

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

MEDIA RESEARCH CENTER,
a Virginia non-stock
corporation,

Plaintiff

v.

KATHLEEN SEBELIUS, in her
official capacity as Secretary of the
United States Department of
Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES
200 Independence Avenue, SW
Washington, DC 20201

JACOB W. LEW, in his official
capacity as the Secretary of the
United States Department of the
Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

UNITED STATES DEPARTMENT
OF THE TREASURY
1500 Pennsylvania Avenue, NW
Washington, DC 20220

THOMAS E. PEREZ, in his official
capacity as the Secretary of the
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

UNITED STATES DEPARTMENT
OF LABOR
200 Constitution Avenue, NW
Washington, DC 20210

Defendants.

Case No. 1:14-cv-00379
(GBL/IDD)

COMPLAINT

For its Complaint against the Defendants, Plaintiff MEDIA RESEARCH CENTER (“MRC” or “Plaintiff”) states as follows:

Introduction

1. MRC challenges the applicability and constitutionality of regulations under the 2010 Patient Protection and Affordable Care Act that require certain employers to provide insurance coverage for contraceptive, abortifacient, and sterilization procedures.
2. The regulations have carve-outs for “religious organizations” and certain other “eligible organizations” that oppose providing these services.
3. To be an “eligible organization,” the entity must: (1) oppose on religious grounds the provision of some or all of these services, (2) operate as a nonprofit, (3) hold itself out as a religious organization, and (4) self-certify that it meets the first three conditions. 45 C.F.R. § 147.131(b).
4. MRC is a nonprofit organization whose mission, in part, is to expose and critique media bias against traditional American Judeo-Christian religious beliefs. It opposes on religious grounds the provision of coverage for contraceptive, abortifacient, and sterilization services. And it has self-certified those facts on a form provided by the Department of Labor.
5. MRC has sought assurance from Defendants that it qualifies as an “eligible organization.”
6. Defendants, however, have refused to provide such assurance.

7. Rather than hazard the possibility of a later determination that it is not an “eligible organization”—with concomitant fines for having failed to provide required coverage—MRC has brought this action seeking a declaration of its status.

8. In the alternative, MRC seeks a declaration that, by exempting some—but not all—religious entities, the regulations unconstitutionally entangle the Government in questions of religious doctrine and organization.

9. In particular, the regulations require the Government to determine: (1) whether the organization truly seeks to inculcate “religious values,” (2) whether an objection to providing the relevant services is truly “religious”, and (3) whether an entity truly holds itself out as a “religious” organization.

10. Such entanglement violates the Establishment Clause of the First Amendment.

11. For this alternate reason, the Court should enjoin enforcement of the regulations against MRC.

Parties

12. Plaintiff MRC is a Virginia non-stock corporation headquartered in Reston, Virginia. (Affidavit of David Martin attached hereto as Exhibit 1 at ¶ 2) It is a nonprofit that operates under § 501(c)(3) of the Internal Revenue Code. (*Id.*)

13. MRC is governed exclusively by a Board of Directors, whose members are selected by a majority of the then-members of the Board.

14. MRC employs more than 50 employees.

15. Defendant United States Department of Health and Human Services (“HHS”) is an executive agency of the United States and is responsible for promulgating, administering, and enforcing the Mandate.

16. Defendant Kathleen Sebelius is the Secretary of the Department of Health and Human Services.¹

17. Defendant United States Department of the Treasury is an executive agency of the United States and is responsible for promulgating, administering, and enforcing the Mandate.

18. Defendant Jacob W. Lew is the Secretary of the Department of Treasury.

19. Defendant United States Department of Labor is an executive agency of the United States and is responsible for promulgating, administering, and enforcing the Mandate.

20. Defendant Thomas E. Perez is the Secretary of the Department of Labor.

Jurisdiction and Venue

21. This is an action for declaratory relief under 28 U.S.C. §§ 2201 and 2202.

22. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1346(a)(2).

¹ On the eve of the filing of this Complaint, Secretary Sebelius announced her resignation as Secretary of the Department of Health and Human Services. As Secretary Sebelius is sued in her official capacity, pursuant to Fed. R. Civ. P. 25(d), her successor assumes/becomes substituted as a defendant by operation of law.

23. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1).

Facts

MRC's Defense of Judeo-Christian Religious Beliefs Against the Media Elite

24. MRC is a research and educational organization whose mission is to expose liberal bias in the news media and popular culture. (Ex. 1 at ¶ 2.)

25. L. Brent Bozell, III, founded the organization in 1987 and remains its president. (Affidavit of L. Brent Bozell, III attached hereto as Exhibit 2 at ¶ 2)

26. Bozell is a devout Catholic with deep roots in the conservative movement. (*Id.* at ¶¶ 1, 16.) He is one of ten children. (*Id.* at ¶ 2.) His father was a conservative activist and a close friend and college debating partner of William F. Buckley, Jr. (The late Mr. Buckley also was Bozell's uncle.) (*Id.* at ¶ 3.) Bozell's father founded *Triumph*, a Catholic magazine advocating conservative causes. (*Id.* at ¶ 3.) These included a strong opposition to birth control and abortion. (*Id.*) One of Bozell's brothers is a priest. (*Id.*)

27. Bozell, a syndicated columnist, founded MRC to combat media bias against Judeo-Christian ideals and conservatism. (*Id.* at ¶¶ 8, 11.)

28. In the quarter century since its founding, MRC has become the nation's premier media watchdog.

29. MRC accomplishes its mission through several programs.

30. MRC's "News Analysis Division" employs news analysts who monitor major national televised and print broadcasts. MRC compiles and publishes the results of its analyses on its website, in e-mail blasts, and in

blogs. It identifies and exposes the biases of influential journalists, celebrities, and other public figures—conferring “DisHonors Awards” on the worst offenders.

31. MRC’s “Business & Media Institute” is dedicated to correcting media bias against free enterprise and to promoting a fair portrayal of the business community. Its “Balance Sheet” e-mail newsletter analyzes top news issues from a free-market perspective.

32. MRC’s “CNSNews.com” website is an online news resource for conservatives, producing original reporting and presenting breaking news. It distributes a daily “E-Brief” containing headlines and exclusive stories.

33. Finally, and most relevant here, MRC’s “Culture and Media Institute” (“CMI”) serves as a bulwark against media assaults on social conservatism and religious faith. Through its various publications, it promotes a fair portrayal of social conservatism and religious faith.

34. In its special report “Rewriting the Bible: The Gospel According to Liberals,” for example, MRC “analyzed the various ways media liberals twist, selectively edit and otherwise misuse the Bible’s text to justify nearly any immoral or profane behavior.” (“Rewriting the Bible,” attached hereto as Exhibit 3, at 2.)

35. The report catalogs the various ways that “[w]riters, politicians and entertainers have made concerted effort to alter the content and message of the Bible, substituting the gospel of liberalism for the Gospel of Jesus Christ.” (*Id.* at 6.)

36. Among other things, it cites a claim by writer Nynia Chance that “there’s times where the Bible states God commands that one [abortion] take place.” (*Id.* at 5)

37. The report also cites examples where the “entertainment industry . . . skewer[ed] the Christian holy book in order to mock it.” (*Id.*) For instance, the television show “GCB”² mocked the Ten Commandments by reframing one of the commandments as “Thou shalt not covet they neighbor’s husband . . . Unless he’s really hot.” (*Id.*)

38. “Rewriting the Bible” also critiques liberal attempts to use the Bible as a vehicle for spreading leftist political ideology. It notes that the “Christian vision of the Bible emphasizes God and His message of salvation” and quotes Dr. Michael Youssef, founder of a Christian ministry, who states that using the Bible to justify one’s “own desires and own political positions” is an “unpardonable sin.” (*Id.* at 8.) The report asserts that “a spiritual understanding of the Bible contradicts the political gospel of the religious left.” (*Id.*)

39. Other distortions exposed by “Rewriting the Bible” include a claim by Erin Gloria Ryan, a contributor to the liberal site Jezebel, that “there are a lot more passages in the Bible that imply (or insist) that the big man upstairs doesn’t consider a zygote to be the same sort of being with the same value as,

² The television program referred to as “GCB” was also previously known by the title “Good Christian Bitches.” See Ex. 3 at 16.

say, a mailman or a trapeze artist that there are passages that mention abortion.”

40. The report concludes that “Modern liberals regularly dismiss the Bible as repressive and irrelevant to modernity, and excoriate Christian conservatives for believing, in Dan Savage’s words, ‘bullshit in the Bible.’” But it warns that some liberals opportunistically become ersatz Bible scholars if they think the Bible “can be used as a ‘tool of progressive social change.’” (*Id.* at 20.) A central part of MRC’s mission is to expose and combat these false exegeses.

41. Another special report by MRC, titled “Apostles of Atheism: How the Broadcast and Print Media Helped Spread the Gospel of Godlessness in 2007,” critiques the liberal media’s attempt to advance the cause of atheists. (“Apostles of Atheism,” attached hereto as Exhibit 4.)

42. This report examined stories featuring atheists and found that the media’s use of “atheism as a foil against Christianity, but not against any other religion, suggests an anti-Christian bias.” (*Id.* at 10)

43. In particular, “the media did not scrutinize atheism the same way it scrutinizes Christianity” and often inserted atheist critiques in stories on Christian topics, but not vice-versa. (*Id.* at 2.)

44. The report admonished that “[j]ournalists who look at America’s majority religion through a skeptical prism should also apply their critical faculties to atheism.” (*Id.* at 10.)

45. In 2012, the MRC published a special report titled “Secular Snobs: Documenting the National Media’s Long-Standing Hostility to Religion,” which collected and categorized 45 prominent instances in which national media have exhibited contempt for organized religion. (“Secular Snobs,” attached hereto as Exhibit 5.)

46. The report shows, *inter alia*, how the media relentlessly has: (1) characterized religious believers as simple-minded and ignorant, clinging to religion as a crutch, (2) characterized the Republican Party as attempting to create a Christian theocracy, (3) characterized the so-called Christian Right as inciting violence against gays and abortionists, and (4) characterized Pope Benedict XVI as an enforcer of anachronistic orthodoxy.

47. Another special report, titled “Roe Warriors: The Media’s Pro-Abortion Bias,” addresses the unbalanced perspective that national media provides on the abortion debate. (“Roe Warriors,” attached hereto as Exhibit 6.)

48. In addition to putting out special reports on issues concerning the media and religion, MRC regularly posts stories on its site and distributes e-mails on the topic.

49. Recently, for instance, MRC posted a story critiquing an article in *Time* by a “theologically confused” pastor who argued that God had a feminine

side—a view that contradicts 5,000 years of teachings of the major monotheistic religions.³

50. Another recent article castigates a promotion by National Public Radio that encouraged listeners to “Get Lucky On St. Patrick's Day With These 25 R&B Songs.” Many of the songs were sexually explicit (they included, among others, Prince’s “Erotic City”). St. Patrick’s day is, of course, a celebration of the patron saint of Ireland.

51. In short, a core part of MRC’s mission is to safeguard and defend religion in general—and Judeo-Christian beliefs, in particular—from the onslaught of anti-religious distortions in the media.

Statutory and Regulatory Background

52. In 2010, Congress enacted the “Patient Protection and Affordable Care Act” (“ACA”) Pub. L. 111–148, 124 Stat. 119.

53. The ACA requires that employer group health insurance plans offer coverage for “preventive care and screenings” for women pursuant to “comprehensive guidelines supported by the Health Resources and Services Administration” (“HRSA Guidelines”). 42 U.S.C. § 300gg-13(a)(4). This coverage must be offered without “cost sharing.” (*Id.*)

54. The penalties for failing to provide the required coverage are stiff—amounting to \$100 per day for each affected individual. 26 U.S.C.A. § 4980D(b)(1).

³ See <http://www.mrc.org/articles/time-makes-god-she-pc-history-month> (accessed March 21, 2014).

55. In establishing the HRSA Guidelines, Defendant HHS adopted the preventive-care recommendations of the Institute of Medicine, a non-governmental organization. 75 Fed. Reg. 41,726 (July 19, 2010).

56. HRSA Guidelines require, *inter alia*, that employers provide “all Food and Drug Administration (FDA)-approved contraception methods, sterilization procedures, and patient education and counseling for women with reproductive capacity” (Contraception Mandate 78 Fed. Reg. 39,870 (July 2, 2013)).

57. The FDA-approved contraception methods include the following abortifacients: (1) “Plan B” (Levonorgestrel), (2) “Ella” (ulipristal acetate), and (3) intrauterine devices (“IUDs”). The FDA-approved contraception methods also include surgical sterilization.

58. On August 3, 2011, Defendants approved an “Interim Final Rule” that exempted certain “religious employers” from the Contraception Mandate. 76 Fed. Reg. 46,621.

59. To be eligible for this exemption, however, an organization needed to satisfy four requirements: (1) the inculcation of religious values is the purpose of the organization, (2) the organization primarily employs persons who share the religious tenets of the organization, (3) the organization serves primarily persons who share the religious tenets of the organization, and (4) the organization is a nonprofit organization as described in § 6033(a)(1) and § 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended. 76 Fed. Reg. 46,626.

60. Section 6033(a)(1) and § 6033(a)(3)(A)(i) of the Internal Revenue Code describe an exception for “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).

61. MRC does not qualify under this narrow exception because it is not a church, an integrated auxiliary of a church, or a religious order.

62. Responding to public outcry, Defendants clarified the “religious employer” requirements and also created a new exception to the Contraception Mandate for “eligible organizations.” 78 Fed. Reg. 39,870 (July 2, 2013).

63. To qualify as an “eligible organization,” the organization must: (1) oppose on religious grounds the provision of some or all of the services required by the Contraception Mandate, (2) operate as a nonprofit, (3) hold itself out as a religious organization, and (4) self-certify that it meets the first three conditions. 45 C.F.R. § 147.131(b).

64. The Department of Labor’s Employee Benefits Security Administration (“EBSA”) has published EBSA Form 700 for entities to self-certify as “eligible organizations.” A copy of EBSA Form 700 is attached hereto as Exhibit 7.

65. As set forth below, MRC believes that it is an “eligible organization” under 45 C.F.R. § 147.131(b).

MRC's Opposition to Providing Contraception and Abortion Services

66. MRC historically has provided its employees with group health insurance coverage. (Ex. 1 at ¶ 3.) It has excluded coverage for contraception, abortifacient, and sterilization services.⁴ (*Id.* at ¶¶ 4, 8-9.)

67. MRC currently offers its employees group health insurance through a self-insured plan (“Plan”) whose claims are administered by a third-party administrator.

68. MRC’s plan is not a grandfathered plan.⁵

69. The plan year for MRC’s next employee health plan begins on May 1, 2014.⁶

70. The Plan excludes coverage for “birth control services, supplies or devices, including birth control pills, regardless of whether such pills are to be used for contraceptive or medical reasons.”

71. The Plan also excludes coverage “for services, supplies or treatment for surgical sterilization, or the reversal of surgical sterilization procedures.”

⁴ Prior to 2010, MRC believed the services were excluded from its health plan. In or around 2010, MRC discovered that its health insurance provider was providing the services. MRC promptly demanded that the policy be changed to exclude them, but the provider refused to exclude the services. MRC subsequently made the decision to change insurance carriers and become self-insured to ensure that the services were excluded. (Ex. 1 at ¶¶ 8-9.)

⁵ Grandfathered plans are exempt from the Contraception Mandate. 75 Fed. Reg. 41,729.

⁶ Up to now, MRC has been operating under a “temporary enforcement safe harbor” that delayed implementation of the Contraception Mandate to qualifying organizations until the first plan year after January 1, 2014. See <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/preventive-services-guidance-6-28-2013.pdf> (accessed March 26, 2014). The eligibility requirements for the safe harbor differ from those required to qualify under either the “religious employer” exemption or the “eligible organization” exemption.

72. MRC excludes these services because it opposes, on religious grounds, the provision of contraceptive, abortifacient, and sterilization services to its employees. (Ex. 1 at ¶¶ 4-7.)

73. MRC's Board adopted a "Resolution on MRC Sincerely Held Beliefs" addressing the subject ("Resolution"). A copy of the Resolution is attached hereto as Exhibit 8.

74. The Resolution notes that "the Corporation offers a health care benefit to its employees for two primary reasons: (1) the Corporation believes that it is a basic civil, ethical and moral obligation to provide low or no cost health insurance coverage to its employees; and (ii) providing a health insurance benefit allows the Corporation to attract the best and brightest employees available to help advance the Corporation's charitable and educational mission"

75. The Resolution further states that "[T]he Corporation and its Directors embrace sincerely held religious, moral or ethical beliefs that to provide, either indirectly or directly, coverage of abortion, abortifacients, sterilization services, contraceptives (other than those contraceptives prescribed with the intent of treating another medical condition, and not to prevent pregnancy) and related counseling and education services or to mandate the provision of the aforementioned services in violation of such beliefs, is a grave and moral sin which would violate the very core of the Corporation and Board Member's sincerely held religious, civil, ethical or moral standards of human life and human dignity."

76. MRC staff, too, oppose the Contraception Mandate. The overwhelming majority of MRC's employees have signed a "Statement of Media Research Center Staff Regarding Mandated Forced Funding of Abortion" ("Statement"). A copy of the Statement is attached hereto as Exhibit 9.

77. The Statement recites: "We the Staff of Media Research Center do affirm that we believe abortion to be abhorrent and immoral. We believe the Obamacare requirement that Media Research Center pay for abortion or abortifacient services to be equally immoral, and would require us and our employer to make an immoral choice between violating the law or violating our fundamental beliefs, faith and morals. We believe that the Media Research Center has espoused, and continues to espouse this position which is why we ask MRC leadership to ensure that it and its employees we [sic] will not be forced to pay for such immoral services."

78. MRC has self-certified as an "eligible organization" by completing and executing EBSA Form 700. A copy of MRC's executed self-certification is attached hereto as Exhibit 10.

COUNT ONE
(Declaratory Judgment that MRC is an "Eligible Organization")

79. MRC hereby incorporates the allegations of paragraphs 1-78 as if set forth fully herein.

80. MRC believes that it is an "eligible organization," for purposes of 45 C.F.R. § 147.131(b), because: (1) it is a nonprofit organization, (2) organized to defend Judeo-Christian beliefs against attacks by the media and popular culture, that (3) opposes providing the services required by the Contraception

Mandate on religious grounds, and that (4) has self-certified its compliance with the requirements of 45 C.F.R. § 147.131(b)(1)-(3).

81. MRC has asked Defendants, through their counsel at the Department of Justice, to acknowledge that MRC is an “eligible organization” under 45 C.F.R. § 147.131(b). A copy of MRC’s letter requesting this acknowledgment is attached hereto as Exhibit 11.

82. Defendants have refused to acknowledge MRC’s status as an “eligible organization.”

83. MRC has brought this declaratory-judgment action to resolve the issue before MRC becomes subject to the Contraception Mandate’s coverage requirements.

84. Without such resolution, the ruinous fines imposed for noncompliance with the Contraception Mandate will hang over MRC like a Damoclean sword.

85. Plaintiff’s have no adequate remedy at law.

86. Accordingly, MRC requests that this Court enter an order: (1) declaring that MRC is an “eligible organization” under 45 C.F.R. § 147.131(b) and, thus, not required to comply with the Contraception Mandate, and (2) granting all other necessary and proper relief.

COUNT TWO
(Declaratory Judgment that the Contraception Mandate
violates the Establishment Clause of the First Amendment)

87. MRC hereby incorporates the allegations of paragraphs 1-86 as if set forth fully herein.

88. The First Amendment's Establishment Clause bars the Government from taking sides on religious questions and from entangling itself in religious matters.

89. Determining which entities qualify as "religious employers" or "eligible organizations" requires the Government to determine (1) whether the organization truly seeks to inculcate "religious values," (2) whether an objection to the Contraception Mandate is truly "religious", and (3) whether an entity truly holds itself out as a "religious" organization.

90. The Contraception Mandate thus makes the Government the arbiter of which organizations are, or are not, sufficiently "religious" to qualify for exceptions to the Contraception mandate.

91. This entails an unconstitutionally invasive inquiry into an organization's religious purpose, beliefs, and practices.

92. Furthermore, the regulations are framed to value the activities of traditional religious groups (e.g, churches, ministries, and proselytizing organizations) more highly than non-traditional religious organizations (like MRC, which defends traditional American Judeo-Christian beliefs by exposing the hypocrisies and fallacies of media attacks on those beliefs).

93. MRC serves the religious beliefs of its founder and President, its Board of Directors, and the overwhelming majority of its employees by defending those beliefs from attacks by the media elite.

94. MRC's mission of defending traditional American Judeo-Christian beliefs is an expression of those religious beliefs as much as a soup kitchen or

homeless shelter organized by religious believers is an expression of the religious beliefs of its organizers.

95. By authorizing the Government to determine whether a particular organization is a “religious employer” or an “eligible employer,” and by weighting the inquiry against nontraditional religious organizations, the Contraception Mandate violates the Establishment Clause—it involves excessive governmental entanglement with religious teachings, values, views, and events.

96. By authorizing and implementing the Contraception Mandate, Defendants have violated 42 U.S.C. § 1983.

97. Accordingly, MRC requests that this Court enter an order (1) declaring that the Contraception Mandate, and the exceptions thereto, violate the Establishment Clause of the First Amendment, (2) enjoining Defendants from enforcing the Contraception Mandate against MRC, and (3) granting all other necessary and proper relief.

PRAYER FOR RELIEF

WHEREFORE, MRC respectfully requests that this Court:

1. Enter a declaratory judgment that MRC qualifies as an “eligible organization” under 45 C.F.R. § 147.131(b), and, as such, MRC does not have to provide coverage for contraceptives, abortifacients, or sterilization procedures under its group health insurance plan;
2. Enter a declaratory judgment that the Contraception Mandate violates MRC’s constitutional rights;
3. Enter an order enjoining Defendants from enforcing the Contraception Mandate against MRC;

4. Award attorney's fees under 42 U.S.C. § 1988; and
5. Afford all other relief that the Court deems just and proper.

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