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

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| **MOST REVEREND LAWRENCE T. PERSICO, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF ERIE, as Trustee of The Roman Catholic Diocese of Erie, a Charitable Trust; THE ROMAN CATHOLIC DIOCESE OF ERIE; ST. MARTIN CENTER, INC., an affiliate nonprofit corporation of Catholic Charities of the Diocese of Erie; PRINCE OF PEACE CENTER, INC., an affiliate nonprofit corporation of Catholic Charities of the Diocese of Erie; and ERIE CATHOLIC PREPARATORY SCHOOL, an affiliate nonprofit corporation of The Roman Catholic Diocese of Erie,** | CASE NUMBER: 13-303 |
| ***Plaintiffs***, | DATE STAMP: _____ |
| | JURY TRIAL DEMAND |
| **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.*** | |

## COMPLAINT

1. This case is a continuation of Plaintiffs' prolonged fight for their religious freedom. Federal law (the "U.S. Government Mandate") has required religious organizations such as Plaintiffs to provide services that violate their long-standing teachings on abortion and

the sanctity of human life by subsidizing, providing, and/or facilitating coverage for abortion-inducing drugs, sterilization services, contraceptives, and related counseling services (also referred to herein as the "objectionable services").

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

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

4. Despite repeated promises to protect Plaintiffs' religious freedom, the Government has chosen not to do so. For example, after the Government issued its proposed rule, the Roman Catholic Diocese of Pittsburgh (the "Diocese of Pittsburgh") submitted extensive public comments outlining how "the proposed rule continue[d] the surprising recent detour into requiring religious objectors to fund or facilitate coverage for abortifacients, contraception, sterilization, and related education and counseling."

5. The Diocese of Pittsburgh's comments were bolstered by a report from a renowned healthcare economist, whose report explained that "the accommodation will not operate as the Government claims it will" and that the scheme proposed by the Government would result in religious organizations funding and/or facilitating coverage of the objectionable services. In its comments, the Diocese of Pittsburgh "offer[ed] two proposals that could alleviate some or all of the issues raised in [its] comment[s.]" These proposals were ignored.

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

7. The Government, through the U.S. Government Mandate, is forcing Plaintiffs to violate their sincerely-held religious beliefs. Plaintiffs St. Martin Center, Inc. ("St. Martin Center"), Prince of Peace Center, Inc. ("Prince of Peace Center"), and Erie Catholic Preparatory School are forced to comply with the U.S. Government Mandate. Plaintiffs Most Reverend Lawrence T. Persico (the "Bishop") and the Roman Catholic Diocese of Erie (the "Diocese") are forced to facilitate coverage of the objectionable services because the Diocese is the plan sponsor for the health insurance plans of Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School, as well as many other Diocesan-affiliated entities subject to the U.S. Government Mandate.

8. Not only is the Government continuing to attack Plaintiffs' religious liberties, but it waited right up until the expiration of the safe harbor to announce its Final Rule. Although the Government extended the safe harbor until December 31, 2013, the Government still is forcing parties such as Plaintiffs, on a highly-compressed schedule, to choose between violating their faith, paying massive fines, or discontinuing their health plans for their employees.

9. The Government's violation of religious freedom is irreconcilable with the First Amendment, the Religious Freedom Restoration Act ("RFRA"), the Administrative Procedure Act ("APA"), and other laws. The Government has not demonstrated any compelling interest in forcing *Plaintiffs* to provide, pay for, and/or facilitate access to abortion-inducing drugs, sterilization, and contraception. Nor has the Government demonstrated that the U.S. Government Mandate is the least restrictive means of advancing any interest it has in increasing access to these services, which are already widely available and which the Government could make more widely available without conscripting Plaintiffs as vehicles for the dissemination of products and services to which they so strongly object.

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

## I. PRELIMINARY MATTERS

11. Plaintiff Bishop Lawrence T. Persico is Trustee for Plaintiff The Roman Catholic Diocese of Erie, a nonprofit Pennsylvania Charitable Trust with a principal place of administration in Erie, Pennsylvania. The Diocese is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

12. Plaintiff St. Martin Center is a nonprofit corporation with its principal place of business in Erie, Pennsylvania. It is an affiliate corporation of Catholic Charities. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

13. Plaintiff Prince of Peace Center is a nonprofit corporation with its principal place of business in Farrell, Pennsylvania. It is an affiliate corporation of Catholic Charities. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

14. Plaintiff Erie Catholic Preparatory School is a nonprofit corporation with its principal place of business in Erie, Pennsylvania. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

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

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

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

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

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

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

21. 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.

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

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

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

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

**B. The Bishop, the Diocese, and the Diocesan Self-Insured Health Plan**

26. The Diocese encompasses thirteen counties in Northwestern Pennsylvania.

27. The Diocese carries out its Christ-centered mission in three mains ways: by educating children within the Diocese, by promoting spiritual growth, and through community service.

28. The Diocese operates thirty elementary schools, three middle schools, and six secondary schools, which educate over 6,400 students. The Diocese educates students of all religions and offers tuition assistance for students who otherwise would have no alternative to the public school system. This determination is based solely on financial need.

29. As for its role in promoting spiritual growth, the Diocese consists of 117 parishes serving a thirteen-county region, including a Catholic population of approximately 187,500 people. Geographically, it is the largest diocese in Pennsylvania.

30. Bishop Persico publishes FAITH Magazine of the Catholic Diocese of Erie, the largest family publication in Northwestern Pennsylvania. FAITH Magazine is mailed to

approximately 62,000 households in all thirteen counties of Northwestern Pennsylvania and focuses on religious issues, but also on other international, national, and local news. "The magazine is designed to touch the hearts of people both within and outside of the faith." About Us, FAITH Magazine, *available at* http://www.eriercd.org/faithabout.asp.

31. In addition to providing spiritual care to its Catholic residents through its parishes and providing education to Catholic and non-Catholic students, the Diocese serves many more thousands of Northwestern Pennsylvania residents through its social service arms.

32. Many Northwestern Pennsylvania residents are served by the Diocese's prison ministry, family ministry, disability ministry, international Diocesan missions, various respect life organizations, pregnancy counseling services, work with new mothers, and the numerous secular and religious charities that receive the Diocese's financial support, including:

a) St. Elizabeth Center, a food pantry, thrift store, and clothing shop for low-income individuals;

b) The Good Samaritan Center, a shelter for homeless men and provider of an emergency one-family apartment and other emergency assistance;

c) Better Homes for Erie, a provider of affordable housing to low-income families; and

d) Catholic Charities Counseling and Adoption Services, a provider of professional counseling, adoption counseling, pregnancy counseling, and refugee resettlement services.

33. These social service programs, which receive support from the Diocese, provide aid to approximately 56,000 people per year. The provision of these social services is a central tenet of the Catholic faith.

34. Many of the individuals being served through these charitable programs are not being adequately served by the Government and without the support of the Diocese, would be without food, shelter, and other necessary services.

35. The Diocese would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

36. Finally, the Diocese operates a self-insured health plan (the "Diocesan health plan"). That is, the Diocese does not contract with a separate insurance company that provides health care coverage to its employees and the employees of its affiliated corporations. Instead, the Diocese itself functions as the insurance company underwriting the medical costs of its employees and the employees of its affiliated corporations.

37. The Diocesan health plans are administered by Third Party Administrators ('TPAs"). The TPAs do not provide any of the funds used to pay health care providers.

38. The next Diocesan plan year begins on July 1, 2014. However, the next *administrative* year for the Diocesan health plan—which is the date by which *all* benefits for the July 1, 2014 plan year must be implemented—begins on January 1, 2014.

39. The Diocesan health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The Diocese did not include a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii) for grandfathered plans.

40. Consistent with Church teachings, the Diocesan health plan does not cover abortion-inducing drugs, contraceptives, or sterilization, except when medically necessary.

**C. St. Martin Center, Inc.**

41. Plaintiff St. Martin Center is a nonprofit, social service organization which has been providing individuals and families with resources to gain self-sufficiency for the last 50 years. Plaintiff provides the following services to the needy in the greater Erie, Pennsylvania community, regardless of religion:

a) Social services: an in-house pantry; vouchers for clothing items; assistance for rent, mortgage, and utility payments; assistance for obtaining life-sustaining prescriptions; vouchers for bus passes and gasoline; and guidance for creating a budget. Also, through St. Martin's Bishop's Breakfast Program, the needy in the community receive a hot breakfast every weekday.

b) Housing services: counseling for potential homebuyers; fair housing and predatory lending education; lead paint education; and foreclosure prevention counseling. Also, through the HOME Investment Partnership Program, first-time homebuyers can receive funds to bring a home into compliance with building codes.

c) An Early Learning Center, which serves as a preschool and provider of before and after school care. Childcare tuition assistance is available at the Early Learning Center.

d) Hospitality Industry Training to teach workforce kitchen skills to the underemployed, unemployed, and many resettled refugees. St. Martin

Center provides hands-on experience to such individuals through its catering program, Catering on Parade; and

e) PA WORKWEAR, a provider of men's clothing for interviewing and entering the workforce.

42. Many of the individuals being served through the programs of St. Martin Center are not being adequately served by the Government and without the support of these programs, would be without food and other necessary services which enable them to live a self-sufficient life.

43. St. Martin Center would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

44. St. Martin Center employees are insured under the Diocesan health plan.

45. St. Martin Center does not currently qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, St. Martin Center likely does not currently qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

46. St. Martin Center is an affiliated corporation of the Diocese. The Diocese directly oversees the management of St. Martin Center.

**D. Prince of Peace Center, Inc.**

47. Plaintiff Prince of Peace Center is a nonprofit, social service organization which provides various social and self-sufficiency services to the needy in the greater Mercer County community.

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

a) Family support services through the HOPE Advocacy program (Help and Opportunity for Personal Empowerment) and Project RUTH (Resources,

Understanding, Training, and Homes). HOPE Advocacy is a long term support program (for up to 24 months) for individuals and families struggling with poverty. Project RUTH is a transitional housing program for single parents and their children, who meet the U.S. Department of Housing and Urban Development's definition of homeless. All of the individuals served by HOPE Advocacy and Project RUTH are given the opportunity to learn basic life skills necessary for self-sufficiency and family stability through intensive case management and monthly support groups. The case managers work closely with all participants and offer educational, supportive, and advocacy services.

b) Emergency Assistance programs, which provide food, clothing, furniture, appliances, and more to those in need at little to no cost. Prince of Peace Center's Emergency Assistance programs are funded by private donations. Through such donations, Prince of Peace Center is able to offer over $50,000 yearly to help the needy pay utility bills and offer any other necessary support to ensure that family units remain intact. As part of its Emergency Assistance Program, Prince of Peace Center runs a program entitled AWESOME (Assistance With Education, Shelter, Organization, Money management, and Employment). The AWESOME program is geared towards single men and women who have children and wish to attain self-sufficiency. The AWESOME program classes cover a variety of topics, including proper nutrition, decision making, and financial

planning. Anyone who attends the AWESOME program classes is eligible for an emergency stipend towards payment of a utility bill.

c) Mission Thrift Store ("the Thrift Store"), which provides items such as clothing and furniture to the community at a low cost. The Thrift Store does not turn away anyone in need and supplies items to such individuals at no cost. The Thrift Store operates at a significant loss each year, but the mission of the store is to serve all in need, not to focus on sales or money.

d) PA WORKWEAR, a program which provides the needy with clothing, accessories, and training to prepare for job interviews. Those who successfully obtain employment are entitled to receive five additional days of work appropriate attire so that they can continue to present a professional image at their job.

e) Neighborhood Meal, a soup kitchen, which provides two meals per week to the needy. The soup kitchen serves approximately 5,700 individuals per year. The needy can come to the soup kitchen for Thanksgiving and Christmas dinner. Also, Prince of Peace Center sponsors Food Day, a program where the needy receive a monthly food distribution of groceries to supplement food stamps. An average of approximately 700 individuals receive food through this program each month.

f) Computer classes for adults and seniors. Students who pass the class receive a free donated and refurbished computer.

g) Various programs and charity drives for disadvantaged children in the Mercer County community are held throughout the year, including a

Christmas toy drive, Easter egg hunt, and school supplies and school clothing drive.

49. The majority of the individuals served by Prince of Peace Center are below the poverty line and are not being adequately served by the Government. Without the services of Prince of Peace Center, these individuals would be without food and shelter.

50. Prince of Peace Center would not be able to provide all of these social services without the financial contributions of its donors and the work of its numerous volunteers.

51. Prince of Peace Center employees are insured under the Diocesan health plan.

52. Prince of Peace Center does not currently qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, Prince of Peace Center likely does not currently qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

53. Prince of Peace Center is an affiliated corporation of the Diocese. The Diocese directly oversees the management of Prince of Peace Center.

**E. ERIE CATHOLIC PREPARATORY SCHOOL**

54. Erie Catholic Preparatory School was formed in 2010 by a merger between the formerly co-educational, but now all-female Villa Maria Academy and the all-male Cathedral Preparatory School. Villa Maria Academy and Cathedral Preparatory School, which together form Erie Catholic Preparatory School, have separate single-sex campuses.

55. In the early 1890's, Father Thomas Casey donated property for a school for females to be operated by the Sisters of St. Joseph. This institution soon became known as Villa Maria Academy. Villa Maria Academy is the oldest of the three Catholic high schools in Erie.

56. The original Cathedral Preparatory School for Boys was formed in 1921 by Bishop John Mark Gannon recognizing that "[m]any Catholics, although highly intelligent and deserving, were denied the chance to receive a preparatory education because they were poor."

57. Erie Catholic Preparatory School's mission is to "form a Christ-centered, co-institutional, college preparatory Catholic school of the Diocese of Erie. With a foundation of faith, family, excellence, and tradition, we develop men and women of vision in spirit, mind, and body." Its vision is "[s]teeped in Gospel values and the mission of the Catholic Church, Cathedral Preparatory School and Villa Maria Academy will excel as a teaching and learning community fostering service, strong moral character, global leadership, and esteemed academic success."

58. As part of the spiritual life at Erie Catholic Preparatory School, mass is celebrated daily. Students of Erie Catholic Preparatory School are required to take four years of Theology. Also, each year, students are required to complete a service project including verification of 25 hours of qualified community service and a reflection component. Examples of qualified community service include: (i) service to the school and parish community; (ii) service related to justice for the young; (iii) service related to justice for adults in poverty; and (iv) service related to justice for the sick and elderly.

59. Additionally, Erie Catholic Preparatory School offers religious retreats and publicizes volunteer opportunities for its students.

60. Erie Catholic Preparatory School currently has approximately 870 students, with approximately 550 students attending Cathedral Preparatory School and approximately 320 students attending Villa Maria Academy.

61. In 2013, 100 percent of Cathedral Preparatory School's 143 graduates were accepted to four-year colleges. In the past two years, 96 percent of Villa Maria Academy graduates enrolled in a college or university.

62. The Diocese offers financial aid to students of Erie Catholic Preparatory School through the Bishop Assistance plan and the STAR Foundation.

63. Erie Catholic Preparatory School employees are insured under the Diocesan health plan. Currently, approximately 80 employees of Erie Catholic Preparatory School are insured under that plan.

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

65. Erie Catholic Preparatory School is an affiliated corporation of the Diocese. The Diocese directly oversees the management of Erie Catholic Preparatory School.

## II. STATUTORY AND REGULATORY BACKGROUND

66. Plaintiffs are now at the end of a long-running regulatory saga, dating back to 2011, when the Government began its historically unprecedented violation of the core constitutional right to religious freedom. Since that time, the Government has bobbed and weaved around various legal challenges by (i) saying whatever it needed to get by the moment, (ii) promising courts around the country on record that it would resolve the concerns that Plaintiffs have raised over the years, and (iii) inviting public comments and representing that it would take these comments seriously. But, despite all that it said, and all that has

happened, the Government has now finalized a rule that respects nothing, resolves nothing, and attempts to confine what constitutes one's practice of faith to the four corners, bricks and mortar of a house of worship.

**A. Statutory Background**

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

68. As relevant here, the Act requires an employer's group health plan to cover certain women's "preventive care." Specifically, it indicates that "[a] group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum[,] provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph." 42 U.S.C. § 300gg-13(a)(4). Because the Act prohibits "cost sharing requirements," the health plan must pay for the full costs of these "preventive care" services without any deductible or co-payment.

69. "[T]he Affordable Care Act preserves the ability of individuals to retain coverage under a group health plan or health insurance coverage in which the individual was enrolled on March 23, 2010." Interim Final Rules for Group Health Plans and Health

Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726, 41,731 (July 19, 2010) ("Interim Final Rules"); 42 U.S.C. § 18011. These so-called "grandfathered health plans do not have to meet the requirements" of the U.S. Government Mandate. 75 Fed. Reg. at 41,731. HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

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

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

b. Under the Internal Revenue Code, group health plans that fail to provide certain required coverage may be subject to a penalty of $100 a day per affected beneficiary. *See* 26 U.S.C. § 4980D(b); *see also* Jennifer Staman & Jon Shimabukuro, Cong. Research Serv., RL 7-5700, Enforcement of the Preventative Health Care Services Requirements of the Patient Protection and Affordable Care Act (2012) (asserting that this applies to employers who violate the "preventive care" provision of the Affordable Care Act).

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

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

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

72. For example, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits certain agencies from discriminating against an institution based on that institution's refusal to provide abortion-related services. Specifically, it states that "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011). The term "health care entity" is defined to include "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, *a health insurance plan*, or any other kind of health care facility, organization, or plan." *Id.* § 507(d)(2) (emphasis added).

73. The legislative history of the Act also demonstrates a clear congressional intent to prohibit the executive branch from requiring group health plans to provide abortion-related

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

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

**B. <u>Regulatory Background – Defining "Preventive Care" and the Narrow Exemption</u>**

75. In a span of less than two years, Defendants promulgated the U.S. Government Mandate, subverting the Act's clear purpose to protect the rights of conscience. The U.S. Government Mandate immediately prompted intense criticism and controversy, in response to which the Government has undertaken various revisions. None of these revisions, however, alleviates the burden that the U.S. Government Mandate imposes on Plaintiffs' religious

beliefs. To the contrary, these revisions have resulted in a final rule that is significantly worse than the original one.

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

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

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

78. Unsurprisingly, the IOM Committee invited presentations from several "pro-choice" groups, such as Planned Parenthood and the Guttmacher Institute (named for a former president of Planned Parenthood), without inviting any input from groups that oppose government-mandated coverage for abortion, contraception, and sterilization. Instead, opponents were relegated to lining up for brief open-microphone sessions at the close of each meeting.

79. 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." Inst. Of Med., Clinical Preventive Services for Women: Closing the Gaps," at 218-219 (2011).

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

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

82. Less than two weeks after the IOM report, without pausing for notice and comment, HHS issued a press release on August 1, 2011, announcing that it would adopt the IOM's definition of "preventive care," including all "FDA-approved contraception methods and contraceptive counseling." *See* U.S. Dept. of Health and Human Services, "Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost," *available at* http://www.hhs.gov/news/press/2011pres/08/20110801b.html. HHS ignored the religious, moral and ethical dimensions of the decision and the ideological bias of the IOM Committee and stated that it had "relied on independent physicians, nurses, scientists, and other experts" to reach a definition that was "based on scientific evidence." Under the final "scientific" definition, the category of mandatory "preventive care" extends to "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *See* "Women's Preventive Services: Required Health Plan Coverage Guidelines," http://www.hrsa.gov/womensguidelines.

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

84. Shortly after announcing its definition of "preventive care," the Government proposed a narrow exemption from the U.S. Government Mandate for a small category of "religious employers" that met all of the following four criteria: "(1) The inculcation of religious values is the purpose of the organization"; "(2) The organization primarily employs

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

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

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

87. Despite such pleas, the Government at first refused to reconsider its position. Instead, the Government "finalize[d], without change," the narrow exemption as originally proposed. 77 Fed. Reg. at 8,729 (Feb. 15, 2012). At the same time, the Government announced that it would offer a "a one-year safe harbor from enforcement" for religious organizations that remained subject to the U.S. Government Mandate. *Id.* at 8,728. As noted

by Cardinal Timothy Dolan, the "safe harbor" effectively gave religious groups "a year to figure out how to violate our consciences."

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

**(2) Plaintiffs' First Lawsuit and the Government's Promise of Non-Enforcement**

89. The first lawsuit filed by Plaintiffs the Diocese, St. Martin Center, and Prince of Peace Center challenging the U.S. Government Mandate was dismissed by this Court, without prejudice, based on the Government's express promises that it would never enforce the then-current regulations against Plaintiffs and the Government's commitment to amend the regulations at issue to accommodate the concerns of entities with religious objections like Plaintiffs.

90. Specifically, Plaintiffs' first lawsuit was filed on May 21, 2012 in the U.S. District Court for the Western District of Pennsylvania. Plaintiffs' Complaint sought to enjoin the U.S. Government Mandate on the grounds that, among other things, it violated their rights of religious conscience under RFRA and the First Amendment. *See Most Rev. Persico, et al v. Sebelius et al.*, Docket No. 1:12-cv-00123 (W.D. Pa.). In response to this and similar litigation, the Government promised this Court that "these regulations almost certainly will never be enforced against plaintiffs." (Gov't Reply Br. in Supp. Mot. Dismiss, Dkt. 37 at 11).

91. In their motion to dismiss, Defendants further represented that the Government "ha[d] initiated a rulemaking to amend the challenged regulations to accommodate religious organizations' religious objections to providing contraceptive coverage, like plaintiffs.'" (Gov't Mem. in Supp. Mot. Dismiss, Dkt. 18 at 9); *see also id.* at 23 ("the forthcoming amendments are intended to address the very issue that plaintiffs raise here by establishing alternative means of providing contraceptive coverage without cost-sharing while further accommodating religious organizations' religious objections to covering contraceptive services.").

92. Defendants also asserted their "commitment" "to amend the regulations as they relate to organizations like plaintiffs" was demonstrated by their "initiation of the amendment process, and opportunities for plaintiffs to participate in that process." (Gov't Reply Br. in Supp. Mot. Dismiss, Dkt. 37 at 15-16).

93. Based on Defendants' representations, this Court granted without prejudice the Government's motion to dismiss for lack of standing and ripeness. *See Most. Rev. Persico v. Sebelius*, No. 1:12-cv-00123, 2013 WL 228200 (W.D. Pa. Jan. 22, 2013). Importantly, the Court relied on the safe harbor and Defendants' commitment to amend the U.S. Government

Mandate to accommodate Plaintiffs' core religious beliefs. *See id.* at *12 ("Defendant have repeatedly stated their intent to amend the Mandate, well before January 1, 2013, for the express purpose of accommodating the Plaintiffs'' religiously motivated objections to the regulation."). The Court noted that "Defendants have gone so far as to plainly state that the Mandate in its current form will never be enforced against the Plaintiffs. . . . ." *Id.* at *12. The Court relied on these representations as "good faith statements of [Defendants'] true intent[.]" *Id.*

**(3) The Government's Final Offer of an Empty "Accommodation" and Issuance of the "Final Rule"**

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

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

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

97. *First*, the Final Rule makes what the Government concedes to be a non-substantive, cosmetic change to the definition of "religious employer." In particular, it

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

98. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the U.S. Government Mandate, while denying this favorable treatment to all other religious groups. The exemption applies only to those groups that are "referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code." This category includes only (i) "churches, their integrated auxiliaries, and conventions or associations of churches," and (iii) "the exclusively religious activities of any religious order." The IRS has adopted an intrusive 14-factor test to determine whether a group meets these qualifications. *See Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009). Among these 14 factors is whether the group has " a recognized creed and form of worship," "a definite and distinct ecclesiastical

government," "a formal code of doctrine and discipline," "a distinct religious history," "an organization of ordained ministers" "a literature of its own," "established places of worship," "regular congregations, "regular religious services," "Sunday schools for the religious instruction of the young," and "schools for the preparation of its ministers." *Id.* Not only do these factors favor some religious groups at the expense of others, but they also require the Government to make intrusive judgments regarding religious beliefs, practices, and organizational features to determine which groups fall into the favored category. Similar problems arise in evaluating whether an organization is an "integrated auxiliary" under Treasury Regulations that assess, among other things whether an organization "shares common religious doctrines, principles, disciplines, or practices with a church," or "receives more than 50% of its support" from non-church sources. *See* 26 C.F.R. § 1.6033-2(h).

99. *Second*, the Final Rule establishes an illusory "accommodation" for certain nonexempt objecting religious entities that qualify as "eligible organizations." To qualify as an "eligible organization," a religious entity must (1) "oppose[] providing coverage for some or all of [the] contraceptive services," (2) be "organized and operate[] as a non-profit entity"; (3) "hold[] itself out as a religious organization," and (4) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance company or, if the religious organization is self-insured, to its TPA. 26 CFR § 54.9816-2713A(a). The provision of this self-certification then automatically requires the insurance issuer or TPA to provide or arrange "payments for contraceptive services" for the organization's employees, without imposing any "cost-sharing requirements (such as a copayment, coinsurance, or a deductible)." *Id*. § 54.9816-2713A(b)(2), (c)(2). The objectionable coverage, moreover, is directly tied to the organization's health plan, lasting only as long as the employee remains on

that plan. *See* 29 CFR § 2590.715-2713; 45 CFR § 147.131(c)(2)(i)(B). In addition, self-insured organizations are prohibited from "directly or indirectly, seek[ing] to influence the[ir] third party administrator's decision" to provide or procure contraceptive services. 26 CFR § 54.9815–2713.

100. This so-called "accommodation" fails to relieve the burden on religious organizations. Under the original version of the U.S. Government Mandate, a nonexempt religious organization's decision to offer a group health plan resulted in the provision of coverage for abortion-inducing products, contraception, sterilization, and related counseling. Under the Final Rule, a nonexempt religious organization's decision to offer a group health plan still results in the provision of coverage—now in the form of "payments"—for abortion-inducing products, contraception, sterilization, and related counseling. *Id*. § 54.9816-2713A(b)-(c).

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

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

103. This shell game does not address Plaintiffs' fundamental religious objection to improperly facilitating access to the objectionable products and services. As before, Plaintiffs are coerced, through threats of crippling fines and other pressure, into facilitating access to contraception, abortion-inducing products, sterilization, and related counseling for their employees, contrary to their sincerely-held religious beliefs.

104. The so-called "accommodation," moreover, requires Plaintiffs to cooperate in the provision of objectionable coverage in other ways as well. For example, in order to be eligible for the so-called "accommodation," Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School must provide a "certification" to Plaintiffs' TPA setting forth their religious objections to the U.S. Government Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the TPA to obtain the objectionable coverage for the employees of St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage.

105. Moreover, the Bishop and Diocese are forced to facilitate coverage for the objectionable services through accommodated entities currently participating in the health plan sponsored by the Diocese.

106. The Bishop is further forced to facilitate coverage of the objectionable services in his role on the Membership Boards of Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School.

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

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

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

110. More importantly, even if the Government's "cost-neutral" assertion were true, it is irrelevant. The so-called "accommodation" is nothing more than a shell game. Premiums

previously paid by the objecting employers to cover, for example, "childbirths," will now be redirected to pay for contraceptive products and services. Thus, the objecting employer is still required to pay for the objectionable products and services.

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

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

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

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

115. For example, the Diocese, operates a self-insurance plan that covers not only the Diocese itself, but other affiliated Catholic organizations within the Diocese, like Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School. Under the religious employer exemption that was originally proposed, if the Diocese was an exempt "religious employer," then these other organizations under the Diocesan plan would have received the benefit of that exemption, regardless of whether they independently qualified as a "religious employer," since they could continue to participate in the plan offered by the Diocese. These affiliated organizations, therefore, could benefit from the Diocese's exemption even if they, themselves, could not meet the Government's unprecedentedly narrow definition of "religious employer."

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

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

118. Moreover, since nonexempt organizations including Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School are part of the Diocesan health plan, the Diocese is now required by the U.S. Government Mandate to consider: (1) providing the employees of these organizations with a separate insurance policy that covers abortion-inducing drugs, contraception, sterilization, and related counseling, or (2) expelling these organizations from the Diocesan health plan and thereby force these organizations to enter into an arrangement with another insurance provider that will, in turn, provide the objectionable coverage. Either alternative violates the Diocese's sincerely-held religious beliefs, and will jeopardize the ability of the Diocese to continue to operate in its current fashion of providing affordable, quality health insurance.

119. Expelling nonexempt organizations from the Diocesan health plan may well result in increased costs for the Diocese and the expelled organizations, including Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School because each organization would be pooling financial resources in a smaller group.

120. In sum, the Final Rule not only fails to alleviate the burden that the U.S. Government Mandate imposes on Plaintiffs' religious beliefs; it in fact makes that burden significantly worse by increasing the number of religious organizations that are subject to the U.S. Government Mandate and jeopardizes the continued operation of Plaintiffs' health plans. The U.S. Government Mandate, therefore, requires Plaintiffs to act contrary to their sincerely-held religious beliefs.

**(4) The Government Ignored Opposition to the Proposed Rule**

121. The NPRM, like the Government's previous proposals, was once again met with strenuous opposition, including over 400,000 comments. For example, the U.S. Conference of Catholic Bishops stated that "the 'accommodation' still requires the objecting

religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments." Comments of U.S. Conference of Catholic Bishop, at 3 (Mar. 20, 2013), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.

122. Additionally, the Diocese of Pittsburgh submitted extensive public comments on the NPRM on April 8, 2013. Public Comments and Expert Opinion submitted by the Roman Catholic Diocese of Pittsburgh, (April 8, 2013), *available at http://www.regulations.gov/#!documentDetail;D=CMS-2012-0031-160262*.

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

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

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

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

127. Dr. Harrington's expert opinion detailed that the proposed rule, in application: (i) will likely make obtaining health insurance more costly for both fully-insured and self-insured eligible organizations; (ii) will require fully-insured eligible organizations to directly fund coverage of the objectionable services; (iii) puts in place a regulatory scheme which will limit the insurance market available to self-insured eligible organizations; and (iv) on its face requires self-insured eligible organizations to facilitate coverage without funding the objectionable services, but in application may result in these organizations funding such services as it may be difficult if not impossible to ensure that administrative fees paid by these organizations are not contributing to such coverage. *Id.*

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

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

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

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

130. Responding to the U.S. Government Mandate, Cardinal Wuerl has declared that "what is at stake here is a question of human freedom." And indeed it is. Since the founding of this country, our law and society have recognized that individuals and institutions are entitled to freedom of conscience and religious practice. Absent a compelling reason, no government authority may compel any group or individual to act contrary to their religious beliefs. As noted by Thomas Jefferson, "[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."

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

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

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

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

135. Moreover, the manner in which the U.S. Government Mandate achieves the cost-savings necessary for it to operate effectively is predicated on the Government's prediction of a decrease in the number of births due to a predicted increase in the number of individuals utilizing the objectionable services. The U.S. Government Mandate thus forces Plaintiffs to not only directly facilitate access to objectionable products and services, but also to participate in a Government scheme specifically designed to thwart the transmission of life contrary to Plaintiffs' religious beliefs.

136. Plaintiffs' beliefs are deeply and sincerely held.

137. The U.S. Government Mandate, therefore, requires Plaintiffs to do precisely what their sincerely-held religious beliefs prohibit—provide, pay for, and/or facilitate access to the objectionable services or else incur crippling sanctions.

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

**(1) The Narrow "Religious Employer" Exemption**

139. The U.S. Government Mandate's exemption for "religious employers" does not alleviate the burden.

140. The "religious employer" exemption likely does not apply to Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School.

141. Additionally, the "religious employer" exemption does not work as the Government claims it will and instead seeks to divide the Catholic church. For example, the U.S. Government Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the Internal Revenue Code. However, the high schools within the Diocese, including Plaintiff Erie Catholic Preparatory School, are specifically exempt from these tax-reporting requirements under 26 C.F.R. § 1.6033-2(g)(1)(vii), and yet, because these high schools are separately incorporated and not run directly through the Diocese, they likely are not exempt from the U.S. Government Mandate.

142. There is no rational basis for exempting Diocesan high schools, like Plaintiff Erie Catholic Preparatory School, from tax-reporting requirements and yet subjecting these high schools to the U.S. Government Mandate. The Government's proposal of equating a "religious employer" to an employer exempt from tax-reporting requirements does not work.

**(2) The So-Called "Accommodation"**

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

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

145. Starting January 1, 2014, Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School will be forced to facilitate coverage of the objectionable services for their employees. In reality, however, Plaintiffs must implement all benefit changes to the Diocesan health plan, including changes required by the U.S. Government Mandate, in advance of the January 1, 2014 administrative year.

146. Although the Diocese is a "religious employer," the U.S. Government Mandate still burdens its sincerely-held religious beliefs by requiring it to consider either: (1) providing Plaintiffs St. Martin Center, Prince of Peace Center, Erie Catholic Preparatory School and other affiliated Catholic organizations with insurance coverage for the objectionable services, (2) or else expelling these affiliates from the Diocesan health plan, thereby forcing them into an arrangement with another insurance provider that will, in turn, provide or procure the objectionable products and services. Expelling these accommodated entities would require significant restructuring of the Diocesan health plan and would affect the pooling of resources which enables the Diocese to offer comprehensive and affordable health benefits.

147. Both of these alternatives violate the Diocese's sincerely-held religious beliefs.

148. The Bishop is forced to facilitate coverage of the objectionable services in his role on the Membership Boards of Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School.

149. The so-called "accommodation" does not alleviate the burden on Plaintiffs' sincerely-held religious beliefs.

150. Finally, the Plaintiffs cannot avoid the U.S. Government Mandate without incurring crippling fines. If they eliminate their employee health plans, they could be subject to annual fines of $2,000 per full-time employee. If Plaintiffs St. Martin Center and Erie Catholic Preparatory School keep their health plans but refuse to provide or facilitate the objectionable coverage, they could be subject to daily fines of $100 a day per affected beneficiary.

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

**B. <u>The U.S. Government Mandate Is Not a Neutral Law of General Applicability</u>**

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

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

154. Similarly, small employers (*i.e.*, those with fewer than 50 employees) are exempt from certain enforcement mechanisms to compel compliance with the U.S. Government Mandate. *See* 26 U.S.C. §§ 4980D(d) (exempting certain small employers from penalties imposed for failing to provide the objectionable services), 4980H(a) (exempting small employers from the assessable payment for failure to provide health coverage).

155. In addition, the U.S. Government Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the Internal Revenue Code. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not of Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School, especially since Erie Catholic Preparatory is exempt from tax-reporting requirements.

156. The U.S. Government Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose certain

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

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

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

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

159. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely-held religious beliefs by requiring them to participate in a scheme for the provision of abortion-inducing products, sterilization, contraceptives, and related education and counseling. The Government itself has relieved numerous other employers from this requirement by exempting grandfathered plans and plans of employers it deems to be sufficiently religious. Moreover, these services are widely available in the United States. The

U.S. Supreme Court has held that individuals have a constitutional right to use such services. And nothing that Plaintiffs do inhibits any individual from exercising that right.

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

161. The U.S. Government Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the wide variety of social and educational services that Plaintiffs provide. The Diocese educates inner-city children whose families want an alternative to the public school system and Plaintiffs St. Martin Center and Prince of Peace Center provides a range of social services to the citizens of Northwestern Pennsylvania. Plaintiff Erie Catholic Preparatory School instills the value of community service in its students. As President Obama acknowledged in his announcement of February 10, 2012, religious organizations like Plaintiffs do "more good for a community than a government program ever could." The U.S. Government Mandate, however, puts these good works in jeopardy.

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

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

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

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

165. While Plaintiffs' next plan year begins on July 1, 2014, the next administrative year for Plaintiffs' health plans—that is the date by which all benefits for the July 1, 2014 plan year must be implemented—begins on January 1, 2014.

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

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

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

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

169. Under normal circumstances, Plaintiffs must begin the process of determining their health care package for a plan year at least one year before the plan year begins and must make benefit determinations in advance of open enrollment for the January 1, 2014 administrative year. The multiple levels of uncertainty surrounding the U.S. Government Mandate have made this already lengthy process even more complex and promulgation of the Final Rule on June 28, 2013 has forced this complex process into an extremely compressed timeframe.

170. Restructuring the Diocesan health plan to expel nonexempt entities would require significant lead time.

171. In addition, if Plaintiffs St. Martin Center and Erie Catholic Preparatory School do not comply with the U.S. Government Mandate, they may be subject to government fines and penalties, which will in turn affect the Diocese as plan sponsor for the employees of St. Martin Center and Erie Catholic Preparatory School. Plaintiffs require time to budget for any such additional expenses.

172. Additionally, the U.S. Government Mandate will impact donations in that a significant numbers of donors give to Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School because of their Catholic mission and will no longer donate if these organizations are forced to stray from that mission by providing coverage for the objectionable services.

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

## V. CAUSES OF ACTION

### COUNT I
### Substantial Burden on Religious Exercise in Violation of RFRA

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

175. RFRA prohibits the Government from substantially burdening an entity's exercise of religion, even if the burden results from a rule of general applicability, unless the Government demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

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

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

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

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

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

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

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

183. Plaintiffs have no adequate remedy at law.

184. 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**

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

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

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

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

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

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

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

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

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

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

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

196. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210. Plaintiffs have no adequate remedy at law.

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

**COUNT IV**
**Prohibition of Speech**
**in Violation of the First Amendment**

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

213. 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.

214. The U.S. Government Mandate violates the First Amendment freedom of speech by imposing a gag order that prohibits Plaintiffs from speaking out in any way that might "influence," "directly or indirectly," the decision of a TPA to provide or procure contraceptive products and services to Plaintiffs' employees.

215. Plaintiffs have no adequate remedy at law.

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

**COUNT V**
**Official "Church" Favoritism and Excessive Entanglement with Religion in Violation of the Establishment Clause of the First Amendment**

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

218. 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.

219. 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.

220. The "religious employer" exemption violates the Establishment Clause in two ways.

221. 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.

222. Second, even if it were permissible for the Government to favor some religious groups over others, the "religious employer" exemption would still violate the Establishment Clause because it requires the Government to determine whether groups qualify as "religious employers" based on intrusive judgments about their beliefs, practices, and organizational features. The exemption turns on an intrusive 14-factor test to determine whether a group meets the requirements of section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. These 14 factors probe into matters such as whether a religious group has "a distinct religious history" or "a recognized creed and form of worship." But it is not the Government's place to determine whether a group's religious history is "distinct," or whether the group's "creed and form of worship" are "recognized." By directing the Government to partake of such inquiries, the "religious employer" exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion. Similar problems arise in evaluating whether an organization is an "integrated auxiliary," an inquiry governed by Treasury Regulations that assesses, among other things whether an organization "shares common religious doctrines, principles, disciplines, or practices with a church," or "receives more than 50% of its support" from non-church sources. *See* 26 C.F.R. § 1.6033-2(h).

223. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

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

232. 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.

233. 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.

234. The Diocese has further made the internal decision that its affiliated religious entities, including Plaintiffs St. Martin Center, Prince of Peace Center, and Erie Catholic Preparatory School, should offer their employees health-insurance coverage through the Diocesan health plan, which allows the Diocese to ensure that these affiliates do not offer coverage for services that are contrary to Catholic teaching.

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

236. The U.S. Government 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.

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

238. Plaintiffs have no adequate remedy at law.

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

**COUNT VII**
**Illegal Action in Violation of the APA**

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

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

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

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

244. 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.

245. The U.S. Government Mandate requires employer-based health plans to provide coverage for abortion-inducing products, contraception, sterilization, and related education. It does not permit employers or issuers to determine whether the plan covers

abortion, as the Act requires. By issuing the U.S. Government Mandate, Defendants have exceeded their authority, and ignored the direction of Congress.

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

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

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

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

250. Plaintiffs have no adequate remedy at law.

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

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

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

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

254. 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.

255. 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.*

256. 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.*

257. 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."

258. 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.

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

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

261. The Defendants erroneous interpretation of the religious employer exemption, however, precludes the Diocese's affiliated entities, including Plaintiff Catholic Charities,

from obtaining the benefit of the exemption by participating in the exempt group health plan established and maintained by the Diocese.

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

263. Plaintiffs have no adequate remedy at law.

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

**WHEREFORE,** Plaintiffs respectfully pray that this Court:

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

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

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

Respectfully submitted, this the 8th day of October, 2013.

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