IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

THE SCHOOL OF THE OZARKS, INC. d/b/a COLLEGE OF THE OZARKS, Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF LABOR, Thomas E. Perez, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF THE TREASURY, *and* JACK LEW, Secretary of the United States Department of the Treasury, Defendants.	)	Case No. 6:13-cv-03157-BP

AMENDED COMPLAINT

The School of the Ozarks, Inc. d/b/a College of the Ozarks, by and through its attorneys, states as follows for its claims against defendants:

The Civil Action

1. As a Christian organization, The School of the Ozarks, Inc., d/b/a College of the Ozarks (the "College") believes that human life is sacred and begins at conception. The

deliberate destruction of human life shortly after conception by abortifacient drugs and devices is a grievous moral wrong. For the federal government to compel the provision of health insurance that makes available such drugs and devices to the College's employees places the College in the impossible position of choosing between civil disobedience or complicity in a grave wrongdoing toward unborn children, and violates the College's constitutional rights.

The Parties

2. The College is a four year liberal arts co-educational college located in Point Lookout, Missouri. The College is unique because of its five-fold emphasis – academic, vocational, Christian, patriotic, and cultural – that is designed to develop citizens of Christ-like character who are well-educated, hard-working and patriotic. All full-time students are required to work in the campus work program to help offset the cost of their education.

3. In 1906, the Missouri Synod of the Presbyterian Church established The School of the Ozarks, and it was granted a charter by the State of Missouri for the purpose (still faithfully administered) of "provid[ing] the advantages of a Christian education for youth of both sexes, especially for those found worthy, but who are without sufficient means to procure such training . . . ."

4. In 2003, the College converted to a not-for-profit corporation governed by Chapter 355 of the Revised Statutes of Missouri, with the stated purpose: "To provide the advantages of a Christian education for youth of both sexes, especially for those found worthy, but who are without sufficient means to procure such education. To carry out this purpose, the following aims and objectives have been defined: academic growth, vocational growth, Christian growth, patriotic growth and cultural growth."

5. The College has long been guided by a biblical worldview which teaches that human sexuality is a gift from God and that the purpose of this gift includes the procreation of human life and the uniting and strengthening of the marital bond in self-giving love.

6. The College is a member of the Coalition for Christian Colleges and Universities, a national organization of evangelical Christian institutions of higher education, and a member of the Association of Presbyterian Colleges and Universities.

7. The United States Department of Health and Human Services ("HHS"), Kathleen Sebelius, the United States Department of Labor, Thomas E. Perez, the United States Department of the Treasury, and Jack Lew (collectively, the "Departments") are United States governmental departments and the appointed officials in charge of the respective departments. The individually named Defendants are sued in their official capacity only.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a), 1361, and 1367.

9. This Court has jurisdiction to enter declaratory relief under 28 U.S.C. §§ 2201 and 2202, 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(b).

10. Venue is appropriate in this Court under 28 U.S.C. § 1391(e) because the College is located in this district and division and a substantial part of the events giving rise to this action occurred in this district and division.

Affordable Care Act

11. In March 2010, Congress passed, and the President signed into law, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and

Education Reconciliation Act of 2010, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act" ("ACA").

12. The ACA reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act ("PHS Act") relating to group health plans and health insurance issuers in group and individual markets.

13. The ACA adds section 715(a)(1) to the Employee Retirement Income Security Act of 1974 ("ERISA") and section 9815(a)(1) to the Internal Revenue Code ("Revenue Code") to incorporate sections 2701 through 2728 of title XXVII of the PHS Act into ERISA and the Revenue Code, and to make them applicable to group health plans.

14. The College has more than 50 employees and provides its employees with a group health insurance plan issued by a third-party insurance company.

15. The College's group health insurance plan renews on January 1 of each year.

Contraceptive Mandate

16. Section 2713 of the PHS Act ('the Contraceptive Mandate"), as added by the ACA, requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide benefits for certain preventive health services without the imposition of cost sharing. These preventive health services include, with respect to women, preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Service Administration ("HRSA").

17. The Contraceptive Mandate imposes significant financial penalties on entities with more than 50 employees that decide to provide no health coverage.

18. The Departments published interim final rules implementing section 2713 of the PHS Act in the July 19, 2010 Federal Register (75 Fed. Reg. 41726) (the "2010 Interim Final Rules").

19. The 2010 Interim Final Rules provide that a plan or issuer must provide coverage, without cost sharing, for certain newly recommended preventive health services starting with the first plan year that begins on or after the date that is one year after the date on which the recommendation or guideline is issued. *See* 26 C.F.R. § 54.9815-2713T(b)(1); 29 C.F.R. § 2590.715-2713(b)(1); 45 C.F.R. § 147.130(b)(1).

20. On August 1, 2011, HRSA adopted and released its guidelines (the "HRSA Guidelines") for women's preventive services. *See* http://www.hrsa.gov/womensguidelines.

21. As relevant here, the HRSA Guidelines require coverage, without cost sharing, for "[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," as prescribed by a health care provider.

22. FDA-approved contraceptive methods include: birth-control pills; prescription contraceptive devices, including both plastic and copper IUDs; levonorgestrel, also known as Plan B, Plan B One-Step, Next Choice, and the "morning-after pill" ("Plan B"); ulipristal acetate, also known as *ella* or the "week-after pill" ("*ella*"); and other drugs, devices, and procedures.

23. The College, in accordance with its religious convictions and conscience, believes that human life begins at conception, i.e., at the fusion of two haploid gametes resulting in the formation of a zygote (the "Child").

24. *Ella* and Plan B operate to inhibit and are intended to operate to inhibit the successful implantation of a Child in the uterus of its mother, causing the death of the Child.

25. The College believes that this death of a Child is a grievous moral wrong. It objects to the compelled provision of health insurance to its employees that makes available abortifacient drugs and devices, including *ella* and Plan B, and the compelled provision of education or counseling to its employees concerning the same, in violation of the College's religious convictions and conscience.

26. Under the 2010 Interim Final Rules, non-grandfathered group health insurance plans and health insurance issuers offering non-grandfathered group health insurance coverage are compelled to provide coverage of women's preventive health services, including abortifacient drugs and devices, consistent with the HRSA Guidelines in plan years beginning on or after August 1, 2012.

27. The College's group health insurance plan is not grandfathered because significant changes in employee co-payments took effect on January 1, 2013.

Exemption for Religious Employers

28. Contemporaneous with the issuance of the HRSA Guidelines, the Departments published an amendment to the 2010 Interim Final Rules in the August 3, 2011 Federal Register (76 Fed. Reg. 46621) (the "2011 Amended Interim Final Rules"), providing HRSA with discretion to exempt group health plans established or maintained by certain religious employers from the requirement to cover contraceptive services otherwise required by the HRSA Guidelines. The 2011 Amended Interim Final Rules appear at 45 C.F.R. § 147.130(a)(iv)(A).

29. Under the 2011 Amended Interim Final Rules, HRSA could, but is not required, to grant an exemption for a "religious employer" meeting all of the following criteria:

(1) The inculcation of religious values is the purpose of the organization.

(2) The organization primarily employs persons who share the religious tenets of the organization.

(3) The organization primarily serves persons who share the religious tenets of the organization.

(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the [Revenue Code].

See 45 C.F.R. § 147.130(a)(iv)(B).

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

31. On February 15, 2012, the Departments published their final rules in the Federal Register, adopting "without change," the narrow exemption for "religious employer" set out in the 2011 Amended Interim Final Rules (77 Fed. Reg. 8725) ("2012 Final Rules").

32. The College is not a "religious employer" as defined in the 2012 Final Rules.

Temporary Enforcement Safe Harbor

33. On February 10, 2012, Defendant HHS issued a "Guidance" describing a "temporary enforcement safe harbor" ("Safe Harbor") from the Contraceptive Mandate. The Safe Harbor applied to "non-exempted, non-grandfathered group health plans established and maintained by non-profit organizations with religious objections to contraceptive coverage (and any health insurance coverage offered in connection with such plans)."

34. Under the Safe Harbor, qualifying organizations were not subject to enforcement of the Contraceptive Mandate by the Departments "until the first plan year that begins on or after August 1, 2013," provided they met certain criteria outlined in the Guidance.

35. The Safe Harbor required an organization to self-certify that it met all of the following criteria:

(1) The organization is organized and operates as a non-profit entity.

(2) From February 10, 2012 onward, contraceptive coverage has not been provided at any point by the group health plan established or maintained by the organization, consistent with any applicable State law, because of the religious beliefs of the organization.

(3) The group health plan (or health insurance issuer or third-party administrator) must provide to participants a form notice stating that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.

36. The Safe Harbor was only in effect until the first plan year that begins on or after August 1, 2013. The College's current plan year began on January 1, 2014.

37. The College is no longer aided by the Safe Harbor.

March 2012 Advance Notice of Proposed Rulemaking

38. On March 16, 2012, the Departments issued an Advance Notice of Proposed Rulemaking ("ANPRM"), 77 Fed. Reg. 16501. In the ANPRM, the Departments announced their intention to create an "accommodation" for non-exempt religious organizations. The accommodation requires a health insurance issuer (or third party administrator) – not the religious organization – to provide the contraception coverage outlined in the Contraceptive Mandate to employees covered under the organization's health plan.

February 2013 Notice of Proposed Rulemaking

39. The Departments published proposed rules in the February 6, 2013 Federal Register (78 Fed. Reg. 8456) (the "February 2013 NPRM"), to amend the criteria for the "religious employer" exemption and to establish a revised "accommodation" for group health coverage established or maintained by certain employers that have religious objections to contraceptive coverage.

40. The February 2013 NPRM defined a "religious employer" as "a nonprofit organization described in section 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Code" for purposes of the "religious employer" exemption.

41. The February 2013 NPRM's revised "accommodation" applied to group health plans established or maintained by an "eligible organization" with religious objection to contraceptive coverage.

42. The February 2013 NPRM defined an "eligible organization" as an employer that meets all of the following criteria:

(1) The organization opposes providing coverage for some or all of the contraceptive services required to be covered under section 2713 of the PHS Act on account of religious objections.

(2) The organization is organized and operates as a nonprofit entity.

(3) The organization holds itself out as a religious organization.

(4) The organization self-certifies that it satisfies the first three criteria.

43. The College is not a "religious employer" as defined in the February 2013 NPRM.

44. The College would be an "eligible organization" as that term is defined in the February 2013 NPRM, if it self-certified that it meets the criteria.

July 2013 Final Regulations

45. The Departments published final regulations in the July 2, 2013 Federal Register (78 Fed. Reg. 39870) (the "Final Regulations") regarding coverage of contraceptive services.

46. The Final Regulations became effective August 1, 2013.

47. The Final Regulations adopted, without change, the definition of "religious employer" proposed in the February 2013 NPRM.

48. The College does not meet the definition of "religious employer" under the Final Regulations because it is not "a nonprofit organization described in section 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Code."

49. The Final Regulations adopted, without change, the definition of "eligible organization" proposed in the February 2013 NPRM.

50. The Final Regulations require that an "eligible organization" prepare the self-certification and furnish a copy to its group health plan issuer on request once in the plan-coverage period.

51. The Final Regulations modified the "accommodation" proposed in the February 2013 NPRM to require the College's group health insurance provider to provide abortifacient drugs and devices to the College's employees upon request if the College self-certifies that it is an eligible organization.

52. Delivering the self-certification to the College's group health insurance provider, as required by the Final Regulations, would trigger coverage of abortifacient drugs and devices to its employees. *See* 78 Fed. Reg. at 39875-39876.

53. The Final Regulations require the College to identify its employees to the group health insurance provider for the purpose of facilitating coverage of abortifacient drugs and devices to the College's employees.

54. The College's self-certification of its status as an "eligible organization" would also trigger notification to plan participants that abortifacient drugs and devices are available to them, as a direct result of the College's group health insurance plan, through the College's group health insurance provider.

55. Under the "accommodation" the College would be required, to trigger through its self-certification, free access to abortifacient drugs and devices to it employees, in direct conflict with its religious beliefs.

56. Under the ACA, the College is forced to provide group health insurance coverage to its employees or face substantial penalties. The government-mandated provision of group health insurance coverage by the College and the Final Regulation's "accommodation" for "eligible organizations" requires the College to either provide abortifacient drugs and devices to the College's employees, or to self-certify that it is an "eligible organization" automatically triggering coverage of abortifacient drugs and devices to the College's employees, both of which are contrary to the College's religious beliefs. Accordingly, the College is coerced into being complicit in the provision of coverage that it finds religiously and morally objectionable and that is contrary to the College's religious beliefs.

57. But for the College providing a primary group health insurance plan to its employees, the College's employees would not receive coverage of abortifacient drugs and devices from the College's group health insurance provider.

58. As a result of the Departments' actions, from and after January 1, 2014 the College is forced to acquiesce in the violation of its religious beliefs and convictions.

COUNT I
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

59. The College restates and realleges paragraphs 1 through 58 as though fully set forth herein.

60. The College's religious beliefs prohibit it from making certain FDA-approved abortifacient drugs and devices, such as *ella* and Plan B, and related education and counseling, available to its employees or being complicit in making abortifacients and related counseling available by completing and providing to their group health plan issuer the self-certification form, which tells the issuer that it must provide the College's employees coverage that gives those employees free access to emergency contraceptive drugs and devices and that it must notify the employees of that benefit.

61. The College's observance of its religious beliefs is the sincere exercise of religion within the meaning of the Religious Freedom Restoration Act.

62. The Contraceptive Mandate and the actions of the Departments impose a present and substantial burden on the College's exercise of its religion.

63. The Contraceptive Mandate and the actions of the Departments violate the College's rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.*

64. The College is suffering and will continue to suffer immediate and specific injury absent injunctive and declaratory relief.

WHEREFORE, The School of the Ozarks, Inc. d/b/a College of the Ozarks prays the Court enter its judgment declaring that the Contraceptive Mandate and the Departments' actions

in enforcement of the Contraceptive Mandate against the College violate the Religious Freedom Restoration Act; prohibiting and enjoining the Departments from enforcing the Contraceptive Mandate against the College on the basis of the College's statutory and constitutional rights to refuse to provide insurance coverage for, or access to abortifacient drugs and devices, and related education and counseling, without facing financial penalty from the Departments; awarding the College the costs of this action and reasonable attorney's fees; and granting such other and further relief as the Court deems just and proper.

COUNT II
Violation of the First Amendment to the United States Constitution
Free Exercise Clause

65. The College restates and realleges paragraphs 1 through 64 as though fully set forth herein.

66. The First Amendment's Free Exercise Clause prohibits the government from violating the College's religiously informed conscience. The College's observance of its religious beliefs is the exercise of religion within the meaning of the Free Exercise Clause.

67. The Contraceptive Mandate and the actions of the Departments expose the College to ruinous fines for its religious beliefs and the exercise of those beliefs. The Contraceptive Mandate and the actions of the Departments impose a substantial burden on the College's exercise of its religious beliefs.

68. The College's religious beliefs prohibit it from making certain FDA-approved abortifacient drugs and devices, such as *ella* and Plan B, and related education and counseling available to its employees through the provision of health insurance coverage, or from being complicit in the provision of such coverage.

69. The Contraceptive Mandate is not neutral because it contains exemptions and exclusions on a religious basis.

70. The Contraceptive Mandate is not generally applicable because many nonprofit and for-profit organizations are exempt or excluded.

71. The Departments have devised individualized assessments that relieve some organizations from the Contraceptive Mandate, but that do not relieve the College for its religious reasons.

72. Defendants designed the Contraceptive Mandate, the "religious employer" exemption, and the "eligible organization" accommodation in a way that makes it impossible for the College to practice its religious beliefs.

73. The College is suffering and will continue to suffer immediate and specific injury absent injunctive and declaratory relief.

WHEREFORE, The School of the Ozarks, Inc. d/b/a College of the Ozarks prays the Court enter its judgment declaring that the Contraceptive Mandate and the Departments' enforcement of the Contraceptive Mandate against the College violate the Free Exercise Clause of the First Amendment to the United States Constitution; prohibiting and enjoining the Departments from enforcing the Contraceptive Mandate against the College on the basis of the College's constitutional rights to refuse to provide insurance coverage for, or access to abortifacient drugs and devices, and related education and counseling, without facing financial penalty from the Departments; awarding the College the costs of this action and reasonable attorney's fees; and granting such other and further relief as the Court deems just and proper.

COUNT III
Violation of the First Amendment to the United States Constitution
Establishment Clause

74. The College restates and realleges paragraphs 1 through 73 as though fully set forth herein.

75. The First Amendment's Establishment Clause prohibits, *inter alia*, the government taking sides on religious questions and differences, as well as excessive government entanglement with religion.

76. The Contraceptive Mandate violates the Establishment Clause by requiring excessive governmental entanglement with religion, including the civil resolution of religious questions and differences in an effort to apply its exemptions and exclusions, so as to determine which religious organizations are required to comply with the Contraceptive Mandate, which religious organizations are exempt as a "religious employer," and which religious organizations are eligible merely for an "accommodation" as an "eligible organization."

77. The Contraceptive Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of "religious employer."

78. The Contraceptive Mandate creates impermissible distinctions by creating a tiered exemption system of "religious enough" and "not sufficiently religious" organizations, the former of which meet the Departments' definition of "religious employer," and are exempt from the Contraceptive Mandate, and the latter of which are subject to the Contraceptive Mandate. The application of such distinctions invites the civil resolution of religious questions and differences.

79. The Contraceptive Mandate requires governmental entanglement with religion by causing the government to make determinations concerning religious teachings, values, views, and events, including whether an organization is a "religious employer," and whether an organization is an "eligible employer."

80. The Contraceptive Mandate and the actions of the Departments exceed the restraints on governmental authority imposed by the Establishment Clause, and invade the sphere reserved for religion.

81. The College is suffering and will continue to suffer immediate and specific injury absent injunctive and declaratory relief.

WHEREFORE, The School of the Ozarks, Inc. d/b/a College of the Ozarks prays the Court enter its judgment declaring that the Contraceptive Mandate and Departments' enforcement of the Contraceptive Mandate against the College violate the Establishment Clause of the First Amendment to the United States Constitution; prohibiting and enjoining the Departments from enforcing the Contraceptive Mandate against the College on the basis of the College's constitutional rights to refuse to provide insurance coverage for, or access to abortifacient drugs and devices, and related education and counseling, without facing financial penalty from the Departments; awarding the College the costs of this action and reasonable attorney's fees; and granting such other and further relief as the Court deems just and proper.

COUNT IV
Violation of the First Amendment to the United States Constitution
Freedom of Speech

82. The College restates and realleges paragraphs 1 through 81 as though fully set forth herein.

83. The Contraceptive Mandate's compelled provision of insurance for education and counseling concerning abortifacient drugs and devices, automatically triggered by the College's provision of insurance coverage for its employees, compels the College to pay for speech that is contrary to its religious beliefs.

84. The College's refusal to provide insurance for *ella* and Plan B, and for education and counseling concerning abortifacients, is expressive conduct stemming from religious faith and belief.

85. The Contraceptive Mandate and the actions of the Departments violate the College's right to be free from compelled speech, and the College's right and opportunity to conduct itself in a religiously expressive manner to employees, students, parents of students, alumni, donors, and the College's community, as secured to it by the Free Speech Clause of the First Amendment to the United States Constitution.

86. Students, parents of students, alumni, and donors expect the College to be true to the Christian faith and thus pro-life without compromise, and to clearly message that belief and practice. The actions of the Departments undermine and prevent the sending of that unadulterated message.

87. The College is suffering and will continue to suffer immediate and specific injury absent injunctive and declaratory relief.

WHEREFORE, The School of the Ozarks, Inc. d/b/a College of the Ozarks prays the Court enter its judgment declaring that the Contraceptive Mandate and the Departments' enforcement of the Contraceptive Mandate against the College violate the Free Speech Clause of the First Amendment to the United States Constitution; prohibiting and enjoining the Departments from enforcing the Contraceptive Mandate against the College on the basis of the

College's constitutional rights to refuse to provide insurance coverage for, or access to abortifacient drugs and devices, and related education and counseling, without facing financial penalty from the Departments; awarding the College the costs of this action and reasonable attorney's fees; and granting such other and further relief as the Court deems just and proper.

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

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

Executed on this 14th day of January, 2014.

Jerry C. Davis, President
The School of the Ozarks, Inc. d/b/a
College of the Ozarks