IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

AMERICAN FAMILY ASSOCIATION, INC

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.

Civil Action No. 1:13CV32-AS

COMPLAINT

COMES NOW Plaintiff American Family Association, Inc. and avers as follows:

INTRODUCTION

1. This is a civil action challenging implementation and enforcement of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) and the Health Care and Education Reconciliation Act (Pub. L. 111-52) (jointly referred to as "PPACA"), particularly, a federal mandate that requires religious entities to supply their employees with group health insurance facilitating coverage for abortion-inducing drugs and related education and counseling, violating their religious convictions and missions.

2. Plaintiff American Family Association, Inc. seeks injunctive and declaratory relief from named Defendants for violations of the First and Fifth Amendments to the United States Constitution, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.* ("RFRA"), and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA").

3. Defendants' actions have deprived and will continue to deprive Plaintiff of fundamental and basic rights protected by the United States Constitution and the operation of federal law.

PARTIES

4. Plaintiff American Family Association, Inc. ("AFA") is a nonprofit organization incorporated in the State of Mississippi with its principal place of business located in Tupelo, Mississippi. AFA is organized for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code.

5. Defendant Kathleen Sebelius ("Sebelius") is the Secretary of the United States Department of Health and Human Services ("HHS") and she is responsible for the operation and management of HHS. Sebelius is sued in her official capacity.

6. Defendant Hilda Solis is the Secretary of the United States Department of Labor and she is responsible for the operation and management of the Department of Labor. Solis is sued in her official capacity.

7. Defendant Timothy Geithner is the Secretary of the United States Department of The Treasury and he is responsible for the operation and management of the Department of Treasury. Geithner is sued in his official capacity.

8. Defendant HHS is an executive agency of the United States government within the meaning of RFRA and APA and is responsible for the promulgation, administration and

enforcement of mandates for the implementation of PPACA.

9. Defendant Department of Labor is an executive agency of the United States government within the meaning of RFRA and APA and is responsible for the promulgation, administration, and enforcement of the mandates for the implementation of PPACA.

10. Defendant Department of the Treasury is an executive agency of the United States government within the meaning of RFRA and APA and is responsible for the promulgation, administration, and enforcement of the mandates for the implementation of PPACA.

JURISDICTION AND VENUE

11. This action raises federal questions under the United States Constitution , RFRA and APA, supplying subject matter jurisdiction to this Court pursuant to 28 U.S.C. §§ 1331, 1346 & 1361.

12. This Court has authority to grant the requested injunctive and declaratory under 28 U.S.C. §§ 2201 & 2202 and 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

13. Venue is proper in the United States District Court for the Northern District of Mississippi under 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to the claim occurred in this district and Plaintiff is located in this district.

STATEMENT OF FACTS

AFA

14. Plaintiff AFA was formed in 1977 under the name of National Federation for Decency. In 1988, the name was changed to American Family Association.

15. AFA is a distinctly Christian organization whose purpose is to speak out on moral

issues in American society.

16. AFA makes every effort to impact and benefit the society at large. The mission of AFA is to inform, equip, and activate individuals to strengthen the moral foundations of American culture, while giving aid to the church in the United States of America and abroad in its task of fulfilling the Great Commission.

17. AFA believes that God has communicated absolute truth to mankind through Scripture, and that all people are subject to the authority of God's Word (Scripture). Therefore, AFA believes that a culture based on biblical truth best serves the well-being of our nation and our families.

18. AFA acts to restrain evil in our country by exposing the works of darkness, promote virtue by upholding in the culture that which is right, true and good according to Scripture, convince individuals of their sin and challenge them to seek Jesus Christ's grace and forgiveness, motivate people to take a stand on cultural and moral issues at the local, state and national levels, and encourage Christians to bear witness to the love of Jesus Christ as they live out their lives before the world.

19. AFA spurs activism regarding important issues impacting the culture, including the preservation of marriage and the family, decency and morality, sanctity of human life, stewardship, and media integrity.

20. To be employed at AFA, a person must credibly profess faith in Jesus Christ as Savior and Lord.

21. AFA has a statement of faith for the organization setting out orthodox beliefs of the historic Christian faith, including a belief that the Bible is the inspired, infallible, and authoritative Word of God.

22. AFA has maintained at least 50 full-time employees since 1998. Currently, AFA has 135 employees, 110 of which work full-time for the organization.

AFA's Beliefs Regarding Abortion

23. AFA believes that God, in His Word, condemns abortion as the intentional destruction of innocent human life, specifically, AFA believes that this proscription is set out in the Sixth Commandment of the Ten Commandments: "Thou shalt not murder."

24. Consistent with its beliefs about Scripture, AFA believes that every human life is worthy of dignity, respect and protection during all stages of life, from the time of conception forward, and has taken public positions proclaiming this earnestly-held belief.

25. Historically, AFA has been very involved in life issues and the pro-life cause, making numerous public statements over the years about the impropriety of abortion, and objecting to procedures, devices, and drugs that serve to end the lives of human beings after conception.

26. AFA has publically and consistently condemned FDA-approved drugs that destroy the human embryo after conception, either after the embryo has been implanted in the uterus or before, believing as a matter of religious conviction that said drugs cause abortions and wrongly end human life.

27. Toward this end, AFA has specifically spoken out against Plan B (otherwise known as the morning-after pill) and Ella (otherwise known as week-after pill) as being drugs that cause abortions and wrongly end human lives.

28. AFA firmly believes that payment for and/or facilitation of the use of procedures, devices, and drugs that destroy human beings in the womb, including human embryos after conception, would violate the Sixth Commandment.

29. AFA believes it would be sinful and immoral and against its mission for it to participate in, pay for, facilitate, or otherwise support any form of abortion.

AFA's Group Health Plan for Employees

30. As a benefit for its full-time employees, AFA has traditionally offered health insurance coverage. For the last decade, AFA has provided fully insured plans of group health coverage for its full-time employees.

31. AFA pays a significant portion of the cost of the health insurance for its full-time employees, spouses, children, and families participating in the plan.

32. AFA does not pay the entire cost of the group health insurance, but while contribution rates have varied from year to year, AFA has typically paid a very high percentage of the cost on behalf of its employees and their dependents.

33. In supplying health insurance for its employees, AFA has typically covered a wide range of services and drugs for its employees so as to adequately address their health needs. AFA includes oral and hormonal contraceptives as part of the insurance coverage, leaving the use of these devices and drugs to the individual consciences of employees.

34. AFA has never intended to supply any insurance coverage for abortions.

35. AFA evaluates its health insurance coverage and costs on an annual basis, and solicits competitive bids each year for insurance coverage.

36. AFA operates on a fiscal year, from July 1 to June 30. The budget planning process for AFA's overall budget and its healthcare budget begins early in the calendar year. AFA is at present budgeting insurance costs for the next fiscal year, running from July 2013 to June 2014.

AFA's Group Health Plan and PPACA

37. In February of 2010, after going through a competitive bid process and negotiating cost and coverage, AFA secured a group health plan with United HealthCare. AFA presumed that abortions would not be covered in the insurance policy.

38. In March of 2010, U.S. Congress enacted PPACA, establishing numerous requirements for employer group health plans, broadly defining "employee welfare benefit plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1), that "provides medical care…to employees or their dependents."

39. Among these requirements, PPACA obliges employers with at least 50 full-time employees to supply a group health plan to cover "preventive care" services for women. This obligation forces qualifying employers to pay the full cost of "preventative care" services without deductible or co-payment.

40. AFA was concerned about the passage of PPACA, and the ramifications of it, but did not perceive the legislation to require insurance coverage for abortion-related services.

41. The language of PPACA seemingly reflected congressional intent that abortion-related services not be included within the scope of the law. PPACA specifically states that "nothing in this title (or any amendment made by this title) 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." 42 U.S.C. § 18023(b)(1)(A)(i). PPACA left the option to the issuer of the health plan whether to include coverage for abortions.

42. AFA was also aware of an executive order issued by President Obama dated March 24, 2010 – delivered in response to public concerns about PPACA funding abortions – stating that no executive agency would authorize the federal funding of abortion.

43. On July 19, 2010, HHS, along with the Departments of Labor and The Treasury,

issued interim final rules for group health plans requiring coverage of "preventative services" to women under PPACA, to take effect on September 17, 2010 for plans beginning on or after September 23, 2010.

44. This Rule requires group health plans and health insurers to cover women's preventive health services and to eliminate cost-sharing requirements for such services, but omitted a description of the services to be included in the plan. Instead, HHS voiced intention to develop guidelines no later than August 1, 2011, giving its Health Resources and Services Administration ("HRSA") the task of developing these guidelines.

45. Defendants allowed concerned entities an opportunity to provide written comments about the interim final rules. But, in doing so, Defendants did not comply with the notice-and-comment requirements of APA, claiming that these requirements did not apply to the process.

46. In February of 2011, AFA renewed insurance coverage with United HealthCare, again, presuming again that abortions would not be covered.

AFA's Group Health Plan and HHS Mandate

47. In the interim period for the Rule, a significant number of pro-abortion lobbyists urged for the inclusion of various contraceptives and abortion-inducing drugs in the "preventive services" requirement for group health plans contemplated in PPACA. Other groups opposed the inclusion of contraceptives and abortion-inducing drugs, referencing the religious implications for certain employers.

48. On or about July 19, 2011, HRSA issued guidelines, recommending that preventive care for women include: "All Food and Drug Administration [FDA] approved contraceptive methods, sterilization methods, and patient education and counseling for all

women with reproductive capacity."

49. FDA-approved contraceptive methods include abortion-inducing drugs like Plan B and Ella.

50. Shortly thereafter, on August 1, 2011, HHS issued a Mandate adopting these same guidelines for identifying the "preventive services" that the group health plans must cover under PPACA. This HHS Mandate effectively requires qualifying employers to supply health insurance coverage for FDA-approved contraceptive methods, including Plan B and Ella, at no cost to their employees. This requirement was to be applied to plans or plan years beginning on August 1, 2012 or later.

51. Two days later, on August 3, 2011, Defendants issued amendments to the interim final rules of July 2010, supplying "additional discretion" to HRSA to grant an exemption for certain religious employers.

52. Disregarding how religious employer and religious accommodation have been described and defined in various federal laws, Defendants created a new standard for determining "religious employer" for this exemption, setting out the following as requisite 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 corporation 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.

53. In issuing the amendment to interim final rules, Defendants did not expound on the basis for these criteria or explain why the criteria differ from federal laws.

54. Defendants allowed for comments on the amended rules, and more than 200,000 responses were submitted about the "religious employer" exemption. Many objected to the narrowness of the definition and the limited scope of the exemption.

55. In latter part of 2011, the time came again for AFA to renew health insurance coverage. AFA was aware of the controversy surrounding the HHS Mandate but believed it would be considered a religious employer when PPACA came into effect in August of 2012, and thereby believed it would be exempted from having to provide insurance coverage for abortion-inducing drugs.

56. After soliciting bids, as of February 1, 2012, AFA once again went with United HealthCare for health insurance coverage, presuming again that abortion-related services were not covered.

57. On February 10, 2012, HHS, along with Departments of Labor and The Treasury, published a bulletin announcing the adoption of the "religious employer" definition and exemption published on August 3, 2011 without change.

58. Also, this HHS bulletin announced one-year temporary enforcement safe harbor for certain non-exempt, non-profit organizations with religious objections to covering contraceptives or emergency contraceptives – that served to postpone prosecution under the HHS Mandate until the first plan begins on or after August 1, 2013.

59. For a non-profit religious organization to qualify for the temporary enforcement safe harbor, it must self-certify that it satisfies safe harbor requirements and supplies notice to enrollees regarding non-coverage of contraceptive/abortifacient services during the safe harbor period.

60. To satisfy the safe harbor requirements, 1) the organization must be organized and

operate as a non-profit entity, 2) from Feb. 10, 2012, onward, the group health plan established or maintained by the organization must not have provided contraceptive coverage at any point consistent with applicable State law, because of the religious beliefs of the organization, 3) the group health plan (or another entity on its behalf, such as a health insurer or third-party administrator) must provide to participants of the plan notice stating that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after Aug. 1, 2012, and 4) the organization must self-certify that it satisfies items 1-3 above, and must document its self-certification in accordance with the procedures outlined in the HHS Bulletin.

61. On that same day, February 10, 2012, the White House announced that a policy could be developed to purportedly "accommodate" employers who do not fit the "religious employer" definition and yet maintain religious objections to the HHS Mandate. The White House also announced a temporary enforcement safe harbor for plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage.

62. On March 21, 2012, Defendants published an Advance Notice of Proposed Rulemaking ("ANPRM") seeking comment on how to structure the proposed "accommodation" for religious objectors. The scenario proposed in the ANPRM involves an "independent entity" providing coverage for objectionable services at no cost to the employer. The ANPRM does not alter the HHS Mandate; neither does the ANPRM suggest an actual exemption for religious objectors, other than that for "religious employers."

63. In the face of some criticism about the applicability of the safe harbor, on August 15, 2012, HHS "reissued" a bulletin that was originally issued on February 10, 2012, stating it was not changing the February 10 policy, but clarifying three points: 1) that the safe harbor is also available to non-profit organizations with religious objections to some but not all

contraceptive coverage, 2) that group health plan take some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of religious beliefs of the organization, but coverage existed despite action, and 3) that the safe harbor may be invoked without prejudice by non-profit organizations that are uncertain whether they qualify for the religious employer exemption.

AFA's Attempt to Avoid HHS Mandate and the Discovery of Objectionable Coverage

64. In late Spring of 2012, AFA learned about litigation pursued by certain for-profit companies challenging the HHS Mandate and began to wonder whether it could be forced to provide group health coverage for religiously-objectionable abortion services, in particular, whether AFA would ever be required to supply insurance coverage for abortifacients.

65. The category of "FDA-approved contraceptive methods" required under the HHS Mandate includes several drugs or devices that are of concern to AFA because they cause the demise of an already-conceived but not-yet-implanted human embryo, such as "emergency contraception" or Plan B (otherwise known as the "morning after" pill).

66. The FDA-approved category also encompasses the drug 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.

67. The HHS Mandate further requires group health care plans to pay for counseling, education, and other information concerning contraception, including devices and drugs like Plan B and Ella, which cause early abortions or harm to embryos for all women beneficiaries who are capable of bearing children.

68. Despite its concern about the coverage, AFA hoped it would be treated differently from for-profit companies that ran into difficulty with the HHS Mandate. AFA sought to confirm

that it could obtain a religious exemption and avoid the impact of the HHS Mandate, expected come into effect in August of 2012.

69. In May of 2012, AFA made inquiries with its on-going health insurer, United HealthCare, to determine how AFA could obtain the religious exemption and avoid insurance coverage for FDA-approved contraceptive methods, particularly, Plan B and Ella, in light of the HHS Mandate.

70. While pressing this question, AFA learned from United HealthCare representatives – much to its dismay – that the United HealthCare insurance policies for AFA that had been in place since 2010 actually covered FDA-approved contraceptive methods, including coverage for Plan B and Ella.

71. This discovery was shocking and distressing to AFA. Despite AFA's strident objections to abortion-related services, United HealthCare had nevertheless provided coverage for abortifacients, like Plan B and Ella, because United HealthCare classifies these drugs as contraceptives.

72. AFA's group health insurance coverage for FDA-approved contraceptive methods like Plan B and Ella was purely unintentional, being antithetical to its mission. AFA did not know if any employee had obtained the objectionable drugs, and for privacy reasons, AFA did not try to find out, but AFA was deeply troubled over the prospect of having this insurance coverage for its employees.

73. Thus, AFA was not only concerned about avoiding the impact of HHS Mandate in the future, but also wanted to eliminate objectionable insurance coverage that it was presently carrying.

74. Realizing the significance of this oversight, and wanting to rectify the situation as

soon as possible, AFA contacted United HealthCare about securing a religious exemption from this insurance coverage.

75. At that time, AFA believed it should qualify as a religious employer, and United HealthCare indicated that the exemption would be appropriate. AFA was unsure about the meaning of several of the phrases found in the definition, like "inculcation of religious values" and "primarily serves," but was hopeful that it – being a distinctly Christian organization – could avoid this provision requiring insurance coverage for aboritfacients.

76. Subsequent discussions with United HealthCare about the religious employer exemption cast some doubt on AFA being able to obtain this religious exemption, but United HealthCare never denied the request.

77. AFA renewed coverage with United HealthCare, beginning in February of 2013, believing that it was exempted from coverage as "religious employer."

78. Then, on the date the coverage with United HealthCare began, on February 1,, 2013, Defendants published Notice of Proposed Rulemaking ("NPRM"), following up on the ANPRM issued in March of 2012. The NPRM represented feedback on the ANPRM, building on the notion of compelling insurance coverage for women's preventive care.

79. The NPRM simplifies the "religious employer" exemption, eliminating several criteria, making it easier to determine eligibility. Under the NPRM, a "religious employer" is "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the Internal Revenue Code, as amended."

80. According to this simplified definition, it is now clear that AFA does not qualify as a "religious employer." Being different from a church or house of worship, AFA is not the type of organization referenced in § 6033(a)(3)(A)(i) or (a)(3)(A)(iii) of the tax code.

81. Now, AFA fully realizes that it is not exempted as a religious employer under the HHS Mandate.

82. Under the HHS Mandate, AFA is currently responsible for providing insurance coverage for abortifacients to its employees, namely, Plan B and Ella.

HHS Mandate's Immediate and Adverse Impact on ADF

83. AFA is now trying to determine whether it can abandon or opt out of the insurance coverage with United HealthCare. The pressing decision is extremely difficult and taxing for AFA.

84. AFA is facing an untenable and unavoidable dilemma. AFA is forced to either: 1) deprive all of its employees of health insurance, while subjecting itself to exorbitant penalties and fines and possible lawsuits for doing so, or 2) pay for and/or facilitate abortions for employees contrary to its conscience and mission.

85. AFA desires to provide adequate health insurance to its employees as part of the benefit package for them. AFA considers the provision of health insurance essential for retaining and hiring quality individuals.

86. Nevertheless, AFA has no other option but to forego health insurance coverage for abortifacients, including Plan B and Ella, to stay true to its religious convictions and organizational mission.

87. Upon forgoing the provision of health insurance, aside from the great risk of losing valuable employees, AFA also subjects itself to significant and cost-prohibitive penalties and fines that will eventually cause AFA to be financially unstable.

88. If an applicable employer, like AFA, fails to provide health insurance coverage and even one full-time employee obtains a qualified health plan and receives premium credits or

cost-sharing reductions, the employer is required to make a penalty payment of $2,000 per employee per year (adjusted for inflation) after the first thirty employees.

89. Also, 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 to be imposed by the Internal Revenue Services and other federal agencies. A fine up to $100 per day per employee may be imposed.

90. If AFA does not submit to the HHS Mandate, it will also be subject to a range of enforcement mechanisms that exist under ERISA, including but not limited to civil actions by the Secretary of Labor or by plan participants and beneficiaries, which would include but not be limited to relief in the form of judicial orders mandating AFA to violate its beliefs and provide coverage for items to which it objects on religious grounds.

91. AFA knows that a decision must be made very soon and will make it as soon as possible, knowing that the only other option is to supply objectionable coverage to its employees.

92. The prospect of continued enforcement of the HHS Mandate is also impairing AFA's ability to plan for the future. AFA must take the HHS Mandate into account now and in the near future as they plan expenditures, including employee compensation and benefits packages, for the next several years. AFA's budget planning process has already begun for the next fiscal year.

93. AFA must engage in extensive planning to determine its future expenditures, including employee compensation and benefits packages. AFA has begun this process and must complete this task in time to submit a proposed budget to AFA's Board of Directors for their approval in early Summer. The costs associated with the HHS Mandate have made it difficult, if not impossible, for AFA to formulate a budget.

94. Because of the cloud of the HHS Mandate, and the real prospect of foregoing a health insurance plan, AFA must also save and set aside funds for penalties, fines, and possible lawsuits. This affects planned expenditures for the current budget as well as future budgets.

95. The HHS Mandate fails to protect the statutory and constitutional conscience rights of AFA even though the rights of religious objectors were repeatedly raised in the public comments to the Mandate.

96. The HHS Mandate requires that AFA provide coverage for abortifacient methods, and education and counseling related to abortifacients, against its conscience and in a manner that is contrary to law.

AFA's Inability to Avoid the Impact of HHS Mandate

97. AFA wishes to continue offering and facilitating health insurance coverage for its employees consistent with its religious beliefs without suffering penalties or burdens resulting from the HHS Mandate.

98. The HHS Mandate applies to AFA currently, applying to AFA's health insurance plan that begun on February 1, 2013.

99. Although other employers are able to avoid or postpone the impact of the Mandate for various reasons, AFA is left with no such option.

100. The HHS Mandate does not apply to employers with group health plans that are "grandfathered," but AFA's group health plan is not grandfathered under the PPACA. AFA is seeking to change the group health plan to eliminate coverage for FDA-approved contraceptives, particularly, coverage for Plan B and Ella, that would eliminate "grandfathered" status.

101. In any event, AFA has made changes to its group health plan regarding deductibles and contribution rate that cause it to lose any grandfathered status it may have

otherwise had. Moreover, AFA has not provided the requisite notice needed to maintain grandfather status.

102. AFA also could have avoided the HHS Mandate had it fallen under the HHS Mandate's definition of "religious employers," like AFA initially had hoped. AFA now realizes that it does not meet the criteria for this narrow exemption.

103. Even though AFA considers itself to be a "religious employer" because it is a religious organization, AFA has learned that it is HHS does not consider AFA "religious" enough under this definition. Since originally reviewing these criteria, AFA has learned of other similarly-situated Christian-based entities that have brought lawsuits challenging the HHS Mandate on the premise that they do not qualify as religious employers. AFA has noted that in defense of these claims, Defendants have yet to acknowledge any one of these similarly-situated non-profit Christian-based groups as being a religious employer under the definition. This indicates to AFA that Defendants would consider AFA to be religious employer.

104. AFA does not meet the requisite criteria. Though AFA at first presumed that the reference to a non-profit in the definition of "religious employer" would include it, AFA has recently deduced that it is not included in this definition. Not being a church or related auxiliary, AFA does not qualify as a "religious employer."

105. Even if the NPRM is not accepted, and the definition of "religious employer" stays intact with the original four prongs, the process by which Defendants would use to determine whether AFA is a religious employer would be unconstitutional in and itself and likewise objectionable. This definition requires Defendants to engage in an extraordinarily 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." These inquiries mandate government entanglement with religion.

106. Moreover, these standards found in the "religious employer" criteria are hopelessly and impermissibly vague and subjective, leading to unfettered discretion in the decision-making.

107. Defendants have implemented a temporary, one-year "Safe Harbor" that will be in effect for some religious employers until the first plan year that begins on or after August 1, 2013. This safe harbor could have been a means for AFA to at least postpone participation in the coverage, yet, the safe harbor does not aid AFA because AFA does not qualify for this either.

108. AFA carried health insurance on February 10, 2012 that covered FDA-approved contraceptive methods to which they take religious objection and wish to exclude. Also, AFA took no action before February 10, 2012 to assure an exclusion of this coverage. There is no temporary enforcement safe harbor in effect for AFA.

109. The March 12, 2012 ANPRM and the February 1, 2013 NPRM claim to offer a possible, future "accommodation" for some religious non-profit organizations that do not qualify for the "religious employer" exemption, but to the extent this ANPRM and NPRM promise of accommodation represents any relief at all, it does alleviate AFA's concerns.

110. An accommodation is not the same as an exemption, and the proposed accommodation would be unsuitable because it would still force AFA to facilitate objectionable coverage through an insurance company.

111. Without injunctive and declaratory relief requested herein, AFA is presently suffering and will continue to suffer irreparable harm.

112. AFA has no adequate remedy at law.

FIRST CLAIM FOR RELIEF

Violation of the Religious Freedom Restoration Act 42 U.S.C. § 2000bb

113. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

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

115. When AFA complies with the Sixth Commandment of the Bible and other sincerely held religious beliefs, it exercises religion within the meaning of the RFRA.

116. The HHS Mandate imposes a substantial burden on AFA's religious exercise and coerces it to change or violate its religious beliefs. The HHS Mandate penalizes AFA for offering health insurance plans that do not cover abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or that cause access to the same through its insurance company. Defendants substantially burden AFA's religious exercise when they force it to choose between either following its religious commitments and suffering debilitating punishments or violating its conscience in order to avoid those punishments.

117. The HHS Mandate chills and deters AFA's religious exercise within the meaning of RFRA.

118. The HHS Mandate exposes AFA to substantial fines and/or financial burdens for exercising its religion.

119. The HHS Mandate exposes AFA to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the HHS Mandate.

120. The HHS Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest. The HHS Mandate does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status, demonstrating the less-than-compelling nature of the interest that allegedly underlies the HHS Mandate. The HHS Mandate also does not apply to plans sponsored by employers that qualify for the religious exemption. Lack of access to abortifacients is not a significant social problem, and compelling AFA to pay for or otherwise facilitate access to such drugs and devices is hardly the least restrictive means of advancing any interest the government might have.

121. The HHS Mandate and its application to AFA violate RFRA.

SECOND CLAIM FOR RELIEF

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

122. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

123. AFA's sincerely-held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing plans that cause access to the same through its insurance company.

124. In complying with the Sixth Commandment of the Bible and other sincerely held religious beliefs, AFA exercises religion within the meaning of the Free Exercise Clause.

125. The HHS Mandate imposes a substantial burden on AFA's religious exercise and coerces it to change or violate its religious beliefs. Defendants substantially burden AFA's religious exercise when they force AFA to choose between either following its religious commitments and suffering debilitating punishments or violating its conscience in order to avoid

those punishments.

126. The HHS Mandate is not neutral and is not generally applicable. It does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status. It does not apply to religious employers that qualify for the HHS Mandate's narrow religious exemption. It does not apply to the employers to whom the Defendants have given waivers from the PPACA.

127. Defendants have created categorical exemptions and other exemptions to the Mandate.

128. The HHS Mandate does not apply equally to various religious groups.

129. The HHS 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).

130. In addition, the HHS Mandate exempts certain churches narrowly considered to be religious employers, exempts grandfathered plans, and does not apply through the employer mandate to employers having fewer than 50 full-time employees.

131. 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.

132. In burdening AFA's religious exercise, the HHS Mandate furthers no compelling governmental interest in doing so. Lack of access to abortifacients is not a significant social problem, and compelling AFA to pay for or otherwise facilitate access to such drugs and devices is not the least restrictive means of advancing any interest the government might have.

133. The HHS Mandate coerces AFA to change or violate its religious beliefs.

134. The HHS Mandate chills and deters AFA's religious exercise.

135. The HHS Mandate exposes AFA to substantial fines and/or financial burdens for its religious exercise.

136. The HHS Mandate exposes AFA to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

137. Defendants designed the HHS Mandate and the religious exemption therefrom in a way that make it impossible for AFA and other similar religious organizations to comply with their religious beliefs.

138. Defendants promulgated both the HHS Mandate and the religious exemption in order to suppress the religious exercise of AFA and others.

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

140. The HHS Mandate violates AFA's right secured 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

141. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

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

143. To determine whether religious organizations like AFA are required to comply with the Mandate, continue to comply with the HHS Mandate, are eligible for an exemption, or

continue 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.

144. Obtaining sufficient information for the Defendants to analyze the content of AFA's religious beliefs requires ongoing, comprehensive government surveillance that impermissibly entangles Defendants with religion.

145. The HHS Mandate discriminates among religions and among denominations, favoring some over others.

146. The HHS Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient coverage and imposes it upon all religionists who must either conform their consciences or suffer a penalty.

147. The HHS Mandate's discrimination and coercive effect also represents unlawful hostility towards religion.

148. The HHS Mandate violates AFA's right secured by the Establishment Clause of the First Amendment of the United States Constitution.

FOURTH CLAIM FOR RELIEF

Violation of the Freedom of Association found in the First Amendment to the United States Constitution

149. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

150. The First Amendment guarantees the right to associate with others in the pursuit of social, educational, religious, and cultural ends.

151. A group may enjoy the right to associate by joining together to engage in expressive association.

152. AFA is such a group that joins together to live out and express its Christian

values, including the sanctity of life, found in the Word of God and reiterated in its Statement of Faith and elsewhere.

153. The HHS Mandate imposes an unconstitutional, significant burden on AFA's right to expressive association guaranteed by the First Amendment by requiring it to, among other things, endorse the use of contraceptives, including abortion-inducing drugs, in violation of its faith or face a penalty for refusing to do so.

154. Moreover, the HHS Mandate punishes religious groups if they choose to serve others outside their faith, which is another significant burden on AFA's right to freely associate and serve others who do not share its beliefs.

155. The HHS Mandate violates AFA's right to associate secured by the First Amendment and is not justified by any compelling government interest and is not narrowly tailored to any such interest.

FIFTH CLAIM FOR RELIEF

Violation of the Free Speech Clause of the First Amendment to the United States Constitution

156. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

157. Defendants' HHS Mandate and requirement of provision of insurance coverage for education and counseling regarding contraception causing abortion forces AFA to speak and endorse in a manner contrary to its religious beliefs.

158. The HHS Mandate forces AFA to fund government-dictated speech that is directly at odds with the religious message it wishes to convey to its employees and to the culture.

159. The Free Speech Clause not only protects the right to speak, but also the right not

to speak.

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

161. 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 the fundamental rights of AFA.

162. Defendants' HHS Mandate and regulations are also unconstitutionally vague because they grant the government unconstitutional discretion, encourage arbitrary and discriminatory enforcement, and chill protected speech.

163. The HHS Mandate violates AFA's right secured by the Free Speech Clause of the First Amendment of the United States Constitution.

SIXTH CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

164. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

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

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

167. This HHS Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner, and lawsuits by private persons, based on the Defendants' vague standards.

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

169. This HHS Mandate is an unconstitutional violation of AFA's Due Process rights under the Fifth Amendment to the United States Constitution.

SEVENTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act

170. AFA re-alleges all matters set forth in the foregoing paragraphs and incorporates them herein.

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

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

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

174. In promulgating the HHS Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on AFA and similar organizations.

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

176. Thus, Defendants' issuance of the HHS Mandate was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the HHS Mandate fails to consider the full

extent of its implications and it does not take into consideration the evidence against it.

177. As set out herein, the HHS Mandate violates RFRA and the First and Fifth Amendments.

178. The HHS 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).

179. The Mandate is further contrary to the provisions of the Weldon Amendment of the Consolidated Appropriations Act, 2012, Public Law 112-74, Div. F, Sec. 507(d), 125 Stat. 786, 1111 (Dec. 23, 2011), as incorporated into Continuing Appropriations Act, 2013, Public Law 112-175, Sec. 101(a)(8), 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."

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AFA respectfully requests the following relief:

A. That this Court enter a judgment pursuant to 28 U.S.C. §§ 2201, 2202 declaring the Mandate and its application to AFA and others not before the Court to be an unconstitutional

violation of its rights protected by RFRA, the Free Exercise, Establishment, Association, 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 APA;

B. That this Court enter a preliminary injunction prohibiting Defendants during the course of this litigation from continuing to apply the HHS 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 AFA and others not before the Court by requiring them to provide health insurance coverage for abortifacients and abortion/abortifacient counseling to their employees;

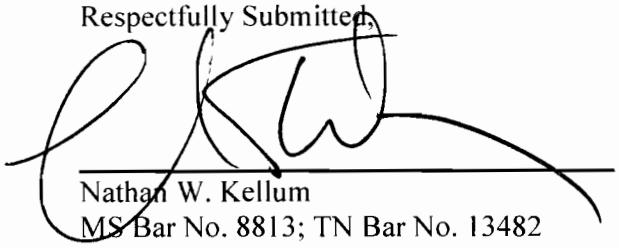
C. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the HHS Mandate in a way that substantially burdens the religious belief of any person in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against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

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

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

Dated: February 19, 2013

Respectfully Submitted,



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*Application for Admission *pro hac vice* is forthcoming