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

THE CATHOLIC BENEFITS ASSOCIATION LCA; THE CATHOLIC INSURANCE COMPANY, INC.	)	
Plaintiffs,	)	
v.	)	Civil Case No. 5:14-cv-00685-R
SYLVIA M. BURWELL, Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; THOMAS E. PEREZ, Secretary of the United States Department of Labor; UNITED STATES DEPARTMENT OF LABOR; JACOB J. LEW, Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF THE TREASURY	)	
Defendants.	)	

AMENDED VERIFIED COMPLAINT

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

I. NATURE OF THE ACTION

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

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

3. The Association brings this action on behalf of a subset of its members consisting of all members who joined the Association after June 4, 2014 (the "Post-June 4 Members").[1] At times herein, Plaintiffs may refer to a seemingly broader category of Association members, such as "Group II Members." Where such a term appears, Plaintiffs intend for it to be read as restricted to Post-June 4 Members that fall into the stated category, unless context dictates otherwise.

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

5. All Post-June 4 Members are Catholic organizations and, as part of their religious witness and exercise, are committed to providing no health care 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,

[1] Plaintiffs' Verified Complaint and Emergency Motion for Temporary Restraining Order filed July 1, 2014, referred to these members as "Post-Injunction Members." For the sake of clarity, Plaintiffs will now refer to these members as "Post-June 4 Members."

sterilization, and related counseling. Such is contrary to Catholic teaching and, thus, to Plaintiffs' and the Post-June 4 Members' sincerely held religious beliefs.

6. Because their faith forbids it, the Post-June 4 Members' health plans do not cover contraception, abortion-inducing drugs or devices, sterilization, and related counseling ("CASC Services").

7. Defendants have promulgated a series of rules that burden the Post-June 4 Members' sincerely held religious beliefs. These rules (collectively, the "Mandate" or "CASC Mandate") require the Post-June 4 Members to provide, pay for, or otherwise directly or indirectly facilitate access to CASC services for their employees.

8. The Post-June 4 Members cannot provide, pay for, or directly or indirectly facilitate access to CASC services without violating the teachings of the Catholic Church. If the Post-June 4 Members fail to comply with the Mandate, however, they face ruinous fines of up to $36,500 per affected beneficiary per year, in addition to other penalties.

9. Defendants have thus put the Post-June 4 Members to a damnable choice: comply with the Mandate and abandon their religious beliefs, or defy the Mandate and face crippling fines and other penalties. The Post-June 4 Members are forced to choose between following the dictates of their conscience or caving to the diktat of the government. Compliance means material cooperation with evil. Defiance means devastating consequences.

10. The Mandate also impermissibly coerces the Association and the Insurance Company. The Association and the Insurance Company exist to enable member

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

11. Federal law prohibits the government from putting Plaintiffs and the Post-June 4 Members to this choice. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1(b), prohibits the government from substantially burdening a person's exercise of religion unless the government can demonstrate that application of the burden to that person is in furtherance of a compelling governmental interest and is the least restrictive means of achieving it. The government cannot meet that standard here. The Mandate likewise violates the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment and the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* ("APA").

12. The CASC Mandate takes effect against Association Members at different points in 2014, on the anniversary of their plan years.

13. Upon completion of their current plan years, many Post-June 4 Members intend to explore remaining or becoming self-funded and contracting with the Insurance Company for stop-loss insurance coverage. Such an arrangement will permissibly avoid state insurance mandates but not the federal Mandate or its effects. Thus, whether or not

the Post-June 4 Members choose to arrange insurance through the Insurance Company, these members' plans will exclude or continue to exclude coverage of CASC services only if they acquire the relief sought in this action.

14. Plaintiffs seek a declaration that the Mandate cannot legally be applied to them or the Post-June 4 Members. Plaintiffs also seek an injunction barring its enforcement against them and the Post-June 4 Members.

II. GENESIS OF THIS LAWSUIT

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

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

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

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

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

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

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

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

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

22. Defendants opposed the Motion to Amend PI in *CBA I*, even though Defendants readily consented to similar relief in a substantially similar case in this Court, *Reaching Souls International, Inc. v. Sebelius*, 2013 WL 6804259 (W.D. Okla. Dec. 27, 2013). There, GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone"), a Protestant Evangelical organization, sought preliminary injunctive relief on behalf of a class consisting of employers that "have adopted *or in the future adopt* the GuideStone Plan to provide medical coverage for their employees." Class Action Complaint, *Reaching Souls International, Inc. v. Sebelius*, No. CIV-13-1092-D (W.D. Okla. Oct. 11, 2013), available at http://www.becketfund.org/wp-content/uploads/2013/10/Reaching-Souls-Complaint.pdf (last visited June 26, 2014).

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

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

24. On June 26, 2014—a mere five days before the Mandate was scheduled to take effect against some of the Post-June 4 Members—the Court denied the Association's Motion to Amend PI. *See* Order, *The Catholic Benefits Ass'n v. Sebelius*, No. 5:14-cv-00240-R (W.D. Okla. June 26, 2014) [hereinafter "Order Denying Motion to Amend"]. The Court reasoned that, when it entered the PI Order, it was "well aware of the possibility of the [Association] subsequently adding new members," and it "decided not to extend the relief to future members of the [Association], which necessarily includes those entities that acquired membership in the [Association] even a few days after the Court's entry of the preliminary injunction." *Id.* at 3. Although the Motion to Amend PI explained that the Mandate was bearing down on new members and new members were in acute need of relief, the Court was "unpersuaded that there is any need to act in order to correct clear error or prevent manifest injustice." *Id.* The Court concluded that new

members were “not left without the means to protect their interests” because “they are free to seek their own relief.” *Id.*

25. Employers have continued to join the Association after June 4. Between June 4 and July 1, when Plaintiffs filed the present lawsuit, the CBA accepted approximately 151 new member employers plus around 958 more parish employers. Each of these members satisfies the Association’s strict membership criteria, and pays or agrees to pay the requisite dues and fees. These are the “Post-June 4 Members” referred to above.

26. Because the Post-June 4 Members were denied relief in *CBA I*, the Association has filed this action on their behalf.

III. JURISDICTION AND VENUE

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

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

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

30. In addition, a substantial part of the events or omissions giving rise to the claims occurred in this district. The Association has done significant work for its members in this district, and it is presently a plaintiff in a substantially similar case in this district (*CBA I*) in which its then-current members were granted preliminary injunctive relief. The present case arises out of both the Court's refusal in *CBA I* to extend preliminary relief to the Association's Post-June 4 Members and the Court's express recognition that the Post-June 4 Members are "free to seek their own relief." Also, the Insurance Company would be harmed by the application of the Mandate in this district because the Mandate prohibits it from participating in and providing morally compliant insurance arrangements for Association members.

IV. PARTIES

A. Plaintiffs

1. The Catholic Benefits Association

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

organized "[t]o support Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values"; "[t]o work and advocate for religious freedom of Catholic and other employers seeking to conduct their ministries and businesses according to their religious values"; "[t]o make charitable donations to Catholic ministries"; and "[t]o incorporate . . . one or more Catholic insurance companies, in furtherance of the Association's purposes." *See* Ex. 1, Articles of Organization of The Catholic Benefits Association LCA ("CBA Articles"), art. IV.

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

33. All of the Association's directors are Catholic archbishops. Three-fourths of its directors are required to be Catholic. *See* Ex. 2, Bylaws of The Catholic Benefits Association LCA ("CBA Bylaws) art. 5.2.

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

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

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

Ex. 2, "CBA Bylaws, art. 5.13.2.

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

37. The Bylaws of the Association provide that "[a]n employer shall satisfy the requirement of being Catholic if either the employer is listed in the current edition of *The Official Catholic Directory* or the secretary or his or her designee makes such a determination." Ex. 2, CBA Bylaws, art. III, § 3.1.1.

38. The Bylaws further provide that a for-profit employer seeking membership in the Association "shall be deemed Catholic only if (i) Catholics (or trusts or other entities wholly controlled by such Catholic individuals) own 51% or more of employer, (ii) 51% or more of the members of the employer's governing body, if any, is comprised of Catholics, and (iii) either the employer's owners or governing body has adopted a written policy stating that the employer is committed to providing no benefits to the employer's employees or independent contractors inconsistent with Catholic values." Ex. 2, CBA Bylaws, art. III, § 3.1.2.

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

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

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

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

42. When Plaintiffs filed the present lawsuit, the Association had around 570 employer members plus over 3,000 parish employer members, including over 150 Post-June 4 employer members plus over 950 Post-June 4 parish employer members.

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

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

45. The Mandate harms the Association's Post-June 4 Members.

46. The Association is seeking to protect Post-June 4 Members' ability to access morally compliant health coverage for their respective employees or agents.

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

48. The Association can adequately represent Post-June 4 Members' interests. All Post-June 4 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 the employees of their affiliates in violation of their sincerely held Catholic beliefs.

2. The Catholic Insurance Company

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

50. 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." Ex. 3, Certificate of Incorporation for The Catholic Insurance Company ("CIC Certificate"), art. IV, *see also* Ex. 4, Bylaws of the Catholic Insurance Company, Inc. ("CBA Bylaws"), art. 3.1.

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

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

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

54. 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. 3, CIC Certificate, art. IV.

55. 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. 4, Bylaws of The Catholic Insurance Company ("CIC Bylaws") art. 8.5.

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

57. 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.

58. 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. 3, CIC Certificate, art. IV; Ex. 4, CIC Bylaws 3.1(i).

59. Many of the Association's members, including Post-June 4 Members, have indicated a desire to maintain self-funded health plans and seek stop-loss coverage through the Insurance Company. Even under these arrangements, however, the Association's Group II and Group III Members will not avoid the Mandate or its effects. Thus, whether or not Post-June 4 Members arrange for health coverage through the Insurance Company, they are subject to the Mandate or its effects absent the judicial relief sought here.

B. <u>Post-June 4 Members</u>

60. Each of the Association's Post-June 4 Members satisfies the same membership criteria that every Association member has been required to satisfy from the founding of the Association. These Post-June 4 Members include, by way of example, the Roman Catholic Diocese of Norwich and its affiliates, among others, Catholic Charities and Family Services, Diocese of Norwich, Inc. ("Catholic Charities and Family Services").

1. Roman Catholic Diocese of Norwich

61. The Roman Catholic Diocese of Norwich is that "portion of the people of God," located in eastern Connecticut and Fisher Island, New York, "which is entrusted to [the Bishop of Norwich] for him to shepherd with his priests. *See* Code of Canon Law, c.

369 (1983). The Diocese carries out the spiritual, educational, and social service mission of the Catholic Church in eastern Connecticut. The Bishop of Norwich exercises pastoral care for more than 80 parishes and missions and other Catholic ministries within the Diocese.

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

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

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

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

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

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

68. Many of the affiliated ministries within the Roman Catholic Diocese of Norwich participate in the diocesan plan, including Catholic Charities and Family Services, Diocese of Norwich, Inc. Unlike the Diocese, some of these affiliated ministries are not exempt from the Mandate but are eligible for the so-called "accommodation."

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

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

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

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

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

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

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

C. Defendants

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

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

77. 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.

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

79. 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.

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

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

V. FACTUAL ALLEGATIONS: PLAINTIFFS' AND POST-JUNE 4 MEMBERS' BELIEFS AND PRACTICES REGARDING CONTRACEPTION, ABORTION, STERILIZATION, AND RELATED COUNSELING

82. The Post-June 4 Members, like all Association members, adhere in belief and practice to the teachings of the Catholic Church on contraception, abortion, sterilization, and related counseling.

83. 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."

84. 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.

85. 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."

86. 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."

87. 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."

88. 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.

89. 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.

90. As Catholic institutions, Plaintiffs and the Post-June 4 Members believe they must adhere to the above teachings as matters of religious faith and doctrine. Consequently, Plaintiffs and the Post-June 4 Members believe that the use or procurement of contraception, abortion-inducing drugs and devices, sterilization, or related counseling is contrary to the Catholic faith. Plaintiffs and the Post-June 4 Members further believe, as part of their faith, that they must not provide, pay for, or directly or indirectly facilitate access to such services and, therefore, that they must not include CASC benefits in their group health plans.

91. On September 12, 2014, the CBA Ethics Committee, consisting of four Catholic archbishops, convened to reexamine the CASC Mandate in light of the Defendants' August 27, 2014, Interim Final Rules. Having concluded their examination, the Ethics Committee adopted this resolution: "that the use of contraceptives, abortion-inducing drugs and devices, sterilization, and counseling in support of such options ('CASC services') is contrary to Catholic values. A Catholic employer, therefore, cannot, consistent with Catholic values, comply with the government's CASC mandate, with the 'accommodation' provided to 'eligible employers,' or with the 'augmented accommodation'—unless such an employer has exhausted all alternatives that do not effect a greater evil and unless such an employer has taken reasonable steps to avoid giving scandal."

92. In order to avoid engaging in morally illicit acts, materially cooperating with evil, and creating scandal, the Post-June 4 Members sponsor or participate in health plans that exclude coverage of CASC services.

VI. THE MANDATE: STATUTORY AND REGULATORY BACKGROUND

A. The Affordable Care Act

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

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

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

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

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

98. As discussed below, it is through these comprehensive guidelines supported by the Health Resources and Services Administration that Defendants are attempting to force the Post-June 4 Members to provide, pay for, or directly or indirectly facilitate access to CASC services in violation of their religious beliefs.

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

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

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

102. Any employer (other than a "religious employer" and an employer providing coverage under a grandfathered plan) that sponsors a group health plan but

fails to offer required coverage for women's "preventive care" is subject to an excise tax of $36,500 per affected beneficiary per year. 26 U.S.C. § 4980D(b), (e)(1).

103. None of the above mandates is generally applicable. Each is subject to significant qualifications and exceptions. "All told, the contraceptive mandate 'presently does not apply to tens of millions of people.'" *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2763 (2014) (quoting *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1143 (10th Cir. 2013)).

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

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

106. The HCSM exemption applies to only three organizations: Samaritan Ministries International, Christian Care Ministry, Inc. (through its "Medi-Share" program), and Christian Healthcare Ministries, Inc. Each organization is Evangelical Protestant on Mennonite in its founding. *See* Samaritan Ministries, Healthcare for People of Biblical Faith, http://samaritanministries.org/healthreform/ (last visited Feb. 23, 2014) (explaining exemption); Medi-Share, How Does Medi-Share Work?,

http://mychristiancare.org/exemption.aspx (last visited Feb. 23, 2014) (same); Christian Healthcare Ministries, Is Christian Healthcare Ministries Included in U.S. Health Care Legislation?, http://www.chministries.org/downloads/ACAInsert.pdf (last visited Feb. 23, 2014) (same).

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

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

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

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

111. By the government's own estimates, the small-employer exemption exempts 96 percent of all employers in the United States. These small employers employ nearly 34 million workers. *See* The White House, The Affordable Care Act Increases

Choice and Saving Money for Small Businesses, at 1, http://www.whitehouse.gov/files/documents/health_reform_for_small_businesses.pdf (last visited Dec. 26, 2013).

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

113. Estimates indicate that 37 percent of employers that sponsor group health plans have at least one grandfathered plan and that 26 percent of all employees are enrolled in such a plan. *See* Kaiser Family Foundation, *Employer Health Benefits: 2014 Annual Survey*, at 252, *available at* http://files.kff.org/attachment/2014-employer-health-benefits-survey-full-report (last visited Oct. 2, 2014). By the government's own estimates, 98 million individuals were enrolled in grandfathered group health plans in 2013. *See* 75 Fed. Reg. 41,726, 41,732 (July 19, 2010).

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

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

115. The Act provides that "[n]otwithstanding any other provision of this title (or any amendment made by this title) . . . nothing in this title (or any amendment made by this title), shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." 42 U.S.C. § 18023(b)(1)(A)(i). The Act also provides that "the issuer of a qualified health

plan shall determine whether or not the plan provides coverage of [abortion] services . . . as part of such benefits for the plan year." *Id.* § 18023(b)(1)(A)(ii).

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

117. In addition, the Weldon Amendment—a feature of every appropriations act for HHS since 2005—provides, "None of the funds made available in this Act [making appropriations for the Departments of Labor and HHS] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011). The term "health care entity" includes "a health insurance plan." *Id.*

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

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

C. Regulatory Background

1. The 2010 Interim Final Rules and the IOM Guidelines

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

121. Defendants did not permit notice and public comment prior to issuance of the 2010 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 2010 Interim Final Rules further stated that "it is essential that participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities." *Id.*

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

123. Despite the alleged urgent necessity of the 2010 Interim Final Rules and the supposed need for immediate "certainty" concerning coverage requirements, the 2010 Interim Final Rules did not define "preventive care" services for women. They instead provided that "HHS is developing these guidelines and expects to issue them no later than August 1, 2011." *Id.* at 41,731.

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

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

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

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

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

128. On July 19, 2011, IOM published its report ("Report") identifying the women's preventive services that should be subject to mandatory coverage. In Recommendation 5.5 of the Report, IOM recommended mandatory coverage for "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity." IOM, *Clinical Preventive Services for Women: Closing the Gaps* (July 2011), at 10, *available for download at* http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx (last visited Oct. 1, 2014).

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The Amended 2010 Interim Final Rules and the "Religious Employer" Exemption

139. On August 1, 2011, Defendants promulgated regulations amending the 2010 Interim Final Rules. *See* 76 Fed. Reg. 46,621 (Aug. 3, 2011).

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

141. In response to these comments, Defendants amended the 2010 Interim Final Rules "to provide HRSA additional discretion to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. at 46,623.

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

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

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

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

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

147. Even so, under the amended 2010 Interim Final Rules, Defendants contemplated that the religious employer exemption would apply to "plans established *or maintained* by religious employers." 76 Fed. Reg. at 46,626 (emphasis added). So written, the exemption applied on a plan-by-plan basis and would allow a religious

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

148. Consistent with the amended 2010 Interim Final Rules, HRSA exercised its discretion to exempt "religious employers" from the requirement to cover CASC services. HRSA did so via a footnote on its website. *See* HRSA Guidelines n.**.

149. As they had done before, Defendants promulgated the amended 2010 Interim Final Rules without notice or opportunity for public comment, determining that "an additional opportunity for public comment would be impractical and contrary to the public interest." 76 Fed. Reg. at 46,624.

3. The Safe Harbor

150. After the amended 2010 Interim Final Rules were issued, Defendants received "over 200,000 responses" addressed to the religious employer exemption. 77 Fed. Reg. 8,725, 8,726 (Feb. 15, 2012).

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

152. On February 10, 2012, Defendants "finalize[d], without change," the amended 2010 Interim Final Rules and maintained the definition of "religious employer." 77 Fed. Reg. at 8,725.

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

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

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

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

4. The Advance Notice of Proposed Rulemaking

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

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

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

5. The Final Rules and the Purported "Accommodation"

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

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

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

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

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

165. Defendants justified this distinction between "religious employers" and "eligible organizations" by reasoning that "houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if

such services were covered under their plan." 78 Fed. Reg. at 39,874. Defendants drew this conclusion without reviewing the available evidence, and the conclusion is not supported by substantial evidence.

166. 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 original self-certification form, EBSA Form 700, is attached as Ex. 5.

167. An eligible organization that executes the self-certification and sends it to its insurance provider or its third party administrator "is considered to comply with any requirement" to provide CASC services. 78 Fed. Reg. at 39,897; 45 C.F.R. § 147.131(e)(2).

168. Upon receipt of the self-certification, an insurer under a group health plan purportedly must "[e]xpressly exclude [CASC] coverage from the group health coverage provided in connection with the group health plan" and purportedly must "[p]rovide separate payments for any [CASC] services . . . for plan participants and beneficiaries for so long as they remain enrolled in the plan." 78 Fed. Reg. at 39,895; 26 C.F.R. § 54.9815-2713A(c)(2); 26 C.F.R. § 54.9815-2713AT(c)(2).

169. 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); 26 C.F.R. § 54.9815-2713AT(b)(2).

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

171. The Final Rules state that the self-certification form "shall be an instrument under which the plan is operated." 78 Fed. Reg. at 39,894; 29 C.F.R. § 2510.3-16(b). The original self-certification form likewise states that it is "an instrument under which the plan is operated." *See* Ex. 5, EBSA Form 700 ("Form 700").

172. By executing and delivering the certification form, the eligible organization makes the TPA both the plan administrator and the claims administrator for contraceptive services provided under the 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[.]").

173. 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. 78 Fed. Reg. at 39,894-95; 26 C.F.R. § 54.9815-2713A(b)(1)(ii).

174. 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. 78 Fed. Reg. at 39,894-95; 26 C.F.R. § 54.9815-2713A(b)(2); 29 C.F.R. § 2510.3-16(b).

175. A purpose of the self-certification form, therefore, is to require the TPA to deliver CASC benefits to the eligible organization's covered employees. 78 Fed. Reg. at 39,894; 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").

176. 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 directly. *See* 78 Fed. Reg. at 39,894-95; 26 C.F.R. § 54.9815-2713A(b), (c).

177. 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* 78 Fed. Reg. at 39,894-95; 26 C.F.R. § 54.9815-2713A(b), (c). Thus, an employee's receipt of CASC services is directly tied to the employee's enrollment in the eligible organization's group health plan, and coverage of the CASC services ceases when the employee ceases to be enrolled in the plan.

178. 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).

179. The insurer or TPA must also provide written notice of the availability of CASC benefits to an eligible organization's employees at the same time that the TPA delivers other plan enrollment materials. 78 Fed. Reg. at 39,893-96; 26 C.F.R. § 54.9815-2713A(d); 29 C.F.R. § 2590.715-2713A(d); 45 C.F.R. § 147.131(d).

180. 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.

181. The Final Rules require the eligible organization to make its TPA, for the first time, a fiduciary "under section 3(16) of ERISA." 78 Fed. Reg. at 39, 879, 39,894; 29 C.F.R. § 2510.3-16(b). 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.

182. Section 3(16) of ERISA, 29 U.S.C. 1002(16), states that the term "administrator" means "the person specifically so designated by the terms of the instrument under which the plan is operated" or, "if an administrator is not so designated, the plan sponsor."

183. 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." 78 Fed. Reg. at 39,893 at 26 C.F.R. § 54.9815-2713A(b)(1)(iii).

184. Thus, under the Final Rules, 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.

185. 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.

186. 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).

187. 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.

188. The Affordable Care Act ("ACA") imposes a "medical loss ratio" on insurers: if the insurer pays out less than 85% of total premiums in claims, the difference must be refunded to the plan sponsor. 42 U.S.C. § 300gg-18(b)(1)(A)(i) and (b)(1)(B).

189. The Final Rules promise "guidance that an issuer . . . that makes payments for contraceptive services [under the accommodation] may treat those payments as an adjustment to claims costs for purposes of medical loss ratio . . . calculations." 78 Fed. Reg. at 39,878. This "adjustment" would "compensate[] for any increase in incurred claims associated with making payments for contraceptive services." *Id.* As a result, insured employers who enter into the accommodation will nevertheless share in paying the premiums for CASC services.

190. 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.

6. *Hobby Lobby* and Defendants' Proposed Rules

191. On June 30, 2014, the Supreme Court held in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), that Defendants' CASC Mandate, "as applied to closely held corporations, violates RFRA. *Id.* at 2785.

192. The Court held that the CASC Mandate substantially burdened the for-profit businesses' religious exercise and that Defendants had failed to satisfy the "least-restrictive means standard." *Id.* at 2779, 2783.

193. On August 27, 2014, Defendants published Proposed Rules "in light of" *Hobby Lobby* that would extend the accommodation to "certain closely held for-profit entities." 79 Fed. Reg. 51,118, 51,122 (Aug. 27, 2014).

194. The Proposed Rules propose for comment "two possible approaches to defining a qualifying closely held for-profit entity." *Id.*

195. The Proposed Rules will not be adopted until, at the earliest, October 21, 2014, the close of the notice-and-comment period. *See* 79 Fed. Reg. at 51,119.

7. *Wheaton College* and Defendants' Augmented Accommodation

196. On July 3, 2014, the Supreme Court issued an order in *Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014), granting the nonprofit plaintiff an injunction against the CASC Mandate pending appellate review, without forcing Wheaton College to sign and submit the self-certification form. Instead, Wheaton College merely had to inform the Secretary of HHS in writing that it is a religious nonprofit and "has religious objections

to providing coverage for contraceptives." 134 S. Ct. at 2807. The Court did not require Wheaton College to disclose its TPA's contact information.

197. On August 27, 2014, Defendants issued Interim Final Rules in order to "augment" the July 2013 Final Rules "in light of" the Supreme Court's order in *Wheaton College*. 79 Fed. Reg. 51,092, 51,092 (Aug. 27, 2014).

198. The Interim Final Rules leave the original accommodation in place and merely create "an alternative to the EBSA Form 700 method of self-certification." 79 Fed. Reg. at 51,094.

199. Under this new "alternative," an employer must send a notice to HHS that not only states its name, that it is a religious non-profit, and that it objects to some or all CASC services; it must also provide "the plan name and type" and "the name and contact information for any of the plan's third party administrators and health insurance issuers." 26 C.F.R. 54.9815-2713AT(b)(1), (c)(1); 29 C.F.R. § 2590.715-2713A(b)(1), (c)(1).

200. The "augmented" accommodation also requires the employer to update HHS if any of this information changes. 26 C.F.R. 54.9815-2713AT(b)(1), (c)(1); 29 C.F.R. § 2590.715-2713A(b)(1), (c)(1).

201. If the employer participating in the "augmented" accommodation has an insured group health plan, HHS "will send a separate notification to each of the plan's health insurance issuers that the Secretary of [HHS] has received a notice" and "describing the obligations of the issuer" under 26 C.F.R. § 54.9815-2713AT & -2713A (Treasury) and 29 C.F.R. 2590.715-2713A (Labor). *See* 26 C.F.R. § 54.9815-2713AT(c)(1)(ii); 29 C.F.R. § 2590.715-2713A(c)(1)(ii).

202. If the employer participating in the "augmented" accommodation has a self-insured group health plan, "the Department of Labor (working with the Department of [HHS]), shall send a separate notification to each of the plans' third party administrators that [HHS] has receive a notice" and "describing the obligations of the third party administrator" under 26 C.F.R. § 54.9815-2713AT & -2713A (Treasury), 29 C.F.R. § 2510.3-16 (Labor), and 29 C.F.R. § 2590.715-2713A (Labor). *See* 26 C.F.R. § 54.9815-2713AT(c)(1)(ii); 29 C.F.R. § 2590.715-2713A(c)(1)(ii).

203. The regulatory obligations of insurers and TPAs are the same under the original and the augmented accommodation. 26 C.F.R. § 54.9815-2713AT(c)(2)-(4); 29 C.F.R. § 2590.715-2713A(c)(2)-(4).

204. If an employer with a self-insured plan submits a notice to HHS, the Departments claim that the Department of Labor's notice to third party administrators "will be an instrument under which the [employer's] plan is operated and shall supersede any earlier designation [of a plan administrator]." 79 Fed. Reg. at 51,095; 29 C.F.R. § 2510.3-16(b).

205. The Departments assert that the Department of Labor has the ability to affect these changes under "its broad rulemaking authority under Title I of ERISA, which includes the ability to interpret and apply and apply the definition of a plan administrator under ERISA section 3(16)(A)." *Id.*

206. Under the accommodation (including the augmented accommodation), the moment an eligible organization contracts with an insurer, the insurer becomes obligated to provide coverage for CASC services as part of its insurance policy. While the

accommodation and the augmented accommodation may provide two mechanisms for an employer to satisfy the CASC mandate and avoid employer liability, they do not provide any avenue by which an employer's insurer can abstain from providing CASC coverage. Thus, for Group II Members, it is impossible to contract with an insurer without triggering coverage for CASC services.

207. Along with the Interim Final Rules, Defendants issued a revised EBSA Form 700. This revised self-certification form is attached as Ex. 6. The revised form states that instead of signing and submitting it to the employer's insurer or TPA, an "eligible organization" may "[a]lternatively" "provide notice to the Secretary of [HHS]." Ex. 6, EBSA Form 700 (revised August 2014) ("Aug. 2014 Form 700) at 1.

208. The revised Form 700 describes what the alternative notice to the Secretary of HHS must contain and provides a link to a model notice that meets these requirements. *Id*. at 2; *see also* http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Model-Notice-8-22-14.pdf ("Model Notice").

209. The revised Form 700 informs eligible organizations that "[t]his form or a notice to the Secretary [of HHS] is an instrument under which the plan is operated." *Id.* at 2.

210. The Interim Final Rules formally withdraw the "gag order" described in paragraph 183 above by "delet[ing] the language" in the Final Rules "prohibiting an eligible organization from interfering with or seeking to influence a third party administrator's decision or efforts to provide separate payments for contraceptive services." 79 Fed. Reg. at 51,095.

211. Defendants have removed this "non-interference provision" because they believe that "other state and federal laws" already prohibit the speech targeted by the July 2013 Final Rules. *Id*. The Defendants therefore maintain that the "gag order" described in the previous paragraph is still in place and is simply enforced through separate means.

VII. THE MANDATE VIOLATES FEDERAL LAW.

212. The Mandate violates federal law. It substantially burdens Plaintiffs' and the Post-June 4 Members' religious practices, intentionally discriminates against their religious practices, intrudes upon their internal decisions, restricts their speech, compels them to convey a morally repugnant message, prohibits them from associating with others in an effort to provide health benefits consistent with their moral values, and creates a religious caste system of the favored and disfavored. The Mandate is also the result of arbitrary and capricious action by Defendants, including an improper delegation of their regulatory authority to a nongovernmental and ideologically biased panel of unaccountable decision makers.

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

213. 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.

214. 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), 1402(g), 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.

215. 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 or Mennonite in its founding. The government closed this option to Catholics and other religious groups by limiting this exemption to organizations formed before December 31, 1999.

216. 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.[2] Finally, they include "integrated auxiliaries" of these ministries. 45 C.F.R. § 147.131(a). Whether an

[2] *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).

217. 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.

218. 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).

219. 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, *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th

Cir. 2013) (No. 12-6294), attached as Ex. 7. The United States Supreme Court rejected this argument. *Burwell v. Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751, 2768-75 (2014).

220. 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.

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

B. <u>The Mandate Substantially Burdens Plaintiffs' and the Post-June 4 Members' Religious Beliefs and Practices.</u>

222. The decisions of the Post-June 4 Members to provide health plans for their employees and to exclude CASC coverage therefrom qualify as the exercise of religion.

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

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

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

group health plan under the so-called accommodation, (5) provide a group health plan under the augmented accommodation, or (6) cease providing health care coverage.

225. 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").

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

227. 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.

228. Option 4, entering into the accommodation by signing and submitting Form 700, burdens Group II Members' exercise of their Catholic values.

229. Entering into the accommodation by using Form 700 substantially burdens the religious exercise of self-insured Group II Members' 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 self-insured 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.

230. The Mandate and the "accommodation" affect CBA members with insured plans differently.

a. When a CBA member contracts with an insurer, that insurer is automatically obligated to provide "coverage" for CASC services as part of the contracted plan or coverage. *See* 42 U.S.C. § 300gg-13(a).

b. Defendants' state that insurers' payments for CASC services under the accommodation "are not benefits under a health insurance policy." 78 Fed. Reg. at 29,876.

c. However, under 42 U.S.C. § 300gg-13(a), Defendants only have the authority to require "insurers" to provide CASC services as part of a contracted obligation to provide "group or individual health insurance coverage."

d. Defendants do not cite any statute that authorizes them to impose on insurers a direct obligation to supply CASC services.

e. To the contrary, Defendants tacitly admit that an insurers' duty under the accommodation to "provide payments for contraceptive services for plan participants and beneficiaries, separate from the group health plan" is *merely* "a federal regulatory requirement." 78 Fed. Reg. at 39,876.

f. The Final Rules' "medical loss ratio" promise—that "an issuer . . . that makes payments for contraceptive services [under the accommodation] may treat those payments as an adjustment to claims costs for purposes of medical loss ratio . . . calculations," 78 Fed. Reg. at 39,878—confirms that even under the accommodation CASC services are being provided by CBA members through their own health care plans.

231. At its core, the Mandate and the "accommodation" require Group II Members to engage and cause a surrogate to provide benefits that their religious values

prevent them from providing, and to do so through the members' own plans. The "accommodation," therefore, does not alleviate Group II Members' religious objections to the Mandate.

232. 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.*

233. 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.

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

235. 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).

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

> We have just completed the open comment period for the so-called accommodation and by August 1st of this year, every employer will be covered by the law with one exception. Churches and church diocese [sic] as employers are exempted from this benefit. But, Catholic hospitals, Catholic universities, other religious entities, *will be providing coverage* to their employees starting August 1st.
>
> . . .
>
> [W]e are about to promulgate the final rule and as of August 1st, 2013, every employee who doesn't work directly for a church or a diocese will be included in the benefit package.

See Kathleen Sebelius, Remarks at The Forum at Harvard School of Public Health (Apr. 8, 2013), *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius/ (last visited March 2, 2014) (emphasis added).

237. 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.

238. Then-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.

239. Option 5, entering into the accommodation by way of the alternative notice to HHS described in Defendants' August 27, 2014, Interim Final Rules, does not alleviate these burdens.

240. Before and after the Interim Final Rules, the accommodation has the same goal: "preserving participants' and beneficiaries access" to CASC services. 79 Fed. Reg. at 51,092.

241. Before and after the Interim Final Rules, the accommodation works by forcing a self-insured employer to amend its plan and appoint its TPA as the plan administrator for CASC services. See 78 Fed. Reg. at 39,879-80; 79 Fed. Reg. at 51,095; 29 U.S.C. § 1002(16)(A)(i) (a plan administrator is designated "by the terms of the instrument under which the plan is operated").

242. Before and after the Interim Final Rules, the accommodation has the same effect: "Regardless of whether the eligible organization self-certifies in accordance with the July 2013 final rules [using Form 700], or provides notice to HHS in accordance with the August 2014 [Interim Final Rules], the obligations of insurers . . . are the same." The Center for Consumer Information & Insurance Oversight, *Fact Sheet: Women's*

Preventive Services Coverage, Non-Profit Religious Organizations, and Closely-Held For-Profit Entities, http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html.

243. Thus, under the "augment[ed]" accommodation, Group II Members and their plans remain the central cog in Defendants' "mechanism" for delivering CASC services to the employers' employees and beneficiaries. 79 Fed. Reg. at 51092.

244. Option 6, 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.

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

245. The Post-June 4 Members who qualify as Group III Members of the Association are not eligible for the "religious employer" exemption or the "accommodation" under the Final Rules.

246. While Defendants have issued a Proposed Rule that would extend the accommodation and augmented accommodation to some or all Group III Members, the definition of "eligible organizations" from the July 2013 Final Rules, which excludes all for-profit employers, is still law.

247. Under the Mandate, Group III Members are now 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.

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

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

250. Option 3, dropping health care benefits, would burden Group III Members' exercise of their Catholic values for the same reasons as those alleged in paragraph 244, *supra*.

251. If and when Defendants offer the accommodation and augmented accommodation to Group III Members, their religious exercise will be still be burdened; the accommodation and augmented accommodation are unacceptable to Group III Members for all the reasons these rules are unacceptable to Group II Members, as described in paragraphs 223 to 244, *supra.*

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

252. While the Post-June 4 Members who qualify as Group I Members of the Association are exempt from the Mandate with regard to the health care coverage they provide for their own employees and, in the cases of dioceses and archdioceses, the employees of their parishes, the Mandate nevertheless burdens Group I Members' religious exercise.

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

254. 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.

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

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

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

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

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

259. 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. 1, CBA Articles, 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.

260. The Mandate burdens the Association's religious exercise by imposing burdens on the Post-June 4 Members, and by precluding the Association from providing the Post-June 4 Members its full range of benefits, including access to the services of its captive insurer.

261. The Insurance Company's purpose, as stated in its articles, is "consistent with Catholic values, doctrine, and canon law [to] suppor[t] Catholic employers . . . that, as part of their religious witness and exercise, provide health or other benefits to their respective employees in a manner that is consistent with Catholic values." Ex. 3, CIC Certificate, art. IV; *see also* Ex. 4, CIC Bylaws, art. 3.1.

262. The Mandate burdens the Insurance Company's religious exercise by imposing burdens on the Association's Post-June 4 Members, each of which is an eligible insured for the Insurance Company, and by precluding the Insurance Company from providing Post-June 4 Members the full range of benefits it otherwise could provide them in the absence of the Mandate.

263. The Mandate substantially burdens Plaintiffs and the Post-June 4 Members by requiring participation in an activity prohibited by their sincerely held Catholic beliefs, preventing participation in conduct consistent with their sincerely held Catholic beliefs, and placing substantial pressure on them to engage in conduct contrary to their

sincerely held Catholic beliefs. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1138 (10th Cir. 2013).

C. The Mandate Is Not a Generally Applicable Law, and Defendants Have No Compelling Interest in Enforcing It Against Plaintiffs or the Post-June 4 Members.

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

265. 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.

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

267. 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.

268. 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.

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

270. Furthermore, Defendants do not have a compelling interest in enforcing the Mandate against Plaintiffs or the Post-June 4 Members. The requirement to cover CASC services applies to some, but not nearly all, employers, and confers benefits on some, but not nearly all, employees. The Mandate thus leaves appreciable damage to Defendants' supposedly vital interest unprohibited and unregulated.

271. 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.

272. Under this reasoning, many Group II Members should also be exempt because, as Catholic organizations, they are just as likely as exempt "religious employers"—and more likely than secular, non-Catholic organizations—to employ persons of the Catholic faith who have the same religious objections to CASC services. Even so, Defendants may not condition a religiously based exemption on whether an organization's employees share the same beliefs with, or have the same intensity of beliefs as, the organization itself.

273. 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.

274. Defendants' supposed interest in enforcing the Mandate against the Post-June 4 Members is further undermined by Defendants' admission that it *cannot* enforce the Mandate against TPAs that administer self-insured church plans for eligible organizations. Defendants' August 27, 2014, Interim Final Rules concede that because "[c]hurch plans are exempt from ERISA," a "third party administrator of a self-insured church plan cannot become the plan administrator by operation of 29 CFR [§] 2510.3-16, although such third party administrators may voluntarily provide or arrange separate payments for contraceptive services." 79 Fed. Reg. at 51,095 n.8. Defendants made a similar concession before the Supreme Court in January 2014. *See* Mem. for Resp'ts in

Opp'n, at 15, *Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius*, Case No. 13A691 (U.S. Jan. 3, 2014) (Defendants 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.").

275. 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 compel any party to deliver CASC services to the beneficiaries of the church plan.

276. 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. <u>The Mandate Is Not Neutral.</u>

277. 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.

278. Statements of Defendant Secretary Burwell's predecessor, Secretary Sebelius, also show that the Mandate is not neutral. Secretary Sebelius is an avowed advocate for abortion rights and a vocal critic of Plaintiffs' and the Post-June 4 Members' religious teachings and beliefs regarding the sanctity of life. On October 5, 2011, Secretary Sebelius spoke at a NARAL Pro-Choice America fundraiser where she criticized individuals and organizations like Plaintiffs and the Post-June 4 Members that object to CASC benefits on religious grounds. She stated that "[w]e are in a war," referring to religious opponents of the Mandate. She also stated, "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much."

279. 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).

280. 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. <u>The Mandate Is Not the Least Restrictive Means of Furthering the Government's Interests.</u>

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

282. 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.

283. Each of these avenues would more directly advance the government's interest and simultaneously avoid the substantial burden on Plaintiffs' and the Post-June 4 Members' religious practices imposed by the Mandate. In particular, the Post-June 4 Members would not be conscripted as conduits for delivery of CASC services to their employees, as they are under the Mandate.

284. Defendants have admitted that they did not consider any such alternatives before issuing the Final Rules. *See* Ex. 8, Transcript of Gary M. Cohen Deposition, *Roman Catholic Archdiocese of New York v. Sebelius* (D.Ct. E.D.N.Y. April 16, 2013).

VIII. CAUSES OF ACTION

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

285. Plaintiffs incorporate by reference all preceding paragraphs.

286. The Post-June 4 Members' sincerely held religious beliefs prohibit them from in any way paying for, providing, or facilitating access to CASC benefits, including by maintaining a group health plan that covers or otherwise provides access to these services.

287. The Post-June 4 Members' sincerely held religious beliefs equally prohibit them from contracting or arranging for provision of CASC services through a surrogate, such as an insurer or TPA.

288. The Post-June 4 Members' compliance with these sincerely held religious beliefs constitutes the exercise of religion, and such exercise is protected by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

289. The Mandate requires the Post-June 4 Members to provide, pay for, or directly or indirectly facilitate access to or to contract or arrange for provision of CASC services for their employees in violation of their sincerely held religious beliefs.

290. By threatening the Post-June 4 Members with ruinous fines and other penalties for failure to comply, the Mandate puts substantial pressure on the Post-June 4 Members to abandon their religious beliefs or engage in conduct that violates their religious beliefs.

291. The Mandate exposes the Post-June 4 Members to significant competitive disadvantages.

292. The Mandate substantially burdens the Post-June 4 Members' exercise of religion.

293. Defendants have no compelling interest in applying the Mandate to the Post-June 4 Members.

294. Applying the Mandate to the Post-June 4 Members is not the least restrictive means of furthering Defendants' interests.

295. By enacting the Mandate and threatening to enforce it against the Post-June 4 Members, Defendants have violated RFRA.

SECOND CLAIM

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

296. Plaintiffs incorporate by reference all preceding paragraphs.

297. 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.

298. 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.

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

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

301. 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.

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

303. 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.

304. 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.

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

THIRD CLAIM

Violation of the Free Exercise Clause, Substantial Burden

306. Plaintiffs incorporate by reference all preceding paragraphs.

307. The Post-June 4 Members' sincerely held religious beliefs prohibit them from in any way paying for, providing, or directly or indirectly facilitating access to CASC benefits, including by maintaining a group health plan that covers or otherwise provides access to these services.

308. The Post-June 4 Members' sincerely held religious beliefs equally prohibit them from contracting or arranging for provision of CASC services by another.

309. The Post-June 4 Members' compliance with these sincerely held religious beliefs constitutes the exercise of religion. Such exercise is protected by the First Amendment Free Exercise Clause.

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

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

312. The Mandate is not neutral.

313. The Mandate was promulgated for the purpose of discriminating against the Post-June 4 Members' sincerely held religious beliefs regarding contraception, abortion, sterilization, and related counseling.

314. The Mandate substantially burdens the Post-June 4 Members' exercise of religion.

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

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

317. By enacting and threatening to enforce the Mandate against the Post-June 4 Members, Defendants have violated the Free Exercise Clause.

FOURTH CLAIM

Violation of the Free Exercise Clause, Intentional Discrimination

318. Plaintiffs incorporate by reference all preceding paragraphs.

319. In promulgating the Mandate and refusing to exempt all but a narrow subset of religious organizations, Defendants deliberately targeted religious organizations like the Post-June 4 Members for discriminatory treatment.

320. In eliminating the Piggyback Option in the Final Rules, Defendants deliberately targeted religious organizations like the Post-June 4 Members for discriminatory treatment and sought to suppress their religious exercise.

321. By enacting and threatening to enforce the Mandate against the Post-June 4 Members, Defendants have violated the Free Exercise Clause.

FIFTH CLAIM

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

322. Plaintiffs incorporate by reference all preceding paragraphs.

323. 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.

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

325. 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.

326. Each Group I and Group II Member of the Association, including the Post-June 4 Members that fall into these categories, has made an internal decision, dictated by its Catholic faith, that the health plans it makes available to its employees may not provide, pay for, or directly or indirectly facilitate access to CASC services.

327. 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.

328. 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.

329. 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.

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

331. 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

332. Plaintiffs incorporate by reference all preceding paragraphs.

333. 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.

334. 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.

335. 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.

336. 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.

337. 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.

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

339. 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.

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

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

342. 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

343. Plaintiffs incorporate by reference all preceding paragraphs.

344. 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.

345. 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.

346. 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.

347. Defendants' actions violate Plaintiffs' and the Post-June 4 Members' right not to be subjected to a system of unbridled discretion when engaging in speech or religious exercise, as secured to them by the First Amendment to the United States Constitution.

EIGHTH CLAIM

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

348. Plaintiffs incorporate by reference all preceding paragraphs.

349. 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.

350. 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.

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

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

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

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

355. 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.

356. 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."

357. 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."

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

359. 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**

360. Plaintiffs incorporate by reference all preceding paragraphs.

361. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of enforcing the Mandate against the Post-June 4 Members and similar organizations.

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

363. 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 and is not supported by substantial evidence.

364. Defendant Secretary Burwell's predecessor, Secretary Sebelius, in remarks made at Harvard University on April 8, 2013, essentially conceded that the Defendants completely disregarded the religious liberty concerns submitted by thousands of religious organizations and individuals.

365. 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

366. Plaintiffs incorporate by reference all preceding paragraphs.

367. The Weldon Amendment prohibits Defendants HHS and the Department of Labor from discriminating against a group health plan, including those maintained by the Post-June 4 Members, on the basis that the plan fails to provide, pay for, provide coverage of, or refer for abortions.

368. 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).

369. 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.

370. The Mandate violates the Weldon Amendment because it discriminates against the Post-June 4 Members by requiring these members’ group health plans to provide, pay for, or facilitate access to abortion services.

371. The Mandate violates Section 1303(b)(1)(A) of the Affordable Care Act by requiring the Post-June 4 Members’ group health plans to provide coverage of abortion services.

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

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

ELEVENTH CLAIM

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

374. Plaintiffs incorporate by reference all preceding paragraphs.

375. Defendants' regulations claim that the Department of Labor has the authority to unilaterally amend private health plans and appoint administrators by virtue of its "broad rulemaking authority . . . to interpret the definition of plan administrator under ERISA section 3(16)(A)(i) [29 U.S.C. § 1002(16)(A)(i)]." 78 Fed. Reg. at 39,880; *id.* at 51,095.

376. The statute referenced, 29 U.S.C. § 1002(16)(A)(i), states that an administrator is designated "by the terms of the instrument under which the plan is operated."

377. Only the employer, as plan sponsor, may establish and maintain a plan and create and issue instruments under which the plan is operated. The only person with authority to amend the plan is the person expressly designated by the plan documents as having such authority.

378. The Department of Labor has no authority, statutory or otherwise, to establish and maintain a plan for employees of a private employer, to create or issue instruments under which a private employer's plan is operated, or to amend a private employer's plan.

379. Defendants' new "federal regulatory requirement" that insurers under the accommodation must "provide payments for contraceptive services for plan participants

and beneficiaries, separate from the group plan," has no basis in 42 U.S.C. § 300gg-13(a) or in any other statute.

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

TWELFTH CLAIM

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

381. Plaintiffs incorporate by reference all preceding paragraphs.

382. Defendants' Mandate relies almost entirely on an IOM Report commissioned by Defendant HHS.

383. The IOM Report does not demonstrate a direct causal link between the CASC Mandate and furthering the Defendants' asserted interests.

384. The IOM Report acknowledges that it did not have enough time to perform an adequate review.

385. The IOM Report includes a dissenting opinion that Defendants failed to give adequate consideration.

386. The Defendants' and IOM's factual determinations are not supported by substantial evidence.

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

PRAYER FOR RELIEF

Wherefore Plaintiffs request that the Court:

a. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs and the Post-June 4 Members violate the Religious Freedom Restoration Act, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs, the Post-June 4 Members, these members' employee health insurance plans, or their plan brokers, plan insurers, or third party administrators, for failure to pay for, provide, or directly or indirectly facilitate access to CASC services, including any penalties under 26 U.S.C. §§ 4980D and 4980H;

b. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs and the Post-June 4 Members violate the First Amendment to the United States Constitution, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs, the Post-June 4 Members, these members' employee health insurance plans, or their plan brokers, plan insurers, or third party administrators, for failure to pay for, provide, or directly or indirectly facilitate access to CASC services, including any penalties under 26 U.S.C. §§ 4980D and 4980H;

c. Declare that the Mandate was issued in violation of the Administrative Procedure Act, and that no taxes, penalties, or other burdens can be charged or assessed against Plaintiffs, the Post-June 4 Members, these members' employee health insurance plans, or their plan brokers, plan insurers, or third party administrators,

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

d. Declare that Defendants may not interfere with Plaintiffs' or the Post-June 4 Members' relationships with their insurers or TPAs, or with Plaintiffs' or the Post-June 4 Members' attempts to contract for morally compliant health coverage for their employees and members, and that no taxes, penalties, or other burdens can be charged or assessed against such insurers or TPAs in relation to their work for Plaintiffs and the Post-June 4 Members;

e. Issue a preliminary injunction and permanent injunction prohibiting Defendants from enforcing the Mandate against Plaintiffs and the Post-June 4 Members; prohibiting Defendants from charging or assessing taxes, penalties, or other burdens against Plaintiffs, the Post-June 4 Members, these members' employee health insurance plans, or their plan brokers, plan insurers, or third party administrators, for failure to pay for, provide, or directly or indirectly facilitate access to CASC services;

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

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

DATED: October 3, 2014.

Respectfully submitted,

_s/ L. Martin Nussbaum__________________

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sdg

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

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

I further declare under penalty of perjury that Exhibit 1 attached hereto is a true and accurate copy of the Articles of Organization of The Catholic Benefits Association LCA, Exhibit 2 is a true and accurate copy of the Bylaws of The Catholic Benefits Association LCA, Exhibit 3 is a true and accurate copy of the Certificate of Incorporation of the Catholic Insurance Company, Inc., and Exhibit 5 is a true and accurate copy of the Bylaws of the Catholic Insurance Company, Inc.

Executed on October 2, 2014.

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

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

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

Executed on October 2, 2014.

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

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ L. Martin Nussbaum
L. Martin Nussbaum