IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-02105-REB-MJW

COLORADO CHRISTIAN UNIVERSITY,

Plaintiff,

v.

KATHLEEN SEBELIUS, Secretary, U.S. Dep't of Health and Human Services, *et al.*,

Defendants.

PLAINTIFF'S MOTION TO EXPEDITE SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
FOR A PRELIMINARY INJUNCTION

On July 1, 2014, Plaintiff Colorado Christian University (CCU) will face the choice of either violating its religious beliefs or facing millions of dollars in fines. To avoid that impossible dilemma, CCU initiated this lawsuit on August 7, 2013, alleging that the government's mandate ("Mandate") for CCU to facilitate access to drugs and devices it deems morally wrong violates the Religious Freedom Restoration Act (RFRA), the Administrative Procedures Act, and the First Amendment's Free Exercise, Establishment, and Free Speech Clauses. CCU sought summary judgment on four of its claims on September 30, 2013. Because Hobby Lobby needs relief from the Mandate before July

1, it now asks the Court to expedite its summary judgment ruling or, in the alternative, to grant a preliminary injunction staying enforcement of the Mandate pending summary judgment and any appeal arising therefrom.[1]

BACKGROUND

The Contraception Mandate

The Affordable Care Act ("ACA") mandates that any "group health plan" must provide coverage for certain "preventive care" without "any cost sharing." 42 U.S.C. § 300gg-13(a). The ACA allowed the Health Resources and Services Administration (HRSA), a division of Defendant HHS, to define "preventative care." 42 U.S.C. § 300gg-13(a)(4).

HRSA's definition includes FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling, including "emergency contraception" such as Plan B (the "morning-after" pill) and Ella (the "week-after" pill). Ex. B-1; Ex. B-2 at 16-17. The FDA's Birth Control Guide notes that these drugs and devices may work by preventing "attachment (implantation)" of a fertilized egg in the uterus. *Id*. at 16-19. HHS allowed HRSA "discretion" to create an exemption for "certain religious employers." 76 Fed. Reg. 46621-01, 46623 (published Aug. 3, 2011).

HHS issued the Mandate as a final rule on June 28, 2013. 78 Fed. Reg. 39870-01 (published July 2, 2013). It exempts only certain entities as "religious employers"—namely, institutional churches, their integrated auxiliaries and the exclusively religious activities of any religious order—if they are "organized and operate[d]" as nonprofit entities and "referred to in section 6033" of the Internal Revenue Code. *Id*. at 39874(a);

[1] Defendants have indicated through counsel that they do not oppose the motion to expedite summary judgment proceedings but do oppose the motion for preliminary injunction.

45 C.F.R. § 147.131(a).[2] The final rule creates a claimed "accommodation" for any "non-exempt" organization that (1) "[o]pposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. at 39874; 45 C.F.R. § 147.131(b). These "non-exempt" entities must provide the certification to their third party administrator or insurer before "the beginning of the first plan year" beginning on or after January 1, 2014. 78 Fed. Reg. at 39875. CCU's self-insured employee plan runs from July 1 of each year. Ex. A ¶ 38. Its insured student plan runs from August 21 of each year. Ex. A ¶ 39.

The non-exempt organization's required delivery of the certification triggers the third party administrator's or insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries." *Id.* at 39875-76; *see* 45 C.F.R. § 147.131(c)(2)(i)(B); 29 C.F.R. § 2590.715–2713A; Ex. B-7. If an administrator declines to provide the services, the religious organization must find one that is willing. 78 Fed. Reg. at 39880.

If the third party administrator is willing, the religious organization—via its self-certification—must expressly designate the administrator as its "plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries." *Id.* at 39879; Ex. B-7. The self-certification

[2] Whether an entity is an "integrated auxiliary" of a church turns primarily on the degree of the church's control over and funding of the entity. *See* 26 C.F.R. § 1.6033-2(h)(2) & (3) (affiliation); *id.* § 1.6033-2(h)(4) (funding). The definition was for tax considerations, not religious conscience concerns, and thus can arbitrarily turn on whether a religious non-profit receives 49% or 50% of financial support from a formal church in a given year.

must notify the third party administrator of its "obligations set forth in these final regulations." *Id.* at 39879.

By contrast to this convoluted "accommodation" for "non-exempt" religious organizations, many secular businesses are exempt from the Mandate. Employers who provide "grandfathered" health care plans—estimated by Defendants for 2013 to cover anywhere from 56 to 109 million people—are exempt. *See* 42 U.S.C. § 18011 (2010); Ex. B-5 at 4. Employers with fewer than fifty employees, covering an estimated 34 million individuals, also may avoid certain fines under the Mandate. *See* 26 U.S.C. § 4980H(c)(2)(A); 26 U.S.C. § 4980D(d); Ex. B-6 at 1.

CCU and the Mandate's Impact

CCU is a small, "Christ-centered" liberal arts university committed to offering a complete education that develops students intellectually, professionally, and spiritually. Ex. A ¶¶ 4-5. It does not affiliate with any specific denomination, but unites with the broad, historic evangelical faith. Ex. A ¶ 6. Consistent with its religious mission, CCU strives to manifest its beliefs in all aspects of its operations. Ex. A ¶¶ 7-9. All CCU employees profess a Statement of Faith, and all students commit to a Lifestyle Covenant. Ex. A ¶¶ 10-11. As part of its commitment to Christian education, CCU promotes both the spiritual and physical well-being of its employees and students, including by providing generous health insurance. Ex. A ¶ 12. Its employee plan covers around 700 individuals. Ex. A ¶ 27. The student plan currently covers around 70 individuals. Ex. A ¶ 28.

CCU believes and teaches that each human being bears the image of God, and that all human life is sacred from the moment of conception. Ex. A ¶ 13. One of CCU's Strategic Objectives is to promote the sanctity of life. Ex. A ¶¶ 14-15. Accordingly, its

insured student health plan excludes coverage for abortions and all contraceptives. Ex. A ¶ 19. Its self-insured employee health plan excludes coverage for all abortions, and for emergency contraceptives like Plan B, Ella, and for certain IUDs. Ex. A ¶¶ 20, 35. CCU believes the ability of these drugs and devices to prevent an embryo from implanting in the uterus would end an innocent human life. Ex. A ¶¶ 21, 36. It would be a violation of CCU's religious beliefs concerning the sanctity of life, and a betrayal of its employees', students', and donors' trust, to deliberately arrange for insurance coverage that facilitates access to abortion-inducing drugs and devices or related educational and counseling. Ex. A ¶¶ 16-18, 22, 36-37.

CCU does not qualify for the religious employer exception, because it is not a church, a church's integrated auxiliary, or a convention or association of churches. Ex. A ¶ 41; *see also* 26 U.S.C. § 6033(a). To qualify for the "accommodation," CCU would need to execute the self-certification prior to July 1, 2014, Ex. A ¶¶ 38-39, and designate its third-party administrator as an "ERISA administrator" that will pay for the objected-to services, 29 C.F.R. § 2590.715-2713A(b). Expressly designating a third party administrator as "an ERISA section 3(16) plan administrator" and notifying the administrator of its "obligations set forth in the[] final regulations" would make CCU morally complicit in providing the objected-to drugs and services. Ex. A ¶ 23; 78 Fed. Reg. at 39879. In other words, CCU's self-certification would set in motion a chain of events that would not otherwise be possible, resulting in its employees and students receiving free abortifacients through the insurance plans that CCU provides and pays for. Ex. A ¶ 24; 78 Fed. Reg. at 39875-77. Acting as the authorizer and conduit for these products violates CCU's Christian faith. Ex. A ¶ 25. From CCU's perspective, requiring its agents to provide free access to

abortifacient services is no different than directly providing that access itself—CCU cannot simply outsource its conscience. Ex. A ¶ 26.

If CCU maintains its healthcare plans without participating in HHS's accommodation, it faces fines of over $27 million annually. Ex. A ¶¶ 27-28; 26 U.S.C. 4980D(b)(1). If it simply dropped its healthcare plans, contrary to its religious convictions, it would face fines of more than $1.3 million annually, Ex. A ¶ 29, and would be placed at a severe competitive disadvantage in its efforts to recruit and retain employees and students. Ex. A ¶¶ 30-33.

ARGUMENT

I. The Court should expedite Summary Judgment proceedings.

Unless CCU obtains relief by July 1, 2014, it will face massive penalties. CCU therefore needs this Court to rule on its request for relief before that date. The simplest way to do so would be to expedite consideration of CCU's pending motion for partial summary judgment, because there are no material disputes of fact and the legal issues for either summary judgment or a preliminary injunction are essentially identical. Defendants do not oppose CCU's request for expedited consideration.

II. Alternatively, The Court should enter a Preliminary Injunction.

A preliminary injunction is warranted because (1) CCU has a strong likelihood of success on the merits, (2) there is a threat of irreparable harm, which (3) outweighs any harm to Defendants, and (4) the injunction would not adversely affect the public interest. *See, e.g., Awad v. Ziriax,* 670 F.3d 1111, 1125 (10th Cir. 2012). Furthermore, to the extent the Court may be concerned about ruling on summary judgment while closely related cases that arose in this Circuit are pending before the

United States Supreme Court (*Hobby Lobby v. Sebelius*, S. Ct. No. 13-354) and Tenth Circuit Court of Appeals (*Little Sisters of the Poor*, 10th Cir. No. 13-1540), a preliminary injunction would allow this Court to stay any further proceedings pending resolution of those cases and a determination of their precedential impact.

A. CCU is likely to succeed on the merits.

In twenty-one separate cases, courts have already ruled on claims brought by nonprofit religious organizations that are essentially identical to those brought by CCU here. In twenty of those cases, courts—including the United States Supreme Court in reversing the Tenth Circuit's order in *Little Sisters of the Poor*—have granted at least preliminary relief under RFRA so that religious organizations can litigate their cases to conclusion without accruing massive penalties for their religious exercise.[3] This alone

[3] *See* Order, *Little Sisters of the Poor v. Sebelius*, No. 13A691 (S. Ct. Jan. 24, 2014); *Priests for Life v. Health & Human Services*, No. 13-5368 (D.C. Cir. Dec. 31, 2013); *Roman Catholic Archbishop of Washington v. Sebelius*, No. 13-5371 (D.C. Cir. Dec. 31, 2013); *Catholic Diocese of Nashville v. Sebelius*, No. 13-6640 (6th Cir. Dec. 31, 2013); *Michigan Catholic Conference v. Sebelius*, No. 13-2723 (6th Cir. Dec. 31, 2013); *Roman Catholic Archdiocese of Atlanta v. Sebelius*, 1:12-cv-03489-WSD (N.D. Ga. Mar. 26, 2014); *Ave Maria Found. v. Sebelius*, No. 2:13-cv-15198 2014 WL 117425 (E.D. Mich. Jan. 13, 2014); *Catholic Diocese of Beaumont v. Sebelius*, No. 1:13-cv-709, 2014 WL 31652 (E.D. Tex. Jan. 2, 2014); *Roman Catholic Diocese of Fort Worth v. Sebelius*, No. 4:12-cv-00314 (N.D. Tex. Dec. 31, 2013); *Sharpe Holdings, Inc. v. United States Dep't of Health & Human Srvs.*, No. 2:12-cv-92, 2013 WL 6858588 (E.D. Mo. Dec. 30, 2013); *Grace Schools v. Sebelius,* No. 3:12-CV-459, 2013 WL 6842772 (N.D. Ind. Dec. 27, 2013); *Diocese of Fort Wayne-S. Bend, Inc. v. Sebelius*, No. 1:12-cv-159, 2013 WL 6843012 (N.D. Ind. Dec. 27, 2013); *E. Tex. Baptist Univ. v. Sebelius*, No. 12-cv-3009, 2013 WL 6838893 (N.D. Tex. Dec. 27, 2013); *Southern Nazarene Univ. v. Sebelius,* No. 5:13-cv-1015, 2013 WL 6804265 (W.D. Okla. Dec. 23, 2013); *Geneva College v. Sebelius,* No. 2:12-cv-00207, 2013 WL 6835094 (W.D. Pa. Dec. 23 2013); *Legatus v. Sebelius,* No. 2:12-cv-12061, 2013 WL 6768607 (E.D. Mich. Dec. 20, 2013); *Reaching Souls Int'l, Inc. v. Sebelius,* No. 5:13-cv- 1092-D, 2013 WL 6804259 (W.D. Okla. Dec. 20, 2013); *Archdiocese of New York*, 2013 WL 6579764 (Dec. 16, 2013); *Persico v. Sebelius*, No. 2:13-cv-00303, 2013 WL 6118696 (W.D. Pa. Nov. 21, 2013); *Zubik v. Sebelius*, No.

shows that CCU has a likelihood of success on the merits sufficient to grant preliminary injunctive relief. *See Michigan Catholic Conference v. Sebelius*, No. 13-2723 (6th Cir. Dec. 31, 2013) (concluding that "[t]he divergence of opinion by the district courts establishes more than a mere possibility of success on the merits"). A cursory review of CCU's RFRA claim, which is fully briefed in its pending motion for summary judgment, further confirms that a preliminary injunction is warranted.

1. The Mandate violates RFRA.

Under RFRA, the federal government "may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000bb-1(b). The Mandate violates RFRA for the same reasons set forth by the Tenth Circuit in *Hobby Lobby v. Sebelius*. 723 F.3d, 1114, 1137-1145 (10th Cir. 2013); *see also Hobby Lobby*, No. CIV-12-1000-HE, 2013 WL 3869832, at *1 (W.D. Okla. July 19, 2013) (preliminary injunction on remand); *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1294-95 (D. Colo. 2012), *aff'd*, 542 Fed. Appx. 706 (10th Cir. Oct. 3, 2013); *Armstrong v. Sebelius*, 2013 WL 5213640, at *1 (D. Colo. Sept. 17, 2013), *Briscoe v. Sebelius*, 2013 WL 4781711, at *1, 5 (D. Colo. Sept. 6, 2013).

Hobby Lobby provides the required framework for RFRA analysis. First, a court must "identify the religious belief" at issue. 723 F.3d at 1140. Second, it must "determine whether this belief is sincere." *Id*. Third, the court must determine "whether the

2:13-cv-01459, 2013 WL 6118696 (W.D. Pa. Nov. 21, 2013). *But see Univ. of Notre Dame v. Sebelius,* No. 13-3853 (7th Cir. Feb. 22, 2014) (denying injunction).

government places substantial pressure on the religious believer." *Id*. Finally, if there is substantial pressure, the government action will be upheld only if it satisfies strict scrutiny—*i.e.*, the court concludes that forcing the religious believer to violate its own conscience is "'the least restrictive means of advancing a compelling interest.'" *Id*. at 1143 (citation omitted); 42 U.S.C. § 2000bb-1. Defendants have never disputed that CCU's sincere religious beliefs forbid it from signing the certification and requiring its third-party administrator and insurer to deliver the very same drugs and devices to which it is morally opposed to delivering directly. Thus, CCU has satisfied the first two requirements of establishing a RFRA claim. In addition, Defendants concede "that a majority of the en banc Tenth Circuit rejected [their] arguments in *Hobby Lobby*" concerning strict scrutiny "and that this Court is bound by that decision." Defs.' Mot. to Dismiss or, in the Alternative, for Summ. J. [Dkt. 40], at 14. Thus, the only element that remains for resolution by this Court is whether CCU is likely to succeed in showing that Defendants' threatened fines impose a substantial burden on its religious exercise. The answer to that question is a resounding "yes."

Government action substantially burdens a religious belief when it "requires participation in an activity prohibited by a sincerely held religious belief," "prevents participation in conduct motivated by a sincerely held religious belief," or "'places substantial pressure on an adherent . . . to engage in conduct contrary to a sincerely held religious belief." *Hobby Lobby*, 723 F.3d at 1138 (internal cite and quotation marks omitted). The Mandate does all of the above. CCU believes that "human life is sacred from the moment of conception," Ex. A ¶ 13, and that "prevent[ing] an embryo from implanting in the uterus ends an innocent human life." Ex. A ¶¶ 21, 36. Thus, CCU cannot

in any way arrange for, or facilitate access to, what it considers to be an abortion. Ex. A ¶¶ 16-18, 22, 36-37.

Yet the Mandate requires CCU to provide an employee health plan that will authorize and facilitate that access. It must maintain the plan; it must expressly designate its third-party administrator as an ERISA "plan administrator and claims administrator" that will pay for the abortifacients and designate its insurer to do the same; and it must specifically notify the administrator and insurer of this obligation. If its administrator refuses to participate in the scheme, it must find a new administrator that will participate. 78 Fed. Reg. at 39879; 29 C.F.R. § 2590.715-2713A(a)(4), (b)(1)(ii), (c)(1). CCU's religious beliefs forbid such complicity. Ex. A ¶¶ 22-26, 36-37, 43-44. Yet the Mandate threatens Plaintiffs with enormous financial penalties in the amount of $100 per plan participant per day, or more than $27 million annually, unless and until it ceases this religious exercise. Ex. A ¶¶ 27-28

Under *Hobby Lobby*, the Mandate thereby imposes a substantial burden on Plaintiffs' religious exercise because it places "substantial pressure on the religious believer" to forego the exercise. 723 F.3d at 1140-41 (noting that the Mandate put plaintiffs to a "Hobson's choice" of violating their beliefs or facing heavy consequences, which "established a substantial burden as a matter of law."); *see also Gilardi v. U.S. Dep't of Health & Human Srvs.*, 733 F.3d 1208, 1219 (D.C. Cir. 2013) (the Mandate burdens objectors by "pressur[ing] [them] to choose between violating their religious beliefs in managing their selected plan or paying onerous penalties").

The so-called "accommodation" does nothing to diminish the substantial burden on CCU's religious exercise. *Reaching Souls Int'l, Inc. v. Sebelius*, CIV-13-1092-D, 2013 WL

6804259, at *8 (W.D. Okla. Dec. 20, 2013) (finding that the substantial burden in *Hobby Lobby* was the same where plaintiffs believed "that participating in or facilitating the accommodation is the moral equivalent of directly complying with the contraceptive mandate"); *see also E. Texas Baptist Univ. v. Sebelius*, CIV.A. H-12-3009, 2013 WL 6838893, at *20 (S.D. Tex. Dec. 27, 2013) (finding that the accommodation imposes a substantial burden because "[t]he purpose of the form is to enable the provision of the very contraceptive services . . . that the organization finds abhorrent" and "[i]f the organizations do not act in the way the accommodation requires, they face onerous fines").

Indeed, courts have overwhelmingly rejected Defendants' "attenuation" argument that, since the religious employer is neither using nor directly subsidizing contraceptives, participating in the accommodation cannot constitute a substantial burden on its religious exercise. *See*, *e.g.*, *Zubik*, 2013 WL 6118696, *24 (describing and rejecting the "attenuation" argument). These courts have recognized that the employers' "religious objection is not only to the use of contraceptives, but also to being required to actively participate in a scheme to provide such services." *Roman Catholic Archdiocese of N.Y.*, 2013 WL 6579764, at *14. The accommodation requires objectors to sign what is, "in effect, a permission slip." *Southern Nazarene Univ.*, 2013 WL 6804265, at *8. Thus, the proper question is whether the objectors believe it is immoral to sign the permission slip and thereby entangle their health plans in the provision of morally objectionable services. *Reaching Souls*, 2013 WL 6804259, at *7 (determining that the question is "'not whether the reasonable observer would consider the plaintiffs complicit in an immoral act, but

rather how the plaintiffs themselves measure their degree of complicity'") (quoting *Hobby Lobby*, 723 F.3d at 1142). Ultimately, Defendants' attenuation argument is "fundamentally flawed because it advances an understanding of 'substantial burden' that presumes 'substantial' requires an inquiry into the theological merit of the belief in question rather than the *intensity of the coercion* applied by the government to act contrary to those beliefs." *Id.*

Here, CCU is being threatened with fines of $27 million annually if it refuses to direct its agents to perform actions it deems immoral. Ex. A ¶¶ 27-28. There can be no question but that this constitutes a substantial burden. *Roman Catholic Archdiocese of N.Y.*, 2013 WL 6579764, at *15 ("[T]here can be no doubt that the coercive pressure here is substantial"); *Zubik*, 2013 WL 6118696, at *27 (concluding that "the religious employer 'accommodation' places a substantial burden on Plaintiffs' right to freely exercise their religion"). Thus, the substantial burden element for a preliminary injunction is easily satisfied.

2. The Mandate violates the First Amendment

CCU is also likely to succeed on the merits of its First Amendment claims. These claims have been fully briefed by the parties in their cross motions for summary judgment. Rather than repeat those arguments here, CCU incorporates them by reference into this motion for preliminary injunction. *See* Dkt. Nos. 27, 45; *see also* Notices of Suppl. Auth. at Dkt. Nos. 60-61. For the reason set forth in its summary judgment briefs, CCU is likely to prevail on these claims.

B. The remaining preliminary injunction factors weigh in CCU's favor.

As demonstrated above, CCU is highly likely to succeed on the merits of its case. Indeed, in matters like this, where First Amendment rights are at stake, "the analysis begins and ends with the likelihood of success on the merits." *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013). This is because "in First Amendment cases, 'the likelihood of success on the merits will often be the determinative factor.'" *Hobby Lobby*, 723 F.3d at 1145 (plurality opinion) (quoting *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012)); *Korte*, 735 F.3d at 666 (same). This principle also holds true for CCU's RFRA claim since "RFRA protects First Amendment free-exercise rights." *Korte*, 735 F.3d at 666; *see also Hobby Lobby*, 723 F.3d at 1146 ("[O]ur case law analogizes RFRA to a constitutional right."); In any case, the remaining factors also overwhelmingly favor entry of a preliminary injunction.

Irreparable Harm. A potential violation of rights under RFRA and the First Amendment constitutes irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (the "loss of First Amendment freedoms . . . unquestionably constitutes irreparable injury"); *accord Hobby Lobby*, 723 F.3d at 1146; *Korte*, 735 F.3d at 666 (the loss of RFRA-protected

freedoms "constitutes irreparable injury"). Further, the impending Mandate is causing harms *now* as CCU undertakes "the planning involved in preparing and providing its employee [benefit] plan." *Newland,* 881 F. Supp. 2d at 1294-95, ***aff'd*** 2013 WL 5481997 at *2; Ex. A ¶ 40.

Balance of Harms. Courts have recognized both the overriding importance of an entity's religious liberty interests and the substantial burden that the Mandate places on those interests, and have also recognized that Defendants' interest in enforcing the Mandate is not compelling. *See Hobby Lobby*, 723 F.3d at 1141, 43-44, 45-46; *accord Korte*, 735 F.3d at 666. Thus, they have found that the balance of harms favors religious claimants. *Newland,* 2013 WL 5481997 at *3. Further, granting preliminary injunctive relief will merely preserve the status quo and extend to CCU what Defendants have already categorically given numerous other employers, *Newland,* 881 F. Supp. 2d at 1295, and have acquiesced to in many related cases. *See*, *e.g.*, Order, *Tyndale House Publishers v. Sebelius*, No. 13-5018 (D.C. Cir. May 3, 2013); Order, *Bick Holdings Inc. v. Sebelius*, No. 4:13-cv-00462 (E.D. Mo. April 1, 2013).

Public Interest. As courts have recognized when granting injunctions against the Mandate for similar religious objectors, "there is a strong public interest in the free exercise of religion even where that interest may conflict with" another statutory scheme. *Newland,* 881 F. Supp. 2d at 1295 (quoting *O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 1010 (10th Cir. 2004) (en banc), ***aff'd*** 546 U.S. 418 (2006)). Indeed, "it is always in the public interest to prevent the violation of a party's

constitutional rights" which are protected by RFRA. *Briscoe v. Sebelius*, 2013 WL 4781711, at *5 (D. Colo. Sept. 6, 2013); *Hobby Lobby*, 723 F.3d at 1147; *Korte*, 735 F.3d at 666 ("[O]nce the moving party establishes a likelihood of success on the merits, the balance of harms 'normally favors granting preliminary injunctive relief' because 'injunctions protecting First Amendment freedoms are always in the public interest.'" (quoting *Alvarez*, 679 F.3d at 590)).

CONCLUSION

This Court should expedite summary judgment or, alternatively, prohibit Defendants from enforcing the Mandate against CCU and its third-party administrator and insurer until the summary judgment motions have been resolved and any time for appeal has expired.

Dated: March 31, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2014, the foregoing *Motion to Expedite Summary Judgment or, in the Alternative, for a Preliminary Injunction*, along with all exhibits and a proposed order, was served on counsel for Defendants via the Court's electronic case filing (ECF) system and via courier to the following:

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