

No. 13-891

In the Supreme Court of the United States

PRIESTS FOR LIFE, *et al.*,
Petitioners,

v.

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, *et al.*,
Respondents.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit*

REPLY BRIEF OF PETITIONERS

ROBERT JOSEPH MUISE
Counsel of Record
AMERICAN FREEDOM LAW CENTER
P.O. BOX 131098
ANN ARBOR, MI 48113
(734) 635-3756
rmuise@americanfreedomlawcenter.org

DAVID ELIEZER YERUSHALMI
AMERICAN FREEDOM LAW CENTER
1901 PENNSYLVANIA AVE. N.W.
SUITE 201
WASHINGTON, D.C. 20006
(646) 262-0500
dyerushalmi@americanfreedomlawcenter.org

Counsel for Petitioners

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RULE

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ARGUMENT IN REPLY

There can be little doubt that the contraceptive services mandate of the Patient Protection and Affordable Care Act of 2010 (hereinafter “Affordable Care Act” or “Act”) is today adversely affecting countless nonprofit religious organizations—organizations which object to being forced by this mandate to impermissibly assist the commission of a wrongful act in violation of the moral doctrines of their faith. This is plainly evident by the number of lawsuits working their way through the federal courts challenging the application of this mandate on behalf of such organizations.¹

¹ See, e.g., *Catholic Diocese of Beaumont v. Sebelius*, No. 1:13-cv-709, 2014 WL 31652 (E.D. Tex. Jan. 2, 2014); *Roman Catholic Diocese of Fort Worth v. Sebelius*, No. 4:12-cv-314 (N.D. Tex. Dec. 31, 2013) (Doc. 99); *Sharpe Holdings, Inc. v. U.S. Dep’t of Health & Human Servs.*, No. 2:12-cv-92, 2013 WL 6858588 (E.D. Mo. Dec. 30, 2013); *Diocese of Fort Wayne-S. Bend v. Sebelius*, No. 1:12-cv-159, 2013 WL 6843012 (N.D. Ind. Dec. 27, 2013); *Grace Schs. v. Sebelius*, No. 3:12-cv-459, 2013 WL 6842772 (N.D. Ind. Dec. 27, 2013); *E. Tex. Baptist Univ. v. Sebelius*, No. H-12-3009, 2013 WL 6838893 (S.D. Tex. Dec. 27, 2013); *S. Nazarene Univ. v. Sebelius*, No. 13-1015, 2013 WL 6804265 (W.D. Okla. Dec. 23, 2013); *Geneva Coll. v. Sebelius*, No. 2:12-cv-00207, 2013 WL 6835094 (W.D. Pa. Dec. 23, 2013); *Reaching Souls Int’l, Inc. v. Sebelius*, No. 13-1092, 2013 WL 6804259 (W.D. Okla. Dec. 20, 2013); *Legatus v. Sebelius*, No. 12-12061, 2013 WL 6768607 (E.D. Mich. Dec. 20, 2013); *Roman Catholic Archdiocese of N.Y. v. Sebelius*, No. 12-2542, 2013 WL 6579764 (E.D.N.Y. Dec. 16, 2013); *Zubik v. Sebelius*, No. 2:13-cv-01459, 2013 WL 6118696 (W.D. Pa. Nov. 21, 2013); *Ave Maria Found. v. Sebelius*, No. 2:13-cv-15198 (E.D. Mich. Dec. 31, 2013) (Doc. 12); *Little Sisters of the Poor v. Sebelius*, No. 13-cv-2611, 2013 WL 6839900 (D. Colo. Dec. 27, 2013), *injunction pending appeal granted*, No. 13A691 (U.S. Jan. 24, 2014); *Mich. Catholic Conf. v. Sebelius*, No. 1:13-cv-1247, 2013 WL 6838707 (W.D. Mich.

And despite the fact that there are many cases still working their way through the federal courts challenging the mandate on behalf of for-profit corporations,² *see* Resp. Br. at 15 (arguing that the Court should not grant review of this case “given the pendency of numerous cases in the courts of appeals involving RFRA challenges to the accommodations”), this Court will be reviewing two such cases this term, *see Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) (en banc), *cert. granted*, 134 S. Ct. 678 (U.S. Nov. 26, 2013) (No. 13-354); *Conestoga Wood Specialties Corp. v. Secretary of HHS*, 724 F.3d 377 (3d Cir. 2013), *cert. granted*, 134 S. Ct. 678 (U.S. Nov. 26, 2013) (No. 13-356). One of the principal and, indeed, threshold issues before this Court in these cases is whether a closely-held business corporation has free exercise rights protected by the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §§ 2000bb *et seq.* Here, there is no dispute that nonprofit organizations such as Priests for Life do enjoy such rights. *See, e.g., Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). Moreover, what makes review of this case particularly compelling is the fact

Dec. 27, 2013), *injunction pending appeal granted*, No. 13-2723 (6th Cir. Dec. 31, 2013); *Catholic Diocese of Nashville v. Sebelius*, No. 3:13-1303, 2013 WL 6834375 (M.D. Tenn. Dec. 26, 2013), *injunction pending appeal granted*, No. 13-6640 (6th Cir. Dec. 31, 2013); *Univ. of Notre Dame v. Sebelius*, No. 13-3853 (7th Cir. Feb. 21, 2013).

² *See* [http://www.becketfund.org/hhsinformationcentral/\(collecting cases\)](http://www.becketfund.org/hhsinformationcentral/(collecting%20cases)) (last visited on Feb. 28, 2014).

that this challenge goes to the very core of Priests for Life's reason for existing as an organization. Consequently, Petitioners are well situated—and perhaps best suited—to challenge the mandate and its application to non-exempt, nonprofit religious organizations.

And as Respondents' opposition makes clear, there are no material fact disputes or procedural issues in this case. Rather, this case provides a straightforward legal question that can and should be resolved by this Court: absent interests of the highest order, may the federal government force Petitioners to take actions that violate their religious beliefs? Under RFRA, the answer to that question is “no.”

Thus, this case provides the proper vehicle for reviewing whether the contraceptive services mandate of the Affordable Care Act as applied to non-exempt, nonprofit religious organizations violates RFRA.

In sum, it is inevitable that the question presented by this petition—like the questions presented in the for-profit cases—will ultimately be decided by this Court. Petitioners contend that delaying this inevitability, particularly in light of this Court's pending review of the for-profit cases and the large number of nonprofit religious organizations that are currently operating under the weight of not knowing how this issue will ultimately be decided for them, is detrimental to the public interest and causing irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (“Courts have persuasively

found that irreparable harm accompanies a substantial burden on an individual's rights to the free exercise of religion under RFRA.”). To ignore the gravity of the moral dilemma caused by the mandate, which is affecting countless lives (and souls), the uncertainty surrounding its enforcement, and the costs and burdens caused by this uncertainty is to ignore reality. Consequently, in light of the circumstances, this “case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” Sup. Ct. R. 11.

Regarding Respondents' argument on the merits of Petitioners' RFRA challenge, it is incorrect to dismiss the claim by asserting simply, as Respondents do, that “Petitioners do not contend that their religious exercise is burdened by completing a form that states that they are religious non-profit organizations with religious objections to providing contraceptive coverage.” Resp. Br. at 16. Respondents' dismissive treatment of Petitioners' claim (and thus Petitioners' religious objection to the mandate) is contrary to this Court's holding in *Thomas v. Rev. Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707 (1981). Based on Respondents' argument, the Court in *Thomas* should have rejected the pacifist's free exercise claim by asserting simply that Thomas does not contend that his religious exercise is burdened by turning a wrench in a factory. However, that is not what this Court did or held. Indeed, by mischaracterizing the nature of Petitioners' religious objection to the mandate (and thus deciding for themselves the nature of the religious beliefs compelling the objection), Respondents are ignoring an important element of the Court's holding in *Thomas*:

there is a legally relevant distinction based on Thomas's religious beliefs between turning a wrench in a foundry that produces steel that could be used to produce armaments and turning a wrench in a factory that produces tank turrets. And that distinction is based upon a line that Thomas drew, not one drawn by the government. *See Thomas*, 450 U.S. at 715 (“Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs.”).

In their opposition, Respondents assert that “[t]he district court noted that petitioners ‘here do not allege that the self-certification violates their religious beliefs’ and that petitioners conceded during oral argument that ‘they have no religious objection to filling out the self-certification.’” Resp. Br. at 13. This assertion, which formed the basis for the district court’s ultimate decision on the RFRA claim, is a mischaracterization of the religious objection at issue and is, in effect, Respondents’ and the district court’s effort to impermissibly draw their own lines regarding Petitioners’ religious beliefs. As the undisputed sworn testimony of Father Pavone demonstrates, Petitioners do emphatically object to the self-certification on religious grounds. App. 62-63. (objecting to the “self-certification” and describing it as “the moral and factual equivalent of an ‘authorization’ by Priests for Life to its insurer to provide coverage for contraceptive services to its plan participants and beneficiaries” and stating that “Priests for Life is prohibited based on its sincerely held religious beliefs from cooperating in this manner with the federal government’s immoral objectives”). Moreover, the oral argument transcript shows without equivocation that Petitioners did not

concede the point referenced by Respondents. In fact, despite the district court's repeated attempts to get Petitioners' counsel to do so, he emphatically rebuffed all such efforts, explaining:

So if you're asking me to fill out a form and say I object to contraception but the purpose of that is to hand it to somebody who's going to enable the contraception, then, yes, I do have an objection. I mean, that's the point I'm trying to bring home here, that there is a distinction between saying I object to contraception, exclude me; and I object to contraception, and oh, by the way, that's going to enable the unlawful act. Because now I am morally complicit. I am cooperating in an unlawful act, and I can't do that.

Reply App. 16b-17b; *see also* Reply App. 1b-17b.

In the final analysis, the Seventh Circuit in *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013), summed up the analysis that is applicable here:

To repeat, the judicial duty to decide substantial-burden questions under RFRA does not permit the court to resolve religious questions or decide whether the claimant's understanding of his faith is mistaken. . . . The question for us is not whether compliance with the contraception mandate can be reconciled with the teachings of the Catholic Church. That's a question of religious conscience for [Petitioners] to decide. They have concluded that their legal and religious obligations are incompatible: The contraception mandate forces

them to do what their religion tells them they must not do. That qualifies as a substantial burden on religious exercise, properly understood.

Id. at 685.

Here, Petitioners legal and religious obligations are incompatible: the mandate forces them to do what their religion tells them they must not do in violation of RFRA.

CONCLUSION

The petition for a writ of certiorari should be granted.

ROBERT JOSEPH MUISE

Counsel of Record

American Freedom Law Center

P.O. Box 131098

Ann Arbor, MI 48113

(734) 635-3756

rmuise@americanfreedomlawcenter.org

DAVID YERUSHALMI

American Freedom Law Center

1901 Pennsylvania Ave. N.W. Suite 201

Washington, D.C. 20006

(646) 262-0500

dyerushalmi@americanfreedomlawcenter.org

Counsel for Petitioners

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APPENDIX 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CA No. 13-1261 (EGS)

[December 9, 2013]

PRIESTS FOR LIFE, et al.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES, et al.,)
)
Defendants.)

Washington, D.C.
Monday, December 9, 2013
12:00 p.m.

**TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiffs:

American Freedom Law Center
By: ROBERT J. MUISE, ESQ.
P.O. Box 131098
Ann Arbor, Michigan 48113
(734) 635-3756

For the Defendants:

U.S. Department of Justice
Civil Division
By: BENJAMIN L. BERWICK, ESQ.
SHEILA LIEBER, ESQ.
JACEK PRUSKI, ESQ.
MICHAEL POLLACK, ESQ.
20 Massachusetts Avenue, NW
Washington, DC 20530
(202) 305-8573

Court Reporter:

BRYAN A. WAYNE, RPR, CRR
U.S. Courthouse, Room 4704-A
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3186

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

* * *

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THE COURT: Now, you've told me you do business along these lines that we've just gone through for the last 20 minutes or so. You indicate who the employees are because you're providing coverage for their health needs, with the exception of contraceptive care insurance. What do employees do now if they want contraceptive care insurance? I guess they get it on their own?

MR. MUISE: They're not getting it through the authorization of Priests for Life.

THE COURT: All right. That's fine. And this is BlueCross BlueShield?

MR. MUISE: They have United Health, and I believe Oxford is the insurance company. But it's United Health.

THE COURT: So you have to identify the employees. You have to indicate to the insurance company that because of religious beliefs that no one is challenging, you're unable to provide for coverage and payment for contraceptive care for employees, right?

MR. MUISE: Right.

THE COURT: You do that. All right. So you make that certification, and you identify the employees, and that's all the regulations require you to do. It's to self-certify and identify and to stand on your religious grounds to assert your religious -- you're shaking your head.

MR. MUISE: Because I disagree with Your Honor. What

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they're doing -- it doesn't matter what the piece of paper --

THE COURT: Well, let me finish what I'm saying.

MR. MUISE: Okay.

THE COURT: But you can stand up for your religious beliefs, though. The regulation gives you the opportunity, and indeed, the unfettered discretion and right to say that you have religious objections to doing this but you want coverage for your employees. You have that right to do that, right?

MR. MUISE: You don't.

THE COURT: You don't?

MR. MUISE: How is it any -- I know that they want to be so dismissive of the fact that all you're doing is signing --

THE COURT: Who's they?

MR. MUISE: Well, the government, dismissive of the fact that all you're doing is simply signing this self-certification, submitting a paper. Well, if you were going to contract for contraceptives, you just have to sign this simple contract. The fact remains --

THE COURT: I think if you're given the opportunity to stand up and advocate for your religious beliefs and take a stand, I don't see where that's an infringement on that right. What is the infringement?

MR. MUISE: The infringement is what that self-certification -- it doesn't matter what that self-certification says on the thing. The fact remains that when they submit that

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self-certification, that is morally and factually operating as an authorization for contraceptive coverage for their employees, for their plan participants, for their beneficiaries.

THE COURT: That's enabling someone else to do that. That's enabling the government to do -- that's enabling the insurance carrier to do it, not the government, the insurance carrier to do it for other people if they want it, and you don't have to pay anything for it.

MR. MUISE: Your Honor used the term "enabling." They are an enabler. Because here's the alternative. Right? Because this is a Hobson's choice, and this is why it's a substantial burden. Here's the alternative:

Number 1. The government makes very clear what is their objective of the contraceptive mandate, including this accommodation, is to increase access to and utilization of contraceptive services, an objective

that is antithetical to the very nature and being of Priests for Life and the plaintiffs.

THE COURT: Right, but that's what some other entity wants to do.

MR. MUISE: No.

THE COURT: It's not encroaching on your views.

MR. MUISE: Sure it is, because by signing that certification, they are ensuring, enabling that very objective. Let me finish my point about the Hobson's choice. So if they decide, you know what, I am not going to enable the government,

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I am not going to facilitate this promotion of contraceptive, because that is antithetical to us. So, you know what, I'm not submitting the self-certification.

Because, as soon as I do, I am now telling my insurance company, you are authorized to not only provide insurance coverage for these immoral services to my employees, but, oh, by the way, you're also going to be sending a notice to them that this is in fact covered.

So now I'm going to be in the bind of, okay, now am I going to have to reach out to my employees now. Now you're forcing me to have to defend my position on this thing. You are causing me to authorize this. We are not going to do it. So what does the government say? All right, penalty.

THE COURT: Well, that would hold true for any law that's passed. I mean, that's just --

MR. MUISE: No, it isn't.

THE COURT: Just a minute. I'm sworn to uphold the law, but are there laws that are passed that I disagree with? Probably. Laws are passed every day that we may disagree with, but this law, if passed and it withstands the scrutiny, doesn't burden your organization at all as far as I can determine. It enables other entities to provide services to other individuals if those other individuals want those services. But you don't have to do anything.

MR. MUISE: Sure, you do. You're an enabler. If

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Priests for Life did not have an insurance plan, would this coverage be provided? Absolutely not. If Priests for Life did not sign the self-certification, would this coverage be provided? Certainly, it would not.

THE COURT: If you don't sign the self-certification, then you have to pay penalties.

MR. MUISE: You have to pay penalties. That's the Hobson's choice that they're being faced with, and it's for their plan participants and beneficiaries. This is effectively an authorization. You could have them put whatever they want, put the Declaration of Independence on this thing and sign off that I support the First Amendment.

At the end of the day, whatever's on that piece of paper is meaningless, because what it effectively is doing is saying we're authorizing the coverage of these services to your plan participants and beneficiaries. It is an authorization. And they're not going to do it. So now they're going to be faced with penalties and fines as a result.

THE COURT: The cost for this insurance, if any employees want the insurance, will be borne by entities other than Priests for Life, correct?

MR. MUISE: I'm not sure if I completely follow.

THE COURT: The cost for this contraceptive care insurance will be borne by entities other than Priests for Life, I assume. Is that right?

* * *

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beliefs as their employer and so by excluding them would be imposing the employer's religious beliefs upon these employees, and that would undermine our objective with the contraceptive.

That is quite a judgment made by the government to discriminate amongst different religious organizations, which goes to the point of not only equal protection, the establishment clause, but it also I think highlights the point that you're making here, Judge. There is a substantive difference between this so-called accommodation and a true exemption, and that being, at the end of the day, the accommodation is truly just

an authorization to have contraception coverage to their plan participants and beneficiaries, to which Priests for Life objects to strenuously.

THE COURT: Okay. Every substantial burden case, from Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707, to Gilardi itself, a recent D.C. Circuit opinion, states that there is a substantial burden on religion only if an adherent has to “modify his behavior and violate his beliefs.”

So the question is, isn't it true that Priests for Life has to do absolutely nothing under the regulations other than to state that it opposes contraceptive coverage, which is entirely consistent with its religious beliefs? And put another way, how could that be a substantial burden under the regulations?

MR. MUISE: And again, Your Honor, I disagree because

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it is a substantial burden. What did Gilardi say is what is the crux of determining a substantial burden? If the individual, the claimant, is being put to a Hobson's choice.

THE COURT: Right. Gilardi is different, though. This case is not like Gilardi. Gilardi required payments from those individuals, money. They had to do something. You don't have to do anything. You don't have to pay anything.

All you have to do is say, You know what, I have strong religious beliefs and there's nothing you can make me do, and I'm not doing anything. That's what the government has told you that you have the option of doing or not, but the government is recognizing your religious beliefs.

MR. MUISE: Totally disagree, Your Honor. What they're saying is you're authorizing contraceptive services for your employees. Priests for Life objects to that whether they're paying for it or not paying for it.

The government, for example, could come into Priests for Life and say, look, we got these wonderful, free gift certificates to have the abortion of your choice at Planned Parenthood. You don't have to pay anything. Tell us who all your employees are, we're going to mail them these gift certificates so you can have an abortion, and by the way, if you don't do that, we're going to fine you a hundred dollars per person per day.

You don't think that's a burden on a religious belief?

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Of course it is.

THE COURT: I don't think that's this case either, though.

MR. MUISE: It is this case. It is this case. Because you're authorizing --

THE COURT: This is an abortion case?

MR. MUISE: No. Well, it's -- contraception, abortifacients, abortion. I mean, the fact is, you're causing them -- you're forcing them to the Hobson's choice of either we authorize this immoral coverage regardless of its cost, because it's immoral regardless of its cost, or we face fines. That's a substantial burden under the law, Your Honor.

Look at even the Thomas case. Here you had a Jehovah witness who, really, we can minimize that as much as we want to. All you had to do was turn a wrench in a factory that made turrets on tanks. What's the big deal? We're not forcing you to wear a uniform, we're not forcing you to be in the military, we're not forcing you to fire a weapon; and, oh, by the way, we're not even forcing you to work there. You quit on your own. And now you want us to provide you with unemployment benefits? How can that be a substantial burden on your religious beliefs?

Well, guess what? The Supreme Court said it was. And I think here there's even a more direct compulsion on Priests for Life to engage in an act that they find morally reprehensible, and that is authorizing coverage for contraception whether they

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have to pay for it or otherwise.

THE COURT: In its motion to dismiss, the government relies on Kaemmerling v. Lappin, 553 F.3d 669, D.C. Circuit case which is binding on this court. Is it plaintiff's position that the circuit's recent decision in

Gilardi limits and casts doubt on the holding of Kaemmerling? And if so, how?

MR. MUISE: Well, that's the DNA case, and I think we addressed it pretty clearly the distinction between the two. In the DNA case, for example, he didn't have any objection to being compelled to draw the blood from him. It was something that was going to happen after the fact, and he said there was no compulsion for him to do an act or to participate, I think was the language he used, to participate -- or "cooperate" I think was the term used -- to cooperate in any way with anything that violated their religious beliefs.

And as we pointed out, this regulation requires them to do just that: facilitate and cooperate. So I don't think the two -- I don't think Gilardi necessarily changes that. I think the two can be --

THE COURT: And it couldn't anyway, because one --

MR. MUISE: -- can be distinguished.

THE COURT: -- you can't --

MR. MUISE: I understand, but to the point of your question, Your Honor, I think the two are distinguishable, just like that case is distinguishable from the case here.

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THE COURT: Right. So the major distinction is that Kaemmerling consented to giving blood. Here, the burden is the government saying self-certify or not.

MR. MUISE: No. The burden -- and again, I mean, you can call it the self-certification. From plaintiffs' view, it's an authorization. You authorize the coverage of contraceptive coverage for your employees or else you're going to be penalized. We're not going to do that.

I don't care what form you want us to sign, or you want us to draw a picture of Mickey Mouse, for goodness sakes. It still operates the same way. The effect is authorizing immoral services. You want us to cooperate in the government's expressed statement of what the scheme is for, increasing access to utilization of contraceptives, contrary to our religious beliefs.

THE COURT: In Kaemmerling the plaintiff was required to provide -- he had no discretion. He was required to provide a blood sample to the government for the purpose of DNA collection. He did object to the DNA collection on religious grounds, but the circuit held that that was not a substantial burden on plaintiff because he did not have to modify his own religious behavior in any way. You're not arguing that the regulation requires you to modify Priests for Life's religious behavior in any way.

MR. MUISE: No, I am. I am. Because it's not just

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action. It's also beliefs. What is a loyalty oath? You put your signature on the bottom of this piece of paper --

THE COURT: Let me be clear about this. So the modification of religious beliefs is what?

MR. MUISE: It's their objection to facilitating, promoting, or using any of these immoral services. It's contrary to the Gospel of Life, their very reason for being. You are forcing them to authorize this coverage.

THE COURT: By objecting. By objecting to provide it and providing names, things that the organization does now.

MR. MUISE: No, but it's not the same, and that's why the discussion we had between the exemption --

THE COURT: What's the difference, though? Tell me what the difference is.

MR. MUISE: The effect.

THE COURT: What happens because the insurer will then make these services available to other people?

MR. MUISE: Right. I think in the Azuba [Zubik] case, the judge pointed out, like, you know, somebody can borrow a knife to use for your barbecue, I don't have a problem; come borrow that knife. If I'm going to go kill somebody with it, I have a moral objection to it.

You want me to sign this certification because you want to use that for an immoral purpose? I'm not going to do it. To force me to do it is causing you to violate my religious

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MR. MUISE: Well, there may be some civil disobedience with that part of it, but they're not going to authorize, I can tell you that, because they can't. And that goes back to the point, Your Honor. You say they don't have to do anything? What happens if they don't --

THE COURT: Don't be reading a lot into the questions I ask. I asked a lot of questions. I'll ask the government a lot of questions as well. I'm just trying to get at just what the core burden is, substantial burden is.

MR. MUISE: If they don't certify, then the coverage doesn't happen. It's only because they have to do that.

THE COURT: And I think where arguably we may disagree is that self-certification means that you are standing on your rights, which I will enforce. I will enforce your ability, your opportunity, to stand on those very sensitive and private and important religious beliefs. That's what that self-certification -- and there's no penalty to you. I understand --

MR. MUISE: Your Honor, that's...

THE COURT: That's just a part of it.

MR. MUISE: You know, that's like we -- the very idea that the government is looking out for our religious concerns by this self-certification is utter nonsense or else they would have given us the religious exemption and rewrote it expressly in the regulation why we don't want your employees to be subject to your religious beliefs, because we want to promote the use of

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MR. MUISE: But the point --

THE COURT: Is that right? You don't object to the form.

MR. MUISE: See, the question's not complete, Your Honor; I apologize. I would have no objection to signing a form that says I object to the death penalty, but if the purpose of that form is to give it to the executioner to kill him, then, yeah, I do. So if you're asking me to fill out a form and say I object to contraception but the purpose of that is to hand it to somebody who's going to enable the contraception, then, yes, I do have an objection.

I mean, that's the point I'm trying to bring home here, that there is a distinction between saying I object to contraception, exclude me; and I object to contraception, and oh, by the way, that's going to enable the unlawful act. Because now I am morally

complicit. I am cooperating in an unlawful act, and I can't do that.

So according to what now the government just said here -- and I just want to point out, we cited the section dealing with penalties. The provision that he read, it just said that the insurance provided shall provide this coverage. I don't know if there's penalties associated with that, but the actual penalty provision associated --

THE COURT: I thought counsel said that in the event that the plaintiffs did nothing and the requirement shifted to the issuer to provide coverage, I thought he said -- and he'll

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