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

MICHIGAN CATHOLIC CONFERENCE in its own name and on behalf of the MICHIGAN CATHOLIC CONFERENCE SECOND AMENDED AND RESTATED GROUP HEALTH BENEFIT PLAN FOR EMPLOYEES, and CATHOLIC FAMILY SERVICES d/b/a CATHOLIC CHARITIES DIOCESE OF KALAMAZOO, ***Plaintiffs***, **v.** **KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor, JACOB J. LEW, in his official capacity as Secretary of the U.S. Department of Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF TREASURY.** ***Defendants.***	CASE NUMBER: 1:13-cv-01247 JUDGE: _____ DATE STAMP: _____

COMPLAINT AND DEMAND FOR JURY TRIAL

1. This lawsuit concerns one of America's most cherished freedoms: the freedom to practice one's religion without government interference. It is not about whether people have a right to contraception, abortion-inducing products, and sterilization (the "objectionable services"). Those products and services are widely available in the United States, and nothing prevents the government from making them more widely available. Here, however, Defendants (or, the "Government") seek to require Plaintiffs—Catholic entities—to violate their sincerely

held religious beliefs by providing, paying for, and/or facilitating access to those products and services. American history, embodied in the First Amendment to the Constitution and the Religious Freedom Restoration Act ("RFRA"), safeguards religious entities from such overbearing governmental action. Plaintiffs therefore seek relief in this Court to protect this most fundamental of civil rights. Plaintiffs provide a range of spiritual, educational, social, and financial services to members of their communities, Catholic and non-Catholic alike. Plaintiff Michigan Catholic Conference ("MCC") sponsors a wide range of benefit programs for approximately 827 Catholic institutions in Michigan, providing services to approximately 10,374 participants. Among these institutions are the seven Catholic Dioceses in Michigan and additional non-profit religious organizations that assist the Dioceses in carrying out the Catholic Church's missions. Plaintiff Catholic Family Services d/b/a Catholic Charities Diocese of Kalamazoo ("Catholic Charities")—a nonprofit Michigan corporation—is one such entity, which provides a wide range of services including advocacy, crisis intervention, housing, counseling, and outreach services within the nine counties of southwestern Michigan that make up the Diocese of Kalamazoo.

2. Plaintiffs' work is guided by Catholic belief, including the requirement that they serve those in need, regardless of their religion. This is perhaps best captured by words attributed to St. Francis of Assisi: "Preach the Gospel at all times. Use words if necessary." As Pope Benedict has more recently put it, "[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Thus, Catholic individuals and organizations consistently work to create a more just community by serving any and all neighbors in need.

3. Catholic Church teachings also uphold the conviction that sexual union should be reserved to married couples open to the creation of life; thus, artificial interference with the creation of life, including contraception, abortion, and sterilization, violates Catholic doctrine.

4. Defendants, however, have promulgated various rules (collectively, the "Mandate") that force Plaintiffs to violate their sincerely held religious beliefs. These rules require Plaintiffs and other religious organizations to provide, pay for, and/or facilitate insurance access to contraception, abortion-inducing products, sterilization, and related education and counseling. In response to the intense criticism that the Government's original proposal provoked, including some by the current Administration's ardent supporters, the Government proposed changes that, it asserted, eliminated the substantial burden imposed on the religious beliefs of nonprofit religious entities. In fact, these changes made that burden worse by significantly *increasing* the number of organizations subject to the Mandate.

5. In its final form (the "Final Rule"), the Mandate contains three basic components:

6. *First*, it requires group health plans to cover, without cost-sharing requirements, all "FDA-approved contraceptive methods and contraceptive counseling"—a term that includes, contraception, abortion-inducing products, sterilization, and related education and counseling.

7. *Second*, the Mandate creates a narrow exemption for certain "religious employers," defined to include only nonprofit entities described in § 6033(a)(1) and § 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended. These provisions are not about religious liberty. Rather, they are paperwork-reduction provisions that address whether tax-exempt nonprofit entities must file an annual informational tax return, known as a Form 990. As the Government has affirmed, this exemption protects only "the unique relationship between a house of worship and its employees in ministerial positions." Coverage of Certain Preventative

Services Under the Affordable Care Act, 78 Fed. Reg. 8,456, 8,461 (proposed Feb. 6, 2013). The only entities that qualify are "churches [and their integrated auxiliaries], synagogues, mosques, and other houses of worship, and religious orders." *Id.* This is the narrowest "conscience exemption" ever adopted in federal law.

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

9. Under these rules, Plaintiff MCC appears to qualify as an integrated auxiliary of a "religious employer" and is eligible for the exemption. But through its health insurance plans, MCC provides coverage to a wide range of Catholic organizations that do not fall within the exemption, including, for example, Plaintiff Catholic Charities, Loyola High School, Catholic Social Services of the Upper Peninsula, Catholic Social Services of Washtenaw County, Baraga Broadcasting, and St. Francis Home (collectively, "non-exempt religious organizations"). MCC must therefore either (1) sponsor a plan that will provide Plaintiff Catholic Charities, and other non-exempt Catholic organizations, with access to the objectionable products and services; (2) sponsor a plan that will require the non-exempt organizations to self-certify and facilitate provision of the objectionable services; (3) sponsor a plan that will subject the non-exempt religious organizations that fail to self-certify and facilitate provision of the objectionable services to onerous fines, *see* 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012); or (4) expel the non-

exempt religious organizations from MCC's health insurance plans, thereby forcing expelled entities into an arrangement with another insurance provider that will, in turn, provide or procure the objectionable products and services.

10. This aspect of the Mandate reflects a change from the original proposal, which tied the exemption to *plans* rather than *employers* and thus allowed non-exempt religious organizations to shield themselves from the Mandate by remaining on a plan sponsored by an exempt entity. The Government's Final Rule, in contrast, removes this protection and thereby *increases* the number of religious organizations subject to the Mandate. In so doing, the Mandate seeks to divide the Catholic Church, artificially separating its "houses of worship" from its faith in action, its charitable works, directly contrary to Pope Benedict's admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

11. Plaintiff Catholic Charities, for example, participates in a plan offered by MCC, but it does not qualify for the exemption. Instead, it is subject to the accommodation. As a result, Catholic Charities' decision to provide insurance to its employees through an MCC plan triggers the requirement that it enter into a contract with the plan's third party administrator to provide the objectionable coverage for its employees. Catholic Charities thus cannot avoid materially cooperating in the provision of this objectionable coverage without subjecting itself to crippling fines and/or lawsuits.

12. The accommodation also requires Plaintiff Catholic Charities to take a number of actions that result in the objectionable services being provided to its employees, which, according to Catholic doctrine, is impermissible. For example, in order to take advantage of the accommodation, Catholic Charities must provide a "certification" to its third party administrator

that sets forth its religious objections to the Mandate. This "certification," in turn, "automatically" triggers an obligation on the part of the third party administrator to provide Catholic Charities' employees with the objectionable coverage. 78 Fed. Reg. at 8,463. A religious organization's self-certification, therefore, triggers the objectionable coverage.

13. Contrary to the Government's position, the Mandate's accommodation "requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage." Comments of U.S. Conference of Catholic Bishops, at 3 (Mar. 20, 2013), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf (Ex. A). The Government asserts that the provision of the objectionable coverage will be "cost-neutral." This assertion, however, ignores the effect the accommodation will have on premiums and administrative fees charged to religious employers. Regulatory compliance will increase costs to insurers and third party administrators and those costs will be passed on to employers. The Government's assertion of "cost neutrality" is also based on the implausible (and morally objectionable) assumption that "lower costs" from "fewer childbirths" will offset the cost of the contraceptive coverage. 78 Fed. Reg. at 8,463. More importantly, even if the Government's assumption were correct, it simply means that premiums previously going toward childbirths will be redirected to contraceptive and related services to achieve "fewer childbirths." Plaintiffs, therefore, would still actually be paying for the objectionable products and services.

14. In short, the Mandate, even with the accommodation, requires non-exempt religious organizations, like Plaintiff Catholic Charities, to provide, pay for, and/or facilitate objectionable insurance coverage contrary to their sincerely held religious beliefs or face onerous fines. Similarly, the Mandate requires exempt religious employers that sponsor a health plan including non-exempt employers, like Plaintiff MCC, to either sponsor a plan that will provide, pay for,

and/or facilitate the provision of the objectionable products and services to non-exempt employees, expel the non-exempt entities from its plan, or face potential liability for the non-exempt organizations' onerous fines.

15. These burdens on religious freedom violate Plaintiffs' rights secured by the First Amendment and the Religious Freedom Restoration Act ("RFRA"). The manner in which the Mandate was passed, moreover, does not comport with the Administrative Procedure Act ("APA"). Accordingly, Plaintiffs seek a declaration that the Mandate cannot legally apply to them, an injunction barring its enforcement against them, and an order vacating the Mandate.

I. BACKGROUND

A. Preliminary Matters

16. Plaintiff MCC is a nonprofit corporation incorporated in Michigan in 1963. Its principal place of business is in Lansing, Michigan. MCC is organized for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The MCC Second Amended and Restated Group Health Benefit Plan for Employees ("MCC Plan") is a health plan sponsored and administered by MCC. MCC is a "church plan" generally exempt from the Employee Retirement Income Security Act ("ERISA").

17. Plaintiff Catholic Charities is a nonprofit subsidiary of the Roman Catholic Diocese of Kalamazoo ("Diocese") incorporated in Michigan in 1991. Catholic Charities is separately incorporated and independent from the Diocese. Its principal place of business is in Kalamazoo, Michigan. Catholic Charities is organized for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

26. 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(c).

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

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

B. Plaintiff MCC And The Many Catholic Institutions That Participate In The MCC Plan

29. Plaintiff MCC was established by His Eminence John Cardinal Dearden, then Archbishop of Detroit, in 1963. It has a Board of Directors of fourteen members, including the seven bishops of the seven Catholic Dioceses in Michigan, five lay persons, a priest, and a religious sister. The Archbishop of Detroit, the Most Reverend Allen H. Vigneron, is presently the Chairman of the Board.

30. Plaintiff MCC sponsors and administers several benefit programs, including the MCC Plan, and by doing so it can ensure that the health benefits provided by the participating Catholic institutions are consistent with Catholic Church teachings. Consistent with these efforts, MCC also serves as a vehicle by which the Catholic Church can speak with one voice in Michigan on the morality of certain healthcare products and services, including the objectionable products and services at issue in this litigation.

31. The MCC Plan offers health benefits to qualifying employees of "Covered Units," and defines "Covered Unit" to mean:

> a parish, school, institution, organization, corporation or other entity in the State of Michigan which is an integral part of the Catholic Church, engaged in carrying out the functions of the Catholic Church, and under the control of an Archbishop or Bishop of a Diocese in the Province of Detroit, unless the Archbishop or Bishop specifically exempts the unit from status as a Covered Unit. The Michigan Catholic Conference shall be a Covered Unit. Any parish, school, institution, organization, corporation or other entity listed within the Kenedy Directory which is an integral part of the Catholic Church and which is engaged in carrying out the functions of the Catholic Church, but which is not under the control of an Archbishop or Bishop of a Diocese in the Province of Detroit, may become a Covered Unit pursuant to a written agreement between its governing authority and the Michigan Catholic Conference.

Presently, approximately 827 Catholic institutions and approximately 10,374 participants receive their health insurance through the MCC Plan.

32. The seven Catholic Dioceses in Michigan are "Covered Units" in the MCC Plan and offer their employees healthcare coverage through the MCC Plan. These Dioceses cover the entire State:

a. The Archdiocese of Detroit encompasses over 270 parishes in six counties in the greater Detroit area. Since 2009, it has been led by Archbishop Allen Vigneron.

b. The Diocese of Grand Rapids encompasses 98 parishes in eleven counties in western Michigan. Since June 2013, it has been led by Bishop David J. Walkowiak.

c. The Diocese of Lansing encompasses 89 parishes in ten counties in central Michigan. Since 2008, it has been led by Bishop Earl A. Boyea.

d. The Diocese of Kalamazoo encompasses 59 parishes in nine counties in southwestern Michigan. Since 2009, it has been led by Bishop Paul J. Bradley.

e. The Diocese of Saginaw encompasses 109 parishes in eleven counties in Michigan's "thumb and index finger." Since 2009, it has been led by Bishop Joseph R. Cistone.

f. The Diocese of Gaylord encompasses 80 parishes in 21 counties in the northern part of Michigan's lower peninsula. It currently has a Vacant See.

g. The Diocese of Marquette encompasses 94 parishes in the fifteen counties in Michigan's upper peninsula. It currently has a Vacant See.

33. These seven Dioceses carry out the spiritual, educational, and social service missions of the Catholic Church in Michigan. The Dioceses, along with their local parishes, provide spiritual ministry to the approximately 2.1 million Catholics in Michigan that represent 21% of Michigan's population. They ensure the availability of the sacraments to all Catholics living in or visiting Michigan. The Dioceses conduct their educational missions, in part, through their various offices for Catholic schools and their many affiliated elementary and high schools, most of whom participate in the MCC Plan. The Dioceses perform charitable social services

through their various diocesan ministries, their offices of Christian Service, and/or their local parishes. These diocesan and parish programs range from ministering to the prison population, to funding local self-help projects for the poor, to offering low-cost, legal representation to indigent immigrants, to providing meals to the homeless or visits to nursing homes.

34. Many affiliated non-profit Catholic charitable and educational entities that assist the Dioceses in carrying out the Catholic Church's mission are Covered Units in the MCC Plan and offer their employees healthcare coverage through the MCC Plan. Many of these organizations do not qualify for the Government's religious-employer exemption and so are instead subject to the so-called accommodation.

35. One such Covered Unit is Loyola High School in Detroit. In the 1990s, the Detroit Board of Education proposed opening several all-male academies to address the alarmingly high dropout rate of high-school males in Detroit. When a court found the state-run plan unconstitutional, Catholic leaders filled the gap by opening Loyola High School in Detroit to be run in the Jesuit tradition. It is an independent high school welcoming male students of all faiths who face the challenges of an urban environment. Its 99% minority student population is 95% non-Catholic. Since its first graduating class, every one of its graduating students has been admitted into a college or university. It offers employment opportunities to people of all faiths.

36. Catholic Social Services of the Upper Peninsula—a nonprofit Michigan corporation located in the Diocese of Marquette—is another Covered Unit under the MCC Plan with a similar service mission. Its mission is, among others, "[t]o promote and improve the healthy social functioning of individuals and families through counseling and prevention programming which enhance and support family life," "[i]n keeping with the teaching of the Catholic Church." It provides a broad range of assistance to Michigan families in need, ranging

from adoption services to counseling services, to assisted-living services. It has seventeen employees and hires people of all faiths.

37. Catholic Social Services of Washtenaw County—a nonprofit Michigan corporation located in the Diocese of Lansing—is a Covered Unit under the MCC Plan. Its mission "[i]s the work of the Catholic Church to share the love of Christ by performing the corporal and spiritual works of Mercy. We help. We participate. We Change Lives." Serving thousands of individuals and families of all faiths and all walks of life, CSSW offers more than two dozen programs reflecting the diversity of the community: adoption and pregnancy counseling, food assistance, homelessness prevention, domestic and child abuse intervention and prevention, family therapy, and services designed to assist older adults, individuals with developmental disabilities, and at-risk families with young children.

38. Baraga Broadcasting—a nonprofit Michigan corporation located in the Diocese of Gaylord—is another Covered Unit under the MCC Plan. A listener-supported radio network, Baraga Broadcasting seeks to proclaim the Truth and beauty of the Roman Catholic Faith by offering educational and inspirational programming that aims to engage its listeners and encourage them to live out their faith in Jesus Christ. With programs entitled "Catholic Answers," "Catholic Connection with Teresa Tomeo," "Word on Fire with Father Robert Barron," "Christ is the Answer with Father John Ricardo," as well as broadcasting the Holy Rosary and daily Mass, its coverage area is in the Dioceses of Gaylord and Marquette, Michigan.

39. St. Francis Home—a nonprofit Michigan corporation located in the Diocese of Saginaw—is another Covered Unit under the MCC Plan. It is a provider of quality skilled nursing care and successful rehabilitation services for seniors. As a human service agency, St. Francis Home offers a wide variety of activities and opportunities to serve the physical,

emotional and spiritual needs of its residents. As an affiliate of the Catholic Diocese of Saginaw, it offers a warm Catholic culture to all residents, regardless of religion, race, or creed through daily Mass, daily rosary, Bible study and adoration of the Blessed Sacrament. As stated in the Mission Statement of St. Francis Home, the "primary goal is to get our residents into heaven."

40. These entities, and many others that participate in the MCC Plan, may participate in the health-benefit programs that MCC offers for their lay employees and clergy.

41. Covered Units may allow their lay employees to participate in the MCC Plan, which consists of self-funded medical and prescription benefits administered by separate third party administrators, Blue Cross Blue Shield of Michigan and Express Scripts, respectively. Approximately 6,429 employees (10,374 lives) participate in this program.

42. Qualified priests may also participate in self-funded medical and prescription benefits under the MCC Plan, administered by the same third party administrators. Approximately 704 clergy throughout Michigan participate in this program.

43. The MCC Plan limits the benefits that may be offered under any of these programs. It expressly indicates that "in no event shall any benefit be provided which violates the tenets of the Catholic Church, including but not limited to expenses relating to sterilizations, abortions, and/or birth control devices." Thus, none of the MCC Plan's programs offer insurance coverage for abortion, sterilization, or contraceptive services.

44. The MCC Plan and its benefit programs do not meet the definition of a "grandfathered" plan. MCC has not included and does not include a statement in the MCC Plan materials provided to participants or beneficiaries informing them that it believes it is a grandfathered plan, as would be required to maintain the status of a grandfathered health plan. 26 C.F.R. § 54.9815-1251T(a)(2)(i).

45. The MCC Plan lost its grandfathered status because the PPO benefit program increased the emergency room co-payment amount from $50 to $100, and increased the prescription co-payment amount for non-formulary brand name drugs from $30 to $50.

46. The plan year for the MCC Plan begins each year on January 1.

C. Plaintiff Catholic Charities

47. Plaintiff Catholic Charities—a nonprofit subsidiary of, and integral entity within, the Diocese of Kalamazoo—is a corporation with a Board of Directors that oversees all major questions of finance, policy, and programming. Catholic Charities was established on a membership, non-stock basis, and the sole member is the Bishop of the Diocese of Kalamazoo, Michigan, Paul J. Bradley ("Diocesan Bishop"). Catholic Charities manages two related corporations, Catholic Family Services Non Profit Housing Corporation and Otsego Senior Apartments, Inc., d/b/a Baraga Manor Apartments, which are also separately incorporated from the Diocese.

48. Catholic Charities' bylaws state in Article III, Section 3.1 that its "purpose . . . is related to the fulfillment of [its] Christian responsibility to the community at large," and that the Diocesan Bishop's approval is required for any policy or program adopted by Catholic Charities. Catholic Charities is therefore required to adhere to Catholic doctrine at all times and in all manners.

49. Catholic Charities seeks to provide human services, and to promote and restore wholesome family life by providing comprehensive social services and related activities to families, children and other individuals that make up the Diocese of Kalamazoo. As indicated in its Mission Statement: "[t]he mission of Catholic Family Services is to provide social services in the manner of Jesus Christ, with compassion, care and concern for justice to all people in need and to advocate for their welfare calling those of good will to assist in this mission in the Diocese

of Kalamazoo." Catholic Charities offers a range of programs to individuals in need without regard to their religion, for example, the Ark Shelter and the Caring Network,. The Ark Shelter serves homeless and runaway children by providing them temporary housing and counseling sessions and by helping them reunite with their families. The Caring Network offers assistance to pregnant and parenting women and their babies, including professional counseling services and transitional living apartments for the homeless.

50. Catholic Charities is a Covered Unit under the MCC Plan.

51. Catholic Charities' approximately 55 employees are offered two options under the MCC Plan (Option 1 and Option 2), both of which comply with Catholic Church teachings on abortion-inducing products, sterilization services, contraceptives, and related counseling services. Specifically, abortion and sterilization are not covered. Contraceptives are not covered when prescribed for contraceptive purposes, but hormone therapies for non-contraceptive purposes are covered.

52. The MCC Plan offered to Catholic Charities' employees does not meet the Affordable Care Act's definition of a "grandfathered" plan.

53. The MCC Plan offered to Catholic Charities' employees begins each year on January 1.

II. STATUTORY AND REGULATORY BACKGROUND

A. The Affordable Care Act

54. 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, "Affordable Care Act" or "Act"). The Act set many new requirements for "group health plan[s]." 42 U.S.C. § 300gg-91(a)(1).

55. As relevant here, the Act requires an employer's group health plan to cover certain women's "preventive care" services. 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.

56. Violations of the Affordable Care Act may subject an employer, an insurer, or a group health plan to substantial monetary penalties.

57. Federal law provides several mechanisms to enforce the requirements of the Act, including the 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 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).

e. Under the Public Health Service Act, the Secretary of HHS may impose a penalty of $100 a day per individual where an insurer fails to provide the required coverage. *See* 42 U.S.C. § 300gg-22(b)(2)(C)(i); Cong. Research Serv., RL 7-5700.

58. The Act, in addition to other federal statutes, reflects a clear congressional intent that the agencies charged with identifying the required women's "preventive care" services should exclude all abortion-related services. The Act provides that "nothing in this title (or any amendment made by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits." 42 U.S.C. § 18023(b)(1)(A)(i). And the Act leaves it to "the issuer of a qualified health plan" "[to] determine whether or not the plan provides coverage of [abortion]." *Id.* § 18023(b)(1)(A)(ii).

59. Likewise, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, provides that "[n]one of the funds made available in this Act [to the Department of Labor and HHS] 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).

60. The Act's intent to exclude abortions was instrumental in its passage, as cemented by an Executive Order without which the Act would not have passed. The legislative history shows an intent to prohibit executive agencies from requiring group health plans to provide abortion-related services. The House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak from Michigan prohibiting the use of federal funds for abortion services. *See* H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, did not contain the same provision. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009).

61. To reconcile the different bills while avoiding a potential Senate filibuster, 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 indicated that they would refuse to vote for the Senate version because it failed to adequately prohibit the use of federal funds for abortion services. In an attempt to address these concerns, President 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).

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

B. Regulatory Background – Defining "Preventive Care" And The Narrow Exemption

63. The Mandate subverts the Act's clear purpose to protect the right of conscience and immediately prompted intense criticism and controversy. In response, the Government has undertaken various revisions. None of these revisions, however, alleviate the burden that the Mandate imposes on Plaintiffs' religious beliefs. To the contrary, these revisions have resulted in a Final Rule that is significantly worse than the original one.

1. The Original Mandate

64. On July 19, 2010, Defendants issued interim final rules concerning the requirement that group health plans cover women's "preventive care" services. Interim Final Rules, 75 Fed. Reg. at 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.

65. As Defendants have conceded, they did not comply with the notice-and-comment requirements of the APA when determining what services to include within the meaning of "preventive care." *Id.* at 41,730. Instead, 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 sixteen 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 contraception and abortion.

66. In developing the guidelines, 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 contraception, abortion, and sterilization. Instead, opponents were relegated to lining up for brief open-microphone sessions at the close of each meeting.

67. 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," (2011) ("IOM Report") at 218-19.

68. The extreme bias of the IOM process spurred one member, Dr. Anthony Lo Sasso, to dissent from the final report, 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. The IOM did not adhere to the rules governing federal agencies, including the notice-and-comment rulemaking process.

69. At a press briefing the next day, the chairwoman of the IOM Committee fielded a question from the audience regarding the "coercive dynamic" of the Mandate, asking whether the Committee considered the "conscience rights" of those who would be forced to pay for coverage that they found objectionable on religious grounds. In response, the chairwoman illustrated her cavalier attitude toward the religious-liberty issue, stating bluntly: "[W]e did not take into account individual personal feelings." Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women, Press Briefing Audio Webinar (July 20, 2011), *available at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx.

70. Less than two weeks after the IOM Report, on August 1, 2011, HHS announced 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* www.hhs.gov/news/press/2011pres/08/20110801b.html (Ex. B). Again acting without notice-and-comment rulemaking, HHS announced these guidelines through a press release on its website rather than enactments in the Code of Federal Regulations or statement in the Federal Register.

71. Ignoring both the moral and ethical dimensions of the decision and the ideological bias of the IOM Committee, HHS stated that it had "relied on independent physicians, nurses, scientists, and other experts" to reach a definition that was "based on scientific evidence."

72. This definition of "preventive care," despite conflicting with the central compromise necessary for the Affordable Care Act's passage and President Obama's promise to protect religious conscience, requires group health plans to cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *See* HRSA, *Women's Preventive Services: Required Health Plan Coverage Guidelines* (Aug. 1, 2011), *available at* www.hrsa.gov/womens guidelines/ (Ex. C).

73. FDA-approved contraceptives that qualify under these guidelines include abortion-inducing products. For example, the FDA has approved "emergency contraceptives," including the morning-after pill (otherwise known as Plan B) and Ulipristal (otherwise known as HRP 2000 or Ella). Both of these drugs can prevent an embryo from implanting in the womb. Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that "[h]uman life

must be respected and protected absolutely from the moment of conception." *Catechism of the Catholic Church* ¶ 2270. Because these "emergency contraceptives" can prevent implantation of a fertilized egg, it is Plaintiffs' sincerely held religious belief that these are abortion-inducing products. By forcing Plaintiffs to provide, pay for, and/or facilitate access to these services, the Mandate violates Plaintiffs' sincerely held religious beliefs.

74. A few days later, on August 3, 2011, Defendants issued amendments to the interim final rules that they had previously enacted in July 2010. *See* Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011). Defendants crafted a narrow religious exemption from the Mandate for a small category of "religious employers" that met all of the following four criteria: "(1) The inculcation of religious values is the purpose of the organization"; "(2) The organization primarily employs persons who share the religious 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 (codified at 45 C.F.R. § 147.130(a)(iv)(B)).

75. As the Government 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.

76. The sweeping nature of the Mandate and the narrow religious-employer exemption were subject to widespread criticism. Numerous organizations expressed concerns that contraception, abortion-inducing products, and sterilization, could not be viewed as

"preventive care." They also explained that the exemption was "narrower than any conscience clause ever enacted in federal law, and narrower than the vast majority of religious exemptions from state contraceptive mandates." Comments of United States Conference of Catholic Bishops (Aug. 31, 2011), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf (Ex. D).

77. 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. 8,725, 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 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."

78. A month later, under continuing public pressure, the Government issued an Advance Notice of Proposed Rulemaking ("ANPRM") that, it claimed, set out a solution to the religious-liberty controversy. 77 Fed. Reg. 16,501 (Mar. 21, 2012). The ANPRM reaffirmed the Government's view 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. 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 (Ex. E).

2. MCC's First Lawsuit And The Government's Promises Of Non-Enforcement

79. On May 21, 2012, Plaintiff MCC—along with Franciscan University in Steubenville, Ohio, which still retains a grandfathered health plan—filed suit in the U.S. District Court for the Southern District of Ohio seeking to enjoin the Mandate on the ground that, among other things, it violated their rights of religious conscience under RFRA and the First Amendment. *See Franciscan University, et al v. Sebelius et al.*, No. 2:12-cv-00440 (S.D. Ohio) (May 21, 2012).

80. According to the Government, the ANPRM "confirm[ed] defendant's intent, before the expiration of the safe harbor period, to propose and finalize additional amendments to the preventative services coverage regulations to further accommodate non-exempt, non-grandfathered religious organizations . . . ." Mem. in Supp. of Defs.' Mot. to Dismiss (2:12-cv-440, S.D. Ohio (Doc. No. 23-1)) at 2. Indeed, the Government assured the court that the ANPRM was just the beginning and that the finalized "religious employer" exemption "will establish alternative means of providing contraceptive coverage without cost-sharing while also accommodating non-exempt, non-grandfathered religious organizations' religious objectives to covering contraceptive services." *Id.* at 8 (citing 77 Fed. Reg. at 8,728 (Feb. 15, 2012)).

81. The Government conceded, however, that "[t]here is nothing to suggest that, if the amendment process does not alleviate plaintiffs' concerns altogether, plaintiffs would not have an opportunity to present a legal challenge in a timely manner once there are regulations that are ripe for review. And even if plaintiffs' worst fears were to somehow come to pass, plaintiffs could then seek preliminary injunctive relieve to preserve the status quo while the Court considers the

merits of plaintiffs' claims." Defs.' Reply in Support of their Mot. To Dismiss (2:12-cv-00440, S.D. Ohio (Doc. No. 35)) at 12.

82. Based on the Government's representations, the district court on March 22, 2013 granted the Government's motion to dismiss for lack of ripeness without prejudice to await the outcome of the ongoing rulemaking process. *See Franciscan Univ., et al v. Sebelius et al.* (2:12-cv-00440, S.D. Ohio (Doc. No. 68)).

3. The Government's Final Rule And The Empty Accommodation

83. 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 that the ANPRM was just the beginning of the process, the NPRM simply adopted the proposals contained in the ANPRM. The NPRM 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 (Ex. A).

84. Despite this opposition, on June 28, 2013, the Government issued the Final Rule that adopted substantially all of the NPRM's proposal without significant change. *See* 78 Fed. Reg. 39,870 (July 2, 2013).

85. The Final Rule makes three changes to the Mandate, none of which relieve the unlawful burdens placed on Plaintiffs and other religious organizations. Indeed, one change

significantly *increases* that burden by increasing the number of religious organizations subject to the Mandate.

86. *First*, the Final Rule makes a non-substantive, cosmetic change to the definition of "religious employer." Under the new definition, an exempt "religious employer" is simply "an organization that is organized and operates as a nonprofit entity and is referred in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 78 Fed. Reg. at 39,874 (codified at 45 C.F.R. § 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. 8,456, 8,461 (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 entities that have a broader mission are still not, in the Government's view, "religious employers."

87. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the Mandate, while denying this favorable treatment to all other religious groups. The exemption applies only to those groups that are "referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code." 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 fourteen (14)-factor test to determine whether a group meets these qualifications. *See Found. of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed.

Cl. 2009). Among these fourteen (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.

88. *Second*, the Final Rule establishes an illusory accommodation for any non-exempt objecting religious entity that qualifies as an "eligible organization" because it (1) "opposes providing coverage for some or all of [the] contraceptive services"; (2) is "organized and operated as a non-profit entity"; (3) "holds itself out as a religious organization"; (4) self-certifies that it meets the first three criteria; and (5) provides a copy of the self-certification either to its insurance company or, if the religious organization is self-insured, its third party administrator. 26 C.F.R. § 54.9815-2713A(a). Insurance issuers and third party administrators in receipt of this self-certification are required to provide, or arrange "payments for[,] contraceptive services" for the non-exempt organization's employees without imposing any "cost-sharing requirements (such as a copayment, coinsurance, or a deductible)." *Id*. § 54.9815-2713A(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 C.F.R. § 2590.715-2713A; 45 C.F.R. § 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 C.F.R. § 54.9815–2713A(b)(1)(iii).

89. This so-called "accommodation" fails to relieve the burden on religious organizations. Under the original version of the Mandate, a non-exempt religious organization's decision to offer a group health plan resulted in the provision of coverage for abortion-inducing products, contraception, sterilization, and related counseling. Under the Final Rule, a non-exempt religious organization's decision to offer a group health plan still results in the provision of coverage—now in the form of "payments"—for abortion-inducing products, contraception, sterilization, and related counseling. *Id*. § 54.9816-2713A(b)-(c). 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 their beliefs. The provision of the objectionable products and services are 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 C.F.R. § 2590.715-2713A(d) (for self-insured employers, the third party administrator "will provide or arrange separate payments for contraceptive services . . . for so long as [employees] are enrolled in [their] group health plan"); 45 C.F.R. § 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"). For self-insured organizations, moreover, the self-certification constitutes the 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 non-exempt religious organizations are the vehicle by which "free" abortion-inducing

products, contraception, sterilization, and related counseling are delivered to the organizations' employees.

90. No matter how Defendants may phrase it, it is beyond dispute that a non-exempt religious organization's employees would be receiving contraceptive coverage by virtue of their participation in the MCC Plan.

91. Furthermore, insurers and third party administrators are required to notify plan participants and beneficiaries of the free contraceptive coverage. 26 C.F.R. § 54.9815-2713A(d). The model language provided by the government to use in the required notice makes it clear even to the employees of non-exempt religious organizations that they are receiving this coverage only because of their participation in the MCC Plan: "Your employer has certified that your group health plan qualifies for an accommodation . . . [and your third party administrator] *will provide or arrange separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your group health plan*." *Id.* (emphasis added).

92. Needless to say, this shell game does not address Plaintiffs' fundamental religious objection to 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 employees on their health plans, contrary to their sincerely held religious beliefs.

93. 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 must provide a "certification" to their insurance provider setting forth their religious objections to the Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the insurance provider

to provide Plaintiffs' employees with the objectionable coverage. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage.

94. The Mandate also requires Plaintiffs to subsidize the objectionable products and services.

95. For self-insured organizations, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that third party administrators 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. at 39,882. Such fee reductions are to be established through a highly regulated and bureaucratic process for evaluating, approving, and monitoring fees paid in compensation to third party administrators. Such regulatory regimes, however, do not fully compensate the regulatory entities for the costs and risks incurred. As a result, few if any third party administrators are likely to participate in this regime, and those that do are likely to increase fees charged to the self-insured organizations. The Government naively asserts that non-exempt religious organizations will not pay for such coverage; however, third party administrators can easily increase fees disguised for other purposes to recoup their costs.

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

97. For all of these reasons, the Final Rule 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.

98. *Third,* the Final Rule *increases* the burden imposed upon religious organizations by significantly increasing the number of religious entities subject to the Mandate. Under the Government's initial "religious employer" definition, if a non-exempt 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 [non-exempt entity would be] required to offer contraceptive coverage to its employees." 77 Fed. Reg. at 16,502.

99. For example, MCC administers the MCC Plan that covers not only its own employees and the seven Catholic Dioceses in Michigan, but also other affiliated Catholic organizations—including, among others, Plaintiff Catholic Charities ("non-exempt religious organizations). Under the religious-employer exemption that was originally proposed, if MCC were an exempt "religious employer," the affiliated, but non-exempt, religious organizations received the benefit of that exemption, even if they could not meet the Government's unprecedentedly narrow definition of "religious employer."

100. 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." *See* 78 Fed. Reg. at 8,467. Since these affiliated, but non-exempt, religious organizations do not meet the Government's narrow definition of "religious employer" they are now subject to the Mandate and their participation in the MCC Plan will be frustrated.

101. Because there are non-exempt religious organizations participating as Covered Units in the MCC Plan, MCC is now required by the Mandate to do one of four things: (1) MCC,

as the plan sponsor for the non-exempt organizations, may either provide the employees of these non-exempt organizations with a separate insurance policy that covers contraception, abortion-inducing products, sterilization, and related counseling; (2) MCC may refuse to provide separate insurance and force non-exempt participating religious organizations to self-certify, which would force the MCC Plan's third party administrator to provide the objectionable coverage; (3) MCC may refuse to comply with the Mandate and potentially face the onerous fines that come with non-compliance; or (4) MCC may expel non-exempt participating religious organizations from the MCC Plan, which is inconsistent with MCC's purpose and simply passes the objectionable coverage issue on to another insurer or third party administrator.

102. The first and second options force MCC to act contrary to its sincerely held religious beliefs.

103. The third and fourth options not only make MCC complicit in the provision of objectionable coverage by forcing the non-exempt Covered Units out of the MCC Plan, but it also compels MCC to submit to the Government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

104. In this respect, the Mandate seeks to divide the Catholic Church. The Church's faith in action, carried out through its charitable and educational arms, is every bit as central to 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 Mandate seeks to separate these consubstantial aspects of the Catholic faith, treating one as "religious" and the other as not. The Mandate therefore deeply intrudes into internal Church governance.

105. As with MCC, the covered non-exempt religious organizations, for example, Plaintiff Catholic Charities, are being forced to either violate their morals and the tenets of the Catholic church, or face monumental penalties for their failure to do so. The Government has left them with no choice but to either decline to self-certify (resulting in substantial fees under § 4980D), or drop coverage altogether (resulting in monstrous penalties under the Employer Shared Responsibility Mandate for applicable large employers).

106. In sum, the Final Rule not only fails to alleviate the burden that the Mandate imposes on Plaintiffs' religious beliefs, but it in fact makes that burden significantly worse by increasing the number of religious organizations that are subject to the Mandate. The Mandate, therefore, requires Plaintiffs to act contrary to their sincerely held religious beliefs.

107. Accordingly, through administrative fiat, the Mandate imposes on the public that which has historically been rejected by the people, at both the state and federal level. In Congress, at least 21 bills have been introduced since 1997 to mandate prescription contraceptive coverage in private health plans. Yet not one of these bills, under the titles "Equity in Prescription Insurance and Contraceptive Coverage Act" or "Prevention First Act," have ever been reported out of a Congressional committee. United States Conference of Catholic Bishops, Comments on the Interim Final Rule on Preventive Services CMS-9992-IFC2, at 4 (Aug. 31, 2011) (Ex. D).

III. THE MANDATE, THE RELIGIOUS EMPLOYER EXEMPTION, AND THE ACCOMMODATION VIOLATE PLAINTIFFS' RELIGIOUS BELIEFS AND FEDERAL RIGHTS

A. The Mandate Substantially Burdens Plaintiffs' Religion

108. The 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 religious grounds.

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

110. Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the "dignity of the human person is rooted in his creation in the image and likeness of God," *Catechism of the Catholic Church* ¶ 1700, and that "[h]uman life must be respected and protected absolutely from the moment of conception," *id.* ¶ 2270. Therefore, Plaintiffs believe that abortion is "gravely contrary to the moral law." *Id.* ¶ 2271.

111. Likewise, Plaintiffs adhere to traditional Catholic teachings on the nature and purpose of human sexuality. They believe, in accordance with the Catechism of the Catholic Church, that the sexual union of spouses "achieves the twofold end of marriage: the good of the spouses themselves and the transmission of life. These two meanings or values of marriage cannot be separated without altering the couple's spiritual life and compromising the goods of marriage and the future of the family." *Id.* ¶ 2363. Consequently, Plaintiffs believe that "every action," including artificial contraception and sterilization, "which . . . proposes, whether as an end or as a means, to render procreation impossible is intrinsically evil." *Id.* ¶ 2370.

112. Plaintiffs' sincerely held religious beliefs treat contraception, abortion (including abortion-inducing products), and sterilization, as intrinsically immoral, and prohibit them from paying for, providing, and/or facilitating those practices.

113. As a corollary, Plaintiffs' Catholic beliefs prohibit them from contracting with an insurance company or third party administrator that will, as a result, provide the objectionable coverage to Plaintiffs' employees. Thus, Plaintiffs' Catholic beliefs prohibit them from facilitating access to the objectionable products and services in the manner required by the Mandate.

114. Plaintiffs have adhered to their religious beliefs and have ensured that their group health plans do not include coverage for prohibited contraception, abortion, sterilization, or related education and counseling.

115. The Mandate seeks to compel Plaintiffs' to provide, pay for, and/or facilitate access to contraception, abortion-inducing products, and sterilization. It also seeks to compel Plaintiffs to fund related "patient education and counseling for [all] women with reproductive capacity." IOM Report at 218-19 (2011).

116. The Mandate, therefore, requires Plaintiffs to do precisely what their sincerely held religious beliefs prohibit—provide, pay for, and/or facilitate access to objectionable products and services, or else incur crippling fines.

117. The Mandate therefore imposes a substantial burden on Plaintiffs' religious beliefs.

118. The Mandate's exemption for "religious employers" does not alleviate the burden.

119. The "religious employers" exemption does not apply to Plaintiff Catholic Charities.

120. Although Plaintiff MCC is an "integrated auxiliary" of a "religious employer," the Mandate still burdens its sincerely held religious beliefs. MCC must therefore either (1) sponsor a plan that will provide Plaintiff Catholic Charities, and other non-exempt Catholic organizations, with access to the objectionable products and services; (2) sponsor a plan that will require the non-exempt organizations to self-certify and facilitate provision of the objectionable services; (3) sponsor a plan that will lead to onerous fines for non-exempt organizations that fail to self-certify and facilitate provision of the objectionable services, *see* 77 Fed. Reg. at 16,502; or (4) expel these non-exempt organizations from MCC's health insurance plans, thereby forcing

expelled entities into an arrangement with another insurance provider that will, in turn, provide or procure the objectionable products and service.

121. This first alternative violates Plaintiff MCC's sincerely held religious beliefs.

122. The second option constitutes a substantial burden on MCC's religious beliefs by compelling MCC to submit to the government's interference with its structure and internal operations by accepting a construct that divides churches from their ministries.

123. The third option is not financially feasible.

124. The fourth option also constitutes a substantial burden on MCC's religious beliefs by compelling MCC to submit to the government's interference with its structure and internal operations by accepting a construct that prevents it from ensuring that entities in Michigan do not provide the objectionable products and services.

125. Thus, the so-called "accommodation" does not alleviate the burden on Plaintiffs' religious freedom. 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 Mandate does and will continue to impose a substantial burden on Plaintiffs' religious beliefs.

B. The Mandate Is Not A Neutral Law Of General Applicability

126. The 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 contraception, abortion-inducing products, sterilization, and related education and counseling. It was designed to target employers not offering the objectionable coverage because of religious beliefs. In no uncertain terms, this is a targeted attack on those beliefs.

127. The Mandate exempts "grandfathered" plans covering tens of millions of individuals from its requirements, thus excluding tens of millions of people from the mandated

coverage. *See* 75 Fed. Reg. at 41,732 ("98 million individuals will be enrolled in grandfathered group health plans in 2013."). Elsewhere, the government has put the number at 87 million. *See* "Keeping the Health Plan You Have" (June 14, 2010), *available at* http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (Ex. F) ("87 million" individuals will be enrolled in grandfathered group health plans in 2013); *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1291 (D. Colo. 2012) ("191 million Americans belong[ed] to plans which may be grandfathered under the ACA.").

128. The 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 other religious organizations that remain subject to the Mandate.

129. Employers that do not have health plans are exempt from compliance with the Act, including the Mandate, until January 1, 2015. U.S. Dep't of Treasury, *Treasury Notes*, "Continuing to Implement the ACA in a Careful, Thoughtful Manner" (July 2, 2013) (Ex. G). Employers that already have health plans are, of course, not exempt and enforcement begins on January 1, 2014.

130. The Mandate was directed at religious organizations instead of creating a government program because its purpose is to attack moral objections to contraceptives and abortion-inducing products and services, including, in particular, the teachings of the Catholic Church. 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 contraception and abortion. 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." Transcript of Kathleen Sebelius Remarks at NARAL Luncheon (Oct. 5, 2011) (Ex. H) at 4-5. In addition, the Mandate was modeled on a California law that was motivated by discriminatory intent against religious groups that oppose contraception.

131. The purpose of the Mandate, including the deliberately narrow exemption, is to discriminate against religious organizations that oppose contraception and abortion.

C. The Mandate Is Not The Least Restrictive Means Of Furthering A Compelling Governmental Interest

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

133. 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 contraception, abortion-inducing products, sterilization, 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. Nothing that Plaintiffs do inhibits any individual from exercising that right.

134. 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 created a program to provide the objectionable

products and services. 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.

135. The Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the wide variety of social and educational services that the non-exempt organizations that participate in the MCC Plan provide. As President Obama acknowledged in his announcement of February 10, 2012, religious organizations like these organizations do "more good for a community than a government program ever could." The Mandate, however, puts these good works in jeopardy.

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

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

137. The Mandate is causing serious, ongoing hardship to Plaintiffs that merits relief now.

138. On June 28, 2013, Defendants finalized the 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 Mandate by the beginning of the next plan year.

139. For Plaintiffs, the next plan year begins on January 1, 2014.

140. Defendants have given no indication that they will not enforce the provisions of the Mandate that impose a substantial burden on Plaintiffs' rights. 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.

141. Further, Plaintiffs are presently being injured by the Mandate in numerous other ways.

142. Plaintiffs need to know whether they will be forced to comply with the Mandate now, rather than days before the end of the temporary safe harbor. The Government issued press releases and rules that constitute the Mandate without notice-and-comment rulemaking precisely because the "requirements in [those provisions] require significant lead time in order to implement." 75 Fed. Reg. at 41,730.

143. 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, Plaintiff MCC—after consulting with its actuaries—must similarly negotiate with its third party administrator.

144. 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. The multiple levels of uncertainty surrounding the Mandate make this already lengthy process even more complex.

145. In addition, if Plaintiffs do not comply with the Mandate, they may be subject to government fines and penalties. Plaintiffs require time to budget for any such additional expenses.

146. The Mandate and its uncertain legality, moreover, undermine Plaintiffs' ability to hire and retain employees.

147. Plaintiffs thus need an immediate declaration of rights concerning their legal status and the legal status of the many other Catholic organizations that obtain insurance under the MCC Plan.

V. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

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

149. 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.

150. RFRA protects organizations as well as individuals from government-imposed substantial burdens on religious exercise.

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

152. The Mandate requires Plaintiffs' group health plans to provide, pay for, and/or facilitate products and services that are contrary to their religious beliefs.

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

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

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

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

157. Plaintiffs have no adequate remedy at law.

158. 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

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

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

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

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

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

164. The 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 coverage for contraception, abortion-inducing products, sterilization, and related education and counseling.

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

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

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

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

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

170. Plaintiffs have no adequate remedy at law.

171. 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

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

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

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

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

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

177. The 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.

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

179. The 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.

180. By imposing the 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.

181. The Mandate is viewpoint-discriminatory and subject to strict scrutiny.

182. The Mandate furthers no compelling governmental interest.

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

184. Plaintiffs have no adequate remedy at law.

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

COUNT IV
Prohibition of Speech
in Violation of the First Amendment

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

187. 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.

188. The Mandate violates the First Amendment freedom of speech by imposing a gag order that prohibits Plaintiffs from speaking out in any way that might "influence," "directly or

indirectly," the decision of a third party administrator to provide or procure contraceptive products and services to Plaintiffs' employees.

189. Plaintiffs have no adequate remedy at law.

190. 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

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

192. 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.

193. 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.

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

195. 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.

196. 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 fourteen (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 fourteen (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.

197. Plaintiffs have no adequate remedy at law.

198. 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

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

200. The Free Exercise Clause and Establishment Clause and RFRA 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.

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

202. 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.

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

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

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

206. 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.

207. 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.

208. The seven Dioceses in Michigan have further made the internal decision that their affiliated religious entities, including Plaintiff Catholic Charities, should offer their employees health-insurance coverage through the MCC Plan, which allows the Dioceses to ensure that these affiliates do not offer coverage for services that are contrary to Catholic teaching.

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

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

211. Because the 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 RFRA.

212. Plaintiffs have no adequate remedy at law.

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

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

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

215. The Affordable Care Act expressly delegates to an agency within HHS, the Health Resources and Services Administration, the authority to establish guidelines concerning the "preventive care" that a group health plan and health insurance issuer must provide.

216. Given this express delegation, Defendants were required to engage in formal notice-and-comment rulemaking in a manner prescribed by law before issuing the guidelines that group health plans and insurers must cover. Proposed regulations were required to be published in the Federal Register and interested persons were required to be given an opportunity to participate in the rulemaking through the submission of written data, views, or arguments.

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

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

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

220. Within two weeks of the IOM issuing its guidelines, HHS issued a press release announcing that the IOM's guidelines were required under the Affordable Care Act.

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

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

223. Plaintiffs have no adequate remedy at law.

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

COUNT VIII
Illegal Action in Violation of the APA

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

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

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

228. 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).

229. 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.

230. The Mandate nevertheless 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 [Weldon Amendment] requires. By issuing the Mandate, Defendants have exceeded their authority, and ignored the direction of Congress.

231. The Mandate violates the Weldon Amendment, RFRA, and the First Amendment.

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

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

234. Plaintiffs have no adequate remedy at law.

235. Defendants' failure to act in accordance with law 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 Mandate violates Plaintiffs' rights under RFRA;
2. Enter a declaratory judgment that the Mandate violates Plaintiffs' rights under the First Amendment;
3. Enter a declaratory judgment that the Mandate was promulgated in violation of the APA;
4. Enter an injunction prohibiting the Defendants from enforcing the Mandate against Plaintiffs;
5. Enter an order vacating the Mandate;
6. Award Plaintiffs attorney's and expert fees under 42 U.S.C. § 1988; and
7. Award all other relief as the Court may deem just and proper.

Respectfully submitted, this 14 day of November, 2013.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2013, I electronically filed the foregoing Plaintiffs' Complaint and Demand for Jury Trial with the Clerk of the United States District Court for the Western District of Michigan using the CM/ECF system and, upon receipt of the returned summonses, will mail the foregoing by certified mail *via* the United States Postal Service to the following:

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