

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

\_\_\_\_\_  
FRANCISCAN UNIVERSITY OF  
STEUBENVILLE; MICHIGAN  
CATHOLIC CONFERENCE in its own  
name and on behalf of the MICHIGAN  
CATHOLIC CONFERENCE AMENDED  
AND RESTATED GROUP HEALTH  
BENEFIT PLAN FOR EMPLOYEES –  
REVISED,

*Plaintiffs,*

v.

KATHLEEN SEBELIUS, in her official  
capacity as Secretary of the U.S.  
Department of Health and Human  
Services; HILDA SOLIS, in her official  
capacity as Secretary of the U.S.  
Department of Labor, TIMOTHY  
GEITHNER, in his official capacity as  
Secretary of the U.S. Department of  
Treasury; U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES;  
U.S. DEPARTMENT OF LABOR; and  
U.S. DEPARTMENT OF TREASURY.

*Defendants.*

CASE NUMBER: \_\_\_\_\_

JUDGE: \_\_\_\_\_

DATE STAMP: \_\_\_\_\_

**COMPLAINT AND DEMAND FOR JURY TRIAL**

1. This lawsuit is about one of America’s most cherished freedoms: the freedom to practice one’s religion without government interference. It is not about whether people have a right to abortion-inducing drugs, sterilization, and contraception. Those services are freely 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—Catholic

entities—to violate their sincerely held religious beliefs by providing, paying for, and/or facilitating access to those services.

2. This country was founded by those searching for religious liberty and freedom from religious persecution. The founders recognized, through their own experience, that the mixture of government and religion is destructive to both institutions. The U.S. Constitution and federal statutes thus protect religious organizations from government interference with their religious views—particularly minority religious views. This “wall of separation between church and state” preserves religious freedom. As the Supreme Court has recognized, “[t]he structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority.” Through this lawsuit, Plaintiffs do not seek to impose their religious beliefs on others. They simply ask that the Government not impose its values and policies on them, in direct violation of their religious beliefs.

3. Under current federal law described below (the “U.S. Government Mandate”), many Catholic organizations must provide, pay for, and/or facilitate the provision of abortion-inducing drugs, sterilization, and contraceptive services for their employees in violation of their sincerely held religious beliefs. Ignoring broader religious exemptions from other federal laws, the Government crafted a narrow exemption to this Mandate for “religious employers.” Group health plans are eligible for the exemption only if they are “established or maintained by religious employers,” and only if the “religious employer” can satisfy four criteria:

- “The inculcation of religious values is the purpose of the organization”;
- “The organization primarily employs persons who share the religious tenets of the organization”;

- “The organization primarily serves persons who share the religious tenets of the organization”; and
- “The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.”

Thus, to safeguard their religious freedoms, religious employers must plead with the Government for a determination that they are sufficiently “religious” under the Government’s definition.

4. Plaintiff Franciscan University of Steubenville’s group health plan may not qualify for this exemption, because, while Franciscan is a charitable organization, it appears not to fall within Section 6033(a)(1) and Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

5. Plaintiff Michigan Catholic Conference Amended and Restated Group Health Benefit Plan for Employees – Revised (“MCC Plan”) likewise may not qualify—even though it provides the health plan for Michigan’s Catholic Dioceses—because it is sponsored by Plaintiff Michigan Catholic Conference, an entity whose purpose is, in part, to offer benefit plans to Michigan Catholic organizations.

6. Even if Franciscan University could somehow change its tax designation and even if the MCC Plan could be considered to be “established and maintained” by the Dioceses themselves, the exemption would still force those entities to submit to an intrusive government investigation into whether their “purpose” is the “inculcation of religious values”; whether they “primarily” employ “persons who share [their] religious tenets,” even though they hire employees of all faiths; and whether they “primarily” serve such people, even though their schools and services are generally open to people of all faiths.

7. The Government has not shown a compelling need to force Plaintiffs to provide, pay for, and/or facilitate access to abortion-inducing drugs, sterilization, and contraception, or to

submit to that intrusive government investigation concerning their religious missions. In fact, the Government has chosen to make exemptions to the law both for religious and non-religious reasons. The Government also has not shown that the U.S. Government Mandate is narrowly tailored to advancing any interest in increasing access to these services, since the services are already widely available and nothing prevents the Government from making them more widely available by providing or paying for them directly through a duly enacted law. The Government, therefore, cannot justify its decision to force Plaintiffs to provide, pay for, and/or facilitate access to these services in violation of their sincerely held religious beliefs.

8. These burdens on religious freedom violate Plaintiffs' clearly established First Amendment rights and rights under the Religious Freedom Restoration Act ("RFRA"). The manner in which the U.S. Government Mandate and its "religious employer" exemption were passed, moreover, does not comport with the Administrative Procedure Act ("APA"). The U.S. Government Mandate runs afoul of all of these constitutional and statutory protections.

9. Accordingly, Plaintiffs seek a declaration that the U.S. Government Mandate cannot legally apply to them, a permanent injunction barring its enforcement against them, and an order vacating the U.S. Government Mandate.

## **I. Background**

### **A. Preliminary Matters**

10. Plaintiff Franciscan University of Steubenville is a nonprofit Ohio corporation with a principal place of business in Steubenville, Ohio. It is organized exclusively for charitable, religious, 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.

11. Plaintiff Michigan Catholic Conference is a nonprofit corporation incorporated in Michigan in 1963. Its principal place of business is in Lansing, Michigan. It is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

12. The MCC Plan is a health plan sponsored and administered by the Michigan Catholic Conference. It is a “church plan” exempt from the Employee Retirement Income Security Act (“ERISA”).

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

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

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

16. 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 APA.

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

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

19. This is an action for declaratory and injunctive relief under 5 U.S.C. § 702, 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 2000bb-1(c).

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

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

**B. Franciscan University and Its Catholic-Centered Educational Mission**

22. Franciscan University is an academic community of higher learning, organized as an independent, national Catholic and Franciscan university in Steubenville, Ohio. Founded in 1946 by the Franciscan Friars of the Third Order Regular (“T.O.R.”) to educate returning war veterans, it seeks to provide a Catholic, Franciscan environment that prepares students spiritually and intellectually for their future vocations and careers.

23. Franciscan University is passionately Catholic and believes that Franciscanism springs from the heart of the church.

24. Faith is at the heart of Franciscan University’s educational mission. The apostolic constitution *Ex Corde Ecclesiae*, which governs and defines the role of Catholic colleges and universities, provides that “the objective of a Catholic University is to assure . . . Fidelity to the Christian message as it comes to us through the Church.”

25. In accordance with *Ex Corde Ecclesiae*, Franciscan University 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.”

26. “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.”

27. Franciscan University’s mission includes: “The Way, the Truth and the Life are fundamental concepts and guidelines for evaluating University priorities, staffing and budgets

and are understood as explicating dynamic orthodoxy.” Dynamic orthodoxy means teaching from the heart of the Church, passing on the unchanging truths of the faith in all their glory.

28. In addition to education, the stated “purpose of the University, publicly identified as a Catholic and a Franciscan institution, [is] to promote the moral, spiritual and religious values of its students. The University will be guided by the example and teaching of St. Francis of Assisi.”

29. As explained in the University’s “Mission and Application,” “The University is thereby committed to: 1. Being truly Catholic in its full submission to the teaching authority of the Catholic Church, thereby teaching as true what that teaching authority teaches as true, rejecting all propositions contrary to those truths, and promoting thereby all the truths of revelation whether found in Scripture or Tradition as taught by the Catholic Church.”

30. Franciscan University embraces the riches of the Catholic intellectual tradition, “consecrating itself without reserve to the cause of truth.” It aims to provide a forum where, through free inquiry and open discussion, the various lines of Catholic thought may intersect with the arts, sciences, and every area of human scholarship.

31. Offering over forty undergraduate majors and seven graduate programs, Franciscan University pursues the highest academic achievement in every discipline, integrating faith and reason in pursuit of truth. Graduate programs include Masters of Arts in Counseling, Philosophy, Theology and Christian Ministry, as well as a Masters of Business Administration.

32. Franciscan University’s Catholic educational mission is furthered by its leadership. The president must be a friar and all five presidents have been Franciscans.

33. Franciscan University's commitment to Catholic teaching permeates campus life. The Franciscans of the T.O.R. are a visible presence on campus, where they minister to, teach, and socialize with the students to elevate their daily routine.

34. The University's Board of Trustees consists of fifteen lay leaders and eight Franciscans, including Father Nicolas Polichnowski, T.O.R., who is both Chairman of the Board and the Minister Provincial of the province.

35. The University's Code of Student Conduct proscribes certain conduct that can be punished with disciplinary sanctions, including "[l]ewd, indecent, obscene or otherwise immoral conduct or expression that violates Catholic moral teaching on sexuality or the promotion or advocacy of such conduct or expression."

36. The University maintains only single-sex dormitories, with opposite sex visitation in student rooms restricted to 6 to 10 pm on Friday night and 1 to 5 pm on Sunday afternoon.

37. The University does not make artificial contraception available to its students, faculty, or staff at its on-campus health care facility.

38. While committed to remaining a Catholic and Franciscan institution, Franciscan University opens its doors to students, academics, and employees of all faiths and creeds.

39. Faith in Christ is not required for student admission. Over 2100 full- and part-time students are enrolled in Franciscan University's undergraduate programs, over 400 are enrolled in its graduate programs.

40. The University's alumni have gone on to distinguished careers in industry, medicine, law, and a host of other disciplines, and established an alumni network with over 14,000 members with a uniquely caring nature. For example, this network formed a Special Needs Network to assist alumni who have children with autism and other special needs.

41. In total, Franciscan University employs over 450 full- and part-time individuals and does not know what percentage of the non-faculty employees are Catholic. Faith in Christ is not required for employment, except where required or permitted by law. All employees, however, must be committed to supporting the mission of Franciscan University.

42. Service to the community is an integral part of the University's curriculum. According to its Economic Impact Report from 2009-2010, the University provided 80,216 hours of service to the local community, approximately 50,000 of those hours by University faculty and staff. Faculty and staff service includes providing free consulting services, uncompensated speeches, appearances at professional groups, and the uncompensated time spent preparing for these services. The total value of contributed time was estimated at \$3,583,664.

43. Every week, over 200 students participate in at least one program run by the Works of Mercy group, which consists of fifteen ministries sponsored and directed by the University that serve the poor, neglected, and needy in the Ohio Valley and nearby Pittsburgh. Ministries include service in nursing homes, homeless shelters, a hospital, group homes for the mentally challenged, soup kitchens, and prisons, as well as mentoring and other youth programs with local youth. These programs are not limited to Catholics, and Franciscan University does not know how many of the people it serves are Catholic. In fact, its religious mission is expressly to serve all, whether or not they are Catholic.

44. Over 80% of both undergraduate and graduate students receive some form of financial aid, with the University distributing over \$8 million in scholarships and non-government grants. In addition, the University provides over \$3 million in institutional discounts to clergy and employees' family members.

45. A significant percentage of the University's endowment is raised from Catholics, including alumni, who donated, and continue to donate, to further its mission. Franciscan University would violate the purpose of those donations if it used the funds to finance, facilitate, or provide services that are contrary to the University's mission.

46. Franciscan University also plays a significant role in the regional economy. The University, including its students, employees, and visitors, directly account for about \$71 million in regional spending per year. Indirectly, the University impacts over \$200 million per year, for a total impact of approximately \$280 million, which is 16% of Steubenville's economy. The University, directly and indirectly, generates jobs for nearly 8100 people.

47. Franciscan University has ensured that its sponsored health plans do not include coverage for abortion, sterilization, contraception, or related education and counseling that are inconsistent with the teachings of the Catholic Church. Franciscan University cannot, without violating its sincerely held religious beliefs, offer coverage for these or other devices, drugs, procedures, or services that are inconsistent with the teachings of the Catholic Church.

48. Franciscan University's group health plan for employees is administered by a Third Party Administrator. Franciscan University is a member of a consortium of private colleges and universities that insures the group health plan. Franciscan University pays a monthly premium to the Consortium. That premium is placed in a pool designated for the University that is used to pay the claims of its employees and their eligible dependents, reserve requirements, administrative expenses, stop loss insurance, and "any ordinary and necessary expenses related to the Third Party Administrator's program or incurred by the Consortium." Under this plan, Franciscan University pays for its employees' claims, including all claims for covered preventive services.

49. Franciscan University's employee health plan year begins on January 1.

50. Both employee health plan options offered by Franciscan University provide rich coverage with a very low cost to employees. Co-pays and employee premiums are very low, especially given Franciscan University's size. The generosity of the plans springs from Franciscan University's mission.

51. Both employee health insurance plan options offered by Franciscan University meet the definition of a "grandfathered" plan within the meaning of the Patient Protection and Affordable Care Act (the "Affordable Care Act" or the "Act"). Franciscan University has included a statement describing its grandfathered status in plan materials, as required by 26 C.F.R. § 54.9815-1251T(a)(2)(ii).

52. Franciscan University also currently offers a student health plan for full-time students who are not covered by other insurance, as well as their eligible dependents. Full-time undergraduate students are enrolled in the plan each year, unless they waive enrollment.

53. This student health plan is not self-insured or funded through the Consortium.

54. The current plan year runs from August 15, 2011, to August 15, 2012.

55. Franciscan University has decided not to continue this student health plan after it expires on August 15, 2012, partially due to the fact that the plan would have to cover the services required by the U.S. Government Mandate.

**C. The Michigan Catholic Conference And The Many Catholic Institutions That Participate In Its MCC Plan**

56. Plaintiff Michigan Catholic Conference was established by His Eminence John Cardinal Dearden, then Archbishop of Detroit, in 1963. It has a Board of Directors of fourteen members, including the seven bishops of the seven Catholic Dioceses in Michigan, five lay

persons, a priest, and a religious sister. The Archbishop of Detroit, the Most Reverend Allen H. Vigneron, is presently the Chairman of the Board.

57. The Michigan Catholic Conference was originally created to be the public policy voice of the Catholic Church in Michigan, allowing the Catholic Church's position on public policy to be presented with one voice throughout the State.

58. Since then, the Michigan Catholic Conference has expanded to sponsor and administer a wide range of benefit programs for participating Catholic institutions in Michigan. It administers, among others, the MCC Plan.

59. The MCC Plan allows Michigan Catholic institutions and their qualifying employees to participate in health-benefit programs. Specifically, the MCC Plan offers health benefits to qualifying employees of "Covered Units," and defines "Covered Unit" to mean:

a parish, school, institution, organization, corporation or other entity in the State of Michigan which is an integral part of the Catholic Church, engaged in carrying out the functions of the Catholic Church, and under the control of an Archbishop or Bishop of a Diocese in the Province of Detroit, unless the Archbishop or Bishop specifically exempts the unit from status as a Covered Unit. The Michigan Catholic Conference shall be a Covered Unit. Any parish, school, institution, organization, corporation or other entity listed within the Kenedy Directory which is an integral part of the Catholic Church and which is engaged in carrying out the functions of the Catholic Church, but which is not under the control of an Archbishop or Bishop of a Diocese in the Province of Detroit, may become a Covered Unit pursuant to a written agreement between its governing authority and the Michigan Catholic Conference.

Presently, approximately 1131 Catholic institutions and approximately 9982 participants receive their health insurance through the Plan.

60. The MCC Plan truly is the group health plan for the Catholic Church in Michigan. The seven Catholic Dioceses in Michigan use the MCC Plan to provide their employees with health insurance. These Dioceses cover the entire State:

- a. The Archdiocese of Detroit encompasses more than 270 parishes in six counties in the greater Detroit area. Since 2009, it has been led by Archbishop Allen Vigneron.
- b. The Diocese of Grand Rapids encompasses 98 parishes in eleven counties in western Michigan. Since 2005, it has been led by Bishop Walter A. Hurley.
- c. The Diocese of Lansing encompasses 89 parishes in ten counties in central Michigan. Since 2008, it has been led by Bishop Earl A. Boyea.
- d. The Diocese of Kalamazoo encompasses 69 parishes in nine counties in southwestern Michigan. Since 2009, it has been led by Bishop Paul J. Bradley.
- e. The Diocese of Saginaw encompasses 109 parishes in eleven counties in Michigan's "thumb and index finger." Since 2009, it has been led by Bishop Joseph R. Cistone.
- f. The Diocese of Gaylord encompasses 80 parishes in 21 counties in the northern part of Michigan's lower peninsula. Since 2009, it has been led by Bishop Bernard A. Hebda.
- g. The Diocese of Marquette encompasses 94 parishes in the fifteen counties in Michigan's upper peninsula. Since 2006, it has been led by Bishop Alexander K. Sample.

61. These seven Dioceses carry out the spiritual, educational, and social-service missions of the Catholic Church in Michigan.

62. The Dioceses, along with their local parishes, provide spiritual ministry to the approximately 2.1 million Catholics in Michigan that represent 21% of Michigan's population. They ensure the availability of the sacraments to all Catholics living in or visiting Michigan.

63. The Dioceses conduct their educational missions, in part, through their various Offices of Catholic Schools and their many affiliated elementary and high schools, most of whom participate in the MCC Plan. The Archdiocese of Detroit has over 100 Catholic schools in its jurisdiction; the Diocese of Grand Rapids has 31; the Diocese of Lansing has 36; the Diocese of Kalamazoo has 22; the Diocese of Saginaw has 19; the Diocese of Gaylord has 17; and the Diocese of Marquette has 9.

64. When including independent Catholic schools, there are approximately 42 high schools and 213 elementary schools in Michigan, teaching over 16,000 high-school students and over 46,000 elementary students. These schools are largely open to students of all faiths.

65. The Dioceses and their schools provide significant tuition assistance to their students. The Archdiocese of Detroit Endowment Foundation, for example, provides 65% of its annual distributions (over \$1.5 million in the 2010-11 school year) to tuition assistance programs for Catholic elementary and high schools in the Archdiocese.

66. The Dioceses perform charitable social services through their various Diocesan ministries, their offices of Christian Service, and/or their local parishes. These Diocesan and parish programs range from ministering to the prison population, to funding local self-help projects for the poor, to offering low-cost, legal representation to indigent immigrants, to providing meals to the homeless or visits to nursing homes.

67. Neither the Dioceses nor their parishes request to know the religious affiliation of the individuals that their social-service programs serve.

68. The MCC Plan provides health benefits for many organizations that assist the Dioceses in carrying out the Church's educational mission. Loyola High School in Detroit is one such entity. In the 1990s, the Detroit Board of Education proposed opening several all-male academies to address the alarmingly high dropout rate of high-school males in Detroit. When a court found the state-run plan unconstitutional, Catholic leaders filled the gap by opening Loyola High School in inner-city Detroit to be run in the Jesuit tradition. It is an independent high school welcoming male students of all faiths who face the challenges of an urban environment. Its student population is made up of 95% non-Catholics and 99% minorities. Since its first

graduating class, every one of its graduating students has been admitted into a college or university. It offers employment opportunities to people of all faiths.

69. San Juan Diego Academy—a nonprofit Michigan corporation located in the Diocese of Grand Rapids—likewise is a “Covered Unit” under the MCC Plan. San Juan Diego is a Kindergarten through Eighth Grade Catholic school located on the Holy Name of Jesus Church campus serving six parishes in the Wyoming and Grand Rapids area of Michigan. The mission of San Juan Diego Academy is “to provide the children of our immediate neighborhood with an academically excellent and morally vibrant education, otherwise outside their economic reach. We are creating an environment where children can learn, engage, pray and grow in Christ.” San Juan Diego Academy serves between 120 and 145 students annually and places an emphasis on literacy. San Juan Diego himself was canonized in 2002, and the school excels in providing an English language-based and interdisciplinary education for its students. Children attending the school typically begin with little to no English reading skills, yet by the end of the first year the students have developed the confidence and skills to read aloud in a public setting.

70. Sacred Heart Major Seminary, another nonprofit Michigan corporation in Detroit that participates in the MCC Plan, also provides educational opportunities to the Michigan community and beyond. It is an institution of higher education that primarily prepares candidates for the Roman Catholic Priesthood and, further, prepares individuals for the diaconate, lay ministry, and other leadership roles in the Church. As its core values, Sacred Heart sees “Jesus Christ [as] the center of all that we do,” and aims to “form disciples as leaders who are prepared to bring the truth of the Gospel to a secularized world, who are faithful to the teachings of the Catholic Church, and who are equipped to nurture their lifelong relationship

with Jesus Christ.” It has over 80 full- and part-time professors serving over 90 seminarians and over 400 lay students, and it offers both undergraduate and graduate degrees.

71. The MCC Plan also provides health benefits for many organizations that assist the Michigan Dioceses in carrying out the Catholic Church’s social-service mission. For example, Catholic Family Services—a nonprofit Michigan corporation located in the Diocese of Kalamazoo—is a “Covered Unit” under the MCC Plan. As indicated in its Mission Statement, “[t]he mission of Catholic Family Services is to provide social services in the manner of Jesus Christ, with compassion, care and concern for justice to all people in need and to advocate for their welfare calling those of good will to assist in this mission in the Diocese of Kalamazoo.”

72. Catholic Family Services offers a range of programs, including, for example, the Ark Shelter and the Caring Network, to individuals in need without regard to their religion. The Ark Shelter serves homeless and runaway children by providing them temporary housing and counseling sessions and by helping them reunite with their families. The Caring Network offers assistance to pregnant and parenting women and their babies, including professional counseling services and transitional living apartments for the homeless.

73. Catholic Family Services has 65 individuals on staff and offers employment opportunities to people of all faiths.

74. Catholic Social Services of the Upper Peninsula—a nonprofit Michigan corporation located in the Diocese of Marquette—is another Covered Unit under the MCC Plan with a similar service mission. Its mission is, among others, “[t]o promote and improve the healthy social functioning of individuals and families through counseling and prevention programming which enhance and support family life,” “[i]n keeping with the teaching of the Catholic Church.” It provides a broad range of assistance to Michigan families in need, ranging

from adoption services to counseling services, to assisted-living services. It has seventeen employees and hires people of all faiths.

75. Catholic Human Services, Inc.—a nonprofit Michigan corporation located in the Diocese of Gaylord—also participates in the MCC Plan. “The purpose of Catholic Human Services, Inc. is to fulfill the social mission of the Catholic Church.” It “seeks to heal, strengthen, enhance and build healthy individuals, families and communities by providing a wide range of services including advocacy, education, counseling, adoption, prevention and outreach services to all people throughout the life span within the twenty-one counties of northern lower Michigan” that make up the Diocese of Gaylord. Its Host Homes for Homeless Youth, for example, is designed to offer safe and stable homes for homeless high-school students, and its Prevention Services program offers instruction on a wide array of topics, including underage drinking, parenting skills, and anger management skills. Catholic Human Services offers assistance to over 26,000 individuals per year, regardless of their religious affiliation. Its 81 employees represent many denominations and faiths.

76. Catholic Social Services of Washtenaw County—a nonprofit Michigan corporation located in the Diocese of Lansing—is another “Covered Unit” under the MCC Plan. Its mission “[i]s the work of the Catholic Church to share the love of Christ by performing the corporal and spiritual works of Mercy. We help. We participate. We Change Lives.” Serving thousands of individuals and families of all faiths and all walks of life, CSSW offers more than two dozen programs reflecting the diversity of the community: adoption and pregnancy counseling, food assistance, homelessness prevention, domestic and child abuse intervention and prevention, family therapy, and services designed to assist older adults, individuals with developmental disabilities, and at-risk families with young children.

77. Compensated executive staff for Abortion Alternatives Information, Inc.—a nonprofit Michigan corporation located in the Diocese of Saginaw—also participate in the MCC Plan. According to Abortion Alternatives’ mission statement, its “Pregnancy Aid is in response to the conviction that God is working through us to protect the sacredness of life and the value of all people, both the born and unborn. We uphold the dignity of all who enter our doors; by offering guidance to moms and dads at their most vulnerable time, thereby promoting healthy families.” The organization’s primary goal is to help people choose life. Its secondary goals are to support their choice in practical ways, and to promote healthy parenting skills. Abortion Alternatives’ clients are low-income mothers, fathers and children, mostly single mothers with newborn or young children. The organization’s typical clients are 15-24 year-old women who are single, poor, and with less than a high school education. Abortion Alternatives serves 11 Michigan counties in the Diocese of Saginaw (Arenac, Bay, Clare, Gladwin, Gratiot, Huron, Isabella, Midland, Saginaw, Sanilac and Tuscola) with the majority coming from the Saginaw area. It served over 2,500 families last year, including 320 new clients. During that year, it provided over 20,000 diapers, 523 cans of formula, 68 cribs, 31 car seats, and substantial clothing for the children of 1108 families. The organization provides emotional support, post-abortive healing, referral services to community resources and adoption agencies, and educational opportunities.

78. These entities, and the many others that participate in the MCC Plan, may participate in two health-benefit programs that MCC offers for their lay employees and clergy.

79. Covered Units may allow their lay employees to participate in the Michigan Catholic Conference Community Blue PPO Active Lay Plan. This program is self-funded and its medical and prescription benefits are administered by separate third-party administrators,

Blue Cross Blue Shield of Michigan and Medco, respectively. Approximately 5064 employees participate in this program.

80. Qualifying priests may participate in the Michigan Catholic Conference Community Blue PPO Clergy Plan. This program is also self-funded, and its medical and prescription benefits are administered by the same third-party administrators. Approximately 836 clergy throughout Michigan participate in this program.

81. Alternatively, the MCC Plan permits both lay employees and clergy to participate in Blue Care Network – Healthy Blue Living, a fully insured benefits program. Healthy Blue Living offers insurance and administrative services through the Blue Care Network of Michigan. Approximately 1070 lay employees and clergy throughout Michigan participate in this fully funded insurance option.

82. The Plan limits the benefits that may be offered under any of these programs. It expressly indicates that “in no event shall any benefit be provided which violates the tenets of the Catholic Church, including but not limited to expenses relating to sterilizations, abortions, and/or birth control devices.” Thus, none of the MCC Plan’s programs offers insurance coverage for abortion, sterilization, or contraceptive services.

83. The MCC Plan and its benefit programs do not meet the definition of a “grandfathered” plan within the meaning of the Affordable Care Act.

84. The MCC Plan, for example, does not include a statement in any plan materials provided to participants or beneficiaries that it believes it is a grandfathered plan, as would be required to maintain the status of a grandfathered health plan. 26 C.F.R. § 54.9815-1251T(a)(2)(i).

85. The MCC Plan lost its grandfathered status because the PPO benefit program increased the emergency room co-payment amount from \$50 to \$100, and increased the prescription co-payment amount for non-formulary brand name drugs from \$30 to \$50.

86. The MCC Plan also lost its grandfathered status because the Blue Care Network – Healthy Blue Living program added a wellness program that resulted in reduced benefits and coverage for certain individuals beyond what is allowed to maintain grandfathered status.

87. The plan year for the MCC Plan begins each year on January 1.

## **II. Statutory and Regulatory Background**

### **A. The Affordable Care Act**

88. 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],” defined as “employee welfare benefit plan[s]” within the meaning of ERISA, 29 U.S.C. § 1002(1), that “provide[] medical care . . . to employees or their dependents.” 42 U.S.C. § 300gg-91(a)(1).

89. As relevant here, the Act required group health plans to cover certain women’s “preventive care.” It indicated that “[a] group health plan and a health insurance issuer offering group or individual health insurance coverage shall . . . provide coverage for and shall not impose any cost sharing requirements for—(4) with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.” Pub. L. No. 111-148, § 1001(5), 124 Stat. 131 (codified at 42 U.S.C. § 300gg-13(a)(4)).

90. Since the Act prohibits “cost sharing requirements,” the group health plan must pay for the full costs of these “preventive care” services without any deductible or co-payment.

91. Violations of the Affordable Care Act may subject an employer, an insurer, or a group health plan to substantial monetary penalties.

92. Certain employers who fail to provide their employees with the opportunity to enroll in an employer-sponsored plan that meets minimum requirements will be exposed to annual fines of \$2000 per full-time employee. *See* 26 U.S.C. § 4980H(a), (c)(1).

93. Additionally, if a group health plan fails to provide the coverage required by the U.S. Government Mandate, the relevant employer or group health plan may be subject to an assessment of \$100 a day per individual. *See* 26 U.S.C. § 4980D(b); 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).

94. Under the Public Health Service Act, the Secretary of HHS may impose a penalty of \$100 a day per individual where an insurer fails to provide the coverage required by the U.S. Government Mandate. *See* 42 U.S.C. § 300gg-22(b)(2)(C)(i); Cong. Research Serv., RL 7-5700.

95. ERISA may also provide for additional penalties for those subject to its provisions. Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B). Similarly, the Secretary of Labor may bring an enforcement action against group health plans that violate the U.S. Government Mandate. *See* 29 U.S.C. § 1132(b)(3); Cong. Research Serv., RL 7-5700.

96. Plans that are materially unchanged since the Affordable Care Act’s enactment—so-called “grandfathered” plans—are exempt from most provisions of the Act. 42 U.S.C. § 18011. These “grandfathered health plans do not have to meet the requirements” of the U.S.

Government Mandate. 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”). HHS estimates that “98 million individuals will be enrolled in grandfathered group health plans in 2013.” *Id.* at 41,732.

97. The Act, in addition to other federal statutes, reflects a clear congressional intent that the agencies charged with identifying the required women’s “preventive care” services should exclude all abortion-related services. The Act provides that “nothing in this title (or any amendment made by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits.” 42 U.S.C.

§ 18023(b)(1)(A)(i). And the Act leaves it to “the issuer of a qualified health plan” “[to] determine whether or not the plan provides coverage of [abortion].” *Id.* § 18023(b)(1)(A)(ii).

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

99. The Act’s intent to exclude abortions was instrumental in its passage, as cemented by an Executive Order without which the Act would not have passed. The legislative history shows an intent to prohibit executive agencies from requiring group health plans to provide

abortion-related services. 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, did not contain the same provision. S. Amend. No. 2786 to H.R. 3590, 111th Cong. (Dec. 23, 2009).

100. To reconcile the different bills while avoiding a potential Senate filibuster, 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.

101. Congressman Stupak and other pro-life House members indicated that they would refuse to vote for the Senate version because it failed to adequately prohibit the use of federal funds for abortion services.

102. To appease these Representatives, President Obama issued an executive order providing that no executive agency would authorize the federal funding of abortion services. *See* Exec. Order No. 13535, 75 Fed. Reg. 15,599 (Mar. 24, 2010).

103. The Act was thus passed on the premise that agencies would follow “longstanding Federal laws to protect conscience” and to prohibit federal funding of abortion. *Id.*

#### **B. Defendants’ Agency Action Under The Act**

104. In 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, moreover, was implemented contrary to the normal procedures governing the promulgation and implementation of rules of this magnitude.

105. Within four months of enactment, on July 19, 2010, Defendants issued interim final rules concerning the requirement that group health plans cover women’s “preventive care.” Interim Final Rules, 75 Fed. Reg. at 41,726.

106. Defendants dispensed with notice-and-comment rulemaking for these rules. While federal law had never required coverage of abortion-inducing drugs, sterilization, or contraception, Defendants asserted both that the APA did not apply to the relevant provisions of the Affordable Care Act and that “it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed.” *Id.* at 41,730. They dispensed with the APA, among other reasons, because, “in order to allow plans and health insurance coverage to be designed and implemented on a timely basis, regulations must be published and available to the public well in advance of the effective date of the requirements of the Affordable Care Act.” *Id.*

107. The interim final rules indicated that “a group health plan . . . must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services: . . . (iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration.” Interim Final Rules, 75 Fed. Reg. at 41,759 (codified at 45 C.F.R. § 147.130(a)(iv)).

108. The rules, however, failed to identify the women’s “preventive care” that Defendants planned to require group health plans to cover. 42 U.S.C. § 300gg-13(a)(4). Instead, Defendants noted that “[t]he Department of HHS [was] developing these guidelines and expects to issue them no later than August 1, 2011.” Interim Final Rules, 75 Fed. Reg. at 41,731.

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

110. In response, several groups lobbied Defendants to include FDA-approved contraceptives (which included abortion-inducing drugs) in the “preventive care” requirements. *See, e.g.*, <http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-supports-initial-white-house-regulations-preventive-care-highlights-need-new-33140.htm>. Other commenters noted that “preventive care” could not be interpreted to include such practices. These groups indicated that pregnancy was not a disease that needed to be “prevented,” and that a contrary view would intrude on the firmly held beliefs of many religious institutions by requiring them to pay for services that they viewed as intrinsically immoral. *See, e.g.*, Comments of United States Conference of Catholic Bishops, at 1-2 (Sept. 17, 2010), *available at* <http://old.usccb.org/ogc/preventive.pdf>.

111. In addition to the U.S. Government Mandate that applies to group health plans for employees, on February 11, 2011, HHS also announced that, if colleges or universities contract with a health insurance issuer to provide insurance to their students, the health insurance issuer must provide these “preventive care” services in the student health plans. *See Student Health Insurance Coverage*, 76 Fed. Reg. 7767, 7772 (Feb. 11, 2011).

112. On August 1, 2011, HHS announced the “preventive care” services that group health plans and health insurance issuers would be required to cover. *See HHS, Affordable Care Act Ensures Women Receive Preventive Services at No Additional Cost*, *available at* <http://www.hhs.gov/news/press/2011pres/08/20110801b.html>. Again acting without notice-and-comment rulemaking, HHS announced these guidelines through a press release on its website rather than enactments in the Code of Federal Regulations or statements in the Federal Register.

113. The press release indicated that the guidelines were developed by a non-governmental “independent” organization, the Institute of Medicine (“IOM”). *See id.* In

developing the guidelines, IOM invited certain groups to make presentations on preventive care. On information and belief, no groups that oppose government-mandated coverage of abortion-inducing drugs, sterilization, and contraception, and related education and counseling were among the invited presenters. Comm. on Preventive Servs. for Women, Inst. of Med., Clinical Preventive Services for Women app. B at 217-21 (2011), *available at* [http://www.nap.edu/openbook.php?record\\_id=13181&page=R1](http://www.nap.edu/openbook.php?record_id=13181&page=R1).

114. The IOM's own report, in turn, included a dissent that suggested that the IOM's recommendations were made on an unduly short time frame without the necessary transparency, and that the process was largely subject to the preferences of the committee's composition.

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

116. In conflict with the central compromise necessary for the Affordable Care Act's passage and President Obama's promise to protect religious conscience, the guidelines required group health plans to cover "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." *See* <http://www.hrsa.gov/womensguidelines/>.

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

118. A few days later, on August 3, 2011, Defendants issued amendments to the interim final rules that they had previously enacted in July 2010. *See* Group Health Plans and

Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011). Defendants issued the amendments again without notice-and-comment rulemaking on the same grounds (namely, that it would be “impracticable and contrary to the public interest” to delay putting the rules into effect) that they had provided for bypassing the APA with the original rules. *See id.* at 46,624.

119. When announcing the amendments, Defendants ignored the view that “preventive care” should exclude abortion-inducing drugs, sterilization, or contraception. Instead, they noted only that “commenters [had] asserted that requiring group health plans sponsored by religious employers to cover contraceptive services that their faith deems contrary to its religious tenets would impinge upon their religious freedom.” *Id.* at 46,623.

120. In response, Defendants crafted a narrow religious exemption. They sought “to provide for a religious accommodation that respect[ed]” only “the unique relationship between a house of worship and its employees in ministerial positions.” *Id.* They ignored all other religiously affiliated entities.

121. Specifically, the regulatory exemption covers only group health plans “established and maintained by” employers whose purpose is to inculcate religious values, and who employ and serve primarily individuals of the same religion. It provides in full:

(A) In developing the binding health plan coverage guidelines specified in this paragraph (a)(1)(iv), the Health Resources and Services Administration shall be informed by evidence and may establish exemptions from such guidelines with respect to group health plans established or maintained by religious employers and health insurance coverage provided in connection with group health plans established or maintained by religious employers with respect to any requirement to cover contraceptive services under such guidelines.

(B) For purposes of this subsection, a “religious employer” is an organization that meets all of the following criteria:

(1) The inculcation of religious values is the purpose of the organization.

- (2) The organization primarily employs persons who share the religious tenets of the organization.
- (3) The organization serves primarily persons who share the religious tenets of the organization.
- (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

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

122. The exemption excludes the group health plans of all other religiously affiliated employers that view their missions as providing charitable, educational, and employment opportunities to all those who request it, regardless of their religious faith.

123. When issuing this interim final rule, Defendants did not explain why they issued such a narrow exemption. Nor did Defendants explain why they refused to incorporate other “longstanding Federal laws to protect conscience” that President Obama’s executive order previously had promised to respect. *See* Exec. Order No. 13535, 75 Fed. Reg. at 15,599.

124. ERISA, for example, has long excluded “church plans” from its requirements, more broadly defined to cover civil law corporations, including universities, that share religious bonds with a church. *See* 29 U.S.C. §§ 1002(33)(C)(iv), 1003.

125. Likewise, the Affordable Care Act itself excludes from its requirement that all individuals purchase insurance those individuals who have a religious objection to receiving benefits from public or private insurance. 26 U.S.C. §§ 1402(g)(1), 5000A(d)(2).

126. Defendants did not consider whether Defendants had a compelling interest to require religious institutions to include services in their group health plans that they viewed as immoral, or whether Defendants could achieve their views of sound policy in a more accommodating manner.

127. Suggesting that they were open to good-faith discussion, Defendants once again permitted parties to provide comments to the amended rules.

128. Numerous organizations expressed the same concerns that they had before, noting that abortion-inducing drugs, sterilization, and contraceptive services could not be viewed as “preventive care.” They also explained that the religious exemption was “narrower than any conscience clause ever enacted in federal law, and narrower than the vast majority of religious exemptions from state contraceptive mandates.” Comments of United States Conference of Catholic Bishops (Aug. 31, 2011), *available at* <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08.pdf>.

129. The Alliance Defense Fund, on behalf of organizations including Franciscan University, noted that religious organizations such as the University “have a legal right not to be required to offer to pay for health insurance coverage that includes practices to which they have a religious or moral objection, and not to be forced to choose between offering such coverage, paying a fine, or offering no coverage at all.” Letter of Alliance Defense Fund to Centers for Medicare & Medicaid Services of Defendant HHS (Sept. 29, 2011).

130. On October 5, 2011, less than two weeks after the Alliance Defense Fund letter, Defendant Sebelius spoke at a fundraiser for NARAL Pro-Choice America. She told the pro-choice crowd that “we are in a war,” apparently with opponents of federal funding of abortion-related services or federal mandates requiring health plans to cover abortion-related services.

131. Three months later, on January 20, 2012, “[a]fter evaluating [the new] comments” to the interim final rules, Defendants responded. They did not request further discussion or attempts at compromise. Nor did they explain the basis for their decision. Instead, Defendant Sebelius issued a short press release. *See* HHS, A Statement by U.S. Department of Health and

Human Services Secretary Kathleen Sebelius, *available at*  
<http://www.hhs.gov/news/press/2012pres/01/20120120a.html>.

132. The press release announced, with little analysis or reasoning, that HHS opted to keep the religious employer exemption unchanged.

133. The press release also indicated that non-qualifying religious organizations would receive a reprieve from the U.S. Government Mandate for a limited time. “Nonprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law.” *Id.*

134. Taken together, these various rules and press releases amount to a mandate that requires most religiously affiliated organizations to provide coverage for services in their health plans that are directly contrary to their religious beliefs. The U.S. Government Mandate and its narrow religious exemption are the current, operative law. Catholic organizations have until August 1, 2013, to comply with this law or face the substantial fines that will accompany noncompliance.

### **C. The White House’s Proposed “Accommodation”**

135. On February 10, 2012, given the public outcry to the U.S. Government Mandate and its exceedingly narrow exemption, the White House held a press conference and issued another press release.

136. The White House announced that it had come up with a “solution” to objections to the U.S. Government Mandate, according to which the insurance companies of religious organizations that object to providing coverage for abortion-inducing drugs, sterilization, or contraception “will be required to directly offer . . . contraceptive care [to participants] free of charge.” White House, *Fact Sheet: Women’s Preventive Services and Religious Institutions*

(Feb. 10, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/02/10/fact-sheet-women-s-preventive-services-and-religious-institutions>.

137. HHS has since indicated that a similar arrangement will apply for student health plans that colleges and universities provide to students through a health insurance issuer. Student Health Insurance Coverage, 77 Fed. Reg. 16,453, 16,457 (Mar. 21, 2012).

138. Despite continued objections that the accommodation did nothing of substance to protect the right of conscience, when asked if there would be further room for compromise, White House Chief of Staff Jacob Lew responded: “No, this is our plan.” David Eldridge & Cynthia Wetzstein, *White House says contraception compromise will stand*, The Washington Times, Feb. 12, 2012, *available at* <http://www.washingtontimes.com/news/2012/feb/12/white-house-birth-control-compromise-will-stand/print/>.

139. About the same time as the White House’s proposed accommodation, Defendants finalized, “without change,” the interim final rules containing the religious employer exemption. They also issued guidelines regarding the previously announced one-year “temporary enforcement safe harbor” for “non-exempted, non-profit religious organizations with religious objections to covering” abortion-inducing drugs, sterilization, or contraception. Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8725, 8728 (Feb. 15, 2012); *see* Ctr for Consumer Info. & Ins. Oversight, Guidance on the Temporary Enforcement Safe Harbor (Feb. 10, 2012), *available at* <http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf>.

140. The final rule indicates that prior to the end of the safe-harbor period, the Defendants “plan to initiate a rulemaking to require issuers to offer insurance without

contraception coverage to [an objecting religious] employer (or plan sponsor) and simultaneously to offer contraceptive coverage directly to the employer’s plan participants (and their beneficiaries) who desire it, with no cost-sharing.” 77 Fed. Reg. at 8728.

141. The temporary safe harbor also applies to student health plans. 77 Fed. Reg. at 16,457.

142. On March 16, 2012, Defendants issued an Advance Notice of Proposed Rulemaking (“ANPRM”), seeking comment on various ways to structure the proposed accommodation. Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501 (Mar. 21, 2012). All proposed scenarios involve an “independent entity” that would “provide [the U.S. Government Mandated] coverage *automatically* to participants and beneficiaries covered under the organization’s plan (for example, without an application or enrollment process).” *Id.* at 16,505 (emphasis added).

143. The ANPRM does not, and does not suggest that Defendants plan to, alter the scope of the narrow religious employer exemption.

144. The ANPRM does not alter existing law. It merely states that the Government may do so at some point in the future.

### **III. The U.S. Government Mandate, the Religious Employer Exemption, and the Proposed Accommodation Violate Plaintiffs’ Religious Beliefs and Federal Rights**

#### **A. The U.S. Government Mandate Conflicts With Plaintiffs’ Sincerely Held Religious Beliefs**

145. Plaintiffs believe, in accordance with the Catechism of the Catholic Church, that the “dignity of the human person is rooted in his creation in the image and likeness of God,” Catechism of the Catholic Church ¶ 1700, and that “[h]uman life must be respected and protected absolutely from the moment of conception,” *id.* ¶ 2270. Therefore, Plaintiffs believe that abortion is “gravely contrary to the moral law.” *Id.* ¶ 2271.

146. Likewise, Plaintiffs adhere to traditional Catholic teachings on the nature and purpose of human sexuality. They believe, in accordance with the Catechism of the Catholic Church, that the sexual union of spouses “achieves the twofold end of marriage: the good of the spouses themselves and the transmission of life. These two meanings or values of marriage cannot be separated without altering the couple’s spiritual life and compromising the goods of marriage and the future of the family.” *Id.* ¶ 2363. Consequently, Plaintiffs believe that “every action,” including artificial contraception and sterilization, “which . . . proposes, whether as an end or as a means, to render procreation impossible is intrinsically evil.” *Id.* ¶ 2370.

147. Effectuating these beliefs, Franciscan University houses the first Tomb of the Unborn Child, a memorial where seven aborted babies are buried that serves as a place of prayer for the end of abortion and as a place of healing for the survivors of abortion. The Tomb also pays tribute to the millions of aborted babies, reflecting the university’s strong pro-life commitment. The University also vigorously exercises its freedom of speech on the issue of abortion. University President Father Terence Henry personally leads over 350 students on University-sponsored buses to Washington, D.C., each year for the March for Life, and some estimate that another 400 students attend on their own. The University’s green-and-white banner has become a fixture in the march. Additionally, the Students for Life club is very active, including holding a prayer ministry outside abortion clinics four days a week.

148. The Michigan Catholic Conference has long effectuated Catholic beliefs in a similar fashion. It has supported such things as state initiatives that provide alternatives to abortion and assistance to pregnant women, state laws that seek to ban partial-birth abortion, and limits on human-embryo research.

149. Plaintiffs' sincerely held religious beliefs treat abortion, sterilization, and contraception as intrinsically immoral, and prohibit them from paying for, providing, and/or facilitating those practices.

150. Plaintiffs have adhered to their religious beliefs and have ensured that their group health plans do not include coverage for prohibited abortion, sterilization, contraception, or related education and counseling.

151. The U.S. Government Mandate would require Plaintiffs to pay for, provide, and/or facilitate the provision of services that are contrary to their religious belief.

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

153. Refusal or failure to provide these items could expose Plaintiffs to various monetary penalties.

154. In short, the U.S. Government Mandate's requirement that group health plans offer free coverage for abortion-inducing drugs, sterilization, and contraception and related counseling or pay a fee substantially burdens Plaintiffs' sincerely held religious beliefs.

155. The Government has no compelling interest to force Plaintiffs to violate their religious beliefs in this way. 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. To

the extent the Government wanted to make them more available, it could provide or pay for the objectionable services through programs established by duly enacted laws.

**B. The Religious Employer Exemption Aggravates The Substantial Burdens Imposed On Plaintiffs' Religious Exercise**

156. The “religious employer” exemption does not remedy the U.S. Government Mandate’s affront to religious liberty. To determine whether a group health plan qualifies for the exemption, Defendants would have to determine the “religious values” of the organization that “established and maintained” the plan and also whether the “purpose” of the organization was to “inculcate” people into those values.

157. The Government would then have to conduct an inquiry into the practices and beliefs of the individuals that the organization employs and serves.

158. The Government would then have to compare and contrast the religious practices and beliefs of the individuals with those of the organization to determine how many of the individuals “share” the organization’s “religious tenets.”

159. The religious exemption is also wholesale unavailable to any entity that does not qualify as an organization described in Section 6033(a)(1) and Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986.

160. The religious employer exemption uses vague, undefined terms that give the Government broad discretion to issue exemptions, and fails to provide organizations with notice of their duties and obligations.

161. It is unclear how the Government defines or will interpret the “purpose” of an organization.

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

163. It is unclear how the Government will ascertain the “religious tenets” of an organization, those it employs, and those it serves.

164. It is unclear how much overlap the Government will require for religious tenets to be “share[d].”

165. Similarly, there is no indication of whether an organization with multiple purposes can qualify. And there is no indication of what an entity must do even to attempt to qualify for this religious exemption.

166. This narrow exemption compounds the U.S. Government Mandate’s substantial burdens on Plaintiffs’ religious exercise while discriminating against and among religions and excessively entangling Defendants in religion.

167. *First*, this exemption does not relieve the substantial burdens on Plaintiffs’ religious exercise caused by the U.S. Government Mandate.

168. Most obviously, as an educational organization under Section 170(b)(1)(A)(ii) of the Internal Revenue Code, Franciscan University appears to be ineligible for the exemption.

169. It is also unclear whether the MCC Plan qualifies for the exemption because it is sponsored by MCC rather than Michigan’s seven Dioceses.

170. Regardless, in addition to believing in the sanctity of human life from conception, Plaintiffs also believe that devotion to God is demonstrated through devotion to fellow man and service of others; the two are so closely related and dependent upon each other that they cannot be separated. Catholic doctrine recognizes that “[l]iving faith ‘work[s] through charity.’” Catechism of the Catholic Church ¶ 1814. As Pope Benedict has recently stated, “love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to [the Catholic Church] as the ministry of the sacraments and preaching of the Gospel. The Church

cannot neglect the service of charity any more than she can neglect the Sacraments and the Word.” Pope Benedict XVI, *Deus Caritas Est* ¶ 22 (2006).

171. The religious employer exemption does not account for this important doctrine of Catholic faith. Instead, it requires organizations to be limited to inculcation, and to employ and serve primarily individuals of the same beliefs. The U.S. Government Mandate thus interferes with Plaintiffs’ religious mission to serve all people, regardless of whether they share the same faith.

172. Plaintiffs cannot be forced to choose between their beliefs on abortion, sterilization, and contraception, their beliefs on serving all mankind, or substantial fines.

173. *Second*, the exemption discriminates against Plaintiffs and the entities that participate in the MCC Plan.

174. By exempting only religious organizations that engage in “inculcation,” the exemption provides preferential treatment to religious organizations that primarily seek to proliferate their own beliefs and discriminates against religious organizations that pursue other purposes. Plaintiffs have the right to determine the religious missions that they will undertake, without Government interference and without burdens on their religious liberties.

175. Likewise, the exemption seeks to improperly limit the definition of religion to those who primarily employ and serve “persons who share the religious tenets of the organization.” This requirement, too, discriminates against religious organizations that view their purposes as serving all mankind, not simply individuals with the same tenets.

176. The U.S. Government Mandate and its narrow religious employer exemption thus discriminate against Plaintiffs and other institutions whose religious missions require them to

serve more than individuals of the same religion. It favors religions that do not believe in serving all humanity, by exempting them, but not others with broader religious purposes.

177. The religious employer exemption also targets Plaintiffs precisely because they commit to educate, serve, and employ people of all faiths.

178. *Third*, the religious employer exemption mandates an invasive, impermissible, and unconstitutional assessment of Plaintiffs' religious purpose, as well as the religious tenets of Plaintiffs, their employees, and the people they serve. Regardless of outcome, by mandating this intrusive investigation, Defendants have excessively entangled themselves with Plaintiffs' religious missions.

**C. The Proposed Accommodation Does Not Allow Plaintiffs To Adhere To Their Sincerely Held Religious Beliefs**

179. The White House's proposed "accommodation" does not relieve Plaintiffs from the unconscionable position in which the U.S. Government Mandate currently puts them.

180. *First*, the "accommodation" is not operative law. Rather, the U.S. Government Mandate is current law.

181. *Second*, the promised "accommodation" would not alter the fact that Plaintiffs would be required to facilitate practices that run directly contrary to their religious beliefs. Catholic teaching does not simply require Catholic institutions to avoid directly paying for practices that are viewed as intrinsically immoral. It also requires them to avoid actions that facilitate those practices.

182. *Third*, any requirement that insurance companies or other independent entities provide preventive services "free of charge" is illusory. Those entities do not provide services for free. Instead, increased costs are passed through to consumers in the form of higher premiums or fees. Under the proposed accommodation, doctors would still have to be paid to

prescribe contraception and drug companies and pharmacists would still have to be paid for providing it.

183. *Fourth*, the accommodation will not change the narrow religious exemption.

184. In short, while the President claimed to have “f[ou]nd a solution that works for everyone” and that ensures that “[r]eligious liberty will be protected,” in reality, his “accommodation” does neither.

**D. Plaintiffs Have Need For Immediate Relief**

185. Plaintiffs are already being affected by the U.S. Government Mandate, and presently require judicial determination of their statutory and constitutional rights.

186. Plaintiffs have expended resources learning about the U.S. Government Mandate, including its exemption and temporary safe harbor. Plaintiffs have also been working to ensure that their 2013 health plans comply with that one-year safe harbor.

187. Plaintiffs also need to know whether they will be forced to comply with the U.S. Government Mandate now, rather than days or months before the end of the temporary safe harbor.

188. The Government issued the press releases and rules that constitute the U.S. Government Mandate without notice-and-comment rulemaking precisely because the “requirements in [those provisions] require significant lead time in order to implement.” 75 Fed. Reg. at 41,730.

189. Health plans do not take shape overnight. Many analyses, negotiations, and decisions must occur before Plaintiffs can implement them.

190. Implementing even basic changes requires substantial lead time.

191. In the interim, Plaintiffs may be subject to significant fines and penalties.

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

193. Franciscan University is currently, and for the foreseeable future will be, negotiating new and existing employee contracts that will be in force when the U.S. Government Mandate begins applying to Franciscan University's health plans. Additionally, the University is currently planning and arranging employee compensation and benefits packages for the next several years.

194. The U.S. Government Mandate restricts and burdens Franciscan University's ability to attract quality employees and faculty due to uncertainty about its future health-insurance benefits and the inability to make changes to improve those benefits.

195. Franciscan University can no longer alter its plan in the best interests of its employees because such alterations would cost the University its grandfathered status. For example, in the summer of 2011, Franciscan University considered adding a high deductible plan to better serve its employees. That consideration was dropped because it would have jeopardized Franciscan University's grandfathered status.

196. Franciscan University has taken all steps to maintain its plan's grandfathered status because under the current law once the plan is not grandfathered the U.S. Government Mandate will apply.

197. Nevertheless, Franciscan University will lose its grandfathered status some time in the near future for reasons that cannot be avoided. For example, the employee contribution to the premium cannot increase by more than 5% of the cost of coverage compared to the employee contribution on March 23, 2010. 26 C.F.R. §54.9815-1251T(g)(1)(v). Franciscan University

currently splits cost increases evenly with its employees. Given the current trajectory of health care costs, Franciscan University will exceed that 5% within the next few years.

198. Similarly, Franciscan University has now decided to end its student health plan when the current plan year ends on August 15, 2012, partially due to the fact that regulations similar to the U.S. Government Mandate might apply to it.

199. If it is determined that regulations similar to the U.S. Government Mandate would not apply to a student health plan established or maintained by Franciscan University, the University would revisit this decision and determine whether a different course of action is appropriate.

200. The Michigan Catholic Conference and the MCC Plan likewise need an immediate declaration of rights concerning their status under the law.

201. The Michigan Catholic Conference has already been forced to sign an indemnification agreement with the third-party administrator of one of the MCC Plan's benefits programs (Blue Cross Blue Shield of Michigan) and the insurer of another of the MCC Plan's benefits programs (Blue Care Network of Michigan).

202. Under this agreement, the Michigan Catholic Conference has certified that the MCC Plan qualifies for the one-year safe harbor. Should this certification be mistaken, the agreement requires the Conference to indemnify these entities for any costs or expenses that they might incur as a result of their failure to provide the U.S. Government Mandate's coverage.

203. The Michigan Catholic Conference has currently refrained from certifying to these entities that the MCC Plan qualifies for the religious employer exemption precisely because of the uncertainty that exists concerning whether it does so.

204. That is the case even though the MCC Plan covers the seven Michigan Dioceses and many other Catholic entities.

205. Yet Michigan Catholic Conference, not the Dioceses themselves, sponsors the Plan, and may not meet the religious employer exemption.

206. The Government has indicated that the exemption applies only to “[g]roup health plans *sponsored* by certain religious employers.” HRSA, *Women’s Preventive Services: Required Health Plan Coverage Guidelines*, available at <http://www.hrsa.gov/womensguidelines/>.

207. To the extent the Government would deny the religious exemption to the MCC Plan because it is sponsored by the Michigan Catholic Conference, rather than the Dioceses themselves, the Michigan Catholic Conference has urgent need for that information.

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

209. If the MCC Plan were to qualify as a plan “established or maintained” by a “religious employer” under the exemption to the U.S. Government Mandate, all Covered Units under the Plan also appear to receive the benefit of the exemption.

210. If that were the case, the Michigan Catholic Conference would need to consider whether to make significant changes to the MCC Plan that would, among other things, make the Dioceses themselves the Plan Sponsors.

211. Before making any change, Plaintiffs would need significant time to review their relevant plan options and to choose the course of action that would allow them to maintain their religious beliefs.

212. Once a change to their plans has been approved, moreover, it would likely take Plaintiffs at least six months to implement the change. During that time, they would need to communicate with all the relevant parties involved, including vendors and administrators, and provide employees with the required notice. The Michigan Catholic Conference would also need to have discussions with the entities that participate in its various plans.

213. In sum, Plaintiffs need to know their rights now so that they can begin developing their future health plans.

214. An actual, justiciable controversy exists between Plaintiffs and Defendants. Absent a declaration resolving this controversy and the validity of the U.S. Government Mandate, Plaintiffs are uncertain as to their rights and duties in planning, negotiating, and/or implementing their group health plans, their hiring and retention programs, and their social, educational, and charitable programs and ministries.

**COUNT I**  
**Substantial Burden on Religious Exercise**  
**in Violation of RFRA**

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

216. 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 government interest and is the least restrictive means of furthering that interest.

217. RFRA protects organizations as well as individuals from government-imposed substantial burdens on religious exercise.

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

219. The U.S. Government Mandate requires Plaintiffs' group health plans to provide, pay for, and/or facilitate services that are contrary to their religious beliefs.

220. To qualify for the "religious employer" exemption to the U.S. Government Mandate, Plaintiffs must submit to an intrusive government inquiry into their religious beliefs.

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

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

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

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

225. The Government is also requiring student health plans, including the one currently offered by Franciscan University, to include coverage for abortion-inducing drugs, sterilization, and contraception, and related education and counseling.

226. To require Franciscan's student health plan to include coverage for services that violate Franciscan's religious beliefs substantially burdens Franciscan's exercise of religion.

227. The Government has no compelling government interest to require Franciscan's student health plan to include coverage for services that violate Franciscan's religious beliefs.

228. Requiring Franciscan’s student health plan to include coverage for services that violate its religious beliefs is not the least restrictive means of furthering a compelling government interest.

229. Defendants have also violated RFRA by requiring Franciscan’s student health plan to include services that violate Franciscan’s religious beliefs.

230. Plaintiffs have no adequate remedy at law.

231. 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**

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

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

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

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

236. To qualify for the “religious employer” exemption to the U.S. Government Mandate, Plaintiffs must submit to an intrusive government inquiry into their religious beliefs.

237. The U.S. Government Mandate substantially burdens Plaintiffs’ exercise of religion.

238. The U.S. Government Mandate is not a neutral law of general applicability, because it is riddled with exemptions. It offers multiple exemptions from its requirement that

employer-based health plans include or facilitate coverage for abortion-inducing drugs, sterilization, and contraceptives, and related education and counseling.

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

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

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

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

243. 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.

244. The Government is also requiring student health plans, including the one currently offered by Franciscan University, to include coverage for abortion-inducing drugs, sterilization, and contraception, and related education and counseling.

245. To require Franciscan's student health plan to include coverage for services that violate Franciscan's religious beliefs substantially burdens Franciscan's exercise of religion.

246. The Government has no compelling government interest to require Franciscan's student health plan to include coverage for services that violate Franciscan's religious beliefs.

247. Requiring Franciscan’s student health plan to include coverage for services that violate Franciscan’s religious beliefs is not the least restrictive means of furthering a compelling government interest.

248. Defendants have also violated the Free Exercise Clause of the First Amendment by requiring Franciscan’s student health plan to include services that violate Franciscan’s religious beliefs.

249. Plaintiffs have no adequate remedy at law.

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

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

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

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

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

254. To qualify for the exemption to the U.S. Government Mandate for “religious employers,” entities must submit to an invasive government investigation into an organization’s religious beliefs, including whether the organization’s “purpose” is the “inculcation of religious values” and whether the organization “primarily employs” and “primarily serves” individuals who share the organization’s religious tenets.

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

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

257. The U.S. Government Mandate is therefore unconstitutional and invalid.

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

259. Plaintiffs have no adequate remedy at law.

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

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

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

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

263. This mandate of equal treatment protects organizations as well as individuals.

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

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

266. The U.S. Government Mandate's definition of religious employer furthers no compelling government interest.

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

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

269. Plaintiffs have no adequate remedy at law.

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

#### **COUNT V**

#### **Interference in Matters of Internal Church Governance in Violation of the Free Exercise and Establishment Clauses of the First Amendment**

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

272. The Free Exercise Clause and Establishment Clause 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.

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

274. 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.

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

276. The Catholic Church views abortion, sterilization, and contraception as intrinsically immoral.

277. The Government may not interfere with, or otherwise question, the decision of the Catholic Church that its religious organizations should abide by these views.

278. Plaintiffs have abided, and continue to abide by, the decision of the Catholic Church to treat abortion, sterilization, and contraception as intrinsically immoral.

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

280. 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 Catholic beliefs.

281. Plaintiffs believe that they are an integral part of the Catholic Church that serve from the heart of the Church.

282. The U.S. Government Mandate and its religious employer exemption interfere with the organizational structure of Plaintiffs as part of the Catholic Church by requiring them to facilitate services that directly conflict with their Catholic tenets but purporting to exempt the Catholic Church.

283. Because the U.S. Government Mandate interferes with the internal decisionmaking and organizational structure of Plaintiffs in a manner that affects their faith and mission, it violates the Establishment Clause and the Free Exercise Clause of the First Amendment.

284. For the same reasons, Defendants' requirement that student health plans, like the one currently offered by Franciscan University, include abortion-inducing drugs, sterilization, and contraception, and related education and counseling, also violates the Establishment Clause and the Free Exercise Clause of the First Amendment.

285. Plaintiffs have no adequate remedy at law.

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

**COUNT VI**  
**Compelled Speech in Violation of**  
**the Free Speech Clause of the First Amendment**

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

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

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

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

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

292. The U.S. Government Mandate would compel Plaintiffs to include in health care plans that they offer employees practices that violate their religious beliefs.

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

294. 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.

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

296. The U.S. Government Mandate furthers no compelling government interest.

297. The U.S. Government Mandate is not narrowly tailored to further a compelling government interest.

298. For the same reasons, Defendants' requirement that student health plans, like the one currently offered by Franciscan University, include coverage for abortion-inducing drugs,

sterilization, and contraception, and related education and counseling, also violates the Free Speech Clause of the First Amendment.

299. Plaintiffs have no adequate remedy at law.

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

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

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

302. 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.

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

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

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

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

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

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

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

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

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

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

313. Plaintiffs have no adequate remedy at law.

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

**COUNT VIII**  
**Arbitrary and Capricious Action in Violation of the APA**

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

316. 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).

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

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

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

320. Defendants failed to consider the suggestion of many commenters that abortion-inducing drugs, sterilization, and contraceptives could not be viewed as “preventive care.”

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

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

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

324. Defendants’ promulgation of the U.S. Government Mandate violates the APA.

325. For the same reasons, Defendants’ requirement that student health plans like Franciscan’s must include abortion-inducing drugs, sterilization, and contraception, and related education and counseling, also violates the APA.

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

327. Plaintiffs have no adequate remedy at law.

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

**COUNT IX**  
**Acting Illegally in Violation of the APA**

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

330. The APA requires that all Government agency action, findings, and conclusions be “in accordance with law.”

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

332. 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).

333. The Affordable Care Act states that “nothing in this title (or any amendment by this title) shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.” 42 U.S.C. § 18023(b)(1)(A)(i). It adds that “the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion.]” *Id.* § 18023(b)(1)(A)(ii).

334. The Affordable Care Act contains no clear expression of an affirmative intention of Congress that employers with religiously motivated objections to the provision of health plans

that include coverage for abortion-inducing drugs, sterilization, contraception, or related education and counseling should be required to provide such plans.

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

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

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

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

339. For the same reasons, Defendants' requirement that student health plans like Franciscan's must include coverage for abortion-inducing drugs, sterilization, and contraception, and related education and counseling, also violates RFRA and the First Amendment and, therefore, is not in accordance with law and violates 5 U.S.C. § 706(2)(A).

340. In addition, the Affordable Care Act states that, "nothing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education . . . from offering a student health insurance plan . . . ." 42 U.S.C. § 18118(c). This provision has been interpreted as prohibiting any law, which would have the effect of prohibiting an institution of higher education from offering a student health plan. Student Health Insurance Coverage, 76 Fed. Reg. at 7769.

341. The requirement that student health plans offered through a health insurance issuer include abortion-inducing drugs, sterilization, and contraception, and related education

and counseling, however, has the effect of prohibiting Franciscan from offering a student health insurance plan. Defendants' requirement that student health plans offered through a health insurance issuer include abortion-inducing drugs, sterilization, and contraception, and related education and counseling, therefore, also violates 42 U.S.C. § 18118(c) and thus is not in accordance with law under 5 U.S.C. § 706(2)(A).

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

343. Plaintiffs have no adequate remedy at law.

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

**WHEREFORE**, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under RFRA;
2. Enter a declaratory judgment that the U.S. Government Mandate violates Plaintiffs' rights under the First Amendment;
3. Enter a declaratory judgment that the U.S. Government Mandate was promulgated in violation of the APA;
4. Enter an injunction prohibiting the Defendants from enforcing the U.S. Government Mandate against Plaintiffs;
5. Enter an order vacating the U.S. Government Mandate;
6. Enter a declaratory judgment that Defendants' requirement that student health plans include coverage for abortion-inducing drugs, sterilization, and contraception, and related education and counseling violates Franciscan's rights

under RFRA and the First Amendment; enter an injunction prohibiting the Defendants from enforcing that requirement against Franciscan; and enter an order vacating the requirement;

7. Award Plaintiffs attorney's and expert fees under 42 U.S.C. § 1988; and
8. Provide all other relief as the Court may deem just and proper.

Respectfully submitted, this 21st day of May, 2012.

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