

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

THE ROMAN CATHOLIC DIOCESE OF
ALBANY, NEW YORK; THE ROMAN
CATHOLIC DIOCESE OF OGDENSBURG;
TRUSTEES OF THE DIOCESE OF ALBANY;
SISTERHOOD OF ST. MARY; CATHOLIC
CHARITIES, DIOCESE OF BROOKLYN;
CATHOLIC CHARITIES OF THE DIOCESE OF
ALBANY; CATHOLIC CHARITIES OF THE
DIOCESE OF OGDENSBURG; ST. GREGORY
THE GREAT ROMAN CATHOLIC CHURCH
SOCIETY OF AMHERST, N.Y.; FIRST BIBLE
BAPTIST CHURCH; OUR SAVIOR'S
LUTHERAN CHURCH, ALBANY, N.Y.;
TERESIAN HOUSE NURSING HOME
COMPANY, INC.; RENÉE MORGIEWICZ;
AND MURNANE BUILDING CONTRACTORS,
INC.;

Plaintiffs,

--against--

MARIA T. VULLO, ACTING SUPERINTENDENT,
NEW YORK STATE DEPARTMENT OF FINANCIAL
SERVICES; CAPITAL DISTRICT PHYSICIANS'
HEALTH PLAN, INC.; CDPHP UNIVERSAL BENEFITS,
INC.; HEALTHNOW NEW YORK INC.; UNITEDHEALTH
CARE OF NEW YORK, INC.; MVP HEALTH CARE, INC.;
EXCELLUS HEALTH PLAN, INC.; INDEPENDENT
HEALTH ASSOCIATION, INC.

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Index No. 02070-16

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Plaintiffs, by and through their attorneys, Tobin and Dempf LLP, for their Verified
Complaint, respectfully state as follows:

PRELIMINARY STATEMENT

1. The State has approved and issued Abortion Mandates that force church institutions, employers and individuals in violation of their religious doctrines, teachings and conscience rights to fund and provide that which in their own workplace they hold and teach to be gravely immoral. These Abortion Mandates under color of law constitute an invidious and coercive governmental infringement on the religious freedom and liberty of conscience of religious institutions, employers and individuals, and, if unchecked, will then result in even further dangerous incursions on religious freedom and liberty of conscience.

2. In this action for declaratory and injunctive relief plaintiffs challenge, as a violation of the New York State Constitution and statutes and the United States Constitution, the Abortion Mandates of the New York State Department of Financial Services (NYSDFS) which impermissibly and unreasonably burden the religious freedom and liberty of conscience of churches, their institutions, individuals and employers to freely organize, express and govern themselves consistent with their religious, moral and conscience convictions. N.Y. Const. art. 1, § 3 (Free Exercise, Enjoyment of Religion and Liberty of Conscience); § 3 (Establishment Clause); § 3 (Preference Clause); § 8 (Free Speech); § 9 (Associational Liberty); art. IV, § 8 and State Administrative Procedure Act § 202(1)(a) (Rule Making); N.Y. Exec. Law § 296(11) (Human Rights Law); N.Y. Rel. Corp. Law § 5; U.S. Const. amend. 1 (Establishment Clause); 1 (Free Exercise of Religion); 1 (Free Speech and Association); 14 (Equal Protection); 1 (Hybrid Rights: (1) Free Exercise Clause with Free Speech; (2) Free Exercise Clause with Expressive Association and Associational Rights; (3) Free Exercise Clause with Equal Protection Clause; (4) Free Exercise Clause with Establishment Clause; (5) Free Speech with Expressive Association and Associational Rights; (6) Free Speech with Equal Protection Clause; (7) Free

Speech with Establishment Clause; (8) Expressive Association and Associational Rights with Equal Protection Clause; (9) Expressive Association and Associational Rights with Establishment Clause; and (10) Equal Protection Clause with Establishment Clause).

JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court by N.Y. Const. art. 6, § 6; N.Y. Jud. Law § 140-b and N.Y. Civ. Prac. L. & R. § 301. Venue is proper in this county pursuant to N.Y. Civ. Prac. L. & R. §§ 503 (a) and 505(a).

PARTIES

Plaintiffs

4. The Roman Catholic Diocese of Albany, New York (“Diocese of Albany”) a special act corporation incorporated under the Laws of the State of New York, is and at all times has been a constituent part of the Roman Catholic Church and is subject to the Catechism, Canon Law and precepts of the Roman Catholic Church. Pursuant to same, the Diocese of Albany exercises ecclesiastical authority over its religious, charitable and educational ministries, institutions and parishes within fourteen counties of upstate New York. The Diocese of Albany maintains its principal administrative office in the City and County of Albany. The Diocese of Albany is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

5. The Roman Catholic Diocese of Ogdensburg (“Diocese of Ogdensburg”) a special act corporation incorporated under the Laws of the State of New York, is and at all times has been a constituent part of the Roman Catholic Church and is subject to the Catechism, Canon Law, doctrines, teachings and precepts of the Roman Catholic Church. Pursuant to the same, the Diocese of Ogdensburg exercises ecclesial authority over the religious, charitable and

educational ministries, institutions and parishes within eight counties in northern New York State. The Diocese of Ogdensburg maintains its principal administrative office in Ogdensburg, New York. The Diocese of Ogdensburg is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

6. Trustees of The Diocese of Albany (“Episcopal Diocese”), a special act corporation incorporated under the laws of the State of New York is and at all times has been a constituent part of the Protestant Episcopal Church in the United States (“Episcopal Church”), and is subject to and accedes to the Constitution, Canons and General Convention of the Episcopal Church. Pursuant to same and its own Constitution and Canons, the Episcopal Diocese exercises ecclesial authority over missions, aided parishes and parishes. The Episcopal Diocese maintains its principal offices within the Counties of Albany and Washington. The Episcopal Diocese is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

7. The Sisterhood of St. Mary (“Sisters of St. Mary”) an Anglican/Episcopal Order of women religious established in 1865 as a New York not-for-profit religious corporation, is and at times has been a constituent part of the Protestant Episcopal Church in the United States and is subject to and accedes to the Constitution, Canons and General Convention of the Episcopal Church. Pursuant to same its members live a traditional, contemplative expression of monastic life through a disciplined life of prayer set within a simple agrarian lifestyle and active ministries in their local communities. The Sisters of St. Mary maintain their principal convent in Washington County. The Sisters of St. Mary is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

8. Catholic Charities, Diocese of Brooklyn (“Charities Brooklyn”) is a not-for-profit corporation established by special act of the New York State Legislature. Charities Brooklyn is operated in connection with the Roman Catholic Diocese of Brooklyn and is a vital and integral part of the human services ministry of the Roman Catholic Church. Charities Brooklyn, one of the largest multi-service agencies in the nation, provides human services programs covering the whole span of an individual’s life including early childhood and family services as part of the charitable and social justice ministry of the Roman Catholic Church in Brooklyn and Queens Counties. It maintains its principal administrative office in Brooklyn. Charities Brooklyn’s health insurance benefits for its employees are regulated and provided by defendants.

9. Catholic Charities of the Diocese of Albany (“Charities Albany”) is a not-for-profit corporation established by special act of the New York State Legislature. Charities Albany is operated in connection with The Roman Catholic Diocese of Albany, New York and represents the human services ministry of the Roman Catholic Church. Among its various human service programs and agencies it operates Community Maternity Services which offers a continuum of care for pregnant adolescents and young parents including case management, goal-directed counseling, childbirth education, parent education, support and advocacy. Charities Albany is the means for facilitating the charitable and social justice missions of The Roman Catholic Church in fourteen counties in central and upstate New York. The work of plaintiff Charities Albany is a vital and integral part of the human services ministry of the Roman Catholic Church. Catholic Charities of Albany maintains its principal administrative office in the City and County of Albany, State of New York. Charities Albany’s health insurance benefits for its employees are regulated and provided by defendants.

10. Catholic Charities of the Diocese of Ogdensburg (“Charities Ogdensburg”) is a not-for-profit corporation established by special act of the New York State Legislature. Charities Ogdensburg is operated in connection with the Roman Catholic Diocese of Ogdensburg and is a vital and integral part of the human services ministry of the Roman Catholic Church. Charities Ogdensburg provides multiple human service programs including adoptions, maternity services and Project Rachel which provides services to individuals and families who have been involved in abortion. Charities Ogdensburg is the means for facilitating the charitable and social justice missions of the Roman Catholic Church in eight counties in northern New York State. Charities Ogdensburg maintains its principal administrative office in the Town of Oswegatchie, County of St. Lawrence. Charities Ogdensburg’s health insurance benefits for its employees are regulated and provided by defendants.

11. St. Gregory the Great Roman Catholic Church Society of Amherst, N.Y. (“St. Gregory”) is a religious corporation duly organized and existing under the New York Religious Corporations Law. It serves as a parish of the Roman Catholic Diocese of Buffalo, maintains its principal place of worship in Williamsville, Town of Amherst, County of Erie and operates St. Gregory’s School and several ministries. St. Gregory is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

12. First Bible Baptist Church (“First Bible”) is a religious corporation duly organized and existing under the laws of the State of New York. First Bible is an independent Evangelical congregation affiliated with the Baptist Bible Fellowship International. First Bible engages in human services outreach with multiple ministries including youth ministry, adult ministry, deaf ministry, education ministry, athletic activities, day care and pre-school and mission ministry. First Bible maintains its principal place of worship in the City of Rochester,

County of Monroe. First Bible is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

13. Our Savior's Lutheran Church, Albany, N.Y. ("Our Savior's Lutheran Church") is a religious corporation duly organized and existing under the New York Religious Corporations Law. It sponsors several ministries and missions and maintains its principal place of worship in the Town of Colonie and County of Albany. Our Savior's Lutheran Church is a religious employer whose health insurance benefits for its employees are regulated and provided by defendants.

14. Teresian House Nursing Home Company, Inc. ("Teresian House") is a not-for-profit corporation organized and existing under the laws of the State of New York. Teresian House provides the elderly with a continuum of services to enhance their physical, spiritual and emotional well-being. Teresian House is sponsored by and affiliated with the Roman Catholic Diocese of Albany and operated by the Carmelite Sisters for the Aged and Infirm. Teresian House maintains its principal service center in the City and County of Albany. Teresian House is a religiously-affiliated employer whose health insurance benefits for its employees are regulated and provided by defendants.

15. Renée Morgiewicz is a resident of Saratoga County. She is an employee of a religious employer which provides her with health insurance benefits regulated and provided by defendants.

16. Murnane Building Contractors, Inc. ("Murnane Contractors") is a business corporation organized and existing under the laws of the State of New York. Murnane Contractors provides general construction, construction management and design/build services on public and nonpublic projects throughout New York State. Murnane Contractors maintains

its principal business office in Plattsburgh, New York. Murnane is an employer whose health insurance benefits for its employees are regulated and provided by defendants.

Defendants

17. Maria T. Vullo is the acting superintendent and chief executive and administrative officer of the New York State Department of Financial Services (NYSDFS) and is sued in her official capacity. Acting Superintendent Vullo has the responsibility for the adoption, implementation and regulation of the programs, practices, directives and contracts involving health insurance policies and health insurers operating in New York State. Defendant Vullo is responsible for issuing, implementing and enforcing regulations and directives regarding health insurance contracts submitted by health insurers authorized to conduct business in New York State. Defendant Vullo's principal office and that of the New York State Department of Financial Services is in the City and County of Albany, State of New York.

18. Capital District Physicians' Health Plan, Inc. ("CDPHP") and CDPHP Universal Benefits, Inc. ("CDPHP-UB") are not-for-profit corporations organized and existing under the laws of the State of New York maintaining their principal offices in Albany County. CDPHP and CDPHP-UB are authorized to transact health insurance business in New York State and are regulated by the NYSDFS in their health insurance activities including the form, content, coverages and issuance of health insurance contracts to employers benefiting employees. CDPHP and CDPHP-UB currently are the health plan insurer for one or more of the plaintiffs.

19. HEALTHNOW New York, Inc. d/b/a Blue Shield of Northeastern New York ("HEALTHNOW NY") is a not-for-profit corporation organized and existing under the laws of New York maintaining its principal office in Erie County. HEALTHNOW NY, through its division affiliate Blue Shield of Northeastern New York ("Blue Shield"), is authorized to transact

health insurance business in New York State and is regulated by the NYSDFS in its health insurance activities including the form, content, coverages and issuance of health insurance contracts to employers benefiting employees. Blue Shield currently is the health plan insurer for one or more plaintiffs.

20. UNITEDHEALTHCARE OF NEW YORK, INC. (“UNITEDHEALTHCARE”) is a business corporation organized and existing under the laws of New York maintaining its principal office in New York County. UNITEDHEALTHCARE is authorized to transact health insurance business in New York State and is regulated by the NYSDFS in its health insurance activities including the form, content, coverages and issuance of health insurance contracts to employers benefitting employees. UNITED HEALTHCARE currently is the health plan insurer for one or more plaintiffs.

21. MVP Health Care, Inc. (“MVP”) is a not-for-profit corporation organized and existing under the laws of New York maintaining its principal office in Schenectady County. MVP is authorized to transact health insurance business in New York State and is regulated by the NYSDFS in its health insurance activities including the form, content, coverages and issuance of health insurance contracts to employers benefiting employees. MVP currently is the health plan insurer for one or more plaintiffs.

22. Excellus Health Plan, Inc. d/b/a Excellus Blue Cross Blue Shield (“Excellus”) is a not-for-profit corporation organized and existing under the laws of New York maintaining its principal office in Monroe County. Excellus is authorized to transact health insurance business in New York State and is regulated by the NYSDFS in its health insurance activities including the form, content, coverages and issuance of health insurance contracts to employers benefiting employees. Excellus currently is the health plan insurer for one or more plaintiffs.

23. Independent Health Association, Inc. (“Independent Health”) is a not-for-profit corporation organized and existing under the laws of New York maintaining its principal place of business in Erie County. Independent Health is authorized to transact health insurance business in New York State and is regulated by the NYSDFS in its health insurance activities including the form, content, coverages and health insurance contracts to employers benefiting employees. Independent Health is the health plan insurer for one or more plaintiffs.

THE MODEL LANGUAGE ABORTION MANDATE AT ISSUE

24. Group and blanket health policies delivered or issued for delivery in New York State providing major medical or similar comprehensive-type coverage are regulated as to form and content by the NYSDFS (N.Y. Ins. Law §3221).

25. Health Insurance providers, including health service corporations and medical service expense indemnity corporations, are regulated with regard to policy coverages, language and benefits. (N.Y. Ins. Law §4303)

26. Previously insurers providing group health insurance benefits to employees were permitted to make discretionary decisions to issue riders to employers removing coverage for abortion benefits.

27. The efforts of NYSDFS as well as its predecessor Department of Insurance to include abortion coverage in group health and benefit plan contracts have a history inextricably intertwined with an ongoing struggle over the religious freedom and liberty of conscience rights of religious and religiously-affiliated employers, other employers and individuals whose conscience rights and sincerely held religious beliefs proscribe involvement in or support for abortion.

28. On June 26, 2015 and again on April 26, 2016, the NYSDFS approved and issued an Abortion Mandate in the form of “Model Language,” requiring individual and small group employers offering health insurance benefits to include in their renewal contracts coverage of non-therapeutic and therapeutic abortions.

SECTION IX

Outpatient and Professional Services

(for other than Mental Health and Substance Use)

{Drafting Note: Section IX is required for individual and small group coverage. Paragraphs F, G, H (if applicable), J, K, O, S, U(1), U(2), V and X are required for large group coverage. The remaining paragraphs are optional, although recommended if applicable, for large group coverage.}

[M.] Interruption of Pregnancy.

We Cover therapeutic abortions. We also Cover non-therapeutic abortions in cases of rape, incest or fetal malformation. [We Cover elective abortions [for one (1) procedure per Member, per [calendar year; Plan Year].]

{Drafting Note: Plans must include the one procedure limit for the standard NYSOH plan and may provide coverage that is more favorable for non-standard NYSOH plans and plans offered outside the NYSOH. For a small group that meets the definition of a religious employer in Sections 3221(l)(16)(A)(1) and 4303(cc)(1)(A) of the New York Insurance Law; a religious employer under 45 CFR § 147.131(a); or an eligible organization under 45 CFR § 131(b), coverage for elective abortions may be removed. Coverage for elective abortions may also be removed for any large group if this section of the model language is used for large group coverage.}

NYSDFS Model Language Section IX [M].

29. Upon information and belief, the Model Language Abortion Mandate is not based on legislative enactment.

30. Upon information and belief, the Model Language Abortion Mandate is not based on regulatory enactment.

31. Upon information and belief, the Model Language Abortion Mandate is an internal NYSDFS policy directive.

32. The Model Language Abortion Mandate avoided legislative and regulatory oversight and deprived those affected with an opportunity to be heard.

33. The Model Language Abortion Mandate directly coerces religious employers, religiously-affiliated employers, objecting secular employers and individuals to fund, provide and cooperate with the religiously violative and morally offensive procedures of therapeutic abortions¹ and non-therapeutic abortions². Plaintiffs are currently funding the Model Language Abortion Mandate in their health care plans provided by defendant insurers through the premiums and co-pays imposed.

THE UNDISCLOSED ABORTION MANDATE AT ISSUE

34. Upon information and belief, NYSDFS separately mandates abortion coverage for therapeutic abortions by all employers, irrespective of number of employees and religious affiliation, under the service category of “medically necessary” surgery.

35. The Undisclosed Abortion Mandate is neither identified nor disclosed by NYSDFS and/or the insurer defendants to plaintiffs or other similarly situated employers and individuals in their health insurance contracts.

36. The Undisclosed Abortion Mandate has been known only to NYSDFS and health insurers and never disclosed to plaintiffs.

¹ Abortion induced because of the mother’s physical or mental health, or to prevent the birth of a deformed child or a child conceived as a result of rape or incest. *Stedman’s Medical Dictionary*. (2002 ed.)

² An abortion not required for medical reasons.

37. The Undisclosed Abortion Mandate is encrypted in health insurance contracts under the rubric of “medically necessary” surgery by NYSDFS and defendant health care insurers and was never communicated or disclosed to plaintiffs and other employers including those who have conscience, moral or religious objections to abortion.

38. Plaintiffs were caught unawares during the current renewal/enrollment period, when upon objecting to the “Model Language” Abortion Mandate, they were informed that they had been separately covering abortions under the service category of “medically necessary” surgery.

39. This Undisclosed Abortion Mandate was issued, implemented and contractually imposed by defendants without the knowledge or assent of plaintiffs and other employers similarly situated.

40. The imposition of this Undisclosed Abortion Mandate, without any prior public or contractual notice, resulted in plaintiffs unwittingly and currently providing and affirmatively funding objectionable abortion coverage by the payment of premiums and co-pays contrary to their sincerely held moral and religious beliefs.

OBJECTION TO ABORTION FUNDING AND COVERAGE

41. Plaintiffs, on moral, ethical, conscience and religious grounds, have protested to defendants the inclusion of coverage and funding of all abortions and have demanded that defendants provide complete exclusion for all abortion procedures in their health insurance plan contracts.

42. Defendants have failed to provide plaintiffs the requested exclusion.

THE IMPACT OF THE ABORTION MANDATES

43. The Roman Catholic Church explicitly teaches that abortion is a “moral evil.”³

This teaching of the Roman Catholic religion is neither subordinate nor secondary. Rather, it is a fundamental instruction that is central to the Church’s tenets on respect for the dignity of each member of the human family regardless of age, condition or stage of development. It is crucial to the life-affirming message of the Catholic Church.

44. The Roman Catholic Church also explicitly teaches that “[h]uman life must be respected and protected absolutely from the moment of conception” and that abortion is “gravely contrary to the moral law”⁴ and an “unspeakable crime.”⁵ “From the time that the ovum is fertilized, a life is begun which is neither that of the father nor the mother. It is rather the life of a new human being with his own growth. It would never be made human if it were not human already. This has always been clear, and... modern genetic science offers clear confirmation. It has demonstrated that from the first instant there is established the program of what this living being will be: a person, this individual person with his characteristic aspects already well determined.”⁶

45. The Episcopal Church teaches and affirms that the dignity of life must be protected from conception to natural death.⁷

³ *The Catechism of the Catholic Church*, copyright 1997, # 2271; *Humana Vitae*, July 25, 1968 by Pope Paul VI; and *Familiaris Consortio*, November 22, 1981 by Pope John Paul II.

⁴ *The Catechism of the Catholic Church*, copyright 1997, # 2270, 2271.

⁵ *Pastoral Constitution on the Church in the Modern World Gaudium et Spes*, 51: “*Abortus necnon infanticidium nefanda sunt crimina.*”

⁶ Congregation for the Doctrine of Faith, *Declaration on Procured Abortion* (18 November 1974), NOS. 12-13: AAS 66 (1974), 738.

⁷ Episcopal Diocese 2007 Annual Convention Resolution 4. “Resolved, that the 2007 Convention of the Diocese of Albany affirms the sanctity of human life as a gift of God from conception to natural death.”

46. Baptist and Lutheran Churches explicitly teach that abortion is contrary to moral law and the Scriptures and violates religious beliefs rooted in the Scriptures.⁸

47. Abortion is in direct conflict with the central and explicit teachings of the Catholic, Episcopal and Evangelical faiths of the plaintiffs. For example it is fundamental that deliberately cooperating (i.e., facilitating or otherwise participating in some meaningful way) in the provision of direct abortion constitutes a grave moral offense under Catholic teaching. In a word, no faithful Catholic person can, without violating a fundamental tenet of the Catholic religion, ever participate in, facilitate, or otherwise cooperate with the intentional killing of an unborn child. To do so, Catholics believe, violates God's creative plan for humanity and is contrary to the inherent dignity and sanctity of every human life. Therefore the Church formally teaches that it is always objectively evil to engage in the direct and intentional killing of unborn human life or any other innocent human life. Direct abortion is clearly and unequivocally immoral and unacceptable in every circumstance. Plaintiffs will not, and cannot, accept or facilitate it in any way.

48. Plaintiffs and other religions also teach that an employer has a moral obligation at all times to consider the well-being of its employees and to offer just wages and benefits in order to provide a dignified livelihood for the employee and his or her family. In accordance with religious teaching, religious employers view the offering of fair, adequate and just employment benefits as a moral obligation rooted in the Gospel of Jesus Christ. The scope and range of these benefits, however, must also be consistent with religious and moral teaching on the dignity and sanctity of each member of the human family.

⁸ *Jeremiah 1:4; Luke 1:39.*

49. As a result of the clear and unequivocal religious and moral teaching against abortion, the notion of a church institution providing its employees, regardless of their particular religious affiliation, with health insurance coverage for abortion, is morally unacceptable as a matter of religious teaching and moral conviction. To provide such insurance coverage to the employees of church organizations and agencies would provide the occasion for “grave sin,” which the Roman Catholic Church and other religions cannot religiously or morally accept or sanction. The NYSDFS Abortion Mandates constitute a direct and an unreasonable interference with the exercise of religion by plaintiffs, who therefore warrant a complete exemption from same.

50. The Model Language and Undisclosed Abortion Mandates were issued with the explicit intention of exempting some employers, while, at the same time, excluding other employers from the exemption.

51. Plaintiffs, having no alternative, are enrolled in health care plans that cover direct abortion for all plan participants. As a result, plaintiffs have been coerced into paying premiums for such coverage. Plaintiffs, given their moral and religious objections to the practice of direct abortion, are being coerced to pay premiums to fund the direct abortion of the unborn children of plan participants. This situation is morally, ethically, and religiously unacceptable to plaintiffs as it substantially and unnecessarily burdens their religious and conscience rights.

52. Plaintiffs believe that health care is a right, not a privilege, of all persons. The delivery of such health care by plaintiffs must, however, comport with their church’s moral teachings especially on the right to life of all human beings which is itself the foundation for a right to health care. In this case, their own health care plans do not so comport and their inability to change this is a direct result defendants’ unlawful Model Language and Undisclosed Abortion

Mandates. These mandates have deprived them, along with millions of other New Yorkers who have moral conscience and/or religious objections to abortions, of the ability to purchase or provide health plan that does not violate their own sincerely held, fundamentally important moral, religious and conscience beliefs. Simply stated, the plaintiffs cannot, in conscience, fund, direct abortions through their own health plan's managed health care insurance premiums.

53. In approving and issuing the Model Language and Undisclosed Abortion Mandates NYSDFS denied the plaintiffs, along with millions of other New Yorkers who have moral, religious or conscience objections to abortion, their right as citizens to receive advance public notice of the NYSDFS's intent to issue Abortion Mandates; their right to comment publicly on the merits of the Abortion Mandates and thereby note the Abortion Mandates' lack of any exemption or accommodation for citizens who have deeply held moral or religious objections to paying for coverage of abortion; and their right to hear the NYSDFS's response to their public comments and those of others.

54. Plaintiffs' group health plans came up for renewal on December 31, 2015, and thereafter.

UNLAWFUL ABORTION MANDATES

55. The NYSDFS Model Language and Undisclosed Abortion Mandates violate the Hyde/Weldon Conscience Protection Amendment which protects physicians, nurses, hospitals, health insurance companies, health insurance plans or any other kind of health care facility, organization, or plan from being forced by state governments receiving federal health funds to perform, pay for, provide coverage of, or refer for abortions. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. H. tit. V, § 507(d) (Dec. 18, 2015).

56. The NYSDFS Model Language and Undisclosed Abortion Mandates violate the New York State Constitution and the State Administrative Procedure Act which require a state agency prior to the adoption of a rule to submit a notice of proposed rule making to the secretary of state for publication in the state register and thereby afford the public an opportunity to submit comments on the proposed rule. NY Const. art. IV, § 8; State Administrative Procedure Act § 202(1)(a). The NYSDFS failed to comply with the constitutional and statutory rulemaking process to impose its Abortion Mandates.

DECLARATORY AND INJUNCTIVE RELIEF

57. The Model Language and Undisclosed Abortion Mandates imposed on plaintiffs in their health plans are enforceable against defendant health insurance providers by the Defendant Maria T. Vullo, in her capacity of acting superintendent of the New York State Department of Financial Services.

58. If this Court were to enjoin the enforcement of coverage and funding the Model Language and Undisclosed Abortion Mandates or declare the Abortion Mandates, including their coverage and funding to be unconstitutional, defendant health insurers could provide plaintiffs with group health benefit plans that offer plaintiffs and their employees benefits consistent with the teachings of their church and in compliance with plaintiffs' moral, conscience and religious convictions.

59. Defendants have no compelling interest in unilaterally mandating abortion insurance coverage and funding for the employees of religious employers, religiously-affiliated employers, and other employers that outweigh plaintiffs' constitutional and conscience rights.

60. Because the NYSDFS deemed it necessary to include an optional limited exemption for large group employers only from the Model Language Abortion Mandate,

NYSDFS already has determined that the interests advanced by the Abortion Mandate are not so compelling or of such a high order that they cannot yield to accommodate conflicting interests or rights. Moreover, it is beyond question that an accommodation is possible and readily accomplished, i.e. others are being accommodated by the laws and regulations.

61. The Model Language and Undisclosed Abortion Mandates are not narrowly tailored to advance any compelling governmental interest insofar as they were drafted to intentionally coerce certain religious organizations and employers, including, specifically, religious organizations with health care and human service agencies to fund and provide coverage of abortion to their employees.

62. Plaintiffs have sustained and continue to sustain actual harm and injury by funding the NYSDFS Model Language and Undisclosed Abortion Mandates through premiums and co-pays. An actual, present controversy has arisen regarding whether the approval, enactment, implementation, enforcement and funding of the Model Language and Undisclosed Abortion Mandates violate plaintiffs' constitutional and statutory rights.

63. This actual and present controversy is properly the subject of declaratory relief insofar as plaintiffs seek a declaration of their rights regarding the constitutional and statutory invalidity of the NYSDFS's Model Language and Undisclosed Abortion Mandates and the coerced funding of same. If the NYSDFS's Model Language and Undisclosed Abortion Mandates are adjudged to violate the provisions of the New York Constitution, New York statutes or the United States Constitution, plaintiffs will be permitted to renew and continue their existing group health benefits plans in the present form which do not include abortion insurance coverage as such coverage is contrary to plaintiffs' sincerely-held religious beliefs and moral and conscience objections.

64. Plaintiffs seek entry of a judgment, pursuant to Civil Practice Law and Rule §3001, declaring that the NYSDFS Model Language, Section IX [M] Abortion Mandate and the Undisclosed Abortion Mandate covering and funding “therapeutic” and “non-therapeutic” abortions under the service category “medically necessary” surgery and the pertinent abortion coverage and funding provisions included in the health insurance contracts approved and issued by defendants dealing with coerced abortion coverage and funding violate the New York Constitution, New York statutes and the United States Constitution and are thus inoperative.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE NEW YORK STATE CONSTITUTION FREE EXERCISE, ENJOYMENT OF RELIGION & LIBERTY OF CONSCIENCE GUARANTEES (NEW YORK CONSTITUTION, ARTICLE 1, SECTION 3)

65. Plaintiffs repeat and reallege paragraphs “1” through “64” of the complaint and incorporate same herein as though more fully set forth.

66. The NYSDFS Abortion Mandates, Model Language, Sec. IX [M], those portions of health insurance contracts covering abortions under the service category of “medically necessary” surgery, and the Undisclosed Abortion Mandate, impose a severe, direct and substantial burden and have infringed upon plaintiffs’ guaranteed right to the free exercise and enjoyment of religion and liberty of conscience, under Article I, Section 3 of the New York Constitution.

67. Mandating that plaintiffs, and objecting employers provide their employees with funded abortion coverage is in violation of their sincerely-held religious, moral, and conscience

beliefs which are integral to the mission of their representative church organizations and therefore infringes upon their guaranteed right to the free exercise and enjoyment of religion and liberty of conscience under Article 1, Section 3 of the New York Constitution.

68. The NYSDFS Model Language and Undisclosed Abortion Mandates coerce plaintiffs into choosing between violating their sincerely-held religious beliefs regarding the moral impermissibility of abortion and violating their sincerely-held religious and conscience beliefs regarding the moral obligation of employers to provide a dignified livelihood, including fair, adequate and just employment benefits, to their employees. Neither choice is religiously or morally acceptable to plaintiffs, as either option coerces plaintiffs into violating their sincerely-held religious and conscience beliefs. Consequently, the NYSDFS Abortion Mandates, including those portions of policies requiring coverage of the Undisclosed Abortion Mandate under the service category of “medically necessary” surgery, have the coercive effect of operating against plaintiffs in the practice of their religion and, thus, violate their religious freedom, enjoyment of religion, and liberty of conscience guarantees under Article I, Section 3 of the New York Constitution.

SECOND CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE NEW YORK STATE CONSTITUTION ESTABLISHMENT CLAUSE (NEW YORK CONSTITUTION, ARTICLE 1, SECTION 3)

69. Plaintiffs repeat and reallege paragraphs “1” through “68” of the complaint and incorporate same herein as more fully set forth.

70. The NYSDFS Abortion Mandates, Model Language, Sec. IX [M], those portions of health insurance contracts requiring coverage of abortions under the service category of

“medically necessary” surgery, the Undisclosed Abortion Mandate violate the Establishment Clause of Article I, Section 3 of the New York Constitution.

71. In issuing the Abortion Mandates NYSDFS chose to selectively impose a substantial burden upon particular religious employers and religiously-affiliated organizations, while preferring other large group employers through the grant of an optional exemption from its Model Language.

72. NYSDFS understood that the Abortion Mandates would be imposed upon certain religiously-affiliated organizations despite their well-known religious objections to abortion, while exempting other large group organizations only from the Model Language Abortion Mandate.

73. Upon information and belief, NYSDFS undertook efforts to carve up religious employers and religiously-affiliated organizations into discrete segments which it regarded as “large group” or as “small group” employers. The distinctions drawn by the NYSDFS between small religious organizations engaging in “religious activities” as opposed to those engaged in “secular activities,” are wholly contrary to religious teachings which regard the latter activities of the plaintiffs as vital parts of their mission and ministries.

74. The principal effect of excluding some religious employers and religiously-affiliated organizations from the Abortion Mandate exemption is to selectively impose the Abortion Mandates on some religious organizations but not on others. The deliberate distinctions drawn by the optional exemption provision between religious organizations, and the resultant denominational preferences that flow therefrom, violate the Establishment Clause of Article I, Section 3 of the New York Constitution.

75. The NYSDFS Model Language, Sec. IX [M] and those portions of health policies requiring coverage of the Abortion Mandate under the service category of “medically necessary” surgery impose a severe and direct burden upon plaintiffs’ constitutionally guaranteed rights under the Establishment Clause of Article I, Section 3 of the New York Constitution.

THIRD CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE NEW YORK STATE CONSTITUTION PREFERENCE CLAUSE (NEW YORK CONSTITUTION, ARTICLE 1, SECTION 3)

76. Plaintiffs repeat and reallege paragraphs “1” through “75” of the complaint and incorporate same herein as though more fully set forth.

77. The NYSDFS Model Language, Sec. IX [M], and those portions of health insurance contracts requiring coverage of the Abortion Mandate under the service category of “medically necessary” surgery violate the Preference Clause of Article I, Section 3 of the New York Constitution.

78. The NYSDFS Abortion Mandates draw explicit and deliberate distinctions between different religiously-affiliated organizations for the purpose of exempting certain religious organizations, and excluding others from exemptions.

79. The benefit conferred by the optional exemption for certain employers constitutes an advantage while the burden of compliance with the Abortion Mandates for others is not *de minimis*.

80. Plaintiffs’ religious freedom and liberty of conscience have been threatened because NYSDFS has drawn a line and associated its power with certain religiously-affiliated organizations and religious traditions to the deliberate exclusion of other religiously-affiliated

organizations and religious traditions under the Model Language Abortion Mandates and the inclusion of all employers under the Undisclosed Abortion Mandate.

81. By exempting some religiously-affiliated organizations (large group employers) from the Model Language Abortion Mandate, while coercing other organizations to comply, the NYSDFS has bestowed a differential benefit on some organizations and employers. The NYSDFS has consequently granted the exempt large group employers a constitutionally forbidden “preference.”

82. The broad protections guaranteed by the Preference Clause of Article I, Section 3 of the New York Constitution prevent the NYSDFS and defendant insurers from discriminating between, or conferring any advantage upon, particular religiously-affiliated organizations and employers or a particular religious denomination. Consequently, the optional exemption to the prescription of the Abortion Mandate, set forth in NYSDFS Model Language Sec. IX [M], and those portions of health insurance contracts requiring coverage of the Abortion Mandate under the service category of “medically necessary” surgery, violate the Preference Clause of Article I, Section 3 of the New York Constitution.

FOURTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE NEW YORK STATE CONSTITUTION - FREE SPEECH (NEW YORK CONSTITUTION, ARTICLE 1, §8)

83. Plaintiffs repeat and reallege paragraphs “1” through “82” of the complaint and incorporate same herein as though more fully set forth.

84. The NYSDFS Abortion Mandates have infringed plaintiffs’ rights under the Free Speech provisions of Article 1, Section 8 of the New York Constitution.

85. Plaintiffs enjoy a guaranteed right under Article 1, Section 8 to promote their religion-based missional goals, purposes and conscience. Plaintiffs, through implementation of operational policies consistent with religious and moral teachings on the dignity of life and abortion, have made a powerful statement, both symbolically and literally, through publication of their employee policy and procedure manuals, governance and operations regarding the relevance and importance of their religious teachings and traditions in conducting their activities and in the daily lives of their employees. Plaintiffs' implementation of employee policies and procedures is based upon religious and moral teachings and traditions and constitute an important component of plaintiffs' efforts to actualize their religious beliefs and conscience principles by demonstrating a serious and earnest commitment to the values of the Gospel and religious teachings in the conduct of their missional affairs and activities.

86. Plaintiffs possess a concomitant right under Article 1, Section 8 of the New York Constitution to decline to foster concepts inimical to their beliefs and conscience. The Abortion Mandates imposed upon plaintiffs by NYSDFS compel plaintiffs and all other affected religious and religiously-affiliated employers, individuals and employers to foster concepts contrary to their profoundly important and sincerely-held religious beliefs and moral convictions.

87. By requiring those plaintiffs who support and provide maternity services, abortion counseling and adoption to include and fund abortion coverage and, consequently, provide information to employees regarding such insurance coverage, the Abortion Mandates coerce plaintiffs to, both symbolically and literally, make a public statement regarding abortion contrary to their sincerely-held religious beliefs and conscience rights and thus foster a concept wholly and profoundly inimical to such beliefs and rights.

88. Catholic Plaintiffs, whose religious beliefs teach that abortion is a “moral evil” and “gravely sinful” are forced by NYSDFS Abortion Mandates to offer and fund abortion coverage as a “benefit of employment.” Episcopal, Baptist, Lutheran, individual, and employer Plaintiffs, whose religious and moral beliefs hold that abortion is immoral, are forced to offer and fund same as a “benefit of employment.” By offering access to abortion as a “benefit” of employment, plaintiffs are compelled to choose between the moral requirement for providing fair and just employment benefits such as health care insurance and the moral impermissibility of facilitating access to abortion which plaintiffs’ religious and conscience beliefs consider immoral. The symbolic impact of a religious and religiously-affiliated employer offering and funding such abortion insurance coverage to its employees is considerable and deleterious to plaintiffs’ rights, under Article 1, Section 8 of the New York Constitution - rights to proclaim religious and moral teachings by way of example in the manner in which they conduct their own activities, and to serve as a witness to the life-affirming message of the Gospel of Jesus Christ and their religious traditions.

89. The NYSDFS Abortion Mandates force plaintiffs to become an instrument for fostering public adherence to a public policy promoting the practice of abortion, a principle which plaintiffs find morally and religiously profoundly unacceptable. In doing so, the NYSDFS has invaded the sphere of protection of the liberty of speech which is the purpose of Article 1, Section 8 to reserve from all official control.

90. The Abortion Mandates imposed and implemented by the NYSDFS and insurer defendants impose a direct and severe burden upon plaintiffs’ constitutionally guaranteed right to free speech pursuant to the Free Speech provisions of Article 1, Section 8 of the New York Constitution.

FIFTH CAUSE OF ACTION
DECLARATORY RELIEF
INVALIDITY OF NYSDFS ABORTION MANDATES
UNDER THE NEW YORK STATE CONSTITUTION
ASSOCIATIONAL LIBERTY
(NEW YORK CONSTITUTION, ARTICLE 1, § 9)

91. Plaintiffs repeat and reallege paragraphs “1” through “90” of the complaint and incorporate same herein as though more fully set forth.

92. The NYSDFS Abortion Mandates have infringed plaintiffs’ expressive association rights under Article 1, Section 9 of the New York Constitution.

93. By requiring plaintiffs to fund and cover abortion and consequently provide information to their employees regarding such insurance coverage, the Abortion Mandates coerce plaintiffs to, both symbolically and literally, make a public statement and engage in expressive conduct regarding abortion that is profoundly contrary to their sincerely-held religious, moral and conscience beliefs and, thus, foster a concept wholly inimical to such religious, moral and conscience beliefs.

94. Mandating such insurance coverage requires plaintiffs to speak, orally and in writing, regarding the availability of abortion, as a benefit of employment by plaintiffs.

95. The NYSDFS Abortion Mandates force plaintiffs, as part of their ordinary missional and employment activities, to become an instrument for fostering public adherence to a public policy promoting the practice of abortion, a principle which plaintiffs profoundly find morally and religiously impermissible. The Abortion Mandates violate plaintiffs’ rights of expressive association.

SIXTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE NEW YORK STATE CONSTITUTION RULE MAKING (NEW YORK CONSTITUTION, ARTICLE IV, § 8)

96. Plaintiffs repeat and realleges paragraphs “1” through “95” of the complaint and incorporate same herein as though more fully set forth.

97. The NYSDFS Abortion Mandates violate the rule making provisions of Article IV, § 8 of the New York State Constitution and § 202(1)(a) of the State Administrative Procedure Act.

98. The NYSDFS by issuing and implementing the Abortion Mandates unlawfully circumvented constitutional and statutory rule and regulation requirements thereby depriving the public and plaintiffs the opportunity and right to be heard.

SEVENTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE NEW YORK HUMAN RIGHTS LAW (HUMAN RIGHTS LAW, EXECUTIVE LAW §296(11))

99. Plaintiffs repeat and reallege paragraphs “1” through “98” of the complaint and incorporate same herein as though more fully set forth.

100. The provision by a New York employer of a group or blanket health policy providing hospital, surgical or medical coverage to employees constitutes a benefit which affects the terms, conditions or privileges of employment.

101. The Legislature by enacting the Human Rights Law has pre-empted the area of the employer-employee relationship by previously exempting religious employers from taking any

action which would violate their sincerely-held religious beliefs within the employer-employee relationship dealing with the terms, conditions and privileges thereof:

Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination *or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained* (N.Y. Exec. Law §296(11). (Emphasis supplied).

102. Plaintiffs are operated, supervised or controlled by or in connection with a religious organization and accordingly are qualified religious employers.

103. The Abortion Mandates imposed by NYSDFS violate plaintiffs' sincerely-held religious beliefs, their right to religious freedom and liberty of conscience, and the Human Rights Law.

104. Plaintiffs as religious employers enjoy a statutory conscience right which protects them from being coerced into providing employment benefits consisting of abortion coverage, contrary to their sincerely-held religious and moral beliefs.

EIGHTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE RELIGIOUS CORPORATIONS LAW (RELIGIOUS CORPORATIONS LAW §§26, 5)

105. Plaintiffs repeat and reallege paragraphs "1" through "104" of the complaint and incorporate same herein as though more fully set forth.

106. The Legislature by enacting the Religious Corporations Law addressed the relationship between law and religion by codifying an allowance of the greatest and freest scope to the activities and practices of religious organizations.

107. The Legislature by enacting the Religious Corporations Law did not define religion, rather it explicitly subordinated the statute to the “laws, regulations, practices, disciplines, rules and usages” of religious denominations and ecclesiastical governing bodies.

108. The Abortion Mandates imposed by NYSDFS impermissibly define religion and contravene the sphere of legal regulation of religious organizations.

109. The NYSDFS Abortion Mandates abrogate the statutory protections safeguarded to religious organizations under law in New York and violate plaintiffs’ sincerely-held religious beliefs and their rights to religious freedom and liberty of conscience.

NINTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION - ESTABLISHMENT CLAUSE (U.S. CONSTITUTION, AMENDMENT 1)

110. Plaintiffs repeat and reallege paragraphs “1” through “109” of the complaint and incorporate same herein as though more fully set forth.

111. The NYSDFS Abortion Mandates violate the Establishment Clause of the First Amendment to the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

112. Upon information and belief, the NYSDFS Abortion Mandates were issued with the express intention of including some religious organizations (small group employers) while, at

the same time, optionally excluding other religious organizations, specifically health care organizations, human service agencies, schools and universities (large group employers).

113. The NYSDFS has engaged in constitutionally impermissible “religious gerrymandering,” in violation of the First Amendment to the Constitution of the United States, granting an exemption for some religious organizations and denying the exemption for others.

114. The NYSDFS intended to impose the abortion insurance coverage Abortion Mandates upon certain religious organizations, despite their well-known religious objection to abortion, while exempting other religious organizations from the Abortion Mandates.

115. The NYSDFS undertook efforts to carve up religious and religiously-affiliated organizations into discrete segments, some of which the NYSDFS treated as “small group” and some as “large group.” The distinctions drawn by the NYSDFS between religious organizations engaging in purportedly “religious activities,” based on their size are wholly contrary to religious teaching, which regards the activities of religious organizations, such as the plaintiffs, as vital and integral ministries irrespective of the size of their employee payroll.

116. The issue as to whether the Abortion Mandate exemption should be optionally extended to include specific religious organizations led the NYSDFS to discuss the characteristics of a particular denomination and its constituent organizations, with a view towards “religious gerrymandering.”

117. The NYSDFS Abortion Mandates are not facially neutral statutory provisions which coincidentally have a “disparate impact” upon different religious organizations. Rather, the NYSDFS Abortion Mandates draw explicit and deliberate distinctions among religious organizations for the purpose of targeting certain religious organizations and excluding significant numbers of other organizations from the Abortion Mandate optional exemption.

118. The NYSDFS provides the exemption provision to distinguish between churches and religiously-affiliated employers for purposes of granting relief from the imposition of the Abortion Mandate. The principal effect of excluding some religious employers from the Abortion Mandate exemption is to selectively impose the Abortion Mandates on some religious organizations but not on others.

119. The benefit conferred by exemption included in the NYSDFS Abortion Mandate may constitute an advantage for those religious organizations exempt, while imposing a burden, which is not *de minimis*, on those religious organizations, including plaintiffs, which are not exempt.

TENTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION-FREE EXERCISE CLAUSE (U.S. CONSTITUTION, AMENDMENT 1)

120. Plaintiffs repeat and reallege paragraphs “1” through “119” of the complaint and incorporate same herein as though more fully set forth.

121. NYSDFS’s decision to exclude certain religious organizations but not others from the Abortion Mandates deliberately targets the religious beliefs of certain religiously-affiliated organizations regarding the religiously-based prohibition against abortion in violation of the Free Exercise Clause of the First Amendment to the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

122. The exclusion of certain religious organizations and employers was to infringe upon, and restrict the practice of, said organizations’ religious freedom and conscience rights pertaining to their offering insurance coverage to their employees consistent with their moral

beliefs. The NYSDFS Abortion Mandates are not neutral and are invalid under the Free Exercise Clause of the First Amendment to the Constitution of the United States.

123. The NYSDFS Abortion Mandates impose a direct, extraordinary and unreasonable burden on the religious freedom and conscience rights of the plaintiffs.

124. Upon information and belief, the NYSDFS's refusal to extend the exemption to all religious organizations as a whole is the product of discriminatory intent on the part of the NYSDFS against churches and their constituent religious organizations including but not limited to the plaintiffs.

125. By allowing an optional exemption for large group employers from the Model Language Abortion Mandate, NYSDFS acknowledged that the State's interest in enforcement was not paramount in order to advance the State's interest. Because it determined that the State's interests must yield to accommodate the religious beliefs of certain religious employers, NYSDFS was required to uniformly extend the exemption to relieve the extraordinary burden imposed upon all religious organizations.

126. The NYSDFS has engaged in constitutionally impermissible "religious gerrymandering" in violation of the First Amendment to the Constitution of the United States, granting selective exemption for some employers and denying the exemption for others.

127. The NYSDFS Abortion Mandates, which are not grounded in statute or regulation, are not "generally applicable" or "neutral," because through their design, interpretation and enforcement, they target the practices of certain religious employers for discriminatory treatment.

ELEVENTH CAUSE OF ACTION
DECLARATORY RELIEF
INVALIDITY OF NYSDFS ABORTION MANDATES
UNDER THE FIRST AMENDMENT TO THE
UNITED STATES CONSTITUTION-FREE SPEECH AND ASSOCIATION
(U.S. CONSTITUTION, AMENDMENT 1)

128. Plaintiffs repeat and reallege paragraphs “1” through “127” of the complaint and incorporate same herein as though more fully set forth.

129. The NYSDFS Abortion Mandates infringe plaintiffs’ rights under the Free Speech and Expressive Association guarantees of the First Amendment to the Constitution of the United States, as applied to the states by the Fourteenth Amendment.

130. Plaintiffs as church institutions, employers and individuals enjoy a First Amendment right to evangelize and to promote their mission. Plaintiffs’ implementation of employee policies and procedures, which reflect and are based upon religious teachings, ethics and conscience, constitute a critical component of plaintiffs’ constitutionally protected right to promote their missions and operations by demonstrating their serious and earnest commitment to living the values of the Gospel and church teachings on morals and ethics in the conduct of plaintiffs’ missional and employment activities. Even if some of plaintiffs’ employees do not share the tenets of the organization, they have accepted its mission by continuing in its employ.

131. By implementing employee policies consistent with religious teachings such as the Ethical and Religious Directives for Catholic Health Care Services plaintiffs have made a powerful statement and implementation of expressive conduct, both symbolically and literally, through publication of their employee policy and procedure manual materials regarding the relevance and importance of religious teachings in conducting their business and in the daily lives of their employees.

132. Plaintiffs possess a concomitant right, under the First Amendment, to decline to foster concepts inimical to their beliefs. The Abortion Mandates imposed on plaintiffs compel plaintiffs, and all other affected religious organizations, employers and individuals to foster concepts wholly contrary to their profoundly important and sincerely-held religious and moral beliefs thus violating the constitutional guarantees of free speech and expressive association.

133. By requiring plaintiffs to provide and fund insurance coverage for abortion and provide information to their employees regarding such insurance coverage, the Abortion Mandates coerce plaintiffs to, both symbolically and literally, make a public statement and engage in expressive conduct regarding abortion contrary to their sincerely-held religious and moral beliefs and, thus, foster a concept wholly inimical to such beliefs.

134. Catholic Plaintiffs, whose religious beliefs teach that abortion is a “moral evil” and “gravely sinful,” are forced to offer and fund abortion coverage as a “benefit” of employment. Episcopal, Baptist and Lutheran Plaintiffs, whose religious beliefs hold that abortion is immoral, are forced to offer same as a “benefit of employment.” The symbolic value of a religious and religiously-affiliated employer offering such abortion insurance coverage to their employees is considerable and deleterious to plaintiffs’ right, under the First Amendment, to proclaim religious and moral teachings by way of expressive conduct including the way they actualize their own missional activities and thus serve as living witness to the life-affirming message of the Gospel of Jesus Christ. NYSDFS requires plaintiffs to foster concepts contradictory to their associational mission and message and totally inimical to their institutional religious and moral beliefs.

135. Mandating such insurance coverage also necessarily requires plaintiffs to speak, orally and in writing, regarding the availability of abortion as a benefit of employment provided

by plaintiffs. Plaintiffs must provide their employees with information regarding available insurance coverage and, thus, must necessarily inform those employees that they are entitled to receive insurance coverage for abortion as a benefit of being employed by plaintiffs.

136. The NYSDFS Abortion Mandates force plaintiffs, as part of their ordinary missional and employment activities, to become an instrument for fostering public adherence to a public policy promoting the practice of abortion, a principle which plaintiffs profoundly find morally and religiously impermissible. In doing so, the NYSDFS has invaded the sphere of protection of liberty of speech, which it is the purpose of the First Amendment to reserve from all official control.

137. The NYSDFS Abortion Mandates impose a direct and severe burden upon plaintiffs' constitutionally guaranteed right to free speech, expressive association, and associational liberty pursuant to the First Amendment to the Constitution of the United States.

TWELFTH CAUSE OF ACTION

DECLARATORY RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION-EQUAL PROTECTION (U.S. CONSTITUTION, AMENDMENT 14)

138. Plaintiffs repeat and reallege paragraphs "1" through "137" of the complaint and incorporate same herein as though more fully set forth.

139. Because the NYSDFS Abortion Mandates make an impermissible classification among employers based upon the exercise of fundamental religious rights, specifically the constitutionally protected right to free exercise of religion and to be free of denominational preferences, they violate the Equal Protection Clause contained in the Fourteenth Amendment to the United States Constitution.

140. Upon information and belief, the classifications imposed by the Model Language Abortion Mandate exemption provision was motivated by discrimination against certain religiously-affiliated organizations and their views on the religious and moral impermissibility of abortion. The basis for the distinctions drawn by the NYSDFS Abortion Mandates is religious not secular.

141. The classification drawn by the NYSDFS Abortion Mandates substantially burden plaintiffs' fundamental religious freedom and conscience rights.

142. The Abortion Mandate optional exemption provision impermissibly draws classifications among religious employers. The suspect classification is based upon specified criteria intentionally tailored to target distinct institutions.

143. Upon information and belief, the classifications set forth in the NYSDFS Abortion Mandates are intentionally drawn to specifically burden religious employers insofar as their denominations are the only religious denomination that operate health care facilities, universities and human service agencies in New York on a statewide scale and have a religious proscription against the practice of abortion. Upon information and belief, because certain denominations hold strong religious views in reference to the prohibition against the use of abortion, their religious freedom rights are substantially burdened by the suspect classifications built into the Abortion Mandate directives.

144. The distinctions were drawn to impact specific denominations with strong, well-publicized religious teachings against the use of abortion, *viz.*, the Roman Catholic Church, Episcopal Church, Baptist Church and Lutheran Church. NYSDFS "gerrymandered" certain denominations by separating them into distinct segments by way of classification and thereby imposing a severe burden upon plaintiffs' religious freedom rights.

THIRTEENTH CAUSE OF ACTION
DECLARATORY RELIEF
INVALIDITY OF NYSDFS ABORTION MANDATES
UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION-HYBRID RIGHTS
(U.S. CONSTITUTION, AMENDMENT 1)

145. Plaintiffs repeat and reallege paragraphs “1” through “144” of the complaint and incorporate same herein as though more fully set forth.

146. Plaintiffs hereby assert “hybrid rights” claims, with respect to the NYSDFS Abortion Mandates dealing with abortion, based upon the substantial infringement of plaintiffs’ rights under the Free Exercise Clause of the First Amendment in conjunction with other constitutional protections, plaintiffs’ rights under the provisions of the First Amendment: (1) Free Speech; (2) Expressive Association and Associational Rights; (3) Equal Protection Clause; (4) Establishment Clause; plaintiffs’ rights under the Free Speech provisions of the First Amendment in conjunction with: (5) Expressive Association and Associational Rights; (6) Equal Protection Clause; (7) Establishment Clause; plaintiffs’ rights under the Expressive Association and Associational Rights provisions of the First Amendment in conjunction with: (8) Equal Protection Clause; (9) Establishment Clause; and plaintiffs’ rights under the Equal Protection Clause in conjunction with: (10) Establishment Clause.

147. For the reasons set forth above at paragraphs “1” through “144” herein, the NYSDFS Abortion Mandates substantially burden plaintiffs’ hybrid rights claims under: the Constitution of the United States in the following combinations: (1) Free Exercise Clause with Free Speech; (2) Free Exercise Clause with Expressive Association and Associational Rights; (3) Free Exercise Clause with Equal Protection Clause; (4) Free Exercise Clause with Establishment Clause; (5) Free Speech with Expressive Association and Associational Rights;

(6) Free Speech with Equal Protection Clause; (7) Free Speech with Establishment Clause; (8) Expressive Association and Associational Rights with Equal Protection Clause; (9) Expressive Association and Associational Rights with Establishment Clause; and (10) Equal Protection Clause with Establishment Clause.

FOURTEENTH CAUSE OF ACTION

INJUNCTIVE RELIEF INVALIDITY OF NYSDFS ABORTION MANDATES (CPLR §§6301 AND 6311)

148. Plaintiffs repeat and reallege paragraphs “1” through “147” of the complaint and incorporate same herein as more fully set forth.

149. Because of the NYSDFS Abortion Mandates have infringed upon plaintiffs’ rights arising under the New York State Constitution, New York Human Rights Law, Religious Corporations Law, and State Administrative Procedures Act as enumerated herein, plaintiffs have been greatly and irrevocably injured.

150. Because the issuance of NYSDFS Abortion Mandates have infringed upon plaintiffs’ rights under the United States Constitution, as enumerated herein, plaintiffs have been greatly and irrevocably injured.

151. Unless the defendants are enjoined by this Court from enforcing the Abortion Mandates imposed by NYSDFS, plaintiffs will be required to subscribe to and fund group health benefit plans that will, as a result of said Abortion Mandates, include abortion coverage.

152. Unless defendants are enjoined by this Court from enforcing the Abortion Mandates imposed by the NYSDFS, plaintiffs’ group benefit plan providers, i.e., defendant insurers, have non-discretionary, regulatory duties to include abortion insurance in plaintiffs’ group benefit plans as renewed in 2016.

153. Unless defendants are preliminarily and permanently enjoined from enforcing the Abortion Mandates imposed by the NYSDFS, plaintiffs will be forced to choose between violating their sincerely-held religious beliefs and conscience beliefs regarding the moral impermissibility of abortion and violating their sincerely-held religious beliefs regarding the moral obligation of employers to provide a dignified livelihood, including fair, adequate and just employment benefits to their employees.

154. The injury to plaintiffs, attributable to being coerced, is that plaintiffs must choose between violating their sincerely-held religious and conscience beliefs regarding the moral impermissibility of abortion and violating their sincerely-held religious beliefs regarding the moral obligations of employers to provide a dignified livelihood, including fair, adequate and just employment benefits, to their employees, is serious and irrevocable.

155. Unless defendants are preliminary and permanently enjoined plaintiffs' ability to live and engage in missional practices in accordance with their sincerely-held religious and conscience beliefs will continue to be abridged. The injury to plaintiffs, attributable to being coerced into engaging in practices violative of plaintiffs' sincerely-held religious beliefs, is serious and irrevocable.

156. If defendants are enjoined by this Court from enforcing the Abortion Mandates imposed by NYSDFS, the defendant providers will then furnish plaintiffs with group benefit health plans that comply with their religious teaching and conscience rights and will not include insurance coverage covering abortion.

157. Plaintiffs have no cognizable, adequate or speedy remedy at law available to them.

WHEREFORE, plaintiffs respectfully request judgment declaring the rights and other legal relations of the parties as follows:

1. That a judgment of this Court be entered, pursuant to Civil Practice Law and Rules §3001, in favor of plaintiffs declaring that:
 - a. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the guarantee of the right to freely exercise and enjoy religion and the liberty of conscience right contained in Article 1, Section 3 of the New York Constitution and are, accordingly, inoperative and unenforceable as a matter of law;
 - b. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Establishment Clause contained in Article 1, Section 3 of the New York Constitution and are, accordingly, inoperative and unenforceable as a matter of law;
 - c. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Preference Clause guarantee contained in Article 1, Section 3 of the New York Constitution and are, accordingly, inoperative and unenforceable as a matter of law;
 - d. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Free Speech provisions contained in Article 1, Section 8 of the New York Constitution and are, accordingly, inoperative and unenforceable as a matter of law;
 - e. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Expressive Association and

Associational provisions contained in Article 1, Section 9 of the New York Constitution and are, accordingly, inoperative and unenforceable as a matter of law;

- f. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the protection contained in the Human Rights Law (Executive Law, Section 296(11)) and are, accordingly, inoperative and unenforceable as a matter of law.
- g. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the safeguards contained in the Religious Corporations Law (N.Y. Relig. Corp. Law §§26,5 (McKinney 1990)) and are, accordingly, inoperative and unenforceable as a matter of law.
- h. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Establishment Clause of the First Amendment to the Constitution of the United States, and are, accordingly inoperative and unenforceable as a matter of law.
- i. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Free Exercise Clause of the First Amendment to the Constitution of the United States and are, accordingly, inoperative and unenforceable as a matter of law;
- j. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Free Speech and Association Liberty provisions of the First Amendment to the Constitution of the United States and are, accordingly, inoperative and unenforceable as a matter of law;

- k. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and are, accordingly, inoperative and unenforceable as a matter of law;
- l. NYSDFS Model Language, Section IX [M] and the Undisclosed Abortion Mandate requiring abortion coverage violate plaintiffs' "hybrid rights" claims: arising from (1) Free Exercise Clause with Free Speech; (2) Free Exercise Clause with Expressive Association and Associational Rights; (3) Free Exercise Clause with Equal Protection Clause; (4) Free Exercise Clause with Establishment Clause; (5) Free Speech with Expressive Association and Associational Rights; (6) Free Speech with Equal Protection Clause; (7) Free Speech with Establishment Clause; (8) Expressive Association and Associational Rights with Equal Protection Clause; (9) Expressive Association and Associational Rights with Establishment Clause and (10) Equal Protection Clause with Establishment Clause and are, accordingly, inoperative and unenforceable as a matter of law.

2. That Defendant Maria T. Vullo, Acting Superintendent, New York State Department of Financial Services and defendant insurers be preliminarily and permanently enjoined as follows:

That neither Defendant Maria T. Vullo, Acting Superintendent, New York State Department of Financial Services, nor any other agency of the State of New York issue any "directives" to plaintiffs or others similarly situated, or institute any administrative or judicial actions seeking enforcement of the subject NYSDFS Abortion Mandates and that defendant insurers

be directed to provide plaintiffs with exemptions from funding and providing abortion coverage in plaintiffs' health insurance benefits plans and contracts.

3. That this Court grant plaintiffs such other and further relief as to this Court may be deemed just, proper and equitable.

DATED: April 29, 2016

Respectfully submitted,

TOBIN AND DEMPFF, LLP

/s/ Michael L. Costello
Michael L. Costello
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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

Edward B. Scharfenberger, being duly sworn, deposes and says: that he is the Bishop of The Roman Catholic Diocese of Albany, New York a plaintiff in the above-captioned complaint. I have read the foregoing Complaint for Declaratory and Injunctive Relief and know its contents. The Complaint is true to the best of my knowledge, except as to any matters alleged on information and belief, and as to those matters, I believe them to be true.

/s/ Edward B. Scharfenberger
Edward B. Scharfenberger

Sworn to before me this
29th day of April, 2016

/s/ Michael L. Costello
Notary Public

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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

William H. Love, being duly sworn, deposes and says: that he is the Bishop of the Episcopal Diocese of Albany, Trustee of the Diocese of Albany, a plaintiff in the above-captioned complaint. I have read the foregoing Complaint for Declaratory and Injunctive Relief and know its contents. The Complaint is true to the best of my knowledge, except as to any matters alleged on information and belief, and as to those matters, I believe them to be true.

/s/ William H. Love
William H. Love

Sworn to before me this
29th day of April, 2016

/s/ Michael L. Costello
Notary Public

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