



Washington, D.C. Offices:

1901 Pennsylvania Avenue NW
Suite 201
Washington, D.C. 20006

New York Offices:

640 Eastern Parkway
Suite 4C
Brooklyn, New York 11213

Michigan Offices:

P.O. Box 131098
Ann Arbor, Michigan 48113

California Offices:

21731 Ventura Boulevard
Suite 180
Woodland Hills, California 91364

Arizona Offices:

P.O. Box 6314
Chandler, Arizona 85246

Main Tel: (855) 835-AFLC (2352)

FAX: (801) 760-3901

Email: rmuise@americanfreedomlawcenter.org

Writer's Direct Tel: (734) 635-3756

David Yerushalmi, Esq.: Licensed in Washington, D.C., New York, California & Arizona

Robert J. Muise, Esq.: Licensed in Michigan

December 7, 2012

Hon. Frederick Block
U. S. District Court Senior Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Priests for Life v. Sebelius, et al.*, No. 1:12-cv-00753-FB-RER

Dear Judge Block:

In further support of its motion for a temporary restraining order / preliminary injunction (Doc. No. 24) and in opposition to Defendants' pending motion to dismiss for lack of subject matter jurisdiction (Doc. No. 18), Plaintiff Priests for Life brings to this Court's attention the recent decision from the U.S. District Court for the Eastern District of New York (Judge Brian M. Cogan), *The Roman Catholic Archdiocese of N.Y. v. Sebelius*, No. 12 Civ. 2542 (BMC), 2012 U.S. Dist. LEXIS 172695 (E.D.N.Y. Dec. 5, 2012), in which the court rejected the very same standing and ripeness arguments presented by Defendants in this case.

In *The Roman Catholic Archdiocese of N.Y.*, the court "conclude[d] that the temporary enforcement safe harbor does not prevent plaintiffs from establishing imminent injuries for standing purposes." *Id.* at *41. And perhaps most important, the court rejected the argument that the advance notice of proposed rulemaking ("ANPRM") deprived the court of its jurisdiction to hear and decide the case, "conclud[ing] that, notwithstanding the ANPRM, plaintiffs have standing to bring this suit based on their future injuries." *Id.* at *48. The court correctly

observed that the contraception coverage mandate “is a final rule . . . and the ANPRM has not made the [mandate] any less binding on plaintiffs.” *Id.* at *49. Indeed, as the court noted, “There is no, ‘Trust us, changes are coming’ clause in the Constitution.” *Id.* at *59.

And finally, the court rejected the government’s ripeness argument, finding that the case was “fit for judicial review” and that the “plaintiffs have adequately demonstrated hardship from withholding judicial review.” *Id.* at *64-*72.

In sum, for the reasons set forth in Judge Cogan’s thorough and thoughtful analysis, this Court should deny Defendants’ motion to dismiss. And because Plaintiff will be subject to the contraception coverage mandate as of January 1, 2013 (The Roman Catholic Archdiocese of New York will not be subject to the mandate until January 1, 2014, *see id.* at *13), this Court should grant Plaintiff’s motion for a temporary restraining order / preliminary injunction in order to maintain the *status quo* pending a final ruling on the merits.

Respectfully submitted,

American Freedom Law Center

/s/ Robert J. Muise

Robert J. Muise, Esq.

David Yerushalmi, Esq.

Law Offices of Charles S. LiMandri, APC

/s/ Charles S. LiMandri

Charles S. LiMandri, Esq.

Teresa Mendoza, Esq.

cc: Opposing Counsel (*via* ECF)