances, it is difficult for researchers to show or conclude that outcomes are positive. Many preventive interventions that are intended to be conducted early in the life span (e.g., skin cancer prevention) require decades to demonstrate effectiveness.

Thus, each of the USPSTF Grade C and I statement recommendations and the evidence supporting them were collected and reviewed. The committee's evaluation included reviewing relevant supporting USPSTF

* * *

TABLE S-1 Continued

Preventive Service	USPSTF Grade	Supporting Evidence	Recommendations
Counseling and screening for human immune-deficiency virus (HIV)	C	The evidence provided to support a recommendation for expanding screening for HIV is based on federal goals from the Centers for Disease Control and Prevention, as well as clinical professional guidelines, such as those from the American College of Physicians, the Infectious Diseases Society of America, the American Medical Association, and the American College of Obstetricians and Gynecologists.	Recommendation 5.4 The committee recommends for consideration as a preventive service for women: counseling and screening for human immunodeficiency virus infection on an annual basis for sexually active women.
Contra-ceptive methods and counseling	Not Addressed	The evidence provided to support a recommend-	Recommendation 5.5 The committee recommends for

Preventive Service	USPSTF Grade	Supporting Evidence	Recommendations
		<p>ation related to unintended pregnancy is based on systematic evidence reviews and other peer-reviewed studies, which indicate that contraception and contraceptive counseling are effective at reducing unintended pregnancies. Current federal reimbursement policies provide coverage for contraception and contraceptive counseling, and most private insurers also cover contraception in their health plans. Numerous health professional associations recommend family planning</p>	<p>consideration as a preventive service for women: the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.</p>

Preventive Service	USPSTF Grade	Supporting Evidence	Recommendations
		services as part of preventive care for women. Furthermore, a reduction in unintended pregnancies has been identified as a specific goal in <i>Healthy People 2010</i> and <i>Healthy People 2020</i> .	

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1.

INTRODUCTION

The passage of the Patient Protection and Affordable Care Act of 2010 (ACA) provides the United States with an opportunity to offer an unprecedented level of population health care coverage and dramatically reduce existing health disparities. The expansion of coverage to millions of uninsured Americans and the new standards for coverage of preventive services that are included in the ACA have the potential to increase the use of preventive health care services and screenings and in turn improve the health and well-being of individuals across the United States.

SPECIFICS OF THE LEGISLATION

The approaches to prevention and wellness offered within the Act are broad based and range from new coverage requirements and incentives to expand workplace wellness activities to new investments. Among these are prohibition of the imposition of cost-sharing requirements for recommended preventive services (an overview of the Act is provided in Box 1-1, and the preventive services are listed and described in detail in Chapter 2), the requirement to link health insurance premiums to participation in health promotion programs, public health workforce development (the ACA authorizes new training and placement programs for public health workers), and community-based prevention activities.

This report focuses on the preventive services for women specified in Section 2713 of the Public Health Service Act. These services were added by the ACA and are detailed in the last bulleted item in Box 1-1 (HHS, 2010; *Federal Register*, 2010).

BOX 1-1

Overview of Regulations in Section 2713 of the Public Health Service Act

Section 2713 of the Public Health Service Act, Coverage of Preventive Health Services, which was added by the Affordable Care Act, and the interim final regulations (26 CFR 54.9815-2713T, 29 CFR 2590.715-2713, 45 CFR 147.130) require that group health plans and health insurance issuers offering health insurance coverage for groups or individuals provide benefits and prohibit the imposition of cost-sharing requirements for

- Medical devices or services that are evidence based and that have, in effect, a rating of Grade A or B in the current recommendations of the United States Preventive Services Task Force (USPSTF) for the individual involved.
- Immunizations for routine use in children, adolescents, and adults that have, in effect, a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC) for the individual involved. A recommended ACIP immunization is considered to be “in effect” after it has been adopted by the CDC director. A recommended immunization is considered to be for routine use if it appears on the immunization schedules of the Centers for Disease Control and Prevention.
- Preventive health care and screenings for infants, children, and adolescents informed by scientific evidence and provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- Preventive health care and screenings for women informed by scientific evidence and provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the USPSTF). The U.S. Department of Health and Human Services is developing these guidelines and expects to issue them no later than August 1, 2011.

The complete list of recommendations and guidelines

that these interim final regulations are required to
 cover can be found at
[http://www.HealthCare.gov/center/regulations/
 prevention.html](http://www.HealthCare.gov/center/regulations/prevention.html).

ROLE OF PREVENTION IN ADDRESSING HEALTH AND WELL-BEING

Prevention is a well-recognized, effective tool in improving health and well-being and has been shown to be cost-effective in addressing many conditions early (Maciosek et al., 2010). Prevention goes beyond the use of disease prevention measures. For example, interventions to prevent injuries and binge drinking can increase positive health outcomes and reduce harm.

Historically, the many disparate components of the U.S. health care system have relied more on responding to acute problems and the urgent needs of patients than on prevention. Although these functions are appropriate for acute and episodic health problems, a notable disparity occurs when this model of care is applied to the prevention and management of chronic conditions. The provision of preventive health care services is thus inherently different from the treatment of acute problems, but the U.S. health care system has fallen short in the provision of such services. Compared with a system that prevents avoidable conditions early, a system that responds to the acute health care needs of patients can be inefficient and costly, and a focus on response instead of prevention is a major barrier to the achievement of optimal health and well-being by Americans.

Nearly half of all deaths in the United States are caused by modifiable health behaviors (McGinnis and Foege, 1993). Maciosek and colleagues found that an increase in the use of clinical preventive services in the United States could result in the saving of more than 2 million life-years annually (Maciosek et al., 2010). Because of the numbers of diseases and conditions that are preventable, inclusion of support for prevention has become more routine during clinical health care visits (Sussman et al., 2006). When patients are systematically provided with the tools and information that they need to reduce their health risks, the likelihood that they will take steps to, for example, reduce substance use, stop using tobacco products, practice safe sex, eat healthful foods, and engage in physical activity increases (WHO, 2002). Therefore, physicians who routinely educate patients on risk-reducing behaviors may reduce the long-term burden and health care demands of chronic conditions. Stimulating the commitment and action of patients, families, and health care teams is also necessary to promote prevention and improve overall population well-being.

Evidence-based testing, diagnosis, and relief of symptoms are also hallmarks of contemporary health care, but these services are often underutilized. A well-cited reason for this underutilization is, for example, the high cost of prescription copayments, with the result being that patients do not fill their prescribed medications, resulting in the loss of lives and dollars (Shrank et al., 2010). Moreover, a recent study by The Commonwealth Fund that analyzed the responses of U.S. adults to a questionnaire indicated

that U.S. adults were significantly less likely than adults in all other countries studied to have confidence in their ability to afford health care (Schoen et al., 2009).

About 51 million Americans lacked health insurance in 2009 (DeNavas-Walt et al., 2010). This is in addition to the millions of under-insured Americans who lack access to the appropriate screenings and services needed to detect and address preventable health conditions and diseases. Furthermore, health care workers have often failed to seize patient interactions as opportunities to promote health and well-being and to inform patients about disease prevention strategies (WHO, 2002). This failure to inform patients has been found to be due to time constraints in the clinical setting, a lack of reimbursement for provision of these services, and a lack of consensus and provider knowledge about what services to prioritize for their patients. The ACA intends to mitigate these issues.

WHY WOMEN?

The ACA has the potential to transform the way in which the U.S. health care system addresses women's health issues in many ways. It expands access to coverage to millions of uninsured women, ends discriminatory practices such as gender rating in the insurance market, eliminates exclusions for preexisting conditions, and improves women's access to affordable, necessary care. The Women's Health Amendment (*Federal Register*, 2010), which was introduced by Senator Barbara Mikulski and which was added to the ACA, expands on these improvements by requiring that all private health

plans cover—with no cost-sharing requirements—a newly identified set of preventive health care services for women. Defining appropriate preventive services for women and ensuring that those services can be accessed without cost sharing are important strategies to improve women’s health and well-being (Bernstein et al., 2010; Blustein, 1995).

Many reasons exist for expanding the list of preventive care and screening services for women beyond those included in the guidelines of the United States Preventive Services Task Force (USPSTF) Grade A and B guidelines, the Advisory Committee on Immunization Practices (ACIP), and Bright Futures (for adolescents) stipulated in the ACA (USPSTF, ACIP, and Bright Futures and their guidelines are described in detail in Chapter 2). Even though women have longer life expectancies than men, women suffer from chronic disease and disability at rates disproportionate to those of men, with consequences for their own health and the health of their families (Wood et al., 2010). Furthermore, mounting evidence suggests that women not only have different health care needs than men (because of reproductive differences) but also manifest different symptoms and responses to treatment modalities (IOM, 2010). Behavioral factors that are shown to contribute to morbidity and mortality in women, include smoking, eating habits, physical activity, sexual risk-taking, and alcohol use (IOM, 2010). Pregnancy and childbirth also carry risks to women’s health including maternal mortality (CDC, 2008). Figure 1-1 illustrates preventable mortality in women.

Health outcomes occur because of multiple factors including biology, behavior, and the social, cultural, and environmental contexts in which women live. Smoking, eating habits, physical activity, and other health-related behaviors are shaped by cultural and social contexts, including factors associated with social disadvantage. The marked differences in

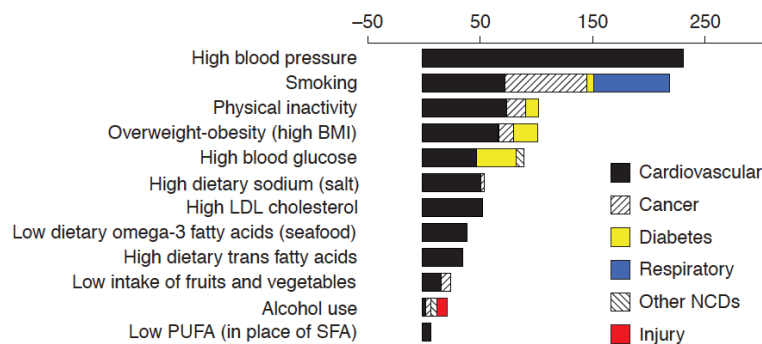


FIGURE 1-1 Deaths in women attributable to total effects of individual risk factors (in thousands), by disease.

ABBREVIATIONS: BMI, body-mass index; LDL, low-density lipoproteins; NCD, non-communicable disease; PUFA, polyunsaturated fatty acid; SFA, saturated fatty acid.

SOURCE: Danaei et al. (2009).

condition prevalence and mortality in women who experience social disadvantage are associated with minority race/ethnicity, lower education, low income, and differential exposure to stressors such as domestic violence. Such exposures are related to outcomes as varied as injury and trauma, depression,

asthma, heart disease, human immunodeficiency virus (HIV) infection, and other sexually transmitted infections (Campbell et al., 2002; Coker et al., 2000; Ozer and Weinstein, 2004; Tjaden and Thoennes, 1998).

On average, women need to use more preventive care than men (Asch et al., 2006; HHS, 2001), owing to reproductive and gender-specific conditions, causing significant out-of-pocket expenditures for women (Bertakis et al., 2000; Kjerulff et al., 2007). This creates a particular challenge to women, who typically earn less than men and who disproportionately have low incomes. Indeed, women are consistently more likely than men to report a wide range of cost-related barriers to receiving or delaying medical tests and treatments and to filling prescriptions for themselves and their families (KFF, 2010). For example, women have been shown to be more likely than men to forgo preventive services such as cancer screenings and dental examinations because of cost (Rustgi et al., 2009). Studies have also shown that even moderate copayments for preventive services such as mammograms and Pap smears deter patients from receiving those services (Solanki et al., 2000; Trivedi et al., 2010). A 2010 Commonwealth Fund survey found that 44 percent of adult women (compared with 35 percent of adult men) either reported that they had a problem paying medical bills or indicated that they were paying off medical debt over time, an increase from 38 percent in 2005 (Robertson and Collins, 2011). The same survey indicated that less than half of women are up to date with recommended preventive care screenings and services (Robertson and Collins, 2011).

Most women and men in the United States are covered by insurance obtained through the workplace. However, women with employer-based insurance are almost twice as likely as men to be covered as dependents, increasing their vulnerability to losing their insurance if they divorce, their partners lose their jobs, or they become widowed (KFF, 2010). Even though results of studies indicate that evidence-based preventive care services lower the burden of disease, are often cost-effective, increase the efficiency of health care spending, and contribute to the creation of a more productive and prosperous America, many financial barriers exist that prevent women from achieving health and well-being for themselves and their families.

PREVENTIVE SERVICES FOR WOMEN

Preventive services for women are services that prevent conditions harmful to women's health and well-being. "Conditions" are considered diseases, disabilities, injuries, behaviors, and functional states that have direct implications for women's health and well-being. These conditions may be specific to women, such as gynecologic infections and unintended pregnancy; they may be more common or more serious in women, such as autoimmune diseases and depression; they may have distinct causes or manifestations in women, such as alcohol abuse, obesity, and interpersonal violence-related posttraumatic stress disorder; or they may have different outcomes in women or different treatments, such as cardiovascular disease and diabetes (IOM, 2010). To "prevent" is to forestall the onset of a condition; detect a condition at an early stage, when it is more treatable; or slow the progress of a

condition that may worsen or result in additional harm. Preventive services may therefore include the provision of immunizations, screening tests, counseling and education, Food and Drug Administration-approved medications and devices, procedures, and over-the-counter medications and devices.

COMMITTEE ON PREVENTIVE SERVICES FOR WOMEN

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of the U.S. Department of Health and Human Services (HHS) asked the Institute of Medicine to convene a diverse committee of experts in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines to review existing guidelines, identify existing coverage gaps, and recommend services and screenings for HHS to consider in order to fill those gaps (Box 1-2). A 16-member committee was selected to complete the statement of task.

In subsequent guidance to the committee, HHS sponsors at ASPE directed the committee to limit its focus to females between the ages of 10 and 65 years.

BOX 1-2

Statement of Task to the Committee on Preventive Services for Women

The Institute of Medicine will convene an expert committee to review what preventive services are necessary for women's health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women. The committee will also provide guidance on a process for regularly updating the preventive

screenings and services to be considered. In conducting its work, the committee will: conduct a series of meetings to examine existing prevention guidelines, obtain input from stakeholders, identify gaps that may exist in recommended preventive services for USPSTF Grade A and B preventive services guidelines for women and in Bright Futures and USPSTF Grade A and B guidelines for adolescents, and highlight specific services and screenings that could supplement currently recommended preventive services for women. Specifically, the committee will consider the following questions:

- What is the scope of preventive services for women not included in those graded A and B by the USPSTF?
- What additional screenings and preventive services have been shown to be effective for women? Consideration may be given to those services shown to be effective but not well utilized among women disproportionately affected by preventable chronic illnesses.
- What services and screenings are needed to fill gaps in recommended preventive services for women?
- What models could HHS and its agencies use to coordinate regular updates of the comprehensive guidelines for preventive services and screenings for women and adolescent girls?

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) on behalf of the U.S. Department of Health and Human Services (HHS)

has been charged to examine recommendations for women's preventive services. ASPE will use the information and recommendations from the committee's report to guide policy and program development related to provisions in the Affordable Care Act addressing preventive services for women.

The ACA defines the current USPSTF recommendations regarding breast cancer screening, mammography, and breast cancer prevention to be "the most current other than those issued in or around November 2009." Thus, coverage for screening mammography is guided by the 2002 USPSTF guideline, which specifies that such screenings be performed every one to two years for women aged 40 years and older.

Furthermore, for consistency in approach with the other three guidelines used by the ACA and given the time limitations for this study, the committee was restricted from considering cost-effectiveness in its process for identifying gaps in current recommendations. Finally, despite the potential health and well-being benefits to some women, abortion services were considered to be outside of the project's scope, given the restrictions contained in the ACA.

The committee received clarification from ASPE that its work was not intended to duplicate the processes used by the USPSTF or Bright Futures. Thus, the committee interpreted this guidance to indicate that evidence ranging from systematic reviews of the evidence to other bodies of evidence could be considered. This appears to be consistent

with the process that led to the current preventive services within the ACA.

The committee was also directed to limit its work to identifying clinical preventive service coverage gaps and not to make recommendations regarding community-based prevention activities.

The committee recognizes that many factors that shape the health and well-being of women fall outside the realm of clinical services. These include, for example, changes to the environment and the workplace to promote health, changes in women's concept of self-efficacy to promote health, and changes in women's self-empowerment to address their own health and wellness. These factors and determinants of health are elements of models such as the Whitehead and Dahlgren (1991) determinants-of-health model and encompass biological, behavioral, and social factors. Nevertheless, evaluation of these factors and determinants of health were outside of the committee's purview.

HHS will consider the committee's recommendations as it develops guidelines to support the delivery of effective preventive services for women. If they are enacted, the recommendations from this study, along with the other coverage requirements in the ACA, will provide a comprehensive package of clinical preventive services for women.

COMMITTEE PROCESS

To meet its charge, the committee held three information-gathering meetings on preventive services for women and reviewed the relevant

literature. Before the first meeting and throughout the committee's delibera-

* * *

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the stage of HIV progression actually reduced their risk of transmitting the virus to their partners by 96 percent (NIAID, 2011).

Identified Gaps

The primary gap in preventive services not already addressed by the provisions set forth in the ACA (reviewed in this section) is that current screening recommendations by the USPSTF are limited in scope; that is, they are limited to pregnant women and high-risk adolescents and adults.

The evidence provided to support a recommendation for expanding screening is based on federal goals from the CDC, as well as clinical professional guidelines, such as those from the ACP, IDSA, AMA, and ACOG.

Recommendation 5.4: The committee recommends for consideration as a preventive service for women: counseling and screening for HIV infection on an annual basis for sexually active women.

PREVENTING UNINTENDED PREGNANCY AND PROMOTING HEALTHY BIRTH SPACING

Unintended pregnancy is defined as a pregnancy that is either unwanted or mistimed at the time of conception (Finer and Henshaw, 2006) and affects women with reproductive capacity, that is, from the time of menarche to menopause. Family planning services that are provided to prevent unintended

pregnancies include contraception (i.e., all FDA-approved contraceptive drugs and devices, sterilization procedures) as well as patient education and counseling.

Prevalence/Burden

Unintended pregnancy is highly prevalent in the United States. In 2001, an estimated 49 percent of all pregnancies in the United States were unintended—defined as unwanted or mistimed at the time of conception—according to the National Survey of Family Growth (Finer and Henshaw, 2006). The unintended pregnancy rate is much lower in other developed countries (Trussell and Wynn, 2008). In 2001, 42 percent of U.S. unintended pregnancies ended in abortion (Finer and Henshaw, 2006). Although 1 in 20 American women has an unintended pregnancy each year, unintended pregnancy is more likely among women who are aged 18 to 24 years and unmarried, who have a low income, who are not high school graduates, and who are members of a racial or ethnic minority group (Finer and Henshaw, 2006).

The consequences of an unintended pregnancy for the mother and the baby have been documented, although for some outcomes, research is limited. Because women experiencing an unintended pregnancy may not immediately be aware that they are pregnant; their entry into prenatal care may be delayed, they may not be motivated to discontinue behaviors that present risks for the developing fetus; and they may experience depression, anxiety, or other conditions. According to the IOM Committee on Unintended Pregnancy, women with unintended

pregnancies are more likely than those with intended pregnancies to receive later or no prenatal care, to smoke and consume alcohol during pregnancy, to be depressed during pregnancy, and to experience domestic violence during pregnancy (IOM, 1995).

A more recent literature review found that U.S. children born as the result of unintended pregnancies are less likely to be breastfed or are breastfed for a shorter duration than children born as the result of intended pregnancies and that mothers who have experienced any unwanted birth report higher levels of depression and lower levels of happiness (Gipson et al., 2008). Finally, a recent systematic literature review found significantly increased odds of preterm birth and low birth weight among unintended pregnancies ending in live births compared with pregnancies that were intended (Shah et al., 2008).

The risk factors for unintended pregnancy are female gender and reproductive capacity. Although certain subgroups of women are at greater risk for unintended pregnancy than others (e.g., women aged 18 to 24 years, unmarried women, women with low incomes, women who are not high school graduates, and women who are members of a racial or ethnic minority group), all sexually active women with reproductive capacity are at risk for unintended pregnancy. In 2008, approximately 36 million U.S. women of reproductive age (usually defined as ages 15 to 44 years) were estimated to be in need of family planning services because they were sexually active, able to get pregnant, and not trying to get pregnant (Frost et al., 2010). More than 99 percent of U.S. women aged 15 to 44 years who have ever had sexual

intercourse with a male have used at least one contraceptive method (Mosher and Jones, 2010).

Pregnancy spacing is important because of the increased risk of adverse pregnancy outcomes for pregnancies that are too closely spaced (within 18 months of a prior pregnancy). Short interpregnancy intervals in particular have been associated with low birth weight, prematurity, and small for gestational age births (Conde-Agudelo et al., 2006; Fuentes-Afflick and Hessol, 2000; Zhu, 2005). In addition, women with certain chronic medical conditions (e.g., diabetes and obesity) may need to postpone pregnancy until appropriate weight loss or glycemic control has been achieved (ADA, 2004; Johnson et al., 2006). Finally, pregnancy may be contraindicated for women with serious medical conditions such as pulmonary hypertension (etiologies can include idiopathic pulmonary arterial hypertension and others) and cyanotic heart disease, and for women with the Marfan Syndrome (Meijboom et al., 2005; Regitz-Zagrosek et al., 2008; Warnes, 2004).

Existing Guidelines and Recommendations

Numerous health care professional associations and other organizations recommend the use of family planning services as part of preventive care for women, including ACOG, AAFP, the American Academy of Pediatrics (AAP), the Society of Adolescent Medicine, the AMA, the American Public Health Association, the Association of Women's Health, Obstetric and Neonatal Nurses, and the March of Dimes. In addition, the CDC recommends family planning services as part of preventive visits for preconception health (Johnson et al., 2006).

The USPSTF does not address prevention of unintended pregnancy. Bright Futures recommends that information about contraception be offered to all sexually active adolescents and those who plan to become sexually active (AAP, 2008).

The IOM Committee on Women's Health Research recently identified unintended pregnancy to be a health condition of women for which little progress in prevention has been made, despite the availability of safe and effective preventive methods (IOM, 2010b). This report also found that progress in reducing the rate of unintended pregnancy would be possible by "making contraceptives more available, accessible, and acceptable through improved services (IOM, 2010b). Another IOM report on unintended pregnancy recommended that "all pregnancies should be intended" at the time of conception and set a goal to increase access to contraception in the United States (IOM, 1995). *Healthy People 2020* (HHS, 2011a), which sets health goals for the United States, includes a national objective of increasing the proportion of pregnancies that are intended from 51 to 56 percent. In addition, *Healthy People 2020* sets goals to increase the number of insurance plans that offer contraceptive supplies and services, to reduce the proportion of pregnancies conceived within 18 months of a previous birth, and to increase the proportion of females or their partners at risk of unintended pregnancy who used contraception during the most recent sexual intercourse (HHS, 2011a).

Effective Interventions

Family planning services are preventive services that enable women and couples to avoid an unwanted pregnancy and to space their pregnancies to promote optimal birth outcomes. A wide array of safe and highly effective FDA-approved methods of contraception is available, including barrier methods, hormonal methods, emergency contraception, and implanted devices; sterilization is also available for women and for men (FDA, 2010). This range of methods provides options for women depending upon their life stage, sexual practices, and health status. Some methods, such as condoms, spermicides, and emergency contraceptives, are available without a prescription, whereas the more effective hormonal and long-acting reversible methods, such as oral contraceptives and intrauterine devices, are available by prescription or require insertion by a medical professional. Sterilization is a surgical procedure. For women with certain medical conditions or risk factors, some contraceptive methods may be contraindicated. These can be assessed clinically so that an appropriate method can be selected for the individual (CDC, 2010; Dragoman et al., 2010).

The effectiveness of contraceptives is determined by studying the rate of failure (i.e., having an unintended pregnancy) in the first year of use (Table 5-3). The failure rates of all FDA-approved methods in both U.S. and international populations have been well documented and are negligible with proper use (Amy and Tripathi, 2009; Hatcher et al., 2007; Kost et al., 2008; Mansour et al., 2010). Female sterilization, the intrauterine device, and the contraceptive implant have failure rates of 1 percent

or less in the first 12 months of use (Fu et al., 1999; Hatcher et al., 2007). Injectable and oral contraceptives have use failure rates of seven and 9 percent, respectively, because some women miss or delay an injection or pill (Kost et al., 2008). Failure rates for both male and female condoms and other barrier methods are higher (e.g., 15 percent for the male condom) (Amy and Tripathi, 2009). These rates compare with an 85 percent chance of an unintended pregnancy within 12 months among couples using no method of contraception (Hatcher et al., 2007; Trussell and Kost, 1987).

In addition to this evidence of method effectiveness, evidence exists that greater use of contraception within the population produces lower unintended pregnancy and abortion rates nationally. Studies show that as the rate of contraceptive use by unmarried women increased in the United States between 1982 and 2002, rates of unintended pregnancy and abortion for unmarried women also declined (Boonstra et al., 2006). Other studies show that increased rates of contraceptive use by adolescents from the early 1990s to the early 2000s was associated with a decline in teen pregnancies and that periodic increases in the teen pregnancy rate are associated with lower rates of contraceptive use (Santelli and Melnikas, 2010).

As with all pharmaceuticals and medical procedures, contraceptive methods have both risks and benefits. Side effects are generally considered minimal (ACOG, 2011a,b,c; Burkman et al., 2004). Death rates associated with contraceptive use are low and, except for oral contraceptive users who smoke, lower than the U.S. maternal mortality rate (Hatcher

et al., 1998). For example, the oral contraceptive death rate per 100,000 users under the age of 35 years who are nonsmokers was 1.5 per 100,000 live births (Hatcher et al., 1998), compared with 11.2 maternal deaths per 100,000 live births in 2006 (age adjusted) (CDC, 2010c).

TABLE 5-3 Percentage of U.S. Women Experiencing an Unintended Pregnancy During First Year of Typical Use and First Year of Perfect Use, by Contraceptive Method

Method	% Experiencing Unintended Pregnancy in First Year of	
	Typical Use ^a	Perfect Use ^b
None	85	85
Spermicides (foams, creams, gels, vaginal suppositories, and vaginal film)	29	18
Withdrawal	27	4
Fertility awareness-based methods ^c	25	
Standard days method		5
Two-day method		4
Ovulation method		3
Sponge		
Parous women	32	20
Nulliparous women	16	9
Diaphragm (with spermicidal cream or jelly)	16	6

Condom (without spermicides)		
Female	21	5
Male	15	2
Combined pill and progestin-only pill	8	0.30
Evra patch	8	0.30
NuvaRing	8	0.30
Depro-Provera	3	0.30
Intrauterine Device		
ParaGard (copper T)	0.80	0.60
Mirena (LNG-IUS)	0.20	0.20
Implanon	0.05	0.05
Female sterilization	0.50	0.50
Male sterilization	0.15	0.10

^a Among typical couples who initiate use of a method (not necessarily for the first time), the percentage who experience an accidental pregnancy during the first year if they do not stop use for any other reason.

^b Among couples who initiate use of a method (not necessarily for the first time) and who use it perfectly (both consistently and correctly), the percentage who experience an accidental pregnancy during the first year if they do not stop use for any other reason.

^c The ovulation and 2-day methods are based on evaluation of cervical mucus. The standard day method avoids intercourse on cycle days 8 through 19.

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Contraceptive methods often have benefits separate from the ability to plan one's family and attain optimal birth spacing. For example, the non-contraceptive benefits of hormonal contraception

include treatment of menstrual disorders, acne or hirsutism, and pelvic pain (ACOG, 2010a). Long-term use of oral contraceptives has been shown to reduce a woman's risk of endometrial cancer, as well as protect against pelvic inflammatory disease and some benign breast diseases (PRB, 1998). The Agency for Healthcare Research and Quality (AHRQ) is currently undertaking a systematic evidence review to evaluate the effectiveness of oral contraceptives as primary prevention for ovarian cancer (AHRQ, 2011).

Education and counseling are important components of family planning services because they provide information about the availability of contraceptive options, elucidate method-specific risks and benefits for the individual woman, and provide instruction in effective use of the chosen method (NBGH, 2005; Shulman, 2006). Research on the effectiveness of structured contraceptive counseling is limited (Halpern et al., 2006; Lopez et al., 2010b; Moos et al., 2003). However, studies show that postpartum contraceptive counseling increases contraceptive use and decreases unplanned pregnancy (Lopez et al., 2010a), that counseling increases method use among adolescents in family planning clinics (Kirby, 2007), that counseling decreases nonuse of contraception in older women of reproductive age (35 to 44 years) who do not want a future baby (Upton et al., 2010), and that counseling of adult women in primary care settings is associated with greater contraceptive use and the use of more effective methods (Lee et al., 2011; Weisman et al., 2002).

Although it is beyond the scope of the committee's consideration, it should be noted that contraception is highly cost-effective. The direct medical cost of unintended pregnancy in the United States was estimated to be nearly \$5 billion in 2002, with the cost savings due to contraceptive use estimated to be \$19.3 billion (Trussell, 2007). The cost-effectiveness of family planning is also documented in an evaluation of FamilyPact, California's 1115 Medicaid Family Planning Waiver Program. The unintended pregnancies averted in this program in 2002 would have cost the state \$1.1 billion within two years, and \$2.2 billion within five years, for public-sector health and social services that otherwise would have been needed (Amaral et al., 2007).

In a study of the cost-effectiveness of specific contraceptive methods, all contraceptive methods were found to be more cost-effective than no method, and the most cost-effective methods were long-acting contraceptives that do not rely on user compliance (Trussell et al., 2009). The most common contraceptive methods used in the United States are the oral contraceptive pill and female sterilization. It is thought that greater use of long-acting, reversible contraceptive methods—including intrauterine devices and contraceptive implants that require less action by the woman and therefore have lower use failure rates—might help further reduce unintended pregnancy rates (Blumenthal et al., 2011). Cost barriers to use of the most effective contraceptive methods are important because long-acting, reversible contraceptive methods and sterilization have high up-front costs (Trussell et al., 2009).

Contraceptive coverage has become standard practice for most private insurance and federally funded insurance programs. For example, contraceptive services are covered for all federal employees and individuals who obtain their care through federally financed programs, such as VA, TRICARE for active-duty military and their dependents, and IHS. Federal programs provide funding for family planning services in community health centers through the Public Health Service Act, in family planning centers through Title X [Population Research and Voluntary Family Planning Programs (PL. 91-572)], through the Maternal and Child Health Block Grant, and through the Medicaid program.

Since 1972, Medicaid, the state-federal program for certain low-income individuals, has required coverage for family planning in all state programs and has exempted family planning services and supplies from cost-sharing requirements. In addition, 26 states currently operate special Medicaid-funded family planning programs for low-income women who either no longer qualify for Medicaid or do not meet the program's categorical requirements. In Massachusetts, family planning services with no copayments will be included as part of the preventive benefits offered to members of Commonwealth Care, a program of subsidized health insurance for low- and moderate-income people (Personal communication, Stephanie Chrobak and Nancy Turnbull, Massachusetts Health Connector, May 10, 2011).

Private employers have also expanded their coverage of contraceptives as part of the basic benefits packages of most policies. This expansion

has occurred in response to state and federal policies. Twenty-eight states now have regulations requiring private insurers to cover contraceptives, and 17 of these states also require that insurance cover the associated outpatient visit costs (Guttmacher Institute, 2011) (see Chapter 3). A federal court ruling issued in 2000 by the Equal Employment Opportunity Commission found an employer's failure to cover prescription contraceptive drugs and devices in a health plan that covers other drugs, devices, and preventive care to be discrimination against women in violation of Title VII of the Civil Rights Act (EEOC, 2000).

In 2007, NBGH recommended that employer-sponsored health plans include coverage of family planning services, without cost sharing, as part of a minimum set of benefits for preventive care. The Guttmacher Institute also calls comprehensive coverage of contraceptive services and supplies "the current insurance industry standard," with more than 89 percent of insurance plans covering contraceptive methods in 2002 (Camp, 2011). A more recent 2010 survey of employers found that 85 percent of large employers and 62 of small employers offered coverage of FDA-approved contraceptives (Claxton et al., 2010).

Despite increases in private health insurance coverage of contraception since the 1990s, many women do not have insurance coverage or are in health plans in which copayments for visits and for prescriptions have increased in recent years. In fact, a review of the research on the impact of cost sharing on the use of health care services found that cost-sharing requirements, such as deductibles and

copayments, can pose barriers to care and result in reduced use of preventive and primary care services, particularly for low-income populations (Hudman and O'Malley, 2003). Even small increments in cost sharing have been shown to reduce the use of preventive services, such as mammograms (Trivedi et al., 2008). The elimination of cost sharing for contraception therefore could greatly increase its use, including use of the more effective and longer-acting methods, especially among poor and low-income women most at risk for unintended pregnancy. A recent study conducted by Kaiser Permanente found that when out-of-pocket costs for contraceptives were eliminated or reduced, women were more likely to rely on more effective long-acting contraceptive methods (Postlethwaite et al., 2007).

Identified Gaps

Contraception and contraceptive counseling are not currently in the array of preventive services available to women under the ACA.

Systematic evidence reviews and other peer-reviewed studies provide evidence that contraception and contraceptive counseling are effective at reducing unintended pregnancies. Current federal reimbursement policies provide coverage for contraception and contraceptive counseling and most private insurers also cover contraception in their health plans. Numerous health professional associations recommend family planning services as part of preventive care for women. Furthermore, a reduction in unintended pregnancies has been identified as a specific goal in *Healthy People 2010* and *Healthy People 2020* (HHS, 2000, 2011a).

Recommendation 5.5: The committee recommends for consideration as a preventive service for women: the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.

BREASTFEEDING

Breastfeeding benefits the mother, the child, and society. The challenge is to ensure that the majority of mothers initiate breastfeeding and exclusively breastfeed their children during the first six months, with breastfeeding continuing to a year or beyond for every child (Gartner et al., 1997).

Prevalence/Burden

An AHRQ report from 2007 includes a summary of systematic reviews and meta-analyses on breastfeeding and maternal and infant health outcomes (Ip et al., 2007). The evidence is clear that breastfeeding reduces Sudden Infant Death Syndrome, gastrointestinal infections, upper and lower respiratory diseases, childhood leukemia, asthma, ear infections, childhood obesity, and diabetes mellitus type 2 risk for children, as well as rates of hospitalization (Table 5-4). They also concluded that sufficient results are available to be able to state that breastfeeding significantly lowers the maternal risk of breast and ovarian cancers (Table 5-4). Breastfeeding soon after birth may reduce the risk of maternal blood loss and enhance maternal-infant bonding (ACNM, 2004). A recent study concluded that if 90 percent of all children were

exclusively breastfeed during the first six months of life, the United States would save \$13 billion per year and prevent an excess of 911 deaths (Bartick and Reinhold, 2010). If only 80 percent of U.S. families complied, \$10.5 billion would be saved and 741 deaths would be prevented each year.

In the United States, the majority of pregnant women plan to breastfeed (DiGirolamo et al., 2005), and yet there is a clear gap between the proportion of women who prenatally intend to breastfeed and those who actually do so by the time they are discharged after a brief hospital stay (California WIC Association and U.C. Davis Human Lactation Center, 2008; CDC, 2007b). The National Immunization Survey found that among the mothers of children born in 2007, 75 percent of mothers initiated breastfeeding, 43 percent were breastfeeding at six months, and 22 percent were breastfeeding at 12 months (CDC, 2007b). Although considerable progress has been made through overall promotion of breastfeeding in the United States, gains in breastfeeding rates have not been made equally across geographic, racial, and socioeconomic groups (Table 5-5).

Contrary to popular conception, breastfeeding appears to be a learned skill and the mother must be supported to be successful. Nevertheless,

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Appendix D

Dissent and Response

This appendix has two parts. The first is a dissent statement from committee member Anthony Lo Sasso, and the second is a response from the chair and the other 14 members of the Committee on Preventive Services for Women.

DISSENTING OPINION

Anthony Lo Sasso

Summary

Given the combination of the unacceptably short time frame for the PSW committee to conduct or solicit meaningful reviews of the evidence associated with the preventive nature of the services considered, this dissent advocates that no additional preventive services beyond those explicitly stated in the Affordable Care Act (ACA) be recommended for consideration by the Secretary for first dollar coverage until such time as the evidence can be objectively and systematically evaluated and an appropriate framework can be developed. The long-run risks associated with making poorly informed decisions, and their likely irreversibility once codified, outweigh the ACA-mandated rapidity with which the committee was confronted.

Rationale

The ACA provided the impetus for the IOM to form a panel to make recommendations about screening and preventive services that “have been shown to be effective for women” that in turn will be considered by the Secretary for coverage on a first-dollar basis by all new private plans in operation in 2014.

However, a remarkably short time frame was provided for the task of reviewing all evidence for preventive services beyond the services encompassed by the USPSTF, Bright Futures and ACIP: the final report from the committee was needed barely six months from the time the group was empanelled.

As the Report acknowledges, the lack of time prevented a serious and systematic review of evidence for preventive services. This should in no way reflect poorly on the tireless work of the committee and staff; it instead merely reflects the fact that the process set forth in the law was unrealistic in the time allocated to such an important and time-intensive undertaking. Where I believe the committee erred was with their zeal to recommend something despite the time constraints and a far from perfect methodology.

The Report posits four categories as the basis for the recommendations ranging from “high quality systematic evidence reviews” (Category I) to potentially self-serving guidelines put forth by professional organizations (Category IV). The categories alone on their face provide little basis to exclude many preventive services. For example, Category II asks whether there are any “quality” supportive peer-reviewed studies, but there is no clear benchmark for what quality means in this context; many studies published in peer-reviewed journals (even very well respected journals) are of low quality and are not generalizable. The problematic nature of the categories aside, the relative weights applied to each category vis-à-vis the recommendations were not specified, making it impossible to discern what factors were most

important in the decision to recommend one service versus another. The categories were combined with expert judgment from members of the committee and supplemented with committee debate to arrive at the recommendations put forth in the Report. Readers of the Report should be clear on the fact that the recommendations were made without high quality, systematic evidence of the preventive nature of the services considered. Put differently, evidence that use of the services in question leads to lower rates of disability or disease and increased rates of well-being is generally absent.

The view of this dissent is that the committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy. An abiding principle in the evaluation of the evidence and the recommendations put forth as a consequence should be transparency and strict objectivity, but the committee failed to demonstrate these principles in the Report. This dissent views the evidence evaluation process as a fatal flaw of the Report particularly in light of the importance of the recommendations for public policy and the number of individuals, both men and women, that will be affected.

Other Considerations

Another concerning aspect of the Report is the lack of a coherent framework to evaluate coverage apart from the evidence regarding clinical efficacy.

Although coverage determinations were not explicitly part of the committee's charge, it is nevertheless difficult to ignore the fact that the committee's recommendations will have important implications for coverage considerations. Thus while the lack of a theoretical or conceptual framework to examine coverage decisions can perhaps be forgiven, it is clear that the "life course" model put forth in the Report does not lend itself to the consideration of coverage decisions. I describe one potential framework below that could inform such thinking around coverage determinations.

The ACA law requires coverage by private insurers of all USPSTF A and B recommendations. The USPSTF process of evidence review represents a "gold standard" based on a critical and scholarly review of all extant literature and therefore is the bar the committee should have aspired to in basing its recommendations to the Secretary. That said, the clinical recommendations from the USPSTF were never intended to provide a basis for insurance coverage determinations; they are intended as guides to physician practice. Given the previous role of the USPSTF it is worth noting that basing coverage decisions categorically on USPSTF recommendations has the potential to jeopardize the objectivity and scientific integrity of the USPSTF review process.

In contrast, while Bright Futures is a body aimed at influencing clinical practice, the evidence bar for its recommendations is considerably lower than that of the USPSTF. Recommendations are considered "evidence-informed" and rely heavily on expert opinion rather than systemic, critical reviews of the literature. This is troubling given the important

public policy consequences that will now result from Bright Futures recommendations.

Additions to the Update Recommendations

There are reasons to support the framework for future evaluation of preventive services in the Report (Chapter 6). The proposed framework crucially recognizes the importance of separating the scientific objective of establishing the effectiveness and potentially the cost effectiveness of preventive services from the policy decision regarding coverage of services. This dissent advocates for a more concrete structure based on sound public policy principles to frame both the evidence review and coverage decision for specific preventive services for women.

A highly regarded framework to examine coverage decisions of preventive services in an insurance context was developed more than twenty years ago by Pauly and Held (1990). The authors consider coverage decisions for a hypothetical preventive service that is presumed to reduce the probability of a covered and potential costly healthcare treatment episode (for example, inpatient treatment of a preventable disease outcome). More formally, if one assumes a preventive service, S , that costs P is available that when administered changes the probability from p_n to p_y of experiencing an inpatient event with cost E , the following can be observed:

1. If $p_n > p_y$ the service is effective in prevention as the treatment S reduces the probability of experiencing the negative outcome; this represents the minimum necessary threshold for which “preventive” needs to be defined.

2. If $(p_n - p_y)E > P$ the service is “cost effective”¹ in that the cost associated with the relative reduction in the probability of the negative outcome exceeds the cost of the treatment S ; this is a potentially high bar but an important one for a preventive service.

However, it is important to understand that point (1) and even point (2) do not necessarily imply that first-dollar coverage of preventive services leads to an overall reduction in insurer payments (and hence insurance premiums) as many might assume. Whether coverage of preventive service leads to a reduction in healthcare expenditure depends on the fraction of enrollees using the service before the service becomes covered and the magnitude of the response among enrollees who experience the reduction in out-of-pocket price. This latter point is what Pauly and Held term “benign moral hazard” and it points to a critical parameter of interest as the elasticity or responsiveness of preventive service utilization to the user price for the service. Knowing how elastic patient demand is to preventive services is a critical element to a coverage decision even if one already has good estimates of the effectiveness and cost-effectiveness. This is self-evidently a useful parameter to know for any preventive service because it highlights the impact that first-dollar coverage of

¹ It is important to note that the statute rules out cost as a consideration by the committee. Cost is included in the example only to demonstrate that the hypothetical preventive service meets a high bar beyond effectiveness.

the service will have, perhaps in relation to other forms of outreach.

More recently, Pauly and Blavin (2008) incorporate some additional considerations in the wake of research on so-called value-based health insurance designs. First dollar coverage can be justified if enrollees lack information about the benefits of preventive services in order to make correct (or at least fully informed) decisions. Such a determination, however, would depend on the relative efficacy of information provision about the benefits of preventive services versus reducing (or eliminating) cost sharing.

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RESPONSE TO DISSENTING STATEMENT

Linda Rosenstock (Chair), Alfred O. Berg, Claire D. Brindis, Angela Diaz, Francisco Garcia, Kimberly Gregory, Paula A. Johnson, Jeanette H. Magnus, Heidi D. Nelson, Roberta B. Ness, Magda G. Peck, E. Albert Reece, Alina Salganicoff, Sally W. Vernon, and Carol S. Weisman

The dissenting committee member wanted more time and the opportunity to incorporate cost-benefit analysis. At the first committee meeting, it was agreed that cost considerations were outside the

scope of the charge, and that the committee should not attempt to duplicate the disparate review processes used by other bodies, such as the USPSTF, ACIP, and Bright Futures. HHS, with input from this committee, may consider other factors including cost in its development of coverage decisions. The dissent also includes inaccurate statements regarding the committee process and its approach to the committee charge. The committee members' expertise is diverse and while many have different perspectives, no other member shares the opinion that report recommendations were not soundly evidence based.

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