

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil File No.**

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REV. MR. (DEACON) GREGORY E. HALL  
and AMERICAN MFG COMPANY,

*Plaintiffs,*

*vs*

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; SETH D. HARRIS, in his official capacity as Acting Secretary of the United States Department of Labor and his successor; NEIL WOLIN, in his official capacity as Acting Secretary of the United States Department of the Treasury and his successor; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY,

*Defendants.*

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

**Verified Complaint for Declaratory and Injunctive Relief**

Rev. Mr. Gregory E. Hall (“Deacon Hall”) and his company called American Mfg Company (“Company”), by and through their counsel, as Plaintiffs complain against the above-named Defendants (collectively “HHS”) as follows:

## **Introduction**

1. In this action, Deacon Hall and Company challenge certain regulations adopted under the 2010 Patient Protection and Affordable Care Act (“Affordable Care Act”), Pub. L. No. 111-148, 124 Stat. 119. The generally-applicable regulations force Deacon Hall and other ordained clergy in the United States who have an ownership interest in or operate companies for their secular remuneration to include in their group health plans coverage for products and services that violate their religious beliefs under threat of substantial monetary fines, penalties and significant competitive disadvantages.

2. Specifically, Deacon Hall and Company seek declaratory and injunctive relief from the operation of the final rules promulgated by the HHS, mandating that all group health plans include 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” in plan years beginning on or after August 1, 2012 (“the HHS Mandate”), *see* 45 CFR § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Reg. 8725 (Feb. 15, 2012), adopting and quoting Health Resources and Services Administration Guidelines found at <http://www.HealthResourcesandServices.gov/womensguidelines>.

3. Deacon Hall is a Roman Catholic Deacon of the Archdiocese of Galveston-Houston assigned to Christ Redeemer Catholic Church where he conducts religious services and preaches. He is a permanent Deacon, meaning that, in the regular course, he will not be ordained a Priest. He has been appointed as an Assistant Director of the National Association of Deacon Directors. He is teaching courses on “Prayer and Moral Theology” at the seminary of the Archdiocese of Galveston-Houston beginning in October of 2013.

4. As is typical with Deacons, Deacon Hall receives no remuneration from the Archdiocese of Galveston-Houston and supports his family with outside income.

5. Deacon Hall supports his family by owning and operating the Company and related work. The Company is located in St. Joseph, Minnesota. The Company manufactures and markets mining equipment, mud pumps and parts, for distribution worldwide.

6. After the Copiago mining accident in Chile, Deacon Hall and his Company became internationally famous by assisting in the successful design and implementation of “Plan B” which aided in the successful rescue of thirty-three (33) trapped Chilean miners on October 9, 2010.

7. As a Deacon, Deacon Hall is required to steadfastly teach and preach the Catechism of the Catholic Church on abortion and contraception. *See, e.g.,*

Code of Canon Law § 757. The Catechism § 2322 states abortion is a criminal practice under religious law:

2322 From its conception, the child has the right to life. Direct abortion, that is, abortion willed as an end or as a means, is a "criminal" practice (GS 27 § 3), gravely contrary to the moral law. The Church imposes the canonical penalty of excommunication for this crime against human life.

The Catechism §§ 2367-2372, 2399 state that "direct sterilization and contraception" are "morally unacceptable" under Catholic religious law.

8. Thus, Deacon Hall is required as a Deacon to teach that contraception and abortion are sinful and morally unacceptable under Catholic religious law.

9. Deacon Hall is also required to practice in his life, even in his business, what he preaches as a minister.

10. In fact, the Catholic Church considers it a "public scandal", according to its own meaning of the term, if Deacon Hall were to deviate from these Catechism in his teaching, his preaching or his life. *See* Catechism §§ 2284-2287. Catechism § 2285 states:

Scandal takes on a particular gravity by reason of the authority of those who cause it or the weakness of those who are scandalized. It prompted our Lord to utter this curse: "Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened round his neck and to be drowned in the depth of the sea." Scandal is grave when given by those who by nature or office are obliged to teach and educate others. Jesus reproaches the scribes and Pharisees on this account: he likens them to wolves in sheep's clothing.

(Footnotes omitted).

11. Thus, Deacon Hall as Roman Catholic clergy is very careful to public scandal.

12. Thus, Deacon Hall, in order to avoid public scandal, operates his Company in ways that adhere to and are not violative of the Catechism.

13. The Catechism compels Deacon Hall to provide for the physical health of his employees and exercise his belief by offering group health plans for his employees consistent with the Catechism regarding contraception and abortion.

14. The HHS Mandate requires that the Company's group health plans provide and pay for coverage for contraception, sterilization, abortifacient drugs, and related education and counseling. Among the products the HHS Mandate requires Company's group plan to fund are Plan B (the "morning after pill") and Ella (the "week after pill"),<sup>1</sup> drugs that are designed to destroy early human life shortly after conception.

15. Deacon Hall believes that paying for a group health insurance plan that complies with the HHS Mandate is sinful and immoral because it requires Deacon Hall and the Company to pay for contraception, sterilization, abortifacient drugs and related education and counseling violating the Catholic Cathechism.

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<sup>1</sup> FDA Office of Women's Health, *Birth Control Guide*, available at [www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf](http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf).

16. Deacon Hall desires to continue offering a group health plan to Company employees, but wishes to exclude coverage for products and services that violate his religious beliefs, such as those required by the HHS Mandate.

17. Yet, HHS will not allow him to terminate these coverages on April 1, 2013 – when his current coverage expires.

18. In short, the HHS Mandate will not permit Deacon Hall to operate his business in accordance with the Catechism. In order to avoid Deacon Hall being involved in public scandal, as defined by the Catechism and Code of Canon Law, Deacon Hall and Company are being coerced by HHS through the HHS Mandate to discontinue the Company's group health insurance plan to avoid violating Catholic religious law.<sup>2</sup>

19. The Company will terminate its group health plan for its employees on March 31, 2013, unless it receives relief from this Court.

20. If Deacon Hall and the Company were to choose to exercise their religious beliefs by offering a group health plan that does not comply with the

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<sup>2</sup> Because Company employs fewer than 50 full-time employees, it is not subject to fines and penalties if it does not offer a group health plan to its employees. See 26 U.S.C. § 4980H(c)(2)(A). However, all employers, regardless of size, that offer a group health plan, must comply with the HHS Mandate or face substantial fines and penalties. 26 U.S.C. § 4980D (imposing \$100 per-day, per-employee fine on employers that offer group health plan that do not comply with the coverage requirements of the HHS Mandate).

HHS Mandate, they are subject to substantial fines and penalties. 26 U.S.C. § 4980D.

21. Because Deacon Hall and the Company are being forced to discontinue the Company's employee health care in order to avoid public scandal, the Company may now and will in the future face significant competitive disadvantages in the marketplace, in that it is unable to offer health insurance to current and prospective employees, where as its competitors will be able to do so without violating their consciences.

22. Deacon Hall and the Company's decision to discontinue health care will not be done willingly, but under the coercive pressure of the HHS Mandate and the public scandal it would create for Deacon Hall.

23. Further, because providing health care is accepted to be a moral and religious duty by Deacon Hall and Company, discontinuing the company's group health plan violates Deacon Hall's and Company's religiously-held duty to provide for the physical health of his employees, including their health care.

24. The Company will offer group health plans in the future, but only if they can do so without violating their religious beliefs with respect to contraception, sterilization and abortifacient drugs.

25. The HHS has exempted certain employers from complying with the requirements of the HHS Mandate in an attempt to accommodate the religious

beliefs of those employers, *see* 76 Fed. Reg. 46621, 46623 (issued on August 1, and published on August 3); however, despite their sincere religious objections, the Company does not, and can not, meet the HHS's narrow qualifications for such an exemption.

26. The HHS Mandate violates Deacon Hall's and Company's statutory and constitutional rights by coercing them to violate their sincerely held religious beliefs under the threat of fines and penalties.

27. The HHS Mandate violates Deacon Hall's and Company's statutory and constitutional rights by forcing them to violate certain religious beliefs in order to comply with their religiously-held duty to offer group health care and by choosing between violating their religious beliefs and facing significant competitive disadvantages in the marketplace.

28. The HHS actions violate Deacon Hall's and Company's right to freely exercise their religion, which are protected by the Religion Clauses of the First Amendment to United States Constitution and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA").

29. The HHS actions also violate Deacon Hall's and Company's rights to freedom of speech, which are protected by the Free Speech Clause of the First Amendment to the United States Constitution.

30. Further, the HHS actions violated the Administrative Procedures Act, 5 U.S.C. § 553, by adopting and imposing the HHS Mandate without prior notice or public comment.

31. Deacon Hall and Company are currently being impermissibly coerced to violate their religious beliefs. Deacon Hall and Company will continue to be harmed unless this court provides them their requested relief from the HHS's illegal and unconstitutional actions.

### **Jurisdiction and Venue**

32. This action arises under the Constitution and laws of the United States. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361 and 42 U.S.C. § 1983. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, and 5 U.S.C. § 702. This Court has jurisdiction to award reasonable attorney's fees and costs under the Equal Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

33. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(e)(1) because the Plaintiffs reside within this district.

### **The Parties**

34. Plaintiff Rev. Mr. Gregory E. Hall ("Deacon Hall") is an individual and a citizen of the State of Texas. He is the owner, President and Chief Executive

Officer of Company. He is also a Deacon of the Catholic Church in the Archdiocese of Galveston-Houston in Texas.

35. Plaintiff American Mfg Company, formerly known as DSI American Manufacturing Company (“Company”), is a Minnesota corporation that manufactures parts for mining equipment such as pumps, rigs, swivels, reverse circulation drill pipe, and booster compressors, with worldwide distribution. It is located at 736 19<sup>th</sup> Avenue NE, St. Joseph, Minnesota, 56374.

36. Defendant United States Department of Health and Human Services (“HHS”), is an agency of the United States, and is responsible for the administration and enforcement of the HHS Mandate.

37. Defendant Kathleen Sebelius is the Secretary of Health and Human Services. As Secretary, she is responsible for the operation and management of the HHS. She is sued in her official capacity only.

38. Defendant United States Department of Labor is an agency of the United States government and is responsible for the administration and enforcement of the HHS Mandate.

39. Defendant Seth D. Harris is the Acting Secretary of Department of Labor. As Acting Secretary, he is responsible for the operation and management of the Department. He is sued in his official capacity only.

40. Defendant United States Department of the Treasury is an agency of the United States government and is responsible for the administration and enforcement of the Mandate.

41. Defendant Neil Wolin, in his official capacity as Acting Secretary of the Treasury. As Acting Secretary, he is responsible for the operation and management of the Treasury. He is sued in his official capacity only.

### **Factual Allegations**

#### **Introduction**

42. Certain factual allegations are described in the preceding paragraphs of this complaint. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

#### **Deacons in the Roman Catholic Church**

43. The history of Deacons in the Roman Catholic Church goes back to the beginning of the Roman Catholic Church. After the Council of Nicea in 325 A.D., the Order of Deacons was suppressed by the Pope. From that time until the years just prior to the Second Vatican Council, the only men ordained as deacons were seminarians who were completing the last year or so of graduate theological training, who received the order several months before priestly ordination. In 1967, following the recommendations of Vatican Council II (in *Lumen Gentium* 29), Pope Paul VI issued the motu proprio *Sacrum Diaconatus Ordinem*, restoring

the ancient practice of ordaining to the diaconate men who were not candidates for priestly ordination. These men are known as *permanent deacons* in contrast to those completing their training, who were then called *transitional deacons*. There is no sacramental difference between the two, however, as there is only one order of deacons.

44. The permanent diaconate formation period in the Roman Catholic Church varies from diocese to diocese as it is determined by the local ordinary. But it usually entails a year of prayerful preparation, a four- or five-year training period that resembles a collegiate course of study, and a year of post-ordination formation as well as the need for lifelong continuing education credits.

45. Diaconal candidates receive instruction in Catholic doctrine, philosophy, theology, study of the Holy Scriptures (the Bible), homiletics, sacramental studies, evangelization, ecclesiology, counseling, and pastoral care and ministry before ordination.

46. Although Deacons are assigned to work in a parish by the diocesan bishop, once assigned, deacons are under the supervision of the parish pastor.

47. Unlike most clerics, permanent deacons who have a secular profession have no right to receive a salary for their ministry.

48. Specifically, under the Code of Canon Law, Can. 281 § 3, “married deacons ... who receive remuneration by reason of a civil profession which they

exercise or have exercised, however, are to take care of the needs of themselves and their families from the income derived from it."

49. The ministry of the deacon in the Roman Catholic Church is described as one of service in three areas: the Word, the Liturgy and Charity. Deacons, prior to ordination, make a Profession of Faith and Oath of Fidelity.

50. The deacon's ministry of the Word includes proclaiming the Gospel during the Mass, preaching and teaching.

51. The deacon's liturgical ministry includes various parts of the Mass proper to the deacon, including being an ordinary minister of Holy Communion and the proper minister of the chalice when Holy Communion is administered under both kinds.

52. The ministry of charity involves service to the poor and marginalized and working with parishioners to help them become more involved in such ministry.

53. As clerics, deacons are required to recite the Liturgy of the Hours.

54. Deacons, like priests and bishops, are ordinary ministers of the sacrament of Baptism and can serve as the church's witness at the sacrament of Holy Matrimony, which the bride and groom administer to each other (though if the exchange of vows takes place in a wedding Mass, or Nuptial Mass, the Mass is celebrated by the priest and the deacon acts as another witness).

55. Deacons may preside at funeral rites not involving a Mass (e.g., the final commendation at the gravesite or the reception of the body at a service in the funeral home) and may assist the priest at the Requiem Mass.

56. They can preside over various services such as Benediction of the Blessed Sacrament, and they may give certain blessings.

57. Deacons cannot hear confession and give absolution, anoint the sick, or celebrate Mass.

58. At Mass, the deacon is the ordinary minister of the proclamation of the Gospel (in fact, a priest, bishop, or even the Pope should not proclaim the Gospel if a deacon is present) and of Holy Communion (primarily, of the Precious Blood).

59. As ordained clerics, and if granted faculties by their bishops, deacons may preach the homily at a public Mass, unless the priest celebrant retains that ministry to himself at a given Mass.

60. The vestments most particularly associated with the Western Rite Catholic deacon are the alb, stole and dalmatic. Deacons, like priests and bishops, must wear their albs and stoles; deacons place the stole over their left shoulder and it hangs across to their right side, while priests and bishops wear it around their necks. The dalmatic, a vestment especially associated with the deacon, is worn during the celebration of the Mass and other liturgical functions; its use is more

liberally applied than the corresponding vestment of the priest, the chasuble. At certain major celebrations, such as ordinations, the diocesan bishop wears a dalmatic under his chasuble.

61. Permanent deacons often serve in parish or other ministry as their time permits, since they typically have other full-time employment. They may also act as parish administrators (Code of Canon Law § 217).

62. With the passage of time, more and more deacons are serving in full-time ministries in parishes, hospitals, prisons, and in diocesan positions.

63. Deacons often work directly in ministry to the marginalized inside and outside the church: the poor, the sick, the hungry, the imprisoned.

64. The permanent diaconate can be conferred on single men 25 or older, and on married men 35 or older, but an older age can be required by the Episcopal conference.

65. If a married deacon is widowed, he must maintain the celibate state.

66. This is most commonly done when the deacon is left as a single father. In some cases, a widowed deacon will seek priestly ordination, especially if his children are grown.

67. The wife of a permanent deacon may be sometimes considered a partner in his ordained ministry.

68. A permanent deacon is not styled "Father" as a priest would be, but as "Deacon", abbreviated variously as "Dn." or "Dcn." This preferred method of address is stated in the 2005 document of the United States Conference of Catholic Bishops, National Directory for the Formation, Ministry and Life of Permanent Deacons in the United States.

69. The proper address in written correspondence for all Deacons of the Latin (Roman Rite) Catholic Church is "Rev. Mr." "Rev. Mr.", however, is more often used to indicate a transitional deacon (i.e., preparing for ordination to the priesthood) or one who belongs to a religious institute, while "Deacon" is used as the honorific for permanent deacons (e.g. Deacon John Smith, or Deacon Smith).

## **Company**

70. American Mfg Company ("Company"), formerly known as DSI American Manufacturing Company, was purchased in 1999 by Gregory E. Hall. The Company is a business that produces parts for mining equipment such as pumps, rigs, swivels, reverse circulation drill pipe, and booster compressors distributing them world-wide. Hall is also president of a company located in Houston that does business as Drillers Supply International ("DSI"). DSI is an assumed business name for Hall-McMullen, Inc.

71. The Company currently employs approximately 40 full-time employees.

72. Hall is the Company's current President and Chief Executive Officer.

73. After the Copiapo mining accident in Chile, Deacon Hall and his Company became internationally famous by assisting in the successful design and implementation of "Plan B" which aided in the successful rescue of thirty-three (33) trapped Chilean miners on October 9, 2010.

74. Deacon Hall, personally, and consistent with his position as a Deacon of the Catholic Church, strives to operate his companies in accordance with the religious, ethical, and moral teachings of the Catholic Church.

75. Deacon Hall accommodates all employees regarding religious observances by giving employees time off to make religious observances.

76. Deacon Hall closes the Company on Good Friday which is a paid vacation day for all employees.

77. Deacon Hall sponsors an annual Christmas Party. At the annual Company Christmas Party, Deacon Hall consecrates the Company by praying for it in the name of Jesus Christ. Also, prior to the Christmas Party dinner, Deacon Hall blesses the food to be eaten in the name of Jesus Christ.

78. The Company's current group health plan is issued by Medica. The plan year for Company's group health plan began on April 1, 2012 and will end on March 31, 2013.

79. The Company's group plan is not currently subject to the HHS Mandate.

80. According to HHS regulations, 77 Fed. Reg. at 8725, the Company's group plan will be subject to the HHS Mandate beginning on the first day of their next scheduled plan renewal— April 1, 2013.

81. The Company's religious beliefs prohibit it from intentionally providing a group health plan that provides coverage for contraception, sterilization, abortion, and abortifacient drugs and related education and counseling.

82. Deacon Hall is aware of the national controversy surrounding the HHS Mandate and the many lawsuits filed by Catholic lay people around the country who own businesses are faced with a similar problem. However, Deacon Hall sees that the substantial burden he is suffering may be greater than Catholic lay people. As a Deacon by Roman Catholic religious law prohibits him from owning the Company if it complies with the HHS Mandate. It would undoubtedly be “public scandal” under Catholic religious law for a Roman Catholic Deacon to do so.

83. Deacon Hall has examined the Company's group health plan to verify it did not include coverage for drugs or services that do not accord with his religious beliefs. During this re-examination and talking to Medica representatives,

Deacon Hall discovered that the Company's current group health plan provides coverage for abortifacient drugs, sterilization and contraception supplies and prescription medications.<sup>3</sup>

84. Coverage for these drugs and services was not included knowingly as to do so would be contrary to Deacon Hall's sincerely-held religious beliefs.

85. Upon learning that the Company's current group health plan provides coverage in violation of Deacon Hall's Catholic faith, the Company's representatives immediately contacted its agent for Medica to request that the Company's group health plan be modified to exclude coverage for contraception, sterilization, abortifacient drugs and related education and counseling.

86. The Company received notification from Medica that it would be expanding its coverage pursuant to and in accordance with the new guidelines under the Affordable Care Act effective upon the Company's renewal of its group health policy.

87. Medica representatives informed the Company that Medica will not permit the Company to modify its group health plan to omit coverage for contraception, sterilization, abortifacient drugs and related education and

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<sup>3</sup> During the examination of its group health plan in January 2013, Company representatives also discovered it had included coverage for similar contraceptive and abortion-inducing drugs in prior group health plans. Coverage for these drugs was not included knowingly as to do so would be contrary to Deacon Hall's sincerely-held religious beliefs.

counseling because under the HHS Mandate, Medica is required to include in all group health plans issued to employers with fewer than 50 employees the before-mentioned coverage.

88. The Company then inquired with other Minnesota insurance issuers about providing a group health plan to the Company that excludes coverage for contraception, sterilization and abortifacient drugs. None of the issuers was able to offer such a group plan because no such plan can exist as a result of the HHS Mandate, for it requires *all* insurance issuers to provide HHS Mandate-compliant coverage in *all* group health plans in accordance with 42 U.S.C. § 300gg-13; 45 CFR 147.130(a)(1)(iv).

89. The HHS Mandate strips Deacon Hall and Company of any choice to select an insurance plan that does not cover and finance contraception, sterilization, and abortifacient drugs and related education and counseling.

90. As a result of the HHS Mandate, Deacon Hall and the Company cannot offer a group health plan to its employees that accords with and does not violate Hall's sincerely-held religious beliefs.

91. Deacon Hall believes he has a moral and religious duty to provide a group health insurance plan for the Company employees; however, he cannot do so without violating his religious beliefs.

92. Despite these religious directives, Deacon Hall and Company have determined they must discontinue the Company's group health plan.

93. This decision to discontinue health care was not done willingly, but under the coercive pressure of the HHS Mandate, which has eliminated Deacon Hall's and the Company's choice to purchase a plan that accords with the Catholic faith.

94. By coercing Deacon Hall and Company to discontinue the Company's group health plan, the HHS Mandate has illegally and unconstitutionally coerced Deacon Hall and Company to violate Deacon Hall's Catholic conscience that compels him to provide for the physical health of others, including their health care.

95. Discontinuing insurance coverage threatens the health and economic stability of Company and its employees. It will also force the Company to suffer competitive disadvantages, in that it will not be able to offer current and prospective employees the important benefit of health insurance, whereas other employers will be able to do so without violating their religious beliefs.

96. Deacon Hall and the Company do not want to discontinue Company's group health plan, but are coerced by the HHS Mandate to do so under the threat of punishment for following Deacon Hall's religious beliefs.

97. If Deacon Hall and the Company choose to continue to provide their current employee group health plan, the Company will, inevitably, be forced to offer a Mandate-compliant group health plan.

98. If the Company provides a group health plan that does not comply with the HHS Mandate, the Company is subject to substantial fines and penalties.

99. The HHS Mandate illegally and unconstitutionally forces Hall to choose between violating his religious beliefs with respect to contraception, sterilization and abortifacient drugs and facing significant competitive disadvantages in the marketplace.

100. The HHS Mandate illegally and unconstitutionally forces Deacon Hall and Company to violate their religious beliefs with respect to contraception, sterilization and abortifacient drugs in order to exercise their religiously-held duty to provide for the physical health of Company employees abandoning the precepts of the Catholic faith in order to offer group health insurance.

101. Deacon Hall seeks to simply operate the Company in accordance with his Catholic faith and would do so but for the HHS Mandate and its fines, penalties and substantially burdensome coercive effects.

102. The HHS Mandate illegally and unconstitutionally forces Deacon Hall to choose between violating his sincerely-held religious beliefs by complying with

the HHS Mandate or not complying with the HHS Mandate and incurring substantial fines and penalties.

103. The HHS Mandate illegally and unconstitutionally forces Deacon Hall to choose between continuing as a Deacon and selling his Company or retaining the Company and resigning as Deacon.

### **The ACA and the HHS Mandate**

104. The Patient Protection and Affordable Care Act (“ACA”), Pub. L. No. 111-148, 124 Stat. 119, enacted in March 2010, requires group health plans to provide women with “preventive care and screenings” at no charge to the patient. *See 42 U.S.C. § 300gg-13(a)(4).*

105. The ACA provides:

A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for... (4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.

*Id.*

106. In July, 2010, HHS issued regulations ordering HHS’s Health Resources Services Administration (“Health Resources Services”) to develop

guidelines that would determine what preventative care and screenings would be mandated under the ACA. *See* 75 Fed. Reg. 41728 (July 19, 2010).

107. Health Resources Services commissioned and funded a committee at the Institute of Medicine to recommend which drugs, procedures, and services should be covered by all health plans as preventive care for women.

108. The Institute of Medicine's report<sup>4</sup> to Health Resources Services recommended that preventative care for women include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity."

109. On August 1, 2011, without notice of rulemaking or opportunity for public comment, the Health Resources Services adopted the Institute of Medicine's recommendations in full. *See* Health Resources and Services Administration, Women's Preventive Services: Required Health Plan Coverage Guidelines, <http://www.HealthResourcesServices.gov/womensguidelines> (last visited Oct. 31, 2012) ("Health Resources Services Guidelines").

110. Contemporaneously, HHS issued an "interim final rule" requiring "group health plan[s] and...health insurance issuer[s] offering group or individual

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<sup>4</sup> INSTITUTE FOR MEDICINE, CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS (2011), *available at* <http://cnsnews.com/sites/default/files/documents/PREVENTIVE%20SERVICESINSTITUTE%20REPORT.pdf>.

insurance coverage [to] provide benefits for and prohibit the imposition of cost-sharing with respect to” the women’s preventive care and services included in the Health Resources Services Guidelines for plan years beginning on or after August 1, 2012. 76 Fed. Reg. 46622, 46629 (issued on August 1, and published on August 3); 45 CFR 147.130(a)(1)(iv).

111. On February 15, 2012, HHS issued final regulations—the HHS Mandate—by adopting the August 1 interim final rule “without change.” 77 Fed. Reg. 8725-30 (Feb. 15, 2012).

112. Among the Federal Drug Administration approved “contraceptive methods” that all group health plans must provide at no cost are Plan B (the “morning after pill”) and Ella (the “week after pill”),<sup>5</sup> drugs that are designed to destroy early human life shortly after conception.

113. Plan B and Ella can prevent the implantation of a human embryo in the wall of the uterus and can cause the death of an embryo. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus or to cause the death of an embryo each constitute an “abortion” as that term is used in federal law and Catholic teaching. Consequently, Plan B and Ella are abortifacients.

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<sup>5</sup> FDA Office of Women’s Health, *Birth Control Guide*, available at [www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf](http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf).

114. The ACA, under 26 U.S.C. § 4980H, requires employers with more than 50 full-time employees (or full-time employee equivalents) to provide federal government-approved health insurance coverage or pay substantial fines and penalties.

115. Employers with fewer than 50 full-time employees must comply with the HHS Mandate, under threat of substantial fines, if they offer a group health plan because the Mandate applies to *all* non-exempt, non-grandfathered group health plans regardless of the employer's size. 42 U.S.C. § 300gg-13(a)(4) (Mandate applies to all group health plans); 26 U.S.C § 4980D (imposing fines on "failure of a group health plan to meet the requirements" of the ACA).

116. Moreover, the ACA and the HHS Mandate prevents *all* employers (and individuals) from selecting a group health plan that does not include coverage for contraceptives, sterilization, abortifacient drugs and related education and counseling because the ACA requires all "health insurance issuers offering group or individual health insurance coverage" to provide Mandate-compliant coverage. 42 U.S.C. § 300gg-13(a)(4).

117. Therefore, Deacon Hall and Company cannot avoid the HHS Mandate by purchasing a group health plan that accommodates their conscience and religious beliefs because no such plan exists.

118. The HHS Mandate does not apply to preexisting group health plans that are considered “grandfathered.” 76 Fed. Reg. 46623 & n.4; *see also* 42 U.S.C. § 18011(a)(3-4) (specifying those provisions of the ACA that apply to grandfathered health plans).

119. To remain “grandfathered,” a group health plan must now and in the future comply with regulations issued by the HHS. *See* 42 U.S.C. § 18011(a)(2); 45 CFR § 147.140; 75 Fed. Reg. 34538, 34545 (June 17, 2010); *see also* HealthReform.gov, “Fact Sheet: Keeping the Health Plan You Have: The Affordable Care Act and “Grandfathered” Health Plans,” [http://www.healthreform.gov/newsroom/keeping\\_the\\_health\\_plan\\_you\\_have.html](http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html) (last visited Oct. 31, 2010).

120. The ACA and the HHS Mandate do not apply equally to members of certain religious groups.

121. Individual “member[s] of a recognized religious sect or division thereof” who are “conscientiously opposed to acceptance of the benefits of any private or public insurance” are exempted from complying with certain provisions of the ACA. 26 U.S.C. §§ 5000A(d)(2)(a)(i), 1402(g)(1).

122. The HHS Mandate indicates that Heath Resources Services “may” exempt certain “religious employers” from complying with the HHS Mandate. 45 C.F.R. § 147.130(a)(iv)(A); 76 Fed. Reg. at 46623.

123. The HHS has defined which employers are “religious” for purposes of this exemption. 45 C.F.R. § 147.130(a)(iv)(B).

124. Health Resources Services may grant exemptions for “religious employers” that “meet[] 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 serves primarily 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 Internal Revenue Code of 1986, as amended.” 45 C.F.R. § 147.130(a)(iv)(B)(1)-(4).

125. The sections of the Internal Revenue Code referenced in the fourth criterion refer to “churches, their integrated auxiliaries, and conventions or associations of churches” and “the exclusively religious activities of any religious order,” that are exempt from taxation under 26 U.S.C. § 501(a). 26 U.S.C. § 6033(a)(1), (a)(3)(A)(i), (a)(3)(A)(iii).

126. The HHS Mandate does not place limits on Health Resource Services discretion to establish an exemption for “religious employers,” or to grant such exemptions to organizations meeting the Defendants’ definition of “religious employer.”

127. The HHS Mandate contains no exemptions for for-profit organizations, such as Plaintiff Company, even when those organizations have a sincere religious objection to the HHS Mandate's requirement that their group health plans provide coverage, at no cost, for contraception, sterilization, abortifacient drugs and related education and counseling.

128. The HHS stated that it based the exemption for "religious employers" on comments and feedback received on the July 19, 2010 interim final rule, *see* 76 Fed. Reg. at 46623, and the August 1, 2011 amendments to the interim final rule, *see* 77 Fed. Reg. at 8726.

129. The HHS stated they received over 200,000 responses to the request for comments to the August 1, 2011 amendments to the interim final rule. 77 Fed. Reg. at 8726.

130. Through these comments, the HHS was made aware of numerous objections to the HHS Mandate, including, but not limited to, the following:

- "the religious employer exemption is too narrow";
- "the definition of religious employer [should] be broadened so that more sponsors of group health plans would qualify for the exemption";
- "the exemption for religious employers will not allow them to continue their current exclusion of contraceptive services from coverage under their group health plans";
- that for certain employers to "pay for [contraceptive] services...would be contrary to their religious beliefs"; and

- “if the definition of religious employer is not broadened, [employers] could cease to offer health coverage to their employees in order to avoid having to offer coverage to which they object on religious grounds.”

77 Fed. Reg. at 8726-27.

131. Despite these, and other, known religious objections, the HHS did not expand the narrow exemption for organizations defined as “religious employers,” but finalized the interim final rule “without change.” 77 Fed. Reg. at 8730.

132. With full knowledge of the aforementioned objections, the HHS issued the HHS Mandate, which substantially burdens the religious exercise of Hall, Company and millions of other Americans.

133. Because the HHS Mandate arbitrarily exempts certain plans and employers for a variety of secular reasons, but does not exempt similar plans and employers for religious reasons, the HHS Mandate impermissibly targets religious conduct.

134. The HHS Mandate was adopted without giving due weight to the tens of thousands of public comments submitted to HHS in opposition to the HHS Mandate.

135. The HHS Mandate forces Deacon Hall and Company and others to adopt and endorse the HHS moral view of contraception, sterilization, abortifacient drugs and related education and counseling.

136. On February 10, 2012, HHS issued a document entitled “Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code” (“Guidance”),<sup>6</sup> which established a “temporary enforcement safe harbor.”

137. Under the “Guidance,” until “the first plan year that begins on or after August 1, 2013...[n]either employers, nor group health plans, nor group health insurance issuers will be subject to any enforcement action by the Departments for failing to cover recommended contraceptive services without cost sharing in non-exempted, non-grandfathered group health plans established or maintained by an organization...that meets *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.

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<sup>6</sup> HHS, Guidance on the Temporary Enforcement Safe Harbor, <http://ccilio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf> (last visited Oct. 31, 2012).

3. ...the group health plan established or maintained by the organization (or another entity on behalf of the plan, such as a health insurance issuer or third-party administrator) must provide to participants the attached notice, as described below, which states that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.
4. The organization self-certifies that it satisfies criteria 1-3 above, and documents its self-certification in accordance with the procedures detailed herein.”

HHS, Guidance on the Temporary Enforcement Safe Harbor,

<http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf> (last visited Oct. 31, 2012).<sup>7</sup>

138. On March 21, 2012, the HHS issued an Advanced Notice of Proposed Rulemaking” (“Advanced Notice”) stating their intentions to propose certain amendments to the Mandate. 77 Fed. Reg. 16501 (March 21, 2012).

139. In the Advanced Notice, the HHS stated an intention to “accommodate” some religious non-profit employers not defined as “religious employers” by HHS by requiring compliance with the mandate by means of requiring those employers’ insurers to offer the employer’s employees the coverage required by the HHS Mandate for at no cost. *See* 77 Fed. Reg. at 16503.

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<sup>7</sup> On August 15, 2012, Defendants issued a revised Guidance, clarifying certain criteria with respect to the Temporary Enforcement Safe Harbor. HHS, Revised Guidance on the Temporary Enforcement Safe Harbor at 1 n.1, <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf> (last visited Oct. 16, 2012).

140. The Advanced Notice is neither a rule, a proposed rule, nor the specification of what a rule proposed in the future would actually contain. It in no way changes or alters the final status of the HHS Mandate. It does not even create a legal requirement that HHS change the HHS Mandate at some time in the future.

141. The ACA creates a system of individualized exemptions.

142. The ACA grants HHS the authority to grant compliance waivers, which exempt certain entities from complying with certain provisions of the ACA, including the requirement that employers provide health care coverage.

143. Employers who are exempt from providing health care coverage are exempt from complying with the HHS Mandate.

144. Upon information and belief, HHS has granted over 1,000 compliance waivers.

145. HHS has granted compliance waivers to for-profit businesses, unions, and other organizations for purely secular reasons, but has not exempted Company despite Hall's sincere religious objections.

146. The ACA is not generally applicable because it provides numerous exemptions from its rules and applicability.

147. The ACA is not neutral because some organizations and individuals, both secular and religious, are exempt from complying with certain provisions it, including the HHS Mandate.

148. The ACA is not neutral because some organizations and individuals, both secular and religious, have been granted compliance waivers, exempting them from complying with certain provisions of it, including the HHS Mandate.

**Deacon Hall, Company and the HHS Mandate**

149. The HHS Mandate applies to Company's first group health insurance plan year after August 1, 2012.

150. Company has been pressured to discontinue its current group health plan. Therefore, absent relief from this Court, the HHS Mandate will apply to the next group health plan Company provides.

151. Absent relief from this Court, the HHS Mandate will apply to any group health plan provided by a business owned by Deacon Hall.

152. Company does not qualify for any of the exemptions to the ACA.

153. Company does not qualify for an individual exemption under 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) as Company does not object to acceptance of public or private insurance funds in their totality -- a requirement for the exemption.

154. Company's current group health plan also does not qualify as a "grandfathered" group health plan. According to Medica, Company's group plan provider, all small business group plans it offers, such as Company's plan, are non-grandfathered plans.

155. Even if this were not so, Company could not qualify for grandfather status because Company did not provide the required notification, *see* 45 CFR § 147.140(a)(2)(i)-(ii), to plan participants that its plan was considered grandfathered (because the plan was not considered grandfathered).

156. The Company does not qualify as exempt “religious employers” under 45 CFR § 147.130(a)(1)(iv)(A)-(B).

157. The Company is not “religious” enough under the HHS’s definition of “religious employer” in several respects because, including but not limited, Company has purposes other than the “inculcation of religious values,” it does not primarily hire or serve Catholics, and because Deacon Hall’s current businesses are not churches, integrated auxiliaries of particular churches, convention, or association of churches, or the exclusively religious activities of a religious order.

158. Because the Company does not qualify for the “religious employer” exemption, it is not permitted to take advantage of the “temporary enforcement safe-harbor” as set forth by the Defendants at 77 Fed. Register 8725 and the contemporaneously-issued Guidance.

159. The HHS Mandate requires that Company finance coverage for and facilitate access to contraception, sterilization, abortifacient drugs and related education and counseling against the Plaintiffs’ conscience and in violation of their religious beliefs, in a manner that is contrary to law.

160. The HHS Mandate constitutes government-imposed coercion on Deacon Hall and Company to change or violate Hall's sincerely held religious beliefs.

161. The HHS Mandate exposes Company and Deacon Hall to substantial fines for refusal to change or violate his religious beliefs.

162. Pursuant to the HHS Mandate, all insurance issuers must provide coverage for contraception, sterilization, abortion and abortifacient drugs and related counseling services in all group health plans as of August 1, 2012.

163. HHS has stripped Deacon Hall and the Company of any choice to select a group health plan that excludes coverage for these drugs, devices, and services.

164. Deacon Hall and the Company are forced to select and pay for a group health plan that includes the HHS Mandate-compliant coverage in violation of their religious beliefs.

165. The Company will remove itself from the health insurance market in its entirety on April 1, 2013 rather than comply with the HHS Mandate.

166. The HHS Mandate will place the Company at a competitive disadvantage in efforts to recruit and retain employees, in that it will no longer be permitted to offer a group health plan.

167. The HHS Mandate will make it difficult for the Company and Deacon Hall to attract quality employees because of uncertainty about health insurance benefits.

168. Deacon Hall will have to choose between remaining a Deacon and selling the Company to avoid public scandal or to retain the Company and resign as Deacon.

169. The HHS Mandate will prevent Company from receiving a tax credit available to small businesses who offer group health insurance plans. 26 U.S.C. § 45R.

170. The HHS Mandate will prevent Deacon Hall from exercising his religiously-held duty to provide for the health and welfare of their current and future employees by providing them a group health plan.

171. Deacon Hall has a sincere conscientious religious objection to funding coverage for and facilitating access to contraception, sterilization, abortifacient drugs and related education and counseling.

172. The HHS Mandate directly punishes, with substantial fines and penalties, Deacon Hall's exercise of his religious beliefs against providing insurance coverage for the above items.

173. The HHS Mandate unconstitutionally coerces Deacon Hall to violate his deeply-held religious beliefs under threat of these fines and penalties upon him through Company.

174. The HHS Mandate requires Deacon Hall through the Company to pay these fines and penalties or exit the insurance market entirely in order to exercise Deacon Hall's religious beliefs.

175. The HHS Mandate imposes substantial burdens on Deacon Hall's exercise of his sincerely-held religious beliefs through Company.

176. The HHS Mandate also unconstitutionally forces Company to fund government-dictated speech that directly contradicts Deacon Hall's own speech and religious beliefs through Company

177. The HHS Mandate fails to protect the statutory and constitutional conscience rights of religious Americans like Deacon Hall even though those rights were repeatedly raised in the public comments submitted directly to HHS.

178. Deacon Hall and Company bring this action to enjoin HHS's violations of Deacon Hall and Company's statutory and constitutional rights and to permit Deacon Hall and Company to operate their current and future businesses in a manner consistent with and not in violation of their sincerely-held religious beliefs.

179. Deacon Hall and Company have no adequate remedy at law.

## **Claims for Relief**

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

180. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

181. Deacon Hall's sincerely-held religious beliefs prohibits him, through the Company, from purchasing or providing coverage for contraception, sterilization, abortifacient drugs and related education and counseling in Company's employee group health plan.

182. Deacon Hall, as a Deacon of the Catholic Church, adheres to Catholic teachings with regard to contraception, sterilization, abortion, abortifacient drugs and related education and counseling. He exercises religion within the meaning of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb ("RFRA").

183. The HHS Mandate coerces Deacon Hall to change or violate his sincerely-held religious beliefs by requiring the Company purchase policies compliant with the HHS Mandate or be charged with substantial fines and penalties.

184. The HHS Mandate chills Deacon Hall's religious exercise. According to Roman Catholic religious law, it would be public scandal for Deacon Hall to knowingly continue owning a business that provides health care coverage for

contraception, sterilization, abortion, abortifacient drugs and related education and counseling.

185. The HHS Mandate coerces Deacon Hall through Company to violate his sincerely-held religious beliefs, in that the HHS Mandate coerces Deacon Hall, through the Company, to terminate their employee group health plan.

186. The HHS Mandate exposes Hall and Company to significant competitive disadvantages, in that they will no longer be able to offer an employee group health plan. In the longer term, the Company is no longer viable without the insurance benefits offered.

187. The HHS Mandate pressures Deacon Hall to consider selling the Company because the HHS Mandate prevents him from operating his business in accordance with Catholic religious law.

188. So, Deacon Hall is now faced with a choice of remaining a Deacon and selling the Company to avoid public scandal or retaining the Company and resigning as a Deacon.

189. The HHS Mandate imposes a substantial burden on Deacon Hall and the Company on their exercise of religion.

190. The HHS Mandate furthers no compelling government interest.

191. The HHS Mandate is not narrowly tailored to any compelling government interest.

192. The HHS Mandate is not the least restrictive means of furthering Defendants' alleged interests.

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

193. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

194. Deacon Hall's sincerely-held religious beliefs prohibits him from purchasing or providing coverage for contraception, sterilization, abortifacient drugs and related education and counseling in Company's employee group health plan.

195. When Deacon Hall adheres to Catholic teaching with regard to contraception, sterilization, abortion, abortifacient drugs and related education and counseling, he is exercising religion within the meaning of the Free Exercise of the First Amendment.

196. The HHS Mandate is not neutral and is not generally applicable.

197. HHS has created categorical and individualized exemptions to the HHS Mandate.

198. The HHS Mandate coerces Deacon Hall and Company to change or violate sincerely-held religious beliefs.

199. The HHS Mandate coerces Deacon Hall to change or violate his sincerely-held religious beliefs by requiring the Company purchase policies compliant with the HHS Mandate or be charged with substantial fines and penalties.

200. The HHS Mandate chills Deacon Hall's religious exercise. According to Roman Catholic religious law, it would be public scandal for Deacon Hall to knowingly continue owning a business that provides health care coverage for contraception, sterilization, abortion, abortifacient drugs and related education and counseling.

201. The HHS Mandate coerces Deacon Hall through Company to violate his sincerely-held religious beliefs, in that the HHS Mandate coerces Deacon Hall, through the Company, to terminate their employee group health plan.

202. The HHS Mandate exposes Hall and Company to significant competitive disadvantages, in that they will no longer be able to offer an employee group health plan. In the longer term, the Company is no longer viable without the insurance benefits offered.

203. The HHS Mandate pressures Deacon Hall to consider selling the Company because the HHS Mandate prevents him from operating his business in accordance with Catholic religious law.

204. So, Deacon Hall is now faced with a choice of remaining a Deacon and selling the Company to avoid public scandal or retaining the Company and resigning as a Deacon.

205. The HHS Mandate imposes a substantial burden on Hall's exercise of his religion.

206. The HHS Mandate is designed to apply to some religious Americans but not to others, which results in discrimination among religions.

207. The HHS Mandate permits Health Resources Services unlimited discretion to decide to exempt some, all, or no organizations meeting the HHS's definition of "religious employers."

208. HHS has created exemptions to the HHS Mandate for some religious believers but not others based on characteristics of their beliefs and the manner in which they exercise them.

209. Despite having prior detailed knowledge of the kind of religious objections contained in this complaint, HHS designed the HHS Mandate and the religious exemption to the HHS Mandate in a way that made it impossible for Deacon Hall, through his Company and others similarly situated to comply with their religious beliefs.

210. HHS promulgated both the HHS Mandate and the religious exemptions thereto with the purpose and intent to suppress the religious exercise of Deacon Hall, through the Company and others similarly situated.

211. The HHS Mandate furthers no compelling governmental interest.

212. The HHS Mandate is not the least restrictive means of furthering HHS alleged interests.

213. The HHS Mandate violates Deacon Hall's rights secured to him by the Free Exercise Clause of the First Amendment of the United States Constitution.

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

214. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

215. The First Amendment's Establishment Clause prohibits the establishment of any religion as well as excessive government entanglement with religion.

216. The Establishment Clause requires government neutrality in matters of religion.

217. The HHS Mandate requires HHS to examine the religious beliefs and teachings of Deacon Hall, and others like him, to determine whether religious

persons or entities must comply with the HHS Mandate or whether they are exempt from compliance.

218. Such examination requires continuous surveillance of the religious exercise of Deacon Hall and other similarly situated, leading to an impermissible degree of entanglement in violation of the Establishment Clause.

219. The HHS Mandate discriminates among religions and among denominations, favoring some over others, and exhibits hostility to religious beliefs.

220. The HHS Mandate establishes which individuals and entities are sufficiently religious to warrant exemption from the requirements of the ACA and the HHS Mandate.

221. The HHS Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient, contraceptive and sterilization coverage and imposes it upon all religionists who must either conform their consciences or suffer penalties.

222. The HHS Mandate violates Deacon Hall's rights secured to him by the Establishment Clause of the First Amendment of the United States Constitution.

**COUNT IV**  
**Violation of the Free Speech Clause of**  
**the First Amendment to the United States Constitution**

223. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.
224. A business's conduct and speech relating to the provision of employee health insurance is "speech" protected by the Free Speech Clause.
225. The HHS Mandate's requirement that all group health plans provide coverage for education and counsel related to contraceptives, sterilization, and abortifacient drugs forces Deacon Hall, through the Company, to subsidize speech and expressive conduct that is directly contrary to Deacon Hall's religious beliefs.
226. The HHS Mandate furthers no compelling governmental interest.
227. The HHS Mandate is not narrowly tailored to any compelling governmental interest
228. The HHS Mandate violates Plaintiffs' rights secured to them by the Free Speech Clause of the First Amendment of the United States Constitution.

**COUNT V**  
**Violation of the Administrative Procedures Act**

229. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.
230. Because they did not give proper notice and an opportunity for public comment when they promulgated the "preventive care" guidelines, HHS did not

take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

231. HHS did not consider or respond to the voluminous comments they received in opposition to the August 1, 2102 interim final rule.

232. Therefore, HHS have taken agency action not in accordance with procedures required by law, and Deacon Hall and Company are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

233. In promulgating the HHS Mandate, HHS failed to consider the constitutional and statutory implications of the HHS Mandate on Deacon Hall and Company and similar persons.

234. HHS's decision to not exempt the Company and similar organizations is contrary to the evidence submitted during the comment period.

235. HHS's issuance of the HHS Mandate was thus arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because HHS failed to consider the full extent of the HHS Mandate's implications and they did not take into consideration the evidence against it.

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

237. The HHS Mandate violates RFRA and the First Amendment to the United States Constitution.

238. Additionally, some drugs included as “FDA-approved contraceptives,” under the HHS Mandate, such as Ella, can cause abortions by causing the demise of human embryos before and/or after implantation. Therefore, the HHS Mandate is contrary to Section 1303(b)(1)(A) of the ACA which provides that “nothing in this title” . . . “shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.” 42 U.S.C. § 18023(b)(1)(A)(i).

**Jury Trial Demanded**

239. Plaintiffs Rev. Mr. (Deacon) Gregory E. Hall and American Mfg. Company demand on any issue triable of right by a jury, a jury trial as protected under the United States Constitution, amend. VII, and as provided under Rule 38 of the Federal Rules of Civil Procedure.

**Prayer for Relief**

WHEREFORE, the Plaintiffs Rev. Mr. (Deacon) Gregory E. Hall and American Mfg. Company (“Company”) and respectfully request the following relief:

1. Declare that the HHS Mandate and its application to the Company and Deacon Hall and other similarly situated violate the Religious Freedom Restoration Act;

2. Declare that the HHS Mandate and its application to the Company and Deacon Hall and others similarly situated violate various Clauses of the First Amendment to the United States Constitution;
3. Declare that the HHS Mandate and its application to the Company and Deacon Hall and others similarly situated violate the Administrative Procedures Act;
4. Issue a permanent injunction prohibiting the Defendants from enforcing the HHS Mandate against the Company and Deacon Hall and others with religious objections to providing group health insurance that includes coverage for all FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for the same.
5. Declare that an insurance issuer that offers a group plan to Company and others similarly situated that excludes the coverage required by the HHS Mandate does not violate the ACA or the HHS Mandate.
6. Award the Company and Deacon Hall costs and reasonable attorney fees under 42 U.S.C. § 1988; and

7. Award such other relief as the court deems just.

Dated: February 5, 2013.

s/Erick G. Kaardal

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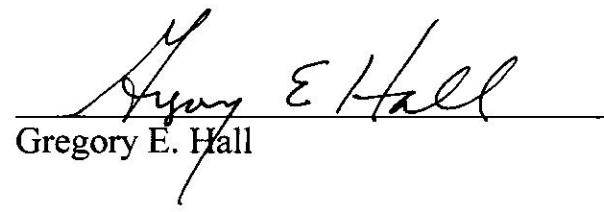
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**VERIFICATION OF COMPLAINT  
PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

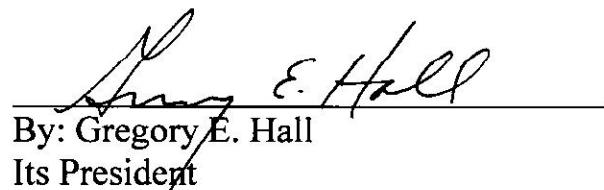
Executed on 2/05, 2013

  
\_\_\_\_\_  
Gregory E. Hall

I declare on behalf of American Mfg Company under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 2/05, 2013

AMERICAN MFG COMPANY

  
\_\_\_\_\_  
By: Gregory E. Hall  
Its President