The so-called accommodation fails to offer adequate religious liberty protection for non-profit religious organizations. Instead, the so-called accommodation coerces religious organizations to facilitate access to drugs to which they have religious objections.

Despite widespread protest from the religious community, the government codified the so-called accommodation for non-exempted, non-profit religious organizations. 78 Fed. Reg. 39870, 39874, 39877-78 (published July 2, 2013). A non-profit organization that holds itself out as a religious organization is eligible for the accommodation if it "[o]pposes providing coverage for some or all of the contraceptive services required." *Id*. at 39874. But by delivering its self-certification that it is eligible for the accommodation to its insurer or a third party administrator, the religious organization itself triggers the provision of abortion-inducing drugs to its employees and their beneficiaries. *Id.* at 39892-93.

Essentially, the so-called accommodation requires a religious organization with religious objections to covering drugs that violate its sincerely held religious convictions to identify an insurer, or a third-party administrator, which the government then requires to pay the costs of contraceptive coverage without any cost-sharing by the employees and (supposedly) without higher premiums charged to the religious organizations. *Id.*

The so-called accommodation fails on multiple levels. First, the religious organization's insurance plan remains the conduit for delivering drugs that violate the organization's religious beliefs. No employee or beneficiary receives the objectionable drugs unless they are enrolled in the religious organization's health insurance plan. When an employee leaves the plan, access to the objectionable drugs ceases.

Second, the "accommodation" certification form, EBSA Form 700, itself states that "[t]his certification is an instrument under which the plan is operated." *See* App. Br. Addendum. The Mandate effectively embeds contraceptive coverage in the health plan of every religious organization that does not qualify for the "religious exemption," *i.e.*, every religious organization that is not a church. The self-certification form formally makes that coverage part of the plan.

Third, a religious objection to taking human life is not satisfied by hiring a third-party who is willing to do the job. At bottom, that is the essence of the so-called accommodation. Because, and only because, the religious organization provides insurance are the objectionable drugs made available to the organization's employees.

Fourth, the government's assurances – that the so-called accommodation places real distance between religious organizations and access to the objectionable drugs – are hollow. Such assurances rest on the unconstitutional premise that the

government, rather than the religious organizations, determines when the distance is adequate to satisfy the organizations' religious consciences. But the government has it backwards: the religious organizations, not the government, determine the distance necessary. *See Thomas v. Review Bd*., 450 U.S. 707, 715 (1981) ("Thomas drew a line and it is not for us to say that the line he drew was an unreasonable one.").

Fifth, the so-called accommodation provides no credible means for covering the cost of the objectionable drugs absent the employers' premiums. Even were the coverage "cost-neutral" over a span of years, as the government claims, the upfront costs would be significant and would need to be paid now. 78 Fed. Reg. at 39877-78. The government offers insurers two modest proposals: 1) "set the premium . . . as if no payments for contraceptive services had been provided to plan participants," or 2) "treat the cost of payments for contraceptive services . . . as an administrative cost that is spread across the issuer's entire risk pool, excluding plans established or maintained by eligible organizations." *Id.* Both proposals lack credibility.

Sixth, the so-called accommodation requires a self-insured religious employer to find a third party administrator to provide the drugs, without cost sharing, to its employees and their beneficiaries, even though the religious employer believes it is wrong to facilitate access to those drugs. *Id.* at 39880. A self- insured religious

organization must provide the names of its employees to a third party administrator. The religious organization must constantly coordinate with the third party administrator to update the list of plan participants when employees leave the organization or new employees are hired. *Id*. at 39876. The religious organization must coordinate with the third-party administrator when notices are sent. *Id.*

At bottom, the government's insistence that religious organizations are not buying objectionable insurance because the government deems contraceptive coverage to be cost-neutral does not deal with economic, legal, or moral reality. Religious organizations that offer health insurance do not pay for individual benefits and products at the time they are dispensed. Instead, the religious organizations pay a premium for a policy that provides access to covered drugs, and that access includes access to the objectionable drugs. Religious organizations are thereby paying an insurer to provide employees with access to the objectionable drugs contrary to their sincerely held religious beliefs. That is the reality.

In light of the bureaucratic expense and waste that implementation of the so-called accommodation will necessarily create for the government and religious organizations, as well as insurers and third party administrators, it clearly would be more economical and efficient for the government itself to provide contraceptives through direct distribution, tax credits, or other government means.