

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

THE CATHOLIC BENEFITS )  
ASSOCIATION LCA; THE )  
CATHOLIC INSURANCE )  
COMPANY; THE ROMAN )  
CATHOLIC ARCHDIOCESE OF )  
OKLAHOMA CITY; CATHOLIC )  
CHARITIES OF THE ARCHDIOCESE )  
OF OKLAHOMA CITY, INC.; ALL )  
SAINTS CATHOLIC SCHOOL, INC.; )  
ARCHBISHOP WILLIAM E. LORI, )  
ROMAN CATHOLIC ARCHDIOCESE )  
OF BALTIMORE AND HIS )  
SUCCESSORS IN OFFICE; THE )  
CATHEDRAL FOUNDATION, INC. )  
d/b/a CATHOLIC REVIEW MEDIA; )  
VILLA ST. FRANCIS CATHOLIC )  
CARE CENTER, INC.; and GOOD )  
WILL PUBLISHERS, INC. )

Plaintiffs, )

v. )

KATHLEEN SEBELIUS, 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 )

Defendants. )

Civil Case No. CIV-14-240-L

**VERIFIED COMPLAINT**

Plaintiffs THE ROMAN CATHOLIC ARCHDIOCESE OF OKLAHOMA CITY; CATHOLIC CHARITIES OF THE ARCHDIOCESE OF OKLAHOMA CITY, INC., an Oklahoma not for profit corporation; ALL SAINTS CATHOLIC SCHOOL, INC., an Oklahoma not for profit corporation; VILLA ST. FRANCIS CATHOLIC CARE CENTER, INC., a Kansas not for profit corporation; and GOOD WILL PUBLISHERS, INC., a North Carolina corporation, on behalf of themselves and all others similarly situated; THE CATHOLIC BENEFITS ASSOCIATION LCA, a nonprofit Oklahoma limited cooperative association, on behalf of itself and its members; THE CATHOLIC INSURANCE COMPANY, an Oklahoma corporation, on behalf of itself and its insureds; ARCHBISHOP WILLIAM E. LORI, ROMAN CATHOLIC ARCHDIOCESE OF BALTIMORE AND HIS SUCCESSORS IN OFFICE, a Maryland corporation sole; and THE CATHEDRAL FOUNDATION, INC. D/B/A CATHOLIC REVIEW MEDIA, a Maryland nonstock corporation, (collectively, "Plaintiffs"), 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, and though circumstances have changed, the promise of religious liberty has not. For Madison in 1785, the issue was mandatory taxation that forced religious dissidents to support religious doctrines they opposed. The present controversy is much the same. Defendants here, federal agencies and their officers, seek to coerce Plaintiffs 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 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. Plaintiffs The Roman Catholic Archdiocese of Oklahoma City (“Archdiocese of Oklahoma City”); Catholic Charities of the Archdiocese of Oklahoma City, Inc. (“Catholic Charities Oklahoma City”); All Saints Catholic School, Inc. (“All Saints”); Archbishop William E. Lori, Roman Catholic Archdiocese of Baltimore and His Successors in Office (“Archdiocese of Baltimore”); The Cathedral Foundation, Inc. d/b/a Catholic Review Media (“Catholic Review Media”); Villa St. Francis Catholic Care Center, Inc. (“Villa St. Francis”); and Good Will Publishers, Inc. (“Good Will

Publishers”) are Catholic employers and referred to collectively as the “Plaintiff Employers.”

3. The Plaintiff Employers are members of The Catholic Benefits Association, LCA (“Association”).

4. The Plaintiff Employers currently provide health benefits to their employees through insured group health plans or self-funded plans.

5. Some of the Plaintiff Employers 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 Plaintiff Employers plan to implement this insurance arrangement upon completion of their current plan years and successful resolution of this lawsuit.

6. All the Plaintiff Employers 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 all Plaintiffs’ sincerely held religious beliefs.

7. Because their faith forbids it, the Plaintiff Employers’ health plans do not cover contraception, abortion-inducing drugs or devices, sterilization, and related counseling (“CASC services” or “CASC benefits”), except for Good Will Publishers, for

whom all morally compliant alternatives have been foreclosed as detailed in paragraphs 73-79, *infra*.

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

9. The Plaintiff Employers cannot provide, pay for, or directly or indirectly facilitate access to CASC services without violating the teachings of the Catholic Church. If the Plaintiff Employers 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.

10. Defendants have thus put the Plaintiff Employers 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 Plaintiff Employers 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.

11. 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.

12. Federal law prohibits the government from putting Plaintiffs 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”).

13. The Mandate has already taken effect against at least one of the Association’s members, Plaintiff Good Will Publishers. It will take effect against other members of the Association at various times in 2014, on the anniversary of their plan years. For Plaintiff Villa St. Francis, this occurs on April 1, 2014.

14. Upon completion of their current plan years, many members of the Association, including the Plaintiff Employers, 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 members choose to arrange insurance through the Insurance Company, members’ plans will exclude or continue to

exclude coverage of CASC services only if the members acquire the relief sought in this action.

15. All Plaintiffs seek a declaration that the Mandate cannot legally be applied to them, and an injunction barring its enforcement against them.

## **II. JURISDICTION AND VENUE**

16. 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.

17. Venue lies in this district under 28 U.S.C. § 1391(e)(1). Plaintiffs the Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, and the Insurance Company reside in this district because their principal places of business are here. Each of these Plaintiffs, along with the Association, are incorporated or organized in Oklahoma, and the Insurance Company is regulated in Oklahoma by the Oklahoma Department of Insurance. In addition, a substantial part of the events or omissions giving rise to the claims occurred in this district. The Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, and All Saints would be harmed by the application of the Mandate in this district by having to pay for, provide, or directly or indirectly facilitate access to CASC services in violation of their religious beliefs or by suffering penalties as a result of their activities in this district. In addition, 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. Application of the Mandate to the Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, and the Insurance Company would, therefore, violate their religious beliefs, burden their religious practices, and violate their legal and constitutional rights in this district.

### **III. PARTIES**

#### **A. Plaintiffs**

##### **1. Archdiocese of Oklahoma City**

18. The Archdiocese of Oklahoma City is that “portion of the people of God,” located in 46 counties in western Oklahoma, “which is entrusted to [the Archbishop of Oklahoma] for him to shepherd” in cooperation with his priests. *See* Code of Canon Law, c. 369 (1983). The Archdiocese carries out the spiritual, educational, and social service mission of the Catholic Church in western Oklahoma. Its Archbishop is the Most Reverend Paul S. Coakley. He exercises pastoral care and canonical support for more than 100 parishes and missions and other Catholic ministries within the Archdiocese.

19. The Archdiocese of Oklahoma City comprises 42,470 square miles. Through its parishes and its related Catholic organizations, the Archdiocese ministers to more than 115,000 Catholics and tens of thousands of others in western Oklahoma.

20. The educational mission of the Archdiocese of Oklahoma City is carried out, in part, through its Office of Catholic Schools, which oversees eighteen elementary schools, a school for autistic children, and two high schools within the Archdiocese.



21. The charitable mission of the Archdiocese of Oklahoma City is carried out through local parishes and various ministries founded by or otherwise related to the Archdiocese, including Catholic Charities Oklahoma City and All Saints.

22. Saint Ann Retirement Center, Inc. (“Saint Ann”) is a ministry related to the Archdiocese of Oklahoma City. Saint Ann provides independent and assisted living services for elderly adults in a Christian setting. Saint Ann’s facilities include 120 apartments for active, independent adults, and 50 apartments in an Assisted Living Center for individuals who require additional care. Daily mass is celebrated for residents and visitors in a dedicated chapel centrally located in the facility.

23. Another ministry related to the Archdiocese of Oklahoma City is Mount St. Mary High School (“Mount St. Mary”). The oldest high school in Oklahoma, Mount St. Mary was established in 1884 in what was then Indian Territory by five Sisters of Mercy. Today it provides a faith-based, college-preparatory education to approximately 400 high school students. It is the only Catholic school in the United States to be sponsored both by an archdiocese (the Archdiocese of Oklahoma City) and a religious order (the Sisters of Mercy). That unique identity is reflected in Mount St. Mary’s curriculum, where academic pursuits are coupled with an emphasis on Mercy Values, Catholic Social Teachings, and service to others. The school utilizes a block schedule that allows students to leave campus during a “Christian Service” class period to serve at assigned locations. In addition, students participate in “Service Days” each semester, committing a day of work to meet needs around the community. Among other things, Mount St. Mary students pack food boxes for the poor, partner with neighborhood organizations to

make community improvements, collect toys for Catholic Charities Oklahoma City, and minister to senior citizens. Christ-centered community service is an integral part of the education of Mount St. Mary students.

24. The Archdiocese of Oklahoma City operates a self-insured health plan. That is, the Archdiocese does not contract with a separate insurance company for health care coverage. Rather, the Archdiocese itself underwrites the medical costs of plan participants. The plan is administered by Aetna and covers over 1,000 lives.

25. Consistent with Catholic values and teaching, the Archdiocese of Oklahoma City's health plan does not cover CASC services.

26. The plan year for the Archdiocese of Oklahoma City begins July 1.

27. Many of the affiliated Catholic ministries within the Archdiocese of Oklahoma City participate in the archdiocesan plan, including St. Ann, Mount St. Mary, Catholic Charities Oklahoma City, and All Saints. Unlike the Archdiocese, some of these affiliated ministries are not exempt from the Mandate but are eligible for the so-called "accommodation." Absent judicial relief, these ministries will be forced to provide or arrange for CASC coverage for their employees by July 1, 2014.

28. The Archdiocese of Oklahoma City's self-insured 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 Oklahoma City**

29. Catholic Charities Oklahoma City serves the poor, elderly, and oppressed throughout the Archdiocese of Oklahoma City through critical social services programs. Its mission is to provide help and hope to all through the Catholic tradition of service and to make Christ's love a visible and living reality for the persons it serves. The services of Catholic Charities Oklahoma City touch almost every area of human need. They include disaster relief, family counseling, adoption services, emergency rent and utilities assistance, homeless services, health care, refugee resettlement, and immigration services.

30. Catholic Charities Oklahoma City adheres to Catholic social teachings, including those teachings about the sanctity of human life, the care for one's neighbors, and the stewardship of God's creation.

31. One of the ministries of Catholic Charities Oklahoma City is Sanctuary Women's Development Center ("Sanctuary"), which offers social services to help restore feelings of self-worth, confidence, and dignity to homeless and at-risk women in Oklahoma City. Sanctuary provides shower and laundry facilities and assists its visitors through job assistance, life skills development, counseling, and links to other community resources.

32. Holy Family Home in Midwest City, Oklahoma, is also administered by Catholic Charities Oklahoma City. Holy Family Home provides a community living environment for up to twelve women and eight children on a revolving basis, and helps these families overcome barriers to success and achieve self-sufficiency.

33. Through the Sanctuary, Holy Family Home, and similar programs, Catholic Charities Oklahoma City transitioned 98 families into permanent housing in 2013. This is just a small slice of the work that Catholic Charities Oklahoma City does as it carries out the Gospel mandates to love one's neighbor and to be salt and light in the world.

34. Catholic Charities Oklahoma City participates in the Archdiocese of Oklahoma City's self-insured health plan, and the employees of Catholic Charities Oklahoma City are offered insurance through the plan. The plan does not cover CASC services.

### **3. All Saints Catholic School**

35. All Saints Catholic School is a Catholic pre-K through 8 school located in Norman, Oklahoma. The school's mission is to teach children to know, love, and serve God through academic pursuits and service to others. All Saints is supported by four local parishes, including St. Mark the Evangelist Parish, where an all-school mass is held each Wednesday.

36. All Saints serves over 400 students, who learn in an academically rigorous environment while being taught the value of service to others. The All Saints curriculum emphasizes Catholic social teaching, and each class engages in a year-long service project, such as serving at the local food bank or spending time with developmentally disabled children and elderly adults. In 2007, All Saints received national recognition as a National Blue Ribbon School of Excellence by the U.S. Department of Education.

37. All Saints participates in the Archdiocese of Oklahoma City's self-insured health plan, and the employees of All Saints are offered insurance through the plan. The plan does not cover CASC services.

#### **4. Archdiocese of Baltimore**

38. The Archdiocese of Baltimore is that "portion of the people of God" located in the City of Baltimore and nine central and western Maryland counties, "which is entrusted to [the Archbishop of Baltimore] for him to shepherd" in cooperation with his priests. *See* Code of Canon Law, c. 369 (1983). The Archdiocese carries out the spiritual, educational, and social service mission of the Catholic Church in Baltimore and central and western Maryland. Its Archbishop is the Most Reverend William E. Lori. He exercises pastoral care and canonical support for 145 parishes and other Catholic ministries within the Archdiocese.

39. The Archdiocese of Baltimore was the first diocese in the United States, established by the papal bull of 1789. At that time, the boundaries and jurisdiction of the diocese were the same as those of the new Republic. John Carroll, the first Catholic Bishop in the United States, was installed as the Bishop of Baltimore on November 6, 1789.

40. Forty-three days after Bishop Carroll's installation, Maryland ratified the federal Bill of Rights, including the First Amendment with its guarantees of religious freedom.

41. The Archdiocese of Baltimore comprises over 4,800 square miles. Through the parishes and a variety of Catholic organizations within its territory, it carries out the spiritual and practical ministry of the Catholic Church to nearly 500,000 Catholics and hundreds of thousands of others in Baltimore and central and western Maryland.

42. The educational mission of the Archdiocese of Baltimore is carried out, in part, through its Department of Schools, which oversees 69 Catholic high schools, middle schools, elementary schools, and special education schools within the Archdiocese. Together these schools educate over 27,000 students.

43. The charitable mission of the Archdiocese of Baltimore is carried out through local parishes and various ministries founded by or related to the Archdiocese, including child care centers, nursing homes, hospitals, and social services agencies.

44. One such ministry is Msgr. O'Dwyer Retreat House, Inc. ("Retreat House"), which serves the youth of the Archdiocese of Baltimore by providing a peaceful, prayerful place where young people can encounter God and nurture their call as disciples of Jesus in the Catholic tradition. Set on eighteen bucolic acres in the Maryland countryside, the Retreat House allows visitors to "come apart and rest awhile," to reconnect with each other, and to deepen their relationship with God. The Retreat House features different kinds of retreats each year, such as Confirmation Retreats, which help young people come to a fuller understanding of the Catholic sacrament of confirmation; Youth Group Retreats, which provide a time of reflection for young people to gain a clearer understanding of themselves and their relationships with God, family, and friends; and Camp GLOW (God Loves Our World), a week-long residential summer camp for

adults with developmental disabilities. Every year, the Retreat House serves 7,000 to 8,000 youth and adults, primarily from middle schools, high schools, and parishes in the Archdiocese.

45. The Archdiocese of Baltimore operates a self-insured health plan. The plan is administered by Cigna and covers over 5,500 lives.

46. Consistent with Catholic values and teaching, the Archdiocese of Baltimore's health plan does not cover CASC services.

47. The plan year for the Archdiocese of Baltimore begins July 1.

48. Many of the affiliated Catholic ministries within the Archdiocese of Baltimore participate in the archdiocesan plan, including the Retreat House and Catholic Review Media.

## **5. Catholic Review Media**

49. Catholic Review Media is a ministry related to the Archdiocese of Baltimore. Its mission is to provide intergenerational communications that inform, teach, inspire, and engage Catholics and all persons of good will in the mission of Christ through diverse forms of media.

50. Catholic Review Media publishes *The Catholic Review*, Maryland's largest paid biweekly newspaper and the newspaper of record for the Archdiocese of Baltimore. *The Catholic Review* is distributed to nearly 48,000 households throughout the state, offering Catholic news and information from around the world and a Catholic perspective on current events. The paper features columns by Archbishop Lori and other lay and

spiritual leaders in the Archdiocese, and maintains an online presence

([www.catholicreview.org](http://www.catholicreview.org)) with sections such as “Marriage,” “Family Life,” “Relief and Charity,” “Religious Liberty,” and “Vatican News.”

51. Catholic Review Media participates in the Archdiocese of Baltimore’s self-insured health plan, and the employees of Catholic Review Media are offered insurance through the plan. The plan does not cover CASC services.

#### **6. Villa St. Francis Catholic Care Center**

52. Villa St. Francis Catholic Care Center is a Catholic, nonprofit skilled nursing facility founded by the Archdiocese of Kansas City in Kansas. Since 1945, Villa St. Francis has been committed to being the visible expression of Christ’s care and healing love to the frail, elderly, and poor through skilled nursing and rehabilitative care. Approximately 150 patients receive care at Villa St. Francis. Its facilities and services are available to all persons regardless of race, religion, or ability to pay.

53. In providing a comfortable, compassionate, caring environment for its residents and patients, Villa St. Francis believes it is fulfilling Pope John Paul II’s proclamation that “[w]hen the sick, the aged or the dying are abandoned in loneliness, we will stand up and proclaim that they are worthy of love, care and respect.”

54. Villa St. Francis offers health coverage to approximately 100 plan participants under an insured group health plan through Blue Cross and Blue Shield of Kansas City.



55. Consistent with Catholic values and teaching, Villa St. Francis' health plan excludes coverage of CASC services.

56. The plan year for Villa St. Francis begins April 1.

57. Villa St. Francis' plan is not a "grandfathered plan" under the grandfathered plan provisions of Section 1251 of the Affordable Care Act and regulations published thereunder.

## **7. Good Will Publishers**

58. Good Will Publishers is a closely held for-profit corporation headquartered in Gastonia, North Carolina.

59. E. F. Gallagher and his son, E. F. "Bud" Gallagher, Jr.—both Catholic—started Good Will Publishers in 1938 as a Bible distributor. By the 1950s, Good Will Publishers had expanded to become one of the largest distributors of Bibles in the country, with sales representatives in every region of the United States.

60. The principal owners, Robert M. Gallagher, and his wife, Jacquelyn S. Gallagher, are devoted Catholics and seek to operate Good Will Publishers and its affiliated companies (collectively, "Good Will Publishers") in accordance with their Catholic faith.

61. Good Will Publishers has three classes of stock: voting common, nonvoting common, and nonvoting preferred. Robert and Jacquelyn Gallagher own 100 percent of Good Will Publishers' voting common stock and 33 percent of its nonvoting common stock. The Robert M. Gallagher Family Trust owns the remaining 67 percent of

nonvoting common stock. All of the beneficiaries of that trust are Catholic. Seventeen individuals who are either relatives of the Gallaghers, past employees, or relatives of past employees own the nonvoting preferred stock. Thirteen of these seventeen are Catholic.

62. The Good Will Publishers board of directors consists of eleven individuals, ten of whom are Catholic. Currently, one director is a Catholic priest.

63. Good Will Publishers publishes and distributes Bibles, Catholic literature, and other value-oriented and religious books in the Judeo-Christian tradition. It operates through three divisions:

- **The Catholic Marketing Companies.** The Catholic Marketing Companies cater to an explicitly Catholic readership. Saint Benedict Press, LLC is Good Will Publishers' Catholic publishing arm. Its mission is to preserve and promote the spiritual, theological, and liturgical traditions of the Catholic Church. Saint Benedict Press has a retail presence in over 1,500 outlets and sells directly to over 2,000 Catholic parishes. Under a number of imprints, Saint Benedict Press publishes nearly 1,000 titles. These imprints are: TAN Books, which has published "Catholic Classics" for over 45 years and continues to publish books on Thomistic theology, traditional devotions, Church doctrine and history, and the lives of the saints; Catholic Courses, which produces Catholic educational audio and video courses taught by college professors from leading universities; and Neumann Press, which publishes Catholic books for children and Catholic homeschooling text books. Finally, Good Will Publishers, together with Robert Gallagher and James Hetzel (a member of Good Will Publishers' board), founded Trinity Road, LLC d/b/a The Catholic Company. The Catholic Company is the largest distributor of Catholic gifts and products on the internet. It offers thousands of specifically Catholic products such as rosaries, statues, books, medals, and sacramental gifts. Mr. Gallagher and Mr. Hetzel are two of the three managers of Trinity Road, LLC.
- **The Sponsorship Companies.** The Sponsorship Companies publish and distribute customized, keepsake books on behalf of sponsors. Books are specially designed for particular events or occasions and are distributed as gifts to the sponsor's designated recipients. The Sponsorship Companies' unincorporated divisions are: the Heritage Company, which works with funeral homes to create specially designed books that offer comfort, consolation, and

hope to grieving families; the Ambassador Company, which works with elementary schools to develop illustrated children's books focused on character development; Family Business Services, which develops specially designed books for newlyweds, their parents, and couples celebrating hallmark wedding anniversaries; and Public Relations Institute, which distributes customized Christian-oriented children's books for pre-school and child care programs.

- **The Corporate and Organizational Companies.** The Corporate and Organizational Companies consist of Ambassador Services, Inc. and United Memorial Bible Services, Inc. These companies offer customized bereavement products and programs, including bereavement Bibles, to organizational clients seeking to comfort family members and friends when an employee, patient, or member passes away.

64. The Gallaghers' Catholic values permeate Good Will Publishers' operations and policies. Good Will Publishers' products are designed to deepen readers' faith and relationships with God; to touch the hearts and minds of individuals and families; to celebrate and enhance community relationships; and to enable Good Will Publishers' customers to express personal concern for their own employees, patients, and members.

65. One of Good Will Publishers' core values is integrity in dealings with customers, employees, vendors, and others. To that end, Good Will Publishers pays its employees a competitive living wage and provides employees with competitive health benefits through an insured group health plan.

66. For Good Will Publishers, success means more than turning a profit. It means bettering the lives of customers through the company's religious and inspirational products, and bettering the lives of employees through competitive wages and benefits.

67. Good Will Publishers has made a commitment that nothing it publishes will be inconsistent with Catholic teachings. That decision necessarily restricts the

company's customer base and, thus, its revenue and profit potential. But Good Will Publishers has made this choice because it views its publishing and distribution activities not simply as commercial endeavors, but also as religious undertakings.

68. Good Will Publishers considers itself to be “a people business.” It teaches its corporate leaders to exercise virtuous leadership, that is, leadership oriented toward serving others. Humility is at the core of Good Will Publishers' leadership philosophy, and the Gallaghers' believe this is a fulfillment of Jesus' teaching: “He who is greatest among you shall be your servant; whoever exalts himself will be humbled, and whoever humbles himself will be exalted.” Matthew 23:11-12 (Revised Standard Version, Catholic Edition).

69. Reflecting its commitment to the Catholic Church and the Catholic faith, Good Will Publishers regularly makes substantial charitable contributions to Catholic organizations, including the Diocese of Charlotte, the Southern Benedictine Society of North Carolina, Belmont Abbey College, Missionaries of the Poor, the Knights of Malta, and various right-to-life organizations. Good Will Publishers also distributes Bibles and other Catholic literature free of charge to prisons in North Carolina and Jamaica, and to other charitable organizations throughout the world.

70. Good Will Publishers is committed to providing no benefits to its employees inconsistent with Catholic values, and the Good Will Publishers' board of directors has adopted a written policy to that effect.

71. Good Will Publishers sponsors an insured group health plan for its employees through UnitedHealthcare.

72. One of Good Will Publishers' subsidiaries is Saint Benedict Press, LLC, which is part of the Catholic Marketing Companies division. Saint Benedict Press maintains an insured group health plan through Blue Cross and Blue Shield of North Carolina. This plan, maintained separately from Good Will Publishers' primary plan through UnitedHealthcare, contains the same coverage and exclusions as the primary plan. For simplicity, these two plans are together called the "plan."

73. Under North Carolina law, an insurer providing a health benefit plan that provides coverage for prescription drugs or devices must provide coverage for all contraceptive drugs and devices approved by the Food and Drug Administration ("FDA"). *See* N.C. Gen. Stat. § 58-3-178(a). The law creates an exception for plans sponsored by "religious employers," defined as nonprofit entities that meet certain criteria. *See id.* § 58-8-178(e).

74. Before passage of the Affordable Care Act, Good Will Publishers was unaware that its plan covered contraceptives and abortifacients because, unlike the Mandate, North Carolina law is directed to insurers, not to Good Will Publishers as an employer.

75. After passage of the Affordable Care Act, Good Will Publishers' management learned that, as mandated by North Carolina law, Good Will Publishers' plan includes coverage of FDA-approved contraceptives, including abortion-inducing drugs and devices. Good Will Publishers does not qualify for North Carolina's "religious employer" exemption because that exemption excludes for-profit employers.

76. Because of the Mandate, Good Will Publishers' plan also covers sterilization and related counseling.

77. As a result of these laws, Good Will Publishers has had to weigh two Catholic values—that which commends providing family-supportive benefits to employees like health care coverage, and that which disapproves of including CASC services among such benefits.

78. After discovering that its plan covers contraceptives and abortifacients pursuant to North Carolina law, and following implementation of the Mandate, Good Will Publishers has actively sought ways to exclude coverage of CASC services. It has paid substantial additional premiums to acquire a policy that excludes surgical abortion. In 2013, Robert Gallagher sent two letters—one to Good Will Publishers' board, one to its employees—outlining the company's moral objections to the Mandate and explaining that the company was diligently exploring alternatives. On January 28, 2014, Mr. Gallagher and his wife, Jacquelyn, joined an amicus brief filed with the United States Supreme Court in *Sebelius v. Hobby Lobby*, Nos. 13-354, 13-356, a challenge to the Mandate brought by for-profit corporations, including a Christian bookstore chain. Finally, Mr. Gallagher and a Good Will Publishers board member lobbied the North Carolina legislature in an effort to add a conscience-based exemption from the state insurance mandate for for-profit corporations. Unfortunately, these lobbying efforts were unsuccessful.

79. Good Will Publishers welcomed the creation of the Association and the Insurance Company. As explained below, Good Will Publishers' membership in the

Association makes it eligible to sponsor a self-insured health plan and purchase stop-loss coverage from the Insurance Company. Maintaining a self-insured plan would permissibly avoid the North Carolina contraceptive mandate, and through this lawsuit, Good Will Publishers seeks a judicial determination that the federal Mandate is invalid and unenforceable against it and similarly situated employers. With the federal Mandate invalidated and the state mandate lawfully avoided, Good Will Publishers would be able to offer employee health benefits that are not inconsistent with its Catholic faith.

#### **8. The Catholic Benefits Association**

80. 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.

81. The Most Reverend William E. Lori is the Association’s incorporator.

82. 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.

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

84. 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.

85. 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.

86. 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.



87. 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.

88. All the Plaintiff Employers meet the Association’s criteria for being Catholic.

89. 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 86, *supra*) that meet Defendants’ definition of “religious employers” and are exempt from the Mandate. Plaintiffs the Archdiocese of Oklahoma City and the Archdiocese of Baltimore are Group I Members of the Association.
- **Group II Members** are Catholic employers (as defined in paragraph 86, *supra*) that meet Defendants’ definition of “eligible organizations” for purposes of the “accommodation.” Plaintiffs Catholic Charities Oklahoma City, All Saints, Catholic Review Media, and Villa St. Francis are Group II Members of the Association.
- **Group III Members** are Catholic employers (as defined in paragraphs 86 and 87, *supra*) that do not fall into the previous two categories, a group composed largely, if not exclusively, of for-profit employers. Plaintiff Good Will Publishers is a Group III Member of the Association.

90. In addition to almost 1,000 Catholic parish members, the Association has almost 200 employer members with over 40 in each of Groups I, II, and III.

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

92. The Mandate harms the Association's members.

93. The Association is seeking to protect its members' ability to access morally compliant health coverage for their respective employees or agents.

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

95. The Association can adequately represent its members' interests. All 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.

#### **9. The Catholic Insurance Company**

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

97. 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.

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

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

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

101. 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.

102. 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.

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

104. 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.

105. 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).

106. Many of the Association's 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 members arrange for health coverage through the Insurance Company, they are subject to the Mandate or its effects absent the judicial relief sought here.

#### **10. Class Action Plaintiffs**

107. The Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, Villa St. Francis, and Good Will Publishers (the "Class Representatives") bring this action on behalf of themselves and all others similarly situated. The class consists of all employers that: (i) are operated in accordance with Catholic principles and religious teachings and are committed, as part of their religious witness and exercise, to providing health care benefits consistent with Catholic values; (ii) have become or in the future will become members of The Catholic Benefits Association; and (iii) are eligible to purchase stop-loss coverage through The Catholic Insurance Company as part of an arrangement to

provide health care coverage to their employees and former employees and to such employees' dependents.

108. The Archdiocese of Oklahoma City represents a subclass consisting of all Group I Members of the Association that meet the class definition in paragraph 107, *supra*.

109. Catholic Charities Oklahoma City, All Saints, and Villa St. Francis represent a subclass consisting of all Group II Members of the Association that meet the class definition in paragraph 107, *supra*.

110. Good Will Publishers represents a subclass consisting of all Group III Members of the Association that meet the class definition in paragraph 107, *supra*.

**B. Defendants**

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

112. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services. She is sued only in her official capacity.

113. 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.

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

115. 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.

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

117. 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.

**IV. FACTUAL ALLEGATIONS: PLAINTIFFS' BELIEFS AND PRACTICES REGARDING CONTRACEPTION, ABORTION, STERILIZATION, AND RELATED COUNSELING**

118. All Plaintiffs adhere, in belief and practice, to the teachings of the Catholic Church on contraception, abortion, sterilization, and related counseling.

119. 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.”

120. 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.

121. 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.”

122. 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.”

123. 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.”

124. 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.

125. 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.

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

127. In order to avoid engaging in morally illicit acts, materially cooperating with evil, and creating scandal, the Plaintiff Employers sponsor or participate in health plans that exclude coverage of CASC services, except for Good Will Publishers, for whom all morally compliant alternatives have been foreclosed as detailed in paragraphs 73-79, *supra*.

## **V. THE MANDATE: STATUTORY AND REGULATORY BACKGROUND**

### **A. The Affordable Care Act**



128. 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”).

129. 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).

130. 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).

131. 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).

132. 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.*

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

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

135. 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).

136. 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).

137. 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).

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

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

140. 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.*

141. 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).

142. 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).

143. 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).

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

145. 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).

146. 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](http://www.whitehouse.gov/files/documents/health_reform_for_small_businesses.pdf) (last visited Dec. 26, 2013).

147. 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).

148. 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**

149. 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.

150. 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).

151. 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).

152. 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.*

153. 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.

154. 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**

155. 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).

156. 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.*

157. 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.

158. 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.

159. 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.

160. 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.

161. 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.

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

163. 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).

164. 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.

165. 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).

166. 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.

167. 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.*

168. 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.

169. 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”).

170. 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.

171. 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.”).

172. 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.

173. 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**

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

175. 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.

176. 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.

177. “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.

178. 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).

179. 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.

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

181. 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.

182. 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.”

183. 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.\*\*.*

184. 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**

185. 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).

186. 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).

187. 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.

188. 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.

189. 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.

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

191. The safe harbor did not apply to group health plans sponsored by for-profit employers like Good Will Publishers.

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

192. 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.

193. 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).

194. 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”**

195. 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).

196. 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.

197. 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.

198. 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.*



199. 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).

200. 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.

201. 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).

202. 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).

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

204. 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).

205. 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.*

206. 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).

207. 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”).

208. 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[.]”).

209. 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).

210. 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.

211. 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).

212. 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).

213. 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.

214. 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.

215. 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).

216. 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.

217. 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.

218. 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).

219. 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.

220. 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.

## **VI. THE MANDATE VIOLATES FEDERAL LAW.**

221. The Mandate violates federal law. It substantially burdens Plaintiffs’ 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 decisionmakers.

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

222. 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.

223. 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.

224. 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.

225. 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.<sup>1</sup> Finally, they include “integrated auxiliaries” of these ministries. 45 C.F.R. § 147.131(a). Whether an

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<sup>1</sup> 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.

auxiliary is deemed “integrated” depends in part on whether it is internally supported. *See* 26 C.F.R. § 1.6033-2(h)(4).

226. 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.

227. 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 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).

228. 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.



229. 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.

230. 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' Religious Beliefs and Practices.**

231. The decisions of the Plaintiff Employers to provide health plans for their employees and to exclude CASC coverage therefrom qualify as the exercise of religion.

**1. The Mandate's Substantial Burden on Group II Members' Religious Exercise**

232. Group II Members of the Association do not qualify as "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).

233. 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 Piggy Back 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.

234. 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”).

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

236. 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.

237. 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.

238. At its core, the “accommodation” requires Group II Members to engage 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.

239. 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.*

240. 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.

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

242. 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).

243. Defendant Secretary 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).

244. 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.

245. 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.

246. 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.

247. The risk of burden on the Group II Members is immediate. Villa St. Francis' health plan renews on April 1, 2014. The plan in which Catholic Charities Oklahoma City and All Saints participate renews on July 1, 2014. At those times, these organizations must be in compliance with the Final Rules or face severe penalties. Other Group II Members are confronting similar dilemmas.

## **2. The Mandate's Substantial Burden on Group III Members' Religious Exercise**

248. Group III Members of the Association, including Good Will Publishers, do not qualify for the "religious employer" exemption or the "accommodation" under the Final Rules.

249. Under the Mandate, Good Will Publishers is 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.

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

251. 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. In the case of Good Will Publishers, with its 172 employees, the annual fine could be as much as \$6,278,000 or more. Such a fine would force Good Will Publishers 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.

252. Option 3, dropping health care benefits, would burden the Group III employers' exercise of their Catholic values for the same reasons as those alleged in paragraph 246, *supra*.

### **3. The Mandate's Substantial Burden on Group I Members' Religious Exercise**

253. While Group I Members of the Association, including the Archdiocese of Oklahoma City, 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.

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

255. 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.

256. Part of the religious purpose and mission for most Group I Members, including all Group I Members presently, 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.

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

258. For example, the Archdiocese of Oklahoma City sponsors a single, diocese-wide group health plan that provides coverage both for its own employees and for employees of its ministry affiliates. These ministry affiliates include Group II Members of the Association, like Catholic Charities Oklahoma City and All Saints, that do not qualify for the “religious employer” exemption.

259. As a result of the Mandate, the Archdiocese of Oklahoma City and other 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.

260. None of these options is morally acceptable to the Archdiocese of Oklahoma City, the Archdiocese of Baltimore, or the other Group I Members, and each substantially burdens their religious exercise.

**4. The Mandate's Substantial Burden on the Association's and the Insurance Company's Religious Exercise**

261. 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.

262. The Mandate burdens the Association's religious exercise by imposing burdens on its members, including the Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, Villa St. Francis, and Good Will Publishers, and by precluding it from providing them its full range of benefits, including access to the services of its captive insurer.

263. The Insurance Company’s purpose, as stated in its articles, is “consistent with Catholic values, doctrine, and canon law [to] support[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.

264. The Mandate burdens the Insurance Company’s religious exercise by imposing burdens on the Association’s members, including the Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, Villa St. Francis, and Good Will Publishers, each of which is an eligible insured for the Insurance Company, and by precluding the Insurance Company from providing Association members the full range of benefits it otherwise could provide them in the absence of the Mandate.

265. The Mandate substantially burdens all Plaintiffs 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.**

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

267. 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.

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

269. 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.

270. 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.

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

272. Furthermore, Defendants do not have a compelling interest in enforcing the Mandate against Plaintiffs. 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.

273. 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.

274. Under this reasoning, many Group II Members, like Catholic Charities Oklahoma City, All Saints, and Catholic Review Media, 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.

275. 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.

276. Defendants' supposed interest in enforcing the Mandate against Plaintiffs 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 (Jan. 2013).

277. 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.

278. 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.**

279. 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.

280. Secretary Sebelius' statements also show that the Mandate is not neutral. Secretary Sebelius is an avowed advocate for abortion rights and a vocal critic of Plaintiffs' 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 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."

281. 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).

282. 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.**

283. The government has numerous means at its disposal for advancing its goal of expanding access to CASC services.

284. 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.

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

**VII. CLASS ACTION ALLEGATIONS**

286. The Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, Villa St. Francis, and Good Will Publishers (the “Class Representatives”) bring this action on behalf of themselves and all others similarly situated as members of a proposed plaintiff class pursuant to Federal Rule of Civil Procedure 23(a), (b)(1), and (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, risk of incompatible standards, and cohesiveness requirements of those provisions.

287. The class is defined as all employers that are members of the Association, now or in the future, that satisfy the requirements for membership set forth in paragraph 107 *supra*, including without limitation those sponsoring or participating in self-funded plans and are eligible to purchase stop-loss coverage through the Insurance Company.

288. The proposed class includes employers that are not currently known but may join the Association and may purchase insurance through the Insurance Company in the future. Accordingly, joinder is impracticable, and the disposition of the claims of these class members in a single class action will provide substantial benefits to all parties and to the Court.

289. There are three subclasses, drawn from those satisfying the requirements for membership set forth in paragraphs 108-110, *supra*: (1) Group I Members, with the Archdiocese of Oklahoma City serving as their Subclass Representative, (2) Group II Members, with Catholic Charities Oklahoma City, All Saints, and Villa St. Francis serving as their Subclass Representative, and (3) Group III Members, with Good Will Publishers serving as their Subclass Representative.



290. The claims of the Class Representatives for the class and of the Subclass Representatives for their respective subclasses are typical of the claims of the class or subclass in that the Class or Subclass Representatives and all members of the class and the respective subclasses will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and the Mandate.

291. The factual bases of Defendants' actions are common to all class and subclass members. The class and respective subclass members share the same Catholic beliefs regarding the morality of CASC services and cooperation with evil and, therefore, will suffer the same impact and violation of rights.

292. There are questions of law and fact common to the Class Representatives and the class members and Subclass Representatives and subclass members as set forth above.

293. The Class and Subclass Representatives will fairly and adequately protect the interests of the Class and their respective Subclasses. The Class Representatives have retained undersigned counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the class and the respective subclasses, and have the resources to do so. Upon information and belief, the Class Representatives do not have interests adverse to those of the class, and the Subclass Representatives do not have interests adverse to those of their respective subclasses.

294. This case is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(1). Because the Class and Subclass Representatives seek injunctive relief and corresponding declaratory relief for the entire class and their respective subclasses, the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to Defendants and with respect to individual members of the class and subclasses, and would establish incompatible standards of conduct for Defendants. Further, separate adjudications with respect to individual class members would, as a practical matter, give rise to avoidable litigation over whether the separate adjudications are dispositive of the interests of other class members who are not parties and may impair and impede their ability to protect their interests.

295. This case is also maintainable as a class action under Federal Rule of Civil Procedure Rule 23(b)(2) because Defendants have acted and refused to act on grounds generally applicable to the entire class and to the respective subclasses under the same statute and regulations. All members of the class are entitled to a declaration that the Mandate violates RFRA, the First Amendment, and the Administrative Procedure Act. Further, all members of the class will be entitled to an injunction prohibiting Defendants from enforcing the Mandate against them and their contracting parties and from charging or assessing penalties against them for failure to pay for, provide, or directly or indirectly facilitate access to CASC services.

## **VIII. CAUSES OF ACTION**

### **FIRST CLAIM**

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

296. Plaintiffs incorporate by reference all preceding paragraphs.

297. Plaintiffs' 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.

298. Plaintiffs' 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.

299. Plaintiffs' 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.

300. The Mandate requires Plaintiffs 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.

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

302. The Mandate exposes Plaintiffs to significant competitive disadvantages.

303. The Mandate substantially burdens Plaintiffs' exercise of religion.

304. Defendants have no compelling interest in applying the Mandate to Plaintiffs.

305. Applying the Mandate to Plaintiffs is not the least restrictive means of furthering Defendants' interests.

306. By enacting the Mandate and threatening to enforce it against Plaintiffs, Defendants have violated RFRA.

### **SECOND CLAIM**

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

307. Plaintiffs incorporate by reference all preceding paragraphs.

308. 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.

309. 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.

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

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

312. 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.

313. The Mandate's exemption of integrated auxiliaries of churches, coupled with the government's refusal to exempt organizations such as Catholic Charities Oklahoma City, All Saints, Villa St. Francis, and other Group II Members of the Association, is irrational and discriminatory.

314. 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.

315. 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.

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

### **THIRD CLAIM**

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

317. Plaintiffs incorporate by reference all preceding paragraphs.

318. Plaintiffs' 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.

319. Plaintiffs' sincerely held religious beliefs equally prohibit them from contracting or arranging for provision of CASC services by another.

320. Plaintiffs' compliance with these sincerely held religious beliefs constitutes the exercise of religion. Such exercise is protected by the First Amendment Free Exercise Clause.

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

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

323. The Mandate is not neutral.

324. The Mandate was promulgated for the purpose of discriminating against Plaintiffs' sincerely held religious beliefs regarding contraception, abortion, sterilization, and related counseling.

325. The Mandate substantially burdens Plaintiffs' exercise of religion.

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

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

328. By enacting and threatening to enforce the Mandate against Plaintiffs, Defendants have violated the Free Exercise Clause.

#### **FOURTH CLAIM**

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

329. Plaintiffs incorporate by reference all preceding paragraphs.

330. In promulgating the Mandate and refusing to exempt all but a narrow subset of religious organizations, Defendants deliberately targeted religious organizations like Plaintiffs for discriminatory treatment.

331. In eliminating the Piggyback Option in the Final Rules, Defendants deliberately targeted religious organizations like Plaintiffs for discriminatory treatment and sought to suppress their religious exercise.

332. By enacting and threatening to enforce the Mandate against Plaintiffs, Defendants have violated the Free Exercise Clause.

#### **FIFTH CLAIM**

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

333. Plaintiffs incorporate by reference all preceding paragraphs.

334. 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.

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

336. 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.

337. Each Group I and Group II Member of the Association, including the Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, and Villa St. Francis, 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.

338. 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.

339. 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.

340. 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.

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



342. 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**

343. Plaintiffs incorporate by reference all preceding paragraphs.

344. 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.

345. 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.

346. 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.

347. 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.

348. 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.

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

350. 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.

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

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

353. 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**

354. Plaintiffs incorporate by reference all preceding paragraphs.

355. 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.

356. 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.

357. 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.

358. Defendants' actions violate the Plaintiffs' 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**

359. Plaintiffs incorporate by reference all preceding paragraphs.

360. 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.

361. 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.

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

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

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

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

366. 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.

367. 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."

368. 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."

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

370. 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**

371. Plaintiffs incorporate by reference all preceding paragraphs.

372. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of enforcing the Mandate against Plaintiffs and similar organizations.

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

374. 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.

375. Defendant 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.

376. 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**

377. Plaintiffs incorporate by reference all preceding paragraphs.

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

379. 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).

380. 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.

381. The Mandate violates the Weldon Amendment because it discriminates against Plaintiffs by requiring Plaintiffs’ group health plans to provide, pay for, or facilitate access to abortion services.

382. The Mandate violates Section 1303(b)(1)(A) of the Affordable Care Act by requiring Plaintiffs’ group health plans to provide coverage of abortion services.

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

384. 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 violate the Religious Freedom Restoration Act, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs 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 violate the First Amendment to the United States Constitution, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs 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 the Plaintiffs 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' relationships with their insurers or TPAs or with Plaintiffs' 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;
- e. Issue a preliminary injunction and permanent injunction prohibiting Defendants from enforcing the Mandate against Plaintiffs (including all of the Association's members) and the class members; prohibiting Defendants from charging or assessing taxes, penalties, or other burdens against Plaintiffs for failure to pay for, provide, or directly or indirectly facilitate access to CASC services; and prohibiting Defendants from interfering with Plaintiffs' relationships with their insurers or TPAs and with Plaintiffs' attempts to contract for morally compliant health coverage for their employees and members;
- f. Enter an order certifying the proposed plaintiff class, designating the Archdiocese of Oklahoma City, Catholic Charities Oklahoma City, All Saints, Villa St. Francis, and Good Will Publishers as named representatives of the class; designating the Archdiocese of Oklahoma City as named representative of the first subclass consisting of Group I Members of the Association; designating Catholic Charities Oklahoma City, All Saints, and Villa St. Francis as named representatives of the second subclass consisting of Group II Members of the Association; designating Good Will Publishers as named representative as the third subclass consisting of



Group III Members of the Association; and designating the undersigned as Class Counsel;

- g. Award Plaintiffs the costs of this action and reasonable attorney's fees as provided by law, including 42 U.S.C. § 1988(b); and
- h. Award such other and further relief as the Court deems equitable and just.

<Signature on next page>

DATED: March 12, 2014.

Respectfully submitted,

/s/ J. Angela Ables

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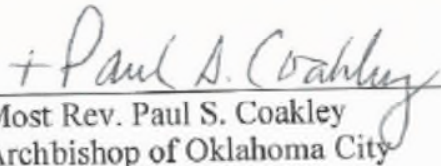
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**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing allegations pertaining to the teachings of the Catholic Church and to the Archdiocese of Oklahoma City, including Catholic Charities of the Archdiocese of Oklahoma City, Inc., All Saints Catholic School, Inc., and other affiliated ministries, are true and correct to the best of my knowledge.

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

Executed on March 7, 2014.

  
\_\_\_\_\_  
Most Rev. Paul S. Coakley  
Archbishop of Oklahoma City  
Vice President, The Catholic Benefits Association LCA  
Vice 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 teachings of the Catholic Church and to the Archdiocese of Baltimore, including The Cathedral Foundation, Inc. d/b/a Catholic Review Media and other affiliated ministries, are true and correct to the best of my knowledge.

I further declare under penalty of perjury that the foregoing allegations pertaining 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 March 7, 2014.



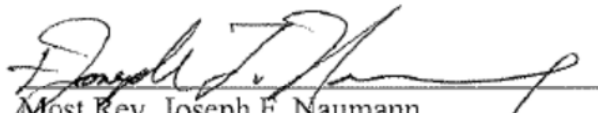
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Most Rev. William E. Lori  
Archbishop of Baltimore  
President, The Catholic Benefits Association LCA  
President, The Catholic Insurance Company, Inc.

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

I declare under penalty of perjury that the foregoing allegations pertaining to the teachings of the Catholic Church and to the Archdiocese of Kansas City in Kansas, including Villa St. Francis Catholic Care Center, Inc., are true and correct to the best of my knowledge.

Executed on March 2, 2014.

  
Most Rev. Joseph F. Naumann  
Archbishop of Kansas City in Kansas

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

I declare under penalty of perjury that the foregoing allegations pertaining to Good Will Publishers, Inc. are true and correct to the best of my knowledge.

Executed on 3-10-14.

  
\_\_\_\_\_  
Robert M. Gallagher  
Chief Executive Officer and Chairman of the Board,  
Good Will Publishers, Inc.