

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

MOST REVEREND LAWRENCE E.)
BRANDT, BISHOP OF THE ROMAN)
CATHOLIC DIOCESE OF)
GREENSBURG, as Trustee of The Roman)
Catholic Diocese of Greensburg, a)
Charitable Trust; THE ROMAN)
CATHOLIC DIOCESE OF)
GREENSBURG, as the Beneficial Owner)
of the Greensburg series of The Catholic)
Benefits Trust; CATHOLIC CHARITIES)
OF THE DIOCESE OF GREENSBURG,)
an affiliate nonprofit corporation of The)
Roman Catholic Diocese of Greensburg;)
and ST. JOHN THE EVANGELIST)
REGIONAL CATHOLIC SCHOOL, an)
affiliate Charitable Trust of The Roman)
Catholic Diocese of Greensburg,)

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official)
capacity as Secretary of the U.S.)
Department of Health and Human)
Services; THOMAS PEREZ, in his official)
capacity as Secretary of the U.S.)
Department of Labor; JACOB J. LEW, in)
his official capacity as Secretary of the)
U.S. Department of Treasury; U.S.)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES; U.S.)
DEPARTMENT OF LABOR; and U.S.)
DEPARTMENT OF TREASURY)

Defendants.

CASE NUMBER: _____

DATE STAMP: _____

JURY TRIAL DEMAND

COMPLAINT

1. This case represents another chapter in the Catholic Dioceses' prolonged fight for their religious freedom. In all material respects, this case is identical to *Zubik v. Sebelius*, 13-CV-1459, 2013 U.S. Dist. LEXIS 165922 (W.D. Pa. Nov. 21, 2013), where this Court granted the Bishops, Dioceses, and their affiliates a permanent injunction, conclusively deciding the issues presented in this case. Before filing this action, Plaintiffs reached out to the Defendants' counsel to try and expand the *Zubik* permanent injunction to the Diocese of Greensburg and its affiliated entities. Such an extension is warranted and appropriate, to conserve judicial resources and the resources of the parties. Defendants failed to agree to the injunction, thereby necessitating this action to protect Plaintiffs' religious liberties under the Religious Freedom Restoration Act ("RFRA") and the U.S. Constitution. Plaintiffs seek declaratory and injunctive relief based on the allegations and claims set forth below. Plaintiffs also seek an award of attorneys' fees against Defendants for needless and repetitive litigation over civil rights issues already decided by this Court.

2. Federal law (the "U.S. Government Mandate") requires religious organizations such as Plaintiffs to provide services that violate their long-standing teachings on abortion and the sanctity of human life by subsidizing, providing, and/or facilitating coverage for abortion-inducing drugs, sterilization services, contraceptives, and related counseling services (also referred to herein as the "objectionable services").

3. In 2011, Defendants first issued regulations which violated Plaintiffs' long- and sincerely-held religious beliefs in an unprecedented manner. Since issuing those regulations, the Government consistently promised that changes were coming and that these changes would accommodate Plaintiffs' sincerely-held religious beliefs.

4. More than two years later, it is more clear than ever that these promises were empty words. The Government ignored the views of religious organizations like Plaintiffs by promulgating a final rule that is more damaging than the initial regulations.

5. The Government has repeatedly promised to protect Plaintiffs' religious freedom, but the Government has chosen not to do so. Despite over 400,000 public comments, repeated requests from Church leaders, and repeated promises from the Government that it would fix the problem, the Government has not changed the core principle of the U.S. Government Mandate. On June 28, 2013, the Government issued its Final Rule, which still requires Plaintiffs to subsidize and/or directly facilitate the provision of abortion-inducing drugs, contraception, sterilization, and related education and counseling, in violation of their religious beliefs.

6. The Government, through the U.S. Government Mandate, is forcing Plaintiffs to violate their sincerely-held religious beliefs. Plaintiffs Catholic Charities of the Diocese of Greensburg ("Catholic Charities") and St. John the Evangelist Regional Catholic School ("St. John School") are forced to comply with the U.S. Government Mandate or face significant fines and penalties. Plaintiffs Most Reverend Lawrence E. Brandt (the "Bishop") and the Roman Catholic Diocese of Greensburg (the "Diocese") are forced to directly facilitate coverage of the objectionable services because the insurance trust which the Diocese operates currently offers coverage to Diocesan-affiliated entities subject to the U.S. Government Mandate.

7. The Government's violation of religious freedom is irreconcilable with the First Amendment, RFRA, the Administrative Procedure Act ("APA"), and other laws. The Government has not demonstrated any compelling interest in forcing Plaintiffs to provide, pay for, and/or directly facilitate access to abortion-inducing drugs, sterilization, and contraception. Nor has the Government demonstrated that the U.S. Government Mandate is the least restrictive

means of advancing any interest it has in increasing access to these services, which are already widely available and which the Government could make more widely available without conscripting Plaintiffs as vehicles for the dissemination of products and services to which they so strongly object.

8. The Government cannot justify its decision to force Plaintiffs to provide, pay for, and/or directly facilitate access to these services in violation of their sincerely-held religious beliefs. Accordingly, Plaintiffs seek a declaration that the U.S. Government Mandate cannot lawfully be applied to Plaintiffs, an injunction barring its enforcement, and an order vacating the Mandate.

I. PRELIMINARY MATTERS

9. Plaintiff Most Reverend Lawrence E. Brandt, Bishop of The Roman Catholic Diocese of Greensburg, is the Trustee of The Roman Catholic Diocese of Greensburg, a Pennsylvania Charitable Trust. Bishop Brandt resides in Greensburg, Pennsylvania.

10. Plaintiff The Roman Catholic Diocese of Greensburg is a Pennsylvania Charitable Trust with a principal place of administration in Greensburg, Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

11. Plaintiff Catholic Charities of the Diocese of Greensburg is a nonprofit corporation affiliated with the Diocese and with a principal place of administration in Greensburg, Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

12. Plaintiff St. John the Evangelist Regional Catholic School is a Pennsylvania Charitable Trust with its principal place of business in Uniontown, Pennsylvania. It is organized

exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

13. Defendant Kathleen Sebelius is the Secretary of the U.S. Department of Health and Human Services (“HHS”). She is sued in her official capacity.

14. Defendant Thomas Perez is the Secretary of the U.S. Department of Labor. He is sued in his official capacity.

15. Defendant Jacob J. Lew is the Secretary of the U.S. Department of the Treasury. He is sued in his official capacity.

16. Defendant U.S. Department of Health and Human Services is an executive agency of the United States within the meaning of RFRA and the APA.

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

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

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

20. An actual, justiciable controversy currently exists between Plaintiffs and Defendants. Absent a declaration resolving this controversy and the validity of the U.S. Government Mandate, Plaintiffs will be required to provide, pay for, and/or directly facilitate access to objectionable products and services in contravention of their sincerely-held religious beliefs, as described below.

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

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

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

A. The Bishop and the Diocese

(1) Background on the Religious Mission of the Bishop and the Diocese

24. The Bishop of Greensburg is the shepherd of the Catholic faithful in Southwestern Pennsylvania. The Bishop in his capacity as Bishop of the Greensburg Diocese also serves as Trustee for 78 parishes and their charitable trusts. The Diocese provides services throughout four counties in Southwestern Pennsylvania—Armstrong, Fayette, Indiana, and Westmoreland Counties—including a Catholic population of approximately 153,000 people.

25. The Bishop also oversees the multifaceted mission of spiritual, educational, and social service to residents of this four-county region, Catholic and non-Catholic alike. Specifically, the Bishop oversees the mission of social service in his role as Chairman of the Membership Board of Plaintiff Catholic Charities.

26. Because education is an integral component of the Catholic faith, the Diocese serves the community through its affiliated Catholic schools. The Diocese's Catholic schools include two high schools, two junior high schools, thirteen elementary schools, and various preschool programs. These schools educate approximately 2,800 students.

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

28. Two Catholic junior-senior high schools are affiliated with the Diocese, including Geibel Catholic Junior-Senior High School and Greensburg Central Catholic Junior-Senior High School. Ninety-seven percent of senior high school students in the Diocesan schools continue further education after high school.

29. The elementary schools within the Diocese are not exclusive to Catholics. For example, approximately sixty percent of the students at Holy Trinity School identify as non-Catholic, and approximately forty percent of the students at Conn-Area Catholic School and the Cardinal Maida Academy identify as non-Catholic.

30. As described below, the U.S. Government Mandate will result in the schools within the Diocese being treated inconsistently and differently, in that some schools within the Diocese will be exempt from compliance with the U.S. Government Mandate while other schools will not. Defendants' religious employer exemption rests on formalistic distinctions which do not work in practice and rather, seek to create a division in the Catholic church between (a) houses of worship and (b) charitable and educational organizations which provide good works and education to those in need.

31. The Diocese provides numerous other social services to the needy, underserved, and underprivileged residents of its four-county community. Diocesan employees and volunteers provide these services without regard to national origin, race, color, sex, religion, age, or disability. For example, the Diocese provides crisis pregnancy assistance and post-abortion healing ministries.

32. The Diocese assists the work of many other local organizations, including organizations that provide support to the homeless and provide counseling and support to struggling families.

(2) Operation and Beneficial Ownership of the Catholic Benefits Trust

33. The Diocese of Greensburg operates a self-insured health plan through the Catholic Benefits Trust (or the "Trust"). The Catholic Benefits Trust was formed in June 2013 by an agreement between the Diocese of Greensburg, the Diocese of Pittsburgh, and the Diocese of Altoona-Johnstown (the "Trust Agreement") in an effort to pool resources with regard to

health benefits. The Trust was formed by the Diocese of Pittsburgh converting its Catholic Employers Benefits Plan Delaware Trust to a Delaware statutory trust and expanding the Trust to include the Dioceses of Greensburg and Altoona-Johnstown.

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

35. 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.” Presently, approximately 230 Catholic organizations, including the Diocese of Greensburg, Catholic Charities of the Diocese of Greensburg, and all of the parishes and schools within the Diocese of Greensburg, along with the Dioceses of Pittsburgh and Altoona-Johnstown and affiliated entities within those Dioceses, participate in the Catholic Benefits Trust. Within these organizations, approximately 3,100 employees and 5,000 participants receive their health insurance through the Trust. This structure allows even very small organizations to benefit from economies of scale, to be self-insured and to spread their risks. As a result, each religious organization can offer its employees better benefits at lower costs.

36. The three Dioceses do not contract with a separate insurance company that pays for the employee health plans sponsored by the Trust. Instead, the Trust functions as the insurance company underwriting the covered employees’ medical costs, with all funding coming from each respective Diocese and its covered affiliates.

37. The health plans sponsored by the Trust are administered by Third Party Administrators (“TPAs”), who are paid a flat fee for each covered individual for administering the plans but who do not pay for any services received by covered employees.

38. The Trust sponsors one set of group health plans for the Diocese of Greensburg, Catholic Charities of the Diocese of Greensburg, and all other Diocesan-affiliated entities with the Diocese of Greensburg (the “Diocesan plan”).

39. Approximately 600 employees at the Diocese and its various affiliated entities are eligible for coverage through the Catholic Benefits Trust. Approximately 400 employees are covered and approximately 800 individuals are covered, including dependents.

40. The Diocese’s next plan year begins on July 1, 2014.

41. The Diocese offers two health plan options to its lay employees as well as to all lay employees of its affiliated entities: (1) a lay basic plan, and (2) a lay premium plan. Neither lay plan is “grandfathered.” Indeed, the Diocese did not include a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii) for grandfathered plans.

42. Consistent with Church teachings, the Diocesan plan offered through the Trust does not cover abortion-inducing drugs, contraceptives, or sterilization, except when medically necessary.

43. Many Diocesan-affiliated entities currently insured through the Trust likely do not qualify for Defendants’ religious employer exemption and so are instead subject to the so-called “accommodation.”

44. Plaintiffs Catholic Charities and St. John School are two such entities, which likely do not qualify for the exemption and which do not have a “grandfathered” health plan.

45. While the Diocese is exempt from compliance with the U.S. Government Mandate, both the Bishop and the Diocese will be forced directly 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 Greensburg series of the Trust in its role as sole Beneficial Owner and beneficiary of that series. The Bishop and the Diocese will be forced directly to facilitate provision of the objectionable services because accommodated entities currently included in the Trust, such as Plaintiffs Catholic Charities and St. John School, will be forced to comply with the U.S. Government Mandate.

46. 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 U.S. Government Mandate, the Director must then allow the Trust directly to facilitate provision of the objectionable services for accommodated entities. The Bishop knows that his appointee will be forced to violate the Catholic faith.

47. 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 through their respective Bishops have ultimate decision-making authority and ultimately are forced directly to facilitate provision of the objectionable services to the employees of accommodated entities within the Trust.

48. Additionally, it is the Diocese, as operator and sole Beneficial Owner of the Greensburg series of the Trust, which decides whether accommodated 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 accommodated, non-grandfathered entities, like Plaintiffs Catholic Charities and St. John School, currently participate in the Trust, the Diocese will directly be facilitating coverage of the objectionable services for the employees of these accommodated entities by permitting these entities to participate in the Trust. The Diocese is now faced with the decision of whether to expel these accommodated entities from the Trust.

49. The Diocese, as sole Beneficial Owner of the Greensburg series of the Trust, is ultimately responsible for any fines incurred by accommodated entities as a result of non-compliance with the U.S. Government 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.”

50. Finally, the Bishop, as Chairman of the Membership Board of Catholic Charities and Trustee of St. John School, is ultimately responsible for deciding whether these entities will sign the self-certification form. The Bishop cannot, consistent with Catholic doctrine, permit either entity to sign the self-certification form.

51. In all of these ways, the Bishop and the Diocese are forced directly to facilitate coverage for the objectionable services.

B. Catholic Charities of the Diocese of Greensburg

(1) Background on the Religious Mission of Catholic Charities

52. Plaintiff Catholic Charities is the primary social service agency of the Diocese under the leadership of Bishop Brandt. Catholic Charities has been providing services and support for individuals, couples, and families through a variety of programs since 1954.

53. Its mission is to serve the human needs of individuals and families, regardless of their religious affiliation, and to provide leadership in building collaborative efforts with parishes and communities in addressing these needs.

54. Catholic Charities' programs reach out through the four counties of the Diocese with five satellite offices and include specifically defined workshops and seminars for parishes. All programs are provided with the highest degree of confidentiality and are administered by professionally trained associates committed to the human dignity of the person and quality care and support.

55. Catholic Charities provides more than 11,400 acts of service each year for people in need throughout Southwestern Pennsylvania, with approximately 18 employees, and with offices in all four counties that the Diocese serves. Catholic Charities has distributed approximately \$1,954,279 over the last ten years to those in need.

56. Catholic Charities serves the needy, underserved, and underprivileged in countless ways. Its programs and services include information and referral services, adoption, counseling, safety net and stability services, housing and homeless assistance, pregnancy and parenting support, and senior services. Catholic Charities also offers workshops with topics including living wills, powers of attorney, medical decision documents, and senior enrichment.

57. The comprehensive information and referral services provided at Catholic Charities are considered among the best in the Diocese. Temporary Emergency Financial

Assistance is provided through the information and referral program for basic needs, such as food, heat, shelter and other utilities. A toll-free “Help Line” is available 24 hours a day/7 days a week to those with immediate needs.

58. Catholic Charities administers Poverty Relief Fund grants through a program started by Bishop Brandt in 2010. The Poverty Relief Fund’s central purpose is to provide concrete support for organizations that work to help people raise themselves out of poverty. The grants help provide food and shelter to people in need and provide assistance to agencies that are committed to helping people out of poverty. The grants have provided, for example, funding to three service organizations in the Diocese that provided meals for children during the summer, helped families with infants, and helped men who are homeless. A Poverty Relief Fund grant was also given to the “Alternative.Yes Pregnancy Support Center.” This Pregnancy Support Center offers a variety of services, such as free pregnancy test kits, maternity and baby clothes, baby furnishings and full newborn layettes. The Center also offers pregnancy information, professional counseling, and referrals for medical care, housing, adoption, childbirth classes, social services, employment guidance, and legal aid.

59. Catholic Charities provides support and referral for those facing crisis pregnancies, as well as providing infant baby clothing, formula, and diapers for new parents in need, through the Baby Closet. Support is available for the expectant parents and extended family members beginning with the possibility of conception to the baby’s first birthday. Project Rachel, post-abortion healing and reconciliation counseling, is also offered to those struggling with issues relating to abortion. Options regarding adoption also are discussed. All services provided through this program are free.

60. Catholic Charities also supports a parenting program throughout the four counties of the Diocese of Greensburg. Women who are pregnant or have recently given birth are provided with supportive counseling (whether parenting or making an adoption plan) and access to workshops and classes to learn parenting and life skills, in addition to employment preparedness in order to become more stable. Last year, 69 parents accessed these services. Catholic Charities also provided permanency service to 100 children in the Pennsylvania foster care system.

61. The Adoption and Foster Care Center is Catholic Charities' longest standing program. Adoptive parents can also benefit from pre and post adoption counseling and support groups. These groups address a variety of issues adoptive parents and children may face.

62. Catholic Charities provides additional counseling services, including individual counseling, marital and couples counseling, family counseling, anger management groups, and counseling for gambling and other addiction issues.

63. Through its various social service programs, in 2013, Catholic Charities provided approximately 944 meals to the hungry, 520 hours of case management to struggling individuals and families, and 1,791 hours of counseling.

64. Donors are the life blood of Catholic Charities, and they make the mission and programs of Catholic Charities possible. Additionally, the Diocese provides funding to Catholic Charities and its programs.

65. Catholic Charities' employees are insured under the Diocesan plan. Currently, approximately 18 of Catholic Charities' employees are covered under the health plan, with a total of approximately 38 insured individuals, including dependants.

66. Catholic Charities does not currently qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, Catholic Charities likely does not currently qualify as a “religious employer” under the exemption to the U.S. Government Mandate.

67. Catholic Charities is an affiliated corporation of the Diocese. The Diocese has direct oversight of the governance of Catholic Charities and the Bishop has direct oversight of the governance of Catholic Charities in his role as Chairman of the Membership Board of Catholic Charities.

C. St. John the Evangelist Regional School

68. St. John School is a Catholic elementary school in the Uniontown area that offers education for preschool through eighth grade.

69. The primary purpose of St. John School is to provide a school environment centered on the Gospel and based on the values of the Catholic faith. The school program is an extension of the Diocese of Greensburg in educating and reinforcing the Catholic faith. Catholic schooling fulfills its academic purpose while simultaneously promoting a disposition to service, passion for justice, and commitment to God and the church.

70. As part of the spiritual life at St. John School, mass and daily prayer are celebrated. Daily theology classes are part of an age-appropriate curriculum for all grades. Students at St. John School, along with students at all other schools in the Diocese, also participate in parish and school service projects throughout the year. Each grade at St. John School is responsible for its own service project each year. A few examples of these projects include writing to military veterans, providing service to senior living homes in Fayette County, and providing assistance to the St. Vincent de Paul Society in Greensburg, which is a Catholic organization that sponsors various projects and events to assist and support individuals in need.

71. In addition to serving the community, students are encouraged to reflect on their service experiences to identify how they were served, personally and spiritually, by reaching out to help others. Accordingly, students learn to express the spiritual, charitable, and educational mission of the Diocese through both faith and good works.

72. Additionally, St. John School offers religious retreats and publicizes volunteer opportunities for its students.

73. Currently, St. John School has approximately 210 students.

74. The Diocese offers financial aid to attend St. John School, as well as other schools in the Diocese, through Diocesan Endowment funds, Parish Supported Financial Aid (“PSFA”) Funds, and the Scholarship Partners Foundation established by the Diocese of Greensburg, which benefits qualifying families at the local school level. These resources ensure that St. John School remains affordable to all families that desire such an education.

75. St. John School employees are insured under the Diocesan plan. Currently, thirteen employees and six dependents of St. John School are insured under that plan.

76. St. John School does not currently qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code, however, it is exempt from tax reporting obligations under 26 C.F.R. § 1.6033-2(g)(1)(vii). Accordingly, despite being exempt from tax reporting obligations, St. John School likely does not currently qualify as a “religious employer” under the exemption to the U.S. Government Mandate.

77. St. John School is a charitable trust affiliated with the Diocese. The Bishop, in his role as Trustee of St. John School, and the Diocese directly oversee the governance of St. John School.

II. STATUTORY AND REGULATORY BACKGROUND

78. Plaintiffs are engaged in a long-running regulatory struggle that dates back to 2011, when the Government began its historically unprecedented violation of the core constitutional right to religious freedom. Since that time, the Government has bobbed and weaved around various legal challenges by (i) saying whatever it needed to get by the moment, (ii) promising courts around the country on record that it would resolve the concerns that Plaintiffs have raised over the years, and (iii) inviting public comments and representing that it would take these comments seriously. But, despite all that it said, and all that has happened, the Government has finalized a rule that respects nothing, resolves nothing, and attempts to confine what constitutes one's practice of faith to the four corners, bricks and mortar of a house of worship.

A. Statutory Background

79. In March 2010, Congress enacted the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (collectively, the "Affordable Care Act" or the "Act"). The Affordable Care Act established many new requirements for "group health plan[s]," broadly defined as "employee welfare benefit plan[s]" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provide[] medical care . . . to employees or their dependents." 42 U.S.C. § 300gg-91(a)(1).

80. As relevant here, the Act requires an employer's group health plan to cover certain women's "preventive care." Specifically, it indicates that "[a] group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum[,] provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in

comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.” 42 U.S.C. § 300gg-13(a)(4). Because the Act prohibits “cost sharing requirements,” the health plan must pay for the full costs of these “preventive care” services without any deductible or co-payment.

81. “[T]he Affordable Care Act preserves the ability of individuals to retain coverage under a group health plan or health insurance coverage in which the individual was enrolled on March 23, 2010.” Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726, 41,731 (July 19, 2010) (“Interim Final Rules”); 42 U.S.C. § 18011. These so-called “grandfathered health plans do not have to meet the requirements” of the U.S. Government Mandate. 75 Fed. Reg. at 41,731. HHS estimates that “98 million individuals will be enrolled in grandfathered group health plans in 2013.” *Id.* at 41,732.

82. Federal law provides several mechanisms to enforce the requirements of the Act, including the U.S. Government Mandate. For example:

a. Under the Internal Revenue Code, certain employers who fail to offer “full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan” will be exposed to significant annual fines of \$2,000 per full-time employee. *See* 26 U.S.C. § 4980H(a), (c)(1).

b. Under the Internal Revenue Code, group health plans that fail to provide certain required coverage may be subject to a penalty of \$100 a day per affected beneficiary. *See* 26 U.S.C. § 4980D(b); *see also* Jennifer Staman & Jon Shimabukuro, Cong. Research Serv., RL 7-5700, Enforcement of the Preventative Health Care Services

Requirements of the Patient Protection and Affordable Care Act (2012) (asserting that this applies to employers who violate the “preventive care” provision of the Affordable Care Act).

c. Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700.

d. Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the U.S. Government Mandate, as incorporated by ERISA. *See* 29 U.S.C. § 1132(b)(3); *see also* Cong. Research Serv., RL 7-5700 (asserting that these penalties can apply to employers and insurers who violate the “preventive care” provision of the Affordable Care Act).

83. Several of the Act’s provisions, along with other federal statutes, reflect a clear congressional intent that the executive agency charged with identifying the “preventive care” required by § 300gg-13(a)(4) should exclude all abortion-related services.

84. For example, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits certain agencies from discriminating against an institution based on that institution’s refusal to provide abortion-related services. Specifically, it states that “[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.” Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011). The term “health care entity” is defined to include “an individual physician or other

health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, *a health insurance plan*, or any other kind of health care facility, organization, or plan.” *Id.* § 507(d)(2) (emphasis added).

85. The legislative history of the Act also demonstrates a clear congressional intent to prohibit the executive branch from requiring group health plans to provide abortion-related services. For example, the House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak prohibiting the use of federal funds for abortion services. *See* H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, lacked that restriction. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009). To avoid a filibuster in the Senate, congressional proponents of the Act engaged in a procedure known as “budget reconciliation” that required the House to adopt the Senate version of the bill largely in its entirety. Congressman Stupak and other pro-life House members, however, indicated that they would refuse to vote for the Senate version because it failed to adequately prohibit federal funding of abortion. In an attempt to address these concerns, President Barack Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. *See* Exec. Order No. 13535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

86. The Act, therefore, was passed on the central premise that all agencies would uphold and follow “longstanding Federal laws to protect conscience” and to prohibit federal funding of abortion. *Id.* That executive order was consistent with a 2009 speech that President Obama gave at the University of Notre Dame, in which he indicated that his Administration would honor the consciences of those who disagree with abortion, and draft sensible conscience clauses.

B. Regulatory Background – Defining “Preventive Care” and the Narrow Exemption

87. In a span of less than two years, Defendants promulgated the U.S. Government Mandate, subverting the Act’s clear purpose to protect the rights of conscience. The U.S. Government Mandate immediately prompted intense criticism and controversy, in response to which the Government has undertaken various revisions. None of these revisions, however, alleviates the burden that the U.S. Government Mandate imposes on Plaintiffs’ religious beliefs. To the contrary, these revisions have resulted in a final rule that is significantly worse than the original one.

(1) The Original Mandate and Advance Notice of Proposed Rulemaking

88. On July 19, 2010, Defendants issued interim final rules addressing the statutory requirement that group health plans provide coverage for women’s “preventive care.” 75 Fed. Reg. 41,726 (citing 42 U.S.C. § 300gg-13(a)(4)). Initially, the rules did not define “preventive care,” instead noting that “[t]he Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011.” *Id.* at 41,731.

89. To develop the definition of “preventive care,” HHS outsourced its deliberations to the Institute of Medicine (“IOM”), a non-governmental “independent” organization. The IOM in turn created a “Committee on Preventive Services for Women,” composed of 16 members who were selected in secret without any public input. At least eight of the Committee members had founded, chaired, or worked with “pro-choice” advocacy groups (including five different Planned Parenthood entities) that have well-known political and ideological views, including strong animus toward Catholic teachings on abortion and contraception.

90. Unsurprisingly, the IOM Committee invited presentations from several “pro-choice” groups, such as Planned Parenthood and the Guttmacher Institute (named for a former

president of Planned Parenthood), without inviting any input from groups that oppose government-mandated coverage for abortion, contraception, and sterilization. Instead, opponents were relegated to lining up for brief open-microphone sessions at the close of each meeting.

91. The contract for the development of the definition of “preventive care” required HHS to pay the IOM \$906,902.00 to develop the definition of “preventive care” and required IOM to provide various materials to HHS as it was developing the “preventive care” definition. Specifically, the contract required IOM to submit to HHS, among other things: (i) a work plan, (ii) a research brief, and (iii) quarterly electronic reports.

92. Despite the contractual terms, HHS never received any of the contractually-required written materials from IOM, other than the final report that was issued on July 19, 2011. HHS never received a work plan, research brief, or any quarterly electronic reports. It never received any documentation from IOM, other than the final report.

93. IOM’s final report recommended that “preventive care” for women be defined to include “the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for [all] women with reproductive capacity.” Inst. Of Med., *Clinical Preventive Services for Women: Closing the Gaps*,” at 218-219 (2011).

94. The extreme bias of the IOM process spurred one member of the Committee, Dr. Anthony Lo Sasso, to dissent from the final recommendation, writing: “[T]he committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee’s composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy.” *Id.* at 232.

95. HHS immediately showed concern regarding the dissent, asking IOM how common such dissents are. IOM responded that dissents are “not common—very few happen each year.” Yet, HHS did not slow its approval process.

96. At a press briefing the next day, the chair of the IOM Committee fielded a question from a representative of the U.S. Conference of Catholic Bishops regarding the “coercive dynamic” of the U.S. Government Mandate, asking whether the Committee considered the “conscience rights” of those who would be forced to pay for coverage that they found objectionable on moral and religious grounds. In response, the chair illustrated her cavalier attitude toward the religious-liberty issue, stating bluntly: “[W]e did not take into account individual personal feelings.” *See* Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women, Press Briefing (July 20, 2011), *available at* <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>. The chair later expressed concern to Congress about considering religious objections to the Mandate because to do so would risk a “slippery slope” that could occur by “opening up that door” to religious liberty. *See* Executive Overreach: The HHS Mandate Versus Religious Liberty: Hearing Before the H. Comm. On the Judiciary, 112th Cong. (2012) (testimony of Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women).

97. Internal HHS emails indicate that HHS’ review of the final report was rushed. Internal emails dated July 20 and 21, 2011 with the subject line “FOR EXPEDITED REVIEW: Women’s Preventive Services: Comments Due Tomorrow (Thursday) morning” indicate “Please note that they are requesting our comments as early as possible today. Also, they are asking us to notify [HHS Office of the Secretary] if we think we will have comments so please

get back to me on this latter questions as soon as possible.” The emails state “Sorry for the short review time.”

98. Less than two weeks after the IOM report, without pausing for notice and comment, HHS issued a press release on August 1, 2011, announcing that it would adopt the IOM’s definition of “preventive care,” including all “FDA-approved contraception methods and contraceptive counseling.” *See* U.S. 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>. HHS ignored the religious, moral and ethical dimensions of the decision and the ideological bias of the IOM Committee and stated that it had “relied on independent physicians, nurses, scientists, and other experts” to reach a definition that was “based on scientific evidence.” Under the final “scientific” definition, the category of mandatory “preventive care” extends to “[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.” *See* “Women’s Preventive Services: Required Health Plan Coverage Guidelines,” <http://www.hrsa.gov/womensguidelines>.

99. The Government’s definition of mandatory “preventive care” also includes abortion-inducing products. For example, the FDA has approved “emergency contraceptives” such as the morning-after pill (otherwise known as Plan B), which can prevent an embryo from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or ella), which likewise can induce abortions.

100. Shortly after announcing its definition of “preventive care,” the Government proposed a narrow exemption from the U.S. Government Mandate for a small category of “religious employers” that met all of the following four criteria: “(1) The inculcation of religious

values is the purpose of the organization”; “(2) The organization primarily employs persons who share the religious tenets of the organization”; “(3) The organization serves primarily persons who share the religious tenets of the organization”; and “(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.” 76 Fed. Reg. at 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(iv)(B)).

101. As the Government itself admitted, this narrow exemption was intended to protect only “the unique relationship between a house of worship and its employees in ministerial positions.” *Id.* at 46,623. It provided no protection for religious universities, elementary and secondary schools, hospitals, and charitable organizations.

102. The sweeping nature of the U.S. Government Mandate was subject to widespread and withering criticism. Religious leaders from across the country protested that they should not be punished or considered less religious simply because they chose to live out their faith by serving needy members of the community who might not share their beliefs. As Cardinal Wuerl later wrote, “Never before has the government contested that institutions like Archbishop Carroll High School or Catholic University are religious. Who would? But HHS’s conception of what constitutes the practice of religion is so narrow that even Mother Teresa would not have qualified.”

103. Despite such pleas, the Government at first refused to reconsider its position. Instead, the Government “finalize[d], without change,” the narrow exemption as originally proposed. 77 Fed. Reg. at 8,729 (Feb. 15, 2012). At the same time, the Government announced that it would offer “a one-year safe harbor from enforcement” for religious organizations that

remained subject to the Mandate. *Id.* at 8,728. As noted by Cardinal Timothy Dolan, the “safe harbor” effectively gave religious groups “a year to figure out how to violate our consciences.”

104. A month later, under increasing public pressure, the Government issued an Advance Notice of Proposed Rulemaking (“ANPRM”) that, it claimed, set out a solution to the religious-liberty controversy created by the U.S. Government Mandate. 77 Fed. Reg. 16,501 (Mar. 21, 2012). The ANPRM did not revoke the U.S. Government Mandate, and in fact reaffirmed the Government’s view at the time that the “religious employer” exemption would not be changed. *Id.* at 16,501-08. Instead, the ANPRM offered hypothetical “possible approaches” that would, in the Government’s view, somehow solve the religious-liberty problem without granting an exemption for objecting religious organizations. *Id.* at 16,507. As the U.S. Conference of Catholic Bishops soon recognized, however, any semblance of relief offered by the ANPRM was illusory. Although it was designed to “create an appearance of moderation and compromise, it [did] not actually offer any change in the Administration’s earlier stated positions on mandated contraceptive coverage.” *See* Comments of U.S. Conference of Catholic Bishops, at 3 (May 15, 2012), *available at* <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-on-advance-notice-of-proposed-rulemaking-on-preventive-services-12-05-15.pdf>.

(2) The Government’s Final Offer of an Empty “Accommodation” and Issuance of the “Final Rule”

105. On February 1, 2013, the Government issued a Notice of Proposed Rulemaking (“NPRM”), setting forth in further detail its proposal to “accommodate” the rights of Plaintiffs and other religious organizations. Contrary to the Government’s previous assurances, the NPRM adopted the proposals contained in the ANPRM.

106. Despite opposition from the U.S. Conference of Catholic Bishops and various other commenters, as described below, on June 28, 2013, the Government finalized the U.S. Government Mandate, adopting the core proposals in the NPRM. *See* 78 Fed. Reg. 39870 (July 2, 2013) (“Final Rule”).

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

108. *First*, the Final Rule makes what the Government concedes to be a non-substantive, cosmetic change to the definition of “religious employer.” In particular, it eliminates the first three prongs of that definition, such that, under the new definition, an exempt “religious employer” is simply “an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.” 78 Fed. Reg. 39874 (codified at 45 CFR § 147.131(a)). As the Government has admitted, this new definition does “not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules.” 78 Fed. Reg. 8456, 8461 (Feb. 6, 2013). Instead, it continues to “restrict[]the exemption primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders.” *Id.* In this respect, the Final Rule mirrors the intended scope of the original “religious employer” exemption, which focused on “the unique relationship between a house of worship and its employees in ministerial positions.” 76 Fed. Reg. at 46,623. Religious

organizations that have a broader mission are still not, in the Government's view, "religious employers."

109. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the U.S. Government Mandate, while denying this favorable treatment to all other religious groups. The exemption applies only to those groups that are "refer to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code." This category includes only (i) "churches, their integrated auxiliaries, and conventions or associations of churches," and (iii) "the exclusively religious activities of any religious order." The IRS has adopted an intrusive 14-factor test to determine whether a group meets these qualifications. *See Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009). Among these 14 factors is whether the group has "a recognized creed and form of worship," "a definite and distinct ecclesiastical government," "a formal code of doctrine and discipline," "a distinct religious history," "an organization of ordained ministers," "a literature of its own," "established places of worship," "regular congregations," "regular religious services," "Sunday schools for the religious instruction of the young," and "schools for the preparation of its ministers." *Id.* Not only do these factors favor some religious groups at the expense of others, but they also require the Government to make intrusive judgments regarding religious beliefs, practices, and organizational features to determine which groups fall into the favored category. Similar problems arise in evaluating whether an organization is an "integrated auxiliary" under Treasury Regulations that assess, among other things whether an organization "shares common religious doctrines, principles, disciplines, or practices with a church," or "receives more than 50% of its support" from non-church sources. *See* 26 C.F.R. § 1.6033-2(h).

110. As Bishop Brandt has stated, the “[e]xemptions are nearly unattainable for most Catholic organizations, such as Catholic charities and Catholic hospitals, which hire and serve non-Catholics outside of the church building[.]” Katelyn Snyder, *Bishop warns Catholics against HHS Mandate at annual White Mass*, CATH. ACCENT (Nov. 7, 2013).

111. Second, the Final Rule establishes an illusory “accommodation” for certain nonexempt objecting religious entities that qualify as “eligible organizations.” To qualify as an “eligible organization,” a religious entity must (1) “oppose[] providing coverage for some or all of [the] contraceptive services,” (2) be “organized and operate[] as a non-profit entity”; (3) “hold[] itself out as a religious organization,” and (4) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance company or, if the religious organization is self-insured, to its TPA. 26 CFR § 54.9816-2713A(a). The provision of this self-certification then automatically requires the insurance issuer or TPA to provide or arrange “payments for contraceptive services” for the organization’s employees, without imposing any “cost-sharing requirements (such as a copayment, coinsurance, or a deductible).” *Id.* § 54.9816-2713A(b)(2), (c)(2). The objectionable coverage, moreover, is directly tied to the organization’s health plan, lasting only as long as the employee remains on that plan. *See* 29 CFR § 2590.715-2713 45 CFR § 147.131(c)(2)(i)(B). In addition, self-insured organizations are prohibited from “directly or indirectly, seek[ing] to influence the[ir] third party administrator’s decision” to provide or procure contraceptive services. 26 CFR § 54.9815–2713.

112. This so-called “accommodation” fails to relieve the burden on religious organizations. Under the original version of the U.S. Government Mandate, a nonexempt religious organization’s decision to offer a group health plan resulted in the provision of coverage for abortion-inducing products, contraception, sterilization, and related counseling.

Under the Final Rule, a nonexempt religious organization's decision to offer a group health plan still results in the provision of coverage—now in the form of “payments”—for abortion-inducing products, contraception, sterilization, and related counseling. *Id.* § 54.9816-2713A(b)-(c).

113. In both scenarios, Plaintiffs' decision to provide a group health plan triggers the provision of “free” contraceptive coverage to their employees in a manner contrary to Plaintiffs' beliefs. The provision of the objectionable products and services is directly tied to Plaintiffs' insurance policies, as the objectionable “payments” are available only so long as an employee is on the organization's health plan. *See* 29 CFR § 2590.715-2713 (for self-insured employers, the TPA “will provide or arrange separate payments for contraceptive services . . . for so long as [employees] are enrolled in [their] group health plan”); 45 CFR § 147.131(c)(2)(i)(B) (for employers that offer insured plans, the insurance issuer must “[p]rovide separate payments for any contraceptive services . . . for plan participants and beneficiaries for so long as they remain enrolled in the plan”).

114. For self-insured organizations, like Plaintiffs, the self-certification constitutes the religious organization's “*designation* of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits.” 78 Fed. Reg. at 39,879 (emphasis added). Thus, employer health plans offered by nonexempt religious organizations are the vehicle by which “free” abortion-inducing products, contraception, sterilization, and related counseling are delivered to the organizations' employees.

115. This shell game does not address Plaintiffs' fundamental religious objection to improperly facilitating access to the objectionable products and services. As before, Plaintiffs are coerced, through threats of crippling fines and other pressure, into directly facilitating access

to contraception, abortion-inducing products, sterilization, and related counseling for their employees, contrary to their sincerely-held religious beliefs.

116. The so-called “accommodation,” moreover, requires Plaintiffs to cooperate in the provision of objectionable coverage in other ways as well. For example, in order to be eligible for the so-called “accommodation,” Catholic Charities and St. John School must provide a “certification” to Plaintiffs’ TPA setting forth its religious objections to the U.S. Government Mandate. The provision of this “certification,” in turn, automatically triggers an obligation on the part of the TPA to obtain the objectionable coverage for Catholic Charities’ and St. John School’s employees. A religious organization’s self-certification, therefore, is a trigger and but-for cause of the objectionable coverage.

117. Moreover, the Bishop and Diocese are forced to directly facilitate coverage for the objectionable services through accommodated entities currently participating in the Catholic Benefits Trust, such as Catholic Charities and St. John School.

118. The Bishop oversees the governance of Catholic Charities and St. John School in his role as Chairman of the Membership Board of Catholic Charities and as Trustee of St. John School, and is forced directly to facilitate moral evil when Catholic Charities and St. John School, organizations which he oversees, provide the “certification” to Plaintiffs’ TPA. That “certification” triggers an obligation on the part of the TPA to obtain the objectionable coverage for Catholic Charities’ and St. John School’s employees.

119. The Diocese is also forced directly to facilitate coverage for the objectionable services in that it oversees the governance of Catholic Charities and St. John School and offers health coverage to these entities, through the Trust.

120. Additionally, as pointed out in the Diocese of Pittsburgh's public comments and the expert report submitted with the Diocese of Pittsburgh's comments, described below, the U.S. Government Mandate requires religious organizations such as Plaintiffs to subsidize the objectionable services.

121. For organizations that procure insurance through a separate insurance provider, the Government asserts that the cost of the objectionable products and services will be "cost neutral" and, therefore, that these organizations will not actually be paying for it, notwithstanding the fact that the organizations' premiums are the only source of funding that their insurance providers will receive for the objectionable products and services.

122. The Government's "cost-neutral" assertion, however, is based on smoke and mirrors. It rests on the unproven (and implausible) assumption that cost "savings" from "fewer childbirths" will be at least as large as the direct costs of paying for contraceptive products and services and the costs of administering individual policies. 78 Fed. Reg. at 8,463. Some employees, however, will choose not to use contraception notwithstanding the U.S. Government Mandate. Others would use contraception regardless of whether it is being paid for by an insurance company. And yet others will shift from less expensive to more expensive products once coverage is mandated and cost-sharing is prohibited. Consequently, there can be no assurance that cost "savings" from "fewer childbirths" will offset the cost of providing contraceptive services.

123. More importantly, even if the Government's "cost-neutral" assertion were true, it is irrelevant. The so-called "accommodation" is nothing more than a shell game. Premiums previously paid by the objecting employers to cover, for example, "childbirths," will now be

redirected to pay for contraceptive products and services. Thus, the objecting employer is still required to pay for the objectionable products and services.

124. For self-insured organizations, like Plaintiffs, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that TPAs required to provide or procure the objectionable products and services will be compensated by reductions in user fees that they otherwise would pay for participating in federally-facilitated health exchanges. *See* 78 Fed. Reg. 39,882. Those TPAs that are willing to participate in this regime are likely to increase fees charged to the self-insured organizations.

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

126. For all of these reasons, the U.S. Government Mandate continues to require Plaintiffs to provide, pay for, and/or directly facilitate access to abortion-inducing products, contraception, sterilization, and related education and counseling, in violation of their sincerely-held religious beliefs.

127. *Third*, the Final Rule actually *increases* the number of religious organizations that are subject to the U.S. Government Mandate. Under the Government's initial "religious employer" definition, if a nonexempt religious organization "provided health coverage for its employees through" a plan offered by a separate, "affiliated" organization that was "exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees." 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012).

128. For example, the Diocese, through the Catholic Benefits Trust operates a self-insured plan that covers not only the Diocese itself, but other affiliated Catholic organizations within the Diocese. Under the religious employer exemption that was originally proposed, if the Diocese was an exempt “religious employer,” then these other organizations under the Diocesan plan would have received the benefit of that exemption, regardless of whether they independently qualified as a “religious employer,” since they could continue to participate in the plan offered by the Diocese. These affiliated organizations, therefore, could benefit from the Diocese’s exemption even if they, themselves, could not meet the Government’s unprecedentedly narrow definition of “religious employer.”

129. The Final Rule eliminates this safeguard. Instead, it provides that “each employer” must “independently meet the definition of eligible organization or religious employer in order to take advantage of the accommodation or the religious employer exemption with respect to its employees and their covered dependents.” 78 Fed. Reg. 39,886. *See also* 78 Fed. Reg. at 8467 (NPRM).

130. In this respect, the U.S. Government Mandate seeks to divide the Catholic Church. The Church’s faith in action, carried out through its charitable and educational arms, is every bit as central to the Church’s religious mission as is the administration of the Sacraments. In the words of Pope Benedict, “[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word.” Yet the U.S. Government Mandate seeks to separate these consubstantial aspects of the Catholic faith, treating one as “religious” and the other as not.

131. Accordingly, Bishop Brandt rightly accused the Mandate of “forcing people with a religious conscience to have the freedom to worship only in a church building rather than in the

public square.” Katelyn Snyder, *Bishop warns Catholics against HHS Mandate at annual White Mass*, CATH. ACCENT (Nov. 7, 2013). The U.S. Government Mandate therefore deeply, and improperly, intrudes into internal Church governance.

132. Moreover, since nonexempt organizations including Plaintiffs Catholic Charities and St. John School are part of the Diocese’s Trust, the Diocese, as the entity which determines which organizations will participate in the Trust, is now required by the U.S. Government Mandate to do one of two things: (1) provide the employees of these organizations with a separate insurance policy that covers abortion-inducing drugs, contraception, sterilization, and related counseling, or (2) expel these organizations from the Trust and thereby force these organizations 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 Trust to continue to operate in its current fashion of providing affordable, quality health insurance.

133. Additionally, under either alternative, the Bishop, as Chairman of the Membership Board of Catholic Charities and Trustee of St. John School, ultimately will have to decide whether these entities can sign the self-certification form, in violation of Catholic beliefs.

134. Expelling nonexempt organizations from the Catholic Benefits Trust would result in increased costs for the Diocese and the expelled organizations, including Catholic Charities and St. John School, because each organization would be pooling financial resources in a smaller group.

135. In sum, the Final Rule not only fails to alleviate the burden that the U.S. Government Mandate imposes on Plaintiffs’ religious beliefs; it in fact makes that burden significantly worse by increasing the number of religious organizations that are subject to the

U.S. Government Mandate and jeopardizes the continued operation of Plaintiffs' health plans. The U.S. Government Mandate, therefore, requires Plaintiffs to act contrary to their sincerely-held religious beliefs.

(3) The Government Ignored Opposition to the Proposed Rule

136. The NPRM, like the Government's previous proposals, was once again met with strenuous opposition, including over 400,000 comments. For example, the U.S. Conference of Catholic Bishops stated that "the 'accommodation' still requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments." Comments of U.S. Conference of Catholic Bishop, at 3 (Mar. 20, 2013), *available at* <http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf>.

137. Additionally, the Diocese of Pittsburgh—a sister Diocese with a long history of cooperating with and supporting the Diocese of Greensburg—submitted extensive public comments on the NPRM on April 8, 2013. Public Comments and Expert Opinion submitted by the Roman Catholic Diocese of Pittsburgh, (April 8, 2013), *available at* <http://www.regulations.gov/#!documentDetail;D=CMS-2012-0031-160262>.

138. In its public comments, the Diocese of Pittsburgh asserted that the proposed "religious employer" exemption draws indefensible and unconstitutional distinctions between equally religious Diocesan affiliates. Specifically, the exemption uses corporate formalities to restrict religion to worship alone, when religious service is an essential part of the Catholic faith. *Id.*

139. Additionally, the Diocese of Pittsburgh explained that the now-final exemption will needlessly increase insurance costs. The exemption could require Dioceses, like the Diocese of Pittsburgh and Diocese of Greensburg, to alter the structure of their health plans since they will no longer be able to insure nonexempt entities. Expelling nonexempt entities would decrease the pooled financial resources which currently enable the Diocese of Pittsburgh and the Diocese of Greensburg to offer comprehensive health coverage to their employees and to employees of affiliated religious entities, including Plaintiffs Catholic Charities and St. John School. *Id.*

140. The Diocese of Pittsburgh asserted that the proposed “accommodation” violates its religious beliefs by requiring accommodated entities to pay for and facilitate immoral acts. Action by these entities will trigger the U.S. Government Mandate requirement to provide the objectionable coverage, including: (i) signing the self-certification form that triggers the TPA’s duties to provide the coverage; (ii) providing the names of covered individuals that the TPA will contact for coverage; and (iii) providing the self-certification of their objections to their TPA will trigger coverage for the objectionable services. *Id.*

141. The Diocese of Pittsburgh also demonstrated that the proposed “accommodation” will not, in practice, work as currently written. The Diocese of Pittsburgh engaged Dr. Scott E. Harrington, the Alan B. Miller Professor in Health Care Management, Insurance and Risk Management, and Business Economics and Public Policy at the Wharton School of the University of Pennsylvania, a renowned healthcare economist, to determine how the proposed rule will work.

142. Dr. Harrington’s expert opinion detailed that the proposed rule, in application: (i) will likely make obtaining health insurance more costly for both fully-insured and self-insured

eligible organizations; (ii) will require fully-insured eligible organizations to directly fund coverage of the objectionable services; (iii) puts in place a regulatory scheme which will limit the insurance market available to self-insured eligible organizations; and (iv) on its face requires self-insured eligible organizations to facilitate coverage without funding the objectionable services, but in application may result in these organizations funding such services as it may be difficult if not impossible to ensure that administrative fees paid by these organizations are not contributing to such coverage. *Id.*

143. The Diocese of Pittsburgh offered solutions on how the Government could protect religious liberty with revisions to the proposed rule. The Diocese of Pittsburgh advanced two proposals: (i) The Departments should broaden the religious employer exemption to include Diocesan-affiliated organizations, which do good, religious works under the guidance and leadership of their Bishops; or (ii) The Departments should delay enforcement of any new rule so that there is time to adjudicate the substantive rights of religious organizations. *Id.* Both of these solutions were ignored.

144. Thus, despite all of its promises and despite various Dioceses' representations that the Government had not in fact fixed the problem, the Government adopted the core proposals in the NPRM and issued the Final Rule.

III. THE U.S. GOVERNMENT MANDATE IMPOSES A SUBSTANTIAL BURDEN ON PLAINTIFFS' RELIGIOUS LIBERTY

A. The U.S. Government Mandate Substantially Burdens Plaintiffs' Religious Beliefs

145. Responding to the U.S. Government Mandate, Cardinal Wuerl has declared that "what is at stake here is a question of human freedom." And indeed it is. Since the founding of this country, our law and society have recognized that individuals and institutions are entitled to freedom of conscience and religious practice. Absent a compelling reason, no government

authority may compel any group or individual to act contrary to their religious beliefs. As noted by Thomas Jefferson, “[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority.”

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

147. It is a core tenet of Plaintiffs’ religion that human life is sacred from conception to natural death. The Plaintiffs’ commitment to service and charity is an integral element of the Plaintiffs’ religion and an indispensable expression of Plaintiffs’ commitment to the preservation of human life.

148. As a small but integral part of Plaintiffs’ fundamental commitment to the preservation of human life, Plaintiffs serve their employees by providing them with health care coverage.

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

150. Plaintiffs’ Catholic beliefs therefore prohibit them from providing, paying for, and/or facilitating access to abortion-inducing products, contraception, or sterilization.

151. As a corollary, Plaintiffs’ Catholic beliefs prohibit them contracting with an insurance company or TPA that will, as a result, provide or procure the objectionable services for Plaintiffs’ employees.

152. Moreover, the manner in which the U.S. Government 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 objectionable services. The U.S. Government Mandate thus forces Plaintiffs 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 Plaintiffs' religious beliefs.

153. While Plaintiffs could theoretically drop their employees' health care benefits to avoid providing objectionable drugs and services, to do so would subvert Plaintiffs' mission of preserving the sanctity and dignity of human life.

154. Plaintiffs' beliefs are deeply and sincerely-held.

155. The U.S. Government Mandate, therefore, requires Plaintiffs to do precisely what their sincerely-held religious beliefs prohibit—provide, pay for, and/or directly facilitate access to the objectionable services; or abandon their goal of preserving of their employees' lives; or else incur crippling sanctions.

156. The U.S. Government Mandate therefore imposes a substantial burden on Plaintiffs' religious beliefs.

(1) The Narrow “Religious Employer” Exemption

157. The U.S. Government Mandate's exemption for “religious employers” does not alleviate the burden.

158. The “religious employer” exemption likely does not apply to Plaintiffs Catholic Charities and St. John School.

159. Additionally, the “religious employer” exemption does not work as the Government claims it will and instead seeks to divide the Catholic Church. For example, the exemption creates artificial distinctions between different schools within the Diocese. The high schools within the Diocese are not separately incorporated from the Diocese and therefore are exempt from the U.S. Government Mandate. However, the elementary schools are separately

incorporated and therefore, likely are not exempt from the U.S. Government Mandate. Yet, all of these schools are equally under the supervision of the Bishop and Diocese.

160. The Government relies on this formalistic distinction in determining that the high schools are “religious enough” to be exempt, while the elementary schools likely will not be exempt. There is no rational basis for treating these schools and their employees differently based merely on corporate structure.

161. In a hearing before the U.S. House of Representatives Committee on Ways and Means on February 28, 2012, Secretary Sebelius indicated that the “religious employer” exemption would apply to “church and church affiliates” as well as “to likely most parochial schools, many religious high schools.” In response to U.S. Congressman Patrick Tiberi’s question about how fines would be calculated for a specific religious employer, Secretary Sebelius responded: “I have no idea.” This further demonstrates that the Government lacks a rational basis for the distinctions that underlie its narrow “religious employer” exemption and that the Government did not adequately consider less burdensome alternatives when it did not even know the burdens it was imposing.

(2) The So-Called “Accommodation”

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

163. Plaintiffs’ Catholic beliefs do not simply prohibit them from using or directly paying for the objectionable coverage. Their beliefs also prohibit them from facilitating access to the objectionable products and services in the manner required by the U.S. Government Mandate.

164. Starting July 1, 2014, Catholic Charities and St. John School will be forced directly to directly facilitate coverage of the objectionable services for their employees.

Moreover, the Bishop and the Diocese will be facilitating coverage of the objectionable services by operating and overseeing the Catholic Benefits Trust, which sponsors health plans for accommodated entities forced directly to comply with the U.S. Government Mandate, like Catholic Charities and St. John School. The Bishop will also be forced to directly facilitate coverage of the objectionable services in his role as Chairman of the Membership Board of Catholic Charities and as Trustee of St. John School.

165. The Bishop further will be directly facilitating coverage of the objectionable services for accommodated entities in his legal role as Trustee of the Diocese and also in his role as good shepherd and spiritual leader of the Catholic faithful in Southwestern Pennsylvania. The Bishop will be forced to appoint a Director to the Board of the Catholic Benefits Trust with the knowledge that the Director directly will facilitate coverage for the objectionable services for the employees of accommodated entities, such as Plaintiffs Catholic Charities and St. John School.

166. Although the Diocese is a “religious employer,” the U.S. Government Mandate still burdens its sincerely-held religious beliefs by requiring it either to (1) provide Plaintiffs Catholic Charities and St. John School and other affiliated Catholic organizations with insurance coverage for the objectionable services, (2) or else expel these affiliates from its Trust, thereby forcing them into an arrangement with another insurance provider that will, in turn, provide or procure the objectionable products and services. Expelling these accommodated entities would require significant restructuring of the Catholic Benefits Trust and would affect the pooling of resources which enables the Diocese to offer comprehensive and affordable health benefits.

167. Both of these alternatives violate the Diocese’s sincerely-held religious beliefs.

168. Participating in the accommodation will create 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 and (2) offer coverage for accommodated entities which then have to comply with the U.S. Government Mandate in violation of Catholic beliefs. Administratively, the burdens of this coverage scheme are significant.

169. The so-called “accommodation” does not alleviate the burden on Plaintiffs’ sincerely-held religious beliefs.

170. Finally, Plaintiffs cannot avoid the U.S. Government Mandate without incurring significant fines. If Catholic Charities and St. John School keep their health plans but refuse to provide or directly facilitate the objectionable coverage, they can be subject to daily fines of \$100 a day per affected beneficiary. The Diocese, as the Beneficial Owner of the Greensburg series of the Catholic Benefits Trust, could be held liable for any fines incurred by the Trust as a result of noncompliance with the U.S. Government Mandate. The fines therefore coerce Plaintiffs into violating their religious beliefs.

171. It is not an option for Catholic Charities and St. John School to eliminate their health plans since the Diocese and Bishop, who oversee these organizations, believe that health coverage is a basic human right which they must provide to their employees.

172. In short, while the President claims to have “found a solution that works for everyone” and that ensures that “religious liberty will be protected,” his promised “accommodation” does neither. Unless and until this issue is definitively resolved, the U.S. Government Mandate does and will continue to impose a substantial burden on Plaintiffs’ religious beliefs.

B. The U.S. Government Mandate Is Not a Neutral Law of General Applicability

173. The U.S. Government Mandate is not a neutral law of general applicability. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate coverage for abortion-inducing products, sterilization, contraception, and related education and counseling. It was, moreover, implemented by and at the behest of individuals and organizations who disagree with Plaintiffs' religious beliefs regarding abortion and contraception, and thus targets religious organizations for disfavored treatment.

174. For example, the U.S. Government Mandate exempts all "grandfathered" plans from its requirements, thus excluding tens of millions of people from the mandated coverage. As the government has admitted, while the numbers are expected to diminish over time, "98 million individuals will be enrolled in grandfathered group health plans in 2013." 75 Fed. Reg. 41726, 41732 (July 19, 2010). Elsewhere, the government has put the number at 87 million. *See* "Keeping the Health Plan You Have" (June 14, 2010), <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html>. And according to one district court last year, "191 million Americans belong[ed] to plans which may be grandfathered under the ACA." *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1291 (D. Colo. 2012).

175. In addition, the U.S. Government Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the Internal Revenue Code. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not of Plaintiffs and other religious organizations that remain subject to the U.S. Government Mandate.

176. The U.S. Government Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose certain Catholic teachings and beliefs. For example, on October 5, 2011, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. Defendant Sebelius has long supported abortion rights and criticized Catholic teachings and beliefs regarding abortion and contraception. NARAL Pro-Choice America is a pro-abortion organization that likewise opposes many Catholic teachings. At that fundraiser, Defendant Sebelius criticized individuals and entities whose beliefs differed from those held by her and the other attendees of the NARAL Pro-Choice America fundraiser, stating: “Wouldn’t you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much.” In addition, the U.S. Government Mandate was modeled on a California law that was motivated by discriminatory intent against religious groups that oppose contraception.

177. Internal HHS emails from January 2012 also suggest that Government officials were aware of widespread Catholic opposition to the U.S. Government Mandate. Specifically, internal emails indicate awareness that “the church is really mobilizing [Catholics] around this issue,” that the “issue is not going to go away,” and that “the pushback on this has been stronger than any of us anticipated. . . .” Despite this, the Government did nothing to address the concerns of religious groups that oppose the U.S. Government Mandate.

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

C. **The U.S. Government Mandate Is Not the Least Restrictive Means of Furthering a Compelling Governmental Interest**

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

180. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely-held religious beliefs by requiring them to participate in a scheme for the provision of abortion-inducing products, sterilization, contraceptives, and related education and counseling. The Government itself has relieved numerous other employers from this requirement by exempting grandfathered plans and plans of employers it deems to be sufficiently religious. Moreover, these services are widely available in the United States. The U.S. Supreme Court has held that individuals have a constitutional right to use such services. And nothing that Plaintiffs do inhibits any individual from exercising that right.

181. Even assuming the interest was compelling, the Government has numerous alternative means of furthering that interest without forcing Plaintiffs to violate their religious beliefs. For example, the Government could have provided or paid for the objectionable services itself through other programs established by a duly enacted law. Or, at a minimum, it could have created a broader exemption for religious employers, such as those found in numerous state laws throughout the country and in other federal laws. The Government therefore cannot possibly demonstrate that requiring Plaintiffs to violate their consciences is the least restrictive means of furthering its interest.

182. The U.S. Government Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the wide variety of social and educational services that Plaintiffs provide to the citizens of Western Pennsylvania. As President Obama acknowledged in his announcement of February 10, 2012,

religious organizations like Plaintiffs do “more good for a community than a government program ever could.” The U.S. Government Mandate, however, puts these good works in jeopardy.

183. That is unconscionable. Accordingly, Plaintiffs seek a declaration that the U.S. Government Mandate cannot lawfully be applied to Plaintiffs, an injunction barring its enforcement, and an order vacating the U.S. Government Mandate.

IV. THE U.S. GOVERNMENT MANDATE THREATENS PLAINTIFFS WITH IMMINENT INJURY THAT SHOULD BE REMEDIED BY A COURT

184. The U.S. Government Mandate is causing serious, ongoing hardship to Plaintiffs that merits relief now.

185. On June 28, 2013, Defendants finalized the U.S. Government Mandate, including the narrow “religious employer” exemption and the so-called “accommodation” proposed in the NPRM. By the terms of the Final Rule, Plaintiffs must comply with the U.S. Government Mandate by the beginning of the next plan year on or after January 1, 2014.

186. Plaintiffs’ next plan year begins on July 1, 2014.

187. Defendants have indicated that they intend to enforce the essential provisions of the U.S. Government Mandate that impose a substantial burden on Plaintiffs’ rights for Plaintiffs’ next plan year. Consequently, absent the relief sought herein, Plaintiffs will be required to provide, pay for, and/or directly facilitate access to contraception, abortion-inducing products, sterilization, and related education and counseling, in violation of their sincerely-held religious beliefs.

188. The U.S. Government Mandate is also harming Plaintiffs in other ways.

189. Health plans do not take shape overnight. A number of analyses, negotiations, and decisions must occur each year before Plaintiffs can offer a health benefits package to their

employees. For example, an employer that is self-insured—like the Diocese—after consulting with its actuaries, must negotiate with its TPA.

190. Restructuring the Catholic Benefits Trust to expel nonexempt entities would be a significant and substantial administrative burden.

191. In addition, if Catholic Charities and St. John School do not comply with the U.S. Government Mandate, they may be subject to government fines and penalties, which will in turn affect the Diocese, which is ultimately liable for fines incurred by entities within the Greensburg series of the Trust. Plaintiffs require time to budget for any such additional expenses.

192. Catholic Charities and St. John School are presently being forced to consider whether to: (1) drop their employee health plan in violation of Catholic beliefs; (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.

193. Additionally, the U.S. Government Mandate will impact donations in that a significant numbers of donors give to Catholic Charities and St. John School because of their Catholic mission and will no longer donate if Catholic Charities and St. John School are forced to stray from that mission by providing coverage for the objectionable services.

194. Plaintiffs therefore need judicial relief now in order to prevent the serious, ongoing harm that the U.S. Government Mandate is already imposing on them.

V. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise
in Violation of RFRA

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

196. RFRA prohibits the Government from substantially burdening an entity's exercise of religion, even if the burden results from a rule of general applicability, unless the Government

demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

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

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

199. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or directly facilitate access to products, services, practices, and speech that are contrary to their religious beliefs.

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

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

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

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

204. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

209. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or directly facilitate practices and speech that are contrary to their religious beliefs.

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

211. The U.S. Government Mandate is not a neutral law of general applicability, because it is riddled with exemptions for which there is not a consistent, legally defensible basis. It offers multiple exemptions from its requirement that employer-based health plans include or directly facilitate access to abortion-inducing products, sterilization, contraception, and related education and counseling.

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

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

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

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

216. By enacting and threatening to enforce the U.S. Government Mandate, the Government has burdened Plaintiffs' religious exercise in violation of the Free Exercise Clause of the First Amendment.

217. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

224. The U.S. Government Mandate would compel Plaintiffs to provide health care plans to their employees that include or directly facilitate access to products and services that violate their religious beliefs.

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

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

227. By imposing the U.S. Government Mandate, Defendants are compelling Plaintiffs to publicly subsidize or directly facilitate the activity and speech of private entities that are contrary to their religious beliefs, and compelling Plaintiffs to engage in speech that will result in the provision of objectionable products and services to Plaintiffs' employees.

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

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

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

231. Plaintiffs have no adequate remedy at law.

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

COUNT IV
Prohibition of Speech
in Violation of the First Amendment

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

234. The First Amendment protects the freedom of speech, including the right of religious groups to speak out to persuade others to refrain from engaging in conduct that may be considered immoral.

235. The U.S. Government Mandate violates the First Amendment freedom of speech by imposing a gag order that prohibits Plaintiffs from speaking out in any way that might

“influence,” “directly or indirectly,” the decision of a TPA to provide or procure contraceptive products and services to Plaintiffs’ employees.

236. Plaintiffs have no adequate remedy at law.

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

COUNT V

Official “Church” Favoritism and Excessive Entanglement with Religion in Violation of the Establishment Clause of the First Amendment

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

239. The Establishment Clause of the First Amendment prohibits the Government from adopting an official definition of a “religious employer” that favors some religious groups while excluding others.

240. The Establishment Clause also prohibits the Government from becoming excessively entangled in the affairs of religious groups by scrutinizing their beliefs, practices, and organizational features to determine whether they meet the Government’s favored definition.

241. The “religious employer” exemption violates the Establishment Clause in two ways.

242. First, it favors some religious groups over others by creating an official definition of “religious employers.” Religious groups that meet the Government’s official definition receive favorable treatment in the form of an exemption from the Mandate, while other religious groups do not.

243. Second, even if it were permissible for the Government to favor some religious groups over others, the “religious employer” exemption would still violate the Establishment Clause because it requires the Government to determine whether groups qualify as “religious employers” based on intrusive judgments about their beliefs, practices, and organizational

features. The exemption turns on an intrusive 14-factor test to determine whether a group meets the requirements of section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. These 14 factors probe into matters such as whether a religious group has “a distinct religious history” or “a recognized creed and form of worship.” But it is not the Government’s place to determine whether a group’s religious history is “distinct,” or whether the group’s “creed and form of worship” are “recognized.” By directing the Government to partake of such inquiries, the “religious employer” exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion. Similar problems arise in evaluating whether an organization is an “integrated auxiliary,” an inquiry governed by Treasury Regulations that assesses, among other things whether an organization “shares common religious doctrines, principles, disciplines, or practices with a church,” or “receives more than 50% of its support” from non-church sources. *See* 26 C.F.R. § 1.6033-2(h).

244. Plaintiffs have no adequate remedy at law.

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

COUNT VI
Interference in Matters of Internal Church Governance in Violation of
the Religion Clauses of the First Amendment

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

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

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

249. Under these Clauses, the Government may not interfere with a religious organization's internal decision if that interference would affect the faith and mission of the organization itself.

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

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

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

253. The Government may not interfere with or otherwise question the final decision of the Catholic Church that its religious organizations must abide by these views.

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

255. The Diocese has further made the internal decision that its affiliated religious entities, including Catholic Charities, should offer their employees health-insurance coverage through the Catholic Benefits Trust, which allows the Diocese to ensure that these affiliates do not offer coverage for services that are contrary to Catholic teaching.

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

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

258. Because the U.S. Government Mandate interferes with the internal decision-making of Plaintiffs in a manner that affects Plaintiffs' faith and mission, it violates the Establishment Clause and the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act.

259. Plaintiffs have no adequate remedy at law.

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

COUNT VII
Illegal Action in Violation of the APA

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

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

263. The U.S. Government Mandate, its exemption for "religious employers," and its so-called "accommodation" for "eligible" religious organizations are illegal and therefore in violation of the APA.

264. The Weldon Amendment states that "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011).

265. The Affordable Care Act contains no clear expression of an affirmative intention of Congress that employers with religiously motivated objections to the provision of health plans

that include coverage for abortion-inducing products, sterilization, contraception, or related education and counseling should be required to provide such plans.

266. The U.S. Government Mandate requires employer-based health plans to provide coverage for abortion-inducing products, contraception, sterilization, and related education. It does not permit employers or issuers to determine whether the plan covers abortion, as the Act requires. By issuing the U.S. Government Mandate, Defendants have exceeded their authority, and ignored the direction of Congress.

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

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

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

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

271. Plaintiffs have no adequate remedy at law.

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

COUNT VIII

Erroneous Interpretation of the Exemption with Respect to Multi-Employer Plans

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

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

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

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

277. In such a situation, Defendants stated that if the “affiliated” organization was “exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees.” *Id.*

278. This reading is consistent with the text of the regulation, which by its plain terms exempts “group health plan[s]” so long as they are “established or maintained by a religious employer.”

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

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

281. The Diocese meets the U.S. Government Mandate’s definition of a religious employer, and therefore, the group health plan it has “established or maintained” is exempt from providing coverage for abortion-inducing products, sterilization, contraception, and related education and counseling.

282. The Defendants erroneous interpretation of the religious employer exemption, however, precludes the Diocese's affiliated entities, including Plaintiff Catholic Charities, from obtaining the benefit of the exemption by participating in the exempt group health plan established and maintained by the Diocese.

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

284. Plaintiffs have no adequate remedy at law.

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

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under RFRA;
2. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under the First Amendment;
3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;
4. In the alternative, enter a declaratory judgment that Defendants have erroneously interpreted the scope of the religious employer exemption, and that nonexempt organizations may obtain the benefit of the religious employer exemption if they provide insurance through a group health plan established and maintained by a religious employer.
5. Enter an injunction prohibiting the Defendants from enforcing the U.S. Government Mandate against Plaintiffs;

6. Enter an order vacating the U.S. Government Mandate;
7. Award Plaintiffs attorneys' and expert fees under 42 U.S.C. § 1988; and
8. Award all other relief as the Court may deem just and proper.

Respectfully submitted, this the 27th day of May, 2014.

/s/ John D. Goetz

Paul M. Pohl (PA ID No. 21625)
John D. Goetz (PA ID No. 47759)
Leon F. DeJulius, Jr. (PA ID No. 90383)
Ira M. Karoll (PA ID No. 310762)
Mary Pat Stahler (PA ID No. 309772)
JONES DAY
500 Grant Street – Suite 4500
Pittsburgh, PA 15219
(412) 391-3939
(412) 394-7959 (fax)

*Counsel for Plaintiffs Most Reverend Lawrence
E. Brandt, The Roman Catholic Diocese of
Greensburg, Catholic Charities of the Diocese
of Greensburg, and St. John the Evangelist
Regional Catholic School*