UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK; CATHOLIC HEALTH CARE SYSTEM; CARDINAL SPELLMAN HIGH SCHOOL; MONSIGNOR FARRELL HIGH SCHOOL; THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK; and CATHOLIC HEALTH SERVICES OF LONG ISLAND, Plaintiffs, -against- KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the U.S. Department of Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF TREASURY, Defendants.	No.: 1:12-cv-2542 (BMC) JURY TRIAL DEMANDED

AMENDED COMPLAINT

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 products, sterilization, and contraception. Those products and services are widely available in the United States, and nothing prevents the Government itself from making them more widely available. Here, however, the Government seeks to require Plaintiffs—all of which are Catholic entities—to violate their sincerely held religious beliefs by providing, paying for, and/or facilitating access to those products and services. American history and tradition, embodied in the First Amendment to the United States Constitution and the Religious Freedom Restoration Act ("RFRA"), safeguard religious entities from such overbearing

and oppressive governmental action. Plaintiffs therefore seek relief in this Court to protect this most fundamental of American rights.

2. Plaintiffs provide a wide range of spiritual, educational, and social services to members of their communities, Catholic and non-Catholic alike. Plaintiffs The Roman Catholic Archdiocese of New York (the "Archdiocese of New York" or the "Archdiocese") and The Roman Catholic Diocese of Rockville Centre, New York (the "Diocese of Rockville Centre" or the "Diocese"), for example, serve New York families through their many charitable programs and through the education of students in their respective school systems. Cardinal Spellman High School ("Cardinal Spellman") and Monsignor Farrell High School ("Msgr. Farrell High School") educate diverse student bodies, preparing them for attending college and becoming leaders who make a difference in their community, their nation, and in the world. Catholic Health Services of Long Island ("CHSLI") is an integrated healthcare delivery system that serves hundreds of thousands of Long Islanders each year, providing care that extends from the beginning of life to helping people live their final years in comfort, grace, and dignity. And Catholic Health Care System and its affiliates (collectively "ArchCare"), provides compassionate care to frail and vulnerable people unable to fully care for themselves and seeks to improve the quality of the lives of those individuals and their families.

3. Plaintiffs' work is in every respect guided by and consistent with Roman Catholic beliefs, including the requirement that they serve those in need, regardless of their religion. This is perhaps best captured by words attributed to St. Francis of Assisi: "Preach the Gospel at all times. Use words if necessary." As Pope Emeritus Benedict XVI has more recently put it, "[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The

Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Or as Cardinal Timothy Dolan, the Archbishop of New York, has taught: "We don't serve people because they're Catholic, we serve them because *we* are, and it's a moral imperative for us to do so." In accordance with these beliefs, Catholic individuals and organizations consistently work to create a more just community by serving any and all neighbors in need.

4. Catholic Church teachings also uphold the firm conviction that sexual union should be reserved to a committed marital relationship between a man and a woman who are open to the creation of life; thus, artificial interference with the creation of life, including through abortion, sterilization, and contraceptives, is contrary to Catholic doctrine.

5. Defendants have promulgated various rules (collectively, "the U.S. Government Mandate" or "the Mandate") that force Plaintiffs to violate their sincerely held religious beliefs. These rules, first proposed on July 19, 2010, require Plaintiffs and other Catholic and religious organizations to provide, pay for, and/or facilitate access to abortion-inducing products, sterilization, and contraception in violation of their sincerely held religious beliefs. In response to the intense public criticism that the Government's original proposal provoked, including by some of the current Administration's most ardent supporters, the Government proposed changes to the rules that, it asserted, were intended to eliminate the substantial burden that the Mandate imposed on religious beliefs. In fact, however, these changes made that burden worse by significantly *increasing* the number of religious organizations subject to the U.S. Government Mandate, and by driving a wedge between religious organizations, such as the Archdiocese of New York and Diocese of Rockville Centre, and their equally religious charitable arms, such as Plaintiffs Cardinal Spellman and Msgr. Farrell High School, and other organizations for which the Archdiocese and Diocese provide health plans. Reversing course from its original form, the

U.S. Government Mandate now prohibits the Archdiocese and the Diocese from ensuring that their religious affiliates provide health insurance consistent with Catholic doctrine.

6. In its final form, the U.S. Government Mandate contains three basic components:

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

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

9. *Third*, the U.S. Government Mandate creates a second class of religious entities that, in the Government's view, are not sufficiently "religious" to qualify for the "religious employer"

exemption. These religious entities, deemed "eligible organizations," are subject to a so-called "accommodation" that is intended to eliminate the burden that the Mandate imposes on their religious beliefs. The "accommodation," however, is illusory: it continues to require "eligible organizations" to participate in a new employer-based scheme to provide, pay for, and/or facilitate access to the objectionable products and services for their employees.

10. In particular, Plaintiffs ArchCare, Cardinal Spellman High School, Msgr. Farrell High School, and CHSLI do not qualify under the Government's narrow definition of "religious employers," even though they are religious organizations under any reasonable definition of the term. Instead, they are "eligible organizations" subject to the so-called "accommodation." But notwithstanding the "accommodation," these Plaintiffs are required to enter into a contract with an insurance company (or, for self-insured organizations, their third-party administrator), which, as a direct result, is required to provide or procure abortion-inducing products, contraception, sterilization, and related counseling for Plaintiffs' employees. Consequently, the religious organizations' actions are the trigger and but-for cause of the provision of the objectionable products and services. Plaintiffs cannot avoid facilitating the provision of the objectionable products and services—for example, by contracting with an insurance company that will not provide or procure the objectionable products and services or even dropping their health insurance plans altogether—without subjecting themselves to crippling fines and/or lawsuits by individuals and governmental entities.

11. The Mandate, moreover, requires Plaintiffs to facilitate the provision of the objectionable products and services. For example, to be eligible for the so-called "accommodation," Plaintiffs must provide a "certification" to their insurance provider or third-party administrator setting forth their religious objections to the Mandate. The provision of this

"certification," in turn, automatically triggers an obligation on the part of the insurance provider or third-party administrator to provide or procure the objectionable products and services for Plaintiffs' employees. A religious organization's self-certification, therefore, is a trigger and but-for cause of the provision of the objectionable products and services.

12. Notwithstanding the "accommodation," the U.S. Government Mandate "requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage." Comments of U.S. Conference of Catholic Bishop, at 3 (Mar. 20, 2013), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf. The Government asserts that the provision of the objectionable products and services will be "cost-neutral." This assertion, however, ignores the regulatory and administrative costs that will inevitably force insurance companies and third-party administrators to increase the prices they charge religious employers subject to the "accommodation." The Government's assertion of "cost neutrality" is also based on the implausible (and morally objectionable) assumption that "lower costs" from "fewer childbirths" will offset the cost of the contraceptive services. 78 Fed. Reg. at 8,463. More importantly, even if the Government's assumption were correct, it simply means that premiums previously going toward childbirths will be redirected to contraceptive and related services in order to achieve what, to Plaintiffs, is the objectionable goal of "fewer childbirths."

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

14. Plaintiffs Archdiocese of New York and Diocese of Rockville Centre qualify as "religious employers," and, as such, are eligible for the "religious employer" exemption. However, the Archdiocese and Diocese operate self-insured health plans that encompass not only individuals directly employed by the Archdiocese and Diocese themselves, but in addition, individuals employed by affiliated Catholic organizations including Plaintiffs Cardinal Spellman High School and Msgr. Farrell High School, and many other Catholic entities. Because these schools and other covered Catholic affiliated organizations do not qualify as exempt "religious employers," the U.S. Government Mandate requires the Archdiocese and Diocese to either (1) sponsor plans that will provide, pay for, and/or facilitate the provision of the objectionable products and services to the employees of Cardinal Spellman High School, Msgr. Farrell High School, and other covered, non-exempt organizations; or (2) expel these non-exempt organizations from the Archdiocese and Diocese's respective self-insurance plans, subjecting these non-exempt organizations to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage.

15. This reflects a change from the Government's original interpretation of the Mandate. As originally understood, the exemption would have allowed Cardinal Spellman High School, Msgr. Farrell High School, and other affiliated organizations to remain on the Archdiocese's and Diocese's plans, which, in turn, would have shielded them from the Mandate by virtue of the exemption for the Archdiocese and Diocese. *See* 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012). But the Government's revised Mandate, as contained in the Final Rule, removes this protection and thereby *increases* the number of religious organizations subject to the Mandate. In so doing, the Mandate seeks to divide the Catholic Church, artificially separating its "houses of worship" from its faith in action, directly contrary to Pope Emeritus Benedict XVI's

admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

16. The U.S. Government Mandate is irreconcilable with the First Amendment, RFRA, the Administrative Procedure Act ("APA"), and other laws. The Government has not demonstrated any compelling interest in forcing Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, sterilization, and contraception. Nor has the Government demonstrated that the U.S. Government Mandate is the least restrictive means of advancing any interest it has in increasing access to these products and services, which are already widely available and which the Government could make more widely available without conscripting Plaintiffs as vehicles for the dissemination of products and services to which they so strongly object. The Government, therefore, cannot justify its decision to force Plaintiffs to provide, pay for, and/or facilitate access to these products and services in violation of their sincerely held religious beliefs.

17. 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.

I. PRELIMINARY MATTERS

18. Plaintiff Archdiocese of New York is a not-for-profit corporation incorporated in New York. Its principal place of business is 1011 First Avenue, New York, New York 10022. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

19. Plaintiff ArchCare is a not-for-profit corporation incorporated in New York. Its principal place of business is 205 Lexington Avenue, New York, New York 10016. It is

organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

20. Plaintiff Cardinal Spellman High School is a not-for-profit corporation incorporated in New York. Its principal place of business is One Cardinal Spellman Place, Bronx, New York 10466. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

21. Plaintiff Monsignor Farrell High School is a not-for-profit corporation incorporated in New York. Its principal place of business is 2900 Amboy Road, Staten Island, New York 10306. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

22. Plaintiff Diocese of Rockville Centre is a not-for-profit corporation created by a special act of the New York State legislature in 1958. Its principal place of business is 50 North Park Avenue, Rockville Centre, New York 11570. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

23. Plaintiff CHSLI is a not-for-profit corporation incorporated in New York. Its principal place of business is 992 North Village Avenue, Rockville Centre, New York 11570. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

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

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

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

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

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

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

30. 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.

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

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

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

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

A. <u>The Archdiocese of New York</u>

35. Plaintiff Archdiocese of New York encompasses 370 parishes serving ten counties in New York City and the lower Hudson Valley, including in New York, Bronx, and Richmond Counties in the boroughs of Manhattan, the Bronx, and Staten Island, respectively, as

well as Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester Counties in the lower Hudson Valley of New York State. The Archdiocese was created as the Diocese of New York in 1808, and was elevated to an Archdiocese on July 19, 1850.

36. His Eminence, Timothy Cardinal Dolan, was named Archbishop of New York by Pope Emeritus Benedict XVI on February 23, 2009. On November 16, 2010, Cardinal Dolan was elected president of the United States Conference of Catholic Bishops. On January 6, 2012, Pope Emeritus Benedict XVI announced that Cardinal Dolan was to be appointed to the College of Cardinals and Cardinal Dolan was elevated in the Consistory on February 18, 2012.

37. Though the Archdiocese includes a community of over 2.5 million Catholics, its services reach out to individuals of all faiths. The Archdiocese administers a variety of programs and organizations that help support parishes and schools; students and their families; retired, current and future clergy and religious; and countless men, women, and children in need of social services regardless of their faith.

38. For instance, through Catholic Charities of the Archdiocese of New York, over 356,000 individuals are served on an annual basis through 90 Catholic Charities agencies and 300 neighborhood and community sites. Catholic Charities helps New Yorkers in need—non-Catholics and Catholics alike—and seeks to uphold the dignity of each person as made in the image of God by serving the basic needs of the poor, troubled, frail and oppressed of all religions. Catholic Charities collaborates with parishes as well as non-Catholic and Catholic partners to build a compassionate and just society. Through a network of administered, sponsored, and affiliated agencies, Catholic Charities delivers, coordinates, and advocates for quality human services and programs touching almost every human need. The services of Catholic Charities of the Archdiocese of New York include the following:

- **Protecting and Nurturing Children and Youth**—25,000 youth in sports and recreational programs; 310 children adopted by loving families; 6,545 children placed in safe foster care; 4,100 children and teens in after school programs; 1,850 children in summer camps; 8,100 children in day-care/Head Start;

- **Feeding the Hungry and Sheltering the Homeless**—6,500,000 meals served in parish and community food programs; 4,800 families saved from homelessness; 2,545 people placed in temporary or transitional housing; 8,430 people in emergency overnight shelters; 6,524 families in affordable housing;

- **Strengthening Families and Resolving Crises**—4,500 families supported to stay together; 35,000 people received needed social services; 7,900 people provided training, orientation, and job placement; 1,600 women helped during unplanned pregnancies; 15,100 individuals received counseling; 12,568 people helped with emergency financial assistance;

- **Supporting the Physically and Emotionally Challenged**—2,700 pre-schoolers in early intervention and special education; 800 individuals in safe and secure residences; 930 people with mental illness supported in their own homes; 329 individuals received individual therapy; 6,141 teens and adults treated for drug and alcohol abuse; 1,250 visually and hearing impaired people trained for independence; and

- **Welcoming and Integrating Immigrants and Refugees**—3,378 families counseled and protected from exploitation; 40,651 calls answered in 18 languages; 445 breadwinners helped to obtain authorization to work; 417 immigrants reunited with the families; 281 refugee and asylee families resettled; and 291 immigrants taught English.

39. In addition, the Archdiocese of New York is committed to providing young people of all religious backgrounds with a high-quality, faith-based education in some of the poorest neighborhoods in New York.

40. There are 246 Catholic schools located in the Archdiocese, including 50 secondary schools, 8 special education schools, and 188 elementary schools.

41. Nearly 70% of the students enrolled in the 92 elementary and secondary inner-city schools in Manhattan, the Bronx, and Staten Island come from homes living at or below the federal poverty line. Enrollment is 93% minority and 36% non-Catholic. Over half of these students come from single-parent households. Archdiocesan Catholic schools enable their

students and their families to overcome enormous odds and break the cycle of poverty through education. Fully 95% of graduates from the Archdiocese's Inner-City Scholarship Fund ("ICSF") pursue college or university studies, including at distinguished institutions such as Harvard, Yale, MIT, Fordham, and Georgetown.

42. In the graduating class of 2011, 95% of the Archdiocese's Catholic high school graduates attended two- or four-year colleges and/or universities. Additionally, the average scores of Catholic high schools in the Archdiocese on the five basic Regents exams (English, Integrated Algebra, Living Environments, Global History and Geography, and U.S. History) exceeded that of the average scores on these exams in the New York State public high schools.

43. The Archdiocese offers a variety of tuition assistance programs for those in economic need. Archdiocesan-sponsored scholarship programs serve 8,285 K-12 students, awarding an average overall scholarship of $2,142.

44. Further, the Cardinal's Scholarship Programs serve 8,285 students: the Cardinal's Scholarship Program (funded by the Children's Scholarship Fund, ICSF, Partnership for Inner-City Education, and the Archdiocese) serves 5,760 students in grades K-8, with an average scholarship amount of $1,945; the Cardinal's Scholarship Program (non-ICSF) serves 217 K-8 students on Staten Island with an average scholarship of $1,851; and the Cardinal's Scholarship Program (funded by the Partnership) serves 642 students in grades 9-12 with, on average, a $3,502 scholarship. The "Be a Student's Friend" Scholarship Program serves 1,666 students in grades K-12 and provides an average scholarship of $2,339.

45. The Archdiocese and its parishes and institutions employ nearly 10,000 people, including 1,452 priests, 379 religious men and women, and 7,923 lay people.

46. The Archdiocese operates a self-insured health plan. That is, the Archdiocese does not contract with a separate insurance company that provides health care coverage to its employees. Instead, the Archdiocese itself functions as the insurance company underwriting its employees' medical costs.

47. The Archdiocese's plan also covers the employees of over 600 affiliated religious organizations, including a number of organizations that do not qualify as "religious employers" under the exemption to the U.S. Government Mandate. For example, Plaintiffs Cardinal Spellman High School and Msgr. Farrell High School—both separately-incorporated high schools located within the Archdiocese of New York—offer the Archdiocesan health plan to their employees. These schools do not meet the definition of a "religious employer" as set forth in the Final Rules.

48. The Archdiocese's medical plan is administered by United Health Care and its pharmaceutical coverage is administered by CVS Caremark. These third parties handle the administrative aspects of the Archdiocese's self-insured employee health plans, but they bear none of the risks for benefits, nor do they provide any of the funds used to pay health care providers.

49. Consistent with Church teachings, the Archdiocese's health insurance plan does not cover abortion-inducing products, contraceptives, or sterilization. In limited circumstances, the Archdiocese's health plan administrator can override the exclusion of certain products commonly used as contraceptives if a physician certifies that they were prescribed with the intent of treating certain medical conditions and not with the intent to prevent pregnancy.

50. The Archdiocese's self-insured health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan because the plan has enacted significant increases to

the 10% employee contribution requirements and increased the co-payment requirements for all lay employees effective January 1, 2012.

51. The magnitude of potentially applicable fines imposed pursuant to the U.S. Government Mandate would have devastating consequences on the Archdiocese.

52. The plan year for the Archdiocese begins on January 1.

B. ArchCare

53. ArchCare, known as the "Continuing Care Community of the Archdiocese of New York," is a non-profit healthcare organization with over 4,000 employees. ArchCare is guided by a dedication to and appreciation for the dignity of all human life and by the Archdiocese's commitment to serving the sick and the frail in New York City and the Greater New York area.

54. ArchCare is a central part of the health care ministry of the Archdiocese of New York. As Cardinal Dolan has stated: "Through the vital ministry of ArchCare, the Archdiocese of New York provides health care and continuing support in the name of Jesus to those in our community who have lost the opportunity to live independently or alone due to advancing age, injury or disability."

55. As such, ArchCare seeks to assure the presence of Catholic values in caring for a diverse medical population, including children with developmental disabilities, the elderly, individuals requiring renal dialysis, and those living with Huntington's disease, Alzheimer's disease, and HIV/AIDS.

56. ArchCare's mission is to foster and provide faith-based holistic care to frail and vulnerable people unable to fully care for themselves. With an emphasis on not only physical well-being, but also the mind and spirit of those it serves, ArchCare treats individuals with

respect, compassion, and dignity, and seeks to improve the quality of the lives of individuals within its care as well as their families.

57. Among the guiding values of ArchCare are justice, inclusiveness, respect, integrity, benevolence, humility, and spirituality. In living these core values, ArchCare commits itself to the recognition that those with the greatest needs often have the least resources, and thus provides the same quality of care to the disenfranchised and less-fortunate of New York as it does to those who have been more fortunate.

58. With over 2,500 beds and more than 700 nurses, ArchCare is one of the largest Catholic continuing care systems in the nation, with a broad array of services including home care, hospice, a long-term acute care hospital, and adult day health care centers.

59. ArchCare offers individualized, comprehensive care services through its network of in-home care, five nursing homes, eight residential locations, and several out-patient facilities located throughout New York City in the boroughs of Manhattan, Staten Island, and the Bronx, as well as in Dutchess and Orange Counties.

60. The facilities in ArchCare's network, which together administer care to more than 6,000 patients, include the following:

- **Carmel Richmond Healthcare and Rehabilitation Center** ("Carmel Richmond")—a home-like, 300-bed residential facility in Staten Island, New York, served by the Carmelite Sisters for the Aged and Infirm, is a religious community nationally renowned for setting the standard for excellence in care of the elderly. Carmel Richmond offers residents continuous, 24-hour skilled nursing and medical care, administered by a team of 70 affiliated physicians and more than 500 nurses, professionals, and support staff. Services for the nearly 1,000 patients cared for at Carmel Richmond include dentistry, ophthalmology, audiology, social services, psychology, podiatry, nutrition therapy, recreation therapy, pain management, and hospice care. The Carmelite Sisters work to maintain the dignity, comfort, and connection to the community of the residents through recreational, socialization, and activity programs, including daily Mass and religious services, a café, a beauty salon and barber shop, and gathering rooms, as well as a garden and outdoor space. Through its state-of-the-art

rehabilitation facilities and highly skilled rehabilitation therapists, Carmel Richmond has a proven record of achievement in restoring residents to their optimal level of independence. More than 90% of the people admitted for short-term rehabilitation return to their communities within their targeted time frame. The short-term rehabilitative services include pain management and coordinated treatment plans personalized for each resident in physical, occupational, and speech therapy. Carmel Richmond also offers an Adult Day Health Care Program, available for individuals who wish to remain at home, but who need limited health care services.

- **Ferncliff Nursing Home** ("Ferncliff")—a 328-bed residential home located in Rhinebeck, New York. Ferncliff provides its residents with continuous, 24-hour skilled holistic care that addresses not only physical needs, but social, psychological, emotional, and spiritual needs, as well. Ferncliff provides the 580 patients it serves with access to its private 36-acre grounds, and through its 18 consulting physicians offers treatment in psychiatry, psychology, podiatry, ophthalmology and optometry, neurology, gastroenterology, orthopedics, and dentistry. Short-term rehabilitation services for residents who have suffered a stroke or who have undergone major surgery or other medical procedures include speech, physical, and occupational therapy, as well as pain management. These programs are designed to assist the elderly and vulnerable to return to their normal routines and independent lives as quickly as possible. Ferncliff also offers religious services.

- **Mary Manning Walsh Home** ("Mary Manning")—a completely refurbished 362-bed facility located in Manhattan. Mary Manning, operated by the Carmelite Sisters, serves the East Side community and offers long-term care and short-term rehabilitation services to nearly 1,390 patients. Mary Manning provides continuing care services through access to numerous physicians and also maintains a vibrant community for its residents through the presence of outdoor facilities, a barber shop and beauty parlor, and common gathering areas.

- **San Vicente de Paúl Catholic Healthcare Center** ("San Vicente")—a 200-bed residential skilled nursing and rehabilitation healthcare facility located in the Bronx that is designed to meet the special needs of elderly members of New York's Latino communities. Since opening in 1992, it has become a cornerstone in the rebirth of its Bronx neighborhood. San Vicente provides the same high quality, 24-hour short-term and long-term care services as are offered at its sister facilities and offers transportation and meals to its out-patients in need. The bilingual staff, ethnic food, and special social events it provides all reflect San Vicente's commitment to providing much-needed services to its surrounding community and the more than 240 patients it treats. A special unit is dedicated to serving those needing intensive rehabilitative services for a short period before returning to their independent lives at home. San Vicente also offers access to several consulting physicians and an Adult Day Health Care Program.

- **Terence Cardinal Cooke Health Care Center** ("Cooke Center")—a continuing care facility located near Central Park in Manhattan that provides compassionate medical care to over 1,570 patients from emerging and under-served populations. The Cooke Center provides long-term care for the frail elderly and those with complex medical conditions, as well as short-term subacute rehabilitative services for those recovering from surgery or other ailments. As a comprehensive skilled nursing facility, the Cooke Center provides access to nearly 50 physicians and offers health care services to a diverse medical population, such as children with developmental disabilities, the elderly, individuals requiring renal dialysis, including those requiring hemodialysis and suffering through end-stage renal disease, as well as those living with Huntington's disease, Alzheimer's disease, and HIV/AIDS. The Cooke Center works in collaboration with Mount Sinai Hospital's Department of Rehabilitation Medicine, one of America's top specialty hospitals.

- **Program of All-Inclusive Care for the Elderly**—an adult day care and continuing care facility recently opened to serve the needs of the elderly in Harlem. The facility—one of only 77 of its kind in the country—delivers the same level of care that individuals would receive in a nursing home while allowing them to keep their independence and continue living safely in the community for as long as possible.

61. ArchCare believes profoundly in the traditions of the Roman Catholic Church. ArchCare relies on the *Ethical and Religious Directives for Catholic Health Care Services* promulgated by the United States Conference of Catholic Bishops ("*Ethical and Religious Directives*") as a guiding document detailing the application of the Catholic Church's basic theological principles to the provision of health care. These *Ethical and Religious Directives*, now in their Fifth Edition published in 2009, provide guidance for specific issues relating to the general overriding requirement to operate in accordance with the ethical and moral teachings of the Roman Catholic Church.

62. At the same time, ArchCare continues to honor its ministry by serving New Yorkers of all faiths and striving to fulfill each individual's spiritual needs by respecting their distinct beliefs.

63. More than 1,130 ArchCare employees participate in ArchCare's self-insured health plan.

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

65. ArchCare operates a self-insured health plan. That is, ArchCare does not contract with a separate insurance company that provides health care coverage to its employees. Instead, ArchCare itself functions as the insurer underwriting its employees' medical costs.

66. ArchCare's medical plan is administered by Emblem Health and its pharmaceutical coverage is administered by CVS Caremark. These third parties handle the administrative aspects of ArchCare's self-insured employee health plans, but they bear none of the risks for benefits, nor do they provide any of the funds used to pay health care providers.

67. Pursuant to the *Ethical and Religious Directives*, all of ArchCare's current employee health plan options comply with Catholic teachings on abortifacients, sterilization, and contraception. Specifically, abortion and sterilization are not covered. Contraceptives are also barred under the plans, but may be available for medically necessary, non-contraceptive purposes, such as treatments for amenorrhea, hypermenorrhea, dysmenrrhea, dysfunctional uterine bleeding, endometriosis, polycystic ovary syndrome, ovarian hyperandrogenism, and other medical indications other than contraception, if certain approval procedures are utilized.

68. The health plans offered by ArchCare are not "grandfathered" plans because the employee cost share increased by more than 5% effective January 1, 2012.

69. The financial burden of potentially applicable fines imposed pursuant to the U.S. Government Mandate would devastate ArchCare's ability to continue to provide health care services to the communities it serves.

70. The plan year for ArchCare begins on January 1.

C. Cardinal Spellman High School

71. Cardinal Spellman High School is a Roman Catholic high school that has been dedicated to the education of young men and women in the Bronx since it was founded in 1959.

72. Spellman's mission is to promote a culture of aspiration that encourages superior academic performance, leadership, and service. It strives to make its program available to all qualified students and is proud of its diverse student body. Spellman consists of approximately 40% African American students, 40% Hispanic students, and 20% Caucasian students. Spellman recognizes and celebrates that diversity, and believes its students gain a great advantage from it.

73. Spellman offers its diverse student body a rigorous college preparatory education in a supportive learning environment. Preparing each student for college acceptance and achievement is a priority of the entire program at Cardinal Spellman High School. Spellman's teachers and administrators work diligently and enthusiastically to achieve this goal for each of its students. 98% of Spellman's graduates go on to college.

74. Consistent with its Catholic identity, Cardinal Spellman High School teaches its students to integrate faith and life. It stresses the importance of building a just society and provides numerous opportunities for students to participate in charitable work. All Spellman students are required to undertake service projects, and Spellman has an extracurricular student group dedicated to community service. Spellman students have participated in a wide breadth of service activities, including projects for those affected by the Newtown school shooting and Hurricane Sandy, as well as tutoring and other projects for local public school students and diaper, formula, and other drives to give aid to single mothers.

75. Cardinal Spellman High School has over 100 employees and employs individuals of all faiths.

76. Cardinal Spellman High School does not qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, Spellman does not qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

77. Cardinal Spellman High School is an affiliated corporation of the Archdiocese, and Spellman employees are offered health insurance through the Archdiocese's health plan.

78. The magnitude of potentially applicable fines imposed pursuant to the U.S. Government Mandate would have a significant negative impact on Cardinal Spellman High School.

D. Monsignor Farrell High School

79. Set on twenty acres in the Oakwood Heights section of Staten Island, Msgr. Farrell High School has been providing Roman Catholic secondary education to young men for over fifty years.

80. Msgr. Farrell High School offers an approach to life that is simultaneously Catholic, American, and contemporary. It strives to provide quality education and ensure that the knowledge its students acquire of the world, life, and humanity is illuminated by faith. Msgr. Farrell High School stresses the importance of service to others, challenging them to develop their own God-given talents and teaching students to be seekers of peace and justice. The school endeavors to graduate mature, faithful young men who will be sensitive and productive members of society. Indeed, Msgr. Farrell High School's motto, *Vir Fidelis*, means "faithful man."

81. Msgr. Farrell High School draws students from predominantly blue-color backgrounds, and is both racially and religiously diverse. Msgr. Farrell High School has a 24.6% minority enrollment rate, which exceeds the percentage of minorities in the local population. Students of all religions are welcome at Msgr. Farrell High School, and a wide variety of non-

Catholic religions—including Judaism, Hinduism, Islam, Buddhism, and Orthodox Christianity—are represented among the student population.

82. Msgr. Farrell High School offers its diverse student body a rigorous college preparatory education. 100% of Msgr. Farrell High School's graduates go on to college, and its graduates are regularly awarded roughly $30 million in aggregate scholarships. Msgr. Farrell High School's alumni have risen to become significant figures in business, law, medicine, military service, and public service. Indeed, nearly all elected male officials on Staten Island are alumni.

83. Central to Msgr. Farrell High School's mission is teaching its students to integrate faith and life. The school stresses the importance of giving back to the community and provides numerous opportunities for students to participate in charitable work. Msgr. Farrell High School is located in the epicenter of Hurricane Sandy's devastation, and Msgr. Farrell's students spearheaded and participated in many relief efforts and continue to work on volunteer projects assisting those affected by the storm. Msgr. Farrell students started an organization dedicated to serving veterans, including those veterans that are home bound or elderly, that has spread across the country and become a national association. Amongst many other charitable projects, Msgr. Farrell High School also participates in the Big Brother program, as well as academic and athletic mentoring of underprivileged children.

84. Msgr. Farrell High School has seventy-four employees and employs individuals of all faiths.

85. Msgr. Farrell High School does not qualify as an entity described in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. Accordingly, Msgr. Farrell High School does not qualify as a "religious employer" under the exemption to the U.S. Government Mandate.

86. Msgr. Farrell High School is an affiliated corporation of the Archdiocese, and Msgr. Farrell High School employees are offered health insurance through the Archdiocese's health plan.

87. The magnitude of potentially applicable fines imposed pursuant to the U.S. Government Mandate would have a significant negative impact on Msgr. Farrell High School.

E. The Diocese of Rockville Centre

88. Plaintiff Diocese of Rockville Centre encompasses 134 parishes on Long Island. Formed from the Diocese of Brooklyn in 1957, the Diocese of Rockville Centre encompasses Nassau and Suffolk Counties and is the second largest diocese by population in the U.S.

89. Most Reverend Bishop William Murphy has served since 2001 as the Diocese's fourth bishop. Bishop Murphy is assisted in his ministry by two auxiliary bishops and a staff of over 370 priests, 771 religious women, 72 brothers, and 250 deacons. The Diocese corporation directly employs 193 persons. And the Diocese of Rockville Centre, together with its hospitals, parishes, schools, and other Diocese-associated institutions employs approximately 19,800 lay employees, making it the second largest non-governmental employer on Long Island.

90. The Diocese of Rockville Centre oversees a variety of liturgical, sacramental, and faith formation programs. Parish and diocesan programs provide ongoing faith formation for its adult members, and the Diocese works for the inclusion of persons with special needs in faith formation and parish life.

91. The Diocese conducts its educational mission through its schools. Over 33,000 students are educated in fifty-seven Catholic elementary and ten Catholic high schools in the Diocese by over 2,000 dedicated educators. The Diocese supervises the operation of fifty-three of the Catholic elementary schools and three of the high schools, overseeing the education of 17,033 elementary and 3,520 high school students. Between 99 and 100% of the Diocese's

students are accepted into two- or four-year colleges. The Diocesan schools welcome students of any or no faith.

92. The Diocese of Rockville Centre is committed to social services in the community. In 2010, more than 59,000 poor, vulnerable, and disadvantaged individuals were assisted by Catholic Charities of the Diocese of Rockville Centre. Diocesan programs served a combined total of 503,856 people in 2010. Through parish outreach programs supported by the Diocese, direct services were provided to more than 19,000 persons each month in 2010. That same year, the Diocese also served 345,000 individuals in hospitals, 3,000 inmates, and 45,000 people living in the Dominican Republic. In addition, the Diocese helps make housing and supportive services available to adults with chronic mental illness and substance abuse difficulties and helps provide safe and affordable housing to people in its communities through support of 15 senior housing facilities with 1,298 affordable apartments and a residence for disabled individuals (multi-generational housing) with 31 units.

93. The Diocese operates a self-insured health plan. That is, other than for the performance of administrative services only, the Diocese does not contract with a separate insurance company that provides health care coverage to its employees. Instead, the plan administered by the Diocese itself functions as the risk-bearing insurance entity underwriting its employees' medical costs.

94. A number of Catholic organizations affiliated with the Diocese also offer health coverage through the Diocese's self-insurance plan, including several entities that do not qualify as "religious employers" under the exemption to the U.S. Government Mandate, for example, Dominican Village, a not-for-profit independent, assisted living, and respite care retirement community, and Our Lady of Mercy Academy, an all-girls Catholic high school.

95. The Diocese-administered health plan is managed by Diocesan Health Plan Inc., and third party administrator Empire BlueCross BlueShield provides certain administration services to the Diocesan plan.

96. The Diocese's health plan complies with Catholic teachings on abortifacients, sterilization, and contraception. Specifically, abortion and sterilization are not covered. Contraceptives are covered only when prescribed for non-contraceptive, medically necessary purposes.

97. The Diocese's current health plan does not meet the Affordable Care Act's definition of a "grandfathered" plan for two reasons: (i) because certain changes to the plan were made by the Diocese shortly after the Act was passed, causing the plan to lose any "grandfathered" status; specifically, beginning in 2011, the Diocese added an annual $50 per person deductible on prescription medications and had communicated that change to participating employees, constituting, under Treas. Reg. §54.9815-1251T(g) and HHS Reg. §147.140(g), an increase in a fixed-amount cost-sharing requirement other than a copayment (for example, a deductible or out-of-pocket limit); and (ii) because the Diocese has never communicated, as is required by Treas. Reg. §54.9815-1251T(a)(2) and HHS Reg. §147.140(a)(2) in order to maintain "grandfathered" status, to participants or beneficiaries that the Diocese's health plan is a grandfathered plan.

98. For fiscal year 2011-2012, the Diocese's operating budget was $30,844,000, including subsidies paid to related entities. The negative financial impact of potentially applicable fines imposed pursuant to the U.S. Government Mandate would be significant for the Diocese, as it struggles to balance its budget each and every year.

99. The plan year for the Diocese (and the organizations its health plan insures) begins on January 1.

F. Catholic Health Services of Long Island

100. CHSLI is a New York not-for-profit corporation that oversees the Diocese of Rockville Centre's health care ministries. CHSLI operates as the active parent organization of a healthcare system consisting of separately incorporated not-for-profit corporations located in Nassau and Suffolk Counties on Long Island, New York.

101. CHSLI is an integral part of the Diocese's mission to provide compassion and care to all Long Islanders, while remaining faithful to the principles of the Catholic faith. CHSLI strives to be a leader, a partner, and an advocate in creating innovative health and wellness solutions that improve the lives of the individuals and communities it serves.

102. Since 1907, Catholic healthcare on Long Island has built a distinguished tradition of operating community-based hospitals and human service organizations. These services have become widely valued for the high quality of their compassionate care for people from all walks of life and of every religious belief and ethnic group.

103. Founded in 1997 to oversee Catholic healthcare organizations within the Diocese, CHSLI provides services to hundreds of thousands of Long Islanders each year, extending from providing care at the beginning of life to helping people live their final years in comfort, grace, and dignity. Since its formation as a system, and before that as individual hospitals and health care providers, CHSLI, like ArchCare, has relied on the *Ethical and Religious Directives.* These *Directives* predate the existence of CHSLI. Since the formation of CHSLI as a system, they have been considered by CHSLI's governance as one of CHSLI's core guiding documents.

104. As stated in the Preamble to the *Ethical and Religious Directives*:

> The *Ethical and Religious Directives* are concerned primarily with institutionally based Catholic health care services. They address the sponsors, trustees, administrators, chaplains, physicians, health care personnel and patients or residents of the institutions or services. . . . The *Directives* have been refined through an extensive process of consultation with bishops, theologians, sponsors, administrators, physicians, and other health care providers.

105. The *Ethical and Religious Directives* are guiding principles for Catholic healthcare institutions, including ArchCare and CHSLI. CHSLI incorporates the *Ethical and Religious Directives*, as interpreted by the Bishop of the Diocese of Rockville Centre, into hundreds of CHSLI contracts.

106. CHSLI's 1997 Certificate of Incorporation states the purposes for which the Corporation is formed as follows:

> [T]he Corporation is organized and shall be operated exclusively for the charitable purpose of supporting and strengthening the ministries of the Diocese of Rockville Centre ("the Diocese") and other ministries which also are supervised or controlled by or in connection with the Roman Catholic Church in the management of their spiritual, material and financial resources **in conformity with the ethical and moral teachings of the Roman Catholic Church,** and promoting efficient governance and management, cooperative planning and the sharing of resources among such ministries. (Article 3, section (a) Certificate of Incorporation dated October 23, 1997) (emphasis added).

107. In its 1997 Certificate of Incorporation, Article 8 reads in its entirety, as follows: "The Corporation shall operate in accordance with The Ethical and Religious Directives for Catholic Health Services as promulgated and interpreted by the Bishop of the Roman Catholic Diocese of Rockville Centre." (Article 8, Certificate of Incorporation dated October 23, 1997.)

108. Section 1.02 of the By-laws of the Corporation reads in its entirety:

> *Section - 1.02 Adherence to Catholic Doctrine*.
> The Corporation shall adhere at all times to the Ethical and Religious Directives for Catholic Health Care Services as published and interpreted by the Bishop of the Diocese of Rockville Centre.

Each of the individual CHSLI hospitals and other affiliates has a parallel provision in its corporate by-laws.

109. At its inception, CHSLI was composed of four acute care hospitals, two nursing homes, three home care companies, four hospice divisions, and numerous supporting companies. CHSLI has continued to increase its presence on Long Island as a provider of health services and currently consists of six acute care hospitals, three nursing homes, certified home health and long-term healthcare programs, a hospice service, and a network of services for the mentally and developmentally disabled, all based on Long Island.

110. More than 17,000 staff, including 3,068 registered nurses, and more than 3,000 affiliated physicians assist patients throughout CHSLI's health care network. The CHSLI hospitals contain approximately 1,928 licensed acute care beds. The CHSLI system administers more than 2,700 acute and non-acute beds. CHSLI's annual operating budget is approximately $2 billion.

111. CHSLI is the sole corporate member of each of the six hospitals within the CHSLI system. The high-quality and award-winning hospitals operated by CHSLI provide a full continuum of much-needed and, in many cases, uniquely specialized care across all of Long Island:

- **St. Francis Hospital d/b/a St. Francis Hospital, The Heart Center ("St. Francis")**—a not-for-profit hospital located in Roslyn, Nassau County, New York, with 364 licensed beds, that delivers specialized cardiac and general medical acute care services and conducts cardiovascular research. St. Francis has achieved "Magnet" recognition twice and is a cardiac specialty center. St. Francis has been consistently recognized for its outstanding quality of care. Patients are transferred to St. Francis from community hospitals throughout Long Island, the New York metropolitan area, other states, and abroad for emergency cardiac diagnosis and treatment. St. Francis also provides crucial diagnostic testing, such as stress testing, echocardiography, computed tomography angiography, cardiac magnetic resonance imaging and catheter-based repair of congenital heart defects.

- **Good Samaritan Hospital Medical Center ("Good Samaritan")**—a not-for-profit, regional teaching medical center located on the south shore of Long Island in West Islip, Suffolk County, New York. Good Samaritan has 537 licensed beds, including 100 nursing home beds. The hospital is also a "Magnet" recognized institution and is a New York State Designated Level II Trauma Center. Good Samaritan provides inpatient, ambulatory care, certified home health and dialysis services, as well as a full range of diagnostic and therapeutic services on an inpatient and outpatient basis. Good Samaritan recently expanded its Division of Cardiology and will soon integrate the St. Francis cardiac surgery program at Good Samaritan. Good Samaritan also operates offsite facilities, including two chronic dialysis centers, a women's imaging center, a home health agency, a nursing home, and a pediatric specialty facility, in addition to staffing two community health clinics.

- **St. Catherine of Siena Medical Center ("St. Catherine")**—a not-for-profit hospital located in Smithtown, Suffolk County, New York. St. Catherine was acquired by CHSLI in 2000, and has 558 licensed beds, including 240 nursing home beds. St. Catherine is certified for ambulatory surgery, acute and chronic renal dialysis, neonatal intensive care, cardiac catheterization, and magnetic resonance imaging. St. Catherine operates the Women's Health and Outpatient Diagnostic Pavilion and St. Catherine of Siena Nursing and Rehabilitation Care Center. St. Catherine is also the owner of Siena Medical Realty, LLC, which operates a 51,000 square foot medical office building, and is the sole member of Siena Village, Inc., which operates a 298-unit subsidized apartment complex for the elderly and disabled.

- **Mercy Medical Center ("Mercy")**—a not-for-profit community hospital located in Rockville Centre, Nassau County, New York. Founded in 1913, Mercy has 375 licensed beds and offers a broad range of diagnostic and therapeutic services on an inpatient and outpatient basis, as well as specialized services in the areas of cardiology, oncology, maternal and neonatal intensive care, behavioral health, orthopedic surgery, and physical medicine and rehabilitation. Mercy has the only Level III Neonatal Intensive Care Unit on the south shore of Nassau County.

- **St. Charles Hospital ("St. Charles")**—a not-for-profit hospital that has provided medical, surgical, and rehabilitation services since 1907. In addition to its general hospital with 231 licensed beds located in Port Jefferson, Suffolk County, New York, St. Charles operates outpatient rehabilitation facilities in Port Jefferson, Smithtown, Melville, Patchogue, Riverhead, Centereach, Setauket, Ronkonkoma, and Albertson. St. Charles was the first hospital in Suffolk County to become a designated Stroke Center. St. Charles offers a broad range of diagnostic, therapeutic, and rehabilitative services for adults and children on an inpatient and outpatient basis.

- **St. Joseph Hospital ("St. Joseph")**—a not-for-profit hospital located in Bethpage, Nassau County, New York. St. Joseph was acquired by CHSLI in January 2010 and has 231 licensed beds and provides comprehensive inpatient

and outpatient medical services, critical care, and surgical services. St. Joseph specializes in wound care and is the only hospital on Long Island to have a Center for Wound Care and Hyperbaric Medicine accredited by the Undersea and Hyperbaric Medical Society—a recognition awarded to just 15% of facilities with related services. Other services offered include emergency medicine, ambulatory surgery, sleep medicine, and diabetes education.

112. CHSLI's acute care hospitals are known for providing excellence in care and committing themselves to those in need. This is evidenced by the numerous awards and national recognition they have earned. As noted, two of the six hospitals, St. Francis and Good Samaritan, have earned "Magnet" recognition status, the highest honor for nursing care. The CHSLI network has also won both the 2010 HANYS Pinnacle Award for Quality and Patient Safety and the 2011 HANYS Community Health Improvement Award.

113. For the seventh year in a row, St. Francis has been recognized by *US News & World Report* as one of the best hospitals in the nation. St. Francis is currently ranked among the top 10 hospitals in the in the country for cardiology and heart surgery, rating # 8 nationwide. St. Francis also rated among the best in the U.S. in seven other specialties: ear, nose, and throat; gastroenterology and GI surgery; geriatrics; neurology and neurosurgery; and, for the first time, orthopedics, pulmonology, and urology. Overall, St. Francis was rated the # 1 hospital on Long Island and # 4 in New York State.

114. Additionally, Mercy earned 5 stars from HealthGrades® for joint replacements, total knee replacement, and hip fracture repair, while St. Charles has been named a Blue Distinction Center for total joint replacement. Good Samaritan, St. Catherine, and Mercy were named Bariatric Surgery Centers of Excellence.

115. CHSLI also has a uniquely well-developed continuum of care, providing services to those in need of a full range of health care services on Long Island to improve quality outcomes and offer patients seamless transfers. These services include an extensive system of

long-term and sub-acute facilities, home health agencies (both short- and long-term), an inpatient and community hospice, a durable medical equipment company, a community-based school, residential housing and day programs for children and adults with developmental and behavioral disabilities, and an outpatient and residential substance abuse and mental health program. Among the facilities in CHSLI's continuum of health care providers are the following:

- **Catholic Home Care**—the largest home health organization on Long Island, Nursing Sisters Home Care (d/b/a Catholic Home Care) is a certified home health agency licensed in Nassau and Suffolk Counties, which has developed a health monitoring program, enabling the reduction of hospital length of stay and readmissions while improving patient outcomes. Catholic Home Care is also the sole member of CHS Home Support Services, a licensed durable medical equipment provider.

- **Maryhaven Center of Hope** ("Maryhaven")—provides behavioral health services to developmentally disabled individuals, and operates an intermediate care facility, a school, community residences, individual residential alternative sites, and supportive living facilities, primarily in Suffolk County, New York. Maryhaven is fully interwoven into the Suffolk County community as a provider of health care and related services.

- **Our Lady of Consolation Geriatric Care Center d/b/a Our Lady of Consolation Nursing and Rehabilitative Care Center** ("Our Lady of Consolation")—a 450-bed nursing home in West Islip, Suffolk County, New York. Skilled nursing care at Our Lady of Consolation includes geriatric, rehabilitative, and medically complex care. In addition, Our Lady of Consolation offers a long-term home health care program that provides critical services to Long Island's elderly and sick, while reducing the burden on area hospitals.

- **Good Shepherd Hospice** ("Good Shepherd")—operates a 16-bed inpatient hospice unit on the campus of St. Charles in Port Jefferson, Suffolk County, New York, and provides end-of-life care to patients in their homes and in skilled nursing facilities. Good Shepherd is licensed to operate in Nassau and Suffolk Counties.

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

117. CHSLI offers health care insurance to its employees and employees of its member corporations through a self-insured program administered by a third party, Empire BlueCross BlueShield.

118. Consistent with its mission and the *Ethical and Religious Directives*, CHSLI's health plan does not cover abortion-inducing products, sterilization, or contraceptives.

119. The health plan offered by CHSLI to its employees is not a "grandfathered" plan because CHSLI made plan design changes for January 1, 2011 that triggered the loss of "grandfathered" status. For example, CHSLI increased its specialist office visit copay to an amount that exceeds the limits for "grandfathered" plans. In addition, CHSLI also increased prescription drug co-pays and reduced co-pays for its point of service plan.

120. The specter of potentially applicable fines imposed pursuant to the U.S. Government Mandate would cause undue financial hardship on CHSLI and call into question its ability to continue to operate.

121. CHSLI's plan year begins on January 1.

II. STATUTORY AND REGULATORY BACKGROUND

A. Statutory Background

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

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

124. "[T]he Affordable Care Act preserves the ability of individuals to retain coverage under a group health plan or health insurance coverage in which the individual was enrolled on March 23, 2010." Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726, 41,731 (July 19, 2010) ("Interim Final Rules"); 42 U.S.C. § 18011. These so-called "grandfathered health plans do not have to meet the requirements" of the U.S. Government Mandate. 75 Fed. Reg. at 41,731. HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

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

a. Under the Internal Revenue Code, certain employers who fail to offer "full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan" will be exposed to

significant annual fines of $2,000 per full-time employee. *See* 26 U.S.C. § 4980H(a), (c)(1).

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

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

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

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

127. For example, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits certain agencies from discriminating against an institution based on that institution's refusal to provide abortion-related

services. Specifically, it states that "[n]one of the funds made available in this Act [to the Department of Labor and the Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011). The term "health care entity" is defined to include "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan." *Id.* § 507(d)(2).

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

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

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

130. In a span of less than two years, Defendants promulgated the U.S. Government Mandate, subverting the Act's clear purpose to protect the rights of conscience. The Mandate immediately prompted intense criticism and controversy, in response to which the Government has undertaken various revisions. None of these revisions, however, alleviates the burden that the Mandate imposes on Plaintiffs' religious beliefs. To the contrary, these revisions have resulted in a final rule that imposes significantly greater burdens on the practice of religious beliefs than the original one.

(1) The Original Mandate

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

132. To develop the definition of "preventive care," HHS outsourced its deliberations to the Institute of Medicine ("IOM"), a non-governmental "independent" organization. The IOM in turn created a "Committee on Preventive Services for Women," composed of 16 members who were selected in secret without any public input. At least eight of the Committee members had

founded, chaired, or worked with "pro-choice" advocacy groups (including five different Planned Parenthood entities) that have well-known political and ideological views, including strong animus toward Catholic teachings on abortion and contraception.

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

134. At the close of this process, on July 19, 2011, the IOM issued a final report recommending that "preventive care" for women be defined to include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for [all] women with reproductive capacity." Inst. of Med., "Clinical Preventive Services for Women: Closing the Gaps," at 218-219 (2011).

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

136. At a press briefing the next day, the chair of the IOM Committee fielded a question from a representative of the U.S. Conference of Catholic Bishops regarding the "coercive dynamic" of the Mandate, asking whether the Committee considered the "conscience rights" of those who would be forced to pay for coverage that they found objectionable on moral and religious grounds. In response, the IOM Committee chair illustrated her cavalier attitude

toward the religious-liberty issue, stating bluntly: "[W]e did not take into account individual personal feelings." *See* Linda Rosenstock, Chair, Inst. of Med. Comm. on Preventive Servs. for Women, Press Briefing (July 20, 2011), *available at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx. The chair later expressed concern to Congress about considering religious objections to the Mandate because to do so would risk a "slippery slope" by "opening up that door" to religious liberty. *See* Executive Overreach: The HHS Mandate Versus Religious Liberty: Hearing Before the H. Comm. On the Judiciary, 112th Cong. (2012) (testimony of Linda Rosenstock, Chair, Inst. of Med. Comm. on Preventive Servs. for Women).

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

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

139. Shortly after announcing its definition of "preventive care," the Government proposed a narrow exemption from the Mandate for a small category of "religious employers" that met all of the following four criteria: "(1) The inculcation of religious values is the purpose of the organization"; "(2) The organization primarily employs persons who share the religious tenets of the organization"; "(3) The organization serves primarily persons who share the religious tenets of the organization"; and "(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(iv)(B)).

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

141. The sweeping nature of the Mandate was subject to widespread and withering criticism. Religious leaders from across the country protested that they should not be punished or considered less religious simply because they chose to live out their faith by serving needy members of the community who might not share their beliefs. As Catholic Charities USA's

president, the Rev. Larry Snyder, observed, even Jesus and His disciples would not qualify for the exemption in that case, because they were committed to serve those of other faiths.

142. Despite such pleas, the Government at first refused to reconsider its position. Instead, the Government "finalize[d], without change," the narrow exemption as originally proposed. 77 Fed. Reg. 8,725, 8,729 (Feb. 15, 2012). At the same time, the Government announced that it would offer a "a one-year safe harbor from enforcement" for religious organizations that remained subject to the Mandate. *Id.* at 8,728. As noted by Cardinal Timothy Dolan, the "safe harbor" effectively gave religious groups "a year to figure out how to violate our consciences."

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

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

144. On May 21, 2012, Plaintiffs filed this lawsuit seeking to enjoin the U.S. Government Mandate on the ground, among others, that it violated their rights of religious conscience under RFRA and the First Amendment. *See The Roman Catholic Archdiocese of New York, et al. v. Sebelius, et al.*, Case No. 1:12-cv-02542-BMC (E.D.N.Y.).

145. The Court denied Defendants' motion to dismiss in substantial part, but thereafter, in response to the Government's later representation that it would never enforce the current regulations, the Court granted a stay of discovery and proceedings "pending the completion of the agency defendants' current rulemaking proceedings" in connection with the ANPRM. *See id.*, Apr. 24, 2013 Order.

(3) The Government's Final Offer and the Empty "Accommodation"

146. On February 1, 2013, the Government issued a Notice of Proposed Rulemaking ("NPRM"), setting forth in further detail its proposal to "accommodate" the rights of Plaintiffs and other religious organizations. The NPRM, like the Government's previous proposals, was once again met with strenuous opposition, including over 400,000 comments. For example, the U.S. Conference of Catholic Bishops stated that "the 'accommodation' still requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments." Comments of U.S. Conference of Catholic Bishop, at 3 (Mar. 20, 2013), *available at* http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.

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

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

149. *First*, the Final Rule makes what the Government concedes to be a non-substantive, cosmetic change to the definition of "religious employer." In particular, it eliminates the first three prongs of that definition, such that, under the new definition, an exempt "religious employer" is simply "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 78 Fed. Reg. at 39,874 (codified at 45 CFR § 147.131(a)). As the Government has admitted, this new definition does "not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. 8,456, 8,461 (Feb. 6, 2013). Instead, it continues to "restrict[]the exemption primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders." *Id.* In this respect, the Final Rule mirrors the intended scope of the original "religious employer" exemption, which focused on "the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. at 46,623. Religious organizations that have a broader mission are still not, in the Government's view, "religious employers."

150. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the Mandate, while denying this favorable treatment to all other religious groups. The exemption for groups that are "referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code" includes only (i) "churches, their integrated auxiliaries, and conventions or associations of churches," and (iii) "the exclusively religious activities of any religious order." The IRS has adopted an intrusive, 14-factor test to determine whether a group meets these qualifications. *See Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009). Among these 14 factors is whether the group has "a recognized creed and form of worship," "a definite and distinct ecclesiastical government," "a formal code of doctrine and discipline," "a distinct religious history," "an organization of ordained ministers," "a literature of its own," "established places of worship," "regular congregations, "regular religious services," "Sunday schools for the religious instruction of the young," and "schools for the preparation of its ministers." *Id.* Not only do these factors favor some religious groups at the expense of others, but they also require the Government to make intrusive judgments regarding religious beliefs, practices, and organizational features to determine which groups fall into the favored category.

151. *Second*, the Final Rule establishes an illusory "accommodation" for certain nonexempt objecting religious entities that qualify as "eligible organizations." To qualify as an "eligible organization," a religious entity must (1) "oppose[] providing coverage for some or all of [the] contraceptive services"; (2) be "organized and operate[] as a non-profit entity"; (3) "hold[] itself out as a religious organization"; and (4) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance company or, if the religious organization is self-insured, to its third-party administrator. 26 CFR § 54.9816-

2713A(a). The provision of this self-certification then automatically requires the insurance issuer or third-party administrator to provide or arrange "payments for contraceptive services" for the organization's employees, without imposing any "cost-sharing requirements (such as a copayment, coinsurance, or a deductible)." *Id.* §§ 54.9816-2713A(b)(2), (c)(2). The objectionable coverage, moreover, is directly tied to the organization's health plan, lasting only as long as the employee remains on that plan. *See* 29 CFR § 2590.715-2713; 45 CFR § 147.131(c)(2)(i)(B). In addition, self-insured organizations are prohibited from "directly or indirectly, seek[ing] to influence the[ir] third party administrator's decision" to provide or procure contraceptive services. *See* 26 CFR § 54.9815–2713.

152. This so-called "accommodation" fails to relieve the burden on religious organizations. Under the original version of the Mandate, a non-exempt religious organization's decision to offer a group health plan resulted in the provision of coverage for abortion-inducing products, contraception, sterilization, and related counseling. Under the Final Rule, a non-exempt religious organization's decision to offer a group health plan still results in the provision of coverage—now in the form of "payments"—for abortion-inducing products, contraception, sterilization, and related counseling. *Id*. § 54.9816-2713A(b)-(c). In both scenarios, Plaintiffs' decision to provide a group health plan triggers the provision of "free" contraceptive coverage to their employees in a manner contrary to their beliefs. The provision of the objectionable products and services are directly tied to Plaintiffs' insurance policies, as the objectionable "payments" are available only so long as an employee is on the organization's health plan. *See* 29 CFR § 2590.715-2713 (for self-insured employers, the third-party administrator "will provide or arrange separate payments for contraceptive services . . . for so long as [employees] are enrolled in [their] group health plan"); 45 CFR § 147.131(c)(2)(i)(B) (for employers that offer insured plans, the

insurance issuer must "[p]rovide separate payments for any contraceptive services . . . for plan participants and beneficiaries for so long as they remain enrolled in the plan"). For self-insured organizations, moreover, the self-certification constitutes the religious organization's "*designation* of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits." 78 Fed. Reg. at 39,879 (emphasis added). Thus, employer health plans offered by non-exempt religious organizations are the vehicle by which "free" abortion-inducing products, contraception, sterilization, and related counseling are delivered to the organizations' employees.

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

154. The U.S. Government Mandate also requires Plaintiffs to subsidize the objectionable products and services.

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

156. The Government's "cost-neutral" assertion, moreover, is implausible. It rests on the assumption that cost "savings" from "fewer childbirths" will be at least as large as the direct costs of paying for contraceptive products and services and the costs of administering individual

policies. 78 Fed. Reg. at 8,463. Some employees, however, will choose not to use contraception notwithstanding the Mandate. Others would use contraception regardless of whether it is being paid for by an insurance company. And yet others will shift from less expensive to more expensive products once coverage is mandated and cost-sharing is prohibited. Consequently, there can be no assurance that cost "savings" from "fewer childbirths" will offset the cost of providing contraceptive services.

157. More importantly, even if the Government's "cost-neutral" assertion were true, it is still objectionable. Premiums previously paid by the objecting employers to cover, for example, "childbirths," will now be redirected to pay for contraceptive products and services. Thus, the objecting employer is required to pay for the objectionable products and services rather than for the provision of healthcare in connection with childbirths.

158. For self-insured organizations, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that third-party administrators required to provide or procure the objectionable products and services will be compensated by reductions in user fees that they otherwise would pay for participating in federally-facilitated health exchanges. *See* 78 Fed. Reg. at 39,882. Such fee reductions are to be established through a highly regulated and bureaucratic process for evaluating, approving, and monitoring fees paid in compensation to third-party administrators. Such regulatory regimes, however, do not fully compensate the regulatory entities for the costs and risks incurred. As a result, few if any third-party administrators are likely to participate in this regime, and those that do are likely to increase fees charged to the self-insured organizations.

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

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

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

162. For example, Plaintiffs Archdiocese of New York and Diocese of Rockville Centre operate self-insurance plans that cover not only the Archdiocese and Diocese themselves, but other affiliated Catholic organizations—including Plaintiffs Cardinal Spellman High School and Msgr. Farrell High School. Under the original interpretation of the exemption, if the Archdiocese and Diocese are exempt "religious employers," then Cardinal Spellman High School, Msgr. Farrell High School, and the other affiliated Catholic organizations participating in the Archdiocese's plan received the benefit of that exemption, regardless of whether they independently qualified as "religious employers." These affiliated organizations, therefore, could

benefit from the Archdiocese's or the Diocese's exemptions even if they, themselves, could not meet the Government's unprecedentedly narrow definition of "religious employer."

163. The Final Rule eliminates this safeguard. Instead, it interprets the exemption to require "each employer" to "independently meet the definition of eligible organization or religious employer in order to take advantage of the accommodation or the religious employer exemption with respect to its employees and their covered dependents." 78 Fed. Reg. at 39,886. *See also* 78 Fed. Reg. at 8,467 (NPRM). Thus, because Cardinal Spellman High School, Msgr. Farrell High School, and other affiliated Catholic organizations offering the Archdiocese's or the Diocese's health plans to their employees do not meet the Government's narrow definition of "religious employers," they are now subject to the U.S. Government Mandate.

164. Moreover, the Archdiocese of New York and Diocese of Rockville Centre are now required by the Mandate to do one of two things: Since non-exempt organizations including Plaintiffs Cardinal Spellman High School and Msgr. Farrell High School participate in the archdiocesan and diocesan health plans, the Archdiocese of New York and Diocese of Rockville Centre are forced to sponsor a plan that will provide the employees of these organizations with "free" abortion-inducing products, contraception, sterilization, and related counseling. Alternatively, the Archdiocese and Diocese will have to no longer extend their plans to these organizations, thereby forcing the organizations to provide the objectionable coverage through another insurance provider or subjecting them to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage.

165. The first option forces the Archdiocese of New York and Diocese of Rockville Centre to act contrary to their sincerely-held religious beliefs. The second option not only makes the Archdiocese and Diocese complicit in the provision of objectionable coverage, by forcing

their affiliates out of their plans and to obtain the objectionable coverage through another insurance provider, but also compels the Archdiocese and Diocese to submit to the Government's interference with their structure and internal operations by accepting an artificial construct that divides churches from their ministries.

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

167. In sum, the Final Rule not only fails to alleviate the burden that the U.S. Government Mandate imposes on Plaintiffs' religious beliefs; it in fact makes that burden significantly worse by increasing the number of religious organizations that are subject to the Mandate.

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

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

168. As Cardinal Dolan observed, "we know so very well that religious freedom is our heritage, our legacy and our firm belief, both as loyal Catholics and Americans." Indeed, since the founding of this country, our law and society have recognized that individuals and institutions are entitled to freedom of conscience and religious practice. Absent a compelling reason, no government authority may compel any group or individual to act contrary to their religious

beliefs. As noted by Thomas Jefferson, "[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."

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

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

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

172. As a corollary, Plaintiffs' Catholic beliefs prohibit them from contracting with an insurance company or third-party administrator that will, as a result, provide or procure the objectionable products and services to Plaintiffs' employees.

173. Plaintiffs' beliefs are deeply and sincerely held.

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

175. The U.S. Government Mandate thus imposes a substantial burden on Plaintiffs' religious beliefs.

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

177. The "religious employers" exemption does not apply to numerous Catholic employers in the Archdiocese and Diocese, including Plaintiffs ArchCare, Cardinal Spellman High School, Msgr. Farrell High School, or CHSLI.

178. Although Plaintiffs Archdiocese of New York and Diocese of Rockville Centre are "religious employers," the Mandate still requires them either to (1) sponsor a plan that will provide Plaintiff Cardinal Spellman High School, Plaintiff Msgr. Farrell High School, and other affiliated Catholic organizations with access to the objectionable products and services, or (2) no longer extend their plans to these organizations, subjecting the organizations to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage.

179. The first option forces the Archdiocese and Diocese to act contrary to their sincerely-held religious beliefs.

180. The second option not only makes the Archdiocese of New York and the Diocese of Rockville Centre complicit in the provision of objectionable coverage, by forcing their affiliates out of their plans and to obtain the objectionable coverage through another insurance provider, but also compels the Archdiocese of New York and Diocese of Rockville Centre to submit to the Government's interference with their structure and internal operations by accepting a construct that divides churches from their ministries.

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

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

183. Plaintiffs' Catholic beliefs do not simply prohibit them from using or directly paying for the objectionable coverage. Their beliefs also prohibit them from facilitating access to the objectionable products and services.

184. Finally, Plaintiffs cannot avoid the U.S. Government Mandate without incurring crippling fines. If they eliminate their employee health plans, they are subject to annual fines of

$2,000 per full-time employee. If they keep their health plans but refuse to provide or facilitate the objectionable coverage, they are subject to daily fines of $100 a day per affected beneficiary. The fines therefore coerce Plaintiffs into violating their religious beliefs.

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

B. The U.S. Government Mandate Is Not a Neutral Law of General Applicability

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

187. For example, the Mandate exempts all "grandfathered" plans from its requirements, thus excluding tens of millions of people from the mandated coverage. As the Government has admitted, while the numbers are expected to diminish over time, "98 million individuals will be enrolled in grandfathered group health plans in 2013." 75 Fed. Reg. at 41,732. Elsewhere, the Government has put the number at 87 million. *See* "Keeping the Health Plan You Have" (June 14, 2010), *available at* http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html. And according to one district court last year, "191 million Americans

belong[ed] to plans which may be grandfathered under the ACA." *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1291 (D. Colo. 2012).

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

189. In addition, the Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the Internal Revenue Code. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not of other religious organizations that remain subject to the Mandate.

190. The U.S. Government Mandate, moreover, was promulgated by Government officials, and supported by non-governmental organizations, who strongly oppose certain Catholic teachings and beliefs. For example, on October 5, 2011, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. Defendant Sebelius has long supported abortion rights and criticized Catholic teachings and beliefs regarding abortion and contraception. NARAL Pro-Choice America is a pro-abortion organization that likewise opposes many Catholic teachings. At that fundraiser, Defendant Sebelius said, "we are in a war," and criticized individuals and entities whose beliefs differed from those held by her and the other attendees of the NARAL Pro-Choice America fundraiser. She added: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much." In addition, the Mandate was modeled on a

California law that was motivated by discriminatory intent against religious groups that oppose contraception.

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

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

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

193. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely held religious beliefs by requiring them to participate in a scheme for the provision of abortion-inducing products, sterilization, contraceptives, and related education and counseling. The Government itself has relieved numerous other employers from this requirement by exempting grandfathered plans and plans of employers it deems to be sufficiently religious. Moreover, these services are widely available in the United States. The U.S. Supreme Court has held that individuals have a constitutional right to use such services. And nothing that Plaintiffs do inhibits any individual from exercising that right.

194. Even assuming the Government's asserted interest were compelling, the Government has numerous alternative means of furthering that interest without forcing Plaintiffs to violate their religious beliefs. For example, the Government could have provided or paid for the objectionable services itself through other programs established by a duly enacted law. Or, at a minimum, it could have created a broader exemption for religious employers, such as those found in numerous state laws throughout the country and in other federal laws. The Government

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

195. The U.S. Government Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the wide variety of social and educational services that Plaintiffs provide. Plaintiffs Archdiocese of New York and Diocese of Rockville Centre serve New Yorkers through their many charitable programs and through the education of students in their respective school systems. Cardinal Spellman High School and Msgr. Farrell High School educate religiously and ethnically diverse student bodies, preparing them for college and encouraging them to become leaders. CHSLI provides care for hundreds of thousands of Long Islanders each year, and ArchCare cares for frail and vulnerable people unable to fully care for themselves. As President Obama acknowledged in his announcement of February 10, 2012, religious organizations like Plaintiffs do "more good for a community than a government program ever could." The U.S. Government Mandate, however, puts these good works in jeopardy.

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

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

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

198. On June 28, 2013, Defendants finalized the U.S. Government Mandate, including the narrow "religious employer" exemption and the so-called "accommodation" proposed in the

NPRM. By the terms of the Final Rule, Plaintiffs must comply with the Mandate by the beginning of the next plan year on or after January 1, 2014.

199. For all Plaintiffs, their next plan year begins on January 1, 2014.

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

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

202. Health plans do not take shape overnight. A number of analyses, negotiations, and decisions must occur each year before Plaintiffs can offer a health benefits package to their employees. For example, employers that are self-insured—like the Archdiocese of New York, ArchCare, the Diocese of Rockville Centre, and CHSLI—after consulting with actuaries, must negotiate with their third-party administrators.

203. Under normal circumstances, Plaintiffs must begin the process of determining their health care package for a plan year many months before the plan year begins. The multiple levels of uncertainty surrounding the U.S. Government Mandate make this already lengthy process even more complex.

204. The Archdiocese of New York and Diocese of Rockville Centre face the additional complexity of having to chose between two alternatives—both of which violate their sincerely-held religious beliefs—with respect to affiliated, non-exempt organizations that use the Archdiocesan or Diocesan plans: (1) sponsor plans that will provide, pay for, and/or facilitate the provision of the objectionable products and services to the employees of these organizations; or

(2) expel them from their respective self-insurance plans, which, in turn, will require those organizations to provide, pay for, and/or facilitate access to the objectionable products and services. If the Archdiocese and/or the Diocese choose the latter option, the non-exempt affiliates will need time to select and set up a new health care plan for employees.

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

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

V. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

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

208. 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.

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

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

211. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, contraception, sterilization procedures, and related counseling in a manner that is directly contrary to their religious beliefs.

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

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

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

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

216. Plaintiffs have no adequate remedy at law.

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

COUNT II
Substantial Burden on Religious Exercise in Violation of the Free Exercise Clause of the First Amendment

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

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

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

221. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, contraception, sterilization procedures, and related counseling in a manner that is directly contrary to their religious beliefs.

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

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

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

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

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

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

228. 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.

229. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

236. The U.S. Government Mandate would compel Plaintiffs to provide health care plans to their employees that provide, pay for, and/or facilitate access to products and services that violate Plaintiffs' religious beliefs.

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

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

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

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

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

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

243. Plaintiffs have no adequate remedy at law.

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

COUNT IV
Prohibition of Speech in Violation of the First Amendment

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

246. The First Amendment protects the freedom of speech, including the right of religious groups to speak out to persuade others to refrain from engaging in conduct that may be considered immoral.

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

248. Plaintiffs have no adequate remedy at law.

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

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

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

251. The Establishment Clause of the First Amendment prohibits the Government from adopting an official definition of a "religious employer" that favors some religious groups while excluding others.

252. The Establishment Clause also prohibits the Government from becoming excessively entangled in the affairs of religious groups by scrutinizing their beliefs, practices, and organizational features to determine whether they meet the Government's favored definition.

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

254. First, it favors some religious groups over others by creating an official definition of "religious employers." Religious groups that meet the Government's official definition receive favorable treatment in the form of an exemption from the Mandate, while other religious groups do not.

255. Second, even if it were permissible for the Government to favor some religious groups over others, the "religious employer" exemption would still violate the Establishment

Clause because it requires the Government to determine whether groups qualify as "religious employers" based on intrusive judgments about their beliefs, practices, and organizational features. The exemption turns on an intrusive 14-factor test to determine whether a group meets the requirements of section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. These 14 factors probe into matters such as whether a religious group has "a distinct religious history" or "a recognized creed and form of worship." But it is not the Government's place to determine whether a group's religious history is "distinct," or whether the group's "creed and form of worship" are "recognized." By directing the Government to partake of such inquiries, the "religious employer" exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion.

256. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

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

265. Plaintiffs have therefore made the internal decision that the health plans they offer to their employees may not cover, subsidize, or facilitate abortion, sterilization, or contraception.

266. Plaintiffs Archdiocese of New York and Diocese of Rockville Centre have further made the internal decision to offer health insurance coverage through their plans to affiliated religious entities and their employees, including Plaintiffs Cardinal Spellman High School and Msgr. Farrell High School.

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

268. The U.S. Government Mandate's interference with Plaintiffs' internal decisions affects their faith and mission by requiring them to provide, pay for, and/or facilitate practices that directly conflict with their religious beliefs.

269. Because the U.S. Government Mandate interferes with the internal decision-making of Plaintiffs in a manner that affects Plaintiffs' faith and mission, it violates the

Establishment Clause and the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act.

270. Plaintiffs have no adequate remedy at law.

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

COUNT VII
Illegal Action in Violation of the APA

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

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

274. The U.S. Government Mandate, its exemption for "religious employers," and its so-called "accommodation" for "eligible" religious organizations are not in accordance with law and therefore in violation of the APA.

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

276. The Affordable Care Act contains no clear expression of an affirmative intention of Congress that employers with religiously motivated objections to the provision of health plans that include coverage for abortion-inducing products, sterilization, contraception, or related education and counseling should be required to provide such plans.

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

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

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

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

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

282. Plaintiffs have no adequate remedy at law.

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

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

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

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

286. In the ANPRM, Defendants acknowledged that the religious employer exemption was "available to religious employers in a variety of arrangements." 77 Fed. Reg. at 16,502.

287. Specifically, Defendants indicated that a nonexempt entity could "provide[] health coverage for its employees through" a plan offered by a separate, "affiliated" organization that is a "distinct common-law employer." *Id.*

288. In such a situation, Defendants stated that if the "affiliated" organization was "exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees." *Id.*

289. This reading is consistent with the text of the regulation, which by its plain terms exempts "group health plan[s]" so long as they are "established or maintained by a religious employer."

290. Nonetheless, when issuing the Final Rule, Defendants reversed course, rejecting a "plan-based approach" and adopting an "employer-by-employer approach" whereby "each employer [must] independently meet the definition of religious employer . . . in order to avail itself of the exemption." 78 Fed. Reg. at 39,886.

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

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

293. Defendants' erroneous interpretation of the religious employer exemption, however, precludes the Archdiocese's and Diocese's affiliated entities that do not meet the definition of a "religious employer," including Plaintiffs Cardinal Spellman High School and

Msgr. Farrell High School, from obtaining the benefit of the exemption by participating in the exempt group health plans established and maintained by the Archdiocese and the Diocese.

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

295. Plaintiffs have no adequate remedy at law.

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

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under RFRA;
2. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under the First Amendment;
3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;
4. Enter an injunction prohibiting the 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, and costs; and
7. Award all other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury for all issues so triable as a matter of right.

Dated: August 14, 2013
New York, New York

Respectfully submitted,

JONES DAY

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