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

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| THE CATHOLIC BENEFITS ASSOCIATION LCA; THE CATHOLIC INSURANCE COMPANY, INC. | ) | |
| Plaintiffs, | ) | |
| v. | ) | |
| SYLVIA M. BURWELL, Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; THOMAS E. 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; UNITED STATES DEPARTMENT OF THE TREASURY | ) | Civil Case No. _____ |
| Defendants. | ) | |

**VERIFIED COMPLAINT**

Plaintiffs THE CATHOLIC BENEFITS ASSOCIATION LCA, a nonprofit Oklahoma limited cooperative association, on behalf of itself and its members, and THE CATHOLIC INSURANCE COMPANY, an Oklahoma corporation, on behalf of itself and its insureds, by their attorneys, allege:

## I. NATURE OF THE ACTION

1. This case is about our country's most cherished freedoms: the freedom to exercise one's religion according to the dictates of conscience and to be free of government establishment or favor of one religion over another. Conscience is the source of the dignity of humankind. It is the most distinctive aspect of humanity. This is why James Madison called it "a fundamental and undeniable truth, that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." James Madison, *Memorial and Remonstrance* (circa June 20, 1785). Those words resonate today as they did in 1785. Defendants here, federal agencies and their officers, seek to coerce Plaintiffs' members and insureds into supporting practices—contraception, abortion, sterilization, and related counseling—that they find morally abhorrent and that violate their sincerely held religious beliefs. Faced with the prospect of ruinous fines if they do not comply with the government's mandate, Plaintiffs ask this Court to enjoin Defendants, and declare and secure to Plaintiffs, their members and insureds, and their contracting providers that which the Constitution and laws have long guaranteed: the right to exercise their religion free of government control, to be free of the selective burdens this administration has imposed on their practices, to proclaim their convictions freely, to associate with others, particularly their co-religionists, in defense of their liberty; and to hold the government to its most fundamental charge, obedience to the rule of law.

2. Plaintiff The Catholic Benefits Association, LCA ("Association") is an association of Catholic employers who currently provide health benefits to their employees through insured group health plans or self-funded plans.

3. The Association brings this action on behalf of a subset of its members consisting of all members who joined the Association after June 4, 2014 (the "Post-Injunction Members"). At times herein, Plaintiffs may refer to a seemingly broader category of Association members, such as "Group II Members." Where such a term appears, Plaintiffs intend for it to be read as restricted to Post-Injunction Members that fall into the stated category, unless context dictates otherwise.

4. Some of the Post-Injunction Members desire to provide health benefits to their employees through individual self-funded plans and to purchase stop-loss insurance coverage from Plaintiff The Catholic Insurance Company ("Insurance Company"). These Post-Injunction Members plan to implement this insurance arrangement upon completion of their current plan years and successful resolution of this lawsuit.

5. All Post-Injunction Members are Catholic organizations and, as part of their religious witness and exercise, are committed to providing no healthcare benefits to their employees inconsistent with Catholic teaching. According to Catholic teaching, such benefits must not include any artificial interference with the creation and nurture of new life, specifically contraception, abortion-inducing drugs and devices, surgical abortion, sterilization, and related counseling. Such is contrary to Catholic teaching and, thus, to Plaintiffs' and the Post-Injunction Members' sincerely held religious beliefs.

6. Because their faith forbids it, the Post-Injunction Members' health plans do not cover contraception, abortion-inducing drugs or devices, sterilization, and related counseling ("CASC Services").

7. Defendants have promulgated a series of rules that burden the Post-Injunction Members' sincerely held religious beliefs. These rules (collectively, the "Mandate") require the Post-Injunction Members to provide, pay for, or otherwise directly or indirectly facilitate access to CASC services for their employees.

8. The Post-Injunction Members cannot provide, pay for, or directly or indirectly facilitate access to CASC services without violating the teachings of the Catholic Church. If the Post-Injunction Members fail to comply with the Mandate, however, they face ruinous fines of up to $36,500 per affected beneficiary per year, in addition to other penalties.

9. Defendants have thus put the Post-Injunction Members to a damnable choice: comply with the Mandate and abandon their religious beliefs, or defy the Mandate and face crippling fines and other penalties. The Post-Injunction Members are forced to choose between following the dictates of their conscience or caving to the diktat of the government. Compliance means material cooperation with evil. Defiance means devastating consequences.

10. The Mandate also impermissibly coerces the Association and the Insurance Company. The Association and the Insurance Company exist to enable member employers to provide morally compliant health benefits to their employees and plan

participants, and to provide an effective vehicle for protection of members' shared interests. But the Mandate makes the mission of the Association and the Insurance Company effectively illegal by preventing Association members from cooperating with the Insurance Company and its third party administrator to provide morally compliant health benefits to employees and plan participants.

11. Federal law prohibits the government from putting Plaintiffs and the Post-Injunction Members to this choice. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1(b), prohibits the government from substantially burdening a person's exercise of religion unless the government can demonstrate that application of the burden to that person is in furtherance of a compelling governmental interest and is the least restrictive means of achieving it. The government cannot meet that standard here. The Mandate likewise violates the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* ("APA").

12. Some of the Post-Injunction Members are in need of emergency relief from this Court because the Mandate will take effect against them on July 1, 2014, the anniversary of their plan years.

13. Upon completion of their current plan years, many Post-Injunction Members intend to explore remaining or becoming self-funded and contracting with the Insurance Company for stop-loss insurance coverage. Such an arrangement will permissibly avoid state insurance mandates but not the federal Mandate or its effects.

Thus, whether or not the Post-Injunction Members choose to arrange insurance through the Insurance Company, these members' plans will exclude or continue to exclude coverage of CASC services only if they acquire the relief sought in this action.

14. Plaintiffs seek a declaration that the Mandate cannot legally be applied to them or the Post-Injunction Members. Plaintiffs also seek an injunction barring its enforcement against them and the Post-Injunction Members.

## II. GENESIS OF THIS LAWSUIT

15. On March 12, 2014, the Association, the Insurance Company, and several Association members filed a substantially similar action in this Court against these same Defendants, seeking to enjoin the Mandate ("*CBA I*"). Plaintiffs in *CBA I* ("*CBA I* Plaintiffs") filed that day their Verified Complaint, Motion for Preliminary Injunction, and Brief in Support of Motion for Preliminary Injunction. *CBA I* Plaintiffs sought relief on behalf of themselves and all others similarly situated. In addition, the Association sought relief on behalf of its present and future members.

16. On June 4, 2014, this Court granted some *CBA I* Plaintiffs some of the preliminary injunctive relief they requested. *See* Order, *The Catholic Benefits Ass'n v. Sebelius*, No. 5:14-cv-00240-R (W.D. Okla. June 4, 2014) [hereinafter "PI Order"]. The Court concluded, among other things, that (1) the Association "possesses associational standing to pursue its members' claims," *id.* at 9; (2) that the Association's "Group II Members" and "Group III Members" were or would be substantially burdened by the Mandate, *id.* at 13 n.10, 16; and (3) that, under *Hobby Lobby Stores, Inc. v. Sebelius*, 723

F.3d 1114 (10th Cir. 2013), the Mandate could not satisfy strict scrutiny under RFRA, *see id.* at 13. The Court therefore granted preliminary injunctive relief to the Association's Group II and Group III Members.

17. The Court nonetheless concluded that the Insurance Company lacked standing. *See id.* at 11. The Court also ruled that the Association's "Group I Members" were not entitled to preliminary injunctive relief because they are exempt from the Mandate; in the Court's view, the Mandate "ask[ed] nothing of" Group I Members. *See id.* at 14-15.

18. The Court held that preliminary injunctive relief extended "to all present members of the [Association] that fit within Groups II and III." *Id.* at 19. The Court was "satisfied" that the Association's tests for membership "have ensured the uniformity of belief among the current Group II and Group III members to which this preliminary relief will extend." *Id.* at 20 n.16. Nonetheless, the Court refused to extend this relief to future members of the Association, concluding that "it is too difficult for the Court to *presently* determine whether these future members are entitled to relief." *Id.* at 20 (emphasis added).

19. On the date the Court entered its PI Order (June 4, 2014), the Association had over 400 member employers, plus over 2,000 Catholic parishes that were and still are members of the Association.

20. On June 18, 2014, the Association filed a Motion to Amend Preliminary Injunction in *CBA I*, requesting that this Court amend its PI Order "to include those

Catholic employers who joined the Association after June 4, 2014[,] and are now 'current members.'" Motion to Amend Preliminary Injunction at 1, *The Catholic Benefits Ass'n v. Sebelius*, No. 5:14-cv-00240-R (W.D. Okla. June 18, 2014) [hereinafter "Motion to Amend PI"]. The Association noted that, from the time the Court issued its PI Order until the time the Association filed its Motion to Amend, three new Catholic employers had joined the Association under identical membership criteria and were "identically situated to the Association's pre-June 4 members in all relevant aspects." *Id.* at 1. The Association also "anticipate[d] that it will receive more applications and accept more members before the end of June and in the months ahead." *Id.* at 3-4.

21. Most importantly, the Motion to Amend PI informed the Court that "**[a]ll three new current members are in acute need of relief, as they will be subject to the Mandate as of July 1[, 2014]**." *Id.* at 4 (emphasis added). They still have this acute need.

22. Defendants opposed the Motion to Amend PI in *CBA I*, even though Defendants readily consented to similar relief in a substantially similar case in this Court, *Reaching Souls International, Inc. v. Sebelius*, 2013 WL 6804259 (W.D. Okla. Dec. 27, 2013). There, GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone"), a Protestant Evangelical organization, sought preliminary injunctive relief on behalf of a class consisting of employers that "have adopted *or in the future adopt* the GuideStone Plan to provide medical coverage for their employees." Class Action Complaint, *Reaching Souls International, Inc. v. Sebelius*, No. CIV-13-1092-D (W.D. Okla. Oct. 11, 2013), available at http://www.becketfund.org/wp-

content/uploads/2013/10/Reaching-Souls-Complaint.pdf (last visited June 26, 2014). Defendants "d[id] not object to the scope of the resulting preliminary injunction including the named plaintiffs as well as any members of the class plaintiffs have proposed in their complaint." *Reaching Souls*, 2013 WL 6804259, at *1 (quotation omitted). Therefore, when this Court, through Judge Timothy D. DeGiusti, entered a preliminary injunction in the *Reaching Souls* case, injunctive relief extended to both present *and future* members of the GuideStone Plan. *See id.*

23. Defendants have never adequately explained to the Court why they consented to future-member relief in *Reaching Souls* but opposed substantially similar future-member relief requested by the Association in *CBA I*.

24. On June 26, 2014—a mere five days before the Mandate was scheduled to take effect against some of the Post-Injunction Members—the Court denied the Association's Motion to Amend PI. *See* Order, *The Catholic Benefits Ass'n v. Sebelius*, No. 5:14-cv-00240-R (W.D. Okla. June 26, 2014) [hereinafter "Order Denying Motion to Amend"]. The Court reasoned that, when it entered the PI Order, it was "well aware of the possibility of the [Association] subsequently adding new members," and it "decided not to extend the relief to future members of the [Association], which necessarily includes those entities that acquired membership in the [Association] even a few days after the Court's entry of the preliminary injunction." *Id.* at 3. Although the Motion to Amend PI explained that the Mandate was bearing down on new members and new members were in acute need of relief, the Court was "unpersuaded that there is any need to act in order to correct clear error or prevent manifest injustice." *Id.* The Court

concluded that new members were "not left without the means to protect their interests" because "they are free to seek their own relief." *Id.*

25. Employers have continued to join the Association after June 4. From that date to the date of this filing, the CBA has accepted approximately 151 new member employers plus around 958 more parish employers. Each of these members satisfy the Association's strict membership criteria, and pay or agree to pay the requisite dues and fees. These are the "Post-Injunction Members" referred to above.

26. Because the Post-Injunction Members were denied relief in *CBA I* and because some of the Post-Injunction Members are in need of immediate relief from the Mandate, which will (absent action by this Court) take effect against them on July 1, 2014, the Association has filed this action on behalf of the Post-Injunction Members.

## III. JURISDICTION AND VENUE

27. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361 because this action arises under the Constitution and laws of the United States. The Court has jurisdiction to render declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000bb-1.

28. Venue lies in this district under 28 U.S.C. § 1391(e)(1). The Association is an organization incorporated under the laws of the State of Oklahoma, and it has standing to represent its members' interests in this district. The Insurance Company resides in this district because it is an organization incorporated under the laws of the State of Oklahoma, and its principal place of business is here.

29. Some of the Association's officers, and one of its directors, reside in this district. The depositories and bank accounts of the Association and Insurance Company are located and maintained in this district. Member dues and fees are paid to the Association in this district and deposited with the Association's and Insurance Company's depository in this district.

30. In addition, a substantial part of the events or omissions giving rise to the claims occurred in this district. The Association has done significant work for its members in this district, and it is presently a plaintiff in a substantially similar case in this district (*CBA I*) in which its then-current members were granted preliminary injunctive relief. The present case arises out of both the Court's refusal in *CBA I* to extend preliminary relief to the Association's Post-Injunction Members and the Court's express recognition that the Post-Injunction Members are "free to seek their own relief." Also, the Insurance Company would be harmed by the application of the Mandate in this district because the Mandate prohibits it from participating in and providing morally compliant insurance arrangements for Association members.

## IV. PARTIES

### A. Plaintiffs

#### 1. The Catholic Benefits Association

31. The Catholic Benefits Association is an Oklahoma nonprofit limited cooperative association. Its articles of organization state that it is organized "exclusively for religious, charitable, and educational purposes" that are "consistent with Catholic values, doctrine, and canon law." Specifically, they state that the Association is

organized "[t]o support Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values"; "[t]o work and advocate for religious freedom of Catholic and other employers seeking to conduct their ministries and businesses according to their religious values"; "[t]o make charitable donations to Catholic ministries"; and "[t]o incorporate . . . one or more Catholic insurance companies, in furtherance of the Association's purposes." *See* Articles of Organization of The Catholic Benefits Association LCA, art. IV, attached as Exhibit A.

32. The Most Reverend William E. Lori, Archbishop of Baltimore, is the Association's incorporator.

33. All of the Association's directors are Catholic archbishops. Three-fourths of its directors are required to be Catholic. *See* Bylaws of The Catholic Benefits Association LCA, art. 5.2, attached as Exhibit B.

34. All of the Association's officers are Catholic.

35. The Association has a standing Ethics Committee, comprised exclusively of Catholic bishops. The Association's bylaws state:

> The Ethics Committee shall have exclusive authority to review all benefits, products, and services provided by the Association, its affiliates or subsidiaries, or their respective contractors to ensure such conform with Catholic values and doctrine. If they do not, the committee shall determine the necessary corrections to bring such benefits, products, and services into conformity with Catholic values and doctrine. The decision of the committee shall be final and binding on the Association, its board, and its officers . . . .

Ex. B, art. 5.13.2.

36. To be a member of the Association, an organization must meet these criteria, among others: (1) "[i]t shall be a Catholic employer," and (2) "[w]ith regard to the benefits it provides to its employees, it shall, as part of its religious witness and exercise, be committed to providing no benefits inconsistent with Catholic values." Ex. A, art. VI.

37. The Bylaws of the Association provide that "[a]n employer shall satisfy the requirement of being Catholic if either the employer is listed in the current edition of *The Official Catholic Directory* or the secretary or his or her designee makes such a determination." Ex. B, art. III, § 3.1.1.

38. The Bylaws further provide that a for-profit employer seeking membership in the Association "shall be deemed Catholic only if (i) Catholics (or trusts or other entities wholly controlled by such Catholic individuals) own 51% or more of employer, (ii) 51% or more of the members of the employer's governing body, if any, is comprised of Catholics, and (iii) either the employer's owners or governing body has adopted a written policy stating that the employer is committed to providing no benefits to the employer's employees or independent contractors inconsistent with Catholic values." Ex. B, art. III, § 3.1.2.

39. All members of the Association meet the Association's criteria for being Catholic.

40. The Association has only one class of membership. However, and as a result of Defendants' arbitrary classification scheme under the Mandate, the Association refers to its members as falling into three categories:

- **Group I Members** are Catholic employers (as defined in paragraph 37, *supra*) that meet Defendants' definition of "religious employers" and are exempt from the Mandate.
- **Group II Members** are Catholic employers (as defined in paragraph 37, *supra*) that meet Defendants' definition of "eligible organizations" for purposes of the "accommodation."
- **Group III Members** are Catholic employers (as defined in paragraphs 37 and 38, *supra*) that do not fall into the previous two categories, a group composed largely, if not exclusively, of for-profit employers.

41. As of June 4, 2014—the date the Court issued a preliminary injunction in *CBA I*—the Association had 459 employer members, with substantial numbers in each of Groups I, II, and III. In addition, it had over 2,000 parish employer members.

42. As of June 30, the Association has around 570 employer members plus over 3,000 parish employer members, including over 150 Post-Injunction employer members plus over 950 Post-Injunction parish employer members.

43. To remain a member of the Association in good standing, an employer must pay certain membership dues and fees to the Association. These dues and fees depend on the number of "covered employees" in the member-employer's health plan. As of June 30, 2014, a member with 1,000 covered employees in its health plan would pay annual dues and fees to the Association of approximately $18,000.

44. Several of these Post-Injunction Members, including the Roman Catholic Diocese of Norwich, it affiliates, and Catholic Charities and Family Services, Diocese of

Norwich, have a pressing need for relief from the Mandate because their next plan year begins on July 1, 2014.

45. The Association has standing to represent all of its present and future members.

46. The Mandate harms the Association's Post-Injunction Members.

47. The Association is seeking to protect Post-Injunction Members' ability to access morally compliant health coverage for their respective employees or agents.

48. Neither the claims asserted nor the relief requested by the Association requires individualized proof.

49. The Association can adequately represent Post-Injunction Members' interests. All Post-Injunction Members are similarly situated in that all are compelled by the Mandate either to pay for, provide, or directly or indirectly facilitate access to CASC services for their own employees or those of their affiliates in violation of their sincerely held Catholic beliefs.

**2. The Catholic Insurance Company**

50. The Catholic Insurance Company is a Catholic for-profit insurance company, incorporated in Oklahoma and operating with its principal office in Oklahoma City.

51. The Insurance Company "at all times act[s] in a manner consistent with Catholic values, doctrine, and canon law, including supporting Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to

their respective employees in a manner that is consistent with Catholic values." Certificate of Incorporation of the Catholic Insurance Company, art. IV, attached as Exhibit C; *see also* Bylaws of the Catholic Insurance Company, Inc., art. 3.1, attached as Exhibit D.

52. The Association owns 100 percent of the Insurance Company's stock.

53. All of the Insurance Company's directors are Catholic archbishops.

54. All of the Insurance Company's officers are Catholic.

55. The Insurance Company "is organized and authorized to provide, in a manner consistent with Catholic values, doctrine, and canon law, . . . stop loss insurance providing protection to employers that are Members . . . of The Catholic Benefits Association. . ." Ex. C, art. IV.

56. The Insurance Company has a standing Ethics Committee, comprised exclusively of Catholic bishops. Its bylaws state:

> The Ethics Committee of the Catholic Benefits Association shall also serve as the Ethics Committee for the Insurance Company. In that capacity, it shall have exclusive authority to review all benefits, products, and services provided by the Corporation, and its respective contractors to ensure such conform with Catholic values and doctrine. If they do not, the committee shall determine the necessary corrections to bring such benefits, products, and services into conformity with Catholic values and doctrine. The decision of the committee shall be final and binding on the Corporation, its board, and its officers.

Ex. D, art. 8.5.

57. The Oklahoma Department of Insurance regulates the Insurance Company.

58. The Insurance Company also contracts with medical provider networks, one or more third party administrators, a reinsurer, a benefits consultant, and others to arrange health coverage for Association members' employees when such members have self-funded plans.

59. The Insurance Company is "authorized to contribute such portions of its earnings or surplus to Catholic charitable or religious organizations as may from time to time be determined by the Corporation's board of directors." Ex. C, art. IV; Ex. D, art. 3.1(i).

60. Many of the Association's members, including Post-Injunction Members, have indicated a desire to maintain self-funded health plans and seek stop-loss coverage through the Insurance Company. Even under these arrangements, however, the Association's Group II and Group III Members will not avoid the Mandate or its effects. Thus, whether or not Post-Injunction Members arrange for health coverage through the Insurance Company, they are subject to the Mandate or its effects absent the judicial relief sought here.

**B. Post-Injunction Members**

61. After June 4, 2014, the Association accepted approximately 151 Catholic employers and around 958 parishes for membership in the Association. Each of these Post-Injunction Members satisfies the same membership criteria that every Association member has been required to satisfy from the founding of the Association. These Post-Injunction Members include, by way of example, the Roman Catholic Diocese of

Norwich and its affiliates, among others, Catholic Charities and Family Services, Diocese of Norwich, Inc. ("Catholic Charities and Family Services").

**1. Roman Catholic Diocese of Norwich**

62. The Roman Catholic Diocese of Norwich is that "portion of the people of God," located in Eastern Connecticut and Fisher Island, New York, "which is entrusted to [the Bishop of Norwich] for him to shepherd with his priests. See Code of Canon Law, c. 369 (1983). The Diocese carries out the spiritual, educational, and social service mission of the Catholic Church in eastern Connecticut. He exercises pastoral care for more than 80 parishes and missions and other Catholic ministries within the Diocese.

63. The Roman Catholic Diocese of Norwich comprises about 2,000 square miles. Through its parishes and related Catholic organizations, the Diocese ministries to more than 230,000 Catholics and tens of thousands of others in eastern Connecticut.

64. The educational mission of the Roman Catholic Diocese of Norwich is carried out, in part, through the Diocesan School Office, which oversees thirteen elementary schools, two diocesan secondary schools, another private religious secondary school, and a residential treatment program that provides integrated treatment services to adolescent boys and young men, all serving a school population of about 4,800.

65. The charitable mission of the Roman Catholic Diocese of Norwich is carried out through local parishes and various ministries founded or otherwise related to the Diocese, including Catholic Charities and Family Services, Diocese of Norwich.

66. The Roman Catholic Diocese of Norwich provides health care through a Catholic insurance trust. The plan covers about 540 lives.

67. Consistent with Catholic values and teaching, the Roman Catholic Diocese of Norwich's health plan does not cover CASC services.

68. The plan year for the Roman Catholic Diocese of Norwich begins July 1.

69. Many of the affiliated ministries within the Roman Catholic Diocese of Norwich participate in the diocesan plan, including Catholic Charities and Family Services, Diocese of Norwich, Inc. Unlike the Diocese, some of these affiliated ministries are not exempt from the Mandate but are eligible for the so-called "accommodation." Absent emergency judicial relief, these ministries will be required by law to provide or arrange for CASC coverage for their employees by July 1, 2014.

70. The Roman Catholic Diocese of Norwich's plan is not a "grandfathered plan" under the grandfathered plan provisions of Section 1251 of the Affordable Care Act and regulations published thereunder.

**2. Catholic Charities and Family Services, Diocese of Norwich, Inc.**

71. The mission of Catholic Charities and Family Services is to respond to Christ's call to care for those in need by providing compassionate social services for individuals and families living in the Diocese of Norwich, with special attention to people who are poor or disadvantaged.

72. Catholic Charities and Family Services adheres to Catholic social teachings, including those teachings about the sanctity of life, the care for one's neighbors, and the stewardship of God's creation.

73. One of the ministries of Catholic Charities and Family Services is Refugee, Migration and Immigration Services, which helps families navigate issues relating to citizenship and immigration issues and helps them feel at home in their new community.

74. Catholic Charities and Family Services also operates the Office of Emergency Services & Basic Needs, which helps individuals and families deal with urgent needs as a result of a crisis such as fire, flood, family violence, and loss of income.

75. Catholic Charities and Family Services participates in the Roman Catholic Diocese of Norwich's health plan, and the employees of Catholic Charities and Family Services, Inc. are offered insurance through the plan. The plan does not cover CASC services.

**C. Defendants**

76. Defendants are appointed officials of the federal government and federal government agencies responsible for promulgating, administering, and enforcing the Mandate.

77. Defendant Sylvia M. Burwell is the Secretary of the United States Department of Health and Human Services. She is sued only in her official capacity.

78. Defendant United States Department of Health and Human Services ("HHS") is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

79. Defendant Thomas E. Perez is the Secretary of the United States Department of Labor. He is sued only in his official capacity.

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

81. Defendant Jacob J. Lew is the Secretary of the United States Department of the Treasury. He is sued only in his official capacity.

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

## V. FACTUAL ALLEGATIONS: PLAINTIFFS' AND POST-INJUNCTION MEMBERS' BELIEFS AND PRACTICES REGARDING CONTRACEPTION, ABORTION, STERILIZATION, AND RELATED COUNSELING

83. The Post-Injunction Members, like all Association members, adhere in belief and practice to the teachings of the Catholic Church on contraception, abortion, sterilization, and related counseling.

84. While the Catholic Church uses the term "abortion" to include both surgical abortion and abortion-inducing drugs and devices, Defendants refer to some abortion-inducing drugs and devices as "contraceptives."

85. The Catechism of the Catholic Church ("Catechism") teaches that life begins at conception and that "[h]uman life must be respected and protected absolutely from the moment of conception." *See* Catechism § 2270 (1994). Thus, "[d]irect abortion, that is to say, abortion willed either as an end or a means, is gravely contrary to the moral law." *Id.* § 2271. Moreover, "[f]ormal cooperation in an abortion constitutes a grave offense. " *Id.* § 2272.

86. The Catholic Church also teaches that sexual union between spouses must at all times "remain ordered *per se* to the procreation of human life." Catechism § 2366. Accordingly, the Church teaches that all forms of contraception and sterilization are contrary to the moral law. Section 2370 of the Catechism provides that "every action which, whether in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible is intrinsically evil."

87. Section 234 of the Compendium of the Social Doctrine of the Church (2004) provides that "[a]ll programmes of economic assistance aimed at financing campaigns of sterilization and contraception . . . are to be morally condemned as affronts to the dignity of the person and the family."

88. Section 91 of the papal encyclical *Evangelium Vitae* (1995) teaches that "[i]t is . . . morally unacceptable to encourage, let alone impose, the use of methods such as contraception, sterilization, and abortion in order to regulate births."

89. Catholic moral theology teaches that a person's material cooperation in an intrinsically evil act is morally illicit. Material cooperation occurs when the cooperator does not share the principal's evil intent but participates in circumstances that are essential to the commission of the act, such that the act would not occur but for the cooperator's participation. Catholics may not materially cooperate with evil unless they have exhausted every other alternative that does not effect a greater evil than the first evil to be avoided.

90. Catholic moral theology also prohibits an act that, although morally licit, may give rise to "scandal." The Catechism defines scandal as "an attitude or behavior which leads another to do evil." Catechism § 2284. The Catechism teaches that "[a]nyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged." *Id.* § 2287. This is so even if the act itself is morally permissible.

91. As Catholic institutions, Plaintiffs and the Post-Injunction Members believe they must adhere to the above teachings as matters of religious faith and doctrine. Consequently, Plaintiffs and the Post-Injunction Members believe that the use or procurement of contraception, abortion-inducing drugs, sterilization, or related

counseling is contrary to the Catholic faith. Plaintiffs and the Post-Injunction Members further believe, as part of their faith, that they must not provide, pay for, or directly or indirectly facilitate access to such services and, therefore, that they must not include CASC benefits in their group health plans.

92. In order to avoid engaging in morally illicit acts, materially cooperating with evil, and creating scandal, the Post-Injunction Members sponsor or participate in health plans that exclude coverage of CASC services.

## VI. THE MANDATE: STATUTORY AND REGULATORY BACKGROUND

### A. The Affordable Care Act

93. On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010). Days later, the President signed into law the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 1029 (Mar. 30, 2010). These two acts, together, are known as the Affordable Care Act (the "Affordable Care Act" or "Act").

94. The Act imposes a series of mandates. The "individual mandate" requires an "applicable individual" to purchase a health insurance policy that provides "minimum essential coverage." *See* 26 U.S.C. § 5000A(a).

95. All individual health insurance coverage, whether purchased through the federally funded exchange or otherwise, must include preventive care, without cost sharing. 45 C.F.R. § 147.130(a)(1).

96. The "employer mandate" requires large employers to sponsor "group health plans" for the benefit of their employees or pay a penalty. *See* 26 U.S.C. §§ 4980H(a)(1), 5000A(f)(2). A "group health plan" is "a plan (including a self-insured plan) of, or contributed to by, an employer . . . to provide health care (directly or otherwise) to the employees, former employees, . . . or their families." *Id.* § 5000(b)(1).

97. The Act also imposes new requirements on group health plans. As relevant here, the Act requires certain employers' group health plans to cover "preventive care and screenings" for women "as provided for in comprehensive guidelines supported by the Health Resources and Services Administration." 42 U.S.C. § 300gg-13(a)(4). In covering these services, the plan may not "impose any cost sharing requirements," such as deductibles or copays, on plan participants. *See id.*

98. As discussed below, it is through these comprehensive guidelines supported by the Health Resources and Services Administration that Defendants are attempting to force the Post-Injunction Members to provide, pay for, or directly or indirectly facilitate access to CASC services in violation of their religious beliefs.

99. Failure to comply with the above mandates results in fines, penalties, and potential civil lawsuits.

100. An "applicable individual" that fails to maintain "minimum essential coverage" is subject to monetary penalties that may vary based on the individual's income. *See* 26 U.S.C. § 5000A(c).

101. A large employer that fails to sponsor a group health plan for its employees is subject to an excise tax of $2,000 per employee per year after the first 30 employees. 26 U.S.C. § 4980H(a), (c)(1).

102. Any employer (other than a "religious employer" and an employer providing coverage under a grandfathered plan) that sponsors a group health plan but fails to offer required coverage for women's "preventive care" is subject to an excise tax of $36,500 per affected beneficiary per year. 26 U.S.C. § 4980D(b), (e)(1).

103. None of the above mandates is generally applicable. Each is subject to significant qualifications and exceptions.

104. The individual mandate is subject to two explicitly religious exceptions, neither of which applies to or benefits Catholics.

105. First, individuals who are members of a "health care sharing ministry" are not required to purchase health insurance. *See* 26 U.S.C. § 5000A(d)(2)(B). A "health care sharing ministry" (hereinafter "HCSM") is a nonprofit organization whose members "share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs," that "has been in existence at all times since December 31, 1999," and that meets other criteria. *See id.*

106. The HCSM exemption applies to only three organizations: Samaritan Ministries International, Christian Care Ministry, Inc. (through its "Medi-Share" program), and Christian Healthcare Ministries, Inc. Upon information and belief, each organization is Evangelical Protestant. *See* Samaritan Ministries, Healthcare for People

of Biblical Faith, http://samaritanministries.org/healthreform/ (last visited Feb. 23, 2014) (explaining exemption); Medi-Share, How Does Medi-Share Work?, http://mychristiancare.org/exemption.aspx (last visited Feb. 23, 2014) (same); Christian Healthcare Ministries, Is Christian Healthcare Ministries Included in U.S. Health Care Legislation?, http://www.chministries.org/downloads/ACAInsert.pdf (last visited Feb. 23, 2014) (same).

107. Second, the individual mandate does not apply to individuals who are members of "a recognized religious sect or division" that is "conscientiously opposed to acceptance of the benefits of any private or public insurance," that has "made provision" for its members for a "substantial" period of time, and that "has been in existence at all times since December 31, 1950." *See* 26 U.S.C. §§ 5000A(d)(2)(A), 1402(g)(1).

108. Though phrased in general terms, this exemption was designed for, and applies exclusively to, members of historic Anabaptist congregations (Amish, Mennonites, Hutterites, and members of the Bruderhof Communities).

109. The mandates applicable to group health plans are also subject to substantial secular exceptions.

110. First, small employers—employers with fewer than 50 full-time employees—are not required to sponsor a group health plan at all. *See* 26 U.S.C. § 4980H(c)(2)(A).

111. By the government's own estimates, the small-employer exemption exempts 96 percent of all employers in the United States. These small employers employ

nearly 34 million workers. *See* The White House, The Affordable Care Act Increases Choice and Saving Money for Small Businesses, at 1, http://www.whitehouse.gov/files/documents/health_reform_for_small_businesses.pdf (last visited Dec. 26, 2013).

112. Second, "grandfathered" group health plans are not required to cover certain, otherwise mandated services. As relevant here, grandfathered plans are not required to cover women's "preventive care" services as described in 42 U.S.C. § 300gg-13(4). *See* 42 U.S.C. § 18011; 45 C.F.R. § 147.140(c)(1).

113. Estimates indicate that 54 percent of employers that sponsor group health plans have at least one grandfathered plan. *See* Kaiser Family Foundation, *Employer Health Benefits: 2013 Annual Survey*, at 220-21, *available at* http://kaiserfamilyfoundation.files, wordpress.com/2013/08/8465-employer-health-benefits-20131.pdf (last visited Dec. 26, 2013). By the government's own estimates, 98 million individuals were enrolled in grandfathered group health plans in 2013. *See* 75 Fed. Reg. 41,726, 41,732 (July 19, 2010).

### B. Anti-Abortion Provisions in or Applicable to the Affordable Care Act

114. The text, context, and history of the Affordable Care Act reflect clear congressional intent that no group health plan be required to cover abortion services.

115. The Act provides that "[n]otwithstanding any other provision of this title (or any amendment made by this title) . . . nothing in this title (or any amendment made by this title), 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." 42

U.S.C. § 18023(b)(1)(A)(i). The Act also provides that "the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [abortion] services . . . as part of such benefits for the plan year." *Id.* § 18023(b)(1)(A)(ii).

116. The Affordable Care Act itself does not contain a restriction on the use of federal funds to pay for abortion services. This omission nearly defeated the Act's passage when a group of pro-life Democrats in the House of Representatives, led by Rep. Bart Stupak of Michigan, threatened to withhold their votes from the bill. To secure their votes, President Obama issued an executive order that prohibited the use of federal funds to pay for "abortion services . . . , consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment." Exec. Order No. 13,535, Patient Protection and Affordable Care Act's Consistency with Longstanding Restrictions on the Use of Federal Funds for Abortion, 3 C.F.R. 201 (2010).

117. In addition, the Weldon Amendment—a feature of every appropriations act for HHS since 2005—provides, "None of the funds made available in this Act [making appropriations for the Departments of Labor and HHS] may be made available to a Federal agency or program, or to a State or local government, 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." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011). The term "health care entity" includes "a health insurance plan." *Id.*

118. The Affordable Care Act and the Weldon Amendment prohibit the government from coercing the consciences of health care providers that respect the sanctity of life. Executive Order 13,535 reflects the federal government's longstanding avoidance of coercing the consciences of taxpayers that oppose abortion and government funding of abortion services.

119. As explained below, Defendants' Mandate breaches the federal government's historic protection of conscience with regard to abortion and violates the Affordable Care Act, the Weldon Amendment, and other federal laws.

## C. Regulatory Background

### 1. The Interim Final Rules and the IOM Guidelines

120. On July 19, 2010, Defendants published interim final rules ("Interim Final Rules") addressing the requirement that group health plans cover "preventive care" services for women. *See* 75 Fed. Reg. 41,726 (July 19, 2010).

121. Defendants did not permit notice and public comment prior to issuance of the Interim Final Rules, stating that "it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed." 75 Fed. Reg. at 41,730. The Interim Final Rules further stated that "it is essential that participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities." *Id.*

122. Defendants opted to publish interim final regulations, rather than proposed regulations subject to a notice-and-comment period, because "interim final regulations provide the public with an opportunity for comment, but without delaying the effective date of the regulations." 75 Fed. Reg. at 41,730.

123. Despite the alleged urgent necessity of the Interim Final Rules and the supposed need for immediate "certainty" concerning coverage requirements, the Interim Final Rules did not define "preventive care" services for women. They instead provided that "HHS is developing these guidelines and expects to issue them no later than August 1, 2011." *Id.* at 41,731.

124. HHS delegated its duty to develop the preventive care guidelines to a nongovernmental health policy organization, the Institute of Medicine ("IOM"). IOM thereafter convened the Committee on Preventive Services for Women ("Committee"), consisting of sixteen members.

125. At least seven committee members had explicit ties to Planned Parenthood, NARAL Pro-Choice America, and other organizations that advocate for increased access to abortion and contraception. Such organizations stand to benefit from guidelines that require group health plans to cover CASC services.

126. In developing its guidelines, the Committee held three "open sessions" and invited a select group of individuals and organizations to make presentations on preventive care. Presenters included Planned Parenthood Federation of America, The Guttmacher Institute, the National Women's Law Center, the National Women's Health

Network, and the American Congress of Obstetricians and Gynecologists, all of which are well-known advocates for increased access to abortion and contraception.

127. None of the selected presenters included groups or individuals, religious or otherwise, that opposed government-mandated coverage of CASC services.

128. On July 19, 2011, IOM published its report ("Report") identifying the women's preventive services that should be subject to mandatory coverage. In Recommendation 5.5 of the Report, IOM recommended mandatory coverage for "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity." IOM, *Clinical Preventive Services for Women: Closing the Gaps* (July 2011), at 10, *available for download at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx (last visited Dec. 26, 2013).

129. As the Report acknowledged, the scope of the Committee's review was extremely limited and focused primarily on clinical efficacy of certain preventive services, not on insurance coverage. *See* Report at 75-76. Even within that narrow scope, the Committee "had neither the time and resources nor a charge to conduct its own systematic reviews" of the evidence on efficacy. *Id.* at 75.

130. Furthermore, because its review was so limited, the Committee did not consider "a host of other issues" that should be evaluated when considering whether to cover preventive services as part of a health plan. These issues include "established practice; patient and clinician preferences; availability; *ethical, legal, and social issues*;

and availability of alternatives," as well as cost-effectiveness. Report at 76 (emphasis added).

131. Because the Committee did not consider these issues, it did not evaluate the impact of its recommendations on sponsors of group health plans that object on religious grounds to providing, paying for, or directly or indirectly facilitating access to CASC services. Nor did the Committee evaluate its recommendations in light of RFRA and other federal laws and policies that protect rights of conscience.

132. One member of the Committee, Dr. Anthony Lo Sasso, dissented from the Committee's recommendations, noting that "the lack of time prevented a serious and systematic review of evidence for preventive services" and that "the process set forth in the law was unrealistic in the time allocated to such an important and time-intensive undertaking." Report at 232. In Dr. Lo Sasso's view, "the committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy." *Id.*

133. On August 1, 2011, less than two weeks after IOM published the Report, the Health Resources and Services Administration ("HRSA"), a sub-agency within HHS, issued the Women's Preventive Services Guidelines ("Guidelines"). The Guidelines adopted the Report's recommendations nearly verbatim.

134. In particular, the Guidelines provided that non-grandfathered group health plans are required to provide coverage, without cost-sharing, for "[a]ll Food and Drug

Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." HRSA, Women's Preventive Services Guidelines, http://www.hrsa.gov/womensguidelines/ (last visited Dec. 26, 2013) ("HRSA Guidelines").

135. HRSA did not explain how, if at all, the Guidelines accounted for the various factors relevant to insurance coverage decisions that IOM declined to consider. Nor did HRSA consider how the Committee's composition and ideological biases affected its deliberations and ultimate recommendations.

136. HRSA simply rubber-stamped IOM's recommendations. Indeed, in issuing the Guidelines, HRSA admitted that the Guidelines were "developed" by IOM and simply "supported" by HRSA. *See* HRSA Guidelines ("The HRSA-supported health plan coverage guidelines, developed by the Institute of Medicine, will help ensure that women receive a comprehensive set of preventive services without having to pay a co-payment, co-insurance or a deductible.").

137. HHS did not permit public comment on the Report or the Guidelines prior to issuing the Guidelines. The Guidelines were enacted via publication on the HRSA website, rather than through the Federal Register or the Code of Federal Regulations.

138. The contraceptive methods approved by the FDA include birth-control pills, "emergency contraception," intrauterine devices ("IUDs"), and sterilization procedures. *See* FDA, Birth Control: Medicines to Help You, http://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/

ucm313215.htm (last visited Dec. 26, 2013). Some of these methods, including Plan B (the "morning after pill"), Ella (the "week after pill"), and the Copper IUD, are known or reasonably believed to be abortion-inducing because they operate by "preventing attachment (implantation) to the womb (uterus)." *See id.*

### 2. The Amended Interim Final Rules and the "Religious Employer" Exemption

139. On August 1, 2011, Defendants promulgated regulations amending the Interim Final Rules. *See* 76 Fed. Reg. 46,621 (Aug. 3, 2011).

140. Defendants acknowledged the "considerable feedback" they had received concerning mandatory coverage for preventive services, including "several" comments on the religious liberty implications of requiring religious organizations to cover CASC services as part of their health plans. 76 Fed. Reg. at 46,623.

141. In response to these comments, Defendants amended the Interim Final Rules "to provide HRSA additional discretion to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. at 46,623.

142. "Religious employer" was defined in an exceedingly narrow fashion as an organization meeting the following criteria: "(1) [t]he inculcation of religious values is the purpose of the organization"; "(2) [t]he organization primarily employs persons who share the religious tenets of the organization"; "(3) [t]he organization serves primarily persons who share the religious tenets of the organization"; and "(4) [t]he organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46,626.

143. Section 6033(a)(3)(A) of the Internal Revenue Code refers to "churches, their integrated auxiliaries, and conventions or associations of churches," and "the exclusively religious activities of any religious order." 26 U.S.C. § 6033(a)(3)(A)(i), (iii).

144. So defined, the "religious employer" exemption applied only to a subset of churches, their integrated auxiliaries, and religious orders that satisfied the first three prongs of this test. The exemption did not apply to churches with significant charitable or educational activities, such as a parish food pantry or parochial school that either served individuals regardless of their faith or employed people of other faiths. It did not apply to separately incorporated ministries such as faith-based charitable organizations, religious colleges, and religious health care institutions. And it did not apply to for-profit employers that seek to run their businesses consistent with their religious values.

145. The "religious employer" exemption did not apply to the vast majority of organizations with religious objections to mandatory coverage of CASC services.

146. As Defendants admitted, the exemption was designed for the limited purpose of "accommodat[ing] . . . the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. at 46,623.

147. Even so, under the amended Interim Final Rules, Defendants contemplated that the religious employer exemption would apply to "plans established *or maintained* by religious employers." 76 Fed. Reg. at 46,626 (emphasis added). So written, the exemption applied on a plan-by-plan basis and would allow a religious employer, such as

a diocese, to sponsor a plan that excluded CASC coverage and in which non-exempt employers could permissibly participate. In colloquial terms, this was known as the "Piggyback Option."

148. Consistent with the amended Interim Final Rules, HRSA exercised its discretion to exempt "religious employers" from the requirement to cover CASC services. HRSA did so via a footnote on its website. *See* HRSA Guidelines n.**.

149. As they had done before, Defendants promulgated the amended Interim Final Rules without notice or opportunity for public comment, determining that "an additional opportunity for public comment would be impractical and contrary to the public interest." 76 Fed. Reg. at 46,624.

**3. The Safe Harbor**

150. After the amended Interim Final Rules were issued, Defendants received "over 200,000 responses" addressed to the religious employer exemption. 77 Fed. Reg. 8,725, 8,726 (Feb. 15, 2012).

151. In a press release on January 20, 2012, HHS acknowledged the "important concerns some have raised about religious liberty." HHS, A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited Dec. 26, 2013).

152. On February 10, 2012, Defendants "finalize[d], without change," the amended Interim Final Rules and maintained the definition of "religious employer." 77 Fed. Reg. at 8,725.

153. At the same time, Defendants created a one-year "temporary enforcement safe harbor," a self-imposed moratorium on enforcement of the CASC coverage requirement for "certain non-exempted, non-profit organizations with religious objections to covering contraceptive services." 77 Fed. Reg. at 8,728.

154. The safe harbor applied to "group health plans sponsored by non-profit organizations that, on and after February 10, 2012, do not provide some or all of the contraceptive coverage otherwise required . . . because of the religious beliefs of the organization." *See* 77 Fed. Reg. 16,501, 16,502-03 (Mar. 21, 2012). The safe harbor would remain in effect for an eligible organization until its first plan year beginning on or after August 1, 2013. *Id.* at 16,503.

155. In the interim, Defendants promised new rules that would "accommodat[e]" the religious objections of these organizations. 77 Fed. Reg. at 8,727.

156. The safe harbor did not apply to group health plans sponsored by for-profit employers.

**4. The Advance Notice of Proposed Rulemaking**

157. On March 21, 2012, Defendants issued an Advance Notice of Proposed Rulemaking ("ANPRM"), seeking comment on "alternative ways of providing contraceptive coverage without cost sharing in order to accommodate non-exempt, non-profit religious organizations with religious objections to such coverage." Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 16,501, 16,503.

158. The ANPRM presented "questions and ideas to help shape these discussions" and set forth "two goals" that Defendants sought to achieve. 77 Fed. Reg. at 16,503. The first was "to maintain the provision of contraceptive coverage without cost sharing to individuals who receive coverage through non-exempt, non-profit religious organizations with religious objections to contraceptive coverage in the simplest way possible." *Id.* The second goal was to "protect such religious organizations from having to *contract*, *arrange*, or pay for contraceptive coverage." *Id.* (emphases added).

159. Defendants thus envisioned an "accommodation," an "arrangement under which contraceptive coverage is provided without cost sharing to participants and beneficiaries covered under a plan *independent of* the objecting religious organization that sponsors the plan." *Id.* (emphasis added).

**5. The Final Rules and the Purported "Accommodation"**

160. After receiving over 200,000 comments in response to the ANPRM, Defendants issued proposed rules ("Proposed Rules") on February 1, 2013. *See* 78 Fed. Reg. 8,456 (Feb. 6, 2013).

161. Defendants received over 400,000 comments in response to the Proposed Rules. *See* 78 Fed. Reg. 39,870, 39,871 (July 3, 2013). The comment period closed on April 8, 2013. *See* 78 Fed. Reg. at 8,457.

162. On June 28, 2013, "[a]fter consideration of the comments," Defendants issued final rules ("Final Rules"). *See* 78 Fed. Reg. at 39,871. The Final Rules make two principal changes to the amended Interim Final Rules.

163. First, the Final Rules revise the definition of "religious employer" to mean "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the Internal Revenue Code of 1986, as amended." 45 C.F.R. § 147.131(a). Although Defendants have clarified that an organization does not fail to qualify for the exemption simply because its "purposes extend beyond the inculcation of religious values or because [it] hires or serves people of different religious faiths," the exemption is still limited to "houses of worship." 78 Fed. Reg. at 39,874. Defendants admit that the revised definition does "not materially expand the universe of religious employers." *Id.*

164. Second, the Final Rules purport to "accommodate" so-called "eligible organizations." An organization is eligible for the "accommodation" if it meets four criteria: "(1) [t]he organization opposes providing coverage for some or all of any contraceptive services required to be covered . . . on account of religious objections"; "(2) [t]he organization is organized and operates as a nonprofit entity"; "(3) [t]he organization holds itself out as a religious organization"; and "(4) [t]he organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the [above] criteria." 26 C.F.R. § 54.9815-2713A(a).

165. An eligible organization seeking the "accommodation" must execute the self-certification "prior to the beginning of the first plan year to which an accommodation is to apply" and provide a copy of the self-certification to its insurance provider (if it maintains an insured group health plan) or its third party administrator (if it maintains a

self-insured plan). 78 Fed. Reg. at 39,875. A copy of the self-certification form, EBSA Form 700, is attached as Exhibit E.

166. Upon receipt of the self-certification, an insurer under a group health plan must "[e]xpressly exclude [CASC] coverage from the group health coverage provided in connection with the group health plan" and must "[p]rovide separate payments for any [CASC] services . . . for plan participants and beneficiaries for so long as they remain enrolled in the plan." 26 C.F.R. § 54.9815-2713A(c)(2).

167. Likewise, a third party administrator ("TPA") that receives a copy of the self-certification must "provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan without cost sharing." 78 Fed. Reg. at 39,880; 26 C.F.R. § 54.9815-2713A(b)(2).

168. The Final Rules impose additional requirements and limitations for eligible organizations with self-insured health plans.

169. The organization's self-certification to its TPA must include notice that "[t]he eligible organization will not act as the plan administrator or claims administrator with respect to claims for [CASC] services, or contribute to the funding of [CASC] services," and that the "[o]bligations of the third party administrator are set forth in 29 CFR [§] 2510.3-16 and 26 CFR [§] 54.9815-2713A," *viz.*, regulatory sections outlining the duties of the TPA with respect to CASC coverage. 26 C.F.R. § 54.9815-2713A(b)(1)(ii).

170. The Final Rules also state that the self-certification form "shall be an instrument under which the plan is operated." 29 C.F.R. § 2510.3-16(b). EBSA Form 700 itself says that it is "an instrument under which the plan is operated." *See* Ex. E.

171. The TPA, having received the notice, is obligated to pay the full cost of contraceptive coverage, or arrange for the provision of contraceptive coverage, without cost sharing, to plan participants and beneficiaries. 26 C.F.R. § 54.9815-2713A(b)(2); 29 C.F.R. § 2510.3-16(b).

172. A purpose of the form, therefore, is to require the TPA to deliver CASC benefits to the eligible organization's covered employees. 29 C.F.R. § 2510.3-16(b)(1) (duties arising from delivery of the self-certification are exclusively "with respect to coverage of contraceptive services").

173. The delivery of the certification form makes the TPA both the plan administrator and the claims administrator for the new contraceptive services plan. 78 Fed. Reg. at 39,879; 29 C.F.R. § 2510.3-16(b) ("[T]he self-certification provided by the eligible organization to a [TPA] . . . shall be treated as a designation of the [TPA] as the plan administrator . . . responsible for [t]he plan's compliance . . . with respect to coverage of contraceptive services[.]").

174. Delivery of the self-certification is the necessary cause of the insurer's or TPA's duty to provide CASC coverage. Absent such delivery, the insurer or TPA has no such duty, and the eligible organization remains obligated to cover CASC services in its health plan. *See* 26 C.F.R. § 54.9815-2713A(b), (c).

175. An eligible organization's employees receive CASC benefits *only* because they are enrolled in the eligible organization's health plan and the eligible organization has a contractual relationship with its insurer or TPA. *See* 26 C.F.R. § 54.9815-2713A(b), (c). Thus, an employee's receipt of CASC benefits is directly tied to the employee's enrollment in the eligible organization's group health plan, and the CASC benefits cease when the employee ceases to be enrolled in the plan.

176. As a result, the Final Rules still compel religious organizations to "*contract, arrange,* or *pay for* contraceptive coverage," despite Defendants' promise in the ANPRM that it would "protect" religious organizations from having to do so. 77 Fed. Reg. at 16,503 (emphases added).

177. The insurer or TPA must also provide written notice of the availability of CASC benefits to eligible organization's employees at the same time that the TPA delivers other plan enrollment materials. 26 C.F.R. § 54.9815-2713A(d); 29 C.F.R. § 2590.715-2713A(d); 45 C.F.R. § 147.131(d).

178. When a self-insured eligible organization signs and delivers the self-certification, the form itself, coupled with the regulations it references, becomes an addendum to the eligible organization's plan, and the TPA, previously in possession of the names and contact information for the organization's employees, becomes the plan administrator for the CASC benefits portion of the amended plan.

179. The Final Rules make the TPA, for the first time, a fiduciary "under section 3(16) of ERISA." 29 C.F.R. § 2510.3-16(b); 78 Fed. Reg. at 39,879. Such TPAs,

therefore, become subject to criminal penalties, 29 U.S.C. § 501, civil penalties, 29 U.S.C. § 502(l), and civil liability to participants, 29 U.S.C. § 502(a), if they fail to provide coverage of CASC services.

180. The Final Rules also impose a gag order on eligible organizations with self-insured plans by providing, "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." 26 C.F.R. § 54.9815-2713A(b)(1)(iii).

181. Thus, not only must the eligible organization tell its TPA that the TPA *must* provide CASC coverage. The organization is also prohibited from saying anything that might "directly or indirectly . . . interfere" with that message or "influence" the TPA's coverage decision.

182. In combination, these two rules (1) force the eligible organization to convey the government's message and (2) prohibit the eligible organization from conveying its own message. The Final Rules thus enlist eligible organizations as mouthpieces for the government.

183. Under the Final Rules, a TPA that receives a copy of an eligible organization's self-certification has *discretion* concerning whether to "enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan." 26 C.F.R. § 54.9815-2713A(b)(2).

184. The Final Rules do not limit the grounds on which a TPA may object to providing or arranging separate payments for CASC services. A TPA may, therefore, object *on religious grounds* to these responsibilities, and it would have "no obligation . . . to enter into or remain in a contract with the eligible organization." 78 Fed. Reg. at 39,880.

185. Finally, the Final Rules eliminated the Piggyback Option and, in so doing, eliminated the last viable moral alternative for Group II employers to avoid the Mandate. The Final Rules declared that the religious employer exemption would be "determined on an employer-by-employer basis," not a plan-by-plan basis, and each eligible organization—even those participating in plans sponsored by exempt religious employers—"must independently satisfy the self-certification standard." 78 Fed. Reg. at 39,886.

## VII. THE MANDATE VIOLATES FEDERAL LAW.

186. The Mandate violates federal law. It substantially burdens Plaintiffs' and the Post-Injunction Members' religious practices, intentionally discriminates against their religious practices, intrudes upon their internal decisions, restricts their speech, compels them to convey a morally repugnant message, prohibits them from associating with others in an effort to provide health benefits consistent with their moral values, and creates a religious caste system of the favored and disfavored. The Mandate is also the result of arbitrary and capricious action by Defendants, including an improper delegation of their regulatory authority to a nongovernmental and ideologically biased panel of unaccountable decision makers.

### A. The Affordable Care Act Creates a Discriminatory Religious Caste System.

187. The Affordable Care Act, its regulations, and Defendants' admissions have created a religious caste system where the quantum of government-permitted religious freedom depends upon where a religious person or religious institution falls within this system. In direct contravention of the First Amendment Establishment Clause, the government has stratified religious persons and religious organizations into at least six religious classifications.

188. First, Anabaptists are exempt from the individual mandate and, therefore, are not forced to go to the federally funded exchanges that offer only health insurance policies that include contraceptive coverage. 26 U.S.C. § 5000A(d)(2)(A), 26 U.S.C. § 1402(g); 26 U.S.C. § 4980H(a), (c)(1); 45 C.F.R. §§ 147.130, 147.131(c) (all individual health insurance coverage, whether on the exchange or otherwise, must include preventive care, without cost sharing). The denominations in the Anabaptist tradition include Amish, Mennonites, Hutterites, and the Bruderhof Communities.

189. Second, members of HCSMs can avoid buying insurance that includes CASC coverage because they, too, are exempt from the individual mandate. 26 U.S.C. § 5000A(d)(2)(B). There are only three HCSMs: Samaritan Ministries, Medi-Share, and Christian Healthcare Ministries. Each is Evangelical Protestant. The government closed this option to Catholics and other religious groups by limiting this exemption to organizations formed before December 31, 1999.

190. Third, Defendants deem some employers sufficiently religious and have granted them exemption from the Mandate. 45 C.F.R. § 147.131(a). These employers include churches, conventions of churches, and the exclusively religious activities of religious orders. 26 U.S.C. 6033(a)(3)(A)(i) and (iii). They also include the ministries of these religious groups—so long as they are not separately incorporated.[1] Finally, they include "integrated auxiliaries" of these ministries. 45 C.F.R. § 147.131(a). Whether an auxiliary is deemed "integrated" depends in part on whether it is internally supported. *See* 26 C.F.R. § 1.6033-2(h)(4).

191. Fourth, an eligible organization is not exempt. As previously alleged, in order to qualify for the "accommodation," it must engage an insurer or TPA to act as a surrogate plan and benefits administrator for the CASC portion of its health plan and must cause the insurer or TPA to inform employees of the CASC coverage. In addition, an eligible organization with a self-funded plan must engage in actions that amend its plan to include CASC services and must censor its own speech with its TPA.

192. Fifth, a TPA with moral objections to providing or arranging for CASC benefits can opt out of its contract just after an eligible organization provides it with the self-certification form and the TPA thereby learns of its contraceptive coverage obligations. 78 Fed. Reg. at 39,879-80. The government has now contended in several cases that a TPA of a church plan may either opt out of its contract to serve as a TPA or

[1] *See* 45 C.F.R. § 147.131(a) (separately incorporated ministries other than "churches, their integrated auxiliaries, and conventions or associations of churches" or "exclusively religious activities of religious orders" listed in 26 U.S.C. § 6033(a)(3)(A)(i), (iii) do not qualify for "religious employer" exemption); *see also* 77 Fed. Reg. at 16,502.

stay in its contract and avoid penalties and sanctions because "ERISA enforcement authority is not available with respect to TPAs of self-insured church plans." *See, e.g.,* Defendants' Motion to Dismiss at 11-12, *Little Sisters of the Poor Home for the Aged v. Sebelius,* No. 13-cv-02611-WJM-BNB (D. Colo. Nov. 8, 2013).

193. Sixth, Defendants have asserted that some religious for-profit employers (sole proprietors and general partnerships) have standing to invoke religious liberty protections while all others (corporations, limited partnerships, etc.) do not. *See* Transcript of Oral Argument at 61-63, *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) (No. 12-6294), attached as Exhibit F. The United States Supreme Court rejected this argument. *Burwell v. Hobby Lobby Stores, Inc., No. 13-354)* slip op. 16-31 (U.S., June 30, 2014).

194. For people of Catholic faith, the Association's Group I, II, or III Members are no more and no less religious, and the respect for and protection of their consciences is no more or less important.

195. The Mandate thus provides selective quanta of religious freedom depending upon the type or classification of each religious person or entity.

### B. The Mandate Substantially Burdens Plaintiffs' and the Post-Injunction Members' Religious Beliefs and Practices.

196. The decisions of the Post-Injunction Members to provide health plans for their employees and to exclude CASC coverage therefrom qualify as the exercise of religion.

### 1. The Mandate Substantially Burdens Group II Members' Religious Exercise.

197. The Post-Injunction Members who qualify as Group II Members of the Association are not deemed to be "religious employers" under the Final Rules. They are "eligible organizations," or would be if they executed and delivered the self-certification required by 26 C.F.R. § 54.9815-2713A(a)(4).

198. The Mandate's regulatory scheme has left no option for Group II Members that does not substantially burden the exercise of their Catholic faith. Their options are: (1) participate in a "piggyback" plan sponsored by an exempt employer like a diocese or religious order, (2) provide a group health plan that includes coverage of CASC services, (3) provide a group health plan that excludes coverage of CASC services, (4) provide a group health plan under the so-called accommodation, or (5) cease providing health care coverage.

199. Group II Members do not avoid the Mandate under Option 1 because the Final Rules eliminate the Piggyback Option. *See* 78 Fed. Reg. at 39,886 (eliminating the plan exemption and determining the availability of exemption or accommodation "on an employer-by-employer basis").

200. Option 2, directly providing the CASC benefits, is contrary to Catholic teaching, would constitute material cooperation with evil, and would give rise to scandal.

201. Option 3 is ruinous because it would subject Group II Members to fines of up to $100 per affected beneficiary per day, or as much as $36,500 per affected beneficiary annually. It is also impractical because insurers and TPAs, who operate in a

highly regulated industry, are unlikely—absent invalidation of the Mandate—to risk fines, liability, and regulatory scrutiny by excluding coverage of CASC services.

202. Option 4, entering into the accommodation, would burden Group II Members' exercise of its Catholic values because:

a. The Final Rules require "accommodated" employers to give notices to TPAs of their legal obligation to provide CASC benefits;

b. The Final Rules require the "accommodated" employers to sign a notice that amends the employers' plans to include a second binder of CASC benefits;

c. The Final Rules require the "accommodated" employers to engage in a statutory scheme that makes their TPAs the plan and benefits administrators for the CASC benefit portion of their plan;

d. The Final Rules require the "accommodated" employers to permit their TPAs to utilize their knowledge of the names and contact information of employers' employees for the purpose of providing them CASC benefits;

e. The Final Rules bar the "accommodated" employers from communicating with their TPAs about not providing the CASC benefits; and

f. The Final Rules require "accommodated" employers to give notices to TPAs of their legal obligations to inform the employers' employees that

the TPAs will provide CASC benefits at no cost to the employee, thus giving rise to scandal among those employees.

203. At its core, the "accommodation" requires Group II Members to engage and cause a surrogate to provide benefits that their religious values prevent them from providing. The "accommodation," therefore, does not alleviate Group II Members' religious objections to the Mandate.

204. The Final Rules also create the risk of scandal. When a Group II Member, having entered into the "accommodation," distributes plan information to its employees in connection with enrollment in coverage, the insurer or TPA must notify employees in writing that the eligible organization does not administer or fund CASC benefits, but that the insurer or TPA provides separate payments for CASC services. *See* 26 C.F.R. § 54.9815-2713A(d). Such notice must be provided at the same time as, though separate from, any materials distributed by the Group II Member. *Id.*

205. Employees are unlikely to read the disclaimer provided by the insurer or TPA. Those who do are unlikely to grasp the distinction the Final Rules purport to draw between the employer and its insurer or TPA. Employees will simply know that, as a direct result of their enrollment in the Group II Member's plan, they receive CASC benefits.

206. This situation creates the risk of scandal because employees will perceive that their employer professes one thing but does another. Such scandal devastates ministry.

207. Defendants' regulations admit that there is no meaningful separation between the eligible organization and the provision of CASC benefits to employees under the "accommodation." Employees still receive CASC benefits "*under* . . . the employer's plan." 78 Fed. Reg. at 39,879 (emphasis added).

208. The predecessor of Defendant Secretary Burwell, Secretary Kathleen Sebelius, herself admitted the true effect of the "accommodation" in her remarks at Harvard University on April 8, 2013, the final day for comment on the Proposed Rules. Secretary Sebelius stated:

> We have just completed the open comment period for the so-called accommodation and by August 1st of this year, every employer will be covered by the law with one exception. Churches and church diocese [sic] 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.
>
> . . .
>
> [W]e are about to promulgate the final rule and as 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* Kathleen Sebelius, Remarks at The Forum at Harvard School of Public Health (Apr. 8, 2013), *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius/ (last visited March 2, 2014) (emphasis added).

209. From these remarks, it is clear that even Defendants view the "accommodation" as still requiring eligible organizations to "provid[e] coverage" of CASC benefits to their employees. Accordingly, the regulations state that the employer participating in the "accommodation" "is considered to comply" with the Mandate. 78 Fed. Reg. at 39,879.

210. Secretary Sebelius's remarks also reveal that Defendants were poised "to promulgate the final rule" before the comment period closed. Defendants apparently gave no consideration to the 400,000 comments received on the Proposed Rules, including comments that explained that the proposed "accommodation" would not alleviate the objections of many religious organizations.

211. Option 5, dropping health care benefits, would burden the Group II Members' exercise of their Catholic values because:

a. Catholic values commend providing just compensation and benefits supportive of family values, including, whenever possible, health care;

b. Eliminating health care benefits would drive employees, most of whom do not have the Anabaptist or HCSM exemptions available to them, to the federally funded exchanges. Individual plans are less attractive, less convenient, more expensive, and less tax-efficient, and, even more troubling, almost certainly drive employees to a market with no options that exclude CASC coverage;

c. Eliminating health insurance for employees subjects Group II Members to annual excise taxes beginning in 2016 of $2,000 per employee after the first 30 employees; and

d. Eliminating health insurance would put Group II Members at a significant disadvantage in the market for recruiting the best workers and thereby harm the operation of their ministries.

212. The risk of burden on the Group II Members is immediate. Several of the Post-Injunction Members who qualify as Group II Members have health plans that renew on July 1, 2014. At that time, these organizations must be in compliance with the Final Rules or face severe penalties.

**2. The Mandate Substantially Burdens Group III Members' Religious Exercise.**

213. The Post-Injunction Members who qualify as Group III Members of the Association are not eligible for the "religious employer" exemption or the "accommodation" under the Final Rules.

214. Under the Mandate, Group III Members are faced with three options: (1) provide a group health plan that includes coverage of CASC services, (2) provide a group health plan that excludes coverage of CASC services, or (3) cease providing health care coverage.

215. Option 1, directly providing the CASC benefits, is contrary to Catholic teaching, would constitute material cooperation with evil, and would give rise to scandal.

216. Option 2 is ruinous because it would subject Group III Members to fines of up to $100 per affected beneficiary per day, or as much as $36,500 per affected beneficiary annually. Such fines have the potential to force Group III Members out of business. Option 2 is also impractical since insurers and TPAs, who operate in a highly regulated industry, are unlikely—absent invalidation of the Mandate—to risk fines, liability, and regulatory scrutiny by excluding coverage of CASC services.

217. Option 3, dropping health care benefits, would burden Group III Members' exercise of their Catholic values for the same reasons as those alleged in paragraph 210, *supra*.

### 3. The Mandate Substantially Burdens Group I Members' Religious Exercise.

218. While the Post-Injunction Members who qualify as Group I Members of the Association are exempt from the Mandate with regard to the health care coverage they provide for their own employees and, in the cases of dioceses and archdioceses, the employees of their parishes, the Mandate nevertheless burdens Group I Members' religious exercise.

219. Part of the religious purpose and mission for most Group I Members is to provide support services to local parishes and affiliated Catholic ministries. Many such affiliated ministries are Group II Members.

220. As part of their religious mission, many Group I Members sponsor diocesan-wide group health plans for themselves, their parishes, and their related non-exempt ministries.

221. Part of the religious purpose and mission for most Group I Members is to educate the Catholic faithful and Catholic ministry leaders regarding Catholic doctrine and values, including the values prohibiting provision of CASC benefits. Part of such education is to model ways to access morally compliant health care coverage that does not include CASC services.

222. The Mandate and the "accommodation," along with the elimination of the Piggyback Option, burden the religious exercise of Group I Members, who serve their affiliates by maintaining life-affirming health care plans.

223. As a result of the Mandate, Group I Members have four options: (1) sponsor a group health plan that provides CASC coverage (as a result of participation by non-exempt employers); (2) sponsor a group health plan that excludes CASC coverage but subjects non-exempt participants to onerous fines; (3) expel non-exempt participants from the plan; or (4) do not sponsor a group health plan at all.

224. None of these options is morally acceptable to the Group I Members, and each substantially burdens their religious exercise.

#### 4. The Mandate Substantially Burdens the Association's and the Insurance Company's Religious Exercise.

225. The Association's purpose, as stated in its Articles of Organization, is to "support Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values" and "[t]o incorporate . . . one or more Catholic insurance companies, in furtherance of the Association's purposes." Ex. A, art. IV. The Association has done this, in part, by providing a means by which members, if they choose, may access morally compliant health care benefits for their employees through the Association's captive insurer, the Insurance Company.

226. The Mandate burdens the Association's religious exercise by imposing burdens on the Post-Injunction Members, and by precluding the Association from

providing the Post-Injunction Members its full range of benefits, including access to the services of its captive insurer.

227. The Insurance Company's purpose, as stated in its articles, is "consistent with Catholic values, doctrine, and canon law [to] suppor[t] Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values." Ex. C, art. IV; *see also* Ex. D, art. 3.1.

228. The Mandate burdens the Insurance Company's religious exercise by imposing burdens on the Association's Post-Injunction Members, each of which is an eligible insured for the Insurance Company, and by precluding the Insurance Company from providing Post-Injunction Members the full range of benefits it otherwise could provide them in the absence of the Mandate.

*229.* The Mandate substantially burdens Plaintiffs and the Post-Injunction Members by requiring participation in an activity prohibited by their sincerely held Catholic beliefs, preventing participation in conduct consistent with their sincerely held Catholic beliefs, and placing substantial pressure on them to engage in conduct contrary to their sincerely held Catholic beliefs. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1138 (10th Cir. 2013).

### C. The Mandate Is Not a Generally Applicable Law, and Defendants Have No Compelling Interest in Enforcing It Against Plaintiffs or the Post-Injunction Members.

230. The Mandate is not generally applicable. It is riddled with exemptions that undermine the government's supposed purpose in imposing it.

231. In imposing the Mandate, Defendants assert "compelling . . . interests" in "providing more women broad access to recommended preventive services, including contraceptive services, without cost sharing." 78 Fed. Reg. at 39,873. Yet the Mandate, and the Affordable Care Act more broadly, leave tens of millions of women beyond the reach of this supposed interest.

232. Organizations with grandfathered plans, covering tens of millions of employees, are exempt from the requirement to provide CASC coverage for their employees.

233. Small employers with fewer than 50 full-time employees are exempt from the requirement to provide a group health plan at all. This leaves tens of millions of American workers without access to CASC coverage.

234. Hundreds of thousands of other individuals are left potentially untouched by the CASC coverage requirement because they are Anabaptists or members of HCSMs. *See* Young Ctr. for Anabaptist & Pietist Studies, Elizabethtown Coll., Q&A With Author Donald B. Kraybill, http://www.etown.edu/centers/young-center/concise-encyclopedia.aspx (last visited Dec. 27, 2013) (estimating the Anabaptist population in North America at 1.3 million); Alliance of Health Care Sharing Ministries, What Is a

Health Care Sharing Ministry?, http://www.healthcaresharing.org/hcsm/ (last visited Dec. 27, 2013) ("HCSMs serve more than 210,000 people . . . ."). While they may be employed by organizations with group health plans that cover CASC benefits, Anabaptists and HCSM members have the option to participate in alternative health arrangements that may permissibly exclude some or all CASC benefits. Defendants chose not to impose the Mandate on these alternative health arrangements.

235. As a result of these categorical exemptions, some secular and some religious, the Mandate is not generally applicable.

236. Furthermore, Defendants do not have a compelling interest in enforcing the Mandate against Plaintiffs or the Post-Injunction Members. The requirement to cover CASC services applies to some, but not nearly all, employers, and confers benefits on some, but not nearly all, employees. The Mandate thus leaves appreciable damage to Defendants' supposedly vital interest unprohibited and unregulated.

237. Also beyond the reach of the CASC coverage requirement are the employees of exempt "religious employers." Defendants' stated reason for the exemption is that these organizations "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.

238. Under this reasoning, many Group II Members should also be exempt because, as Catholic organizations, they are just as likely as exempt "religious

employers"—and more likely than secular, non-Catholic organizations—to employ persons of the Catholic faith who have the same religious objections to CASC services. Even so, Defendants may not condition a religiously based exemption on whether an organization's employees share the same beliefs with, or have the same intensity of beliefs as, the organization itself.

239. Moreover, Defendants' reasoning does not explain why the Affordable Care Act exempts small employers and employers with grandfathered plans without regard to whether their employees are more or less likely to use CASC services. Nor does it explain why the government chose not to impose the Mandate on alternate health arrangements by Anabaptists and Evangelical Protestants without regard to whether those individuals are more or less likely to use CASC services.

240. Defendants' supposed interest in enforcing the Mandate against the Post-Injunction Members is further undermined by Defendants' admission that it *cannot* enforce the Mandate against TPAs that administer self-insured church plans for eligible organizations. In similar litigation that reached the Supreme Court on emergency review, Defendants conceded that they lack "authority to regulate either the church plan or the third party administrator of a self-insured church plan, and thus the third party administrator is under no legal compulsion to provide contraceptive coverage where an eligible organization with a self-insured church plan invokes the accommodation." Mem. for Resp'ts in Opp'n, at 15, *Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius*, Case No. 13A691 (U.S. Jan. 3, 2014).

241. Defendants' concession is fatal to its assertion of a compelling interest. It renders the Mandate's regulatory scheme incomplete and, for Group II Members with church plans, potentially worthless. A Group II Member with a church plan could comply with the Mandate's requirements and deliver its self-certification to its TPA (together with notice of the TPA's duties). In that situation, Defendants contend, they would be powerless to do anything.

242. In other words, the Mandate forces some eligible organizations to fill out the self-certification form that, while violating the organizations' religious beliefs, may serve no governmental interest. If the government has no power to enforce a law, it cannot have a compelling interest in enforcing that law.

**D. The Mandate Is Not Neutral.**

243. The Mandate is not neutral because the government discriminates between religious individuals and religious employers based on its classification system and because the government exempts other employers from the Mandate for wholly secular reasons.

244. Statements of Defendant Secretary Burwell's predecessor, Secretary Sebelius, also show that the Mandate is not neutral. Secretary Sebelius is an avowed advocate for abortion rights and a vocal critic of Plaintiffs' and the Post-Injunction Members' religious teachings and beliefs regarding the sanctity of life. On October 5, 2011, Secretary Sebelius spoke at a NARAL Pro-Choice America fundraiser where she criticized individuals and organizations like Plaintiffs and the Post-Injunction Members

that object to CASC benefits on religious grounds. She stated that "[w]e are in a war," referring to religious opponents of the Mandate. She also stated, "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."

245. In a speech on July 16, 2013, Secretary Sebelius compared opposition to the Mandate to opposition to civil rights legislation in the 1960s. She accused opponents of the Mandate of spreading "fear and misinformation." She applauded her listeners for supporting the Mandate just as they had supported "the fight against lynching." *See* Kathleen Sebelius, Remarks at 104th NAACP Annual Conference (July 16, 2013), *available at* http://www.hhs.gov/secretary/about/speeches/sp20130716.html (last visited Dec. 27, 2013).

246. Defendants evidenced their intent to foreclose all moral options available to eligible organizations by eliminating the Piggyback Option in the Final Rules, despite their contrary assurances in the ANPRM.

### E. The Mandate Is Not the Least Restrictive Means of Furthering the Government's Interests.

247. The government has numerous means at its disposal, other than the Mandate or the accommodation, for advancing its goal of expanding access to CASC services.

248. The government could: (1) directly provide coverage of CASC benefits for individuals who do not currently receive such benefits through their health plans; (2) reimburse those who pay for CASC benefits through a combination of direct subsidies,

tax deductions, and tax credits; (3) facilitate greater access to CASC benefits through the health insurance exchanges; or (4) work with other, willing organizations to expand access to CASC services.

249. Each of these avenues would more directly advance the government's interest and simultaneously avoid the substantial burden on Plaintiffs' and the Post-Injunction Members' religious practices imposed by the Mandate. In particular, the Post-Injunction Members would not be conscripted as conduits for delivery of CASC services to their employees, as they are under the Mandate.

## VIII. CAUSES OF ACTION

### FIRST CLAIM

### Violation of RFRA, 42 U.S.C. § 2000bb-1

250. Plaintiffs incorporate by reference all preceding paragraphs.

251. The Post-Injunction Members' sincerely held religious beliefs prohibit them from in any way paying for, providing, or facilitating access to CASC benefits, including by maintaining a group health plan that covers or otherwise provides access to these services.

252. The Post-Injunction Members' sincerely held religious beliefs equally prohibit them from contracting or arranging for provision of CASC services through a surrogate, such as an insurer or TPA.

253. The Post-Injunction Members' compliance with these sincerely held religious beliefs constitutes the exercise of religion, and such exercise is protected by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

254. The Mandate requires the Post-Injunction Members to provide, pay for, or directly or indirectly facilitate access to or to contract or arrange for provision of CASC services for their employees in violation of their sincerely held religious beliefs.

255. By threatening the Post-Injunction Members with ruinous fines and other penalties for failure to comply, the Mandate puts substantial pressure on the Post-Injunction Members to abandon their religious beliefs or engage in conduct that violates their religious beliefs.

256. The Mandate exposes the Post-Injunction Members to significant competitive disadvantages.

257. The Mandate substantially burdens the Post-Injunction Members' exercise of religion.

258. Defendants have no compelling interest in applying the Mandate to the Post-Injunction Members.

259. Applying the Mandate to the Post-Injunction Members is not the least restrictive means of furthering Defendants' interests.

260. By enacting the Mandate and threatening to enforce it against the Post-Injunction Members, Defendants have violated RFRA.

## SECOND CLAIM

### Violation of the Establishment Clause, Government Discrimination Among Religious Individuals and Religious Groups

261. Plaintiffs incorporate by reference all preceding paragraphs.

262. The Establishment Clause of the First Amendment to the United States Constitution requires government neutrality toward religion and prohibits the government from discriminating among religions and preferring some religious views over others.

263. The Establishment Clause also forbids discrimination among religious institutions based on the source of the institution's financial support or on the religious composition of the organization's employees.

264. Through its elaborate religious classifications, the Affordable Care Act and the Mandate discriminate among religious persons and organizations.

265. The Affordable Care Act and the Mandate impose selective burdens on certain religious adherents and certain religious institutions.

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

267. The Mandate's exemption of integrated auxiliaries of churches, coupled with the government's refusal to exempt organizations such as the Association's Group II Members, is irrational and discriminatory.

268. The Mandate adopts a particular theological view of what is acceptable moral complicity in an organization's provision of CASC services, favoring some organizations with full exemption, requiring others to enter into the morally unacceptable "accommodation," and extending neither exemption nor "accommodation" to still others.

269. The Mandate reflects Defendants' judgment about the importance or centrality of religious mission, favoring the purpose and mission of "religious employers" over the purpose and mission of eligible organizations, and totally denying protection to organizations engaged in for-profit activities.

270. The Affordable Care Act and the Mandate violate the Establishment Clause.

**THIRD CLAIM**

**Violation of the Free Exercise Clause, Substantial Burden**

271. Plaintiffs incorporate by reference all preceding paragraphs.

272. The Post-Injunction Members' sincerely held religious beliefs prohibit them from in any way paying for, providing, or directly or indirectly facilitating access to CASC benefits, including by maintaining a group health plan that covers or otherwise provides access to these services.

273. The Post-Injunction Members' sincerely held religious beliefs equally prohibit them from contracting or arranging for provision of CASC services by another.

274. The Post-Injunction Members' compliance with these sincerely held religious beliefs constitutes the exercise of religion. Such exercise is protected by the First Amendment Free Exercise Clause.

275. The Mandate is not a law of general applicability.

276. The Mandate is subject to categorical exemptions that undermine Defendants' stated interests in the law.

277. The Mandate is not neutral.

278. The Mandate was promulgated for the purpose of discriminating against the Post-Injunction Members' sincerely held religious beliefs regarding contraception, abortion, sterilization, and related counseling.

279. The Mandate substantially burdens the Post-Injunction Members' exercise of religion.

280. The Mandate does not further a compelling governmental interest.

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

282. By enacting and threatening to enforce the Mandate against the Post-Injunction Members, Defendants have violated the Free Exercise Clause.

## FOURTH CLAIM

### Violation of the Free Exercise Clause, Intentional Discrimination

283. Plaintiffs incorporate by reference all preceding paragraphs.

284. In promulgating the Mandate and refusing to exempt all but a narrow subset of religious organizations, Defendants deliberately targeted religious organizations like the Post-Injunction Members for discriminatory treatment.

285. In eliminating the Piggyback Option in the Final Rules, Defendants deliberately targeted religious organizations like the Post-Injunction Members for discriminatory treatment and sought to suppress their religious exercise.

286. By enacting and threatening to enforce the Mandate against the Post-Injunction Members, Defendants have violated the Free Exercise Clause.

## FIFTH CLAIM

### Violation of the Free Exercise and Establishment Clauses, Interference in Matters of Internal Religious Governance

287. Plaintiffs incorporate by reference all preceding paragraphs.

288. The Free Exercise Clause and the Establishment Clause protect the freedom of religious organizations to decide for themselves, free from government interference, matters of internal governance as well as those of faith and doctrine.

289. Under these Clauses, the government may not interfere with a religious organization's internal decisions concerning the organization's religious structure, leadership, or doctrine.

290. Under these Clauses, the government may not interfere with a religious organization's internal decision if that interference would affect the faith and mission of the organization itself.

291. Each Group I and Group II Member of the Association, including the Post-Injunction Members that fall into these categories, has made an internal decision, dictated by its Catholic faith, that the health plans it makes available to its employees may not provide, pay for, or directly or indirectly facilitate access to CASC services.

292. The Mandate interferes with these Group I and Group II Members' internal decisions concerning their structure and mission by requiring them to provide, pay for, or directly or indirectly facilitate practices that directly conflict with their Catholic beliefs.

293. The Mandate creates the risk of scandal by requiring Group I and Group II Members to provide, pay for, or directly or indirectly facilitate practices that directly conflict with Catholic teaching.

294. The Mandate artificially divides Catholic ministries into those that are exempt (such as dioceses) and those that are not (such as Catholic Charities). In so doing, the Mandate inhibits the Church's ability to speak with one voice on issues of sexual morality and sanctity of life. The Mandate also interferes with the ability of Group I Members to provide support to their non-exempt affiliated ministries by sponsoring diocesan health plans both for their own employees and for employees of those non-exempt ministries.

295. The Mandate thus interferes with the faith and mission of the Catholic Church and its affiliated ministries.

296. Because the Mandate intrudes on matters of internal religious governance and interferes with the faith and mission of the Catholic Church and its affiliated ministries, it violates the Establishment Clause and Free Exercise Clause.

## SIXTH CLAIM

### Violation of the Free Speech Clause

297. Plaintiffs incorporate by reference all preceding paragraphs.

298. The Free Speech Clause of the First Amendment to the United States Constitution prohibits the government from compelling a speaker to convey a message that the speaker finds morally repugnant.

299. The Free Speech Clause also prohibits the government from regulating speech based on the content of the message, the viewpoint expressed in the message, the motivation for the message, or the identity of the speaker.

300. By requiring self-insured Group II Members to notify their TPA of the TPA's obligations to provide or arrange for separate payment of CASC services, the Mandate compels such Group II Members to convey a message they find morally repugnant.

301. By prohibiting self-insured Group II Members from "interfer[ing] with" or "influencing" the TPA's decision whether to provide or arrange for separate payments of CASC services, even while the TPA may lawfully refuse to do so, the Mandate restricts such Group II Members' speech based on its religious content, viewpoint, and motivation.

302. The Mandate also restricts self-insured Group II Members' speech based on their identity as religious organizations because the Mandate contains no comparable restrictions on other organizations, who may freely attempt to "interfere with" or "influence" their TPA's decisionmaking for any number of reasons.

303. Neither the speech compelled nor the speech restricted by the Mandate is commercial speech.

304. Defendants have no compelling interest in enlisting self-insured Group II Members as government mouthpieces or in censoring their religiously motivated speech concerning CASC services.

305. The Mandate's combination of compelled speech and censorship is not necessary to further any interest of Defendants.

306. The Mandate's combination of compelled speech and censorship is substantially underinclusive.

307. The Mandate's combination of compelled speech and censorship violates self-insured Group II Members' rights under the Free Speech Clause.

## SEVENTH CLAIM

### Violation of the Free Speech and Free Exercise Clauses, Unbridled Discretion

308. Plaintiffs incorporate by reference all preceding paragraphs.

309. By purporting to give HHS, through HRSA, "discretion to exempt certain religious employers from the Guidelines," the Mandate vests HHS with unbridled discretion over which organizations will have their First Amendment rights protected.

310. Defendants have exercised unbridled discretion in a discriminatory manner by granting an exemption via a footnote on HRSA's website for Group I Members but not for other organizations with identical religious objections to the Mandate, like the Association's Group II and Group III Members.

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

312. Defendants' actions violate Plaintiffs' and the Post-Injunction Members' right not to be subjected to a system of unbridled discretion when engaging in speech or religious exercise, as secured to them by the First Amendment to the United States Constitution.

## EIGHTH CLAIM

### Violation of the Administrative Procedure Act, Lack of Good Cause and Improper Delegation

313. Plaintiffs incorporate by reference all preceding paragraphs.

314. The Affordable Care Act expressly delegates to HHS, through HRSA, the authority to establish guidelines concerning the "preventive care" that a group health plan and health insurance issuer must provide.

315. In light of this express delegation, Defendants were required to engage in formal notice-and-comment rulemaking in a manner prescribed by law before issuing the Guidelines. Proposed regulations were required to be published in the Federal Register

and interested persons were required to be given an opportunity to participate in the rulemaking through the submission of written data, views, or arguments.

316. Defendants promulgated the Guidelines without engaging in formal notice-and-comment rulemaking in a manner prescribed by law.

317. Defendants, instead, wholly delegated their responsibility for issuing the Guidelines to a nongovernmental entity, the IOM.

318. The IOM did not permit or provide for the broad public comment otherwise required under the APA concerning the Guidelines.

319. Within two weeks of the IOM's issuing its recommendations, HHS issued the Guidelines. HHS admitted that the Guidelines were "developed" by IOM.

320. HHS abdicated its responsibility to administer, interpret, and faithfully execute the Affordable Care Act by adopting the IOM's recommendations wholesale, without further notice-and-comment rulemaking and without consideration of numerous relevant factors that IOM explicitly declined to consider.

321. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute "good cause."

322. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the Guidelines by completing a meaningful "consideration of the relevant matter presented."

323. Thereafter, Defendants did not consider or respond to the voluminous subsequent comments they received in opposition to the Interim Final Rules or the NPRM.

324. Therefore, Defendants have taken agency action not in observance with procedures required by law, and Defendants' actions should be set aside pursuant to the Administrative Procedure Act, 5 U.S.C. § 500 *et seq*.

## NINTH CLAIM

### Violation of the Administrative Procedure Act, Arbitrary and Capricious Action

325. Plaintiffs incorporate by reference all preceding paragraphs.

326. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of enforcing the Mandate against the Post-Injunction Members and similar organizations.

327. The Mandate arbitrarily distinguishes between exempt "religious employers," accommodated "eligible organizations," and fully subject for-profit employers.

328. Defendants' explanation for their decision not to exempt Group II organizations from the Mandate runs counter to the evidence submitted by religious organizations during the comment periods.

329. Defendant Secretary Burwell's predecessor, Secretary Sebelius, in remarks made at Harvard University on April 8, 2013, essentially conceded that the Defendants

completely disregarded the religious liberty concerns submitted by thousands of religious organizations and individuals.

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

## TENTH CLAIM

### Violation of the Administrative Procedure Act, Agency Action Not in Accordance With the Law

331. Plaintiffs incorporate by reference all preceding paragraphs.

332. The Weldon Amendment prohibits Defendants HHS and the Department of Labor from discriminating against a group health plan, including those maintained by the Post-Injunction Members, on the basis that the plan fails to provide, pay for, provide coverage of, or refer for abortions.

333. Section 1303(b)(1)(A) of the Affordable Care Act states that "nothing in this title" (including the provision requiring plans to cover women's "preventive care" 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." 42 U.S.C. § 18023(b)(1)(A)(i).

334. Some of the drugs approved as "contraceptives" by the FDA and thus required to be covered by the Mandate are drugs known to cause medical abortions.

335. The Mandate violates the Weldon Amendment because it discriminates against the Post-Injunction Members by requiring these members' group health plans to provide, pay for, or facilitate access to abortion services.

336. The Mandate violates Section 1303(b)(1)(A) of the Affordable Care Act by requiring the Post-Injunction Members' group health plans to provide coverage of abortion services.

337. As set forth above, the Mandate violates RFRA and the First Amendment.

338. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law and in violation of the Administrative Procedure Act.

## PRAYER FOR RELIEF

Wherefore Plaintiffs request that the Court:

a. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs and the Post-Injunction Members violate the Religious Freedom Restoration Act, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs or the Post-Injunction Members for failure to pay for, provide, or directly or indirectly facilitate access to CASC services, including any penalties under 26 U.S.C. §§ 4980D and 4980H;

b. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs and the Post-Injunction Members violate the First Amendment to the United States Constitution, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs or the Post-Injunction Members for failure to

pay for, provide, or directly or indirectly facilitate access to CASC services, including any penalties under 26 U.S.C. §§ 4980D and 4980H;

c. Declare that the Mandate was issued in violation of the Administrative Procedure Act, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs or the Post-Injunction Members for failure to pay for, provide, or directly or indirectly facilitate access to CASC services, including any penalties under 26 U.S.C. §§ 4980D and 4980H;

d. Declare that Defendants may not interfere with Plaintiffs' or the Post-Injunction Members' relationships with their insurers or TPAs, or with Plaintiffs' or the Post-Injunction Members' attempts to contract for morally compliant health coverage for their employees and members, and that no taxes, penalties, or other burdens can be charged or assessed against such insurers or TPAs in relation to their work for Plaintiffs and the Post-Injunction Members;

e. Issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants from enforcing the Mandate against Plaintiffs and the Post-Injunction Members; prohibiting Defendants from charging or assessing taxes, penalties, or other burdens against Plaintiffs or the Post-Injunction Members for failure to pay for, provide, or directly or indirectly facilitate access to CASC services; and prohibiting Defendants from interfering with Plaintiffs' and the Post-Injunction Members' relationships with their insurers or TPAs and with

Plaintiffs' and the Post-Injunction Members' attempts to contract for morally compliant health coverage for their employees and members;

f. Award Plaintiffs the costs of this action and reasonable attorney's fees as provided by law, including 42 U.S.C. § 1988(b); and

g. Award such other and further relief as the Court deems equitable and just.

DATED: July 1, 2014.

Respectfully submitted,

/s/J. Angela Ables
J. Angela Ables (Okla. Bar #0112)
Johnny R. Blassingame (Okla. Bar ##21110)
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201 Robert S. Kerr Ave., #600
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*Pro Hac Vice Motions Pending*

*Attorneys for Plaintiffs*

sdg

**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing allegations pertaining the teachings of the Catholic Church and to The Catholic Benefits Association LCA and The Catholic Insurance Company, Inc. are true and correct to the best of my knowledge.

I further declare under penalty of perjury that Exhibit A attached hereto is a true and accurate copy of the Articles of Organization of The Catholic Benefits Association LCA, Exhibit B is a true and accurate copy of the Bylaws of The Catholic Benefits Association LCA, Exhibit C is a true and accurate copy of the Certificate of Incorporation of the Catholic Insurance Company, Inc., and Exhibit D is a true and accurate copy of the Bylaws of the Catholic Insurance Company, Inc.

Executed on July 1, 2014.

/s/Most Rev. William E. Lori
Most Rev. William E. Lori
Archbishop of Baltimore
President, The Catholic Benefits Association LCA
President, The Catholic Insurance Company, Inc.

**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing allegations pertaining to The Catholic Benefits Association LCA and its members are true and correct to the best of my knowledge.

Executed on July 1, 2014.

/s/ Nancy Matthews, Esq.
Nancy Matthews, Esq.
Director of Membership,
The Catholic Benefits Association LCA
Corporate Secretary,
The Catholic Benefits Association LCA

# ARTICLES OF ORGANIZATION
# OF
# THE CATHOLIC BENEFITS ASSOCIATION LCA

AN OKLAHOMA LIMITED COOPERATIVE ASSOCIATION

Pursuant to the Oklahoma Limited Cooperative Association Act (Okla. Stat. tit. 18, §§ 441-101 *et seq.*) (the "**Act**"), the person designated in ARTICLE XII below, acting as organizer of the Association (the "**Organizer**"), does hereby establish an Oklahoma limited cooperative association pursuant to these Articles of Organization.

## ARTICLE I
## NAME AND OFFICE

The name of the limited cooperative association is **The Catholic Benefits Association LCA** (the "**Association**"). The Association's principal place of business is 90 S. Cascade Avenue, Suite 1100, Colorado Springs, Colorado 80903.

## ARTICLE II
## REGISTERED AGENT AND ADDRESS

The registered agent is The Corporation Company, and the address of the registered office is 1833 South Morgan Road, Oklahoma City, OK 73128.

## ARTICLE III
## PERIOD OF DURATION

The Association shall have perpetual existence.

## ARTICLE IV
## PURPOSES

The Association's purposes shall be consistent with Catholic values, doctrine, and canon law. They are exclusively religious, charitable, and educational and, among others, include:

4.1 To support Catholic employers—including dioceses, parishes, religious institutes, associations of the faithful, charities, schools and colleges, health care institutions, fraternal benefit societies, professional groups, for profit businesses, and others—that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values;



4.2 To work and advocate for religious freedom of Catholic and other employers seeking to conduct their ministries and businesses according to their religious values;

4.3 To support Catholic employers in responding to changes in civil law that threaten their ability to conduct their affairs consistent with their Catholic values;

4.4 To make charitable donations to Catholic ministries from the Association's surplus;

4.5 To incorporate, support, or serve as a member of one or more Catholic entities, including one or more Catholic insurance companies, in furtherance of the Association's purposes.

## ARTICLE V
## POWERS

5.1 **General Powers**. The Association has, without limitation, full power to sue and be sued in its own name, to hold title to real property in its own name, and to do all other things necessary or convenient to carry on its activities.

5.2 **Restrictions on Powers**.

5.2.1 No part of the net earnings shall inure to the benefit of or be distributable to any director or officer or any other individual (except that reasonable compensation may be paid for services rendered to or for the benefit of the Association affecting one or more of its purposes), and no director or officer, any individual or any entity not constituting a Qualifying Charitable Organization shall be entitled to share in any distribution of any of the corporate assets on dissolution or otherwise. "**Qualifying Charitable Organization**" is an organization exempt from federal income taxation and described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**") or the corresponding section of the Code or any other federal revenue law hereafter in effect. Any such Qualifying Charitable Organization shall be a Catholic ministry.

5.2.2 No part of the assets shall be contributed to any organization whose net earnings or any part thereof inure to the benefit of any private shareholder or other individual or any substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation.

5.2.3 The Association shall make no grants or loans to any member of the board of directors or officer.

5.2.4 No substantial part of the activities shall consist of carrying on propaganda or otherwise attempting to influence legislation. The Association shall not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

5.2.5 Notwithstanding any other provision of these Articles, the Association shall not carry on any activities not permitted to be carried on by a Corporation exempt from federal income tax as an organization described in Section 501(c)(3) of the Code.

## ARTICLE VI
## MEMBERS

6.1 **Qualifications.** The Association shall have patron members in such class or classes with the rights and obligations ascribed to them in the Bylaws, provided that every member shall, in addition to other qualifications adopted by the board of directors, satisfy the following qualifications:

6.1.1 It shall be a Catholic employer;

6.1.2 With regard to the benefits it provides to its employees, it shall, as part of its religious witness and exercise, be committed to providing no benefits inconsistent with Catholic values; and

6.1.3 It shall, on a timely basis, pay its dues or other financial obligations to the Association and any of its affiliates.

6.2 **Voting Rights.** Voting rights of the members shall be as set forth and determined under the Bylaws, and pursuant to Okla. Stat. tit. 18, § 441-113(a) as may be subsequently amended, in the event of any variance between the Act and the Bylaws, the Bylaws will control.

6.3 **Acceptance of Members.** Until the Organizer's resignation as such, the Organizer shall have exclusive authority to accept members in the Organizer's sole and absolute discretion. Following the Organizer's resignation as such, acceptance of new members shall be at the discretion of the board of directors pursuant to the terms of the Bylaws or, if delegated by the board of directors, by a committee thereof, which may be comprised of persons who are not members of the board of directors.

6.4 **Limited Liability.** The personal liability of all members solely by virtue of being members shall be limited to the fullest extent of the law.

6.5 **Withdrawal.** Members shall be permitted to withdraw from the Association at any time by delivering written notice of withdrawal to the board of directors or executive director. Any financial obligations existing at the time of such withdrawal shall continue thereafter.

## ARTICLE VII
## BOARD OF DIRECTORS

7.1 **In General.** The management of the Association's affairs shall be vested in a board of directors, except as otherwise provided in the Act, these Articles, or the Bylaws.

7.2 **Initial Appointment.** Until his resignation as such, the Organizer shall have the exclusive authority to appoint and remove members of the board of directors.

7.3 **Regularly Constituted Board of Directors**. Subject to the preceding section, the identity and number of directors, their classifications, if any, their terms of office, and the manner of their election or appointment shall be determined according to the Bylaws.

## ARTICLE VIII
## LIMITATION OF LIABILITY OF DIRECTORS FOR BREACH OF FIDUCIARY DUTIES

No director shall have liability to the Association or any of its Members for breach of fiduciary duties as a director; provided, however, the forgoing limitation shall not eliminate a director's liability for:

(a) Breach of the duty of loyalty to the Association;

(b) Any acts or omissions of the director not taken in good faith;

(c) Any acts or omissions of the director involving intentional misconduct or knowing violation of the law;

(d) Any violation of Okla. Stat. tit. 18, § 1053 (relating to unlawful payment of dividends or unlawful stock purchase or redemption);

(e) Any other transaction from which the director derived an improper personal benefit; or

(f) Any other act for which indemnification of directors is prohibited under the provisions of the Act.

## ARTICLE IX
## INDEMNIFICATION

9.1 **No Limitation on Indemnification**. Nothing in these Articles shall be construed to limit or restrict the Association's ability:

(a) To indemnify its Organizer, officers, directors, employees, fiduciaries, or agents against liabilities asserted against or incurred by such officers, directors, employees, fiduciaries, or agents for actions taken by (or omissions of) such persons in such capacities; or

(b) To advance the counsel fees of its Organizer, officers, directors, employees, fiduciaries, or agents incurred in defending liabilities asserted against or incurred by such Organizer, officers, directors, employees, fiduciaries, or agents for actions taken by (or omissions of) such persons in such capacities.

9.2 **Procedures for Indemnification**. Except as set forth in the Act, the Oklahoma General Association Act (the "**OGCA**"), these Articles, or the Bylaws, indemnification of the Organizer, officers, directors, employees, fiduciaries, or agents shall not be mandatory.

Indemnification, when permissive under the Act or the OGCA, shall be granted as set forth in the Bylaws.

## ARTICLE X
## BYLAWS

The Bylaws shall be initially adopted by the Organizer. Except to the extent otherwise provided in the Bylaws, the board of directors shall have the exclusive power to alter, amend, or repeal the Bylaws from time to time in force and to adopt new Bylaws upon the majority vote of the board of directors. Such Bylaws may contain any provisions for the regulation or management of the Association's affairs which are not inconsistent with law or these Articles, as the same may from time to time be amended.

## ARTICLE XI
## AMENDMENTS

11.1 **Amendments to Certificate of Association**. The power and right to alter, amend, or repeal these Articles of Organization or any Article or provision herein, and to adopt new, revised, or restated Articles of Organization shall be vested in the Organizer until his resignation as such, and thereafter, in the board of directors.

11.2 **Amendments to Bylaws**. Subject to ARTICLE X, the power and right to adopt, alter, amend, or repeal the Association's Bylaws or any section or provision therein, and to adopt new, revised, or restated Bylaws shall be vested solely in the Organizer until his resignation as such, and thereafter, in the board of directors, subject to the limitations contained therein.

## ARTICLE XII
## ORGANIZER

The name and address of the Organizer is:

William Edward Lori
320 Cathedral Street
Baltimore, MD 21201

The Organizer shall have such rights, powers and duties as may be set forth in these Articles and the Bylaws in addition to any other rights afforded the Organizer under the Act. The personal liability of the Organizer by virtue of being the Organizer or serving as the Organizer shall be limited to the fullest extent of the law.

## ARTICLE XIII
## DISSOLUTION

Upon dissolution of the Association, the Association's assets remaining after payment of or provision for its liabilities shall be paid over or transferred to one or more Catholic ministries that is a Qualifying Charitable Organization. Any assets not so disposed of shall be disposed of

by the District Court of the State of Oklahoma that is located in Oklahoma City, or to one or more Catholic Qualifying Charitable Organizations as said Court shall determine.

**ARTICLE XIV**
**DELIVERY AND PRIMARY CONTACT**

The name and contact information of the individual who causes this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, is:

L. Martin Nussbaum, Esq.
Lewis Roca Rothgerber LLP
90 S. Cascade Ave., Suite 1100
Colorado Springs, Colorado 80903
mnussbaum@lrrlaw.com
719.386.3000

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles on the Feast of St. Ignatius of Antioch, October 17, 2013.

William Edward Lori

William Edward Lori, Organizer

# OKLAHOMA SECRETARY OF STATE

**Larry V. Parman**
**Secretary of State**

**2300 N. Lincoln Blvd., Room 101**
**Oklahoma City, OK 73105-4897**

**Mary Fallin**
**Governor**

**October 30, 2013** **STATEMENT** Page 1 of 1

Attn: CLAUDIA FERRIS
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90 S CASCADE AVE STE 1100
COLORADO SPRINGS CO 80903
- 1662
**Client ID:** 155575583

**Process Date:** 10/30/13 **Receive Date:** 10/21/13

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**Total Amount Credited to Client Account** $0.00

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Evidence of Filed Document(s) or Orders(s) requested is enclosed.
**Please include Client ID number on all correspondence.**

# BYLAWS
## OF
# THE CATHOLIC BENEFITS ASSOCIATION LCA
AN OKLAHOMA LIMITED COOPERATIVE ASSOCIATION

**Table of Contents**

## ARTICLE I
## PURPOSES AND POWERS OF ASSOCIATION

**1.1. Purposes and Power**. The purposes and power of The Catholic Benefits Association LCA, an Oklahoma limited cooperative association ("**Association**"), formed under the Oklahoma Limited Cooperative Association Act (Okla. Stat. tit. 18, §§ 441-101 *et seq.*) ("**Act**") are stated in the Articles of Organization.

## ARTICLE II
## ORGANIZER; COMMENCEMENT OF BUSINESS

**2.1. Powers of Organizer**. In addition to any powers vested in him pursuant to the Act, the organizer of the Association, William Edward Lori (the "**Organizer**"), shall have such powers and obligations as set forth herein. Any right, power, or duty vested in the board shall be vested solely in the Organizer until the appointment by the Organizer of the initial board.

## ARTICLE III
## MEMBERSHIP

**3.1. Members and Qualifications**. The Association shall have a single class of members. All members shall satisfy the requirements for membership set forth in the articles.

3.1.1. Any employer shall satisfy the requirement of being Catholic if either the employer is listed in the current edition of *The Official Catholic Directory* or the secretary or his or her designee makes such a determination.

3.1.2. For profit employers seeking membership in the Association shall be deemed Catholic only if (i) Catholics (or trusts or other entities wholly controlled by such Catholic individuals) own 51% or more of employer, (ii) 51% or more of the members of the employer's governing body, if any, is comprised of Catholics, and (iii) either the employer's owners or governing body has adopted a written policy stating that the employer is committed to providing no benefits to the employer's employees or independent contractors inconsistent with Catholic values.

**3.2. Admission of Members**.

3.2.1. The board or such duly appointed and authorized committee thereof or the secretary or the secretary's designee may admit members to the Association.

3.2.2. Each organization seeking to be a member shall apply for membership, by providing such information as may be required by the board, the secretary, or the secretary's designee. No organization qualified to be a member shall, solely by virtue of such qualification or application, be entitled to be admitted as a member.

**3.3. No Power to Bind Association**. A member, solely by reason of being a member, cannot and may not act for or bind the Association.

**3.4.** **No Liability**. A debt, obligation, or other liability of the Association is solely that of the Association and is not the debt, obligation, or liability of a member solely by reason of being a member.

**3.5.** **Membership Assessments for Ongoing Operations**. The board may assess contributions from members to fund the expenses of the Association. The board shall establish the amount, manner, or other method of determining any membership assessments, which shall be payable at such times and in such amounts as it determines. All membership assessments shall be payable in cash and the receipt and acceptance of such must be reflected in the Association's records. The proportion of the total membership assessments shall be allocated as determined by the board. Membership assessments under this Section 3.5 are not refundable to any member.

**3.6.** **Temporary Assessments for Litigation Costs**. The board may assess additional mandatory contributions from members or seek voluntary contributions from members and non-members to fund litigation costs consistent with the Association's purposes.

3.6.1. Such litigation includes, without limitation, litigation in the name of the Association, its members, its affiliates, its insurance company, others, or any person or entity providing services to the Association, its affiliates, or its insurance company, that is reasonably needed to avoid government mandates requiring employers or their contractors to provide CASC Benefits to the member's employees or independent contractors. "**CASC Benefits**" means medication, medical devices or medical procedures that are used for the purposes of contraception, abortion, sterilization, and related counseling.

3.6.2. The board shall establish the amount, manner, or other method of determining any membership temporary assessments for litigation, which shall be payable at such times and in such amounts as determined by the board. Such assessments shall be made on a temporary basis, until the cost of funding the litigation has, in the opinion of the board, been fully funded. Thereafter, the board may re-commence assessments for the cost of CASC Benefits litigation or other litigation as the circumstances warrant. All such assessments shall be payable in cash and the receipt and acceptance of such must be reflected in the Association's records. The proportion of the total membership assessments payable by each member under this Section 3.6 shall be allocated as determined by the board, taking into account such factors as the board deems appropriate.

3.6.3. After paying outstanding litigation costs and establishing such reserves as the board deems prudent for funding other litigation, any remaining funds from litigation assessments and third party contributions to fund litigation costs shall be refunded to such members and contributors in proportion to their relative historic contributions of such funds.

**3.7.** **Suspension or Termination**. If the board finds that a member has ceased to be an eligible member, the board shall suspend such member's rights as a member or terminate the member's membership. On termination of membership, all rights and interests of such member in the Association shall cease. No action taken under these bylaws shall impair the obligations of a member already accrued under any contract with the Association.

**3.8. Transferability of Membership Interests**. Membership interests in the Association shall not be transferable without the prior written consent of the board in its sole discretion. Any transfer in violation of this section shall be void *ab initio*.

**3.9. Members' Voting Interests**. "**Members' Voting Interests**" shall mean for each member calculated as of the end of the immediately preceding year, or as otherwise reasonably estimated by the board in good faith, the total number of covered lives by the member participating in any and all health plans for which the Association's insurance company provides stop loss or other coverage divided by the total aggregate number of covered lives by all members subscribing to such coverage.

**3.10. Information Rights**. Members and former members shall have the rights to information as set forth in Section 441-505 of the Act. In connection with the foregoing:

3.10.1. No member shall have a right to any information in the possession of the Association with respect to any other member that may be protected or otherwise confidential under the Health Insurance Portability and Accounting Act;

3.10.2. No member shall have any right to communications between the Association and its counsel, or to the work product prepared by the Association or its counsel with respect to any litigation, whether such matter is anticipated, ongoing, or complete.

3.10.3. No member shall have any right to any information relating to the Association's insurance company, including its assets, liabilities, expenses, or the claims of insureds made against it;

3.10.4. If the member seeks any information from the Association, such request shall set forth with reasonable particularity the information sought and the purpose for seeking the information, which purpose must (as determined by the board) be directly related to the purposes for which the member operates. Without limiting the foregoing, it shall not be deemed a purpose related to the operations of the member if the member is seeking such information for the purposes of assisting any person intending to compete with the Association or the Association's insurance company, or to defeat or attack the purposes of the Association or the Association's insurance company.

3.10.5. The Association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section 3.10.

3.10.6. The Association may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

3.10.7. Any determination as to the reasonableness of the member's request for information as set forth in Section 441-505 of the Act, or that the request for information does not meet the requirements of this Section 3.10 or the Act, shall be in the sole and absolute discretion of the board, provided that such determination shall be made in good faith.

**3.11. Annual Meeting of Members**. The annual meeting of the members of the Association shall be in such month and at such time and place as designated by the board in a

Notice of Annual meeting, which notice shall be mailed to each member not less than thirty days before such annual meeting. The first annual meeting of the members shall be in 2015.

**3.12. Special Meetings of Members.**

3.12.1. Special meetings of the members may be called at any time by order of the board.

3.12.2. Special meetings of the members may be called by the members at any time by delivery of a written demand for a special meeting, which written demand shall be delivered to the president and shall be signed by not less than those members with at least fifty-one percent of the total members' voting interests. The written demand shall state the object of the meeting.

3.12.3. Written or printed notice of every special meeting of members shall be prepared and mailed to the last known post office address of each member. In the case of a Special Meeting called by demand of the members, such notice shall be delivered within twenty days of the Association's receipt of a demand for special meeting satisfying the requirements of Section 3.12.2. Every notice of special meeting shall be delivered not less than fifteen days nor more than sixty days before such meeting. Such notice shall state every subject matter for the meeting and the time and place of meeting. No business shall be transacted at special meetings other than that identified in the notice.

**3.13. Voting.**

3.13.1. *Number of Votes.* Each member shall be entitled to a number of votes equal to such Members' Voting Interests multiplied by 100, rounded down to the nearest whole number. By way of example, if a Member's Voting Interest is 6.4581%, the member shall have 645 votes.

3.13.2. *Voting by Mail.* Members may vote on specific questions, other than the removal of directors, by ballots transmitted to the secretary by mail, provided that all members have been notified in writing, pursuant to action by the board, of the exact wording of the motion or resolution on which such vote is taken, and a copy is forwarded with and attached to the ballot of the member voting.

3.13.3. *Proxy Voting.* At any meeting of the members, a member may vote by proxy. Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, the following shall constitute valid means of such appointment: (i) a member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact; or (ii) a member may appoint a proxy by transmitting or authorizing the transmission of an email or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the Association. Such appointment of a proxy shall be filed with the Association before or at the time of the meeting. No appointment of a proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the appointment form.

**3.14. Quorum**. Members holding twenty percent of the aggregate Members' Voting Interests shall constitute a quorum for the transaction of business, provided that in the event of a special meeting called by the members, members holding fifty-one percent of the aggregate Members' Voting Interests shall constitute a quorum for the transaction of business at such special meeting. If a quorum is not present and acting at an annual meeting or special meeting called by the board, such meeting shall be adjourned by those present until a quorum is obtained. If a quorum is not present and acting at a special meeting called by the members, no action proposed in the notice of special meeting shall be taken.

**3.15. Order of Business**. The order of business at the annual meeting shall be:

3.15.1. Roll call;

3.15.2. Proof of due notice of meeting;

3.15.3. Reading and disposal of minutes;

3.15.4. Annual reports of officers and committees;

3.15.5. Unfinished business;

3.15.6. New business;

3.15.7. Election of directors; and

3.15.8. Adjournment.

**3.16. Action Without Meeting**.

3.16.1. Action may be taken without a meeting or vote of the members if specified and consented to in writing by all the members entitled to vote. Consent by a member may be withdrawn by a member in a record at any time before the Association receives a consent from each member entitled to vote. Consent to any action may specify the effective date or time of the action.

**3.17. Dissociation of Members**.

3.17.1. A member may withdraw from membership in the Association by providing one hundred twenty days' notice of intent to withdraw to the president, provided that no member may elect to dissociate from the Association when such member has insurance coverage in effect provided by the Association's insurance company.

3.17.2. In addition to the rights and obligations concerning dissociation of members under the Act, including without limitation Article 11 of the Act, the board may cause any member to dissociate from the Association upon a determination by the board that (i) such member does not meet the qualifications for membership or (ii) such member has acted in a manner contrary to the purposes of the Association. Such determination shall be made by the board in its sole, absolute, and final determination and discretion and for which no hearing or other administrative procedure shall be required.

## ARTICLE IV
## FINANCIAL MATTERS

**4.1.** **Non-Profit Purpose**. The Association shall at all times operate to further the purposes set forth in the articles. No profits of the Association shall be distributable to or inure to the benefit of the members, nor shall the Association operate for the private benefit of any member.

**4.2.** **Allocation of Profits**. The board may deduct and set aside a part of the profits to create or accumulate:

4.2.1. An unallocated capital reserve; and/or

4.2.2. Reasonable reserves allocated for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information relating to moral issues of interest to Catholic employers, and funding for litigation.

**4.3.** **Charitable Contributions**. After establishing reasonable reserves for the operation of the Association, the board may authorize, and the Association may make, contributions to Catholic ministries exempt from federal income taxation and described in Section 501(c)(3) of the Code ("**Qualifying Charitable Organization**").

## ARTICLE V
## DIRECTORS AND OFFICERS

**5.1.** **Management of Association**. The board shall have general supervision and control of the Association's affairs and shall make all rules for the Association's management not inconsistent with the articles or these bylaws. It shall have an accounting system adequate to the requirements of its operations, and it shall keep proper records of all business transactions.

**5.2.** **Number and Qualifications of Directors**. The Association shall have a board of no less than three and no more than fifteen members. At least three fourths of the directors shall be Catholic.

**5.3.** **Initial Directors**. The initial directors appointed by the Organizer are:

His Eminence Timothy Cardinal Dolan
Most Rev. Charles J. Chaput, OFM Cap.
Most Rev. Paul S. Coakley
Most Rev. William E. Lori
Most Rev. J. Peter Sartain

The initial directors may appoint additional directors before the initial annual meeting of the members. The initial directors and all directors appointed by them shall serve until the first annual meeting of the members and thereafter until their then-staggered terms expire.

**5.4. Election of Directors; Term**. Before the first annual meeting of the members, and before each annual meeting thereafter, the board shall nominate individuals to serve as directors. The notice of annual meeting shall include the list of nominees and biographical information for each. At the annual meeting of the members, the members shall elect directors from such nominees. During the first board meeting, after the first annual meeting of members, the board shall stagger the term of all directors then serving--including the initial directors, any directors appointed by the initial directors, and the directors elected by the members during the first annual meeting--so that approximately one third of the directors have terms of one year, one third have terms of two years, and one third have terms of three years. Newly elected directors shall thereafter serve for a term of three years, provided that each such director shall continue to hold office until the director's successor is elected or until the earlier of the director's death, resignation, or removal. Each director may serve as many as three consecutive terms after which the individual may not serve as director for at least one year. Whenever a vacancy occurs in the board, other than from the expiration of a term of office, the board shall appoint a qualified person to fill the vacancy until the next annual meeting of the members.

**5.5. Board Chair**. The Organizer shall initially appoint a chair of the board from among the acting members of the board, and thereafter the chair shall be elected by action of the board. The chair shall preside over all meetings of the board. The chair shall serve as such until his or her successor is elected and qualified by action of the board or until the earlier of such director's death, resignation, or removal.

**5.6. Board Meetings**. In addition to the meetings mentioned above, regular meetings of the board shall be held not less than semi-annually or at such other times and places as the board determines. Board meetings may be held telephonically or via other means, including conference calls, video- or web-conferencing, so long as each director may hear and be heard by each other director.

**5.7. Special Meetings**. A special meeting of the board shall be held whenever called by a majority of the directors. Any and all business may be transacted at a special meeting. Each call for a special meeting shall be in writing, signed by the person or persons making the same, addressed and delivered to the secretary, and shall state the time and place of such meeting. Upon the signing of a waiver of notice of a meeting, a meeting of the board may be held at any time.

**5.8. Quorum**. A majority of the board shall constitute a quorum.

**5.9. Notice of Board Meetings**. Oral or written notice of each meeting of the board shall be given to each director by or under the supervision of the secretary not less than forty-eight hours before the time of the meeting, but such notice may be waived by all the directors, and appearance at a meeting shall constitute a waiver of notice.

**5.10. No Proxies**. No director may vote or act by proxy or power of attorney.

**5.11. Action Without a Meeting**. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting and without prior notice if a consent in writing, setting forth the action taken, is signed by every director. Such consent (which may be counterparts) has the same effect as a unanimous vote. Unless it specifies a different effective

date, it is effective when signed by all. All consents signed pursuant to this section shall be delivered to the secretary for inclusion in the minutes and the Association's records.

**5.12. Compensation; Reimbursement**. The compensation, if any, of the directors shall be determined by the members at any annual or special meeting. Proposals for such salary may be made by the board. Nothing contained herein shall serve to bar any director receiving a salary as an officer or employee of the Association. Directors may be paid for his or her expenses, if any, of attendance at each meeting of the members, the board, or any committee of which he or she is a member.

**5.13. Ethics Committee**.

5.13.1. The Association shall at all times have an Ethics Committee comprised of the Catholic bishops serving on the board plus any additional number of Catholic bishops as appointed by the committee itself when necessary to bring the total number of bishops on the committee to at least three.

5.13.2. The Ethics Committee shall have exclusive authority to review all benefits, products, and services provided by the Association, its affiliates or subsidiaries, or their respective contractors to ensure such conform with Catholic values and doctrine. If they do not, the committee shall determine the necessary corrections to bring such benefits, products, and services into conformity with Catholic values and doctrine. The decision of the committee shall be final and binding on the Association, its board, and its officers, and also upon the board and officers of the Association's affiliates or subsidiaries.

5.13.3. The governing documents of any affiliate or subsidiary formed by the Association shall expressly acknowledge and accede to the authority of the Ethics Committee as set forth in this article 5.14.

**5.14. Other Committees**.

5.14.1. The board, by resolution, may designate one or more other committees to exercise authority as designated by the board.

5.14.2. The delegation of authority to any committee shall not operate to relieve the board or any director from any responsibility imposed by law. Subject to the foregoing, the board may provide such powers, limitations, and procedures for such committees as it wishes. Each committee shall keep regular minutes of its meetings, which shall be reported to the board and submitted to the secretary for inclusion in the Association's records.

**5.15. Bonds and Insurance**. The board may require its officers, agents, and employees charged by the Association with responsibility for the custody of any of its funds, securities, or commercial paper to give adequate bonds. Such bonds, unless cash security is given, shall be furnished by a responsible bonding company and approved by the board, the cost to be paid by the Association. The board shall provide for the adequate insurance of the property of the Association, or property in the possession or control of the Association, and not otherwise adequately insured, and in addition, adequate insurance covering liability for accidents to all employees and the public.

**5.16.** **Audits**. At least once in each year, the board shall secure the services of a competent and disinterested public auditor or accountant, who shall audit the Association's books and render a report in writing to the board and to the members at their annual meeting. This report shall include at least:

5.16.1. A balance sheet showing the Association's assets and liabilities; and

5.16.2. An operating statement for the fiscal period under review.

**5.17.** **Agreements with Members**. The board shall have the power to carry out all agreements of the Association with its members in every way advantageous to the Association representing the members collectively.

**5.18.** **Depository**. The board shall have power to select one or more banks to act as depositories of the Association's funds, and to determine the manner of receiving, depositing, and disbursing such funds, the form of checks, and the person or persons with authority to sign them.

## ARTICLE VI
## OFFICERS

**6.1.** **Election of Officers; Vacancies**. The board shall meet within ninety days after their initial appointment by the Organizer and within forty-five days after each annual election of directors thereafter elect a president, vice-president, secretary and treasurer, and any other position as may be determined by the board. Each such person shall hold office until the election and qualification of a successor unless removed by death, resignation, or for cause. There shall be no limits on the number of terms any officer may serve as such. Any of the officers may be members of the board, but membership on the board shall not be a required qualification for officers. The board shall fill vacancies in such offices.

**6.2.** **Duties of President**. The president shall:

6.2.1. Perform all duties usually performed by an executive and presiding officer or as may be prescribed by the board; and

6.2.2. Sign such other papers of the Association as the president may be authorized or directed by the board to sign; provided, however, that the board may authorize any person to sign any or all checks, contracts, and other instruments on behalf of the Association.

**6.3.** **Duties of Vice President**. The vice president shall:

6.3.1. In the absence of the president or in the event of his or her death, inability or refusal to act, perform all duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president; and

6.3.2. Perform such other duties as the president or the board shall assign.

**6.4.** **Duties of Secretary**. The secretary, personally or through a designee, shall:

6.4.1. Keep a complete record of all meetings of the Association and of the board and have general charge of the Association's books and records;

6.4.2. Sign all membership certificates with the president and such other papers pertaining to the Association as the board shall authorize;

6.4.3. Serve all notices required by law, the articles, and these bylaws and make a full report of all matters pertaining to the office to the members at the annual meeting;

6.4.4. Keep complete membership records;

6.4.5. Make all reports required by law and perform such other duties as may be required by the Association or the board; and

6.4.6. On the election of a successor, the secretary shall turn over all books and other property belonging to the Association in the secretary's possession.

**6.5. Duties of Treasurer**. The treasurer shall ensure the performance of an annual audit and the preparation of annual financial statements, along with such other duties, with respect to the finances of the Association as the board may prescribe.

## ARTICLE VII
## INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES

**7.1. Mandatory Indemnification**.

7.1.1. The Association shall indemnify any director, officer, or employee who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action of the Association) by reason of the fact that he or she is or was, a director, officer, or employee of the Association, or is or was serving at the request of the Association as a director, officer, employee, agent, administrator, advisor, fiduciary, or member of a corporation, partnership, joint venture, holding company, subsidiary, trust, unincorporated association, retirement or other employee benefit plan, or other enterprise, as well as any committee, subcommittee, or other body of the Association existing under authority of statute or otherwise, against expenses (including attorneys' fees), judgments, fines, penalties, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he/she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

7.1.2. The Association shall indemnify any director, officer, or employee who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by, or in the right of, the Association to procure a judgment in its favor by reason of the fact that he/she is or was a director, officer, or employee of the Association, or is or was serving at the request or direction of the Association as a director, officer, employee, agent, administrator, advisor, fiduciary, or member of a corporation, partnership, joint venture, trust, retirement or other employee benefit plan or other enterprise, as well as any committee,

subcommittee, or other body of the Association existing under authority of statute or otherwise, against expenses (including attorneys' fees) actually and reasonable incurred by him or her in connection with the defense or settlement of such action or suit, as well as amounts paid in settlement, if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such director, officer, or employee shall have been adjudged to be liable to the Association unless, and only to the extent that a court of competent jurisdiction shall determine upon application that, despite the adjudication of liability but in the view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

**7.2. Termination or Abatement of Claim.** The termination or abatement of a claim, threatened claim, suit, or other proceeding by way of judgment, order, settlement, or conviction, upon a plea of guilty or nolo contendere or its equivalent is not, of or by itself, determinative that the director, officer, or employee met or did not meet the standard of conduct described in this article.

**7.3. Permissive Indemnification.** The Association may indemnify any agent of the Association to the same extent as and under the same provisions applicable to directors and officers of the Association, but only by specific action of and to the extent designated by the board.

**7.4. Success on the Merits.** Notwithstanding any other provision of this article, a director, officer, or employee of the Association who has been successful, on the merits or otherwise, in the defense of any suit or proceeding referred to in Section 7.1 *et seq.* above, to which he or she was a party shall be indemnified against expenses (including reasonable attorneys' fees) actually and reasonable incurred by him or her in connection with such suit or proceeding.

**7.5. Procedure**. Any indemnification under this Article VII (unless ordered by the court) shall be made by the Association only as authorized in the specific case upon a determination by the board that indemnification of the director, officer, or employee is proper in the circumstances because he/she has met the applicable standard of conduct set forth in the applicable section of this Article. Such determination shall be made (1) by the board by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding; or (2) if such quorum is not obtainable, or even if obtainable, by the direction of a quorum of disinterested directors, by independent legal counsel in a written opinion.

**7.6. Advancement of Expenses**. Notwithstanding the provisions of Section 7.5, reasonable expenses incurred in defending any civil or criminal action, suit or proceeding, shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding, if the director, officer, or employee shall undertake to repay such amount in the event that it is ultimately determined, as provided herein, that such person is not entitled to indemnification. Advances of expenses shall be made promptly and, in any event, within ninety days, upon written request of the director, officer, or employee. Notwithstanding the foregoing, no advance shall be made by the Association, if a determination is reasonably made at any time by the Association board by a majority vote of a quorum of disinterested directors, or (if such a quorum

is not obtainable or, even if obtainable, a quorum of disinterested directors so directs) by independent legal counsel in a written opinion, that based upon the facts known to the board or counsel at the time such determination is made, such person acted in bad faith and in a manner opposed to the best interests of the association, or such person deliberately breached his or her duty to the Association or its stockholders, or, with respect to any criminal proceeding, that such person believed or had reasonable cause to believe his or her conduct was unlawful.

**7.7. Other Rights**. The indemnification provided by this article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any insurance or other agreement, vote of directors, or otherwise, both as to actions in their official capacity and as to actions in another capacity while holding an office, and shall continue as to a person who has ceased to be a director, officer, or employee and shall inure to the benefit of the heirs, executors, and administrators of such person. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, or who is or was serving in any of the capacities referred to in Section 7.1 *et seq.* hereof against any liability asserted against him or incurred by him in any such capacity, or arising out of his or her status as such.

## ARTICLE VIII
## DISSOLUTION

**8.1. Required Vote**. Voluntary dissolution of the Association may only be made upon the affirmative vote of not less than two-thirds of all directors of the board.

**8.2. Debts and Liabilities**. On the dissolution of the Association, all its debts and liabilities shall be paid first according to their respective priorities.

**8.3. Remaining Assets**. Any remainder of property of the Association shall be paid over or transferred to one or more Catholic ministries that is a Qualifying Charitable Organization. Any assets not so disposed of shall be disposed of by the state District Court in Oklahoma City, or to one or more Catholic Qualifying Charitable Organizations as said Court shall determine.

## ARTICLE IX
## FISCAL YEAR

The fiscal year shall be the calendar year or such other consecutive twelve month period established by the board.

## ARTICLE X
## INCORPORATION OF ACT

Except as may be modified in the articles or these bylaws, the Act shall control and govern the Association.

## ARTICLE XI
## AMENDMENTS

**11.1.** **Bylaws and Articles**. If notice of the character of the amendment proposed is given in the notice of meeting, a majority of all of the directors may amend these bylaws or the articles. The articles or these bylaws may also be amended by unanimous written consent of the directors. Notwithstanding the foregoing, there shall be no amendment to Article IV, Article VI (paragraph 6.1), or Article XII of the Articles of Organization or sections 3.1, 5.13 and 11.1 of these bylaws without the approval of the Ethics Committee. The members may not amend either these bylaws or the articles.

OFFICE OF THE SECRETARY OF STATE

STATE OF OKLAHOMA

# CERTIFICATE OF INCORPORATION

*WHEREAS, the Certificate of Incorporation of*

**THE CATHOLIC INSURANCE COMPANY**

*has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.*

***NOW THEREFORE, I,** the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.*

***IN TESTIMONY WHEREOF, I** hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.*

*Filed in the city of Oklahoma City this*
*20th day of February, 2014.*

***Secretary of State***

FILED - Oklahoma Secretary of State #1912441626 02/20/2014

02/20/2014 03:14 PM
OKLAHOMA SECRETARY OF STATE

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# CERTIFICATE OF INCORPORATION OF THE CATHOLIC INSURANCE COMPANY

AN OKLAHOMA FOR PROFIT CORPORATION

Pursuant to the Oklahoma General Corporation Act (Okla. Stat. tit. 18, §§ 1001-1144), and the Oklahoma Captive Insurers Act (Okla. Stat. tit. 36, § 6470.1 et seq.) the person designated in ARTICLE XII below, acting as incorporator, hereby establishes a for-profit corporation and adopts the following Certificate of Incorporation.

## ARTICLE I
## NAME AND OFFICE

The name of the corporation is **THE CATHOLIC INSURANCE COMPANY** (the "**Corporation**"). The Corporation's principal place of business is: c/o Kerr, Irvine, Rhodes & Ables, 201 Robert S. Kerr Ave., Suite 600, Oklahoma City, Oklahoma 73102.

## ARTICLE II
## REGISTERED AGENT AND ADDRESS

The registered agent of the Corporation is J. Angela Ables, at Kerr, Irvine, Rhodes & Ables and address of the registered office of the Corporation is 201 Robert S. Kerr Ave., Suite 600, Oklahoma City, Oklahoma 73102.

## ARTICLE III
## PERIOD OF DURATION

The Corporation shall have perpetual existence.

## ARTICLE IV
## PURPOSES

The Corporation is organized and authorized to provide, in a manner consistent with Catholic values, doctrine, and canon law, all kinds types, classes and forms of stop loss insurance providing protection to employers that are Members ("Association Members") of The Catholic Benefits Association, an Oklahoma Limited Cooperative Association (the "Association"), and the affiliated employers of such Association Members, against excessive losses and claims under their self-funded welfare benefit plans, and any other insurance protection to Association Members and their affiliated employers that the Corporation is or becomes authorized to transact under the laws of the state of Oklahoma or any other state, nation, territory, possession or District of Columbia in which the Corporation is authorized to do business, and in connection therewith, to reinsure all or any portion of such risk and to reinsure all or any portion of such risk ceded to it by other insurance companies. For the purposes of this Certificate of Incorporation, "affiliated employer" of an Association Member shall mean an organization constituting an "affiliated company" of an Association Member under the Oklahoma Captive Insurance Company Act.

The Corporation shall at all times be authorized and empowered to render services related to the functions involved in the operation of its insurance business, including but not limited to, actuarial, data processing, accounting and claims administration, and any other activity to the extent necessarily or properly incidental to the insurance business of the Corporation.

The Corporation shall at all times act in a manner consistent with Catholic values, doctrine, and canon law, including supporting Catholic employers—including dioceses, parishes, religious institutes, associations of the faithful, charities, schools and colleges, health care institutions, fraternal benefit societies, professional groups, for profit businesses, and others—that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values.

Consistent with the foregoing purposes, and subject to any limitations or requirements under the Oklahoma Insurance Code or the Oklahoma Insurance Department, the Corporation is specifically authorized to contribute such portions of its earnings or surplus to Catholic charitable or religious organizations as may from time to time be determined by the Corporation's board of directors.

Subject at all times to the provisions of the Oklahoma Insurance Code and any regulations and requirements promulgated by the Oklahoma Insurance Department, and subject to the express limitation that in no circumstances shall the Corporation issue policies of life insurance, the Corporation may at all times engage in any lawful act or activity for which all corporations may be organized under the Oklahoma General Corporation Act and shall have the general rights, privileges , immunities and powers accorded to general for profit corporations by Oklahoma law, but only to the extent that any such act, activity, right, privilege, immunity or power is not inconsistent with or otherwise limited by the Oklahoma Insurance Code or any regulation or requirement published by the Oklahoma Insurance Department.

## ARTICLE V
## CAPITAL STOCK

The total number of shares which the Corporation shall have the authority to issue is Fifty Thousand (50,000) shares, all of which shall be designated as voting common stock with a par value of $1.00 per share.

## ARTICLE VI
## BOARD OF DIRECTORS

7.1 **In General**. The management of the affairs of the Corporation shall be vested in a board of directors, except as otherwise provided in the Oklahoma General Corporation Act, this Certificate, or the Bylaws of the Corporation.

7.2 **Initial Appointment**. Until his resignation as such, the Incorporator shall have the exclusive authority to appoint and remove members of the board of directors.

7.3 **Regularly Constituted Board of Directors**. The identity and number of directors, their classifications, if any, their terms of office, and the manner of their election or

appointment shall be determined according to the Bylaws of the Corporation from time to time in force.

## ARTICLE VII
## LIMITATION OF LIABILITY OF DIRECTORS FOR BREACH OF FIDUCIARY DUTIES

No director of the Corporation shall have liability to the Corporation for breach of fiduciary duties as a director of the Corporation; provided, however, the forgoing limitation shall not eliminate a director's liability for:

(a) breach of the duty of loyalty to the Corporation;

(b) any acts or omissions of the director not taken in good faith;

(c) any acts or omissions of the director involving intentional misconduct or a knowing violation of the law;

(d) any violation of Okla. Stat. tit. 18, § 1053 (relating to unlawful payment of dividends or unlawful stock purchase or redemption);

(e) any other transaction from which the director derived an improper personal benefit; or

(f) any other act for which indemnification of directors is prohibited under the provisions of the Oklahoma General Corporation Act.

## ARTICLE VIII
## INDEMNIFICATION

9.1 **No Limitation on Indemnification**. Nothing in this Certificate shall be construed to limit or restrict the ability of the Corporation:

(a) to indemnify its officers, directors, employees, fiduciaries, or agents against liabilities asserted against or incurred by such officers, directors, employees, fiduciaries, or agents for actions taken by (or omissions of) such persons in such capacities; or

(b) to advance the counsel fees of its officers, directors, employees, fiduciaries, or agents incurred in defending liabilities asserted against or incurred by such officers, directors, employees, fiduciaries, or agents for actions taken by (or omissions of) such persons in such capacities.

9.2 **Procedures for Indemnification**. Except as set forth in the Oklahoma General Corporation Act or as set forth in the Bylaws of the Corporation, indemnification of officers, directors, employees, fiduciaries, or agents shall not be mandatory. Indemnification, when permissive under the Oklahoma General Corporation Act, shall be granted as set forth in the Bylaws of the Corporation.

L. Martin Nussbaum
Lewis Roca Rothgerber LLP
90 S. Cascade, Suite 1100
Colorado Springs, CO 80903
mnussbaum@lrrlaw.com
719.386.3000

IN WITNESS WHEREOF, the undersigned incorporator has executed this Certificate of Incorporation effective as of February 19, 2014.

L. Martin Nussbaum, Incorporator

Lewis Roca Rothgerber LLP
90 S. Cascade, Suite 1100
Colorado Springs, CO 80903
mnussbaum@lrrlaw.com
719.386.3000

# BYLAWS

# OF

# THE CATHOLIC INSURANCE COMPANY

## ARTICLE I
## OFFICES

**Section 1.1 PRINCIPAL OFFICE**. The principal office of the corporation shall be located at c/o Kerr, Irvine, Rhodes & Ables, 201 Robert S. Kerr Ave., Suite 600, Oklahoma City, Oklahoma. The corporation may have such other offices, either within or outside of the State of Oklahoma, as the Board of Directors may designate or as the business of the corporation may require from time to time.

**Section 1.2 REGISTERED OFFICE AND AGENT.** The corporation shall maintain in the State of Oklahoma a registered office and a registered agent, whose office is identical with such registered office, as required by the Oklahoma General Corporation Act (Okla. Stat. tit. 18, §§ 1001-1144) (the "Act").

## ARTICLE II
## SHAREHOLDERS

**Section 2.1 SOLE SHAREHOLDER**. The Catholic Benefits Association, LCA, an Oklahoma Limited Cooperative Association (the "CBA"), has caused the Corporation to be formed with the intent and purpose that that CBA be the sole shareholder of the Corporation, with the Corporation operating for the purpose of providing stop loss insurance to the members of the CBA and their affiliated employers with respect to their welfare benefit plans. During such times as the CBA is the sole Shareholder of the Corporation, the CBNA shall take all shareholder actions by written resolution or consent, executed by an officer of the CBA, in lieu of any Shareholder meeting.

**Section 2.2 ANNUAL MEETING**. Subject to Section 2.1, the annual meeting of the shareholders shall be held at such time and place as shall be fixed by the Board of Directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting. A shareholder may apply to any court of competent jurisdiction in Oklahoma to seek an order that a shareholder meeting be held: (i) if an annual meeting was not held within six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting, whichever is earlier, or (ii) if the shareholder participated in a proper call for a special meeting and notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's Secretary or the special meeting was not held in accordance with the notice.

**Section 2.3 SPECIAL MEETINGS**. Subject to Section 2.1, special meetings of the shareholders, for any purpose, unless otherwise prescribed by statute, may be called by the

President or by the Board of Directors, and shall be called by the President if the corporation receives one or more written demands for a special meeting, stating the purpose of the meeting and signed and dated by holders of shares representing at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the meeting.

**Section 2.4 PLACE OF MEETINGS.** Subject to Section 2.1, t, the Board of Directors may designate any place, either within or outside of the State of Oklahoma, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made, the place of meeting shall be the principal office of the corporation in the State of Oklahoma.

**Section 2.5 NOTICE OF MEETING.** Subject to Section 2.1, written notice stating the place, day and hour of the meeting of shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally, or by mail, electronic mail, or other form of written communication by or at the direction of the President, the Secretary, or the officer or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting; *provided, however*, that if the authorized shares of the corporation are to be increased, at least thirty (30) days' notice shall be given, and if sale of all or substantially all assets are to be voted upon, at least twenty (20) days' notice shall be given. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the stock transfer books of the corporation, with postage thereon prepaid. If notice is given other than by mail, and provided that notice is in a comprehensible form, the notice is given and effective on the date received by the shareholder.

If three successive letters mailed to the last-known address of any shareholder of record are returned as undeliverable, no further notices to such shareholder shall be necessary until another address for such shareholder is made known to the corporation. In order to be entitled to receive notice of any meeting, a shareholder shall advise the corporation in writing of any change in such shareholder's mailing address as shown on the corporation's books and records.

When a meeting is adjourned to another date, time, or place, notice need not be given of that new date, time or place if the new date, time, or place of such meeting is announced before adjournment of the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than 120 days, or if a new record date is fixed for the adjourned meeting, a new notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting as of the new record date.

**Section 2.6 FIXING OF RECORD DATE**. Subject to Section 2.1, for the purpose of determining shareholders entitled to (i) notice of or vote at any meeting of shareholders or any adjournment thereof, (ii) receive distributions or share dividends, or (iii) demand a special meeting or to make a determination of shareholders for any other proper purpose, the Board of Directors may fix a future date as the record date for any such determination of shareholders, such date in any case to be not more than seventy (70) days, and, in the case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action requiring

such determination of shareholders is to be taken. If no record date is fixed by the directors, the record date shall be the date on which notice of the meeting is mailed to shareholders, or the date on which the resolution of the Board of Directors providing for a distribution is adopted. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless the Board of Directors sets a new record date which shall be required if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

**Section 2.7 VOTING LIST.** Subject to Section 2.1, the corporation shall make, at the earlier of ten (10) days before each meeting of shareholders or two (2) business days after notice of the meeting has been given, a complete list of the shareholders entitled to be given notice of such meeting of shareholders or any adjournment thereof. The list shall be arranged by voting groups and, within each voting group, shall be arranged by class or series of shares. The list shall also be in alphabetical order within each class or series, and shall show the address of each shareholder and the number of shares of each class or series held by each shareholder. The list, for a period beginning the earlier of ten (10) days prior to such meeting or two (2) business days after notice of the meeting is given and continuing through the meeting and any adjournment, shall be kept on file at the principal office of the corporation, or at a place (which shall be identified in the notice) in the city where the meeting will be held. Such list shall be available for inspection on written demand by any shareholder or his or her agent or attorney during regular business hours and during the period available for inspection. The original stock transfer book shall be *prima facie* evidence as to the shareholders entitled to examine such lists or to vote at any meeting of shareholders.

**Section 2.8 QUORUM AND ADJOURNMENT.** A majority of the votes entitled to be cast on the matter by a voting group, represented in person or by proxy, shall constitute a quorum of that voting group for action on the matter. If no specific voting group is designated in the Articles of Incorporation or under the Act for a particular matter, all outstanding shares of the corporation entitled to vote shall constitute a voting group. In the absence of a quorum at any such meeting, a majority of the votes so represented may adjourn the meeting from time to time without further notice for a period not to exceed 120 days for any one adjournment. If a quorum is present at such adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally noticed. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, unless the meeting is adjourned and a new record date is set for the adjourned meeting.

**Section 2.9 MANNER OF ACTING.** Subject to Section 2.1, if a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the vote of a greater number or voting by classes is required by law or the Articles of Incorporation.

**Section 2.10 PROXIES.** At all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by his or her duly authorized attorney-in-fact. A shareholder may also appoint a proxy by transmitting a written statement to the corporation. The transmitted appointment shall set forth written evidence from which it can

be determined that the shareholder authorized the transmission of the appointment. The proxy appointment form or similar writing shall be filed with the Secretary of the corporation before or at the time of the meeting. The appointment of a proxy is effective when received by the corporation and is valid for eleven (11) months from the date of its execution, unless otherwise provided in the appointment form.

Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used. The corporation may accept or reject any appointment of a proxy, revocation of appointment of a proxy vote, vote, consent, waiver or other writing purportedly signed by or for a shareholder if such acceptance or rejection is in accordance with the provisions of Sections 7-107-203 and 7-107-205 of the Act.

**Section 2.11 VOTING OF SHARES.** Unless otherwise provided by these bylaws or the Articles of Incorporation, each outstanding share entitled to vote, regardless of class, shall be entitled to one vote upon each matter submitted to a vote at a meeting of shareholders.

Except as otherwise ordered by a court of competent jurisdiction, upon a finding that the purpose of this Section would not be violated in the circumstances presented to the court, the shares of the corporation are not entitled to be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for the directors of the second corporation except to the extent the second corporation holds the shares in a fiduciary capacity.

Redeemable shares which have been called for redemption shall not be entitled to vote on any matter and shall not be deemed outstanding shares on and after the date on which written notice of redemption has been mailed to shareholders and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

**Section 2.12 CORPORATION'S ACCEPTANCE OF VOTES.** The corporation is entitled to reject a vote, consent, waiver, proxy appointment or proxy appointment revocation if the Secretary or other officer or agent authorized to tabulate votes, acting in good faith and in accordance with the provisions of Section 7-107-205 of the Act, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder. Neither the corporation nor its officers nor any agent who accepts or rejects a vote, consent, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of the Section is liable in damages for the consequences of the acceptance or rejection.

**Section 2.13 ACTION BY SHAREHOLDERS WITHOUT A MEETING.** Action required or permitted to be taken at a meeting of shareholders may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each shareholder entitled to vote and actually received by the corporation. Action taken under this Section is effective when all shareholders entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining shareholders entitled to take action without a meeting shall be the date the written consent is first received by the corporation.

**Section 2.14 NO CUMULATIVE VOTING.** No shareholder shall be permitted to cumulate his or her votes by giving one candidate as many votes as the number of such directors multiplied by the number of his or her shares shall equal, or by distributing such votes on the same principle among any number of candidates.

**Section 2.15 WAIVER OF NOTICE.** A shareholder may waive notice of a meeting before or after the time and date of the meeting by a writing signed by such shareholder. Such waiver shall be delivered to the corporation for filing with the corporate records. By attending a meeting, either in person or by proxy, a shareholder waives objection to lack of notice or defective notice of the meeting unless the shareholder objects at the beginning of the meeting to the holding of the meeting or the transaction of business at the meeting because of lack of notice or defective notice. By attending the meeting the shareholder also waives any objection to consideration at the meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

**Section 2.16 PARTICIPATION BY ELECTRONIC MEANS.** Any shareholder may participate in any meeting of the shareholders by means of telephone conference or similar communications equipment, by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

## ARTICLE III
## BOARD OF DIRECTORS

**Section 3.1 GENERAL POWERS.** Except as otherwise provided in the Act or the Articles of Incorporation, the business and affairs of the corporation shall be managed by its Board of Directors. The directors may appoint a Chairman of the Board who shall have the duties set forth in Section 4.4. All actions of the Board of Directors shall further the ministry of the CBA, and shall be consistent with Catholic values, doctrine, and canon law. Without limiting the foregoing, the Board of Directors shall to the extent not inconsistent with or otherwise limited by the Oklahoma Insurance Code or any regulation or requirement published by the Oklahoma Insurance Department, seek to cause the Corporation:

i. To support Catholic employers—including dioceses, parishes, religious institutes, associations of the faithful, charities, schools and colleges, health care institutions, fraternal benefit societies, professional groups, for profit businesses, and others—that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values; and

ii. To make charitable donations to Catholic ministries from the Corporation's surplus.

**Section 3.2 PERFORMANCE OF DUTIES.** A director of the corporation shall perform his or her duties as a director, including his or her duties as a member of any committee of the Board upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent

person in a like position would use under similar circumstances. In performing his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in paragraphs (a), (b), and (c) of this Section 3.2; but he or she shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director who so performs his or her duties shall not be liable to the corporation or its shareholders for any action he or she takes or omits to take as a director. Those persons and groups on whose information, opinions, reports, and statements a director is entitled to rely are:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence; or

(c) A committee of the Board upon which he or she does not serve if the director reasonably believes the committee merits confidence.

**Section 3.3 NUMBER, TENURE AND QUALIFICATIONS.** The number of directors of the corporation shall be not less than one (1) nor more than twenty-five (25), and shall be fixed as determined by the resolution of the Shareholder from time to time and may be increased or decreased by resolution adopted by the Shareholder from time to time, but no decrease in the number of directors shall have the effect of shortening the term of any incumbent director. Each director shall be a natural person who is eighteen (18) years of age or older and shall hold office until the next annual meeting of shareholders or until his or her successor shall have been elected and qualified. Directors need not be residents of the State of Oklahoma or shareholders of the Corporation.

**Section 3.4 REGULAR MEETINGS.** A regular meeting of the Board of Directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of shareholders. The Board of Directors may provide, by resolution, the time and place, either within or outside the State of Oklahoma, for the holding of additional regular meetings without other notice than such resolution.

**Section 3.5 SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or outside the State of Oklahoma, as the place for holding any special meeting of the Board of Directors called by them.

**Section 3.6 NOTICE AND WAIVER OF NOTICE.** Notice of any special meeting shall be delivered at least twenty-four (24) hours prior to the meeting by written notice either delivered personally or mailed to each director at his or her mailing address of record, or by electronic or facsimile transmission. The method of giving notice need not be the same for each director. If mailed, such notice shall be deemed to be given three (3) days after such notice is deposited in the United States mail so addressed, with postage thereon prepaid. If delivered by electronic mail, such notice shall be deemed to be delivered if such electronic mail is sent to the address identified in the corporation's records for such director unless the corporation receives electronic notice of nondelivery of the email.

A director may waive notice of a meeting before or after the time and date of the meeting by a writing signed by such director. Such waiver shall be delivered to the corporation for filing with the corporate records. Further, a director's attendance at or participation in a meeting waives any required notice to him or her of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need to specified in the notice or waiver of notice of such meeting.

**Section 3.7 QUORUM.** A majority of the number of directors fixed by the Board of Directors pursuant to Section 3.3 or, if no number is fixed, a majority of the number of directors in office immediately before the meeting begins, shall constitute a quorum for the transaction of business in any meeting of the Board of Directors. If less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, for a period not to exceed sixty (60) days at any one adjournment.

**Section 3.8 MANNER OF ACTING.** Except as otherwise required by law or by the Articles of Incorporation, the affirmative vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 3.9 INFORMAL ACTION BY DIRECTORS OR COMMITTEE MEMBERS.** Any action required or permitted to be taken at a meeting of the Board of Directors or any committee designated by said Board may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by each director or committee member. Unless the consent specifies a different effective date, action taken under this Section is effective at the time the last director signs a writing describing the action taken, unless, before such time, any director revokes his or her consent in writing signed by the director and received by the corporation. Such consent has the same force and effect as a unanimous vote of the directors or committee members and may be stated as such in any document.

**Section 3.10 PARTICIPATION BY ELECTRONIC MEANS.** Any members of the Board of Directors or any committee designated by such Board may participate in a meeting of the Board of Directors or committee by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

**Section 3.11 VACANCIES.** Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors or the shareholders. If the

directors remaining in office constitute fewer than a quorum of the Board, then the directors may fill the vacancy by the affirmative vote of all of the directors remaining in office. If elected by the directors, the director shall hold office until the next annual shareholders' meeting. If elected by the shareholders, the director shall hold office of the unexpired term of his or her predecessor in office; except that, if the director's predecessor was elected by the directors to fill a vacancy, the director elected by the shareholders shall hold office for the unexpired term of the last predecessor elected by the shareholders.

**Section 3.12 RESIGNATION**. Any director of the corporation may resign at any time by giving written notice to the corporation. The resignation of any director shall take effect upon receipt of notice by the corporation or at such later time as shall be specified in such notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

**Section 3.13 REMOVAL.** Any director or directors of the corporation may be removed at any time, with or without cause, in the manner provided in the Act.

**Section 3.14 COMMITTEES.** By resolution adopted by a majority of all of the directors in office when the action is taken, the Board of Directors may designate from among its members an Executive Committee and one or more other committees, and appoint one or more members of the Board of Directors to serve on such committees. To the extent provided in the resolution, each committee shall have such authority in the management of the corporation as the Board of Directors shall designate and as shall be prescribed by the Act. The designation of such Committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law. Notwithstanding anything in these bylaws to the contrary, a committee may not (i) authorize distributions, (ii) approve or propose to shareholders action required to be approved by shareholders, (iii) fill vacancies on the Board of Directors or on any of its committees, (iv) amend the Articles of Incorporation of the corporation, (v) adopt, amend or repeal these bylaws, (vi) approve a plan of merger not requiring stockholder approval, (vii) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the Board, or (viii) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares.

**Section 3.15 COMPENSATION.** By resolution of the Board of Directors and irrespective of any personal interest of any of the members, each director may be paid his or her expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated fee as director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

**Section 3.16 PRESUMPTION OF ASSENT**. A director of the corporation who is present at a meeting of the Board of Directors or committee thereof, at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless (i) the

director objects at the beginning of the meeting or promptly upon his or her arrival to the holding of the meeting or the transaction of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting, (ii) the director contemporaneously requests that his or her dissent or abstention as to any specific action taken be entered in the minutes of the meeting, or (iii) the director causes written notice of his or her dissent or abstention to any specific action to be received by the presiding office of the meeting before its adjournment or by the corporation promptly after the adjournment. A director may dissent to a specific action at a meeting, while assenting to others. The right to dissent to a specific action taken at a meeting of the Board of Directors or a committee of the Board shall not be available to a director who voted in favor of such action.

## ARTICLE IV
## OFFICERS

**Section 4.1 NUMBER.** The officers of the corporation shall be a President, one or more Vice-Presidents, a Secretary, and a Treasurer, each of whom shall be a natural person eighteen years (18) of age or older and shall be appointed by the Board of Directors. Such other officers and assistant officers as may be deemed necessary, including a Chairman of the Board, may be appointed by the Board of Directors. Any two or more offices may be held by the same person.

**Section 4.2 APPOINTMENT AND TENURE OF OFFICE.** The officers of the corporation shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the shareholders. If the appointment of officers shall not be held at such meeting, such appointment shall be held as soon thereafter as practicable. All officers shall hold office for one year, unless and until they shall sooner resign, become disqualified, or be removed.

**Section 4.3 RESIGNATION AND REMOVAL.** Any officer may resign at any time by giving written notice to the corporation. A resignation is effective when the notice is given unless the notice specifies a later effective date. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer shall not of itself create contract rights.

**Section 4.4 CHAIRMAN AND VICE CHAIRMAN OF THE BOARD.** The Chairman of the Board, if one has been appointed, or, in the absence of the Chairman, the Vice Chairman of the Board, if one has been appointed, shall preside at all meetings of the Board, shareholders and committees of which he or she is a member. The Chairman shall have such powers and perform such duties as may be authorized by the Board.

**Section 4.5 PRESIDENT.** The President shall be the chief executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. He or she shall, when present, and in the absence of a Chairman or Vice Chairman of the Board, preside at all meetings of the shareholders and of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation and deeds, mortgages, bonds, contracts, or other instruments which the

Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 4.6 VICE PRESIDENT.** If appointed by the Board of Directors, the Vice President (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall, in the absence of the President or in the event of his or her death, inability or refusal to act, perform all duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President may sign, with the Treasurer or the Secretary or an Assistant Secretary, certificates for shares of the corporation and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

**Section 4.7 SECRETARY.** The Secretary shall: (a) prepare and maintain as permanent records, the minutes of the proceedings of the shareholders and the Board of Directors, a record of all actions taken by the shareholders or Board of Directors without a meeting, a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the corporation, and a record of all waivers of notice and meetings of shareholders or the Board of Directors or any committee thereof, (b) insure that all notices are duly given in accordance with the provisions of these bylaws and as required by law, (c) serve as custodian of the corporate records and affix the seal to all documents when authorized by the Board of Directors, (d) keep at the corporation's registered office or principal place of business a record containing the names and addresses of all shareholders in a form that permits preparation of a list of shareholders arranged by voting group and by class or series of shares within each voting group, that is alphabetical within each class or series and that shows the address of, and the number of shares of each class or series held by, each shareholder, unless such a record shall be kept at the office of the corporation's transfer agent or registrar, (e) maintain at the corporation's principal office the originals or copies of the corporation's Articles of Incorporation, bylaws, minutes of all shareholders' meetings and records of all actions taken by shareholders without a meeting for the past three years, all written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group, a list of the names and business addresses of the current directors and officers, a copy of the corporation's most recent corporate report filed with the Secretary of State, and financial statements showing in reasonable detail the corporation's assets and liabilities and result of operations for the past three years, (f) have general charge of the stock transfer books of the corporation, unless the corporation has a transfer agent, (g) authenticate records of the corporation, and (h) in general, perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him or her by the President or by the Board of Directors. Any books, records, or minutes of the corporation may be in written form or in any form capable of being converted into written form within a reasonable time period.

**Section 4.8 TREASURER.** The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such

moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these bylaws; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

**Section 4.9 ASSISTANT SECRETARIES AND ASSISTANT TREASURERS.** The Assistant Secretaries, when authorized by the Board of Directors, may sign with the Chairman of the Board of Directors or the President or a Vice President, certificates for shares of the corporation the issuance of which shall have been authorized by a resolution of the Board of Directors. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

**Section 4.10 BONDS.** If the Board of Directors by resolution shall so require, any officer or agent of the corporation shall give bond to the corporation in such amount and with such surety as the Board of Directors may deem sufficient, conditioned upon the faithful performance of their respective duties and offices.

## ARTICLE V
## CONTRACTS. LOANS. CHECKS AND DEPOSITS

**Section 5.1 CONTRACTS.** The Board of Directors may authorize any officer(s) or agent(s) to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

**Section 5.2 LOANS.** No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**Section 5.3 CHECKS, DRAFTS, ETC.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 5.4 DEPOSITS.** All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the appropriate officers of the corporation or the Board of Directors may select.

## ARTICLE VI
## SHARES OF STOCK

**Section 6.1 SHARES WITH OR WITHOUT CERTIFICATES.** The Board of Directors may authorize the issuance of any of its classes or series of shares with or without certificates. Such authorization shall not affect shares already represented by certificates until they are surrendered to the corporation. Within a reasonable time following the issue or transfer of shares without certificates, the corporation shall send the shareholder a complete written statement of the information required on certificates by the Act.

**Section 6.2 CERTIFICATES FOR SHARES.** If shares of the corporation are represented by certificates, the certificates shall be respectively numbered serially for each class of shares, or series thereof, as they are issued, and shall be signed, either manually or by facsimile, by one or more officers designated by the Board of Directors. Each certificate shall state the name of the corporation, the fact that the corporation is organized or incorporated under the laws of the State of Oklahoma, the name of the person to whom issued, the date of issue, the class (or series of any class), and the number of shares represented thereby and the par value of the shares represented thereby. A statement of the designations, preferences, qualifications, limitations, restrictions and special or relative rights of the shares of each class shall be set forth in full or summarized on the face or back of the certificates which the corporation shall issue, or in lieu thereof, the certificate may set forth that such a statement or summary will be furnished to any shareholder upon request without charge. Each certificate shall be otherwise in such form as may be prescribed by the Board of Directors and as shall conform to the rules of any stock exchange on which the shares may be listed.

The corporation shall not issue certificates representing fractional shares and shall not be obligated to make any transfers creating a fractional interest in a share of stock.

**Section 6.3 CANCELLATION OF CERTIFICATES.** All certificates surrendered to the corporation for transfer shall be cancelled and no new certificates shall be issued in lieu thereof until the former certificate for a like number of shares shall have been surrendered and cancelled, except as herein provided with respect to lost, stolen or destroyed certificates.

**Section 6.4 CONSIDERATION FOR SHARES.** Shares shall be issued for such consideration, expressed in dollars (but not less than the par value thereof), as shall be fixed from time to time by the Board of Directors. Such consideration may consist in whole or in part of money, other property, tangible or intangible, or in labor or services actually performed for the corporation. Neither future services, nor the promissory note of a subscriber or direct purchaser of shares from the corporation, nor the unsecured or nonnegotiable promissory note of any other person shall constitute payment or part payment for shares of the corporation. Treasury shares shall be disposed of for such consideration expressed in dollars as may be fixed from time to time by the Board.

**Section 6.5 LOST, STOLEN OR DESTROYED CERTIFICATES.** Any shareholder claiming that his or her certificate for shares is lost, stolen or destroyed may make an affidavit or affirmation of that fact and lodge the same with the Secretary of the corporation, accompanied by a signed application for a new certificate. Upon receipt by the corporation of such affidavit and application, and upon the giving of a satisfactory bond of indemnity to the corporation not exceeding an amount double the value of the shares as represented by such certificate (the necessity for such bond and the amount required to be determined by the President and Treasurer of the corporation), a new certificate may be issued of the same tenor and representing the same number, class and series of shares as were represented by the certificate alleged to be lost, stolen or destroyed.

**Section 6.6 TRANSFER OF SHARES.** Subject to such limitations and requirements as may be imposed under the Oklahoma Insurance Code or any regulation or requirement published by the Oklahoma Insurance Department, shares of the corporation shall be transferable

on the books of the corporation by the holder thereof in person or by his or her duly authorized attorney, upon the surrender and cancellation of a certificate or certificates for a like number of shares. Upon presentation and surrender of a certificate for shares properly endorsed and payment of all taxes therefor, the transferee shall be entitled to a new certificate or certificates in lieu thereof. As against the corporation, a transfer of shares can be made only on the books of the corporation and in the manner hereinabove provided, and the corporation shall be entitled to treat the holder of record of any share as the owner thereof and shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the statutes of the State of Oklahoma.

**Section 6.7 REDEMPTION OR PURCHASE OF ITS OWN SHARES.** Before the corporation purchases or redeems any shares of its common or preferred stock, the appropriate officer of the corporation shall, if applicable, have the corporation comply with such limitations and requirements as may be imposed under the Oklahoma Insurance Code or any regulation or requirement published by the Oklahoma Insurance Department.

## ARTICLE VII
## INDEMNIFICATION AND INSURANCE

**Section 7.1 DEFINITIONS.** As used in this Article VII:

(a) "Corporation" includes the corporation and any domestic or foreign entity that is a predecessor of the corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(b) "Director" means an individual who is or was a director of the corporation or an individual who, while a director of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, fiduciary or agent of another domestic or foreign corporation or other person or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(c) "Expenses" includes counsel fees.

(d) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(e) "Official capacity" means, when used with respect to a director, the office of director in the corporation and, when used with respect to a person other than a director as contemplated in Section 7.7, the office in the corporation held by the officer or the employment, fiduciary or agency relationship undertaken by the employee, fiduciary or agent on behalf of the corporation. "Official capacity" does not include service for any other domestic or foreign corporation or other person or employee benefit plan.

(f) "Party" includes a person who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(g) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

**Section 7.2 AUTHORITY TO INDEMNIFY DIRECTORS.**

(a) Except as provided in Section 7.2(d) of this Article, the corporation shall indemnify a person made a party to a proceeding because the person is or was a director against liability incurred in the proceeding if:

(1) The person's conduct was in good faith;

(2) The person reasonably believed:

(A) In the case of conduct in an official capacity with the corporation, that his or her conduct was in the corporation's best interests; and

(B) In all other cases, that such conduct was at least not opposed to the corporation's best interests; and

(3) In the case of any criminal proceeding, the person had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, or beneficiaries of, the plan is conduct that satisfies the requirement of Section 7.2(a)(2)(B) of this Article. A director's conduct with respect to an employee benefit plan for a purpose that the director did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of Section 7.2(a)(1) of this Article.

(c) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this Section 7.2.

(d) The corporation may not indemnify a director under this Section 7.2:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation;

(2) In connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that he derived an improper personal benefit; or

(3) To the extent such indemnification is contrary to limitations and requirements as may be imposed under the Oklahoma Insurance Code or any regulation or requirement published by the Oklahoma Insurance Department.

(e) Indemnification permitted under this Section 7. 2 in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

**Section 7.3 MANDATORY INDEMNIFICATION OF DIRECTORS.** The corporation shall indemnify a person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, against reasonable expenses incurred by him or her in connection with the proceeding.

**Section 7.4 ADVANCE OF EXPENSES TO DIRECTORS.**

(a) The corporation shall pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes to the corporation a written affirmation of the director's good faith belief that he has met the standard of conduct described in Section 7.2 of this Article;

(2) The director furnishes to the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article VII.

(b) The undertaking required by Section 7.4(a)(2) of this Article shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this Section 7.4 of this Article shall be made in the manner specified in Section 7.6 of this Article.

**Section 7.5 COURT-ORDERED INDEMNIFCATION OF DIRECTORS.** A director who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under Section 7.3 of this Article, the court shall order indemnification, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 7.2(a) of this Article or was adjudged liable in the circumstances described in Section 7.2(d) of this Article, the court may order such indemnification as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged in the circumstances described in Section

7.2(d) of this Article is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

**Section 7.6 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION OF DIRECTORS.**

(a) The corporation may not indemnify a director under Section 7.3 of this Article unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 7.2 of this Article. The corporation shall not advance expenses to a director under Section 7.4 of this Article unless authorized in the specific case after the written affirmation and undertaking required by Sections 7.4(a)(1) and 7.4(a)(2) of this Article are received and the determination required by Section 7.4(a)(3) of this Article has been made.

(b) The determination required by Section 7.6(a) of this Article shall be made:

(1) By the Board of Directors, by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(2) If a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors designated by the Board of Directors, which committee shall consist of two (2) or more directors not parties to the proceeding; except that directors who are parties to the proceeding may participate in the designation of directors for the committee.

(c) If a quorum cannot be obtained as contemplated in Section 7.6(b)(1) of this Article and a committee cannot be established under Section 7.6(b)(2) of this Article or, even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made by Section 7.6(a) of this Article shall be made:

(1) By independent legal counsel selected by a vote of the Board of Directors or the committee in the manner specified in Section 7.6(b)(1) or 7.6(b)(2) of this Article or, if a quorum of the full Board of Directors cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full Board of Directors; or

(2) By the shareholders.

(d) Authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible; except that, if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

**Section 7.7 INDEMNIFICATION OF OFFICERS, EMPLOYEES, FIDUCIARIES AND AGENTS.**

(a) An officer is entitled to mandatory indemnification under Section 7.3 of this Article and is entitled to apply for court-ordered indemnification under Section 7.5, in each case to the same extent as a director.

(b) The corporation may also indemnify and advance expenses to an officer, employee, fiduciary or agent of the corporation to the same extent as to a director.

(c) The corporation may also indemnify and advance expenses to an officer, employee, fiduciary or agent who is not a director to a greater extent than is provided in this Article VII, if not inconsistent with public policy, and if provided for by general or specific action of the Board of Directors or shareholders or by contract.

**Section 7.8 NOTICE TO SHAREHOLDERS OF INDEMNIFICATION OF DIRECTORS.** If the corporation indemnifies or advances expenses to a director under this Article VII in connection with a proceeding by or in the right of the corporation, the corporation shall give written notice of the indemnification or advance to the shareholders with or before the notice of the next shareholders' meeting. If the next shareholder action is taken without a meeting at the instigation of the Board of Directors, such notice shall be given to the shareholders at or before the time the first shareholder signs a writing consenting to such action.

**Section 7.9 LIMITATIONS ON INDEMNIFICATION**. Notwithstanding anything in these bylaws or elsewhere to the contrary, the corporation shall not provide (or be obligated to provide) indemnification or advancement of expenses in violation of any applicable law, rule or regulation, including, without limitation, those applicable to insurance companies.

**Section 7.10 PROVISION OF INSURANCE.** By action of the Board of Directors, notwithstanding any interest of the directors in the action, the corporation may purchase and maintain insurance, in such scope and amounts as the Board of Directors deems appropriate, on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise, or employee benefit plan, against any liability asserted against, or incurred by, him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of Article VII or applicable law. Any such insurance may be procured from any insurance company designated by the Board of Directors of the corporation, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity interest or any other interest, through stock ownership or otherwise.

## ARTICLE VIII
## MISCELLANEOUS

**Section 8.1 FISCAL YEAR**. The fiscal year of the corporation shall end on the last day of December in each calendar year.

**Section 8.2 DISTRIBUTIONS**. Subject to limitations and requirements as may be imposed under the Oklahoma Insurance Code or any regulation or requirement published by the Oklahoma Insurance Department, the Board of Directors may from time to time declare, and the corporation may pay, distributions on its outstanding shares in the manner and upon the terms and conditions provided by law and its Articles of Incorporation.

**Section 8.3 CORPORATE SEAL**. The Board of Directors may provide a corporate seal for the corporation which shall be circular in form and shall have inscribed thereon the name of the corporation and the state of incorporation and the words "CORPORATE SEAL."

**Section 8.4 AMENDMENTS**. The Board of Directors shall have the power, to the maximum extent permitted by the Act, to amend the bylaws of the corporation at any regular or special meeting of the Board unless the shareholders, in making, amending or repealing a particular bylaw, expressly provide that the directors may not amend or repeal such bylaw. The shareholders also shall have the power to make, amend or repeal the bylaws of the corporation at any annual meeting or at any special meeting called for that purpose.

**Section 8.5 ETHICS COMMITTEE.** The Ethics Committee of the Catholic Benefits Association shall also serve as the Ethics Committee for the Insurance Company. In that capacity, it shall have exclusive authority to review all benefits, products, and services provided by the Corporation, and its respective contractors to ensure such conform with Catholic values and doctrine. If they do not, the committee shall determine the necessary corrections to bring such benefits, products, and services into conformity with Catholic values and doctrine. The decision of the committee shall be final and binding on the Corporation, its board, and its officers.

[End of Document]

**EBSA FORM 700-- CERTIFICATION**
**(To be used for plan years beginning on or after January 1, 2014)**

This form is to be used to certify that the health coverage established or maintained or arranged by the organization listed below qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing, pursuant to 26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131.

Please fill out this form completely. This form must be completed by each eligible organization by the first day of the first plan year beginning on or after January 1, 2014, with respect to which the accommodation is to apply, and be made available for examination upon request. This form must be maintained on file for at least 6 years following the end of the last applicable plan year.

| | |
|---|---|
| Name of the objecting organization | |
| Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization | |
| Mailing and email addresses and phone number for the individual listed above | |

I certify that, on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization.

Note: An organization that offers coverage through the same group health plan as a religious employer (as defined in 45 CFR 147.131(a)) and/or an eligible organization (as defined in 26 CFR 54.9815-2713A(a); 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)), and that is part of the same controlled group of corporations as, or under common control with, such employer and/or organization (within the meaning of section 52(a) or (b) of the Internal Revenue Code), may certify that it holds itself out as a religious organization.

*I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.*

_____
Signature of the individual listed above

_____
Date

The organization or its plan must provide a copy of this certification to the plan's health insurance issuer (for insured health plans) or a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement.

Notice to Third Party Administrators of Self-Insured Health Plans

In the case of a group health plan that provides benefits on a self-insured basis, the provision of this certification to a third party administrator for the plan that will process claims for contraceptive coverage required under 26 CFR 54.9815-2713(a)(1)(iv) or 29 CFR 2590.715-2713(a)(1)(iv) constitutes notice to the third party administrator that the eligible organization:

(1) Will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and

(2) The obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A.

This certification is an instrument under which the plan is operated.

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1210-0150. Each organizations that seeks to be recognized as an eligible organization that qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing is required to complete this self-certification from pursuant to 26 CFR 54.9815-2713A(a)(4) in order to obtain or retain the benefit of the exemption from covering certain contraceptive services. The self-certification must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be retained for six years. The time required to complete this information collection is estimated to average 50 minutes per response, including the time to review instructions, gather the necessary data, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Labor, Employee Benefits Security Administration, Office of Policy and Research, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number 1210-0150.

**Date:** May 23, 2013

**Case:** Hobby Lobby Stores, Inc., et al. v. Kathleen Sebelius


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SEBELIUS

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JUDGE: Before we get to strict scrutiny --

MS. KLEIN: Yes your honor.

JUDGE: Let's talk about the corporate form and let's assume there is a substantial burden on the sole proprietor --

MS. KLEIN: For purposes of argument I guess -- I'm with you.

JUDGE: And think of a different type of government requirement. What if, the proprietor then brings his younger brother into the business as a full partner, they have a partnership. Can they raise this claim?

MS. KLEIN: We think this line of questioning and it also came up yesterday in the Seventh Circuit, underscores the problems with the plaintiff's argument because it's not clear, I mean, yesterday that it was positive, what if it was the 51% --

JUDGE: Well before we get to where there is a problem with this planned reasoning, do you agree that if two people who share in a business they would still have the same free exercise claim?

MS. KLEIN: I'm sorry we talking about a

corporation?

JUDGE: No. I'm talking about --

JUDGE: Partnership.

JUDGE: I started with the sole proprietor and said let's have a situation which you agreed that there is a substantial burden on the free exercise religion of the sole proprietor.

Now the proprietor brings in his kid brother as a full partner, can they claim violation of free exercise?

MS. KLEIN: Well assuming that the one could, I'm not -- I don't see that a second person would alter the inquiry.

JUDGE: Okay. Now say they have a third brother, who's got a lot of money and he's interested in the same business too so he wants to protect his asset from liability in this partnership so he says well, I'll put money in this and I'd like a business interest in it but I don't want to be subject to full liability, so let's make us a limited partnership where I am a limited part.

Now, where are we?

MS. KLEIN: Well --

JUDGE: It's a limited partnership.

MS. KLEIN: Certainly once you're forming a separate legal entity and that entity is the regulated entity and it's funds are being used to comply with whatever law we have, then no --

JUDGE: Well you concede non profit organizations can though so it's not no, except for --

MS. KLEIN: We say non-profits -- let's talk about -- go back to churches because --

JUDGE: No, no, no, no, no.

MS. KLEIN: The analysis is different.

JUDGE: No, the analysis is profits to non-profits. That's the line the government asks this court to draw and I'm just a little curious why the tax treatment of profits because non-profits can make profits, it's just how they're handled, they have to be reinvested rather than distributed, okay.

I'm just not sure that I understand why the tax treatment of moneys generated by a company would make a difference as to its RFRA rights.

MS. KLEIN: Well, this is the issue that was the subject of debate in Spencer. Judge --

JUDGE: I'm asking here right now --

MS. KLEIN: And I want to make clear that --

JUDGE: (*)

MS. KLEIN: We've not suggested that non-profit status is sufficient. It's that as under our all --

JUDGE: No but they're not categorically disbarred from being able to assert RFRA rights. You're asking us to find that for-profit companies are categorically disbarred from asserting RFRA rights and I'm just curious why the tax treatment of profits would make a difference categorically in the capacity in bringing RFRA suits.

MS. KLEIN: What we're saying is that when Congress enacted RFRA in 1993, it was not doing for the first time giving for-profit corporations rights against their employees.

JUDGE: Your argument is a textual argument then.

MS. KLEIN: I'm sorry, contextual?

JUDGE: Textual argument.

MS. KLEIN: It's textual and contextual.

JUDGE: All right in (*) to Title VII, there is a bit in Title VII actually doesn't distinguish between profits and non-profits, that's a judicial gloss on that section of Title VII.

MS. KLEIN: And it's animated by establishment --

JUDGE: Let's say it's right, okay, let's say the judicial gloss is correct, why wouldn't that be really hurtful to the government's cause because if Congress knew how to distinguish between profits and non-profits in Title VII and didn't here, normal (*) of construction would be that that difference is entitled to respect.

MS. KLEIN: That is their argument. Their argument is that --

JUDGE: I'm asking that's wrong or right.

MS. KLEIN: I know, I still say that trumps Title VII, the (*) --

JUDGE: We're not interpreting those things, we're interpreting RFRA.

MS. KLEIN: And lets remember, when Congress enacted RFRA, the heartland are the planes of natural person that's when -- when Congress --

JUDGE: RFRA also speaks of entities having rights too. So what we do about that?

MS. KLEIN: Okay, so heartland, natural person, so you know, classic case a prison wants a halal meal. That's this court's Abdul Hased decision. And if you look at the Senate Report, they're talking about, you know, Jews being forced to do autopsies in violation of their religious beliefs.

There is no doubt that there was a reason to use the term "person" because certain types of entities have historically exercised -- have free exercise rights, and that's churches, and entities that are really closely affiliated with that.

JUDGE: So where do we stop? Where does that line stop? Hospitals?

MS. KLEIN: Well what the Supreme Court said in Amos, and this is what --

JUDGE: Schools?

MS. KLEIN: Pardon?

JUDGE: Hospitals, schools? Where does this stop?

MS. KLEIN: Again, the line that the departments that issue these regulations have drawn, is paralleling what Congress has done in Title VII and the other employment statutes and there, there is a debate about how far into secular looking non-profit activities it's appropriate to go to just do with establishment clause.

The paradigm is churches, the Ninth Circuit was willing to go as far as something like the Salvation Army.

JUDGE: Well you've admitted a full proprietorship can exercise religion, you've admitted a partnership can exercise religion, you've admitted a non-profit can exercise religion, why is it inherently about a for-profit corporation that's different than all those other things?

MS. KLEIN: Well I want to be clear, when your honor says partnership, I want to think more about the legal structure --

JUDGE: I think that's what you said, you

said heart, so I'm just repeating what you said. What is about it uniquely, we're talking about one little category over everybody else can do, exercise religion, this one kind over here can't.

MS. KLEIN: Two points, with the Supreme Court when it was faced with this issue in Amos --

JUDGE: This isn't a statutory problem this is a first amendment problem, so don't tell me about Title VII, free exercised of religion is in the constitution and RFRA just reiterated it. So --

MS. KLEIN: Again Hosanna-Tabor is the Supreme Court's word on what an entity can do vis- -vis its employees. And there, what the Supreme Court has said is a church and its spiritual leaders, that's where the church has prerogative, not with respect to other employees.

So if we're talking about the First Amendment. Now if we're talking about which -- how far Congress can go beyond that, that was the issue in Amos. It was okay, the paradigm was, you know, the churches can be exempt from Title VII, the NLRA, but the District Court in Amos said, this violates