

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**ROMAN CATHOLIC DIOCESE OF
FORT WORTH; UNIVERSITY OF
DALLAS; OUR LADY OF VICTORY
CATHOLIC SCHOOL; CATHOLIC
CHARITIES, DIOCESE OF FORT
WORTH, INC.,**

Plaintiffs,

v.

**KATHLEEN SEBELIUS, in her official
capacity as Secretary of the U.S.
Department of Health and Human
Services; THOMAS PEREZ, in his official
capacity as Secretary of the U.S.
Department of Labor, JACOB J. LEW, in
his official capacity as Secretary of the
U.S. Department of Treasury; U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; U.S.
DEPARTMENT OF LABOR; and U.S.
DEPARTMENT OF TREASURY,**

Civil Action No. 4:12-CV-314-Y

DEMAND FOR JURY TRIAL

Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs Roman Catholic Diocese of Fort Worth, University of Dallas, Our Lady of Victory Catholic School, and Catholic Charities, Diocese of Fort Worth, Inc. move this Court to grant summary judgment in their favor on all their claims.

Summary

Pursuant to LR 56.3, Plaintiffs provide the following summary of the elements of their claims:

- RFRA Claim: The Religious Freedom Restoration Claim (“RFRA”) prohibits the government from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the government can "demonstrate[] that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a),(b). The Mandate violates the RFRA by substantially burdening Plaintiffs’ exercise of religion without being the least restrictive means to achieve a compelling government interest.
- Free Exercise Clause: The Free Exercise Clause prohibits the government from passing a law that substantially burdens the exercise of religion. A law that is neutral and of general applicability need not be justified by a compelling governmental interest. But if a law may restricts practices because of their religious motivation, the law must be justified by a compelling interest and must be narrowly tailored to advance that interest. The Mandate violates the Free Exercise Clause of the First Amendment because it substantially burdens Plaintiffs’ exercise of religion, is not a neutral and generally applicable law, and is neither justified by nor narrowly tailored to further a compelling government interest.
- Establishment Clause: Under *Lemon*, a statute violates the Establishment Clause if (1) it does not have a secular purpose, (2) its principal or primary effect advances or inhibits religion, or (3) it creates excessive government entanglement with religion. See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). The Mandate’s “religious employer” exemption violates the Establishment Clause of the First Amendment in two ways. First, it creates an artificial, Government-favored category of “religious employers,” which favors some types of religious groups over others. Second, the Mandate creates an excessive entanglement between government and religion.
- Compelled Speech: The Free Speech Clause of the First Amendment prohibits laws that compel a speaker to affirm any religious or ideological proposition that the speaker finds unacceptable, unless the law is narrowly tailored to further a compelling government interest. The Mandate compels Plaintiffs to support and/or facilitate “counseling” that contradicts their religious viewpoint, and the Mandate is not narrowly tailored to further a compelling government interest.
- Freedom of Speech: Content-based restrictions on speech are subject to strict scrutiny, requiring the government to prove that its actions are narrowly tailored to further a compelling interest. The Mandate violates the First Amendment protection of freedom of speech by imposing a gag order that prohibits Plaintiffs from attempting to “influence” a third party administrator’s decision to provide or procure contraceptive services, a gag order that is not narrowly tailored to meet any compelling interest.
- Internal Church Governance: The Religion Clauses of the First Amendment prohibit “government interference with an internal church decision that affects the faith and mission of the church itself.” *Hosanna-Tabor Evangelical Lutheran Church &*

School v. EEOC, 132 S.Ct. 694, 707 (2012). The Mandate violates both Religion Clauses of the First Amendment because it interferes with Plaintiffs' rights of internal church governance.

- APA: The Administrative Procedure Act requires a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The Mandate violates the APA because the Defendants did not act "in accordance with law" and disregarded statutory prohibitions on compelled support for abortion.

This motion is made under Federal Rule of Civil Procedure 56 and is supported by the record in this case, the accompanying Brief in Support of Plaintiffs' Motion for Summary Judgment, which sets forth each of the matters required by Local Rule 56.3 not satisfied in this motion, and the accompanying Appendix and declarations.

Prayer for Relief

Plaintiffs respectfully request that the Court grant this Motion for Summary Judgment and award costs in their favor. Plaintiffs also pray for any additional relief to which this Court deems they are entitled.

Respectfully submitted, this 9th day of October, 2013.

By: /s/ Basheer Y. Ghorayeb

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CERTIFICATE OF SERVICE

I certify that on October 9, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Basheer Y. Ghorayeb
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