IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

DORDT COLLEGE and CORNERSTONE UNIVERSITY, *Plaintiffs*, vs. KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACK 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*.	Case No. C13-4100

COMPLAINT

Plaintiffs Dordt College and Cornerstone University (hereinafter, "the Schools"), by their attorneys, state as follows:

NATURE OF THE ACTION

1. This lawsuit challenges regulations issued by Defendants under the 2010 Patient Protection and Affordable Care Act that compel employee and student health insurance plans to provide free coverage of contraceptive services, including so-called "emergency contraceptives" that cause early abortions.

2. The Schools are Christ-centered institutions of higher learning. They believe that God has condemned the intentional destruction of innocent human life. The Schools hold, as a matter of religious conviction, that it would be sinful and immoral for them intentionally to participate in, pay for, facilitate, enable, or otherwise support access to abortion, which destroys human life. They hold that one of the prohibitions of the Ten Commandments ("thou shalt not murder") precludes them from facilitating, assisting in, or enabling the use of drugs that can and do destroy very young human beings in the womb.

3. Defendants have acknowledged that the Mandate challenged in this lawsuit should not be applied to certain religious employers. They exempted "churches, their integrated auxiliaries, and conventions or associations of churches" and "the exclusively religious activities of any religious order." Defendants contend that these employers "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." The Schools fit this description, yet they do not qualify for the exemption.

4. In addition, the government has elected not to impose the challenged regulations upon thousands of other organizations. Employers with "grandfathered" plans, small employers, and favored others are exempt from these rules.

5. Defendants have offered entities like the Schools a so-called "accommodation" of their religious beliefs and practices. However, the alleged accommodation fails. It still conscripts the Schools into the government's scheme, forcing the Schools to obtain an insurer or third-party claims administrator and submit a form that specifically causes that insurer or third-party administrator to arrange payment for the objectionable drugs, so that such coverage

will apply to the Schools' own employees as a direct consequence of their employment with the Schools and of their participation in the health insurance benefits the Schools provide them.

6. 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.

7. By placing the Schools in this untenable position, Defendants violate the Religious Freedom Restoration Act; the Free Exercise, Establishment 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.

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

IDENTIFICATION OF PARTIES AND JURISDICTION

9. Plaintiff Dordt College is a Christ-centered institution of higher learning located in Sioux Center, Iowa. It is an Iowa not-for-profit corporation.

10. Plaintiff Cornerstone University is a Christ-centered institution of higher learning located in Grand Rapids, Michigan. It is a Michigan not-for-profit corporation.

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

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 and 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P. 65, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

19. 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 Dordt College is located in this district.

FACTUAL ALLEGATIONS

I. Dordt College's Religious Beliefs and Provision of Educational Services in General

20. The College was established in 1953, under the name Midwest Christian Junior College. The initial purpose of the College was to train teachers for Christian day schools in the area.

21. The College is a private, Christian, liberal arts college located in Sioux Center, Iowa. As an institution of higher education that is committed to the Reformed Christian perspective, the College seeks to provide a holistic learning experience that integrates the classroom and other educational activities with every other aspect of a student's life.

22. The College's mission is to equip students, alumni, and the broader community to work effectively toward Christ-centered renewal in all aspects of contemporary life. It carries out its mission by preparing graduates who have a biblical understanding of creation and culture. The College also desires that its students be able to discern the pervasive effects of sin throughout the world, while challenging those forces that distort God's good creation and celebrating the redemptive rule of Christ over all life and creation. To that end, Dordt College offers academic programs, maintains institutional practices, and conducts social activities in a visionary, integrated, and biblically-informed manner—which is designed to foster discipleship as a way of life, both on and off campus.

23. The College is owned and controlled by an incorporated society composed primarily of the Christian Reformed Church of North America (CRCNA). The vision of the Christian Reformed Church is to "express[] the good news of God's kingdom that transforms lives and communities worldwide."

24. The College is a non-denominational agency of the CRCNA. To be a non-denominational agency, CRCNA requires that its annual synod review and approve the ministry, ensuring that the organization is not a duplicate ministry and is closely related to the Christian Reformed Church's integral work: works of mercy, of Christian education, and the distribution of the Word of God. Any approved agencies must also be closely aligned with the CRC ecclesiastical task and so, can be recommended to the entire denomination for support. The College derives its mission and core values from the heart of the Christian Reformed Church, having partnered with CRCNA for 50 years.

25. Members of Dordt College's Board of Trustees, which governs the College, are elected by the society. They either represent geographical areas in the Christian Reformed Church or are at-large members representing the broader Reformed evangelical community.

26. The College draws its faculty, staff, and administration from among those who profess and demonstrate a strong commitment to the Christian faith and the Reformed Christian perspective. Faculty and administrative staff must also affiliate with a local, confessionally-Reformed congregation, have their children enrolled in local Christian schools, and must assent to the three forms of Reformed Christian unity, namely, the Belgic Confession, the Heidelberg Catechism, and the Canons of Dort and/or the Westminster Standards. Support staff members are required to work in accordance with the College's stated mission and beliefs.

27. Although the College does not require a profession of faith as a prerequisite for student admission, all students are expected to live by the standards of historic Christian morality, as expressed in the College's Student Code of Conduct.

28. The College's current enrollment is approximately 1,400.

29. Dordt College has approximately 280 employees, of whom approximately 179 are full-time.

II. The Religious Beliefs of Dordt College Regarding Abortion

30. Dordt College unreservedly shares the Christian Reformed Church's religious views regarding abortion, believing that the procurement of, participation in, facilitation of, or payment for abortion (including abortion-causing drugs and devices like Plan B and ella) violates the Sixth Commandment and is inconsistent with the dignity conferred by God on creatures made in His image.

31. The Christian Reformed Church in the *Acts of the Synod, 1972* states, on page 64, as follows:

> That synod affirm the unique value of all human life and the special relationship of man to God as his image-bearer… That synod, mindful of the sixth commandment, condemn the wanton or arbitrary destruction of any human being at any stage of its development from the point of conception to the point of death…

32. On its website, the Christian Reformed Church declares as follows:

> Life is a gift from God's hand, who created all things. Receiving this gift thankfully, with reverence for the Creator, we protest and resist all that harms, abuses, or diminishes the gift of life, whether by abortion, pollution, gluttony, addiction, or foolish risks. Because it is a sacred trust, we treat all life with awe and respect, especially when it is most vulnerable—whether growing in the womb, touched by disability or disease, or drawing a last breath. When forced to make decisions at life's raw edges, we seek wisdom in community, guided by God's Word and Spirit.
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> On respect for all life, see Deuteronomy 5:17 and Psalm 104:14-30 and 139:14-16. Our very bodies are temples of the Holy Spirit: 1 Corinthians 6:19-20.

III. Dordt College's Group Health Insurance Plans

33. To fulfill its religious commitments and duties in the Christ-centered educational context, Dordt promotes the spiritual and physical well-being and health of its employees and

students. This includes the provision of generous health insurance to employees and their dependents and the facilitation of a student health plan.

34. Consistent with its religious commitments, the College offers self-insured coverage, administered through a third-party administrator, Wellmark Blue Cross Blue Shield of Iowa. Dordt offers three choices: Blue Advantage 2000 HMO; Blue Advantage 500 HMO; and the Alliance Select 2000 Plan.

35. The College has contracted with an outside insurance company to pay all claims over $50,000.

36. Approximately 178 Dordt College employees are enrolled in health insurance plans sponsored by the College. Approximately 430 dependents of employees are covered. The plans thus cover approximately 608 individuals.

37. The plan year for the College employee health insurance coverage begins on June 1 of each year.

38. The College's employee health plans cover a variety of contraceptive methods that are not abortifacient.

39. However, consistent with its religious commitments, the College's contract for employee health coverage states that ella and Plan B, which can and sometimes do act after fertilization has occurred, are excluded.

40. Effective September 2011, Dordt made a number of changes that caused the plan to lose its "grandfathered" status." The College changed their plan deductibles from $750 for a single and $1500 for a family to $1200 for a single and $2400 for a family. Out-of-pocket maximums were also increased from $1500 for a single and $3000 for a family to $2400 and $4800 respectively. Employees also began sharing the cost of the health insurance premium

with the College according to their salary bracket. Also, the College switched from a PPO network to an HMO network.

41. Dordt offers an optional health plan to those students who do not have health insurance coverage of their own. The student plan specifically excludes abortions, and does not cover ella or Plan B.

42. The next student plan year begins on August 1, 2014.

IV. Cornerstone University's Religious Beliefs and Provision of Educational Services in General

43. The University was established in 1941 under the name Baptist Bible Institute of Grand Rapids, Michigan. The initial purpose for the University was to train Christians to be more effective lay workers in local churches.

44. The University is an interdenominational, private, Christ-centered university located in Grand Rapids, Michigan. As a Christ-centered university, Cornerstone has a passion for influencing the whole world through the transforming power of the Gospel.

45. The University's mission is to empower men and women to excel as influencers in the world for Christ. It carries out its mission by offering a student-focused learning community where Jesus Christ is central—intertwining academic excellence and faith. Specifically, the University achieves this goal by helping students develop into critical and innovative thinkers who are skilled professionals, able to advance the Kingdom of God through their work by being wise and spiritually mature followers of Christ.

46. Cornerstone believes that there is truth – that it is knowable and revealed in God's inerrant Word. Cornerstone believes that Christians can accordingly live with unshakeable confidence and hope, knowing that the Bible and God's truth have direct application to their lives, their work, their relationships, and the culture around them.

47. The University lays out its truth claims in a document entitled "The Cornerstone Confession," which faculty and staff are required to affirm annually. To be admitted, students must provide a profession of faith in Jesus Christ and provide evidence of living a Christian lifestyle.

48. Cornerstone's desire is to create a vibrant community of Christ-followers that includes students, faculty, and staff. The Cornerstone Community Covenant states in part as follows:

> As a community under the authority of Christ, we commit ourselves to serving together in ways that will bear witness to His reign in our midst. We will seek to reflect His will and His ways through our words, actions and attitudes so that our community will both express and experience the Kingdom blessings of Righteousness, Peace and Joy…We will live righteously by aligning our lives with the standards that God has lovingly revealed to us through His Word so that we may glorify Him as the wise and loving Lord over our community.

49. Cornerstone University's Board of Trustees has the responsibility of setting broad policies that govern the university, and the members are required to annually reaffirm their agreement with the Cornerstone Confession.

50. The University's current undergraduate enrollment is approximately 1,388 with approximately 479 graduate students. Cornerstone also has around 1,056 students in its Professional and Graduate Services program for adult continuing education opportunities.

51. Cornerstone University has approximately 294 employees, of which approximately 26 are part-time.

V. The Religious Beliefs of Cornerstone University Regarding Abortion

52. Cornerstone holds that life is a sacred gift from God, that life begins at conception, and that every life should be protected from that moment.

53. The Cornerstone Confession states that God created the first humans, Adam and Eve, as "distinct from the rest of creation in their bearing of God's image." Because it believes that each life bears the image of God, the University regards each unique human life, from the moment of conception, as sacred. They further believe that the unborn purposefully reflect God's creative design.

54. Cornerstone, as a community of Christ-followers, believes that it is called to love God and care for his creation. The Cornerstone Confession states, "[b]y loving God, serving others, and caring for creation, [Christians] anticipate the redemption of all things at Christ's return." The University's care for the unborn is a direct outflow of its care for all of creation, its love for God, and its religious belief in ultimate redemption.

55. Over the years, Cornerstone has displayed its care for mothers facing unplanned pregnancy and for the unborn. Since 2009, Cornerstone has been hosting Life Walk, which is a two-mile awareness and fundraising walk to benefit the Pregnancy Resource Center in Grand Rapids. Also since 2009, President Joe Stowell has served on the Board of Reference for the Pregnancy Resource Center. To raise awareness on campus, Cornerstone students opened a chapter of Students for Life of America in 2012.

56. The University also plans to host a table in its student center this fall collecting signatures to initiate the process for statewide Abortion Insurance Opt-Out legislation, which will prevent Michigan tax dollars and insurance premiums from paying for abortions as part of the Affordable Care Act insurance exchanges.

VI. Cornerstone University's Group Health Insurance Plans

57. To fulfill its religious commitments and duties in the Christ-centered educational context, Cornerstone promotes the spiritual and physical well-being and health of its employees. This includes the provision of generous health insurance to employees and their dependents.

58. Approximately 212 Cornerstone University employees are enrolled in health insurance plans sponsored by the College. Approximately 379 dependents of employees are covered. The plans thus cover approximately 591 individuals.

59. Cornerstone offers three medical insurance options for its employees through Priority Health. The first two options are two tiers of a Health by Choice Incentives HMO plan, and the third is a high-deductible health plan (HDHP) with a health savings account.

60. The plan year for the University employee health insurance coverage begins on October 1 of each year.

61. After the enactment of the Affordable Care Act, Cornerstone made a number of changes to its health insurance plans that caused them to lose "grandfathered" status. Since March of 2010, the co-pays, deductibles, out-of-pocket maximums, and prescription drug plans changed for both the HMO plan and the HDHP plan.

62. Specifically, in March 2010, the co-pays for the Priority Health Choice Benefits HMO were $15 an office visit. In October 2011, they were increased to $20, then to $25 dollars in October 2012, and finally, to $30 in October 2013. Deductibles under the Choice Benefits HMO plan increased as well for both families and single persons. In March 2010, the deductible for a single adult was $500 and $1000 for a family, and in October 2013, the deductible for a single adult was increased to $1000 and for a family it was increased to $2000. Also in March of 2010, the out-of-pocket maximum for an individual was $1500 and for a family was $3000. In October 2012, the out-of-pocket maximum for an individual increased to $2500

and for a family, to $5000. The out-of-pocket maximum increased again in October 2013 to $4000 for an individual and $8000 for a family.

63. In March 2010, the co-pays for the Priority Health Standard Benefits HMO were $25 an office visit. In October 2011, they were decreased to $20, then increased to $35 in October 2012, and finally, to $40 in October 2013. Deductibles under the Standard Benefits HMO plan increased as well for both families and single persons. In March 2010, the deductible for a single adult was $1250 and $2500 for a family, and in October 2013, the deductible for a single adult was increased to $2000 and for a family it was increased to $4000. Also in March of 2010, the out-of-pocket maximum for an individual was $3000 and for a family was $6000. In October 2012, the out-of-pocket maximum for an individual increased to $4500 and for a family, to $9000. The out-of-pocket maximum decreased in October 2013 to $4000 for an individual and $8000 for a family.

64. In March 2010, both the Choice and Standard Benefits HMO included a two-tiered prescription drug plan that had a $10 co-pay per generic drug prescription or refill and a $40 co-pay for per preferred brand-name prescription or refill. In October 2011, the two tiers changed to be five tiers starting with an increased co-pay of $15 for generic prescriptions, then $50 co-pay for each of the remaining tiers including: preferred brand-name drugs, non-preferred brand-name drugs, preferred specialty drugs, and non-preferred specialty drugs. In October 2012, the plan changed again increasing tier three and tier five co-pays to $80. In October 2013, tier four and tier five co-pays were changed to 20% co-insurance.

65. Cornerstone's HMO plan specifically excludes post-coital "emergency contraceptives."

66. Cornerstone has made changes to the HDHP since March of 2010. In October 2010, the plan year deductible was $2000 a person and $4000 a family. The out-of-pocket maximum was $4000 per person and $8000 per family. In October 2012, the plan year deductible was lowered to $1200 per person and $2400 per family. Also, in October 2012, the out-of-pocket maximum was lowered to $2000 per person and $4000 per family. The deductibles changed again in October 2013 to $1250 per person and $2500 per family.

67. The University employee health plans cover a variety of contraceptive methods that are not abortifacient. But, consistent with its religious commitments, the University's contract for employee health coverage states that emergency contraceptives, such as ella and Plan B, and IUDs which can and sometimes do act after fertilization has occurred, are excluded.

VII. The ACA and Defendants' Mandate Thereunder

68. 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).

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

70. 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).

71. 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).

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

The Interim Final Rule

73. 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).

74. 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.

75. 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.*

76. 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 without regard to concerns that might be raised in public comments. *Id.*

77. 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.

78. 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.

79. 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.

80. 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.

81. 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).

82. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices such as IUDs; Plan B (also known as the "morning-after pill") and its chemical cognates; ulipristal (also known as "ella" or the "week-after pill"); and other drugs, devices, and procedures.

83. Some of these drugs and devices—including "emergency contraceptives" such as Plan B and ella and certain 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.

84. 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).

85. 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.

86. 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.

87. 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.

88. Insurance plans starting after August 1, 2012 were subject to the Mandate.

89. 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 approximating $100 per employee per day. Such employers are also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

90. A large employer entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the ACA imposes monetary penalties on entities that would so refuse.

91. The annual penalty for failing to provide health insurance coverage is $2000 times the number of the employer's employees, minus 30.

The Religious Employer Exemption

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

93. This Second Interim Final Rule granted HRSA "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).

94. 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).

95. 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.

96. 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/womensguidelines.

97. Although religious organizations like the Schools share the same religious beliefs and concerns as objecting churches, their integrated auxiliaries, and objecting religious orders, HHS ignored the regulation's impact on their 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.

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

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

100. 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.

101. 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 contraception mandate's infringement on the rights of religious individuals and organizations.

102. HHS did not take into account the concerns of religious organizations in the comments submitted before 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

103. 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.

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

105. 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 after August 1, 2013.

106. 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.

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

The Advance Notice of Proposed Rulemaking

108. 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).

109. 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).

110. 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.*

111. "[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

112. 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).

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

114. 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.

115. 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.

116. 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.

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

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

119. The proposed "accommodation" did not resolve the concerns of religious organizations like the Schools because it continued to force them to deliberately provide health insurance that would trigger access to abortion-inducing drugs and related education and counseling.

120. "[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 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.

121. 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.

122. 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 (Episode 9 at 2:25) (emphasis added).

123. 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."

124. Moreover, Secretary Sebelius' remarks belie the assertion that objecting employers are not "providing coverage for" morally objectionable items in the health insurance plans they provide employees.

The Final Mandate

125. 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.

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

127. Defendants attempt to justify the extraordinarily narrow religious exemption as follows: "The Departments believe that the simplified and clarified definition of religious employer continues to respect the religious interests of houses of worship and their integrated auxiliaries in a way that does not undermine the governmental interests furthered by the contraceptive coverage requirement. 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.

128. All other organizations, including the Schools, are denied the exemption's protection.

129. The Schools do not fall within the scope of this narrow religious exemption. They are not churches, the integrated auxiliaries of a church, or conventions or associations of churches, nor do they perform the exclusively religious activities of a religious order.

130. The Final Mandate declares that the rules concerning contraceptive and abortifacient services will "apply to student health insurance coverage arranged by an eligible organization that is an institution of higher education in a manner comparable to that in which they apply to group health insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer." 78 Fed. Reg. at 39897.

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

132. 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." 78 Fed. Reg. at 39874.

133. The Schools are eligible for the so-called accommodation.

134. 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.

135. 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.

136. 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. If the organization has a self-insured plan, it would deliver the executed self-certification to the plan's third party administrator. 78 Fed. Reg. at 39875.

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

138. By delivering its self-certification to its third-party administrator, Dordt would trigger the third-party administrator's provision of or arrangement for payments for the morally objectionable abortifacients. 78 Fed. Reg. 39892-39893. These payments constitute coverage of the items to which Dordt objects. *See, e.g., id.* at 39872 ("the regulations provide women with access to contraceptive coverage"). These payments also are treated as coverage under the 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 Dordt's plan. *See id.*

139. If it elects to invoke the accommodation with respect to its employee plan, Cornerstone would be required to execute the self-certification and deliver it to its plan's issuer before October 1, 2014.

140. By delivering its self-certification to its insurer, Cornerstone would trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries." 78 Fed. Reg. at 39875-76. These payments constitute

coverage of the items to which Cornerstone objects. *See, e.g., id.* at 39872 ("the regulations provide women with access to contraceptive coverage"). These payments also 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 Cornerstone's plan. *See id.*

141. By issuing their self-certifications, the Schools would be identifying their participating employees and students to the insurer or third-party administrator for the distinct purpose of enabling the government's scheme to facilitate free access to abortifacient services.

142. The insurer's obligation to make direct payments for abortifacient services would continue only "for so long as the participant or beneficiary remains enrolled in the plan." 78 Fed. Reg. at 39876.

143. Therefore, Cornerstone would have to coordinate with its insurer whenever it added or removed employees and beneficiaries from its healthcare plan and, as a direct and unavoidable result, from the abortifacient services payment scheme.

144. Cornerstone's insurer is required to notify plan participants and beneficiaries of the abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan. 78 Fed. Reg. at 39876.

145. This would also require Cornerstone to coordinate the notices with its insurer.

146. Cornerstone's insurer would be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77.

147. Thus, any payment or coverage disputes presumably would be resolved under the terms of the Cornerstone's existing plan documents.

148. Thus, even under the accommodation, the Schools and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to abortifacient services.

149. Defendants state that they "continue to believe, and have evidence to support," that providing payments for contraceptive services will be "cost neutral for issuers," because "[s]everal studies have estimated that the costs of providing contraceptive coverage are balanced by cost savings from lower pregnancy-related costs and from improvements in women's health." 78 Fed. Reg. at 39877.

150. On information and belief, the studies Defendants rely upon to support this claim are severely flawed.

151. Nevertheless, even if the payments, over time, eventually resulted in cost savings in other areas, it is undisputed that it would cost money at the outset to make the payments. *See, e.g.,* 78 Fed. Reg. at 39877-78 (addressing ways insurers can cover up-front costs).

152. Moreover, if the cost savings that allegedly will arise make insuring an employer's employees cheaper, the savings would have to be passed on to employers through reduced premiums, not retained by insurance issuers.

153. HHS suggests that, to maintain cost neutrality, issuers may simply ignore this fact and "set the premium for an eligible organization's large group policy as if no payments for contraceptive services had been provided to plan participants." 78 Fed. Reg. 39877.

154. This encourages issuers to artificially inflate the eligible organization's premiums.

155. Under this methodology—assuming it is even legal—the eligible organization would still bear the cost of the required payments for abortifacient services in violation of their consciences, as if the accommodation had never been made.

156. Defendants have suggested that "[a]nother option" would be to "treat the cost of payments for contraceptive services . . . as an administrative cost that is spread across the issuer's entire risk pool, excluding plans established or maintained by eligible organizations." 78 Fed. Reg. at 39878.

157. There is no legal authority for forcing third parties to pay for services provided to the employees of eligible organizations under the accommodation.

158. Furthermore, under the Affordable Care Act, Defendants lack authority in the first place to coerce insurers to make separate payments for contraceptive and abortifacient services for an eligible organization's plan participants and beneficiaries.

159. Thus, the accommodation fails to protect objecting religious organizations for lack of statutory authority.

160. For all these reasons, the accommodation does nothing to relieve non-exempt religious organizations with insured plans from being co-opted as the central cog in the government's scheme to force the free provision of contraceptive and abortifacient services even when the organizations object to facilitating those services.

161. 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.

162. Despite the accommodation's convoluted machinations, a religious organization's decision to offer health insurance (which the ACA's employer mandate requires) and its self-certification continue to serve as the sole triggers for creating access to free abortifacient services to its employees and plan beneficiaries from the same insurer they are paying for their insurance plan.

163. The Schools cannot participate in or facilitate the government's scheme in this manner without violating their religious convictions.

The Final Mandate and Plaintiffs' Health Insurance Plans

164. The plan year for Dordt's next employee health plan begins on June 1, 2014; Cornerstone's begins on October 1, 2014. As a result, the Schools now – or will soon – face a choice. They can transgress their religious commitments by including abortifacients in their plan or by triggering their insurance issuer or third-party administrator to provide the exact same services by providing the self-certification. Or they can transgress their religious duty to provide for the well-being of their employees and their families by dropping their employee health insurance plans altogether in order to avoid being complicit in the provision of abortifacients, thereby incurring crippling annual fines.

165. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee (minus 30) for organizations that drop their insurance altogether, the postponement is only for one year, until 2015. This postponement does not delay the daily fines under 26 U.S.C. § 4980D or lawsuits under 29 U.S.C. § 1132.

166. The plan year for Dordt's next student plan begins on August 1, 2014. As a result, Dordt College will face a choice in the period leading up to that date. It can transgress its religious commitments by including abortifacients in its plan or by triggering its insurance issuers to provide the exact same services by providing its self-certification. Or it can transgress its religious duty to provide for the well-being of its students by dropping its student health insurance plans altogether in order to avoid being complicit in the provision of abortifacients.

167. The Schools' 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.

168. Dropping their insurance plans would place the Schools at a severe competitive disadvantage in their efforts to recruit and retain employees and students.

169. The Final Mandate forces the Schools to deliberately provide health insurance that would facilitate free access to emergency contraceptives, including Plan B and ella, regardless of the ability of insured persons to obtain these drugs from other sources.

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

171. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the sanctity of life that the Schools seek to convey.

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

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

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

174. The required drugs, devices, and related services to which Plaintiffs object are already widely available at non-prohibitive costs.

175. 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.

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

177. 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.

178. 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.

179. In one form or another, the government also provides exemptions for grandfathered plans, 42 U.S.C. § 18011; 75 Fed. Reg. 41,726, 41,731 (2010), small employers with fewer than 50 employees, 26 U.S.C. § 4980H(c)(2)(A), and certain religious denominations, 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) (individual mandate does not apply to members of "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds). 26 U.S.C. § 5000A(d)(2)(b)(ii) (individual mandate does not apply to members of "health care sharing ministry" that meets certain criteria).

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

181. 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.

182. 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); 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").

183. In the ACA Congress chose to impose a variety of requirements on grandfathered health plans, but decided that this Mandate was not important enough to impose to the benefit of tens of millions of women. Congress did not even think contraception was important enough to codify as part of this Mandate—as far as Congress is concerned, the Mandate need not include contraception at all.

184. 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 employers may now simply decide not to provide their employee health plans without incurring fines under 26 U.S.C. § 4980H, at least for one additional year.

185. These broad exemptions also demonstrate that the Final Mandate is not a general law entitled to some measure of judicial deference.

186. 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.

187. 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.

188. The Final Mandate was promulgated by government officials, and supported by non-governmental organizations, who strongly oppose religious teachings and beliefs regarding marriage, family, and life.

189. 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.

190. 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."

191. 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."

192. 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.

193. Consequently, on information and belief, the Schools 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

194. Plaintiffs reallege all matters set forth in paragraphs 1-193 and incorporate them herein.

195. The Schools' sincerely held religious beliefs prohibit them from providing, paying for, making accessible, or facilitating coverage or payments for abortion, abortifacients, embryo-harming pharmaceuticals, 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.

196. When the Schools 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.

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

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

199. The Mandate exposes the Schools to substantial fines and/or financial burdens for their religious exercise.

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

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

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

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

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

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

205. Plaintiffs reallege all matters set forth in paragraphs 1–193 and incorporate them herein.

206. The Schools' sincerely held religious beliefs prohibit them from providing, paying for, making accessible, or otherwise facilitating coverage or payments for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing or facilitating a plan that causes access to the same through an insurance company or third-party administrator.

207. When the Schools 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.

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

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

210. The Mandate furthers no compelling governmental interest.

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

212. The Mandate coerces the Schools to change or violate their religious beliefs.

213. The Mandate chills the Schools' religious exercise.

214. The Mandate exposes the Schools to substantial fines and/or financial burdens for their religious exercise.

215. The Mandate exposes the Schools to substantial competitive disadvantages, in that it makes it unclear what health benefits they can offer to their employees and what health insurance coverage they can facilitate for their students.

216. The Mandate substantially burdens the Schools' religious exercise.

217. The Mandate is not narrowly tailored to any compelling governmental interest.

218. Despite being informed in detail of the religious objections of the Schools and thousands of others, Defendants designed the Mandate and the religious exemption thereto to target the Schools and others like them, thereby making it impossible for the Schools and other similar religious organizations to comply with their religious beliefs without suffering crippling punishments.

219. Defendants promulgated both the Mandate and the religious exemption in order to suppress the religious exercise of the Schools and others.

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

221. The Mandate violates the Schools' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

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

222. Plaintiffs reallege all matters set forth in paragraphs 1–193 and incorporate them herein.

223. The First Amendment's Establishment Clause, together with the Free Exercise Clause, requires the equal treatment of all religious faiths and institutions without discrimination or preference. It prohibits the unjustified differential treatment of similarly situated religious organizations.

224. 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.

225. The Mandate adopts a particular theological view of what is morally acceptable complicity in the facilitation of abortifacient coverage and payments, and imposes it upon those, like the Schools, who conscientiously object, and who must either conform their consciences or suffer penalty.

226. The Establishment Clause, together with the Free Exercise Clause, also protects the freedom of religious organizations to decide for themselves, free from governmental interference, matters of internal governance as well as those of doctrine and practice.

227. Under the First Amendment, government may not interfere with a religious organization's internal decisions concerning its religious structure, leadership, practice, discipline, membership, or doctrine.

228. Under the First Amendment, government may not interfere with a religious organization's internal decisions if that interference would affect the faith and mission of the organization itself.

229. The Schools made an internal decision, dictated by their Christian faith, that the health plans they make available to employees and students may not include, subsidize, provide, pay for, or in any way facilitate access to abortifacient drugs, devices, or related services.

230. The Mandate interferes with the Schools' internal decisions concerning their structure and mission by requiring them to subsidize, provide access to, and facilitate practices that directly conflict with their Christian beliefs.

231. The Schools also made internal decisions to not be structured as integrated auxiliaries to a church, denomination, or association of churches.

232. The Mandate's narrow religious exemption unconstitutionally punishes the Schools for this structural choice, and pressures them to become integrated auxiliaries of a church or denomination in order to gain the protection of the exemption.

233. Because the Final Mandate interferes with the Schools' internal decision making in a manner that affects their faith and mission, it violates the Establishment Clause (and Free Exercise Clause) of the First Amendment.

234. Absent injunctive and declaratory relief against the Mandate, the Schools will suffer irreparable harm.

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

235. Plaintiffs reallege all matters set forth in paragraphs 1–193 and incorporate them herein.

236. Defendants' requirement to provide insurance coverage for education and counseling regarding contraception causing abortion forces the Schools to speak in a manner contrary to their religious beliefs.

237. The Schools 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.

238. The Mandate compels the Schools to facilitate expression and activities that the Schools teach are inconsistent with their religious beliefs, expression, and practices.

239. The Mandate compels the Schools to facilitate access to government-dictated education and counseling related to abortion.

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

241. The Mandate's compelled speech requirement does not advance a compelling governmental interest.

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

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

244. Absent declaratory and injunctive relief, the Schools will suffer irreparable harm.

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

245. Plaintiffs reallege all matters set forth in paragraphs 1–193 and incorporate them herein.

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

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

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

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

250. This Mandate violates the Schools' 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

251. Plaintiffs reallege all matters set forth in paragraphs 1–193 and incorporate them herein.

252. The Schools 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.

253. The Mandate compels the Schools to facilitate expression and activities that the Schools teach are inconsistent with their religious beliefs, expression, and practices.

254. Defendants' actions thus violate the Schools' 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

255. Plaintiffs reallege all matters set forth in paragraphs 1–193 and incorporate them herein.

256. 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.

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

258. 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.

259. 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.

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

261. 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.

262. Thus the Final Rule, by its effective date of August 1, 2013 and its impact on Dordt College on June 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.

263. 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 the Schools are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

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

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

266. 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.

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

268. 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).

269. 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."

270. 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."

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to Plaintiffs and their insurance issuers or third-party administrators to be a violation of their rights protected by RFRA, the Free Exercise, Establishment, and Free Speech Clauses of the First

Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate to the Plaintiffs and their insurance issuers or 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 health insurance coverage or access to separate payments for contraceptives, abortifacients, and related counseling to their employees and students;

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 23 day of October, 2013.

s/ Jeff W. Wright
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*Motion to appear *pro hac vice* to be submitted

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing allegations regarding Dordt College are true and correct to the best of my knowledge.

Executed on October 23, 2013.

Erik Hoekstra*
President, Dordt College

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing allegations regarding Cornerstone University are true and correct to the best of my knowledge.

Executed on October 23, 2013.

Joseph M. Stowell*
President, Cornerstone University

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*