

FILED

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

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS, FLORIDA

CHRISTIAN AND MISSIONARY ALLIANCE  
FOUNDATION, INC. d/b/a SHELL POINT RETIREMENT  
COMMUNITY; THE ALLIANCE COMMUNITY FOR  
RETIREMENT LIVING, INC.; THE ALLIANCE HOME  
OF CARLISLE, PENNSYLVANIA d/b/a CHAPEL POINTE,  
AT CARLISLE; TOWN AND COUNTY MANOR OF THE  
CHRISTIAN AND MISSIONARY ALLIANCE; SIMPSON  
UNIVERSITY; and CROWN COLLEGE  
Plaintiffs,

v.

Civ. No.

SYLVIA MATHEWS BURWELL, in her official capacity as  
Secretary of the Department of Health and Human  
Services; UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES; THOMAS E.  
PEREZ, in his official capacity as the Secretary of the  
United States Department of Labor; UNITED  
STATES DEPARTMENT OF LABOR; JACOB J.  
LEW, in his official capacity as Secretary of the  
United States Department of the Treasury; and THE  
UNITED STATES DEPARTMENT OF THE  
TREASURY,  
Defendants.

2:14-cv-580-FtM-JCM

**PLAINTIFFS' COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF**

Come now Plaintiffs, Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Retirement Community; The Alliance Community for Retirement Living, Inc.; The Alliance Home of Carlisle, Pennsylvania d/b/a Chapel Pointe at Carlisle; Town and Country Manor of The Christian and Missionary Alliance; Simpson University; and Crown College, by and through their attorneys, and state as follows:

### **NATURE OF THE ACTION**

1. Plaintiffs submit this Complaint to seek redress for violations of their sincerely held religious beliefs by the Defendants.

2. The Plaintiffs challenge regulations issued under the Patient Protection and Affordable Care Act (“PPACA”) that force organizations to provide, directly or indirectly, insurance plans with coverage of abortifacient drugs, devices, or services (the “Mandate”).

3. Under the regulations, Plaintiffs have until their first group health insurance plan renewal after January 1, 2014, to either include certain drugs, devices, and/or procedures that are abortifacients or arrange for their insurance carriers or others to provide the same.

4. Plaintiffs Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Retirement Community (“Shell Point” or “Shell Point Retirement Community”); The Alliance Community for Retirement Living, Inc. (“Alliance Community”); The Alliance Home of Carlisle, Pennsylvania d/b/a Chapel Pointe at Carlisle (“Chapel Pointe”); and Town and Country Manor of The Christian and Missionary Alliance (“Town and Country Manor”) are Christian retirement communities affiliated with The Christian and Missionary Alliance religious denomination (“CMA”).

5. Plaintiffs Simpson University (“SU”) and Crown College are colleges and universities affiliated with the CMA.

6. Plaintiffs' religious beliefs forbid them from participating in, providing access to, paying for, designating others to pay for, training others to engage in, or otherwise supporting abortion.

7. The CMA General Council issued a statement explaining its religious beliefs regarding abortion. Its statement states:

The Christian and Missionary Alliance believes that abortion on demand is morally wrong. We cannot allow the current social climate of moral relativism and sexual permissiveness to dictate our response to moral and social dilemmas.

The Word of God teaches that each individual is known by God from before the foundation of the world (e.g., *Jeremiah 1:4–5*, *Psalms 139:13–17*). Our omnipotent, omniscient, omnipresent God has pronounced His blessing upon the life of a child according to *Psalms 127:3–5*.

Since all life exists for God's purposes and all human lives are equally sacred, it is our belief that the life of the unborn person is blessed of God and must be preserved and nurtured. The Christian and Missionary Alliance, therefore, are opposed to induced abortion.

CMA General Council, "Abortion" (1981), *available at* <http://www.cmalliance.org/about/beliefs/perspectives/abortion>.

8. Because of their sincerely held religious beliefs, Plaintiffs cannot meet the government's Mandate, which promotes, encourages, and requires the provision of drugs and devices that cause abortions. Under the Mandate, Plaintiffs face significant fines and/or the loss of their insurance coverage for the exercise of their sincerely held religious beliefs.

### **JURISDICTION AND VENUE**

9. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1361. This action arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000bb-1.

10. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to the claim occurred in this district, and two of the Plaintiffs reside in this district.

### **IDENTIFICATION OF PARTIES**

11. Plaintiff Shell Point Retirement Community, founded in 1968, is a non-profit retirement center affiliated with the CMA and is located in Ft. Myers, Florida.

12. Plaintiff Alliance Community, founded in 1954, is a non-profit retirement center affiliated with the CMA and is located in DeLand, Florida.

13. Plaintiff Chapel Pointe, founded in 1944, is a non-profit retirement center affiliated with the CMA and is located in Carlisle, Pennsylvania.

14. Plaintiff Town and Country Manor, founded in 1975, is a non-profit retirement center affiliated with the CMA and is located in Santa Ana, California.

15. Plaintiff Simpson University, founded in 1921, is a non-profit university affiliated with the CMA and is located in Redding, California.

16. Plaintiff Crown College, established in 1916, is a non-profit college affiliated with the CMA and is located in St. Bonifacius, Minnesota.

17. Defendant Sylvia Mathews Burwell is the Secretary of the United States Department of Health and Human Services. Secretary Burwell is an official of the United States. She is sued in her official capacity.

18. Defendant the United States Department of Health and Human Services (“HHS”) is a department and agency of the United States.

19. Defendant Thomas E. Perez is the Secretary of the United States Department of Labor. Secretary Perez is an official of the United States. He is sued in his official capacity.

20. Defendant the United States Department of Labor (“Labor”) is a department and agency of the United States.

21. Defendant Jacob J. Lew is the Secretary of the United States Department of the Treasury. Secretary Lew is an official of the United States. He is sued in his official capacity.

22. Defendant the United States Department of the Treasury (“Treasury”) is a department and agency of the United States. All Defendants are hereafter collectively referred to here as “the Departments” or “the Government.”

#### **PLAN RENEWAL DATES AND STATUS**

23. Shell Point’s group health insurance plan renewed on July 1, 2014. Shell Point has more than fifty full-time employees covered by its group health insurance plan. Shell Point’s group health insurance plan is not a “grandfathered” plan under the PPACA, and Shell Point is not a “church” for purposes of the PPACA.

24. Alliance Community's group health insurance plan renewed on April 1, 2014. Alliance Community has more than fifty full-time employees covered by its group health insurance plan. Alliance Community's group health insurance plan is not a "grandfathered" plan under the PPACA, and Alliance Community is not a "church" for purposes of the PPACA.

25. Chapel Pointe's group health insurance plan renewed on January 1, 2014. Chapel Pointe has more than fifty full-time employees covered by its group health insurance plan. Chapel Pointe's group health insurance plan is not a "grandfathered" plan under the PPACA, and Chapel Pointe is not a "church" for purposes of the PPACA.

26. Town and Country Manor's group health insurance plan renewed on May 1, 2014. Town and Country Manor has more than fifty full-time employees covered by its group health insurance plan. Town and Country Manor's group health insurance plan is not a "grandfathered" plan under the PPACA, and Town and Country Manor is not a "church" for purposes of the PPACA.

27. Simpson University's group health insurance plan renewed on October 1, 2014. Simpson University has more than fifty full-time employees covered by its group health insurance plan. Simpson University's group health insurance plan is not a "grandfathered" plan under the PPACA, and Simpson University is not a "church" for purposes of the PPACA.

28. Crown College's group health insurance plan for its faculty and staff renewed on January 1, 2014. Crown College's student "accident and sickness" insurance plan renewed on August 1, 2014. Crown College has more than fifty full-time employees

covered by its group health insurance plan. Crown College's group health insurance plan is not a "grandfathered" plan under the PPACA, and Crown College is not a "church" for purposes of the PPACA.

**SHELL POINT RETIREMENT COMMUNITY'S  
SINCERELY HELD RELIGIOUS BELIEFS**

29. Shell Point has been affiliated with the CMA since Shell Point's founding in 1968.

30. As a ministry of the CMA, Shell Point is "dedicated to the service of God and the care of His people." As such, Shell Point holds sincerely and deeply held religious beliefs regarding life from conception to natural death.

31. Shell Point's Purpose & Policy Statement requires that Shell Point's activities and services be conducted according to certain biblical values expressed in that statement. The first "Biblical value" expressed in Shell Point's Purpose & Policy Statement is the following:

We believe that all human life is sacred in every dimension, including the unborn, the elderly, the mentally and physically handicapped, the ill and inform, and every other human condition from conception to death. Every person is created in the image of God and therefore has dignity and deserves to have that dignity respected.

32. It is, therefore, Shell Point's sincerely held religious belief that it is forbidden, under religious principles and teachings, from providing or assisting in the provision of any abortion-inducing drugs or services.

33. Shell Point not only opposes the direct provision of abortion-related drugs, devices and services on religious grounds, but it also opposes being associated with or participating indirectly with the provision of such services.

**ALLIANCE COMMUNITY'S  
SINCERELY HELD RELIGIOUS BELIEFS**

34. Alliance Community has been affiliated with the CMA since Alliance Community's founding in 1954.

35. As a ministry of the CMA, the religious beliefs of the CMA are also those of Alliance Community. As such, Alliance Community holds sincerely and deeply-held religious beliefs regarding life from conception to natural death.

36. Alliance Community "is connected with and subordinate to its parent religious organization, The Christian and Missionary Alliance Foundation, Inc." Amended and Restated Bylaws of The Alliance Community for Retirement Living, Inc., Art. 10. If, at any time, Alliance Community fails to "be subject to or abide by any of the purposes, usages, directives, doctrines or teachings of The Christian and Missionary Alliance denomination," then "legal title to all real and personal property (tangible and intangible), appurtenances, fixtures and effects of whatever type then owned, held or used by The Alliance Community for Retirement Living, Inc., without regard to how or from whom acquired shall, upon the demand of The Christian and Missionary Alliance Foundation, Inc., revert to and become the property of The Christian and Missionary Alliance Foundation, Inc." *Id.* The Christian and Missionary Alliance Foundation, Inc. is Shell Point.

37. It is, therefore, Alliance Community's sincerely held religious belief that it is forbidden, under religious principles and teachings, from providing or assisting in the provision of any abortion-inducing drugs or services.



38. Alliance Community not only opposes the direct provision of abortion-related drugs, devices and services on religious grounds, but it also opposes being associated with or participating indirectly with the provision of such services.

**CHAPEL POINTE'S  
SINCERELY HELD RELIGIOUS BELIEFS**

39. Chapel Pointe has been affiliated with the CMA since Chapel Pointe's founding in 1944.

40. As a ministry of the CMA, the religious beliefs of the CMA are also those of Chapel Pointe. As such, Chapel Pointe holds sincerely and deeply-held religious beliefs regarding life from conception to natural death.

41. Pursuant to Chapel Pointe's articles of incorporation, its purpose is "the operation of a continuing care retirement community ... in accordance with the Christian principles of The Christian and Missionary Alliance." The Alliance Home of Carlisle, PA Articles 02/18/92 Revised & Approved 06/24/05 BOD, ¶ 2.

42. It is, therefore, Chapel Pointe's sincerely held religious belief that it is forbidden, under religious principles and teachings, from providing or assisting in the provision of any abortion-inducing drugs or services.

43. Chapel Pointe not only opposes the direct provision of abortion-related drugs, devices and services on religious grounds, but it also opposes being associated with or participating indirectly with the provision of such services.

**TOWN AND COUNTRY MANOR'S  
SINCERELY HELD RELIGIOUS BELIEFS**

44. Town and Country Manor has been affiliated with the CMA since Town and Country Manor's founding in 1975.

45. As a ministry of the CMA, the religious beliefs of the CMA are also those of Town and Country Manor. As such, Town and Country Manor holds sincerely and deeply-held religious beliefs regarding life from conception to natural death.

46. Town and Country Manor "is connected with and subordinate to its parent religious organization, The Christian and Missionary Alliance." Restated Bylaws of Town and Country Manor of The Christian and Missionary Alliance, A California Nonprofit Public Benefit Corporation § 16.3. If, at any time, Town and Country Manor fails to "be subject to or abide by any of the purposes, usages, doctrines, or teachings of The Christian and Missionary Alliance," then "legal title to all real and personal property [sic] (tangible and intangible), appurtenances, fixtures, and effects of whatever type then owned, held, or used by [Town and Country Manor], without regard to how or from whom acquired, shall, upon the demand of The Christian and Missionary Alliance, revert to and become the property of The Christian and Missionary Alliance." *Id.*

47. It is, therefore, Town and Country Manor's sincerely held religious belief that it is forbidden, under religious principles and teachings, from providing or assisting in the provision of any abortion-inducing drugs or services.

48. Town and Country Manor not only opposes the direct provision of abortion-related drugs, devices and services on religious grounds, but it also opposes being associated with or participating indirectly with the provision of such services.

**SIMPSON UNIVERSITY'S  
SINCERELY HELD RELIGIOUS BELIEFS**

49. Simpson University has been affiliated with the CMA since Simpson University's founding in 1921.

50. As a ministry of the CMA, the religious beliefs of the CMA are also those of Simpson University. As such, Simpson University holds sincerely and deeply-held religious beliefs regarding life from conception to natural death.

51. Simpson University's articles of incorporation states that it "is a religious corporation.... The specific Christian purposes for which this corporation is organized and operated are as follows: (i) to support and extend the ministry of the church of Jesus Christ by furnishing educational programs designed to build the Christian mind and character and provide philosophical underpinnings to adequately address life's questions in global context...." Restated Articles of Incorporation of Simpson College, Art. II.

52. Simpson University "is connected with and subordinate to its parent religious organization, The Christian and Missionary Alliance." *Id.*, Art. V. If, at any time, Simpson University fails to "be subject to or abide by any of the purposes, usages, doctrines, or teachings of the C&MA [The Christian and Missionary Alliance]," then "legal title to all real and personal property (tangible and intangible), appurtenances, fixtures, and effects of whatever type then owned, held, or used by [Simpson University], without regard to how or from whom acquired, shall, upon the demand of the C&MA, revert to and become the property of the C&MA." *Id.*

53. It is, therefore, Simpson University's sincerely held religious belief that it is forbidden, under religious principles and teachings, from providing or assisting in the provision of any abortion-inducing drugs or services.

54. Simpson University not only opposes the direct provision of abortion-related drugs, devices and services on religious grounds, but it also opposes being associated with or participating indirectly with the provision of such services.

**CROWN COLLEGE'S  
SINCERELY HELD RELIGIOUS BELIEFS**

55. Crown College is "the Midwestern regional college of The Christian and Missionary Alliance," Crown College Bylaws, Art. II, and has been affiliated with the CMA since Crown College's founding in 1916.

56. As a ministry of the CMA, the religious beliefs of the CMA are also those of Crown College. As such, Crown College holds sincerely and deeply-held religious beliefs regarding life from conception to natural death.

57. Crown College's bylaws state that it "is to provide a biblically-based education for Christian leadership in The Christian and Missionary Alliance, the Church at large and the world." *Id.*, Art. III.

58. Crown College "is connected with and subordinate to The Christian and Missionary Alliance of Colorado Springs, Colorado, the parent religious society." *Id.*, Art. II. If Crown College ceases to exist or "ceases to be subject to the purposes, usages, doctrines and teachings of the The Christian and Missionary Alliance, then all its property, appurtenances and effects then owned or held by it shall revert to and become

the property of The Christian and Missionary Alliance of Colorado Springs, Colorado.”

*Id.*

59. It is, therefore, Crown College’s sincerely held religious belief that it is forbidden, under religious principles and teachings, from providing or assisting in the provision of any abortion-inducing drugs or services.

60. Crown College not only opposes the direct provision of abortion-related drugs, devices and services on religious grounds, but it also opposes being associated with or participating indirectly with the provision of such services.

#### **THE ACCOMMODATION**

61. On June 28, 2013, Defendants issued a final rule (the “2013 Mandate”), which ignores the objections repeatedly raised by religious organizations and continues to co-opt objecting religious organizations into the government’s scheme of expanding free access to contraceptive and abortifacient services. 78 Fed. Reg. 39870.

62. Under the 2013 Mandate, the discretionary “religious employers” exemption, which is still implemented via footnote on the Health Resources and Services Administration (“HRSA”) website, Ex. C, remains 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 39874.

63. All other religious organizations, including Plaintiffs, are excluded from the exemption.

64. The 2013 Mandate creates a separate “accommodation” for certain non-exempt religious organizations. 78 Fed. Reg. at 39874. This “accommodation” was

modified on August 27, 2014, by an interim final rule (the 2013 Mandate, incorporating the August 27, 2014, modifications, is the “Final Mandate”). 79 Fed. Reg. 51092.

65. An organization is 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.

66. The self-certification must be executed “prior to the beginning of the first plan year to which an accommodation is to apply.” 78 Fed. Reg. at 39875.

67. The time before the Mandate was to apply is known as the “safe harbor” period. The Final Rule extended the safe harbor through the end of 2013, meaning that the Mandate applies for each organization when its insurance plan is renewed for the first time after January 1, 2014. 78 Fed. Reg. at 39889; *see also* HHS Center for Consumer Information and Insurance Oversight, Guidance on the Temporary Enforcement Safe Harbor for Certain Employers (June 28, 2013) (extending the safe harbor to the first plan year that begins on or after January 1, 2014).

68. The interim final rule of August 27, 2014, merely provides an alternative method of communicating the request for accommodation that includes HHS and/or the Department of Labor as intermediaries between the eligible organization and the organization’s insurer or third-party administrator. The new option made available under the August 27, 2014, interim final rule requires that eligible organizations submit even more information to the government than is required under the original option of using

EBSA Form 700, and is even more burdensome on the eligible organization. The August 27, 2014, interim final rule does not alleviate Plaintiffs' inability to accept the "accommodation" because of their sincerely held religious beliefs.

69. Thus, an eligible organization would need to execute a self-certification prior to its first plan year that begins on or after January 1, 2014, and either (1) deliver EBSA Form 700 to the organization's insurer or, if the organization has a self-insured plan, to the plan's third party administrator or (2) deliver written notice to HHS, which results in the Department of Labor's notifying the organization's insurer or, if the organization has a self-insured plan, the plan's third-party administrator, that the eligible organization opposes providing coverage for certain contraceptive drugs. 78 Fed. Reg. at 39875; 79 Fed. Reg. 51092, 51098–99.

70. By the terms of the "accommodation," Plaintiffs would be required to either execute and submit EBSA Form 700 to its insurers and third-party administrators or to submit a written statement to the HHS before their first group health insurance plan renewal date after January 1, 2014.

71. By delivering either EBSA Form 700 to its insurers and third-party administrators or written notice to the HHS, Plaintiffs would trigger, directly or indirectly, the insurers and third-party administrators' obligations to "provide payments for contraceptive services," including abortion-causing contraceptives like Plan B (the "day after pill") and Ella (the "week after pill"). 78 Fed. Reg. at 39876 (insurers); 79 Fed. Reg. at 51099 (insurers); 78 Fed. Reg. at 39879 (third-party administrators); 79 Fed. Reg. at 51098–99 (third party administrators).

72. Because Plaintiffs have sincerely-held religious objections to facilitating, including indirectly, the provision of abortion-inducing drugs or procedures or education in the use thereof, accepting the “accommodation” and signing either EBSA Form 700 or the notice to HHS would violate Plaintiffs’ sincerely-held religious beliefs by causing Plaintiffs to facilitate such provision through their third-party administrators or insurers.

73. If Plaintiffs do not offer abortion-related drug services or devices or if they do not submit EBSA Form 700 or written notice to HHS, they face and are subject to a \$100.00 per day per beneficiary fine, which will cause a severe economic consequence to each Plaintiff.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Violation of the Religious Freedom Restoration Act – Substantial Burden**

74. Plaintiffs incorporate by reference paragraphs 1–73.

75. Plaintiffs’ sincerely held religious beliefs prohibit them from deliberately providing health insurance that would facilitate access to abortifacients, or to related education and counseling. Plaintiffs’ compliance with these beliefs is a religious exercise.

76. The Final Mandate and Defendants’ threatened enforcement of the Final Mandate violate Plaintiffs’ rights secured to them by the Religious Freedom Restoration Act, § 2000bb-1 *et seq.* The language of the applicable section of the Religious Freedom Restoration Act (RFRA) is as follows:

(b) Exception: Government may substantially burden a person’s exercise of religion only if it demonstrates 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

77. The Final Mandate creates government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

78. The Final Mandate restricts Plaintiffs' religious exercise.

79. The Final Mandate exposes Plaintiffs to substantial fines for their religious exercise.

80. The Final Mandate exposes Plaintiffs to substantial competitive disadvantages in that, if Plaintiffs are forced to comply with the Final Mandate, Plaintiffs will have no choice but to cancel their health insurance plans rather than violate their religious beliefs.

81. The Final Mandate imposes a substantial burden on Plaintiffs' religious exercise.

82. The Final Mandate furthers no compelling governmental interest.

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

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

85. Because the "accommodation" provided by the Final Mandate is not narrowly tailored and is not the least restrictive means available, it violates the terms of the exception granted by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 *et seq.*

86. Absent injunctive and declaratory relief against the Final Mandate, Plaintiffs will continue to be harmed.

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

87. Plaintiffs incorporate by reference paragraphs 1–73.

88. Plaintiffs’ sincerely held religious beliefs prohibit them from providing health insurance that would facilitate access to abortifacients, or to related education and counseling. Plaintiffs’ compliance with these beliefs is a religious exercise.

89. Despite being informed in detail of these beliefs beforehand, Defendants designed the Final Mandate and the religious exemption to the Mandate in order to suppress the religious exercise of religious organizations such as Plaintiffs.

90. The Final Mandate and Defendants’ threatened enforcement of the Mandate therefore violate Plaintiffs’ rights secured to them by the Free Exercise Clause of the First Amendment of the United States Constitution.

91. Absent injunctive and declaratory relief against the Mandate, Plaintiffs will continue to be harmed.

**COUNT III**  
**Violation of the First Amendment to the United States Constitution**  
**Free Exercise Clause**  
**Discrimination Among Religions**

92. Plaintiffs incorporate by reference paragraphs 1–73.

93. The Free Exercise Clause and Establishment Clause of the First Amendment mandate the equal treatment of all religious faiths and institutions without discrimination or preference.

94. This guarantee of equal treatment protects organizations as well as individuals.

95. Because the Final Mandate provides a narrow exemption for “religious employers” but not for other religious organizations, it discriminates among religions on the basis of religious views or religious status.

96. The Final Mandate and Defendants’ threatened enforcement of it thus violate Plaintiffs’ rights secured to them by the Free Exercise Clause of the First Amendment of the United States Constitution.

97. Absent injunctive and declaratory relief against the Final Mandate, Plaintiffs will continue to be harmed.

**COUNT IV**  
**Violation of the First Amendment to the United States Constitution**  
**Establishment Clause**  
**Selective Burden/Denominational Preference (*Larson v. Valente*)**

98. Plaintiffs incorporate by reference paragraphs 1–73.

99. By design, Defendants imposed the Final Mandate on some religious organizations but not on others, resulting in a selective burden on Plaintiffs.

100. The Final Mandate and Defendants’ threatened enforcement of the Final Mandate therefore violate Plaintiffs’ rights secured to them by the Establishment Clause of the First Amendment to the United States Constitution.

101. Absent injunctive and declaratory relief against the Final Mandate, Plaintiffs will continue to be harmed.

**COUNT V**  
**Interference in Matters of Internal Religious Governance**  
**Free Exercise Clause and Establishment Clause**

102. Plaintiffs incorporate by reference paragraphs 1–73.

103. The Free Exercise Clause and the Establishment Clause protect the freedom of religious organizations to decide for themselves, free from state interference, matters of internal governance as well as those of faith and doctrine.

104. Under the Free Exercise Clause and the Establishment Clause, the Government may not interfere with a religious organization's internal decisions concerning the organization's religious structure, doctrine, or leadership.

105. Plaintiffs made an internal decision, based on the doctrine set forth by The Christian and Missionary Alliance, that they view abortion as immoral and discourage any actions that even indirectly result in an abortion.

106. The accommodation provided for by the Final Mandate interferes with Plaintiffs' internal decisions by requiring them to be complicit in the process of providing contraceptives, which directly conflicts with their stated doctrine.

107. The Final Mandate therefore directly interferes with Plaintiffs' faith and mission because it interferes with their ability to make internal decisions concerning their doctrine.

108. Because of this interference, the Final Mandate violates the Establishment Clause and the Free Exercise of the First Amendment and Plaintiffs are entitled to relief.

**COUNT VI**

**Violation of the First and Fifth Amendments of the United States Constitution  
Establishment Clause and Due Process**

109. Plaintiffs incorporate by reference paragraphs 1–73.

110. The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

111. The Free Exercise Clause of the First Amendment prohibits the Government from substantially burdening an entity’s exercise of religion.

112. The Free Exercise Clause protects organizations from Government-imposed burdens on religious exercise.

113. The Due Process Clause of the Fifth Amendment mandates the equal treatment of all religious faiths and institutions without discrimination or preference.

114. The Mandate and the “accommodation” require Plaintiffs to provide, facilitate, or initiate the provision of services that are directly contrary to their religious beliefs respecting the sanctity and dignity of human life and prohibiting being associated with the provision of contraceptive services.

115. The Mandate and the “accommodation” are not neutral laws of general applicability because they exempt substantial categories of organizations, solely for secular reasons, while not exempting organizations for religious reasons, and the exemptions are so substantial as to render any differing treatment for religious organizations suspect and discriminatory.

116. The Mandate and the “accommodation” are subject to strict scrutiny.

117. The Government has no compelling interest to require Plaintiffs to comply with the Mandate or the “accommodation.”

118. The Mandate and the “accommodation” are not narrowly tailored to further a compelling government interest.

119. By enacting the Mandate and the “accommodation,” the Government has, therefore, burdened Plaintiffs’ religious exercise in violation of the Free Exercise Clause of the First Amendment, and Plaintiffs are entitled to relief.

**COUNT VII**  
**Violation of the First Amendment to the United States Constitution**  
**Freedom of Speech**  
**Compelled Speech**

120. Plaintiffs incorporate by reference paragraphs 1–73.

121. The Christian and Missionary Alliance, and with it, Plaintiffs, teach and express the view that the practice of abortion is contrary to biblical teachings and that it is immoral to assist in providing any abortion-inducing drugs or services.

122. The accommodation provided by the Final Mandate would still compel Plaintiffs to facilitate activities that it teaches are violations of its religious beliefs.

123. Defendants’ actions thus violate Plaintiffs’ right to be free from compelled speech as secured to them by the First Amendment of the United States Constitution

124. The Final Mandate’s requirement of this compelled speech is not narrowly tailored to a compelling governmental interest.

125. Absent injunctive and declaratory relief against the Final Mandate, Plaintiffs have been and will continue to be harmed.

**COUNT VIII**

**Violation of the First Amendment to the United States Constitution  
Freedom of Speech  
Expressive Association**

126. Plaintiffs incorporate by reference paragraphs 1–73.

127. The Christian and Missionary Alliance, and with it, Plaintiffs, teach and express the view that the practice of abortion is contrary to biblical teachings and that it is immoral to assist in providing any abortion-inducing drugs or services.

128. The accommodation provided by the Final Mandate would still compel Plaintiffs to facilitate activities that they teach are violations of their religious beliefs.

129. Defendants’ actions thus violate Plaintiffs’ right of expressive association as secured to them by the First Amendment of the United States Constitution.

130. Absent injunctive and declaratory relief against the Final Mandate, Plaintiffs will continue to be harmed.

**COUNT IX**

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

131. Plaintiffs incorporate by reference paragraphs 1–73.

132. By stating that HRSA “may” grant an exemption to certain religious groups, the Final Mandate vests HRSA with unbridled discretion over which organizations can have its First Amendment interests accommodated.

133. Defendants have exercised unbridled discretion in a discriminatory manner by granting an exemption for a narrowly defined group of “religious employers” but not for other organizations like Plaintiffs.

134. Defendants have further exercised unbridled discretion by indiscriminately waiving enforcement of some provisions of the PPACA while refusing to waive enforcement of the Final Mandate, despite its conflicts with the free exercise of religion.

135. Defendants' actions therefore violate Plaintiffs' right not to be subjected to a system of unbridled discretion when engaging in speech or when engaging in religious exercise, as secured to it by the First Amendment of the United States Constitution.

136. By enacting the Final Mandate, the Government has therefore burdened Plaintiffs' religious exercise in violation of the Free Exercise Clause of the First Amendment, and Plaintiffs are entitled to relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

a. Injunctive relief under Fed. R. Civ. P. 65 to preliminarily and permanently enjoin enforcement by the Departments of the Mandate and the "accommodation" against Plaintiffs or any other participants in the health care plan at issue in this matter;

b. Injunctive relief under Fed. R. Civ. P. 65 to preliminarily and permanently enjoin the Departments from applying or enforcing upon Plaintiffs, or any other participants in the health care plan at issue in this matter, the requirements imposed in 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 45 C.F.R. § 147.131(a), 29 C.F.R. § 2590.715-2713(a)(1)(iv), 29 C.F.R. § 2590.715-2713A(a)-(b), 26 C.F.R. § 54.9815-2713(a)(1)(iv), 26 C.F.R. § 54.9815-2713A(a)-(b), and any other law or regulation to the extent those laws or regulations (1) require Plaintiffs to provide contraceptive coverage; (2) require Plaintiffs to sign EBSA Form 700 or provide notice to



Defendants that would designate or lead to the designation of any third party as a plan administrator or claims administrator for contraceptive coverage; or (3) in any way require Plaintiffs to authorize or facilitate the provision of contraceptive coverage to persons covered by Plaintiffs' health insurance plans, including, but not limited to, by requiring Plaintiffs to designate, directly or indirectly, any third party as a plan administrator or claims administrator for contraceptive coverage;

c. Injunctive relief under Fed. R. Civ. P. 65 to preliminarily and permanently enjoin the Departments from assessing or imposing any fine, penalty, or tax against Plaintiffs, or any other participants in the health care plan at issue in this matter, for failing to provide contraceptive coverage or execute and deliver EBSA Form 700, notice to the Defendants, or any other self-certification;

d. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring the Mandate and the "accommodation" are a violation of the RFRA and the First Amendment;

e. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 45 C.F.R. § 147.131(a), 29 C.F.R. § 2590.715-2713(a)(1)(iv), 29 C.F.R. § 2590.715-2713A(a)–(b), 26 C.F.R. § 54.9815-2713(a)(1)(iv), 26 C.F.R. § 54.9815-2713A(a)–(b) are a violation of the RFRA and the First Amendment to the extent those laws or regulations (1) require Plaintiffs to provide contraceptive coverage; (2) require Plaintiffs to sign EBSA Form 700, notice to Defendants, or any other form designating any third party as a plan administrator or claims administrator for contraceptive coverage; or (3) in any way require Plaintiffs to

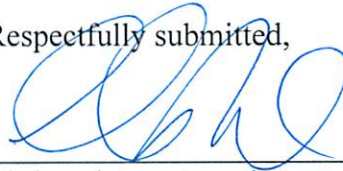
authorize or facilitate the provision of contraceptive coverage to persons covered by Plaintiffs' health insurance plans, including, but not limited to, by requiring Plaintiffs to designate any third party as a plan administrator or claims administrator for contraceptive coverage;

f. Declaratory judgment and relief under 28 U.S.C. § 2201-02 declaring any fine, penalty, or tax assessed or imposed against Plaintiffs for failing to provide contraceptive coverage or execute and deliver EBSA Form 700, notice to Defendants, or any other self-certification are a violation of the RFRA and the First Amendment;

g. Attorneys' and expert fees under 42 U.S.C. § 1988(b); and

h. Such other relief as the Court deems just and proper.

Respectfully submitted,



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Christopher A. Roach  
Florida Bar No. 0049033  
*Trial Counsel*

Stephanie M. Martin  
Florida Bar No. 0030585  
ADAMS AND REESE LLP  
101 East Kentucky Blvd., Suite 4000  
Tampa, Florida 33602  
T: (813) 402-2880  
F: (813) 402-2887  
chris.roach@arlaw.com  
stephanie.martin@arlaw.com

Jeffrey C. Mateer\*  
Texas Bar No. 13185320  
Jeremiah G. Dys\*  
West Virginia Bar No. 9998  
Justin E. Butterfield\*  
Texas Bar No. 24062642  
LIBERTY INSTITUTE  
2001 W. Plano Parkway, Suite 1600  
Plano, Texas 75075  
T: (972) 941-4444  
F: (972) 941-4457  
jmateer@libertyinstitute.org  
jdys@libertyinstitute.org  
jbutterfield@libertyinstitute.org

\* Application for pro hac vice pending

*Counsel for Plaintiffs*

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Retirement Community; The Alliance Community for Retirement Living, Inc.; The Alliance Home of Carlisle, Pennsylvania d/b/a Chapel Pointe, at Carlisle; Town and Country Manor of the Christian and Missionary Alliance; Simpson University; and Crown College

## DEFENDANTS

Sylvia Mathews Burwell, in her official capacity as Secretary of the Department of Health and Human Services; United States Department of Health and Human Services; Thomas E. Perez, in his official capacity as the Secretary of the United States Department of Labor; United States Department of Labor; Jacob J. Lew, in his official capacity as Secretary of the United States Department of the Treasury; and The United States Department of the Treasury.

(b) County of Residence of First Listed Plaintiff Lee County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Christopher. A. Roach and Stephanie M. Martin, Adams and Reese LLP, 101 E. Kennedy Blvd., Suite 4000, Tampa, FL 33602

Attorneys (If Known)

U.S. Attorney for the Middle  
District of Florida  
400 N. Tampa Street, Suite 3200  
Tampa, FL 33602

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

U.S. Const. 1st Amend., 42 USC § 200055, 28 USC § 2201-02

Brief description of cause:

A challenge to the Affordable Care Act under U.S. Const. 1st Amendment and other statutes listed above.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

October 2, 2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # Fthmoo

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

6757