

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

CATHOLIC CHARITIES OF THE ARCHDIOCESE :
OF PHILADELPHIA; ST. JOHN’S ORPHAN :
ASYLUM; ST. EDMOND’S HOME FOR :
CRIPPLED CHILDREN; DON GUANELLA :
VILLAGE OF THE ARCHDIOCESE OF :
PHILADELPHIA; DIVINE PROVIDENCE :
VILLAGE; THE PHILADELPHIA PROTECTOR Y :
FOR BOYS; CATHOLIC COMMUNITY :
SERVICES, INC.; NUTRITIONAL :
DEVELOPMENT SERVICES, INC.; CATHOLIC :
HEALTH CARE SERVICES – SUPPORTIVE :
INDEPENDENT LIVING; ST. MONICA MANOR; :
ST. JOHN NEUMANN NURSING HOME; :
IMMACULATE MARY HOME; ST. FRANCIS :
COUNTRY HOUSE; ST. MARTHA NURSING :
HOME; ST. MARY MANOR; ST. JOHN VIANNEY :
CENTER; CATHOLIC CLINICAL :
CONSULTANTS; and the ROMAN CATHOLIC :
ARCHDIOCESE OF PHILADELPHIA, :

Civ. No. _____

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official capacity as :
Secretary of the Department of Health and Human :
Services; UNITED STATES DEPARTMENT OF :
HEALTH AND HUMAN SERVICES; THOMAS E. :
PEREZ, in his official capacity as the Secretary of the :
United States Department of Labor; UNITED :
STATES DEPARTMENT OF LABOR; JACOB J. :
LEW, in his official capacity as Secretary of the :
United States Department of the Treasury; and THE :
UNITED STATES DEPARTMENT OF THE :
TREASURY, :

Defendants.

COMPLAINT

Plaintiffs, by and through the undersigned counsel, submit this Complaint against

Defendants, and allege as follows:

1. Plaintiffs submit this complaint to seek redress for violations of their sincerely held religious beliefs by the Defendants and to seek relief from content-based restrictions on free speech.

I. PARTIES

2. Plaintiff Catholic Charities of the Archdiocese of Philadelphia is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania and does business as Catholic Social Services. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Catholic Social Services has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

3. Plaintiff St. John's Orphan Asylum is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania and does business as St. Francis-St. Joseph Homes for Children (a/k/a St. Francis Home for Boys). It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. Francis-St. Joseph Homes for Children has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

4. Plaintiff St. Edmond's Home for Crippled Children is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania and does business as St. Edmond's Home (a/k/a St. Edmond's Home for Children). It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. Edmond's Home has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

5. Plaintiff Don Guanella Village of the Archdiocese of Philadelphia is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the

Internal Revenue Code of 1986. Don Guanella Village has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

6. Plaintiff Divine Providence Village is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Divine Providence Village has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

7. Plaintiff the Philadelphia Protectory for Boys is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania and does business as St. Gabriel's System (a/k/a St. Gabriel's Hall). It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. Gabriel's System has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

8. Plaintiff Catholic Community Services, Inc. is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Catholic Community Services has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

9. Plaintiff Nutritional Development Services, Inc. is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Nutritional Development Services has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

10. Plaintiff Catholic Health Care Services – Supportive Independent Living is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania and does business as Villa St. Martha and Community Based Services. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Catholic Health Care Services – Supportive Independent Living has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

11. Plaintiff St. Monica Manor is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. Monica Manor has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

12. Plaintiff St. John Neumann Nursing Home is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. John Neumann Nursing Home has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

13. Plaintiff Immaculate Mary Home is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Immaculate Mary Home has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

14. Plaintiff St. Francis Country House is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of

1986. St. Francis Country House has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

15. Plaintiff St. Martha Nursing Home is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania and does business as St. Martha Manor. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. Martha Manor has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

16. Plaintiff St. Mary Manor is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. Mary Manor has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

17. Plaintiff St. John Vianney Center is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. St. John Vianney Center has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

18. Plaintiff Catholic Clinical Consultants is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Catholic Clinical Consultants has a registered address of 222 N. 17th Street, Philadelphia, PA 19103.

19. The above Plaintiffs are all affiliated with the Roman Catholic Archdiocese of Philadelphia. They are collectively referred to here as “the Archdiocese Affiliates.”

20. Plaintiff the Roman Catholic Archdiocese of Philadelphia (“the Archdiocese”) is an unincorporated religious organization with a principal place of administration in Philadelphia, PA. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986.

21. Plaintiffs all adhere to Catholic principles and teachings in their operations.

22. Upon information and belief, none of the Archdiocese Affiliates qualifies as an entity described in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code and, as such, none of the Archdiocese Affiliates qualifies as a “religious employer” under the current regulations of the Patient Protection and Affordable Care Act.

23. The Archdiocese itself qualifies as a “religious employer” under the current regulations of the Patient Protection and Affordable Care Act.

24. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services. Secretary Sebelius is an official of the United States. She is sued in her official capacity.¹

25. Defendant the United States Department of Health and Human Services (“HHS”) is a department and agency of the United States.

26. Defendant Thomas E. Perez is the Secretary of the United States Department of Labor. Secretary Perez is an official of the United States. He is sued in his official capacity.

27. Defendant the United States Department of Labor (“Labor”) is a department and agency of the United States.

¹ Plaintiffs are aware that Secretary Sebelius has tendered her resignation; however, upon information and belief, that resignation is not effective until a replacement is confirmed. As of the date of the filing of this complaint, the President’s nominee to replace Secretary Sebelius, Sylvia Mathews Burwell, has not been confirmed by the Senate. Once confirmed, the new secretary will automatically substitute in as a party to this matter under Fed.R.Civ.P. 25(d).

28. Defendant Jacob J. Lew is the Secretary of the United States Department of the Treasury. Secretary Lew is an official of the United States. He is sued in his official capacity.

29. Defendant the United States Department of the Treasury (“Treasury”) is a department and agency of the United States. All Defendants are hereafter collectively referred to here as “the Departments” or “the Government.”

II. JURISDICTION AND VENUE

30. This Complaint is based on a violation of the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb to bb-4, and the First Amendment to the United States Constitution; as such, this Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(4). This Court has jurisdiction to enter declaratory and injunctive relief under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 2000bb-1(c).

31. Venue in this action against officers and agencies of the United States is proper in this District under 28 U.S.C. § 1391(e)(1).

III. FACTS

A. The Contraceptive Mandate

32. In 2010, the Patient Protection and Affordable Care Act (“ACA”), Pub. L. No. 111-148, 124 Stat. 119 (2010), was enacted.

33. Under the ACA, a “group health plan” must provide coverage for certain “preventative care” for women per “comprehensive guidelines supported by the Health Resources and Services Administration.” 42 U.S.C. § 300gg-13(a)(4); see also 45 C.F.R. § 147.130(a)(iv) (“[A] group health plan ... must provide coverage for all of the following items and services With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services

Administration.”); 29 C.F.R. § 2590.715-2713(a)(1)(iv) (Labor regulation stating substantially same); 26 C.F.R. § 54.9815-2713(a)(1)(iv) (Treasury regulation stating substantially same).

34. The ACA itself does not define “preventative care.” Thus, the Department of Health and Human Resources (“HHS”) tasked the Institute of Medicine (“IOM”) with developing recommendations to the Health Resources and Services Administration (“HRSA”).

35. Among the IOM’s recommendations were that group health plans cover “the full range of Food and Drug Administration [‘FDA’]-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.”

36. FDA-approved contraceptive methods include oral contraceptive pills, diaphragms, intrauterine devices, and emergency contraceptives.

37. FDA-approved emergency contraceptives include Plan B, known as the “morning after pill,” and ella, known as the “week after pill.” Plan B and ella are potentially abortifacients in that they are agents that may induce an abortion.

38. The HRSA ultimately adopted the IOM’s recommendations in 2011. The foregoing paragraphs describe “the Contraceptive Mandate” under the ACA.

39. If an employer’s group health plan fails to comply with the Contraceptive Mandate, the employer is subject to devastating penalties of \$100 per day *per beneficiary*. See 26 U.S.C. § 4980D(b)(1), (e)(1).

40. The Departments have all enacted regulations implementing the Contraceptive Mandate.

B. The “Accommodation” for “Eligible Organizations”

41. In an effort to purportedly “accommodate” certain religious entities that have a moral and religious objection to the Contraceptive Mandate, the Departments enacted various regulations regarding “eligible organizations.”

42. An “eligible organization” is defined as follows:

- (1) 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.
- (2) The organization is organized and operates as a nonprofit entity.
- (3) The organization holds itself out as a religious organization.
- (4) 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. The self-certification must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974.

45 C.F.R. § 147.131(a) (HHS regulation); see also 29 C.F.R. § 2590.715-2713A(a) (Labor regulation); 26 C.F.R. § 54.9815-2713A(a) (Treasury regulation).

43. The self-certification form described above has been issued and is known as EBSA Form 700 (attached as Exhibit A).

44. EBSA Form 700 is more than just a certification that an organization opposes contraceptive services on religious grounds. Instead, it is also, for those employers who are self-insured (as is the case with Plaintiffs here), a legal instrument that formally designates the third-party administrator of the self-insured health plan as a “plan administrator” and “claims administrator” with respect to contraceptive services.

45. This means that upon receipt of the form, which is now “an instrument under which the plan is operated,” see EBSA Form 700 at 2—i.e., the plan is formally amended to create a mechanism for the provision of contraceptive services—the third party administrator could immediately begin providing contraceptive services.

46. But-for the Archdiocese Affiliates signing the form, the third party administrator would have no ability to act.

47. Stated otherwise: the form has specific, legal consequences—it enables an independent, non-religiously affiliated plan/claim administrator, to whom the form must be delivered, to provide contraceptive services.

48. Further, upon execution and delivery of the form, the Government then supplies financial incentives to the third party administrator to supply contraceptive services.

49. Indeed, the Government will pay the third party administrator’s costs plus a 10% premium for the provision of contraceptive services.

50. In other words, the Government provides financial incentives to the third party administrator to voluntarily act. The third party administrator is only eligible for those incentives after a party delivers the executed self-certification.

51. The regulations regarding “eligible organizations” apply to group health plans for the first plan year beginning on or after January 1, 2014.

52. The Archdiocese Affiliates each oppose providing contraceptive coverage required by the ACA and its implementing regulations due to religious objections, each is organized and operates as a nonprofit entity, and each holds itself out as a religious organization.

53. Therefore, the Archdiocese Affiliates would otherwise be “eligible organizations” but for their refusal to sign the self-certification, which they refuse to do because doing so would violate their sincerely held religious beliefs.

C. The Archdiocese Health Care Plan

54. On July 1, 2013, the Archdiocese established a welfare benefits trust to fund and support a welfare benefit plan (“the Archdiocese Health Care Plan” or “the Plan”) (which has

multiple health plan options) for the Archdiocese, its parishes, its agencies, and activities, all of whom are participating employers in the Archdiocese Health Care Plan.

55. No person was enrolled in the Archdiocese Health Care Plan on March 23, 2010, the Plan has not continuously covered at least one person since that date, and the Plan has not supplied annual notice of its grandfathered status; therefore, the Plan is not “grandfathered” under the ACA.

56. The next plan year for the Archdiocese Health Care Plan begins on July 1, 2014, which is the first plan year beginning after January 1, 2014.

57. The Archdiocese Affiliates are all non-profit corporations affiliated with the Archdiocese and each is a participating employer in the Archdiocese Health Care Plan.

58. The plan offered by the Archdiocese, and participated in by the Archdiocese Affiliates, is a “self-insured” plan and is a “church plan” under Section 3(33) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(33).

59. The Archdiocese Health Care Plan is administered by a third party administrator: Independence Blue Cross.

60. The Archdiocese and its parishes, its agencies, and activities, which include each of the Archdiocese Affiliates, adhere to Catholic doctrines and teachings, which include a belief in the dignity and sanctity of human life.

61. Catholic doctrine opposes directly or indirectly providing or facilitating the use of contraceptive services. Contraceptive technology, precisely because of its impact on sexual intimacy, subverts the understanding of the purpose of sexuality, fertility, and marriage itself.

62. The Archdiocese and the Archdiocese Affiliates have sincerely held religious beliefs concerning (1) the inability to provide contraceptive services consistent with Catholic

principles and teachings; and (2) the inability to associate in any way with the provision of contraceptive services, since that would implicate the Archdiocese and the Archdiocese Affiliates in providing services in violation of Catholic doctrines and teachings.

63. The Archdiocese Health Care Plan is administered in conformance with Catholic beliefs, and, accordingly, the Archdiocese Health Care Plan does not provide coverage for abortions or contraception, unless the contraceptive medicine is prescribed for non-contraceptive, medical purposes.

D. The Contraceptive Mandate and the “Accommodation” Violate the RFRA

64. Neither the Archdiocese nor the Archdiocese Affiliates can offer, directly or indirectly, contraceptive services to their employees and adhere to their sincerely held Catholic beliefs on the dignity and sanctity of human life.

65. The Departments are putting substantial pressure on the Archdiocese and the Archdiocese Affiliates to offer services that interfere with the dignity and sanctity of human life.

1. The RFRA Violation for the Archdiocese Affiliates

66. If the Archdiocese Affiliates do not offer contraceptive services or if they fail to comply with the “accommodation” by signing the self-certification, they are subject to a \$100 per day, per beneficiary fine—a fine that will quickly reach millions of dollars.

67. In fact, if the Archdiocese Affiliates do not comply with the Government’s demands, they will be subject collectively to a fine of approximately \$160,000 per day.

68. That fine would significantly burden, if not terminate, the existence of the Archdiocese Affiliates and their mission impacting the common good.

69. There can be no clearer substantial pressure than millions of dollars in penalties and the likely cessation of these affiliated entities and their programs.

70. The Archdiocese Affiliates also cannot comply with the “accommodation” without violating their religious beliefs.

71. The Archdiocese Affiliates not only oppose the direct provision of contraceptive services on religious grounds, they also oppose on religious grounds even being associated the provision of such services.

72. Signing the self-certification form associates the Archdiocese Affiliates with the provision of contraceptive services and enables these services to be provided.

73. The self-certification is a legal document that has legal effects: it formally nominates the third party administrator as a “plan administrator” and “a claims administrator” for purpose of contraceptive services.

74. This means that upon receipt of the form, which is now “an instrument under which the plan is operated”—i.e., the plan is formally amended to create a mechanism for the provision of contraceptive services—the third party administrator could immediately begin providing contraceptive services.

75. But-for the Archdiocese Affiliates signing the form, the third party administrator would have no ability to act.

76. Hence, by signing the form, the Archdiocese Affiliates will have created a vital link in a chain toward the provision of contraceptive services.

77. Further, upon provision of the form to a third party administrator, the third party administrator could unilaterally choose to supply the contraceptive services.

78. If it did so, under the ACA, the Government would pay the administrator’s costs plus a 10% premium. In other words, the Government provides financial incentives to the third party administrator to voluntarily act.

79. As such, signing and delivering the self-certification form further embroils the Archdiocese Affiliates in the provision of contraceptive services by initiating incentives for the third party administrator to act to provide the objectionable services. Hence, signing and delivering the form violates the Archdiocese Affiliates' sincerely held religious beliefs.

80. As demonstrated, the so-called "accommodation" results in religiously affiliated entities becoming associated with contraceptive services. In enacting the "accommodation," Final Rules were implemented stating that eligible organizations are not required to "contract, arrange, pay, or refer to contraceptive coverage." 78 Fed. Reg. 39870, at 39874 (July 2, 2013).

81. However, the self-certification itself forces each Archdiocese Affiliate to do most of the things the Departments say it does not: contract, arrange, and refer contraceptive coverage to its employees. Indeed, the certification (1) is contractual in nature in a process that could lead to the provision of the offending services; (2) arranges for a process in which someone other than the religious organization will determine if the religious employer's employees will be provided contraceptive services; and (3) refers employees to a program operated at the discretion of a third party administrator who will have the sole discretion (and has a financial incentive to do so) to provide the offending services. Essentially, the so-called "accommodation" only accomplishes that an eligible organization does not have to "pay" for contraceptive coverage (and even that is tenuous in that the certification sets forth an indirect payment for the offending services).

82. In sum, to comply with the ACA and its implementing regulations and avoid directly providing the offending services, a spiritual leader designated by the Archdiocese Affiliates is mandated to take affirmative steps, including signing the self-certification, while knowing that such steps are facilitating and initiating a process toward providing offending services.

2. The RFRA Violation for the Archdiocese

83. The Contraceptive Mandate and the “accommodation” place substantial pressure on the Archdiocese to violate its sincerely held religious beliefs, even though the Archdiocese itself is exempt from the Contraceptive Mandate.

84. Part of the religious purpose and mission for the Archdiocese is to provide support services to local parishes and affiliated Catholic ministries, such as the Archdiocese Affiliates.

85. And as part of its religious mission, the Archdiocese established the Archdiocese Health Care Plan for itself, its parishes, its agencies, and its activities, including the Archdiocese Affiliates.

86. The Archdiocese Health Care Plan does not cover contraceptive services, but if the Archdiocese Affiliates are forced to offer such services or sign the self-certification, then the Archdiocese will be *facilitating* the provision of contraceptive services in violation of its sincerely held religious beliefs by continuing to allow the complying Archdiocese Affiliates to participate in the Archdiocese Health Care Plan.

87. The Archdiocese cannot simply remove the Archdiocese Affiliates who comply with the Contraceptive Mandate or the “accommodation” because doing so would interfere with the Archdiocese’s ability to fulfill its pastoral ministry by and through those affiliated entities.

88. As a result of the Contraceptive Mandate and the “accommodation,” the Archdiocese is faced with four intolerable options: (1) sponsor a group health that provides coverage for contraceptive services (as a result of the participation by the Archdiocese Affiliates); (2) sponsor a group health plan that excludes coverage for contraceptive services but subjects the Archdiocese Affiliates to onerous fines; (3) expel the Archdiocese Affiliates from the Plan; or (4) do not sponsor a group health plan at all.

89. None of these options is morally acceptable to the Archdiocese, and each substantially burdens its religious exercise.

E. The Contraceptive Mandate and the Purported Accommodation Violate the Exercise Clause of the First Amendment

90. The Contraceptive Mandate and the “accommodation” violate the Free Exercise Clause (as well as the Establishment Clause) of the First Amendment.

91. The Contraceptive Mandate does not apply to employers with “grandfathered” plans and employers of fewer than 50 full-time employees.

92. These two exemptions alone, which are for secular reasons, mean the employers of tens of millions of employees are not subject to the Contraceptive Mandate.

93. These substantial exemptions solely for secular reasons, while not permitting the same exemption for religious reasons, are so substantial as to mean the Contraceptive Mandate, and the “accommodation” are not laws of general applicability.

94. Further, the Government has in its sole discretion determined whether an employer receives the “religious employer” exemption or not by unilaterally, and unlawfully, deciding if the employer is religious “enough.”

95. This inter-religious discrimination further means the Contraceptive Mandate and the accommodation are not laws of general applicability.

96. Because the Government discriminates against religious employers through the Contraceptive Mandate and the “accommodation,” those laws are subject to strict scrutiny, and each fails strict scrutiny review.

F. The ACA Regulations Also Violate the Archdiocese Affiliates’ Free Speech Rights under the First Amendment

97. Two provisions of the ACA implementing regulations violate the Archdiocese Affiliates’ free speech rights; specifically, the emphasized portions of the following:

- a. “The eligible organization must not, directly or indirectly, seek to interfere with a third party administrator’s arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, *and must not, directly or indirectly, seek to influence the third party administrator’s decision to make any such arrangements.*” 29 C.F.R. § 2590.715-2713A(b)(1)(iii) (emphasis added).
- b. “The eligible organization must not, directly or indirectly, seek to interfere with a third party administrator’s arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, *and must not, directly or indirectly, seek to influence the third party administrator’s decision to make any such arrangements.*” 26 C.F.R. § 54.9815-2713A(b)(1)(iii) (emphasis added).

98. These regulations unlawfully impose content-based restrictions on the Archdiocese Affiliates’ speech by expressly forbidding the Archdiocese Affiliates from communicating a message against contraceptive services with any third party administrator, while allowing communications that do not contain that content.

IV. CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT

99. The above paragraphs are incorporated as if fully set forth herein.

100. Under the RFRA, the “government” is prohibited from imposing a “substantial burden” on a person’s “exercise of religion,” even if “the burden results from a rule of general applicability.” 42 U.S.C. § 2000bb-1(a).

101. Plaintiffs have a sincerely held religious belief against providing, directly or indirectly, contraceptive services.

102. A substantial burden is only excused if the government satisfies its burden under a two-part strict scrutiny test: it must show “that the application of the burden to the person” “(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).

103. A violation of the RFRA may be asserted as a claim for relief in a judicial proceeding and appropriate relief against the government may be imposed. 42 U.S.C. § 2000bb-1(c).

104. The “government” is defined as “a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity[.]” 42 U.S.C. § 2000bb-d(1).

105. The Defendants here are the “government” for purposes of the RFRA as each is either an official or department or agency.

106. The ACA and implementing regulations, developed by the Departments, impose a substantial burden on Plaintiffs’ exercise of religion:

- a. they require the Archdiocese Affiliates to either offer contraceptive services, in violation of their sincerely held religious beliefs, or execute a form, which also violates their sincerely held religious beliefs, on penalty of substantial fines for non-compliance; and
- b. they require the Archdiocese to either: (1) sponsor a group health that provides coverage for contraceptive services (as a result of the participation by the Archdiocese Affiliates); (2) sponsor a group health plan the excludes coverage for contraceptive services but subjects the Archdiocese Affiliates to onerous fines; (3) expel the Archdiocese Affiliates from the Plan; or (4) do not sponsor a group health plan at all. Each of these options violates the Archdiocese’s sincerely held religious beliefs.

107. The Departments do not have a compelling government interest for imposing these burdens. At a minimum, the ACA and implementing regulations afford so many exceptions

to the provision of contraceptive services (e.g., grandfathered plans, small business plans, and religious employer plans), without requiring the signing of any offending form, that the Departments cannot credibly advance any interest in imposing contraceptive services upon Plaintiffs.

108. The Departments also have not used the least restrictive means to further any interest. Indeed, any number of reasonable alternatives exist that do not require Plaintiffs to violate their sincerely held religious beliefs, such as requiring an employee to certify to the government that she does not receive contraceptive services from her employer's plan due to the employer's religious objections.

109. Therefore, the RFRA has been violated by the Departments and Plaintiffs are entitled to appropriate relief. 42 U.S.C. § 2000bb-1(c).

COUNT II: VIOLATION OF THE FIRST AMENDMENT (FREE EXERCISE CLAUSE)

110. The above paragraphs are incorporated as if fully set forth herein.

111. The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"

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

113. The Free Exercise Clause protects organizations from Government-imposed burdens on religious exercise.

114. The Contraceptive Mandate and the "accommodation" require Plaintiffs to provide, facilitate, or initiate the provision of services that are directly contrary to their religious beliefs respecting the sanctity and dignity of human life and prohibiting being associated with the provision of contraceptive services.

115. The Contraceptive Mandate and the “accommodation” are not neutral laws of general applicability because they exempt substantial categories of employers, solely for secular reasons, while not exempting employers for religious reasons, and the exemptions are so substantial as to render any differing treatment for religious employers suspect and discriminatory.

116. The Contraceptive Mandate and the “accommodation” also effect inter-religious discrimination, which further means they are not laws of general applicability.

117. The Contraceptive Mandate and the “accommodation” are subject to strict scrutiny.

118. The Government has no compelling interest to require Plaintiffs to comply with the Contraceptive Mandate or the “accommodation.”

119. The Contraceptive Mandate and the “accommodation” are not narrowly tailored to further a compelling government interest.

120. By enacting the Contraceptive Mandate and the “accommodation,” the Government has, therefore, burdened Plaintiffs’ religious exercise in violation of the Free Exercise Clause of the First Amendment, and Plaintiffs are entitled to relief.

COUNT III: VIOLATION OF THE FIRST AMENDMENT (FREE SPEECH CLAUSE)

121. The above paragraphs are incorporated as if fully set forth herein.

122. The First Amendment protects the freedom of speech, including the right of religious groups to speak out to persuade others to refrain from engaging in conduct that they consider contrary to their religious beliefs.

123. Two provisions of the ACA implementing regulations, 29 C.F.R. § 2590.715-2713A(b)(1)(iii) and 26 C.F.R. § 54.9815-2713A(b)(1)(iii), violate the Archdiocese Affiliates' free speech rights

124. These regulations unlawfully impose content-based restrictions on the Archdiocese Affiliates' speech, thus the regulations are presumptively invalid.

125. Also, these regulations do not survive strict scrutiny because they do not further a compelling government interest and are not narrowly tailored to any interest.

126. Therefore, the above ACA regulations issued by the Departments violate the First Amendment and the Archdiocese Affiliates are entitled to relief.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

a. Injunctive relief under Fed.R.Civ.P. 65 to preliminarily and permanently enjoin enforcement by the Departments of the Contraceptive Mandate and the "accommodation" against Plaintiffs or any other participants in the health care plan at issue in this matter;

b. Injunctive relief under Fed.R.Civ.P. 65 to preliminarily and permanently enjoin the Departments from applying or enforcing upon Plaintiffs, or any other participants in the health care plan at issue in this matter, the requirements imposed in 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 45 C.F.R. § 147.131(a), 29 C.F.R. § 2590.715-2713(a)(1)(iv), 29 C.F.R. § 2590.715-2713A(a)-(b), 26 C.F.R. § 54.9815-2713(a)(1)(iv), 26 C.F.R. § 54.9815-2713A(a)-(b), and any other law or regulation to the extent those laws or regulations (1) require Plaintiffs to provide contraceptive coverage; (2) require Plaintiffs to sign EBSA Form 700, or any other form designating any third party as a plan administrator or claims administrator for contraceptive coverage; or (3) in any way require Plaintiffs to authorize or facilitate the provision of contraceptive coverage to their employees, including, but not limited to, by requiring Plaintiffs

to designate any third party as a plan administrator or claims administrator for contraceptive coverage;

c. Injunctive relief under Fed.R.Civ.P. 65 to preliminarily and permanently enjoin the Departments from assessing or imposing any fine, penalty, or tax against Plaintiffs, or any other participants in the health care plan at issue in this matter, for failing to provide contraceptive coverage or execute and deliver EBSA Form 700 or any other self-certification;

d. Injunctive relief under Fed.R.Civ.P. 65 to preliminarily and permanently enjoin the Departments from enforcing the speech restrictions in 29 C.F.R. § 2590.715-2713A(b)(1)(iii) and 26 C.F.R. § 54.9815-2713A(b)(1)(iii);

e. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring the Contraceptive Mandate and the “accommodation” are a violation of the RFRA and the First Amendment;

f. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 45 C.F.R. § 147.131(a), 29 C.F.R. § 2590.715-2713(a)(1)(iv), 29 C.F.R. § 2590.715-2713A(a)-(b), 26 C.F.R. § 54.9815-2713(a)(1)(iv), 26 C.F.R. § 54.9815-2713A(a)-(b) are a violation of the RFRA and the First Amendment to the extent those laws or regulations (1) require Plaintiffs to provide contraceptive coverage; (2) require Plaintiffs to sign EBSA Form 700, or any other form designating any third party as a plan administrator or claims administrator for contraceptive coverage; or (3) in any way require Plaintiffs to authorize or facilitate the provision of contraceptive coverage to their employees, including, but not limited to, by requiring Plaintiffs to designate any third party as a plan administrator or claims administrator for contraceptive coverage;

g. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring any fine, penalty, or tax assessed or imposed against Plaintiffs for failing to provide contraceptive coverage or execute and deliver EBSA Form 700 or any other self-certification are a violation of the RFRA and the First Amendment;

h. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring the speech restrictions in 29 C.F.R. § 2590.715-2713A(b)(1)(iii) and 26 C.F.R. § 54.9815-2713A(b)(1)(iii) are a violation of the First Amendment;

i. Attorneys' and expert fees under 42 U.S.C. § 1988(b); and

j. Such other relief as the Court deems just and proper.

Respectfully submitted,

CONRAD O'BRIEN PC

Dated: June 2, 2014

By: /s/ FRE2055
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Attorneys for Plaintiffs

Exhibit A

EBSA FORM 700-- CERTIFICATION
(To be used for plan years beginning on or after January 1, 2014)

This form is to be used to certify that the health coverage established or maintained or arranged by the organization listed below qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing, pursuant to 26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131.

Please fill out this form completely. This form must be completed by each eligible organization by the first day of the first plan year beginning on or after January 1, 2014, with respect to which the accommodation is to apply, and be made available for examination upon request. This form must be maintained on file for at least 6 years following the end of the last applicable plan year.

Name of the objecting organization	
Name and title 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	

I certify that, on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization.

Note: An organization that offers coverage through the same group health plan as a religious employer (as defined in 45 CFR 147.131(a)) and/or an eligible organization (as defined in 26 CFR 54.9815-2713A(a); 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)), and that is part of the same controlled group of corporations as, or under common control with, such employer and/or organization (within the meaning of section 52(a) or (b) of the Internal Revenue Code), may certify that it holds itself out as a religious organization.

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.

Signature of the individual listed above

Date

The organization or its plan must provide a copy of this certification to the plan's health insurance issuer (for insured health plans) or a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement.

Notice to Third Party Administrators of Self-Insured Health Plans

In the case of a group health plan that provides benefits on a self-insured basis, the provision of this certification to a third party administrator for the plan that will process claims for contraceptive coverage required under 26 CFR 54.9815-2713(a)(1)(iv) or 29 CFR 2590.715-2713(a)(1)(iv) constitutes notice to the third party administrator that the eligible organization:

- (1) Will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and
- (2) The obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A.

This certification is an instrument under which the plan is operated.

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1210-0150. Each organizations that seeks to be recognized as an eligible organization that qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing is required to complete this self-certification from pursuant to 26 CFR 54.9815-2713A(a)(4) in order to obtain or retain the benefit of the exemption from covering certain contraceptive services. The self-certification must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be retained for six years. The time required to complete this information collection is estimated to average 50 minutes per response, including the time to review instructions, gather the necessary data, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Labor, Employee Benefits Security Administration, Office of Policy and Research, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebbsa.opr@dol.gov and reference the OMB Control Number 1210-0150.