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Mark Langer, Clerk
United States Court of Appeals for the
District of Columbia Circuit
333 Constitution Ave., NW
Washington, DC 20001

Filed via CM/ECF

Re: No. 13-5368, *Priests for Life v. U.S. Dep't of Health & Human Servs.*
No. 13-5371, *Roman Catholic Archbishop of Washington v. Sebelius*
Rule 28(j) letter

Dear Mr. Langer:

We write in response to the Sixth Circuit's recent decision in *Michigan Catholic Conference v. Burwell*, Nos. 13-2723, 13-6640 (6th Cir. June 11, 2014).

The Sixth Circuit's decision is erroneous and contrary to this Court's decision in *Gilardi* and the Supreme Court's decision in *Thomas*, both of which make clear that the Government "substantially burdens" the exercise of religion whenever it imposes "substantial pressure" to act contrary to one's sincere religious beliefs. Here, it is undisputed that Appellants have a sincere religious objection both to the filing of the required "self-certification" and to the act of providing health insurance in compliance with the Government's regulatory scheme. If they undertake either course of action, they will violate Catholic teaching regarding material cooperation and scandal. But if Appellants refuse to take those actions, they will be subject to ruinous penalties. That type of coercive pressure to act contrary to one's religious beliefs is the very definition of a substantial burden under RFRA.

The Sixth Circuit's decision assumes that Appellants' religious objection to complying with the "accommodation" is contingent on the way secular authorities characterize the operation of the self-certification. That is simply untrue. While the Sixth Circuit's reading of the regulatory scheme is erroneous, *see* Reply Br. at 7-10, Appellants object not only to providing the self-certification, but also to offering health plans through an insurance company or third-party administrator authorized to provide contraceptive coverage to their employees "so long as [they] are enrolled in [those] plan[s]." 29 C.F.R. § 2590.715-2713A(d); 45 C.F.R. § 147.131(c)(2)(i)(B); Appellants' Br. at 26-27. Thus, regardless of the Sixth Circuit's mischaracterization of the factual and legal effect of the self-certification, Appellants would still object to providing insurance coverage under the "accommodation." Due to the regulatory

scheme, Appellants have no way to avoid an immoral course of action without incurring massive penalties.

In short, the Government's regulatory mandate makes it utterly impossible for Appellants to offer an insurance arrangement that comports with their Catholic beliefs. That is a substantial burden on religious exercise, properly understood. The Sixth Circuit's decision is wrong, and this Court should not follow suit.

Sincerely,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 16, 2013, I filed the foregoing Rule 28(j) Letter with this Court through the CM/ECF system, which then served it upon all counsel of record:

/s/ *Noel J. Francisco*

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