

CATHOLIC DIOCESE OF NASHVILLE v. SEBELIUS

3:12cv934

United States District Court for the Middle District of Tennessee, Nashville Division

September 12, 2012

Reporter

2012 U.S. Dist. Ct. Pleadings LEXIS 305 *

THE CATHOLIC DIOCESE OF NASHVILLE; CATHOLIC CHARITIES OF TENNESSEE, INCORPORATED; FATHER RYAN HIGH SCHOOL, INC.; POPE JOHN PAUL II HIGH SCHOOL, INC.; MARY, QUEEN OF ANGELS, INC.; VILLA MARIA MANOR, INC.; ST. MARY VILLA, INC.; and AQUINAS COLLEGE, Plaintiffs, v. KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; HILDA SOLIS, in her official capacity as Secretary of the U.S. Department of Labor; TIMOTHY GEITHNER, 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.

Type: Complaint

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Title

Complaint

Text

1. This lawsuit is about 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

abortion-inducing drugs, sterilization, and contraception. Those services are and will continue to be freely available in the United States, and nothing prevents the Government itself from making them more widely available. [*2] But the right to such services does not authorize the Government to force the Plaintiffs to violate their own consciences by making them provide, pay for, and/or facilitate those services to others, contrary to their sincerely held religious beliefs, American history and tradition, embodied in the First Amendment to the United States Constitution and the Religious Freedom Restoration Act ("RFRA"), protect religious entities from such overbearing and oppressive governmental action. Plaintiffs therefore seek relief in this Court to protect this most fundamental of American rights.

2. Plaintiffs are Catholic religious entities that provide a wide range of spiritual, educational, and social services to individuals in Middle Tennessee and beyond, regardless of whether those individuals are Catholic. For example, Plaintiff The Catholic Diocese of Nashville not only provides pastoral care and spiritual guidance for approximately 76,000 Catholics, but also serves individuals throughout Middle Tennessee through its schools and various charitable programs. The Diocese's programs serve those who are most often overlooked and marginalized in the community, including individuals who are poor, [*3] elderly, disabled, and others in need. Plaintiff Catholic Charities of Tennessee offers a host of social services to thousands in need. Its services feed the hungry, place children in adoptive families, improve the welfare of children from high-risk backgrounds, and provide assistance to refugees and new immigrants. Plaintiffs Father Ryan High School, Inc. and Pope John Paul II High School, Inc. teach religiously, ethnically, and economically diverse student bodies. Plaintiffs Mary, Queen of Angels, Inc. and Villa Maria Manor, Inc. provide housing to low-income, elderly individuals and seniors needing care, including those suffering from Alzheimer's Disease. Plaintiff St. Mary Villa, Inc. provides affordable daycare options to a diverse range of families with parents who are working or in school. For its part, Plaintiff Aquinas College educates over 600 students annually, charging tuition well below the average private college in Middle Tennessee. And the College's School of Nursing is uniquely positioned to respond to the critical shortage of licensed nurses and nursing educators in Tennessee and the United States.

3. Plaintiffs' works are guided by and consistent with the teachings [*4] of the Catholic Church, including the requirement to serve those in need, regardless of their religion. As Pope Benedict stated, "[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." Pope Benedict XVI, *Deus Caritas Est* P 22 (2006). Or, as Cardinal James Hickey once commented on the role of Catholic educators, "We do not educate our students because *they* are Catholic; we educate them because *we* are Catholic." Thus, Catholic individuals and organizations consistently work to create a more just community by serving any and all neighbors in need.

4. As discussed herein, Plaintiffs uphold and follow the teachings of the Catholic Church. Plaintiffs' genuinely held religious beliefs dictate that it is unacceptable to support, pay for, provide, and/or facilitate abortion, sterilization, or the use of contraception, as these services are contrary to Catholic Doctrine. See, e.g., Catechism of the Catholic Church PP 2363, 2370.

5. Defendants [*5] have promulgated various rules described herein (collectively, the "U.S. Government Mandate") that force many Catholic organizations, including Plaintiffs, to provide or facilitate the provision of, abortion-inducing drugs, sterilization, contraceptives, and contraceptive services to their employees in violation of the centuries' old teachings of the Catholic Church.

6. Ignoring broader religious exemptions from other federal laws, the Government has crafted a narrow, discretionary exemption to this U.S. Government Mandate for "religious employers." Group health plans are eligible for the exemption only if they are "established or maintained by religious employers," and only if the "religious employer" can convince the Government that it satisfies four criteria:

- . "The inculcation of religious values is the purpose of the organization";
- . "The organization primarily employs persons who share the religious tenets of the organization";
- . "The organization primarily serves persons who share the religious tenets of the organization"; and
- . "The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the [*6] Internal Revenue Code of 1986, as amended."

45 C.F.R. § 147.130(a)(iv)(B). Thus, in order to safeguard their religious freedoms, religious employers must plead with Government bureaucrats for a determination that they are sufficiently "religious."

7. The impermissibly vague terms of the "religious employer" exemption make it unclear whether many religious entities will satisfy this definition. And, in order to find out whether they qualify as "religious employers," religious entities must submit to an intrusive governmental investigation into whether, in the Government's view, their "purpose" is the "inculcation of religious values"; whether they "primarily" employ "persons who share [their] religious tenets"; and whether they "primarily" serve "persons who share [their] religious tenets," even when their fundamental beliefs dictate that they serve all, regardless of the religious beliefs of those served.

8. The U.S. Government Mandate, including the narrow exemption for certain "religious employers," is irreconcilable with the First Amendment, RFRA, and other laws. The Government has not shown any compelling need to force Plaintiffs to provide, pay for, and/or facilitate [*7] access to abortion-inducing drugs, contraception, and sterilization, or for requiring Plaintiffs to submit to an intrusive governmental examination of their religious missions. The Government also has not shown that the U.S. Government Mandate is narrowly tailored to advancing its interest in increased access to these services, since these services are already widely available, and nothing prevents the Government from making them even more widely available by providing or paying for them directly through a duly enacted law. The Government, therefore, cannot justify its decision to force Plaintiffs to provide, pay for, and/or facilitate access to these services in violation of their sincerely held religious beliefs.

9. Despite repeated requests from religious leaders, the Government has insisted that it will not change the core principle of the U.S. Government Mandate-that Plaintiffs must subsidize and/or facilitate providing their employees free access to drugs and services that are contrary to

Plaintiffs' religious beliefs. If the Government can force religious institutions to violate their beliefs in such a manner, there is no apparent limit to the Government's power. Such an oppression [*8] of religious freedom violates Plaintiffs' clearly established constitutional and statutory rights.

10. The U.S. Constitution and federal statutes protect religious organizations from governmental interference with their religious views-particularly minority religious views. The Founders recognized, through their own experiences, that the mixture of government and religion is destructive to both institutions and divisive to the social fabric upon which the country depends. The Constitution and federal law are thus meant to stand as bulwarks against oppressive government actions even if supported by a majority of citizens. This "wall of separation between church and state" is critical to the preservation of religious freedom. As the Supreme Court has recognized, "[t]he structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority." [*Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 730 \(1872\)](#). Through this lawsuit, Plaintiffs do not seek to impose their religious beliefs on others. They simply ask that the Government [*9] not impose its values and policies on Plaintiffs, in direct violation of their sincerely held religious beliefs.

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

BACKGROUND

I. PRELIMINARY MATTERS

12. Plaintiff The Catholic Diocese of Nashville is an unincorporated religious association with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

13. Plaintiff Catholic Charities of Tennessee, Incorporated is a nonprofit Tennessee public benefit corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

14. Plaintiff Father Ryan High School, Inc. is a nonprofit Tennessee public benefit corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, [*10] charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. It is also an educational organization under Section 170(b)(1)(A)(ii) of the Internal Revenue Code.

15. Plaintiff Pope John Paul II High School, Inc. is a nonprofit Tennessee public benefit corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code. It is also an educational organization under Section 170(b)(1)(A)(ii) of the Internal Revenue Code.

16. Plaintiff Mary, Queen of Angels, Inc. is a nonprofit Tennessee public benefit corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

17. Plaintiff Villa Maria Manor, Inc. is a nonprofit Tennessee public benefit corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the [*11] Internal Revenue Code.

18. Plaintiff St. Mary Villa, Inc. is a nonprofit Tennessee public benefit corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

19. Plaintiff Aquinas College is a nonprofit Tennessee public benefit corporation with a principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. It is also an educational organization under Section 170(b)(1)(A)(ii) of the Internal Revenue Code.

20. Defendant Kathleen Sebelius is the Secretary of the U.S. Department of Health and Human Services. She is sued in her official capacity.

21. Defendant Hilda Solis is the Secretary of the U.S. Department of Labor. She is sued in her official capacity.

22. Defendant Timothy Geithner is the Secretary of the U.S. Department of Treasury. He is sued in his official capacity.

23. Defendant U.S. Department of Health and Human Services ("HHS") is an executive agency of the United States [*12] within the meaning of RFRA and the Administrative Procedure Act ("APA").

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

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

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 over this action 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).

A. Aquinas College and its Catholic-Centered Educational Mission

29. Aquinas College (or the "College") is an independent Catholic and Dominican college located in Nashville, Tennessee that confers undergraduate and graduate degrees. Founded in 1961 by the Dominican Sisters of St. Cecilia Congregation (the "Congregation"), Aquinas College is the only four-year Catholic liberal arts college in Eastern and Middle Tennessee. [*13]

30. Aquinas College is incorporated as a nonprofit Tennessee corporation, and the corporation's sole member is the Congregation. The College is governed by a Board of Directors, whose president is the Prioress General of the Congregation.

31. One of the Congregation's mottos is "to contemplate and to give to others the fruits of our contemplation." The Sisters contemplate Truth and share that same Truth with others through their educational mission. The driving truth behind the Sisters' educational work is the principle of the dignity of the human person.

32. Aquinas College's mission is to provide an atmosphere of learning permeated with faith, directed to the intellectual, moral, and professional formation of the human person. The College's academic programs are rooted in the liberal arts and the Dominican tradition. Among the College's core values are the sanctity of human life, respect for the human person, and fidelity to Church teaching. Its curriculum emphasizes the dignity of the human person and is directed toward the development of the whole person through the acquisition of knowledge, the pursuit of Truth, and the integration of faith with daily life.

33. Aquinas College [*14] recognizes that its identity and mission spring from *Ex Corde Ecclesiae*, the apostolic constitution which governs and defines the role of Catholic colleges and universities. *Ex Corde Ecclesiae* provides that "the objective of a Catholic University is to assure . . . Fidelity to the Christian message as it comes to us through the Church."

34. In accord with *Ex Corde Ecclesiae*, Aquinas College believes and teaches that "besides the teaching, research and services common to all Universities," it must "bring[] to its task the inspiration and light of the Christian message." "Catholic teaching and discipline are to influence all university activities," and "[a]ny official action or commitment of the University [must] be in accord with its Catholic identity." "In a word, being both a University and Catholic, it must be both a community of scholars representing various branches of human knowledge, and an academic institution in which Catholicism is vitally present and operative."

35. Aquinas College's Catholic educational mission is furthered by its leadership. Each of the College's Presidents has been a Sister of the Congregation, including its current President, Sister [*15] Mary Sarah Galbraith, O.P. At the beginning of her term, the President makes a Profession of Faith and takes the Oath of Fidelity in accord with *Ex Corde Ecclesiae*. Other members of the College's leadership are also affiliated with the Congregation. The Prioress General of the Congregation serves as the Chairperson of the College's Board of Directors, and two of the four Vice Presidents of the College are Sisters of the Congregation. Sisters also serve in positions among the faculty and staff of the college.

36. Theological study is a part of the liberal arts education offered to all Aquinas College students. Every teacher of theology at Aquinas College has the Mandatum, an acknowledgement by Church authority that a Catholic professor of a theological discipline is a

teacher within the full communion of the Catholic Church. The Mandatum recognizes the professor's commitment and responsibility to teach authentic Catholic doctrine and refrain from putting forth as Catholic teaching anything contrary to the Church's Magisterium (the official teaching of the Catholic Church).

37. Sensitivity to both the permanent and the changing needs of the Nashville community and to the needs [*16] of the Church led to the establishment of the degrees that Aquinas offers today: degrees in nursing, education, business, and liberal arts and sciences. Aquinas College graduates enter the workforce prepared to serve the Nashville community and beyond.

38. Aquinas College maintains a long-standing tradition of educating competent and qualified nurses-regardless of their religious backgrounds-to care for the sick. Tennessee is projected to have a shortage of nearly 15,000 nurses by 2020 and an even more critical shortage of qualified nursing faculty, estimated at approximately 450 vacancies by 2020. To respond to the critical shortage, Aquinas College's School of Nursing began offering an innovative competency-based Master of Science in Nursing Education in 2012, and it is planning to implement a new four-year residential baccalaureate nursing program and expand enrollment in its nursing programs by 100% in the next five years. With one of the largest nursing programs in the state of Tennessee, Aquinas College is uniquely positioned to respond to the growing demand for qualified nurses and nursing faculty in the coming years.

39. The College also serves others directly through the [*17] education of its students and through its students' contributions to the community. For instance, students from the School of Nursing spend approximately 85,000 hours per academic year caring for the sick, regardless of age, race, or faith. Many of these hours are spent caring for patients suffering from acute and chronic illnesses in traditional institutional settings (e.g., hospitals, special care facilities, etc.). Nursing students and faculty also participate in health fairs, where they educate Middle Tennesseans about issues of health, wellness, and nutrition and provide health assessment screenings to the public. Consistent with the College's Catholic mission, these services are provided to anyone who needs them, free of charge. The College does not inquire as to the faith of the individuals it serves through these programs, and it does not know how many of the individuals served are Catholic.

40. Aquinas College students and faculty contribute to the Nashville and greater Tennessee communities through other community service projects as well. Faculty, students, and alumni have volunteered at a local homeless shelter, made donations to Angel Tree programs, and participated in [*18] food drives, among other efforts.

41. Aquinas College also serves its community by providing a forum for intellectual and spiritual thought and discourse. Its annual Lecture Series offers the Nashville community the opportunity to learn from respected leaders from within the College and across the country, offering free lectures on a variety of topics. Past lectures have discussed financial planning, Jewish-Christian relations, music and fine arts, and parenting.

42. While committed to remaining a distinctly Catholic and Dominican institution, Aquinas College opens its doors to students, academics, prospective employees, and people in need, from all faiths and creeds.

43. Aquinas College currently educates more than 600 graduate and undergraduate students annually and it is rated among the top Catholic colleges in the nation. Approximately two thirds of its students are not Catholic and over 20% of its students are minorities.

44. Aquinas College costs over \$ 2,000 less than the average private college in Tennessee and offers comprehensive financial aid programs to its students. Approximately 92% of its students receive financial assistance annually.

45. Aquinas College maintains [*19] a faculty of more than 140 professors, who are recognized as among the leaders in their fields. An additional thirty-six staff members are employed by the College. Seventy-six of the College's employees are classified as full-time (i.e. working thirty hours or more per week), including eleven Sisters of the Congregation. Approximately 49% of Aquinas College's employees are not Catholic.

46. Aquinas College offers its eligible employees two health benefits plans from which to choose. Both are fully-insured plans offered and administered by Blue Cross Blue Shield of Tennessee. The policies cover the lay employees of the Dominican Campus, defined to include both the Congregation's Motherhouse and Aquinas College as well as other employers affiliated with the Congregation.

47. The College subsidizes health plan premiums for its eligible employees. Full-time employees of Aquinas College who are also Sisters of the Congregation receive employee health benefits through the Congregation's separate health benefits plan.

48. Aquinas College has ensured that its sponsored health plans do not include coverage for elective abortion, sterilization, abortion-inducing drugs, or contraception. Aquinas [*20] College cannot, without violating its sincerely held religious beliefs, offer coverage for these or other devices, drugs, procedures, or services that are inconsistent with the teachings of the Catholic Church.

49. Aquinas College's employee health plan year starts on September 1st. The next Aquinas College employee health plan year begins on September 1, 2013.

50. It is unclear whether the Government will conclude that Aquinas College qualifies as a "religious employer" under the narrow exemption to the U.S. Government Mandate. For example, it is unclear whether Aquinas College serves primarily people of the Catholic faith and whether "the inculcation of religious values is the purpose of Aquinas College.

51. It is also unclear whether the health benefits plan of Aquinas College qualifies for the religious exemption because, while it is a nonprofit charitable organization that is firmly grounded in the tenets of Catholicism, it may not be deemed to fall within sections 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

52. The Aquinas College employee health plans are not "grandfathered." Neither of the Aquinas College employee health plans included a statement [*21] in any plan materials provided to participants or beneficiaries 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).

53. Though the Government's position is unclear, it appears that if an entity qualifies as a "religious employer" for purposes of the exemption, any affiliated corporation that provides coverage to its employees through the exempt entity's group health plan would also receive the benefit of the exemption. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. at 16,502 (Mar. 21, 2012).

54. Therefore, if the Congregation qualifies as a "religious employer" under the exemption to the U.S. Government Mandate, then Aquinas College also may receive the benefit of the exemption.

B. The Catholic Diocese of Nashville

55. Plaintiff The Catholic Diocese of Nashville (the "Diocese") is the civil law entity for the local body of the Universal Roman Catholic Church, a community of the baptized confessing the Catholic faith, sharing in sacramental life, and entrusted since February 2006 to the ministry of Bishop David R. Choby. The Diocese [*22] encompasses thirty-eight counties, including Davidson County, and covers over 16,300 square miles in Middle Tennessee. Its missions include seeing to the spiritual, educational, and social needs of the Middle Tennessee community.

56. The Diocese, through its fifty-three local community parishes and three missions situated throughout the Diocese, serves the spiritual needs of its Catholic population of approximately 75,000 individuals. Through its parishes, the Diocese ensures the regular availability of the sacraments to all Catholics living in or visiting the Middle Tennessee area. The Diocese also provides numerous other opportunities for prayer, worship, and faith formation. In addition to overseeing the sacramental life of its parishes, the Diocese coordinates Catholic campus ministries at eight colleges and universities within its borders.

57. The Diocese also serves the needs of its communities with a variety of social welfare, educational, and charitable programs. These programs are largely carried out through the work of the parishes of the Diocese and through the separately incorporated entities affiliated with the Diocese (including Plaintiffs Catholic Charities of Tennessee, [*23] Inc., Father Ryan High School, Inc., Pope John Paul II High School, Inc., Mary, Queen of Angels, Inc., Villa Maria Manor, Inc., and St. Mary Villa, Inc.). The parishes of the Diocese serve an indeterminate number of persons who are homeless, hungry, elderly, sick, or otherwise in need of material assistance without regard to whether the recipient is Catholic or non-Catholic.

58. In accord with Canon Law, the Diocese also fulfills an educational mission. See Code of Canon Law, Canons 802 § 1, 803 § 2. The Diocese conducts its educational mission through the schools it sponsors, currently including eighteen private Catholic schools within the Diocese: two high schools and sixteen elementary schools. Through its schools, the Diocese strives to provide an exceptional Catholic educational experience that is open to all in Middle Tennessee.

59. Presently the Diocese has approximately 7,000 students enrolled in its schools. Many of the Diocesan schools serve a significant minority population. Pope John Paul II High School, for example, has a student body composed of over 20% minority students. Enrollment in Diocesan schools is open to Catholics and non-Catholics.

60. To make a Catholic [*24] education available to as many children as possible-no matter their faith, means, or heritage-the Diocese expends substantial funds in tuition assistance programs. For the 2011-2012 academic year, the elementary and high schools of the Diocese granted approximately \$ 3 million in financial aid.

61. The Diocese and its parishes, following the teachings of the Catholic Church, serve people of all faiths. The Diocese does not know how many of those it serves are Catholic. In order to determine those statistics, the Diocese would be required to ask the religious affiliation of all individuals that it serves. That inquiry, however, would substantially burden the Diocese's religious exercise, because Catholic teaching dictates that it serve all people in need regardless of their faith. Approximately 96% of the population of Middle Tennessee, however, is composed of individuals who are not Catholic.

62. The Diocese, including its parishes and schools, has over 1,200 employees, with approximately 1,000 classified as full-time (i.e., working an average of at least thirty hours per week) and approximately 200 classified as part-time. The Diocese does not know how many of its employees share [*25] its religious tenets.

63. It is therefore unclear whether the Government will conclude that the Diocese qualifies as a "religious employer" under the narrow exemption from the U.S. Government Mandate.

64. Consistent with Church teachings on social justice, the Diocese makes health insurance benefits plans available to its religious personnel, seminarians, and full-time employees and subsidizes the cost of those plans. The Diocese's employee health plans include a preferred provider option (the "PPO plan") and a high-deductible option (the "HDHP plan"). Both are fully-insured plans offered and administered by Blue Cross Blue Shield of Tennessee.

65. Consistent with Church teachings regarding the sanctity of life, the Diocesan health plans specifically exclude coverage for abortion, sterilization, and contraception. The Diocese cannot, without violating its sincerely held religious beliefs, offer coverage for these or other devices, drugs, procedures, or services that are inconsistent with the teachings of the Catholic Church.

66. The health plan year for each of the Diocesan health plans begins each year on January 1.

67. The PPO plan meets the Affordable Care Act's definition [*26] of a "grandfathered" plan and includes a statement in plan materials provided to participants or beneficiaries that it believes it is a grandfathered plan, as is required to maintain the status of a grandfathered health plan. 26 C.F.R. § 54.9815-1251T(a)(2)(i).

68. The HDHP plan is not "grandfathered." The plan did not include a statement in any plan materials provided to participants or beneficiaries 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).

69. Though the Government's position is unclear, it appears that if an entity qualifies as a "religious employer" for purposes of the exemption, any affiliated corporation that provides coverage to its employees through the exempt entity's group health plan would also receive the

benefit of the exemption. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. at 16,502 (Mar. 21, 2012).

C. Catholic Charities of Tennessee, Incorporated

70. Plaintiff Catholic Charities of Tennessee, Incorporated ("Catholic Charities") was created in 1962 for the purpose of providing coordinated service to all [*27] of God's people in need, especially the poor, regardless of race, culture, or religion. Catholic Charities is an affiliated corporation of the Diocese.

71. Catholic Charities offers a variety of services to meet the needs of a diverse population in the Middle Tennessee area. These programs include feeding the hungry, adoption and pregnancy counseling, child welfare services, refugee and immigration services, family counseling, and services for seniors. Various Catholic Charities programs see to the basic needs-food, clothing, and shelter-of individuals in Middle Tennessee.

72. Catholic Charities provided social services to over 69,000 Middle Tennesseans in 2011 alone.

73. Each year, Catholic Charities serves thousands of meals to the hungry in Middle Tennessee through its Loaves and Fishes and its North Nashville programs. In 2011, Loaves and Fishes served approximately 22,000 hot midday meals, while food distributed by North Nashville provided approximately 88,000 meals in 2012. The North Nashville program also provides clothing and housing assistance and recently added a job training center to its services to address one cause of poverty.

74. Catholic Charities has a long history, [*28] dating back to its founding, of helping refugees and immigrants transition to life in the United States. One of the organization's first major initiatives following its founding focused on assisting Cuban refugees of all ages fleeing from Cuba. Catholic Charities found foster homes for forty-three Cuban refugee children who arrived in the United States without parents. By 1995, over 10,000 refugees had received assistance from Catholic Charities, including refugees of many different faiths and more than thirty-five different countries. More recently, in March 2008, Catholic Charities was selected by the Federal Office of Refugee Resettlement to manage and disburse federal funding for refugee services throughout Tennessee, after the Tennessee Department of Human Services ceased its participation in the statewide refugee program. As the designated interim replacement for the State of Tennessee in providing refugee services, Catholic Charities' Refugee and Immigration Services program offers classes to help newly arriving refugees attain self-sufficiency and financial sustainability, including classes in financial literacy, cultural orientation, and English as a Second Language. Catholic [*29] Charities has assisted 3,200 refugees over the last decade alone.

75. Catholic Charities also assists seniors and the elderly in Middle Tennessee. It offers a licensed adult daycare program with supervised activities aimed at enhancing independence and self-esteem while providing respite for caregivers. Fees for the program are subsidized for lower income families.

76. Catholic Charities runs a variety of programs to make adoption an affordable and realistic option for families in Middle Tennessee, place children in need into loving homes, and encourage stability in adoptive families. It operates a state-licensed adoption agency, Caring Choices, that places infants, including special medical needs infants, into adoptive homes, Caring Choices serves families of all faiths, and its services are offered on a sliding scale to make adoption possible for lower income families. FOCUS (Finding Our Children Unconditional Support) is another Catholic Charities adoption program designed to place older children in need of adoption into foster care and then assist families in adopting these children. Finally, Catholic Charities' Adoption Support and Preservation Program (ASAP) is an innovative [*30] program that supports children and families as they create and maintain connections and access services that support permanency. ASAP gives families the tools to overcome the obstacles they might face in bringing adopted children into their homes, seeks to increase the availability and accessibility of adoption support services in Tennessee, and seeks to decrease the incidences of disrupted or dissolved adoptions.

77. Catholic Charities also offers counseling services to parents and families. Its CHAP Program provides parenting education, crisis intervention, and case management designed to develop effective parenting skills through work with professional counselors. Catholic Charities also sponsors the HOPE Program, which provides counseling services to children and teens who are secondary victims of violent crimes. HOPE helps children learn to normalize their experiences, understand their feelings, and develop coping skills and support systems to deal with traumatizing experiences.

78. Catholic Charities' Angel Tree program provides gifts, food, and/or household and personal care items to approximately 1,200 people, many children and seniors, each year around Christmas time. [*31]

79. Catholic Charities has also provided aid to Middle Tennesseans in times of natural disaster. In May 2010, the city of Nashville was plagued with a major flood that caused thousands to be displaced for months. Catholic Charities responded by opening a warehouse center to distribute household goods, clothing, food, and other needed supplies. With the aid of Diocesan parishes and community groups, Catholic Charities developed an Adopt-a-Family program whereby individuals and groups could provide assistance to families or individuals in need of assistance during the flood.

80. Catholic Charities serves people in need without regard to their religion. It does not ask whether the people it serves are Catholic and, therefore, it does not know how many of the people it serves are Catholic.

81. Catholic Charities has approximately 115 full-time (i.e., working 30 hours or more per week) employees. Catholic Charities does not inquire about the religion of its applicants for employment. As a result, it does not know how many of its employees are Catholic.

82. It is therefore unclear whether the Government will conclude that Catholic Charities qualifies as a "religious employer" under the [*32] narrow exemption for compliance with the U.S. Government Mandate.

83. Catholic Charities' full-time employees are offered health insurance through the Diocese's employee health plans. Therefore, if the Diocese qualifies as a "religious employer" under the exemption to the U.S. Government Mandate, Catholic Charities also may receive the benefit of the exemption.

D. Father Ryan High School, Inc.

84. Founded more than eighty years ago, Father Ryan High School, Inc. ("Father Ryan") is one of the oldest Catholic schools in Nashville. Father Ryan is an affiliated corporation of the Diocese.

85. As a Catholic diocesan high school, Father Ryan's mission is to be an experience of the living Gospel while challenging students to reach their spiritual, academic, and personal potential.

86. Father Ryan offers its coed student body of approximately 940 students a rigorous college preparatory education, including a broad selection of Advanced Placement classes. Last year, 100% of the graduating class was accepted to college, and over 100 students were honored by the National Merit Scholarship Program. Father Ryan was also the first school in Tennessee to receive dual accreditation from [*33] the Southern Association of Colleges and Schools and the Southern Association of Independent Schools.

87. Father Ryan's students come from diverse socio-economic backgrounds, and the school offers financial aid to approximately 180 students.

88. Minority students account for approximately 20% of Father Ryan's student body.

89. To encourage students to take the teachings of Christ beyond the textbook, to actively live the Gospel, and to act justly in regards to poverty, oppression, and marginalization, Father Ryan requires each student to complete 40 hours of community service in fulfillment of its service learning requirement. Its students have volunteered at such organizations as the Special Olympics, Catholic Charities, and the American Cancer Society. In addition, Father Ryan offers its students the opportunity to spend their spring breaks in service to the Nashville community and beyond. Previous spring break service events have been held in Abbeville, Louisiana; John's Island, South Carolina; and Monk's Corner, South Carolina. Father Ryan students also participate in a mission trip to Olancho, Honduras each year, where students build community infrastructure and work with orphans. [*34]

90. Father Ryan has approximately 125 employees. It employs individuals of all faiths and does not inquire about the religion of its applicants for employment. As a result, it does not know how many of its employees are Catholic.

91. It is therefore unclear whether the Government will determine that Father Ryan qualifies as a "religious employer" under the narrow exemption to the U.S. Government Mandate.

92. Father Ryan's full-time employees are offered health insurance through the Diocese's employee health plans. Therefore, if the Diocese qualifies as a "religious employer" under the exemption to the U.S. Government Mandate, Father Ryan also may receive the benefit of the exemption.

E. Pope John Paul II High School, Inc.

93. Since 2002, Plaintiff Pope John Paul II High School, Inc. ("JPPII") has been educating students in the Catholic tradition. Its mission is to prepare students to be strong in mind, body, character, and spirit for lives of learning and service, according to the Gospel. JPPII is an affiliated corporation of the Diocese.

94. JPPII teaches its approximately 615 students a classical, liberal arts curriculum. Its 2012 graduates were accepted to over 160 different [*35] colleges and universities and were awarded over \$ 14 million in scholarships. The College Board has named hundreds of JPPII students as AP Scholars in the last five years. Like Father Ryan, JPPII is also accredited by both the Southern Association of Colleges and Schools and the Southern Association of Independent Schools.

95. JPPII affords its students the opportunity to take part in a wide variety of extracurricular activities, including twenty-seven athletic teams, an award-winning choral program, and a College Model U.N. team that has won 328 awards in 33 conferences since 2002.

96. JPPII welcomes students from all backgrounds and of any or no faith. It also embraces diversity. Approximately 22% of its students are minorities.

97. Through its "Hand in Hand" program, JPPII provides the unique opportunity to pursue an education in a Catholic high school community to students with intellectual disabilities who would not be able to pursue JPPII's traditional college preparatory program without intensive special education support.

98. JPPII students dedicate hours each year in service to the Nashville community. Through the school's Christian Service Internship program, JPPII students give [*36] over 25,000 hours of volunteer service to more than fifty local charities each year.

99. JPPII has approximately eighty-five full-time (i.e., working thirty hours or more per week) employees, including faculty and staff. It employs individuals of any faith and does not inquire about the religion of its applicants for employment. As a result, it does not know how many of its employees are Catholic.

100. It is therefore unclear whether the Government will conclude that JPPII qualifies as a "religious employer" under the narrow exemption to the U.S. Government Mandate.

101. JPPII's full-time employees are offered health insurance through the Diocese's employee health plans. Therefore, if the Diocese qualifies as a "religious employer" under the exemption to the U.S. Government Mandate, then JPPII also may receive the benefit of the exemption.

F. Mary, Queen of Angels, Inc.

102. Plaintiff Mary, Queen of Angels, Inc. ("MQA") is an assisted living facility located in Nashville, Tennessee. MQA is an affiliated corporation of the Diocese.

103. The mission of MQA is to provide top quality, affordable assisted living services to elderly persons in Middle Tennessee. MQA is designed to [*37] meet the physical, psychological, and

spiritual needs of its residents in a safe, stimulating, and dignified environment. The average age of MQA's residents is approximately eighty-four years.

104. MQA is the second largest assisted living facility in the Nashville area. It has a total of 98 apartments housing 110 residents, on average. Sixteen of its apartments are located in a secure unit that serves residents who are memory-impaired or who have Alzheimer's disease.

105. In addition to providing residence, MQA offers a meal program, as well as nursing, personal care, physical therapy, housekeeping and maintenance services, and assistance with the activities of daily life for those who need it. It also offers a rich and engaging program of activities. Mass is held daily in the MQA chapel, and there are regular church and prayer services available to residents of other denominations.

106. MQA's mission is driven by the Catholic belief that all human life is equally valuable and worthy of respect and support, and its living facilities are made available to all, regardless of race, creed, or national origin. Residents are admitted on a first come, first served basis.

107. Consistent with its Catholic mission and affiliation, fees for MQA's service are based upon its residents' ability to pay. MQA provides some level of financial assistance in the form of rent discounts to approximately 45% of its residents. In its first ten years of operation, MQA provided an average of \$ 640,000 in total rent assistance per year. No enrolled resident of MQA is denied care or residence due to the resident's inability to pay for those services.

108. On information and belief, approximately half of MQA's residents are Catholic.

109. MQA employs approximately eighty-five employees, including approximately sixty-five full-time (i.e., working thirty hours or more per week) and twenty part-time employees. MQA does not inquire about the faith of its applicants for employment. As a result, it does not know how many of its employees are Catholic.

110. It is therefore unclear whether the Government will conclude that MQA qualifies as a "religious employer" under the exemption to the U.S. Government Mandate.

G. Villa Maria Manor, Inc.

111. Plaintiff Villa Maria Manor, Inc. (the "Manor") has operated for over thirty years as an independent living facility for the elderly in Nashville, Tennessee. The Manor is an affiliated corporation of the Diocese.

112. The Manor's mission is to provide housing and services to low-income elderly persons in Middle Tennessee. The Manor provides housing to its residents, whose average annual income is approximately \$ 15,733, on a sliding scale basis. The average age of the Manor's residents is seventy-seven years.

113. The Manor offers a variety of support services designed to enhance each of its resident's ability to live independently. There is a food service program for those who want or need assistance. The Manor provides transportation for those residents who do not drive so that they may visit physicians or complete everyday errands, such as banking and shopping for food. The Manor also offers an extensive program of activities designed to engage all residents in life of

the Manor community and myriad social support programs, from individual counseling to assistance in navigating the complexities of the Medicare and Medicaid systems.

114. The Manor has 214 apartments housing approximately 230 residents on average. Like MQA, the Manor's mission is driven by the Catholic belief that all human life is equally valuable and worthy [*40] of respect and support, and its living facilities are made available to all, regardless of race, creed, or national origin. The Manor's residents are admitted on a first come, first served basis. The Manor does not inquire about its residents' religious beliefs and it therefore does not know how many of its residents are Catholic.

115. The Manor has ten employees. On information and belief, none of the Manor's employees are Catholic.

116. It therefore appears that the Manor does not qualify as a "religious employer" under the U.S. Government Mandate.

H. St. Mary Villa, Inc.

117. Plaintiff St. Mary Villa, Inc. ("St. Mary") is an educational child care provider that supports families with employed parents and parents in school. St. Mary is an affiliated corporation of the Diocese.

118. St. Mary has a long history of providing child care responsive to the social needs of the Middle Tennessee community. St. Mary began operations in the mid-nineteenth century in response to family and social disruption following the American Civil War. It was operated as a residential orphanage until the mid 1970s, when family and social needs changed from alternative placement to family supportive [*41] services. In response to the changing needs of the community, St. Mary transformed to its current focus as an educational child care provider.

119. St. Mary's mission, derived from the teachings of Jesus Christ and the Catholic Church, is to support families by providing affordable, quality day care, after school care and educational programs in a safe, healthy, nurturing and multi-cultural environment, promoting intellectual, physical, social and moral development of the child. St. Mary embraces diversity in socio-economic status, race, ethnicity and religion.

120. St. Mary has been a long-time, continuous recipient of United Way Outcome-Based Investments, which are awarded based on findings of measurable and documented results. It has also consistently earned a "Three Star" rating from Tennessee, the highest score in the State's Quality Rating Program.

121. St. Mary serves over 300 children and their families annually, at four locations in Davidson County, including locations at three Catholic schools affiliated with the Diocese. Approximately 60% of the families it serves through its preschool program participate in the Tennessee "Child Care Certificate" program or have annual [*42] incomes below \$ 38,000.

122. A portion of St. Mary's funds come from the Diocese. Other sources of its funding are the United Way of Nashville, the federal Government, endowments, community grants, and private donations. These funds are used to subsidize the cost of St. Mary's services, up to 50%, for families who need assistance in affording childcare.

123. Motivated by the teachings of Jesus Christ and in the tradition of the Catholic faith, St. Mary offers services to all members of the community. It also offers instruction in the Catholic faith and practices, on a voluntary basis, to those it serves.

124. St. Mary employs approximately thirty-two full-time (i.e., working thirty hours or more per week) and eighteen part-time staff. St. Mary does not know the religious makeup of its employees or the children and families it serves.

125. It is therefore unclear whether the Government will conclude that St. Mary qualifies as a "religious employer" under the narrow exemption to the U.S. Government Mandate.

I. The Mary Entities' Health Plan

126. Plaintiffs MQA, the Manor, and St. Mary (together, the "Mary Entities") collaborate with one another in order to provide a health [*43] benefits plan to their employees. Their plan is separate and distinct from the employee benefits plans offered by the Diocese.

127. Each of the Mary Entities subsidizes the premiums for its eligible employees who enroll in the plan. The Mary Entities provide subsidized health insurance for their full-time employees, at least in part, in order to fulfill their duty as Catholic employers to provide a "living wage" to their employees. The Mary Entities' employee health benefits plan is a fully-insured plan, offered and administered by Blue Cross Blue Shield of Tennessee.

128. The Mary Entities' health plan year begins each year on August 1st.

129. Despite their sincere religious beliefs in and dedication to following the teachings of the Catholic Church, the Mary Entities discovered in November 2011 that, through inadvertence, their health benefits plan mistakenly offered coverage for certain drugs and medical procedures that are inconsistent with the teachings of the Catholic Church (the "objectionable services"). Following this discovery, the Mary Entities immediately undertook efforts to remove the objectionable services from their plan.

130. The Mary Entities' initial efforts [*44] were partially successful in that they were able to remove coverage for some of the objectionable services from their plan. But their insurer refused to remove all of the objectionable services from the plan. Because the Mary Entities' plan included coverage for contraception as recently as February 10, 2012, the plan was not eligible for the one-year "temporary enforcement safe harbor" from the U.S. Government Mandate when the Mary Entities renewed it on August 1, 2012. Accordingly, the Mary Entities did not include in their plan application materials for enrollment a notice stating that contraceptive coverage would be excluded.

131. During negotiations for its current health plan year, the Mary Entities sought to have all of the objectionable services excluded from their employee health benefits plan. Their insurer, Blue Cross Blue Shield of Tennessee, informed the organizations that it was unable to exclude coverage for oral contraceptives from the plan because of the requirements of the U.S. Government Mandate.

132. The Mary Entities thus faced an intolerable dilemma: they could either drop their employee health benefits plan altogether—an action that could subject them to debilitating [*45] fines that

would curb their philanthropic missions and that they believed was inconsistent with their duties as Catholic employers-or continue to offer a plan that included coverage for objectionable services. Either alternative required the Mary Entities to violate their religious beliefs and the teachings of the Catholic Church.

133. Refusing to deny their employees the essential healthcare they need and worried about compliance with the U.S. Government Mandate and the crippling fines they might face if they chose to drop health coverage for their employees altogether, the Mary Entities chose to renew their employee health benefits plan for the August 1, 2012 plan year. That plan currently includes coverage without cost sharing for oral contraceptives, as required by the U.S. Government Mandate and the Mary Entities' insurer, despite the Mary Entities' religious objections to this coverage and their diligent efforts to have the coverage removed.

134. In direct contravention of the Mary Entities' sincerely held religious beliefs and despite their affiliation with the Diocese, the U.S. Government Mandate has forced the Mary Entities to violate a central tenet of their Catholic faith. [*46]

135. The Mary Entities' employee health plan is not "grandfathered." The changes necessary to remove some of the objectionable services from the plan precluded the Mary Entities' plan from receiving "grandfathered" status. See 26 C.F.R. § 54.9815-1251T(a)(2)(i). Also, the Mary Entities' plan did not include a statement in any plan materials provided to participants or beneficiaries 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).

II. STATUTORY AND REGULATORY BACKGROUND

A. Statutory Background

136. 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. 119 (2010)* (collectively, the "Affordable Care Act" or the "Act").

137. The Affordable Care Act established many new requirements for "group health plan[s]," broadly defined as "employee welfare benefit plan[s]" within the meaning of the Employee Retirement Income Security Act ("ERISA"), [29 U.S.C. § 1002](#) [*47] (1), that "provide[] medical care . . . to employees or their dependents." [42 U.S.C. § 300gg-91](#)(a)(1).

138. The Affordable Care Act requires an employer's group health plan to cover certain women's "preventive care," leaving the definition of that term up to an agency within HHS. Specifically, it provided 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-(4) 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." Pub. L. No. 111-148 § 1001(5), *124 Stat. 131* (codified at [42 U.S.C. § 300gg-13](#)(a)(4)),

139. 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.

140. Some provisions of the Affordable Care Act exempt individuals with religious objections. For example, individuals [*48] are exempt from the requirement to obtain health insurance if they are members of a "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds or are members of a "health care sharing ministry." [26 U.S.C. §§ 5000A](#)(d)(2)(a)(i) and (ii) (conscientious objectors); 5000A(d)(2)(b)(ii) ("health care sharing ministry").

141. Not every employer is required to comply immediately with the U.S. Government Mandate. "Grandfathered" health plans are exempt from the "preventive care" requirements of the Affordable Care Act. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, *75 Fed. Reg. 41,276, 41,731* (July 19, 2010) ("Interim Final Rules"); [42 U.S.C. § 18011](#). Such plans cannot undergo substantial change after March 23, 2010 without losing grandfathered status. *Id.* HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

142. Violations of the Affordable Care Act can subject an employer [*49] and an insurer to substantial monetary penalties.

143. Under the Internal Revenue Code, employers who fail to provide all coverage required by the U.S. Government Mandate will be exposed to significant annual fines of \$ 2,000 per full-time employee. See [26 U.S.C. § 4980H](#)(a), (c)(1).

144. Additionally, under the Internal Revenue Code, group health plans that fail to provide certain required coverage may be subject to an assessment of \$ 100 a day per individual. See *id.* § 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 assessment applies to employers who violate the "preventive care" provision of the Affordable Care Act).

145. Under the Public Health Service Act, the Secretary of HHS may impose a monetary penalty of \$ 100 a day per individual where an insurer fails to provide the coverage required by the U.S. Government Mandate. See [42 U.S.C. § 300gg-22](#)(b)(2)(C)(i); see also Cong. Research Serv., RL 7-5700 (asserting that this penalty [*50] applies to insurers who violate the "preventive care" provision of the Affordable Care Act).

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

147. The Affordable Care Act limits the Government's regulatory authority. The Act and an accompanying Executive Order reflect a clear intent to exclude abortion-related services from the Act and regulations implementing it. The Act itself 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 [*51] for any plan year." [42 U.S.C. § 18023\(b\)\(1\)\(A\)\(i\)](#). The ability "[to] determine whether or not the plan provides coverage of abortion-inducing drugs is expressly reserved for "the issuer of a qualified health plan," not the Government. *Id.* § 18023(b)(1)(A)(ii).

148. Likewise, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004-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)*.

149. The intent to exclude abortions was instrumental in the Affordable Care Act's passage, as cemented by an executive order without which the Act would not have passed. Indeed, the Act's legislative history could [*52] not show a clearer congressional intent to prohibit the executive branch from requiring group health plans to provide abortion-related services. For example, the House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak prohibiting the use of federal funds for abortion services. See H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, lacked that restriction. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009). To avoid filibuster in the Senate, congressional proponents of the Act engaged in a procedure known as "budget reconciliation" that required the House to adopt the Senate version of the bill largely in its entirety. Congressman Stupak and other pro-life House members indicated that they would refuse to vote for the Senate version because it failed adequately to prohibit federal funding of abortion. To appease these Representatives, President Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. See Exec. Order No. 13,535, *75 Fed. Reg. 15,599* (Mar. 24, 2010).

150. The Act was, therefore, passed based on the central [*53] premise that all agencies would uphold and follow "longstanding Federal laws to protect conscience" and to prohibit federal funding of abortion. *Id.*

151. 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 conscience of those who disagree with abortion, and draft sensible conscience clauses.

B. Regulatory Background - Defining "Preventive Care" and the Narrow Exemption

152. Less than two years later, Defendants promulgated the U.S. Government Mandate, subverting the Act's clear purpose to protect the rights of conscience. Over that time, they issued interim rules and press releases-none of which followed notice-and-comment

rulemaking-that required the federal funding of abortion-inducing drugs, sterilization services, contraceptives and related counseling services and commandeered religious organizations to facilitate those services as well.

153. Within four months of the Act's passage, on July 19, 2010, Defendants issued their initial interim final rules concerning section 300gg-13(a)(4)'s requirement that group health plans provide coverage for [*54] women's "preventive care." Interim Final Rules, 75 Fed. Reg. at 41,726.

154. Defendants dispensed with notice-and-comment rulemaking for these rules.

155. Even though federal law had never required coverage of abortion-inducing drugs, sterilization, or contraceptives, Defendants claimed both that the APA did not apply to the relevant provisions of the Affordable Care Act and that "it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed." [Id. at 41,730.](#)

156. The interim final rules did not resolve what services constitute "preventive care"; instead, they merely track the Affordable Care Act's statutory language. They provide that "a group health plan . . . must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services: . . . (iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided [*55] for in comprehensive guidelines supported by the Health Resources and Services Administration." Interim Final Rules, [75 Fed. Reg. at 41,759](#) (codified at 45 C.F.R. § 147.130(a)(iv)).

157. The interim final rules did not identify the women's "preventive care" that Defendants planned to require employer group health plans to cover, nor give any notice as to how it would identify those services. [42 U.S.C. § 300gg-13\(a\)\(4\)](#). Instead, Defendants noted that "[t]he Department of HHS [was] developing these guidelines and expects to issue them no later than August 1, 2011." Interim Final Rules, [75 Fed. Reg. at 41,731.](#)

158. Defendants permitted concerned entities to provide written comments about the interim final rules. See *id.* at 41,726. But, as Defendants have conceded, they did not comply with the notice-and-comment requirements of the APA. [Id. at 41,730.](#)

159. In response, several groups engaged in a lobbying effort to persuade Defendants to include various contraceptives and abortion-inducing drugs in the "preventive care" requirements for group health plans. See, e.g., <http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-supports-initial-white-house-regulations-preventive-care-highlights-need-new-33140.htm>.

160. Other commenters noted that "preventive care" could not reasonably be interpreted to include such practices. These groups explained that pregnancy was not a disease that needed to be "prevented," and that a contrary view would intrude on the sincerely held beliefs of many religiously affiliated organizations by requiring them to pay for services that violate their religious

beliefs. See, e.g., Comments of United States Conference of Catholic Bishops, at 1-2 (Sept. 17, 2010), available at <http://old.usccb.org/ogc/preventive.pdf>

161. On August 1, 2011, HHS issued the "preventive care" services that group health plans would be required to cover. See HHS, *Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost*, available at www.hhs.gov/news/press/2011pres/08/20110801b.html. Again acting without notice-and-comment rulemaking, HHS announced these guidelines through a press release rather than enactments in the Code of Federal Regulations or statements in the Federal Register. The press release [*57] made clear that the guidelines were developed by a non-governmental, "independent" organization, the Institute of Medicine ("IOM"). See *id.* In developing the guidelines, IOM invited certain groups to make presentations on preventive care. On information and belief, no groups that oppose government-mandated coverage of contraception, abortion-inducing drugs, and related education and counseling were among the invited presenters. Comm. on Preventive Servs. for Women, Inst. of Med., *Clinical Preventive Services for Women* app. B at 217-21 (2011), http://www.nap.edu/openbook.php?record_id=13181&page=R1.

162. The IOM's own report, in turn, included a dissent that suggested that the IOM's recommendations were made on an unduly short time frame required by politicians without the appropriate transparency for all concerned persons.

163. The IOM also did not adhere to the rules governing federal agencies, including the notice-and-comment rulemaking process.

164. In stark contrast with the central premise necessary for the Affordable Care Act's passage and President Obama's promise to protect religious liberty, HHS's new guidelines required insurers and group health plans to cover "[a] [*58] 11 Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." See Health Res. Servs. Admin., *Women's Preventive Services: Required Health Plan Coverage Guidelines*, available at www.hrsa.gov/womensguidelines/.

165. FDA-approved contraceptives that qualify under these guidelines include drugs that induce abortions. For example, the FDA has approved "emergency contraceptives" such as the so-called "morning-after pill" (otherwise known as Plan B), which can operate by preventing a fertilized embryo from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or Ella), which likewise can induce abortions of living embryos.

166. 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).

167. The Government issued the amendments again without notice-and-comment rulemaking on the same [*59] grounds (namely that it would be "impracticable and contrary to the public interest" to delay putting the rules into effect) that they had provided for bypassing the APA with the original rules. See *id.* at 46,624.

168. When announcing the amended regulations, Defendants ignored the view that "preventive care" should exclude abortion-inducing drugs, sterilization, or contraceptives that do not prevent disease. Instead, they noted only that "commenters [had] asserted that requiring group health plans sponsored by religious employers to cover contraceptive services that their faith deems contrary to its religious tenets would impinge upon their religious freedom." *Id.*, at 46,623.

169. Defendants sought "to provide for a religious accommodation that respect[ed]" only "the unique relationship between a house of worship and its employees in ministerial positions." *Id.*,

170. Specifically, the regulatory "religious employer" exemption ignored definitions of religious employers already existing in federal law. Instead, the exemption is available only to those employers whose purpose is to inculcate religious values, and who employ and serve primarily individuals with the same [*60] religious tenets. It provides in full:

- (A) In developing the binding health plan coverage guidelines specified in this paragraph (a)(1)(iv), the Health Resources and Services Administration shall be informed by evidence and may establish exemptions from such guidelines with respect to group health plans established or maintained by religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers with respect to any requirement to cover contraceptive services under such guidelines.
- (B) For purposes of this subsection, a "religious employer" is an organization that meets all of the following 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.
 - (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.

Id. at 46,626 (codified [*61] at 45 C.F.R. § 147.130(a)(iv)(A)-(B)).

171. The regulation delegates to the Government the job of issuing exemptions, on an *ad hoc* basis, based on a determination of whether an organization is sufficiently "religious" to qualify for the exemption.

172. The religious employer exemption mandates an unconstitutionally invasive inquiry into an organization's religious purpose, beliefs, and practices.

173. Similarly, the religious employer exemption further mandates an impermissibly invasive inquiry into the private religious beliefs of the individuals that an organization employs and serves.

174. The religious employer exemption also uses numerous impermissibly vague, undefined terms that extend the agency's already broad discretion and fail to provide organizations with

notice of their duties and obligations. There is no definition for the numerous vague terms, including "inculcation of religious values," "purpose of the organization," "primarily," and "religious tenets." Similarly, there is no indication of whether an agency with multiple purposes can qualify and how much overlap there must be for religious tenets to be "share [d]."

175. The religious employer exemption does [*62] not appear to apply to educational organizations as defined in Section 170(b)(1)(A)(ii) of the Internal Revenue Code.

176. Defendants ignored all other religiously affiliated employers and insurance issuers, excluding from the narrow exemption all religious organizations that view their missions as providing charitable, educational, and employment opportunities to all those who request it, regardless of the requesters' religious faith.

177. When issuing this interim final rule, Defendants did not explain why they issued such a narrow religious exemption. Nor did Defendants explain why they refused to incorporate other "longstanding Federal laws to protect conscience" that President Obama's executive order previously had promised to respect. See Exec. Order No. 13535, *75 Fed. Reg. 15,599* (Mar. 24, 2010).

178. ERISA, for example, has long excluded "church plans" from its requirements, more broadly defined to cover civil law corporations that share common religious bonds and convictions with a church, including organizations like Catholic Charities, Father Ryan, JPPII, the Mary Entities, and Aquinas College. See [29 U.S.C. §§ 1002\(33\)\(C\)\(iv\)](#), [*63] 1003.

179. It is unclear whether Plaintiffs Diocese, Catholic Charities, Father Ryan, JPPII, MQA, St. Mary Villa, and Aquinas College qualify for the exemption from compliance with the U.S. Government Mandate offered to organizations deemed "religious employers" under the U.S. Government Mandate's narrow exemption.

180. Moreover, determining whether Plaintiffs qualify for the exemption will require the Government to engage in an intrusive inquiry, based on principles inconsistent with the Catholic faith, into whether, in the view of HHS, (1) Plaintiffs' "purpose" is the "inculcation of religious values"; (2) whether Plaintiffs "primarily" employ "persons who share [their] religious tenets," even though they hire people of all faiths and do not know how many Catholics they employ; and (3) whether Plaintiffs "primarily" serve such people, even though their facilities, schools, hospitals, and social services are open to all, without regard to their religion.

181. Regardless of the outcome, Plaintiffs strongly object to such an intrusive and misguided governmental investigation into their religious missions.

182. Nor did Defendants consider whether they had a compelling interest to [*64] require religiously affiliated employers' health plans to include services that violate the employers' religious beliefs, or whether Defendants could achieve their views of sound policy in a more religiously accommodating manner.

183. Suggesting that they were open to good-faith discussion, Defendants once again permitted parties to provide comments to the amended rules. Numerous organizations expressed the same concerns that they had before, noting that abortion-inducing drugs, sterilization, and

contraceptive services could not be viewed as "preventive care." They also explained that the religious 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, at 1-2 (Aug. 31, 2011), *available at* <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf>.

184. For example, the American Center for Law and Justice, on behalf of the Dominican Sisters of the Congregation of St. Cecilia of Nashville, noted that the Congregation should not be forced to "provide [*65] insurance coverage for services that are contrary to its basic religious tenets." See Letter of American Center for Law and Justice to Centers for Medicare & Medicaid Services (Sept. 29, 2011).

185. On October 10, 2011, less than two weeks after the American Center for Law and Justice's letter, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. She told the pro-choice audience that "we are in a war," apparently with opponents of either federal funding of abortion-related services or federal mandates requiring coverage for abortion-related services in health care plans.

186. Three months later, allegedly "[a]fter evaluating [the new] comments" to the interim final rules, Defendants gave their response. They did not request further discussion or make attempts at compromise. Nor did they explain the basis for their decision. Instead, Defendant Sebelius issued a short, Friday-afternoon press release on January 20, 2012. See HHS, A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* www.hhs.gov/news/press/2012pres/01/20120120a.html.

187. The press release announced a one-year "safe harbor" from enforcement. [*66] With little analysis or reasoning, HHS opted to keep the exemption unchanged, but indicated that "Monprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law." *Id.*

188. Taken together, these various rules and press releases amount to a U.S. Government Mandate that requires most religiously affiliated organizations to pay, sponsor and facilitate abortion-inducing drugs, sterilization services, contraceptives and related counseling services through their health plans. As noted by Cardinal Timothy Dolan, the "safe harbor" effectively gave objecting religious institutions "a year to figure out how to violate [their] consciences."

C. The White House Has Refused To Expand The Exemption

189. On February 10, 2012, given the continued public outcry to the U.S. Government Mandate and its exceedingly narrow conscience protections, the White House held a press conference and issued another press release about the U.S. Government Mandate, announcing that it had come up with a "solution" to the religious objections based on First Amendment [*67] protections for religious freedom.

190. According to the White House, Defendants planned to issue regulations at some unspecified date prior to August 1, 2013, to exempt religious organizations that have religious

objections to providing abortion-inducing drugs, sterilization, or contraception services from *directly* paying for those services under the terms of their health plans.

191. When such religious organizations provide health plans, the "insurance company will be required to directly offer . . . contraceptive care free of charge." White House, *Fact Sheet: Women's Preventive Services and Religious Institutions* (Feb. 10, 2012), available at <http://www.hhs.gov/news/press/2012pres/01/20120120a.html>.

192. Despite continued objections that this "accommodation" did nothing of substance to protect the right of conscience, when asked if there would be further room for compromise, White House Chief of Staff Jacob Lew responded: "No, this is our plan." David Eldridge & Cheryl Wetzstein, *White House says contraception compromise will stand*, THE WASHINGTON TIMES, Feb. 12, 2012, available at www.washingtontimes.com/news/2012/feb/12/white-house-birth-control-compromise-will-stand/print/. **[*68]**

193. Defendants have since "finalize[d], without change," the interim final rules containing the religious employer exemption, 77 Fed. Reg. at 8729, and issued guidelines regarding the previously announced "temporary enforcement safe harbor" for "non-exempted, non-profit religious organizations with religious objections to such coverage." *Id.* at 8725; see Ctr. for Consumer Info. & Ins. Oversight, *Guidance on the Temporary Enforcement Safe Harbor* (Feb. 10, 2012), available at <http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf>.

194. A discussion accompanying the final rule indicates that, prior to the end of the safe-harbor period, the Defendants "*plan to initiate* a rulemaking to require issuers to offer insurance without contraception coverage to [an objecting religious] employer (or plan sponsor) and simultaneously to offer contraceptive coverage directly to the employer's plan participants (and their beneficiaries) who desire it, with no cost-sharing." 77 Fed. Reg. at 8728 (emphasis added).

195. The U.S. Government Mandate is therefore the current, operative law.

196. On March 16, 2012, the **[*69]** Government announced an Advance Notice of Proposed Rulemaking ("ANPRM"), seeking comment on various ways to structure the proposed accommodation. Certain Preventive Services Under the Affordable Care Act, [*77 Fed. Reg. 16,501*](#) (Mar. 21, 2012).

197. The ANPRM launched a 90-day comment period, to be followed by several other steps in the rulemaking process; it offers no clear end date other than repeating the assurance that an accommodation will be in place by August 1, 2013. *See id.*

198. The ANPRM's recurring theme is that the Government has not found a solution to the problems it created when it promulgated its U.S. Government Mandate.

199. In fact, the ANPRM contains little more than a recitation of proposals, hypotheticals, and "possible approaches." It offers almost no analysis of the relative merits of the various proposals. It is, in essence, an exercise in public brainstorming.

200. The ANPRM does not alter existing law. It merely states that it may do so at some point in the future. But a promise to change the law, whether issued by the White House or in the form of an ANPRM, does not, in fact, change the law.

201. Nor does the ANPRM alter the scope of the [*70] narrow religious employer exemption.

202. In promulgating the U.S. Government Mandate, the Government rationalized that the time-sensitive nature of the issue justified dispensing with notice and comment. This justification is inconsistent with the Government's subsequent delays in implementing the U.S. Government Mandate.

203. The ANPRM does nothing of substance to avoid involving Plaintiffs in the subsidy, provision and/or facilitation of abortion-inducing drugs, sterilization services, contraceptives and related counseling services or otherwise eliminate the constitutional and statutory infirmity of the U.S. Government Mandate.

D. The Temporary Enforcement Safe Harbor is Expanded

204. In order to meet the temporary enforcement safe harbor that the Government implemented in early 2012, entities must comply with four requirements:

1. The organization is organized and operates as a non-profit entity.
2. From February 10, 2012 onward, contraceptive coverage has not been provided at any point by the group health plan established or maintained by the organization, consistent with any applicable State law, because of the religious beliefs of the organization.
3. [*71] [T]he group health plan established or maintained by the organization . . . must provide to participants . . . notice . . . which states that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.
4. The organization self-certifies that it satisfies criteria 1-3 above, and documents its self-certification in accordance with the procedures detailed herein.

77 Fed. Reg. at 8725; Ctr. for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Feb. 10, 2012), *available at* ccio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf.

205. On August 15, 2012, the Center for Consumer Information and Insurance Oversight (CCIIO) and the Centers for Medicare and Medicaid Services (CMS) issued additional guidance expanding the temporary enforcement safe harbor. The Government clarified that a group health plan that otherwise would have qualified for the safe harbor will get the benefit of the safe harbor if it "took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because [*72] of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action." The bulletin offers no guidance as to what actions will qualify as "some action." See Ctr. for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Aug. 15, 2012), *available at* ccio.cms.gov/resources/files/prev-services-guidance-08152012.pdf.

206. Despite expanding its ad hoc "safe harbor" from enforcement, the Government's retroactive revision of the requirements to qualify for the safe harbor did nothing for religious entities with plan years starting on August 1, 2012, because it did not remove the requirement that "notice must be in any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of the first plan year that is on or after August 1, 2012." *Id.* Religious entities with plan years beginning on August 1, 2012 cannot retroactively comply with the newly expanded safe harbor by sending revised notices to plan participants.

207. The newly expanded safe harbor scheme creates yet another gap in the [*73] Government's enforcement of the U.S. Government Mandate, this time disfavoring religious entities who have the misfortune of having plan years that started between August 1, 2012, when the original safe harbor provision went into effect, and August 15, 2012, when the newly expanded safe harbor guidance was issued. The Government cannot offer a compelling reason for this this arbitrary system of enforcement of and exemptions from the U.S. Government Mandate.

E. The U.S. Government Mandate Has Harmed and Continues to Harm Plaintiffs

208. In implementing the U.S. Government Mandate, the ANPRM, and the temporary enforcement safe harbor, the Government applied a "regulate first, think later" approach that is not an acceptable method of rulemaking, especially when the Government is regulating in a way that may require monumental changes on the part of the regulated entities.

209. The U.S. Government Mandate is already causing serious, ongoing hardship to Plaintiffs that merits judicial review now,

210. The U.S. Government Mandate has forced the Mary Entities to provide coverage for oral contraception in direct violation of their sincerely held religious beliefs.

211. Even under [*74] the newly expanded temporary enforcement safe harbor, the Mary Entities are still required to provide contraceptive coverage in violation of their consciences,

212. Moreover, the uncertainty surrounding the implementation of the U.S. Government Mandate has actually increased the harms all Plaintiffs are incurring. With the regulatory landscape so unsettled, it is impossible for Plaintiffs to develop their future health plans.

213. Health plans do not take shape overnight. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement health plans for their employees.

214. Under normal circumstances, Plaintiffs must begin the process of determining their health care packages around one year before the plan years begin. The multiple levels of uncertainty swirling around the U.S. Government Mandate, the temporary enforcement safe harbor, and the ANPRM make the already lengthy process of preparing a health benefits package even more complex.

215. For example, the planning process for Aquinas College's health plan-including analysis, consultation, and negotiations-begins in early Spring and all decisions must then be made by

August for the following plan year. [*75] Implementing even basic changes to Plaintiffs' health plans requires substantial lead time.

216. The U.S. Government Mandate, however, may require Plaintiffs to make significant, and likely revolutionary, changes to their employee health plans. Plaintiffs, moreover, may need to restructure their programs or health plans to fit within the U.S. Government Mandate's requirements. Such changes will require substantially more lead time.

217. Even assuming Plaintiffs other than the Mary Entities are entitled to the benefit of the safe harbor, they must be prepared to implement modified health coverage as early as September 1, 2013 for Aquinas College and January 1, 2014 for the Plaintiffs providing coverage under the Diocesan health plan.

218. The temporary enforcement safe harbor does not provide relief to Plaintiffs from the U.S. Government Mandate, which is the current, operable law. The temporary enforcement safe harbor does nothing but briefly delay the harm Plaintiffs are suffering and will continue to suffer, without judicial relief.

219. The Mary Entities, moreover, obtain no relief from the temporary enforcement safe harbor because they have the misfortune of having a plan year [*76] beginning August 1, 2012, a date the Government has arbitrarily chosen to disfavor.

220. By the time that any new rule is finalized, if ever, it will be too late for Plaintiffs to bring their health plans into compliance with the law.

221. Even with respect to the grandfathered PPO plan offered by the Diocese, Plaintiffs that offer employee health coverage through the Diocesan plans (the Diocese, Catholic Charities, Father Ryan, and JPIL) are currently, and in the foreseeable future will be, negotiating new and existing insurance contracts. The fact that these Plaintiffs cannot change their plans without losing grandfathered status severely limits their bargaining power with their insurers, substantially interferes with their operations, and places significant and ever-increasing financial burdens on them in the event that they choose to uphold their religious beliefs by attempting to maintain grandfathered status.

222. In addition, if Plaintiffs do not comply with the U.S. Government Mandate, they may be subject to huge annual fines and penalties. Plaintiffs are already taking these onerous fines into consideration with respect to their budgeting decisions. Accordingly, the uncertainty [*77] of the U.S. Government Mandate's application and penalties may cause other budgeted expenses to go unfunded.

223. The U.S. Government Mandate thus imposes a present and ongoing hardship on Plaintiffs.

III. The U.S. Government Mandate, The Proposed Accommodation, And The Religious Employer Exemption Violate Plaintiffs' Religious Beliefs

A. The U.S. Government Mandate Violates Plaintiffs' Religious Beliefs

224. The Catholic Church's well-established religious beliefs are articulated in the Catechism of the Catholic Church. One of the central tenets of the Catholic faith is belief in the sanctity of

human life and the dignity of all persons. Thus, the Church believes that the "dignity of the human person is rooted in his creation in the image and likeness of God." Catechism of the Catholic Church P 1700.

225. One outgrowth of belief in human life and dignity is the Church's well-established belief that "[h]uman life must be respected and protected absolutely from the moment of conception." *Id.* P 2270. As a result, the Church believes that "abortion is gravely contrary to the moral law" and that it cannot facilitate the provision of abortion-inducing drugs. [*78] *Id.* PP 2271-72.

226. Catholic teachings prohibit any action which "render[s] procreation impossible" and, more specifically, regard direct sterilization as "unacceptable." *Id.* PP 2370, 2399.

227. These Catholic teachings have been reaffirmed as doctrine at various times including on July 25, 1968, when his holiness Pope Paul VI issued his encyclical *Humanae Vitae* (Human Life) and again on March 25, 1995, when his holiness Pope John Paul II issued his encyclical *Evangelium Vitae* (The Gospel of Life).

228. Partially quoting *Humanae Vitae*, the Catechism states that "'every action which, whether in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible' is intrinsically evil." Catechism of the Catholic Church P 2370.

229. Catholic teachings also prohibit the use of contraceptives to impede conception. As articulated by the Catechism of the Catholic Church, 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 [*79] be separated without altering the couple's spiritual life and compromising the goods of marriage and the future of the family." *Id.* P 2363. Consequently, artificial contraception and sterilization cannot be used for the purpose of impeding procreation. *Id.* P 2370.

230. Plaintiffs' sincerely held religious beliefs follow the teachings of the Catholic Church. Plaintiffs cannot, without violating their sincerely held religious beliefs, subsidize, facilitate, and/or sponsor coverage for the required "contraceptive methods" and "sterilization procedures," which are inconsistent with the teachings of the Catholic Church.

231. Plaintiffs have adhered to their religious beliefs by undertaking efforts to provide their employees with benefits plans that do not include coverage for prohibited abortion, sterilization, contraception, or related education and counseling. These efforts have thus far been successful for all Plaintiffs except the Mary Entities.

232. The U.S. Government Mandate irreconcilably conflicts with Plaintiffs' well-established, sincerely held beliefs by requiring Plaintiffs to subsidize, pay for, provide, and/or facilitate the provision of services that are contrary [*80] to their religious beliefs.

233. The U.S. Government Mandate also seeks to compel Plaintiffs to fund "patient education and counseling for all women with reproductive capacity." It therefore compels Plaintiffs to pay for, provide, and/or facilitate speech that is contrary to their firmly held religious beliefs.

234. Plaintiffs vigorously exercise their freedom of speech on the issue of abortion. For example, each year Aquinas College sponsors a group of students to attend the national March for Life in Washington, D.C., carrying a banner bearing the College's emblem. The College also sponsors a Cemetery of the Innocent each year in support of the sanctity of all human life, where students and friends of the College place hundreds of white crosses in a lawn on the College's campus as a symbolic commemoration of the millions of lives lost to abortion and statement about the sanctity of all human life, particularly that of the unborn. Finally, the College's students, faculty, and staff join other Christians each year in the national "40 Days for Life" effort in which Christians from across the country pray that abortion will end in the United States. These and other efforts reflect [*81] Plaintiffs' strong pro-life commitment.

235. Refusal or failure to provide required "contraceptive methods," "sterilization procedures," and "patient education and counseling" to employees may expose Plaintiffs to substantial fines. See Cong. Research Serv., RL 7-5700 (analyzing some of the available fines).

236. In short, requiring Plaintiffs to provide, subsidize, pay for, and/or facilitate access to devices, drugs, procedures, or services that violate their beliefs constitutes a substantial burden on Plaintiffs' free exercise of religion.

237. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely held religious beliefs by requiring them to provide, subsidize, pay for, and/or facilitate access to abortion-inducing drugs, sterilizations, and contraceptives. 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,

238. Furthermore, the U.S. Government Mandate [*82] is not narrowly tailored to promote a compelling governmental interest. Even assuming the interest was compelling, the Government has numerous alternatives to furthering that interest other than forcing Plaintiffs to violate their religious beliefs,

239. For example, the Government could provide or pay for the objectionable services through expansion of its existing network of family planning clinics funded by HHS under Title X or through other programs established by a duly enacted law. Or, at a minimum, it could create a broader exemption for religious employers, such as those found in numerous state laws throughout the country and in other federal laws.

240. The Government therefore cannot possibly demonstrate that requiring Plaintiffs to violate their consciences is the least restrictive means of furthering its interest.

241. The U.S. Government Mandate compels Plaintiffs to consider restructuring their admissions, employment, and service programs to discriminate on the basis of religion in an overt and potentially illegal fashion.

242. Before feeding the hungry, placing adoptive children into permanent families, and assisting refugees, Catholic Charities would be forced to [*83] inquire whether those it serves are Catholic and impose restrictive quotas on the availability of its social services to non-Catholics.

243. Aquinas College, Father Ryan, and JPPII would be forced to inquire both into the nature and sincerity of the faith of prospective students, turning away Protestants, Muslims, Jews, atheists, and those that the Government may not find to be sufficiently Catholic-or at the very least, imposing strict quotas that ensure that they do not "primarily" serve such students.

244. Aquinas College's, Father Ryan's, and JPPII's financial aid programs designed to reach poor and underprivileged students regardless of religion would have to be redesigned to exclude non-Catholics. The Mary Entities' subsidization of care for needy children, their families, and the elderly would have to be similarly restricted.

245. Meanwhile, Plaintiffs would potentially subject themselves to a host of employment discrimination suits if they restricted employment to coreligionists.

246. Moreover, any attempts by Plaintiffs to qualify for the narrow religious exemption by restricting their charitable and educational mission to Catholics would have devastating effects on the [*84] Middle Tennessee and greater communities.

247. Forcing Aquinas College to stop educating non-Catholic nurses would have a significant, negative impact on the availability of quality healthcare services in the Nashville area in the coming years.

248. Forcing the non-Catholic students attending the Diocese's grade schools and high schools to leave the Catholic school system would deprive these students and their parents of a safe, positive, structured, and academically rigorous education in an area where there are very few comparable alternatives.

249. The vacuum left in Middle Tennessee by Plaintiffs' inability to serve non-Catholics would be impossible to fill.

250. In order to restrict the provision of services to Catholics, Plaintiffs would have to inquire about the religious beliefs and membership of any person who approached them or the programs which Plaintiffs support. Verifying the religious status of every poor, hungry, disabled, or otherwise underserved person asking for assistance from Plaintiffs would clearly present a logistical problem of significant proportions-and would seriously hamstring Plaintiffs' ability to serve even those persons who were ultimately able to [*85] prove their membership in the Catholic Church. As President Obama acknowledged in his February 10th announcement, religious organizations like Plaintiffs do "more good for a community than a government program ever could."

251. This unprecedented, direct assault on the religious beliefs of Plaintiffs and all Catholics is irreconcilable with American law. Since the founding of this country, one of the basic freedoms central to our society and legal system is that individuals and institutions are entitled to freedom of conscience and religious practice. See, e.g., James Madison, *Memorial and Remonstrance Against Religious Assessments*, P 1 (1785).

B. The U.S. Government Mandate's Religious Employer Exemption Aggravates The Constitutional And Statutory Violations

252. The constitutional and statutory violations of the U.S. Government Mandate are aggravated, not alleviated, by its "religious employer" exemption (identified in paragraph 170 above).

253. The religious employer exemption substantially burdens Plaintiffs' religious exercise. The exemption forces Plaintiffs to choose between their religious beliefs (that abortion-inducing drugs, sterilization, and contraception [*86] are strictly forbidden) and their missions (serving, employing, providing care for, and educating individuals of all faith traditions to enrich and enlighten) versus obeying the law.

254. In addition to believing in the sanctity of human life from conception, Plaintiffs believe that devotion to God is demonstrated through devotion to fellow man and service of others; the two are so closely related and dependent upon each other that they cannot be separated. Catholic doctrine recognizes that "[l]iving faith 'work[s] through charity.'" Catechism of the Catholic Church P 1814.

255. To effectuate this religious belief, Plaintiffs-like the Catholic Church that inspires their work-are committed to serving anyone in need, regardless of religion.

256. In addition to serving individuals of all faiths, Plaintiffs also employ, serve, and in some cases provide medical care for, feed, and educate individuals of all faiths.

257. Although the Government exempts some religious institutions from the U.S. Government Mandate, it has crafted such a narrow exemption that thousands of sincere religious institutions are being forced to make the unconscionable "choice" between violating their religious [*87] beliefs or violating the law.

258. Both the Constitution and RFRA protect religious institutions, whether or not their purpose is the "inculcation of religious values" and whether or not they "primarily" serve and employ people with shared "religious tenets."

259. However, only institutions with such a narrow purpose and with such limitations on employees and services qualify for the religious employer exemption under the U.S. Government Mandate.

260. Forcing Plaintiffs to choose between violating their religious beliefs or violating the law constitutes a substantial burden on Plaintiffs' exercise of religion, which is protected by the Constitution and RFRA.

261. The Government also has not provided any process by which Plaintiffs can determine whether they fit within the exemption.

262. It is unclear how the Government defines or will interpret religious "purpose."

263. It is unclear how the Government defines or will interpret vague terms, such as "primarily," "share," and "religious tenets."

264. It is unclear how the Government will ascertain the "religious tenets" of Plaintiffs, those they employ, and those they serve.

265. It is unclear how much overlap the Government [*88] will require for religious tenets to be "share[d]."

266. Plaintiffs encourage their employees to remain committed to Catholicism's core values. For example, Aquinas College asks its employees to sign a "Witness Statement," certifying, among other things, that employees will respect ecclesiastical authority. However, it is unclear how the Government will view Plaintiffs' employees' religious tenets.

267. Any attempt by Plaintiffs to qualify for the narrow religious employer exemption by restricting their charitable and educational missions to serving primarily Catholics would have devastating effects on the communities Plaintiffs serve.

Indeed, the Government does not even provide Plaintiffs the option to attempt to avoid the U.S. Government Mandate by exiting the health care market. Eliminating their employee group health plan or refusing to provide plans that cover abortion-inducing drugs, sterilization, or contraceptives would expose each Plaintiff to substantial annual fines. It is no "choice" to leave those employees scrambling for health insurance while subjecting Plaintiffs to significant fines for breaking the law. Yet that is what the U.S. Government Mandate requires for [*89] Plaintiffs to adhere to their religious beliefs.

269. The limited and ill-defined religious exemption provided in the U.S. Government Mandate conflicts with the Constitution and RFRA.

C. The U.S. Government Mandate's Religious Employer Exemption Excessively Entangles The Government In Religion, Interferes With Religious Institutions' Religious Doctrine, And Discriminates Against And Among Religions

270. The U.S. Government Mandate's religious employer exemption further excessively entangles the Government in defining the religious tenets of each Plaintiff organization and their employees and beneficiaries.

271. In order to determine whether Plaintiffs-or any other religious organizations-qualify for the exemption, the Government would have to decide Plaintiffs' "religious tenets" and determine whether "the purpose" of the organization is to "inculcate" those tenets.

272. The Government would then have to conduct an inquiry into the practices and beliefs of the individuals that Plaintiffs ultimately employ and the individuals for whom Plaintiffs provide social services, medical care, food, and educational instruction.

273. The Government would then have to compare and contrast [*90] those religious practices and beliefs to determine whether and how many of them are "share [d]."

274. Regardless of the outcome, this inquiry is unconstitutional, and Plaintiffs strongly object to such an intrusive governmental investigation into their religious missions.

275. The religious employer exemption is based on an improper Government determination that "inculcation" is the only legitimate religious purpose.

276. The Government should not base an exemption on an assessment of the "purity" or legitimacy of an institution's religious purpose.

277. By limiting that legitimate purpose to inculcation, at the expense of other sincerely held religious purposes, the U.S. Government Mandate interferes with religious autonomy and attempts to divest Plaintiffs of their religious liberties. Plaintiffs have the right to determine their own religious purposes, including religious purposes broader than inculcation, without Government interference.

278. Likewise, the exemption seeks to improperly limit the definition of legitimate religious organizations to those who primarily employ and serve "persons who share the religious tenets of the organization." 45 C.F.R. § 147.130(a)(iv)(B)(2)-(3). [*91] This is inconsistent with the definition of religion under the Constitution and RFRA.

279. Defining religion based on employing and serving primarily people who share the organization's religious tenets directly contradicts Plaintiffs' sincerely held religious beliefs regarding their religious mission to serve all people, regardless of whether or not they share the same faith.

280. The U.S. Government Mandate and its extremely narrow religious employer exemption discriminate against Catholic religious institutions.

281. The U.S. Government Mandate targets Plaintiffs precisely because of their adherence to their religious opposition to abortion-inducing drugs, sterilization, and contraception.

282. The religious employer exemption targets Plaintiffs precisely because of their commitment to serve, employ, provide social services for, and educate, people of all faiths.

283. Plaintiffs cannot be forced to give up their beliefs on abortion-inducing drugs, sterilization, or contraception, nor their devotion to serving all mankind, without violating their religious beliefs and compromising their religious purpose.

284. The U.S. Government Mandate and its extremely narrow religious employer [*92] exemption discriminate among religions. The U.S. Government Mandate favors religions that do not oppose abortion-inducing drugs by putting the Government imprimatur on those beliefs as correct.

285. Similarly, the religious employer exemption favors religions that do not believe in serving all humanity by exempting them from its requirements.

286. As a result of such discrimination, the U.S. Government Mandate is subject to the strictest scrutiny under the Constitution, as well as RFRA.

D. The U.S. Government Mandate Is Not A Neutral Law Of General Applicability

287. The U.S. Government Mandate is not a neutral law of general applicability. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling. For example, the U.S. Government Mandate exempts all "grandfathered" plans from its

requirements. Moreover, the legislative history indicates that the U.S. Government Mandate was implemented at the behest of individuals and organizations who disagree with certain religious beliefs regarding abortion-inducing drugs and contraception, [*93] and thus it targets religious organizations for disfavored treatment.

288. The Government has also crafted a religious employer exemption to the U.S. Government Mandate that favors certain religions over others. As noted, it applies only to plans sponsored by religious organizations that have, as their "purpose," the "inculcation of religious values"; that "primarily" serve individuals that share those religious tenets; and that "primarily" employ such individuals. 45 C.F.R. § 147.130(a)(iv)(B).

289. Moreover, the U.S. Government Mandate was promulgated by Government officials and supported by non-governmental organizations that strongly oppose Catholic teachings and beliefs regarding marriage and family. For example, on October 5, 2011, after Defendants announced the interim final rule but before they announced the final rule, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. Defendant Sebelius has long been a staunch supporter of abortion rights and a vocal critic of Catholic teachings and beliefs regarding abortion-inducing drugs and contraception. NARAL Pro-Choice America is a pro-abortion organization that likewise opposes many Catholic teachings. At the [*94] October 5, 2011 fundraiser, Defendant Sebelius criticized individuals and entities whose beliefs differed from those held by her and the other attendees, 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."

290. Consequently, on information and belief, Plaintiffs allege that the purpose of the U.S. Government Mandate, including the narrow religious employer exemption, is to discriminate against religious institutions and organizations that oppose contraception, sterilization, and abortion-inducing drugs.

291. An actual, justiciable controversy exists between Plaintiffs and Defendants. Absent a declaration resolving this controversy and the validity of the U.S. Government Mandate and exemption, Plaintiffs are uncertain as to their rights and duties in planning, negotiating, and/or implementing their group health plans, and they are threatened with the impossible choice between paying for prescriptions and procedures in violation of the Catholic Church's moral teaching, or discontinuing their health plans in violation of the Catholic Church's social teaching. [*95]

IV. CAUSES OF ACTION

COUNT I

Substantial Burden on Religious Exercise in Violation of RFRA

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

293. 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.

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

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

296. Abortion-inducing drugs, sterilization, and contraception violate the Catholic beliefs and tenets to which Plaintiffs must adhere according to the Church's magisterial teachings and the Catechism of the Catholic Church.

297. Plaintiffs' religious beliefs preclude them from offering health care plans to their employees that include or facilitate coverage for abortion-inducing [*96] drugs, sterilization, and contraception, or related education and counseling about those practices.

298. Plaintiffs have exercised their religious beliefs by, for example, undertaking efforts to provide their employees with benefits plans that do not include coverage for prohibited abortion, sterilization, contraception, or related education and counseling.

299. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate practices and speech that are contrary to their religious beliefs concerning abortion-inducing drugs, sterilization, and contraception.

300. The U.S. Government Mandate exposes Plaintiffs to substantial monetary fines if they refuse to abandon their religious beliefs by offering an employee health care plan that includes or facilitates coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling about those practices.

301. In order to qualify for the narrow exemption to the U.S. Government Mandate, Plaintiffs would have to submit to an intrusive and burdensome governmental inquisition into whether their "purpose" is the "inculcation of religious values," whether they "primarily" employ Catholics, [*97] and whether they "primarily" serve Catholics. And the Government may decide that Plaintiffs do not meet those standards.

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

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

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

305. By enacting and threatening to enforce the U.S. Government Mandate against Plaintiffs, the Government has violated RFRA.

306. Plaintiffs have no adequate remedy at law.

307. The U.S. Government Mandate and its impending enforcement impose 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

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

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

310. The Free Exercise Clause [*98] protects organizations as well as individuals from Government-imposed burdens on religious exercise.

311. Abortion-inducing drugs, sterilization, and contraception violate the Catholic beliefs and tenets to which Plaintiffs must adhere according to the Church's teachings and the Catechism of the Catholic Church.

312. Plaintiffs' religious beliefs preclude them from offering health care plans to their employees that include or facilitate coverage for abortion-inducing drugs, sterilization, contraception, or related education and counseling about those practices.

313. Plaintiffs have exercised their religious beliefs by, for example, undertaking efforts to provide their employees with benefits plans that do not include coverage for prohibited abortion, sterilization, contraception, or related education and counseling.

314. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate practices and speech that are contrary to their religious beliefs concerning abortion-inducing drugs, sterilization, and contraception.

315. The U.S. Government Mandate exposes Plaintiffs to substantial monetary fines if they refuse to abandon their religious beliefs by offering [*99] health care plans that include or facilitate coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling about those practices.

316. In order to qualify for the narrow exemption to the U.S. Government Mandate, Plaintiffs would have to submit to an intrusive and burdensome governmental investigation into whether their "purpose" is the "inculcation of religious values," whether they "primarily" employ Catholics, and whether they "primarily" serve Catholics. And Plaintiffs may not meet those standards.

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

318. The U.S. Government Mandate is not a neutral law of general applicability, because it is riddled with exemptions. It offers multiple exemptions from its requirement that employer-based health plans include or facilitate coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling.

319. The U.S. Government Mandate is not a neutral law of general applicability, because it discriminates against certain religious viewpoints and targets certain religious organizations for disfavored treatment. Defendants [*100] enacted the U.S. Government Mandate despite being aware of the substantial burden it would place on Plaintiffs' exercise of religion.

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

321. The U.S. Government Mandate offers discretionary exemptions for certain religious entities, but not for others.

322. In its practical effect, the U.S. Government Mandate targets and predominantly burdens religiously motivated conduct.

323. The Government issued the U.S. Government Mandate to suppress the religious exercise of Plaintiffs and other entities with analogous religious beliefs.

324. The U.S. Government Mandate is not a neutral law of general applicability, and so is subject to strict scrutiny.

325. The U.S. Government Mandate infringes not simply the Free Exercise Clause, but also the Free Speech Clause, and so is subject to strict scrutiny.

326. The Government was aware of the substantial burden the U.S. Government Mandate would place on Plaintiffs' exercise of religion, but the Government did [*101] not identify any compelling governmental interest for requiring Plaintiffs to comply with the U.S. Government Mandate.

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

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

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

330. Plaintiffs have no adequate remedy at law.

331. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT III

Excessive Entanglement in Violation of the Free Exercise and Establishment Clauses of the First Amendment

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

333. The Free Exercise Clause and the Establishment Clause of the First Amendment prohibit intrusive government inquiries into the religious beliefs of individuals and institutions, and other forms of excessive entanglement between religion [*102] and Government.

334. This prohibition on excessive entanglement protects organizations as well as individuals.

335. In order to qualify for the exemption to the U.S. Government Mandate for "religious employers," an entity must submit to an invasive government investigation into its religious beliefs, including whether the organization's "purpose" is the "inculcation of religious values" and whether the organization "primarily employs" and "primarily serves" individuals who share the organization's religious tenets.

336. It is unclear how the Government will determine whether an organization meets the U.S. Government Mandate's definition of a sufficiently "religious" organization.

337. The U.S. Government Mandate thus requires the Government to engage in invasive inquiries and judgments regarding questions of religious belief or practice.

338. The U.S. Government Mandate results in an excessive entanglement between religion and Government.

339. The U.S. Government Mandate is therefore unconstitutional and invalid,

340. The enactment and impending enforcement of the U.S. Government Mandate violate the Free Exercise Clause and the Establishment Clause of the First Amendment, [*103]

341. Plaintiffs have no adequate remedy at law.

342. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT IV

Religious Discrimination in Violation of the Free Exercise and Establishment Clauses of the First Amendment

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

344. The Free Exercise Clause and the Establishment Clause of the First Amendment mandate the equal treatment of all religious faiths and institutions without discrimination or preference.

345. This mandate of equal treatment protects organizations as well as individuals,

346. The U.S. Government Mandate offers exemptions from its requirement that health plans include coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling for some religious institutions on the basis of stated criteria.

347. The U.S. Government Mandate discriminates on the basis of religious views or religious status.

348. The U.S. Government Mandate's narrow exemption for certain "religious employers" but not others discriminates on the basis of religious [*104] views or religious status.

349. The U.S. Government Mandate's definition of religious employer likewise discriminates among different types of religious entities based on the nature of those entities' religious beliefs or practices.

350. The U.S. Government Mandate's definition of religious employer likewise furthers no compelling governmental interest.

351. The U.S. Government Mandate's definition of religious employer likewise is not narrowly tailored to further a compelling governmental interest.

352. The enactment and impending enforcement of the U.S. Government Mandate violate the Free Exercise Clause and the Establishment Clause of the First Amendment.

353. Plaintiffs have no adequate remedy at law.

354. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT V

Excessive Interference in Matters of Internal Governance in Violation of the Free Exercise and Establishment Clauses of the First Amendment

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

356. The Free Exercise Clause and Establishment Clause protect the freedom of religious [*105] organizations to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.

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

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

359. Plaintiffs are nonprofit, religiously based organizations which operate in a fashion consistent with and supportive of the religious mission and teachings of the Universal Roman Catholic Church.

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

361. 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.

362. The Government may not interfere with the Catholic Church and its affiliated religious organizations, [*106] including Plaintiffs, with regard to their religious beliefs on abortion-inducing drugs, sterilization, and contraception.

363. In accordance with this Catholic doctrine, Plaintiffs' have made the internal decision that their employee health plans should not cover, subsidize, or facilitate abortion-inducing drugs, sterilization, and contraception, and have undertaken efforts to eliminate these services and drugs from their plans.

364. The U.S. Government Mandate interferes with Plaintiffs' internal decisions concerning their structure and mission by requiring them to either facilitate practices that directly conflict with Catholic tenets or face substantial penalties.

365. Plaintiffs and the Church believe that Plaintiffs are integral parts of the Church that serve from the heart of the Church.

366. The U.S. Government Mandate and its religious employer exemption interfere with the organizational structure of Plaintiffs as part of the Church by requiring Plaintiffs to include or facilitate coverage for practices that directly conflict with their Catholic tenets while purporting to exempt the Church from the U.S. Government Mandate.

367. Before issuing the U.S. Government Mandate, [*107] Defendants made no showing that their interference with the internal decision-making and organizational structure of Plaintiffs was necessary to advance any compelling government interest.

368. The U.S. Government Mandate's interference with Plaintiffs' internal decision-making and organizational structure is not narrowly tailored to serve any compelling government interest.

369. Because the U.S. Government Mandate interferes with the internal decision-making and organizational structure of Plaintiffs in a manner that affects Plaintiffs' faith and mission, the U.S. Government Mandate violates the Establishment Clause and the Free Exercise Clause of the First Amendment.

370. Plaintiffs have no adequate remedy at law.

371. The U.S. Government Mandate and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VI

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

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

373. The First Amendment protects against the compelled affirmation of any religious or ideological proposition that the speaker finds [*108] unacceptable.

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

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

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

377. Plaintiffs consistently hold and publicly proclaim that abortion-inducing drugs, sterilization, and contraception violate fundamental tenets of their Catholic religion.

378. The U.S. Government Mandate is compelling the Mary Entities to include or facilitate coverage for contraception, a practice that violates their religious beliefs.

379. The U.S. Government Mandate is compelling the Mary Entities to provide or sponsor health care plans for their employees that include or facilitate coverage for drugs and services that violate their religious beliefs,

380. The U.S. Government Mandate, once the benefit of the temporary enforcement safe harbor expires, will compel Plaintiffs Diocese, Catholic Charities, Father Ryan, JPPII, and Aquinas College to provide or sponsor health care plans for their employees that include or facilitate coverage [*109] for abortion-inducing drugs, sterilization, and contraception services, practices that violate their religious beliefs.

381. The U.S. Government Mandate would compel Plaintiffs to subsidize, promote, and facilitate education and counseling services to their employees on abortion-inducing drugs, sterilization, and contraception services.

382. By imposing the U.S. Government Mandate, Defendants are compelling Plaintiffs to publicly subsidize or facilitate the activity and speech of private entities that are contrary to their religious beliefs.

383. Plaintiffs' decisions about the benefits they provide for their employees should be guided by their consciences and moral values consistent with Catholic religious standards, not artificial government guidelines.

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

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

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

387. Plaintiffs have no adequate remedy at law.

388. The U.S. Government Mandate imposes an immediate and ongoing harm on Plaintiffs that warrants relief. [*110]

COUNT VII

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

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

390. The Affordable Care Act expressly delegates to an agency within Defendant 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.

391. 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.

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

393. Defendants, instead, wholly delegated their responsibilities for issuing preventive care guidelines [*111] to a non-governmental entity, the IOM (the Institute of Medicine).

394. When crafting its guidelines recommendations, the IOM did not permit or provide for the broad public comment otherwise required 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.

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

396. Defendants have never explained why they failed to enact these "preventive care" guidelines through notice-and-comment rulemaking as required by the APA.

397. Defendants also failed to engage in notice-and-comment rulemaking when issuing the interim final rules and the final rule incorporating the guidelines.

398. Defendants' stated reasons for promulgating these rules without engaging in formal notice-and-comment rulemaking do not constitute "good cause." Providing public notice and an opportunity for comment was not impracticable, unnecessary, or contrary to the public interest for [*112] the reasons claimed by Defendants.

399. Defendants have since undertaken the first step toward a prolonged notice and comment process to promulgate amended regulations, which undermines their claims that good cause warranted abandoning notice and comment for the current regulations.

400. By enacting the "preventive care" guidelines and interim and final rules through delegation to a non-governmental entity and without engaging in notice-and-comment rulemaking, Defendants failed to observe a procedure required by law and thus violated 5 U.S.C. § 706(2)(D).

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

402. Plaintiffs have no adequate remedy at law.

403. The enactment of the U.S. Government Mandate without observance of a procedure required by law and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VIII

Arbitrary and Capricious Action in Violation of the APA

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

405. The APA condemns agency [*113] action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

406. The APA requires that an agency examine the relevant data and articulate an explanation for its action that includes a rational connection between the facts found and the policy choice made.

407. Agency action is arbitrary and capricious under the APA if the agency failed to consider an important aspect of the problem before it.

408. A court reviewing agency action may not supply a reasoned basis that the agency itself failed to offer.

409. Defendants failed to consider the suggestion of many commenters that abortion-inducing drugs, sterilization, and contraception as well as counsel and education for these services could not be viewed as "preventive care."

410. Defendants failed adequately to engage with voluminous comments suggesting that the scope of the religious exemption to the U.S. Government Mandate should be broadened.

411. Defendants did not articulate a reasoned basis for their action by drawing a connection between facts found and the policy decisions they made.

412. Defendants failed to provide any standards or [*114] processes for how the Administration will decide which religious institutions will be included in the religious exemption.

413. Defendants failed to consider the use of broader religious exemptions found in many other federal laws and regulations.

414. Defendants' promulgation of the U.S. Government Mandate violates the APA.

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

416. Plaintiffs have no adequate remedy at law.

417. The enactment of the U.S. Government Mandate that is not in accordance with law and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief,

COUNT IX

Acting Illegally in Violation of the APA

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

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

420. The U.S. Government Mandate and its exemption are illegal and therefore in violation of the APA.

421. The Weldon Amendment states that "[n]one of the funds made available in this Act [to the [*115] 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)*.

422. The Affordable Care Act states that "nothing in this title (or any amendment 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 for any plan year." [42 U.S.C. § 18023\(b\)\(1\)\(A\)\(i\)](#). It adds that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion.]" *Id.* § 18023(b)(1)(A)(ii).

423. 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 drugs, [*116] sterilization, contraception, or related education and counseling should be required to provide such plans.

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

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

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

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

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

429. Plaintiffs have no adequate remedy at law.

430. The enactment of the U.S. Government Mandate that is not in accordance with law and its impending enforcement impose an immediate and ongoing harm on Plaintiffs that warrants relief,

V. PRAYER FOR RELIEF

[*117] WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under RFRA;
 2. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under the First Amendment;
 3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;
 4. Enter an injunction prohibiting Defendants from enforcing the U.S. Government Mandate against Plaintiffs;
 5. Enter an order vacating the U.S. Government Mandate;
 6. Award Plaintiffs attorneys' and expert fees under 42 U.S.C. § 1988;
 7. Award Plaintiffs pre- and post- judgment interest to the fullest extent allowed under the law; and
 8. Award all other relief as the Court may deem just and proper.
- Respectfully submitted, this the 12th day of September, 2012.

By: /s/ [Signature]

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