

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

PRIESTS FOR LIFE, *et al.*,

Plaintiffs,

-v-

DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, *et al.*,

Defendants.

Case No. 1:13-cv-01261-EGS

**PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS**

Pursuant to Local Civil Rule 7(h), Plaintiffs hereby submit the following responses to Defendants' Statement of Material Facts (Doc. No. 14-1) (hereinafter referred to as "Defs.' SMF"). The numbered paragraphs correspond to Defendants' paragraphs.

1. Defendants' statement sets forth an unsupported and purely speculative inference that the Patient Protection and Affordable Care Act (hereinafter "Affordable Care Act" or "Act") reduces healthcare costs and increases the use of "preventive services"—a vague and undefined term. As such, it is not a material statement of fact.

2. Insofar as Defendants are characterizing and quoting from a federal statute, the statute speaks for itself.

3. Plaintiffs do not dispute that the Department of Health and Human Services (HHS) tasked the Institute of Medicine (IOM) with developing recommendations to implement a mandate compelling coverage for "preventive services for women," which would include coverage for contraception, sterilization, and abortifacients, as well as related education and counseling.<sup>1</sup>

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<sup>1</sup> Defendants dispute Plaintiffs' use of the term "abortifacient" to describe drugs and devices that kill a

4. Plaintiffs object to Defendants' characterization of the IOM recommendation in that it is not a statement of fact. However, Plaintiffs do not dispute that the IOM recommended, among other things, "the full range of [FDA]-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity."

5. Undisputed.

6. Disputed. Increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' Statement of Material Facts at ¶¶ 82, 83 [Doc. No. 8-1]) (hereinafter referred to as "Pls.' SMF").

7. Undisputed.

8. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself.

9. Undisputed. Plaintiffs further add that despite the fact that Priests for Life is a religious employer, it is not eligible for the exemption from the contraceptive services mandate provided by Defendants to a very narrow class of religious employers. (Pls.' SMF at ¶¶ 4, 5, 28, 29).

10. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself.

11. Disputed. The government never intended to "accommodate" the religious objections to the contraceptive services mandate of non-exempt religious employers such as

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fertilized human egg. However, "abortifacient" is the correct term for such drugs and devices since they operate post "conception" (*i.e.*, after the egg has been fertilized). Further, based on Plaintiffs' sincerely held religious beliefs (and medical science), human life begins at conception. Thus, destroying this human life is properly considered an abortion, and drugs that facilitate this killing are properly described as abortifacients. (*See* Pls.' Statement of Material Facts at ¶¶ 10, 86 [Doc. No. 8-1]).

Priests for Life and have thus failed to do so. (Pls.' SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).<sup>2</sup>

12. Disputed. The government never intended to “accommodate” the religious objections to the contraceptive services mandate of non-exempt religious employers such as Priests for Life and have thus failed to do so. (Pls.' SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

13. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Plaintiffs further assert that Priests for Life is not exempt from the contraceptive services mandate. (Pls.' SMF at ¶¶ 4, 5, 28, 29).

14. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Plaintiffs further assert that Priests for Life is not exempt from the contraceptive services mandate. (Pls.' SMF at ¶¶ 4, 5, 28, 29).

15. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Insofar as Defendants are asserting that the challenged regulations “accommodate” Plaintiffs’ religious objections to the contraceptive services mandate, this statement is false and thus disputed. The government never intended to “accommodate” the religious objections to the contraceptive services mandate of non-exempt religious employers such as Priests for Life and have thus failed to do so. (Pls.' SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

16. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself.

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<sup>2</sup> For ease of reference, Plaintiffs will continue to number their exhibits consecutively, starting with the exhibits filed in support of Plaintiffs’ motion for a preliminary injunction (1 through 3), and then with the exhibit filed in support of Plaintiffs’ motion for summary judgment (4), and now with the exhibits filed here (5 and 6).

17. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Insofar as Defendants are asserting that the challenged regulations “accommodate” Plaintiffs’ religious objections to the contraceptive services mandate, this statement is false and thus disputed. The government never intended to “accommodate” the religious objections to the contraceptive services mandate of non-exempt religious employers such as Priests for Life and have thus failed to do so. (Pls.’ SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

18. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Insofar as Defendants are asserting that the challenged regulations “accommodate” Plaintiffs’ religious objections to the contraceptive services mandate, this statement is false and thus disputed. (Pls.’ SMF at ¶¶ 21, 27-44, 49, 50, 89, 90, 92, 94, 95; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

19. Plaintiffs do not dispute that as a result of the contraceptive services mandate, Priests for Life’s healthcare plan participants and beneficiaries will now have coverage for contraceptive services. Consequently, the *sine qua non* for receiving coverage for such “services” is being a participant or beneficiary of Priests for Life’s healthcare plan. Insofar as Defendants’ statement is not in accord with this undisputed statement of fact, it is disputed. (Pls.’ SMF at ¶¶ 31-44).

20. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Insofar as Defendants are asserting that the challenged regulations “accommodate” Plaintiffs’ religious objections to the contraceptive services mandate, this statement is false and thus disputed. (Pls.’ SMF at ¶¶ 21, 27-44, 49, 50, 89, 90, 92, 94, 95; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

21. Undisputed.

22. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Plaintiffs state further that they are prohibited by their sincerely held religious beliefs from providing, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients or facilitating, supporting, or cooperating with the government's immoral objective of promoting the use of contraceptive services. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Plaintiffs. Contraception, sterilization, and abortifacients are immoral regardless of their cost. (Pls.' SMF at ¶¶ 43, 44, 89, 90).

23. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Plaintiffs state further that they are prohibited by their sincerely held religious beliefs from providing, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients or facilitating, supporting, or cooperating with the government's immoral objective of promoting the use of contraceptive services. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Plaintiffs. Contraception, sterilization, and abortifacients are immoral regardless of their cost. (Pls.' SMF at ¶¶ 43, 44, 89, 90).

24. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Plaintiffs state further that they are prohibited by their sincerely held religious beliefs from providing, whether directly or indirectly, any support for, or access to, contraception, sterilization, and abortifacients or facilitating, supporting, or cooperating with the government's immoral objective of promoting the use of contraceptive services. This is true whether the immoral services are paid for directly, indirectly, or even not at all by Plaintiffs.

Contraception, sterilization, and abortifacients are immoral regardless of their cost. (Pls.’ SMF at ¶¶ 43, 44, 89, 90).

25. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself.

26. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Plaintiffs state further that the *reason* why Priests for Life’s plan participants and beneficiaries are given notice of coverage for contraceptive services is because Priests for Life and its healthcare plan are subject to the contraceptive services mandate. Consequently, by providing the mandated “self-certification”—without which Priests for Life would face penalties of \$100 per day per employee—Priests for Life is authorizing coverage for contraceptive services and notice of such coverage to its plan participants and beneficiaries, in direct violation of Plaintiffs’ sincerely held religious beliefs. (Pls.’ SMF at ¶¶ 35-44, 50, 89, 90).

27. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Moreover, Plaintiffs state further that the *reason* why Priests for Life’s plan participants and beneficiaries will be given notice of coverage for contraceptive services is because Priests for Life and its healthcare plan are subject to the contraceptive services mandate. Consequently, by providing the mandated “self-certification”—without which Priests for Life would face penalties of \$100 per day per employee—Priests for Life is authorizing coverage for contraceptive services and notice of such coverage to its plan participants and beneficiaries, in direct violation of Plaintiffs’ sincerely held religious beliefs. (Pls.’ SMF at ¶¶ 35-44, 50, 89, 90).

28. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. However, increasing access to and use of contraceptive services

harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' speculative statement is not in accord with this undisputed statement of fact, it is disputed.

29. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. However, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' speculative statement is not in accord with this undisputed statement of fact, it is disputed.

30. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. However, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

31. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. However, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

32. Increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

33. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. However, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

34. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. However, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

35. Insofar as Defendants are characterizing and quoting from federal reports or regulations, the reports and regulations speak for themselves. Plaintiffs do not dispute that women may spend "more in out-of-pocket health care costs than men." However, this fact is not material. Moreover, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

36. Insofar as Defendants are characterizing and quoting from federal reports or regulations, the reports and regulations speak for themselves. Moreover, increasing access to and use of contraceptive services harms women (and men) morally, spiritually, and physically. (Pls.' SMF at ¶¶ 82, 83). Insofar as Defendants' statement is not in accord with this undisputed statement of fact, it is disputed.

37. Undisputed.

38. Insofar as Defendants' statement asserts a legal conclusion, it is not a statement of fact. Plaintiffs state further that "the effect of grandfathering" is to exempt certain plans from the various mandates of the Affordable Care Act, including the contraceptive services mandate. Plaintiffs further state that providing such exemptions demonstrates that the government lacks a compelling interest in forcing Priests for Life to comply with the contraceptive services mandate. (*See also* Pls.' SMF at ¶ 3).



39. Defendants' statement is vague. Nonetheless, whether a "majority" or a "minority" of healthcare plans are exempt from the contraceptive services mandate is not a material fact. The undisputed material fact, confirmed by Defendants' statement, is that at least *some* healthcare plans will remain exempt from the contraceptive services mandate when it applies in full force against Plaintiffs on January 1, 2014. (*See also* Pls.' SMF at ¶ 3).

40. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Moreover, Plaintiffs do not dispute that the only meaningful religious accommodation to the contraceptive services mandate is the exemption referred to in this statement—an exemption which applies to *some* religious employers and not others, such as Priests for Life, based upon the government's determination as to how "religious" the employer and its employees are and the sincerity with which they hold their religious beliefs. (Pls.' SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

41. Insofar as Defendants are characterizing and quoting from a federal regulation, the regulation speaks for itself. Moreover, Defendants' assertion is an opinion that conveys a message of discrimination against certain religious employers such as Priests for Life and those persons who are employed by Priests for Life, such as Plaintiffs Father Pavone, Alveda King, and Janet Morana (*i.e.*, that their religious beliefs are less sincere or not as strongly held as other religious employers and their employees). Moreover, it is an opinion that expresses a false statement with regard to Priests for Life and is therefore disputed. (Pls.' SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

42. Defendants' assertion is an opinion that conveys a clear message of discrimination against religious employers such as Priests for Life and those persons who are employed by Priests for Life, such as Plaintiffs Father Pavone, Alveda King, and Janet Morana

(*i.e.*, that their religious beliefs are less sincere or not as strongly held as other religious employers and their employees). Moreover, it is an opinion that expresses a false statement with regard to Priests for Life and is therefore disputed. (Pls.' SMF at ¶ 21; *see also* Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

43. Disputed. The Affordable Care Act, as set forth in the majority opinion authored by Chief Justice Roberts in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012), imposed new taxes to finance the government's healthcare scheme, which added new government-mandated coverage via regulations promulgated thereunder, such as the contraceptive services mandate.

44. Disputed. The court can take judicial notice of the fact that the Obama administration has made numerous revisions by administrative fiat to the Act, including delaying, without congressional approval, the implementation of the employer mandate. (*See* Muise Supp. Decl. at ¶ 2, Ex. A, at Ex. 6). Moreover, the government *is* the lawmaker, and it is incumbent upon it to pass—or amend—statutes that are constitutionally defective. Consequently, for the government to argue that it is constrained to act in accord with the Constitution because the very statute that creates the constitutional defect prevents it from doing so is rather disingenuous, to say the least. Disputed.

45. Disputed. Defendants have taken great pains to argue that providing the contraceptive services required under the challenged mandate will not impose any new costs (*see, e.g.*, ¶¶ 17, 20, 23-25, *supra*), but then here argue that if the government were to provide such services, it “would impose considerable new costs and other burdens on the government and would otherwise be impractical.” This is thus an argument about a future consequence without factual or evidentiary basis. Moreover, in an official press statement released on January

20, 2012, Defendant Sebelius stated the following: “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.” She also claimed in this statement that providing contraceptive services will “significantly reduce health costs.” (Muise Supp. Decl. at ¶ 3, Ex. B, at Ex. 6) (emphasis added). Indeed, during a hearing before a House Energy and Commerce Subcommittee on Health, Defendant Sebelius, responding to questions about the cost of complying with the contraceptive services mandate, stated the following: “The reduction in the number of pregnancies compensates for the cost of contraception.” (Muise Supp. Decl. at ¶ 4, Ex. C, at Ex. 6). Thus, according to Defendant Sebelius, the loss of coverage for contraceptive services caused by exempting from the mandate certain organizations with religious objections will be offset by providing such services through other channels, and this is either without cost or cost-neutral at the least. (*See also* Pls.’ SMF at ¶ 45).

46. Disputed. (*See* ¶¶ 43-45, *supra*). Defendants already provide an exemption for certain “religious employers,” but not others, such as Priests for Life. Therefore, there is no factual or evidentiary basis for claiming a compelling interest to force some religious organizations and their employees, such as Plaintiffs, to comply with the contraceptive services mandate, while exempting others.

47. Disputed. (*See* ¶¶ 43-46, *supra*).

48. Disputed. Defendants’ primary objective for imposing the contraceptive services mandate in the first instance is “to increase access to and utilization of” contraceptive services. (*See* Defs.’ SMF at ¶ 29). Indeed, Defendants incessantly extol the alleged “benefits” of such services and how liberating and egalitarian it is for a woman to have sex without the

“consequence” of bearing a child. (*See* Defs.’ SMF at ¶¶ 1, 3, 4, 28, 29, 31-36). In short, Defendants treat pregnancy as a disease, or at best a gender-based bias, which can be prevented via the mandated contraceptive services. (Defs.’ SMF at ¶ 28 [asserting that the “*primary predicted benefit*” of the contraceptive services mandate “is that ‘individuals will experience improved health as a result of reduced transmission, prevention or delayed onset, and earlier treatment of disease” (emphasis added)]). Thus, to assert that the “education and counseling for women with reproductive capacity” required by the mandate will not include “education and counseling” that promotes the use of contraception is not credible.

49. Disputed. Insofar as Defendants are characterizing and quoting from a federal statute, the statute speaks for itself. Moreover, it is disingenuous to on one hand say that there is nothing preventing individuals and organization such as Plaintiffs from expressing opposition to the government’s objective of increasing access to and utilization of contraceptive services, but then on the other hand force these same individuals and organization under penalty of federal law to actually cooperate with and facilitate the government’s illicit objective—an objective which is contrary to the primary reason for Plaintiffs’ expressive association in the first instance. (*See* Pls.’ SMF at ¶¶ 21, 27-44, 49-51, 89, 90, 92, 94, 95; Priests for Life Supp. Decl. at ¶¶ 5-8 at Ex. 5).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: none.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise  
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