

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**THE CATHOLIC DIOCESE OF
NASHVILLE, *et al.*,**

Plaintiffs,

v.

KATHLEEN SEBELIUS, *et al.*,

Defendants.

Case No. 3:13-cv-01303

District Judge Todd J. Campbell

Magistrate Judge E. Clifton Knowles

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL

Pursuant to Rule 8(a)(1)(C) of the Federal Rules of Appellate Procedure, Plaintiffs respectfully requests that the Court enter an injunction pending appeal. For all the reasons advanced in Plaintiffs' original Motion for Preliminary Injunction (Doc. 14), Memorandum in Support (Doc. 26), Declarations (Docs. 15-22), and argument before the Court on December 23, 2013, Plaintiffs request preliminary injunctive relief pending appeal, without bond, enjoining Defendants from continuing to require Plaintiffs to provide coverage for contraceptives, abortion-inducing drugs, sterilization, and related counseling in their employee and student health plans.

A preliminary injunction is justified, as discussed in Plaintiffs' accompanying Memorandum in Support, because (1) Plaintiffs are reasonably likely to succeed on the merits of their claims; (2) Plaintiffs are suffering a continuing, irreparable harm in the absence of preliminary relief that outweighs any harm the Government may suffer if the preliminary injunction is granted; (3) Plaintiffs have no adequate remedy at law; and (4) an injunction

further the public interest. Accordingly, Plaintiffs respectfully move this Court to issue a preliminary injunction in the form of the attached Proposed Order.

Respectfully submitted, this the 26th day of December, 2013.

By: /s/ Matthew A. Kairis

Matthew A. Kairis (Ohio Bar No. 55502)*

Brandy H. Ranjan (Ohio Bar No. 86984)*

Melissa D. Palmisciano (Ohio Bar No. 80027)*

**admitted pro hac vice*

JONES DAY

325 John H. McConnell Blvd.

Suite 600

P.O. Box 165017

Columbus, OH 43216

Telephone: (614) 469-3939

Facsimile: (614) 461-4198

makairis@jonesday.com

branjan@jonesday.com

mpalmisciano@jonesday.com

Counsel for Plaintiffs

L. Gino Marchetti, Jr. (Tenn. BPR No. 005562)

Matthew C. Pietsch (Tenn. BPR No. 024659)

Antonio J. Aguilar (Tenn. BPR No. 029743)

TAYLOR, PIGUE, MARCHETTI

& BLAIR, PLLC

2908 Poston Avenue

Nashville, Tennessee 37203-1312

Telephone: (615) 320-3225

Facsimile: (615) 320-3244

marchetti-dc@tpmblaw.com

*Local Counsel for The Catholic Diocese of
Nashville; Catholic Charities of Tennessee, Inc.;
Camp Marymount, Inc.; Mary, Queen of Angels,
Inc.; and St. Mary Villa, Inc.*

Robb S. Harvey (Tenn. BPR No. 11519)

Lauran Sturm (Tenn. BPR No. 030828)

WALLER LANSDEN DORTCH & DAVIS, LLP

511 Union Street, Suite 2700

Nashville, Tennessee 37219

Telephone: (615) 850-8856

robb.harvey@wallerlaw.com

lauran.sturm@wallerlaw.com
*Local Counsel for St. Cecilia Congregation
and Aquinas College*

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2013, I electronically filed the foregoing document with the Clerk of the United States District Court for the Middle District of Tennessee using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Jacek Pruski
U.S. Department of Justice
20 Massachusetts Avenue NW
Washington, DC 20530
(202) 616-2035
Fax: (202) 616-8470
Email: jacek.pruski@usdoj.gov
Attorney for Defendants

/s/ Matthew A. Kairis

One of the Attorneys for Plaintiffs

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION PENDING APPEAL**

A court should grant a preliminary injunction if, after considering four factors, it determines that the balance of equities favors such relief. *See Am. Imaging Servs., Inc. v. Eagle-Picher Indus., Inc.*, 963 F.2d 855, 858-59 (6th Cir. 1992). The four factors that courts should consider are: A plaintiff seeking a preliminary injunction must demonstrate (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest is served. *See Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001); *Int'l Res., Inc. v. N.Y. Life Ins. Co.*, 950 F.2d 294, 302 (6th Cir. 1991). These factors are not "prerequisites [to be] satisfied" and merely "guide the discretion of the court." *Eagle-Picher*, 963 F.2d at 859. *See In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985) ("the four considerations applicable to preliminary injunction decisions are factors to be balanced, not prerequisites that must be met."). In other words, "they are not meant to be rigid and unbending requirements," because "[a] fixed legal standard is not the essence of equity jurisprudence." *Id.* (quotation and citation omitted). Here, a

preliminary injunction is warranted because Plaintiffs meet all four factors for such interim relief and the balance of harms clearly weighs in their favor.

Plaintiffs incorporate by reference here their arguments advanced in their Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction (Doc. 26) and at oral argument on December 23, 2013. For all those reasons, Plaintiffs respectfully request that the Court adjudicate their motion for preliminary injunction pending appeal enjoining Defendants from any application or enforcement of the Mandate against them, their health plans, participants in their health plans, or their third party administrators or insurers.

Respectfully submitted, this the 26th day of December, 2013.

By: /s/ Matthew A. Kairis

Matthew A. Kairis (Ohio Bar No. 55502)*

Brandy H. Ranjan (Ohio Bar No. 86984)*

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**admitted pro hac vice*

JONES DAY

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Columbus, OH 43216

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& BLAIR, PLLC

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Nashville, Tennessee 37203-1312

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Camp Marymount, Inc.; Mary, Queen of Angels,
Inc.; and St. Mary Villa, Inc.*

Robb S. Harvey (Tenn. BPR No. 11519)
Lauran Sturm (Tenn. BPR No. 030828)
WALLER LANSDEN DORTCH & DAVIS, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Telephone: (615) 850-8856
robb.harvey@wallerlaw.com
lauran.sturm@wallerlaw.com
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U.S. Department of Justice
20 Massachusetts Avenue NW
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Email: jacek.pruski@usdoj.gov
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/s/ Matthew A. Kairis

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Electronically Filed

ORDER

Plaintiffs moved for a preliminary injunction pending appeal to enjoin Defendants from applying and enforcing 45 C.F.R. § 147.130(a)(1)(iv) and any related fines or penalties to Plaintiffs, their employee and student health plans, and their third party administrator and insurer.

The Court **HEREBY FINDS** as follows.

1. Plaintiffs are likely to succeed on the merits of their claims that the imposition of 45 C.F.R. § 147.130(a)(1)(iv) on them violates the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb *et seq.*, and the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment.
2. Plaintiffs will suffer irreparable harm in the absence of the preliminary injunctive relief they request.
3. There will be no substantial harm to others, including Defendants, from granting the preliminary injunction.
4. Granting preliminary injunctive relief is in the public interest.

Further, the Court **HEREBY ORDERS** that Defendants are **ENJOINED FROM** any application or enforcement against Plaintiffs or their employee or student healthcare plans or their third party administrator of the requirement under 45 C.F.R. § 147.130(a)(1)(iv), corresponding Guidelines, and corresponding press releases that Plaintiffs provide coverage for FDA-approved contraceptive methods, abortion-inducing drugs, sterilization procedures, and patient education and counseling, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4).

The Court **FURTHER ORDERS** as follows:

1. Plaintiffs shall not be required to post bond.

BY THE COURT:

United States District Judge