IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

LOUISIANA COLLEGE, Plaintiff v. KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; HILDA SOLIS, in her official capacity as Secretary of the United States Department of Labor; TIMOTHY GEITHNER, 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. 1:12-cv-463 JUDGE: Dee D. Drell MAGISTRATE: James D. Kirk

FIRST AMENDED COMPLAINT

1. Comes now the Plaintiff, LOUISIANA COLLEGE ("LC") and sues the DEFENDANTS, and states as follows:

I. NATURE OF THE ACTION

2. In this action, Plaintiff seeks judicial review of Defendants' violations of the Religious Freedom Restoration Act 42 U.S.C. § 2000(bb) ("RFRA"), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq* ("APA").

3. LC is a Christian school that is subject to the 2010 Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148 (March 23, 2010), and Pub. L. 111-152 (March 30, 2010); hereinafter PPACA). Final regulations implementing the PPACA require that LC provide health insurance for its employees that covers abortion-inducing drugs and counseling regarding such drugs ("Mandate" [1]). This violates LC's sincerely held religious beliefs regarding abortion.

4. With full knowledge that many religious organizations and individuals hold the same or similar beliefs, the government Defendants issued regulations that, by forcing them to pay for and otherwise facilitate the use of morally objectionable drugs, devices, and related education and counseling, trample on the freedom of LC and millions of other American organizations and individuals to abide by their religious convictions, to comply with moral imperatives they believe are decreed by God Himself.

[1] The Mandate consists of a conglomerate of authorities, including: "Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act," 77 Fed. Reg. 8725–30 (Feb. 15, 2012); the prior interim final rule found at 76 Fed. Reg. 46621–26 (Aug. 3, 2011), which the Feb. 15 rule adopted "without change"; the guidelines by Defendant HHS's Health Resources and Services Administration (HRSA), http://www.hrsa.gov/womensguidelines/, mandating that health plans include no-cost-sharing coverage of "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" as part of required women's "preventive care"; regulations issued by Defendants in 2010 directing HRSA to develop those guidelines, 75 Fed. Reg. 41726 (July 19, 2010); the statutory authority found in 42 U.S.C. § 300gg-13(a)(4), requiring unspecified preventive health services generally, to the extent Defendants have used it to mandate coverage to which Plaintiffs and other employers have religious objections; penalties existing throughout the United States Code for noncompliance with these requirements; and other provisions of PPACA or its implementing regulations that affect exemptions or other aspects of the Mandate.

5. The regulation—the HHS Preventive Services Mandate—illegally and unconstitutionally coerces LC to violate its religious beliefs under threat of heavy fines and penalties. The Mandate also forces LC to fund government-dictated speech that is directly at odds with their religious beliefs.

6. Defendants' refusal to accommodate conscience in this matter is highly selective. Upon information and belief, the government has provided categorical exemptions for plans that include millions of employees, and has granted thousands of exemptions from the PPACA for various groups, such as large corporations, but has refused to exempt most religious groups from this unprecedented Mandate.

7. Defendants' actions violate LC's right freely to exercise its religion, protected by the Religious Freedom Restoration Act and the Religion Clauses of the First Amendment to the United States Constitution.

8. Defendants' actions also violate LC's right to the freedom of speech, as secured by the Free Speech Clause of the First Amendment to the United States Constitution, and due process rights secured by the Fifth Amendment to the United States Constitution.

9. Additionally, Defendants violated the Administrative Procedure Act, 5 U.S.C. § 553, by imposing the Mandate without prior notice or public comment, and for other reasons.

10. LC seeks an order declaring this unconstitutional law to be in violation of RFRA, the First and Fifth Amendments to the United States Constitution, and the APA. In addition, the Plaintiff seeks an order enjoining the Defendants from enforcing the Mandate.

II. IDENTIFICATION OF THE PARTIES AND JURISDICTIONAL ALLEGATIONS

11. Plaintiff is a Christian university located in Pineville, Louisiana.

12. Established in 1906, the mission of LC is to provide liberal arts, professional, and graduate programs characterized by dedication to academic excellence for the glory of God.

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 and enforcement of the Mandate. Defendant Sebelius is sued in her official capacity only.

14. 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 and enforcement of the Mandate. Defendant Solis is sued in her official capacity only.

15. 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 and enforcement of the Mandate. Defendant Geithner is sued in his official capacity only.

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

17. 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.

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. Jurisdiction and venue in this Court are predicated on Title 28 U.S.C. § 1331, Title 28 U.S.C. § 1343, Title 28 U.S.C. § 2201, and 5 U.S.C. § 702.

III. FACTUAL ALLEGATIONS

LC's Religious Beliefs and Provision of Educational Services

20. Faith is central to the mission and identity of LC. LC describes itself as a "private Baptist co-educational college of liberal arts" and commits, in its mission, to provide educational programs with a "dedication to academic excellence for the glory of God."

21. Consistent with its mission, LC works to manifest its Christian faith in all aspects of its administration.

22. LC adheres to, as its doctrinal statement, the Baptist Faith and Message 2000 of the Southern Baptist Convention.

23. LC's religious beliefs include traditional Christian teachings on the sanctity of life. The College's doctrinal statement states, "We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death."

24. LC is affiliated with the Southern Baptist Convention which has passed Resolutions from as early as 1984 condemning the use of the abortion drug RU-486 as a violation of its sincerely held religious beliefs and urging SBC members to oppose the usage and proliferation of RU-486.

25. LC therefore believes and teaches that abortion, or methods that harm an embryo from the moment of conception/fertilization, ends a human life and is a sin.

26. LC has more than 1,450 graduate and undergraduate students.

27. LC has approximately 180 full-time and 80 part-time employees.

28. As part of fulfilling its commitment and duty in Christian education, LC also promotes the well-being and health of its employees, spiritual and physical. This includes provision of generous health services and health insurance for its employees.

29. As part of its religious commitment, LC has ensured that its insurance policies do not cover drugs, devices, services or procedures inconsistent with its faith.

30. In particular, its insurance plans do not cover abortion.

31. As part of that same commitment, LC has ensured that its insurance policies do not cover drugs, devices, services or procedures that it believes may cause the death of an early human embryo, such as Plan B or ella.

32. LC cannot provide health care insurance covering abortion, abortifacient or embryo-endangering methods, or related education and counseling without violating its deeply held religious beliefs and its Christian witness.

33. While excluding abortifacients like ella and Plan B, LC's employee health plan does cover contraceptives that prevent ovulation.

34. The plan year for LC's insurance begins on January 1 of each year.

Applicable Provisions of the PPACA

35. Under the PPACA, employers with over 50 full-time employees are required to provide a certain level of health insurance to their employees.

36. Nearly all such plans must include "preventive services," which must be offered with no cost-sharing by the employee.

37. On February 10, 2012, the Department of Health and Human Services finalized a rule (previously referred to in this Complaint as the Mandate) that imposes a definition of preventive services to include all FDA-approved "contraceptive" drugs, surgical sterilization, and education and counseling for such services.

38. This final rule was adopted without giving due weight to the hundreds of thousands of public comments submitted to HHS in opposition to the Mandate.

39. In the category of "FDA approved contraceptives" included in this Mandate are several drugs or devices that may cause the demise of an already-conceived but not-yet-implanted human embryo.

40. Likewise in that category are "emergency contraception" or "Plan B" (the "morning after" pill), and variations of oral contraceptives ("birth control pills" or "the Pill") taken regularly through a cycle.

41. The FDA approved in this same category a drug called ella (the "week after" pill), which studies show can function to kill embryos even after they have implanted in the uterus, by a mechanism similar to the abortion drug RU-486.

42. The manufacturers of some such 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.

43. The Mandate also requires group health care plans to pay for the provision of counseling, education, and other information concerning contraception (including

contraceptive devices and drugs such as Plan B and ella that cause early abortions or harm to embryos) for all women beneficiaries who are capable of bearing children.

44. The Mandate applies to the first health insurance plan-year beginning after August 1, 2012.

45. The Mandate makes little or no allowance for the religious freedom of entities and individuals, including Christian ministries and educational institutions like LC, who object to paying for or providing insurance coverage for such items.

46. Any 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.

47. An entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the PPACA imposes monetary penalties on entities that would so refuse.

48. The exact magnitude of these penalties seems to vary according to the complicated provisions of the PPACA, but it is estimated the fine is approximately $2,000 per employee per year.

49. Switching to self-insurance does not avoid the Mandate.

50. The Mandate applies not only to sponsors of group health plans like LC, but also to issuers of insurance. Accordingly, the pressure to include morally problematic drugs, devices, and counseling in group health plans comes not only from Defendants, but also through the insurers who must comply with the rule.

51. The Mandate includes a narrow religious exemption, but it is potentially available only to those organizations that meet all of the following requirements:

(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"; and

(4) "The organization is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A)."

52. 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."

53. LC is not "religious" enough under this definition in several respects, most notably that its purpose is other than the "inculcation of religious values" and it does not primarily serve persons who share the religious tenets of the organization, and because it is not itself a church, integrated auxiliary of a particular church, convention or association of a church, or the exclusively religious activities of a religious order.

54. There are no clear guidelines restricting the discretion of Defendants when applying the Mandate and its many exceptions.

55. In order to determine those whether employees, or persons an entity serves, share an institution's "religious tenets," someone would need to inquire into the detailed religious beliefs of all individuals that an entity employs, and that it serves.

56. It is unclear how Defendants define or will interpret religious "purpose."

57. It is unclear how Defendants define or will interpret vague terms, such as "primarily," "share" and "religious tenets."

58. It is unclear how Defendants will ascertain the "religious tenets" of an entity, those it employs, and those it serves.

59. It is unclear how much overlap Defendants will require for religious tenets to be "share[d]."

60. The limited and ill-defined religious employer exemption provided in the Mandate conflicts with the Constitution.

61. Moreover, the process by which Defendants determine whether an organization qualifies for the exemption will require Defendants to engage in an intrusive inquiry into whether, in the view of HHS, the organization's "purpose" is the "inculcation of religious values" and whether it "primarily" employs and serves people who "share" its "religious tenets." The standards are impermissibly vague and subjective.

62. By basing the exemption on shared religious tenets, the Mandate compels LC to restructure its religious affiliation, admissions, employment, and service programs in order to fall within the scope of the Mandate's religious exemption.

63. The Mandate fails to protect the statutory and constitutional conscience rights of religious organizations like LC even though those rights were repeatedly raised in the public comments.

64. The Mandate requires that LC provide or facilitate coverage for abortifacient methods, and education and counseling related to abortifacients, against its conscience in a manner that is contrary to law.

65. The Mandate constitutes government-imposed coercion on LC to change or suffer penalties for exercising its religious beliefs.

66. The Mandate exposes LC to substantial fines for refusal to change or violate its religious beliefs.

67. The Mandate will impose a burden on the College's employee and student recruitment efforts by creating uncertainty as to whether or on what terms it will be able to offer or facilitate health insurance beyond the Mandate's effect or will suffer penalties therefrom.

68. The Mandate will place LC at a competitive disadvantage in its efforts to recruit and retain employees and students.

69. The Mandate coerces LC to provide coverage for and otherwise facilitate the provision of Plan B, ella, other abortifacient drugs, and related counseling in violation of its religious beliefs.

70. LC has a sincere religious objection to providing or facilitating coverage for Plan B because it believes the drug would prevent a human embryo, which it believes is a human being from the moment of conception/fertilization (including before it implants in the uterus), from implanting in the wall of the uterus, causing the death of the embryo.

71. LC has a sincere religious objection to providing or facilitating coverage for ella because it believes the drug would either prevent a human embryo from implanting in the uterine wall, or could cause the death of a recently implanted embryo.

72. The Mandate does not apply equally to all members of religious groups.

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

74. For instance, the Mandate does not apply to members of a "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds. *See* 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii).

75. In addition, as described above, the Mandate exempts certain churches narrowly considered to be religious employers, it exempts grandfathered plans, and it does not apply through the employer mandate to employers having less than 50 full-time employees.

76. Furthermore, the PPACA creates a system of individualized exemptions because under the PPACA's authorization the federal government has granted discretionary compliance waivers to a variety of businesses for purely secular reasons..

77. President Obama held a press conference on February 10, 2012 claiming to offer a compromise under which some religious non-profit organizations not meeting the above "religious employer" definition would still have to comply with the Mandate, but by means of the employer's insurer offering the employer's employees the same coverage for "free."

78. This compromise is not helpful to LC because, among other reasons, it is entirely fictitious. It does not exist in the rule the Administration made final on February 10, and it need never be formally proposed or adopted.

79. The PPACA and the preventive services requirement do not authorize Defendants to compel insurers, third-party administrators, or any other third-party source

to offer free and allegedly independent coverage of items not covered by the employer's plan; it only encompasses requirements of the employer's plan itself.

80. Even if one of the proposed "accommodations" did exist and had coherent boundaries, LC would deem it to violate its religious beliefs by forcing it directly to facilitate objectionable coverage by providing and paying for a plan that is itself necessary for the employee to obtain the coverage in question, and which coverage is not separate from the employer's plan, nor is it apparently "free" since a variety of costs contained in the massive scope of the Mandate would necessarily be passed onto the employer through premiums and/or administrative charges.

81. The Mandate does not apply to employers with preexisting plans that are "grandfathered."

82. LC does not qualify for the Mandate's grandfathering of preexisting plans because, since March 23, 2010, it has made, and plans to make in the near future, substantial changes to its health plan, including increasing the amount of coinsurance, deductibles, or copays paid by employees, eliminating coverage for certain conditions, and the overall limit on dollar value of benefits.

83. Moreover, LC's insurance carrier has elected not to have its plans grandfathered in order to allow more flexibility in plan design, cost sharing, and premium equality.

84. Consequently, LC is subject to the Mandate's requirement of coverage of the above-described items starting in its January 2013 plan.

85. The Mandate makes it unclear whether LC will be able to offer health insurance as a benefit to its employees, and if so, the terms upon which it will be offered.

86. LC must take the Mandate into account now as it is planning compensation and benefits packages for the next several years. It will have to negotiate contracts for new and existing employees and these contracts will extend into the time frame when the Mandate begins to apply to its health insurance plans.

87. On February 10, 2012 a document was issued by the Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS), of HHS, entitled "Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code."

88. Referring to a January 20, 2012, HHS news release, the Guidance states that "the Secretary indicated that a temporary enforcement safe harbor would be provided to non-exempted, non-grandfathered group health plans established and maintained by non-profit religious organizations with religious objections to contraceptive coverage."

89. The Guidance states that the temporary enforcement safe harbor "is available to non-exempted, non-grandfathered group health plans established or maintained by non-profit organizations whose plans have not covered contraceptive services for religious reasons at any point from the issuance date of this bulletin (i.e., February 10, 2012) onward."

90. The Guidance states that the "Department of Labor and the Department of Treasury . . . will not take any enforcement action against an employer or group health

plan that complies with the conditions of the temporary enforcement safe harbor described herein."

91. The Guidance states that the temporary enforcement safe harbor is available only to those employers, group health plans, and group health insurance issuers who meet "all of the following criteria:

1. The organization is organized and operates as a non-profit entity.
2. From February 10, 2012 onward, contraceptive coverage has not been provided at any point by the group health plan established or maintained by the organization, consistent with any applicable State law, because of the religious beliefs of the organization.
3. As detailed below, the group health plan established or maintained by the organization (or another entity on behalf of the plan, such as a health insurance issuer or third-party administrator) must provide to participants the attached notice, as described below, which states that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.
4. The organization self-certifies that it satisfies criteria 1-3 above, and documents its self-certification in accordance with the procedures detailed herein."

92. The Guidance states that "[a] certification must be made by the organization" and that "[t]he certification must be signed by an organizational representative who is authorized to make the certification on behalf of the organization."

93. The Guidance declares that "[t]he certification must be completed and made available for examination by the first day of the plan year to which the temporary enforcement safe harbor applies."

94. The Guidance sets forth the language of the required notice that employers, group health plans, and group health insurance issuers must provide to plan participants to take advantage of the temporary enforcement safe harbor. That language states as follows:

NOTICE TO PLAN PARTICIPANTS

> *The organization that sponsors your group 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. During this one-year period, coverage under your group health plan will not include coverage of contraceptive services.*

95. The Guidance also includes the certification form that a group health plan must truthfully complete to take advantage of the temporary enforcement safe harbor. The form includes a space for the "[n]ame of the organization sponsoring the plan," the "[n]ame of the individual who is authorized to make, and makes, this certification on behalf of the organization," and the "[m]ailing and email addresses and phone numbers for the individual listed above."

96. In the certification itself, the representative of the organization declares as follows: "I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, contraceptive coverage has not been provided by the plan, consistent with any applicable State law, because of the religious beliefs of the organization." The organization's representative is also required to state, above his or her signature, as follows: "*I declare that I have made this*

certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete." (Emphasis in original.)

97. The Certification states that "[f]ailure to provide the requisite notice to plan participants renders a group health plan ineligible for the temporary enforcement safe harbor."

98. Defendants have not subsequently modified the language of the February 10, 2012 Guidance, the included Notice, or the included Certification.

99. LC *has* included non-abortifacient contraception in its group health insurance plan after February 10, 2012 and to the present day.

100. Accordingly, LC is *not* able to truthfully certify "that, at any point from February 10, 2012 onward, contraceptive coverage has not been provided by the plan."

101. No organizational representative of LC could, in good conscience and with integrity, sign his or her name to the following required language of the Certification set forth in the February 10, 2012 Guidance: "*I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.*"

102. If LC were to notify its group health insurance plan participants that "*coverage under your group health plan will not include coverage of contraceptive services*," it would be making an untrue statement. LC is unable and unwilling to communicate a falsehood to its group health insurance plan beneficiaries in order to invoke the temporary enforcement safe harbor.

103. Because LC is unwilling and unable to disseminate a factually untrue "Notice to Plan Participants," it is ineligible for the temporary enforcement safe harbor

according to the Certification form issued by Defendant HHS on February 10, 2012, which states in pertinent part that "[f]ailure to provide the requisite notice to plan participants renders a group health plan ineligible for the temporary enforcement safe harbor."

104. Even if LC was not categorically disqualified for the "extra year" under the "Guidance," it would still not alleviate the harm done to the College by the Mandate because, among other reasons: it can be revoked at any time; at the end of the extension the Mandate still applies in violation of the College's rights as described herein; and even if the extension applied to the College, its effect would leave the College in violation of the Mandate despite Defendants' promise not to enforce it, thereby subjecting the College to a vast array of legal, contractual and litigation liabilities.

105. On March 21, 2012, Defendants published in the Federal Register an "Advance Notice of Proposed Rulemaking" (ANPRM). (77 Fed. Reg. 16501 (Mar. 21, 2012)). It "announces the intention of the Departments of Health and Human Services, Labor, and the Treasury to propose amendments to regulations regarding certain preventive health services under provisions of the Patient Protection and Affordable Care Act."

106. The ANPRM acknowledges that many religious organizations do not qualify for the unusually narrow religious exemption found in the Mandate. It further acknowledges that many of these non-exempt religious organizations object, on religious grounds, to paying for, arranging, or otherwise facilitating the use of morally problematic drugs, devices, procedures, and counseling by the beneficiaries of their insurance plans. The ANPRM requests comments on the potential means of "accommodating" these

religious organizations, "while ensuring contraceptive coverage [including abortifacients like ella and Plan B] for plan participants and beneficiaries covered under their plans (or, in the case of student health insurance plans, student enrollees and their dependents) without cost sharing."

107. Defendants intend to complete the process initiated by the ANPRM by August 1, 2013, when the Temporary Enforcement Safe Harbor expires. Because LC is not eligible for the Temporary Enforcement Safe Harbor, the anticipated new rules or guidance will not affect the application of the Mandate to LC when its new employee health plan year begins on January 1, 2013, seven months earlier.

108. The "accommodation" generated by the process initiated by the ANPRM may not even apply to LC at all. The ANPRM acknowledges that Defendants will need to determine the scope of the accommodation, *i.e.*, the criteria for deciding which religious organizations may take advantage of any accommodation that is generated by the process. The ANPRM explicitly contemplates that entities like LC – ones that object to facilitating the use of some but not all "FDA-approved contraceptives" – might end up completely outside the scope of any "accommodation":

> The Departments seek comment on whether the definition of religious organization should include religious organizations that provide coverage for some, but not all, FDA-approved contraceptives consistent with their religious beliefs. That is, under the forthcoming proposed regulations, the Departments could allow religious organizations to continue to provide coverage for some forms of contraceptives without cost sharing, and allow them to qualify for the accommodation with respect to other forms of contraceptives consistent with their religious beliefs.

The ANPRM thus does not provide sufficient assurances that LC will even be able to take advantage of whatever "accommodation" the process produces.

109. Even if Defendants define "religious organization" broadly enough to include LC, the "accommodation" produced by the process initiated by the ANPRM almost certainly will not ameliorate LC's conscience concerns. The ANPRM makes clear that Defendants will not rescind the Mandate, expand the scope of its unusually narrow religious exemption, or remove abortifacients and related counseling from the list of drugs, devices, and services that must be provided without cost.

110. Moreover, none of the potential accommodations identified in the ANPRM – and none that could satisfy Defendants' objective of requiring that cost-free access to abortifacients be given to LC's plan beneficiaries – will relieve the burden on LC's religious liberty. LC will still be required to provide an employee health insurance plan that will serve as a conduit for the provision of abortifacients and related counseling to their own employees and their dependents.

111. The Mandate, regardless of the Administration's proposed compromises or promises of delayed enforcement, has a profound and adverse effect on LC and how it negotiates contracts and compensates its employees.

112. The Mandate makes it virtually impossible for LC to attract quality employees because of uncertainty about health insurance benefits.

113. Any alleged interest Defendants have in providing free FDA-approved abortifacients without cost-sharing could be advanced through other, more narrowly tailored mechanisms that do not burden LC's fundamental rights.

114. LC has expended and will continue to expend a great deal of time and money ascertaining the requirements of the Mandate and how it applies to the College's health insurance benefits.

115. LC wishes to continue offering and facilitating health insurance coverage consistent with their religious beliefs without suffering penalties or burdens resulting from the Mandate.

116. Without injunctive and declaratory relief as requested herein, LC is suffering and will continue to suffer irreparable harm.

117. LC has no adequate remedy at law.

IV. LEGAL ALLEGATIONS

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

118. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-117 and incorporates them herein.

119. LC's sincerely held religious beliefs prohibit it from providing or facilitating coverage for abortion, abortifacients, embryo-harming mechanisms, and related education and counseling, or providing a plan that causes access to the same through its insurance company or other third party.

120. LC's compliance with these beliefs is a religious exercise.

121. The Mandate imposes a substantial burden on LC's religious exercise and coerces it to change or violate its religious beliefs.

122. The Mandate chills LC's religious exercise.

123. The Mandate exposes LC to substantial fines for its religious exercise.

124. The Mandate exposes LC to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

125. The Mandate furthers no compelling governmental interest and 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 violates RFRA.

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

128. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-117 and incorporates them herein.

129. LC's sincerely held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming mechanisms, and related education and counseling, or providing a plan that causes access to the same through its insurance company.

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

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

132. The Mandate furthers no compelling governmental interest.

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

134. The Mandate coerces LC to change or violate its religious beliefs.

135. The Mandate chills LC's religious exercise.

136. The Mandate exposes LC to substantial fines for its religious exercise.

137. The Mandate exposes LC to substantial competitive disadvantages, in that it makes it unclear what health benefits it can offer to its employees.

138. The Mandate imposes a substantial burden on LC's religious exercise.

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

140. Defendants designed the Mandate and the religious exemption thereto in a way that make it impossible for LC and other similar religious organizations to comply with their religious beliefs.

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

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

143. The Mandate as applied to LC violates LC's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

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

144. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-117 and incorporates them herein.

145. The First Amendment's Establishment Clause prohibits the establishment of any religion and/or excessive government entanglement with religion.

146. To determine whether a religious organization like LC is required to comply with the Mandate, continues to comply with the Mandate, is eligible for an exemption, or continues to be eligible for an exemption, Defendants must examine the

organization's religious beliefs and doctrinal teachings, and that of its employees and persons it serves.

147. Obtaining sufficient information for the Defendants to analyze the con tent the LC's religious beliefs requires ongoing, comprehensive government surveillance that impermissibly entangles Defendants with religion.

148. The Mandate distinguishes am ong religions and a mong denominations, favoring some over others.

149. The Mandate adopts a particular th eological view of what is accep table moral complicity in provision of abortif acient coverage and i mposes it upon all religionists who must either conform their consciences or suffer penalty.

150. The Mandate as applied to LC violates LC's rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

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

151. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-117 and incorporates them herein.

152. Defendants' requirement of provision of insurance coverage for education and counseling regarding contraception causing abortion forces LC to speak in a manner contrary to its religious beliefs.

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

154. The Mandate as applied to LC violates LC's rights secured to it by the Free Speech Clause of the First Amendment of the United States Constitution.

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

155. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-117 and incorporates them herein.

156. Because the Mandate sweepingly infringes upon religious exercise and speech which are constitutionally protected, it is unconstitutionally overbroad in violation of the due process rights of LC and other parties not before the Court.

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

158. 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.

159. 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 meet the government's definition of "religious employers."

160. This Mandate, on its face and as applied to LC is an unconstitutional violation of the Plaintiff's due process rights under the Fifth Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

161. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-117 and incorporates them herein.

162. 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.

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

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

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

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

167. 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.

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

169. The Mandate is also contrary to the provisions of the PPACA which 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).

170. 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."

171. 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."

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

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to LC and others not before the Court to be an unconstitutional violation of their rights as protected by RFRA, the Free Exercise 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 Procedures Act;

B. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate in a way that substantially burdens the religious belief of any person in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against LC and others not before the Court by requiring them to provide health insurance coverage for abortifacients and abortion/abortificacient counseling to their employees.

C. That this Court award Plaintiff 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).

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

Respectfully submitted this 11th day of June, 2012.

s/Kevin H. Theriot
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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Bradley P. Humphreys and Michelle R. Bennett, Counsel for Defendants.

s/ Kevin H. Theriot