IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THE CATHOLIC DIOCESE OF BILOXI, INC., THE MOST REVEREND ROGER P. MORIN, Bishop and President of THE CATHOLIC DIOCESE OF BILOXI, INC. and his successors in office, as Trustee for and on behalf of the RESURRECTION CATHOLIC SCHOOL and the SACRED HEART CATHOLIC SCHOOL; CATHOLIC SOCIAL AND COMMUNITY SERVICES, INC.; DE L'EPEE DEAF CENTER, INC.; THE CATHOLIC DIOCESE OF JACKSON, THE MOST REVEREND JOSEPH R. KOPACZ, Bishop and Chief Executive Officer of THE CATHOLIC DIOCESE OF JACKSON, and his successors in office, in accordance with the discipline and government of the Roman Catholic Church; VICKSBURG CATHOLIC SCHOOL, INC.; ST. JOSEPH CATHOLIC SCHOOL; CATHOLIC CHARITIES INC.; and ST. DOMINIC-JACKSON MEMORIAL HOSPITAL,

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.

CIVIL ACTION NO.: 1:14CV146LG-JMR

JUDGE: _____

COMPLAINT

1. This lawsuit is about one of America's most fundamental freedoms: the freedom to practice one's religion without governmental interference. It is not about whether people have a right to abortion-inducing drugs, sterilization, and contraception. These products and services are widely available throughout the United States, and nothing prevents the Government from making them more widely available. Here, however, the Government is attempting to require Plaintiffs -- all Catholic entities -- to violate their religious beliefs by providing, paying for, and/or facilitating access to those products and services. American history and tradition, embodied in the First Amendment to the United States Constitution and the Religious Freedom Restoration Act ("RFRA"), safeguard religious entities from such overbearing and oppressive governmental action. Plaintiffs therefore seek relief in this Court to protect this most fundamental of American rights.

2. Plaintiffs provide a wide range of spiritual, educational, and social services to the public, Catholic and non-Catholic alike, throughout the State of Mississippi.

3. Plaintiff, the Catholic Diocese of Biloxi, Inc. (the "Biloxi Diocese"), is the legal name of a religious community inclusive of those Roman Catholic parishes and organizations located within the 17 southeastern counties of Mississippi under the pastoral care of the Most Reverend Roger P. Morin ("Bishop Morin"), and his successors in office. The Biloxi Diocese carries out its mission directly, through the work of affiliated Catholic entities such as Plaintiffs Catholic Social and Community Services, Inc. ("Catholic Social Services") and de l'Epee Deaf Center, Inc. ("de l'Epee"), and also through the education of students in Catholic schools, including Plaintiffs Resurrection Catholic School ("Resurrection Catholic") and Sacred Heart Catholic School ("Sacred Heart"). The Plaintiffs named in this paragraph will be referred to collectively as the "Biloxi Plaintiffs."

4. Plaintiff, the Catholic Diocese of Jackson, a Mississippi nonprofit corporation (the "Jackson Diocese"), is a religious community inclusive of those Roman Catholic parishes and organizations located in the remaining 65 counties of Mississippi under the pastoral care of the Most Reverend Joseph R. Kopacz ("Bishop Kopacz"), Bishop of the Diocese and his successors in office. The Jackson Diocese carries out its mission directly, through the work of affiliated corporations such as Plaintiff Catholic Charities, Inc. ("Catholic Charities"), and also through the education of students in Catholic schools, including Plaintiffs St. Joseph Catholic School ("St. Joseph") and Vicksburg Catholic School, Inc. ("Vicksburg Catholic"), both of which are separately incorporated. The Plaintiffs named in this paragraph will be referred to collectively as the "Jackson Plaintiffs."

5. Plaintiff, St. Dominic-Jackson Memorial Hospital ("St. Dominic"), while not affiliated with a diocese, is a Catholic healthcare organization whose mission is both guided by and consistent with the teachings of the Catholic Church. St. Dominic provides medical care and related services to all, regardless of religious faith.

6. Plaintiffs' work is guided by and consistent with Roman Catholic beliefs, including the requirement that they serve those in need, regardless of their religion.

7. Plaintiffs address the needs of Mississippi residents in a variety of ways. The Biloxi Diocese and the Jackson Diocese serve families through the education of the students attending their Catholic school systems, which are devoted to teaching a religiously and ethnically diverse student body. They also provide charitable service statewide through dozens of programs undertaken by their parishes.

8. Catholic Social Services and Catholic Charities offer a host of social services to thousands of Catholics and non-Catholics in need throughout the State. De l'Epee provides

coordinated services to those throughout Mississippi who are deaf or hard of hearing, to their families, and to clients of local agencies and businesses with hearing-related disabilities, to promote their independence and inclusion in the community. It is the only ministry of its kind in the state. And St. Dominic provides invaluable assistance and care to residents of the greater Jackson area, including the homeless and poor who would otherwise not be able to afford medical care. These Plaintiffs serve all people, regardless of faith or financial condition.

9. Catholic Church teachings also uphold the firm conviction that sexual union should be reserved to married couples who are open to the creation of life; thus, artificial interference with the creation of life, including through abortion, sterilization, or contraception, is contrary to Catholic doctrine.

10. Defendants have promulgated various rules (collectively, "the Mandate"), as part of the 2010 Patient Protection and Affordable Care Act (the "Affordable Care Act" or the "Act"), that force Plaintiffs to violate their sincerely-held religious beliefs. These rules, first proposed on July 19, 2010, require Plaintiffs and other Catholic and religious organizations to provide, pay for, and/or facilitate insurance coverage for abortion-inducing drugs, sterilization, and contraception, in violation of their religious beliefs. In response to the resulting intense public criticism, the Government recently finalized changes to the interim rule (the "Final Rule") that, it asserts, are intended to eliminate the substantial burden that the Mandate imposes on religious beliefs. In fact, however, these changes made that burden worse by significantly *increasing* the number of religious organizations subject to the Mandate, and by driving a wedge between religious organizations, like the Biloxi Diocese, and their equally religious charitable arms, such as Catholic Social Services and de l'Epee. Reversing course from its prior form, the Mandate

now prohibits the Biloxi Diocese and the Jackson Diocese from ensuring that their religious affiliates provide health insurance consistent with Catholic doctrine.

11. In its current form, the Mandate contains three basic components:

(a) First, it requires employer group health plans to cover, without cost-sharing requirements, all "FDA-approved contraceptive methods and contraceptive counseling" – a term that includes abortion-inducing drugs, contraception, sterilization, and related counseling and education.

(b) Second, the Mandate creates a narrow exemption for certain "religious employers" (the "Exemption"), now defined to include only organizations that are "organized and operate[] as . . . nonprofit entit[ies] and [are] referred to in 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." The referenced Code section does not, nor is it intended to, address religious liberty. Instead, it is a paperwork-reduction provision that addresses whether and when tax-exempt nonprofit entities must file an annual informational tax return, known as a Form 990. As the Government has repeatedly affirmed, the Exemption is intended to protect only "the unique relationship between a house of worship and its employees in ministerial positions." 78 Fed. Reg. 8,461 (Feb. 6, 2013), 39,874 (July 2, 2013). Consequently, the only organizations that qualify for the Exemption are "churches, synagogues, mosques, and other houses of worship, and religious orders." *Id.* at 8461. This is the narrowest "conscience exemption" ever adopted in federal law, and it grants the Government broad discretion to sit in judgment of which groups qualify as "religious employers," thus favoring certain religious organizations over others and entangling the Government in matters of religious faith and practice.

(c) Third, the Mandate creates a second, inferior class of religious entities that, in the Government's view, are not sufficiently "religious" to qualify for the Exemption. These religious entities, deemed "eligible organizations," are subject to a so-called "accommodation" that is intended to ameliorate the burden that the Mandate imposes on their religious beliefs. The "accommodation," however, is illusory: it continues to require "eligible organizations" to participate in a new employer-based scheme to provide, pay for, and/or facilitate provision of the objectionable coverage to their employees.

12. For example, the Exemption's narrow definition of "religious employer" likely excludes, among other entities, Catholic Social Services, de l'Epee, Resurrection Catholic, Sacred Heart, St. Dominic, Catholic Charities, St. Joseph, and Vicksburg Catholic, even though they are all "religious" organizations under any reasonable definition of the term. Instead, they appear to qualify merely as "eligible organizations" subject to the so-called "accommodation." But notwithstanding the "accommodation," these Plaintiffs are required to alter their prior practices with respect to their health plan, identify and enter into contracts with insurance companies (or for self-insured organizations, with third party administrators) who will provide the objectionable products and services and who, as a direct result of Plaintiffs' objections, are required to provide or procure the objectionable products and services for free to Plaintiffs' employees. Plaintiffs cannot avoid causing and facilitating this provision – for example, by contracting with an insurance company that will not provide or procure the objectionable products and services or by dropping their health insurance plans altogether – without subjecting themselves to crippling fines and/or lawsuits by individuals and governmental entities.

13. Plaintiffs, moreover, must facilitate the provision of the objectionable services in other ways that exacerbate their compelled cooperation in religiously impermissible conduct. For example, to be eligible for the so-called "accommodation," Plaintiffs must execute and submit a "certification" to their insurance provider or third party administrator that purports to set forth their religious objections to the Mandate. However, submitting this "certification" automatically triggers an obligation on the part of the insurance provider or administrator to procure the objectionable products and services for Plaintiffs' employees. In practice, then, a religious organization's self-certification is a trigger and but-for cause of providing the objectionable coverage.

14. Notwithstanding the "accommodation," the Mandate "requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage."[1] While the Government asserts that providing the objectionable coverage will be "cost-neutral," that bold assertion ignores the regulatory and administrative costs that will inevitably force insurance companies and third-party administrators to increase the prices they charge religious employers subject to the "accommodation." The Government's assertion of "cost neutrality" is also based on the implausible (and morally objectionable) assumption that "lower costs" from "fewer childbirths" will offset the anticipated cost of the contraceptive coverage. 78 Fed. Reg. at 8,463 (Feb. 6, 2013). More importantly, even if the Government's assumptions were correct, it simply means that premiums previously going toward childbirths will now be redirected to contraceptive and related services in order to achieve the (objectionable) goal of "fewer childbirths."

[1] Comments of U.S. Conference of Catholic Bishops, at 3 (Mar. 20, 2013), available at http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.

15. In short, the "accommodation" requires non-exempt religious organizations, including some of the Plaintiffs, to provide, pay for, and/or facilitate abortion-inducing products, contraception, sterilization and related counseling, contrary to their core religious beliefs.

16. Even though the Biloxi Diocese and the Jackson Diocese appear to qualify as "religious employer[s]" under the Exemption, as modified by the Final Rule and interpreted by the Defendants, the Mandate still requires them to act in violation of their Catholic beliefs. For example, the Biloxi Diocese operates a self-insurance plan that encompasses not only individuals directly employed by the Diocese itself, but also individuals working for or employed by affiliated Catholic organizations such as Catholic Social Services, de l'Epee, Resurrection Catholic, and Sacred Heart. Because these entities do not, themselves, appear to qualify as exempt "religious employers," the Diocese must either: (i) employ those who work at its affiliated Catholic entities; (ii) sponsor a plan that will provide, pay for, and/or facilitate the provision of the objectionable insurance coverage to the employees of those affiliated Catholic entities, or (iii) expel them from the Diocese's self-insurance plan which, in turn, will require those affiliated Catholic entities themselves to provide, pay for, and/or facilitate access to the objectionable products and services.

17. This aspect of the Mandate reflects a change from the Government's original proposal of July 19, 2010, which allowed employees of Catholic Social Services, de l'Epee, Resurrection Catholic, and Sacred Heart to remain on the Biloxi Diocese's plan, which, in turn, would have shielded them from the Mandate if the Biloxi Diocese was exempt.[2] The Final Rule, in contrast, removes this ancillary protection and thereby *increases* the number of religious organizations subject to the Mandate. And in so doing, the Mandate now effectively divides the

[2] *See* 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012).

Catholic Church, artificially separating its "houses of worship" from its faith in action entities, directly contrary to Pope Benedict's admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

18. The Mandate is irreconcilable with the First Amendment, RFRA, and other laws. The Government has demonstrated no compelling interest in forcing Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing drugs, sterilization, and contraception. Nor has it shown that the Mandate is the least restrictive means of advancing any interest it may have in increasing access to these services, which are already widely available without the Government conscripting Plaintiffs as vehicles for the dissemination of products and services to which they so strongly object. The Government, therefore, cannot justify its decision to force Plaintiffs to provide, pay for, and/or facilitate access to these products and services in violation of their religious beliefs.

19. Accordingly, Plaintiffs respectfully seek (i) a declaration that the Mandate cannot lawfully be applied to them; (ii) an injunction barring its enforcement; and (iii) an order vacating the Mandate.

PRELIMINARY MATTERS

20. The Biloxi Diocese is a nonprofit corporation with its principal place of business in Biloxi, Mississippi. It is organized exclusively for charitable, religious, and educational purposes under Section 501(c)(3) of the Internal Revenue Code ("IRC").

21. Bishop Morin, in his capacity as Bishop of the Biloxi Diocese, is responsible for serving more than 70,000 Catholics residing in southeastern Mississippi.

22. Catholic Social Services is a not-for-profit corporation that is part of the Catholic ministry of the Biloxi Diocese. It is organized exclusively for charitable, religious, and educational purposes under IRC § 501(c)(3).

23. De l'Epee is a not-for-profit corporation located in Biloxi, Mississippi and affiliated with the Biloxi Diocese. It is organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

24. Resurrection Catholic and Sacred Heart are two of the 14 Catholic schools that carry out the Catholic Church's teaching ministry within the Biloxi Diocese.

25. The Jackson Diocese is a religious association of parishes and schools, with its principal place of business located in Jackson, Mississippi. It is organized exclusively for charitable, religious, and educational purposes under IRC § 501(c)(3).

26. Bishop Kopacz, in his capacity as Bishop of the Jackson Diocese, is responsible for overseeing and serving 99 parishes in 65 counties in Mississippi.

27. Vicksburg Catholic and St. Joseph are two of the Catholic schools of the Jackson Diocese. While they fall within the Catholic ministry of the Jackson Diocese, Vicksburg Catholic and St. Joseph are separately incorporated.

28. Catholic Charities is a nonprofit Mississippi corporation, which is part of the Catholic ministry of the Jackson Diocese. It is organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

29. St. Dominic is a nonprofit Mississippi corporation providing numerous healthcare-related services. It is organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

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

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

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

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

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

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

36. 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.

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

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

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

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

THE PARTIES

BISHOP MORIN AND THE BILOXI DIOCESE

41. Bishop Morin, in his capacity as head of the Biloxi Diocese, is responsible for the 40 Catholic parishes located throughout 17 counties in southeastern Mississippi. Originally part

of the Diocese of Natchez-Jackson, the Biloxi Diocese was established as a separate diocese on March 1, 1977.

42. Bishop Morin is assisted in his ministry by a staff of clergy, religious brothers and sisters, and lay people. Except where religion is a *bona fide* requirement for fulfilling a job requirement, the Biloxi Diocese imposes no religious litmus test on its employees and employs Catholics and non-Catholics alike.

43. The Biloxi Diocese carries out a tripartite spiritual, educational, and social service mission largely through its parishes. Through the ministry of its priests, the Biloxi Diocese ensures the regular availability of the Sacraments to all Catholics living in or visiting the southeastern Mississippi area.

RESURRECTION CATHOLIC AND SACRED HEART SCHOOLS

44. The Catholic Church's educational mission within the Biloxi Diocese is carried out largely through 14 Catholic schools, including Plaintiffs Resurrection Catholic and Sacred Heart. Collectively, those schools serve nearly 4,000 students and employ more than 200 certificated teachers and school staff.

45. The Catholic schools within the Biloxi Diocese, including Resurrection Catholic and Sacred Heart, welcome students of any or no faith. To serve as many children as possible, the Biloxi Diocese expends significant funds in tuition assistance programs. Approximately 13% of the students enrolled in the Biloxi Diocese's Catholic schools are minorities.

46. The Catholic schools within the Biloxi Diocese provide an education based on Christ's teaching and values, and focus on the formation of strong moral character, the furtherance of academic excellence, the inspiration to serve others and the motivation to achieve the students' potential in the local and the world communities. Nationally, 99.4% of students in Catholic high schools graduate.

CATHOLIC SOCIAL SERVICES

47. Catholic Social Services is a not-for-profit corporation, which is a Catholic ministry within the Biloxi Diocese and is organized exclusively for charitable, religious, and educational purposes within the meaning of the IRC § 501(c)(3).

48. The mission of Catholic Social Services is to convene people to action, advocate justice in societal structures, and provide service to people in need. It is the "good works" arm of the Biloxi Diocese, that "commits itself above all to a preferential option for those less fortunate."

49. Catholic Social Services serves the needy, underserved, and underprivileged in countless ways, regardless of their faith. For instance, it offers a variety of maternity services for pregnant women, including pregnancy testing, prenatal care, and counseling. It also operates a licensed adoption agency. Many of the services provided by Catholic Social Services are not otherwise available in southern Mississippi.

DE L'EPEE DEAF CENTER

50. De l'Epee is a not-for-profit corporation located in Biloxi, Mississippi, and is affiliated with the Biloxi Diocese. It is organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

51. Founded in 1978 by Sister Delores Coleman, de l'Epee offers a variety of educational, social, religious, and personal services throughout Mississippi for those who are deaf, hard of hearing or have other hearing-related disabilities. Its services include afterschool tutoring and sign language classes for deaf students and interpreting services for the deaf and hearing disabled. It also conducts church services and offers spiritual counseling in sign language. There is no other organization in Mississippi providing this critical function for the hearing impaired.

52. De l'Epee serves people in need without regard to their religion.

BISHOP KOPACZ AND THE JACKSON DIOCESE

53. The Jackson Diocese is a nonprofit Mississippi corporation, with its principal place of business located in Jackson, Mississippi. It is organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

54. Bishop Kopacz, in his capacity as head of the Jackson Diocese, is responsible for 99 parishes in 65 counties in Mississippi. The Jackson Diocese currently serves a Catholic population of approximately 48,000 people. Geographically, it is the largest diocese located east of the Mississippi River.

55. Bishop Kopacz oversees the multifaceted mission of delivering spiritual, educational, and social services to residents, both Catholic and non-Catholic alike, of the region that the Jackson Diocese encompasses. The parishes maintain their own charitable efforts and serve an indeterminate number of persons of all faiths who are homeless, hungry, elderly, or otherwise in need of material assistance.

56. The Jackson Diocese employs approximately 900 people, the majority of whom are full-time employees.

VICKSBURG CATHOLIC AND ST. JOSEPH SCHOOLS

57. The Jackson Diocese also serves the community through its Catholic schools, including Vicksburg Catholic and St. Joseph, which is located in Madison, Mississippi. The Office of Catholic Schools is vested with responsibility for all of the Catholic schools within the Diocese, which include fifteen elementary schools, four high schools, and various preschool programs. Collectively, these schools educate approximately 4,500 students. While all of these

schools fall within the Catholic ministry of the Jackson Diocese, Vicksburg Catholic and St. Joseph are separately incorporated.

58. Like the Catholic schools of the Biloxi Diocese, the Catholic schools of the Diocese of Jackson maintain high standards for academic excellence. Ninety-nine percent of senior high school students in the Jackson Diocese's schools graduate.

59. The Jackson Diocese's schools are open to and serve all children, without regard to the students' religion, race or financial condition. To make a Catholic education available to as many children as possible, the Jackson Diocese expends substantial funds in tuition assistance programs. Approximately one-half of the students who attend the Catholic schools of the Jackson Diocese are not Catholic, and approximately one-third are minorities.

CATHOLIC CHARITIES

60. Catholic Charities is a nonprofit Mississippi corporation which is part of the Catholic ministry of the Jackson Diocese. It is organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

61. The mission of Catholic Charities is to be a visible sign of Christ's love and concern for all people. Last year, Catholic Charities directly served more than 20,000 people throughout Mississippi, without regard to religious affiliation, but its mission extends to the larger community of the state, nation, and beyond.

62. Catholic Charities serves the needy, underserved, and underprivileged in countless ways, including alcohol and drug addiction services, health training ministry, mental health counseling services, children's mental health services, domestic violence shelters, pregnancy and parenting support, and refugee services. Catholic Charities provides more than

$7.6 million in services annually (excluding administrative and fund-raising costs) for the communities it serves.

63. Catholic Charities has approximately 140 employees and maintains offices in Jackson, Natchez, and Vardaman, Mississippi. It also has outreach workers located throughout the Jackson Diocese.

ST. DOMINIC

64. St. Dominic is a nonprofit Mississippi corporation organized exclusively for charitable, religious, and educational purposes within the meaning of IRC § 501(c)(3).

65. St. Dominic employs more than 2,200 full-time employees at St. Dominic-Jackson Memorial Hospital and affiliated locations and programs.

66. The mission of St. Dominic includes numerous healthcare-related services. "Its outreach programs and services extend its ministry beyond [its] walls so that specific needs can be addressed."

67. In addition, St. Dominic has contributed to the operation of St. Dominic Community Health Services Clinic (the "Health Clinic"). Since its founding in 1946, St. Dominic has recognized the need to provide healthcare services for the homeless and working poor of Jackson, Mississippi. As an extension of that focus, the Health Clinic provides basic medical care to those who cannot afford it. In addition to primary healthcare services, the Health Clinic provides a variety of educational programs for children, adolescents, and adults in an effort to promote disease prevention and safety among a segment of the population that is underserved by the Government. In 2010, more than 12,000 individuals were treated at the Health Clinic.

68. St. Dominic has also contributed to the operation of the "Care-A-Van Outreach Program" ("Care-A-Van"). With health prevention as its focus, this 42-foot mobile screening bus travels throughout Central Mississippi conducting both screenings and education programs for school-age children and the elderly. Care-A-Van targets segments of the community in which there is an identified need. In fact, the majority of the children screened come from families who do not have access to available preventive health care resources. Like the Health Clinic, Care-A-Van serves a segment of the population that is underserved by the Government. In 2010, the Care-A-Van program served 9,551 children and senior adults through its programs and services.

THE IMPACTED HEALTH PLANS

69. The Biloxi Diocese operates two self-insured health plans, one for its clergy and one for all other employees (collectively, the "Biloxi Plan"). It does not contract with a separate insurance company to provide health care coverage to its employees. Instead, the Diocese itself functions as the insurance company, underwriting its employees' medical costs. The Diocese contracts with Select Administrative Services to provide certain claims administration services. The Biloxi Plan does not cover abortion-inducing drugs or sterilization. Contraceptives are not covered by the plan unless they are necessary for medically diagnosed conditions. Plaintiffs Catholic Social Services, de l'Epee, Resurrection Catholic and Sacred Heart offer coverage to their employees through the Biloxi Plan.

70. The Biloxi Plan year begins on July 1.

71. The Jackson Diocese operates three self-insured health plans (collectively, the "Jackson Plan"). Plaintiffs Catholic Charities, Vicksburg Catholic, and St. Joseph offer coverage for their employees through the Jackson Plan. A third-party administrator, Boon-Chapman manages benefit applications, claims processing, and payment of claims for the Jackson Plan on

behalf of the Jackson Diocese. The Jackson Plan does not cover abortion-inducing drugs, sterilization, or contraceptives.

72. The Jackson Plan year begins on October 1.

73. St. Dominic participates in a single self-insured health plan (the "St. Dominic Plan") which offers coverage to the more than 2,200 full-time employees of the hospital. A third-party administrator, Fox/Everett, Inc., manages benefit applications, claims processing, and payment of claims for the St. Dominic Plan. The St. Dominic Plan does not cover abortion-inducing drugs, sterilization, or contraceptives.

74. The St. Dominic Plan year begins on July 1.

75. "[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."[3] These so-called "grandfathered health plans do not have to meet the requirements" of the Mandate, but only so long as the plans offer substantially the same benefits at substantially the same costs.[4]

76. Plaintiffs believe that the Biloxi Plan and Jackson Plan currently meet the Affordable Care Act's definition of a "grandfathered plan." As a result, each Diocese has included a statement describing its grandfathered status in its Plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).

77. St. Dominic also believes that the St. Dominic Plan currently meets the Affordable Care Act's definition of a "grandfathered plan." The Plan materials include a

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[3] 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); 42 U.S.C. § 18011.

[4] 75 Fed. Reg. at 41731; 26 C.F.R. § 54.9815-1251T(g); 45 C.F.R. § 147.140(g); 29 C.F.R. § 2590.715-1251(g).

statement describing its grandfathered status, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).[5]

78. To maintain their putative grandfathered status, however, Plaintiffs are locked into their current health plans, unable to adjust them in response to the ever-changing healthcare marketplace. To avoid compromising their core religious beliefs, Plaintiffs are stuck in perpetuity with providing their current plans and forgoing necessary modifications that would benefit plan participants and affiliated Catholic organizations.

79. In any event, Plaintiffs' plans inevitably will lose their grandfathered status in the near future for reasons that cannot be avoided. For example, the employer contribution to the premium cannot decrease by more than 5% of the cost of coverage compared to the employer contribution on March 23, 2010.[6] Even the Government acknowledges that, as health costs escalate, the number of grandfathered health plans will decrease substantially in the near future.[7]

80. For the plan year ending June 30, 2013, the Biloxi Plan operated at such a loss that the Biloxi Diocese was forced to loan the Plan $250,000. That trend obviously cannot continue, and it demonstrates that the Biloxi Plan will inevitably lose grandfathered status in the near future. In fact, if not for the need to maintain grandfathered status, the Biloxi Plan already would have pared back benefits, increased the deductible, or taken other measures to mitigate its losses and stabilize itself.

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[5] *See also* 45 C.F.R. § 147.140(a)(2); 29 C.F.R. § 2590.715-1251(a)(2).

[6] 26 C.F.R. §54.9815-1251T(g)(1)(v); 45 C.F.R. § 147.140(g)(1)(v); 29 C.F.R. § 2590.715-1251(g)(1)(v).

[7] *See* 75 Fed. Reg. 41,726, 41,731 (July 19, 2010).

STATUTORY AND REGULATORY BACKGROUND

THE AFFORDABLE CARE ACT

81. On March 23, 2010, Congress enacted the Affordable Care Act.[8] The 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 dependants." 42 U.S.C. § 300gg-91(a)(1).

82. As relevant here, the Act requires an employer's group health plan to cover 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 cost of these "preventive care" services without any deductible or co-payment.

83. "[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."[9] These so-called "grandfathered health plans do not have to meet the requirements" of the Mandate. 75 Fed. Reg. at 41,731 (July 9, 2010). HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

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[8] *See* Pub. L. No. 111-148, 124 Stat. 119.

[9] 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.

84. Federal law provides several mechanisms to enforce the requirements of the Act, including the Mandate. For example:

(a) Under the IRC, 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 annual fines of $2,000 per full-time employee.[10]

(b) Under the IRC, group health plans that fail to provide certain required coverage may be subject to a penalty of $100 a day per covered individual.[11]

(c) Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits.[12]

(d) Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the Mandate, as incorporated by ERISA.[13]

85. The Act's provisions, along with other federal statutes, reflect a clear congressional intent that the executive agency charged with identifying the "preventive care" should exclude all abortion-related services.

86. 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 HHS] may be made available to a Federal agency or program . . . if

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[10] *See* 26 U.S.C. § 4980H(a), (c)(1).

[11] *See* 26 U.S.C. § 4980D(b).

[12] 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700.

[13] *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).

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."[14]

87. The Act, therefore, was passed on the fundamental premise that all agencies would uphold and follow "longstanding Federal laws to protect conscience" and to prohibit federal funding of abortion services. *See* Exec. Order No. 13535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

THE EVOLVING MANDATE

88. Less than two years later, however, Defendants promulgated the Mandate, subverting Congress's clear intent to protect the rights of conscience. The Mandate immediately prompted intense criticism and controversy, in response to which the Government has undertaken various revisions. None of these revisions, however, alleviates the substantial burden that the Mandate imposes on Plaintiffs' religious beliefs. To the contrary, these revisions have resulted in a Final Rule that is significantly worse than the original rule.

THE ORIGINAL MANDATE

89. On July 19, 2010, Defendants issued initial interim final rules addressing the statutory requirement that group health plans provide coverage for women's "preventive care." 75 Fed. Reg. 41,726. These interim 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.

[14] Consolidated Appropriations Act, 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, among other things, "a health insurance plan." *Id.* § 507(d)(2).

90. 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 an ad hoc "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.

91. 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 end of each meeting.

92. At the close of this process, on July 19, 2011, the IOM issued a final report recommending 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."[15]

93. The pervasive 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."[16]

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[15] Inst. Of Med., Clinical Preventive Services for Women: Closing the Gaps," at 109-10 (2011).

[16] *Id.* at 232.

94. Less than two weeks after the IOM report, without pausing for comment, HHS issued a press release on August 1, 2011, announcing that it would adopt the IOM's definition of "preventive care" in its entirety, including all "FDA-approved contraception methods and contraceptive counseling."[17] 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."[18]

95. The Government's definition of mandatory "preventive care" also includes abortion-inducing drugs. 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.

THE ORIGINAL EXEMPTION

96. Shortly after announcing its definition of "preventative care," the Government proposed a narrow exemption from the 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

[17] *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.

[18] *See* "Women's Preventive Services: Required Health Plan Coverage Guidelines," http://www.hrsa.gov/womensguidelines.

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."[19]

97. The Government admitted that this narrow exemption was intended to protect only "the unique relationship between a house of worship and its employees in ministerial positions."[20] It provided no protection for religious universities, elementary and secondary schools, hospitals, and charitable organizations.

THE ANPRM

98. The sweeping nature of the Mandate was subject to widespread 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.

99. The Government initially refused to reconsider its position. Instead, it "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.

100. A month later, 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 Mandate. 77 Fed. Reg. 16,501 (Mar. 21, 2012). The ANPRM did not revoke the Mandate, and in fact reaffirmed the Government's view at the time that the original exemption

[19] 76 Fed. Reg. at 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(1)(iv)(B)).
[20] *Id.* at 46,623.

would not be expanded. *Id.* at 16,501-08. Instead, the ANPRM offered hypothetical "possible approaches" that would, the Government claimed, somehow solve the religious-liberty problem without granting an exemption for objecting religious organizations. *Id.* at 16,507.

THE FIRST LAWSUIT AND THE GOVERNMENT'S PROMISE OF NON-ENFORCEMENT

101. On May 21, 2012, Plaintiffs filed a lawsuit in this Court in which they argued, *inter alia*, that the Mandate violated their rights under RFRA and the First Amendment. *See Catholic Diocese of Biloxi, et al v. Sebelius et al.*, Docket No. 1:12-cv-158-HSO-RHW (S.D. Miss.). In response to this and similar litigation, the Government promised that "these regulations almost certainly will never be enforced against plaintiffs," and represented that it was planning to modify the regulations to accommodate religious organizations with religious objections to contraceptive coverage before the safe harbor expired in August 2013. *Id.*, Defs.' Reb. Br. [Dkt. # 27] at 5.

102. According to the Government, "the forthcoming amendments [were] intended to address the very issue that plaintiffs raise here by establishing alternative means of providing contraceptive coverage without cost-sharing while accommodating religious organizations' religious objections to covering contraceptive services." Mem. of Law in Support of Defs.' Mot. to Dismiss [Dkt. # 16] at 17. Indeed, the Government assured the Court, "[o]nce defendants complete the rulemaking outlined in the ANPRM, plaintiffs' challenge to the current regulations likely will be moot." *Id.* at 18.

103. In their Complaint and in response to the Government's motion to dismiss, Plaintiffs made clear that the ANPRM, even if adopted, would still require Plaintiffs to provide, pay for, and/or facilitate the provision of objectionable insurance coverage for their employees

and, therefore, would not relieve the burden on their religious exercise. *See* Compl. [Dkt. # 1] ¶ 108; Pls.' Mem. Br. in Opp., [Dkt. # 23] at 31.

104. Confronted with these allegations, the Government assured the Court that "the ANPRM [was] a mere starting point, and plaintiffs [would] have ample opportunity to express their concerns and help shape the forthcoming amendments." Defs.' Reb. Br. [Dkt. # 27], at 12. The Government further stated that the Defendants "ha[d] begun the process of amending the regulations for the very purpose of addressing the religious objections to covering contraception by religious organizations like plaintiffs," and that "Plaintiffs' baseless conjecture that defendants will not do what they say they will do – and are currently doing – does not constitute an imminent injury for standing purposes." *Id.* at 4.

105. Based on the Government's representations, the district court granted the Government's motion to dismiss (without prejudice) for lack of ripeness to await the outcome of the ongoing rulemaking process. *See Catholic Diocese of Biloxi, et al v. Sebelius et al.*, Docket No. 1:12-cv-158, Order [Dkt. # 62], at 12-15.

THE NPRM

106. 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. Like the Government's previous proposals, the NPRM was once again met with strenuous opposition, including more than 400,000 comments.

107. Despite this strenuous opposition, on June 28, 2013, the Government issued the Final Rule that adopted substantially all of the NPRM's proposal. *See* 78 Fed. Reg. 39,870 (July 2, 2013).

108. The Final Rule makes three changes to the 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 increasing the number of religious organizations subject to the Mandate.

109. *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 "a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." *See* 78 Fed. Reg. 39,874 (July 2, 2013). 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 regulations." *Id.* 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." 78 Fed. Reg. 8,456, 8,461 (Feb. 6, 2013). In this respect, the Exemption in the Final Rule is, in substance, virtually identical to the original "religious employer" exemption, which was intended to focus on "the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. at 46,623. Religious organizations that have a broader mission are still not, in the Government's view, "religious employers."

110. The "religious employer" Exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the Mandate, while denying this favorable treatment to all other religious groups. The Exemption applies only to those groups that are "referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code," which 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.* These factors require the Government to make intrusive judgments regarding religious beliefs, practices, and organizational features to determine which groups fall into the favored category.

111. *Second*, the Final Rule establishes an illusory "accommodation" for certain nonexempt objecting religious entities that qualify as an "eligible organization." An "eligible organization" is one that must (i) "oppose[] providing coverage for some or all of any contraceptive services," (ii) be "organized and operate[] as a non-profit entity"; (iii) "hold[] itself out as a religious organization;" and (iv) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance provider or, if the religious organization is self-insured, to its third party administrator.[21] Providing this self-certification automatically requires the insurance provider or third-party administrator to procure or arrange "payments for contraceptive services" for the organization's employees, without imposing any

[21] 26 CFR § 54.9815-2713A(a), (b)(ii), (c) ; 29 C.F.R. § 2590.715-2713A(a), (b)(ii), (c); 45 CFR § 147.131(b), (c)(1).

"cost-sharing requirements (such as copayment, coinsurance, or a deductible)."[22] The objectionable coverage is directly tied to the organization's health plan, lasting only as long as the employee remains on that plan.[23] In addition, self-insured organizations are expressly prohibited from "directly or indirectly, seek[ing] to influence the[ir] third party administrator's decision" to provide or procure contraceptive services.[24]

112. This so-called "accommodation" fails to relieve the burden on religious organizations. Under the original version of the Mandate, a non-exempt 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 non-exempt 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.[25] In both scenarios, Plaintiffs' decision to provide a group health plan triggers the delivery of "free" contraceptive coverage to their employees in a manner contrary to their beliefs. The provision of the objectionable products and services are directly tied to Plaintiffs' health plans, as the objectionable "payments" are available only so long as an employee is on the organization's health plan.[26] Moreover, for self-insured organizations, the self-certification constitutes the religious organization's "*designation* of the third party

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[22] 26 CFR§ 54.9815-2713A(b)(2), (c)(2); 29 CFR § 2590.715-2713A(b)(2), (c)(2); 45 CFR § 147.131(c)(2).

[23] *See* 26 CFR § 54.9815-2713A(c)(2)(B); 29 CFR § 2590.715-2713A(c)(2)(B); 45 CFR § 147.131(c)(2)(i)(B).

[24] 26 CFR § 54.9815–2713A(b)(1)(iii); 29 CFR § 2590.715-2713A(b)(1)(iii).

[25] 26 CFR § 54.9815-2713A(b)-(c); 29 CFR § 2590.715-2713A; 45 CFR § 147.131(c).

[26] *See* 29 CFR § 2590.715-2713A (for self-insured employers, the third-party administrator "will provide 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").

administrator(s) as plan administrator and claims administrator for contraceptive benefits." 78 Fed. Reg. at 39,879 (July 2, 2013) (emphasis added). Thus, employer health plans offered by non-exempt religious organizations remain the vehicle by which "free" abortion-inducing products, contraception, sterilization, and related counseling are delivered to the organizations' employees.

113. The shell game described above does not address Plaintiffs' fundamental religious objection to having to take affirmative action to facilitate their employees' access to the objectionable products and services. As before, Plaintiffs are coerced, through threats of crippling fines and other pressure, into providing their employees access to "free" contraception, abortion-inducing products, sterilization, and related counseling, contrary to their sincerely-held religious beliefs.

114. The so-called "accommodation," moreover, requires Plaintiffs to cooperate in providing objectionable coverage in other ways. For example, to be eligible for the so-called "accommodation," Plaintiffs must execute and deliver a "certification" to their insurance provider or third-party administrator setting forth their religious objections to the Mandate. The delivery of this "certification," in turn, "automatically" triggers an obligation on the part of the insurance company or third-party administrator to provide Plaintiffs' employees with objectionable coverage or to arrange for the provision of objectionable coverage. 78 Fed. Reg. 8,463 (Feb. 6, 2013).

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

products and services. This assertion assumes that cost "savings" from "fewer childbirths" will be at least as large as the direct costs of paying for contraceptive coverage and the costs of administering individual policies. 78 Fed. Reg. at 8,463 (Feb. 6, 2013). Some employees, however, will choose not to use contraception notwithstanding the Mandate. Others will use contraception regardless of whether it is free. 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.

116. 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 Catholic organizations to cover, for example, "childbirths," will now be redirected to pay for contraceptive products and services. Thus, Catholic organizations are still required to pay for the objectionable products and services.

117. For self-insured organizations, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that third-party administrators required to procure the objectionable products and services for self-insured organizations subject to the accommodation will be compensated via reductions in the user fees required for participation in federally-facilitated health exchanges. *See* 78 Fed. Reg. 39,882-86 (July 2, 2013); 26 C.F.R. § 54.9815-2713A(b)(3); 45 C.F.R. § 156.50(d). Such fee reductions will have to be established through a highly regulated and bureaucratic process. The actual reduction in user fees likely will not compensate fully the regulated entities for the costs and risks associated with providing or procuring the objectionable coverage for those religious organizations that qualify for the "accommodation" and with complying with the Final Rule's regulatory framework. As a result,

few if any third-party administrators are likely to participate in this regime, and those that do are likely to increase fees charged to the self-insured organizations.

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

119. *Third*, the Final Rule actually *increases* the number of religious organizations that are subject to the 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."[27]

120. For example, the Biloxi Diocese operates a self-insurance plan that covers not only the Diocese itself, but other affiliated Catholic organizations -- including Catholic Social Services, de l'Epee, Resurrection Catholic, and Sacred Heart. The same goes for the Jackson Diocese, which operates a self-insurance plan that covers affiliated Catholic organizations, including Catholic Charities, St. Joseph, and Vicksburg Catholic. Under the exemption as originally proposed, if the Dioceses were exempt "religious employers," then the affiliated covered entities received the benefit of that exemption, regardless of whether they independently qualified as "religious employers," since they could continue to participate in the Dioceses' exempt plans.

121. The Final Rule eliminates this safeguard. It provides that "each employer" must "independently meet the definition of religious employer or eligible organization in order to avail

[27] 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012).

itself of the exemption or an accommodation with respect to its employees and their covered dependents."[28] Since Catholic Social Services, de l'Epee, Resurrection Catholic, Sacred Heart, Catholic Charities, St. Joseph, and Vicksburg Catholic do not appear to meet the Government's narrow definition of "religious employers," they are or could be subjected to the Mandate.[29]

122. Moreover, since Catholic Social Services, de l'Epee, Resurrection Catholic, and Sacred Heart are all part of the Biloxi Diocese's self-insurance plan, the Diocese now apparently is required by the Mandate either to: (a) sponsor a plan that will provide the employees of Catholic Social Services, de l'Epee, Resurrection Catholic, and Sacred Heart with "free" contraception, abortion-inducing products, sterilization, and related counseling; or (b) expel these organizations from its health plan (and thereby force them to enter into an arrangement with another insurance provider that will, in turn, provide the objectionable products and services). Either way, the Mandate compels the Biloxi Diocese to act contrary to its sincerely-held religious beliefs.

123. The Jackson Diocese faces a similar dilemma. Catholic Charities, St. Joseph, and Vicksburg Catholic are part of the Jackson Diocese's health plan, and those entities do not appear to qualify for the current version of the Exemption. Thus, the Jackson Diocese faces the same two intolerable choices.

124. In this respect, the 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

[28] 78 Fed. Reg. 39,886 (July 2, 2103). *See also* 78 Fed. Reg. at 8,467 (Feb. 6, 2013) (NPRM).

[29] Sacred Heart and Resurrection Catholic believe that they are exempted from the Mandate because they are parish schools under 26 U.S.C. § 6033(a). However, they seek a declaration of their rights in the face of the uncertainty generated by the Mandate and Defendants' regulatory positions.

the Church's religious mission as is the administration of the Sacraments. Yet the Mandate seeks to separate these aspects of the Catholic faith, treating one as "religious" and the other as not.

125. In sum, the Final Rule not only fails to alleviate the burden that the 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 Mandate.

THE MANDATE SUBSTANTIALLY BURDENS PLAINTIFFS' RELIGIOUS LIBERTY

126. 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."

127. The Mandate violates Plaintiffs' rights of conscience by forcing them to participate in an employer-based scheme to provide services and products to their employees to which they strenuously object on moral and religious grounds.

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

129. Plaintiffs' Catholic beliefs therefore prohibit them from providing, paying for, and/or facilitating access to abortion-inducing products, contraception, or sterilization. Further, their beliefs prohibit them from paying for, providing, and/or facilitating speech presenting abortion-inducing products, contraception, or sterilization as acceptable options.

130. As a corollary, Plaintiffs' religious beliefs prohibit them from contracting with an insurance company or third-party administrator that will, as a direct result, procure or provide the objectionable coverage to Plaintiffs' employees.

131. The Mandate requires Plaintiffs to do precisely what their religious beliefs prohibit -- (a) provide, pay for, and/or facilitate access to objectionable products, services, and/or speech, or else (b) incur crippling sanctions.

132. The Mandate therefore imposes a substantial burden on Plaintiffs' religious beliefs and violates their religious liberty.

133. The Mandate's narrow Exemption for "religious employers" does not alleviate the burden.

134. The Exemption appears not to apply to Catholic Social Services, de l'Epee, St. Dominic, Catholic Charities, St. Joseph, Vicksburg Catholic, and perhaps other Plaintiffs, including Resurrection Catholic and Sacred Heart.

135. Although the Biloxi Diocese and Jackson Diocese appear to be "religious employers," the Mandate still burdens their sincerely-held religious beliefs by requiring them either to (a) sponsor a plan that will provide objectionable coverage to those that work for affiliated-but-not-exempt Catholic organizations; or else (b) expel those affiliates from their insurance plans.

136. Both alternatives violate the Plaintiffs' sincerely-held religious beliefs.

137. Because St. Dominic operates its own self-insurance plan and does not appear to qualify as a "religious employer" under the Exemption, St. Dominic will be forced to "certify" its religious objection to the Mandate, thereby providing its employees with coverage for contraception, abortion-inducing drugs, sterilization, and related counseling.

138. The result is a violation of St. Dominic's sincerely-held religious beliefs.

139. The so-called "accommodation" does not alleviate Plaintiffs' burden. Notwithstanding the "accommodation," Plaintiffs are still required to provide, pay for, and/or facilitate access to the objectionable products and services, in violation of their religious beliefs.

140. Finally, the Plaintiffs cannot avoid the Mandate without incurring crippling fines. If they eliminate their health plans, they are subject to annual fines of $2,000 per full-time employee. If they keep their health plans but refuse to provide or facilitate the objectionable coverage, they are subject to daily fines of $100 per affected beneficiary.

141. Unless and until this issue is definitively resolved, the Mandate does and will continue to impose a substantial burden on Plaintiffs' religious beliefs.

THE MANDATE IS NOT A NEUTRAL LAW OF GENERAL APPLICABILITY

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

143. For example, the 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."[30] Elsewhere, the

[30] 75 Fed. Reg. 41,726, 41732 (July 19, 2010).

government has put the number at 87 million.[31] And according to one district court in 2012, "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).

144. Similarly, small employers (*i.e.*, those with fewer than 50 employees) are exempt from certain enforcement mechanisms to compel compliance with the Mandate.[32]

145. In addition, the Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the IRC. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not for other religious organizations -- likely including, for example, Catholic Social Services, de l'Epee, Catholic Charities, St. Joseph, Vicksburg Catholic, St. Dominic, and possibly including Sacred Heart and Resurrection Catholic-- that remain subject to the Mandate.

146. The Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose certain Catholic teachings and beliefs. For example, the Mandate was modeled on a California law that was expressly motivated by discriminatory intent against religious groups that oppose contraception.

147. Consequently, Plaintiffs allege that the purpose of the Mandate, including the narrow Exemption, is to discriminate against religious institutions and organizations that oppose abortion and contraception.

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[31] *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.

[32] *See* 26 U.S.C. 4980D(d) (exempting small employers from the assessable payment for failure to provide health coverage), 4980H(a) (exempting small employers from penalties imposed for failing to provide the objectionable services).

THE MANDATE IS NOT THE LEAST RESTRICTIVE MEANS OF FURTHERING A COMPELLING GOVERNMENTAL INTEREST

148. The Mandate is not narrowly tailored to serve a compelling governmental interest.

149. The Government has no compelling interest in conscripting Plaintiffs to participate in a scheme for the provision of abortion-inducing drugs, sterilizations, contraceptives and related education and counseling. The Government itself has relieved numerous other employers from this requirement by, among other things, arbitrarily delaying enforcement of the Mandate as to certain employers, exempting grandfathered plans, and exempting plans of employers it deems to be sufficiently religious. Moreover, these products and services are already widely available in the United States.

150. Even assuming the interest is 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. Or, at a minimum, it could create a broader exemption for religious employers, such as those found in numerous state statutes throughout the country and in other federal laws. The Government cannot possibly demonstrate that requiring Plaintiffs to violate their consciences is the least restrictive means of furthering its claimed interest.

151. The 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. 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 Mandate, however, puts these good works in jeopardy.

152. Accordingly, Plaintiffs seek a declaration that the Mandate cannot lawfully be applied to Plaintiffs, an injunction barring its enforcement, and an order vacating the Mandate.

THE MANDATE THREATENS PLAINTIFFS WITH IMMINENT INJURY THAT SHOULD BE REMEDIED BY A COURT

153. The Mandate is causing serious, ongoing hardship to Plaintiffs that merits immediate relief.

154. On June 28, 2013, Defendants finalized the Mandate, including the narrow Exemption and the so-called "accommodation." By the terms of the Final Rule, Plaintiffs must comply with the Mandate by the beginning of the next plan year on or after January 1, 2014.

155. For the Biloxi Diocese, Catholic Social Services, de l'Epee, Resurrection Catholic, Sacred Heart, and St. Dominic, the next plan year begins on July 1, 2014.

156. For the Jackson Diocese, Catholic Charities, Vicksburg Catholic, and St. Joseph, the next plan year begins on October 1, 2014.

157. Defendants have given no indication that they will not enforce the essential provisions of the Mandate that impose a substantial burden on Plaintiffs' rights. Consequently, absent the relief sought herein, Plaintiffs will soon be required to provide, pay for, and/or facilitate access to contraception, abortion-inducing products, sterilization, and related education and counseling, in violation of their sincerely-held religious beliefs.

158. The Mandate is also harming Plaintiffs in other ways.

159. The process of determining the healthcare package for a plan year requires a substantial amount of lead time before the plan year actually begins. Generally, the benefits department for St. Dominic must begin budgeting and planning for its health plan approximately 12 months ahead of the start of a plan year in order to analyze, vet, and implement changes. Because the St. Dominic Plan is self-insured, St. Dominic's benefits department must analyze

historical data, evaluate potential changes, work with consultants to model and analyze potential changes, and compare potential change options. The benefits department must then develop options to be presented to the committee that is responsible for benefits issues. The potential changes are discussed and debated with the committee during a three to four month period, and a proposal must be finalized at least nine months in advance of the start of the next plan year. The multiple levels of uncertainty surrounding the Mandate make this already lengthy process even more complex.

160. Similarly, under normal circumstances -- when making only minor changes to its health plan -- the Biloxi Diocese needs at least four months of lead time for its insurance committee to analyze, vet, and recommend any plan changes to Bishop Morin. Generally, because the Biloxi Plan is self-insured, there is a need to analyze historical data, identify and evaluate potential changes, work to analyze potential changes, and compare potential change options. The Biloxi Diocese's insurance committee must then develop and vote upon options and make recommendations to be presented to Bishop Morin for his consideration and final decision. The potential proposal must then be approved and finalized to be implemented by the start of the next plan year. Likewise, the Jackson Plan needs months of lead time to analyze, vet and recommend any changes to Bishop Kopacz.

161. If Plaintiffs decide not to comply with the Mandate, they may be subject to government fines and penalties, and claims for damages by private parties. Plaintiffs require time to budget for any such additional expenses. Specifically, the Biloxi Diocese needs to begin budgeting for such major general expenses approximately one year in advance of the beginning of the relevant fiscal year on July 1. Similarly, St. Dominic must begin budgeting for such major general expenses approximately five months before the beginning of the next fiscal year on

January 1. Likewise, the Jackson Diocese begins its budgeting process months in advance of the beginning of a new fiscal year.

162. The Mandate and its uncertain legality undermine Plaintiffs' ability to hire and retain employees, thus placing them at a competitive disadvantage in the labor market relative to organizations that do not have a religious objection to the Mandate.

163. Thus, the Mandate, including its requirement that Plaintiffs choose between violating their sincerely-held religious beliefs and suffering substantial monetary liability, is currently injuring Plaintiffs.

164. Further, the Government-imposed dilemma that Plaintiffs face between continuously maintaining the grandfathered status of their group health plans -- which severely limits the changes that can be made to their plans in response to increasing healthcare costs -- and becoming subject to the Mandate is causing injury now. St. Dominic has considered making certain beneficial changes to its Plan since March 23, 2010, and would have made those changes if not for the need to maintain grandfathered status. Specifically, after March 23, 2010, St. Dominic would have increased premium employee contributions up to 10% for health coverage, but could not do so without losing its grandfathered status. Moreover, going forward, St. Dominic would consider making and would make certain additional changes to its health plan if not for the risk of losing grandfathered status. Deductible and co-pay increases have been made in the past, and, but for the risk of losing grandfathered status, would be considered in the future because they are prudent and in the best interest of St. Dominic's employees. Increasing the deductibles and co-pays lowers premiums, which is in the best interests of employees who are healthy and want to save money. Additionally, increasing the deductible lowers St. Dominic's contribution, which is necessary in light of current economic circumstances.

165. Similarly, the Biloxi Diocese has considered making certain beneficial changes to the Biloxi Plan since March 23, 2010, and would have made those changes if not for the need to maintain grandfathered status. Specifically, after March 23, 2010, the Biloxi Diocese would have increased employee contributions for health coverage above the levels allowed for retaining grandfathered status. Indeed, in preparing for the plan year beginning July 1, 2013, the Biloxi Diocese considered decreasing benefits and changing the coinsurance ratio so as to offset the staggering losses facing the Plan. The Biloxi Diocese rejected those potential changes -- which would have helped to stabilize the Plan -- because they would have caused the Biloxi Plan to lose its grandfathered status. Thus, because of the need to maintain the Plan's grandfathered status, the Biloxi Diocese has been forced to bear almost all of the increased premium costs since March 23, 2010.

166. The increased premium payments have resulted in more money being spent by the Biloxi Plaintiffs to cover increased employee health premiums, with a corresponding reduction in the funds available for other religious ministries. Moreover, going forward, if not for the risk of losing grandfathered status, the Biloxi Diocese and its affiliates would consider making certain additional changes to the Biloxi Plan. For example, for the months of April, May, June, and July 2012, respectively, there was a combined monthly shortfall with regard to revenues and expenditures of the Biloxi Plan of $188,000.68, $204,220.93, $284,917.48, and $272,163.96. Bishop Morin, as head of the Diocese, would like to significantly increase the employees' premium contribution as well as pare back coverage under the Biloxi Plan in order to keep the Plans solvent, but cannot do so without jeopardizing grandfathered status. The Jackson Diocese has likewise experienced significant increased expenses as a result of its efforts to maintain grandfathered status.

167. A significant portion of the budget and planning sessions for the Biloxi Diocese and St. Dominic each year necessarily entails analyzing the grandfathered status of the Biloxi Plan and the St. Dominic Plan. In fact, since March 2010, St. Dominic has spent more than $9,000 on professional services in order to ensure that the St. Dominic Plan maintains its grandfathered status. Similarly, the Biloxi Diocese has spent more than $8,000 on professional fees in order to ensure that the Biloxi Plan remains grandfathered. Similarly, the Jackson Diocese has expended funds and time to ensure the Jackson Plan remains grandfathered. The money and time that Plaintiffs have had to spend on these issues could have been spent addressing other significant budgetary and operational issues, or it could have been spent providing services to the poor and needy.

168. In sum, an actual, justiciable controversy currently exists between Plaintiffs and Defendants. Absent a declaration resolving this controversy and the validity and applicability of the Mandate, Plaintiffs are uncertain as to their rights and duties in planning, negotiating, and/or implementing their group health plans, their hiring and retention programs, and their social, educational, and charitable programs and ministries, as described herein.

169. Plaintiffs need judicial relief now in order to end the serious, ongoing harm that the Mandate is already imposing on them and to prevent the additional, imminent injuries that they will suffer in the near future.

170. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

COUNT I

SUBSTANTIAL BURDEN ON RELIGIOUS EXERCISE IN VIOLATION OF RFRA

171. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

172. 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 (a) furthers a compelling governmental interest, and (b) is the least restrictive means of furthering that interest.

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

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

175. The Mandate requires Plaintiffs to provide, pay for, and/or facilitate practices and speech that are contrary to their religious beliefs.

176. The Mandate substantially burdens Plaintiffs' exercise of religion.

177. The Government has no compelling governmental interest to require Plaintiffs to comply with the Mandate.

178. Requiring Plaintiffs to comply with the Mandate is not the least restrictive means of furthering any compelling governmental interest.

179. By enacting and threatening to enforce the Mandate against Plaintiffs, Defendants have violated RFRA.

180. Plaintiffs have no adequate remedy at law.

181. 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

182. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraph 1 through 170 hereinabove.

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

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

185. The Mandate requires Plaintiffs to provide, pay for, and/or facilitate practices and speech that are contrary to their religious beliefs.

186. The Mandate substantially burdens Plaintiffs' exercise of religion.

187. The Mandate is not a neutral law of general applicability, because it is riddled with arbitrary exemptions for which there is not a consistent, legally defensible basis.

188. The Mandate is not a neutral law of general applicability because it was passed with discriminatory intent.

189. The Mandate implicates constitutional rights in addition to the right to free exercise of religion, including, for example, the rights to free speech, to freedom from excessive government entanglement with religion, to freedom from favoritism with respect to religious groups, and to freedom of association.

190. The Government has no compelling interest to require Plaintiffs to comply with the Mandate.

191. The Mandate is not narrowly tailored to further a compelling governmental interest.

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

193. Plaintiffs have no adequate remedy at law.

194. The Mandate and its impending enforcement impose an ongoing harm on Plaintiffs that warrants immediate relief.

COUNT III

COMPELLED SPEECH IN VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT

195. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraph 1 through 170 hereinabove.

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

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

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

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

200. The Mandate would compel Plaintiffs to provide healthcare plans to their employees that include or facilitate access to products and services that violate their religious beliefs.

201. The Mandate would compel Plaintiffs to subsidize, promote, and facilitate education and counseling services regarding these objectionable products and services.

202. The Mandate would compel Plaintiffs to issue a certification of its beliefs that, in turn, would directly cause the provision of objectionable products and services to Plaintiffs' employees.

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

204. The Mandate is subject to strict scrutiny.

205. The Mandate furthers no compelling governmental interest.

206. The Mandate is not narrowly tailored to further a compelling governmental interest.

207. Plaintiffs have no adequate remedy at law.

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

COUNT IV

PROHIBITION OF SPEECH IN VIOLATION OF THE FIRST AMENDMENT

209. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraph 1 through 170 hereinabove.

210. 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.

211. The 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 third-party administrator to provide or procure contraceptive products and services to Plaintiffs' employees.

212. Plaintiffs have no adequate remedy at law.

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

COUNT V

OFFICIAL "CHURCH" FAVORITISM AND EXCESSIVE ENTANGLEMENT WITH RELIGION IN VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT

214. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

215. 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.

216. 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.

217. The "religious employer" Exemption violates the Establishment Clause in two ways.

218. 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.

219. Second, the Exemption requires the Government to make intrusive judgments regarding religious beliefs, doctrines, and organizational features. For instance, the issue of whether groups qualify as "religious employers" turns on an intrusive 14-factor test used 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 Exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion.

220. Plaintiffs have no adequate remedy at law.

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

COUNT VI

INTERFERENCE IN MATTERS OF INTERNAL CHURCH GOVERNANCE IN VIOLATION OF THE RELIGION CLAUSES OF THE FIRST AMENDMENT

222. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

223. The Free Exercise and Establishment Clauses and RFRA collectively serve to 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.

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

225. Under these Clauses and RFRA, 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.

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

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

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

229. 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.

230. 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.

231. The Biloxi Diocese has further made the internal decision that its affiliated religious entities, including Catholic Social Services, de l'Epee, Resurrection Catholic, and Sacred Heart, should offer their employees health coverage through the Biloxi Plan, so as to ensure that those affiliates do not offer coverage for services that are contrary to Catholic teaching. For the same reason, the Jackson Diocese has decided that its affiliated religious entities, including Catholic Charities, Vicksburg Catholic, and St. Joseph, should offer their employees health-insurance coverage through the Jackson Plan.

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

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

234. Because the Mandate interferes with the internal decision-making of Plaintiffs in a manner that affects their faith and mission, it violates the Establishment and Free Exercise Clauses of the First Amendment and RFRA.

235. The Mandate is therefore unconstitutional and invalid.

236. Plaintiffs have no adequate remedy at law.

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

COUNT VII

UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY

238. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

239. The United States Constitution vests all federal legislative power in the United States Congress. Congress may not delegate its policymaking authority to an executive agency in the absence of an intelligible principle that limits and guides the agency's exercise of that authority.

240. The Affordable Care Act expressly delegates unchecked authority to an agency within Defendant HHS, the Health Resources and Services Administration ("HRSA"), to establish "comprehensive guidelines" for the services that group health plans and health insurance issuers must provide as "preventive care" under the Act.

241. For instance, the Act does not contain an intelligible principle or any other identifiable standard to which HHS or HRSA is directed to conform in deciding which services do and do not qualify as "preventive care."

242. Moreover, the Act contains no intelligible principle or other identifiable standard to which HHS or HRSA is directed to conform in deciding what "preventive care" should be -- and should not be -- required.

243. For example, the Act purports to bestow unfettered discretion on HHS or HRSA to mandate coverage for whatever medical services and procedures it deems to qualify as "preventive care" worthy of coverage. Also, Defendants have used their unbounded discretion under the Act to claim for themselves the authority to decide which entities will (and will not) be subject to the Mandate and which will (and will not) qualify for the Exemption.

244. The Mandate resulted from a complete delegation of legislative and/or regulatory authority by Defendants to a non-governmental organization, the IOM. Defendants left it to IOM to develop "preventive care" guidelines, and then adopted IOM's guidelines in their entirety a mere two weeks after IOM issued its report. Moreover, Defendants did all of this without engaging in notice and comment. In sum, Defendants effectively rubber-stamped IOM's determinations. As a result, the Mandate is the result of an unconstitutional delegation of governmental authority to a non-governmental entity.

245. The Act's delegation of legislative authority violates the United States Constitution.

246. Defendants' subdelegation of legislative and/or regulatory authority to a nongovernmental entity violates the United States Constitution and the ACA.

247. Plaintiffs have no adequate remedy at law.

248. The enactment and impending enforcement of the Mandate pursuant to these illegal delegations of authority impose an ongoing harm on Plaintiffs that warrants immediate relief.

COUNT VIII

ILLEGAL ACTION IN VIOLATION OF THE APA

249. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

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

251. The Mandate, its Exemption for "religious employers," and its so-called "accommodation" for "eligible" religious organizations are illegal and therefore in violation of the APA.

252. 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."[33]

253. 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.

[33] Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011).

254. The Mandate nevertheless requires employer-based health plans to provide coverage for abortion-inducing products, contraception, sterilization, and related education. Thus, the Mandate is "not in accordance with the law." 5 U.S.C. § 706(2)(A). By issuing the Mandate, Defendants have exceeded their authority and ignored the direction of Congress.

255. The Mandate violates RFRA.

256. The Mandate violates the First Amendment.

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

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

259. Plaintiffs have no adequate remedy at law.

260. The Mandate imposes an ongoing harm on the Plaintiffs that warrants immediate relief.

COUNT IX

Failure to Conduct Notice-and-Comment Rulemaking in Violation of the APA

261. Plaintiffs repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

262. The Affordable Care Act expressly delegates to HRSA the authority to establish guidelines concerning the "preventive care" that a group health plan and health insurance issuer must provide.

263. Given this express delegation, Defendants were required to engage in formal notice-and-comment rulemaking in a manner prescribed by law before issuing the "preventive care" guidelines that group health plans and insurers must cover. Proposed regulations were required to be published in the Federal Register and interested persons were required to be given

an opportunity to participate in the rulemaking through the submission of written data, views, or arguments.

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

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

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

267. Within two weeks of IOM issuing its women's "preventive care" guidelines, HHS issued a press release announcing that IOM's Guidelines regarding women's "preventive care" were required to be covered under the Affordable Care Act.

268. Defendants have never indicated reasons for failing to enact the "preventive care" guidelines through notice-and-comment rulemaking as required by the APA.

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

270. Plaintiffs have no adequate remedy at law.

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

COUNT X

ERRONEOUS INTERPRETATION OF THE EXEMPTION WITH RESPECT TO MULTI-EMPLOYER PLANS

272. Plaintiffs repeat and re-allege the allegations set out in Paragraphs 1 through 170 hereinabove.

273. The 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).

274. 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.

275. 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.*

276. 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.*

277. 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."

278. 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.

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

280. The Biloxi Diocese and Jackson Diocese both meet the Mandate's definition of a religious employer, and therefore, the group health plans they have "established or maintained" are exempt from providing coverage for abortion-inducing products, sterilization, contraception, and related education and counseling.

281. The Defendants' erroneous interpretation of the religious employer exemption, however, precludes the Biloxi Diocese's affiliated entities—including Plaintiffs Catholic Social Services, de l'Epee, and possibly including Resurrection Catholic and Sacred Heart—from obtaining the benefit of the exemption by participating in the exempt group health plan established and maintained by the Biloxi Diocese. Similarly, the Defendants' erroneous interpretation of the religious employer exemption precludes the Jackson Diocese's affiliated entities – including Plaintiffs Catholic Charities, Vicksburg Catholic, and St. Joseph – from obtaining the benefit of the exemption by participating in the exempt group health plan established and maintained by the Jackson Diocese.

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

283. Plaintiffs have no adequate remedy at law.

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

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the Mandate violates Plaintiffs' rights under RFRA;

2. Enter a declaratory judgment that the Mandate violates Plaintiffs' rights under the First Amendment;

3. Enter a declaratory judgment that the Mandate was promulgated in violation of the APA;

4. Enter a declaratory judgment that the ACA unconstitutionally delegates legislative authority, and that the Mandate is therefore invalid because it is the result of that unconstitutional delegation of legislative authority;

5. Enter a declaratory judgment that Defendants unconstitutionally delegated legislative and/or regulatory authority to a nongovernmental entity, and that the Mandate is therefore invalid because it is the result of that unconstitutional delegation of authority;

6. Enter a declaratory judgment that Plaintiffs are not subject to the Mandate;

7. 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;

8. Enter an injunction prohibiting the Defendants from enforcing the Mandate against Plaintiffs;

9. Enter an order vacating the Mandate;

10. Award Plaintiffs their attorneys' and expert fees and costs under 42 U.S.C. § 1988; and

11. Award all other relief as the Court may deem just and proper.

Respectfully submitted, this the 27 day of March, 2014.

By: _____

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and

_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of March, 2014, I caused a copy of the foregoing to be served by United States mail, return receipt requested, to each party named on the Summonses in this action.

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