IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:11-cv-03350-CMA-BNB

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.

FIRST AMENDED COMPLAINT

(Jury Demand Endorsed Hereon)

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" 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, providing access to, 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 provide health insurance coverage 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 facilitate government-dictated speech that is incompatible 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, 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. 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 spiritual and physical well-being and health of its students and employees. This includes provision of generous health services and health insurance for its employees.

28. It is a violation of Colorado Christian's religious beliefs to deliberately provide insurance coverage for drugs, devices, services, or procedures inconsistent with its faith, in particular abortion-inducing drugs, abortion procedures, and related services.

29. It is similarly a violation of Colorado Christian's religious beliefs to deliberately provide health insurance that would facilitate access to abortion-inducing drugs, abortion procedures, and related services, even if those items were paid for by an insurer and not by Colorado Christian.

30. The University has no conscientious objection to providing coverage for non-abortion-inducing contraceptive drugs and devices.

31. When Colorado Christian learned in November 2011 that its insurance carrier had unilaterally included coverage for abortion in its insurance plan, its President, William L. Armstrong, immediately required the insurance carrier to terminate that coverage.

32. President Armstrong understood that the insurance carrier revised Colorado Christian's employee insurance plans to exclude all abortions, abortion-related services, and the abortion-inducing drugs Plan B (levonorgestral) and Ella (uliprsital).

33. Colorado Christian recently obtained copies of the formularies that list the drugs covered by its revised employee insurance plans. The formularies list "Plan B" and/or "levonorgestral."

34. Colorado Christian again contacted its insurer to inquire why Plan B had not been excluded from its employee insurance plans as requested. The insurer responded that it construes Colorado state law to require coverage of Plan B to the extent a prescription is required to purchase it.

35. Plan B is available as an over-the-counter drug for all persons seventeen years of age or older. A prescription for Plan B is required only for persons under the age of seventeen.

36. Colorado Christian's insurer has expressly confirmed to Colorado Christian that its employee insurance plans only cover Plan B for persons under the age of seventeen and that abortions, abortion-related services, Ella, and Plan B for persons seventeen and older are excluded.

37. Colorado Christian believes it is unlikely that Plan B will actually be obtained through its employee insurance plans by any of its employees or their covered dependants.

38. On information and belief, as far back as Colorado Christian's insurer has been able to determine, no abortions or abortion-related drugs or services have been obtained under Colorado Christian's employee insurance plans.

39. Furthermore, none of Colorado Christian's covered employees are under the age of seventeen.

40. It would be difficult for a covered employee's minor dependent under the age of seventeen to obtain a prescription for Plan B without the covered employee's knowledge. Colorado Christian seeks to ensure that it hires only individuals who agree with its religious views regarding the sanctity of life. Thus, it is unlikely that a covered employee would facilitate a minor dependent's obtaining Plan B. Even if a covered employee would facilitate such access, it could more easily do so by purchasing Plan B over-the-counter.

41. Although Colorado Christian thus believes it is unlikely that Plan B would be accessed under its employee insurance plan, the forced provision of access to Plan B for persons under the age of seventeen conflicts with the University's deeply held religious beliefs. Accordingly, Colorado Christian is determining ways to revise its coverage or self-insure to avoid providing access to Plan B.

42. Colorado Christian's student insurance plan expressly excludes all oral contraceptives and other contraception used for contraceptive purposes.

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

44. The plan year for Colorado Christian's student insurance plan begins in mid-August of each year.

45. Colorado Christian's employee insurance plans are not eligible for grandfather status. *See* 45 C.F.R. § 1 47.140(a)(1)(i), 26 C .F.R. § 54.9815-1251T(a)(1)(i); 29 C.F.R. § 2590.715-1251(a)(1)(i).

II. The Affordable Care Act

46. 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."

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

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

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

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

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

52. 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.

53. 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).

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

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

56. 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.

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

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

59. The Act creates a system of individualized exemptions.

60. 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").

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

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

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

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

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

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

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

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

III. The Preventive Care Mandate

69. 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).

70. 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).

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

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

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

73. 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.

74. 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.

75. 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.

76. 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.

77. 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).

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

79. Thirteen days later, on August 1, 2011, HRSA issued guidelines adopting the IOM recommendations. http://www.hrsa.gov/womensguidelines. On the same day HHS, the Department of Labor, and the Department of Treasury promulgated an amended interim final rule which reiterated the Mandate and added a narrow exemption for "religious employer[s]." 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.

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

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

82. When it issued the Mandate, HHS requested comments from the public by September 30, 2011, and indicated that comments would be available online.

83. Upon information and belief, over 100,000 c omments were submitted against the Mandate and its narrow "religious employer" exemption.

84. 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 w ar." She did not state whom she and NARAL Pro-Choice America were warring against.

85. 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.

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

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

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

89. 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.

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

91. The Mandate forces the University to provide coverage or access to coverage for Plan B, Ella, and other abortifacient drugs in violation of the University's religious beliefs.

92. The University has a s incere religious objection to providing coverage for Plan B and Ella since it believes those drugs could prevent a human embryo—which it understands 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.

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

94. The University believes that Plan B and Ella can cause the death of the embryo.

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

96. The drug Ella can prevent the implantation of a human embryo in the wall of the uterus.

97. Plan B and Ella can cause the death of the embryo.

98. 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.

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

100. The Mandate forces the University to provide insurance coverage or access to insurance coverage for emergency contraception, including Plan B and Ella free of charge, regardless of the ability of insured persons to obtain these drugs from other sources.

101. The Mandate forces the University to provide insurance coverage or access to insurance coverage for education and counseling concerning abortion that directly conflicts with the University's religious beliefs and teachings.

102. Providing this counseling and education is incompatible and irreconcilable with the explicit messages and speech of the University.

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

104. 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.

105. 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

106. 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).

107. 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).

108. 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."

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

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

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

112. The University is not an organization described in Section 6033(a)(1) and Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

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

114. On January 20, 2012, Defendant Sebelius announced that there would be no change to the "religious employer" exemption. Instead, 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 Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited February 7, 2012).

115. 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 insurer-based 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.

116. 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]

117. 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."

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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 SERVS. (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).

118. On February 15, 2012, the Defendants adopted as final, "without change," the Mandate and its narrow "religious employers" exemption. 77 Fed. Reg. 8725, 8727.

119. On March 16, 2012, the Defendants issued an Advance Notice of Proposed Rulemaking ("ANPRM"). The ANPRM announced the Defendants' intention to create an "accommodation" for non-exempt religious organizations under which the Defendants would require a health insurance issuer (or third party administrator) to provide coverage for these drugs and services—without cost sharing and without charge—to employees covered under the organization's health plan. The ANPRM solicited public comments on structuring the proposed accommodation, and announced the Defendants' intention to finalize an accommodation by the end of the Safe Harbor period. *See* https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-06689.pdf (published on March 21, 2012).

120. The ANPRM also announced Defendants' intention to apply the Temporary Safe Harbor provision to student insurance plans provided by "nonprofit institutions of higher education that meet comparable criteria" to those established for the employer safe harbor. *See id.* at 14.

121. The ANPRM did not announce any intention to alter the Mandate or its narrow "religious employer" exemption, which were made "final, without change" on February 15, 2012.

122. In sum, the Mandate takes effect against Colorado Christian's employee insurance plans on July 1, 2013.

123. To qualify for the one-year non-enforcement period, Colorado Christian would thus be required to satisfy the Safe Harbor notice requirements outlined in the guidance bulletin by July 1, 2013.

124. Colorado Christian's employee insurance plans, however, are not eligible for the Safe Harbor, because they provide coverage for contraceptive drugs other than Plan B and Ella.

125. Even if the Safe Harbor applied, Colorado Christian would be subject to enforcement action by Defendants under the Mandate no later than July 1, 2014.

CLAIMS

COUNT I

Violation of the Religious Freedom Restoration Act
Substantial Burden

126. The University incorporates by reference all preceding paragraphs.

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

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

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

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

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

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

133. The Mandate furthers no compelling governmental interest.

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

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

136. 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.*

137. 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

138. The University incorporates by reference all preceding paragraphs.

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

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

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

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

143. The Mandate furthers no compelling governmental interest.

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

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

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

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

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

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

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

151. 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.

152. 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

153. The University incorporates by reference all preceding paragraphs.

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

155. 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.

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

157. 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.

158. 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

159. The University incorporates by reference all preceding paragraphs.

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

161. 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."

162. 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.

163. 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*)

164. The University incorporates by reference all preceding paragraphs.

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

166. 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."

167. 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.

168. 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

169. The University incorporates by reference all preceding paragraphs.

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

171. The Mandate would compel the University to cooperate in activities through its provision of health insurance that the University teaches are violations of the University's religious beliefs.

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

173. 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.

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

175. 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

176. The University incorporates by reference all preceding paragraphs.

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

178. The Mandate would compel the University to cooperate in activities through its provision of health insurance that the University teaches are violations of the University's religious beliefs.

179. The Mandate would compel the University to provide, through its provision of health insurance, education and counseling related to abortion.

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

181. 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

182. The University incorporates by reference all preceding paragraphs.

183. 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.

184. 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.

185. 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.

186. 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

187. The University incorporates by reference all preceding paragraphs.

188. 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.'

189. 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.

190. 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).

191. 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

192. The University incorporates by reference all preceding paragraphs.

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

194. 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.

195. 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.

196. 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

197. The University incorporates by reference all preceding paragraphs.

198. 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).

199. 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."

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

201. Some FDA-approved contraceptives cause abortions.

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

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.

COUNT XII

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

205. The University incorporates by reference all preceding paragraphs.

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

207. 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."

208. 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.

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

210. The Mandate requires issuers, including the University, to provide coverage or access to coverage for all Federal Drug Administration-approved contraceptives.

211. Some FDA-approved contraceptives cause abortions.

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

213. 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 organizations that object on religious grounds 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 22d day of March, 2012.

JURY DEMAND

Colorado Christian University requests a trial by jury on all issues so triable.

s/ *Eric Baxter*
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2012, I caused a copy of the foregoing *First Amended Complaint* to be served via the Court's electronic case-filing system on the following counsel of record:

Michelle R. Bennett
michelle.bennett@usdoj.gov

s/ *Marie Peralta*
Marie Peralta