

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MOST REVEREND LAWRENCE T.)	
PERSICO, BISHOP OF THE ROMAN)	CIVIL ACTION NO. 1:13-00303
CATHOLIC DIOCESE OF ERIE, et al.,)	
)	
PLAINTIFFS)	JUDGE ARTHUR J. SCHWAB
)	
v.)	
)	
KATHLEEN SEBELIUS, et al.,)	
)	
DEFENDANTS.)	
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MOST REVEREND DAVID A. ZUBIK,)	
BISHOP OF THE ROMAN CATHOLIC)	
DIOCESE OF PITTSBURGH, et al.,)	CIVIL ACTION NO. 2:13-cv-01459
)	
PLAINTIFFS,)	JUDGE ARTHUR J. SCHWAB
)	
v.)	
)	
KATHLEEN SEBELIUS, et al.,)	
)	
DEFENDANTS.)	
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**PLAINTIFFS’ UNOPPOSED MOTION TO CONVERT
PRELIMINARY INJUNCTION INTO PERMANENT INJUNCTION**

Plaintiffs, by and through their counsel, hereby jointly move to convert the preliminary injunction entered November 21, 2013 (*Zubik*, Doc. No. 76; *Persico*, Doc. No. 76) into a permanent injunction. The parties have met and conferred regarding this motion and the Government does not oppose it.

1. On October 8, 2013, Plaintiffs filed Complaints on the Erie and Pittsburgh dockets alleging the Mandate (the requirements imposed in 42 U.S.C. § 300gg-

13(a)(4) and as further regulated by 45 C.F.R. § 147.130(a)(1)(iv)) violates the Religious Freedom Restoration Act (“RFRA”), First Amendment, and Administrative Procedure Act. Doc. No. 1. Plaintiffs simultaneously filed motions for expedited preliminary injunctions, supported by declarations, arguing they were likely to succeed on their RFRA and First Amendment claims. *Zubik*, Doc. No. 4; *Persico*, Doc. No. 6.

2. On November 7, 2013, the parties filed joint stipulations on several factual topics. *Zubik*, Doc. No. 43; *Persico*, Doc. No. 39. But, they could not agree to stipulations regarding: (1) “the burdens imposed on Plaintiffs by the Mandate,” (2) “the Government’s stated compelling interest,” and (3) “potential alternatives to the Mandate.” *See, e.g., Zubik*, Doc. No. 25 at II.2.b.
3. On November 12, 2013, the Court held a joint evidentiary hearing on Plaintiffs’ motions for preliminary injunctions to complete the record on the three disputed factual topics. Plaintiffs presented the videotaped deposition of Cardinal Timothy Dolan and the live testimony of Bishop Zubik, Susan Rauscher, Bishop Persico, Father Scott Jabo, and Mary Maxwell. Plaintiffs also entered 48 documents into evidence. *Zubik*, Doc. Nos. 55, 60; *see also* Text Order entered Nov. 14, 2013, 8:23 am. Defendants did not present any witness testimony and entered 16 exhibits into evidence, 8 of which were duplicative of exhibits entered by Plaintiffs. *Zubik*, Doc. No. 60.
4. On November 13, 2013, the Court held joint argument on Plaintiffs’ motions for preliminary injunctions. The arguments focused on all four preliminary

injunction factors. Argument on likelihood of success on the merits focused only on Plaintiffs' RFRA claims.

5. That day, the parties also filed Additional Stipulated Facts. *Zubik*, Doc. No. 59.
6. On November 21, 2013, the Court issued an Order and Memorandum Opinion granting Plaintiffs' motions for preliminary injunctions, including holding "Plaintiffs are likely to succeed on the merits" of their RFRA claims. Doc. No. 75 at 61-65. The Court held that Plaintiffs met their burden of proving that the Mandate imposed a substantial burden on their religious practice and the Government did not meet its burden of proving that the Mandate was the least restrictive means of achieving any compelling governmental interest. *Id.*
7. The parties have met and conferred about how to proceed with this case in light of the Court's November 21, 2013 Order and Opinion. The Government indicated again that it will not challenge the articulation or sincerity of Plaintiffs' religious beliefs and does not have any additional evidence to present. As a result, no additional evidence or arguments would be presented by the Government at a permanent injunction hearing.
8. The Government does not oppose converting the preliminary injunctions into permanent injunctions.
9. For the reasons set forth in this Court's November 21, 2013 Order and Memorandum Opinion and in the Memorandum accompanying this unopposed joint motion, Plaintiffs respectfully request the Court convert the preliminary injunctions into permanent injunctions, consistent with the attached Proposed

Final Judgment and Order. Plaintiffs also respectfully ask the Court to enter final judgment in their favor.

Dated: December 20, 2013

Respectfully submitted,

/s/ Paul M. Pohl

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