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November 19, 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), Plaintiff Priests for Life brings to this Court's attention the recent decision from the U.S. District Court for the District of Columbia, *Tyndale House Publishers, Inc. v. Sebelius*, No. 12-1635 (RBW), 2012 U.S. Dist. LEXIS 163965 (D.D.C. Nov. 16, 2012), in which the court granted the plaintiffs' motion for a preliminary injunction, enjoining the "contraceptive coverage mandate." *Id.* at *67

In *Tyndale House Publishers, Inc.*, the court found, *inter alia*, that "the plaintiffs have shown a strong likelihood of success on the merits of their RFRA claim." *Id.* at *61. In reaching its conclusion, the court also rejected the reasoning in *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 4:12-CV-476 (CEJ), 2012 U.S. Dist. LEXIS 140097, (E.D. Mo. Sept. 28, 2012), *appeal docketed*, No. 12-3357 (8th Cir. Oct. 4, 2012), stating, in part, "If *O'Brien* is intended to stand for the proposition that a plaintiff can never demonstrate that its religious exercise is substantially burdened by a law that forces it to pay for services to which it objects that are

ultimately chosen and used by third parties, this Court must respectfully disagree. . . . Because it is the coverage, not just the use, of the contraceptives at issue to which the plaintiffs object, it is irrelevant that the use of the contraceptives depends on the independent decision of third parties. And even if this burden could be characterized as ‘indirect,’ the Supreme Court has indicated that indirectness is not a barrier to finding a substantial burden.” *Tyndale House Publishers, Inc.*, 2012 U.S. Dist. LEXIS 163965, at *43-*44 (quoting *Thomas v. Rev. Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 718 (1981)).

Plaintiff Priests for Life hereby requests that the Court consider this case, which was decided after Plaintiff filed its motion for a temporary restraining order / preliminary injunction, as supplemental authority in support of its motion.

Respectfully submitted,

American Freedom Law Center

/s/ Robert J. Muise

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cc: Opposing Counsel (via ECF)