IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. ________________________

COLORADO CHRISTIAN 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.

COMPLAINT

Comes now Plaintiff Colorado Christian 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" (colloquially referred to as "Obamacare") that force thousands of religious organizations to violate their deepest religious beliefs.

2. Plaintiff Colorado Christian University ("The University" or "Colorado Christian") is a Christian liberal arts university located in Lakewood, Colorado, with classrooms in five other Colorado cities. Colorado Christian's religious beliefs forbid it from participating in, paying for, training others to engage in, or otherwise supporting abortion. Colorado Christian is among the many American religious organizations that hold these beliefs.

3. With full knowledge of these beliefs, the government issued an administrative rule ("the Mandate") that runs roughshod over Colorado Christian's religious beliefs, and the beliefs of millions of other Americans by forcing them to pay for abortifacient drugs and related education and counseling.

4. The government's Mandate unconstitutionally coerces Colorado Christian to violate its deeply-held religious beliefs under threat of heavy fines and penalties. The Mandate also forces Colorado Christian 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.

5. The government's refusal to accommodate conscience is also highly selective. The government obviously does not believe every single insurance plan in the country needs to cover these services. Rather, the government has provided ***thousands*** of exemptions from the

Affordable Care Act for other groups, including large corporations such as McDonald's, often for reasons of commercial convenience. And the government allows a variety of other reasons—from the age of the plan to the size of the employer—to qualify a plan for an exemption. But the government refuses to give the same level of accommodation to groups exercising their fundamental First Amendment freedoms.

6. The Defendants' actions therefore violate Colorado Christian's right to freedom of religion, as secured by the First Amendment of the United States Constitution and the Religious Freedom Restoration Act ("RFRA").

7. Defendants' actions also violate Colorado Christian's right to the freedom of speech, as secured by the First Amendment of the United States Constitution.

8. 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.

9. Had Colorado Christian's religious beliefs been obscure or unknown, the government's actions might have been an accident. But because the government acted with full knowledge of those beliefs, and because it allows plans not to cover these services for a wide range of reasons *other than* religion, the Mandate can be interpreted as nothing other than a deliberate attack by the government on the religious beliefs of Colorado Christian and millions of other Americans. The University seeks declaratory and injunctive relief to protect against this attack.

JURISDICTION AND VENUE

10. 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.

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

IDENTIFICATION OF PARTIES

12. Plaintiff Colorado Christian is a Christian liberal arts university located in Lakewood, Colorado, with classrooms in five other Colorado cities. Established in 1914, Colorado Christian is committed to offering a complete education that develops students spiritually, intellectually, and professionally.

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

14. 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.

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

16. 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.

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 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.

19. 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. The University's Religious Beliefs and Practices Related to Insurance for Abortion.

20. Colorado Christian is a Christian liberal arts university located in Lakewood, Colorado, with classrooms in five other Colorado cities. Established in 1914, Colorado Christian is committed to offering a complete education that develops students intellectually, professionally, and spiritually.

21. Faith is central to the educational mission of Colorado Christian. Colorado Christian describes itself as a "Christ-centered community" and commits, in its mission, to "exemplary academics, spiritual formation, and engagement with the world."

22. Consistent with its mission, Colorado Christian works to manifest its Christian faith in all aspects of its administration. All Colorado Christian employees profess the same Statement of Faith, which establishes the essential framework within which members of the University both unite in shared beliefs and explore differences.

23. Colorado Christian holds religious beliefs that include traditional Christian teachings on the sanctity of life. Colorado Christian 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. Colorado Christian therefore believes and teaches that abortion ends a human life and, with rare exceptions, is a sin.

24. One of Colorado Christian's listed strategic objectives is to "[i]mpact our culture in support of traditional family values, sanctity of life, compassion for the poor, Biblical view of human nature, limited government, personal freedom, free markets, natural law, original intent of the Constitution and Western civilization."

25. Colorado Christian has more than 4,200 graduate and undergraduate students.

26. Colorado Christian has approximately 280 full-time and 330 part-time employees.

27. As part of its commitment to Christian education, Colorado Christian also promotes the well-being and health of its students and employees, spiritual and physical. This includes provision of generous health services and health insurance for its employees.

28. As part of its religious commitment, Colorado Christian has ensured that its insurance policies do not cover drugs, devices, services or procedures inconsistent with its faith. In particular, its insurance plans do not cover abortion. When Colorado Christian was earlier informed that its insurance carrier had unilaterally included coverage for abortion in its insurance plan, it immediately required the insurance carrier to terminate that coverage.

29. Colorado Christian cannot provide health care insurance covering abortion or related education and counseling without violating its deeply held religious beliefs.

30. The plan year for Colorado Christian's insurance plan begins on July 1 of each year.

II. The Affordable Care Act

31. 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."

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

33. The Act does not apply equally to all plans.

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

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

36. The Act applies differently to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

37. 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.

38. 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).

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

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

41. 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.

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

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

44. The Act creates a system of individualized exemptions.

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

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

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

48. Upon information and belief, thousands of HHS waivers have been granted.

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

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

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

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

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

III. The Preventive Care Mandate

54. One of the provisions of the Affordable Care Act mandated 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 directed 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).

55. 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 F ed. Reg. 41726 (2010).[1] 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).

56. 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.

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[1] For ease of reading, references to "HHS" in this Complaint are to all three Departments.

57. 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.

58. 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.

59. 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.

60. 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 "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).

61. 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.

62. 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.

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

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

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

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

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

68. Upon information and belief, over 100,000 c omments were submitted against the Mandate.

69. 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.

70. The Mandate fails to take into account the statutory and constitutional conscience rights of religious organizations like Colorado Christian, even though those rights were repeatedly raised in the public comments.

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

72. The Mandate constitutes government-imposed pressure and coercion on Colorado Christian to change or violate its religious beliefs.

73. The Mandate exposes Colorado Christian to substantial fines for refusal to change or violate its religious beliefs.

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

75. The Mandate places Colorado Christian at a competitive disadvantage in its efforts to recruit and retain employees and students.

76. The Mandate forces the University to provide coverage for Plan B, *ella*, and other abortifacient drugs in violation of the University's religious beliefs.

77. The University has a sincere religious objection to providing coverage for 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 the embryo.

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

79. The University believes that Plan B and *ella* can cause the death of the embryo.

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

81. The drug *ella* can prevent the implantation of a human embryo in the wall of the uterus.

82. Plan B and *ella* can cause the death of the embryo.

83. 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.

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

85. 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.

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

87. Providing this counseling and education directly undermines the express messages and speech of the University.

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

89. 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.

90. 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.

IV. The Narrow and Discretionary Religious Exemption

91. 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).

92. 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).

93. 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."

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

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

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

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

98. The University has no conscientious objection to providing coverage for women's healthcare services such as mammograms.

CLAIMS

COUNT I

Violation of the Religious Freedom Restoration Act
Substantial Burden

99. The University incorporates by reference all preceding paragraphs.

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

101. The Mandate creates government-imposed coercive pressure on t he University to change or violate its religious beliefs.

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

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

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

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

106. The Mandate furthers no compelling governmental interest.

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

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

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

110. Absent injunctive and declaratory relief against the Mandate, 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
Substantial Burden

111. The University incorporates by reference all preceding paragraphs.

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

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

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

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

116. The Mandate furthers no compelling governmental interest.

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

118. The Mandate creates government-imposed coercive pressure on t he University to change or violate its religious beliefs.

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

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

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

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

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

124. 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 of the United States Constitution.

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

COUNT III

Violation of the First Amendment to the United States Constitution
Free Exercise Clause
Intentional Discrimination

126. The University incorporates by reference all preceding paragraphs.

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

128. 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.

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

130. 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.

131. 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
Discrimination Among Religions

132. The University incorporates by reference all preceding paragraphs.

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

134. 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."

135. 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.

136. 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
Selective Burden/Denominational Preference (*Larson* v. *Valente*)

137. The University incorporates by reference all preceding paragraphs.

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

139. 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."

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

141. 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

142. The University incorporates by reference all preceding paragraphs.

143. The University teaches that abortion violates its religious beliefs.

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

145. The Mandate would compel the University to provide education and counseling related to abortion.

146. 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.

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

148. 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

149. The University incorporates by reference all preceding paragraphs.

150. The University teaches that abortion violates its religious beliefs.

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

152. The Mandate would compel the University to provide education and counseling related to abortion.

153. Defendants' actions thus violate the University's right of expressive association as secured to it by 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 VIII

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

155. The University incorporates by reference all preceding paragraphs.

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

157. 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.

158. 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.

159. 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

160. The University incorporates by reference all preceding paragraphs.

161. 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.'

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

163. 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).

164. 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

165. The University incorporates by reference all preceding paragraphs.

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

167. 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.

168. 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.

169. 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

170. The University incorporates by reference all preceding paragraphs.

171. 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).

172. 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."

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

174. Some FDA-approved contraceptives cause abortions.

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

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

177. 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

178. The University incorporates by reference all preceding paragraphs.

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

180. 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."

181. 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.

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

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

184. Some FDA-approved contraceptives cause abortions.

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

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

PRAYER FOR RELIEF

Wherefore, the University requests that the Court:

a. Declare that the Mandate and Defendants' enforcement of the Mandate against the University violate the First Amendment of the United States Constitution;

b. Declare that the Mandate and Defendants' enforcement of the Mandate against the University violate 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 the 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 the 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 December, 2011.

/s/ *Eric Rassbach*
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