

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

PRIESTS FOR LIFE,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary, United States Department of Health and Human Services;

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;

HILDA SOLIS, in her official capacity as Secretary, United States Department of Labor;

UNITED STATES DEPARTMENT OF LABOR;

TIMOTHY GEITHNER, in his official capacity as Secretary, United States Department of the Treasury; and

UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Priests for Life (“Plaintiff”), by and through undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

**INTRODUCTION**

1. This is a civil action pursuant to which Plaintiff Priests for Life seeks a Preliminary and Permanent Injunction, enjoining Defendants from implementing and enforcing provisions of the regulations promulgated under the “Patient Protection and Affordable Care Act.” These regulations require employers to provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur

substantial penalty fines. This mandate violates Priests for Life's rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

2. An actual controversy exists between Plaintiff Priests for Life and Defendants involving substantial Constitutional issues. Priests for Life asserts that provisions of the regulations promulgated under the "Patient Protection and Affordable Care Act" which require employers to provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines are unconstitutional on their face and as applied in that they, among other things, violate Priests for Life's rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act. Defendants assert that these regulatory provisions comport with the Constitution, that no compliance with the Administrative Procedure Act is necessary, and that they are lawfully empowered to enforce and implement the subject regulations.

3. Consequently, Plaintiff Priests for Life also seeks a Declaratory Judgment that the regulations promulgated under the "Patient Protection and Affordable Care Act" (hereinafter "Affordable Care Act") requiring employers to provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines violate Priests for Life's rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

4. The Affordable Care Act's contraception, sterilization, and abortifacient mandate violates the rights of Priests for Life as a Catholic organization. The mandate also violates the

freedom of all people of faith, and even those of no faith, who have a conscientious objection to contraception, sterilization, or abortion. Priests for Life brings this action to vindicate not only its own rights, but to protect the rights of all Americans who care about our constitutional guarantees of the free exercise of religion and the freedom of speech, as well as the protection of innocent human life.

### **JURISDICTION AND VENUE**

5. This action in which the United States is a defendant arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1346.

6. Priests for Life's claims for declaratory and preliminary and permanent injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by 28 U.S.C. § 2000bb-1, and by the general legal and equitable powers of this Court.

7. Venue is proper under 28 U.S.C. § 1391(e) because this is the judicial district in which Priests for Life is located.

### **PARTIES**

8. Plaintiff Priests for Life is a non-profit corporation that is incorporated under the laws of the State of New York. It has its principal place of business in the County of Richmond, New York. And it is recognized by the Internal Revenue Service as a Section 501(c)(3) organization.

9. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (hereinafter "HHS"). In this capacity, she has responsibility for the operation and management of HHS. Defendant Sebelius is sued in her official capacity only.

10. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

11. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Defendant Solis is sued in her official capacity only.

12. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

13. Defendant Timothy Geithner is the Secretary of the United States Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department of the Treasury. Defendant Geithner is sued in his official capacity only.

14. Defendant Department of the Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

## **FACTUAL ALLEGATIONS**

### **The Affordable Care Act**

15. In March 2010, President Obama signed into law the “Patient Protection and Affordable Care Act” (Pub. L. No. 111-148, 124 Stat. 119 (2010), *amended by* Healthcare and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010)) (hereinafter “Affordable Care Act” or “Act”).

16. Among many other things, the Affordable Care Act requires employers with more than 50 employees to provide federal government-approved health insurance or pay a substantial per-employee fine. (26 U.S.C. § 4980H.)

**The Affordable Care Act — Not a General Law of Neutral Applicability**

17. To date, HHS has granted over 1,000 individualized waiver requests from employers and to insurance plans excusing their compliance with the Affordable Care Act.

18. The fine for failure to offer an approved health insurance plan does not apply to employers with fewer than 50 employees, not counting seasonal workers. (26 U.S.C. § 4980H).

19. Certain provisions of the Act do not apply to members of certain religious groups. (*See, e.g.*, 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) [individual mandate does not apply to members of a “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds]; § 5000A(d)(2)(a)(ii) [individual mandate does not apply to members of “health care sharing ministry” that meets certain criteria.]). None of these exceptions apply to Priests for Life.

20. The Affordable Care Act’s preventive care requirements (described below) do not apply to employers who provide so-called “grandfathered” health care plans.

21. The Affordable Care Act is not generally applicable because it does not apply equally to all individuals and employers; because the Act provides for numerous exemptions from its provisions; and because HHS grants individualized waiver requests excusing some employers from complying with the provisions of the Act.

22. The Affordable Care is not neutral because some groups, both secular and religious, enjoy exemptions from certain provisions of the Act, which others do not; because

some groups, both secular and religious, have received waivers from complying with the provisions of the Act, while others have not.

### **The Affordable Care Act — Development of the Preventive Services Mandate**

23. Among other things, one provision of the Affordable Care Act mandates that health insurers “provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventative care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration.” (42 U.S.C. § 300gg-13(a)(4)).

24. On July 19, 2010, HHS, along with the Department of Labor and the Department of the Treasury, published interim final regulations “implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding preventive health services.” (75 Fed. Reg. 41726 (2010)). Among other things, the interim final regulations required health insurers to cover preventive care for women “as provided for in guidelines supported by the Health Resources and Services Administration.” (75 Fed. Reg. 41759 (2010)).

25. HHS accepted public comments to the 2010 interim final regulations until September 17, 2010. Upon information and belief, a large number of groups filed comments, warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of services, including contraception, sterilization, and abortion.

26. HHS commissioned a study by a private health policy organization, the Institute of Medicine (hereinafter “IOM”), “to review what preventive services are necessary for women’s health and well-being and should be considered in the development of comprehensive guidelines for preventive services for women.” (See <http://www.hrsa.gov/womensguidelines>).

27. In conducting its study, IOM invited the various pro-elective abortion groups and individuals to make presentations on the preventive care that should be provided by all health insurers, including the following: the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists, the National Women’s Law Center, the National Women’s Health Network, Planned Parenthood Federation of America, John Santelli, and Sara Rosenbaum. (See [http://www.nap.edu/openbook.php?record\\_id=13181&page=217](http://www.nap.edu/openbook.php?record_id=13181&page=217)).

28. No religious groups or other groups that oppose government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters. (See [http://www.nap.edu/openbook.php?record\\_id=13181&page=217](http://www.nap.edu/openbook.php?record_id=13181&page=217)).

29. On July 19, 2011, IOM published a report of its study regarding preventive care for women. Among other things, IOM recommended that preventive services include “[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures.” (See Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* (2011)).

30. Federal Drug Administration-approved contraceptive methods include, among other drugs, devices and procedures, birth control pills, prescription contraceptive devices, Plan B (also known as the “morning after pill”), and ulipristal (also known as “ella” or the “week after pill”).

31. Plan B and ella can prevent the implantation of a human embryo in the wall of the uterus and can cause the death of an embryo. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus or to cause the death of an embryo each constitute an “abortion” as that term is used in federal law. Consequently, Plan B and ella are abortifacients.

32. On August 1, 2011, HHS's Health Resources and Services Administration (hereinafter "HRSA") announced that it was supporting "the IOM's recommendations on preventive services that address health needs specific to women and fill gaps in existing guidelines." HRSA entitled the recommendations "Women's Preventive Services: Required Health Plan Coverage Guidelines." Among other things, HRSA's Guidelines include "[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>).

#### **The Affordable Care Act — Adoption of the Contraceptive Services Mandate**

33. On August 3, 2011, HHS, along with the Department of Labor and the Department of the Treasury published interim final regulations which, among other things, mandate that all health insurers "provide benefits for and prohibit the imposition of cost-sharing: . . . . With respect to women, preventive care and screening provided for in comprehensive guidelines supported by HRSA . . . which will be commonly known as HRSA's Women's Preventive Services: Required Health Plan Coverage Guidelines." (76 Fed. Reg. 46621 (2011); 45 C.F.R. § 147.130).

34. Defendant Departments "determined that an additional opportunity for public comment would be impractical and contrary to the public interest" and promulgated the final regulation without waiting for public comment.

35. The August 3, 2011, interim final regulations noted that "several commenters [to the July 19, 2010 interim final regulations] 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." Accordingly, "the Departments

seek to prove for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions. . . [T]he Departments are amending the interim final rules to provide HRSA additional *discretion* to exempt certain religious employees from the Guidelines where contraceptive services are concerned.” (emphasis added).

36. For purposes of this discretionary exemption, a “religious employer is one that: (1) Has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization under section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii).” (76 Fed. Reg. 46621 (2011); 45 C.F.R. § 147.130).

37. Priests for Life does not qualify as a “religious employer” for purposes of the discretionary exemption.

38. Although HHS accepted public comments to the 2011 interim final regulations until September 30, 2011, it went into effect immediately.

39. Health insurers are required to begin providing the coverage mandated by HRSA’s Women’s Preventive Care Guidelines in the first plan year (in the individual market, policy year) that begins on or after August 1, 2012.

40. Thus, by the stroke of a bureaucrat’s pen, the federal government purported to effect a rule forcing private health plans nationwide to cover sterilization and contraception, including drugs that may cause abortion. All the other mandated “preventive services” prevent disease, but pregnancy is not a disease. Moreover, forcing plans to cover abortifacients violates existing federal conscience laws.

41. The contraceptive services component of the preventive services mandate imposes a substantial burden of unprecedented reach and severity on the consciences of those

who consider such “services” immoral: insurers forced to write policies including this coverage; employers and schools forced to sponsor and subsidize the coverage; and individual employees and students forced to pay premiums for the coverage.

42. Upon information and belief, HHS received tens of thousands of comments objecting to the mandate regarding the provision of contraception, sterilization, and abortifacients.

43. The United States Council of Catholic Bishops called for a rescission of the contraceptive mandate, and, in the event HHS insisted on keeping the mandate, urged HHS to provide a conscience exemption for all of these stakeholders—not just the extremely small subset of “religious employers” that HHS proposed to exempt initially.

44. On January 20, 2010, Defendant Sebelius announced that: “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.” She further announced that: “We intend to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support.” (See <http://www.hhs.gov/news/press/2012pres/01/20120120a.html>).

45. To date, HHS has not promulgated any rule or regulation implementing either the one-year extension or the compelled speech requirement.

46. On February 10, 2011, President Obama announced that his Administration intends to propose and finalize a new regulation that “will require insurance companies to cover contraception if the non-exempted religious organization chooses not to. . . . Contraception coverage will be offered to women by their employers’ insurance companies directly, with no

role for religious employers who oppose contraception.” (See <http://www.whitehouse.gov/the-press-office/2012/02/10/fact-sheet-women-s-preventive-services-and-religious-institutions>).

47. While Defendant Sebelius claimed that women may pay up to \$600 per year for contraceptive services, she asserted that insurers could provide those services to covered employees at no cost because “on balance, preventive services around family planning, avoiding what may be unhealthy pregnancies, avoiding the health consequences of that actually is a cost reducer.” (See [http://www.pbs.org/newshour/bb/politics/Jan-june12/contraception\\_02-10.html](http://www.pbs.org/newshour/bb/politics/Jan-june12/contraception_02-10.html)).

48. Insurance companies do not donate products and services to covered employees. Drug makers will still charge insurers for birth control pills, IUD’s, and other contraceptive devices. Doctors will still bill insurers for reproductive treatment. The reality, as with all mandated benefits, is that these costs will be borne eventually via higher premiums. Insurers may amortize the cost differently over time, but eventually prices will find an equilibrium. Priests for Life will still pay for contraceptive services, including abortifacients, even if it is nominally carried by a third-party corporation.

(See <http://online.wsj.com/article/SB10001424052970203646004577215150068215494.html>).

49. There is no logical or moral distinction between the original contraceptive services mandate and the “revised” regulation announced on February 10, 2011. Employers who offer health insurance do not pay for individual benefits and products as they are provided. Rather, they pay a premium for a policy that gives their employees access to covered benefits and products when they need them. Under the “revised” regulation, all non-exempted health plans must include contraceptive services among their covered benefits. The choice for religious employers is still between paying an insurer to provide their employees with access to a product

that violates their convictions (*i.e.*, contraceptives, sterilization, and abortifacients) or paying a large annual fine to the federal government.

### **Priests for Life — Mission**

50. Priests for Life was founded in 1991 to do one of the most important tasks in the Church today: to help priests around the world spread the Gospel of Life to their people. The mission of Priests for Life is to unite and encourage all clergy to give special emphasis to the life issues in their ministry. It also seeks to help them take a more vocal and active role in the pro-life movement, with predominant emphasis on the issues of abortion and euthanasia. Priests for Life exists in order to show the clergy how to fight the culture of death.

51. Priests for Life's Mission Statement provides: "As a Private Association of the Faithful, recognized and approved under the Canon Law of the Catholic Church, and working in harmony with the goals of the Bishops' Pro-Life Committee and the local diocesan respect life offices, Priests for Life seeks to:

1. unite, encourage, and provide ongoing training to priests and deacons who give a special emphasis to the 'life issues', especially abortion and euthanasia, in their ministries;
2. instill a sense of urgency in all clergy to teach about these issues and to mobilize their people to help stop abortion and euthanasia;
3. assist clergy and laity to work together productively for the cause of life;
4. provide ongoing training and motivation to the entire pro-life movement."

52. With the co-operation of bishops and their respect life offices, Priests for Life provides a bi-monthly newsletter to priests and deacons. This informative newsletter is also available to the general public. Priests for Life offers pro-life seminars and retreats to both

clergy and laity. With the permission of their respective ordinaries, the National Director of Priests for Life and his associates travel the country full time to meet with priests and pro-life groups. Priests for Life offers a wide range of audios, videos, and brochures, and regularly uses the media of television, radio, and the printed press to spread the message of life.

53. Priests for Life also represents a family of ministries that reach and enrich every aspect of the pro-life movement, for clergy and laity alike, in a wide variety of activities, including direct ministries to priests, deacons, and seminarians; youth outreach; healing ministries; broadcasting; prayer campaigns; education regarding public policy; and facilitating relationships among pro-life organizations and leaders.

#### **Priests for Life — Sincerely Held Religious Beliefs Regarding Contraceptive Practices and Abortion**

54. A deep devotion to the Catholic faith is central to the mission of Priests for Life.

55. Priests for Life holds and actively professes religious beliefs that include traditional Christian teaching on the nature and purpose of human sexuality. In particular, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, Priests for Life believes that human sexuality has two primary purposes: to “most closely unit[e] husband and wife” and “for the generation of new lives.” Priests for Life believes and actively professes the Catholic Church teaching that “[t]o use this divine gift destroying, even if only partially, its meaning and purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will.” Therefore, Priests for Life believes and teaches that “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means”—including contraception and sterilization—is a grave sin.

56. Priests for Life also holds and actively professes religious beliefs that include traditional Christian teaching on the sanctity of life. It believes and teaches that each human being bears the image and likeness of God, and therefore all human life is sacred and precious from the moment of conception. Consequently, Priests for Life believes and teaches that abortion ends a human life and is a grave sin.

57. Further, Priests for Life subscribes to authoritative Catholic teaching about the proper nature and aims of health care and medical treatment. For example, Priests for Life believes, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that “[c]ausing death’ can never be considered a form of medical treatment,” but rather “runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life.”

58. Based on the teachings of the Catholic Church, and its own deeply held beliefs, Priests for Life does not believe that contraception, sterilization, or abortion are properly understood to constitute medicine, health care, or a means of providing for the well-being of persons. Indeed, Priests for Life believes these procedures involve gravely immoral practices.

#### **Priests for Life — Employee Health Insurance**

59. Priests for Life has approximately 50 to 60 employees.

60. As part of its commitment to Catholic social teaching, Priests for Life promotes the health and well-being of its employees. In furtherance of this commitment, Priests for Life provides health insurance for its employees.

61. Priests for Life ensures that its insurance policies do not cover drugs, devices, services, or procedures inconsistent with its faith, including contraception.

62. Priests for Life cannot provide health insurance covering artificial contraception, sterilization, or abortion, or related education and counseling, without violating its deeply held religious beliefs.

63. Priests for Life cannot provide information or guidance to its employees about other locations at which they can access artificial contraception, sterilization, or abortion, or related education and counseling, without violating its deeply held religious beliefs.

64. Priests for Life is funded solely through tax-deductible donations. Donors who give to Priests for Life do so with an understanding of Priest for Life's mission and with the assurance that Priests for Life will continue to adhere to, disseminate, and report reliable Catholic teaching on the sanctity of life and human sexuality.

65. Priests for Life cannot use donated funds for purposes known to be morally repugnant to its donors and in ways that would violate the implicit trust of the purpose of their donations.

66. If Priests for Life does not provide health insurance for its employees, it will be subject to onerous fines.

67. Priests for Life's next plan year will commence in January 2013.

### **FIRST CLAIM FOR RELIEF**

#### **(Free Exercise of Religion — Violation of the First Amendment)**

68. Priests for Life hereby incorporates by reference all stated paragraphs as though fully set forth herein.

69. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and

counseling violates Priests for Life's right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution.

70. Priests for Life's sincerely held religious beliefs prohibit it from providing insurance coverage for contraception, sterilization, abortion, and related education and counseling. Priests for Life's compliance with these beliefs is a religious exercise.

71. The Affordable Care Act's requirement that Priests for Life provide health insurance that covers contraception, sterilization, abortifacients, and related education and counseling substantially burdens Priests for Life's sincerely-held religious beliefs.

72. The Affordable Care Act's requirement that Priests for Life provide health insurance that covers contraception, sterilization, abortifacients, and related education and counseling chills Priests for Life's religious exercise.

73. Priests for Life must choose between being forced to purchase health insurance for its employees that covers contraception, sterilization, abortifacients, and related education and counseling or paying substantial penalty fines.

74. The Affordable Care Act's requirement that employers provide health insurance that covers contraception, sterilization, abortifacients, and related education and counseling creates government-imposed coercive pressure on Priests for Life to change or violate its sincerely-held religious beliefs.

75. The Affordable Care Act's requirement that employers provide health insurance that covers contraception, sterilization, abortifacients, and related education and counseling exposes Priests for Life to significant competitive disadvantage, in that it will no longer be able to offer its employees health insurance.

76. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines does not further any compelling governmental interest.

77. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines is not the least restrictive means to accomplish any permissible governmental interest.

78. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines is a restriction on the free exercise of religion which is not narrowly tailored to advance any permissible governmental interest.

79. The Affordable Care Act's requirement that employers provide health insurance that covers contraception, sterilization, abortifacients, and related education and counseling does not accommodate Priests for Life's sincerely-held religious beliefs.

80. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines is not a general law of neutral applicability.

81. Notwithstanding its receipt of multiple objections to the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling on the basis that it would violate certain persons' sincerely-held religious beliefs, Defendants designed that requirement

and its “religious employer” exemption in a way that makes it impossible for Priests for Life to comply with its religious beliefs.

82. By design, the Affordable Care Act’s requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling is imposed on some religious organizations, but not others, resulting in discrimination among religions.

83. The Affordable Care Act’s requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling is official action that targets religious conduct and beliefs for distinctive and discriminatory adverse treatment.

84. Defendants promulgated the Affordable Care Act’s requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling in order to suppress Priests for Life’s and others’ right to free exercise of religion.

85. The Affordable Care Act’s violation of Priests for Life’s right of free exercise of religion has caused, and will continue to cause, Priests for Life to suffer undue hardship and irreparable injury.

86. Priests for Life has no adequate remedy at law to correct the continuing deprivation of its constitutional rights.

## **SECOND CLAIM FOR RELIEF**

### **(Violation of the Religious Freedom Restoration Act)**

87. Priests for Life hereby incorporates by reference all stated paragraphs as though fully set forth herein.

88. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines violates the Religious Freedom Restoration Act (42 U.S.C. § 2000bb, *et. seq.*).

89. Priests for Life's sincerely held religious beliefs prohibit it from providing insurance coverage for contraception, sterilization, abortion, and related education and counseling. Priests for Life's compliance with these beliefs is a religious exercise.

90. The Affordable Care Act's requirement that Priests for Life provide health insurance that covers contraception, sterilization, abortifacients, and related education and counseling substantially burdens Priests for Life's sincerely-held religious beliefs.

91. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines does not further any compelling governmental interest.

92. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines is not the least restrictive means to accomplish any permissible governmental interest.

93. The Affordable Care Act's violation of the Religious Freedom Restoration Act has caused, and will continue to cause, Priests for Life to suffer undue hardship and irreparable injury.

94. Priests for Life has no adequate remedy at law to correct the continuing deprivation of its constitutional rights.

### **THIRD CLAIM FOR RELIEF**

#### **(Freedom of Speech — Violation of the First Amendment)**

95. Priests for Life hereby incorporates by reference all stated paragraphs as though fully set forth herein.

96. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling violates Priests for Life's right to free speech guaranteed by the First Amendment to the United States Constitution.

97. The HRSA Women's Preventive Services: Required Health Plan Coverage Guidelines mandate that non-exempt employer-sponsored health plans must cover "preventive services" which include "Contraceptive methods and counseling: All Food and Drug Administration approved contraceptive methods; sterilization procedures, and patient education and counseling for all women with reproductive capacity."

98. The Affordable Care Act's contraception coverage mandate compels Priests for Life to subsidize education and counseling regarding contraceptive methods, sterilization procedures, and abortifacients.

99. The Affordable Care Act's contraception coverage mandate compels Priests for Life to provide education and counseling regarding contraceptive methods, sterilization procedures, and abortifacients in violation of its sincerely-held religious beliefs.

100. The Affordable Care Act's contraception coverage mandate compels Priests for Life to engage in speech that violates its sincerely-held religious beliefs.

101. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling is not narrowly tailored to advance a compelling governmental interest.

102. Defendants promulgated the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling in order to suppress Priests for Life's and others' right to free speech.

103. The Affordable Care Act's violation of Priests for Life's right of free speech has caused, and will continue to cause, Priests for Life to suffer undue hardship and irreparable injury.

104. Priests for Life has no adequate remedy at law to correct the continuing deprivation of its constitutional rights.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Violation of the Administrative Procedure Act)**

105. Priests for Life hereby incorporates by reference all stated paragraphs as though fully set forth herein.

106. Because the Affordable Care Act itself does not specify a standard for judicial review, it is subject to review under the default standard of the Administrative Procedure Act. (5 U.S.C. § 706(2)). At issue in this lawsuit is whether adoption of the Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines was "without observance of procedure required by law" and/or "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

107. The Administrative Procedure Act requires general notice of a proposed rulemaking and an opportunity for public comment before promulgation of a rulemaking, unless the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. (5 U.S.C. § 551, *et seq.*).

108. Defendant Departments purported to find good cause to forego public comment on the August 3, 2011, interim final regulations on the Affordable Care Act's preventive care mandate on the basis that the public had the opportunity to comment on the previous interim final rule issued on July 19, 2010. (76 Fed. Reg. 46621 (2011)).

109. The July 19, 2010, interim final rule, however, did not include HRSA's Women's Preventive Services: Required Health Plan Coverage Guidelines, which mandated the coverage for contraception, sterilization, abortifacients, and related education and counseling. Accordingly, the public was deprived of the opportunity to comment on the contraception mandate in the preventive services provision of the Affordable Care Act.

110. Because Defendant Departments took agency action "not in observance of procedure required by law," Priests for Life is entitled to relief under 5 U.S.C. § 706(2)(D).

111. Similarly, Defendant Departments' decision to adopt the August 3, 2011, interim final regulations was made without considering the public's comments on the specific preventive procedures mandated therein, including coverage for contraception, sterilization, abortifacients, and related education and counseling. Therefore, its action was "arbitrary, capricious, [and] an abuse of discretion." Priests for Life is therefore also entitled to relief under 5 U.S.C. § 706(2)(A).

112. Section 1303(b)(1)(A) of the Affordable Care Act states that "nothing in this title"—(*i.e.*, Title I of the Act, which includes the provision dealing with "preventive

services”)—“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.”

113. Further, the Weldon Amendment to the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 prevents federal, state, and local governments from receiving certain federal funds if they discriminate against health care providers, including health insurance plans, that refuse to provide, pay for, provide coverage of, or refer for abortions. (Pub. L. 110 329, Div. A, Section 101 (Sept. 30, 2008) 122 Stat. 3574, 3575). This “conscience clause” is designed to prevent discrimination against health care providers who have a moral objection to abortion.

114. The Affordable Care Act’s requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling includes “[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures.”

115. Federal Drug Administration-approved contraceptive methods include, among other drugs, devices and procedures, birth control pills, prescription contraceptive devices, Plan B (also known as the “morning after pill”), and ulipristal (also known as “ella” or the “week after pill”).

116. Plan B and ella can prevent the implantation of a human embryo in the wall of the uterus and can cause the death of an embryo. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus or to cause the death of an embryo each constitute an “abortion” as that term is used in federal law. Consequently, Plan B and ella cause abortions.

117. The Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraceptives that cause abortions violates Section 1303(b)(1)(A) of the Affordable Care Act and the Weldon Amendment.

118. As set forth above, the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines violates the free exercise of religion and the free speech guarantees of the First Amendment and the Religious Freedom Restoration Act.

119. Because the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or pay substantial penalty fines is "contrary to existing law," Priests for Life is further entitled to relief under 5 U.S.C. § 706(2)(A).

120. Priests for Life has no adequate remedy at law to correct the continuing deprivation of its constitutional and statutory rights.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff Priests for Life prays for judgment as follows:

A. That this Court declare that the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines violates the First Amendment to the United States Constitution;

B. That this Court declare that the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and

related education and counseling or incur substantial penalty fines violates the Religious Freedom Restoration Act;

C. That this Court declare that the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines was issued in violation of the Administrative Procedure Act;

D. That this Court issue an order preliminarily and permanently prohibiting Defendants from enforcing the Affordable Care Act's requirement that employers provide insurance plans that include coverage for contraception, sterilization, abortifacients, and related education and counseling or incur substantial penalty fines against Priests for Life and other persons who object to providing coverage for contraception, sterilization, abortifacients, and related education and counseling;

E. That this Court award Priests for Life its reasonable costs, including attorney's fees, pursuant to 28 U.S.C. § 2412, 5 U.S.C. § 504, 42 U.S.C. § 2000bb-1, and the general legal and equitable powers of this Court;

F. That this Court grant such other and further relief as it deems equitable and just under the circumstances.

Respectfully submitted,

**LAW OFFICES OF CHARLES S. LIMANDRI, APC**



Charles S. LiMandri, Esq. (NY Bar No. 830162)

Teresa Mendoza, Esq.\* (CA Bar No. 185820)

Box 9120

Rancho Santa Fe, CA 92067

[climandri@limandri.com](mailto:climandri@limandri.com)

(858) 759-9930

\* Subject to admission *pro hac vice*

**AMERICAN FREEDOM LAW CENTER**



---

David Yerushalmi, Esq. (AZ. Bar No. 009616;  
DC Bar No. 978179; CA Bar No. 132011; NY Bar No. 4632568)  
640 Eastern Parkway, Suite 4C  
Brooklyn, NY 11213  
[dyerushalmi@americanfreedomlawcenter.org](mailto:dyerushalmi@americanfreedomlawcenter.org)  
(646) 262-0500

Robert J. Muise, Esq.\* (MI Bar No. P62849)  
P.O. Box 131098  
Ann Arbor, MI 48113  
[rmuise@americanfreedomlawcenter.org](mailto:rmuise@americanfreedomlawcenter.org)  
(734) 635-3756

\*Subject to admission *pro hac vice*

*Counsel for Plaintiff Priests for Life*