IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BECKWITH ELECTRIC CO., INC.; and THOMAS R. BECKWITH, Chief Executive Officer and Primary Shareholder of Beckwith Electric Co., Inc.

Plaintiffs,

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; SETH D. HARRIS, Acting Secretary of the United States Department of Labor; UNITED STATES DEPARTMENT OF LABOR; JACK LEW, Secretary of the United States Department of the Treasury; and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

Case No. 8:13-cv-00648

Hon. Judge Elizabeth A. Kovachevich

Magistrate Judge Mark A. Pizzo

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND LOCAL RULE 3.01(j) REQUEST FOR ORAL ARGUMENT

PLEASE TAKE NOTICE that at the earliest possible time for the court to hear this motion, Plaintiffs Beckwith Electric Co., Inc. and Thomas R. Beckwith, by and through their undersigned counsel, will and hereby do move the court for a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a) and Local Rule 3.06 in order to prevent immediate irreparable injury to Plaintiffs' fundamental rights and interests.

In support of their motion, Plaintiffs rely upon the pleadings and papers of record, as well as their brief filed with this motion, and the declarations and exhibits attached hereto. For the reasons set forth more fully in the supporting brief, Plaintiffs hereby request that this court enjoin the enforcement of Defendants' Health and Human Services Mandate that violates Plaintiffs'

rights guaranteed by the First Amendment to the United States Constitution and the Religious Freedom Restoration Act of 1993, 107 Stat. 1488, as amended, 42 U.S.C. § 2000bb *et seq*. For the purposes of this request for a preliminary injunction, the Plaintiffs focus solely on Claims I-III and VII-VIII of their complaint; however, Plaintiffs do not forfeit any of the claims alleged in their complaint. Plaintiffs additionally request oral argument and estimate that the time required for oral argument on this motion would be one (1) hour. *See* Local Rule 3.01(j).

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND LOCAL RULE 3.01(j) REQUEST FOR ORAL ARGUMENT

INTRODUCTION

Plaintiffs Beckwith Electric, Thomas R. Beckwith (collectively "Plaintiffs") bring this Motion for a Preliminary Injunction to enjoin the unconstitutional and illegal directives of the HHS Mandate. Currently, the Defendants are forcing businesses and organizations which hold sincerely held religious beliefs to violate those beliefs by supplying contraceptive and abortifacient coverage.[1] Such action blatantly disregards religious freedom and the right of conscience, and is nothing short of irreconcilable with the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA"), and the First Amendment. Nineteen courts thus far have enjoined the HHS Mandate for for-profit companies indistinguishably situated and structured to the Plaintiffs.[2]

[1] At the same time these Defendants are forcing Plaintiffs to violate their religious beliefs; Defendants have simply *decided not* to impose the HHS Mandate against several Plaintiffs in at least six similar cases by consenting to preliminary injunctive relief for for-profit companies and their owners. *See Sharpe Holdings, Inc. v. U.S. Dep't of Health & Human Servs.*, No. 2:12-cv-00092, (Doc. # 41) (E.D. Mo. Mar. 11, 2013); *Sioux Chief Mfg. Co. v. Sebelius*, No. 4:13-cv-0036, (Doc. # 9) (W.D. Mo. Feb. 28, 2013)); *Hall v. Sebelius*, No. 13-0295, (Doc. # 10) (D. Minn. Apr. 2, 2013); *Bick Holding, Inc. v. Sebelius*, No. 4:13-cv-00462, (Doc. # 1) (E.D. Mo. Apr. 1, 2013); *Tonn and Blank Construction v. Sebelius*, No. 12-325, order (N.D. Ill. Apr. 1, 2013); *Lindsay v. Sebelius*, No. 1:13-cv-01210, (Doc. # 21) (N.D. Ill. Mar. 20, 2013). Defendants moved to voluntarily dismiss their appeal of *Tyndale House Publishers, Inc. v. Sebelius*, No. 12-1635, slip op. (D.D.C. Nov. 16, 2012) and therefore decided not to challenge the lower court's grant of preliminary injunction. *Tyndale House Publishers, Inc. v. Sebelius*, No. 13-5018, order (D.C. Cir., May 3, 2013).

[2] *See Monaghan v. Sebelius*, No. 12-15488, slip op. (E.D. Mich. March 14, 2013); *Legatus v. Sebelius,* No. 12-12061, slip op. (E.D. Mich. October 31, 2012); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357, order (8th Cir. November 28, 2012); *Korte v. Sebelius*, No. 12-3841, slip op. (7th Cir. Dec. 28, 2012), *Grote Indus.*

FACTUAL BACKGROUND

Plaintiff Beckwith Electric is a for-profit company. (Beckwith Decl. at ¶ 3 at Ex. 1). Plaintiff Thomas R. Beckwith is the Chief Executive Officer and 92% voting shareholder. (Beckwith Decl. at ¶¶ 3, 8-9 at Ex. 1). Plaintiffs strive to follow the teachings and values of the Southern Baptist Faith. (Beckwith Decl. at ¶¶ 6-7, 10-15, 20-26, 29-32 at Ex. 1). Plaintiffs believe that a company managed under the living God's direction and by God's principles cannot engage in activities that are contrary to such direction, principles, or moral compass. (Beckwith Decl. at ¶ 13 at Ex. 1). Plaintiffs believe that terminating an innocent human life and any devices, drugs, or services that are capable of killing innocent human life is a clear violation of such direction, principles, or moral compass. *Id.* Plaintiffs believe that abortion-causing drugs (abortifacients and emergency contraceptives) are contrary to their Southern Baptist Faith. *Id.* Plaintiffs therefore cannot provide or fund through their private group health insurance plan abortifacients or emergency contraceptives. *Id.*

Plaintiffs employ 163 full-time employees. (Beckwith Decl. at ¶¶ 4-5 at Ex. 1). Plaintiff Thomas R. Beckwith is responsible for setting and implementing all policies governing Beckwith Electric. (Beckwith Decl. at ¶ 8 at Ex. 1). In accordance with the Southern Baptist Faith, Plaintiffs specifically excluded abortifacients from their group health insurance plan.[3]

LLC v. Sebelius, No. 13-1077, slip op. (7th Cir. Jan. 30, 2013); *Annex Med. Inc. v. Sebelius*, No. 13-1119, slip op. (8th Cir. Feb. 1, 2013), *Am. Pulverizer Co. v. Dep't of Health & Human Servs*., No. 12-3459, slip op. (W.D. Mo. Dec. 20, 2012); *Newland v. Sebelius*, No. 12-1123, slip op. (D. Colo. July 27, 2012); *Tyndale House Publishers, Inc. v. Sebelius*, No. 12-1635, slip op. (D.D.C. Nov. 16, 2012); *Triune Health Group, Inc. v. U.S. Dep't of Health and Human Servs.*, No. 1:12-cv-06756 (N.D. Ill. Jan. 3, 2013); *Sharpe Holdings, Inc. v. U.S. Dep't of Health and Human Servs.*, 12-92, slip op. (E.D. Mo. Dec. 31, 2012); *Sioux Chief Mfg. Co., Inc. v. Sebelius*, No. 13-36, order (W.D. Mo. Feb. 28, 2013); *Seneca Hardwood Lumber v. Sebelius*, No. 12-207, slip op. (W.D. Pa. Apr. 19, 2013); *Lindsay, Rappaport & Postel LLC v. Sebelius*, No. 13-1210, order (Mar. 20, 2013); *Gilardi v. Dep't of Health & Human Servs.*, No. 13-5069 , order (D.C. Cir. Mar. 29, 2013); *Bick Holding, Inc. v. Sebelius*, No. 13-462, order (E.D. Mo. Apr. 1, 2013); *Am. Manufacturing Co. v. Sebelius*, No. 13-295, slip op.(D. Minn. Apr. 2, 2013); *Hart Electric LLC v. Sebelius*, No. 13-2253, order (N.D. Ill. Apr. 18, 2013); *Tonn and Blank Construction v. Sebelius*, No. 12-325, order (N.D. Ill. Apr. 1, 2013).

[3] Plaintiff Beckwith Electric also exercises religion by, for example, contributing large donations to charitable causes respecting the sanctity of life and offering on-site corporate chaplains. (Beckwith Decl. at ¶¶16-22).

(Long Decl. at ¶¶ 5-8 at Ex. 2). After the mandate began its implementation in August 2012, Humana added coverage for emergency contraception and abortifacients to its group health plans. (Long Decl. at ¶ 16 at Ex. 2). This was done without any notice to, knowledge, or consent of Plaintiffs. (Long Decl. at ¶11 at Ex. 2). Plaintiffs have unwaveringly tried to remove coverage of abortifacients and emergency contraception from their plan. (Long Decl. at ¶ 13 at Ex. 2). Humana asserts that none of Plaintiffs' plan participants have used their group insurance plan for abortifacient or emergency contraceptive coverage. (Long Decl. at ¶ 12 at Ex. 2). The mandate officially affects Plaintiffs as of the beginning of their plan year on June 1, 2013. (Long Decl. at ¶ 15 at Ex. 2). Due to the Health and Human Services Mandate ("HHS mandate" or "mandate"), Plaintiffs cannot make health care insurance decisions in line with their religious views. (Beckwith Decl. at ¶ 30-34, 40-46; Long Decl. at ¶ 16 at Ex. 2). The mandate forces Plaintiffs to pay, fund, contribute, provide, or support emergency contraception and abortifacients or related education and counseling, in violation of their Constitutional rights and deeply held religious beliefs.[4] The Affordable Care Act ("ACA") called for health insurance plans to provide coverage and "not impose any cost sharing requirements. . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines" and directed Defendant Sebelius to determine what would constitute "preventive care." 42 U.S.C § 300gg-13(a)(4). Defendants published an interim final rule under the ACA, 75 Fed. Reg. 41726 (2010), requiring providers of group health insurance to cover "preventive care" for women as provided in guidelines to be published on a later date.[5] Prior to adopting

[4] *See* 45 C.F.R. § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Register 8725 (Feb. 15, 2012), adopting and quoting Health Resources and Services Administration (HRSA) Guidelines, (http://www.hrsa.gov/womensguidelines).

[5] Defendants directed the Institute of Medicine ("IOM") to compile recommended guidelines describing which drugs, procedures, and services should be covered as preventative care for women. (http://www.hrsa.gov/womensguidelines). IOM invited select groups to make presentations on the preventive care that should be mandated by all health plans. (http://www.nap.edu/openbook.php?record_id=13181&PAGE=217). No religious groups or groups opposing government-mandated coverage of contraception, abortion, and related

those guidelines, Defendants accepted public comments. A large number of groups filed comments warning of the potential implications of requiring religious individuals and groups to pay for contraception and abortifacients.

On February 15, 2012, Defendant United States Department of Health and Human Services ("HHS") promulgated the mandate that group health plans include coverage for all FDA-approved contraceptive methods and procedures, patient education, and counseling for all women with reproductive capacity in plan years beginning on or after August 1, 2012.[6] All FDA-approved contraceptives included contraception, abortion, and abortifacients such as birth-control pills; prescription contraceptive devices, including IUDs; Plan B, also known as the "morning-after pill"; ulipristal, also known as "ella" or the "week-after pill"; and other drugs, devices, and procedures.[7] The mandate applies to almost all group health plans and health insurance issuers, 42 U.S.C. § 300gg-13 (a)(1),(4), and forces Plaintiffs to provide "preventive care" by making available and subsidizing such contraception, abortion, and abortifacients. The mandate also requires group health care plans and insurance issuers to provide education and counseling for all women beneficiaries with reproductive capacity—even if paying for or providing such "services" violates one's conscience and deeply held religious beliefs.

The ACA and the mandate include a number of exemptions, but Plaintiffs do not fall within them.[8] Plaintiffs' insurance plan is not "grandfathered." (Long Decl. at ¶ 15 at Ex. 4).[9]

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education and counseling were invited to present. Defendants adopted the IOM recommendations in full. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.

[6] *See* 45 C.F.R. § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Register 8725 (Feb. 15, 2012), adopting and quoting Health Resources and Services Administration (HRSA) Guidelines, (http://www.hrsa.gov/womensguidelines).

[7] (http://www.hrsa.gov/womensguidelines) (*last visited* May 6, 2013).

[8] The allowable factors for receiving exemptions under the Affordable Health Care Act include: the age of the plan, 42 U.S.C. § 18011(a)(2); 26 C.F.R. § 54.9815-1251T; 29 C.F.R. § 2590.715-1251; 45 C.F.R. §147.140 (exempting plans that qualify for "grandfathered" status by meeting criteria such as abstaining from plan changes since the date of March 23, 2010); a non-profit company which qualifies as a "religious employer," 45 C.F.R. § 147.130 (a)(iv)(A) and (B) (exempting non-profit companies which adopt certain hiring practices and exist to further the organization's religious doctrine); and individuals of certain religions which disapprove of insurance in its entirety such as the

Plaintiffs do not qualify for the "religious employer" exemption contained in 45 C.F.R. § 147.130 (a)(iv)(A) and (B). Plaintiffs cannot be considered for this exemption as Plaintiff Beckwith Electric is for-profit. Defendant Sebelius has announced that there will be no change to the religious exemption, but "[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."[10] This provided no relief to Plaintiffs, as a for-profit company is ineligible for the safe-harbor provision.[11] Defendants claim that the temporary safe-harbor provision could become permanent for non-profit companies who object to the mandate.[12] Defendant Sebelius also 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," acknowledging that contraceptives are readily available without mandating Plaintiffs subsidize them.[13]

Without the injunctive relief of this Court, Plaintiffs are forced to choose: comply with the mandate and violate their deeply held religious beliefs; or disobey federal law and incur the consequences, including severe burdens on their religious exercise, enormous penalties, and substantial competitive disadvantages in employee recruitment and retention if Plaintiffs are no

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Muslim or Amish religion, 26 U.S.C. § 5000A(d)(2)(A)(i)-(ii) (exempting members of "recognized religious sect or division" that conscientiously object to acceptance of public or private insurance funds).

[9] Plaintiffs' health care plan is not a grandfathered plan as: (1) the health care plan does not include the required "disclosure of grandfather status" statement; (2) Plaintiffs do not take the position that its health care plan is a grandfathered plan and thus do not maintain the records necessary to verify, explain, or clarify its status as a grandfathered plan nor will it make such records available for examination upon request; and (3) the health care plan has an increase in a percentage cost-sharing requirement measured from March 23, 2010. *See* 42 U.S.C. § 18011(a)(2); 26 C.F.R. § 54.9815-1251T; 29 C.F.R. § 2590.715-1251; 45 C.F.R. §147.140; (Beckwith Decl. at ¶ 37 at Ex. 1; Long Decl. ¶ 15 at Ex. 2).

[10] (http://www.hhs.gov/news/press/2012pres/01/20120120a.html) (*last visited* May 6, 2013).

[11] 77 Fed. Register 8725 (Feb. 15, 2012).

[12] (http://www.hhs.gov/news/press/2013pres/02/20130201a.html) (*last visited* May 6, 2013).

[13] (http://www.hhs.gov/news/press/2012pres/01/20120120a.html) (*last visited* May 6, 2013).

longer able to offer health care.[14] In this motion, Plaintiffs simply seek to continue providing health insurance in compliance with their sincere and deeply held religious beliefs. (Beckwith Decl. at ¶ 40-51 at Ex. 1).

ARGUMENT

The standard for issuing a preliminary injunction in this Circuit is well established. In *Siegel v. Lepore*, 234 F.3d 1163, 1176 (11th Cir. 2000), the court stated:

> A district court may grant injunctive relief only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

Id.; see also McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 (11th Cir. 1989)). Typically, the reviewing court will balance these factors, and no single factor will necessarily be determinative of whether or not to grant the injunction. *Id.* However, because this case deals with a violation of Plaintiffs' First Amendment rights, irreparable harm is presumed and the crucial and often dispositive factor is whether Plaintiffs are likely to prevail on the merits. *See Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983).

A. Plaintiffs' Likelihood of Success on the Merits

i. The HHS Mandate violates the Religious Freedom Restoration Act.

The Religious Freedom Restoration Act of 1993, 107 Stat. 1488, as amended, 42 U.S.C. § 2000bb *et seq.* (hereinafter "RFRA"), strictly prohibits the Federal Government from substantially burdening a person's exercise of religion, "even if the burden results from a rule of

[14] Upon not providing insurance to its employees, Plaintiffs would incur a $2,000 annual fine *per employee*, of which they have 163 employees. 26 U.S.C. § 4980H. The fines are even more insurmountable if Plaintiffs were to decide to offer insurance that did not comply with the HHS Mandate. Beckwith Decl. at ¶¶ 35-36 at Ex. 1) (penalties of $266,000 or $5,949,500 per year).

general applicability" except when the Government can "demonstrate[] that application of the burden to the person--(1) [furthers] a compelling government interest; and (2) is the least restrictive means of furthering that . . . interest." *Id.*; s*ee also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006); *Newland, et al. v. Sebelius, et al.*, No. 12-1123, slip op. at *17-18 (D. Colo. July 27, 2012) (granting preliminary injunction from HHS Mandate due to violation of RFRA); *Legatus v. Sebelius,* No. 12-12061, slip op. (E.D. Mich. October 31, 2012) (same); *Monaghan*, No. 12-15488, slip op. (E.D. Mich. March 14, 2013) (same).

In its formulation of RFRA, Congress expressly adopted the compelling interest test of *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In both cases, the Court "looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants." *Gonzales* at 431, *see also Yoder* at 213, 221, 236; *Sherbert* at 410. In *Sherbert*, the Court held that the State's denial of unemployment benefits to an employee who refused to work on Saturdays because of her religious beliefs was an impermissible burden on her free exercise of religion because it "force[d] her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." *Id.* at 404. The *Sherbert* court held that the government could not impose the same kind of burden upon the free exercise of religion as it would impose a fine against noncompliant parties of the law. *Id.* at 402.

In *Yoder*, Amish and Mennonite parents of teenaged children held religious beliefs that prohibited them from sending their children to high school as required by Wisconsin law. *Yoder* at 207. Each parent was fined $5 per child for failing to comply with state law for not sending

their children to school beyond the eighth grade in accordance with their sincerely held religious belief that "higher learning tends to develop values they reject as influences that alienate man from God." *Id.* at 208-13. The Court held that the impact of Wisconsin law, while recognizing the "paramount" interest in education that the law sought to promote, impermissibly compelled the parents to perform acts undeniably at odds with the fundamental tenets of their religious beliefs. *Id.* at 218, 213, 221; *see also Braunfeld v. Brown*, 366 U.S. 599, 605 (1961). The Court found that this compulsion "carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent," *Yoder* at 218; the same constitutionally forbidden compulsion is before the court in this case.

In accordance with the Supreme Court rulings in *Sherbert* and *Yoder*, and with the plain language of RFRA expressly enacted by Congress to protect religious freedom, the HHS Mandate substantially burdens the Plaintiffs' sincere exercise of religion. Furthermore, the federal government cannot "demonstrate[] that application of the burden to the person--(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b).

1. A Corporation and its Owners have First Amendment rights

The corporate form cannot be a reason to declare an entity incapable of exercising religion. RFRA applies to "persons," 42 U.S.C. § 2000bb(b), and persons as defined by 1 U.S.C. § 1 includes corporations. The United States Code requires the conclusion that corporations can exercise religion. Concluding otherwise would mean that churches, religious hospitals, and religious non-profits cannot bring claims either under RFRA or under the Free Exercise Clause. Reading the definition of person to cover corporations is consistent with the statutory scheme because corporations already benefit from other civil rights provisions and from the First

Amendment Rights RFRA was designed to restore. *See, e.g. Thinket Ink. v. Sun Microsystems, Inc.*, 368 F. 3d 1053, 1058-60 (9th Cir. 2004) (corporations may bring § 1981 actions for racial discrimination); *White Mountain Apache Tribe v. Williams*, 810 F.2d 844, 867 (9th Cir. 1984) (corporations may bring § 1983 actions and qualify as "persons" under the 14th Amendment, the equal protection clause, and the due process clause); *NAACP v. Button*, 371 U.S. 415, 428-430 (1963). Corporations qualify as "persons" under the 14th Amendment, the equal protection clause, and the due process clause. *Id.* Corporations have brought free exercise cases before.[15]

The Supreme Court has expressly held that "First Amendment protection extends to corporations," and a First Amendment right "does not lose First Amendment protection simply because its source is a corporation." *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876, 899 (2010); *see also Monell v. Dept. of Social Services*, 436 U.S. 658, 687 (1978) ("corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis").[16] For-profit corporations such as the New York Times could never have

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[15] *See, e.g. Church of the Lukumi Babalu Aye, **Inc.** v. City of Hialeah*, 508 U.S. 520, 525 (1993); *Okleveuha Native American Church of Hawaii, **Inc.** v. Holder*, 676 F.3d 829 (9th Cir. 2012); *Mirdrash Sephardi, **Inc.** v. Town of Surfside*, 367 F. 3d 1214 (11th Cir. 2004); *see also* Durham & Smith, *1 Religious Organizations and the Law* § 3:44 (2012) (explaining reasons religious organizations use the corporate form).

[16] In *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978), the Supreme Court held in its determination of the constitutionality of a law identified as §8,

> The Constitution often protects interests broader than those of the party seeking their vindication. The First Amendment, in particular, serves significant societal interests. The proper question therefore is not whether corporations "have" First Amendment rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether § 8 abridges expression that the First Amendment was meant to protect. We hold that it does. . . . We thus find no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property. The "materially affecting" requirement is not an identification of the boundaries of corporate speech etched by the Constitution itself. Rather, it amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.

Id. at 775-76, 784 (1978). These protections cannot be reconciled with the government's view that commerce excludes religion. There is no factual basis for the notion that Plaintiffs forfeit their constitutional rights when they chose to conduct business through a business entity authorized by state law. This is as it should be because any

won seminal cases without possessing First Amendment rights. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Just because Plaintiffs have entered the commercial marketplace, they have not abandoned their rights to the exercise of religion. The Supreme Court has recognized that an Amish business owner may exercise religion in the marketplace. *United States v. Lee*, 455 U.S. 252, 257 (1982), *rev'd on other grounds*. Other cases likewise show that a for-profit company can exercise religion and bring free exercise claims on behalf of itself or its owners. *McClure v. Sports and Health Club, Inc.*, 370 N.W.2d 844, 850 (Minn. 1985). The Ninth Circuit allowed two for-profit corporations to assert free exercise claims on behalf of their owners. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119–20 & n.9 (9th Cir. 2009) (pharmacy and its religious owners); *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 620 n.15 (9th Cir. 1988) (manufacturer on behalf of its religious owners). In *Commack Self-Service Kosher Meats, Inc. v. Hooker*, 680 F.3d 194 (2d Cir. 2012), the court allowed a kosher deli and its owners, *id.* at 200, to bring Free Exercise and Establishment Clause claims, and the court subjected each claim to the applicable level of scrutiny rather than declaring that the for-profit business and its owners were not capable of exercising religion. *See also Tyndale House Publishers, Inc. v. Sebelius*, No. 12-1635, slip op. at *5-9 (D.D.C. Nov. 16, 2012).

There is no distinction under RFRA which divides profit vs. non-profit activity, corporate vs. individual activity, direct vs. indirect activity. RFRA presents this question: whether the

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effort to make the Plaintiffs' surrender their fundamental rights in order to use the corporate form would itself be unconstitutional. *See Bd. of County Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996) ("our modern 'unconstitutional conditions' doctrine holds that the government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected [First Amendment rights] even if he has no entitlement to that benefit"); *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) ("Under the well-settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right . . . in exchange for a discretionary benefit conferred by the government"). Here, the Plaintiffs seek to live out religious faith, in part, in the way Plaintiffs conduct the business they own and operate. To force Plaintiffs to violate their conscience or face ruinous fines for doing so substantially burdens the Plaintiffs' free exercise of religion under RFRA and the First Amendment.

government is imposing a substantial burden on the exercise of religion. 42 U.S.C. § 2000bb-1. RFRA requires strict scrutiny analysis. The Seventh and Eighth Circuits have echoed four times that such cases presented "a sufficient likelihood of success on the merits." *See Annex Medical; O'Brien; Grote; Korte*.

One can exercise religion while engaging in business, and the free exercise clause has often involved the commercial sphere. As discussed in *Sherbert*, an employee's religious beliefs were burdened by not receiving unemployment benefits. 374 U.S. at 399. The same occurred in *Thomas v. Review Bd.*, 450 U.S. 707, 709 (1981). In *U.S. v. Lee*, the Court held that an employer's beliefs were burdened by paying taxes for workers. 455 U.S. at 257. In *Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 360 (3d Cir. 1999) (Alito, J.), an employee's bid to continue his employment was burdened by discriminatory grooming rules.[17] No case exists which holds that religious exercise should be confined to the four walls of a person's church, home, or mind. Religion is not an isolated category of human activity. Religion is, among other things, a viewpoint from which people engage in any kind of activity or purpose, not excluding business. *See Goods News Club v. Milford Central School*, 533 U.S. 98, 107-12 (2001) (activities of any kind, whether "social," "civic," "recreational," or educational, are not different kinds of activities when religious, they are the same kind of activity simply done from a religious perspective). Under the law, a person is not required to attend weekly mass, uphold the sacraments, or tithe before being able to hold religious beliefs. Religion is also not purely

[17] Congress also has rejected the government's argument in many ways. For example, the Affordable Care Act lets employers and "facilit[ies]" assert religious beliefs for or against "provid[ing] coverage for" abortions, without requiring them to be nonprofits. 42 U.S.C. § 18023; *see* http://www.aha.org/research/rc/stat-studies/fast-facts.shtml (last visited Apr. 22, 2013). Congress has repeatedly authorized similar objections. *See*, *e.g.*, Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, Title VII, Div. C, § 727; *id.* at Title VIII, Div. C, § 808; 42 U.S.C. § 300a-7; 42 U.S.C. § 2996f(b)(8); 20 U.S.C. § 1688; 42 U.S.C. § 238n; 42 U.S.C. § 1396u-C.F.R. § 1609.7001(c)(7). These protections cannot be reconciled with the government's now-stated view that religious exercise cannot occur in the world of commerce. If facilities and health plans have conscience protections under federal law, so too should the Plaintiff family business.

"personal." Many religions require exercise in groups and guide believers in all their daily activities. American law protects religious exercise, not religious subjectivism. No precedent exists which dictates that the confluence of two realities—corporate status and profit motive—make religious exercise impossible. The First Amendment has never contained a "dichotomy between religious and secular employers" and case law dictates the same. Corporations are no more purely "secular" or purely religious than are the people that run them. It is essential to freedom in America for its citizens to be able to live out their faith in their everyday lives, which includes such things as being employed and running a business.

2. The HHS Mandate substantially burdens Plaintiffs' free exercise of religion.

Plaintiffs' operation of health insurance plans according to their religious beliefs is "exercise of religion" under RFRA. RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). This includes not merely worship but actions in accordance with one's faith.

Pursuant to the teachings of his Baptist Faith, Plaintiff Thomas R. Beckwith's sincerely held religious beliefs prohibit him from providing or purchasing health insurance coverage for emergency contraception, abortifacients, or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise. The HHS Mandate creates government-imposed coercive pressure on Plaintiffs to purchase insurance and provide emergency contraception, abortion, and abortifacients—or in other words, *to change or violate their beliefs*. By failing to provide an exemption for the Plaintiffs' religious beliefs, the HHS Mandate not only exposes Plaintiffs to substantial per employee fines for their religious exercise—roughly $2,000 annually per employee, a fine significantly more severe than the $5 per student fine struck down by the Court in *Yoder*—but also exposes all Plaintiffs to substantial competitive

disadvantages if they are no longer permitted to offer or purchase health insurance due to their religious beliefs. 26 U.S.C. §§ 4980D & 4980H; *Legatus v. Sebelius,* No. 12-12061, slip op. at *13 (E.D. Mich. October 31, 2012) (holding Plaintiffs likely to show HHS Mandate substantially burdens religious exercise); *see also Sherbert* at 374 U.S. at 403-04. The HHS Mandate imposes a substantial burden on Plaintiffs' religious exercise by forcing Plaintiff Thomas Beckwith and his company to act in violation of the teachings of the Baptist Faith.[18]

3. The HHS Mandate fails to justify a compelling interest.

The HHS Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest, as contraceptives are currently readily available through other means without forcing the Plaintiffs to provide them. It is Defendants, not Plaintiffs, who must demonstrate both a compelling interest and their use of the least restrictive means before this Court, even at the preliminary injunction stage. *Gonzales*, 546 U.S. at 428-30; *see also Newland,* slip op. at *11 ("The initial burden is borne by the party challenging the law. Once that party establishes that the challenged law substantially burdens her free exercise of religion, the burden shifts to the government to justify that burden. The nature of this preliminary injunction proceeding does not alter these burdens.") (quoting *Gonzales*, 546 U.S. at 429). In order to prove that Defendants' substantial burden on the Plaintiffs' religious liberties is justified, Defendants would need to pass strict scrutiny—"the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Defendants are charged to "specifically identify an 'actual problem' in need of solving," and show that substantially burdening Plaintiffs' free exercise of religion is "actually necessary

[18] As the Court in *Tyndale* correctly noted, "Because it is the coverage, not just the use, of the contraceptives at issue to which the plaintiffs object, it is irrelevant that the use of the contraceptives depends on the independent decisions of third parties. And even if this burden could be characterized as 'indirect,' the Supreme Court has indicated that indirectness is not a barrier to finding a substantial burden." *Id.* at *13 (citing *Thomas v. Review Brd.*, 450 U.S. 707, 718 (1981)).

to the solution." *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2738 (2011). The government bears the burden of proof and "ambiguous proof will not suffice." *Id.* at 2739.[19]

There is "no actual problem in need of solving," and forcing the Plaintiffs to violate their religious beliefs fails to offer any sort of "actually necessary solution." Forcing the Plaintiffs to provide and fund health insurance which makes contraceptives and abortifacients available to their employees serves only an ambiguous, non-compelling interest, and *at best* would serve the interest of *marginally* increasing access to contraceptives and abortifacients. What radically undermines any claim from the Defendants that the Mandate is needed to address a compelling harm to its asserted interests is the massive number of employees and participants, tens of millions in fact, for whom the government has voluntarily decided to omit what they call a compelling need to protect health and equality. *Newland, et al. v. Sebelius, et al.*, No. 12-1123, slip op. at *23 (D. Colo. July 27, 2012); *Tyndale*, slip op. at *17. Defendants cannot explain how their interests can be compelling against Plaintiffs when, by the government's own choice in not applying this Mandate to grandfathered plans, nearly 200 million Americans will not receive the Mandate's benefits.

Notably, ACA does impose multiple requirements on grandfathered health plans, but Defendants have decided that this Mandate is not of a high enough order to be imposed. The preventive services Mandate, listed at § 2713 of ACA, is conspicuously omitted from the provisions that grandfathered plans must observe: §§ 2704, 2708, 2711, 2712, 2714, 2715, and 2718. *See* list at 75 Fed. Reg. 34,538, 34,542. These include such requirements as dependent

[19] Indeed, nineteen District Courts have already ruled that the Defendants failed to meet this burden of proof under the HHS Mandate. *See, e.g.*, *Newland*, slip op. at *17 ("Defendants have failed to adduce facts establishing that government provision of contraception services will necessarily entail logistical and administrative obstacles defeating the ultimate purpose of providing no-cost preventative health care coverage to women."); see also *Legatus,* slip op. at *22 (in weighing whether the Government applies the least restrictive means in the HHS Mandate, "The cost to Plaintiffs appears provably substantial. The cost to the Government appears provably small").

coverage until age 26, and restrictions on preexisting condition exclusions and annual or lifetime limits. Thus, Congress itself has deemed that many interests are of the "highest order" to impose on 2/3 of the nation covered in grandfathered plans, but not this Mandate. It is therefore necessarily true that Congress deemed the Mandate to be of a lower order, which fails the compelling interest standard. The Defendants have granted the equivalent of a preliminary injunction to all non-profit companies satisfying the one-year non-enforcement "safe harbor," so that their employees too are omitted from the Mandate and claim that a permanent exemption for non-profit companies is in the rulemaking stage. 77 Fed. Register 8725 (Feb. 15, 2012); *see also* http://www.hhs.gov/news/press/2013pres/02/20130201a.html (*last visited* May 6, 2013). Furthermore, the Defendants have agreed not to enforce the mandate against at least six for-profit companies.[20]

The Defendants cannot demonstrate a compelling need to require Plaintiffs to comply with a Mandate that it has chosen not to apply to millions of employees nationwide. As in *Gonzales*, where government exclusions applied to "hundreds of thousands" (here, tens of millions), RFRA requires "a similar exception for the [hundreds] or so" implicated by Plaintiffs here. *Id.* at 433.

4. The HHS Mandate fails to use the least restrictive means.

The mandate is also not the least restrictive means of furthering the Defendants' interests. In *Riley v. National Federation of the Blind*, 487 U.S. 781, 799–800 (1988), the Court required the government to use alternatives rather than burden fundamental rights, even when the alternatives might be more costly or less directly effective to achieve the goal. In *Riley*, North

[20] *See Sharpe Holdings, Inc. v. U.S. Dep't of Health & Human Servs.*, No. 2:12-cv-00092, (Doc. # 41) (E.D. Mo. Mar. 11, 2013); *Sioux Chief Mfg. Co. v. Sebelius*, No. 4:13-cv-0036, (Doc. # 9) (W.D. Mo. Feb. 28, 2013)); *Hall v. Sebelius*, No. 13-0295, (Doc. # 10) (D. Minn. Apr. 2, 2013); *Bick Holding, Inc. v. Sebelius*, No. 4:13-cv-00462, (Doc. # 1) (E.D. Mo. Apr. 1, 2013); *Tonn and Blank Construction v. Sebelius*, No. 12-325, order (N.D. Ill. Apr. 1, 2013); *Lindsay v. Sebelius*, No. 1:13-cv-01210, (Doc. # 21) (N.D. Ill. Mar. 20, 2013).

Carolina sought to curb fraud by requiring professional fundraisers to disclose during solicitations how much of the donation would go to them. 487 U.S. at 786. Applying strict scrutiny, the Supreme Court declared that the state's interest could be achieved by punishing the same disclosures itself online, and by prosecuting fraud. *Id.* at 799-800. Although these alternatives would be costly, less directly effective, and a restructuring of the governmental scheme, strict scrutiny demanded they be viewed as acceptable alternatives. *Id.*

Here, Defendants could further their interests without coercing Plaintiffs in violation of their religious exercise. The government could subsidize emergency contraception itself and give it to employees at exempt entities. This in and of itself shows the mandate fails RFRA's least restrictive means elements. *Gonzales*, 546 U.S. at 428-30. The government could offer tax deductions for the purchase of contraceptives, reimburse citizens who pay to use contraceptives, provide these services to citizens itself, or provide incentives for pharmaceutical companies to provide such products free of charge. Defendants could offer tax credits to those companies who comply with the HHS Mandate while not punishing those companies who do not based upon sincerely held religious beliefs. As in *Riley*, Defendants could add to the already existing HHS website or the website for the exchanges to provide for the availability of free contraceptives. Defendants could arrange—although they admit this system is already in place—for the "preventive services" to be made available at community health centers, public clinics, and hospitals. (http://www.hhs.gov/news/press/2012pres/01/20120120a.html) (*last visited* May 6, 2013). In fact the government *already* subsidizes contraception for certain individuals.[21] Indeed,

[21] *See, e.g.,* Family Planning grants in 42 U.S.C. § 300, et seq.; the Teenage Pregnancy Prevention Program, Public Law 112-74 (125 Stat 786, 1080); the Healthy Start Program, 42 U.S.C. § 254c-8; the Maternal, Infant, and Early Childhood Home Visiting Program, 42 U.S.C. § 711; Maternal and Child Health Block Grants, 42 U.S.C. § 703; 42 U.S.C. § 247b-12; Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.; the Indian Health Service, 25 U.S.C. § 13, 42 U.S.C. § 2001(a), & 25 U.S.C. § 1601, et seq.; Health center grants, 42 U.S.C. § 254b(e), (g), (h), & (i); the NIH Clinical Center, 42 U.S.C. § 248; the Personal Responsibility Education Program, 42 U.S.C. § 713; and the Unaccompanied Alien Children Program, 8 U.S.C. § 1232(b)(1).

of the various ways the government could achieve its interests; it has chosen perhaps the *most burdensome* means for non-exempt employers with religious objections to contraceptive services, such as Plaintiffs. *Anderson v. Celebrezze*, 460 U.S. 780, 806 (1983) (if the government "has open to it a less drastic way of satisfying its legitimate interests, it may not choose a [regulatory] scheme that broadly stifles the exercise of fundamental personal liberties"). HHS has carved out a number of exemptions for secular purposes such as size of employer, the age and grandfathered status of a health insurance plan, waivers for high grossing employers, *inter alia*. Granting an exemption to protect rights granted under the First Amendment should be at least as important.

In other cases challenging the HHS Mandate, Defendants have argued that women's health and equality can only be achieved through free contraception. By forcing that these Plaintiffs provide the free contraception, Defendants have further claimed that women's health and equality are harmed depending on who gives them the free contraception. There is no evidence that women are helped by making sure that their *religious employers* provide emergency contraception for them. If women received free emergency contraception from a different source, there is no evidence these women would face grave or paramount harms. Therefore, "*the Government has not offered evidence demonstrating" compelling harm from an alternative*. *Gonzales*, 546 U.S. at 435-37 (*emphasis added*). No evidence exists that the HHS Mandate could not use a less restrictive method to provide emergency contraception and abortifacients. Such evidence would not be possible as the effect of emergency contraception does not differ based upon who has purchased it. There are less restrictive ways for the Defendants to achieve their stated goals.

ii. The HHS Mandate violates the First Amendment to the United States Constitution, Free Exercise Clause.

The First Amendment prohibits the government from making any law "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. Const. amend. I. Under the First Amendment, the government may not impose special restrictions, prohibitions, or disabilities on the basis of religious beliefs. *See generally McDaniel v. Paty*, 435 U.S. 618 (1978). "The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such." *Id.* at 626. And as the Supreme Court acknowledged, "This principle that government may not enact laws that suppress religious belief or practice is . . . well understood." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993).

Unquestionably, the First Amendment protects Plaintiffs' right to express and exercise their religious beliefs. Under the Free Exercise Clause, the Supreme Court has ruled that the government may only pass a law that burdens certain religious exercises when the law is facially neutral and of general applicability. *Id*. at 531. However, when a law burdens religious exercise because it is *not actually neutral or generally applicable* it must be "justified by a compelling governmental interest" and be "narrowly tailored to advance that interest." *Id.* at 531-32 (*citing Employment Div., Dep't of Human Res. of Ore. v. Smith*, 494 U.S. 872 (1990)).

In *Church of the Lukumi*, *supra*, the City of Hialeah enacted an ordinance prohibiting the public sacrifice of animals. *Id.* at 527. The ordinance also contained exemptions for the slaughtering of animals raised for food purposes and for sale in accordance with state law. *Id.* at 528. The ordinance had the stated purpose of promoting "public health, safety, welfare, and the morals of the community" and carried a maximum fine of $500. *Id.* at 528. The ordinance, however, prevented members of the church of Santeria from engaging in a principal aspect of

their religious worship, which was the public, sacrificial killing of animals. *Id.* at 524-25. This practice was known to the Defendant prior to the enactment of the ordinance. *Id.* at 526-27.

In deciding that the ordinance was not neutral nor generally applicable, the Court examined whether the law "infringe[d] upon or restrict[ed] practices because of their religious motivation," or "in a selective manner impose[d] burdens only on conduct motivated by religious belief." *Id.* at 533, 543. The Court emphasized that the Free Exercise Clause "forbids subtle departures from neutrality, and covert suppression of particular religious beliefs." *Id.* at 534 (internal quotations and citations omitted).

The Court in *Church of Lukumi* further adopted the reasoning from *Smith* that "in circumstances in which individualized exemptions from a general requirement are available, the government 'may not refuse to extend that system to cases of 'religious hardship' without compelling reason.'" *Id.* at 537 (*quoting Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. at 884; *Bowen v. Roy*, 476 U.S. 693, 708 (1986) (opinion of Burger, C.J.)

1. The HHS Mandate is not neutral nor generally applicable, and fails strict scrutiny.

In the instant case, the HHS Mandate cannot avoid strict scrutiny as the law is neither neutral nor generally applicable and the Defendants have set forth a number of individualized exemptions from the general requirement. Widespread individualized exemptions deny the mandate of general applicability. *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012) ("At some point, an exception-ridden policy takes on the appearance and reality of a system of individualized exemptions, the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny."); see also *Newland*, slip op. at *15 (holding that the scheme of exemptions in the HHS Mandate "completely undermines any compelling interest").

Despite being informed in detail beforehand of the imposition on faith such as the Baptist Faith of the Plaintiffs, Defendants designed the Mandate and the religious exemptions to the Mandate in a way that made it impossible for Plaintiffs to comply in accord with their religious beliefs. By design, Defendants imposed the Mandate on some religious organizations or religious individuals but not on others, resulting in discrimination among religions. The ACA and the HHS Mandate include exemptions for:

- Individual members of a "recognized religious sect or division" that conscientiously object to acceptance of public or private insurance funds in their totality, such as members of the Islamic faith or the Amish. 26 U.S.C. § 5000A(d)(2)(A)(i) and (ii).

- Employers with health care plans that are considered to be "grandfathered," which, amongst meeting other criteria, have been in place and remain unchanged since March 23, 2010. 42 U.S.C. § 18011(a)(2); 26 C.F.R. § 54.9815-1251T; 29 C.F.R. § 2590.715-1251; 45 C.F.R. § 147.140.

- Employers with fewer than 50 full time employees. 26 USC § 4980H(c)(2)(B)(i). While employers with more than 50 full time employees must provide federal government-approved health insurance or pay substantial per-employee fines. 26 U.S.C. § 4980H.

- Non-profit employers who qualify under the narrow exemption of a "religious employer." 45 C.F.R. § 147.130 (a)(iv)(A) and (B).

- All non-profit employers who do not qualify as a "religious employer" but who object to the HHS Mandate on religious grounds. 77 Fed. Register 8725 (Feb. 15, 2012); *see also* (http://www.hhs.gov/news/press/2013pres/02/20130201a.html) (*last visited* May 6, 2013).

The HHS Mandate in its exemptions completely fails to address the constitutional and statutory implications on for-profit employers such as Plaintiffs Beckwith Electric and Thomas R. Beckwith. Furthermore, there is no exemption available for a member of the Baptist Faith who conscientiously objects to the HHS Mandate on religious grounds. The HHS Mandate vests the Health Resources and Services Administration with unbridled discretion in deciding

whether to allow exemptions to some, all or no organizations meeting the definition of "religious employers" or religious individuals.

For these reasons and those articulated in the previous section of this brief, the substantial burden the Defendants shackle to the Plaintiffs' religious exercise is not narrowly tailored to any compelling governmental interest. The HHS Mandate violates the Plaintiffs' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution. Based upon this, and all other reasons articulated in this brief, the Plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of their claims.

B. Plaintiffs Will Suffer Irreparable Harm Without Injunctive Relief.

Plaintiffs will be irreparably harmed absent the issuance of an injunction by this Court. The HHS Mandate deprives Plaintiffs of their fundamental First Amendment rights.

A showing of irreparable injury is "'the sine qua non of injunctive relief.'" *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) (quoting *Frejlach v. Butler*, 573 F.2d 1026, 1027 (8th Cir. 1978)). And it is well established that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *KH Outdoor. LLC v. Trussville*, 458 F.3d 1261, 1271-72 (11th Cir. 2006) (*quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Legatus,* slip op. at *26 (holding the HHS Mandate causes irreparable harm to First Amendment rights).

Plaintiffs additionally face financial harm through crippling per employee fines for noncompliance with the HHS Mandate. (Beckwith Decl. at ¶¶ 35, 36). Plaintiffs face substantial competitive disadvantages if they are no longer permitted to offer or purchase health insurance due to remaining faithful and exercising their religious beliefs. *Id.* at ¶ 45. If an injunction does not issue, Plaintiffs will be forced to violate their religious beliefs or forfeit health insurance.

C. Granting a Preliminary Injunction Will Cause No Substantial Harm to Others.

In this case, the likelihood of harm to Plaintiffs is substantial because Plaintiffs' freedom of religion is at issue, and the deprivation of this fundamental right, even for minimal periods, constitutes irreparable injury. On the other hand, if Defendants are restrained from enforcing the HHS Mandate against Plaintiffs, Defendants will suffer no harm because the exercise of constitutionally protected expression can never harm any of the Defendants' or others' legitimate interests. *KH Outdoor* at 1272-1273 (*quoting Planned Parenthood Ass'n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987) (finding that the public's interest is in "prevention of enforcement of ordinances which may be unconstitutional").

Defendants already exempt a number of other employers and individuals from the HHS Mandate. Allowing Plaintiffs an exemption in order to stop a violation of their deeply held religious beliefs fails to cause harm to Defendants. Defendants have even consented to enjoin the HHS Mandate and agreed to provide injunctive relief to similarly situated plaintiffs in at least six cases. *See Seneca Hardwood Lumber*, slip op. at *22 ("defendants cannot claim irreparable harm in this case while acquiescing to preliminary injunctive relief in several similar cases. In light of the exemptions granted, and defendants' position with respect to injunctive relief in other cases, this factor weighs strongly in favor of granting the requested relief."). As demonstrated, the enforcement of Defendants' HHS Mandate on Plaintiffs violates the First Amendment and Defendants in other cases have consented to the requested preliminary relief; therefore, the balance of harm tips strongly in favor of issuing the injunction.

D. The Impact of the Preliminary Injunction on the Public Interest Favors Granting the Injunction.

The impact of the preliminary injunction on the public interest turns in large part on whether Plaintiffs' Constitutional rights are violated by the enforcement of Defendants' HHS

Mandate. As the Eleventh Circuit noted, "[I]t is always in the public interest to protect First Amendment liberties." *K.H Outdoors* at 1272-73 (11th Cir. 2006) (*quoting Joelner v.Vil. of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004)). As explained above, the enforcement of Defendants' HHS Mandate is a direct violation of Plaintiffs' fundamental rights. Therefore, the public interest is best served by preventing Defendants from compelling Plaintiffs to violate their religious beliefs and rights of conscience, protected by RFRA and the First Amendment. *Monaghan*, slip. op. at *19 (March 14, 2013).

Unless this Court issues injunctive relief from the HHS Mandate, Plaintiffs inescapably must choose between violating their religious beliefs or suffering massive financial penalties and harm to their goodwill and sustainability. Without an injunction, Plaintiffs will be irreparably harmed.

CONCLUSION

For the reasons stated, Plaintiffs hereby request that this court issue preliminarily enjoin Defendants' requirement that Plaintiffs cover emergency contraception, abortifacients, and counseling and education for the same in the Plaintiff Beckwith Electric employee group health plan.

Respectfully submitted this 13th day of May, 2013.

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CERTIFICATE OF SERVICE

I certify that on May 13, 2013, a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send electronic notices to all counsel of record. I certify that a copy of the foregoing has been served by certified U.S. Mail upon all parties for whom counsel has not yet entered an appearance electronically:

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