UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

* * * * * * ** *

RIGHT TO LIFE OF MICHIGAN, a Michigan non-profit corporation

Plaintiff,

-v-

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 Independence Avenue, SW
Washington, DC 20201

JACK LEW, in his official capacity as the Secretary of the United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

UNITED STATES DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue, NW
Washington, DC 20220

THOMAS PEREZ, in his official capacity as the Secretary of the United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

UNITED STATES DEPARTMENT OF LABOR 200 Constitution Avenue, NW
Washington, DC 20210,

FIRST AMENDED COMPLAINT

Defendants.
_____/

NOW COMES the Right to Life of Michigan ("RLM" or "Plaintiff"), through Michael B. Rizik Jr. of Rizik & Rizik, its attorneys and undersigned counsel, who bring this First Amended Complaint against the above-named Defendants, their employees, agents, and successors in office. In support of this First Amended Complaint they state the following:

NATURE OF THE ACTION

1. This case involves religious freedom and freedom from coerced speech.
2. This case challenges the constitutionality of rules and the comprehensive guidelines regarding preventive services for women supported by the Health Resources and Services Administration arguably issued under the "Patient Protection and Affordable Care Act" (Pub. L. 111-148, March 23, 2010, 124 Stat. 119) and the "Health Care and Education Reconciliation Act" (Pub. L. 111-152, March 30, 2010, 124 Stat. 1029) (collectively the "Affordable Care Act" or "ACA") that force Plaintiff to violate its deeply held religious beliefs that it is intrinsically disordered and gravely immoral to take the life of an unborn human being by abortion.
3. The sanctity and protection of innocent life at every stage on its continuum is the sole reason for RLM's organizational existence.
4. Not only is abortion inherently disordered, and, therefore, immoral, but it violates the due process of the laws accorded every human being, and belies reasoned reflection and scientific fact on when life begins. As such, abortion is an act of injustice, and the Mandate forces Plaintiff to violate its only reason

for existence, as well as 501(c)(4) charter that the Internal Revenue Service granted it.

5. The Affordable Care Act mandates health plans to "provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration" and directs the Secretary of the United States Department of Health and Human Services ("HHS") to determine what would constitute "preventative care" under the Mandate. 42 U.S.C § 300gg–13(a)(4).
6. The Defendants adopted regulations and requirements that require the Plaintiff to provide health benefits for its employees that include coverage for, or access to, contraception, sterilization, abortifacients, and related education and counseling. This requirement ("Mandate") triggered a variety of penalties and created certain rules and exemptions pertaining to different kinds of organizations. The statutory provisions, regulations, policies and penalties being challenged here are referenced below.
7. Consequently, Plaintiff faces a choice: abandon its sole purpose for existing, namely, the protection of life from the moment of conception, or face penalties in the millions of dollars that would bankrupt it.
8. The threat of such penalties imposes a substantial burden on the Plaintiff's religious exercise, because it "requires participation in an activity prohibited by a sincerely held religious belief," prevents participation in conduct motivated by a sincerely held religious belief, and "places substantial

pressure on" Plaintiff "to engage in conduct contrary to a sincerely held religious belief." Hobby Lobby Stores, Inc v Sebelius, 723 F 3d 1114, 1138 (CCA 10, 2013).

9. Contrary to Defendants coercion of this Plaintiff, federal law forbids the government from forcing the Plaintiffs to face such penalties and harm for exercising their religion. In particular, the Religious Freedom Restoration Act ("RFRA") forbids such burdens on religious exercise unless the government can demonstrate that the burden "(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). The government cannot meet that standard, making it illegal to impose the Mandate on the Plaintiff. The Mandate is likewise invalid under the First Amendment's Religion and Speech Clauses, the Fifth Amendment's Due Process Clause, and the Administrative Procedure Act, 5 U.S.C. § 551 et seq. ("APA").

REGULATORY BACKGROUND & HISTORY

10. On August 1, 2011, the Defendants promulgated an amendment to Interim Final Rules that until that time had not specified the scope of women's preventive services or whether groups might be exempt based on their ideological objections. *See* 76 Fed. Reg. 46621 (Aug. 3, 2011). Those rules recognized the inclusion of implantation preventing or –dislodging abortifacients, contraception, sterilization, and related education and counseling, within the Mandate.

11. As amended, the Interim Final Rules granted the Health Resources and

Services Administration ("HRSA") "discretion to exempt certain religious employers from the [Institute of Medicine, or "IOM"] Guidelines where contraceptive services are concerned." (Id, at 46623).

12. However, the "religious employers" exemption was severely limited to formal churches, their integrated auxiliaries, and religious orders whose purpose is to inculcate faith and that hire and serve primarily people of their own faith tradition. 76 Fed. Reg. at 46626.

13. The majority of faith-informed and other religious organizations, including non-profits such as Right to Life of Michigan, with conscience objections to providing contraceptive or abortifacient services, were excluded from the "religious employers" exemption.

14. The HRSA exercised its discretion under the amended Interim Final Rules to grant an exemption for defined "religious employers" through a footnote on its website listing the Women's Preventive Services Guidelines. The footnote states that "guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in-group health plans sponsored by religious employers." http://www.hrsa.gov/womensguidelines. (Last visited January 15, 2014)

15. Like the original Interim Final Rules, the amended Interim Final Rules were made effective immediately, without prior notice or opportunity for public comment. 76 Fed. Reg. at 46624.

16. Following strong public demands for a broader "religious employer" exemption that continued for many months, on January 20, 2012, the

Department of Health & Human Services ("HHS") issued a press release acknowledging "the important concerns some have raised about religious liberty," and stating that religious objectors would be "provided an additional year . . . to comply with the new law." *See* Press Release, U.S. Department of Health and Human Services, Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius ("Sebelius") (Jan. 20, 2012), http://www.hhs.gov/news/press/2012pres/01/20120120a.html (Last visited January 15, 2014).

17. Consequently, on January 20, 2012, Sebelius announced a temporary, one-year safe harbor, or stay of regulation enforcement. . Defendants then finalized the August 2011 rules without change. 77 Fed. Reg. 8725 (Feb. 15, 2012).

18. This so-called "safe harbor" would remain in effect for a qualified organization until its first plan year that began on or after August 1, 2013. *See* HHS Guidance on Temporary Enforcement Safe Harbor (Feb. 10, 2012); 77 Fed. Reg. 16501, 16504 (March 21, 2012).

19. The "temporary enforcement safe harbor" applied to nonexempt, non-grandfathered "group health plans sponsored by nonprofit organizations that, on and after February 10, 2012, do not provide some or all of the contraceptive coverage otherwise required . . . because of the religious beliefs of the organization." See 77 Fed. Reg. at 16502-03.

20. The Defendants indicated they would develop and propose changes to regulations to accommodate the objections of non-exempt, nonprofit religious

organizations following August 1, 2013 (Id at 16503). This Plaintiff considered itself one such non-exempt, non-profit, faith-informed organization.

21. After comment on the Interim Final Rule, on June 28, 2013, Defendants issued final rules that ignored objections that religious organizations raised, and continued to require objecting religious employers, like this Plaintiff, to participate in the government's scheme of expanding free access to contraceptive and abortifacient services. *See* 78 Fed. Reg. 39870. (July 2, 2013)

22. The final rules assert, without explanation or analysis, that the Mandate and the narrow exemption comply with the requirements of RFRA. However, that is untrue.

23. Under the Mandate, the discretionary "religious employer" exemption, which is still implemented via footnote on the HRSA website, http://www.hrsa.gov/womensguidelines (Last visited January 15, 2014), is limited to formal churches and religious orders "organized and operate[d]" as nonprofit entities and "referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39896 (codified at 45 C.F.R.§ 147.131(a)). A religious, non-profit organization like this Plaintiff is excluded from this exemption.

24. Non-profit, religious organizations like RLM share the same religious beliefs and concerns as Catholic, Evangelical and other conservative churches (e.g., Orthodox Judaism), their integrated auxiliaries, and religious orders that are exempt as "religious employers"; however, the Defendants deliberately

ignored the regulation's impact on this Plaintiff's religious liberty, stating by exclusion that the "simplified and clarified definition of religious employer continues to respect the religious interests of *houses of worship* and their *integrated auxiliaries* in a way that does not undermine the governmental interests furthered by the contraceptive coverage requirement." (Emphasis supplied) 78 Fed. Reg. at 39874.

25. In a sleight of hand accounting maneuver, the Mandate purports to fashion an "accommodation" for certain non-exempt religious organizations defined as "eligible organizations". 78 Fed. Reg. at 39874 (codified at 45 C.F.R. § 147.131(b)&(c)).

26. An organization is an "eligible organization" and therefore eligible for the "accommodation" if it (1) "[o]pposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. at 39874 (codified at 45 C.F.R.§ 147.131(b)).

27. Upon information and belief, Defendants will ask this Court to dismiss this case because Plaintiff qualifies under the accommodation. Upon further information and belief, Defendants will as this Court to dismiss this case, because Plaintiff failed to seek the accommodation. However, this Plaintiff refuses to be complicit in the diabolical accounting trick at the heart of the so-called "accommodation," and will not self-certify. Consequently, the Mandate and its so-called "accommodation" continue to violate Plaintiff's constitutional

and federally guaranteed statutory rights as further explained in this First Amended Complaint.

28. The Mandate applies to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014, except that the amendments to the religious employers exemption apply to plan years beginning on or after August 1, 2012. *See* 78 Fed. Reg. at 39870. Defendants also extended the "temporary enforcement safe harbor" to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. Id. at 3987.

29. An eligible organization seeking an "accommodation" must execute a self-certification "prior to the beginning of the first plan year to which an accommodation is to apply", and deliver it to the organization's insurer or, if the organization has a self-insured plan, to the plan's third party administrator. Id. at 39875.

30. An eligible organization would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014. Id. Plaintiff cannot and will not comply.

31. The so-called accommodation is an unacceptable alternative for Plaintiff, because it would require Plaintiff to contract for, facilitate or pay for the provision of contraception, sterilization, abortifacients, and related education and counseling in violation of Right to Life of Michigan's express mission, sole reason for existing, and faith-informed beliefs. Likewise, Plaintiff's religious convictions forbid it from continuing to contract with any insurance company

that will provide free coverage for, or access to, contraception, sterilization, abortifacients, and related education and counseling.

32. The Obama administration has repeatedly delayed implementation of the Act for various reasons, most notably because the Act and its Mandate simply don't work.

33. Therefore, there is no public benefit in enforcing the Mandate and its "accommodation" against this Plaintiff, forcing it to violate its religious beliefs.

34. By forcing these religious believers to continue to violate their faith by participating in a broken Mandate, the Defendants insist that Plaintiff violate its religious beliefs by providing directly the objectionable insurance coverage, or signing forms authorizing others to do so in its place.

35. As such, this is a simple and straightforward Religious Freedom And Restoration Act case.

THE ACT AND MANDATE REQUIREMENTS

36. The Act requires participants in a group health plan to be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

37. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012) (codified at 26 C.F.R. § 54.9815- 2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b)). Any change to a fully insured plan would likely constitute a

material change in the information previously provided to covered employees of a Class Action Plaintiff in the Summary of Benefits and Coverage, which would require 60 days' advance notice to the participants. 77 Fed. Reg. at 8698-8705. However, because of the lateness of the Final Mandate, there is inadequate time in which to change coverage within the law.

38. The Mandate requires all insurance issuers (e.g. Blue Cross/Blue Shield of Michigan) to include abortifacient drugs and devices in all of its insurance plans, group and individual.

39. The Mandate requires all insurance issuers to provide not only sterilization and contraception but also early abortions, because certain drugs and devices such as "ella," known as the "week-after pill," and possibly "Plan B," known as the "morning-after pill," can act to prevent the implantation of an embryo after its conception/fertilization, and in the case of ella, might act to dislodge an already implanted embryo. Yet such items come within the Mandate's and Health Resources and Services Administration's definition of "Food and Drug Administration-approved contraceptive methods" despite their known abortifacient mechanisms of action,. The Mandate also requires counseling relating to the Mandated methods, in all of its insurance plans, group and individual

40. The Mandate, therefore, forces employers and individuals to violate their religious beliefs because it requires employers and individuals to pay for insurance from insurance issuers which fund and directly provide for drugs, devices, and services which violate their deeply held religious beliefs, as well,

in the case of this Plaintiff, reasoned reflection, and sole reason for existence as an organization.

41. By having to take active steps to identify an insurance company that provides contraceptive and abortifacient services, to contract with that insurer, and to supply and adopt plan documentation and information that triggers coverage for those services (including the self-certification form), Plaintiff is required to actively facilitate and promote the distribution of these services in ways that the organization's religious beliefs forbid.

42. Defendants maintain they "continue to believe, and have evidence to support," that providing payments for contraceptive and abortifacient services will be "cost neutral for issuers," because "[s]everal studies have estimated that the costs of providing contraceptive coverage are balanced by cost savings from lower pregnancy-related costs and from improvements in women's health." 78 Fed. Reg. at 39877.

43. Even if the payments were—over time—to become cost neutral, it is undisputed that there will be up-front costs for making the payments. *See*, e.g., Id at 39877-78 (addressing ways insurers can cover up-front costs).

44. Moreover, if cost savings arise that make insuring an employer's employees cheaper, the savings would have to be passed on to employers through reduced premiums, not retained by insurance issuers to cover so-called "free" services.

45. The chief reason this Plaintiff calls the "accommodation" a blatantly disingenuous accounting trick is that Defendants suggest to maintain cost

neutrality issuers may simply ignore this fact and "set the premium for an eligible organization's large group policy as if no payments for contraceptive services had been provided to plan participants." Id at 39877. In other words, Defendants encourage policy issuers to artificially inflate the organization's premiums on unobjectionable coverage, in order to provide "free" but objectionable coverage, and this Plaintiff would, therefore, still pay for services that violate its religious beliefs. In other words, the accommodation is a lie.

46. Since under the Mandate all insurance issuers must provide what the HHS has deemed "preventative care," employers and individuals are stripped of all choice between insurance issuers or insurance plans to avoid violating a) their religious beliefs, in cooperation with practices they consider intrinsically evil and gravely immoral, and, in Plaintiff's particular case, b) its sole reason for existing and c) legal mandate as a (c)(4) organization.

47. Plaintiff could adopt a self-insured employee benefit plan for its employees and appoint a "third party administrator" under the Mandate to provide or arrange for the provision of abortifacients, sterilizations and contraceptives, and related education and counseling. However, this is an equally unacceptable, because it involves Plaintiff in contracting for, facilitating or paying for the provision of abortifacients, sterilizations and contraceptives, and related education and counseling.

48. Plaintiff would have to contract a third-party administrator would be required to provide objectionable services "in a manner consistent" with other covered

services. Id at 39876, 39877, under the organization's plan's documents.

49. Plaintiff would facilitate the Defendants' scheme by: a) identifying the third-party administrator; b) coordinate with the administrator the required coverage; and, c) provide notice to employees of the objectionable coverage.

50. Finally, the third-party administrator would identify an issuer willing to make payments on behalf of the administrator for these objectionable services. The issuers would recover these payments from user fees they paid to participate in the federal exchange. Then the issuer would pay the administrator from these user fees its administrative costs, thus completing the cost shifting that ultimately are borne by all employers, employees and organizations, including those who object to paying anything towards objectionable services. If there is a shortfall, there will be a bailout by the people. And, there is no way to assure this Plaintiff will not pay for the objectionable coverage, or administering it.

51. Without relief from the Mandate, or its accommodation, employers are subject to monetary fines and also lawsuits from the government coercing their compliance. Under one of those penalties, this Plaintiff's cost of complying will be burdensome, and cost Plaintiff: 33 employees x 365 days per year x $100 each day = **$1,204,500.00 per year penalty**.

52. Plaintiff seeks a Declaratory Judgment that the Mandate promulgated under the ACA violates Plaintiff's rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, RFRA, and the APA.

53. Plaintiff brings this action to vindicate not only its rights, but also to protect its organizational existence and the rights of all Americans who care about our Constitutional guarantees of free exercise of religion and freedom of speech, as well as the protection of innocent human life, the sole and exclusive reason for the organization, its Board of Directors and employees.

JURISDISCTION AND VENUE

54. This action in which the United States is a defendant arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1346.

55. Plaintiff's claims for declaratory relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by 28 U.S.C. § 2000bb-l, and by the general legal and equitable powers of this Court.

56. Venue is proper under 28 U.S.C. § 1391(e) because this is the judicial district in which Plaintiff is located.

PLAINTIFF

57. Plaintiff operates as a 501(c)(4) non-profit organization whose principal office is at 2340 Porter S.W., Grand Rapids, MI 49509-0901.

58. On or about August 15, 1974, James L. Ryan, Gloria Klein and Arthur F. Barkey filed Articles of Incorporation with the State of Michigan's Department of Commerce, Corporation and Securities Bureau under the name of “MICHIGAN CITIZENS FOR LIFE,” a non-profit, domestic corporation. The organization’s stated purpose was, in pertinent part:

> "To promote the dignity and protect the rights that are possessed by all human beings from the moment of conception including the greatest right of all, the right to life itself."

That remains the organization's sole and exclusive reason for existing today.

59. On or about August 30, 1979, the organization changed its name to "Right To Life Of Michigan."

60. Plaintiff is also legally known as "Choose Life Michigan," "Advocates For A Better Life," and "Advocates For Better Care," each assumed name of which indicates the organization's mission is focused exclusively on the sanctity and dignity of each human life from the moment of conception until natural death.

61. "Right to Life of Michigan is a nonpartisan, nonsectarian, nonprofit organization of diverse and caring people united to protect the precious gift of human life from fertilization to natural death." http://rtl.org/aboutus/missionstatement.html (Last visited January 15, 2014)

62. Plaintiff works "work on the behalf of defenseless or vulnerable human beings, born and unborn, within our identified life issues of abortion, infanticide and assisted suicide." (Id).

63. In May 1986, the U.S. government through the Internal Revenue Service recognized Plaintiff's mission by granting it section 501(c)(4) status. That same status remains in effect.

64. According to 26 USC 501(c)(4), the U.S. government recognized that Plaintiff was "operated exclusively for religious, charitable" or "other purposes."

65. Plaintiff is a non-sectarian, religious organization. Each of the Plaintiff's Board

of Directors is either Catholic or Evangelical Christian, who see their commitment to the organization's mission as a the logical extension of their freely exercised religious beliefs and free speech as Americans.

66. The Plaintiff's President, Barbara A. Listing, is Catholic.

67. The Plaintiff's Chairman of the Board of Directors, Paul Miller, is Catholic.

68. The Plaintiff's Legislative Director, Ed Rivet, is Catholic.

69. The organization's founding father and first president, James L. Ryan, is Catholic.

70. Fifteen of Plaintiff's Board members are Catholic, and one is Christian Reformed.

71. The vast majority, if not all, of Plaintiff's employees are Catholic or Evangelical Christian. All employees subscribe unequivocally to Plaintiff's sole and exclusive mission protecting life.

72. Plaintiff's website advertises "Faith Resources," including links to Catholic and Protestant Bibles, the Knights of Columbus, "Reflection on Psalm 139" by Rabbi Loren Jacobs, a presentation and script (in English and Spanish) entitled how all human life is created "In the Image of God," interactive, prolife materials for Bible study groups, and more. http://rtl.org/faith_school/faithresources.html (Last visited January 16, 2014)

73. Plaintiff believes that: "Abortion is any act or procedure performed with the willful intent to cause the death of an unborn child from conception to birth. As such, abortion is a grave act of injustice toward the child and a clear violation of the child's natural, unalienable right to life and his/her legal right not to be

deprived of life without due cause. Right to Life of Michigan, therefore, is unalterably opposed to abortion." At the same time, Plaintiff does not oppose abortion when it is the unintended consequence of saving the mother's life. http://rtl.org/aboutus/policystatements.html (Last visited January 16, 2014)

74. Plaintiff "opposes all attempts to legalize or condone euthanasia..." while at the same time it "supports the tradition which allows persons suffering from a terminal illness to die naturally. Under this centuries-old ethic, patients are not obligated to use extraordinary or heroic medical treatment that would only prolong the dying process." (Id). (Last visited January 16, 2014)

75. Right to Life of Michigan "finds human cloning to be an inherent violation of human dignity. As with abortion and assisted reproductive technologies, such as in vitro fertilization, human cloning research denies the most fundamental of human rights -- the right to life." (Id). (Last visited January 16, 2014)

76. Plaintiff sees itself as an American human and civil rights leader, part of a long line of other such leaders including **Susan B. Anthony** (the feminist who referred to abortion as "child murder" – from her weekly suffragist newspaper *The Revolution*, 4(1):4 July 8, 1869); **Elizabeth Cody Stanton**; **Alice Paul** (who authored the original Equal Rights Amendment in 1923, and said; "Abortion is the ultimate exploitation of women."); **Emma Goldman** ("The custom of procuring abortions has reached such appalling proportions in America as to be beyond belief...So great is the misery of the working classes that seventeen abortions are committed in every one hundred pregnancies." – *Mother Earth*, 1911); as well as humanitarian activists who promoted civil

rights through nonviolent means, completely inspired and informed by their religious beliefs: Mother Theresa, Martin Luther King, Jr. and Gandhi. (Id). (Last visited January 16, 2014)

77. Plaintiff advocates: “Peaceful solutions to the violence of abortion is the goal of Right to Life of Michigan... Any bombings, vandalism, assaults, or arson in other parts of the nation against abortion facilities concern Right to Life of Michigan. To counter violence with violence is against our principles. Prolifers have consistently worked peacefully through the democratic process in order to reach our goal - the end of violence within clinic walls. We are a peaceful movement.” (Id). (Last visited January 16, 2014)

78. Simultaneously, reasoned reflection consistent with God’s laws guides Plaintiff, who believes that the free exercise of religious faith and speech are inextricably bound with reason. You cannot have one without the other, which is why the Mandate is so ominous: it violates the organization’s free exercise of religion, free speech and rightly informed reason.

79. Prior to January 1, 2013, after the issuance of the Interim Final Rules on August 1, 2011, Plaintiff structured a morally acceptable health insurance policy through Blue Cross Blue Shield of Michigan that specifically excluded contraception, abortion and abortifacients, and exempted Plaintiff from paying, contributing, or supporting contraception and abortion for others.

80. Plaintiff obtained these exclusions from coverage due to its deeply held religious beliefs and right to exercise its free speech as stated in this First Amended Complaint.

81. Plaintiff's employees received coverage under this specially structured insurance policy with Blue Cross Blue Shield of Michigan that specifically excluded contraception, abortion, and abortifacients, and exempted Plaintiff from paying, contributing, or supporting contraception and abortion for others.

82. Plaintiff's Board of Directors is the final decision-maker when it comes to setting all policies governing the conduct of all phases of the organization.

83. Before January 1, 2013, Plaintiff and its Board of Directors ensured that health insurance insurance policy contained these exclusions to reflect their deeply held religious beliefs, free speech, and sole reason for existence as an organization.

84. As of January 1, 2013, on advice from its insurance carrier, and further advice that the so-called "safe-harbor" was illusory, Plaintiff purchased the offensive coverage, thereby avoiding penalties.

85. Based on the teachings of their religious faith and their deeply held religious beliefs, Plaintiff and its Board of Directors do not believe that abortion, even at its earliest stages, are properly understood to constitute medicine, health care, or a means of providing for the well-being of persons.

86. Plaintiff and its Board of Directors believe abortion involves a grave injustice and immoral and sinful practices, specifically *the intentional destruction of innocent human life*.

87. After promulgation of the Interim Final Rules, and in spite of Plaintiff's deeply held religious beliefs, as stated in this First Amended Complaint, on January 1, 2013, Blue Cross Blue Shield of Michigan provided insurance coverage to

Plaintiff that included ella and Plan B One Step.

88. Plaintiff is a nonprofit organization that holds itself out as religious and has religious objections to continuing to provide coverage for contraceptive services that cause or it believes causes abortion, as more fully described elsewhere in this First Amended Complaint. Little Sisters of the Poor et al v Sebelius et al, Order In Pending Case, Order List 571 U.S.

DEFENDANTS

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

90. Defendant-Sebelius is the Secretary of the HHS. In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only.

91. HHS is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation that is the subject of this lawsuit.

92. Defendant Thomas Perez is the Secretary of the United States Department of Labor. In this capacity, he holds responsibility for the operation and management of the United States Department of Labor. Defendant Perez is sued in his official capacity only.

93. Defendant United States Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation that is the subject of this lawsuit.

94. Defendant Jack Lew is the Secretary of the United States Department of the Treasury. In this capacity, he holds responsibility for the operation and management of the United States Department of Treasury. Defendant Lew is sued in his official capacity only.

95. Defendant United States Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation that is the subject of this lawsuit.

FACTUAL ALLEGATIONS

Plaintiff's Religious Beliefs

96. Plaintiff holds and actively professes religiously based beliefs that entirely parallel the traditional Judeo-Christian teachings on the sanctity of life. Plaintiff believes that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious, from the moment of conception. Plaintiff therefore believes that abortion ends an innocent human life, and is a grave sin and the ultimate injustice.

97. Plaintiff subscribes to or agrees with traditional Judeo-Christian teachings about the proper nature and aims of health care and medical treatment. For instance, Plaintiff believes, in accordance with Pope John Paul II's 1995 encyclical Evangelium Vitae, that "Absolute respect for every innocent human life also requires the **exercise of conscientious objection** in relation to procured abortion and euthanasia. 'Causing death' can never be considered a form of medical treatment, even when the intention is solely to comply with the patient's request. Rather, it runs completely counter to the health-care

profession, which is meant to be an impassioned and unflinching affirmation of life." Pope John Paul II, "Evangelium Vitae: On The Value and Inviolability of Human Life," Vatican: the Holy See, 25 March 1995, No. 89.

98. Several leaders within the Catholic Church and Protestant churches have publicly spoken out about how the Mandate is a direct violation of Christian beliefs.

99. Cardinal Timothy Dolan, Archbishop of New York and President of the United States Conference of Catholic Bishops wrote, "Since January 20 [2012], when the final, restrictive HHS Rule was first announced, we have become certain of two things: religious freedom is under attack, and we will not cease our struggle to protect it. We recall the words of our Holy Father Benedict XVI to our brother bishops on their recent *ad limina* visit: 'Of particular concern are certain attempts being made to limit that most cherished of American freedoms, the freedom of religion.' . . . We have made it clear in no uncertain terms to the government that we are not at peace with its invasive attempt to curtail the religious freedom we cherish as Catholics and Americans." (http://www.usccb.org. March 2, 2012).

100. Archbishop Charles J. Chaput, the Archbishop of Philadelphia, has expressed that the Affordable Care Act and the Mandate seek "to coerce Catholic employers, private and corporate, to violate their religious convictions . . . [t]he HHS Mandate, including its latest variant, is belligerent, unnecessary, and deeply offensive to the content of Catholic belief . . . The HHS Mandate needs to be rescinded. In reality, no similarly aggressive attack

on religious freedom in our country has occurred in recent memory . . . [t]he HHS Mandate is bad law; and not merely bad, but dangerous and insulting. It needs to be withdrawn-now." http://the-american-catholic.com/2012/02/14/archbishop-chaput-hhs-mandate-dangerous-and-insulting/ (Last visited January 16, 2014)

101. Several Protestant leaders described how the Mandate violates the Protestant faith. Michael Milton, chancellor and CEO-elect of Reformed Theological Seminary in Charlotte, N.C., one of America's largest Protestant seminaries, declared, "This is not a Catholic issue only. It is not a contraception issue. It is a religious-liberty issue. It is an American issue." http://www.ncregister.com/daily-news/religious-leaders-of-other-denominations-and-faiths-weigh-in-on-hhs-mandate (Last visited January 16, 2014)

102. The Billy Graham Evangelistic Association writes: "It is also sin that produces the misbelief that women have a 'right' to take the lives of unborn babies. The apostle Paul writes, 'The acts of the sinful nature are obvious: sexual immorality, impurity and debauchery; idolatry and witchcraft; hatred, discord, jealousy, fits of rage, selfish ambition, dissensions, factions and envy; drunkenness, orgies, and the like' (Galatians 5:19-21a)."

"Life is sacred, and we must seek to protect all human life: the unborn, the child, the adult, and the aged. Several Bible passages tell of the sacredness of life and speak to the subject of abortion." http://www.billygraham.org/articlepage.asp?articleid=2000 (Last visited

January 16, 2014)

103. In 1972, the Christian Reformed Church took its official stand against abortion. Its position is clearly stated: "Because the CRC believes that all human beings are image bearers of God, it affirms the unique value of all human life. Mindful of the sixth commandment – 'You shall not murder' (Ex. 20:13) - the church condemns the wanton or arbitrary destruction of any human being at any stage of its development from the point of conception to the point of death." http://www.crcna.org/welcome/beliefs/position-statements/abortion (Last visited January 16, 2014)

104. Orthodox Judaism condemns abortion: "Judaism regards all life-including fetal life-as inviolate. Abortion is not a private matter between a woman and her physician. It infringes upon the most fundamental right of a third party-that of the unborn child." - Statement of the Union of Orthodox Jewish Congregations of America, issued at its 78th National Convention in 1976.

105. The Jewish Pro-Life Foundation states: "The use of elective abortion violates the most fundamental principle of the sanctity of human life, introduced in the Natural Law set forth in the Noahide scripture, 'he who sheds the blood of man, in man (adam ba'adam) shall his blood be shed' (Genesis 9:6). Using and condoning elective abortion is demographic and spiritual suicide, and promotes the eugenics movement, which historically has targeted Jews for extinction." http://jewishprolifefoundation.org/Jewish_Pro-Life_Foundation/Welcome.html (Last visited January 16, 2014)

106. With full knowledge of these beliefs described above, Defendants issued

the Mandate that brutally forces Plaintiff to violate its religious beliefs, and those of millions of other Americans, under the pain of severe financial penalties.

107. The Mandate not only forces Plaintiff to finance abortifacients, and related education and counseling as health care, but also subverts the expression of Plaintiff's religious beliefs, and the beliefs of millions of other Americans, by forcing Plaintiff to fund, promote, and assist others to acquire services which Plaintiff believe involve gravely immoral and unjust practices, including the destruction of innocent human life.

108. The Mandate unconstitutionally bullies Plaintiff to violate its deeply held religious beliefs under threat of directly violating its collective conscience and sole reason to exist, in addition to any imposed fines and penalties.

109. The Mandate forces Plaintiff to fund government-dictated speech that is directly at odds with its own faith-formed speech. Being entirely forced out of the insurance market in order to ensure the privilege of practicing one's religion or controlling one's own constitutionally protected speech substantially burdens Plaintiff's religious liberty and freedom of speech under the First Amendment.

110. The Mandate shreds Plaintiff's choice to select an insurance plan that does not cover and finance contraceptives and abortifacients, because the Mandate requires all insurance issuers provide this coverage.

111. Blue Cross/Blue Shield of Michigan deemed that due to the Mandate, Plaintiff is no longer allowed to exclude contraception and abortifacients from

its insurance plans, and are now involuntarily forced to provide and pay for these services that violate its religious beliefs and right of free speech.

112. Plaintiff intends to conduct its mission in a manner that does not violate the principles of its religious beliefs and free speech.

113. Complying with the Mandate requires a direct violation of the Plaintiff's religious beliefs and free speech, because it requires Plaintiff to pay for and assist others in paying for or obtaining abortion, because certain drugs and devices such as intrauterine devices ("IUD"), "ella" and possibly "Plan B" come within the Mandate's and Health Resources and Services Administration's definition of "Food and Drug Administration-approved contraceptive methods", which is included in the BCBS health care plan as "FDA-approved **generic** prescription contraceptive medication" and "FDA-approved **brand name** prescription contraceptive medication," despite their known abortifacient mechanisms of action.

114. Defendants' refusal to accommodate the conscience of the Plaintiff, and of other Americans who share the Plaintiff's religious principles and free speech, is highly selective. Numerous exemptions exist in the Affordable Care Act that appear arbitrary and inexplicably were granted to employers who purchase group insurance. This is evidence that Defendants do not mandate that all insurance plans need to cover "preventative services" (e.g. the thousands of waivers from the Affordable Care Act issued by Defendants for group insurance based upon the commercial convenience of large corporations, the age of the insurance plan, or the size of the employer).

115. Despite granting waivers inexplicably and upon a seemingly arbitrary basis, no exemption exists for an employer or individual whose religious conscience instructs him that certain mandated services are unethical, immoral, fundamentally unjust and violative to one's religious dogmas and free speech. Defendants' plan fails to give the same level of weight or accommodation to the exercise of one's fundamental First Amendment freedoms that it assigns to the yearly earnings of a corporation.

116. The Defendants' blatantly unconstitutional actions violate Plaintiff's absolute right to freely exercise its conscience and motivating religious principles under the First Amendment to the U.S. Constitution, which states pertinently: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

117. The Defendants' actions violate Plaintiff's right to exercise its conscience and motivating religious principles that civil rights statutes, such as Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb to 42 U.S.C. § 2000bb-4, secure with unmistakable clarity.

118. The Defendants' actions also violate Plaintiff's right to free and unforced speech that the First Amendment to the United States Constitution guarantees in absolute language when it states: "Congress shall make no law...abridging the freedom of speech..."

119. The Mandate is illegal because Defendants imposed it without prior notice or sufficient time for public comment, and otherwise violates the Administrative Procedure Act, 5 U.S.C. § 553.

120. Had Plaintiff's religious beliefs, or the beliefs of the millions of other Americans who share Plaintiff's religious beliefs been obscure or unknown, the Defendants' actions might have been an accident. But because the Defendants acted with full knowledge of those beliefs, and because they arbitrarily exempt some plans for a wide range of reasons other than religious conviction, the Mandate can be interpreted as nothing other than Defendants' intentional and deliberate attack on the Judeo-Christian faith tradition, the religious beliefs and free speech rights that Plaintiff holds. The Defendants have, in sum, intentionally used the federal government's coercive power to compel individuals to support and endorse the mandated services manifestly contrary to their own religious convictions and rights of free speech, and then to act on that coerced support or endorsement. Such coercion is tantamount to a form religious persecution against which these United States were founded.

121. Plaintiff seeks declaratory relief to protect against these attacks.

CLAIMS

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

122. Plaintiff incorporates by reference paragraph 1 through 121 into Count I as though set forth completely within.

123. Plaintiff's sincerely held religious beliefs prohibit it from providing coverage for abortifacients and abortion, or related education and counseling. Plaintiff's compliance with these beliefs is a religious exercise.

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

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

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

127. The Mandate furthers no compelling governmental interest.

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

129. The Mandate creates government-imposed coercive pressure on Plaintiff to change or violate their religious beliefs.

130. The Mandate chills Plaintiff's religious exercise.

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

132. The Mandate exposes Plaintiff to substantial fines for their religious exercise.

133. 190. The Mandate exposes Plaintiff to monetary and health risks as they will no longer be able to accept health insurance, nor be able to purchase or provide health care insurance without violating their religious beliefs.

134. The Mandate imposes a substantial burden on Plaintiff's religious exercise.

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

136. The Mandate and Defendants' threatened enforcement of the Mandate violate Plaintiff's rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

137. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

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

138. Plaintiff incorporates by reference paragraph 1 through 137 into Count II as though set forth completely within.

139. Plaintiff's sincerely held religious beliefs prohibit them from purchasing or providing coverage for abortifacients, abortion, or related education and counseling.

140. Plaintiff's compliance with these beliefs is a religious exercise.

141. Despite being informed in detail of these beliefs beforehand, Defendants designed the Mandate and the religious exemption to the Mandate in a way that made it impossible for Plaintiff to comply with its religious beliefs.

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

143. The Mandate and Defendants' threatened enforcement of the Mandate thus violate Plaintiff's rights secured to them by the Free Exercise Clause of the First Amendment of the United States Constitution.

144. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

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

145. Plaintiff incorporates by reference paragraph 1 through 144 into Count III as though set forth completely within.

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

147. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of "religious employers."

148. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no religious individuals.

149. The Mandate and Defendants' threatened enforcement of the Mandate thus violate Plaintiff's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

150. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

COUNT IV. Violation of the First Amendment to the United States Constitution Establishment Clause

151. Plaintiff incorporates by reference paragraph 1 through 150 into Count IV as though set forth completely within.

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

153. Defendants also imposed the Mandate on some religious individuals and religious organizations but not on others, resulting in a selective burden on Plaintiff.

154. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of

"religious employers."

155. The Mandate also vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no individuals.

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

157. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

COUNT V. Violation of the First Amendment to the United States Constitution Freedom of Speech

158. Plaintiff incorporates by reference paragraph 1 through 157 into Count V as though set forth completely within.

159. Plaintiff professes, educates, lectures, and engages in outreach amongst the community that abortion, and abortifacients violate their faith-informed, religious beliefs.

160. In fact, Plaintiff's *raison d'etre* exclusively focuses on the human and civil right to life, as explicated in the religions, as stated above, raised in religious documents quoted above, and clearly stated in The Declaration of Independence:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life..."

161. The Mandate would compel Plaintiff to provide or subsidize activities that it professes, educates, lectures, and engages in outreach amongst the community are violations of the Plaintiff's religious beliefs and constitutionally

protected free speech, and would amount to coerced speech.

162. The Mandate would compel Plaintiff to fund and to provide education and counseling related to abortion and abortifacients, another example of coerced speech.

163. Defendants' actions thus violate Plaintiff's right to be free from compelled speech as secured to it by the First Amendment of the United States Constitution.

164. Defendants' actions violate and contradict their own government's approval of Plaintiff's exclusive mission when granting Section 501(c)(4) tax-exempt status in May 1986.

165. At this point, there is no other religious, nonsectarian, non-profit organization with the exclusive mission dedicated to the human and civil right to life from moment of conception to the moment of natural death that has challenged the Mandate, or filed suit to nullify it.

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

167. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

COUNT VI. Violation of the First Amendment to the United States Constitution Expressive Association

168. Plaintiff incorporates by reference paragraph 1 through 167 into Count VI as though set forth completely within.

169. Plaintiff professes, educates, and engages in outreach amongst the community that abortion and abortifacients violate their religious beliefs.

170. The Mandate would compel Plaintiff to subsidize activities that Plaintiff profess, educate, and engage in outreach in the community are violations of Plaintiff's religious beliefs and constitutionally protected right of free expression.

171. The Mandate would compel Plaintiff to fund and to provide education and counseling related to abortion and abortifacients.

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

173. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

COUNT VII. Violation of the Religious Freedom Restoration Act

174. Plaintiff incorporates by reference paragraph 1 through 173 into Count VII as though set forth completely within.

175. Plaintiff's sincerely held religious beliefs prohibit it from providing or purchasing coverage for abortion, abortifacients, or related education and counseling.

176. Plaintiff's compliance with these beliefs is a religious exercise.

177. The Mandate creates government-imposed coercive pressure on Plaintiff's to change or violate their religious beliefs.

178. The Mandate chills Plaintiff's religious exercise.

179. The Mandate exposes Plaintiff to substantial fines for their religious exercise.

180. The Mandate exposes Plaintiff to substantial competitive disadvantages,

in that it will no longer be permitted to offer or purchase health insurance.

181. The Mandate imposes a substantial burden on Plaintiff's religious exercise.

182. The Mandate furthers no compelling governmental interest.

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

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

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

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

COUNT VIII. Violation of the Administrative Procedure Act

187. Plaintiff incorporates by reference paragraph 1 through 186 into Count VIII as though set forth completely within.

188. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute "good cause."

189. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a meaningful "consideration of the relevant matter presented."

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

191. Therefore, Defendants have taken agency action without observing procedures required by law, and Plaintiff is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

192. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Plaintiff and similar organizations, companies, and individuals.

193. Defendants' explanation for its decision not to exempt organizations similar to Plaintiff from the Mandate runs counter to the evidence submitted by religious organizations during the comment period.

194. Therefore, Defendants' issuance of the interim final rule was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the rules fail to consider the full extent of their implications and they do not take into consideration the evidence against them.

195. The Mandate requires issuers, employers, and individuals, including Plaintiff, to purchase coverage of all Federal Drug Administration-approved contraceptives. Some of these FDA-approved contraceptives cause abortions, as stated above in this Verified Complaint.

196. As set forth above, the Mandate violates RFRA and the First Amendment to the United States Constitution.

197. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in the Administrative Procedure Act.

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

199. Section 1303(a)(1)(A)(i) of the Affordable Care Act states that "nothing in

this title"—i.e., title I of the Act, which includes the provision dealing with "preventive services"— "shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year."

200. Section 1303 further states that it is "the issuer" of a plan that "shall determine whether or not the plan provides coverage" of abortion services.

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

202. However, the Mandate requires all issuers, including Plaintiff and Plaintiff's insurance issuer Blue Cross/Blue Shield of Michigan, to provide coverage of all Federal Drug Administration-approved contraceptives.

203. Some FDA-approved contraceptives cause abortions, such as those described above in this Verified Complaint.

204. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and violates the Administrative Procedure Act.

205. Absent declaratory relief against the Mandate, Plaintiff has been and will continue to be harmed.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court:

A. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiff violates the First Amendment to the United States Constitution;

B. Declare that the Mandate and Defendants' enforcement of the Mandate

against Plaintiff violates the Religious Freedom Restoration Act;

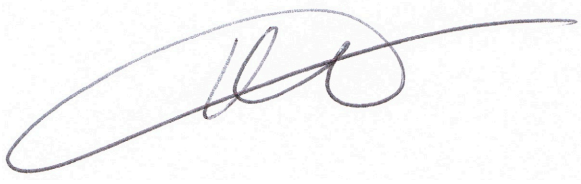
C. Declare that the Mandate was issued in violation of the Administrative Procedure Act;

D. Declare that Plaintiff is no longer required to obey the Mandate;

E. Award Plaintiff the costs of this action and reasonable attorney's fees; and

F. Award such other and further relief as it deems equitable and just.

Respectfully submitted by,



Dated: January 27, 2014

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