IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE ROMAN CATHOLIC ARCHDIOCESE OF ATLANTA, an association of churches and schools;

THE MOST REVEREND WILTON D. GREGORY, and his successors, Archbishop of the Atlanta Archdiocese;

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF ATLANTA, INC.;

CATHOLIC EDUCATION OF NORTH GEORGIA, INC.;

THE ROMAN CATHOLIC DIOCESE OF SAVANNAH, an ecclesiastical territory; and

THE MOST REVEREND JOHN HARTMAYER, and his successors, Bishop of the Savannah Diocese,

***Plaintiffs*,**

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services;

THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor;

JACOB J. LEW, in his official capacity as Secretary of the U.S. Department of the Treasury;

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES;

U.S. DEPARTMENT OF LABOR; and

U.S. DEPARTMENT OF THE TREASURY,

***Defendants*.**

CIV. NO.: 12-cv-03489-WSD

SECOND AMENDED AND RECAST VERIFIED COMPLAINT

Pursuant to Fed. R. Civ. P. Rule 15 and this Court's Order of July 25, 2013 (D.E. #54), Plaintiffs hereby submit their Second Amended and Recast Complaint, which shall substitute for and supersede Plaintiffs' First Amended and Recast Complaint in this action (D.E. #21), and state as follows:

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

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

3. Plaintiff The Roman Catholic Archdiocese of Atlanta (the "Atlanta Archdiocese") is an association of those Roman Catholic parishes and organizations located within the 69 counties in northern Georgia under the pastoral care of the Most Reverend Wilton D. Gregory ("Archbishop Gregory"), and his successors in office. The Atlanta Archdiocese carries out its mission directly, through the work of affiliated Catholic entities and associations, through the education of students in 18 Catholic schools operated by and within the Atlanta Archdiocese, and through the education of students in five regional Catholic schools collectively incorporated as Catholic Education of North Georgia, Inc. ("CENGI")

4. Plaintiff Catholic Charities of the Archdiocese of Atlanta, Inc. ("Catholic Charities"), a nonprofit Georgia corporation headquartered in Atlanta, Georgia, with five regional offices located throughout northern Georgia, is a charitable organization committed to providing "an advocate and friend for individuals and families facing adversity." Catholic Charities provides "a holistic combination of accredited social services -- life skills education, counseling,

family stabilization, and immigration legal services -- that remove barriers to self-sufficiency and wholeness." Catholic Charities serves its neighbors in multiple languages, and regardless of background.

5. CENGI is a separately incorporated religious entity that includes the following five Catholic schools: Blessed Trinity High School, Holy Redeemer, Our Lady of Victory, Queen of Angels, and Our Lady of Mercy. The CENGI schools provide a comprehensive, high quality Catholic education, including both secular and religious subjects. The schools charge tuition for their services and currently serve more than 2,300 students. The CENGI schools employ approximately 200 teachers and welcome students of all faiths or of no faith.

6. Plaintiff The Catholic Diocese of Savannah (the "Diocese of Savannah") is a religious association of parishes and schools inclusive of those Roman Catholic parishes and organizations located in 90 counties in south Georgia under the pastoral care of the Most Reverend John Hartmayer ("Bishop Hartmayer"), Bishop of the Roman Catholic Diocese of Savannah and his successors in office. The Diocese of Savannah carries out its mission directly, through the work of affiliated Catholic entities and associations, and through the education of students in its Catholic schools.

7. Plaintiffs' work is 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 Benedict more recently stated: "[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Thus, Catholic individuals and organizations consistently work to create a more just community by serving any and all neighbors in need.

8. Plaintiffs address the needs of Georgia residents in a variety of ways. The Atlanta Archdiocese, CENGI, and the Diocese of Savannah serve families through the education of the students attending their Catholic schools. The two dioceses also provide charitable service statewide through dozens of programs undertaken by their respective parishes.

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

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

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

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

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

sit in judgment of which groups qualify as "religious employers," thus favoring certain religious organizations over others and entangling the Government in matters of religious faith and practice.

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

12. For example, the Exemption's narrow definition of "religious employer" likely excludes, among other entities, Catholic Charities and CENGI, even though they are plainly "religious" organizations under any reasonable definition of the term. Instead, they appear to be merely "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, a third party administrator),

which, as a direct result, is required to provide or procure the objectionable coverage 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 causing and facilitating the provision of 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.

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

14. In addition, notwithstanding the "accommodation," the Mandate "requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage."[1] While the Government asserts that providing the objectionable coverage will be "cost-neutral," that assertion ignores the regulatory and administrative costs that will inevitably force insurance companies and third-party administrators to increase the prices they charge religious employers subject to the "accommodation." The Government's assertion of "cost neutrality" is also based on the implausible (and morally objectionable) assumption that "lower costs" from "fewer childbirths" will offset the cost of the contraceptive coverage. 78 Fed. Reg. at 8,463 (Feb. 6, 2013). 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 the (objectionable) goal of "fewer childbirths."

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

[1] 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.

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

17. This aspect of the Mandate reflects a change from the Government's original proposal of July 19, 2010, which allowed Catholic Charities workers[2] and CENGI employees to remain on the Atlanta Archdiocese' plan, which, in turn,

[2] Catholic Charities' workers are borrowed from the Atlanta Archdiocese.

would have shielded them from the Mandate if the Atlanta Archdiocese was exempt.[3] The Final Rule, in contrast, removes this protection and thereby *increases* the number of religious organizations subject to the Mandate. And in so doing, the Mandate now effectively divides the Catholic Church, artificially separating its "houses of worship" from its faith in action, directly contrary to Pope Benedict's admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

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

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

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

PRELIMINARY MATTERS

20. The Atlanta Archdiocese is an unincorporated association of 99 parishes and 18 Catholic schools, with its principal place of business in Smyrna, Georgia. It is organized exclusively for charitable, religious, and educational purposes under Section 501(c)(3) of the Internal Revenue Code ("IRC").

21. Catholic Charities is a nonprofit Georgia corporation that is part of the Catholic ministry of the Atlanta Archdiocese. It is organized exclusively for charitable, religious, and educational purposes under IRC § 501(c)(3).

22. CENGI is a nonprofit Georgia corporation that, among other things, owns and operates five independent Catholic schools. It is organized exclusively for charitable, religious, and educational purposes under IRC § 501(c)(3).

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

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 Administrative Procedure Act ("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 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 Court under 28 U.S.C. § 1391(e)(1).

THE PARTIES

ARCHBISHOP GREGORY AND THE ATLANTA ARCHDIOCESE

35. Archbishop Gregory, in his capacity as Archbishop of the Atlanta Archdiocese, is responsible for serving more than 900,000 Catholics residing throughout 69 counties in northern Georgia. Originally established in 1956 through a division of the Diocese of Savannah, the Atlanta Archdiocese was elevated to the rank of archdiocese on February 10, 1962.

36. Archbishop Gregory is assisted in his ministry by a staff of clergy, religious brothers and sisters, and lay people. Except where religion is a bona fide prerequisite for fulfilling a job requirement, the Atlanta Archdiocese imposes no religious litmus test on its employees and employs Catholics and non-Catholics alike.

37. The Atlanta Archdiocese carries out a tripartite spiritual, educational, and social service mission. Through the ministry of its priests, the Atlanta Archdiocese ensures the regular availability of the Sacraments to all Catholics living in or visiting the northern part of Georgia.

THE ATLANTA CATHOLIC SCHOOLS

38. The Catholic Church's educational mission within the Atlanta Archdiocese is carried out largely through 18 Catholic schools, and through the five independent Catholic schools that are part of CENGI. Collectively, those schools serve nearly 12,000 students and employ more than 1,800 full-time and 3,000 part-time teachers and administrators.

39. The Catholic schools within the Atlanta Archdiocese and the CENGI schools welcome students of any or no faith. To serve as many children as possible, the Atlanta Archdiocese expends significant funds in tuition assistance programs. A substantial number of the students and faculty are not Catholic.

40. The Catholic schools within the Atlanta Archdiocese and CENGI have established certain priorities that distinguish them from public educational institutions. They provide an education based on Christ's teaching and Catholic values, and focus on the formation of strong moral character, the furtherance of academic excellence, the inspiration to serve others and the motivation to achieve

the students' potential in the local and the world communities. High academic standards help each student reach his or her potential. Nationally, 99.4% of students in Catholic high schools graduate.

CATHOLIC CHARITIES

41. The mission of Catholic Charities is to be a faith-based advocate and friend for individuals and families facing adversity by providing multiple accredited social services that remove barriers to self-sufficiency and wholeness. Last year, Catholic Charities directly served more than 21,000 people, without regard to religious affiliation.

42. Catholic Charities serves the needy, underserved, and underprivileged in countless ways, including immigration legal services, refugee resettlement services, outpatient mental health counseling, foreclosure intervention and prevention, disaster preparedness and response education, financial literacy education, English language instruction, and marriage counseling. More than 75 workers at Catholic Charities provide services to those in need in over 16 languages.

43. Serving the needs of women and children is a priority of Catholic Charities. It operates numerous programs for new and prospective mothers, including in-home parenting education, pregnancy support services, post-adoption

services, and play therapy for children. The pregnancy support counselors at Catholic Charities focus on the prospective mother's emotional needs during pregnancy, and help mothers to make positive, long-term plans for the child. Last year, 46 women were counseled through the pregnancy support program, and 86% of the mothers who received counseling prior to the birth of their child actively prepared for the child by making a parenting, kinship, or adoption plan. Catholic Charities provides millions of dollars in services annually (excluding administrative and fund-raising costs) for the communities it serves. Catholic Charities does not ask whether the people it serves are Catholic.

44. Catholic Charities maintains offices in Atlanta, Chamblee, Lilburn and Athens, Georgia. It also provides counseling services at parishes throughout northern Georgia, including parishes in Alpharetta, Conyers, Cumming, Douglasville, Lawrenceville, Marietta, Norcross, Duluth, Flowery Branch, Hapeville, Johns Creek, Peachtree City, Roswell, Sandy Springs, and Woodstock. Catholic Charities does not inquire about the religious commitments of its workers and does not know how many of its workers are Catholic.

BISHOP HARTMAYER AND THE DIOCESE OF SAVANNAH

45. Bishop Hartmayer, in his capacity as Bishop of the Diocese of Savannah, is responsible for 55 parishes and 24 missions in 90 counties located

throughout the southern part of Georgia. The Diocese of Savannah has been serving these communities since it was established by Pope Pius IX in 1850. It currently serves a Catholic population of more than 77,000 people.

46. Since 2011, Bishop Hartmayer has overseen the multifaceted mission of delivering spiritual, educational, and social services to residents, both Catholic and non-Catholic alike. The parishes maintain their own charitable efforts and serve an indeterminate number of persons of all faiths who are homeless, hungry, elderly, or otherwise in need of material assistance. Because it serves people regardless of their faith, the Diocese of Savannah does not know how many of those that it serves are Catholic.

47. The Diocese of Savannah employs hundreds of people, the majority of whom are full-time employees. While most of these employees likely identify themselves as Catholic, except where religion is a bona fide requirement for the job, the Diocese does not inquire into the faiths of potential employees.

48. The Diocese of Savannah also serves the community through its Catholic schools. The Office of Catholic Schools is vested with responsibility for all of the Catholic schools within the Diocese, which include 16 elementary schools, five high schools, and various preschool programs. Collectively, these schools educate approximately 5,000 students.

49. The mission of the Diocese of Savannah Catholic Schools is to "encourage and support" students to reach the fullness of their potential spiritually, intellectually, aesthetically, emotionally, socially, and physically." These Catholic schools offer an educational experience unlike any other in the area. As Cardinal Donald Wuerl said about Catholic education: "We educate people not just for exams, but for life eternal. We educate the whole person: mind, body, and spirit."

50. Like the Catholic schools of the Atlanta Archdiocese and CENGI, the Catholic schools of the Diocese of Savannah maintain high standards for academic excellence. They are open to and serve all children, without regard to the students' religion, race or financial condition. To make a Catholic education available to as many children as possible, the Diocese of Savannah expends substantial funds in tuition assistance programs. Approximately one-third of the students who attend the Catholic schools of the Diocese of Savannah are not Catholic, and approximately one-quarter of them are minorities.

51. The Diocese of Savannah Catholic Schools do not consider religious affiliation in hiring for most positions. While the Diocese does not know exactly how many teachers in its schools are Catholic, it is likely that a substantial percentage of the Diocese's teachers do not share its religious tenets.

THE IMPACTED HEALTH PLANS

52. The Atlanta Archdiocese operates the Roman Catholic Archdiocese of Atlanta Group Health Care Plan (the "Atlanta Plan"), which provides coverage to the employees of, among other organizations, the Atlanta Archdiocese and CENGI, and individuals working for Catholic Charities. The Archdiocese does not contract with a separate insurance company to provide healthcare coverage to its employees. Instead, it functions as its own insurance company, underwriting its employees' medical costs. The Archdiocese contracts with Meritain Health, a third-party administrator, to provide certain claims and other related administration services. The Atlanta Plan does not cover abortion-inducing drugs or sterilization. Contraceptives are not covered by the Plan unless they are necessary for medically diagnosed conditions unrelated to contraception.

53. The Atlanta Plan year begins on January 1.

54. The Diocese of Savannah operates two self-insured health plans (collectively, the "Savannah Plan"), which provide coverage to the employees of the Diocese, the parishes, and the schools within the Diocese. Meritain Health manages benefit applications, claims processing, and payment of claims for the Savannah Plan on behalf of the Diocese of Savannah. The Savannah Plan does not cover abortion-inducing drugs or sterilization. Contraceptives are not covered by

the Plan unless they are necessary for medically diagnosed conditions unrelated to contraception.

55. The Savannah Plan year begins on July 1.

56. "[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."[4] These so-called "grandfathered health plans do not have to meet the requirements" of the Mandate, but only so long as the plans offer substantially the same benefits at substantially the same costs.[5]

57. Because of financial pressures caused by increasing healthcare costs, the Diocese of Savannah was forced to modify significantly its existing Plan on July 1, 2011. Among other changes, the Diocese increased employee deductibles and out-of-pocket maximums by approximately 33% above those amounts associated with the Savannah Plan as of March 23, 2010. Further, the Diocese introduced an additional "Value Plan" for its employees on July 1, 2012. Plaintiffs

[4] Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726, 41,731 (July 19, 2010); 42 U.S.C. § 18011.

[5] 75 Fed. Reg. at 41731; 26 C.F.R. § 54.9815-1251T(g); 45 C.F.R. § 147.140(g); 29 C.F.R. § 2590.715-1251(g).

believe that, because of these changes and others, the Savannah Plan does not meet the Affordable Care Act's definition of a "grandfathered" plan.

58. Plaintiffs believe that the Atlanta Plan currently meets the Affordable Care Act's definition of a "grandfathered" Plan. As a result of this, the Atlanta Archdiocese has included a statement describing its grandfathered status in its Plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).[6]

59. To maintain its putative grandfathered status, however, the Atlanta Archdiocese is locked into its current health plan, unable to adjust it in response to the ever-changing healthcare marketplace. Thus, to avoid compromising its core religious beliefs, the Atlanta Archdiocese is stuck in perpetuity with providing its current Plan, and forgoing necessary modifications that would benefit its Plan participants and its affiliated Catholic organizations.

60. In any event, the Atlanta Plan will lose its grandfathered status in the near future for reasons that cannot be avoided. For example, the employer contribution to the premium cannot decrease by more than 5% of the cost of coverage compared to the employer contribution on March 23, 2010.[7] The Atlanta Plan's costs, however, have increased by 14% a year since March 23, 2010. The

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

[7] 26 C.F.R. §54.9815-1251T(g)(1)(v); 45 C.F.R. § 147.140(g)(1)(v); 29 C.F.R. § 2590.715-1251(g)(1)(v).

Atlanta Archdiocese has had to absorb the bulk of these millions of dollars in increased healthcare premiums since March 23, 2010, and may be unable to continue to do so without threatening its overall solvency. Given the well-established, long-term trajectory of healthcare costs, the Atlanta Archdiocese anticipates that, as an employer, it will be unable to continue to pay within 5 percentage points of what it had paid in 2010 by January 1, 2014. Even the Government acknowledges that, as health costs escalate, the number of grandfathered health plans will decrease substantially in the near future.[8]

STATUTORY AND REGULATORY BACKGROUND

THE AFFORDABLE CARE ACT

61. On March 23, 2010, Congress enacted the Affordable Care Act.[9] The Act established many new requirements for "group health plan[s]," broadly defined as "employee welfare benefit plan[s]" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provide[] medical care . . . to employees or their dependants." 42 U.S.C. § 300gg-91(a)(1).

[8] *See* 75 Fed. Reg. 41,726, 41,731 (July 19, 2010); *see also* Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 39,870, 39,887 n.49 (July 2, 2013) ("[I]t is expected that a majority of plans will lose their grandfathered status by the end of 2013.").

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

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

63. "[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."[10] These so-called "grandfathered health plans do not have to meet the requirements" of the Mandate. 75 Fed. Reg. at 41,731 (July 9, 2010). HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732.

[10] 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.

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

(a) Under the IRC, certain employers who fail to offer "full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan" will be exposed to annual fines of $2,000 per full-time employee.[11]

(b) Under the IRC, group health plans that fail to provide certain required coverage may be subject to a penalty of $100 a day per covered individual.[12]

(c) Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits.[13]

(d) Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the Mandate, as incorporated by ERISA.[14]

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

[12] *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).

[13] 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700.

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

66. For example, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits certain agencies from discriminating against an institution based on that institution's refusal to provide abortion-related services. Specifically, it states that "[n]one of the funds made available in this Act [to the Department of Labor and the HHS] may be made available to a Federal agency or program . . . if 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, 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat 786, 1111 (2011). The term "health care entity" is defined to include, among other things, "a health insurance plan." *Id.* § 507(d)(2).

67. The legislative history of the Act also demonstrates a clear congressional intent to prohibit the executive branch from requiring group health

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[14] *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).

plans to provide abortion-related services. For example, the House of Representatives originally passed a bill that included an amendment by Congressman Bart Stupak prohibiting the use of federal funds for abortion services. *See* H.R. 3962, 111th Cong. § 265 (Nov. 7, 2009). The Senate version, however, lacked that restriction. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009). To avoid a filibuster in the Senate, congressional proponents of the Act engaged in a procedure known as "budget reconciliation" that required the House to adopt the Senate version of the bill largely in its entirety. Congressman Stupak and other pro-life House members, however, indicated that they would refuse to vote for the Senate version because it failed adequately to 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).

68. 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 services. *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.

THE EVOLVING MANDATE

69. Less than two years later, however, Defendants promulgated the 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 is significantly worse than the original rule.

THE ORIGINAL MANDATE

70. On July 19, 2010, Defendants issued initial interim final rules addressing the statutory requirement that group health plans provide coverage for women's "preventive care." 75 Fed. Reg. 41,726. These interim rules did not define "preventive care," instead noting that "[t]he Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011." *Id*. at 41,731.

71. 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.

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

73. At the close of this process, on July 19, 2011, the IOM issued a final report recommending that "preventive care" for women be defined to include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for [all] women with reproductive capacity."[15]

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

74. The pervasive bias of the IOM process spurred one member of the Committee, Dr. Anthony Lo Sasso, to dissent from the final recommendation, writing: "[T]he committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy." [16]

75. At a press briefing the next day, the chair of the IOM Committee fielded a question from the audience regarding the "coercive dynamic" of the Mandate, asking whether the Committee considered the "conscience rights" of those who would be forced to pay for coverage that they found objectionable on moral and religious grounds. In response, the chair stated: "[W]e did not take into account individual personal feelings."[17] The chair later expressed concern to Congress about considering religious objections to the Mandate because to do so

[16] *Id.* at 232.

[17] *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.

would risk a "slippery slope" that could occur by "opening up that door" to religious liberty.[18]

76. 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" in its entirety, including all "FDA-approved contraception methods and contraceptive counseling."[19] HHS ignored the religious, moral and ethical dimensions of the decision and the ideological bias of the IOM Committee and stated that it had "relied on independent physicians, nurses, scientists, and other experts" to reach a definition that was "based on scientific evidence." Under the final "scientific" definition, the category of mandatory "preventive care" extends to "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity."[20]

77. The Government's definition of mandatory "preventive care" also includes abortion-inducing drugs. For example, the FDA has approved

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[18] *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).

[19] *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.

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

"emergency contraceptives," such as the morning-after pill (otherwise known as Plan B), which can prevent an embryo from implanting in the womb, and Ulipristal (otherwise known as HRP 2000 or ella), which likewise can induce abortions.

THE ORIGINAL EXEMPTION

78. Shortly after announcing its definition of "preventative care," the Government proposed a narrow exemption from the Mandate for a small category of "religious employers" that met all of the following four criteria: "(1) The inculcation of religious values is the purpose of the organization"; "(2) The organization primarily employs persons who share the religious 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."[21]

79. 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."[22] It provided no protection for religious

[21] 76 Fed. Reg. at 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(1)(iv)(B)).

[22] *Id*. at 46,623.

universities, elementary and secondary schools, hospitals, and charitable organizations.

THE ANPRM

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

81. The Government initially refused to reconsider its position. Instead, it "finalize[d], without change," the narrow exemption as originally proposed. 77 Fed. Reg. at 8,729 (Feb. 15, 2012). At the same time, the Government announced that it would offer a "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."

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

THE ORIGINAL COMPLAINT AND THE GOVERNMENT'S PROMISE OF NON-ENFORCEMENT

83. On October 5, 2012, Plaintiffs filed this lawsuit in the U.S. District Court for the Northern District of Georgia seeking to enjoin the Mandate on the ground that, among other things, it violated their rights of religious conscience under RFRA and the First Amendment. [Dkt. #1] In response to this and similar litigation, the Government referenced the ANPRM, promised that the regulations would never be enforced in their present form, and represented that it was planning to modify the regulations to accommodate religious organizations with religious objections to contraceptive coverage before the safe harbor expired in August 2013.

84. According to the Government: "[D]efendants finalized an amendment to the preventive services coverage regulations, issued guidance on a temporary enforcement safe harbor, and initiated a rulemaking to further amend the regulations, all designed to address religious concerns such as those raised by

plaintiffs. The finalized amendment confirms that group health plans sponsored by certain religious employers (and any associated group health insurance coverage) are exempt from the requirement to cover contraceptive services." *Mem. In Support of Defs.' Mot. to Dismiss Amended Complaint* [Dkt. #27-1] at 2. Indeed, the Government assured the Court that "[t]he amended regulations likely will address plaintiffs' concerns (after all, that is the intent of the ongoing rulemaking)[.]" *Id*. at 4.

85. In response to the Government's motion to dismiss, Plaintiffs made clear that the ANPRM, even if enacted, would still require Plaintiffs to provide, pay for, and/or facilitate the provision of objectionable insurance coverage for their employees and, therefore, would not relieve the burden on their religious exercise. *Plfs' Mem. in Opposition to Defs' Motion to Dismiss Amended Complaint* [Dkt. #37] at 8 n.4, 32.

THE NPRM

86. On February 1, 2013, the Government issued a Notice of Proposed Rulemaking ("NPRM"), setting forth in further detail its proposal to "accommodate" the rights of Plaintiffs and other religious organizations. Like the Government's previous proposals, the NPRM was once again met with strenuous opposition, including more than 400,000 comments. 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."[23]

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

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

89. *First*, the Final Rule makes what the Government concedes to be a non-substantive, cosmetic change to the definition of "religious employer." In particular, it eliminates the first three prongs of that definition, such that, under the new definition, an exempt "religious employer" is simply "a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the

[23] 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.

Internal Revenue Code of 1986, as amended." *See* 78 Fed. Reg. 39,874 (July 2, 2013). 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 regulations." *Id*. Instead, it continues to "restrict[] the exemption primarily to group health plans established or maintained by churches, synagogues, mosques, and other houses of worship, and religious orders." 78 Fed. Reg. 8,456, 8,461 (Feb. 6, 2013). In this respect, the Final Rule is, in substance, virtually identical to the original "religious employer" exemption, which was intended to focus on "the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. at 46,623. Religious organizations that have a broader mission are still not, in the Government's view, "religious employers."

90. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the Mandate, while denying this favorable treatment to all other religious groups. The exemption applies only to those groups that are "referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code," which includes only (i) "churches, their integrated auxiliaries, and conventions or associations of churches," and (iii) "the exclusively religious activities of any religious order."

The IRS has adopted an intrusive 14-factor test to determine whether a group meets these qualifications. *See Foundation of Human Understanding v. United States*, 88 Fed. Cl. 203, 220 (Fed. Cl. 2009). Among these 14 factors is whether the group has " a recognized creed and form of worship," "a definite and distinct ecclesiastical government," "a formal code of doctrine and discipline," "a distinct religious history," "an organization of ordained ministers" "a literature of its own," "established places of worship," "regular congregations, "regular religious services," "Sunday schools for the religious instruction of the young," and "schools for the preparation of its ministers." *Id.* 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.

91. *Second*, the Final Rule establishes an illusory "accommodation" for certain nonexempt objecting religious entities that qualify as an "eligible organization." To qualify as an "eligible organization," an organization must (i) "oppose[] providing coverage for some or all of any contraceptive services," (ii) be "organized and operate[] as a non-profit entity"; (iii) "hold[] itself out as a religious organization;" and (iv) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance provider or, if the

religious organization is self-insured, to its third party administrator.[24] Providing this self-certification automatically requires the insurance provider 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 copayment, coinsurance, or a deductible)."[25] The objectionable coverage is directly tied to the organization's health plan, lasting only as long as the employee remains on that plan.[26] 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.[27]

92. 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

[24] 26 CFR § 54.9815-2713A(a), (b)(ii), (c) ; 29 C.F.R. § 2590.715-2713A(a), (b)(ii), (c); 45 CFR § 147.131(b), (c)(1).

[25] 26 CFR§ 54.9815-2713A(b)(2), (c)(2); 29 CFR § 2590.715-2713A(b)(2), (c)(2); 45 CFR § 147.131(c)(2).

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

[27] 26 CFR § 54.9815–2713A(b)(1)(iii); 29 CFR § 2590.715-2713A(b)(1)(iii).

coverage -- now in the form of "payments" -- for abortion-inducing products, contraception, sterilization, and related counseling.[28] In both scenarios, Plaintiffs' decision to provide a group health plan triggers the delivery of "free" contraceptive coverage to their employees in a manner contrary to their beliefs. The provision of the objectionable products and services are directly tied to Plaintiffs' insurance policies, as the objectionable "payments" are available only so long as an employee is on the organization's health plan. *See* 29 CFR § 2590.715-2713A (for self-insured employers, the third-party administrator "will provide separate payments for contraceptive services . . . for so long as [employees are] enrolled in [their] group health plan"); 45 CFR § 147.131(c)(2)(i)(B) (for employers that offer insured plans, the insurance issuer must "[p]rovide separate payments for any contraceptive services . . . for plan participants and beneficiaries for so long as they remain enrolled in the plan"). 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 (July 2, 2013) (emphasis added). Thus, employer health plans offered by non-exempt religious organizations remain the

[28] 26 CFR § 54.9815-2713A(b)-(c); 29 CFR § 2590.715-2713A; 45 CFR § 147.131(c).

vehicle by which "free" abortion-inducing products, contraception, sterilization, and related counseling are delivered to the organizations' employees.

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

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

95. The Mandate also requires Plaintiffs to pay directly for the objectionable coverage.

96. For organizations that procure insurance through a separate insurance provider, the Government asserts that the cost of the objectionable coverage will be "cost neutral" and, therefore, that Plaintiffs will not actually be paying for it, notwithstanding the fact that Plaintiffs' premiums are the only source of funding that their insurance providers will receive for the objectionable products and services. This assertion, however, rests on the implausible assumption that cost "savings" from "fewer childbirths" will be at least as large as the direct costs of paying for contraceptive coverage and the costs of administering individual policies. 78 Fed. Reg. at 8,463 (Feb. 6, 2013). Some employees, however, will choose not to use contraception notwithstanding the Mandate. Others will use contraception regardless of whether it is being paid for by insurance. 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.

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

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

98. For self-insured organizations, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that third-party administrators required to procure the objectionable products and services for self-insured organizations subject to the accommodation will be compensated via reductions in the user fees required for participation in federally-facilitated health exchanges. *See* 78 Fed. Reg. 39,882-86 (July 2, 2013); 26 C.F.R. § 54.9815-2713A(b)(3); 45 C.F.R. § 156.50(d). Such fee reductions would be established through a highly regulated and bureaucratic process, and it appears most unlikely that the reduction in user fees will fully compensate the regulated entities for the costs and risks associated with providing or procuring the objectionable coverage for those religious organizations that qualify for the "accommodation" and with complying with the Final Rule's regulatory framework. As a result, few if any third-party administrators are likely to participate in this regime, and those that do are likely to increase fees charged to the self-insured organizations.

99. Either way, as with insured plans, self-insured organizations likewise will be required to pay for contraceptive coverage notwithstanding the so-called "accommodation."

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

101. *Third*, the Final Rule actually *increases* the number of religious organizations that are subject to the Mandate. Under the Government's initial "religious employer" definition, if a nonexempt religious organization "provided health coverage for its employees through" a plan offered by a separate, "affiliated" organization that was "exempt from the requirement to cover contraceptive services, then neither the [affiliated organization] nor the [nonexempt entity would be] required to offer contraceptive coverage to its employees."[29]

102. For example, the Atlanta Archdiocese operates a self-insurance plan that covers not only the Archdiocese itself, but other affiliated Catholic organizations -- including Catholic Charities and CENGI. Under the religious

[29] 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012).

employer exemption that was originally proposed, if the Archdiocese was an exempt "religious employer," then Catholic Charities and CENGI received the benefit of that exemption, regardless of whether they independently qualified as "religious employers," since they could continue to participate in the Archdiocese's exempt plan. These affiliated organizations, therefore, could benefit from the Atlanta Archdiocese's exemption even if they, themselves, could not meet the Government's narrow definition of "religious employer."

103. The Final Rule eliminates this safeguard. Instead, it provides that "each employer" must "independently meet the definition of religious employer or eligible organization in order to avail itself of the exemption or an accommodation with respect to its employees and their covered dependents." [30] Since Catholic Charities and CENGI do not appear to meet the Government's narrow definition of "religious employers," CENGI now appears to be subject to the Mandate and Catholic Charities could be subjected to the Mandate.

104. Moreover, since Catholic Charities and CENGI are part of the Atlanta Archdiocese's self-insurance plan, the Archdiocese is now required by the Mandate to do one of two things: (a) it must sponsor a plan that will provide the workers at Catholic Charities and employees at CENGI with "free" contraception,

[30] 78 Fed. Reg. 39,886 (July 2, 2103). *See also* 78 Fed. Reg. at 8,467 (Feb. 6, 2013) (NPRM).

abortion-inducing products, sterilization, and related counseling; or (b) it must expel these organizations from its insurance plan and thereby force these organizations to enter into an arrangement with another insurance provider that will, in turn, provide the objectionable products and services. Either way, the Archdiocese is forced to act contrary to its sincerely-held religious beliefs.

105. The Savannah Diocese faces a similar dilemma. The Diocese's charitable efforts and Catholic Schools are part of its self-insurance plans, and those charities and schools do not appear to qualify for the Exemption. Thus, the Savannah Diocese is likely required by the Mandate to do one of two things: since it is the insurance company for nonexempt affiliated organizations, it must sponsor a plan that will provide the employees of these organizations with "free" contraception, abortion-inducing drugs, sterilization, and related counseling. Alternatively, the Diocese must expel these organizations from its insurance plan and thereby force these organizations to enter into an arrangement with another insurance provider that will, in turn, provide the objectionable coverage.

106. In this respect, the Mandate seeks to divide the Catholic Church. The Church's faith in action, carried out through its charitable and educational arms, is every bit as central to the Church's religious mission as is the administration of the Sacraments. In the words of Pope Benedict, "[t]he Church cannot neglect the

service of charity any more than she can neglect the Sacraments and the Word." Yet the Mandate seeks to separate these aspects of the Catholic faith, treating one as "religious" and the other as not.

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

THE MANDATE SUBSTANTIALLY BURDENS PLAINTIFFS' RELIGIOUS LIBERTY

108. 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."

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

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

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

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

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

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

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

116. The "religious employers" exemption appears not to apply to Catholic Charities, CENGI, and perhaps other Plaintiffs.

117. Although the Atlanta Archdiocese and the Savannah Diocese appear to be "religious employers," the Mandate still burdens their sincerely-held religious beliefs by requiring them either to (a) sponsor plans that will provide objectionable coverage to those that work for Plaintiffs CENGI, Catholic Charities, and other affiliated but non-exempt Catholic organizations; or (b) else expel those affiliates from their insurance plans, thereby forcing them into arrangements with other insurance providers that will, in turn, provide the objectionable products and services.

118. Both of those alternatives violate the Plaintiffs' sincerely-held religious beliefs.

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

120. Finally, the Plaintiffs cannot avoid the 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 per affected beneficiary. The fines therefore coerce Plaintiffs into violating their religious beliefs.

121. In short, while the President claimed to have "f[ou]nd a solution that works for everyone" and that ensures that "[r]eligious liberty will be protected," his "accommodation" does neither. Unless and until this issue is definitively resolved, the Mandate does and will continue to impose a substantial burden on Plaintiffs' religious beliefs.

THE MANDATE IS NOT A NEUTRAL LAW OF GENERAL APPLICABILITY

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

123. 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."[31] Elsewhere, the government has put the number at 87 million.[32] 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).

124. Similarly, small employers (*i.e.*, those with fewer than 50 employees) are exempt from certain enforcement mechanisms to compel compliance with the Mandate.[33]

125. In addition, the Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the IRC. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not for other religious organizations -- likely including Catholic Charities and CENGI -- that remain subject to the Mandate

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[31] 75 Fed. Reg. 41,726, 41732 (July 19, 2010).

[32] *See* "Keeping the Health Plan You Have" (June 14, 2010), http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html.

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

126. The 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.
Secretary 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, Ms. Sebelius criticized individuals and entities whose beliefs differed from those held by her and the other attendees of the NARAL Pro-Choice America fundraiser. In addition, the Mandate was modeled on a California law that was motivated by discriminatory intent against religious groups that oppose contraception.

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

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

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

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

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

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

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

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

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

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

135. For the Atlanta Archdiocese, Catholic Charities and CENGI, the next plan year begins on January 1, 2014.

136. For the Diocese of Savannah, the next plan year begins on July 1, 2014.

137. 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.

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

139. The process of determining the healthcare package for a plan year requires a substantial amount of time before the plan year actually begins. The benefits departments for Plaintiffs must begin budgeting and planning for their insurance Plans from 14 to 16 months ahead of the start of a plan year in order to analyze, vet, and implement changes to their plans. Because both the Atlanta Plan and the Savannah Plan are self-insured, the benefits departments for Plaintiffs must analyze historical data, evaluate potential changes, work with consultants to model and analyze potential changes, and compare potential change options. The benefits departments must then develop options to be presented to committees that are responsible for benefits issues. The potential changes are discussed and debated

with the committees during a three to four month period, and a proposal must be finalized at least five months in advance of the start of the next plan year. The multiple levels of uncertainty surrounding the Mandate make this already lengthy process even more complex.

140. If Plaintiffs decide not to comply with the Mandate, they may be subject to government fines and penalties, and claims for damages by private parties. Plaintiffs require time to budget for any such additional expenses. Specifically, Plaintiffs must begin budgeting for such major general expenses approximately 18 months before a plan year will begin.

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

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

143. Further, the Government-imposed dilemma that the Atlanta Plaintiffs face between continuously maintaining the grandfathered status of their group health plan -- which severely limits the changes the can be made to the Atlanta

Plan in response to increasing healthcare costs -- and becoming subject to the Mandate is causing injury now. The Atlanta Archdiocese has considered making certain beneficial changes to the Atlanta Plan since March 23, 2010, and would have made those changes if not for the need to maintain grandfathered status. Specifically, after March 23, 2010, the Atlanta Archdiocese would have introduced some combination of increased employee premium contributions, deductibles, and/or co-pays to preserve the financial stability of both the Atlanta Plan and the Atlanta Archdiocese, but they cannot do so for fear of losing grandfathered status. Moreover, a significant portion of the budget and planning sessions for the Atlanta Archdiocese each year necessarily entails analyzing the grandfathered status of the Atlanta Plan. In fact, since March 2010, the Atlanta Archdiocese and its insurance brokers have spent more than 150 hours analyzing the Plan's grandfathered status. The time the Atlanta Archdiocese has had to spend on these issues could have been spent addressing other significant budgetary and operational issues facing the Atlanta Plaintiffs.

144. The Atlanta Archdiocese has already been injured because it has expended significant resources to ensure that the Atlanta Plan maintained its grandfathered status for plan years 2011, 2012, and 2013.

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

146. Plaintiffs need judicial relief now in order to prevent the serious, ongoing harm that the Mandate is already imposing on them.

147. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

COUNT I

SUBSTANTIAL BURDEN ON RELIGIOUS EXERCISE IN VIOLATION OF RFRA

148. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 147 hereinabove.

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

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

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

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

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

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

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

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

157. Plaintiffs have no adequate remedy at law.

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

COUNT II

SUBSTANTIAL BURDEN ON RELIGIOUS EXERCISE IN VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

159. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraph 1 through 147 hereinabove.

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

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

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

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

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

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

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

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

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

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

170. Plaintiffs have no adequate remedy at law.

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

COUNT III

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

172. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraph 1 through 147 hereinabove.

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

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

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

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

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

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

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

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

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

182. The Mandate furthers no compelling governmental interest.

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

184. Plaintiffs have no adequate remedy at law.

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

COUNT IV

PROHIBITION OF SPEECH IN VIOLATION OF THE FIRST AMENDMENT

186. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraph 1 through 147 hereinabove.

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

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

189. Plaintiffs have no adequate remedy at law.

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

COUNT V

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

191. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 147 hereinabove.

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

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

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

195. First, it favors some religious groups over others by creating an official definition of "religious employers." Religious groups that meet the

Government's official definition receive favorable treatment in the form of an exemption from the Mandate, while other religious groups do not.

196. Second, even if it were permissible for the Government to favor some religious groups over others, the "religious employer" Exemption would still violate the Establishment Clause because it requires the Government to determine whether groups qualify as "religious employers" based on intrusive judgments about their beliefs, practices, and organizational features. The Exemption turns on an intrusive 14-factor test to determine whether a group meets the requirements of section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. These 14 factors probe into matters such as whether a religious group has "a distinct religious history" or "a recognized creed and form of worship." But it is not the Government's place to determine whether a group's religious history is "distinct," or whether the group's "creed and form of worship" are "recognized." By directing the Government to partake of such inquiries, the "religious employer" exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion.

197. Plaintiffs have no adequate remedy at law.

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

COUNT VI

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

199. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 through 147 hereinabove.

200. The Free Exercise and Establishment Clauses and RFRA collectively serve to protect the freedom of religious organizations to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.

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

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

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

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

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

206. The Government may not interfere with or otherwise question the final decision of the Catholic Church that its religious organizations must abide by these views.

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

208. The Atlanta Archdiocese and the Savannah Diocese have further made the internal decision that its affiliated religious entities, including the other Plaintiffs in this case, should offer their employees health-insurance coverage through their respective plans, that allows them to ensure that these affiliates do not offer coverage for services that are contrary to Catholic teaching.

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

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

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

212. The Mandate is therefore unconstitutional and invalid.

213. Plaintiffs have no adequate remedy at law.

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

COUNT VII

UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY

215. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 though 147 hereinabove.

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

217. The Affordable Care Act expressly delegates unchecked authority to Defendant HHS to establish "comprehensive guidelines" for the services that group health plans and health insurance issuers must provide as "preventive care" under the Act.

218. The Act does not contain an intelligible principle or any other identifiable standard to which HHS is directed to conform in deciding which services do and do not qualify as "preventive care."

219. For example, and as illustrated by the Mandate and Exemption, the Act purports to bestow unfettered discretion on HHS to mandate coverage for whatever medical services and procedures it deems to qualify as "preventive care." Also, HHS has used its unbounded discretion under the Act to claim for itself the authority to decide which entities will (and will not) be subject to the Mandate and which will (and will not) qualify for the Exemption.

220. The Act's delegation of legislative authority violates the separation of powers principles of the United States Constitution.

221. Plaintiffs have no adequate remedy at law.

222. The enactment and impending enforcement of the Mandate pursuant to this unconstitutional delegation of authority impose an immediate and ongoing harm on Plaintiffs that warrants relief.

COUNT VIII

ILLEGAL ACTION IN VIOLATION OF THE APA

223. Plaintiffs hereby repeat and re-allege the allegations set out in Paragraphs 1 though 147 hereinabove.

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

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

226. 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."[34]

227. 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.

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

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

229. The Mandate violates RFRA.

230. The Mandate violates the First Amendment.

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

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

233. Plaintiffs have no adequate remedy at law.

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

WHEREFORE, Plaintiffs respectfully pray that this Court:

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

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

3. Enter a declaratory judgment that the Mandate was promulgated in violation of the APA and is an unconstitutional delegation of legislative authority;

4. Enter a declaratory judgment that Catholic Charities is not subject to the Mandate;

5. Enter a declaratory judgment that CENGI is not subject to the Mandate;

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

7. Enter an order vacating the Mandate;

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

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

Respectfully submitted, this the 19th day of August, 2013.

By:

/s E. Kendrick Smith
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Janine Cone Metcalf
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VERIFICATION

STATE OF GEORGIA

PARISH/COUNTY OF Cobb

BEFORE ME, the undersigned Notary Public, personally came and appeared:

Charles J. Thibaudeau

Human Resources Director for the Roman Catholic Archdiocese of Atlanta, Catholic Charities of the Archdiocese of Atlanta, Inc., and Catholic Education of North Georgia, Inc., Plaintiffs in the foregoing Second Amended and Recast Complaint, who declared that he has read the Second Amended and Recast Complaint and that all of the allegations contained therein are true and correct to the best of his knowledge, information and belief.

Charles J. Thibaudeau

(name)

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 19th DAY

OF August, 2013

NOTARY PUBLIC

Print Name: Lisa J. Jones

Bar Roll No.:

LISA J JONES NOTARY PUBLIC FULTON COUNTY, GEORGIA MY COMMISSION EXPIRES SEPT. 14, 2015

VERIFICATION

STATE OF GEORGIA
PARISH/COUNTY OF Bibb

BEFORE ME, the undersigned Notary Public, personally came and appeared:

Jo Ann Green

Human Services Director for The Roman Catholic Archdiocese of Savannah, Plaintiff in the foregoing Second Amended and Recast Complaint, who declared that s/he has read the Second Amended and Recast Complaint and that all of the allegations contained therein are true and correct to the best of her/his knowledge, information and belief.

Jo Ann Green

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 6th DAY
OF August, 2013

NOTARY PUBLIC
Print Name: C. A. Zilaro
Bar Roll No.:

CINDY A. ZILARO NOTARY PUBLIC EXPIRES GEORGIA JAN 7, 2018 PUBLIC JONES COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2013, I have caused a copy of this First Amended and Recast Complaint to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following counsel of record for Defendants.

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