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,

VERIFIED 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 Complaint against the above-named Defendants, their employees, agents, and successors in office. In support of this 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 regulations ("Mandate") 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 disordered, 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)(3) charter which 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 to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg–13(a)(4).

6. Without required notice of rulemaking or opportunity for public comment, the United States Department of Health and Human Services, the United States Department of Labor, and the United States Department of Treasury adopted the Institute of Medicine ("IOM") recommendations in full and promulgated an interim final rule, the Mandate, which requires all "group health plan[s] and . . . health insurance issuer[s] offering group or individual health insurance coverage" provide all FDA-approved contraceptive methods and procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.
7. 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.
8. Health Resources and Services Administration issued guidelines adopting the IOM recommendations. (http://www.hrsa.gov/womensguidelines)
9. Under the IOM guidelines, the Mandate requires all insurance issuers to provide not only sterilization and contraception but also 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," 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, as well as sterilization methods approved by the FDA. The Mandate also requires counseling relating to the same, in all of its insurance plans, group and individual

10. 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.

11. Since under the Mandate all insurance issuers must provide what the United States Department of Health and Human Services 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 mortally sinful, and, in Plaintiff's particular case, b) its sole reason for existing and c) legal mandate as a 501(c)(3) organization.

12. Without relief to this Plaintiff, the cost of complying with the Mandate will be burdensome, and cost Plaintiff: 33 employees x 365 days per year x $100 each day = **$1,204,500.00 per year tax**.

13. Plaintiff seeks preliminary and permanent injunctive relief, enjoining Defendants from implementing and enforcing provisions of the regulations promulgated under the ACA, specifically the Mandate. The Mandate violates

Plaintiff's rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act ("RFRA"), and the Administrative Procedure Act ("APA").

14. Plaintiff also 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.

15. The Affordable Care Act's contraceptive/abortifacient mandate violates the rights of Plaintiff.

16. Plaintiff employs **33 full-time** employees and **10 part-time** employees, and is forced under the Mandate to conduct business in a manner that violates their religious faith by providing and funding abortifacient drugs and devices, which violates deeply held religious beliefs and the sole reason they work for Plaintiff.

17. 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

18. 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.

19. Plaintiff's claims for declaratory and preliminary and permanent injunctive 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.

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

PLAINTIFF

21. Plaintiff operates as both a 501(c)(3) and 501(c)(4) non-profit organization whose principal office is at 2340 Porter S.W., Grand Rapids MI 49509-0901.

22. 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.

23. On or about August 30, 1979, the organization changed its name to "Right To

Life Of Michigan."

24. 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.

25. "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

26. 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).

27. In May 1986, the U.S. government through the Internal Revenue Service recognized Plaintiff's mission by granting it section 501(c)(3) status. That same status remains in effect.

28. According to 26 USC 501(c)(3), the U.S. government recognizes that Plaintiff is "operated exclusively for religious, charitable" or "other purposes."

29. Although Plaintiff is non-sectarian, 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.

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

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

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

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

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

35. 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.

36. 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

37. 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

38. 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).

39. 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).

40. 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.

41. 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).

42. 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.

43. Prior to the issuance of the Mandate, 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.

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

45. Before Defendants issued the Mandate, 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.

46. 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.

47. 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.

48. 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.

49. 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*.

DEFENDANTS

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

51. Defendant Kathleen Sebelius ("Sebelius") is the Secretary of the United States Department of Health and Human Services ("HHS"). In this capacity, she has responsibility for the operation and management of HHS. Defendant Sebelius is sued in her official capacity only.

52. Defendant 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.

53. 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.

54. 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.

55. 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.

56. 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

57. Plaintiff holds and actively professes religiously based beliefs in accordance with 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.

58. 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 believe, 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.

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

60. 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).

61. 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/

62. 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

63. 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

64. 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

65. 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.

66. 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

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. Plaintiff's plan is not considered "grandfathered" and will be subject to the

provisions of the Mandate.

73. 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.

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

75. 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.

76. 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).

77. 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.

78. 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..."

79. 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.

80. 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..."

81. 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.

82. 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.

83. Plaintiff seeks declaratory and injunctive relief to protect against these attacks.

The Affordable Health Care Law Act

84. In March 2010, Congress passed, and President Barack Hussein Obama signed into law, 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) ("Affordable Care Act").

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

86. The Affordable Care Act does not apply equally to all insurers. The Affordable Care Act does not apply equally to all individuals.

87. Plaintiff employs **33 full-time** and **10 part-time** employees.

88. Plaintiff constitutes a "single employer" for purposes of the Affordable Care Act as defined at 42 U.S.C. § 18024(b)(4)(A).

89. Plaintiff must provide federal government-approved health insurance under the Affordable Care Act or provide no health insurance at all to its employees.

90. Employers with fewer than 50 employees who purchase insurance for their employees from health insurance issuers are subject to the Affordable Care Act. 42 USC § 300GG-13 (a)(1), (4).

91. Certain provisions of the Affordable Care Act do not apply equally to members of certain religious groups. See, e.g., 26 U.S.C. § 5000A(d)(2)(A)(i) and (ii) (individual mandate does not apply to members of "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds); 26 U.S.C. § 5000A(d)(2)(B)(ii) (individual mandate does not apply to members of "health care sharing ministry" that meets certain criteria).

92. Plaintiff does not qualify for an individual exemption under 26 U.S.C. § 5000A(d)(2)(A)(i) and (ii) as Plaintiff does not object to acceptance of public

or private insurance funds in their totality, and maintains health insurance benefits that, prior to the Mandate, excluded contraceptives, abortion and abortifacients.

93. Plaintiff does not qualify for an individual exemption under 26 U.S.C. § 5000A(d)(2)(B)(ii), because it is not a member of a health care ministry.

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

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

96. Plaintiff's current insurance plans does not qualify as "grandfathered" health care plans, and are considered "non-grandfathered."

97. Plaintiff does not qualify for the "religious employer" exemption contained in 45 CFR § 147.130 (a)(1)(A) and (B).

98. There have been changes made to Plaintiff's plan after March 23, 2010, and participants have never been notified of a "grandfathered" status.

99. Plaintiff is not eligible for "grandfathered" status under the Affordable Care Act, and is subject to the requirements of the Affordable Care Act and the Health and Human Services Mandate because: (1) the health care plan does not include the required "disclosure of grandfather status" statement; (2) Plaintiff does not take the position that its health care plan is a grandfathered plan and thus does not maintain the records necessary to verify, explain, or clarify its status as a grandfathered plan nor will it make such records available for examination upon request; and (3) the health care plan has an

increase in a percentage cost-sharing requirement measured from March 23, 2010. See 42 U.S.C. § 18011(a) (2); 26 C.F.R. § 54.9815-1251T; 29 C.F.R. § 2590.715-1251; 45 C.F.R. §147.140.

100. Since the Plaintiff does not qualify for the "religious employer" exemption, it is not permitted to take advantage of the "temporary safe-harbor" as set forth by the Defendants at 77 Fed. Register 8725 (Feb. 15, 2012).

101. Plaintiff is, therefore, subjected to the Mandate now, and is confronted with choosing between complying with the Mandate's requirements in violation of Plaintiff's religious beliefs and free speech rights, or violating federal law.

102. Plaintiff is confronted with complying with the requirements of the Affordable Care Act in violation of its religious beliefs and rights of free speech, or removing itself and and its employees from the health insurance market in its entirety - endangering the health and economic stability of its employees, and forcing Plaintiff to be uncompetitive as employers in a market where other, non-religious employers will be able to provide insurance to their employees under the Affordable Care Act without violating their religious beliefs and free speech rights.

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

104. The Affordable Care Act is not neutral because some groups, both secular and religious, enjoy exemptions from the law, while certain religious groups do not. Some groups, both secular and religious, have received waivers from

complying with the provisions of the Affordable Care Act, while others—such as the Plaintiff—have not.

105. The Affordable Care Act creates a system of individualized exemptions.

106. The United States Department of Health and Human Services has the authority under the Affordable Care Act to grant compliance waivers ("HHS waivers") to employers and other health insurance plan issuers.

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

108. HHS appears to arbitrarily decide whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers.

109. Upon information and belief, more than a thousand HHS waivers have been granted.

The "Preventive Care" Mandate

110. A provision of the Affordable Care Act mandates that health plans "provide coverage for and shall not impose any cost sharing requirements . . . 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 United States Department of Health and Human Services to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg–13(a)(4).

111. On July 19, 2010, HHS, along with the United States Department of Treasury and the United States Department of Labor, published an interim

final rule under the Affordable Care Act. 75 Fed. Reg. 41726 (2010). The interim final rule required providers of group health insurance to cover preventive care for women as provided in guidelines to be published by the Health Resources and Services Administration at a later date. 75 Fed. Reg. 41759 (2010).

112. On February 15, 2012, the United States Department of Health and Human Services promulgated a mandate that group health plans include coverage for all Food and Drug Administration-approved contraceptive methods and procedures, patient education, and counseling for all women with reproductive capacity in plan years beginning on or after August 1, 2012 (the "Mandate"). See 45 CFR § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Register 8725 (Feb. 15, 2012), adopting and quoting Health Resources and Services Administration (HRSA) Guidelines, (http://www.hrsa.gov/womensguidelines).

113. The Mandate was enacted pursuant to statutory authority under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, as amended by the Health Care and Education Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (ACA). 77 Fed. Reg. 31, 8725 ("Affordable Care Act").

114. In its ruling, HHS included all FDA-approved contraceptives under the banner of preventive services, including contraception and abortifacients such "ella," a close cousin of the abortion pill RU-486. (http://www.hrsa.gov/womensguidelines), and possibly "Plan B."

115. The Mandate's reach seeks to control the decisions of employers, individuals and also the decisions of all insurance issuers (i.e. "Blue Cross/Blue Shield of Michigan," etc.). 42 USC § 300gg-13 (a)(1), (4). ("A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for evidence-based items or services that have in effect a rating of 'A' or 'B' in the current recommendations of the United States Preventive Services Task Force; . . . with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.").

116. The Mandate demands all insurance issuers include contraception, sterilization and abortifacients such as "ella" and possibly "Plan B" in all of its group and individual plans, not specifically exempted, beginning as of August 1, 2012 and effective on the anniversary of the employer's plan year.

117. The Mandate strong-arms individuals and employers, regardless of the number of employees the latter employ, to select an insurance plan which includes what HHS deemed "preventative care."

118. The Mandate husks all individuals and employers of their choice not to pay for the "preventative care," regardless of whether paying for such "services" violates one's conscience or deeply held religious beliefs or free speech rights.

119. Health insurance issuers include insurance companies such as Blue Cross/Blue Shield of Michigan, the Plaintiff's insurance provider.

120. The Mandate reaches even further than the Affordable Care Act to eliminate all employers and individuals from selecting a health insurance plan in which the insurance issuers do not automatically provide contraception and abortifacients.

121. Before HHS promulgated the Mandate, it accepted public comments to the 2010 interim final regulations from July 19, 2010 to September 17, 2010. Upon information and belief, a large number of groups filed comments, warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of services, including contraception, sterilization, abortion, and abortifacients.

122. HHS directed a private health policy organization, the Institute of Medicine ("IOM"), to suggest a list of recommended guidelines describing which drugs, procedures, and services should be covered by all health plans as preventative care for women. (http://www.hrsa.gov/womensguidelines).

123. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. These included the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists (ACOG), John Santelli, the National Women's Law Center, National Women's Health Network, Planned Parenthood Federation of America and Sara Rosenbaum. (http://www.nap.edu/openbook.php?record_id=13181&PAGE=217).

124. Upon information and belief, no religious groups or other groups that oppose government-mandated coverage of contraception, abortion, and related education and counseling were among the invited presenters.

125. One year after the first interim final rule was published, on July 19, 2011, the IOM published its recommendations. It recommended that the preventative services include "All Food and Drug Administration approved contraceptive methods." (Institute of Medicine, Clinical Preventive Services for Women: Closing the Gaps (July 19, 2011)).

126. Preventative services therefore include FDA-approved contraceptive methods such as birth-control pills; prescription contraceptive devices, including IUDs; ulipristal, also known as "ella" or the "week-after pill"; possibly "Plan B", and other drugs, devices, and procedures.

127. "Ella" and possibly "Plan B" can prevent the implantation of a human embryo in the wall of the uterus and can cause the death of an embryo. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus or to cause the death of an embryo each constitute an "abortion" as that term is used in federal law and Catholic teaching. Consequently, "ella" and possibly "Plan B" are abortifacients.

128. Thirteen days later, on August 1, 2011, without notice of rulemaking or opportunity for public comment, HHS, the United States Department of Labor, and the United States Department of Treasury adopted the IOM recommendations in full and promulgated an interim final rule ("the Mandate"), which requires that all "group health plan[s] and . . . health

insurance issuer[s] offering group or individual health insurance coverage" provide all FDA- approved contraceptive methods and procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. Health Resources and Services Administration issued guidelines adopting the IOM recommendations. (http://www.hrsa.gov/womensguidelines).

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

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

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

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

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

134. Upon information and belief, over 100,000 comments were submitted against the Mandate.

135. On October 5, 2011, six days after the comment period ended, Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that "we are in a war." She did not state whom she and NARAL Pro-Choice America were warring against, except that the implication was opponents included religious and like-minded organizations such as Plaintiff who have the temerity to exercise their constitutional rights described

above.

136. During a Congressional hearing on April 26, 2012, Sebelius incredulously admitted that she was totally unfamiliar with the United States Supreme Court's religious freedom doctrines and rulings.

137. Defendant Sebelius showed little concern for the constitutional issues involved in promulgating the Mandate. At the aforementioned congressional hearing, she admitted that prior to issuing the Mandate she did not review any written materials or any sort of legal memo from her general counsel discussing the effects of the Mandate on religious freedom.

138. Sebelius' admissions raise the question: "How could the current Administration's cabinet officer primarily responsible for drafting and promulgating the Mandate not know or carelessly disregard the U.S. Constitution, enforcing statutes and interpretative case law?

139. The Mandate fails to take into account the statutory and constitutional conscience rights of non-profit organizations like Plaintiff that exercise business practices in compliance with certain faith practices.

140. The Mandate requires that Plaintiff assist, provide, or fund coverage for contraceptives, abortifacients, and related education and counseling against its conscience and fundamental human justice, which may necessitate civil disobedience if this Court does not enjoin its application and effect.

141. The Mandate constitutes government-imposed influence and coercion on Plaintiff to change or violate its religious beliefs and freedom of speech.

142. The Mandate exposes Plaintiff to substantial fines.

143. As an employer with less than 50 full-time employees if Plaintiff provides insurance that conforms to their religious beliefs but not to the mandate, Plaintiff faces penalties of $100 a day per employee.

144. Under the United States Internal Revenue Code, 26 U.S.C. § 4980D(a), there is a tax imposed on any failure of a group plan to meet the requirements of Chapter 100 (relating to group plan requirements). Under 26 U.S.C. § 4980D(b), the amount of the tax is $100 for each day in the non-compliance period with respect to each individual to whom such failure relates. This tax penalty would generally be: 33 employees x 365 days per year x $100 each day = $1,204,500.00 per year tax.

145. Alternatively, Plaintiff can terminate health care coverage for all employees, which puts it at a disadvantage in the market place for the type of excellent, dedicated employees it has had the benefit of hiring. Plaintiff does not want to take this course of action.

146. The Mandate imposes a burden on Plaintiff's employee recruitment and retention efforts by creating uncertainty as to whether Plaintiff will continue to offer health insurance.

147. The Mandate places Plaintiff at a competitive disadvantage in their efforts to recruit and retain employees.

148. As Christians, Plaintiff's religious beliefs and the principle of stewardship require it to care for employees by providing insurance coverage for them and their families. Such health care coverage is a practical, real way of living its mission upholding the fundamental right to life.

149. The Mandate forces Plaintiff its employees, members and donors to be complicit in the purchasing and subsidizing others' acquisition of abortifacient drugs in violation of Plaintiff's religious beliefs that doing so is gravely immoral and equivalent to assisting another to destroy innocent human life.

150. Plaintiff has sincere religious and free speech objections to providing coverage for contraceptive drugs and devices such as the IUD, "ella" and possibly "Plan B", since it believes those drugs could prevent a human embryo, which they understand to include a fertilized egg before it implants in the uterus, from implanting in the wall of the uterus, causing the death of a human being.

151. Plaintiff considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

152. Plaintiff believes that "ella" and possibly "Plan B" can cause the death of the embryo, which is a person.

153. "Ella" and possibly "Plan B" can prevent the implantation of a human embryo in the wall of the uterus.

154. The IUD can prevent the implantation of a human embryo in the wall of the uterus.

155. The IUD, "ella" and possibly "Plan B" can cause the death of the embryo.

156. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus constitutes an "abortion" as that term is used in federal law.

157. The use of artificial means to cause the death of a human embryo

constitutes an "abortion" as that term is used in federal law.

158. The Mandate forces Plaintiff to provide emergency contraception, and "ella," and possibly "Plan B", free of charge, regardless of the ability of insured persons to obtain these drugs from other sources.

159. The Mandate forces Plaintiff to fund education and counseling concerning abortion that directly conflicts with Plaintiff's religious beliefs and teachings, and constitutionally protected right of free speech.

160. Plaintiff could not cease in providing its employees with health insurance coverage without likewise violating its religious duty to provide for the health and well being of its employees and their families.

161. The Mandate forces Plaintiff to choose between violating its religious beliefs and protected right of free speech and incurring substantial fines, or terminating their employee or individual health insurance coverage.

162. Providing counseling and education about abortion directly undermines and subverts the explicit messages and speech of Plaintiff.

163. Group health plans and insurance issuers have been subject to the Mandate as of August 1, 2012.

164. Plaintiff's plan year begins on March 1 of each year, and has been subject to the Mandate as of that date.

165. Plaintiff has already devoted significant institutional resources, including attorney, accountant, and human resource, Board of Director, outside professionals and staff time and funds, to determine how to respond to the Mandate. Plaintiff anticipates this will continue in the future.

The Narrow, Discretionary Religious Exemption and Exemption for Non-profit Corporations

166. The Mandate indicates that the Health Resources and Services Administration ("HRSA") "may," grant religious exemptions to certain religious employers. 45 C.F.R. § 147.130(a)(iv)(A).

167. According to 45 C.F.R. § 147.130(a)(iv)(B):

> "For purposes of this subsection, a 'religious employer" is an organization that meets all of the following criteria:
>
> > *"(1)* The inculcation of religious values is the purpose of the organization.
> > *"(2)* The organization primarily employs persons who share the religious tenets of the organization.
> > *"(3)* The organization serves primarily persons who share the religious tenets of the organization.
> > *"(4)* The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended."

168. The Mandate imposes no constraint on HRSA's discretion to grant exemptions to some, all, or none of the organizations meeting the Mandate's definition of "religious employers."

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

170. Plaintiff is not "religious" enough under this definition in several respects, including: a) purposes other than the "inculcation of religious values," b) it does not primarily serve persons who share the religious tenets of the organization (nor does it even require faith in God to be a member of Plaintiff), and c) it is not itself a church, integrated auxiliary of a particular church, convention or association of a church, or the exclusively religious

activities of a religious order or sect.

171. There are no clear guidelines restricting the discretion of Defendants when applying the Mandate and its many exceptions.

172. The Mandate fails to protect the statutory and constitutional conscience rights of religiously motivated organizations like Plaintiff, even though those rights were repeatedly raised in the public comments.

173. The Mandate requires that Plaintiff provide coverage for abortifacient methods, and education and counseling related to abortifacients, against its conscience.

174. The Mandate constitutes government-imposed coercion on Plaintiff to change or violate its religious beliefs.

175. The Mandate exposes Plaintiff to substantial fines for refusal to change or violate its religious beliefs and free speech rights.

176. The Mandate will impose a burden on Plaintiff's employee recruitment efforts by creating uncertainty as to whether or on what terms it will be able to offer health insurance beyond the Mandate's effect or will suffer penalties therefrom.

177. Any alleged interest Defendants have in providing free FDA-approved abortifacients without cost-sharing could be advanced through other, more narrowly tailored mechanisms that do not burden the fundamental rights of Plaintiff.

178. Plaintiff has expended and will continue to expend a great deal of time and money ascertaining the requirements of the Mandate and how it applies to the

Plaintiff's health insurance benefits.

179. Without injunctive and declaratory relief as requested in this Verified Complaint, the Plaintiff is suffering and will continue to suffer irreparable harm.

180. Plaintiff has no adequate remedy at law.

CLAIMS

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

181. Plaintiff incorporates by reference paragraph 1 through 180 into Count I as though set forth completely within.

182. 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.

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

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

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

186. The Mandate furthers no compelling governmental interest.

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

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

189. The Mandate chills Plaintiff's religious exercise.

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

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

192. 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.

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

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

195. 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.

196. Absent injunctive and 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

197. Plaintiff incorporates by reference paragraph 1 through 196 into Count II as though set forth completely within.

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

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

200. 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.

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

202. 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.

203. Absent injunctive and 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

204. Plaintiff incorporates by reference paragraph 1 through 203 into Count III as though set forth completely within.

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

206. 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."

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

208. 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.

209. Absent injunctive and 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

210. Plaintiff incorporates by reference paragraph 1 through 209 into Count IV as though set forth completely within.

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

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

213. 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."

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

215. 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.

216. Absent injunctive and 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

217. Plaintiff incorporates by reference paragraph 1 through 216 into Count V as though set forth completely within.

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

219. 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..."

220. 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.

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

222. 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.

223. Defendants' actions violate and contradict their own government's approval of Plaintiff's exclusive mission when granting Section 501(C)(3) tax-exempt status in May 1986.

224. 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.

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

226. Absent injunctive and 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

227. Plaintiff incorporates by reference paragraph 1 through 226 into Count VI as though set forth completely within.

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

229. 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.

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

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

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

COUNT VII. Violation of the Religious Freedom Restoration Act

233. Plaintiff incorporates by reference paragraph 1 through 232 into Count VII as though set forth completely within.

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

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

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

237. The Mandate chills Plaintiff's religious exercise.

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

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

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

241. The Mandate furthers no compelling governmental interest.

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

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

244. 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.

245. Absent injunctive and declaratory relief against the Mandate, Plaintiff has

been and will continue to be harmed.

COUNT VIII. Violation of the Administrative Procedure Act

246. Plaintiff incorporates by reference paragraph 1 through 245 into Count VIII as though set forth completely within.

247. 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."

248. 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."

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

250. 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).

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

252. 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.

253. 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.

254. 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.

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

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

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

258. 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."

259. 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.

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

261. 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.

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

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

264. Absent injunctive and 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. Issue both a preliminary and a permanent injunction prohibiting and enjoining Defendants from enforcing the Mandate against Plaintiff and other religious individuals, employers, companies and organizations that object to funding and providing insurance coverage for abortion, abortifacients, and related education and counseling;

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: 11/4, 2013

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VERIFICATION BY PLAINTIFF'S AUTHORIZED REPRESENTATIVE

COUNTY OF KENT)
) ss
STATE OF MICHIGAN)

Pursuant to 28 U.S.C. §1746 I declare under penalty of perjury of the laws of the United States that the factual statements set forth above are true and accurate to the best of my knowledge, information, and belief.

Barbara A. Listing

Barbara A. Listing, President
Right to Life of Michigan