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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

AVE MARIA UNIVERSITY,
Plaintiff,

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services,

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

HILDA SOLIS, Secretary of the United States Department of Labor,

UNITED STATES DEPARTMENT OF LABOR,

TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and

UNITED STATES DEPARTMENT OF THE TREASURY,
Defendants.

CIVIL NO. _____

COMPLAINT

2:12-cv-88-FtM-29SPC

COMPLAINT

Comes now Plaintiff Ave Maria University, by and through its attorneys, and states as follows:

NATURE OF THE ACTION

1. This is a challenge to regulations issued under the 2010 Affordable Care Act that force the Plaintiff—along with a multitude of other religious organizations—to violate their deepest religious beliefs.

2. Ave Maria University ("the University") was founded in 2003 to build an institution of Catholic higher education that would be publicly faithful to the authoritative teachings of the Catholic Church, in matters of both faith and morals. The University began as Ave Maria College in Ypsilanti, Michigan, and moved to its present campus in Naples, Florida in 2003. Additionally, the University has a branch Latin American Campus in San Marcos, Nicaragua.

3. The University's sincere religious beliefs forbid it from participating in, paying for, training others to engage in, or otherwise supporting contraception, sterilization, or abortion. The University is one of many American religious organizations that hold these beliefs.

4. Based on the teachings of the Catholic Church, and its own deeply held beliefs, the University does not believe that contraception, sterilization, or abortion are properly understood to constitute medicine, health care, or a means of providing for the well being of persons. Indeed, the University believes these procedures involve gravely immoral practices, including the intentional destruction of innocent human life.

5. With full knowledge of these beliefs, Defendants[1] issued an administrative rule ("the Mandate") pursuant to authority created by the Affordable Care Act that not only forces the University to treat contraception, sterilization, abortion, and related education and counseling as health care, but that also subverts the expression of the University's religious beliefs, and the beliefs of millions of other Americans, by forcing the University to fund, promote, and assist others to acquire services which it believes involve gravely immoral practices, including the destruction of innocent human life.

6. The Mandate unconstitutionally coerces the University to violate its deeply-held religious beliefs under threat of heavy fines and penalties. The Mandate also forces the University to fund government-dictated speech that is directly at odds with its own speech and religious teachings. Having to pay a fine to the taxing authorities for the privilege of practicing one's religion or controlling one's own speech is un-American, unprecedented, and flagrantly unconstitutional.

7. The Defendants' refusal to accommodate conscience is also highly selective. A patchwork of seemingly arbitrary exemptions announces that Defendants do not believe every insurance plan in the country need cover these services. For instance, Defendants have issued thousands of waivers from the Affordable Care Act altogether for groups, such as many large corporations, purely for reasons of commercial convenience. Other exemptions have been awarded based on how old a plan is, or how large an employer is. And there are many other exemptions from the Affordable Care Act and from the Mandate, for a variety of groups and for a variety of reasons. Missing, however, is any exemption for employers whose religious consciences instruct them that certain mandated services are ethically repugnant. In other words,

[1] All defendants are referred to collectively as "Defendants" unless context requires greater specificity.

the Defendants' pattern of exemptions reveals a massive blind spot for groups exercising their fundamental First Amendment freedoms.

8. The Defendants' actions therefore violate the University's right to freedom of religion, as secured by the First Amendment to the United States Constitution and by a civil rights statute, the Religious Freedom Restoration Act (RFRA).

9. The Defendants' actions also violate the University's right to the freedom of speech, as secured by the First Amendment to the United States Constitution.

10. Furthermore, the Mandate is also illegal because it was imposed by Defendants without prior notice or sufficient time for public comment, and otherwise violates the Administrative Procedure Act, 5 U.S.C. § 553.

11. Had the University's religious beliefs been obscure or unknown, the Defendants' actions might have been an accident. But because the Defendants acted with full knowledge of those beliefs, and because they arbitrarily exempt some plans for a wide range of reasons other than religious conviction, the Mandate can be interpreted as nothing other than a deliberate attack by the Defendants on the religious beliefs of the University and millions of other Americans. The Defendants have, in sum, intentionally used government power to force religious groups to believe something about the mandated services manifestly contrary to their own religious convictions, and then to act on that coerced belief under threat of heavy fines and other penalties. The University seeks declaratory and injunctive relief to protect against this attack.

JURISDICTION AND VENUE

12. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1361. This action arises under the Constitution and laws of the United States. This Court has

jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000bb-1.

13. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). The University is located in this district.

IDENTIFICATION OF PARTIES

14. Plaintiff Ave Maria University is a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code and is principally located in Collier County, Florida.

15. Defendants are appointed officials of the United States government and United States governmental agencies responsible for issuing the Mandate.

16. 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.

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

18. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Solis is sued in her official capacity only.

19. 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.

20. Defendant Timothy Geithner is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Geithner is sued in his official capacity only.

21. 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.

FACTUAL ALLEGATIONS

I. Ave Maria University's Religious Beliefs and Practices Related to Contraception, Sterilization, and Abortion.

22. Ave Maria University was founded to build an institution of Catholic higher education that would be faithful to the authoritative teachings of the Catholic Church, in matters both of faith and morals. The University began as Ave Maria College in 1998, and moved to its present campus in Naples, Florida in 2003.

23. Faith is central to the identity and educational mission of the University. It is established as a Catholic University according to the guidelines of the Code of Canon Law. Its recognition as a Catholic University is granted upon the University's commitment to continue to be guided by the teachings of the Catholic Church.

24. The University adheres to the Apostolic Constitution *Ex Corde Ecclesiae* of Pope John Paul II, which is the relevant law of the Catholic Church for Catholic colleges and universities.

25. The University endeavors to produce faithful Catholic educators, leaders, and mentors and to equip them to bring the truths of the faith into all areas of culture. To achieve this goal, the University challenges its faculty "to explicate the truths of the faith, and measure against them the evolving societal propositions or practices" in every arena, including politics, business, and the arts.

26. A deep devotion to the Catholic faith is central to the University's mission. In the University's own words:

> Founded in fidelity to Christ and His Church in response to the call of Vatican II for greater lay witness in contemporary society, Ave Maria University exists to further teaching, research, and learning at the undergraduate and graduate levels in the abiding tradition of Catholic thought in both national and international settings. The University takes as its mission the sponsorship of a liberal arts education curriculum dedicated, as articulated in the apostolic constitution *Ex Corde Ecclesiae*, to the advancement of human culture, the promotion of dialogue between faith and reason, the formation of men and women in the intellectual and moral virtues of the Catholic faith, and to the development of professional and pre-professional programs in response to local and societal needs. As an institution committed to Catholic principles, the University recognizes the importance of creating and maintaining an environment in which faith informs the life of the community and takes expression in all its programs. The University recognizes the central and indispensable role of the Ordinary of the Diocese of Venice in promoting and assisting in the preservation and strengthening of the University's Catholic identity.

27. The University thus holds and actively professes religious beliefs that include traditional Christian teachings on the sanctity of life. It believes and teaches that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious, from the moment of conception. The University therefore believes and teaches that abortion ends a human life and is a grave sin.

28. The University's religious beliefs also include traditional Christian teaching on the nature and purpose of human sexuality. In particular, the University believes, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." Accordingly, the University believes and actively professes, with the Catholic Church, that "[t]o use this divine gift destroying, even if only partially, its meaning and its purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." Therefore, the University believes and teaches that "any action which either before, at the moment of, or after sexual intercourse, is specifically

intended to prevent procreation, whether as an end or as a means"—including contraception and sterilization—is a grave sin.

29. Furthermore, the University subscribes to authoritative Catholic teaching about the proper nature and aims of health care and medical treatment. For instance, the University believes, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "'[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

30. The University has approximately 1,200 students.

31. The University has approximately 200 employees.

32. As part of its commitment to Catholic education, and in accordance with Catholic social teaching, the University promotes the well-being and health of its employees. In furtherance of these commitments, the University has striven over the years to provide its employees with health coverage superior to coverage generally available at Catholic peer institutions.

33. Moreover, as part of its religious commitment to the authoritative teachings of the Catholic Church, the University ensures that its insurance policies do not cover drugs, devices, services or procedures inconsistent with its faith. In particular, the University has taken great pains through the years to ensure that its insurance plans do not cover sterilization, contraception, or abortion.

34. The University cannot provide health care insurance covering artificial contraception, sterilization, or abortion, or related education and counseling, without violating its deeply held religious beliefs.

35. The University cannot provide information or guidance to its employees about other locations at which they can access artificial contraception, sterilization, abortion, or related education and counseling, without violating its deeply held religious beliefs.

36. The University's plan year begins on January 1.

37. Furthermore, the University relies on donations from the public in order to make tuition affordable to its students. Donors who give to the University do so with an understanding of its mission and with the assurance that the University will continue to follow and transmit reliable Catholic teachings on faith and morals.

38. The University cannot use donated funds for purposes known to be morally repugnant to its donors and in ways that violate the implicit trust of the purpose of their donations.

II. The Affordable Care Act

39. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act."

40. The Affordable Care Act regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

41. The Act does not apply equally to all insurers.

42. The Act does not apply equally to all individuals.

43. The Act does not apply its fine provisions for failure to offer employer-sponsored insurance to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

44. According to the United States census, more than 20 million individuals are employed by firms with fewer than 20 employees. http://www.census.gov/econ/smallbus.html.

45. Certain provisions of the Act do not apply equally to members of certain religious groups. *See, e.g.*, 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).

46. The Act's preventive care requirements do not apply to employers who provide so-called "grandfathered" health care plans.

47. Employers who follow HHS guidelines may continue to use grandfathered plans indefinitely.

48. HHS has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans through at least 2014, and that a third of small employers with between 50 and 100 employees may do likewise. http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html.

49. The Act is not generally applicable because it provides for numerous exemptions from its rules.

50. The Act is not neutral because some groups, both secular and religious, enjoy exemptions from the law, while certain religious groups do not.

51. The Act creates a system of individualized exemptions.

52. The Department of Health and Human Services has the authority under the Act to grant compliance waivers ("HHS waivers") to employers and other health insurance plan issuers.

53. HHS waivers release employers and other plan issuers from complying with the provisions of the Act.

54. HHS decides whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers.

55. Upon information and belief, more than a thousand HHS waivers have been granted.

56. The Act is not neutral because some secular and religious groups have received statutory exceptions while other religious groups have not.

57. The Act is not neutral because some secular and religious groups have received HHS waivers while other religious groups have not.

58. The Act is not generally applicable because Defendants have granted numerous waivers from complying with its requirements.

59. The Act is not generally applicable because it does not apply equally to all individuals and plan issuers.

60. Defendants' waiver practices create a system of individualized exemptions.

III. The Preventive Care Mandate

61. One of the provisions of the Affordable Care Act mandates that health plans "provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration" and directs the Secretary of Health and Human Services to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg–13(a)(4).

62. On July 19, 2010, HHS, along with the Department of Treasury and the Department of Labor, published an interim final rule under the Affordable Care Act. 75 Fed. Reg. 41726

(2010). The interim final rule required providers of group health insurance to cover preventive care for women as provided in guidelines to be published by the Health Resources and Services Administration at a later date. 75 Fed. Reg. 41759 (2010).

63. HHS accepted public comments to the 2010 interim final rule until September 17, 2010. A number of groups filed comments warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of health care, including contraception, sterilization, and abortion.

64. HHS directed a private health policy organization, the Institute of Medicine ("IOM"), to suggest a list of recommended guidelines describing which drugs, procedures, and services should be covered by all health plans as preventative care for women. See http://www.hrsa.gov/womensguidelines.

65. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. 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.

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

67. One year after the first interim final rule was published, on July 19, 2011, the IOM published its recommendations. It recommended that the preventative services include sterilization procedures and "All Food and Drug Administration approved contraceptive methods

[and] sterilization procedures." Institute of Medicine, Clinical Preventive Services for Women: Closing the Gaps (July 19, 2011).

68. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices, including IUDs; Plan B, also known as the "morning-after pill"; and ulipristal, also known as "ella" or the "week-after pill"; and other drugs, devices, and procedures.

69. Thirteen days later, on August 1, 2011, without notice of rulemaking or opportunity for public comment, HHS, the Department of Labor, and the Department of Treasury adopted the IOM recommendations in full and promulgated an interim final rule ("the Mandate"), which requires that all "group health plan[s] and . . . health insurance issuer[s] offering group or individual health insurance coverage" provide all FDA-approved contraceptive methods and sterilization procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. On the same day HRSA issued guidelines adopting the IOM recommendations. http://www.hrsa.gov/womensguidelines.

70. The Mandate also requires group health care plans and issuers to provide education and counseling for all women beneficiaries with reproductive capacity.

71. The Mandate went into effect immediately as an "interim final rule."

72. HHS did not take into account the concerns of religious organizations in the comments submitted before the Mandate was issued.

73. Instead the Mandate was unresponsive to the concerns stated in the comments submitted by religious organizations.

74. When it issued the Mandate, HHS requested comments from the public by September 30th and indicated that comments would be available online.

75. Upon information and belief, over 100,000 comments were submitted against the Mandate.

76. On October 5, 2011, six days after the comment period 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." She did not state whom she and NARAL Pro-Choice America were warring against.

77. The Mandate fails to take into account the statutory and constitutional conscience rights of religious organizations like the University which have been pointed out in comments.

78. The Mandate requires that the University provide coverage for contraception, sterilization, abortion, and related education and counseling against its conscience in a manner that is contrary to law.

79. The Mandate constitutes government-imposed pressure and coercion on the University to change or violate its religious beliefs.

80. The Mandate exposes the University to substantial fines for refusal to change or violate its religious beliefs.

81. The Mandate imposes a burden on the University's employee recruitment efforts by creating uncertainty as to whether the University will be able to offer health insurance beyond 2012.

82. The Mandate places the University at a competitive disadvantage in its efforts to recruit and retain employees and students.

83. The Mandate forces the University to provide contraception, sterilization, and some abortifacient drugs in violation of the University's religious beliefs that doing so is gravely immoral and, in certain cases, equivalent to assisting another to destroy innocent human life.

84. The Mandate forces the University to provide emergency contraception in violation of its religious beliefs that this is equivalent to assisting another to destroy innocent human life.

85. The University has a sincere religious objection to providing coverage for emergency contraceptive drugs such as Plan B and ella since it believes those drugs could prevent a human embryo, which they understand to include a fertilized egg before it implants in the uterus, from implanting in the wall of the uterus, causing the death of a human being.

86. The University considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

87. The University believes that Plan B and ella can cause the death of the embryo, which is a person.

88. Plan B can prevent the implantation of a human embryo in the wall of the uterus.

89. Ella can prevent the implantation of a human embryo in the wall of the uterus.

90. Plan B and ella can cause the death of the embryo.

91. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus constitutes an "abortion" as that term is used in federal law.

92. The use of artificial means to cause the death of a human embryo constitutes an "abortion" as that term is used in federal law.

93. The Mandate forces the University to provide emergency contraception, including Plan B and ella, free of charge, regardless of the ability of insured persons to obtain these drugs from other sources.

94. The Mandate forces the University to fund education and counseling concerning contraception, sterilization, and abortion that directly conflicts with the University's religious beliefs and teachings.

95. The University could not terminate its employees from health insurance coverage without violating its religious duty to provide for the health and well-being of its employees. Additionally, employees would be unable to attain similar coverage in the market as it exists today.

96. The Mandate forces the University to choose among violating its religious beliefs, incurring substantial fines, or terminating its employee health insurance coverage.

97. Providing counseling and education about contraceptives, sterilization, and abortion directly undermines and subverts the explicit messages and speech of the University.

98. Group health plans and issuers will be subject to the Mandate starting with the first insurance plan year that begins on or after August 1, 2012.

99. The University has already had to devote significant institutional resources, including both staff time and funds, to determining how to respond to the Mandate. The University anticipates continuing to make such expenditures of time and money up until the time that the Mandate goes into effect.

100. Given plan changes since March 23, 2010, the University's health insurance plan does not qualify as a grandfathered health plan. *See* 42 U.S.C. § 18011(a)(2); 26 C.F.R. § 54.9815-1251T; 29 C.F.R. § 2590.715-1251; 45 C.F.R. § 147.140.

IV. The Narrow and Discretionary Religious Exemption

101. The Mandate indicates that that the Health Resources and Services Administration ("HRSA") "may" grant religious exemptions to certain religious employers. 45 C.F.R. § 147.130(a)(iv)(A).

102. The Mandate allows HRSA to grant exemptions for "religious employers" who "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).

103. The Mandate imposes no constraint on HRSA's discretion to grant exemptions to some, all, or none of the organizations meeting the Mandate's definition of "religious employers."

104. HHS stated that it based the exemption on comments on the 2010 interim final rule. 76 Fed. Reg. 46621.

105. Most religious organizations, including the University, have more than one purpose.

106. For most religious organizations, including the University, the inculcation of religious values is only one purpose among others.

107. Many religious organizations, including the University, employ many persons who do not share the religious organization's beliefs.

108. Many religious organizations, including the University, serve many persons who do not share the religious tenets of the religious organization.

109. The University reasonably expects that it will be subject to the Mandate despite the existence of the exemption.

110. The University has no conscientious objection to providing preventive services such as mammograms.

111. On January 20, 2012, Defendant Sebelius announced that there would be no change to the religious exemption. She added that "[n]onprofit employers who, based on religious

beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law," on the condition that those employers certify they qualify for the extension. At the same time, however, Sebelius announced that HHS "intend[s] to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support." *See* Statement by U.S. Dep't of Health and Human Serv's Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited February 7, 2012).

V. The Mandate and the Religious Exemption Become Final, Without Change.

112. On February 10, 2012, President Obama held a press conference at which he announced an intention to initiate, at some unspecified future date, a separate rulemaking process that would work toward creating a different contraceptive services mandate. This promised mandate would, the President stated, attempt to take into account the kinds of religious objections voiced against the original Mandate contained in the interim final rule.

113. On that same day—February 10, 2012—the Defendants issued a "guidance bulletin" describing a "Temporary Enforcement Safe Harbor" ("Safe Harbor") from the Mandate. The Safe Harbor applies to "non-exempted, non-grandfathered group health plans established and maintained by non-profit organizations with religious objections to contraceptive coverage (and any health insurance coverage offered in connection with such plans)." Under the Safe Harbor, the Defendants state that qualifying organizations will not be subject to enforcement of the

Mandate "until the first plan year that begins on or after August 1, 2013," provided they meet certain criteria outlined in the guidance bulletin.[2]

114. Those Safe Harbor criteria require an organization to self-certify that (1) it operates as a non-profit; (2) it has not, from February 10, 2012 onward, offered "contraceptive coverage ... 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"; and (3) it has provided (for the first plan year beginning on or after August 1, 2012) a notice to plan participants stating that "[t]he organization that sponsors your groups health plan has certified that it qualifies for a temporary enforcement safe harbor with respect to the Federal requirement to cover contraceptive services without cost sharing," and that "[d]uring this one-year period, coverage under your group health plan will not include coverage of contraceptive services."

115. On February 15, 2012, the Defendants adopted the original Mandate contained in the interim final rule, without any changes, as final. 77 Fed. Reg. 8725, 8727. The Defendants also adopted, without any changes, the original "religious employer" exemption. *Id.*

116. In sum, the University will be required to satisfy the Safe Harbor notice requirements outlined in the guidance bulletin by January 1, 2013. Under the terms of the Safe Harbor, the University will be subject to enforcement action under the Mandate by January 1, 2014.

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[2] *See* "Guidance on 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," U.S. DEP'T OF HEALTH & HUMAN SERV'S (Feb. 10, 2012), at 3, *available at* http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf (last visited February 17, 2012).

CLAIMS

COUNT I
Violation of the Religious Freedom Restoration Act

117. The University incorporates by reference all preceding paragraphs.

118. The University's sincerely held religious beliefs prohibit it from providing coverage for contraception, sterilization, abortion, or related education and counseling. The University's compliance with these beliefs is a religious exercise.

119. The Mandate creates government-imposed coercive pressure on the University to change or violate its religious beliefs.

120. The Mandate chills the University's religious exercise.

121. The Mandate exposes the University to substantial fines for its religious exercise.

122. The Mandate exposes the University to substantial competitive disadvantages, in that it will no longer be permitted to offer health insurance.

123. The Mandate imposes a substantial burden on the University's religious exercise.

124. The Mandate furthers no compelling governmental interest.

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

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

127. The Mandate and Defendants' threatened enforcement of the Mandate violate the Unviersity's rights secured to it by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq.

128. Absent injunctive and declaratory relief against the Defendants, the University has been and will continue to be harmed.

COUNT II
Violation of the First Amendment to the United States Constitution
Free Exercise Clause
The Mandate is neither neutral nor generally applicable

129. The University incorporates by reference all preceding paragraphs.

130. The University's sincerely held religious beliefs prohibit it from providing coverage for contraception, sterilization, abortion, or related education and counseling. The University's compliance with these beliefs is a religious exercise.

131. Neither the Affordable Care Act nor the Mandate is neutral.

132. Neither the Affordable Care Act nor the Mandate is generally applicable.

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

134. The Mandate furthers no compelling governmental interest.

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

136. The Mandate creates government-imposed coercive pressure on the Unversity to change or violate its religious beliefs.

137. The Mandate chills the University's religious exercise.

138. The Mandate exposes the University to substantial fines for its religious exercise.

139. The Mandate exposes the University to substantial competitive disadvantages, in that it will no longer be permitted to offer health insurance.

140. The Mandate imposes a substantial burden on the University's religious exercise.

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

142. The Mandate and Defendants' threatened enforcement of the Mandate violate the University's rights secured to it by the Free Exercise Clause of the First Amendment to the United States Constitution.

143. Absent injunctive and declaratory relief against the Mandate, the Unversity has been and will continue to be harmed.

COUNT III
Violation of the First Amendment to the United States Constitution
Free Exercise Clause
The Mandate intentionally discriminates

144. The University incorporates by reference all preceding paragraphs.

145. The University's sincerely held religious beliefs prohibit it from providing coverage for contraception, sterilization, abortion, or related education and counseling. The University's compliance with these beliefs is a religious exercise.

146. Despite being informed in detail of these beliefs beforehand, Defendants designed the Mandate and the religious exemption to the Mandate in a way that made it impossible for the University to comply with its religious beliefs.

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

148. The Mandate and Defendants' threatened enforcement of the Mandate thus violate the University's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

149. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT IV
Violation of the First Amendment to the United States Constitution
Free Exercise Clause
The Mandate discriminates among religions

150. The University incorporates by reference all preceding paragraphs.

151. By design, Defendants imposed the Mandate on some religious organizations but not on others, resulting in discrimination among religions.

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

153. The Mandate and Defendants' threatened enforcement of the Mandate thus violate the University's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

154. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT V
Violation of the First Amendment to the United States Constitution
Establishment Clause
The Mandate prefers certain denominations over others

155. The University incorporates by reference all preceding paragraphs.

156. By design, defendants imposed the Mandate on some religious organizations but not on others, resulting in a selective burden on the Unversity.

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

158. The Mandate and Defendants' threatened enforcement of the Mandate therefore violate the Unversity's rights secured to it by the Establishment Clause of the First Amendment to the United States Constitution.

159. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

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

160. The University incorporates by reference all preceding paragraphs.

161. The Unversity teaches that contraception, sterilization, and abortion violate its religious beliefs.

162. The Mandate would compel the University to subsidize activities that the Unversity teaches are violations of the College's religious beliefs.

163. The Mandate would compel the University to provide education and counseling related to contraception, sterilization, and abortion.

164. Defendants' actions thus violate the University's right to be free from compelled speech as secured to it by the First Amendment of the United States Constitution.

165. The Mandate's compelled speech requirement is not narrowly tailored to a compelling governmental interest.

166. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT VII
Violation of the First Amendment to the United States Constitution
Freedom of Speech
Expressive Association

167. The University incorporates by reference all preceding paragraphs.

168. The University teaches that contraception, sterilization, and abortion violate its religious beliefs.

169. The Mandate would compel the University to subsidize activities that the University teaches are violations of the University's religious beliefs.

170. The Mandate would compel the University to provide education and counseling related to contraception, sterilization, and abortion.

171. Defendants' actions thus violate the University's right of expressive association as secured to it by the First Amendment of the United States Constitution.

172. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT VIII
Violation of the First Amendment to the United States Constitution
Free Exercise Clause and Freedom of Speech
Unbridled Discretion

173. The University incorporates by reference all preceding paragraphs.

174. By stating that HRSA "may" grant an exemption to certain religious groups, the Mandate vests HRSA with unbridled discretion over which organizations can have its First Amendment interests accommodated.

175. The Mandate vests HRSA with unbridled discretion to determine whether a religious organization such as the University "primarily" serves and employs members of the same faith as the organization.

176. Defendants' actions therefore violate the University's right not to be subjected to a system of unbridled discretion when engaging in speech or when engaging in religious exercise, as secured to it by the First Amendment of the United States Constitution.

177. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT IX
Violation of the Administrative Procedure Act
Lack of Good Cause

178. The University incorporates by reference all preceding paragraphs.

179. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute 'good cause.'

180. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a meaningful "consideration of the relevant matter presented." Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

181. Therefore, Defendants have taken agency action not in observance with procedures required by law, and the University is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

182. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT X
Violation of the Administrative Procedure Act
Arbitrary and Capricious Action

183. The University incorporates by reference all preceding paragraphs.

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

185. Defendants' explanation for its decision not to exempt the University and similar religious organizations from the Mandate runs counter to the evidence submitted by religious organizations during the comment period.

186. Thus, Defendants' issuance of the interim final rule was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the rules fail to consider the full extent of their implications and they do not take into consideration the evidence against them.

187. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT XI
Violation of the Administrative Procedure Act
Agency Action Not in Accordance with Law
Weldon Amendment
Religious Freedom Restoration Act
First Amendment to the United States Constitution

188. The University incorporates by reference all preceding paragraphs.

189. The Mandate is 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).

190. The Weldon Amendment 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."

191. The Mandate requires issuers, including the University, to provide coverage of all Federal Drug Administration-approved contraceptives.

192. Some FDA-approved contraceptives cause abortions.

193. As set forth above, the Mandate violates RFRA and the First Amendment.

194. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

195. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

COUNT XII
Violation of the Administrative Procedure Act
Agency Action Not in Accordance with Law
Affordable Care Act

196. The University incorporates by reference all preceding paragraphs.

197. The Mandate is contrary to the provisions of the Affordable Care Act.

198. Section 1303(b)(1)(A) of the Affordable Care Act 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."

199. Section 1303 further states that it is "the issuer" of a plan that "shall determine whether or not the plan provides coverage" of abortion services.

200. Under the Affordable Care Act, Defendants do not have the authority to decide whether a plan covers abortion; only the issuer does.

201. The Mandate requires issuers, including the University, to provide coverage of all Federal Drug Administration-approved contraceptives.

202. Some FDA-approved contraceptives cause abortions.

203. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

204. Absent injunctive and declaratory relief against the Mandate, the University has been and will continue to be harmed.

PRAYER FOR RELIEF

Wherefore, Ave Maria University requests that the Court:

a. Declare that the Mandate and Defendants' enforcement of the Mandate against Ave Maria University violates the First Amendment to the United States Constitution;

b. Declare that the Mandate and Defendants' enforcement of the Mandate against Ave Maria University violates the Religious Freedom Restoration Act;

c. Declare that the Mandate was issued in violation of the Administrative Procedure Act;

d. Issue an order prohibiting Defendants from enforcing the Mandate against Ave Maria University and other religious organizations that object to providing insurance coverage for contraceptives (including abortifacient contraceptives), sterilization procedures, and related education and counseling;

e. Award Ave Maria University the costs of this action and reasonable attorney's fees; and

f. Award such other and further relief as it deems equitable and just.

Respectfully submitted this 21st day of February, 2012.

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