IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

FELLOWSHIP OF CATHOLIC UNIVERSITY STUDENTS,
a Colorado non-profit corporation,
CURTIS A. MARTIN,
CRAIG MILLER,
BRENDA CANNELLA, and
CINDY O'BOYLE,

Plaintiffs,

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services,
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
THOMAS PEREZ, Secretary of the United States Department of Labor,
UNITED STATES DEPARTMENT OF LABOR,
JACOB J. LEW, Secretary of the United States Department of the Treasury, and
UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

VERIFIED COMPLAINT AND JURY DEMAND

PLAINTIFFS FELLOWSHIP OF CATHOLIC UNIVERSITY STUDENTS ("FOCUS"), a Colorado non-profit corporation, CURTIS A. MARTIN, CRAIG MILLER, BRENDA CANNELLA, and CINDY O'BOYLE, by and through their attorneys with Alliance Defending Freedom, for their complaint against the Defendants above-named, state as follows:

I. NATURE OF THE ACTION

1. This lawsuit seeks judicial review of Defendants' violations of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (herein "RFRA"), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C.

each and every human person is created in the image of God and that it is contrary to God's will to interfere with human conception with contraceptives or to destroy innocent human life by abortion or by the use of abortion-inducing drugs and devices. Thus, FOCUS holds, as a matter of religious conviction, that it is immoral for FOCUS to intentionally participate in, pay for, train others to engage in, enable or otherwise support or facilitate access to access to contraceptives, sterilization, abortion, abortion-inducing drugs, devices, and services.

6. Though a religious organization, FOCUS does not qualify for the extraordinarily narrow religious exemption from the Mandate. That narrow religious exemption protects thousands of "churches, their integrated auxiliaries, conventions or associations of churches" and "the exclusively religious activities of any religious order", but does not protect FOCUS. 78 Fed. Reg. 39,870 (July 2, 2013).

7. In addition, though thousands of other secular organizations have been exempted from the Mandate for purely secular reasons, FOCUS has not been so exempted. For example, employers with so-called "grandfathered" plans, i.e., plans in existence before March 23, 2010, are exempted from the Mandate and encompass tens of millions of women. Defendants have also recently admitted that "church plans" exempt from ERISA are also exempt from penalties attached to the Mandate, and those plans likewise encompass thousands of non-exempt non-profit religious organizations otherwise indistinguishable from FOCUS.

8. Defendants have offered FOCUS and other non-exempt religious organizations a so-called "accommodation" of their religious beliefs and practices. However, this alleged "accommodation" fails and conscripts FOCUS into compliance with the Mandate, forcing FOCUS to obtain an insurer or a third party insurance claims administrator, and to complete and submit a government form that specifically causes that insurer or third party administrator to

arrange payment for the objectionable drugs and devices, so that such coverage will apply to FOCUS's own employees as a direct consequence of their employment with FOCUS and of their participation in the health insurance benefits FOCUS provides to them.

9. Under the supposed "accommodation," the government continues to treat entities like FOCUS as second-class religious organizations, not entitled to the same religious freedom rights as substantially similar religious entities, or even the myriad of secular entities, that qualify for the exemption from the Mandate.

10. Defendants have determined to exempt churches and integrated auxiliaries from the Mandate because they surmise that employees of such religious entities are likely to share the religious convictions of such entities. Clearly, though not understood or recognized by the Defendants, this rationale applies equally to FOCUS and its employees.

11. Instead, Defendants seek to force FOCUS and other similarly situated religious nonprofits not eligible for Defendants' exemption to comply with the Mandate without regard to their sincerely held faith beliefs.

12. Indeed, HHS Secretary Kathleen Sebelius stated that: "[A]s of August 1st, 2013, every employee who doesn't work directly for a church or a diocese will be included in the [Mandate] benefit package," and "Catholic hospitals, Catholic universities, other religious entities will be providing [contraceptive and abortifacient] coverage to their employees starting August 1st." Remarks at the Forum at Harvard School of Public Health (Apr. 8, 2013), http://theforum.sph.harvard.edu/eents/conversation-kathleen-sebelius (Part 9, Religion and Policymaking, at 4:40 and 2:48). The enforcement date was delayed until January 1, 2014. 78 Fed. Reg. 39,870 (July 2, 2013).

13. Defendants' so-called "accommodation" does not offer religious liberty protections to FOCUS; if FOCUS follows its religious convictions and declines to participate in Defendants' scheme, FOCUS will face, among other injuries, enormous fines that could exceed $16,000,000. It also forces the individual plaintiff employees of FOCUS, CURTIS A. MARTIN, CRAIG MILLER, BRENDA CANNELLA, and CINDY O'BOYLE to participate in a health insurance plan that causes them to receive promised payment coverage of morally and religiously objectionable abortifacient, contraceptive and sterilization items for themselves and their families.

14. These religious beliefs are central to FOCUS's faith. FOCUS not only believes, but lives and teaches these beliefs. Thus, FOCUS remains opposed to complying with the Mandate, even pursuant to this "accommodation."

15. In view of the untenable and unconscionable position in which Defendants have placed FOCUS, FOCUS respectfully requests that this Court vindicate its religious rights by, *inter alia*, (a) declaring that the Mandate violates the Religious Freedom Restoration Act, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment to the United States Constitution, due process and equal protection as guaranteed by the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act and (b) by entering a preliminary and permanent injunction enjoining enforcement of the Mandate as to FOCUS.

II. JURISDICTION AND VENUE

16. 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 and 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P. 57 and 65, and to award reasonable attorney's fees and

costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and under 42 U.S.C. § 1988.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) in that FOCUS is resident in this district and a substantial part of the events or omissions giving rise to the claims herein occurred in this district.

III. IDENTIFICATION OF PARTIES

18. FOCUS is a Colorado non-profit corporation organized and recognized by the Internal Revenue Service as a § 501(c)(3) organization. Its headquarters office is located in Jefferson County, Colorado. FOCUS was born out of a passion and zeal to share how a relationship with Jesus Christ and the Catholic Faith can transform the world. FOCUS sends teams of young, trained missionaries to college campuses in order to reach students with the Gospel of Jesus Christ. In partnership with a local Catholic Parish and other Catholic organizations, FOCUS missionaries host large group outreach events, weekly Bible studies, and one-on-one mentoring sessions with student leaders. FOCUS presently has a staff of approximately 450 persons (of which about 350 are missionaries) and a presence on more than 80 college campuses across the United States.

19. CURTIS A. MARTIN is the founder, president, and chief executive officer of FOCUS and, in 2011, was appointed as Consulter to the Pontifical Council of the New Evangelization by Pope Benedict XVI and, in October 2012, participated with Catholic Bishops and Catholic lay people in a three week conference in Rome on the work of evangelization by the Catholic Church. Mr. Martin and his wife have eight children, one of whom is a teenage daughter, and are expecting their ninth child. Mr. Martin and his entire family hold and live the same religious beliefs as are held and lived by FOCUS. Mr. Martin and his entire family support

FOCUS's religious liberty rights, do not want to have any part in participating in Defendants' immoral health insurance scheme, and do not want to expose any of their family members to Defendants' immoral health insurance scheme. The Oath of Fidelity to the Catholic Church which reflects both FOCUS's faith beliefs and those of Mr. Martin and which was signed by Mr. Martin when he began to work for FOCUS is attached hereto as Exhibit A and incorporated herein by this reference.

20. CRAIG A. MILLER is currently chief operating officer of FOCUS. Mr. Miller and his wife have six children, including four daughters, three of whom are teenagers. Mr. Miller and his entire family hold and live the same religious beliefs as are held and lived by FOCUS. Mr. Miller and his entire family support FOCUS's religious liberty rights, do not want to have any part in participating in Defendants' immoral health insurance scheme, and do not want to expose any of their family members to Defendants' immoral health insurance scheme. The Oath of Fidelity to the Catholic Church which reflects both FOCUS's faith beliefs and those of Mr. Miller's and which was signed by Mr. Miller when he began to work for FOCUS is attached hereto as Exhibit B and incorporated herein by this reference.

21. BRENDA CANNELLA is currently senior director of finance of FOCUS. Ms. Cannella and her husband have five children, including two daughters, one of whom is a teenager. Ms. Cannella and her entire family hold and live the same religious beliefs as are held and lived by FOCUS. Ms. Cannella and her entire family support FOCUS's religious liberty rights, do not want to have any part in participating in Defendants' immoral health insurance scheme, and do not want to expose any of their family members to Defendants' immoral health insurance scheme. The Oath of Fidelity to the Catholic Church which reflects both FOCUS's

faith beliefs and those of Ms. Cannella and which was signed by Ms. Cannella is attached hereto as Exhibit C and incorporated herein by this reference.

22. CINDY O'BOYLE is currently a missionary and team director at the University of California-Berkeley, CA. Ms. O'Boyle, who is in her early twenties, is single. Ms. O'Boyle holds and lives the same religious beliefs as are held and lived by FOCUS. Ms. O'Boyle supports FOCUS's religious liberty rights, does not want to have any part in participating in Defendants' immoral health insurance scheme, and does not want to be exposed to Defendants' immoral health insurance scheme. The Oath of Fidelity to the Catholic Church which reflects both FOCUS's faith beliefs and those of Ms. O'Boyle and which was signed by Ms. O'Boyle when she began to work for FOCUS is attached hereto as Exhibit D and incorporated herein by this reference.

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

24. Defendant Kathleen Sebelius ("Sebelius") is the Secretary of the United States Department of Health and Human Services ("HHS"). In that capacity, she is responsible for the operation and management of HHS. Sebelius is sued in her official capacity only.

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

26. Defendant Thomas E. Perez ("Perez") is the Secretary of the United States Department of Labor ("DOL"). In that capacity, he is responsible for the operation and management of DOL. Perez is sued in his official capacity only.

27. Defendant DOL is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of aspects of the Mandate.

28. Defendant Jacob J. Lew ("Lew") is the Secretary of the United States Department of the Treasury ("Treasury"). In that capacity, he is responsible for the operation and management of Treasury. Lew is sued in his official capacity only.

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

IV. FACTUAL ALLEGATIONS

A. FOCUS's Religious Beliefs.

30. FOCUS's mission is, with the blessing and approval of Archbishop Samuel Aquila of Denver and with the blessings and approval of the local Bishop in each diocese in which a specific college is located, to equip and enable qualified FOCUS-trained missionaries to serve as the hands and feet of the Catholic Church and its auxiliaries by meeting college students where they live, i.e., dorms, intramural sports, student unions, Greek life, etc., by making a personal, sacrificial investment in the lives of those students, and by stressing 'incarnational evangelization' and God's love to each student. *See, e.g.*, http://www.focus.org/about/faqs.html.

31. FOCUS's primary purpose or "main thing" is "[i]nviting college students into a growing relationship with Jesus Christ and His Church [and i]nspiring and equipping them for a lifetime of Christ-centered evangelization, discipleship, and friendship in which they lead others to do the same."

32. FOCUS's mission statement is "[t]o know Christ Jesus, and to fulfill His great commission by first living and then communicating the fullness of life within the family of God, the Church." Thus, a relationship with Jesus Christ and a commitment to the teachings of the

Catholic Faith are central to FOCUS's mission. The Gospel of Life promotes the culture of life, which opposes contraception, sterilization, abortifacients, and abortion.

33. FOCUS holds and actively professes religious beliefs in accordance with the traditional Christian teachings on the sanctity of life. FOCUS believes that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious, from the moment of conception.

34. FOCUS follows the teachings of the Catholic faith as defined by the Magisterium (teaching authority) of the Catholic Church. FOCUS lives out its religious faith daily by helping and assisting its employees and the college students it serves to follow the teachings of the Catholic Church and to strengthen their faith.

35. FOCUS's religious beliefs include traditional Christian teaching on the nature and purpose of marriage and human sexuality. In particular, FOCUS believes, teaches, and lives, in accordance with Pope Paul VI's July 25, 1968 encyclical entitled *Humanae Vitae*, that

- "The transmission of human life is a most serious role in which married people collaborate freely and responsibly with God the Creator."
- "Marriage and conjugal love are by their nature ordained toward the procreation and education of children. Children are really the supreme gift of marriage and contribute in the highest degree to their parents' welfare."
- "[T]he exercise of responsible parenthood requires that husband and wife . . . recognize their own duties toward God, themselves, their families and human society."
- "The sexual activity, in which husband and wife are intimately and chastely united with one another, through which human life is transmitted, is . . . 'noble and worthy.'"
- "[E]ach and every marital act must of necessity retain its intrinsic relationship to the procreation of human life."
- Thus, "the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely

> excluded as lawful means of regulating the number of children. Equally to be condemned . . . is the direct sterilization, whether of the man or of the woman, whether permanent or temporary. Similarly excluded is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation – whether as an end or as a means."

36. Accordingly, in following Pope Paul VI's encyclical *Humanae Vitae*, FOCUS believes and actively professes, with the Catholic Church, that "to use this divine gift while depriving it, even if only partially, of its meaning and purpose, is equally repugnant to the nature of man and of woman, and is consequently in opposition to the plan of God and His holy will."

37. FOCUS believes, as Pope Paul VI prophetically stated in *Human Vitae*, that "a man who grows accustomed to the use of contraceptive methods may forget the reverence due to a woman, and, disregarding her physical and emotional equilibrium, reduce her to being a mere instrument for the satisfaction of his own desires, no longer considering her as his partner whom he should surround with care and affection."

38. This authoritative Catholic teaching was again set forth in Pope John Paul II's March 25, 1995 encyclical *Evangelium Vitae* in which Pope John Paul II reaffirmed "the value of human life and its inviolability" and urged all persons "in the name of God [to] respect, protect, love and serve life, every human life!"

39. Based on the teachings of the Catholic Church, and its own sincerely held religious beliefs, FOCUS does not believe that contraception, sterilization, abortifacients, or abortion are properly understood to constitute medicine, health care, or a means of providing for the well-being of persons. Indeed, FOCUS believes these procedures involve gravely immoral practices and cannot participate in any scheme to facilitate access to contraceptives, sterilization, and abortion-inducing drugs and devices and counseling and education related to the same without

violating its sincerely held religious convictions concerning the sanctity and inherent dignity of all human life.

40. As a result, FOCUS exercises its fundamental constitutional and statutory rights to the free exercise of religion, the freedom of speech, and expressive association and its devotion to the teachings and the tenets of the Catholic Church by emphatically opposing and speaking out against the use of contraceptives, sterilization practices, abortifacients, and abortion.

41. FOCUS objects to Defendants forcing FOCUS to provide – directly or indirectly – any support for, or access to, contraception, sterilization, and abortifacients based on its sincerely held religious beliefs.

42. FOCUS both believes, affirms, and teaches that it is contrary to God's will to interfere with conception with contraceptive devices or sterilization, or to destroy innocent human life by abortion or use of abortion-inducing drugs and devices and affirmatively speaks out against contraceptives, sterilization, abortion, and abortion-inducing drugs. Therefore, FOCUS may not participate in, pay for, train others to engage in, or otherwise support or facilitate contraception, abortion, and abortion-inducing drugs and devices.

43. FOCUS cannot fulfill its mission to strengthen the faith of the college students it serves and to teach such students to follow the teachings of the Catholic Church and also comply with the challenged regulations.

44. Furthermore, FOCUS subscribes to authoritative Catholic teaching about the proper nature and aims of health care and medical treatment. For instance, FOCUS believes, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "'[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to

the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

45. Therefore, FOCUS 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 as a means"—including contraception—is a grave sin.

46. FOCUS likewise has a sincere religious objection to facilitating access to abortion-inducing drugs and devices, including the "emergency contraceptives" Plan B and ella and certain intrauterine devices ("IUDs") because those drugs and devices can prevent a human embryo – which FOCUS understands to include the being formed at fertilization/conception, including before its implantation – from implanting in the wall of the uterus, thereby causing the death of the embryo.

47. Along with the clear and consistent teaching of the Catholic Church, the Pope, and the Bishops throughout this nation, FOCUS considers artificially preventing implantation of a human embryo to constitute an abortion.

48. Over the past several months, leaders within the Catholic Church have publicly spoken out about how the Mandate is a direct violation of Catholic Faith.

49. Cardinal Timothy Dolan, Archbishop of New York and President of the United States Conference of Catholic Bishops, wrote, "Since January 20 [2012], when the final, restrictive HHS [Mandate] . . . was first announced, we have become certain of two things: religious freedom is under attack, and we will not cease our struggle to protect it. We recall the words of our Holy Father Benedict XVI to our brother bishops on their recent ad limina visit: 'Of particular concern are certain attempts being made to limit that most cherished of American freedoms, the freedom of religion.' We have made it clear in no uncertain terms to the

government that we are not at peace with its invasive attempt to curtail the religious freedom we cherish as Catholics and Americans." (http://www.usccb.org., March 2, 2012).

50. Archbishop Charles J. Chaput, the Archbishop of Philadelphia and a founding FOCUS board member and current board member emeritus, has expressed that the ACA and the Mandate seek "to coerce Catholic employers, private and corporate, to violate their religious convictions . . . [t]he HHS mandate, including its latest variant, is belligerent, unnecessary, and deeply offensive to the content of Catholic belief . . . The HHS mandate needs to be rescinded. In reality, no similarly aggressive attack on religious freedom in our country has occurred in recent memory . . . [t]he HHS mandate is bad law; and not merely bad, but dangerous and insulting. It needs to be withdrawn—now." (http://the-american-catholic.com/2012/02/14/archbishop-chaput-hhs-mandate-dangerous-and-insulting/, Feb. 14, 2012).

51. Archbishop Samuel J. Aquila of Denver said:

> The Obama Administration's mandate is a forceful intrusion by the government on the rights of Catholics to act on their beliefs in the public square. Furthermore, it violates the principle of the freedom to follow one's conscience. This mandate runs contrary to the long-held principle of religious freedom that our Founders, who came here to escape religious persecution, enshrined in our Constitution. Catholics, Evangelical Christians, Baptists, and Jews are among the people of faith who have spoken out against the mandate and its requirements, to which they have moral objections. The government should not force its beliefs upon people of faith.

52. On November 13, 2013, the U.S. Conference of Catholic Bishops, at the conclusion of their fall General Assembly in Baltimore, Maryland, issued a "Special Message". In part, the Bishops, who promised to resist the Mandate if it is not corrected or rescinded, said:

> The current impasse is all the more frustrating because the Catholic Church has long been a leading provider of, and advocate for, accessible, life-affirming health care. We would have preferred to spend these recent past years working toward this shared goal instead of resisting this intrusion into our religious liberty. We have been forced to devote time and resources to a conflict we did not start nor seek.

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> As the government's implementation of the mandate against us approaches, we bishops stand united in our resolve to resist this heavy burden and protect our religious freedom. We will continue our efforts in Congress and especially with the promising initiatives in the courts to protect the religious freedom that ensures our ability to fulfill the Gospel by serving the common good.

53. On November 26, 2013, Pope Francis released an Apostolic Exhortation in which he stated:

> [T]his defence of unborn life is closely linked to the defence of each and every other human right. It involves the conviction that a human being is always sacred and inviolable, in any situation and at every stage of development. Human beings are ends in themselves and never a means of resolving other problems. Once this conviction disappears, so do solid and lasting foundations for the defence of human rights, which would always be subject to the passing whims of the powers that be. Reason alone is sufficient to recognize the inviolable value of each single human life, but if we also look at the issue from the standpoint of faith, every violation of the personal dignity of the human being cries out in vengeance to God and is an offence against the creator of the individual.

54. Because FOCUS both believes, affirms, and teaches that it that it is contrary to God's will to interfere with conception with contraception or to destroy innocent human life by abortion or use of abortion-inducing drugs and devices and affirmatively speaks out against contraceptives, sterilization, abortion, and abortion-inducing drugs, it would be a violation of FOCUS's deeply held religious beliefs for it to be required to provide, fund, facilitate, cause, or participate in health insurance which covers or provides payments for artificial contraception, sterilization, and/or abortion-inducing drugs and devices and related education and counseling.

55. CURTIS A. MARTIN, CRAIG MILLER, BRENDA CANNELLA, and CINDY O'BOYLE (hereinafter "the individual plaintiffs") are employees of FOCUS who, like other FOCUS employees, hold and live the same religious beliefs as are held and lived by FOCUS, support FOCUS's religious liberty rights, do not want to have any part in participating in

Defendants' immoral health insurance scheme, and do not want, either for themselves or for their wives or daughters, as applicable, to expose their family members to Defendants' immoral health insurance scheme, including by receiving promises of payments for objectionable items arranged by FOCUS's plan administrator, or by participating in a plan where FOCUS designates the administrator to obtain those promises of payments. They also object to losing their health insurance coverage provided by FOCUS, and to be forced in such a circumstance to buy themselves and their families a health insurance plan from another source that (because of the Mandate challenged here) will require them to buy coverage of abortifacients, contraception, sterilization, and education and counseling in favor of the same.

B. FOCUS's Health Insurance Plan.

56. FOCUS currently has about 450 full-time employees and provides health insurance through a self-insured plan administered by a third party administrator. The individual plaintiffs are four of those employees for whom FOCUS provides health insurance.

57. Though FOCUS provides its employees with employee health coverage superior to coverage generally available in the Colorado market, never in its history has FOCUS provided insurance coverage for contraceptives, sterilization, or abortion-inducing drugs and devices.

58. FOCUS has designed its health insurance plan throughout the years to exclude coverage of contraception sterilization, and abortion-inducing drugs and devices in line with FOCUS's religious beliefs and has taken great pains through the years to insure that its employees' insurance plans do not cover these objectionable drugs and devices.

59. As the Mandate, with its "safe harbor" for religious non-profit groups, applies to the first health insurance plan-year beginning after December 31, 2013, FOCUS's insurance plan year, as is relevant to this complaint, begins on July 1, 2014.

60. FOCUS's health insurance plan does not qualify for any of the myriad of exemptions to the challenged regulations provided by Defendants.

61. Thus, FOCUS will face a choice in the period leading up to July 1, 2014 of explicitly designating and triggering its third party plan administrator to provide the objectionable drugs and devices or drop its employee health insurance plan altogether in order avoid being complicit in the provision of such objectionable drugs and devices and face crippling annual fines, harm to its employees who rely on that insurance, a severe impact on FOCUS's ability to recruit and keep good employees, a consequent need to increase employee compensation substantially so that employees can provide insurance for their families (but leaving them to a market in which all insurance products they can buy, even assuming the system ever works, will include unwanted coverage of abortifacient, contraceptive, and sterilizing drugs and devices).

C. The ACA and Defendants' Preventive Care Mandate.

62. In March 2010, Congress passed and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 (March 30, 2010), together known as the "ACA."

63. The ACA regulates the national health insurance market by, among other things, directly regulating "group health plans" and "health insurance issuers."

64. Pursuant to the ACA, employers with over 50 full-time employees are required to provide a certain level of health insurance to their employees.

beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities." *Id.*

71. 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 objectionable regulations regardless of the legal flaws or public opposition that might be manifest in public comments. *Id.*

72. In addition to reiterating the ACA's "preventive care and screenings" coverage requirements, this Interim Final Rule provided further guidance concerning the ACA's restriction on cost-sharing.

73. This Interim Final Rule made it clear that "cost sharing" referred to "out-of-pocket" expenses for plan participants and beneficiaries. 75 Fed. Reg. at 41,730.

74. This Interim Final Rule acknowledged that 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 41,737. ("Such a transfer of costs could be expected to lead to an increase in premiums.").

75. In other words, according to the Defendants, the prohibition on cost-sharing was simply a way "to distribute the cost of preventive services more equitably across the broad insured population." 75 Fed. Reg. at 41,730.

76. After this Interim Final Rule was issued, numerous commenters warned against the adverse religious freedom and conscience implications of requiring religious individuals and organizations to include certain drugs, procedures, and services, including contraceptives, abortion-inducing drugs and devices, sterilization, and related education and counseling services, in the health care plans of such religious individuals and organizations.

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

78. In developing its guidelines, IOM invited a select number of groups to make presentations on the drugs, procedures, and services that should, by force of law, be included by mandate in all health plans. Those groups selected by IOM, presumably in coordination with HHS, to make presentations to IOM included the Guttmacher Institute (an entity related to Planned Parenthood Federation of America which "advances sexual and reproductive health rights" including abortion)[1], the American Congress of Obstetricians and Gynecologists ("ACOG"), John Santelli (who, among other things, serves as senior consultant for the Guttmacher Institute),[2] the National Women's Law Center (an organization which, among other things, works "to protect women's reproductive rights" including abortion and contraception access),[3] the National Women's Health Network (an organization dedicated to preserve "access to contraceptive and abortion care"),[4] Planned Parenthood Federation of America (a contraception and abortion providing organization dedicated to "reproduction self-determination"),[5] and Sara Rosenbaum, a longtime contraception advocate. All of these groups and individuals advocate for access, at public expense, to contraception and abortion.

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[1] Guttmacher Institute, "Mission," *available at* http://www.guttmacher.org/mission.html (last visited Nov. 27, 2013).
[2] Columbia University, "John S. Santelli," available at http://www.mailman.columbia.edu/our-faculty/profile?uni=js2637 (last visited Nov. 27, 2013).
[3] National Women's Law Center, "Our Issues," available at http://www.nwlc.org/our-issues (last visited Nov. 27, 2013).
[4] National Women's Health Network, "Securing Sexual & Reproductive Health and Autonomy," available at http://nwhn.org/securing-sexual-reproductive-health-and-autonomy (last visited Nov. 27, 2013).
[5] Planned Parenthood, "Mission," available at http://www.plannedparenthood.org/about-us/who-we-are/vision-4837.htm (last visited Nov. 27, 2013).

79. No religious groups or other groups that opposed government-mandated coverage of contraceptives, abortion-inducing drugs and devices, sterilization, and related education and counseling were invited by IOM to be presenters.

80. On July 10, 2011, the IOM published its preventive care guidelines for women, including recommendations 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).

81. Pursuant to the Food and Drug Administration ("FDA"), "approved contraceptive methods" were defined to include contraceptives, including birth control pills and prescription contraceptive devices such as IUDs, and abortion-inducing drugs and devices such as Plan B drugs (also known as the "morning after pill") and its chemical cognates; ulipristal (also known as "ella" or the "week-after pill"); and certain IUDs.

82. Many of these drugs and devices – including "emergency contraceptives" such as Plan Be and ella and intrauterine devices ("IUDs") – are known abortion-inducing drugs or devices, i.e., drugs or devices that can cause the death of an embryo by preventing the embryo from implanting in the wall of the uterus.

83. Indeed, FDA's own Birth Control Guide states that an effect of Plan B (Levonorgestrel) is to "prevent[] attachment (implantation) to the womb (uterus). FDA, Office of Women's Health, Birth Control Guide, *available at* http://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/ucm313215.htm (last visited Nov. 27, 2013).

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

85. The requirement for related "education and counseling" accompanying contraceptives, abortion-inducing drugs, and sterilization necessarily covers education and counseling given in favor of the use of such objectionable drugs, devices, and methods, 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 objectionable drugs, devices, and methods that the medical provider is taking the position that the use of such items is in the patient's best interests, and therefore the medical provider's education and counseling related to any such item will be in favor of its proper use.

86. On August 1, 2011, a mere 13 days after IOM issued its recommendations, HRSA, a subagency of HHS, issued guidelines adopting IOM's recommendations in full. *See* http://www.hrsa.gov/womensguidelines (last visited Nov. 27, 2013).

87. These guidelines required that insurance plans commencing on or after August 1, 2012 include these offensive contraceptives and abortion-inducing drugs and devices.

88. A non-exempt employer which provided a health insurance plan that did not cover abortifacients, contraceptives, sterilization, or education and counseling for the same was subject to heavy fines approximating $100 per employee per day. Such employers were also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

89. An employer with more than 50 employees could not avoid the requirements of the Mandate by simply refusing to provide health insurance to its employees because the ACA

imposed annual monetary penalties on entities that would so refuse of $2,000 times the number of employees, minus 30.

90. Additionally, dropping health insurance coverage for employees altogether 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 the employees could purchase health insurance themselves. It would also deprive the employees not only of a good health insurance plan, but also of a health insurance plan that many of the employees desire, for religious and moral reasons, does not cover abortifacients, contraceptives, or sterilization.

2. Second Interim Rule - The Religious Employer Exemption.

91. On the very same day that HRSA rubber-stamped the IOM's recommendations, HHS promulgated a "Second Interim Final Rule." 76 Fed. Reg. 46,621 (published Aug. 3, 2011).

92. This Second Interim Final Rule granted HRSA "discretion to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46,621, 46,623. 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 (ii) of the Internal Revenue Code of 1986, as amended. 75 Fed. Reg. at 46,626.

93. The statutory citations in the fourth prong of this test refer to "churches, their integrated auxiliaries, and conventions or associations of churches" and the "exclusively religious activities of any religious order." 26 U.S.C. § 6033(a)(3).

94. Thus, the "religious employer" exemption was extremely narrow, limited to churches, their integrated auxiliaries, and religious orders, but only if (1) their purpose was to inculcate faith and (2) they hired and served primarily people of their own faith tradition.

95. 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. 27, 2013).

96. Although religious organizations like FOCUS share the same religious beliefs and concerns as objecting Catholic churches, their integrated auxiliaries, and objecting religious orders, HHS deliberately ignored the offensive Mandate'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. 46,621, 46,623.

97. As a result, the vast majority of religious organizations with conscientious objections to providing contraceptive and abortifacient products and services, including FOCUS, were excluded from the "religious employer" exemption.

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

99. 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 46,624.

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

101. HHS did not take into account any of the concerns of religious organizations in the comments submitted before the Second Interim Final Rule was issued. Instead, HHS was unresponsive to the thousands of well-grounded assertions and concerns that the Mandate violated rights of conscience and religious liberties protected by the U.S. Constitution and statutes.

3. The Temporary Enforcement Safe Harbor.

102. The public outcry for a broader religious employer exemption continued for many months. On January 20, 2012, 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 [i.e., to August 1, 2012]. . . to comply with this new law." *See* Jan. 20, 2012 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. 27, 2013).

103. On February 10, 2012, HHS formally announced a "temporary enforcement safe harbor" for non-exempt nonprofit religious organizations that objected to covering free contraceptives and abortifacient services pursuant to the objectionable regulations.

104. HHS, declaring a "Temporary Enforcement Safe Harbor," agreed that it would not take any enforcement action against an eligible organization during the safe harbor period which would extend until the first plan year beginning on or after August 1, 2013.

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

106. Notwithstanding the safe harbor and HHS's assurances that non-exempt religious nonprofits would be accommodated, on February 10, 2012, HHS announced a final rule "finalizing, without change" the contraceptive mandate and the narrow religious employer exemption. 77 Fed. Reg. 8,725-01 (published Feb. 15, 2012).

4. The Advance Notice of Proposed Rulemaking.

107. 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. 16,501, 16,503.

108. 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.* (emphasis added).

109. 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.*

110. For the first time, and contrary to the earlier definition of "cost sharing," Defendants suggested in the ANPRM that insurers and third party administrators of self-insured plans could "assume this responsibility." *Id.*

111. This time, "approximately 200,000 comments" were submitted in response to the ANPRM, 78 Fed. Reg. 8,456, 8,459, largely restating previous religious liberty objections and

stating that the government's new proposal would not resolve these religious and 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 drugs, devices, and services.

4. The Notice of Proposed Rulemaking.

112. 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. 8,456 (published Feb. 6, 2013).

113. The NPRM proposed two changes to the then-existing regulations. 78 Fed. Reg. 8,456, 8,458–59.

114. 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. 8,461.

115. Under the NPRM's 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 8,461.

116. HHS acknowledged, however, that this proposal "would not expand the universe of employer plans that would qualify for the exemption beyond those entities which qualified for the religious employer exemption pursuant to the 2012 final rules." 78 Fed. Reg. 8,456, 8,461.

117. In other words, religious nonprofit organizations like FOCUS that are not a formal church, an integrated auxiliary of a church, or a religious order would still not qualify for an exemption.

118. Though HHS had pledged to "accommodate" non-exempt religious nonprofit organizations like FOCUS, the NPRM required such non-exempt religious nonprofit organizations to participate in the government's scheme by making them "designate" their insurers and third party administrators as "agents" to provide plan participants and beneficiaries with free access to contraceptive and abortifacient drugs, devices, and services.

119. This proposed "accommodation" did not resolve the concerns of religious organizations like FOCUS because it continued to force them to deliberately provide health insurance that would trigger access to contraceptives, abortion-inducing drugs, devices, sterilization, and related education and counseling.

120. The NPRM received 408,907 comments, a new record for comments. *See* 78 Fed. Reg. 8,457 and http://www.regulations.gov/#!documentDetail;D=CMS-2012-0031-63161 (government's website tally of comments) (last visited Nov. 27, 2013). Religious organizations again overwhelmingly decried this new proposed "accommodation" as a sham and 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 drugs, devices, and services.

121. On April 8, 2013, the very same day that the notice-and-comment period ended, Defendant Sebelius answered questions about the contraceptive and abortifacient services requirement in a presentation at Harvard University. Defendant 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 Remarks at 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/ (at 49:45) (emphasis added) (last visited Nov. 27, 2013).

122. Given the date and timing of these remarks, it is clear that Defendants had no intention to give and indeed gave no consideration to the thousands of comments submitted by religious organizations in response to the NPRM's proposed "accommodation."

123. Moreover, Defendant Sebelius's 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 such employers provide employees.

5. The Final Rule.

124. On June 28, 2013, Defendants issued a Final Rule (the "Mandate"), which wholly ignored the objections raised by thousands of religious organizations and others and continued to co-opt and conscript objecting employers, like FOCUS, into the Defendants' scheme of coercing free access to contraceptive and abortifacient drugs, devices, and services from religious organizations like FOCUS. 78 Fed. Reg. 39,870 (2013).

125. Under this Final Rule, the "discretionary religious employer" exemption, which is still implemented via footnote on the HRSA website, *see* http://hrsa.gov/womensguidelines, 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 (ii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39,874.

126. Defendants attempted to justify the extraordinarily narrow religious 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 39,874.

127. Although religious organizations like FOCUS share the same religious objection to the Final Rule (the "Mandate") as do churches, their integrated auxiliaries, and religious orders, Defendants have deliberately ignored the Mandate's impact on FOCUS's religious liberty by refusing to grant FOCUS and similar religious organizations an exemption from it.

128. FOCUS is a Catholic institution that adheres to the teaching authority of the Catholic Church in matters of faith and morals, including its belief concerning the sanctity and dignity of all human life. Its employees, including the individual plaintiffs, choose to work at FOCUS because they share its religious beliefs and wish to help FOCUS further its religious mission.

129. FOCUS is thus just as likely as organizations that qualify for Defendants' "religious employer" exemption to employ individuals who are either of the same faith as FOCUS or adhere to the same religious objection to contraceptives and abortion-inducing drugs and devices as does FOCUS, yet Defendants deny FOCUS the "religious employer" exemption while extending it to houses of worship, and they deny the ability of FOCUS's employees to obtain health insurance without triggering "free" coverage of such objectionable drugs and devices for their own and their fellow employees' wives and daughters.

130. Defendants' "religious employer" exemption divides the thousands of religious organizations that share a religious objection to the Mandate into those "religious enough" to qualify for an exemption (e.g., houses of worship) and those that are not "religious enough" (e.g., FOCUS and other similar religious nonprofits).

131. The Mandate creates a separate "accommodation" for certain non-exempt religious organizations. 78 Fed. Reg. at 39,874.

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. at 39,874.

133. The Temporary Enforcement Safe Harbor was extended through the end of 2013, only six months after the issuance of the Final Rule. 78 Fed. Reg. at 39,889.

134. Thus, organizations which must comply with the Mandate must 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 or third party administrator. 78 Fed. Reg. at 39,875.

135. FOCUS, which maintains a self-insurance plan for its employees in which FOCUS acts as its own insurer, must comply with this so-called "accommodation" and self-certify to the administrator of FOCUS's self insurance plan (called third party administrator) "prior to the beginning of the first plan year to which an accommodation is to apply", i.e., in the case of FOCUS's self-insurance plan, July 1, 2014. 78 Fed. Reg. 39,889.

136. But the certification that self-insured entities, like FOCUS, must deliver to third party administrators is different than the certification organizations are required to deliver to insurers. The certification that FOCUS is required to deliver certifies not only its religious

objections, but also designates the "[o]bligations of the third party administrator" under ERISA include, by virtue of that designation, a fiduciary duty to provide promises of payments for the exact contraceptives and abortion-inducing drugs and devices to which FOCUS objects. 78 Fed. Reg. at 39,894-95.

137. Moreover, to comply with the Final Mandate, FOCUS is forbidden from speaking its pro-life religious beliefs to its third party administrator to withdraw its designation or urge it not to provide payments for objectionable contraceptives and abortion-inducing drugs and devices. "The eligible organization must not, directly or indirectly, seek to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, and must not, directly or indirectly, seek to influence the third party administrator's decision to make any such arrangements." 78 Fed. Reg. at 39,895.

138. If FOCUS elects to conform to the accommodation with respect to its self-insurance plan, FOCUS would be required to execute the self-certification and deliver it to its self-insurance plan's third party administrator on or before July 1, 2014.

139. By delivering the self-certification to its third party administrator, FOCUS would thereupon trigger the third party administrator's provision of or arrangement for payments for morally objectionable contraceptives and abortifacients. 78 Fed. Reg. 39,892-93. These payments constitute coverage of the items to which FOCUS objects, *see,* e.g., *id.* at 39,872 ("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 39,876. This coverage will not be contained in any insurance policy separate from FOCUS's plan. *See id.*

140. By issuing the self-certification, FOCUS would thereupon arrange and contract for its third party administrator to provide the exact coverage or payments that FOCUS objects to arranging, contracting for, or enabling, and that Defendants falsely represent in their Mandate that FOCUS would no longer be obliged to arrange or contract for.

141. Indeed, FOCUS would be required to identify its participating employees to its third party administrator for the distinct purpose of enabling Defendants' scheme to facilitate free access to contraceptives and abortifacient drugs, devices, and services to which FOCUS objects.

142. Moreover, the final Mandate effectively eliminates the existing morally acceptable health insurance made available to and possessed by employees of FOCUS and instead forces FOCUS and its employees, with no opt-out, to accept and pay into a plan that includes coverage of objectionable contraceptives and abortifacient drugs, devices, and services not only for themselves but for their wives and daughters. This impact falls on the individual plaintiffs and violates their religious beliefs.

143. Thus, while FOCUS is eligible for this so-called "accommodation," the "accommodation" is objectionable to FOCUS as it requires FOCUS to play an explicit, central and necessary role in Defendants' scheme to provide free access to contraceptives and abortifacient drugs, devices, and services. Without forcing FOCUS to designate its plan administrator to secure payments for the objectionable items, Defendants could not use FOCUS to deliver their unwanted payment promises upon FOCUS, its employees, or the individual plaintiffs. Quite simply, the "accommodation" is nothing more than a shell game that attempts to disguise a religious organization's role as something less than the central cog in Defendants' scheme to provide contraceptives or abortifacients and related counseling and education.

144. Notwithstanding this dissembling deception by Defendants, a religious organization's decision to offer health insurance and its self-certification continue to serve as the sole triggers for creating access to the religious organization's employees of free contraceptives or abortifacients and related counseling and education.

145. The third party administrator's obligation to make direct payments for artificial contraception and/or abortion-inducing drugs and devices, sterilization, and related education and counseling to which FOCUS objects would continue "for so long as the participant or beneficiary remains enrolled in the plan." 78 Fed. Reg. at 39,876.

146. Thus, FOCUS would have to coordinate with its third party administrator regarding when it was adding or removing employees and beneficiaries from its health insurance plan and, as a result, to or from the Defendants' scheme.

147. FOCUS's third party administrator would be required to notify plan participants and beneficiaries of the contraceptive and abortifacient payment benefit "contemporaneous with . . . but separate from any application materials distributed in connection with enrollment" in FOCUS's health insurance plan. 78 Fed. Reg. at 39,876.

148. This would also require FOCUS to coordinate the notices with its third party administrator and to thus participate in the government's contraceptive and abortifacient services payment scheme.

149. The third party administrator would be required to provide contraceptive and abortifacient benefits "in a manner consistent" with the provision of other covered services." 78 Fed. Reg. at 39,876-77.

150. Thus, any payment or coverage disputes would presumably need to be resolved under the terms of FOCUS's existing plan documents further embroiling FOCUS in the Defendants' scheme.

151. Even under this "accommodation," FOCUS and every other non-exempt objecting religious nonprofit organization will continue to play a central role in facilitating free access to objectionable contraceptive and abortifacient services in furtherance of the Defendants' scheme.

152. Under the "accommodation," insurers "may not impose any cost-sharing requirements, such as a copayment, coinsurance, or a deductible, or impose any premium fee or other charge, or any portion thereof, directly or indirectly, on the eligible organization." 78 Fed. Reg. at 39,896.

153. Defendants state that they "continue to believe, and have evidence to support," that providing payments for contraceptive and abortifacient services 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 39,877.

154. On information and belief, the studies Defendants rely upon to support this claim are severely flawed.

155. 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. 39,877-78 (addressing ways insurers can cover up-front costs).

156. 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.

157. 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.39,877.

158. This would encourage issuers to artificially inflate the eligible organization's premiums.

159. Under this methodology – assuming it is even legal – the eligible organization would still bear the cost of the required payments for contraceptive and abortifacient services in violation of its religious beliefs, as if the "accommodation" had never been made.

160. 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. 39,878.

161. There is no legal authority for forcing third and fourth parties to pay for services provided to the employees of eligible organizations under this "accommodation."

162. Furthermore, under the ACA, Defendants lack authority in the first place to coerce insurers to make separate payments for contraceptive and abortifacient services for an eligible organization's plan participants and beneficiaries.

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

164. Finally, the "accommodation" has another massive, built-in "exception" to the Mandate, albeit an apparently accidental one, which further illustrates the arbitrary and sloppy character of Defendants' discrimination against entities like FOCUS. In recent similar lawsuits, Defendants have admitted that if non-exempt, non-integrated-auxiliary organizations otherwise

identical to FOCUS are participants in self-insured "church plans" that are exempt from ERISA, Defendants have refrained from (and lack authority for) imposing the aforementioned "accommodation" requirement on their third party administrators to promise abortifacient/contraceptives/sterilization payments for the plan's participants. As a result, thousands of non-exempt, non-integrated-auxiliary religious organizations that are indistinguishable from FOCUS for these purposes face no penalty whatsoever on their third party administrator to deliver objectionable payments to their employees, while FOCUS still faces that pressure, for reasons that serve no rational basis in Defendants' Mandate scheme,

165. 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 Defendants' scheme to force the free provision of contraceptive and abortifacient services even when the organization, as does FOCUS, objects to facilitating those services.

166. Religious organizations, like FOCUS, with self-insured plans managed by a third party administrator would be similarly enmeshed in the government's scheme.

167. Defendants acknowledge "there is no obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities." 78 Fed. Reg. at 39,880. This will pressure organizations like FOCUS so that they might not be able to find a third party administrator to work with them at all, or might have to pay increased costs to use a third party administrator.

168. Thus, the burden remains on the objecting religious organization (and Defendants have made that burden all the more difficult) to find a third party administrator that will agree to provide free access to the same contraceptive and abortifacient services the religious organization cannot, on the basis of its sincere religious objections, directly provide. Interfering

with FOCUS's access to third party administrator services harms both FOCUS and its employees, including the individual plaintiffs, and undermines the coverage and network benefits that FOCUS's employees receive under FOCUS's plan.

169. FOCUS's religious beliefs preclude it from soliciting, contracting with, or designating a third party to provide these objectionable drugs, devices, and services.

170. The Mandate requires that, even if the third party administrator consents, the religious organization – via its self-certification – must expressly designate the third party administrator as "an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries." 78 Fed. Reg. at 39,879.

171. The self-certification must specifically notify the third party administrator of its "obligations set forth in the[] final regulations, and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA." 78 Fed. Reg. at 39,879.

172. Because the designation makes the third party administrator a plan administrator with fiduciary duties linked to FOCUS's plan under ERISA, the payments for contraceptive and abortifacient drugs, devices and services would be payments made under FOCUS's plan.

173. Because FOCUS would be required to identify and designate a third party administrator willing to administer the contraceptive and abortifacient drugs, devices, and services, FOCUS's religious beliefs preclude it from complying with this "accommodation."

174. The Mandate sets forth complex means through which a third party administrator may seek to recover its costs incurred in making payments for contraceptive and abortifacient drugs, devices, and services.

175. The third party administrator must identify an issuer who participates in an ACA exchange and who would be willing to make payments on behalf of the third party administrator.

176. Cooperating issuers would then be authorized to obtain refunds from the user fees they have paid to participate in the exchange as a means of being reimbursed for making payments for contraceptive and abortifacient drugs, devices, and services on behalf of the third party administrator.

177. Issuers would be required to pay a portion of the refund back to the third party administrator to compensate it for any administrative expenses it has incurred.

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

179. 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 contraceptive and abortifacient services to its employees and plan beneficiaries from the same insurer they are paying for their insurance plan.

180. FOCUS, and the individual plaintiffs, cannot participate in or facilitate Defendants' scheme in this manner without violating their religious convictions.

6. The Mandate and FOCUS's Health Insurance Plan.

181. The plan year for FOCUS's next employee health plan begins on July 1, 2014. As a result, FOCUS must, as it prepares for this next plan year, face the choice of (a) transgressing its religious commitments by including contraceptives and abortifacients in its plan or by

arranging with its insurance issuer or third party administrator to provide the exact same services by providing the self-certification, or (b) transgressing its religious duty to provide for the well-being of its employees and their families by dropping its health insurance plan altogether in order to avoid being complicit in the provision of contraceptives and abortifacients, but thereby subjecting itself to crippling annual fines, penalties, and other sanctions, and depriving its employees of religiously acceptable health insurance that many of its employees desire for their families.

182. Although the government has recently announced that it will postpone implementing the annual fine of $2,000 per employee (minus 30) for organizations that drop insurance altogether, that postponement is only for one year, until 2015 (in the middle of FOCUS's next plan year). This postponement does not delay the daily fines under 26 U.S.C. § 4980D or lawsuits under 29 U.S.C. § 1132.

183. FOCUS's religious convictions forbid it from participating in any way in the government's scheme to provide free access to contraceptive and abortifacient services through its health care plan.

184. Dropping its insurance plan would place FOCUS at a severe competitive disadvantage in its efforts to recruit and retain employees. It would also deprive individual FOCUS employees, including the individual plaintiffs, of insurance that complies with their own moral and religious beliefs by omitting coverage and payments for abortifacients, contraceptives, and sterilization for themselves, their own families, and other plan participants. And it would harm FOCUS's employees by depriving them of the health plan they have, and pushing them into a costly and dysfunctional health insurance market governed by the ACA.

185. The Mandate forces FOCUS to deliberately provide health insurance that would facilitate free access to contraceptives and abortifacients regardless of the ease with which insured persons could obtain these drugs and devices from other sources. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the sanctity of life that FOCUS seeks to convey.

186. The Mandate directly forces FOCUS to speak by designating its third party administrator to provide promises of payments for abortifacients, contraception, and sterilization, in violation of FOCUS's beliefs, while also censoring FOCUS from speaking to its third party administrator its message against such items.

187. The Mandate therefore imposes a number of substantial burdens on the religious beliefs and exercise of Plaintiffs. And to the extent the Mandate impacts FOCUS's religious beliefs and its health insurance coverage, it impacts the individual plaintiffs' beliefs and their participation in that coverage as well.

7. The Governmental Interests Allegedly Underlying the Mandate and the Availability of Other Means of Pursuing Those Interests.

188. Coercing FOCUS to facilitate access to morally objectionable contraceptives and abortifacients advances no compelling governmental interest and is hardly the least restrictive means of achieving the government's purported interest.

189. The mandated contraceptives and abortion-inducing drugs, devices, and related services to which FOCUS objects are already widely available at little or no cost. Indeed, HHS Secretary Sebelius has acknowledged that contraceptives are "the most commonly taken drug in America by young and middle-aged women" and are widely "available at sites such as community health centers, public clinics, and hospitals with income-based support." *See* Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius (Jan.

20, 2012), *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited Nov. 27, 2013).

190. The government has many other policy options available to it by which Defendants could provide access to these objectionable drugs, devices, and services without conscripting FOCUS and other religious objectors and their insurance plans in violation of their religious beliefs.

191. For example, Defendants could pay for such objectionable drugs, devices, and services (a) through existing government programs, including Title XIX, Title X, and Title XX; (b) by subsidizing the government's existing network of abortion and family planning services providers, many of which are being paid by the government as "Navigators" to promote the government's health insurance scheme; or (c) through direct government payments, or tax deductions, refunds, or credits.

192. The government could simply exempt all conscientiously objecting organizations, just as it has already exempted the subset of nonprofit religious employers that are referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code, and participants in self-insured church plans exempt from ERISA by freeing such plans from the Mandate's third party administrator penalty. And the government cannot possibly assert or sustain a compelling interest in forcing the individual plaintiffs to obtain coverage or promised payments of items when they religiously object to receiving that coverage or using those items and prefer to retain the coverage afforded to them by FOCUS.

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

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

195. Employers who do not make modifications to their insurance plans that deprive the plans of "grandfathered" status may continue to use those grandfathered plans indefinitely.

196. 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. 34,538 (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").

197. 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 contraceptives and abortifacients were important enough to codify in the ACA; as far as Congress was concerned, the Mandate need not include contraceptives and abortifacients at all.

198. The Administration's recent postponement of the employer mandate (and its attendant penalties) also belies any claim that a compelling government interest justifies coercing FOCUS into complying with the Mandate, as employers may now decide not to provide their employee health plans without incurring fines under 26 U.S.C. § 4980H, at least for one additional year, although such a course is not an option for FOCUS itself.

199. These broad exemptions also demonstrate that the Mandate is not a general law entitled to some measure of judicial deference.

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

201. Defendants were willing to exempt various secular organizations, religious organizations, and church plan participants, and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for religious organizations such as FOCUS.

202. The Mandate was promulgated by government officials, and supported by non-governmental organizations, who strongly oppose religious teachings and beliefs regarding marriage, family, and life and who strongly support an unlimited abortion right.

203. 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.

204. 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 at which time she told the assembled crowd that "we are in a war."

205. Defendant Sebelius further criticized individuals and entities whose beliefs differed from those held by her and the others at this pro-abortion fundraising event, 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."

206. On July 16, 2013, Defendant Sebelius further compared opponents of the ACA generally to "people who opposed civil rights legislation in the 1960s," stating that upholding the ACA 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.

207. Consequently, on information and belief, FOCUS and the individual plaintiffs allege that the clear purpose of the Mandate, including the restrictively narrow scope of the religious employer's exemption, is to discriminate against religious organizations and people that oppose contraception and abortion on religious and moral grounds.

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

208. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference.

209. FOCUS's sincerely held religious beliefs prohibit it from providing, paying for, making accessible, or otherwise facilitating coverage or payments for abortion, abortifacients, embryo-harming drugs and devices, contraceptives, and related education and counseling, or providing or facilitating a plan that causes access to the same through an insurance company, third party administrator, or any other third party. The individual plaintiffs' beliefs similarly prohibit them from participating in such a health insurance scheme for themselves or their families.

210. When Plaintiffs comply with the Ten Commandments' prohibition on murder and with their sincerely held religious beliefs that the Holy Bible and the Catholic Church teach that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious from the moment of conception, they exercise religion within the meaning of the Religious Freedom Restoration Act ("RFRA").

211. The Mandate imposes a substantial burden on Plaintiffs' religious exercise and coerces them to either change or violate their religious beliefs and the beliefs of many of FOCUS's employees.

212. The Mandate chills Plaintiffs' religious exercise within the meaning of RFRA and pressures them to abandon their religious convictions and religious practices.

213. The Mandate exposes FOCUS to substantial fines and/or financial burdens for its religious exercise. It likewise imposes harms on the individual plaintiffs to participate in morally acceptable health insurance or threaten the quality and cost of their insurance coverage, which harms are exacerbated by the ACA's penalties on individuals if they do not obtain health insurance.

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

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

216. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

217. The Mandate and Defendants' threatened enforcement thereof violates Plaintiffs' rights protected by RFRA.

218. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

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

219. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference .

220. FOCUS's sincerely held religious beliefs prohibit it from providing, paying for, making accessible, or otherwise facilitating coverage or payments for abortion, abortifacients, embryo-harming drugs and devices, contraceptives, and related education and counseling, or providing or facilitating a plan that causes access to the same through an insurance company, third party administrator, or any other third party. The individual plaintiffs' beliefs similarly prohibit them from participating in such a health insurance scheme for themselves or their families.

221. When Plaintiffs comply with the Ten Commandments' prohibition on murder and with their sincerely held religious beliefs that the Holy Bible and the Catholic Church teach that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious from the moment of conception, they exercise religion within the meaning of the Free Exercise Clause of the First Amendment to the United States Constitution.

222. The Mandate imposes a substantial burden on Plaintiffs' religious exercise and coerces them to either change or violate their religious beliefs and the beliefs of many of FOCUS's employees.

223. The Mandate chills Plaintiffs' religious exercise within the meaning of RFRA and pressures them to abandon their religious convictions and religious practices.

224. The Mandate exposes FOCUS to substantial fines and/or financial burdens for its religious exercise. It likewise imposes harms on the individual plaintiffs to participate in morally acceptable health insurance or threaten the quality and cost of their insurance coverage, which harms are exacerbated by the ACA's penalties on individuals if they do not obtain health insurance.

225. The Mandate forces Plaintiffs to choose between either following their religious commitments and suffering debilitating punishments or violating their religious beliefs in order to avoid those punishments.

226. The Mandate exposes FOCUS to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

227. The Mandate violates the free exercise of religion of FOCUS and its employees (including the individual plaintiffs) who share FOCUS's beliefs about human life and abortion, abortifacients, embryo-harming drugs and devices, and contraceptives, and who do not wish to pay for or participate in a plan that causes promised payments for abortifacients, embryo-harming drugs and devices, and contraceptives for their fellow employees, families, wives, and daughters, but for whom the Mandate gives no option.

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

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

230. Despite being informed in substantial detail of the religious objections of thousands of religious nonprofits like FOCUS, Defendants designed the Mandate and the "religious employer" exemption therefrom in a way that makes it impossible for FOCUS and

other similar religious organizations to simultaneously comply with its religious beliefs and the Mandate.

231. Defendants promulgated the Mandate's narrow "religious employer" exemption, and its implicit exemption of self-insured church plan participants among organizations like FOCUSE, so that it the Mandate is not neutral in that it exempts from the Mandate some nonprofit employers who are religious but not others, thereby discriminating among religious organizations on the basis of their religious views or status.

232. 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 organizational governance as well as matters of faith and doctrine.

233. 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, or the degree to which it is an integrated auxiliary or a church.

234. 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.

235. Based on Biblical teachings, the 2,000 year old teachings of the Catholic Church, and its own sincerely held religious beliefs, FOCUS has made the internal organizational decision that its employee health plan may not, as a matter of faith and practice, subsidize, provide, or facilitate access to contraception, sterilization, abortifacients, or abortion and counseling and education related to the same.

236. The Mandate directly interferes with FOCUS's internal organizational decision concerning its structure and mission by requiring it to subsidize, provide, or facilitate access to

contraception, sterilization, abortifacients, or abortion and counseling and education related to the same.

237. The Mandate's interference with FOCUS's internal organizational decisions affects its faith and religious mission by requiring it to subsidize, provide, or facilitate access to contraception, sterilization, abortifacients, or abortion and counseling and education related to the same in direct violation of its religious beliefs.

238. The Mandate's interference with FOCUS's internal organizational decision-making in a manner that affects its faith and mission violates the Free Exercise Clause.

239. Defendants promulgated and implemented the Mandate and the "religious employer" exemption and its implicit exemption of self-insured church plan participants among organizations like FOCUS in order to suppress the religious exercise of FOCUS and other similar religious organizations.

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

241. The Mandate and/or its penalties, by Defendants' creation, do not apply to, *inter alia*, (a) an enormous number of health insurance plans that enjoy "grandfathered" status; (b) plans sponsored by employers that qualify for the "religious employer" exemption (including integrated auxiliaries that are similar to FOCUS); or (c) self-insured church plan participants among organizations like FOCUS, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies the Mandate.

242. Indeed, access to contraceptives or abortifacients and related counseling and education is not a significant social problem as the availability of such items is ubiquitous, and compelling FOCUS to play an essential role in facilitating access to such objectionable drugs,

devices, and services is not the least restrictive means of advancing any interest Defendants may conceivably have.

243. The Mandate violates Plaintiffs' rights secured to it by the Free Exercise Clause of the First Amendment to the United States Constitution.

244. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

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

245. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference.

246. 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.

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

248. The Mandate's narrow exemption for "religious employers," and its refraining from imposing a penalty on third party administrators of self-insured church plan participants among organizations like FOCUS, 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. The Mandate's exemption of integrated auxiliaries of churches, but its refusal to exempt organizations such as FOCUS is irrational and discriminatory. The Mandate discriminates

among individual religious believers who work at exempted entities and those who do not, crediting the significance of the beliefs of the former but not of the latter.

249. The Mandate adopts a particular theological view of what is acceptable moral complicity in the provision of contraceptives and abortifacients and imposes it through its "accommodation" upon most religionists like FOCUS (except those it favors via the "religious employer" exemption) who must either conform their consciences or suffer penalty. Yet the Mandate chooses other, situationally indistinguishable religionists and arbitrarily chooses not to impose itself or its penalties on them.

250. The Mandate's narrow "religious employer" exemption, and its refraining from imposing a penalty on third party administrators of self-insured church plan participants among organizations like FOCUS, exempts some religious employers but not others, thereby discriminating among religious organizations and favoring some religions and religious views over others.

251. The Mandate furthers no governmental interest.

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

253. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

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

254. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference.

255. Defendants' requirement that FOCUS provide insurance coverage that includes education and counseling regarding contraceptives and abortifacients forces FOCUS to speak in a manner contrary to its religious beliefs. Likewise, the Mandate censors FOCUS from speaking in a manner consistent with its religious beliefs.

256. FOCUS lives, practices, and teaches that abortion, contraceptives, and abortifacients violate God's law and that any participation in the unjustified taking of an innocent human life or artificial anti-conception contradicts its religious beliefs and convictions.

257. The Mandate compels FOCUS to facilitate expression and activities that FOCUS lives, practices, and teaches to be inconsistent with its religious beliefs, expression, and practices.

258. The Mandate compels FOCUS to facilitate access to government-dictated education and counseling related to abortion, contraception, and abortifacients.

259. The Mandate also requires FOCUS, as a condition of omitting contraceptives and abortifacients from its own self-insurance plan, to engage in specific speech to its third party administrator that expressly and operatively designates the third party administrator to provide the exact same promises of payments for contraceptives and abortifacients that FOCUS objects to providing or facilitating.

260. Defendants thus violate FOCUS's right to be free from compelled speech, a right secured to it by the Free Speech Clause of the First Amendment to the United States Constitution.

261. The Mandate also bans FOCUS from speaking on behalf of threatened unborn children to its third party administrator by, among other things, urging its third party

administrator not to provide coverage of such objectionable drugs and devices that can destroy early human lives.

262. The Mandate's compelled speech and censorship requirements do not advance a compelling governmental interest.

263. Defendants have no narrowly tailored compelling interest to justify this compelled speech or censorship.

264. Defendants thus violate FOCUS's freedom of speech, and impose censorship on FOCUS's religiously motivated speech, rights secured to it by the Free Speech Clause of the First Amendment to the United States Constitution.

265. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

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

266. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference.

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

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

269. Through the HHS Mandate's narrow "religious employer" exemption, Defendants have exempted certain religious organizations that object, based on deeply held religious beliefs, to complying with the HHS Mandate, but have refused to exempt others, including FOCUS.

270. By extending the "religious employer" exemption to certain religious groups, but failing and refusing to extend it to FOCUS, Defendants have treated FOCUS differently than similarly situated groups.

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

272. Because the HHS Mandate sweepingly infringes upon religious exercise and speech rights that are constitutionally protected, it is unconstitutionally vague in violation of the due process rights of FOCUS and others not before this Court.

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

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

275. The HHS 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 Defendants' definition of a "religious employer."

276. The HHS Mandate violates Plaintiffs' due process rights under the Fifth Amendment to the United States Constitution.

277. Absent injunctive and declaratory relief against application and enforcement of the HHS Mandate, FOCUS and the individual plaintiffs will suffer irreparable harm.

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

278. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference.

279. FOCUS, its employees, and the individual plaintiffs associate with FOCUS for an expressive purpose, to live and promote their common religious beliefs, which include the teachings outlined above.

280. The Mandate compels FOCUS and its employees to facilitate expression and activities that are inconsistent with Plaintiffs' religious beliefs, expression, and practices.

281. Defendants' actions thus violate Plaintiffs' right of expressive association protected by the Free Speech Clause of the First Amendment to the United States Constitution.

282. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

SEVENTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

283. Plaintiffs reallege paragraphs 1 through 208 and incorporate them herein by this reference.

284. Defendants relied upon a flawed study by IOM which, presumably in concert with HHS, was made up of individuals and organizations whose bias was the support of mass distribution, at public taxpayer expense, of abortion, abortion-inducing drugs and devices, and contraceptives.

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

286. Defendants did not consider or respond to the hundreds of thousands of comments they received in opposition to the proposed regulations.

287. Defendants issued their proposed regulations on an interim final basis and only then asked for comments thereafter. Yet, it was clear from the regulatory text of Defendants' interim rules that Defendants had no intention of considering either the comments of religious organizations or the requests by such religious organizations to provide them with exemptions, or to hold off on the effective date of their rules after Defendants received all comments submitted.

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

289. Moreover, Defendants issued the final Mandate which applies to FOCUS and others on June 28, 2013, and declared it effective August 1, 2013, with a "safe harbor" that imposed the Mandate on FOCUS's first plan year beginning after December 31, 2013, i.e., July 1, 2014.

290. The ACA provides, and Defendants admit, that any rule issued by Defendants requiring coverage of preventive services under 42 U.S.C. § 300gg-13 (i.e., contraceptives or abortifacients and related counseling and education as required by the Mandate) cannot go into effect until at least a year after the rule is finalized. Thus, under these provisions, the Mandate cannot be effective as to FOCUS until its plan year beginning on July 1, 2015.

291. Thus, the Mandate, by its effective date of August 1, 2013 and its impact on FOCUS on July 1, 2014, violates the ACA and Defendants' regulations against imposing the

Mandate within a year after the Mandate was finalized and/or violates the APA's requirement that government agencies be open-minded to comments before finalizing any rules.

292. 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 as a result of which Plaintiffs are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

293. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the Mandate on FOCUS and similar organizations.

294. Defendants' explanation (and lack thereof) for its decision not to exempt FOCUS and similar religious organizations from the Mandate runs counter to the evidence submitted by religious organizations during the comment period. And Defendants lack any explanation or rationale for withholding their penalty on third party administrators or self-insured church plans, despite the participation of many entities indistinguishable from FOCUS in those plans.

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

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

297. 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).

298. 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."

299. The Mandate also violates the provisions of the Church Amendment, 42 U.S.C. § 300a-7(d), which provides that "[n]o 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."

300. The Mandate also violate the ACA itself, 42 U.S.C. § 300gg-13, which give Defendants no authority whatsoever to impose mandates that cause access to contraceptive or abortifacient coverage or payments in a vehicle outside of or separate from FOCUS's own health plan, or to impose requirements on FOCUS to designate its third party administrator to do so. No other federal statute gives Defendants any such authority.

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

302. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Fellowship of Catholic University Students, Curtis A. Martin, Craig Miller, Brenda Cannella, and Cindy O'Boyle respectfully request the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to Plaintiff Fellowship of Catholic University Students and its insurance issuers or third party administrators to be a violation of its rights protected by 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 to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter a preliminary and permanent injunction prohibiting Defendants from continuing to apply the Mandate to Plaintiff Fellowship of Catholic University Students and to its insurance issuers or third party administrators or in a way that violates the legally protected rights of any person, and prohibiting Defendants from continuing to illegally discriminate against Plaintiff Fellowship of Catholic University Students by requiring it to provide health insurance coverage or access to separate payments for contraceptives, abortifacients, and related counseling through a mechanism using its health plan to its employees;

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

D. That this Court grant such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a jury on all issues so triable.

Respectfully submitted this 3rd of December, 2013.

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VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing factual allegations in the verified complaint regarding Fellowship of Catholic University Students are true and correct to the best of my knowledge, information and belief.

Executed on this 26th day of November, 2013.

Curtis A. Martin
Founder, President and CEO
Fellowship of Catholic University Students

**I CERTIFY THAT I HAVE SIGNED THE ORIGINAL OF THIS DOCUMENT, WHICH IS AVAILABLE FOR INSPECTION AT ANY TIME BY THE COURT OR BY A PARTY TO THIS ACTION.*