IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

Dr. JAMES C. DOBSON, and
FAMILY TALK,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services;
THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor;
JACOB J. LEW, in his official capacity as Secretary of the United States Department of the Treasury;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
UNITED STATES DEPARTMENT OF LABOR; and
UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

VERIFIED COMPLAINT

Plaintiffs Dr. James C. Dobson and Family Talk, by their attorneys, state as follows:

NATURE OF THE ACTION

1. This lawsuit challenges the 2010 Patient Protection and Affordable Care Act and implementing regulations issued by Defendants, that together compel religious employers like Family Talk either to include in its employee healthcare plan free coverage for drugs and devices

that may induce abortion, cause its third party administrator to provide the same, or pay ruinous fines. This requirement, including its basis under statutes, regulations, agency decisions, and penalties, is referred to hereinafter as "the Mandate."

2. Dr. James C. Dobson is a believing and practicing Evangelical Christian. Dr. Dobson is the Founder, President and Chairman of the Board of Directors of Family Talk. Dr. Dobson and Family Talk morally reject, as an abortion, the prevention of implantation of an early human embryo, and therefore they oppose the facilitation of "contraceptives" that can cause such an effect.

3. Family Talk is a religious corporation "formed for the express purposes of spreading and propagating the Gospel of Jesus Christ and to provide Christ-oriented advice, counsel, guidance and education to parents and children and to speak to cultural issues that affect the family." Family Talk believes that God has condemned the intentional destruction of innocent human life. Family Talk holds, as a matter of religious conviction, that it would be sinful and immoral for the organization intentionally to participate in, pay for, facilitate, enable, or otherwise support access to abortion or early destruction of human life. Family Talk holds that one of the prohibitions of the Ten Commandments ("thou shalt not murder") precludes them from facilitating, assisting in, or enabling the coverage of arrangements for payments for drugs that can and do destroy very young human beings in the womb.

4. Family Talk does not qualify for the extraordinarily narrow religious exemption from the regulations. That exemption protects only "churches, their integrated auxiliaries, and conventions or associations or churches" and "the exclusively religious activities of any religious order."

5. For purely secular reasons, the government has elected not to impose the challenged regulations upon thousands of other organizations. Employers with "grandfathered" plans and favored others are exempt from these rules.

6. Defendants have offered entities like Plaintiffs a so-called "accommodation" of their religious beliefs and practices. However, the alleged accommodation does not eliminate Plaintiffs' moral and religious objections to the regulations. The accommodation conscripts Plaintiffs into the government's scheme, forcing them to obtain a third-party claims administrator and to submit a form that specifically triggers the third-party administrator's duty to arrange payment for the objectionable drugs. Such coverage will thus apply to Plaintiffs' own employees (including Dr. Dobson) as a direct consequence of their employment with Plaintiffs and of their participation in the health insurance benefits Plaintiffs provide them.

7. Under the supposed accommodation, Defendants continue to treat entities like Family Talk as second-class religious organizations, not entitled to the same religious freedom rights as substantially similar entities that qualify for the exemption. Defendants' rationale for entirely exempting churches and integrated auxiliaries from the regulations is that their employees are likely to share their religious convictions. That rationale applies equally to Family Talk. Yet, Defendants refuse to exempt Family Talk, offering only a superficial "accommodation" that falls woefully short of addressing and resolving Plaintiffs' moral and religious objections.

8. If Plaintiffs follow their religious convictions and decline to participate in the government's scheme, they will face, among other injuries, enormous fines that will cripple their operations.

9. By placing Plaintiffs in this untenable position, Defendants have violated the Religious Freedom Restoration Act; the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment to the United States Constitution; the Due Process Clause of the Fifth Amendment; and the Administrative Procedure Act.

10. Plaintiffs therefore respectfully request that this Court vindicate their rights through declaratory and preliminary and permanent injunctive relief, among other remedies.

IDENTIFICATION OF PARTIES AND JURISDICTION

11. Plaintiff James C. Dobson is the Founder, President, and Chairman of the Board of Family Talk. He is a resident of Colorado Springs, Colorado. He makes, implements, and oversees decisions relating to Family Talk's health insurance plan.

12. Plaintiff Family Talk is a California nonprofit religious corporation whose offices are located in Colorado Springs, Colorado.

13. Defendants are appointed officials of the United States government and United States executive branch agencies responsible for issuing and enforcing the Mandate.

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

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

16. Defendant Thomas E. Perez is the Secretary of the United States Department of Labor. In this capacity, he has responsibility for the operation and management of the Department of Labor. Perez is sued in his official capacity only.

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

18. Defendant Jacob J. Lew is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Lew is sued in his official capacity only.

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

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

21. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to the claim occurred in this district, and at least one of the Plaintiffs is located in this district.

FACTUAL ALLEGATIONS

I. Plaintiffs' Religious Beliefs and Provision of Religious Services

22. Family Talk was established by Dr. Dobson in 2009 for the "express purpose of spreading and propagating the Gospel of Jesus Christ and specifically to provide Christ-oriented advice, counsel, guidance and education to parents and children and to speak to cultural issues that

affect the family." (Certificate of Amended and Restated Articles of Incorporation of Family Talk, ¶ 2; Family Talk Bylaws, Article I).

23. The centerpiece of Plaintiffs' religious work is a 30-minute daily radio broadcast entitled "Dr. James Dobson's Family Talk" that is "strategically designed to reach the younger generation with the Judeo-Christian worldview of the family." DR. DOBSON'S MINISTRY & HISTORY, http://drjamesdobson.org/about/history (last visited Dec. 4, 2013).

24. Plaintiffs also operate a website and publish a monthly newsletter to communicate a Christian message to families.

25. Family Talk's Mission Statement is "[t]o help preserve and promote the institution of the family and the biblical principles on which it is based, and to seek to introduce as many people as possible to the gospel of Jesus Christ. Specifically, the focus of the ministry is on marriage, parenthood, evangelism, the sanctity of human life and encouraging righteousness in the culture." WHAT WE BELIEVE, http://drjamesdobson.org/ about/Statement-of-Faith (last visited Dec. 4, 2013).

26. Reaffirming its biblically based, Christ-centered mission, Family Talk has adopted a Statement of Faith that reads:

Family Talk believes:

- The Bible to be the inspired, only, infallible, authoritative Word of God.
- That there is one God, eternally existent in three persons: Father, Son and Holy Spirit;
- In the deity of our Lord Jesus Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily

resurrection, in His ascension to the right hand of the Father and in his personal return in power and glory;

- That for salvation of lost and sinful men and women, regeneration by the Holy Spirit is absolutely essential;
- In the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a godly life;
- In the resurrection of both the saved and the lost, they who are saved unto the resurrection of life and they who are lost unto the resurrection of damnation;
- And in the spiritual unity of believers in our Lord Jesus Christ.

WHAT WE BELIEVE, http://drjamesdobson.org/about/Statement-of-Faith (last visited Dec. 4, 2013).

27. Under the direction of Dr. Dobson, Family Talk draws its employees from among those who profess and demonstrate a strong commitment to the Christian faith.

28. As part of Family Talk's employment application, a prospective employee must provide a statement describing the applicant's "spiritual journey and where you are today in your walk with the LORD Jesus Christ." (Family Talk Application for Employment at 3). The applicant must also acknowledge that he or she has "read, understand[s], and agree[s] with all parts of the Family Talk Statement of Faith and Mission Statement" and affirm that "[i]f hired, I agree to uphold these beliefs in my personal, daily life and to help Family Talk pursue its mission." (*Id*. at 5).

29. Family Talk's Employee Manual explains that "Family Talk expressly reserves the right, as a religious corporation, to base its hiring practices on the religious affiliation, Christian lifestyle, and conviction of its employees." (Family Talk Employee Manual at 8).

30. Family Talk has 28 full-time employees.

II. The Religious Beliefs of Family Talk Regarding Abortion

31. One of the religious and moral teachings that Plaintiffs embrace, based on the belief that the Bible is the authoritative Word of God, is that a preborn child is, from the moment of conception, a human being created in the image of God. See, e.g., Ps. 51:5; 139:13; Luke 1:41-44; 18:15; 2 Tim. 3:15. By "conception" Plaintiffs mean when the sperm and egg unite, also referred to as fertilization.

32. Based on the Bible's religious and moral teachings, Plaintiffs sincerely believe that the termination of the life of a preborn child by, among other means, abortion-inducing drugs and devices, and related education and counseling, including by means of acting after fertilization to prevent the newly formed embryo from implanting into his or her mother's uterus, is an intrinsic evil and a sin against God for which Plaintiffs will be held accountable. Therefore, abortion and any abortifacient drug, device, or procedure that may terminate the life of a newly formed embryo by preventing or disrupting its implantation is morally wrong to Plaintiffs.

33. Dr. Dobson, who is the Founder, President, and Chairman of the Board of Directors of Family Talk, seeks to conduct the operations of Family Talk with integrity and in compliance with these religious and pro-life beliefs. Family Talk, by its principles, decisions, and policies, also seeks to conduct its operations in compliance with these beliefs.

34. Consequently, Plaintiffs believe that it would be immoral for them to knowingly and intentionally participate in, pay for, facilitate, enable, or otherwise support abortion-inducing or implantation-preventing drugs, abortifacient items, and related education and counseling, through the provision of coverage or causing arrangements for payments as required by the HHS Mandate.

35. Plaintiffs have repeatedly affirmed their unwavering commitment to the sanctity of human life.

36. Family Talk's Mission Statement emphasizes that one of the organization's focuses is on "the sanctity of human life." WHAT WE BELIEVE, http://drjamesdobson.org/about/Statement-of-Faith (last visited Dec. 4, 2013).

37. On the Family Talk website, in response to a question on whether it is ethical to harvest tissue from fetuses for research, Dr. Dobson emphasized that "I will oppose it for as long as I have breath within my body" because it violates the fundamental respect for the sanctity of life. OKAY TO HARVEST FETAL TISSUE FOR RESEARCH?, http://drjamesdobson.org/Solid-Answers/Answers?a=cd25b823-3ba1-4855-8265-61a2c5506b6f (last visited Dec. 4, 2013).

38. Similarly, when asked about whether civil disobedience is a permissible response to prevent abortion, Dr. Dobson responded that "[w]e are law-abiding people and do not advocate violence or obscene and disrespectful behavior, but to be sure, we will follow that higher moral code nonviolently to rescue innocent, defenseless babies." DR. DOBSON'S POSITION ON CIVIL DISOBEDIENCE TO PREVENT ABORTION, http://drjamesdobson.org/Solid-Answers/Answers?a=f7a17816-4cfc-45f9-b8f3-401ab4092573 (last visited Dec. 4, 2013).

39. For the past three years during the month of January, Plaintiffs have dedicated an entire week of their daily radio show to pro-life issues.

40. For example, during the week of January 23–27, 2012, the Family Talk radio show focused each day's broadcast on the Sanctity of Life with titles such as "The Value of One Life, Part 1 and Part 2" and "All Life is Sacred." *See* http://drjamesdobson.org/Broadcasts/archive?YEAR=2012&MONTH=1 (last visited Dec. 4, 2013).

41. In fact, during the introduction to the January 25, 2012 broadcast, Dr. Dobson explained that "[t]he sanctity of human life is one of the pillars, one of the core principles, of what we believe in, what we are trying to do here as a ministry. It is an integral part of my deepest beliefs." *See* http://drjamesdobson.org/Broadcasts/Broadcast?i=2f4d05c5-b69c-4f62-b5f3-998ca02e6bcc (last visited Dec. 4, 2013).

42. Plaintiffs again dedicated a week of their radio shows to the Sanctity of Life between January 21–25, 2013. Topics included Dr. Dobson's interview with an individual who was nearly aborted by his parents. Later in the week, Dr. Dobson's son, Ryan Dobson, interviewed pro-life advocate Lila Rose who encouraged listeners to become more involved in seeking to end the practice of abortion. *See* http://drjamesdobson.org/Broadcasts/archive?YEAR=2013&MONTH=1 (last visited Dec. 4, 2013).

43. In sum, Plaintiffs not only hold sincere religious beliefs about the intrinsic evil of abortion, but they also regularly and consistently promote this belief through their radio show, newsletter, website, and other activities and communications to the public.

IV. Plaintiffs' Group Health Insurance Plans

44. To fulfill its Christian beliefs and commitments and organizational mission, Family Talk promotes the spiritual and physical well-being and health of its employees. This includes the provision of generous health insurance to its employees.

45. Approximately 23 Family Talk employees are enrolled in its health insurance plans. Approximately 37 dependents of employees are covered. The plans thus cover approximately 60 individuals. Dr. Dobson and his family are among those covered by the plan.

46. Family Talk maintains a partially self-insured group plan for its employees, in which the organization acts as its own insurer. Family Talk has contracted with a stop-loss provider and a third-party administrator.

47. The plan year for Family Talk's employee health insurance coverage begins on May 1 of each year.

48. Family Talk's employee health plan does not possess "grandfathered" status because it and its precursors did not exist until April 1, 2010, shortly after Family Talk was founded.

49. Consistent with its religious commitments, Family Talk's employee health coverage specifically excludes surgical abortion, as well as abortion-inducing drugs or devices that may destroy the life of an embryo after fertilization either pre- or post- implantation, specifically referencing IUDs and "emergency contraception" such as Plan B and Ella. The plan also excludes coverage for any counseling or referrals to promote or refer for surgical abortions, such abortion-inducing drugs, and IUDs.

V. The ACA and Defendants' Mandate Thereunder

50. In March 2010, Congress passed, and President Obama signed, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 11-152 (March 30, 2010), together known as the "Affordable Care Act" (ACA).

51. The ACA regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

52. One ACA provision requires that any "group health plan" or "health insurance issuer offering group or individual health insurance coverage" provide coverage for certain preventive care services. 42 U.S.C. § 300gg-13(a).

53. These services include screenings, medications, and counseling given an "A" or "B" rating by the United States Preventive Services Task Force; immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and "preventive care and screenings" specific to infants, children, adolescents, and women that are subsequently "provided for in comprehensive guidelines supported by the Health Resources and Services Administration," an HHS sub-agency. 42 U.S.C. § 300gg-13(a)(1)–(4).

54. These services must be covered without "any cost sharing." 42 U.S.C. § 300gg-13(a).

The Interim Final Rule

55. On July 19, 2010, HHS published an interim final rule regarding the ACA's requirement that certain preventive services be covered without cost sharing. 75 Fed. Reg. 41726, 41728 (2010).

56. HHS issued the interim final rule without a prior notice of rulemaking or opportunity for public comment. Defendants determined for themselves that "it would be impracticable and contrary to the public interest to delay putting the provisions . . . in place until a full public notice and comment process was completed." 75 Fed. Reg. at 41730.

57. Although Defendants suggested in the Interim Final Rule that they would solicit public comments after implementation, they stressed that "provisions of the Affordable Care Act protect significant rights" and therefore it was expedient that "participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities." *Id*.

58. Defendants stated they would later "provide the public with an opportunity for comment, but without delaying the effective date of the regulations," demonstrating their intent to impose the regulations regardless of the legal flaws or general opposition that might be manifest in public comments. *Id*.

59. In addition to reiterating the ACA's preventive services coverage requirements, the Interim Final Rule provided further guidance concerning the Act's restriction on cost sharing.

60. The Interim Final Rule makes clear that "cost sharing" refers to "out-of-pocket" expenses for plan participants and beneficiaries. 75 Fed. Reg. at 41730.

61. The Interim Final Rule acknowledges that, without cost sharing, expenses "previously paid out-of-pocket" would "now be covered by group health plans and issuers" and that those expenses would, in turn, result in "higher average premiums for all enrollees." *Id.*; *see also id*. at 41737 ("Such a transfer of costs could be expected to lead to an increase in premiums.")

62. After the Interim Final Rule was issued, numerous commenters warned against the potential conscience implications of requiring religious individuals and organizations to include

certain kinds of services—specifically contraception, sterilization, and abortion services—in their health care plans.

63. HHS directed a private health policy organization, the Institute of Medicine (IOM), to make recommendations regarding which drugs, procedures, and services all health plans should cover as preventive care for women.

64. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be included in health plans by force of law. These were the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists (ACOG), John Santelli, the National Women's Law Center, National Women's Health Network, Planned Parenthood Federation of America, and Sara Rosenbaum.

65. No religious groups or other groups that opposed government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters.

66. On July 19, 2011, the IOM published its preventive care guidelines for women, including a recommendation that preventive services include "[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures" and related "patient education and counseling for women with reproductive capacity." Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, at 102-10 and Recommendation 5.5 (July 19, 2011).

67. FDA-approved contraceptive methods include birth-control pills; prescription contraception; abortifacient birth control methods (which may destroy an embryo after fertilization either pre- or post- implantation), including devices such as IUDs, emergency contraception such as Plan B (also known as the "morning-after pill") and its chemical cognates,

and ulipristal (also known as "ella" or the "week-after pill"); and other drugs, devices, and procedures.

68. Some of these drugs and devices—including "emergency contraceptives" such as Plan B and ella and IUDs—are known abortifacients, in that they can cause the death of an embryo by preventing it from implanting in the wall of the uterus.

69. Indeed, the FDA's own Birth Control Guide states that Plan B and its cognates, ella, and IUDs can work by "preventing attachment (implantation) to the womb (uterus)." FDA, Office of Women's Health, Birth Control Guide at 16-18, *available as* Addendum to Brief of Appellants at 50, *Hobby Lobby Stores Inc. v. Sebelius*, No. 12-6294, ECF Doc. No. 010189999834 (10th Cir. filed Feb. 11, 2013).

70. The manufacturers of some of the drugs, methods, and devices in the category of "FDA-approved contraceptive methods" indicate that they can function to cause the demise of an early embryo.

71. The requirement for related "education and counseling" accompanying abortifacients, sterilization, and contraception necessarily covers education and counseling given in favor of such items, even though it might also include other education and counseling. Moreover, it is inherent in a medical provider's decision to prescribe one of these items that she is taking the position that use of the item is in the patient's best interests, and therefore her education and counseling related to the item will be in favor of its proper usage.

72. On August 1, 2011, a mere 13 days after IOM published its recommendations, HRSA issued guidelines adopting them in full. *See* http://www.hrsa.gov/womensguidelines (last visited Dec. 4, 2013).

73. Non-exempt, non-grandfathered insurance plans were required to provide coverage consistent with these guidelines in the first plan year beginning on or after August 1, 2012.

74. Any non-exempt employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the Mandate) to heavy fines up to $100 per employee per day, *i.e.*, up to $36,500 per employee per year. The ACA also makes such employers vulnerable to lawsuits by the Secretary of Labor and by plan participants.

The Religious Employer Exemption

75. On the very same day HRSA rubber-stamped the IOM's recommendations, HHS promulgated an additional interim final rule regarding the preventive services mandate. 76 Fed. Reg. 46621 (published Aug. 3, 2011).

76. This Second Interim Final Rule declared that HRSA possesses "*discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46621, 46623 (emphasis added). The term "religious employer" was restrictively defined as one that (1) has as its purpose the "inculcation of religious values"; (2) "primarily employs persons who share the religious tenets of the organization"; (3) "serves primarily persons who share the religious tenets of the organization"; and (4) "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 46626 (emphasis added).

77. The statutory citations in the fourth prong of this test refer 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).

78. The "religious employer" exemption was thus extremely narrow, limited to churches, their integrated auxiliaries, and religious orders, but only if (1) their purpose is to inculcate faith and (2) they hire and serve primarily people of their own faith tradition.

79. HRSA exercised its discretion to grant an exemption for religious employers via a footnote on its website listing the Women's Preventive Services Guidelines. The footnote states that "guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers." *See* http://www.hrsa.gov/womens guidelines.

80. Although religious organizations like Plaintiffs share the same religious beliefs and concerns as objecting churches, their integrated auxiliaries, and objecting religious orders, HHS deliberately ignored the regulation's impact on Plaintiffs' religious liberty, stating that the exemption sought only "to provide for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. 46621, 46623.

81. Therefore, the vast majority of religious non-profit organizations with conscientious objections to providing contraceptive or abortifacient services were excluded from the "religious employer" exemption.

82. Like the original Interim Final Rule, the Second Interim Final Rule was made effective immediately, without prior notice or an opportunity for public comment.

83. Defendants acknowledged that "while a general notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations," they

had "good cause" to conclude that public comment was "impracticable, unnecessary, or contrary to the public interest" in this instance. 76 Fed. Reg. at 46624.

84. Upon information and belief, after the Second Interim Final Rule was put into effect, over 100,000 comments were submitted opposing the narrow scope of the "religious employer" exemption and protesting the mandate's gross infringement on the rights of religious individuals and organizations.

85. HHS did not take into account the concerns of religious organizations in the comments submitted before or after the Second Interim Rule was issued. HHS was unresponsive to numerous and well-grounded assertions that the Mandate violated statutory and constitutional protections of rights of conscience.

The Temporary Enforcement Safe Harbor

86. The public outcry for a broader religious employer exemption continued for many months. On January 20, 2012, HHS issued a press release acknowledging "the important concerns some have raised about religious liberty" and stating that religious objectors would be "provided an additional year . . . to comply with the new law." *See* Jan. 20, 2012, Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a. html (last visited Dec. 4, 2013).

87. On February 10, 2012, HHS formally announced a "temporary enforcement safe harbor" for non-exempt nonprofit religious organizations that objected to covering contraceptive and abortifacient services.

88. HHS declared that it would not take any enforcement action against an eligible organization during the safe harbor period, which would extend until the first plan year beginning on or after August 1, 2013.

89. HHS also indicated it would develop and propose changes to the regulations in an effort to accommodate the religious liberty objections of non-exempt, nonprofit religious organizations following the expiration of the safe harbor.

90. Despite the safe harbor and HHS's accompanying promises, on February 10, 2012, HHS announced a final rule "finalizing, without change," the contraception, sterilization and abortifacient mandate and narrow religious employer exemption. 77 Fed. Reg. 8725-01 (published Feb. 15, 2012).

The Advance Notice of Proposed Rulemaking

91. On March 21, 2012, HHS issued an Advance Notice of Proposed Rulemaking (ANPRM), presenting "questions and ideas" to "help shape" a discussion of how to "maintain the provision of contraceptive coverage without cost sharing," while accommodating the religious beliefs of non-exempt religious organizations. 77 Fed. Reg. 16501, 16503 (2012).

92. The ANPRM conceded that forcing religious organizations to "contract, *arrange*, or pay for" the objectionable contraceptive and abortifacient servicers would infringe their "religious liberty interests." *Id*. (emphasis added).

93. The ANPRM proposed, in vague terms, that the "health insurance issuers" for objecting religious employers could be required to "assume the responsibility for the provision of contraceptive coverage without cost sharing." *Id*.

94. For the first time, and contrary to the earlier definition of "cost sharing," Defendants suggested in the ANPRM that insurers and third-party administrators could be prohibited from passing along their costs to the objecting religious organizations via increased premiums. *See id*.

95. "[A]pproximately 200,000 comments" were submitted in response to the ANPRM, 78 Fed. Reg. 8456, 8459, largely restating previous comments that the government's proposals would not resolve conscientious objections, because the objecting religious organizations, by providing a health care plan in the first instance, would still be coerced to arrange for and facilitate access to morally objectionable services.

The Notice of Proposed Rulemaking

96. On February 1, 2013, HHS issued a Notice of Proposed Rulemaking (NPRM) purportedly addressing the comments submitted in response to the ANPRM. 78 Fed. Reg. 8456 (published Feb. 6, 2013).

97. The NPRM proposed two changes to the then-existing regulations. 78 Fed. Reg. 8456, 8458-59.

98. First, it proposed revising the religious employer exemption by eliminating the requirements that religious employers have the purpose of inculcating religious values and primarily employ and serve only persons of their same faith. 78 Fed. Reg. at 8461.

99. Under the NPRM's proposal, a "religious employer" would be one "that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 8461.

100. HHS emphasized, however, that this proposal "would not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. 8456, 8461.

101. In other words, religious organizations like Family Talk that are not churches, integrated auxiliaries, or religious orders would continue to be denied the protection of the exemption.

102. Second, the NPRM followed up on HHS's earlier-stated intention to "accommodate" non-exempt, nonprofit religious organizations by making them "designate" their insurers or third-party administrators to provide plan participants and beneficiaries with free access to contraceptive and abortifacient drugs and services.

103. The proposed "accommodation" did not resolve the concerns of religious organizations like Family Talk because it continued to force them to deliberately provide health insurance that would facilitate employees' access to abortion-inducing drugs and devices and related education and counseling.

104. "[O]ver 400,000 comments" were submitted in response to the NPRM, 78 Fed. Reg. 39870, 39871, with religious organizations again overwhelmingly decrying the proposed "accommodation" as a gross violation of their religious liberty because it would conscript their health care plans as the main cog in the government's scheme for expanding access to contraceptive and abortifacient services.

105. On April 8, 2013, the very day that the notice-and-comment period ended, Defendant Secretary Sebelius answered questions about the contraceptive and abortifacient services requirement in a presentation at Harvard University.

106. In her remarks, 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 dioceses 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. . . . [A]s 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 The Forum at Harvard School of Public Health, A Conversation with Kathleen Sebelius, U.S. Secretary of Health and Human Services, Apr. 8, 2013, *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius/ (at 49:00) (emphasis added) (last visited Dec. 4, 2013).

107. Given the timing of these remarks, it is clear that Defendants gave no consideration to the comments submitted in response to the NPRM's proposed "accommodation."

108. Moreover, Secretary Sebelius' remarks prove that objecting employers are in fact "providing coverage for" morally objectionable items in the health insurance plans they provide employees, even under the proposed accommodation.

The Final Mandate

109. On June 28, 2013, Defendants issued a final rule (the "Final Mandate"), which ignores the objections repeatedly raised by religious organizations and others and continues to co-opt objecting employers into the government's scheme of expanding free access to contraceptive and abortifacient services. 78 Fed. Reg. 39870 (2013). Defendants declared that the Final Mandate would be effective August 1, 2013, only one month after it was issued.

110. Under the Final Mandate, the discretionary "religious employer" exemption, which is still implemented via a footnote on the HRSA website, *see* http://www.hrsa.gov/womens

guidelines, remains limited to churches, integrated auxiliaries, and religious orders "organized and operate[d]" as nonprofit entities and "referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39874.

111. All other organizations, including Plaintiffs, are denied the exemption's protection.

112. Defendants attempt to justify the narrow religious exemption as follows: "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 39874.

113. Although religious organizations like Plaintiffs share the same religious objection to the Mandate as churches, their integrated axillaries, and religious orders, Defendants have deliberately ignored the Mandate's impact on their religious liberty by refusing to grant Plaintiffs and similar organizations an exemption from it.

114. Family Talk is a religious institution that adheres to biblical teachings regarding faith and morals, including its belief that all human life is sacred. Its employees choose to work at Family Talk because they share its religious beliefs and wish to help Family Talk further its religious mission.

115. Family Talk is thus just as likely as organizations that qualify for the "religious employer" exemption to employ individuals who are either of the same faith as Family Talk or adhere to the same religious objection to abortion-causing drugs and devices as Family Talk. Yet Defendants deny Family Talk the "religious employer" exemption while extending it to houses of worship, and they deny the ability of Family Talk employees to obtain health insurance without

paying into a plan that causes "free" access to payments for such drugs and devices, for themselves, their family members, and their fellow employees.

116. Defendants' "religious employer" exemption divides the thousands of religious organizations that share a religious objection to the Mandate into those "religious enough" to qualify for an exemption (houses of worship) and those that are not (non-profits such as Family Talk).

117. The Final Mandate creates a separate "accommodation" for certain non-exempt religious organizations. 78 Fed. Reg. at 39874.

118. An organization is eligible for the accommodation if it (1) "[o]pposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria," and within that certification makes the assertions required by the Final Mandate. 78 Fed. Reg. at 39874.

119. Family Talk is eligible for the so-called accommodation.

120. The self-certification must be executed "prior to the beginning of the first plan year to which an accommodation is to apply." 78 Fed. Reg. at 39875.

121. The Final Rule also extends the current Temporary Enforcement Safe Harbor through the end of 2013, only six months after the issuance of the Final Rule. 78 Fed. Reg. at 39889.

122. Thus, an eligible organization would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and deliver it to the organization's insurer or third-party administrator.

123. If the organization has a self-insured plan, like Family Talk, it would deliver the executed self-certification to the plan's third party administrator. 78 Fed. Reg. at 39875. But the certification that self-insured entities deliver to third party administrators is different than the certification delivered to insurers. The certification delivered to third party administrators requires that Family Talk certify, not only its religious objections, but also a designation that the "[o]bligations of the third party administrator" under ERISA include, by virtue of that designation, a fiduciary duty to provide promises of payments for the exact abortifacient items to which Family Talk objects. 78 Fed. Reg. at 39894–95.

124. Moreover, to comply with the Final Mandate, Family Talk is forbidden from speaking its pro-life religious beliefs to its third party administrator to urge it not to provide payments for drugs or devices that can prevent the implantation of early human embryos. "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 39895.

125. If it elects to invoke the accommodation with respect to its employee plan, Plaintiffs would be required to execute the self-certification and deliver it to their plan's third party administrator before May 1, 2014.

126. By delivering the self-certification to Family Talk's third party administrator, Plaintiffs would explicitly trigger the third-party administrator's provision of or arrangement for payments for the morally objectionable abortifacients. 78 Fed. Reg. 39892–93. These payments constitute coverage of the items to which Plaintiffs object, *see, e.g., id.* at 39872 ("the regulations

provide women with access to contraceptive coverage"), and are treated as coverage under consumer protection requirements of the Public Health Service Act and ERISA, *id.* at 39876. This coverage will not be contained in any insurance policy separate from Plaintiffs' plan. *See id*.

127. By issuing the self-certification, Plaintiffs would be arranging and contracting for their third party administrator to provide the exact coverage or payments that Plaintiffs object to arranging, contracting for, and enabling, and that Defendants falsely declare their Final Mandate stops Plaintiffs from needing to contract or arrange for. Plaintiffs would also be identifying their participating employees to the third party administrator for the distinct purpose of enabling the government's scheme to facilitate free access to abortifacient services. And the Final Mandate takes away the existing morally acceptable insurance possessed by employees of Family Talk including Dr. Dobson, instead forcing them, with no opt-out, to accept and pay into a plan that comes with promised payments (coverage) of objectionable abortifacient items not only for themselves but for their wives and daughters.

128. Thus, even under the accommodation, Plaintiffs and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to abortifacient services. In sum, the accommodation is nothing more than a shell game that attempts to disguise the religious organization's role as the central cog in the government's scheme for expanding access to contraceptive and abortifacient services.

129. Despite the accommodation's convoluted machinations, a religious organization's decision to offer health insurance and its self-certification continue to serve as the sole triggers for creating access to free abortifacient services to its employees.

130. Plaintiffs cannot participate in or facilitate the government's scheme in this manner without violating their religious convictions.

The Final Mandate and Plaintiffs' Health Insurance Plan

131. The plan year for Plaintiffs' next employee health plan begins on May 1, 2014. As a result, Plaintiffs now face a choice. They can transgress their religious commitments, and the commitments of their employees, by including abortifacients in their plan or by designating their third-party administrator to provide abortifacients, while submitting to the government's censorship prohibiting Plaintiffs from telling their third party administrator not to do so. Or they can violate their religious convictions to promote and provide for the spiritual and physical well-being and health of their employees, injure the well-being of their employees and their families, and make it far more difficult if not impossible to hire and keep good employees, by dropping their employee health insurance plan altogether in order to avoid being complicit in the provision of abortifacients.

132. Plaintiffs' religious convictions forbid them from participating in any way in the government's scheme to provide free access to abortifacient services through their health care plans.

133. Dropping their insurance plans would violate Plaintiffs' religious convictions because it would harm the spiritual and physical well-being and health of their employees, and would also place Plaintiffs at a severe competitive disadvantage in their efforts to recruit and retain employees.

134. The Final Mandate forces Plaintiffs to deliberately provide health insurance that facilitates free access to abortifacient drugs and devices, including IUDs, Plan B and ella,

regardless of the ability of insured persons to obtain these drugs from other sources. And it forces Plaintiffs to explicitly designate, contract with, and arrange for their third party administrator to provide the exact promise of payments that Plaintiffs object to contracting or arranging for.

135. The Final Mandate forces Plaintiffs to facilitate government-dictated education and counseling concerning abortion that directly conflicts with their religious beliefs and teachings.

136. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the sanctity of life that Plaintiffs seek to convey. And the Final Mandate explicitly gags Plaintiffs from even speaking Family Talk's religious beliefs to its third party administrator in an attempt to withdraw the designation or convince it not to provide the promised payments.

137. The Mandate therefore imposes a variety of substantial burdens on the religious beliefs and exercise of each of Plaintiffs.

The Governmental Interests Allegedly Underlying the Mandate and the Availability of Other Means of Pursuing Those Interests

138. Coercing Plaintiffs to facilitate access to morally objectionable contraceptives and abortifacients advances no compelling governmental interest.

139. The required drugs, devices, and related services to which Plaintiffs object are already widely available at non-prohibitive costs. Plaintiffs' plan fully provides other required women's preventive services beyond birth control methods as discussed herein.

140. Upon information and belief, Plan B is widely available for between $30 and $65. Upon information and belief, ella is widely available for approximately $55.

141. There are numerous alternative mechanisms through which the government could provide access to the objectionable drugs and services without conscripting objecting organizations in violation of their religious beliefs.

142. For example, it could pay for the objectionable services through its existing network of family planning services funded under Title X, through direct government payments, or through tax deductions, refunds, or credits.

143. The government could simply exempt all conscientiously objecting organizations, just as it has already exempted the small subset of nonprofit religious employers that are referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

144. The ACA and its accompanying regulations expressly exempt grandfathered plans from providing abortion-inducing drugs and devices. *See* 42 U.S.C. § 18011; 75 Fed. Reg. 41,726, 41,731 (2010). The Abortifacient Mandate also does not reach members of Anabaptist congregations (i.e., Amish, Mennonites, Hutterites, and those in Bruderhof Communities) or members of so-called "health care sharing ministries" formed before December 31, 1999, because the law excludes those people from the requirement to purchase health insurance. *See* 26 U.S.C. § 5000A(d)(2)(A), (B).

145. These broad exemptions further demonstrate Plaintiffs could be exempted from the Mandate without measurably undermining any sufficiently important governmental interest allegedly served by the Mandate.

146. Employers who do not make modifications to their insurance plans that deprive the plans of "grandfathered" status may continue to use those grandfathered plans indefinitely.

147. Indeed, HHS itself has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans until at least 2014, and that a third of medium-sized employers with between 50 and 100 employees may do likewise. 75 Fed. Reg. 34538 (June 17, 2010); *see also* http://web.archive.org/web/20130620171510/ http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (archived version) (last visited Dec. 4, 2013); https://www.cms.gov/CCIIO/Resources/ Files/Factsheet_ grandfather_amendment.html (noting that amendment to regulations "will result in a small increase in the number of plans retaining their grandfathered status relative to the estimates made in the grandfathering regulation") (last visited Dec. 4, 2013).

148. In the ACA, Congress chose to impose a variety of requirements on grandfathered health plans, but not this Mandate. Congress did not even think birth control was important enough to codify as part of this Mandate—as far as Congress is concerned, the Mandate need not include birth control at all.

149. The Administration's recent postponement of the employer mandate (and its attendant penalties) also belies any claim that a compelling interest justifies coercing Plaintiffs to comply with the Final Mandate, as large employers may now decide not to provide their employee health plans without incurring fines under 26 U.S.C. § 4980H, at least for one additional year.

150. These broad exemptions, and the ease with which Defendants frequently declare sections of the ACA non-applicable for various reasons, also demonstrate that the Final Mandate is not a law of general applicability entitled to some measure of judicial deference.

151. These broad exemptions further demonstrate Plaintiffs could be exempted from the Mandate without measurably undermining any sufficiently important governmental interest

allegedly served by the Mandate. The available evidence does not support Defendants' contention that making contraceptives, abortifacients, and related counseling available without cost sharing decreases the rate of unintended pregnancy or the adverse impacts on health and equality that allegedly flow from the unintended nature of a pregnancy.

152. Defendants were willing to exempt various secular organizations and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for religious organizations.

The Mandate's Religious Classifications and Targeting of Religious Entities

153. The ACA, its regulations, and its enforcement have created a complex series of religious classifications whereby the government exempts altogether some religious persons or employers from the Mandate; it "accommodates" other religious employers by requiring them to contract with surrogate third party administrators that will provide the Mandated benefits; it provides a de-facto exemption by withholding the Mandate's central penalties from many "accommodated" religious organizations if they participate in self-insured church plans; and it maintains that some, but not all, corporations asserting religious objections may "exercise religion" under the Religious Freedom Restoration Act.

154. Religious organizations qualifying as churches, their integrated auxiliaries, and conventions or associations of churches, the "exclusively religious activities of any religious order," and their non-separately incorporated ministries can be fully exempt from the Mandate.

155. Other nonprofit religious organizations with equally sincere moral objections to the Mandate are denied that exemption, but are subject to the "accommodation."

156. As a result of this classification, some organizations operating as divisions of churches or other exempt organizations engaged in ministry activities such as education and health care are exempt from the Mandate, while many other organizations engaged in the same kind of ministry activities are denied an exemption and are subject to the "accommodation." Those ministries qualifying for the "accommodation" but not the exemption are not churches, conventions of churches, auxiliaries, or religious orders are not given an exemption.

157. At the same time, some non-profit religious organizations that are denied the categorical exemption have now been given an de facto exemption because the government chose to impose its "accommodation" on self-insured entities only through ERISA. As a result, non-profit religious organizations that participate in self-insured "church plans" (which are exempt from ERISA) will not suffer the government's coercion of their third party administrator to provide their employees abortifacient payments. This frees many non-exempt religious entities from the effect of penalties attached to the morally offensive "accommodation," but it arbitrarily subjects entities like Family Talk to that same "accommodation" even though these two groups of religious non-profit organizations may be indistinguishable.

158. Most business corporations with religious objections to the Abortifacient Mandate are fully subject to the Mandate, and the government contends that they even lack the ability to "exercise religion" under the Religious Freedom Restoration Act or the First Amendment. Defendants have conceded, in other litigation, however, that some for-profit businesses—specifically, sole proprietorships and general partnerships—do have standing to invoke RFRA while limited partnerships, and corporations have no such standing. *See* Transcript of Oral Argument at 61-63, *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013).

159. The Mandate's regulatory parameters were promulgated by government officials, and supported by non-governmental organizations, who strongly oppose religious teachings and beliefs regarding the dignity of unborn human life.

160. Defendant Sebelius, for example, has long been a staunch supporter of abortion rights and a vocal critic of religious teachings and beliefs regarding abortion and contraception.

161. On October 5, 2011, six days after the comment period for the original interim final rule ended, Defendant Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that "we are in a war."

162. She further criticized individuals and entities whose beliefs differed from those held by her and the others at the fundraiser, stating: "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."

163. On July 16, 2013, Secretary Sebelius further compared opponents of the Affordable Care Act generally to "people who opposed civil rights legislation in the 1960s," stating that upholding the Act requires the same action as was shown "in the fight against lynching and the fight for desegregation." *See* http://www.hhs.gov/secretary/ about/speeches/sp20130716.html (last visited Dec. 4, 2013).

164. Consequently, on information and belief, Plaintiffs allege that the purpose of the Final Mandate, including the restrictively narrow scope of the religious employers exemption, is to discriminate against religious organizations that oppose contraception and abortion.

FIRST CLAIM FOR RELIEF
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

165. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

166. Plaintiffs' sincerely held religious beliefs prohibit Family Talk as an organization, and Dr. Dobson as its President, from providing, paying for, contracting for, arranging for, making accessible, or facilitating coverage or payments for abortion, abortifacients, embryo-harming pharmaceuticals or devices, and related education and counseling, or providing or facilitating a plan that causes access to the same through an insurance company, third party administrator, or any other third party.

167. When Plaintiffs comply with the Ten Commandments' prohibition on murder and with other sincerely held religious beliefs, they exercise religion within the meaning of the Religious Freedom Restoration Act.

168. The Mandate imposes a substantial burden on Plaintiffs' religious exercise and coerces them to change or violate their religious beliefs.

169. The Mandate chills Plaintiffs' religious exercise within the meaning of RFRA and pressures them to abandon their religious convictions and religious practices.

170. The Mandate exposes Family Talk to substantial fines, government lawsuit remedies and/or financial burdens for their religious exercise.

171. The Mandate exposes Family Talk to substantial competitive disadvantages because of uncertainties about their health insurance benefits caused by the Mandate.

172. The Mandate violates the free exercise of religion of employees of Family Talk, including Dr. Dobson, who share Family Talk's beliefs about human life and abortifacients and who do not wish to pay for or participate in a plan that causes promised payments for abortifacients for their fellow employees, families, wives and daughters, but for whom the Mandate gives no opt-out.

173. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

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

175. The Mandate and Defendants' threatened enforcement thereof violates Plaintiffs' rights protected by the Religious Freedom Restoration Act.

176. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs' will suffer irreparable harm.

SECOND CLAIM FOR RELIEF
Violation of the Establishment Clause of the First Amendment to the United States Constitution

177. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

178. The First Amendment's Establishment Clause requires governmental neutrality toward religion and prohibits the government from discriminating among religions and preferring some religious denominations or views over others.

179. Through its elaborate religious classifications, the government discriminates among types of religious persons and institutions, favoring some with exemption, some only with

morally unacceptable "accommodation," some with no penalties under the "accommodation," others with the mere ability to make arguments under RFRA or the First Amendment that the government will oppose, and many religious persons and institutions with nothing but the Mandate which, if complied with, will violate their religious conscience and sully their integrity, and, if not complied with, will result in ruinous fines.

180. The Mandate's narrow exemption for "religious employers" discriminates among religions on the basis of religious views, religious status, or incidental institutional structure or affiliation by determining that some religious employers are "religious enough" to qualify for a full exemption while others are not. The Mandate's exemption of integrated auxiliaries of churches but its refusal to exempt organizations such as plaintiffs is irrational and discriminatory.

181. The Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient drugs and imposes it through its "accommodation" upon most religionists like Plaintiffs (except those it favors via the "religious employer" exemption) who must either conform their consciences or suffer penalty.

182. The Mandate's narrow "religious employer" exemption exempts some religious employers but not others, thereby discriminating among religious organizations and favoring some religions and religious views over others.

183. The Mandate furthers no governmental interest.

184. The Mandate violates Plaintiffs' rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

185. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

THIRD CLAIM FOR RELIEF
Violation of Free Exercise Clause of the First Amendment to the United States Constitution

186. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

187. Plaintiffs' sincerely held religious beliefs prohibit Family Talk as an organization, and Dr. Dobson as its President, from providing, paying for, contracting for, arranging for, making accessible, or facilitating coverage or payments for abortion, abortifacients, embryo-harming pharmaceuticals or devices, and related education and counseling, or providing or facilitating a plan that causes access to the same through an insurance company, third-party administrator, or any other third party.

188. When Plaintiffs comply with the Ten Commandments' prohibition on murder and with other sincerely held religious beliefs, they exercise religion within the meaning of the Free Exercise Clause.

189. The Mandate imposes a substantial burden on Plaintiffs' religious exercise and coerces it to change or violate its religious beliefs.

190. The Mandate chills Plaintiffs' religious exercise.

191. The Mandate exposes Plaintiffs to substantial fines, government lawsuit remedies and/or financial burdens for their religious exercise.

192. The Mandate forces Plaintiffs to choose between either following their religious commitments and suffering debilitating punishments or violating their consciences in order to avoid those punishments.

193. The Mandate exposes Plaintiffs to substantial competitive disadvantages because of uncertainties about their health insurance benefits caused by the Mandate.

194. The Mandate violates the free exercise of religion of employees of Family Talk, including Dr. Dobson, who share Family Talk's beliefs about human life and abortifacients and who do not wish to pay for or participate in a plan that causes promised payments for abortifacients for their fellow employees, families, wives and daughters, but for whom the Mandate gives no opt-out.

195. The Mandate is not neutral and is not generally applicable.

196. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

197. Despite being informed in detail of the religious objections of Plaintiffs and thousands others like it, Defendants designed the Mandate and the "religious employer" exemption therefrom in a way that makes it impossible for Plaintiffs and other similar religious organizations to simultaneously comply with their religious beliefs and the Mandate.

198. The Mandate's narrow "religious employer" exemption is not neutral or generally applicable, in that it exempts from the Mandate some non-profit employers who are religious but not others, thereby discriminating among religious organizations on the basis of their religious views or status. Both the Mandate's non-applicability to tens of millions of women in grandfathered insurance plans, and Defendants' decision not to impose penalties on many religious non-profit organizations with health insurance from self-insured church plans, exacerbate its lack of general applicability.

199. The Free Exercise Clause, along with the Establishment Clause, protects the right of religious organizations to decide for themselves, free from government interference, matters of internal governance as well as those of faith and doctrine.

200. The Free Exercise Clause thus prohibits the government from interfering with a religious organization's internal decisions concerning its religious structure, leadership, doctrine, and policies, or the degree to which it is an integrated auxiliary of a church.

201. The government may not interfere with a religious organization's internal decisions if that interference would affect the faith and mission of the organization itself.

202. Based on Biblical teaching and doctrine, Plaintiffs have made an internal decision that their employee health plans may not subsidize, provide, or facilitate access to abortifacient drugs and related counseling.

203. The Mandate directly interferes with Plaintiffs' internal decision concerning their structure and mission by requiring them to subsidize, provide, or facilitate access to abortion inducing drugs or devices and related counseling.

204. The Mandate's interference with Plaintiffs' internal decisions affects their faith and religious mission by requiring them to subsidize, provide, or facilitate access to abortifacient drugs and related counseling in direct violation of its religious beliefs.

205. The Mandate's interference with Plaintiffs' internal decision making in a manner that affects their faith and mission violates the Free Exercise Clause.

206. Defendants promulgated both the Mandate and the "religious employer" exemption in order to suppress the religious exercise of Plaintiffs and similar religious organizations.

207. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

208. The Mandate and its penalties' lack of applicability to many entities conclusively demonstrate the less-than-compelling nature of the interest that allegedly underlies the Mandate.

209. Access to abortifacient drugs and related counseling is not a significant social problem, and compelling Plaintiffs to play an essential role in facilitating access to such drugs and services is not the least restrictive means of advancing any interest the Defendants might have.

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

211. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Plaintiffs will suffer irreparable harm.

FOURTH CLAIM FOR RELIEF
Violation of the Free Speech Clause of the First Amendment to the United States Constitution

212. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

213. Through their radio shows, newsletter, and website, Plaintiffs teach that abortion violates God's law and that any participation in the unjustified taking of an innocent human life contradicts their religious beliefs and convictions.

214. The Mandate requires Plaintiffs, as a condition of omitting abortifacient items from Family Talk's health plan, to engage in specific speech to their third party administrator that explicitly and operatively designates the third party administrator to provide the exact promises of payments for abortifacient items that Plaintiffs object to facilitating.

215. The Mandate also bans Plaintiffs from speaking on behalf of threatened unborn human embryos to their third party administrator by urging the third party administrator not to provide the coverage of items that can destroy early human lives.

216. The Mandate compels Plaintiffs to facilitate access to education and counseling in favor of abortifacient items by causing payments for that speech.

217. The Mandate compels Plaintiffs to speak and refrain from speaking in a manner contrary to Plaintiffs' religious beliefs, expression, and practices.

218. Defendants thus violate Plaintiffs' rights to be free from compelled speech and compelled facilitation of speech, a right secured to them by the Free Speech Clause of the First Amendment.

219. Defendants also violate Plaintiffs' freedom of speech by imposing censorship on Plaintiffs' religiously motivated speech.

220. The Mandate's compelled speech and censorship requirements do not advance a compelling governmental interest.

221. Defendants have no narrowly tailored compelling interest to justify this compelled speech or censorship.

222. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm.

223. The Mandate violates Plaintiffs' rights secured to them by the Free Speech Clause of the First Amendment to the United States Constitution.

FIFTH CLAIM FOR RELIEF
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

224. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

225. The Due Process Clause of the Fifth Amendment requires that government actors treat equally all persons similarly situated.

226. This requirement of equal treatment applies to organizations as well as to individuals.

227. Through the government's religious classifications, including the Mandate's narrow "religious employer" exemption, its decision not to impose the Mandate's penalties on self-insured church plans covering religious non-profit entities, and the government's refusal to recognize the "religious exercise" of many Mandate objectors, Defendants have exempted, "accommodated," refrained from penalizing, and selectively recognized the free exercise rights of certain religious persons and organizations that object to complying with the Mandate based on their deeply held religious beliefs, but has refused to similarly treat others.

228. Family Talk, like the exempted and non-penalized religious organizations, is a religious organization that objects to the Mandate based on its deeply held religious beliefs, yet Defendants have denied the "religious employer" and "self insured church plan" exemptions to Family Talk.

229. Also like the exempted religious organizations, Family Talk employs many people who are either (1) of the same faith as Family Talk or (2) adhere to the same religious objection as

Family Talk, yet Defendants have denied their exemptions to Family Talk despite using that criteria to grant exemptions to other religious employers.

230. By extending their exemptions to certain religious groups, but failing to extend it to Family Talk, Defendants have treated Family Talk differently than similarly situated groups.

231. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

232. The Mandate employs unconstitutionally vague language that results in sweeping infringements upon constitutionally protected religious exercise and speech rights in violation of the due process rights of Plaintiffs and other parties not before the Court.

233. Persons of common intelligence must necessarily guess at the meaning, scope, and application of the Mandate and its exemptions promulgated in the regulations.

234. The Mandate and regulations lend themselves to discriminatory enforcement by government officials in an arbitrary and capricious manner, and lawsuits by private persons, based on the government's vague standards, including the accommodation's failure to define "holds itself out as a religious organization," 78 Fed. Reg. at 39874, the ill-defined prohibition on "directly or indirectly" attempting to "influence" a third party administrator's attempt to arrange for payments for objectionable services, 78 Fed. Reg. at 39895, and the ACA's failure to define "preventative health services," 42 U.S.C. § 300gg-13.

235. These vague terms vest Defendants with unbridled discretion in deciding whether to require abortifacient coverage and for whom, and whether to allow exemptions to some, all, or no organizations that possess religious beliefs, or that meet the government's definition of

"religious employers," or that satisfy other arbitrary criteria such as whether they purchase their insurance coverage from self-insured church plans.

236. This Mandate violates Plaintiffs' due process rights under the Fifth Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF
Violation of the First Amendment to the United States Constitution
Freedom of Expressive Association

237. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

238. Through their radio show, newsletter, and website, Plaintiffs teach that abortion violates God's law and that any participation in the unjustified taking of an innocent human life contradicts their religious beliefs and convictions.

239. The Mandate compels Plaintiffs to facilitate expression and activities that Plaintiffs believe and teach are inconsistent with their religious beliefs, expression, and practices.

240. The Mandate compels Family Talk and its executives, including Dr. Dobson, to engage third parties to act in a manner directly contrary to Dr. Dobson's and Family Talk's religious values.

241. Defendants' actions thus violate Plaintiffs' right of expressive association protected by the Free Speech Clause of the First Amendment to the United States Constitution.

SEVENTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

242. Plaintiffs reallege all matters set forth in paragraphs 1–164 and incorporate them herein.

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

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

245. Defendants issued its regulations on an interim final basis and only asked for comments thereafter. Yet Defendants signaled from regulatory text of its interim rules that it had no intention of considering the requests by religious organizations to provide them with exemptions, or to hold the effective date of its rules after it received and considered all the comments submitted.

246. Thus, Defendants imposed its rules without the required "open-mindedness" that agencies must have when notice-and-comment occurs. Defendants also did not have good cause to impose the rules without prior notice and comment.

247. Moreover, Defendants issued the Final Mandate with respect to Plaintiffs on June 28, 2013, and declared it effective August 1, 2013, with a "safe harbor" that imposed the Final Mandate on Plaintiffs' employee plan years beginning May 1, 2014.

248. The ACA provides, and Defendants admit, that any rule issued requiring coverage of preventive services under 42 U.S.C. § 300gg-13 cannot go into effect until at least a year after the rule is finalized. Under these provisions, the Final Mandate cannot be effective on Plaintiffs until its employee health insurance plan year starting after the summer of 2014, namely, Plaintiffs' plan year starting May 1, 2015.

249. Thus the Final Rule, by its effective date of August 1, 2013 and its impact on Plaintiffs on May 1, 2014, violates the ACA and Defendants' regulations against imposing within a year after they are finalized, and/or violates the APA's requirement that agencies be open-minded to comments before finalizing their rules.

250. Therefore, Defendants have violated the notice and comment requirements of 5 U.S.C. §§ 553 (b) and (c), have taken agency action not in accordance with procedures required by law, and Plaintiffs are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

251. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Plaintiffs and similar organizations.

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

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

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

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

256. The Mandate is also contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), which provides that "[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."

257. The Mandate also violates the provisions of the Church Amendment, 42 U.S.C. § 300a-7(d), which provides that "No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions."

258. The Mandate's regulations also violate the ACA itself, 42 U.S.C. § 300gg-13, which give Defendants no authority whatsoever to impose mandates that cause access to contraception coverage or payments in a vehicle outside of or separate from Plaintiffs' own health plan, or to impose requirements on Plaintiffs to designate their third party administrator to do so, or to impose penalties on the third party administrator for its failure to do so. No other federal statute gives Defendants such authority.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court enter a judgment declaring the Mandate and challenged regulations, and their application to Plaintiffs and their third-party administrators to be a violation of their rights protected by RFRA, the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter preliminary and permanent injunctions prohibiting Defendants from continuing to apply the Mandate and challenged regulations to the Plaintiffs and their third-party administrators or in a way that violates the legally protected rights of any person, and prohibiting Defendants from continuing to illegally discriminate against Plaintiffs by requiring them to provide, arrange for or facilitate health insurance coverage or access to separate payments for contraceptives, abortifacients, and related counseling through a mechanism using their health plans to their employees;

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

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

Respectfully submitted this 10th day of December, 2013.

s/ Matthew S. Bowman
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VERIFICATION OF COMPLAINT
PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2013.

DR. JAMES C. DOBSON
Founder, President, and Chairman of the Board
of Family Talk