UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

THE CATHOLIC DIOCESE OF NASHVILLE; CATHOLIC CHARITIES OF TENNESSEE, INC.; CAMP MARYMOUNT, INC.; MARY, QUEEN OF ANGELS, INC.; ST. MARY VILLA, INC.; DOMINICAN SISTERS OF ST. CECILIA CONGREGATION; and AQUINAS COLLEGE,	)	
Plaintiffs,	)	
v.	)	
KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the U.S. Department of Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF TREASURY,	)	**CASE NO.:**
Defendants.	)	

COMPLAINT

1. This lawsuit is about one of America's most cherished freedoms: the freedom to practice one's religion without government interference. It is not about whether people have a right to abortion-inducing products, sterilization, and contraception. Those products and services are widely available in the United States, and nothing prevents the Government itself from making them more widely available. Here, however, the Government seeks to require Plaintiffs—all of which are Catholic entities—to violate their sincerely held religious beliefs by

providing, paying for, and/or facilitating access to those products and services. American history and tradition, embodied in the First Amendment to the United States Constitution and the Religious Freedom Restoration Act ("RFRA"), safeguard religious entities from such overbearing and oppressive governmental action. Plaintiffs therefore seek relief in this Court to protect this most fundamental of American rights.

2. Plaintiffs provide a wide range of spiritual, educational, and social services to members of their communities, Catholic and non-Catholic alike. For example, Plaintiff The Catholic Diocese of Nashville (the "Diocese") not only provides pastoral care and spiritual guidance for approximately 79,000 Catholics, but also serves individuals throughout Middle Tennessee through its schools and various charitable programs. The Diocese's programs serve those who are most often overlooked and marginalized in the community, including individuals who are poor, elderly, disabled, and others in need. Plaintiff Catholic Charities of Tennessee ("Catholic Charities") offers a host of social services to thousands in need. Its services feed the hungry, place children in adoptive families, improve the welfare of children from high-risk backgrounds, and provide assistance to refugees and new immigrants. Plaintiff Camp Marymount, Inc. ("Camp Marymount") provides a spiritual summer camp experience for school-age children from the Nashville Diocese and around the world. Plaintiff Mary, Queen of Angels, Inc. ("MQA") provides housing to low-income, elderly individuals and seniors needing care, including those suffering from Alzheimer's Disease. Plaintiff St. Mary Villa, Inc. ("St. Mary Villa") provides affordable daycare options to a diverse range of families with parents who are either working or in school. Plaintiff Dominican Sisters of St. Cecilia Congregation ("Dominican Sisters" or "St. Cecilia Congregation") is a congregation of religious sisters who own and operate multiple Catholic schools on The Dominican Campus in Nashville as well as Saint Rose of Lima

Academy in Birmingham, Alabama. For its part, Plaintiff Aquinas College ("Aquinas College" or the "College") educates over 600 students annually, charging tuition well below the average private college in Middle Tennessee. And the College's School of Nursing is uniquely positioned to respond to the critical shortage of licensed nurses and nursing educators in Tennessee and the United States.

3. Plaintiffs' work is in every respect guided by and consistent with Roman Catholic belief, including the requirement that they serve those in need, regardless of their religion. This is perhaps best captured by words attributed to St. Francis of Assisi: "Preach the Gospel at all times. Use words if necessary." As Pope Benedict XVI expressed it, "[L]ove for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Or as Cardinal James Hickey, former Archbishop of Washington, once commented on the role of Catholic educators: "We do not educate our students because *they* are Catholic; we educate them because *we* are Catholic." Thus, Catholic individuals and organizations consistently work to create a more just community by serving any and all neighbors in need.

4. 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, and contraceptives, is contrary to Catholic doctrine.

5. Defendants have promulgated various rules (collectively, "the U.S. Government Mandate" or "Mandate") that force Plaintiffs to violate their sincerely held religious beliefs. These rules, first proposed on July 19, 2010, require Plaintiffs and other Catholic and religious

organizations to provide, pay for, and/or facilitate insurance access to abortion-inducing products, sterilization, and contraception, and related counseling services (the "objectionable products and services") in violation of their sincerely held religious beliefs. In response to the intense public criticism that the Government's original proposal provoked, including by some of the current Administration's most ardent supporters, the Government proposed changes to the rules that, it asserted, were intended to eliminate the substantial burden that the U.S. Government Mandate imposed on religious beliefs. In fact, however, these changes made that burden worse by significantly *increasing* the number of religious organizations subject to the U.S. Government Mandate, and by driving a wedge between religious organizations, such as Plaintiff Diocese, and their equally religious charitable and educational arms, Plaintiffs Catholic Charities and Camp Marymount. Reversing course from its original form, the U.S. Government Mandate now prohibits the Diocese from ensuring that its religious affiliates provide health insurance consistent with Catholic doctrine.

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

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

8. *Second*, the U.S. Government Mandate creates a narrow exemption for certain "religious employers," defined to include only organizations that are "organized and operate[] as a nonprofit entity and [are] referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." The referenced Code section does not, nor is it intended to, address religious liberty. Instead, it is a paperwork-reduction provision that addresses whether and when tax-exempt nonprofit entities must file an annual informational tax return, known as a Form 990.

As the Government has repeatedly affirmed, this exemption is intended to protect only "the unique relationship between a house of worship and its employees in ministerial positions." 78 Fed. Reg. 8,456, 8,461 (Feb. 6, 2013). Consequently, the only organizations that qualify for the exemption are "churches, synagogues, mosques, and other houses of worship, and religious orders." *Id.* This is the narrowest "conscience exemption" ever adopted in federal law. It grants the Government broad discretion to sit in judgment of which groups qualify as "religious employers," thus favoring certain religious organizations over others and entangling the Government in matters of religious faith and practice.

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

10. In particular, Plaintiffs Catholic Charities, Camp Marymount, MQA, St. Mary Villa, and Aquinas College do not qualify under the Government's narrow definition of "religious employers," even though they are religious organizations under any reasonable definition of the term. Instead, they are "eligible organizations" subject to the so-called "accommodation." But notwithstanding the "accommodation," these Plaintiffs are required to enter into a contract with a third party (either an insurance company or, for self-insured organizations, a third-party administrator), which, as a direct result, is required to provide or procure abortion-inducing products, contraception, sterilization, and related counseling for Plaintiffs' employees.

Consequently, the religious organizations' actions are the trigger and but-for cause of the provision of the objectionable products and services. Plaintiffs cannot avoid facilitating the provision of the objectionable products and services—for example, by contracting with an insurance company that will not provide or procure the objectionable products and services or even dropping their health-insurance plans altogether—without subjecting themselves to crippling fines and/or lawsuits by individuals and governmental entities.

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

12. In addition, notwithstanding the "accommodation," the U.S. Government Mandate "requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage." Comments of U.S. Conference of Catholic Bishop (Mar. 20, 2013), at 3, *available at http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.* The Government asserts that the provision of the objectionable products and services will be "cost-neutral." This assertion, however, ignores the regulatory and administrative costs that will inevitably force insurance companies and third-party administrators to increase the prices they charge religious employers subject to the "accommodation." The

Government's assertion of "cost neutrality" is also based on the implausible (and morally objectionable) assumption that "lower costs" from "fewer childbirths" will offset the cost of the contraceptive services. 78 Fed. Reg. at 8,463. More importantly, even if the Government's assumption were correct, it simply means that premiums previously going toward childbirths will be redirected to contraceptive and related services in order to achieve the (objectionable) goal of "fewer childbirths."

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

14. Plaintiffs Diocese and St. Cecilia Congregation appear to qualify as "religious employers," and, as such, are eligible for the "religious employer" exemption. Nonetheless, the U.S. Government Mandate likewise requires the Diocese and St. Cecilia Congregation to act in violation of their Catholic beliefs. In particular, the Diocese makes fully-insured health insurance benefits plans available not only to individuals directly employed by the Diocese itself but also to individuals employed by affiliated Catholic organizations including, but not limited to, Plaintiffs Catholic Charities and Camp Marymount. Likewise, St. Cecilia Congregation sponsors a fully-insured healthcare plan that is offered to employees of Plaintiff Aquinas College and other affiliated organizations. Because Plaintiffs Catholic Charities, Camp Marymount, and Aquinas College (and other affiliated organizations) themselves do not appear to qualify as exempt "religious employers," the U.S. Government Mandate requires that the Diocese and St. Cecilia Congregation must either (1) sponsor plans that will provide, pay for, and/or facilitate the provision of the objectionable products and services to the employees of Plaintiffs Catholic

Charities, Camp Marymount, Aquinas College, and other organizations, or (2) expel these organizations from the healthcare plans of the Diocese and St. Cecilia Congregation, which, in turn, will require Plaintiffs Catholic Charities, Camp Marymount, and Aquinas College to provide, pay for, and/or facilitate access to the objectionable products and services.

15. This aspect of the U.S. Government Mandate reflects a change from the Government's original proposal of July 19, 2010. That proposal allowed Plaintiffs Catholic Charities and Camp Marymount to remain on the Diocesan plans and Plaintiff Aquinas College to remain on St. Cecilia Congregation's plan, which, in turn, would have shielded Catholic Charities, Camp Marymount, and Aquinas College from the U.S. Government Mandate if the Diocese and St. Cecilia Congregation were exempt. *See* 77 Fed. Reg. 16,501, 16,502 (Mar. 21, 2012). The Final Rule, however, removes this protection and thereby *increases* the number of religious organizations subject to the U.S. Government Mandate. And in so doing, the U.S. Government Mandate seeks to divide the Catholic Church, artificially separating its "houses of worship" from its faith in action, directly contrary to Pope Benedict XVI's admonition that "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."

16. The U.S. Government Mandate is irreconcilable with the First Amendment, RFRA, the Administrative Procedure Act, and other laws. The Government has not demonstrated any compelling interest in forcing Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing products, sterilization, and contraception. Nor has the Government demonstrated that the U.S. Government Mandate is the least restrictive means of advancing any interest it has in increasing access to these products and services, which are already widely available and that the Government could make more widely available without conscripting Plaintiffs' health plans as

vehicles for the dissemination of the objectionable products and services to which they so strongly object. The Government, therefore, cannot justify its decision to force Plaintiffs to provide, pay for, and/or facilitate access to these products and services in violation of their sincerely held religious beliefs.

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

I. PRELIMINARY MATTERS

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

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

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

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

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

23. Plaintiff Dominican Sisters of St. Cecilia Congregation ("Dominican Sisters" or "St. Cecilia Congregation") is a nonprofit Tennessee public benefit and religious corporation with its principal place of business in Nashville, Tennessee. It is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

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

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

26. Defendant Thomas Perez is the Secretary of the U.S. Department of Labor ("Labor"). He is sued in his official capacity.

27. Defendant Jacob J. Lew is the Secretary of the U.S. Department of the Treasury ("Treasury"). He is sued in his official capacity.

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

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

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

31. 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.

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

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

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

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

A. The Catholic Diocese of Nashville

36. Plaintiff Diocese is the civil law entity for the local body of the Universal Roman Catholic Church, a community of the baptized confessing the Catholic faith, sharing in sacramental life, and entrusted since February 2006 to the ministry of Bishop David R. Choby. The Diocese encompasses thirty-eight (38) counties, including Davidson County, and covers over 16,300 square miles in Middle Tennessee. Its missions include seeing to the spiritual, educational, and social needs of the Middle Tennessee community.

37. The Diocese, through its fifty-three (53) local community parishes and three (3) missions situated throughout the Diocese, serves the spiritual needs of its Catholic population of approximately 79,000 individuals. Through its parishes, the Diocese ensures the regular availability of the sacraments to all Catholics living in or visiting the Middle Tennessee area. The Diocese also provides numerous other opportunities for prayer, worship, and faith formation. In addition to overseeing the sacramental life of its parishes, the Diocese coordinates Catholic campus ministries at eight (8) colleges and universities within its borders.

38. The Diocese also serves the needs of its communities with a variety of social welfare, educational, and charitable programs. These programs are largely carried out through the work of the parishes of the Diocese and through the separately incorporated entities affiliated with the Diocese (including Plaintiffs Catholic Charities, Camp Marymount, MQA, and St. Mary Villa). The parishes of the Diocese serve an indeterminate number of persons who are homeless, hungry, elderly, sick, or otherwise in need of material assistance.

39. In accord with Canon Law, the Diocese also fulfills an educational mission. *See* Code of Canon Law, Canons 802 § 1 and 803 § 2. The Diocese conducts its educational mission through the schools it sponsors, currently including eighteen (18) private Catholic schools within the Diocese: two (2) high schools and sixteen (16) elementary schools. Through its schools, the Diocese strives to provide an exceptional Catholic educational experience that is open to all in Middle Tennessee.

40. Presently, the Diocese has approximately 7,000 students enrolled in its schools. Many of the Diocesan schools serve a significant minority population. Pope John Paul II High School, for example, has a student body composed of over 20% minority students.

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

42. The Diocese, including its parishes and schools, has over 1,200 employees, with approximately 1,000 employees classified as full-time (*i.e.*, working an average of at least thirty (30) hours per week) and approximately 200 employees classified as part-time.

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

44. Plaintiffs Catholic Charities and Camp Marymount also offer insurance coverage through the Diocesan Health Plans.

45. Consistent with Church teachings regarding the sanctity of life, the Diocesan Health Plans specifically exclude coverage for abortion-inducing products, contraceptives, and sterilization. The Diocese cannot, without violating its sincerely held religious beliefs, offer coverage for these or other devices, products, procedures, or services that are inconsistent with the teachings of the Catholic Church. In limited circumstances, the Diocesan Health Plan's Pharmacy Benefit Manager can override the exclusion of certain drugs commonly used as contraceptives if a physician certifies that they were prescribed with the intent of treating certain medical conditions, not with the intent to prevent pregnancy.

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

47. The HDHP plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The Diocese has not included and does not include a statement in plan materials provided to participants or beneficiaries that it believes the HDHP plan is a grandfathered plan within the meaning of section 1251 of the Affordable Care Act. *See, e.g.*, 26 C.F.R. § 54.9815-1251T(a)(2)(i).

48. The plan year for the Diocesan Health Plans begins on January 1st.

B. Catholic Charities of Tennessee, Inc.

49. Plaintiff Catholic Charities was created in 1962 for the purpose of providing coordinated service to all of God's people in need, especially the poor, regardless of race, culture, or religion. Catholic Charities is an affiliated corporation of the Diocese.

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

51. Catholic Charities provided social services to over 69,000 Middle Tennesseans in 2011 alone. Each year, Catholic Charities serves thousands of meals to the hungry in Middle Tennessee through its Loaves and Fishes and its North Nashville programs. In 2011, Loaves and Fishes served approximately 22,000 hot midday meals, while food distributed by North Nashville

provided approximately 88,000 meals in 2012. The North Nashville program also provides clothing and housing assistance and recently added a job training center to its services to address one cause of poverty.

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

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

54. Catholic Charities runs a variety of programs to make adoption an affordable and realistic option for families in Middle Tennessee, place children in need into loving homes, and

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

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

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

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

58. Catholic Charities has approximately 115 full-time (*i.e.*, working 30 hours or more per week) employees.

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

60. Catholic Charities is an affiliated corporation of the Diocese.

61. Catholic Charities full-time employees are offered health insurance through the Diocesan Health Plans; thus, Catholic Charities' plan year begins on January 1st.

C. Plaintiff Camp Marymount, Inc.

62. Plaintiff Camp Marymount provides a spiritual summer camp experience for children of the Nashville Diocese and from all over the world on its 340 acres in Middle Tennessee.

63. Camp Marymount—originally known as Camp Happy Hollow—was established in 1939 as a Catholic residential camp by the Diocese of Nashville in Joelton, Tennessee. Camp Marymount moved to its present location in Fairview, Tennessee in 1945 and hosted its first campers in the summer of 1946.

64. The mission of Camp Marymount is to develop and renew faith, character, and community in a rustic Christian environment. According to its creed, Camp Marymount gives a total experience in true living, forceful, inspirational and lasting in its impression on the body and soul of its campers. The summer camp experience is filled with community, faith, fun, and simplicity without the pressures of the outside world or technology.

65. While attending Camp Marymount, campers can experience traditional camp activities such as horseback riding, nature, arts and crafts, gardening, riflery, and swimming. The camp also instructs youth in self-control and self-discipline using the wonder of the outdoors to foster deep spirituality. In addition, a prayer service is held at least every other day and mass is celebrated every Sunday in addition to other times during the camp session. All Camp Marymount programs seek to develop the whole person—mind, body, and spirit.

66. Camp Marymount is accredited by the American Camp Association, meeting or exceeding over 300 industry-accepted standards. Camp Marymount currently offers four overnight summer sessions—two for girls and two for boys—to rising first through eleventh graders of all faiths. More than 600 campers experience Camp Marymount between mid-May through August each year with the assistance of seventy (70) counselors and support staff.

67. Today, Camp Marymount consists of eighteen (18) rustic camper cabins, four (4) cabins for support staff and retreats, an infirmary, office lodge/dining hall, arts and crafts hut, outdoor amphitheater, nature center, a five-acre spring fed lake, an outdoor chapel, and the St. George Chapel, an enclosed, year-round place of worship. In the non-summer months, Camp Marymount hosts a variety of events including luncheons, retreats, and weddings in its year-round facilities as well as a team building program called The Sun Trail Program that primarily serves Catholic schools. Camp Marymount also serves as a regular meeting place for Catholic groups

and as a location for celebrating mass. In fact, mass is celebrated at the St. George Chapel approximately forty (40) weekends out of the year.

68. Camp Marymount has five (5) full-time employees (*i.e.*, working 30 hours or more per week) and approximately ten (10) part-time employees. Camp Marymount also has sixty (60) seasonal employees during the summer months.

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

70. Camp Marymount is an affiliated corporation of the Diocese.

71. Camp Marymount's full-time employees are offered health insurance through the Diocesan Health Plans; thus, Camp Marymount's plan year begins on January 1st.

D. Mary, Queen of Angels, Inc.

72. Plaintiff MQA is an assisted living facility located in Nashville, Tennessee.

73. The mission of MQA is to provide top-quality, affordable assisted living services to elderly persons in Middle Tennessee. MQA is designed to meet the physical, psychological, and spiritual needs of its residents in a safe, stimulating, and dignified environment. The average age of MQA's residents is approximately eighty-four (84) years.

74. MQA is the second largest assisted living facility in the Nashville area. It has a total of 98 apartments housing 110 residents, on average. Sixteen (16) of its apartments are located in a secure unit that serves residents who are memory-impaired or who have Alzheimer's disease.

75. In addition to providing residence, MQA offers a meal program, as well as nursing, personal care, physical therapy, housekeeping and maintenance services, and assistance with the activities of daily life for those who need it. It also offers a rich and engaging program

of activities. Mass is held daily in the MQA chapel, and there are regular church and prayer services available to residents of other denominations.

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

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

78. MQA employs approximately eighty-five (85) employees, including approximately sixty-five (65) full-time (*i.e.*, working thirty hours or more per week) and twenty (20) part-time employees.

79. Plaintiffs MQA and St. Mary Villa (together, the "Mary Entities"), along with Villa Maria Manor, Inc., collaborate with one another and pool their resources in order to provide a health benefits plan to their employees (the "Mary Entities' Health Plan"). Their plan is separate and distinct from the Diocesan Health Plans.

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

81. Consistent with Church teachings regarding the sanctity of life, the Mary Entities' Health Plan does not include coverage for abortion-inducing products, contraceptives (except when prescribed for non-contraceptive purposes), and sterilization.

82. The Mary Entities' Health Plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The changes necessary to remove objectionable products and services services from the plan precluded the Mary Entities' Health Plan from receiving "grandfathered" status. *See* 26 C.F.R. § 54.9815-1251T(a)(2)(i). Also, the Mary Entities' Health Plan has not included and does not include a statement in any plan materials provided to participants or beneficiaries that it believes its plan is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act. *See, e.g.*, 26 C.F.R. § 54.9815-1251T(a)(2)(i).

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

84. MQA is an affiliated corporation of the Diocese.

85. The plan year for the Mary Entities' Health Plan begins on August 1st.

E. St. Mary Villa, Inc.

86. Plaintiff St. Mary Villa is an educational child care provider that supports families with employed parents and parents in school.

87. St. Mary Villa has a long history of providing child care responsive to the social needs of the Middle Tennessee community. St. Mary Villa began operations in the mid-nineteenth century in response to family and social disruption following the American Civil War. It was operated as a residential orphanage until the mid-1970s, when family and social needs changed from alternative placement to family supportive services. In response to the

changing needs of the community, St. Mary Villa transformed to its current focus as an educational child care provider.

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

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

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

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

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

93. St. Mary Villa employs approximately thirty-two (32) full-time (*i.e.*, working thirty hours or more per week) and eighteen (18) part-time staff.

94. St. Mary Villa collaborates with Plaintiff MQA and Villa Maria Manor, Inc., in order to provide a health benefits plan to their employees. St. Mary Villa is the plan sponsor. The Mary Entities' Health Plan is separate and distinct from Diocesan Health Plans.

95. The Mary Entities' Health Plan does not meet the Affordable Care Act's definition of a "grandfathered" plan. The changes necessary to remove objectionable products and services from the plan precluded the Mary Entities' Health Plan from receiving "grandfathered" status. *See* 26 C.F.R. § 54.9815-1251T(a)(2)(i). Also, the Mary Entities' plan has not included and does not include a statement in any plan materials provided to participants or beneficiaries that it believes its plan is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act. *See, e.g.*, 26 C.F.R. § 54.9815-1251T(a)(2)(i).

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

97. St. Mary Villa is an affiliated corporation of the Diocese.

98. The plan year for the Mary Entities' Health Plan begins on August 1st.

F. Dominican Sisters of St. Cecilia Congregation

99. Plaintiff St. Cecilia Congregation is a Roman Catholic religious community composed of nearly 300 women that live a contemplative-apostolic life of community, study, and apostolic service in a monastic framework that fosters contemplation.

100. St. Cecilia Congregation owns the facility and operations that constitute a "Motherhouse" for the Dominican Sisters in Tennessee. It was founded in 1860 following the arrival in Nashville, Tennessee of four sisters who were members of the religious order known

under Roman Catholic Canon Law as the Order of Preachers or, in the vernacular, as the "Dominicans." These sisters arrived in Nashville at the request of the Right Reverend James Whelan, Nashville's second bishop and a member of the Dominican order, who had petitioned the sisters at St. Mary's in Somerset, Ohio to send sisters to establish an Academy for the higher education of young women in the Diocese of Nashville.

101. The four Dominican Sisters immediately began work to create a convent and a school for young women in Nashville. From its beginning, St. Cecilia Academy—the all girls school founded by the four original Nashville Dominican Sisters—emphasized music and art while providing young women an education of the highest religious, academic, and cultural standards. Today, St. Cecilia Academy is the oldest continuously operated school in the city of Nashville.

102. The Dominican Sisters combine a monastic communal lifestyle of contemplation with an active apostolate in Catholic education. The essence of what it means to be a Dominican Sister of St. Cecilia is summarized in the community's *Ratio Institutionis*, which outlines the program of initial and ongoing formation. The following characteristics define the charism of St. Cecilia Congregation: (1) Contemplative Focus, (2) Active Apostolate, (3) Strong Community Life, and (4) Love of the Church.

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

104. In 1936, the Dominican Sisters founded Overbrook School with just nine students and a mission to establish a school with traditional Catholic values and academic excellence.

Today the Dominican Sisters still own and operate Overbrook school, which includes more than 230 boys and girls in grades pre-kindergarten through eighth. In 2010, Overbrook was recognized by the United States Department of Education as a Blue Ribbon School of Excellence.

105. In addition to the oversight and operation of St. Cecilia Academy and Overbrook, the Dominican Sisters operate The Dominican Campus—an eighty-three (83) acre campus that includes St. Cecilia Academy, Overbrook, and Plaintiff Aquinas College.

106. Plaintiff Dominican Sisters sponsor The Dominican Campus Health Plans, which cover the lay employees of The Dominican Campus (including the lay employees of St. Cecilia Academy, Overbrook, and Plaintiff Aquinas College) as well as the lay employees of Saint Rose of Lima Academy in Birmingham, Alabama, and the lay employees employed at the Motherhouse.

107. Eligible employees are offered two health benefits plans from which to choose. Both are fully-insured plans offered and administered by Blue Cross Blue Shield of Tennessee. St. Cecilia Congregation maintains a separate health benefits plan for the sisters of St. Cecilia Congregation.

108. Plaintiff Dominican Sisters has ensured that The Dominican Campus Health Plans it sponsors do not include coverage for elective abortion-inducing products, sterilization, or contraception (when prescribed for contraceptive purposes).

109. The Dominican Campus Health Plans have undergone a number of changes and amendments since March 23, 2010, and, accordingly, do not meet the Affordable Care Act's definition of a "grandfathered" health plan. Additionally, The Dominican Campus Health Plans have not included and do not include a statement in any plan materials provided to participants or

beneficiaries that it believes it is a grandfathered plan, as is required to maintain the status of a grandfathered health plan. *See* 26 C.F.R. § 54.9815-1251T(a)(2)(i).

110. The plan years for The Dominican Campus Health Plans begin on September 1st.

G. Aquinas College

111. Aquinas College is an independent Catholic and Dominican college located in Nashville, Tennessee that confers undergraduate and graduate degrees. Founded in 1961 by St. Cecilia Congregation, Aquinas College is the only four-year Catholic liberal arts college in Eastern and Middle Tennessee.

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

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

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

115. In accordance with *Ex Corde Ecclesiae*, Aquinas College believes and teaches that "besides the teaching, research and services common to all Universities," it must "bring[] to

its task the inspiration and light of the Christian message." "Catholic teaching and discipline are to influence all university activities," and "[a]ny official action or commitment of the University [must] be in accord with its Catholic identity." "In a word, being both a University and Catholic, it must be both a community of scholars representing various branches of human knowledge, and an academic institution in which Catholicism is vitally present and operative."

116. Aquinas College's Catholic educational mission is furthered by its leadership. Each of the College's Presidents has been a Dominican Sister, including its current President, Sister Mary Sarah Galbraith, O.P. At the beginning of her term, the President makes a Profession of Faith and takes the Oath of Fidelity in accord with *Ex Corde Ecclesiae*.

117. Other members of the College's leadership are also affiliated with St. Cecilia Congregation. The Prioress General of St. Cecilia Congregation serves as the Chairperson of the College's Board of Directors, and two of the four Vice Presidents of the College are Sisters of St. Cecilia Congregation. Sisters also serve in positions among the faculty and staff of the college.

118. Theological study is a part of the liberal arts education offered to all Aquinas College students. Every teacher of theology at Aquinas College has the Mandatum, an acknowledgement by Church authority that a Catholic professor of a theological discipline is a teacher within the full communion of the Catholic Church. The Mandatum recognizes the professor's commitment and responsibility to teach authentic Catholic doctrine and refrain from putting forth as Catholic teaching anything contrary to the Church's Magisterium (the official teaching of the Catholic Church).

119. Sensitivity to both the permanent and the changing needs of the Nashville community and to the needs of the Church led to the establishment of the degrees that Aquinas

offers today: degrees in nursing, education, business, and liberal arts and sciences. Aquinas College graduates enter the workforce prepared to serve the Nashville community and beyond.

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

121. The College also serves others directly through the education of its students and through its students' contributions to the community. For instance, students from the School of Nursing spend approximately 85,000 hours per academic year caring for the sick, regardless of age, race, or faith. Many of these hours are spent caring for patients suffering from acute and chronic illnesses in traditional institutional settings (*e.g.*, hospitals, special care facilities, etc.).

122. Nursing students and faculty also participate in health fairs, where they educate Middle Tennesseans about issues of health, wellness, and nutrition and provide health assessment screenings to the public. Consistent with the College's Catholic mission, these services are provided to anyone who needs them, free of charge.

123. Aquinas College students and faculty contribute to the Nashville and greater Tennessee communities through other community service projects as well. Faculty, students,

and alumni have volunteered at a local homeless shelter, made donations to Angel Tree programs, and participated in food drives, among other efforts.

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

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

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

127. Aquinas College currently educates nearly 600 graduate and undergraduate students annually, and it is rated among the top Catholic colleges in the nation. Approximately 45% of its students are Catholic and 17% of its students are minorities. Aquinas College students are not offered a health plan.

128. Aquinas College maintains a faculty of approximately 130 professors, who are recognized as leaders in their fields. An additional fifty-two (52) staff members are employed by the College. Eighty-nine (89) of the College's employees are classified as full-time (*i.e.* working thirty hours or more per week), including sixteen (16) Dominican Sisters.

129. Aquinas College offers its eligible employees health insurance through The Dominican Campus Health Plans sponsored by Plaintiff Dominican Sisters. Eligible employees

are offered two health benefits plans from which to choose. Both are fully-insured plans offered and administered by Blue Cross Blue Shield of Tennessee. The College subsidizes health plan premiums for its eligible employees. Full-time employees of Aquinas College who are also Dominican Sisters receive employee health benefits through the Dominican Sisters' separate health benefits plan.

130. The health plans offered by Aquinas College to its employees do not meet the Affordable Care Act's definition of a "grandfathered" plan. Aquinas College has not included and does not include a statement in plan materials provided to participants or beneficiaries informing them that it believes its plans are grandfathered health plans within the meaning of section 1251 of the Affordable Care Act. *See, e.g.*, 26 C.F.R. § 54.9815-1251T(a)(2)(i).

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

132. The plan year for Aquinas College (and The Dominican Campus Health Plans) begins on September 1st.

II. STATUTORY AND REGULATORY BACKGROUND

A. Statutory Background

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

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

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

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

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

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

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

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

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

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

138. For example, the Weldon Amendment, which has been included in every HHS and Department of Labor appropriations bill since 2004, prohibits certain agencies from discriminating against an institution based on that institution's refusal to provide abortion-related services. Specifically, it states that "[n]one of the funds made available in this Act [to the

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

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

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

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

141. In a span of less than two years, Defendants promulgated the U.S. Government Mandate, subverting the Act's clear purpose to protect the rights of conscience. The U.S. Government 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 U.S. Government Mandate imposes on Plaintiffs' religious beliefs. To the contrary, these revisions have resulted in a final rule that is significantly worse than the original one.

(1) The Original Mandate

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

143. 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 ("IOM Committee"). 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.

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

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

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

147. At a press briefing the next day, the chair of the IOM Committee fielded a question from a representative of the U.S. Conference of Catholic Bishops regarding the "coercive dynamic" of the U.S. Government 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 illustrated her cavalier attitude toward the religious-liberty issue, stating bluntly: "[W]e did not take into account individual personal feelings." *See* Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women, Press Briefing (July 20, 2011), *available at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx. The chair later expressed concern to Congress about considering religious objections to the U.S. Government Mandate because to do so would risk a "slippery slope" that could occur by "opening up that door" to religious liberty. *See* Executive Overreach: The HHS Mandate Versus Religious Liberty: Hearing Before the H. Comm. On the Judiciary, 112th Cong. (2012) (testimony of Linda Rosenstock, Chair, Inst. Of Med. Comm. On Preventive Servs. For Women).

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

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

150. Shortly after announcing its definition of "preventive care," the Government proposed a narrow exemption from the U.S. Government Mandate for a small category of "religious employers" that met all of the following four criteria: "(1) The inculcation of religious values is the purpose of the organization"; "(2) The organization primarily employs persons who share the religious tenets of the organization"; "(3) The organization serves primarily persons who share the religious tenets of the organization"; and "(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46,621, 46,626 (Aug. 3, 2011) (codified at 45 C.F.R. § 147.130(a)(iv)(B)).

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

152. The sweeping nature of the U.S. Government Mandate was subject to widespread and withering criticism. Religious leaders from across the country protested that they should not be punished or considered less religious simply because they chose to live out their faith by serving needy members of the community who might not share their beliefs. As Cardinal Wuerl later wrote, "Never before has the government contested that institutions like Archbishop Carroll

High School or Catholic University are religious. Who would? But HHS's conception of what constitutes the practice of religion is so narrow that even Mother Teresa would not have qualified."

153. Despite such pleas, the Government at first refused to reconsider its position. Instead, the Government "finalize[d], without change," the narrow exemption as originally proposed. 77 Fed. Reg. at 8,729. 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 U.S. Government 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."

154. 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 U.S. Government Mandate. 77 Fed. Reg. 16,501 (Mar. 21, 2012). The ANPRM did not revoke the U.S. Government Mandate, and in fact reaffirmed the Government's view at the time that the "religious employer" exemption would not be changed. *Id.* at 16,501-08. Instead, the ANPRM offered hypothetical "possible approaches" that would, in the Government's view, somehow solve the religious-liberty problem without granting an exemption for objecting religious organizations. *Id.* at 16,507. As the U.S. Conference of Catholic Bishops soon recognized, however, any semblance of relief offered by the ANPRM was illusory. Although it was designed to "create an appearance of moderation and compromise, it [did] not actually offer any change in the Administration's earlier stated positions on mandated contraceptive coverage." *See* Comments of U.S. Conference of Catholic Bishops (May 15, 2012), at 3, *available at* http://www.usccb.org/about/general-

counsel/rulemaking/upload/comments-on-advance-notice-of-proposed-rulemaking-on-preventive-services-12-05-15.pdf.

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

155. The first lawsuit filed by Plaintiffs (except for Camp Marymount and Dominican Sisters) was dismissed by this Court, without prejudice, based on the Government's express promises that it would never enforce the then-current regulations against Plaintiffs and the Government's commitment to amend the regulations to accommodate the concerns of entities with religious objections like those of Plaintiffs before the expiration of the safe harbor in August 2013.

156. Specifically, Plaintiffs filed their first lawsuit on September 12, 2012 in the U.S. District Court for the Middle District of Tennessee. Plaintiffs' Complaint sought to enjoin the U.S. Government Mandate on the grounds that, among other things, it violated their rights of religious conscience under RFRA and the First Amendment. *See The Catholic Diocese of Nashville v. Sebelius*, Docket No. 3:12-cv-0934 (M.D. Tenn.) [Dkt. #46].

157. In response to this and similar litigation, the Government cited the ANPRM and promised that "[i]n light of the forthcoming amendments [to the regulations], and the opportunity the rulemaking process provides for plaintiffs to help shape those amendments, there is no reason to suspect that plaintiffs will be required to sponsor a health plan that covers contraceptive services in contravention of their religious beliefs once the enforcement safe harbor expires." Mem. in Support of Defs.' Mot. to Dismiss [Dkt. # 29] at 12–13.

158. The Government also represented that "the forthcoming amendments [were] intended to address the very issue that plaintiffs raise here by establishing alternative means of providing contraceptive coverage without cost-sharing while accommodating religious

organizations' religious objections to covering contraceptive services." *Id.* at 17. Indeed, the Government assured this Court, "[o]nce defendants complete the rulemaking outlined in the ANPRM, plaintiffs' challenge to the current regulations likely will be moot." *Id.* at 18–19.

159. In response to the Government's motion to dismiss, Plaintiffs made clear that even if the ANPRM were enacted, it would still require them 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. *See* Pl. Mem. in Opp. [Dkt. #35]. Indeed, Plaintiffs submitted uncontested factual affidavits expressly so stating. *See, e.g.*, Pl. Mem. in Opp. [Dkt. #35-1], Robinson Aff., Director of Human Resources of the Catholic Diocese of Nashville, at 10 (noting that the ANPRM "will not alter the core requirement of the Mandate that forces the Diocese to pay for or facilitate the provision of abortion-inducing drugs, contraception, and sterilization, in contravention of its religious beliefs").

160. On November 15, 2012, a hearing was held on the Government's motion to dismiss in which the Government assured the Court that "defendants are amending the challenged regulations to address the very type of religious concerns that plaintiffs raise in this case." Mot. to Dismiss Tr. at 3 [Dkt. #45]. The Government further represented that "Plaintiffs' allegation or argument that they will be injured by being excluded from the religious employer exemption presupposes that their concerns will not be addressed by the forthcoming accommodation even though plaintiffs [] have an opportunity now to participate in the ongoing regulatory process. And even though plaintiffs say that they will be unsatisfied with the ideas that were listed in the ANPRM, those ideas do not encompass the full range of considerations that defendants are taking into effect." Mot. to Dismiss Tr. at 41 [Dkt. #45].

161. Based on the Government's representations, on November 21, 2012, the district court granted the Government's motion to dismiss for lack of standing "[b]ecause an amendment to the final rule that may vitiate the threatened injury is not only promised but underway." *The Catholic Diocese of Nashville v. Sebelius*, Docket No. 3:12-cv-0934 (M.D. Tenn.) [Dkt. #46] at 7.

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

162. On February 1, 2013, the Government issued a Notice of Proposed Rulemaking ("NPRM"), setting forth in further detail its proposal to "accommodate" the rights of Plaintiffs and other religious organizations. Contrary to the Government's previous assurances, however, the NPRM adopted the proposals contained in the ANPRM. The NPRM, like the Government's previous proposals, was once again met with strenuous opposition, including over 400,000 comments. For example, the U.S. Conference of Catholic Bishops stated that "the 'accommodation' still requires the objecting religious organization to fund or otherwise facilitate the morally objectionable coverage. Such organizations and their employees remain deprived of their right to live and work under a health plan consonant with their explicit religious beliefs and commitments." Comments of U.S. Conference of Catholic Bishop (Mar. 20, 2013), at 3, *available at http://www.usccb.org/about/general-counsel/rulemaking/upload/2013-NPRM-Comments-3-20-final.pdf.* Likewise, Plaintiff Archdiocese noted that the NPRM's proposed "accommodation" was nothing more than "an accounting maneuver" and did not redress the burden that the U.S. Government Mandate imposes on religious liberty and that, as a result, the Archdiocese had no choice but to "continue[] to strenuously oppose the Mandate, including the proposed changes." Comments of Archdiocese of Washington, at 2 (Apr. 4, 2013), *available at* http://www.becketfund.org/wp-content/uploads/2013/04/Comments-4-4-13-Archdiocese-of-Washington.pdf.

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

164. 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 greatly increasing the number of religious organizations subject to the U.S. Government Mandate.

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

166. The "religious employer" exemption, moreover, creates an official, Government-favored category of religious groups that are exempt from the U.S. Government Mandate, while

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

167. *Second*, the Final Rule establishes an illusory "accommodation" for certain nonexempt objecting religious entities that qualify as "eligible organizations." To qualify as an "eligible organization," a religious entity must (1) "oppose[] providing coverage for some or all of [the] contraceptive services," (2) be "organized and operate[] as a non-profit entity"; (3) "hold[] itself out as a religious organization," and (4) self-certify that it meets the first three criteria, and provide a copy of the self-certification either to its insurance company or, if the religious organization is self-insured, to its third-party administrator. 26 C.F.R. § 54.9816-2713A(a). The provision of this self-certification then automatically requires the insurance issuer

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

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

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

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

170. The so-called "accommodation," moreover, requires Plaintiffs to cooperate in the provision of objectionable coverage in other ways as well. For example, in order to be eligible for the so-called "accommodation," Plaintiffs must provide a "certification" to their insurance provider setting forth their religious objections to the U.S. Government Mandate. The provision of this "certification," in turn, automatically triggers an obligation on the part of the insurance provider to provide Plaintiffs' employees with the objectionable coverage. A religious organization's self-certification, therefore, is a trigger and but-for cause of the objectionable coverage.

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

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

173. The Government's "cost-neutral" assertion, however, is implausible. It rests on the assumption that cost "savings" from "fewer childbirths" will be at least as large as the direct costs of paying for contraceptive products and services and the costs of administering individual policies. 78 Fed. Reg. at 8,463. Some employees, however, will choose not to use contraception notwithstanding the U.S. Government Mandate. Others would use contraception regardless of whether it is being paid for by an insurance company. And yet others will shift from less expensive to more expensive products once coverage is mandate 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.

174. 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, the objecting employer is still required to pay for the objectionable products and services.

175. For self-insured organizations, the Government's "cost-neutral" assumption is likewise implausible. The Government asserts that third-party administrators required to provide or procure the objectionable products and services will be compensated by reductions in user fees that they otherwise would pay for participating in federally-facilitated health exchanges. *See* 78

Fed. Reg. at 39,882. Such fee reductions are to be established through a highly regulated and bureaucratic process for evaluating, approving, and monitoring fees paid in compensation to third-party administrators. Such regulatory regimes, however, do not fully compensate the regulatory entities for the costs and risks incurred. As a result, few if any third party administrators are likely to participate in this regime, and those that do are likely to increase fees charged to the self-insured organizations.

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

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

178. *Third,* the Final Rule actually *increases* the number of religious organizations that are subject to the U.S. Government Mandate. Under the Government's initial "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." 77 Fed. Reg. at 16,502.

179. For example, Plaintiff Diocese offers fully-insured health plans that cover not only the Diocese itself, but other affiliated Catholic organizations—including Plaintiffs Catholic Charities and Camp Marymount. Under the religious employer exemption that was originally

proposed, if the Diocese was an exempt "religious employer," then Plaintiffs Catholic Charities and Camp Marymount received the benefit of that exemption, regardless of whether they independently qualified as "religious employers," because they could continue to participate in the Diocese's exempt plan. These affiliated organizations, therefore, could benefit from the Diocese's exemption even if they, themselves, could not meet the Government's unprecedentedly narrow definition of "religious employer." The same is true for Plaintiffs St. Cecilia Congregation and Aquinas College—Aquinas College would have received the benefit of The Dominican Campus Health Plans' exemption.

180. The Final Rule eliminates this safeguard. Instead, it provides that "each employer" must "independently meet the definition of eligible organization or religious employer in order to take advantage of the accommodation or the religious employer exemption with respect to its employees and their covered dependents." 78 Fed. Reg. at 39,886. *See also* 78 Fed. Reg. at 8,467 (NPRM). Because Plaintiffs Catholic Charities, Camp Marymount, and Aquinas College do not appear to meet the Government's narrow definition of "religious employers," they are now subject to the U.S. Government Mandate.

181. Although Plaintiff Diocese is a "religious employer," the U.S. Government Mandate still requires it either to (1) sponsor a plan that will provide Plaintiffs Catholic Charities and Camp Marymount, and other affiliated Catholic organizations, with access to the objectionable products and services, or (2) no longer extend its plans to these organizations, subjecting these organizations to massive fines if they do not contract with another insurance provider that will provide the objectionable coverage.

182. The same is true for Plaintiff St. Cecilia Congregation—an exempt "religious employer." The U.S. Government Mandate forces St. Cecilia Congregation to either (1) sponsor

a healthcare plan that will provide Plaintiff Aquinas College, and other affiliated Catholic organizations, with access to the objectionable products and services, or (2) no longer extend The Dominican Campus Health Plans to Plaintiff Aquinas College and other equally religious organizations, subjecting these organizations to substantial fines if they do not contract with another insurance provider to offer the objectionable coverage.

183. The first option forces the Diocese and St. Cecilia Congregation to act contrary to their sincerely held religious beliefs.

184. The second option not only makes the Diocese and St. Cecilia Congregation complicit in the provision of objectionable coverage, by forcing its affiliates out of its plans and to obtain the objectionable coverage through another insurance provider, but also compels the Diocese and St. Cecilia Congregation to submit to the Government's interference with their structure and internal operations by accepting a construct that divides churches from their ministries and religious vocations.

185. In this respect, the U.S. Government 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 XVI, "[t]he Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." Yet the U.S. Government Mandate seeks to separate these consubstantial aspects of the Catholic faith, treating one as "religious" and the other as not. The U.S. Government Mandate therefore deeply intrudes into internal Church governance.

186. In sum, the Final Rule not only fails to alleviate the burden that the U.S. Government Mandate imposes on Plaintiffs' religious beliefs; it in fact makes that burden

significantly worse by increasing the number of religious organizations that are subject to the U.S. Government Mandate. The U.S. Government Mandate, therefore, requires Plaintiffs to act contrary to their sincerely held religious beliefs or submit to the Government's interference with their structure and internal operations—both of which severely burden Plaintiffs' exercise of religion.

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

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

187. Responding to the U.S. Government Mandate, Donald Cardinal Wuerl has declared that "what is at stake here is a question of human freedom." And indeed it is. 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."

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

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

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

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

192. Plaintiffs' beliefs are deeply and sincerely held.

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

194. The U.S. Government Mandate therefore imposes a substantial burden on Plaintiffs' religious beliefs.

195. The U.S. Government Mandate's exemption for "religious employers" does not alleviate the burden.

196. The "religious employers" exemption does not apply to Plaintiff Catholic Charities, Camp Marymount, MQA, St. Mary Villa, or Aquinas College.

197. Although Plaintiffs the Diocese and St. Cecilia Congregation are "religious employers," the U.S. Government Mandate still burdens their sincerely held religious beliefs by requiring them either to (1) sponsor a plan that will provide employees of Plaintiffs Catholic Charities, Camp Marymount, Aquinas College, and their other affiliated Catholic organizations, with access to the objectionable products and services; or (2) expel these affiliates from their insurance plans, thereby forcing their affiliates into an arrangement with another insurance provider that will, in turn, provide or procure the objectionable products and services.

198. The first option forces the Diocese and St. Cecilia Congregation to act contrary to their sincerely held religious beliefs.

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

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

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

202. Plaintiffs' Catholic beliefs do not simply prohibit them from using or directly paying for the objectionable coverage. Their beliefs also prohibit them from facilitating access to the objectionable products and services in the manner required by the U.S. Government Mandate.

203. Finally, Plaintiffs cannot avoid the U.S. Government Mandate without incurring crippling fines. If they eliminate their employee health plans, they are subject to annual fines of $2,000 per full-time employee. If they keep their health plans but refuse to provide or facilitate the objectionable coverage, they are subject to daily fines of $100 a day per affected beneficiary. The fines therefore coerce Plaintiffs into violating their religious beliefs.

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

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

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

206. For example, the U.S. Government Mandate exempts all "grandfathered" plans from its requirements, thus excluding tens of millions of people from the mandated coverage. As the Government has admitted, while the numbers are expected to diminish over time, "98 million individuals will be enrolled in grandfathered group health plans in 2013." 75 Fed. Reg. at 41,732. Elsewhere, the government has put the number at 87 million. *See* "Keeping the Health Plan You Have" (June 14, 2010), http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html. And according to one district court last year, "191 million Americans belong[ed] to plans which may be grandfathered under the ACA." *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1291 (D. Colo. 2012).

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

208. In addition, the U.S. Government Mandate exempts an arbitrary subset of religious organizations that qualify for tax-reporting exemptions under Section 6033 of the

Internal Revenue Code. The Government cannot justify its protection of the religious-conscience rights of the narrow category of exempt "religious employers," but not of Plaintiffs and other religious organizations that remain subject to the U.S. Government Mandate.

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

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

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

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

212. The Government has no compelling interest in forcing Plaintiffs to violate their sincerely held religious beliefs by requiring them to participate in a scheme for the provision of

abortion-inducing products, sterilization, contraceptives, and related education and counseling. The Government itself has relieved numerous other employers from this requirement by exempting grandfathered plans and plans of employers it deems to be sufficiently religious. Moreover, these services are widely available in the United States. The U.S. Supreme Court has held that individuals have a constitutional right to use such services. And nothing that Plaintiffs do inhibits any individual from exercising that right.

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

214. The U.S. Government Mandate, moreover, would simultaneously undermine both religious freedom—a fundamental right enshrined in the U.S. Constitution—and access to the wide variety of social and educational services that Plaintiffs provide. The Diocese serves a wide variety of people in need—including the poor, elderly, and disabled. Catholic Charities provides a range of social services to the citizens of Middle Tennessee. Camp Marymount provides a spiritual and educational summer camp experience to school age children. MQA provides housing to low-income, elderly individuals while St. Mary Villa provides affordable daycare options to a diverse range of families in need of quality childcare. Likewise, as part of its vocation, St. Cecilia Congregation administers The Dominican Campus which educates students

from preschool through college level in the Dominican tradition. Aquinas College provides its students with a high-quality education in numerous fields of study while addressing the critical nationwide shortage of nurses. As President Obama acknowledged in his announcement of February 10, 2012, religious organizations like Plaintiffs do "more good for a community than a government program ever could." The U.S. Government Mandate, however, puts these good works in jeopardy.

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

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

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

217. On June 28, 2013, Defendants finalized the U.S. Government Mandate, including the narrow "religious employer" exemption and the so-called "accommodation" proposed in the NPRM. By the terms of the Final Rule and its transitional safe harbor, Plaintiffs must comply with the U.S. Government Mandate by the beginning of the next plan year on or after January 1, 2014.

218. For Plaintiffs the Diocese, Catholic Charities, and Camp Marymount, the next plan year begins on January 1, 2014.

219. For the Mary Entities (MQA and St. Mary Villa), the next plan year begins on August 1, 2014.

220. For St. Cecilia Congregation and Aquinas College, the next plan year begins on September 1, 2014.

221. Defendants have given no indication that they will not enforce the essential provisions of the U.S. Government 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 abortion-inducing products, contraception, sterilization, and related education and counseling, in violation of their sincerely held religious beliefs.

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

223. Health plans do not take shape overnight. A number of analyses, negotiations, and decisions must occur each year before Plaintiffs can offer a health benefits package to their employees. For example, Plaintiffs the Diocese, the Mary Entities, and St. Mary Villa—as employers using outside insurance issuers—must work with actuaries to evaluate their funding reserves, and then negotiate with the insurer to determine the cost of the products and services they want to offer to their employees.

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

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

226. The U.S. Government 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 U.S. Government Mandate.

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

V. CAUSES OF ACTION

COUNT I
Substantial Burden on Religious Exercise in Violation of RFRA

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

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

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

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

232. The U.S. Government Mandate requires Plaintiffs to provide, pay for, and/or facilitate access to products, services, practices, and speech that are contrary to their religious beliefs.

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

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

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

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

237. Plaintiffs have no adequate remedy at law.

238. 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

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

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

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

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

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

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

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

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

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

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

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

250. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

257. The U.S. Government Mandate would compel Plaintiffs to provide health care plans to their employees that include or facilitate access to products and services that violate their religious beliefs.

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

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

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

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

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

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

264. Plaintiffs have no adequate remedy at law.

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

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

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

267. 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.

268. 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.

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

270. 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 U.S. Government Mandate, while other religious groups do not.

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

Government to partake of such inquiries, the "religious employer" exemption runs afoul of the Establishment Clause prohibition on excessive entanglement with religion.

272. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

277. 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.

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

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

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

281. 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.

282. 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.

283. Plaintiff Diocese has further made the internal decision that its affiliated religious entities, including Catholic Charities and Camp Marymount, should offer their employees health-insurance coverage through the Diocesan plan, which allows the Diocese to ensure that these affiliates do not offer coverage for services that are contrary to Catholic teaching.

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

285. The U.S. Government 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.

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

287. Plaintiffs have no adequate remedy at law.

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

COUNT VI
Illegal Action in Violation of the APA

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

290. 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).

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

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

293. 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.

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

295. The U.S. Government Mandate violates the Weldon Amendment, RFRA, and the First Amendment.

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

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

298. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

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

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

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

306. Within two weeks of the IOM issuing its women's "preventive care" guidelines, HHS issued a press release announcing that the IOM's guidelines regarding women's "preventive care" were required to be covered under the Affordable Care Act.

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

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

309. Plaintiffs have no adequate remedy at law.

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

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under RFRA;
2. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under the First Amendment;
3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;
4. Enter an injunction prohibiting the Defendants from enforcing the U.S. Government Mandate against Plaintiffs;

5. Enter an order vacating the U.S. Government Mandate;

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

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

Respectfully submitted, this the 22nd day of November, 2013.

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* *pro hac vice* applications forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2013, I filed the foregoing Plaintiffs' Complaint with the Clerk of the United States District Court for the Middle District of Tennessee and, upon receipt of the returned summonses, will mail the foregoing by registered mail *via* the United States Postal Service to the following:

Kathleen Sebelius, Secretary
U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

U.S. Department of Health & Human Services
200 Independence Ave., S.W.
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Thomas Perez, Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

U.S. Department of Labor
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Washington, D.C. 20210

Jacob J. Lew, Secretary
U.S. Department of Treasury
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Washington, D.C. 20220

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David Rivera, Acting U.S. Attorney
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United States Department of Justice
United States Attorney's Office
Middle District of Tennessee
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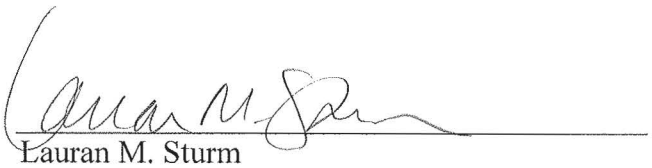

Lauran M. Sturm
One of the Attorneys for Plaintiffs