IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

GRACE SCHOOLS and BIOLA UNIVERSITY, INC. *Plaintiffs,* v. KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY, *Defendants.*	)	Case No. 3:12-cv-459

FIRST AMENDED COMPLAINT

Plaintiffs, Grace Schools (hereinafter "Grace College and Seminary," "Grace College," "the College," or "Grace") and Biola University, Inc. (hereinafter "Biola" or "the University") (collectively, "the Schools"), by their attorneys, state as follows:

NATURE OF THE ACTION

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

2. The Schools are Christ-centered institutions of higher learning. They believe that God has condemned the intentional destruction of innocent human life. The Schools hold,

as a matter of religious conviction, that it would be sinful and immoral for them intentionally to participate in, pay for, facilitate, enable, or otherwise support access to abortion, which destroys human life. They hold that one of the prohibitions of the Ten Commandments ("thou shalt not murder") precludes them from facilitating, assisting in, or enabling the use of drugs that can and do destroy very young human beings in the womb.

3. The Schools do not qualify for the extraordinarily narrow religious exemption from the regulations. That exemption protects only "churches, their integrated auxiliaries, and conventions or associations or churches" and "the exclusively religious activities of any religious order."

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

5. Defendants have offered entities like the Schools a so-called "accommodation" of their religious beliefs and practices. However, the alleged accommodation fails. It still conscripts the Schools into the government's scheme, forcing the Schools to obtain an insurer or third-party claims administrator and submit a form that specifically causes that insurer or third-party administrator to arrange payment for the objectionable drugs, so that such coverage will apply to the Schools' own employees as a direct consequence of their employment with the Schools and of their participation in the health insurance benefits the Schools provide them.

6. Under the supposed accommodation, Defendants continue to treat entities like the Schools as second-class religious organizations, not entitled to the same religious freedom rights as substantially similar entities that qualify for the exemption. Defendants' rationale for entirely exempting churches and integrated auxiliaries from the regulations – their employees are likely to share their religious convictions – applies equally to the Schools. Yet, Defendants

refuse to exempt them, offering only a flimsy, superficial, and utterly semantic "accommodation" that falls woefully short of addressing and resolving the substance of their concerns.

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

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

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

IDENTIFICATION OF PARTIES AND JURISDICTION

10. Plaintiff Grace Schools is a Christ-centered institution of higher learning located in Winona Lake, Indiana. It is an Indiana not-for-profit corporation. It operates as, among other assumed names, Grace College, Grace Theological Seminary, and Grace College & Seminary.

11. Plaintiff Biola University, Inc., is a Christ-centered institution of higher learning located in La Mirada, California. It is a California not-for-profit religious corporation.

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

21. Grace College and Seminary was founded in 1937 under the leadership of Dr. Alva J. McClain, President. The College's mission is to be "an evangelical Christian community of higher education which applies biblical values in strengthening character, sharpening competence, and preparing for service." Grace Seminary is a learning community dedicated to teaching, training, and transforming the whole person for ministry in the local church and around the globe. Grace's aspirational vision is to "be an exceptional learning community that transforms people to live their lives for God and others."

22. Grace College and Seminary embraces these core values:

- "A relationship with the God of Scripture is foundational to all of life."
- "Exceptional learning experiences drive all educational programs."
- "Nurturing the transformation of life is deeply integrated in all institutional life."
- "Appreciating and valuing others as God does characterizes all relationships."
- "Doing good for others is the intended outcome of institutional life and service."
- "Managing institutional and constituents' resources in a disciplined and biblical way is essential to institutional life."

23. At Grace, the students, administration, faculty, and staff aim together to make Christ preeminent in all things. Students learn this by living, studying, working, worshipping, and achieving academic success with other young people who share similar Christian ideals in a setting where the community lifestyle fosters devotion to serious academic inquiry, wholesome recreation and relaxation, and mature spiritual growth.

24. Grace pursues its mission through biblically-based programs and services anchored in the historic Fellowship of Grace Brethren Churches. The curriculum is rooted in the liberal arts and sciences and is delivered through traditional and specialized programs.

25. Grace College and Seminary has a "Covenant of Faith" that "[a]ffirm[s] biblical truth and God's grace."

26. Grace College and Seminary is affiliated with the Fellowship of Grace Brethren Churches. The Fellowship of Grace Brethren Churches traces its denominational heritage back to 1708 and the pietistic movement in Germany following the Reformation.

27. Members of Grace's Board of Trustees, which governs the College, must subscribe annually to the Covenant of Faith, which is consistent with the beliefs of the Fellowship of Grace Brethren Churches.

28. Grace College and Seminary draws its faculty, staff, and administration from among those who profess the Covenant of Faith of the College and Statement of Faith of the Fellowship of Grace Brethren Churches.

29. Although the College does require a profession of faith as a prerequisite for student admission, it does not require membership in the Grace Brethren denomination. Approximately 30 denominations are represented in its student body. All students are expected to adhere to the standards set forth in the Grace College Community and Lifestyle Statement.

30. The College is serving approximately 3,100 students in the fall 2013 semester. This number includes approximately 1,900 students in higher education degree programs and approximately 900 students in its basic education prison program and 300 students in its certificate education prison program, which are located in five Indiana prisons. The campus enrolls students from more than 20 countries.

31. The College currently has approximately 457 employees.

II. The Religious Beliefs of Grace College and Seminary Regarding Abortion

32. The Fellowship of Grace Brethren Churches believes that human life is worthy of protection and respect at all stages from the time of conception.

33. The Fellowship of Grace Brethren Churches believes that the sanctity of human life is established by creation (Gen. 1:26-27), social protection (Gen. 9:6) and redemption (John 3:16).

34. The College agrees with the Fellowship of Grace Brethren Churches' religious views regarding abortion, believing that the procurement, participation in, facilitation of, or payment for abortion (including abortion-causing drugs like Plan B and ella) violates the Sixth Commandment and is inconsistent with the dignity conferred by God on creatures made in His image.

35. By "conception," "pregnancy," "abortion" and related concepts referenced herein regarding the sanctity of innocent human life and prohibitions on its destruction, Grace College understands such concepts to recognize and protect the lives of human beings from the moment of fertilization.

36. Through its Fall 2013 "Statement on Community Expectations for Faculty and Staff," members of the Grace community "agree to uphold the standards of the community" set forth in the Statement.

37. The Statement reads in pertinent part as follows:

> Grace Schools values the worth and dignity of human life as expressed through the fruit of the Spirit. Having been made in the image of God, those who live and work at the institution express like faith and are expected to respect and uphold life-affirming practices that distinguish our faith community from other institutions of higher education, particularly for those who are vulnerable members of society. Consistent with the views of the Fellowship of Grace Brethren Churches, Grace Schools believes that human life is worthy of respect and protection at all stages from the time of

> conception. The sanctity of human life is established by creation (Genesis 1:26-27), social protection (Genesis 9:6) and redemption (John 3:16).

38. In September 2009, crosses representing the 2,016 abortions (1982-2008) in Kosciusko County, Indiana, where Grace is located, were placed on the north and east lawns of Morgan Library on the Grace campus. The crosses were a reminder of the human beings, each created in the image and likeness of God (Genesis 1:26), whose lives were so tragically ended by abortionists. Crosses have been placed on the Grace campus every subsequent year as well.

39. Every two years, the sanctity of life is addressed by a speaker in corporate chapel.

40. In June 2007, Grace College hosted the Pro-Life Music Festival, which drew several thousand attendants to see a number of popular Christian bands.

41. Grace College students have participated in the Pro-Life Day of Silent Solidarity.

42. Grace College hosts the annual Right to Life Banquet at the Orthopedic Capital Center. At the Banquet, over 1,000 community members gather together to proclaim the message that all human life is precious, from conception to natural death.

III. Grace College's Group Health Insurance Plans

43. To fulfill its religious commitments and duties in the Christ-centered educational context, Grace promotes the spiritual and physical well-being and health of its employees and students. This includes the provision of generous health insurance to employees and their dependants and the facilitation of a student health plan.

44. Consistent with its religious commitments, Grace College provides a self-insured group plan for its employees, acting as its own insurer but working with a third-party claims administrator.

45. Approximately 168 employees are enrolled in Grace's group health plan. Including approximately 307 dependents, the total number of people enrolled in the group health plan is approximately 475.

46. Under the terms of Grace's plan for its employees, coverage excludes abortifacient drugs like Plan B and ella.

47. The plan does, however, include a variety of contraceptive methods that Grace does not consider to be morally objectionable.

48. The next plan year for the College's employee health insurance plan will start on January 1, 2014.

49. Effective June 2010, the College made changes to its employee health plan that caused the plan to lose its grandfathered status. Co-pays for specialty pharmacy products were increased from 20% with a maximum of $1000 per year to 50% with a maximum of $250 per prescription.

50. Grace requires all registered residential students to have health insurance. If a student does not submit proof of coverage to the College, it will enroll the student in a health insurance plan issued by Gallagher Koster. The College will bill enrolled students for the cost of the coverage. In the 2013-2014 school year, approximately 60 students are enrolled in the insurance plan facilitated by the College. The plan does not include coverage for the abortifacients and related counseling to which the College morally objects.

IV. Biola University's Religious Beliefs and Provision of Educational Services In General

51. Biola University was founded in 1908 as the Bible Institute of Los Angeles.

52. The mission of Biola University is biblically-centered education, scholarship and service – equipping men and women in mind and character to impact the world for the Lord Jesus Christ.

53. Biola's vision is to be an exemplary Christian university characterized as a community of grace that promotes and inspires personal life transformation in Christ which illuminates the world with His light and truth. As a global center for Christian thought and an influential evangelical voice that addresses crucial cultural issues, Biola University aspires to lead, with confidence and compassion, an intellectual and spiritual renewal that advances the purpose of Christ.

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

55. Biola believes that holding a biblical worldview is foundational to understanding life and truth. It believes that God has equipped it to uphold truth and sustain community at the University through Christ-centered and Spirit-led education, scholarship, and service that is grounded in Scripture and that challenges its community to seek and integrate biblical principles into its fields of study. Biola believes that all it does should be Christ-centered and based on the teachings of Jesus. It believes that Christ provided the best model for how to live and that following Him is a way of life that, when followed to its fullest expression, will impact how Christians live and the choices they make.

56. Biola believes that participating in a Christian community of grace is important in the life of the believer. It believes that the identity of Christians as children of the Triune God lies in their lives lived in and through community, holistic relationships, mutual interdependence upon the Indwelling Spirit and members of the Body and seeking the unity of the Spirit. Biola draws its faculty, staff, and students from among those who profess faith in Christ.

57. Biola believes that through the renewing of the mind and care of the body it prepares its students to live within the culture in a loving and Christ-honoring way. Through a rigorous, Christ-centered and Spirit-led education, the University enables its students to grapple with and engage in the spiritual, intellectual, ethical and cultural issues of our time, their implications and application to everyday life.

58. Biola believes that through community and dependence upon the Spirit, character is sharpened and Christians grow in their ability to live their lives as the Lord Jesus Christ would. It believes that interactions with fellow Christians provide one of the essential means of character development in the life of the believer.

59. Biola believes that integrity and authenticity should be hallmarks of every believer. It believes their relationships should be models of transparency, truth-telling, and unwavering commitment to the example set by the Lord Jesus Christ.

60. Biola believes that we exist to serve God and His Great Commission in reaching the world for the Lord Jesus Christ. It believes that Christ-followers are His light to a dark world and that it is their duty and privilege to make disciples.

61. Biola believes that God uses the faculty, staff, students and alumni to accomplish His plans. It believes that, as servant leaders, each person who is part of Biola's community can make a difference in their families, churches, communities, and vocations for Christ's Kingdom.

62. The University believes that service is an act of worship to God. As followers of the Lord Jesus Christ, members of the Biola community desire to worship God by living in a way that is worthy of the calling they have received.

63. Biola believes that the Lord Jesus Christ intends His Church to be a multi-ethnic, multi-cultural, and multi-national body of believers. It believes that it has been called to

respect, and when appropriate, reflect the diversity of God's kingdom throughout the world. The University holds that believers have a responsibility to spread the Gospel through evangelism, missions and outreach.

64. Biola believes that it has been blessed with kingdom resources and desires to steward them in a God-honoring way. Its desire is to manage its time, money, and gifts and to care for the students, whose lives have been entrusted to it, in a way that models a commitment to excellence and a total-life attitude of stewardship.

V. The Religious Beliefs of Biola University Regarding Abortion

65. Biola's "Doctrinal Statement" declares that "[t]he Bible is clear in its teaching on the sanctity of life. Life begins at conception. We reject the destruction or termination of innocent human life through human intervention in any form after conception including, but not limited to, abortion, infanticide or euthanasia because it is unbiblical and contrary to God's will. Life is precious and in God's hands."

66. The Biola University Employee Handbook, in a section entitled "Standard of Conduct," states in part as follows: "Consistent with the example and command of Jesus Christ, we believe that life within a Christian community must be lived to the glory of God, with love for God and for our neighbors. Being indwelt by the Holy Spirit, we strive to walk by the Spirit, 'crucifying the flesh with its passions and desires' (Galatians 5:24). To this end, members of the Biola community are not to engage in activities that Scripture forbids. Such activities include . . . the destruction or termination of innocent human life through human intervention in any form after conception including, but not limited to, abortion, infanticide or euthanasia."

67. Biola's undergraduate Student Handbook provides in part as follows: "The University wants to assist those involved in unplanned pregnancy while at Biola to consider the

options available to them within the Christian moral framework. These include marriage of the parents, single parenthood, or offering the child for adoption. Because the Bible is clear in its teaching on the sanctity of human life, life begins at conception; we abhor the destruction of innocent life through abortion on demand. Student Development stands ready to help those involved to cope effectively with the complexity of needs that a crisis pregnancy presents."

VI. Biola University's Group Health Insurance Plans

68. To fulfill its religious commitments and duties in the Christ-centered educational context, Grace promotes the spiritual and physical well-being and health of its employees and students. This includes the provision of generous health insurance to employees and their dependants and the facilitation of a student health plan.

69. Health insurance is available to regular employees who work at least 30 hours per week, for at least ten months of the year.

70. Biola offers two medical insurance plans for its employees, one through Kaiser and the other through Blue Shield.

71. Biola has approximately 856 full-time, benefit-eligible employees. Approximately 1,835 individuals are covered under its two employee health insurance plans.

72. After the enactment of the Affordable Care Act, Biola made a number of changes to its employee health plans that deprived them of "grandfathered" status. Upon the renewal of the two employee plans effective April 1, 2010, Biola changed the methodology by which it supported the cost of employee health insurance. It moved from contributing the same number of dollars to the Anthem Blue Cross and Kaiser plans to contributing the same percentage of the total premium. Upon renewal of the two employee plans effective April 1, 2011, Biola increased HMO co-pays from $10 per office visit to $15 per office visit for both plans. It also at that time raised the prescription drug co-pays for the Blue Cross plan. Biola never conveyed

to employees or dependent beneficiaries that its employee group health plans possessed grandfathered status.

73. Blue Shield replaced Anthem Blue Cross effective April 1, 2012. Prior to that date, the Anthem Blue Cross plan did cover all FDA-approved contraceptives, including ella and Plan B. The prior inclusion of abortion-inducing drugs like ella and Plan B was neither knowing nor intentional.

74. The Blue Shield plan does not cover abortion-inducing drugs such as ella and Plan B. The plan does provide coverage of other drugs characterized by the Food and Drug Administration as "contraceptives."

75. Prior to April 1, 2012, the Kaiser plan covered all FDA-approved contraceptives, including ella and Plan B. The prior inclusion of abortion-inducing drugs like ella and Plan B was neither knowing nor intentional. Effective April 1, 2012, Biola eliminated coverage of any "contraceptives" from the Kaiser plan. Effective April 1, 2012, employees enrolled in the Kaiser plan receive coverage of non-abortifacient prescription contraceptive drugs through Script Care, a pharmacy benefits manager. Abortion-inducing drugs, such as ella and Plan B, are not covered. The plan does provide coverage of other drugs characterized by the Food and Drug Administration as "contraceptives."

76. Biola facilitates health insurance for its students who are not otherwise covered by health insurance. The University requires its students to have health insurance coverage. It facilitates coverage through United Health Care. Students who enroll in this plan pay the premium to Biola and the University remits payment to the carrier on behalf of the students. Ella and Plan B are excluded from this plan.

VII. The ACA and Defendants' Mandate Thereunder

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

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

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

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

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

The Interim Final Rule

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

83. HHS issued the interim final rule without a prior notice of rulemaking or opportunity for public comment. Defendants determined for themselves that "it would be

impracticable and contrary to the public interest to delay putting the provisions . . . in place until a full public notice and comment process was completed." 75 Fed. Reg. at 41730.

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

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

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

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

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

89. In other words, the prohibition on cost-sharing was simply a way "to distribute the cost of preventive services more equitably across the broad insured population." 75 Fed. Reg. at 41730.

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

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

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

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

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

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

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

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

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

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

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

100. On August 1, 2011, a mere 13 days after IOM published its recommendations, HRSA issued guidelines adopting them in full. *See* http://www.hrsa.gov/womensguidelines.

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

102. Any non-exempt employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the Mandate) to heavy fines approximating $100 per employee per day. Such employers are also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

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

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

The Religious Employer Exemption

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

106. This Second Interim Final Rule granted HRSA "*discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46621, 46623 (emphasis added). The term "religious employer" was restrictively defined as one that (1) has as its purpose the "inculcation of religious values"; (2) "primarily employs persons who share the religious tenets of the organization"; (3) "serves primarily persons who share the religious tenets of the organization"; and (4) "is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46626 (emphasis added).

107. The statutory citations in the fourth prong of this test refer to "churches, their integrated auxiliaries, and conventions or associations of churches" and the "exclusively religious activities of any religious order." 26 U.S.C. § 6033(a)(3).

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

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

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

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

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

113. Defendants acknowledged that "while a general notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations," they had "good cause" to conclude that public comment was "impracticable, unnecessary, or contrary to the public interest" in this instance. 76 Fed. Reg. at 46624.

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

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

The Temporary Enforcement Safe Harbor

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

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

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

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

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

The Advance Notice of Proposed Rulemaking

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

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

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

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

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

The Notice of Proposed Rulemaking

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

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

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

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

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

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

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

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

134. "[O]ver 400,000 comments" were submitted in response to the NPRM, 78 Fed. Reg. 39870, 39871, with religious organizations again overwhelmingly decrying the proposed

"accommodation" as a gross violation of their religious liberty because it would conscript their health care plans as the main cog in the government's scheme for expanding access to contraceptive and abortifacient services.

135. The Schools submitted comments on the NPRM, stating essentially the same objections stated in this complaint.

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

137. In her remarks, Secretary Sebelius stated:

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

See The Forum at Harvard School of Public Health, A Conversation with Kathleen Sebelius, U.S. Secretary of Health and Human Services, Apr. 8, 2013, *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius (Episode 9 at 2:25) (emphasis added).

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

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

The Final Mandate

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

141. Under the Final Mandate, the discretionary "religious employer" exemption, which is still implemented via footnote on the HRSA website, *see* http://www.hrsa.gov/womensguidelines, remains limited to churches, integrated auxiliaries, and religious orders "organized and operate[d]" as nonprofit entities and "referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39874.

142. Defendants attempt to justify the extraordinarily narrow religious exemption as follows: "The Departments believe that the simplified and clarified definition of religious employer continues to respect the religious interests of houses of worship and their integrated auxiliaries in a way that does not undermine the governmental interests furthered by the contraceptive coverage requirement. Houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan." 78 Fed. Reg. at 39874.

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

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

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

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

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

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

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

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

151. Thus, an eligible organization would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and deliver it to the organization's insurer. If the organization has a self-insured plan, like Grace, it would deliver the executed self-certification to the plan's third party administrator. 78 Fed. Reg. at 39875.

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

153. By delivering its self-certification to its third-party administrator, Grace would trigger the third-party administrator's provision of or arrangement for payments for the morally objectionable abortifacients. 78 Fed. Reg. 39892-39893. These payments constitute coverage of the items to which Grace objects. *See, e.g., id.* at 39872 ("the regulations provide women with access to contraceptive coverage"), and receive treatment as coverage under consumer protection requirements of the Public Health Service Act and ERISA. *Id.* at 39876. This coverage will not be contained in any insurance policy separate from Grace's plan. *See id.*

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

155. By delivering its self-certification to its insurer, Biola would trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries." 78 Fed. Reg. at 39875-76. These payments constitute coverage of the items to which Biola objects. *See, e.g., id.* at 39872 ("the regulations provide women with access to contraceptive coverage"), and receive treatment as coverage under consumer protection requirements of the Public Health Service Act and ERISA. *Id.* at 39876. This coverage will not be contained in any insurance policy separate from Biola's plan. *See id.*

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

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

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

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

160. This would also require Biola to coordinate the notices with its insurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176. In sum, the accommodation is nothing more than a shell game that attempts to disguise the religious organization's role as the central cog in the government's scheme for expanding access to contraceptive and abortifacient services.

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

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

The Final Mandate and Plaintiffs' Health Insurance Plans

179. The plan year for Grace's next employee health plan begins on January 1, 2014; Biola's begins on April 1, 2014. As a result, the Schools now – or will soon – face a choice. They can transgress their religious commitments by including abortifacients in their plan or by triggering their insurance issuer or third-party administrator to provide the exact same services by providing the self-certification. Or they can transgress their religious duty to provide for the well-being of their employees and their families by dropping their employee health insurance

plan altogether in order to avoid being complicit in the provision of abortifacients, thereby incurring crippling annual fines.

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

181. The plan year for Grace's next student plan begins on July 25, 2014; Biola's begins on August 1, 2014. As a result, the Schools will face a choice in the period leading up to those dates. They can transgress their religious commitments by including abortifacients in their plans or by triggering their insurance issuers to provide the exact same services by providing their self-certifications. Or they can transgress their religious duty to provide for the well-being of their students by dropping their student health insurance plans altogether in order to avoid being complicit in the provision of abortifacients.

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

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

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

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

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

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

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

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

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

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

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

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

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

194. In one form or another, the government also provides exemptions for grandfathered plans, 42 U.S.C. § 18011; 75 Fed. Reg. 41,726, 41,731 (2010), small employers with fewer than 50 employees, 26 U.S.C. § 4980H(c)(2)(A), and certain religious denominations, 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) (individual mandate does not apply to members of

"recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds). 26 U.S.C. § 5000A(d)(2)(b)(ii) (individual mandate does not apply to members of "health care sharing ministry" that meets certain criteria).

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

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

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

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

199. The Administration's recent postponement of the employer mandate (and its attendant penalties) also belies any claim that a compelling interest justifies coercing Plaintiffs to

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

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

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

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

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

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

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

206. She further criticized individuals and entities whose beliefs differed from those held by her and the others at the fundraiser, stating: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much."

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

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

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

209. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

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

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

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

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

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

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

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

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

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

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

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

220. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

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

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

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

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

225. The Mandate furthers no compelling governmental interest.

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

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

228. The Mandate chills the Schools' religious exercise.

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

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

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

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

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

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

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

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

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

237. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

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

239. The Mandate's narrow exemption for "religious employers" discriminates among religions on the basis of religious views, religious status, or incidental institutional structure or affiliation.

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

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

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

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

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

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

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

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

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

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

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

250. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

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

252. The Schools teach that abortion violates God's law and that any participation in the unjustified taking of an innocent human life contradicts their religious beliefs and convictions.

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

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

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

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

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

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

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

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

260. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

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

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

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

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

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

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

266. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

267. The Schools teach that abortion violates God's law and that any participation in the unjustified taking of an innocent human life contradicts their religious beliefs and convictions.

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

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

SEVENTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

270. Plaintiffs reallege all matters set forth in paragraphs 1-208 and incorporate them herein.

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

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

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

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

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

276. The ACA provides, and Defendants admit, that any rule issued requiring coverage of preventive services under 42 U.S.C. § 300gg-13 cannot go into effect until at least a year after the rule is finalized. Under these provisions, the Final Mandate cannot be effective on Grace until its employee health insurance plan year starting after the summer of 2013, namely, Grace's plan year starting January 1, 2015.

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

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

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

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

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

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

283. The Mandate is also contrary to the provision of the ACA that states that "nothing in this title"—i.e., title I of the Act, which includes the provision dealing with "preventive

services"—"shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." Section 1303(b)(1)(A).

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

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

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

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

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

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

Respectfully submitted this 6th day of September, 2013.

/s Gregory S. Baylor

Gregory S. Baylor (Texas Bar No. 01941500)
Matthew S. Bowman (DC Bar No. 993261)
ALLIANCE DEFENDING FREEDOM
801 G Street, NW, Suite 509
Washington, DC 20001
(202) 393-8690
(202) 347-3622 (facsimile)
gbaylor@alliancedefendingfreedom.org
mbowman@alliancedefendingfreedom.org

David A. Cortman (Georgia Bar No. 188810)
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Road, NE, Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-6744 (facsimile)
dcortman@alliancedefendingfreedom.org

Kevin H. Theriot (Kansas Bar No. 21565)

ALLIANCE DEFENDING FREEDOM
15192 Rosewood
Leawood, KS 66224
(913) 685-8000
(913) 685-8001 (facsimile)
ktheriot@alliancedefendingfreedom.org

Jerry Mackey (California Bar No.90416)
13800 Biola Avenue
La Mirada, CA 90639
(562) 903-4777
(562) 903-4748 (facsimile)
university.legalcounsel@biola.edu

Jane Dall Wilson (Atty No. 24142-71A)
FAEGRE BAKER DANIELS LLP
300 North Meridian Street, Suite 2700
Indianapolis, IN 46204
(317) 237-0300
(317) 237-1000 (facsimile)
jane.wilson@faegrebd.com

Attorneys for Plaintiffs

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

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

Executed on September 5, 2013.

William J. Katip

William J. Katip*
President, Grace College & Seminary

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

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

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

Executed on September 6, 2013.

Barry H. Corey*
President, Biola University

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

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2013 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Gregory S. Baylor