IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PRIESTS FOR LIFE,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary, United States Department of Health and Human Services;

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;

HILDA SOLIS, in her official capacity as Secretary, United States Department of Labor;

UNITED STATES DEPARTMENT OF LABOR;

TIMOTHY GEITHNER, in his official capacity as Secretary, United States Department of the Treasury; and

UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

Case No. 1:12-cv-00753-FB-RER

PLAINTIFF'S NOTICE OF MOTION & MOTION FOR TEMPORARY RESTRAINING ORDER / PRELIMINARY INJUNCTION

Hon. Frederic Block

Please take notice that Plaintiff Priests for Life ("Plaintiff"), by and through its undersigned counsel, hereby moves this court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order and/or preliminary injunction, enjoining Defendants from enforcing the contraception mandate against Plaintiff pending final resolution of this case.

As set forth more fully in Plaintiff's memorandum in support of this motion, the contraception mandate violates Plaintiff's rights protected by the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act. On January 1, 2013, Plaintiff will be forced by the challenged mandate to provide access to contraception, sterilization, and abortifacients to its employees in violation of Plaintiff's sincerely held religious beliefs. As a

result of the irreparable harm caused by the loss of Plaintiff's First Amendment rights and in light of the extensive planning involved in preparing and providing its employee insurance plan, and the uncertainty that this matter will be resolved before the coverage effective date, Plaintiff has adequately established that it will suffer imminent irreparable harm absent injunctive relief.

Plaintiff's counsel and Defendants' counsel held a meet-and-confer to discuss this motion on October 9, 2012. During that conference, Plaintiff's counsel requested that Defendants consent to an order from this court that would preliminarily enjoin the enforcement of the contraception mandate against Plaintiff while the case is proceeding, thereby maintaining the *status quo*. Plaintiff's counsel highlighted the fact that Defendants have argued, albeit incorrectly, to this court that the case should be dismissed because the contraception mandate will not harm Plaintiff for at least two reasons: (1) the temporary enforcement safe harbor provision protects Plaintiff and, (2) nevertheless, new regulations will be forthcoming that will protect Plaintiff's religious beliefs. (*See, e.g.*, Defs.' Mem. in Supp. of Mot. to Dismiss at 13 ["In light of the forthcoming amendments, and the opportunity the rulemaking process provides for plaintiff to help shape those amendments, there is no reason to suspect that plaintiff will be required to sponsor a health plan that covers contraceptive services in contravention of its religious beliefs once the enforcement safe harbor expires."] [Doc. No. 19]; *see also* Defs.' Reply Mem. in Supp. of Mot. to Dismiss at 4 ["[N]o injury is imminent here because the safe harbor will likely protect plaintiff until defendants finalize new rules designed to accommodate the religious objections of organizations like plaintiff."] [Doc. No. 22]). Defendants' counsel said that Defendants would consider the request.

On October 11, 2012, Defendants' counsel rejected Plaintiff's request for an agreed upon injunction, stating, "We can agree not to enforce the preventive services coverage regulations

against Priests for Life before January 1, 2013—beginning of Priests for Life's next plan year. Hopefully that obviates the need for a preliminary injunction motion. If Priests for Life is willing to certify that it qualifies for the safe harbor and is willing to provide the required notice to plan participants, we can agree not to enforce the regulations before January 1, 2014."

Plaintiff's counsel responded that same day, noting that Defendants' position does not solve the issue and stating, "The mandate doesn't go into effect until January 2013 against [Priests for Life] as is, and [Priests for Life] cannot and will not certify that the safe harbor applies, so we are precisely where we are before I called you. So the government's position is that you oppose the TRO/PI." Plaintiff's counsel then proposed a briefing schedule for this motion, with which Defendants' counsel concurred.

WHEREFORE, Plaintiff hereby requests that the court grant its motion and issue the requested temporary restraining order / preliminary injunction.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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Counsel for Plaintiff Priests for Life

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2012, a copy of the foregoing was served via email on opposing counsel, Michelle R. Bennett, Trial Attorney, U.S. Department of Justice, Michelle.Bennett@usdoj.gov pursuant to the individual motion practices of this court.

AMERICAN FREEDOM LAW CENTER

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