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

NOTICE OF SUPPLEMENTAL AUTHORITY

In further support of their motion for summary judgment (Doc. No. 8), Plaintiffs bring to this court's attention today's decision from the U.S. District Court for the Eastern District of New York, *The Roman Catholic Archdiocese of N.Y. v. Sebelius*, No. 12 Civ. 2542 (BMC), slip op. at 41 (E.D. N.Y. filed Dec. 16, 2013),[1] in which the court, *inter alia*, permanently enjoined the enforcement of the contraceptive services mandate as applied to non-exempt, religious organizations (*i.e.*, organizations eligible for the so-called "accommodation"), such as Plaintiffs in this case.

In its decision, the court found that the so-called "accommodation" imposed a substantial burden on the non-exempt plaintiffs' religious exercise, rejecting the government's argument presented here that the burden imposed by the mandate is "*de minimis*." The court stated, in relevant part, the following:

> As for the self-certification requirement, the Court rejects the Government's position that plaintiffs may be compelled to perform affirmative acts precluded by their religion if a court deems those acts merely "*de minimis*." This argument—which essentially reduces to the claim that completing the self-certification places no burden on plaintiffs' religion because "it's just a form"—finds no support in the case law. As discussed, where a law places substantial pressure on a plaintiff to perform affirmative acts contrary to his religion, the Supreme Court has found a substantial burden without analyzing whether those acts are *de minimis*. . . .

[1] A copy of the Memorandum Decision and Order [Doc. No. 116] is attached.

> "Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals because they hold religious views abhorrent to the authorities." *Sherbert* [*v. Verner*, 374 U.S. 398, 402 (1963)] (citation omitted). . . .
>
> The Government's "it's just a form" argument suffers from the same infirmity. The non-exempt plaintiffs are required to complete and submit the self-certification, which authorizes a third-party to provide the contraceptive coverage to which they object. They consider this to be an endorsement of such coverage; to them, the self-certification "compel[s] affirmation of a repugnant belief." *Sherbert*, 374 U.S. at 402. It is not for this Court to say otherwise.
>
> The [non-exempt] plaintiffs have demonstrated that the Mandate, despite the accommodation, compels them to perform acts that are contrary to their religion. And there can be no doubt that the coercive pressure here is substantial. . . .

The Roman Catholic Archdiocese of N.Y., No. 12 Civ. 2542 (BMC), slip op. at 23-29.

CONCLUSION

Plaintiffs hereby request that the court consider this case, which was decided after Plaintiffs filed their motion for summary judgment, as supplemental authority in support of their motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 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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