

**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: *ZUBIK v. SEBELIUS***

In further support of their motion for summary judgment (Doc. No. 8), Plaintiffs bring to this court's attention the recent decision from the U.S. District Court for the Western District of Pennsylvania, *Zubik v. Sebelius*, Nos. 13cv1459 & 13cv0303, 2013 U.S. Dist. LEXIS 165922 (W.D. Pa. Nov. 21, 2013), in which the court, *inter alia*, preliminarily 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 held, in relevant part, the following:

[T]he Court concludes that the religious employer "accommodation" places a substantial burden on Plaintiffs' right to freely exercise their religion — specifically their right to not facilitate or initiate the provision of contraceptive products, services, or counseling. Thus, Plaintiffs have met their burden of proving that complying with the "accommodation" provision of the contraceptive mandate is a substantial burden on their free exercise of religion.¹

Id. at *88.

Having found that the so-called "accommodation" places a substantial burden on the plaintiffs' exercise of religion, the court further concluded that the government "failed, factually

¹ Similar to Plaintiffs in this case, the plaintiffs in *Zubik* objected to complying with the government's "self-certification" scheme (*i.e.*, the "accommodation") because doing so would "facilitate/initiate the provision of contraceptive products, services, or counselling — in direct contravention to their religious tenets." *Id.* at *80-*81.

and legally,” “to meet its burden of proving that it had a compelling interest to apply the contraceptive mandate, via the ‘accommodation,’” to the plaintiffs and that, nonetheless, the government “failed to present any credible evidence tending to prove it utilized the least restrictive means of advancing those interests.” *Id.* at *88-*101. In short, the court concluded that the government could not satisfy the compelling interest test under the Religious Freedom Restoration Act.

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,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 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

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