

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

THE CRISWELL COLLEGE

*Plaintiff,*

v.

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

*Defendants,*

**JURY TRIAL DEMANDED**

**Cause No.** \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY RELIEF ON PLAINTIFF'S CONSTITUTIONAL RIGHTS  
AND PRELIMINARY AND PERMANENT INJUNCTION AGAINST ANY  
VIOLATION OF THOSE RIGHTS**

Plaintiff The Criswell College (hereinafter "Criswell" or "Criswell College"), states as follows:

**NATURE OF THE CASE**

1. In this action, Plaintiff seeks judicial review of the Defendants' violations of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA"), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"), by their actions implementing the Patient Protection and Affordable Care

Act of 2010 (Pub. L. No. 111-148 (March 23, 2010)), and the Health Care and Education Reconciliation Act (Pub. L. No. 111-152 (March 30, 2010)) (collectively the “ACA”), in ways that coerce thousands of religious institutions and individuals to engage in acts they consider sinful and immoral in violation of their most deeply held religious beliefs.

2. Plaintiff Criswell College is a Christ-centered institution of higher learning. As such, it believes that God, in His Word, has condemned the intentional destruction of innocent human life. Criswell believes that, as a matter of religious conviction, it would be sinful and immoral for it to intentionally participate in, pay for, facilitate, or otherwise support abortion, which destroys human life. It believes that the Sixth Commandment (“thou shalt not murder”) proscribes payment for and facilitation of the use of drugs and devices that can and do destroy very young human beings in the womb.

3. With full knowledge that many religious organizations hold the same or similar beliefs, Defendants issued regulations that, by forcing these organizations to pay for and otherwise facilitate the use of abortifacient drugs and related education and counseling, trample on the freedom of Criswell College and millions of other American organizations and individuals to abide by their religious convictions and to comply with moral imperatives they believe are decreed by God Himself.

4. The regulation—the HHS Preventive Services Mandate<sup>1</sup> (the “Mandate”)—illegally

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<sup>1</sup> The Mandate consists of a conglomerate of authorities, including: “Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act,” 77 Fed. Reg. 8725-30 (Feb. 15, 2012); the prior interim final rule found at 76 Fed. Reg. 46621-26 (Aug. 3, 2011), by which the Defendants adopted the exemption for certain religious employers from the requirement to provide certain preventative services for women endorsed in Health Resources and Services Administration (“HRSA”) guidelines—which the February 15 rule adopted “without change”; the guidelines by Defendant HHS’s HRSA, <http://www.hrsa.gov/womensguidelines/>, mandating that health plans include no-cost-sharing coverage of “All Food and Drug Administration approved contraceptive methods,

and unconstitutionally coerces Criswell College to violate the Sixth Commandment under threat of heavy fines and penalties. The Mandate also forces Criswell College to fund government-dictated speech that is directly at odds with the religious message it wishes to convey to its students and to the broader culture.

5. Defendants' refusal to accommodate conscience in this matter is highly selective. Upon information and belief, the government has provided thousands of exemptions from the ACA for various groups including large corporations. The Mandate does not apply to those employing less than 50 full-time employees. Moreover, the Mandate does not apply to countless "grandfathered" employer group health plans, through which millions of American women receive health insurance coverage, belying any contention that the Mandate advances any compelling government interest. Yet, the government refuses to exempt many religious groups (and religiously observant individuals) from this unprecedented Mandate.

6. Defendants' actions violate Criswell's right to freely exercise its religion, which is protected by the Religious Freedom Restoration Act and the Religion Clauses of the First Amendment to the United States Constitution.

7. Defendants' actions also violate Criswell's right to the freedom of speech and right to the freedom of association, as secured by the First Amendment to the United States Constitution, as well as due process rights secured by the Fifth Amendment to the United States

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sterilization procedures, and patient education and counseling for all women with reproductive capacity" as part of required women's "preventive care"; regulations issued by Defendants in 2010, requiring coverage of certain preventative services for women, including such services provided for in the HRSA guidelines, 75 Fed. Reg. 41726 (July 19, 2010); the statutory authority found in 42 U.S.C. § 300gg-13(a)(4), requiring unspecified preventive health services generally, to the extent Defendants have used it to mandate coverage to which Plaintiffs and other employers have religious objections; penalties existing throughout the United States Code for noncompliance with these requirements; and other provisions of ACA or its implementing regulations that affect exemptions or other aspects of the Mandate.

Constitution.

8. Additionally, Defendants violated the Administrative Procedure Act, 5 U.S.C. § 553, by imposing the Mandate without prior notice or public comment, and for other reasons.

9. Defendants knew, in imposing their Mandate, that it would coerce thousands of individuals and organizations like Criswell College to violate their religious convictions.

10. Criswell seeks declaratory and injunctive relief to protect against this unjustified impairment of conscience.

### **IDENTIFICATION OF PARTIES AND JURISDICTION**

11. Plaintiff The Criswell College is a Christ-centered institution of higher learning located in Dallas, Texas. It is a Texas non-profit corporation. It operates as, among other assumed names, Criswell College and Criswell Bible Institute.

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

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

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

15. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Solis is sued in her official capacity only.

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

Mandate.

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

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

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

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

### **FACTUAL ALLEGATIONS**

#### **I. Criswell College's Religious Beliefs and General Provision of Educational Services**

21. Criswell College was founded in 1970 as Criswell Bible Institute under the leadership of Dr. W. A. Criswell. Certain of Criswell College's trustees are nominated by the Southern Baptist of Texas Convention ("SBTC"), but the SBTC is not a member of the Criswell College Corporation.

22. The mission of Criswell College is to "provide biblical, theological, professional, and applied education on both the undergraduate and graduate levels, based on

an institutional commitment to biblical inerrancy, in order to prepare men and women to serve in Christian ministries.”

23. Criswell’s vision is “to serve the churches of our Lord Jesus Christ by developing God-called men and women in the Word (intellectually and academically) and by the Word (professionally and spiritually) for authentic ministry leadership—all in obedience to Christ, all for the sake of the gospel, all for the glory of God.” Criswell is a learning community dedicated to teaching, training, and transforming the whole person for local church and global ministry through the Word. To participate in this vision, every prospective student applying to Criswell College must provide a personal essay describing when they came to believe in the Lord Jesus Christ as savior, their personal relationship with God, their calling to ministry, and other faith-related topics.

24. Criswell believes that the Holy Bible is the inerrant and infallible Word of God and, thus, true and trustworthy. Criswell believes that the Bible reveals the principles by which God judges all peoples and is the supreme standard by which all human conduct, creeds, and religious opinions should be tried.

25. Criswell believes that it is the duty and privilege of every follower of Christ to endeavor to make disciples of all nations as commanded in the teachings of the Lord Jesus Christ. It believes that such endeavors must be undergirded by a Christian lifestyle and by other methods in harmony with the gospel of Christ.

26. Criswell provides an educational experience centered in Christ. It believes that there should be a proper balance between academic freedom and academic responsibility. Criswell believes that the freedom of a teacher in a Christian school, college, or seminary is limited by the pre-eminence of Jesus Christ, by the authoritative nature of the Scriptures, and by

the distinct purpose for which the school exists.

27. At Criswell, the students, administration, faculty, and staff aim together to make Christ preeminent in all things. Everything taught at Criswell is saturated with Scripture. Every student is grounded in a core of intense classes in theological and Biblical studies such as Old Testament, New Testament, theology, and hermeneutics.

28. Criswell strives to equip all of its students with a Christian worldview, that is, to learn to view every aspect of life—be it politics, art, culture, and the like—through a Christian frame of reference. This philosophy is pervasive in every class offered at Criswell including classes in the humanities, ethics, natural sciences, logic, faith and culture, and others.

29. Criswell believes that participating in a Christian community of grace is important in the life of a believer. At Criswell, the students, administration, faculty, and staff take time twice a week to worship together as a college during chapel. Weekly chapel programs are mandatory for students. Many programs and events are scheduled each semester to specifically nurture the students spiritually and to challenge them to higher levels of Christian maturity, including campus prayer groups and student-led Bible study sessions. Each semester, Criswell College sets aside a special week to focus on spiritual renewal and the great evangelical tradition of revival.

30. Criswell emphasizes the importance of reaching out to the world as part of God's Great Commission. On certain days each semester, all faculty and students go into the surrounding community for the purpose of praying with people and sharing the gospel message through personal evangelism encounters. Criswell's students are required to complete an Applied Ministry Project each semester, that is, application of their knowledge to active ministry including urban mission sites, jail and prison ministries, street evangelism, social service

ministries, overseas mission ventures, and special ministry projects. Furthermore, every student at Criswell is required to take a mission trip before graduation. By their nature, these acts of ministry, charity, and evangelism aim to reach and serve primarily those who do not share their Christian, Southern Baptist denominational faith.

31. Criswell College adapted its “Articles of Faith” from the Southern Baptist Convention Baptist Faith and Message Statement. Criswell maintains a more conservative position than the Baptist General Convention of Texas as reflected in its Articles of Faith.

32. All of Criswell’s faculty, officers, and members of its Board of Trustees must subscribe annually to the Articles of Faith. Criswell’s staff and students do not have to sign the Articles of Faith, and Criswell does not know whether all of its students and staff fully ascribe to the tenets found in the Articles of Faith.

33. Criswell College has stringent hiring criteria and draws its faculty and officers from among only those who profess the Articles of Faith.

34. Criswell College serves approximately 322 students. This number includes: 137 full-time undergraduate students, of which 100 are male and 37 are female; 99 part-time undergraduate students, of which 74 are male and 25 are female; 41 full-time graduate students, of which 34 are male and 7 are female; 45 part-time graduate students, of which 37 are male and 8 are female. These students come from across the United States and other countries.

35. The College currently has 50 full-time employees.

## **II. The Religious Beliefs of Criswell College Regarding Abortion**

36. Criswell College believes that human life is worthy of protection and respect at all stages from the time of conception forward.

37. Criswell’s “Articles of Faith,” in relevant part, states as follows: “All Christians



are under obligation to seek to make the will of Christ supreme in our own lives and in human society. . . . We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. . . . God has ordained the family as the foundational institution of human society. . . . Children, from the moment of conception, are a blessing and heritage from the Lord.”

38. Criswell believes that the procurement, participation in, facilitation of, or payment for abortion (including abortion-causing drugs like Plan B and Ella) violates the Sixth Commandment and is inconsistent with the dignity conferred by God on creatures made in His image as stated in his Word.

39. Criswell recognizes that life begins at the moment of conception, and therefore the use of abortifacient drugs such as Plan B and Ella violates Criswell’s sincerely held beliefs.

### **III. Criswell College’s Group Health Insurance Plans**

40. Criswell College supports the physical, emotional, and spiritual well-being of its employees and their dependents by offering health insurance coverage as a benefit of employment.

41. Criswell pays the full cost of medical insurance of its employees and contributes half toward the coverage of dependents of employees.

42. Criswell expends a significant amount of its total budget to provide health insurance to its employees and their dependents. The budget planning process for Criswell’s overall budget and its healthcare budget has already begun for its next fiscal year, which runs from June 2013 to June 2014. A meeting with department heads about the budget is set to occur in January 2013, proposed budgets are due in February 2013, tuition must be set in March 2013, the budget distributed to the Criswell’s Board of Trustees in March 2013, and the budget must be

approved in April 2013.

43. Currently, at Criswell, health insurance is available to all full-time faculty members and employees who work at least 30 hours per week. Dependents may be included in the health coverage at the faculty's or employee's expense with some contribution from Criswell.

44. Criswell College obtains health insurance for its employees through Guidestone, and Highmark Blue Cross Blue Shield is the third-party administrator for the plan and also provides access to a network of providers via contract.

45. Forty-eight employees are enrolled in Criswell's group health plan. Including dependents, the total number of people enrolled in the group health plan is approximately seventy-five.

46. Under the terms of Criswell's health plan for its employees, coverage expressly excludes abortion by any method as well as certain contraceptives such as Plan B and Ella.

47. Criswell College renegotiates its health plan every year. Even so, it has always been the case that it excluded or sought to exclude from coverage abortion and abortion-inducing devices, drugs, or procedures.

48. The next plan year for the College's employee health insurance plan will start on January 1, 2013, and the following plan year will start on January 1, 2014.

49. Criswell College's group health plan is not grandfathered under the ACA. Criswell has made changes to its health plan that have caused it to lose any grandfathered status it may have had. For example, Criswell implemented certain women's preventative health initiatives except for certain contraceptives. Moreover, Criswell will significantly increase the deductible required in its health plan starting on January 1, 2013, and Criswell has not certified or sent any notification stating that its health plan has grandfathered status.

50. Because Criswell College is a commuter-only college at the time being, health insurance for students is not required but strongly recommended.

#### **IV. Criswell College's Expansion Plan**

51. As of this year, Criswell College has undertaken a strategic expansion plan ("Expansion Plan") to significantly expand its campus and curriculum.

52. Under the Expansion Plan, Criswell plans to increase its course offerings for its students beginning by the Fall 2013 semester ("Fall 2013"). One of its new offerings includes a degree in education. The Board of Trustees plan to finalize its expanded Fall 2013 curriculum by the next board meeting in April 2013. In order to offer an expanded curriculum in 2013, Criswell must take steps now to plan for such an expanded offering, including developing curriculum and hiring new faculty. These plans have been jeopardized by the uncertainty surrounding the Mandate's application to Criswell. In fact, Criswell may not be able to expand its curriculum, faculty, and student size if it is required to comply with the Mandate, and Criswell may cease offering health insurance to its faculty and staff. Regardless, Criswell currently has to plan and budget for costs associated with either option now.

53. Criswell also plans to construct a residential campus for its students as part of its Expansion Plan. The Board of Trustees must identify the property on which to build the residential campus by October 2013.

#### **V. The ACA and Defendants' Mandate Thereunder**

54. Under the ACA, employers with at least 50 full-time employees are required to provide a certain level of health insurance to their employees.

55. Nearly all such plans must include "preventive services," which must be offered to employees with no requirement that employees share those costs.

56. On February 10, 2012, the Department of Health and Human Services finalized a rule (previously referred to in this Complaint as the Mandate) that imposes a definition of preventive services to include all FDA-approved “contraceptive” drugs, surgical sterilization, and education and counseling for such services.

57. But for a temporary Safe Harbor issued by Defendants, compliance with this requirement is required of all group health plans and health insurance issuers offering coverage in the individual or group markets for plan years beginning on or after August 1, 2012. Because Criswell College’s plan year begins on January 1, 2013, Criswell, but for the temporary enforcement safe harbor, would be required to comply with the Mandate as of that date or else face government enforcement actions.

58. This final rule was adopted without giving due weight to the tens of thousands of public comments submitted to HHS in opposition to the Mandate.

59. In the category of “FDA-approved contraceptives” included in this Mandate are several drugs or devices that may cause the demise of an already-conceived but not-yet-implanted human embryo, such as “emergency contraception” or “Plan B” (the “morning after” pill).

60. The FDA approved in this same category a drug called “Ella” (the “week after” pill), which studies show can function to kill embryos even after they have implanted in the uterus, by a mechanism similar to the abortion drug RU-486.

61. The manufacturers of some such drugs, methods, and devices in the category of “FDA-approved contraceptive methods” indicate that they can function to cause the demise of an early embryo (*i.e.* result in an abortion that Criswell cannot and will not condone because of its belief in the dignity and sanctity of human life that starts from conception).

62. The Mandate also requires group health care plans to pay for the provision of counseling, education, and other information concerning contraception (including devices and drugs such as Plan B and Ella that cause early abortions or harm to embryos) for all women beneficiaries who are capable of bearing children.

63. The Mandate applies to the first health insurance plan-year beginning after August 1, 2012.

64. The Mandate makes little or no allowance for the religious freedom of entities and individuals, including Christian ministries and educational institutions like Criswell College, who object to paying for or providing insurance coverage for such items.

65. An employer cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees because the ACA imposes monetary penalties on entities that would so refuse. If an applicable employer fails to provide health insurance coverage and even one full-time employee obtains a qualified health plan and receives premium credits or cost-sharing reductions, the employer is required to make a penalty payment of \$2,000 per employee per year (adjusted for inflation), after the first 30 employees. If Criswell College were to drop its employee health insurance plan in order to avoid the Mandate, it would face significant annual fines.

66. Furthermore, any employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the Mandate) to heavy fines to be imposed by the Internal Revenue Services and other federal agencies. A fine up to \$100 per day per employee may be imposed.

67. If Criswell does not submit to the Mandate, it will also be subject to a range of enforcement mechanisms that exist under ERISA, including but not limited to civil actions by

the Secretary of Labor or by plan participants and beneficiaries, which would include but not be limited to relief in the form of judicial orders mandating that Criswell violate its beliefs and provide coverage for items to which it objects on religious grounds.

68. The Mandate applies not only to sponsors of group health plans but also to issuers of insurance.

69. The Mandate offers a narrow exemption to religious employers but only if they meet all of the following requirements:

“The inculcation of religious values is the purpose of the organization”;

“The organization primarily employs persons who share the religious tenets of the organization”;

“The organization serves primarily persons who share the religious tenets of the organization”; and

“The organization is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A).”

70. The Mandate imposes no constraint on the discretion of HHS’s Health Resources and Services Administration to grant exemptions to some, all, or none of the organizations meeting the Mandate’s definition of “religious employers.”

71. Criswell College is not “religious” enough under this definition in several respects, because, among other reasons, it has purposes other than the “inculcation of religious values” and because it does not fall into the category of churches, integrated auxiliaries of particular churches, conventions or associations of a church, or the exclusively religious activities of a religious order.

72. Even if Criswell were granted exempt status by HRSA under this exemption, it would only be exempt from offering coverage in its employee plans. The Mandate would require coverage of all FDA-approved contraceptive methods (including Ella and Plan B), and

counseling and education, in any health plan offered to students, if Criswell chooses to offer such a plan.

73. There are no clear guidelines restricting the discretion of Defendants when applying the Mandate and its exception.

74. In order to determine whether employees, or persons an entity serves, share an institution's "religious tenets," someone would need to inquire into the detailed religious beliefs of all individuals that an entity employs and that it serves. Criswell does not require that all of its staff subscribe to the Articles of Faith. Whether Criswell "primarily employs persons" who share its religious tenets is unclear.

75. Criswell, in accordance with its Christian beliefs and Southern Baptist tenets seeks directly to serve and reach those who do not share its faith. Criswell does not know how many are reached through its work each year and does not know what percentage of those are Christian, Southern Baptist, or neither.

76. It is unclear how Defendants define or will interpret religious "purpose."

77. It is unclear how Defendants define or will interpret vague terms, such as "primarily," "share," and "religious tenets."

78. It is unclear how Defendants will ascertain the "religious tenets" of an entity, those it employs, and those it serves.

79. It is unclear how much overlap Defendants will require for religious tenets to be "share[d]."

80. The limited and ill-defined religious employer exemption provided in the Mandate conflicts with the Constitution.

81. Moreover, the process by which Defendants determine whether an organization

qualifies for the exemption will require Defendants to engage in an intrusive inquiry into whether, in the view of HHS, the organization's "purpose" is the "inculcation of religious values" and whether it "primarily" employs and serves people who "share" its "religious tenets." The standards are impermissibly vague and subjective.

82. By basing the exemption on shared religious tenets, the Mandate compels Criswell to restructure its religious affiliation, admissions, employment, and service programs in order to fall within the scope of the Mandate's religious exemption.

83. The Mandate fails to protect the statutory and constitutional conscience rights of religious organizations like Criswell College even though those rights were repeatedly raised in the public comments.

84. The Mandate requires that Criswell provide coverage for abortifacient methods, and education and counseling related to abortifacients, against its conscience in a manner that is contrary to law.

85. The Mandate constitutes government-imposed coercion on Criswell to change or violate its religious beliefs.

86. The Mandate exposes Criswell to substantial fines for refusal to change or violate its religious beliefs.

87. The Mandate will impose a burden on Criswell's employee and student recruitment efforts by creating uncertainty as to whether or on what terms they will be able to offer health insurance or will suffer penalties therefrom.

88. If Criswell were to drop its health insurance to avoid application of the Mandate, it will experience a competitive disadvantage in its efforts to recruit and retain employees and students.



89. The Mandate coerces Criswell College to provide coverage for and otherwise facilitate the provision of Plan B, Ella, other abortifacient drugs, and related counseling in violation of its religious beliefs.

90. Criswell has a sincere religious objection to providing coverage for contraceptives like Plan B because they believe such drugs cause the death of a human embryo.

91. Criswell has a sincere religious objection to providing coverage for Ella because they believe the drug could either prevent a human embryo from implanting, or could cause the death of a recently implanted embryo.

92. The Mandate does not apply equally to various religious groups.

93. The Act is not generally applicable because it provides for numerous exemptions from its rules.

94. For instance, the Mandate does not apply to members of a “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds. See 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii).

95. In addition, as described above, the Mandate exempts certain churches narrowly considered to be religious employers, exempts grandfathered plans, and does not apply through the employer mandate to employers having fewer than 50 full-time employees.

96. Furthermore, the ACA creates a system of individualized exemptions because under the ACA’s authorization the federal government has granted discretionary compliance waivers to a variety of businesses for purely secular reasons.

97. The Mandate does not apply to employers with group health plans that are “grandfathered.”

98. Criswell’s employee health insurance plan does not possess grandfathered status.

99. Defendants have implemented a “Temporary Enforcement Safe Harbor” that will be in effect until the first plan year that begins on or after August 1, 2013. This Safe Harbor, however, can be taken away at any time by Defendants, and it only applies to actions by Defendants—not actions by plan participants and beneficiaries, who will be able to bring suit against Criswell starting January 1, 2013, for not providing contraceptives as required by the Mandate. Such suits may occur because not all of Criswell’s plan participants and beneficiaries adhere strictly to Criswell’s Articles of Faith or belief regarding abortion-inducing contraceptives.

100. President Obama held a press conference on February 10, 2012, and the Defendants later issued an “Advance Notice of Proposed Rulemaking” (“ANPRM”) on March 21, 2012 (77 Fed. Reg. 16501-08), claiming to offer some sort of accommodation under which some religious non-profit organizations not qualifying for the religious employer exemption would still have to comply with the Mandate but by means of the employer’s insurer offering the employer’s employees the same coverage for “free.”

101. This alleged accommodation is not helpful to Criswell College because, among other reasons, it is non-binding and does not yet actually exist. It does not exist in the rule requiring coverage of FDA-approved methods of contraceptives and providing the religious employer exemption the Administration made final on February 10, 2012. It does not exist in the guidance on the temporary enforcement safe harbor issued on February 10, 2012, and revised on August 15, 2012. There is no statutory requirement for the Departments to adopt an accommodation and one may never be formally proposed or adopted, much less adopted unchanged. The comment period for the ANPRM ended on June 19, 2012, but, as of the date of this filing, the government has not taken any public steps to initiate the rulemaking process

for any accommodation.

102. The ACA and its statutory preventive services requirement do not authorize Defendants to compel insurers or any other third-party source to offer free and allegedly independent coverage of items not covered by the employer's plan; it only encompasses requirements of the employer's plan itself. Therefore, the president's alleged accommodation is either illegal (and potentially in violation of the Takings Clause), or it mandates that the coverage occur through or in connection with the employer's own plan.

103. Even if the president's "compromise" did exist in binding law, was statutorily authorized and had coherent boundaries, it would still violate Criswell's religious beliefs by forcing it directly to facilitate objectionable coverage by providing and paying for a plan that is itself necessary for the employee to obtain the coverage in question, and which coverage is not separate from the employer's plan. Nor are such services apparently "free," since a variety of costs contained in the Mandate would necessarily be passed onto the employer through premiums and/or administrative charges.

104. Also on March 21, 2012, HHS issued final regulations governing student plans, which, in conjunction with its Mandate, require that objectionable coverage be offered in student plans that Criswell will likely make available to its students in the future under its Expansion Plan.

## **VI. The Defendants' Mandate Affects Criswell Today.**

105. The Mandate makes it unclear whether Criswell will be able to offer health insurance as a benefit to its employees, and if so, the terms upon which it will be offered. Criswell is considering whether to forgo health insurance completely for its employees if it means having to violate its firmly held beliefs. This unconstitutional choice that has been

imposed on Criswell is not the only harm inflicted on it by the Mandate.

**A. The Uncertainty Surrounding the Mandate Has Hindered Criswell's ability to plan for the future.**

106. The uncertainty surrounding the Mandate is currently impairing Criswell's ability to plan for the future. Criswell College must take the Mandate into account now and in the near future as they plan expenditures, including employee compensation and benefits packages, for the next several years. Criswell's budget planning process has already begun, and Criswell cannot adequately engage in its budget planning process so long as it is unclear whether the Mandate applies to it. Moreover, Criswell will have to negotiate contracts for new and existing employees and these contracts will extend into the time frame when the Mandate begins to apply to its health insurance plan, which is January 1, 2014, given the enforcement Safe Harbor.

107. Criswell must engage in extensive planning to determine its future expenditures, including employee compensation and benefits packages. For example, Criswell must determine course offerings for the future, the faculty required to teach those courses, the faculty available to teach those courses, and whether to go out and hire such faculty. Criswell must gather data, analyze that data, perform trend analysis on enrollment, plan for acquisition and repairs of capital assets, and other tasks. Criswell will begin this process in November 2012 and it must complete its tasks in time to submit a proposed budget to Criswell's Board for their approval in early April 2013. The uncertainty caused by the Mandate has made it difficult, if not impossible, for Criswell to complete its plans.

108. Criswell's plans have been affected in a number of different ways. For example, Criswell must now reserve funds in anticipation of the significant fines it will face as a result of the Mandate, and it must now reserve funds to pay for potential lawsuits from plan participants. Moreover, Criswell must now reserve funds to increase the salary of its faculty and staff to

enable such employees to purchase insurance individually if Criswell is forced to stop providing health insurance. Being forced to reserve funds will impede Criswell's ability to plan for the future. Due to the potential applicability of the Mandate, Criswell must now reallocate funds from activities integral to Criswell's religious mission, such as training students and spreading the Word. This reallocation of funds affects Criswell's ability to live out its mission both today and in the future because Criswell cannot use such funds to teach, train students, or fulfill the other parts of its mission. Criswell must reserve such funds now because they would not be available otherwise.

**B. The Mandate's Potential Application Has Hindered Criswell From Implementing its Expansion Plan.**

109. As discussed above, Criswell is currently undertaking a strategic expansion plan, which is being affected by the uncertainty of the Mandate. The strategic plan is designed to significantly expand Criswell both in physical size and in the size of its faculty, administration, staff, and student body, as well as its charitable and evangelistic activities. If the Mandate is applied to Criswell, it will fundamentally alter Criswell's ability to expand, operate, and serve.

110. As such, Criswell's ability to properly pursue its educational and Christian mission will be hindered, thereby causing it to fail to reach and serve individuals who would otherwise be touched through Criswell. As a part of its Christian beliefs, Criswell does not consider individuals as fungible but as uniquely created and endowed with an eternal soul. A disruption to Criswell's ability to follow with every possible resource the biblical imperative to "go into all the world and preach the gospel to every creature" is simply not reparable.

111. Criswell is currently taking additional steps to expand its course offerings and is searching for property to construct a residential campus. These steps anticipate a significant increase in student enrollment and faculty employment, which may not occur if Criswell is

forced to obey the Mandate. Criswell requires certainty as to the applicability of the Mandate so that it can decide whether and what steps to take to expand its course offerings and acquire a residential campus. If Criswell must comply with the Mandate or pay fines, Criswell will consider drastic steps to avoid the Mandate and fines, including reducing the total number of its full-time employees.

112. To grow its curriculum and campus size, Criswell must hire new faculty. Criswell recruits at all times throughout the year and must do so because finding eligible faculty members is an arduous and difficult process for Criswell, as Criswell only hires faculty that subscribe to its Articles of Faith. Criswell often finds such faculty at major recruiting conferences including the Evangelical Theological Society Conference, the Southern Baptists Convention, and the Southern Baptists of Texas Convention. At these conferences, Criswell will be at a significant disadvantage compared to other potential employers because of the uncertainty surrounding the Mandate. Some of these conferences are set to occur in the near future, for example, November 2012, and Criswell needs certainty as to the applicability of the Mandate to adequately compete for faculty and decide whether it can and should take steps like going to the upcoming conferences to hire faculty.

113. Moreover, health insurance is critical to Criswell's ability to hire qualified faculty and retain such faculty. Health insurance is included in the employment contracts for Criswell's faculty. Employment contracts are offered in March of each year, and the contracts run from August 1 to July 31 of each year. At this time, until the issue of whether the Mandate applies to Criswell is resolved, Criswell cannot state with certainty whether it will include health insurance in the employments contracts it will offer in March 2013, and without such certainty Criswell will likely be unable to hire any potential faculty members, as such faculty members will require

health insurance to be included in their employment contracts. Moreover, Criswell will lose current faculty who will choose to leave the school rather than take the risk of having no insurance.

114. Criswell's staff and potential staff members may also choose to leave or not come to Criswell if Criswell cannot guarantee that they will receive health insurance.

115. In summary, because the Mandate is prompting Criswell to contemplate the elimination of health insurance benefits, Defendants are undermining Criswell's efforts to attract quality employees.

116. Criswell is currently in the process of raising funds to carry out the Expansion Plan. The uncertainty surrounding the application of the Mandate has hindered and delayed Criswell's fundraising efforts.

117. The distraction caused by the Mandate and the uncertainty surrounding it may prevent Criswell from moving forward with its Expansion Plan. Moreover, the distraction and uncertainty of the Mandate at Criswell's next Board meeting in April 2013 may cause Criswell to abandon, delay, or restructure its Expansion Plan altogether.

118. Any alleged interest Defendants have in providing free FDA-approved abortifacients without cost-sharing could be advanced through other, more narrowly tailored mechanisms that do not burden the fundamental rights of Criswell College.

119. Criswell has expended and will continue to expend a great deal of time and money ascertaining the requirements of the Mandate and how it applies to its health insurance benefits. Moreover, Criswell must now reserve funds in anticipation of private lawsuits resulting from the application of the Mandate.

120. Criswell wishes to continue offering and facilitating health insurance coverage

consistent with its religious beliefs without suffering penalties or burdens resulting from the Mandate.

121. Without injunctive and declaratory relief as requested herein, Criswell is suffering and will continue to suffer irreparable harm.

122. Criswell has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF**

**Violation of the Religious Freedom Restoration Act  
42 U.S.C. § 2000bb**

123. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

124. Criswell's sincerely held religious beliefs prohibit it from providing or facilitating coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing a plan that causes access to the same through its insurance company.

125. When Criswell complies with the Sixth Commandment of the Bible and other sincerely held religious beliefs, it exercises religion within the meaning of the Religious Freedom Restoration Act (RFRA).

126. The Mandate imposes a substantial burden on Criswell's religious exercise and coerces it to change or violate its religious beliefs. The Mandate penalizes Criswell for offering health insurance plans that do not cover abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or that cause access to the same through its insurance company. Defendants substantially burden Criswell's religious exercise when they force it to choose between either following its religious commitments and suffering debilitating punishments or violating its conscience in order to avoid those punishments.



127. The Mandate chills Criswell's religious exercise within the meaning of RFRA.

128. The Mandate exposes Criswell College to substantial fines and/or financial burdens for its religious exercise.

129. The Mandate exposes Criswell College to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

130. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest. The Mandate does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies the Mandate. The Mandate also does not apply to plans sponsored by employers that qualify for the religious exemption. Access to abortifacients is not a significant social problem, and compelling Criswell to pay for or otherwise facilitate access to such drugs and devices is hardly the least restrictive means of advancing any interest the government might have.

131. The Mandate violates RFRA.

### **SECOND CLAIM FOR RELIEF**

#### **Violation of Free Exercise Clause of the First Amendment to the United States Constitution**

132. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

133. Criswell's sincerely held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing plans that cause access to the same through its insurance company.

134. When Criswell complies with the Sixth Commandment of the Bible and other sincerely held religious beliefs, it exercises religion within the meaning of the Free Exercise

Clause.

135. The Mandate imposes a substantial burden on Criswell's religious exercise and coerces it to change or violate its religious beliefs. Defendants substantially burden Criswell's religious exercise when they force Criswell to choose between either following its religious commitments and suffering debilitating punishments or violating its conscience in order to avoid those punishments.

136. The Mandate is not neutral and is not generally applicable. It does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status. It does not apply to religious employers that qualify for the Mandate's extraordinarily narrow religious exemption. It does not apply to the employers to whom the Defendants have given waivers from the Affordable Care Act.

137. Defendants have created categorical exemptions and other exemptions to the Mandate.

138. The Mandate furthers no compelling governmental interest. The Mandate does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies the Mandate. The Mandate also does not apply to plans sponsored by employers that qualify for the religious exemption. Access to abortifacients is not a significant social problem, and compelling Criswell to pay for or otherwise facilitate access to such drugs and devices is hardly the least restrictive means of advancing any interest the government might have.

139. The Mandate coerces Criswell College to change or violate its religious beliefs.

140. The Mandate chills Criswell's religious exercise.

141. The Mandate exposes Criswell College to substantial fines and/or financial burdens for its religious exercise.

142. The Mandate exposes Criswell College to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

143. Defendants designed the Mandate and the religious exemption therefrom in a way that make it impossible for Criswell College and other similar religious organizations to comply with their religious beliefs.

144. Defendants promulgated both the Mandate and the religious exemption in order to suppress the religious exercise of Criswell College and others.

145. By design, Defendants framed the Mandate to apply to some religious organizations but not to others, resulting in discrimination among religions.

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

### **THIRD CLAIM FOR RELIEF**

#### **Violation of the Establishment Clause of the First Amendment to the United States Constitution**

147. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

148. The First Amendment's Establishment Clause prohibits the establishment of any religion and/or excessive government entanglement with religion.

149. To determine whether religious organizations like Criswell College are required to comply with the Mandate, continue to comply with the Mandate, are eligible for an exemption, or continue to be eligible for an exemption, Defendants must examine the organization's religious beliefs and doctrinal teachings, and that of its employees and persons it

serves.

150. Obtaining sufficient information for the Defendants to analyze the content of Criswell's religious beliefs requires ongoing, comprehensive government surveillance that impermissibly entangles Defendants with religion.

151. The Mandate discriminates among religions and among denominations, favoring some over others.

152. The Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient coverage and imposes it upon all religionists who must either conform their consciences or suffer a penalty.

153. The Mandates' discrimination and coercive effect also represents unlawful hostility towards religion.

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

#### **FOURTH CLAIM FOR RELIEF**

##### **Violation of the Freedom to Associate found in the First Amendment to the United States Constitution**

155. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

156. The First Amendment guarantees the right to associate with others in the pursuit of social, educational, religious, and cultural ends.

157. A group may enjoy the right to associate by joining together to engage in expressive association.

158. Criswell College is such a group that joins together to live out and express its Christian values, including the sanctity of life, found in the Word of God and reiterated in its

Articles of Faith and elsewhere.

159. The Mandate imposes an unconstitutional, significant burden on Criswell's right to expressive association guaranteed by the First Amendment by requiring it to, among other things, endorse the use of contraceptives, including abortion-inducing drugs, in violation of its faith or face a penalty for refusing to do so.

160. Moreover, the Mandate punishes religious groups if they choose to serve others outside their faith, which is another significant burden on Criswell's right to freely associate and serve others who do not share its beliefs.

161. The Mandate violates Criswell's right to associate secured by the First Amendment and is not justified by any compelling government interest and is not narrowly tailored to any such interest.

#### **FIFTH CLAIM FOR RELIEF**

##### **Violation of the Free Speech Clause of the First Amendment to the United States Constitution**

162. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

163. Defendants' Mandate and requirement of provision of insurance coverage for education and counseling regarding contraception causing abortion forces Criswell to speak and endorse in a manner contrary to its religious beliefs.

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

165. Defendants' Mandate and regulations are unconstitutionally vague because they grant the government unconstitutional discretion, encourage arbitrary and discriminatory enforcement, and chill protected speech.

166. The Mandate violates Criswell's rights secured to it by the Free Speech Clause of the First Amendment of the United States Constitution.

**SIXTH CLAIM FOR RELIEF**

**Violation of the Due Process Clause of the  
Fifth Amendment to the United States Constitution**

167. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

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

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

170. This Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner, and lawsuits by private persons, based on the Defendants' vague standards.

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

172. This Mandate is an unconstitutional violation of Criswell's due process rights under the Fifth Amendment to the United States Constitution.

**SEVENTH CLAIM FOR RELIEF**

**Violation of the Administrative Procedure Act**

173. Plaintiff realleges all matters set forth in the foregoing paragraphs and incorporates them herein.

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

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

176. Therefore, Defendants have taken agency action not in accordance with procedures required by law, and Criswell College is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

177. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Criswell College and similar organizations.

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

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

180. As set forth above, the Mandate violates RFRA and the First and Fifth Amendments.

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

182. The Mandate is also contrary to the provisions of the Weldon Amendment of the Consolidated Appropriations Act, 2012, Public Law 112-74, Div. F, Sec. 507(d), 125 Stat. 786, 1111 (Dec. 23, 2011), as incorporated into Continuing Appropriations Act, 2013, Public Law 112-175, Sec. 101(a)(8), which provides that “[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”

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

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

A. That this Court enter a judgment pursuant to 28 U.S.C. §§ 2201, 2202 declaring the Mandate and its application to Criswell College and others not before the Court to be an unconstitutional violation of its rights protected by RFRA, the Free Exercise, Establishment, Association, and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter a preliminary injunction prohibiting Defendants during the course of this litigation from continuing to apply the Mandate in a way that substantially burdens the religious belief of any person in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against Criswell College and



others not before the Court by requiring them to provide health insurance coverage for abortifacients and abortion/abortifacient counseling to their employees and/or to their students.

1. The facts alleged in this complaint show that Criswell will likely succeed on the merits of each of its claims, as stated in Paragraphs 1-183.
2. Criswell will likely suffer irreparable harm in the absence of preliminary relief, as detailed in its Factual Allegations;
3. The balance of equities tips in Criswell's favor because Criswell is suffering irreparable harm and Defendants do not have any evidence, much less the powerful evidence required, to overcome such harm; and
4. A preliminary injunction is in the public interest because, as stated by the Fifth Circuit, "[I]njunctive relief protecting First Amendment freedoms are always in the public interest." *Opulent Life Church v. City of Holly Springs, Miss.*, -- F.3d --, No. 12-60052, 2012 WL 4458234, at \*16 (5th Cir. Sept. 27, 2012).

C. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate in a way that substantially burdens the religious belief of any person in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against Criswell College and others not before the Court by requiring them to provide health insurance coverage for abortifacients and abortion/abortifacient counseling to their employees and/or to their students;

1. Criswell will suffer irreparable harm in the absence of injunctive relief from the unconstitutional infringement of its constitutional rights inflicted by the Mandate and the harms detailed in Criswell's Factual Allegations;

2. The remedies at law such as monetary damages are not adequate to compensate Criswell for its constitutional injuries;
3. Considering the balance of hardships between Criswell and Defendants, a remedy in equity is warranted because Criswell is suffering irreparable harm and Defendants do not have any evidence, much less the powerful evidence required, to overcome such harm; and
4. The public interest would not be disserved by a permanent injunction because injunctions protecting First Amendment freedoms are always in the public interest.

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

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

**JURY TRIAL DEMAND**

Criswell College demands a trial by jury on all issues so triable.

Dated: November 1, 2012

Respectfully Submitted,

s/ Darren L. McCarty

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