IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN CIVIL LIBERTIES UNION, on behalf of its members, and AMERICAN CIVIL LIBERTIES UNION of MICHIGAN, on behalf of its members,

Plaintiffs,

v.

TRINITY HEALTH CORPORATION, an Indiana corporation, and TRINITY HEALTH – MICHIGAN, a Michigan corporation,

Defendants.
_____/

Case No. 15-cv-12611
Hon. Gershwin A. Drain

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**DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE STAY CASE**

***** ORAL ARGUMENT REQUESTED *****

**DEFENDANTS' MOTION TO DISMISS**
**OR IN THE ALTERNATIVE STAY CASE**

Defendants Trinity Health Corporation and Trinity Health-Michigan Corporation ("Trinity"), by their undersigned attorneys, move to dismiss plaintiffs' amended complaint under Rule 12(b)(1), Fed.R.Civ.P. and Rule 12(b)(6), Fed.R.Civ.P., because plaintiffs do not have subject matter jurisdiction and also fail to state any claim upon which relief can be granted. Alternatively, Trinity moves to stay this case pending an adjudication of the appeal of *Means v. U.S. Conference of Catholic Bishops*, 2015 WL 3970046 (W.D. Mich. 6/30/15). In support of this motion, Trinity relies on the accompanying brief.

Under E.D. Mich. LR 7.1, Trinity's counsel sought concurrence of plaintiffs' counsel in the relief requested in this motion. Concurrence was not forthcoming.

WHEREFORE, for the reasons stated in the accompanying brief, Trinity respectfully requests dismissal of plaintiffs' amended complaint.

Respectfully submitted,

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November 6, 2015

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE STAY CASE**

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## STATEMENT OF ISSUES PRESENTED

A. Whether plaintiffs have standing to sue on behalf of their members when they do not allege a particular injury to any member and instead rely only upon a speculative future injury?

**Defendants Answer**: No.

B. Whether plaintiffs stated a claim under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd, when they have not identified any individual harmed, participating hospital, or specific violation, and nonetheless seek broad declaratory and injunctive relief?

**Defendants Answer**: No.

C. Whether plaintiffs stated a claim under the Rehabilitation Act, 29 U.S.C. §794, when they have not identified any disabled individual or specific disability as required by the Act.

**Defendants Answer**: No.

D. Do federal and state statutes that protect religious conscience bar plaintiffs' claims?

**Defendants Answer**: Yes.

E. Whether the First Amendment bars the adjudication of plaintiffs' claims because they require interpretation of religious doctrine?

**Defendants Answer**: Yes.

F. Whether, in the alternative, this case should be stayed pending the appeal of *Means v. U.S. Conference of Catholic Bishops*, 2015 WL 3970046 (W.D. Mich. 6/30/2015), because the Sixth Circuit will decide a fundamental issue in this case?

**Defendants Answer**: Yes.

## CONTROLLING AUTHORITY

**Cases**

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## INTRODUCTION

Plaintiffs' amended complaint offers a web of hypotheticals to revisit an issue they recently lost in *Means v. U.S. Conference of Catholic Bishops*, 2015 WL 3970046 (W.D. Mich. 6/30/2015). **Exhibit A**. In *Means*, the ACLU represented an individual who claimed that certain directors of Trinity (a Catholic health system) and its religious sponsor (Catholic Health Ministries) were negligent in adopting the *Ethical and Religious Directives for Catholic Health Care Services* (the "Directives")[1] because the Directives prohibit "direct" abortions. That case was dismissed based on a lack of subject matter jurisdiction to interpret Catholic doctrine, *i.e.*, the Directives. With this case, plaintiffs are again trying to attack Trinity because it follows this Catholic doctrine.

Plaintiffs seek declaratory and injunctive relief "on behalf of their members" because Trinity follows the Directives. They allege that by following the Directives and prohibiting "direct" abortions, Trinity violates the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd ("EMTALA"). According to plaintiffs, at least one (unidentified) member was refused (when, plaintiffs do not say) a "stabilizing" abortion at a hospital (that plaintiffs do not identify) solely because of the Directives, and speculate that other members may suffer the same fate sometime in the future. They also assert that non-specific

[1] The United States Conference of Catholic Bishops ("USCCB") published the Fifth Edition of the Directives in December 2009. **Exhibit B**.

pregnancy complications create a "disability" under the Rehabilitation Act, 29 U.S.C. §794, and that at least one (unidentified) member suffers from an (unidentified) "disability," and was "discriminated" at an (unnamed) Trinity affiliated hospital because Trinity follows the Directives.

Plaintiffs' second bite at the apple should fail. Plaintiffs have no standing to sue on behalf of their members when they rely entirely on non-particularized and speculative injuries. Plaintiffs fail to state a claim under EMTALA because they have not named an individual harmed, a participating hospital, or a specific violation, and seek relief not authorized by the Act. Their Rehabilitation Act claim also fails because they do not identify any "disabled" persons or a recognized "disability." Moreover, federal and state statutes shield Trinity from liability. Finally, any attempt to adjudicate this contrived action would require interpretation of religious doctrine, which is prohibited by the First Amendment.

Alternatively, this case should be stayed until the Sixth Circuit decides the appeal in *Means v. U.S. Conference of Catholic Bishops*, which involves the fundamental issue presented in this case: whether this Court can interpret the Directives without violating the First Amendment.

## STATEMENT OF FACTS

### A. The Parties.

Plaintiffs are non-profit organizations which claim to have over 500,000

members nation-wide. **Exhibit C**, Amended Complaint, ¶¶7-8. Defendants, Trinity Health Corporation and Trinity Health – Michigan (collectively, "Trinity"), are part of a non-profit health care delivery system. **Exhibit D**, Restated and Amended Articles of Incorporation of Trinity Health. Trinity Health Corporation is the parent of the health system that supports the work of its affiliate hospitals and other entities that provide health care services. Trinity Health Corporation carries a long history of service provided by the founding Catholic religious congregations that have assisted the sick and infirm for more than 125 years. Among the purposes of Trinity Health Corporation is to "carry out the healthcare mission of Catholic Health Ministries on behalf of and as an integral part of the Roman Catholic Church in the United States." Id., Article II.A and II.B. Catholic Health Ministries is recognized by the Roman Catholic Church as a "public juridic person," an entity that acts in the name of the Church with respect to its religiously sponsored works. Trinity Health – Michigan (formerly, Sisters of Mercy Health Corporation) is a subsidiary of Trinity Health Corporation that owns and operates Catholic hospitals and provides other health care services in the state of Michigan.

**B. The Directives.**

The Directives, published by the USCCB, serve two purposes: "first, to reaffirm the ethical standards of behavior in health care that flow from the Church's teachings about the dignity of the human person; second, to provide

authoritative guidance on certain moral issues that face Catholic health care today." **Exhibit B**, p. 4. The Directives express "moral teachings" of the Catholic Church that "flow principally from the natural law, understood in the light of the revelation Christ has entrusted to his church." Id. They "do not cover in detail all of the complex issues that confront Catholic health care today." Id. Trinity adheres to the Directives. See, **Exhibit C**, ¶12; **Exhibit D**, Article III. Directive 45 states: "Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted." **Exhibit B**, p. 26 (Directive No. 45).[2]

**C. The Prior Related Action.**

In November, 2013, the American Civil Liberties Union of Michigan, representing Tamesha Means, filed suit against the USCCB and certain Trinity directors. See, **Exhibit E**, Means Complaint. Ms. Means was pregnant and suffered from preterm rupture of the membrane. Id., ¶¶16, 18. She sought treatment at a Trinity affiliated hospital, ultimately gave birth to a premature baby, and the baby died. Id., ¶¶21-24 and 44-45. Ms. Means claimed that because the hospital adhered to the Directives, she was precluded from seeking a stabilizing

[2] However, the Directives allow "[o]perations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman * * * when they cannot be safely postponed until the unborn child is viable, even if they result in the death of the unborn child." Id., Directive No. 47.

abortion. Id., ¶¶52-53 and 117. She alleged that the defendants were negligent for adopting the Directives as policy for Trinity affiliated hospitals. Id.

The Trinity directors filed a motion to dismiss under Rule 12(b)(6), Fed.R.Civ.P. The Honorable Robert Holmes Bell found that the Directives are a statement of Catholic theology and any determination of liability would necessarily implicate Catholic doctrine. See, **Exhibit A**, pp. 21-24; 2015 WL 3970046, *12-14. Consequently, Judge Bell ruled that the court lacked subject matter jurisdiction because it would "impermissibly intrude upon ecclesiastical matters." Id., p. 24; 2015 WL 3970046, *14. Ms. Means has appealed that decision to the Sixth Circuit.

**D. This Action.**

Now, plaintiffs are suing Trinity for alleged violations of EMTALA and the Rehabilitation Act. See, **Exhibit C**, ¶1. According to plaintiffs, Trinity denies "appropriate emergency care to women suffering pregnancy complications" because it follows the Directives. Id. Plaintiffs assert three injuries:

i. an unidentified member was denied a stabilizing abortion at an unidentified Trinity hospital because of the Directives, Id., ¶¶4, 5, 38, 64;

ii. hypothetical members may in the future become pregnant, suffer emergency complications, be forced to attend "one of Defendants' hospitals," require an abortion for stabilization, but will not receive an abortion because of the Directives, Id., ¶¶8, 10, 41, 42; and

iii. an unidentified member fears that this hypothetical chain of events may happen to her and "suffers mental anguish and distress as a result." Id., ¶¶43, 66.

As their sole relief, plaintiffs seek a declaratory judgment and an injunction requiring Trinity to perform abortions in contravention of religious doctrine. Id., p. 16.

## ARGUMENT

### A. Standard For Rule 12(b)(1) And (6) Motions.

Rule 12(b)(1), Fed.R.Civ.P., requires dismissal of a complaint where plaintiff has failed to establish subject matter jurisdiction. "Where subject matter jurisdiction is challenged pursuant to [Rule 12(b)(1)], the plaintiff has the burden of proving jurisdiction in order to survive the motion." *Gen. Retirement Sys. of City of Detroit v. Snyder*, 822 F.Supp.2d 686, 693 (E.D. Mich. 2011). If plaintiffs cannot "establish subject matter jurisdiction by a preponderance of the evidence," its claims must be dismissed. *Allstate Ins. Co. v. Renou*, 32 F.Supp.3d 856, 859 (E.D. Mich. 2014).

Rule 12(b)(6), Fed.R.Civ.P., requires dismissal when a complaint fails to state a claim upon which relief can be granted. Rule 12(b)(6) is intended "to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993). Bald assertions and legal conclusions do not allow a

complaint to survive a Rule 12(b)(6) motion. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Rule 12(b)(6) "requires more than labels and conclusions[] and a formulaic recitation of the elements of a cause of action * * *." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). A complaint must set forth facts beyond mere speculation that, when considered as a whole, serve as "facially plausible" support for the imposition of liability on a particular defendant. Id.[3]

**B. Plaintiffs Have No Standing.**

"Article III of the Constitution limits the jurisdiction of federal courts to 'Cases' or 'Controversies,'" and "[t]he doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process." *Susan B. Anthony List v. Driehaus*, __ U.S. __, 134 S.Ct. 2334, 2341 (2014). If plaintiffs lack standing, there is no subject matter jurisdiction and the complaint must be dismissed. See, *Klein v. Dep't of Energy*, 753 F.3d 576, 579 (6th Cir. 2014).

Here, plaintiffs assert claims on behalf of their 500,000 members. See, **Exhibit C**, ¶¶7-8. However, an organization has standing to sue on behalf of its members **only** "when its members would otherwise have standing to sue in their

[3] In deciding a Rule 12(b)(6) motion, documents referred to in the complaint may be considered even if not attached to the complaint. *Amini v. Oberlin College*, 259 F.3d 493, 502 (6th Cir. 2001). Documents integral to a complaint may be relied upon in adjudicating a motion to dismiss under Rule 12(b)(6). *Ouwinga v. Benistar*, 694 F.3d 783, 797 (6th Cir. 2012).

own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Evt'l Servs. (TOC) Inc.*, 528 U.S. 167, 181 (2000).

Theoretically, one of plaintiffs' members could sue in her own right if she can establish three things. **First**, she must establish an "an injury-in-fact." *Klein*, 753 F.3d at 579. "An injury sufficient to satisfy Article III must be concrete and particularized and actual or imminent, not conjectural or hypothetical." *Susan B. Anthony List*, 134 S.Ct. at 2341. **Second**, there must be "a causal connection" between the alleged injury and the defendants' conduct – that "the injury * * * [is] fairly traceable to the challenged action * * * and not the result of the independent action of some third party not before the court." *Klein*, 753 F.3d at 579, quoting, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). **Third**, the injury is redressable, meaning the injury will "be redressed by a favorable decision." Id. "The party invoking jurisdiction bears the burden of establishing these elements." *Lujan*, 504 U.S. at 561.

**i.** **No injury-in-fact**. The amended complaint does not identify a "concrete and particularized and actual or imminent" injury to any member. *Susan B. Anthony List*, 134 S.Ct. at 2341. The injury-in-fact requirement mandates that "the injuries being alleged must be described as precisely and unambiguously as

possible." *A.C.L.U. v. N.S.A.*, 493 F.3d 644, 653 (6th Cir. 2007). Here, the amended complaint does not identify any individual that suffered an injury, what that injury was, where or when the injury occurred, or how EMTALA and/or the Rehabilitation Act were violated. See, *Lee v. Bd. of Governors of the Fed. Reserve Sys.*, 118 F.3d 905, 912 (2d Cir. 1997).

Nor have plaintiffs identified any individual who is in imminent danger of such an injury-in-fact. Instead, plaintiffs speculate that one of their 500,000 members encompassing 17 states **may** get pregnant, suffer complications, be forced to visit "one of Defendants' hospitals," require an abortion for stabilization, but that hospital will refuse to perform an abortion **solely** because of the Directives. See, **Exhibit C**, ¶¶7, 8, 10, 41, 42. And, as a result of this highly attenuated chain of speculation, one unidentified member "suffers from mental anguish and distress." Id., ¶¶43, 66. "[T]here is no proof" that this abstract harm might (let alone will) ever happen, and thus it "is neither imminent nor concrete – it is hypothetical, conjectural, or speculative." *N.S.A.*, 493 F.3d at 656; see, also, *Valley Forge Christian Coll. v. Am. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982) (finding that plaintiff lacked standing by failing to assert an injury "other than psychological consequences").

**ii.** **No causal connection**. To establish a necessary causal connection, plaintiffs "must allege some threatened or actual injury **resulting from the**

**putatively illegal action** before a federal court may assume jurisdiction." *N.S.A.*, 493 F.3d at 666, quoting, *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976). "In other words * * * a federal court may act only to redress injury that fairly can be traced to the challenged action of the defendant, and **not injury that results from the independent action of some third party not before the court**." Id.; quoting, *Simon*, 426 U.S. at 41-42; emphasis added.

In *Simon, supra*, an indigents' rights organization alleged that favorable tax treatment was improperly granted to nonprofit hospitals that offered indigents only emergency room treatment. Plaintiffs argued that their members suffered an injury because the policy caused hospitals not to fully serve indigents. Id., p. 33. The court concluded that, even assuming that plaintiffs' members could not get treatment at certain hospitals, plaintiffs lacked a causal connection by failing to name a specific hospital. "[I]njury at the hands of a hospital is insufficient by itself to establish a case or controversy in the context of this suit, for no hospital is a defendant." Id., p. 41. "It is purely speculative whether the denials of service specified in the complaint fairly can be traced to petitioners' [tax treatment] or instead result from decisions made by the hospitals without regard to the tax implications." Id., pp. 42-43.

That same analysis applies here. Plaintiffs have not named **any** hospital where a member suffered or will suffer an injury. As held in *Simon*, "[i]t is purely

speculative" that a Trinity affiliated hospital will refuse to treat a member's emergency pregnancy complication solely because of the Directives. *Simon*, 426 U.S. at p. 42-43. The decision to provide a "stabilizing" procedure is made by the treating physicians, and **not** the health system. Moreover, the Directives **authorize** treating physicians to perform certain procedures "even if they result in the death of the unborn child." See, **Exhibit B**, Directive No. 47.

**iii.** **No redressability**. "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement." *Steel Co. v. Citizens for A Better Env't*, 523 U.S. 83, 107 (1998). Redressability requires "that prospective relief will remove the harm," and that plaintiffs "personally would benefit in a tangible way from the court's intervention." *Warth v. Seldon*, 422 U.S. 490, 505-08 (1975).

The relief sought will not redress plaintiffs' alleged past injuries. Plaintiffs seek two things: a declaratory judgment that Trinity "must provide appropriate stabilizing treatment * * * including pregnancy termination" **and** a permanent injunction barring Trinity from refusing to perform abortions. **Exhibit C**, p. 16. Such relief will not redress any past harm.

In *Friends of Tims Ford v. Tenn. Valley Auth.*, 585 F.3d 955 (6th Cir. 2009), a community organization sued for declaratory and injunctive relief to prevent a land transfer to private developers. Id., p. 961. The organization alleged standing,

in part, because its members would suffer "ongoing injuries to their aesthetic and recreational interests." Id., p. 967. The court dismissed the claim, holding that the organization "failed to allege future injury that could be redressed by the requested declaratory or injunctive relief, as its two members only alleged direct harm from already constructed community boat docks." Id., p. 970. Like the organization in *Friends of Tims Ford*, plaintiffs here cannot seek redress by declaratory and injunctive relief when the direct harm allegedly sustained by a member has already occurred.

Plaintiffs' requested relief also will not redress the alleged prospective injuries. Plaintiffs assert that once Trinity affiliated hospitals are enjoined from following the Directives, plaintiffs' members will no longer be denied stabilizing abortions. See, **Exhibit C**, ¶¶73, 75. That allegation is no more than pure speculation. As one example, a treating physician at a Trinity affiliated hospital may refuse to perform an abortion due to his or her own religious or moral beliefs, regardless of the Directives. Further, the Directives permit procedures "even if they result in the death of the unborn child." **Exhibit B**, Directive No. 47.

### C. This Court Should Decline To Adjudicate The Amended Complaint Under The Prudential Standing Doctrine.

"Unlike constitutional standing, which involves absolute and irrevocable justiciability requirements under Article III, prudential standing is a judicially created doctrine relied on as a tool of 'judicial self-governance.'" *Prime Media,*

*Inc. v. City of Brentwood*, 485 F.3d 343, 349 (6th Cir. 2007), quoting, *Warth*, 422 U.S. at 500. Plaintiffs must meet all three elements of prudential standing. **First**, they must "assert [their] own legal rights and interests, and cannot rest [their] claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499. **Second**, "plaintiff[s'] claim must be more than a 'generalized grievance' that is pervasively shared by a large class of citizens." *Coal Operators & Assocs., Inc. v. Babbitt*, 291 F.3d 912 (6th Cir. 2002), quoting, *Valley Forge Christian Coll.*, 454 U.S. at 747-75. **Third**, "plaintiff[s'] complaint [must] fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Id.; *Valley Forge Christian Coll.*, 454 U.S. at 475.

This Court should decline hearing this case because plaintiffs assert a "generalized grievance" potentially shared by all women in the United States. *Coal Operators & Assocs., Inc.*, 291 F.3d at 916; see, *Hewitt v. Helms*, 482 U.S. 755, 761 (1987) ("[W]hat makes it a proper judicial resolution of a 'case or controversy' rather than an advisory opinion – is the settling of some dispute **which affects the behavior of the defendant towards the plaintiff**").

This is not a case where a plaintiff is seeking vindication of constitutional rights against government action. Nor is it a case where plaintiff seeks damages for personal injuries. Plaintiffs are non-profit organizations suing a private health care system for adopting religious policies that apply uniformly. There are

approximately 160 million women in the United States. If any woman is harmed by a physician's failure to provide a "stabilizing abortion," and that failure violates an applicable standard of care, her remedy would be to directly sue the hospital or physician involved. Moreover, plaintiffs claim they represent over 500,000 members in 17 states that might someday be admitted to a Trinity affiliated hospital. **Exhibit C**, ¶7. If in the future any one of those members does not receive proper medical care, they likewise can sue the hospital or physician directly. "These additional restrictions enforce the principle that, 'as a prudential matter, the plaintiff must be a proper proponent, and the action a proper vehicle, to vindicate the rights asserted.'" *Coal Operators*¸ 291 F.3d at 916, quoting, *Pestrak v. Ohio Elections Comm'n*, 926 F.2d 573, 576 (6th Cir. 1991).

**D. Plaintiffs Failed To State A Claim Under EMTALA.**

EMTALA is intended "to prevent hospitals from dumping patients who suffered from an emergency medical condition because they lacked insurance to pay the medical bills." *Estate of Lacko v. Mercy Hospital*, 829 F.Supp.2d 543, 548 (E.D. Mich. 2011). EMTALA "was not designed or intended to establish guidelines or standards for patient care, provide a suit for medical negligence, or substitute for a medical malpractice claim." Id. In other words, "EMTALA is a limited 'anti-dumping' statute, not a federal malpractice statute." *Bryan v. Rectors & Visitors of Univ. of Va.*, 95 F.3d 349, 351 (4th Cir. 1996).

EMTALA imposes two requirements on hospitals: "(1) to administer an appropriate medical screening, and (2) stabilize emergency medical conditions." *Estate of Lacko*, 829 F.Supp.2d at 548. Plaintiffs' EMTALA claim is based solely on Trinity's alleged failure to provide "stabilizing abortions." See, **Exhibit C**, ¶37.

Plaintiffs do not meet any of the required conditions for a private right of action under EMTALA. Section 1395dd(d)(2)(A) of EMTALA states:

> "**Any individual** who suffers **personal harm** as a **direct result** of a **participating hospital's violation** of a requirement of this section may, in a civil action **against the participating hospital**, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate." 42 U.S.C. §1395dd(d)(2)(A); emphasis added.

Claims under EMTALA are limited to **individuals** who suffered **personal harm** brought against **participating hospitals**. Plaintiffs are not an "individual," do not allege a "personal harm," and assert no claim against any specific participating hospital. They merely declare that "Defendants * * * are subject to the requirements of EMTALA." **Exhibit C**, ¶23. Trinity is not even a "hospital." See, *Medero Diaz v. Grupo De Empresas De Salud*, 112 F.Supp.2d 222, 225 (D. P.R. 2000) (refusing to apply EMTALA to a physicians' medical corporation because "[p]laintiffs have proffered no evidence to establish that it is a 'participating hospital,' as defined by EMTALA"). Tellingly, plaintiffs do not even identify the date of any alleged violation, thereby making it impossible to

determine whether plaintiffs meet EMTALA's statute of limitations. See, 42 U.S.C. §1395dd(d)(2)(C).

Also, plaintiffs did not adequately allege a violation of EMTALA. "If the patient has an 'emergency medical condition' as defined under the statute, the hospital must **either** further examine the patient and provide appropriate treatment to 'stabilize the medical condition,' **or** it must provide for transfer of the patient to another medical facility." *Grant v. Trinity Health-Michigan*, 390 F.Supp.2d 643, 654 (E.D. Mich. 2005), quoting, 42 U.S.C. §1395dd(b)(1)(A)-(B); emphasis added. Plaintiffs only allege that Trinity "denied stabilizing treatment." **Exhibit C**, ¶37. They do not allege the other required condition for an EMTALA claim – whether Trinity could have, but did not, transfer a patient to another medical facility. 42 U.S.C. §1395dd(b)(1)(B).

Finally, EMTALA does not authorize injunctive relief on behalf of third parties. "EMTALA's language limits equitable relief to remedy the personal harm the plaintiff **herself** sustained as a consequence of a violation." *Morin v. E. Main Med. Ctr.*, 779 F.Supp.2d 166, 181 (D. Me. 2011); emphasis added. See, also, *Hart v. Riverside Hosp.*, 899 F. Supp. 264, 267-68 (E.D. Va. 1995). Granting plaintiffs' requested relief would be tantamount to this Court seizing broad oversight authority over Trinity affiliated hospitals.

> "The Court would have to, for example, assure itself that [Trinity affiliated hospitals] had devised and

> implemented internal policies and procedures required under EMTALA. It would have to assure itself that [Trinity affiliated hospitals were] conducting orientation and training for new personnel regarding these policies. It would have to undertake exhaustive review to ensure that [Trinity affiliated hospitals were] complying with such policies. And so on." *Hart*, 899 F. Supp. at 266.

EMTALA does not authorize such expansive judicial oversight. Instead, it authorizes the Secretary of Health and Human Services to carry out that function. Id.; see, 42 U.S.C. §1395dd(d)(1)(A).

**E. Plaintiffs Failed To State A Claim Under The Rehabilitation Act.**

Like their EMTALA claim, plaintiffs' Rehabilitation Act claim also fails to meet threshold requirements. The first element of a *prima facie* case is to identify a "disabled" person. See, *Karlik v. Colvin*, 15 F.Supp.3d 700, 707-706 (E.D. Mich. 2014). Plaintiffs' amended complaint does not identify any person who suffers from a "disability."

Plaintiffs declare that pregnancy complications are a "disability," and that the Directives prohibit Trinity affiliated hospitals from offering "reasonable accommodations" (*i.e.*, abortions) to "disabled individuals." See, **Exhibit C**, ¶¶54-57. "Disability" is defined as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual." 29 U.S.C. §705(20); citing, 42 U.S.C. §12102(1). To meet this standard, courts decide: "(1) whether the plaintiff's condition is a physical or mental impairment; (2) whether that

impairment affects a major life activity; and (3) whether the major life activity is substantially limited by the impairment." *Pacourek v. Insland Steel Co.*, 858 F.Supp. 1393, 1404 (N.D. Ill. 1994).

"It is clearly established that pregnancy *per se* does not constitute a disability under federal law." *Ferrell v. Time Serv., Inc.*, 178 F.Supp.2d 1295, 1298 (N.D. Ga. 2001). Only under "particular circumstances" have courts found that a "pregnancy related condition can constitute a disability." *Cerrato v. Dunham*, 941 F.Supp. 388, 392 (S.D. N.Y. 1996). Here, plaintiffs do not identify **any** individual suffering from pregnancy complications, let alone "particular circumstances" that establish the existence of a disability. **Exhibit C**, ¶48. Instead, they generally (and hypothetically) describe how pregnancy complications **may** potentially require a "stabilizing abortion." **Exhibit C**, ¶¶52-56. Without identifying a "disabled individual," this Court cannot even begin an inquiry under the Act. See, *Keene v. Thompson*, 232 F.Supp.2d 574, 583 (M.D. N.C. 2002) ("Without making an attempt to identify his disability, or at least describing the effect the claimed disability has on his life, Plaintiff cannot satisfy the elements of his *prima facie* case under the Rehabilitation Act").

**F. Federal And State Statutes For The Protection Of Religious Conscience Bar Plaintiffs' Claims.**

Plaintiffs' claims are also barred by 42 U.S.C. §300a-7, entitled "Sterilization or abortion." This federal statute prohibits any requirement that an

"entity * * * make its facilities available for the performance of any sterilization procedure or abortion procedure if performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions." 42 U.S.C. §300a-7(b)(2)(A). Plaintiffs seek injunctive and declaratory relief requiring Trinity to perform abortions even though such procedures are "prohibited by the entity on the basis of religious beliefs." See, **Exhibit C**, p. 16. Accordingly, 42 U.S.C. §300a-7 precludes such relief.

Michigan's statute for protection of religious conscience similarly immunizes Trinity from liability. M.C.L.A. §333.20181, entitled, "Abortions; refusal to admit patient for performance; immunity," states:

> "A **hospital, clinic, institution, teaching institution, or other health facility** or a physician, member, or associate of the staff, or **other person connected therewith**, **may refuse to perform, participate in, or allow to be performed on its premises an abortion**. **The refusal shall be with immunity from any civil or criminal liability or penalty**." See, **Exhibit F**; emphasis added.

The law is clear: a hospital, health facility, or any "**other person connected therewith**," is immune from **any** civil liability for **refusing to perform**, **participate in**, or **allow an abortion to be performed** on hospital or health facility premises. M.C.L.A. §333.20181; emphasis added. Taking the amended complaint as true, Trinity is connected with a health facility, it refuses to allow abortions to be performed on hospital premises, and such refusal "shall be with

immunity from any civil or criminal liability or penalty." See, **Exhibit C**, ¶¶11-12; M.C.L.A. §333.20181. Plaintiffs' amended complaint should be dismissed for that reason as well.

**G. The First Amendment Bars Adjudication Of Plaintiffs' Claims.**

Courts are forbidden from interpreting and deciding whether religious beliefs are reasonable or appropriate. "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981). "It is well established, * * * courts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion). The First Amendment is intended to give religious organizations "independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952). Therefore, the Court must decide whether this suit depends upon "the ability * * * to resolve the controversy without reference to religious doctrine." *Ogle v. Hocker*, 279 Fed. Appx. 391, 395 (6th Cir. 2008).

The USCCB (established by the Roman Catholic Bishops of the United States under Canon Law) is an entity that "advocates and promotes the pastoral

teachings of the Roman Catholic Church in such diverse areas of liturgy, doctrine, education, family and life, healthcare, social welfare, immigration, civil rights, criminal justice and the economy." **Exhibit G**, Affidavit of Linda Hunt, Associate General Secretary of the USCCB, ¶¶3, 16. The Directives are a statement of the Roman Catholic Church's moral and religious postures as it relates to health care issues. Id., ¶41; see, **Exhibit B**, pp. 3-5. To decide this case would necessarily require interpretation of the Directives, a determination whether they are reasonable guidelines for Catholic health care institutions, and whether they prevented (or will prevent) plaintiffs' members from receiving a "stabilizing" abortion. For example, adjudication of plaintiffs' claims would require a comparison of Directive 45 (disallowing "direct" abortions) with Directive 47 (allowing stabilizing treatments "even if they result in the death of the unborn child"). **Exhibit B**, p. 26 (Directive Nos. 45, 47).

Plaintiffs may argue (as they did in *Means*) that this case involves medical care and not the inner workings of the church. However, adjudicating the reasonableness of the Directives is inescapable because their claims are based **solely** on the Directives. See, **Exhibit C**, ¶38. Adjudication "concerns government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, __ U.S. __, 132 S.Ct. 694, 707 (2012). "The very process of

inquiry leading to findings and conclusions" implicates Catholicism and violates the First Amendment. *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979).

This same issue was decided in *Means v. U.S. Conference of Catholic Bishops*, *supra*. **Exhibit A**. In *Means*, the plaintiff alleged that "she should have received, or at least been advised of the option to receive, an abortion * * [h]owever, [she] could not receive an abortion because Directive 45 directly forbids abortion services." Id., p. 5; 2015 WL 3970046, *3. The court recognized the Directives as a statement of Roman Catholic theology, and held that any attempt at adjudicating the dispute would violate the First Amendment:

> "Directive 45 clearly prohibits direct abortions, defined as 'the directly intended termination of a pregnancy before viability.' Do procedures that directly intend to treat a serious pathologic condition of the mother (such as acute chorioamnionitis and funisitis), and indirectly result in termination of the pregnancy, constitute a direct abortion? (*See* Directive 47.) When do medical procedures that augment—rather than induce—labor constitute a direct abortion? (*See* Directive 49.) Must the procedure satisfy the Catholic principle of double-effect to be permissible under the [Directives]? (*See* Directive 45's discussion of 'sole immediate effect' and 'material cooperation.') Can the treating doctor exercise independent judgment or is she required to consult a Catholic ethicist before providing emergency care? (*See* Directive 37.) Does the ethicist have an obligation to consult the local bishop in his moral and theological analysis of the medical treatment options? (*See* General Introduction; Directive 37.)"

> "These questions demonstrate how the application of the Directives are inextricably intertwined with the Catholic Church's religious tenets. This Court is competent to address whether the medical care provided by [hospital] physicians, and vicariously provided by Trinity Health, constitute negligence or medical malpractice. However, the Court cannot determine whether the establishment of the [Directives] constitute negligence because it necessarily involves inquiry into the [Directives] themselves, and thus into Church doctrine." Id., p. 23; 2015 WL 3970046, *13.

"It is well-settled that when a court is required to interpret Canon Law or internal church policies and practices, the First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion." *Isely v. Capuchin Province*, 880 F.Supp. 1138, 1150 (E.D. Mich. 1995). Just as in *Means*, this case hinges upon whether it is appropriate for Trinity affiliated hospitals to follow the Directives. The Directives constitute Church policy, and interpreting them, as requested by plaintiffs, strips the Court of jurisdiction. See, *Lundman v. McKown*, 530 N.W.2d 807, 826 (Minn. Ct. App. 1995) ("[T]he constitutional right to religious freedom includes the authority of churches – not courts – to independently decide matters of faith and doctrine, and for a church as an institution to believe and speak what it will").

**H. In The Alternative, This Case Should Be Stayed Pending Appeal Of *Means v. U.S. Conference of Catholic Bishops*, 2015 WL 3970046 (W.D. Mich. 6/30/2015).**

"'[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *Gray v. Bush*, 628 F.3d 779, 785 (6th Cir. 2010), quoting, *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) (Cardozo, J.). "The decision to stay proceedings rests with the sound discretion of the district court." *Ohio Envtl. Council v. U.S. Dist. Court, S. Dist. Of Ohio, E. Div.*, 565 F.2d 393, 396 (6th Cir. 1977). This power includes the power to stay one case pending the disposition of another. *Gray*, 628 F.3d at 785.[4]

There is no downside to staying this case, but immense potential upside; a stay will allow the parties to avoid what could be costly and lengthy proceedings as long as the *Means* appeal remains pending. Both cases hinge upon whether the

[4] There are numerous examples in which this and other courts have stayed one case pending disposition of an appeal in a similar case. *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303, 1304-05 (1983) (granting petition for stay pending disposition of appeals in Michigan state courts); *Birchett v. Apartment Inv. & Mgmt. Co.*, 2007 WL 4569713 (E.D. Mich. 12/26/2007) (staying case pending disposition of motion in another); *Warrior Lacrosse, Inc. v. STX, L.L.C.*, 2007 WL 3275222 (E.D. Mich. 11/6/2007) (staying cases pending appeals in another); *ILJIN USA v. NTN Corporation*, 2006 WL 568351 (E.D. Mich. 3/7/2006) (same); *Moore v. Bergh*, 2013 WL 2049136 (E.D. Mich. 3/14/2013) (staying habeas corpus action pending appeal of criminal proceeding); *Ward v. Bell*, 2009 WL 2170172, *1 (E.D. Mich. 7/20/2009) (same); *Ingram v. Prelesnik*, 2012 WL 3584529 (E.D. Mich. 8/20/2012) (same); the foregoing unpublished cases are attached as **Exhibit H**.

First Amendment bars courts from interpreting the Directives. If the Sixth Circuit agrees with the *Means* decision, plaintiffs' claims must fail as a matter of law.

## CONCLUSION

As much as plaintiffs would like to make this case a judicial referendum on the wisdom of the Directives, they cannot bring a claim without standing. Even if they somehow had standing, plaintiffs have failed to state a claim under EMTALA or the Rehabiliation Act. Further, the First Amendment precludes adjudication of a claim premised on the Directives. Trinity respectfully requests that plaintiffs' amended complaint be dismissed under Rule 12(b)(1) and (b)(6), or in the alternative, this case be stayed until the Sixth Circuit decides the appeal in *Means v. U.S. Conference of Catholic Bishops*.

Respectfully submitted,

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November 6, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2015, I electronically filed the foregoing document with the Clerk of the Court via the ECF system which will give notification of same to all parties of record.

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