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' MOTION FOR A STAY OF ALL DEADLINES IN LIGHT OF LAPSE OF APPROPRIATIONS

Plaintiffs Priests for Life, Father Frank Pavone, Alveda King, and Janet Morana (collectively referred to as "Plaintiffs") hereby file this response to Defendants' Motion for a Stay of All Deadlines in Light of Lapse of Appropriations (Doc. No. 9), which was filed today.

In this case, Plaintiffs are challenging the implementing regulations of 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"), which require certain employers, including Priests for Life, to provide insurance plans that include coverage for, or access to, contraception, sterilization, abortifacients, and related education and counseling ("contraceptive services mandate").

The challenged mandate compels Plaintiffs to promote, facilitate, and cooperate in the government's immoral objective to increase the use of contraceptive services in direct violation of Plaintiffs' constitutional and statutory rights. In short, Plaintiffs' sincerely held religious beliefs prohibit them from providing ***any*** support for the use of contraceptive services—the very services mandated by Defendants as a matter of federal law. Consequently, the contraceptive

services mandate places a substantial burden on Plaintiffs' sincerely held religious beliefs and the government does not have a compelling reason for doing so in violation of the United States Constitution and the Religious Freedom Restoration Act ("RFRA"). Thus, as set forth more fully in Plaintiffs' memorandum of points and authorities filed in support of their motion for preliminary injunction (Doc. No. 7), the contraceptive services mandate violates the First and Fifth Amendments to the United States Constitution and RFRA.

Because this government mandate will apply in full force to Plaintiffs on January 1, 2014, thus causing Plaintiffs irreparable harm today, Plaintiffs filed a motion for a preliminary injunction on September 19, 2013. (*See* Doc. No. 7). As noted in Plaintiffs' filings, Plaintiffs' refusal to participate in the government's contraceptive services scheme and to support the government's objective of promoting the use of contraceptives through the challenged mandate subjects Priests for Life to crippling fines and penalties of $100 per day for each employee not properly covered, 26 U.S.C. § 4980D, as well as potential enforcement lawsuits, 29 U.S.C. §§ 1132. The alternative for Priests for Life would be to drop its health care coverage, which would harm the organization and its employees, including Plaintiffs King and Morana. Either way, the contraceptive services mandate is presenting Priests for Life with a Hobson's choice that threatens its very existence as an effective, pro-life organization.

In sum, the contraceptive services mandate is causing Plaintiffs to feel economic and moral pressure today as a result of the federal government imposing substantial burdens on their religious beliefs, thereby 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.").

Pursuant to the local rules of this court, Defendants' opposition to Plaintiffs' motion for preliminary injunction should have been "served and filed within seven days after service of the application for preliminary injunction" (*i.e.,* September 26, 2013). *See* LCvR 65.1. However, the court held a conference with counsel on September 25, 2013, to discuss the briefing schedule. During the conference, the parties agreed that this case presents largely legal questions regarding the lawfulness of the challenged mandate and is thus ripe for a decision on the merits. Consequently, following this conference, the court set an expedited briefing schedule, understanding that the mandate will take full effect against Plaintiffs on January 1, 2014. Pursuant to this schedule, the court directed Plaintiffs to file a motion for summary judgment and statement of material facts on or before October 1, 2013, which Plaintiffs did. (*See* Doc. No. 8).

Today, the federal government—due to a lack of funding to the Department of Justice—asks the court to delay this case. And when Defendants' counsel sought Plaintiffs' concurrence in their motion for a stay, Plaintiffs' counsel stated that *Plaintiffs would agree to the stay so long as the government agreed to stay the enforcement of the challenged mandate as against Priests for Life until this court has had a chance to rule on the merits*. However, Defendants' counsel refused. Consequently, the government wants, *for some indefinite period of time,* to stay proceedings that challenge what Plaintiffs believe to be an unconstitutional government mandate that violates their fundamental rights; yet, the government won't agree to stay the mandate pending a resolution of the serious legal questions raised in these same proceedings. Thus, we oppose Defendants' motion.

Indeed, yesterday, President Obama, anticipating the government shutdown, which, somewhat ironically, is a result of a dispute over the implementation of the Affordable Care Act—the very law at issue here—stated, in relevant part, as follows:

> So let me be clear about this. An important part of the Affordable Care Act takes effect tomorrow no matter what Congress decides to do today. The Affordable Care Act is moving forward. That funding is already in place. You can't shut it down. This is a law that passed both houses of Congress; a law that bears my signature; a law that the Supreme Court upheld as constitutional; a law that voters chose not to repeal last November; a law that is already providing benefits to millions of Americans in the form of young people staying on their parents' plan until they're 26, seniors getting cheaper prescription drugs, making sure that insurance companies aren't imposing lifetime limits when you already have health insurance, providing rebates for consumers when insurance companies are spending too much money on overhead instead of health care. Those things are already happening.

(http://www.whitehouse.gov/the-press-office/2013/09/30/statement-president) (last visited October 1, 2013). Thus, according to President Obama, even though the government wants to "shut down" this litigation for the duration of the government shut down, it is not willing to "shut down" the government mandate that is at the heart of this litigation and will seek to enforce it against Plaintiffs when the bell tolls to ring in the New Year.

In the final analysis, per President Obama, the mandates of the Affordable Care Act, which includes the contraceptive services mandate, are "moving forward . . . funding is already in place." Thus, if the government is going to force private citizens to abide by mandates that violate fundamental constitutional rights, then the government should have to defend those mandates in a court of law. At a minimum, since the parties agree that this case is ripe for decision since it involves largely legal questions, this court should grant Plaintiffs' motion for preliminary injunction, thereby preliminarily halting the enforcement of the contraceptive services mandate until such time as the government is prepared to defend the mandate in court. Indeed, granting the injunction will simply maintain the *status quo*, thereby protecting Plaintiffs' interests, providing the government time to address the merits of this case, and providing this court the necessary time to make a final ruling on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 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.

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