

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BELMONT ABBEY COLLEGE)
100 Belmont-Mt. Holly Rd.)
Belmont, NC 28012;)

Plaintiff,)

v.)

KATHLEEN SEBELIUS, Secretary)
of the United States Department of)
Health and Human Services,)

UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN)
SERVICES,)

HILDA SOLIS, Secretary of the)
United States Department of Labor,)

UNITED STATES DEPARTMENT)
OF LABOR,)

TIMOTHY GEITHNER, Secretary)
of the United States Department of)
the Treasury, and)

UNITED STATES DEPARTMENT)
OF THE TREASURY,)

Defendants.)

CIVIL ACTION No. _____

COMPLAINT

Case: 1:11-cv-01989
Assigned To : Kessler, Gladys
Assign. Date : 11/10/2011
Description: Civil Rights-Non-Employ.

COMPLAINT

Comes now Plaintiff Belmont Abbey College, by and through its attorneys, and states as follows:

NATURE OF THE ACTION

1. This is a challenge to regulations issued under the 2010 “Affordable Care Act” (colloquially referred to as “Obamacare”) that force thousands of religious organizations to violate their deepest religious beliefs.

2. Plaintiff Belmont Abbey College is a small religious college, whose religious beliefs forbid it from participating in, paying for, training others to engage in, or otherwise supporting contraception, sterilization, or abortion. Belmont Abbey College is among the many American religious organizations that hold these beliefs.

3. With full knowledge of these beliefs, the government issued an administrative rule (“the Mandate”) that runs roughshod over Belmont Abbey College’s religious beliefs, and the beliefs of millions of other Americans by forcing them to pay for contraception, sterilization, abortion, and related education and counseling.

4. The government’s Mandate unconstitutionally coerces Belmont Abbey College to violate its deeply-held religious beliefs under threat of heavy fines and penalties. The Mandate also forces Belmont Abbey College to fund government-dictated speech that is directly at odds with its own speech and religious teachings. Having to pay a fine to the taxing authorities for the privilege of practicing one’s religion or controlling one’s own speech is un-American, unprecedented, and flagrantly unconstitutional.

5. The government's refusal to accommodate conscience is also highly selective. The government obviously does not believe every single insurance plan in the country needs to cover these services. Rather, the government has provided *thousands* of exemptions from the Affordable Care Act for other groups, including large corporations such as McDonald's, often for reasons of commercial convenience. And the government allows a variety of other reasons—from the age of the plan to the size of the employer—to qualify a plan for an exemption. But the government refuses to give the same level of accommodation to groups exercising their fundamental First Amendment freedoms.

6. The Defendants' actions therefore violate Belmont Abbey College's right to freedom of religion, as secured by the First Amendment of the United States Constitution and a civil rights statute, the Religious Freedom Restoration Act ("RFRA").

7. Defendants' actions also violate Belmont Abbey College's right to the freedom of speech, as secured by the First Amendment of the United States Constitution.

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

9. Had Belmont Abbey College's religious beliefs been obscure or unknown, the government's actions might have been an accident. But because the government acted with full knowledge of those beliefs, and because it allows plans not to cover these services for a wide range of reasons *other than* religion, the Mandate can be interpreted as nothing other than a deliberate attack by the government on the religious beliefs of Belmont Abbey College and millions of other Americans. The College seeks declaratory and injunctive relief to protect against this attack.

JURISDICTION AND VENUE

10. 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.

11. 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 the Defendants are located in this District.

IDENTIFICATION OF PARTIES

12. Plaintiff Belmont Abbey College is a private Benedictine Catholic College in Belmont, North Carolina. Founded by an order of monks in 1876, Belmont Abbey finds its center in Jesus Christ and seeks to provide an educational environment in which the principles of Holy Scripture as taught by the Catholic Church are held up as an ideal.

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

14. Defendant Kathleen 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. Sebelius is sued in her official capacity only.

15. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration and enforcement of the Mandate.

16. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Solis is sued in her official capacity only.

17. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

18. Defendant Timothy Geithner is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Geithner is sued in his official capacity only.

19. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

FACTUAL ALLEGATIONS

I. The College's Religious Beliefs and Practices Related to Insurance for Contraception, Sterilization, and Abortion.

20. Belmont Abbey College is a small liberal arts school located outside of Charlotte, North Carolina. It was founded in 1876 by a congregation of Benedictine monks, who built the campus with bricks they formed by hand from the red clay of the North Carolina soil.

21. Today, the monastery operates in the center of campus, and the monks of the Abbey continue to live on the campus of the College and sponsor it. They provide significant financial support for the College, and the Monks also serve on the Board of Trustees that governs the College. The head of the monastery, Abbot Placid, serves as the College's Chancellor.

22. Faith is central to the educational mission of Belmont Abbey College. The College describes itself as a "Benedictine Catholic College that finds its center in Jesus Christ. Today, as in years past and in the future, our college is inspired by St. Benedict's desire 'that in all things God may be glorified.'" The College adheres to the Apostolic Constitution *Ex Corde Ecclesiae* of Pope John Paul II, which is the relevant law of the Roman Catholic Church for Catholic colleges and universities.

23. Belmont Abbey College’s purpose is expressed in its mission statement: “Our mission is to educate students in the liberal arts and sciences so that in all things God may be glorified. In this endeavor, we are guided by the Catholic intellectual tradition and the Benedictine spirit of prayer and learning. Exemplifying Benedictine hospitality, we welcome a diverse body of students and provide them with an education that will enable them to lead lives of integrity, to succeed professionally, to become responsible citizens, and to be a blessing to themselves and others.”

24. Belmont Abbey College holds religious beliefs that include traditional Christian teachings on the sanctity of life. Belmont Abbey College believes and teaches 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. Belmont Abbey College therefore believes and teaches that abortion ends a human life and is a grave sin.

25. Belmont Abbey College’s religious beliefs also include traditional Christian teaching on the nature and purpose of human sexuality. In particular, Belmont Abbey College believes, in accordance with Pope Paul VI’s 1968 encyclical, *Humanae Vitae*, that human sexuality has two primary purposes: to “most closely unit[e] husband and wife” and “for the generation of new lives.” Accordingly, the College believes, with the Catholic Church, that “[t]o use this divine gift destroying, even if only partially, its meaning and its purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will.” Therefore, Belmont Abbey College believes and teaches that “any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means”—including contraception and sterilization—is a grave sin.

26. Belmont Abbey College has approximately 1700 students.

27. Belmont Abbey College has 200 full-time and 105 part-time employees.

28. As part of its commitment to Catholic education, in accordance with Catholic social teaching, Belmont Abbey also promotes the well-being and health of its students and employees. This includes provision of health services and health insurance for its students and employees.

29. Also as a part of this religious commitment, Belmont Abbey provides insurance policies to its full-time faculty and staff, and to its undergraduate students.

30. As part of its religious commitment, Belmont Abbey ensures that its insurance policies do not cover drugs, devices, services or procedures inconsistent with its faith. In particular, its insurance plans do not cover sterilization, contraception, or abortion.

31. Belmont Abbey College cannot provide health care insurance covering artificial contraception, sterilization, or abortion, or related education and counseling, without violating its deeply held religious beliefs.

32. The College has maintained this stance despite complaints to the EEOC, an EEOC investigation, and a potential lawsuit over the decision not to provide contraceptive coverage. The College believes that any change would be in violation of its Christian faith.

33. Belmont Abbey College's plan year will begin on January 1, 2013.

II. The Affordable Care Act

34. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act."

35. The Affordable Care Act regulates the national health insurance market by directly regulating “group health plans” and “health insurance issuers.”

36. The Act does not apply equally to all insurers.

37. The Act does not apply equally to all individuals.

38. The Act does not apply to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

39. According to the United States census, more than 20 million individuals are employed by firms with fewer than 20 employees. <http://www.census.gov/econ/smallbus.html>.

40. Certain provisions of the 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).

41. The Act’s preventive care requirements do not apply to employers who provide so-called “grandfathered” health care plans.

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

43. HHS has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans through at least 2014, and that a third of small employers with between 50 and 100 employees may do likewise. <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html>.

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

45. The Act is not neutral because some groups, both secular and religious, enjoy exemptions from the law, while certain religious groups do not.

46. The Act creates a system of individualized exemptions.

47. The Department of Health and Human Services has the authority under the Act to grant compliance waivers to employers and other health insurance plan issuers (“HHS waivers”).

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

49. HHS decides whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers.

50. Upon information and belief, thousands of HHS waivers have been granted.

51. The Act is not neutral because some secular and religious groups have received statutory exceptions while other religious groups have not.

52. The Act is not neutral because some secular and religious groups have received HHS waivers while other religious groups have not.

53. The Act is not generally applicable because Defendants have granted numerous waivers from complying with its requirements.

54. The Act is not generally applicable because it does not apply equally to all individuals and plan issuers.

55. Defendants’ waiver practices create a system of individualized exemptions.

III. The Preventive Care Mandate

56. One of the provisions of the Affordable Care Act mandated that health plans “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 directed the Secretary of Health and Human Services to determine what would constitute “preventative care” under the mandate. 42 U.S.C § 300gg–13(a)(4).

57. On July 19, 2010, HHS, along with the Department of Treasury and the Department of Labor, published an interim final rule under the Affordable Care Act. 75 Fed. Reg. 41726 (2010).¹ 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).

58. HHS accepted public comments to the 2010 interim final rule until September 17, 2010. A number of groups filed comments warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of health care, including contraception, sterilization, and abortion.

59. 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. *See* <http://www.hrsa.gov/womensguidelines>.

60. 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 were the

¹ For ease of reading, references to “HHS” in this Complaint are to all three Departments.

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.

61. No religious groups or other groups that oppose government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters.

62. 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 sterilization procedures and “All Food and Drug Administration approved contraceptive methods [and] sterilization procedures.” Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* (July 19, 2011).

63. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices, including IUDs; Plan B, also known as the “morning-after pill”; and ulipristal, also known as “ella” or the “week-after pill”; and other drugs, devices, and procedures.

64. Thirteen days later, on August 1, 2011, without notice of rulemaking or opportunity for public comment, HHS, the Department of Labor, and the 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 sterilization procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. On the same day HRSA issued guidelines adopting the IOM recommendations. <http://www.hrsa.gov/womensguidelines>.

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

66. The Mandate went into effect immediately as an “interim final rule.”

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

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

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

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

71. On October 5, 2011, six days after the comment period ended, Defendant 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.

72. The Mandate fails to take into account the statutory and constitutional conscience rights of religious organizations like the College which have been pointed out in comments.

73. The Mandate requires that the College provide coverage for contraception, sterilization, abortion, and related education and counseling against its conscience in a manner that is contrary to law.

74. The Mandate constitutes government-imposed pressure and coercion on the College to change or violate its religious beliefs.

75. The Mandate exposes the College to substantial fines for refusal to change or violate its religious beliefs.

76. The Mandate imposes a burden on the College's employee and student recruitment efforts by creating uncertainty as to whether the College will be able to offer health insurance beyond 2012.

77. The Mandate places the College at a competitive disadvantage in its efforts to recruit and retain employees and students.

78. The Mandate forces the College to provide contraception, sterilization, and some abortifacient drugs in violation of the College's religious beliefs.

79. The Mandate forces the College to provide emergency contraception in violation of its religious beliefs.

80. The College has a sincere religious objection to providing coverage for Plan B and ella 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 the embryo.

81. The College considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

82. The College believes that Plan B and ella can cause the death of the embryo.

83. Plan B can prevent the implantation of a human embryo in the wall of the uterus.

84. Ella can prevent the implantation of a human embryo in the wall of the uterus.

85. Plan B and ella can cause the death of the embryo.

86. 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.

87. The use of artificial means to cause the death of a human embryo constitutes an “abortion” as that term is used in federal law.

88. The Mandate forces the College to provide emergency contraception, including Plan B and ella free of charge, regardless of the ability of insured persons to obtain these drugs from other sources.

89. The Mandate forces the College to fund education and counseling concerning contraception, sterilization, and abortion that directly conflicts with the College’s religious beliefs and teachings.

90. The College could not terminate its employees and students from health insurance coverage without violating its religious duty to provide for the health and well-being of its employees and students.

91. The Mandate forces the College to choose among violating its religious beliefs, incurring substantial fines, or terminating its employee and student health insurance coverage.

92. Providing this counseling and education directly undermines the explicit messages and speech of the College.

93. Group health plans and issuers will be subject to the Mandate starting with the first insurance plan year that begins on or after August 1, 2012.

94. The College has already had to devote significant institutional resources, including both staff time and funds, to determining how to respond to the Mandate. The College anticipates continuing to make such expenditures of time and money up until the time that the Mandate goes into effect.

IV. The Narrow and Discretionary Religious Exemption

95. The Mandate indicates that 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).

96. The Mandate allows HRSA to grant exemptions for “religious employers” who “meet[] 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.” 45 C.F.R. § 147.130(a)(iv)(B).

97. 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.”

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

99. Most religious organizations, including the College, have more than one purpose.

100. For most religious organizations, including the College, the inculcation of religious values is only one purpose among others.

101. Many religious organizations, including the College, employ many persons who do not share the religious organization’s beliefs.

102. Many religious organizations, including the College, serve many persons who do not share the religious tenets of the religious organization.

103. The College reasonably expects that it will be subject to the Mandate despite the existence of the exemption.

104. The College has no conscientious objection to providing preventive services such as mammograms.

CLAIMS

COUNT I

Violation of the Religious Freedom Restoration Act Substantial Burden

105. The College incorporates by reference all preceding paragraphs.

106. The College's sincerely held religious beliefs prohibit it from providing coverage for contraception, sterilization, abortion, or related education and counseling. The College's compliance with these beliefs is a religious exercise.

107. The Mandate creates government-imposed coercive pressure on the College to change or violate its religious beliefs.

108. The Mandate chills the College's religious exercise.

109. The Mandate exposes the College to substantial fines for its religious exercise.

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

111. The Mandate imposes a substantial burden on the College's religious exercise.

112. The Mandate furthers no compelling governmental interest.

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

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

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

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

COUNT II

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

117. The College incorporates by reference all preceding paragraphs.

118. The College's sincerely held religious beliefs prohibit it from providing coverage for contraception, sterilization, abortion, or related education and counseling. The College's compliance with these beliefs is a religious exercise.

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

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

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

122. The Mandate furthers no compelling governmental interest.

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

124. The Mandate creates government-imposed coercive pressure on the College to change or violate its religious beliefs.

125. The Mandate chills the College's religious exercise.

126. The Mandate exposes the College to substantial fines for its religious exercise.

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

128. The Mandate imposes a substantial burden on the College's religious exercise.

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

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

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

COUNT III

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

132. The College incorporates by reference all preceding paragraphs.

133. The College's sincerely held religious beliefs prohibit it from providing coverage for contraception, sterilization, abortion, or related education and counseling. The College's compliance with these beliefs is a religious exercise.

134. 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 the College to comply with its religious beliefs.

135. Defendants promulgated both the Mandate and the religious exemption to the Mandate in order to suppress the religious exercise of The College and others.

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

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

COUNT IV

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

138. The College incorporates by reference all preceding paragraphs.

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

140. 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.”

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

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

COUNT V

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

143. The College incorporates by reference all preceding paragraphs.

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

145. 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.”

146. The Mandate and Defendants’ threatened enforcement of the Mandate therefore violate the College’s rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

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

COUNT VI

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

148. The College incorporates by reference all preceding paragraphs.

149. The College teaches that contraception, sterilization, and abortion violate its religious beliefs.

150. The Mandate would compel the College to subsidize activities that the College teaches are violations of the College's religious beliefs.

151. The Mandate would compel the College to provide education and counseling related to contraception, sterilization, and abortion.

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

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

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

COUNT VII

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

155. The College incorporates by reference all preceding paragraphs.

156. The College teaches that contraception, sterilization, and abortion violate its religious beliefs.

157. The Mandate would compel the College to subsidize activities that the College teaches are violations of the College's religious beliefs.

158. The Mandate would compel the College to provide education and counseling related to contraception, sterilization, and abortion.

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

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

COUNT VIII

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

161. The College incorporates by reference all preceding paragraphs.

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

163. The Mandate vests HRSA with unbridled discretion to determine whether a religious organization such as the College “primarily” serves and employs members of the same faith as the organization.

164. Defendants’ actions therefore violate the College’s 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.

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

COUNT IX

Violation of the Administrative Procedure Act Lack of Good Cause

166. The College incorporates by reference all preceding paragraphs.

167. 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.’

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

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

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

COUNT X

**Violation of the Administrative Procedure Act
Arbitrary and Capricious Action**

171. The College incorporates by reference all preceding paragraphs.

172. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on the College and similar organizations.

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

174. Thus, 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.

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

COUNT XI

**Violation of the Administrative Procedure Act
Agency Action Not in Accordance with Law
Weldon Amendment
Religious Freedom Restoration Act
First Amendment to the United States Constitution**

176. The College incorporates by reference all preceding paragraphs.

177. The Mandate is contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008).

178. The Weldon Amendment provides that “[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services]

may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”

179. The Mandate requires issuers, including the College, to provide coverage of all Federal Drug Administration-approved contraceptives.

180. Some FDA-approved contraceptives cause abortions.

181. As set forth above, the Mandate violates RFRA and the First Amendment.

182. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

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

COUNT XII

Violation of the Administrative Procedure Act Agency Action Not in Accordance with Law Affordable Care Act

184. The College incorporates by reference all preceding paragraphs.

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

186. Section 1303(b)(1)(A) 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.”

187. 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.

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

189. The Mandate requires issuers, including the College, to provide coverage of all Federal Drug Administration-approved contraceptives.

190. Some FDA-approved contraceptives cause abortions.

191. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

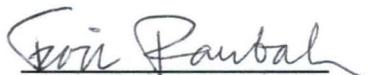
192. Absent injunctive and declaratory relief against the Mandate, the College has been and will continue to be harmed.

PRAYER FOR RELIEF

Wherefore, the College requests that the Court:

- a. Declare that the Mandate and Defendants' enforcement of the Mandate against the College violate the First Amendment of the United States Constitution;
- b. Declare that the Mandate and Defendants' enforcement of the Mandate against the College violate the Religious Freedom Restoration Act;
- c. Declare that the Mandate was issued in violation of the Administrative Procedure Act;
- d. Issue an order prohibiting Defendants from enforcing the Mandate against the College and other religious organizations that object to providing insurance coverage for contraceptives (including abortifacient contraceptives), sterilization procedures, and related education and counseling;
- e. Award the College 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 this 10th day of November, 2011.



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(admission to the bar of this Court in process)

Hannah C. Smith, DC Bar No. 480368

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