IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AVE MARIA SCHOOL OF LAW,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACOB LEW, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

Case No. _____

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DEMAND FOR JURY TRIAL

Plaintiff Ave Maria School of Law, by its attorneys, states as follows:

NATURE OF THE CASE

1. In this action, Plaintiff seeks judicial review of Defendants' violations of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*. (RFRA), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq*. (APA), by their actions implementing the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148 (March 23, 2010), and Pub. L. No. 111-

152 (March 30, 2010); hereinafter "the ACA"), in a manner that forces employers (except the thousands that are exempt) to provide free coverage in their employee insurance plans for abortifacient drugs, contraception, and sterilization.

2. Defendants' regulations challenged herein—collectively referred to as the HHS Preventive Services Mandate[1] (hereinafter "the Mandate")—illegally and unconstitutionally coerce Ave Maria School of Law, and thousands of other non-exempt religious organizations, to violate their sincere religious convictions under threat of heavy fines and penalties.

3. Plaintiff Ave Maria School of Law (hereinafter "Ave Maria") was founded in 1999 as a Catholic law school. Its purpose is to provide a legal education that is publicly faithful to the authoritative teachings of the Catholic Church, and to produce leaders in the legal profession who apply the Catholic faith and Catholic moral teachings to the social, cultural, economic, and political issues in society.

[1] The Mandate consists of a conglomerate of authorities, including: "Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act," 77 Fed. Reg. 8725–30 (Feb. 15, 2012); the prior interim final rule found at 76 Fed. Reg. 46621–26 (Aug. 3, 2011), which the Feb. 15 rule adopted "without change"; the most recent final rule on this subject *** (June 2013); the guidelines by Defendant HHS's Health Resources and Services Administration (HRSA), http://www.hrsa.gov/womensguidelines/, mandating that health plans include no-cost-sharing coverage of "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" as part of required women's "preventive care"; regulations issued by Defendants in 2010 directing HRSA to develop those guidelines, 75 Fed. Reg. 41726 (July 19, 2010); the statutory authority found in 42 U.S.C. § 300gg-13(a)(4), requiring unspecified preventive health services generally, to the extent Defendants have used it to mandate coverage to which Plaintiffs and other employers have religious objections; penalties existing throughout the United States Code for noncompliance with these requirements; and other provisions of ACA or its implementing regulations that affect exemptions or other aspects of the Mandate.

4. Ave Maria's sincere religious beliefs forbid it from participating in, paying for, training others to engage in, facilitating access to, or otherwise supporting abortifacient drugs, contraception, or sterilization, including through health insurance coverage it offers to its employees. Based on teachings of the Catholic Church and its own sincerely held religious beliefs, Ave Maria believes that abortifacient drugs, contraception, and sterilization do not constitute medicine, health care, or a means of providing for the well being of persons. It further believes that these procedures involve gravely immoral practices, including the willful destruction of innocent human life. As a consequence, Ave Maria has always provided health insurance benefits to its employees that omit coverage of abortifacient drugs, contraception, and sterilization.

5. Ave Maria publicly speaks out against the moral evils of contraception, sterilization, and abortion, including abortion caused by emergency contraception.

6. Ave Maria would be acting contrary to its religious mission of training legal professionals to apply the Catholic faith and Catholic moral teachings to societal issues if it violates its own religious convictions by complying with the Mandate and facilitating access to abortifacient drugs, contraception, and sterilization, and related counseling and services.

7. Ave Maria does not qualify for any exemption from the Mandate.

8. Defendants have exempted "religious employers" from the Mandate, but that exemption is limited to "churches, their integrated auxiliaries, and conventions or associations of churches" and "the exclusively religious activities of any religious order." Ave Maria does not qualify for the religious employer exemption.

9. For purely secular reasons, Defendants have elected not to impose the Mandate upon thousands of other organizations. Employers with "grandfathered" plans are exempt from the Mandate, and others receive favorable relief from it.

10. Defendants have offered Ave Maria and other non-exempt religious organizations a so-called "accommodation" of their religious beliefs and practices. But the alleged "accommodation" fails. It still conscripts Ave Maria into the government's scheme, forcing it to obtain an insurer or third-party claims administrator and submit a form that specifically causes that insurer or third-party administrator to arrange payment for abortifacient drugs, contraception, and sterilization, so that such coverage will apply to Ave Maria's own employees as a direct consequence of their employment with Ave Maria and of their participation in the health insurance benefits Ave Maria provides them.

11. Under the supposed "accommodation," Defendants continue to treat entities like Ave Maria as second-class religious organizations, not entitled to the same religious freedom rights as substantially similar entities that qualify for the exemption. Defendants' rationale for entirely exempting churches and integrated auxiliaries from the regulations – their employees are likely to share their religious convictions – applies equally to Ave Maria. Yet, Defendants refuse to exempt Ave Maria, offering only a flimsy, superficial, and utterly semantic "accommodation" that falls woefully short of addressing and resolving the substance of its concerns.

12. If Ave Maria follows its religious convictions and declines to participate in the government's scheme, it will face, among other injuries, enormous fines that will cripple its operations.

13. By unconscionably placing Ave Maria in this untenable position, Defendants have violated the Religious Freedom Restoration Act; the Free Exercise, Establishment and Free Speech Clauses of the First Amendment to the United States Constitution; the Due Process Clause of the Fifth Amendment; and the Administrative Procedure Act.

14. Plaintiff therefore respectfully requests that this Court vindicate its rights through declaratory and permanent injunction relief, among other remedies.

JURISDICTION AND VENUE

15. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P. 65, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

16. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to the claim occurred in this district, and Plaintiff Ave Maria is located in this district.

IDENTIFICATION OF PARTIES AND JURISDICTION

17. Plaintiff Ave Maria School of Law is a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code and is principally located in Collier County, Florida.

18. Defendants are appointed officials of the United States government and United States Executive Branch agencies responsible for issuing and enforcing the Mandate.

19. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (HHS). In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only.

20. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration and enforcement of the Mandate.

21. Defendant Thomas E. Perez is the Secretary of the United States Department of Labor. In this capacity, he has responsibility for the operation and management of the Department of Labor. Perez is sued in his official capacity only.

22. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

23. Defendant Jacob Lew is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Lew is sued in his official capacity only.

24. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

FACTUAL ALLEGATIONS

Ave Maria's Religious Beliefs and Practices Related to Abortifacient Drugs, Contraception, and Sterilization

25. Ave Maria School of Law was founded as an institution of Catholic higher education.

26. Ave Maria's mission is to "offer an outstanding legal education in fidelity to the Catholic Faith, as expressed through sacred tradition, sacred Scripture, and the teaching authority of the Church."

27. Ave Maria's purpose is to train and equip legal professionals to bring the truths of the Catholic faith and teaching into all areas of culture.

28. Ave Maria pursues its mission and purpose through adherence to the letter and spirit of the Apostolic Constitution *Ex Corde Ecclesiae* of Pope John Paul II, which is the relevant law of the Church for Catholic colleges and universities.

29. Ave Maria is governed by a Board of Governors.

30. Ave Maria's Articles of Incorporation and Bylaws state the following concerning the institution's Catholic identity and mission and the Governors' duty to maintain it: "The essential character of Ave Maria School of Law shall at all times be maintained as a Catholic institution of higher learning which operates consistently with *Ex Corde Ecclesiae*. It is the stated intention and desire of the Governors of the Ave Maria School of Law that the School of Law shall retain in perpetuity its identity as such an institution."

31. Members of the Board of Governors must be practicing Catholics.

32. The Board of Governors has numerous standing committees, including the Committee on Mission.

33. The purpose of the Committee on Mission is to "give consideration to matters of policy, priority, and programs that will be supportive of and enhance the Catholic character of the Ave Maria School of Law and its role in modern society consistent with the ecclesiastical directives of the Holy See."

34. The *Ex Corde Ecclesiae* states that "[e]very Catholic University . . . has a relationship to the Church that is essential to its institutional identity" and that "[o]ne consequence of its essential relationship to the Church is that the *institutional* fidelity of the University to the Christian message includes a recognition of and adherence to the teaching authority of the Church in matters of faith and morals."

35. Pursuant to the *Ex Corde Ecclesiae*, Ave Maria requires all faculty to "explore moral and ethical issues and to expose students to Catholic moral and social teachings where those teachings are relevant to the subject matter." In addition, "[i]n their performance of teaching, scholarship, and service functions, Catholic faculty are required to act in fidelity to Catholic doctrine and morals; non-Catholic faculty are expected to respect Catholic doctrine and morals in their discharge of these functions."

36. Faculty members can be terminated if, *inter alia*, they exhibit "[c]ontinual or serious disrespect or disregard for the Catholic character of the Law School."

37. Approximately 90% of Ave Maria's tenured or tenure-track faculty are practicing Catholics.

38. A large majority of Ave Maria's full-time employees are practicing Catholics. Moreover, whether Catholic or not, all employees are committed to its Catholic mission.

39. A deep commitment to the Catholic faith is thus central to Ave Maria's mission and purpose. Accordingly, it holds and actively professes religious beliefs that include traditional Christian teachings on the sanctity of life.

40. Ave Maria believes in and teaches the inherent dignity of every human based on their creation in the image and likeness of God. Based on this religious conviction, Ave

Maria believes and teaches that all human life is sacred from the moment of conception and that abortion is a grave sin that ends a human life.

41. Ave Maria's religious beliefs also include, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, that human sexuality has two primary purposes: "to most closely unit[e] husband and wife" and "for the generation of new lives." It also believes and teaches, consistent with Catholic teaching, that "[t]o use this divine gift destroying, even if only partially, its meaning and its purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore is to contradict also the plan of God and His Will." Ave Maria thus believes and teaches that "any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or a means," including sterilization or contraception, is a grave sin.

42. Ave Maria adheres to Catholic teaching concerning the proper nature and aims of health care and medical treatment. Among other things, Ave Maria subscribes to Pope John II's 1995 encyclical *Evangelium Vitae*, which teaches that "'[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely contrary to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

43. Ave Maria believes that it has a moral obligation to compensate its employees in accordance with Catholic teaching, which emphasizes the dignity of the worker and the requirement of just compensation. Accordingly, it provides generous health insurance for its employees.

44. Based on its sincere religious convictions, Ave Maria has consistently ensured that its health insurance plans do not cover abortifacient drugs, contraception, and sterilization.

45. Ave Maria would violate its deeply held religious beliefs, and contradict its religious commitment to publicly conveying and defending Catholic teaching as it relates to the sanctity and inherent dignity of all human life, if it provided health care insurance covering or causing guaranteed payments for abortifacient drugs, contraception, sterilization, and counseling and education for the same.

46. Ave Maria cannot participate in any scheme to facilitate access to abortifacient drugs, contraception, sterilization, and counseling and education related to the same—like providing or facilitating a health insurance plan that causes access to such drugs, devices, and services through an insurance company or any other third party—without violating its sincerely held religious convictions concerning the sanctity and inherent dignity of all human life.

47. All of Ave Maria's employees, whether Catholic or non-Catholic, choose to work at Ave Maria because they share its religious beliefs and wish to help Ave Maria further its religious mission. Many of Ave Maria's employees work at Ave Maria in part because they will be able to insure the health of their families and their daughters without them receiving or paying for a plan that offers coverage of abortifacients, contraception, and sterilization. Ave Maria would violate their trust in the organization and detrimentally alter its relationship with them if it were to violate its religious beliefs regarding abortifacient drugs, contraception, and sterilization.

48. Ave Maria's insurance plan year began on November 1, 2013.

49. Ave Maria has approximately 68 employees who have elected to be covered under its health insurance plan.

50. Ave Maria's employee health care plan does not qualify for grandfathered status under the Affordable Care Act because, *inter alia*, the facts described in the following eight paragraphs deprive the plan of such status according to the Defendants' regulations governing grandfathered status.

51. In 2011, Ave Maria increased the coinsurance percentage for Plan 1 from 100% to 80/20%.

52. In 2011, Ave Maria increased the Emergency Room copayment charges from $100 to $150 on all three plans it offers.

53. In 2011, Ave Maria increased the Non-Formulary Brand Drug copayment to $80 on all three plans it offers.

54. In 2011, Ave Maria increased the Deductible for families from $2,000 to $3,000 on its Core Plan.

55. In 2011, Ave Maria increased the Family Deductible from $1,000 to $2,000 on its Plan 2.

56. In 2013, Ave Maria increased the Specialist copayment from $30 to $45 on its Core Plan.

57. In 2013, Ave Maria increased the Specialist copayment from $30 to $40 on its Plan 2.

58. In 2013, Ave Maria reduced the amount it pays in premiums on behalf of employees enrolled in its Plan 1 by more than 5%.

59. Due to the changes stated above, all three of Ave Maria's offered health insurance plans (Plan 1, Plan 2, and Core Plan) lack grandfathered status, and in the latest plan year they have not notified plan participants that the plans possess grandfathered status.

The ACA and Defendants' Preventive Care Mandate

60. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Publ. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act" ("ACA").

61. The ACA regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

62. One ACA provision mandates that any "group health plan" (including employers offering the plan) or "health insurance issuer offering group or individual health insurance coverage" must provide coverage for certain preventive care services. 42 U.S.C. § 300gg-13(a).

63. These services include medications, screenings, and counseling given an "A" or "B" rating by the United States Preventive Services Task Force; immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and "preventive care and screenings" specific to infants, children, adolescents, and women, as to be "provided for in comprehensive guidelines supported by the Health Resources and Services Administration." 42 U.S.C. § 300gg-13(a)(1)-(4).

64. These services must be covered without "any cost sharing." 42 U.S.C. § 300gg-13(a).

The Interim Final Rule

65. On July 19, 2010, HHS published an interim final rule imposing regulations concerning the Affordable Care Act's requirement for coverage of preventive services without cost sharing. 75 Fed. Reg. 41726, 41728 (2010).

66. HHS issued the interim final rule without a prior notice of rulemaking or opportunity for public comment. Defendants determined for themselves that "it would be impracticable and contrary to the public interest to delay putting the provisions . . . in place until a full public notice and comment process was completed." 75 Fed. Reg. at 41730.

67. Although Defendants suggested in the Interim Final Rule that they would solicit public comments after implementation, they stressed that "provisions of the Affordable Care Act protect significant rights" and therefore it was expedient that "participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities." *Id*.

68. Defendants stated they would later "provide the public with an opportunity for comment, but without delaying the effective date of the regulations," demonstrating their intent to impose the regulations regardless of the legal flaws or general opposition that might be manifest in public comments. *Id.*

69. In addition to reiterating the ACA's preventive services coverage requirements, the Interim Final Rule provided further guidance concerning the Act's restriction on cost sharing.

70. The Interim Final Rule makes clear that "cost sharing" refers to "out-of-pocket" expenses for plan participants and beneficiaries. 75 Fed. Reg. at 41730.

71. The Interim Final Rule acknowledges that, without cost sharing, expenses "previously paid out-of-pocket" would "now be covered by group health plans and issuers" and that those expenses would, in turn, result in "higher average premiums for all enrollees." *Id.*; *see also id*. at 41737 ("Such a transfer of costs could be expected to lead to an increase in premiums.")

72. In other words, the prohibition on cost-sharing was a way "to distribute the cost of preventive services more equitably across the broad insured population." 75 Fed. Reg. at 41730.

73. After the Interim Final Rule was issued, numerous commenters warned against the potential conscience implications of requiring religious individuals and organizations to include certain kinds of services—specifically contraception, sterilization, and abortion services—in their health care plans.

74. HHS directed a private health policy organization, the Institute of Medicine (IOM), to make recommendations regarding which drugs, procedures, and services all health plans should cover as preventive care for women.

75. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. These were the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists (ACOG), John Santelli, the National Women's Law Center, National Women's Health Network, Planned Parenthood Federation of America, and Sara Rosenbaum. All of these groups advocate for access to contraception and abortion.

76. No religious groups or other groups that opposed government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters.

77. On July 19, 2011, the IOM published its preventive care guidelines for women, including a recommendation that preventive services include "[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures" and related "patient education and counseling for women with reproductive capacity." Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, at 102-10 and Recommendation 5.5 (July 19, 2011).

78. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices such as IUDs; Plan B (also known as the "morning-after pill"); ulipristal (also known as "ella" or the "week-after pill"); and other drugs, devices, and procedures.

79. Some of these drugs and devices—including "emergency contraceptives" such as Plan B and ella and certain IUDs—are known abortifacients, in that they can cause the death of an embryo by preventing it from implanting in the wall of the uterus.

80. Indeed, the FDA's own Birth Control Guide states that both Plan B and ella can work by "preventing attachment (implantation) to the womb (uterus)." FDA, Office of Women's Health, Birth Control Guide at 16-17, *available at http://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/ucm313215.htm* (last visited Nov. 6, 2013).

81. The manufacturers of some of the drugs, methods, and devices in the category of "FDA-approved contraceptive methods" indicate that they can function to cause the demise of an early embryo.

82. The requirement for related "education and counseling" accompanying abortifacients, sterilization, and contraception necessarily covers education and counseling given in favor of such items, even though it might also include other education and counseling. Moreover, it is inherent in a medical provider's decision to prescribe one of these items that she is taking the position that use of the item is in the patient's best interests, and therefore her education and counseling related to the item will be in favor of its proper usage.

83. On August 1, 2011, a mere 13 days after IOM issued its recommendations, HRSA issued guidelines adopting them in full. *See* http://www.hrsa.gov/womensguidelines (last visited Nov. 6, 2013).

84. Non-exempt insurance plans starting after August 1, 2012 were subject to the Mandate.

85. Any non-exempt employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the Mandate) to heavy fines approximating $100 per employee per day. Such employers are also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

86. A large employer entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the ACA imposes monetary penalties on

entities that would so refuse. Additionally, dropping health insurance coverage for employees would harm the entity's ability to attract and keep good employees, and/or cause the entity to have to increase employee compensation so that they could purchase health insurance themselves.

87. The annual penalty for failing to provide health insurance coverage can amount to $2,000 times the number of the employer's employees, minus 30.

The "Religious Employer" Exemption

88. On the very same day HRSA rubber-stamped the IOM's recommendations, HHS promulgated an additional Interim Final Rule regarding the preventive services mandate. 76 Fed. Reg. 46621 (published Aug. 3, 2011).

89. This Second Interim Final Rule granted HRSA "*discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46621, 46623 (emphasis added). The term "religious employer" was restrictively defined as one that (1) has as its purpose the "inculcation of religious values"; (2) "primarily employs persons who share the religious tenets of the organization"; (3) "serves primarily persons who share the religious tenets of the organization"; and (4) "is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46626 (emphasis added).

90. The statutory citations in the fourth prong of this test refers to "churches, their integrated auxiliaries, and conventions or associations of churches" and the "exclusively religious activities of any religious order." 26 U.S.C.A. § 6033.

91. Thus, the "religious employer" exemption was severely limited to churches, their integrated auxiliaries, and religious orders whose purpose is to inculcate faith and that hire and serve primarily people of their own faith tradition.

92. HRSA exercised its discretion to grant an exemption for religious employers via a footnote on its website listing the Women's Preventive Services Guidelines. The footnote states that "guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers." *See* http://www.hrsa.gov/womensguidelines (last visited Nov. 6, 2013).

93. Although religious organizations like Ave Maria share the same or the same kind of religious beliefs and concerns as objecting churches, their integrated auxiliaries, and objecting religious orders, HHS deliberately ignored the regulation's impact on their religious liberty, stating that the exemption sought only "to provide for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. 46621, 46623.

94. Therefore, the vast majority of religious organizations with conscientious objections to providing contraceptive or abortifacient services were excluded from the "religious employer" exemption.

95. Like the original Interim Final Rule, the Second Interim Final Rule was made effective immediately, without prior notice or opportunity for public comment.

96. Defendants acknowledged that "while a general notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of

regulations," they had "good cause" to conclude that public comment was "impracticable, unnecessary, or contrary to the public interest" in this instance. 76 Fed. Reg. at 46624.

97. Upon information and belief, after the Second Interim Final Rule was put into effect, over 100,000 comments were submitted opposing the narrow scope of the "religious employer" exemption and protesting the contraception mandate's gross infringement on the rights of religious individuals and organizations.

98. HHS did not take into account the concerns of religious organizations in the comments submitted before the Second Interim Rule was issued. HHS was unresponsive to numerous and well-grounded assertions that the Mandate violated statutory and constitutional protections of rights of conscience.

The Safe Harbor

99. The public outcry for a broader religious employer exemption continued for many months. On January 20, 2013, HHS issued a press release acknowledging "the important concerns some have raised about religious liberty" and stating that religious objectors would be "provided an additional year . . . to comply with the new law." *See* Jan. 20, 2013 Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited Nov. 6, 2013).

100. On February 10, 2012, HHS formally announced a "safe harbor" for non-exempt nonprofit religious organizations that objected to covering free contraceptive and abortifacient services.

101. Under the safe harbor, HHS agreed it would not take any enforcement action against an eligible organization during the safe harbor, which would remain in effect until the first plan year beginning after August 1, 2013.

102. HHS also indicated it would develop and propose changes to the regulations to accommodate the religious liberty objections of non-exempt, nonprofit religious organizations following the expiration of the safe harbor.

103. Despite the safe harbor and HHS's accompanying promises, on February 10, 2012, HHS announced a final rule "finalizing, without change," the contraception and abortifacient mandate and narrow religious employer exemption. 77 Fed. Reg. 8725-01 (published Feb. 15, 2012).

The Advance Notice of Proposed Rulemaking

104. On March 21, 2012, HHS issued an Advance Notice of Proposed Rulemaking (ANPRM), presenting "questions and ideas" to "help shape" a discussion of how to "maintain the provision of contraceptive coverage without cost sharing," while accommodating the religious beliefs of non-exempt religious organizations. 77 Fed. Reg. 16501, 16503 (2012).

105. The ANPRM conceded that forcing religious organizations to "contract, arrange, or pay for" the objectionable contraceptive and abortifacient services would infringe their "religious liberty interests." *Id*.

106. The ANPRM proposed, in vague terms, that the "health insurance issuers" for objecting religious employers could be required to "assume the responsibility for the provision of contraceptive coverage without cost sharing." *Id*.

107. For self-insured plans, the ANPRM suggested that third party plan administrators "assume this responsibility." *Id*.

108. "[A]pproximately 200,000 comments" were submitted in response to the ANPRM, 78 Fed. Reg. 8456, 8459, largely reiterating previous comments that the government's proposals would not resolve conscientious objections, because the objecting religious organizations, by providing a health care plan in the first instance, would still be coerced to arrange for and facilitate access to morally objectionable services.

The Notice of Proposed Rulemaking

109. On February 1, 2013, HHS issued a Notice of Proposed Rulemaking (NPRM) purportedly addressing the comments submitted in response to the ANPRM. 78 Fed. Reg. 8456 (published Feb. 6, 2013).

110. The NPRM proposed two changes to the then-existing regulations. 78 Fed. Reg. 8456, 8458-59.

111. First, it proposed revising the religious employer exemption by eliminating the requirements that religious employers have the purpose of inculcating religious values and primarily employ and serve only persons of their same faith. 78 Fed. Reg. at 8461.

112. Under this proposal a "religious employer" would be one "that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 8461.

113. HHS emphasized, however, that this proposal "would not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. 8456, 8461.

114. In other words, religious organizations like Ave Maria that are not formal churches or their integrated auxiliaries or religious orders would continue to be denied the protection of the exemption.

115. Second, the NPRM reiterated HHS's intention to "accommodate" non-exempt, nonprofit religious organizations by making them "designate" their insurers and third party administrators to provide plan participants and beneficiaries with free access to contraceptive and abortifacient drugs and services.

116. The proposed "accommodation" did not resolve the concerns of religious organizations like Ave Maria because it continued to force them to deliberately provide health insurance and designations that would trigger access to abortion-inducing drugs and related education and counseling.

117. In issuing the NPRM, HHS requested comments from the public by April 8, 2013. 78 Fed. Reg. 8457.

118. "[O]ver 400,000 comments" were submitted in response to the NPRM, 78 Fed. Reg. 39870, 39871, with religious organizations again overwhelmingly decrying the proposed accommodation as a gross violation of their religious liberty because it would conscript their health care plans as the main cog in the government's scheme for expanding access to contraceptive and abortifacient services.

119. On April 8, 2013, the same day the notice-and-comment period ended, Defendant Secretary Sebelius answered questions about the contraceptive and abortifacient services requirement in a presentation at Harvard University.

120. In her remarks, Secretary Sebelius stated:

> We have just completed the open comment period for the so-called accommodation, and by August 1st of this year, every employer will be covered by the law with one exception. Churches and church dioceses as employers are exempted from this benefit. But Catholic hospitals, Catholic universities, other religious entities *will be providing coverage* to their employees starting August 1st. . . . [A]s of August 1st, 2013, every employee who doesn't work directly for a church or a diocese *will be included* in the benefit package.

See The Forum at Harvard School of Public Health, A Conversation with Kathleen Sebelius, U.S. Secretary of Health and Human Services, Apr. 8, 2013, *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius (Episode 9 at 2:25) (last visited Nov. 6, 2013) (emphases added).

121. Given the timing of these remarks, it is clear that Defendants gave no consideration to the comments submitted in response to the NPRM's proposed "accommodation."

122. Moreover, Secretary Sebelius' remarks belie the utterly unpersuasive assertion that objecting employers do not "contract, arrange, pay, or refer for" coverage of morally objectionable items in the health insurance plans they provide employees.

The Final Mandate

123. On June 28, 2013, Defendants issued a final rule (the "Final Mandate"), which ignores the objections repeatedly raised by religious organizations and others and continues to co-opt objecting religious employers into the government's scheme of coercing free access to contraceptive and abortifacient services. 78 Fed. Reg. 39870.

124. Under the Final Mandate, the discretionary "religious employer" exemption, which is still implemented via footnote on the HRSA website, *see* http://www.hrsa.gov/womensguidelines (last visited Nov. 6, 2013), remains limited to

formal churches and their integrated auxiliaries and religious orders "organized and operate[d]" as nonprofit entities and "referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39874.

125. All other religious organizations, including Ave Maria, are denied the exemption's protection.

126. Defendants attempt to justify their narrow religious employer exemption as follows: "The Departments believe that the simplified and clarified definition of religious employer continues to respect the religious interests of houses of worship and their integrated auxiliaries in a way that does not undermine the governmental interests furthered by the contraceptive coverage requirement. Houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan." 78 Fed. Reg. at 39874.

127. Although religious organizations like Ave Maria share the same religious objection to the Mandate as churches, their integrated axillaries, and religious orders, Defendants have deliberately ignored the Mandate's impact on their religious liberty by refusing to grant Ave Maria and similar organizations an exemption from it.

128. Ave Maria is a Catholic institution that adheres to the teaching authority of the Catholic Church in matters of faith and morals, including its beliefs concerning the sanctity and dignity of all human life. Its employees, whether Catholic or non-Catholic, choose to

work at Ave Maria because they share its religious beliefs and wish to help Ave Maria further its religious mission.

129. Ave Maria is thus just as likely as organizations that qualify for the "religious employer" exemption to employ individuals who are either of the same faith as Ave Maria or adhere to the same religious objection to abortifacient drugs, contraception, and sterilization coverage as Ave Maria, and who are less likely than other people to use the objectionable drugs, devices, and services, yet Defendants deny Ave Maria the "religious employer" exemption, and they deny the ability of Ave Maria employees to obtain health insurance without triggering "free" coverage of contraception and sterilization for their daughters.

130. Defendants' "religious employer" exemption divides the thousands of religious organizations that share the same religious objection to the Mandate into those "religious enough" to qualify for an exemption from it and those that are not.

131. The Final Mandate creates a separate "accommodation" for certain non-exempt religious organizations. 78 Fed. Reg. at 39874.

132. An organization is eligible for the "accommodation" if it: (1) "[o]pposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. 39874.

133. Ave Maria is eligible for the so-called accommodation.

134. The self-certification must be made "prior to the beginning of the first plan year to which an accommodation is to apply." 78 Fed. Reg. 39889.

135. The Final Rule also extends the current Temporary Enforcement Safe Harbor through the end of 2013, only six months after the issuance of the Final Rule. 78 Fed. Reg. at 39889.

136. Thus, an eligible organization would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and deliver it to the organization's insurer. 78 Fed. Reg. at 39875.

137. Defendants present the "accommodation" as a mechanism that eliminates the religious objections of non-exempt religious organizations, like Ave Maria, to the Mandate, but it does no such thing. Rather, the "accommodation" conscripts Ave Maria's health plan as the main cog in the government's scheme for providing access to abortifacient drugs, contraception, and sterilization, and compels Ave Maria to take numerous actions that facilitate access to the very drugs, items, and services to which they religiously object.

138. Under the "accommodation," Ave Maria's mandatory provision of its health insurance plan, and its delivery of its self-certification to its insurer, would trigger the insurer's obligation to offer and make "separate payments for contraceptive services directly for plan participants and beneficiaries." 78 Fed. Reg. at 39875-76. These payments constitute coverage of the drugs, items, and services to which Ave Maria objects, *see, e.g., id*. at 39872 ("the regulations provide women with access to contraceptive coverage"), and are treated as coverage under consumer protection requirements of the Public Health Service Act and ERISA, *id*. at 39876. This coverage will not be contained in any insurance policy separate from Ave Maria's plan. *See id*.

139. Ave Maria's health insurance plan is the essential cog in this scheme, since its insurer's obligation to make direct payments for abortifacient drugs, contraception, and sterilization continues only "for so long as the participant or beneficiary remains enrolled in the plan." 78 Fed. Reg. 39876.

140. An Ave Maria employee's entitlement to payments for abortifacient drugs, contraception, and sterilization arises solely by virtue of the employee's participation in the group health insurance plan Ave Maria offers and purchases for its employees.

141. To facilitate its employees' access to abortifacient drugs, contraception, and sterilization, Ave Maria would have to identify its employees to the insurer.

142. Ave Maria will be involved on an ongoing basis in facilitating its employees' access to abortifacient drugs, contraception, and sterilization because it would have to inform its insurer when it was adding or removing employees and beneficiaries from its health care plan and, as a direct and unavoidable result, from the abortifacient drugs, contraception, and sterilization payment scheme.

143. Defendants also require insurers to notify plan participants and beneficiaries of their entitlement to payments for abortifacient drugs, contraception, and sterilization "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan. 78 Fed. Reg. 39876.

144. This would also require Ave Maria to coordinate the notices with its insurer.

145. Defendants require insurers to provide the coverage for abortifacient drugs, contraception, and sterilization "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77.

146. Accordingly, any payment or coverage disputes related to the insurers' provision of coverage for abortifacient drugs, contraception, and sterilization would presumably be resolved under the terms of Ave Maria's existing plan documents.

147. In all the ways described above, Defendants' "accommodation" requires Ave Maria to play an essential role in facilitating free access to abortifacient drugs, contraception, and sterilization to employees covered by its health insurance plan in a manner that violates its deeply held religious beliefs.

148. Ave Maria's religious beliefs prohibit it from facilitating access to such items and services in the manner the "accommodation" requires.

149. Defendants state that they "continue to believe, and have evidence to support," that providing payments for abortifacient drugs, contraception, and sterilization will be "cost neutral for issuers," because "[s]everal studies have estimated that the costs of providing contraceptive coverage are balanced by cost savings from lower pregnancy-related costs and from improvements in women's health." 78 Fed. Reg. at 39877.

150. On information and belief, the studies Defendants rely upon to support this claim are severely flawed and largely inapplicable to the scope of this mandate.

151. Nevertheless, even if the payments, over time, eventually resulted in cost savings in other areas, it is undisputed that it would cost money at the outset to make the payments. *See, e.g.*, 78 Fed. Reg. at 39877-78 (addressing ways insurers can cover up-front costs).

152. Moreover, if the cost savings that allegedly will arise make insuring an employer's employees cheaper, the savings would have to be passed on to employers through reduced premiums, not retained by insurance issuers.

153. HHS suggests that, to maintain cost neutrality, issuers may simply ignore this fact and "set the premium for an eligible organization's large group policy as if no payments for contraceptive services had been provided to plan participants." 78 Fed. Reg. at 39877.

154. This encourages issuers to artificially inflate the eligible organization's premiums.

155. Under this methodology—assuming it is legal—the eligible organization would still bear the cost of the required payments for abortifacient drugs, contraception, and sterilization in violation of its conscience, as if the accommodation had never been made.

156. Defendants have suggested that "[a]nother option" would be to "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." 78 Fed. Reg. at 39878.

157. There is no legal authority for forcing third parties to pay for services provided to eligible organizations under the accommodation.

158. Furthermore, under the Affordable Care Act, Defendants lack authority in the first place to coerce insurers to directly purchase abortifacient drugs, contraceptive, and sterilization services for an eligible organization's plan participants and beneficiaries.

159. Thus, the "accommodation" fails to protect objecting religious organizations because it lacks statutory authority.

160. For all these reasons, the accommodation does nothing to relieve non-exempt religious organizations with insured plans from being co-opted as the central cog in the government's scheme to force the free provision of contraceptive and abortifacient services even when the organizations object to facilitating those services.

161. In sum, the "accommodation" is nothing more than a shell game that attempts to disguise the religious organization's role as the central cog in the government's scheme for expanding access to abortifacient drugs, contraception, and sterilization.

162. Despite the accommodation's convoluted machinations, a religious organization's decision to offer health insurance (which the ACA's employer mandate requires) and its self-certification continue to serve as the sole triggers for creating access to free abortifacient drugs, contraception, and sterilization to its employees and plan beneficiaries from the same insurer they are paying for their insurance plan.

163. Ave Maria cannot participate in or facilitate the government's scheme in this manner without violating its religious convictions.

The Final Mandate and Ave Maria's Health Care Plan

164. The Mandate applies to the first health insurance plan-year beginning after December 31, 2013.

165. The plan year for Ave Maria's next employee health plan after 2013 begins on November 1, 2014. The Mandate will thus apply to Ave Maria's plan starting on November 1, 2014. As a result, Ave Maria will face a choice in the period leading up to that date. It can transgress its religious commitments and its employees' desires by including abortifacient drugs, contraception, and sterilization in its plan, or by triggering its insurance issuer to provide the exact same services by providing the self-certification. Or Ave Maria can drop its employee health insurance plan altogether in order to avoid being complicit in the provision of abortifacient drugs, contraception, and sterilization, thereby incurring crippling annual fines, harm to its employees who rely on that insurance, a severe impact on

Ave Maria's ability to recruit and keep good employees, and a consequent need to increase employee compensation substantially so that they can provide insurance for their families (but leaving them to a market in which all insurance products they can buy will include the unwanted abortifacient, contraceptive and sterilizing items).

166. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee (minus 30) for organizations that drop their insurance altogether, the postponement is only for one year, until 2015. This postponement does not delay the daily fines under 26 U.S.C. § 4980D or lawsuits under 29 U.S.C. § 1132.

167. Ave Maria's religious convictions forbid it from participating in any way in the government's scheme to provide free access to abortifacient drugs, contraception, and sterilization services through its employee health care plan.

168. Dropping its insurance plans would place Ave Maria at a severe competitive disadvantage in its efforts to recruit and retain employees.

169. The Final Mandate forces Ave Maria to deliberately provide health insurance that would facilitate free access to abortifacient drugs, contraception, and sterilization services, regardless of the ability of insured persons to obtain these drugs from other sources.

170. The Final Mandate forces Ave Maria to facilitate government-dictated education and counseling concerning abortion that directly conflicts with its religious beliefs and teachings.

171. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the sanctity of life that Ave Maria seeks to convey.

172. The Mandate therefore imposes a variety of substantial burdens on the religious beliefs and exercise of Ave Maria.

The Defendants' Lack of a Compelling Government Interest and Failure to Pursue Their Interests through the Least Restrictive Means

173. Coercing Ave Maria to facilitate access to morally objectionable contraceptives, abortifacients, and sterilization advances no compelling governmental interest.

174. The required abortifacient drugs, devices, and related services are already widely available at non-prohibitive costs.

175. Upon information and belief, Plan B is widely available for between $30 and $65. Upon information and belief, ella is widely available for approximately $55.

176. There are numerous alternative mechanisms through which the government could provide access to abortifacient drugs, contraception, and sterilization without co-opting religious employers and their insurance plans in violation of their religious beliefs.

177. For example, it could pay for the objectionable services through its existing network of family planning services funded under Title X, through direct government payments, or through tax deductions, refunds, or credits.

178. The government could also simply exempt all conscientiously objecting organizations, just as it has already exempted nonprofit religious employers referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

179. In one form or another, the government also provides exemptions for grandfathered plans, 42 U.S.C. § 18011; 75 Fed. Reg. 41,726, 41,731 (2010), fewer penalties for small employers with fewer than 50 employees, 26 U.S.C. § 4980H(c)(2)(A), and exemptions for

certain religious denominations, 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) (individual mandate does not apply to members of "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds); 26 U.S.C. § 5000A(d)(2)(b)(ii) (individual mandate does not apply to members of "health care sharing ministry" that meets certain criteria).

180. These broad exemptions further demonstrate that Ave Maria could be exempted from the Mandate without measurably undermining any sufficiently important governmental interest allegedly served by the Mandate.

181. Employers who follow HHS guidelines may continue to use grandfathered plans indefinitely.

182. Indeed, HHS itself has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans until at least 2014, and that a third of medium-sized employers with between 50 and 100 employees may do likewise. 75 Fed. Reg. 34538 (June 17, 2010); *see also* http://web.archive.org/web/20130620171510/http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (archived version); https://www.cms.gov/CCIIO/Resources/Files/Factsheet_grandfather_amendment.html (noting that amendment to regulations "will result in a small increase in the number of plans retaining their grandfathered status relative to the estimates made in the grandfathering regulation").

183. In the ACA Congress chose to impose a variety of requirements on grandfathered health plans, but decided that this Mandate was not important enough to impose to the

benefit of tens of millions of women. Congress did not even think contraception was important enough to codify as part of this Mandate—as far as Congress is concerned, the Mandate need not include contraception at all.

184. The Administration's recent postponement of the employer mandate (and its attendant penalties) also belies any claim that a compelling interest justifies coercing Plaintiffs to comply with the Final Mandate, as employers may now simply decide not to provide their employee health plans without incurring fines under 26 U.S.C. § 4980H, at least for one additional year.

185. These broad exemptions also demonstrate that the Final Mandate is not a general law entitled to judicial deference.

186. The available evidence does not support Defendants' contention that making contraceptives, abortifacients, and related counseling available without cost sharing decreases the rate of unintended pregnancy or the adverse impacts on health and equality that allegedly flow from the unintended nature of a pregnancy.

187. The government's willingness to exempt various secular organizations and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for religious organizations also shows that the Final Mandate is not neutral, but rather discriminates against religious organizations because of their religious commitment to promoting the sanctity of life.

188. Defendants were willing to exempt various secular organizations and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for religious organizations.

189. The Final Mandate was promulgated by government officials, and supported by non-governmental organizations, who strongly oppose religious teachings and beliefs such as Ave Maria's regarding marriage, family, and life.

190. Defendant Sebelius, for example, has long been a staunch supporter of abortion rights and a vocal critic of religious teachings and beliefs regarding abortion and contraception.

191. On October 5, 2011, six days after the comment period for the original interim final rule ended, Defendant Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that "we are in a war."

192. She further criticized individuals and entities whose beliefs differed from those held by her and others at the fundraiser, stating: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much."

193. On July 16, 2013, Secretary Sebelius further compared opponents of the Affordable Care Act generally to "people who opposed civil rights legislation in the 1960s," stating that upholding the Act requires the same action as was shown "in the fight against lynching and the fight for desegregation." *See* http://www.hhs.gov/secretary/about/speeches/sp20130716.html (last visited Nov. 6, 2013).

194. Consequently, on information and belief, the purpose of the Final Mandate, including the restrictively narrow scope of the "religious employer" exemption, is to discriminate against religious organizations that oppose contraception and abortion.

FIRST CLAIM FOR RELIEF
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

195. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

196. Ave Maria's sincerely held religious beliefs prohibit it from providing, paying for, making accessible, or facilitating coverage or payments for abortifacient drugs, contraception, or sterilization, or providing or facilitating a plan that causes access to the same through an insurance company or any other third party. Ave Maria's compliance with these beliefs is a religious exercise within the meaning of the Religious Freedom Restoration Act.

197. The Mandate imposes a substantial burden on Ave Maria's religious exercise and coerces it to change or violate its religious beliefs.

198. The Mandate penalizes Ave Maria for offering a health insurance plan that does not cover or cause payments for abortifacient drugs, contraception, sterilization, and related education and counseling, or that does not facilitate access to the same through their insurance companies.

199. Defendants substantially burden Ave Maria's religious exercise when they force it to choose between either following its religious commitments and suffering debilitating punishments or violating its conscience in order to avoid those punishments.

200. The Mandate chills Ave Maria's religious exercise within the meaning of RFRA.

201. The Mandate exposes Ave Maria to substantial fines and/or financial burdens for its religious exercise.

202. The Mandate exposes Ave Maria to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

203. The Mandate serves no compelling governmental interest and is not narrowly tailored to further any compelling governmental interest.

204. The Mandate or other significant provisions of the ACA do not apply to, *inter alia*, (1) the enormous number of health insurance plans that enjoy "grandfathered" status, (2) a variety of other religious groups and believers, and (3) plans sponsored by employers that qualify for the "religious employer" exemption, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies it.

205. Access to abortifacient drugs, contraception, and sterilization is not a significant social problem, and compelling Ave Maria to play an essential role in facilitating access to such drugs and services is not the least restrictive means of advancing any interest the Defendants might have.

206. The Mandate violates RFRA.

207. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Ave Maria will suffer irreparable harm.

SECOND CLAIM FOR RELIEF
Violation of Free Exercise Clause of the First Amendment to the United States Constitution

208. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

209. Ave Maria's sincerely held religious beliefs prohibit it from providing, paying for, making accessible, or facilitating coverage or payments for abortifacient drugs,

contraception, or sterilization, or providing or facilitating a plan that causes access to the same through an insurance company or any other third party. Ave Maria's compliance with these beliefs is a religious exercise within the meaning of the Free Exercise Clause.

210. The Mandate imposes a substantial burden on Ave Maria's religious exercise and coerces it to change or violate its religious beliefs.

211. The Mandate chills Ave Maria's religious exercise.

212. The Mandate exposes Ave Maria to substantial fines and/or financial burdens for its religious exercise.

213. The Mandate forces Ave Maria to choose between either following its religious commitments and suffering debilitating punishments or violating its conscience in order to avoid those punishments.

214. The Mandate exposes Ave Maria to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

215. The Mandate is not neutral and is not generally applicable.

216. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

217. Despite being informed in detail of the religious objections of Ave Maria and thousands others like it, Defendants designed the Mandate and the "religious employer" exemption therefrom in a way that makes it impossible for Ave Maria and other similar religious organizations to simultaneously comply with their religious beliefs and the Mandate.

218. The Mandate's narrow "religious employer" exemption is not neutral in that it exempts some religious employers from the Mandate but not others, thereby discriminating among religious organizations on the basis of their religious views or status.

219. The Free Exercise Clause, along with the Establishment Clause, protects the right of religious organizations to decide for themselves, free from government interference, matters of internal governance as well as those of faith and doctrine.

220. The Free Exercise Clause thus prohibits the government from interfering with a religious organization's internal decisions concerning its religious structure, leadership, doctrine, and policies.

221. The government may not interfere with a religious organization's internal decisions if that interference would affect the faith and mission of the organization itself.

222. Based on Catholic teaching and doctrine, Ave Maria has made an internal decision that its employee health plans may not subsidize, provide, or facilitate access to abortifacient drugs, contraception, or sterilization.

223. The Mandate directly interferes with Ave Maria's internal decision concerning its structure and mission by requiring it to subsidize, provide, or facilitate access to abortifacient drugs, contraception, or sterilization.

224. The Mandate's interference with Ave Maria's internal decisions affects its faith and religious mission by requiring it to subsidize, provide, or facilitate access to abortifacient drugs, contraception, or sterilization in direct violation of its religious beliefs.

225. The Mandate's interference with Ave Maria's internal decision making in a manner that affects its faith and mission violates the Free Exercise Clause.

226. Defendants promulgated both the Mandate and the "religious employer" exemption in order to suppress the religious exercise of Ave Maria and similar religious organizations.

227. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

228. The Mandate does not apply to, *inter alia*, (1) the enormous number of health insurance plans that enjoy "grandfathered" status, (2) the innumerable employers with fewer than 50 employees, and (3) plans sponsored by employers that qualify for the "religious employer" exemption, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies it.

229. Access to abortifacient drugs, contraception, and sterilization is not a significant social problem, and compelling Ave Maria to play an essential role in facilitating access to such drugs and services is not the least restrictive means of advancing any interest the Defendants might have.

230. The Mandate violates Ave Maria's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

231. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Ave Maria will suffer irreparable harm.

THIRD CLAIM FOR RELIEF
Violation of the Establishment Clause of the First Amendment to the United States Constitution

232. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

233. The First Amendment's Establishment Clause requires governmental neutrality toward religion and prohibits the government from discriminating among religions and preferring some religious denominations or views over others.

234. The Mandate discriminates among religions and favors some religions and religious views over others.

235. The Mandate's narrow exemption for "religious employers" discriminates among religions on the basis of religious views, religious status, or incidental institutional structure or affiliation by determining that some religious employers are "religious enough" to qualify for a full exemption while others are not.

236. The Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient drugs, contraception, and sterilization and imposes it through its "accommodation" upon most religionists like Ave Maria (except those it favors via the "religious employer" exemption) who must either conform their consciences or suffer penalty.

237. The Mandate's narrow "religious employer" exemption exempts some religious employers but not others, thereby discriminating among religious organizations and favoring some religions and religious views over others.

238. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

239. The Mandate violates Ave Maria's rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

240. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Ave Maria will suffer irreparable harm.

FOURTH CLAIM FOR RELIEF
Violation of the Free Speech Clause of the First Amendment to the United States Constitution

241. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

242. Defendants' requirement to provide insurance coverage for education and counseling regarding contraception causing abortion forces Ave Maria to speak in a manner contrary to its religious beliefs.

243. Ave Maria adheres to, teaches, and publicly expresses the Catholic teachings that (1) abortifacient drugs, contraception, and sterilization are grave sins and (2) that participation in any scheme to facilitate access to abortifacient drugs, contraception, and sterilization is a grave sin.

244. The Mandate compels Ave Maria to facilitate expression and activities that it teaches are inconsistent with its religious beliefs, expression, and practices.

245. The Mandate compels Ave Maria to facilitate access to government-dictated education and counseling related to abortion.

246. Defendants thus violate Ave Maria's rights to be free from compelled speech, a right secured to its by the Free Speech Clause of the First Amendment.

247. The Mandate's compelled speech requirement does not advance a compelling governmental interest.

248. Defendants have no narrowly tailored compelling interest to justify this compelled speech.

249. By stating that HRSA "may" grant an exemption to certain religious groups, the Mandate vests HRSA with unbridled discretion over which organizations can have their First Amendment interests accommodated.

250. Defendants have exercised unbridled discretion in a discriminatory manner by granting an exemption via footnote in a website for a narrowly defined group of "religious employers" but not for other religious organizations like Ave Maria.

251. Defendants have further exercised unbridled discretion by indiscriminately waiving enforcement of some provisions of the Affordable Care Act while refusing to waive enforcement of the Mandate, despite its conflict with the free exercise of religion.

252. The Defendants' actions therefore violate Ave Maria's right not to be subjected to a system of unbridled discretion when engaging in speech or when engaging in religious exercise, as secured to it by the First Amendment of the United States Constitution.

253. The Mandate thus violates Ave Maria's rights secured to it by the Free Speech Clause of the First Amendment of the United States Constitution.

254. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Ave Maria will suffer irreparable harm.

FIFTH CLAIM FOR RELIEF
Violation of the Fifth Amendment to the United States Constitution
Due Process and Equal Protection

255. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

256. The Due Process Clause of the Fifth Amendment requires that government actors treat equally all persons similarly-situated.

257. This requirement of equal treatment applies to organizations as well as to individuals.

258. Through the Mandate's narrow "religious employer" exemption, Defendants have exempted certain religious organizations that object to complying with the contraceptive mandate based on their deeply held religious beliefs.

259. Ave Maria, like the exempted religious organizations, is a religious organization that objects to the contraceptive mandate based on its deeply held religious beliefs, yet Defendants have denied the "religious employer" exemption to Ave Maria.

260. Also like the exempted religious organizations, Ave Maria employs people who are either (1) of the same faith as Ave Maria or (2) adhere to the same religious objection as Ave Maria, and thus who are just as unlikely as employees of the exempted organizations to use contraceptive services even if such services were covered under Ave Maria's plan, yet Defendants have denied the "religious employer" exemption to Ave Maria.

261. By extending the "religious employer" exemption to certain religious groups, but failing to extend it to Ave Maria, Defendants have treated Ave Maria differently than similarly-situated groups.

262. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

263. Because the Mandate sweepingly infringes upon religious exercise and speech rights that are constitutionally protected, it is unconstitutionally overbroad in violation of the due process rights of Ave Maria and other parties not before the Court.

264. Persons of common intelligence must necessarily guess at the meaning, scope, and application of the Mandate and its exemptions.

265. The Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner, and lawsuits by private persons, based on the government's vague standard.

266. The Mandate vests Defendants with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations that possess religious beliefs and/or that meet the government's definition of "religious employer."

267. Defendants have further exercised unbridled discretion by indiscriminately waiving enforcement of some provisions of the Affordable Care Act while refusing to waive enforcement of the Mandate, despite its conflict with the free exercise of religion.

268. The Mandate thus violates Ave Maria's rights secured to it by the Fifth Amendment to the United States Constitution.

269. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Ave Maria will suffer irreparable harm.

SIXTH CLAIM FOR RELIEF
Violation of the First Amendment to the United States Constitution
Freedom of Expressive Association

270. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

271. Ave Maria teaches that abortion, contraception, and sterilization violate Catholic moral teaching and that any participation in the unjustified taking of an innocent human life contradicts its religious beliefs and convictions.

272. Ave Maria fosters a community that shares a commitment to Catholic doctrinal and ethical precepts, including the sanctity and dignity of human life.

273. The Mandate compels Ave Maria to facilitate expression and activities that are inconsistent with its religious beliefs, expression, and practices, thereby undermining its effort to foster a community committed to Catholic doctrinal and ethical principles.

274. Defendants' actions thus violate Ave Maria's right of expressive association protected by the Free Speech Clause of the First Amendment to the United States Constitution.

275. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Ave Maria will suffer irreparable harm.

SEVENTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

276. Plaintiff realleges all matters set forth in paragraphs 1-194 and incorporates them herein.

277. The Administrative Procedure Act ("APA") requires a reviewing court to "hold unlawful and set aside agency action" that is "not in accordance with law" or "contrary to [a] constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A) & (B).

278. As set forth above, the Mandate violates RFRA and the First and Fifth Amendments to the U.S. Constitution.

279. Because they did not give proper notice and an opportunity for public comment, Defendants did not take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

280. Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

281. Defendants issued its regulations on an interim final basis and only asked for comments thereafter. Yet Defendants signaled from regulatory text of its interim rules that it had no intention of considering the requests by religious organizations to provide them with exemptions, or to hold the effective date of its rules after it received and considered all the comments submitted.

282. Thus, Defendants imposed its rules without the required "open-mindedness" that agencies must have when notice-and-comment occurs. Defendants also did not have good cause to impose the rules without prior notice and comment.

283. Therefore, Defendants have violated the notice and comment requirements of 5 U.S.C. §§ 553 (b) and (c), have taken agency action not in accordance with procedures required by law, and Ave Maria is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

284. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the Mandate on Ave Maria and similar organizations.

285. Defendants' explanation (and lack thereof) for its decision not to exempt Ave Maria and similar religious organizations from the Mandate runs counter to the evidence submitted by religious organizations during the comment period.

286. Thus, Defendants' issuance of the Mandate was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the Mandate fails to consider the full extent of its implications and it does not take into consideration the evidence against it.

287. The Mandate is also contrary to the provision of the ACA that states that "nothing in this title"—i.e., title I of the Act, which includes the provision dealing with "preventive services"—"shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." Section 1303(b)(1)(A).

288. The Mandate is also contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), which provides that "[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."

289. The Mandate also violates the provisions of the Church Amendment, 42 U.S.C. § 300a-7(d), which provides that "No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions."

290. The Mandate is contrary to law because no statutory authority exists in the ACA or elsewhere to coerce insurance companies or third party administrators to offer payments for contraception or sterilization to enrollees in a health plan sponsored by a religious organization where those payments are "separate" from the health plan itself and the health plan ostensibly excludes that coverage.

291. The Mandate is contrary to existing law and is in violation of the APA under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to Ave Maria, and its insurance issuer or third-party administrator with respect to Ave Maria's plan and its employees, to be an unconstitutional violation of its rights protected by RFRA, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate to Ave Maria or its insurance issuer or third-party administrator with respect to Ave Maria's plan and its employees, or in a way that violates the legally protected rights of any person, and prohibiting Defendants from continuing to illegally discriminate against Ave Maria by requiring it to provide health insurance coverage or a plan that causes its insurance issuer or third-party administrator to offer access to separate payments for contraceptives, abortifacients, and related counseling to its employees;

C. That this Court award Plaintiff court costs and reasonable attorney's fees, as provided by the Equal Access to Justice Act and RFRA (as provided in 42 U.S.C. § 1988);

D. That this Court grant such other and further relief as to which the Plaintiff may be entitled.

Ave Maria demands a jury trial on all issues so triable.

Respectfully submitted this 8th day of November, 2013,

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**Application for Admission Pro Hac Vice Pending*

VERIFICATION OF COMPLAINT

PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2013.

EUGENE R. MILHIZER
President and Dean, Ave Maria School of Law