IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENEVA COLLEGE; WAYNE L. HEPLER, in his personal capacity and as owner and operator of the sole proprietorship WLH Enterprises; THE SENECA HARDWOOD LUMBER COMPANY, INC., a Pennsylvania Corporation; and CARRIE E. KOLESAR Plaintiffs, v. KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY, Defendants.	)	Case No. 2:12-cv-00207-JFC

SECOND AMENDED COMPLAINT

Plaintiffs, by their attorneys, state as follows:

NATURE OF THE ACTION

1. This lawsuit challenges regulations issued by Defendants under the 2010 Patient Protection and Affordable Care Act that compel employee and student health insurance plans to provide free coverage of contraceptive services, including so-called "emergency contraceptives" that cause early abortions.

2. Plaintiff Geneva College is a Christ-centered institution of higher learning. It believes that God has condemned the intentional destruction of innocent human life. The College holds, as a matter of religious conviction, that it would be sinful and immoral for Geneva intentionally to participate in, pay for, facilitate, enable, or otherwise support access to abortion, which destroys human life. It holds that one of the prohibitions of the Ten Commandments ("thou shalt not murder") precludes it from facilitating, assisting in, or enabling the use of drugs that can and do destroy very young human beings in the womb.

3. Plaintiffs Wayne L. Hepler and Carrie E. Kolesar are a father and daughter who, with several of Mr. Hepler's other children, own The Seneca Hardwood Lumber Company, Inc. Located in Cranberry, Pennsylvania, Seneca Hardwood is a lumber business that Mr. Hepler runs in conjunction with a sawmill that he operates as WLH Enterprises, his sole proprietorship. The Hepler family owners and operators of these businesses are practicing Catholic Christians who in their personal lives and their operation of Seneca and WLH adhere to Catholic Church teachings on sexuality and the sanctity of innocent human life. Following these beliefs, the Hepler family has for multiple years omitted abortifacients, contraception, sterilization, and related education and counseling from their health insurance plan covering themselves and their employees and family members. (Seneca Hardwood Lumber Company and the Heplers, including Wayne Hepler's activities in WLH Enterprises, collectively are referred to in this Second Amended Complaint as "the Hepler Plaintiffs.")

4. The regulations impact the Hepler Plaintiffs not only as employers, but as employees. It robs the individual Hepler family members of morally acceptable health insurance, instead potentially forcing them and their daughters to receive coverage for "free" contraception and sterilization from the health insurance plan they will be forced to co-purchase.

5. Neither the College nor the Hepler Plaintiffs qualify for the extraordinarily narrow religious exemption from the regulations. That exemption protects only "churches, their integrated auxiliaries, and conventions or associations or churches" and "the exclusively religious activities of any religious order."

6. For purely secular reasons, the government has elected not to impose the challenged regulations upon thousands of other organizations. Employers with "grandfathered" plans and favored others are exempt from these rules.

7. Defendants have offered entities like the College—but not ones like the Hepler Plaintiffs—a so-called "accommodation" of their religious beliefs and practices. However, the alleged accommodation fails. It still conscripts Geneva into the government's scheme, forces the College to obtain an insurer and to submit a form that specifically causes that insurer to pay for the objectionable drugs, so that such coverage will accrue to the College's own employees, due to the fact that those employees have insurance as an employee benefit from the College and from that insurer.

8. Under the supposed accommodation, Defendants continue to treat entities like the College as second-class religious organizations, not entitled to the same religious freedom rights as substantially similar entities that qualify for the exemption. Defendants' rationale for entirely exempting churches and integrated auxiliaries from the regulations – their employees are likely to share their religious convictions – applies equally to the College. Yet, Defendants refuse to exempt the College, offering only an flimsy, superficial, and utterly semantic "accommodation" that falls woefully short of addressing the substance of its concerns. And the Hepler Plaintiffs do not receive even that much consideration from Defendants.

9. If Plaintiffs follow their religious convictions and decline to participate in the government's scheme, they will face, among other injuries, enormous fines that will cripple their respective operations and/or the loss of morally acceptable health insurance.

10. By unconscionably placing Plaintiffs in this untenable position, Defendants have violated the Religious Freedom Restoration Act; the Free Exercise, Establishment and Free Speech Clauses of the First Amendment to the United States Constitution; the Due Process Clause of the Fifth Amendment; and the Administrative Procedure Act.

11. Plaintiffs therefore respectfully request that this Court vindicate their rights through declaratory and permanent injunction relief, among other remedies.

IDENTIFICATION OF PARTIES AND JURISDICTION

12. Plaintiff Geneva College is a Christ-centered institution of higher learning located in Beaver Falls, Pennsylvania. It is a Pennsylvania not-for-profit corporation.

13. Plaintiff Wayne L. Hepler lives in Cranberry, Pennsylvania. He is 58% owner, President, and Secretary of The Seneca Hardwood Lumber Company, Inc. He is also the sole owner of WLH Enterprises. WLH Enterprises is a sawmill and sole proprietorship owned by Wayne L. Hepler. It is located at 5939 Route 38, Emlenton, Pennsylvania. WLH Enterprises employees participate in the health insurance plan of Seneca Hardwood As an employee, Mr. Hepler is a participant in the health insurance plan of Seneca Hardwood, and beneficiaries of his plan include his wife, their two high-school aged daughters, another daughter under age 26, two sons in college, and one son under age 26.

14. Plaintiff The Seneca Hardwood Lumber Company, Inc., is a Pennsylvania Corporation located at 212 Seneca Hardwood Road, Cranberry, Pennsylvania. The Seneca Hardwood Lumber Company, Inc., is designated as an S-corporation.

15. Plaintiff Carrie E. Kolesar lives in Cranberry, Pennsylvania. She is 6% owner of Seneca Hardwood, and her husband is an employee of Seneca Hardwood. Mrs. Kolesar's husband is an employee of Seneca and participant in its health insurance plan, making her and her eight children beneficiaries of the same plan.

16. Defendants are appointed officials of the United States government and United States Executive Branch agencies responsible for issuing and enforcing the Mandate.

17. 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.

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

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

20. 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.

21. Defendant Jacob J. Lew is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Lew is sued in his official capacity only.

22. 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.

23. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P. 65, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

24. 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 Plaintiffs are located in this district.

FACTUAL ALLEGATIONS

I. Geneva College's Religious Beliefs and Provision of Educational Services in General

25. Geneva College was established in 1848 by the Reformed Presbyterian Church of North America (RPCNA). The College's mission is to glorify God by educating and ministering to a diverse community of students in order to develop servant-leaders who will transform society for the kingdom of Christ.

26. The College pursues this mission through biblically-based programs and services anchored in the historic, evangelical, and Reformed Christian faith. The vocationally-focused curriculum is rooted in the liberal arts and sciences and is delivered through traditional and specialized programs.

27. Central to the mission of Geneva College is its desire to glorify God. The College believes that the Bible teaches that the lives of all people (especially followers of Jesus Christ) should glorify God. The College embraces the oft-quoted statement of the Westminster Shorter Catechism: "Man's chief end is to glorify God and enjoy Him forever."

28. Geneva College believes that one of its central purposes is "to see the glory of God in all the aspects of His Word and world. This is furthered by having students, faculty and, ultimately, the whole of academe see the glory that is God's in His creation, deeds, disciples and, above all, in His Son, the Lord of Glory."

29. Geneva College follows the creedal commitment in the application to many of its policies and practices that flow from the Reformed Presbyterian Church of North America. That commitment is derived from the Holy Bible and is articulated in the Westminster Confession of Faith, the Westminster Larger and Shorter Catechisms, and the Testimony of the RPCNA.

30. Members of Geneva's Board of Corporators, which governs the College, must be members in good standing of the Reformed Presbyterian Church of North America. The Synod of the RPCNA elects all members of the Board of Corporators. The Board of Corporators exercises control for the RPCNA over the purpose, policies, and property of the College.

31. The RPCNA is a church and/or convention or association of churches and thus need not file an informational return with the Internal Revenue Service under 26 U.S.C. § 6033(a)(3)(A)(i).

32. If the College were an "integrated auxiliary" of the RPCNA, it would fall within the scope of the narrow religious exemption to the HHS Mandate. Because the College and the RPCNA chose not to structure their relationship this way, the College falls outside the scope of the exemption and is thus subject to the Mandate.

33. A Board of Trustees operates Geneva College under authority delegated by the Board of Corporators. Trustees must be members of either the RPCNA or other Reformed and Evangelical Christian congregations.

34. Geneva College draws its faculty, staff, and administration from among those who profess faith in Christ and otherwise agree with the College's Christian convictions, including its convictions about the sanctity and dignity of human life.

35. Although the College does not require a profession of faith as a prerequisite for student admission, it does give priority in its recruitment to the evangelical Christian community and seeks to create a Christian peer influence among students. All students are expected to live by the standards of historic Christian morality, including those expressed in the Ten Commandments.

36. Geneva College has a long history of providing education to individuals from segments of society that have been disenfranchised. In the years following the Emancipation Proclamation of 1863, a significant percentage of its students were freed black slaves. Geneva was among the earliest schools to matriculate women to a full degree program. The College is building on that history through special efforts to recruit and retain African-American, Latino, other minority, and international students, believing that its student body should reflect the diversity of our world.

37. At certain points in its history, Geneva has found it necessary to engage in civil disobedience of unjust laws. In the 1860s, Geneva College was a station on the Underground Railroad, which sought, against the law of the land, to hide and transport escaped slaves. The College believed that the institution of slavery was inimical to biblical faith.

38. The College's current total enrollment (including traditional undergraduate, adult undergraduate, and graduate students) is approximately 1,850.

39. The College has approximately 350 employees, and about 280 of them are full-time. There are approximately 95 full-time faculty members.

II. The Religious Beliefs of Geneva College and of the Reformed Presbyterian Church of North America Regarding Abortion

40. The RPCNA Testimony, one articulation of the Church's religious beliefs, declares as follows: "Unborn children are living creatures in the image of God. From the moment of conception to birth they are objects of God's providence as they are being prepared by Him for the responsibilities and privileges of postnatal life. Unborn children are to be treated as human persons in all decisions and actions involving them. Deliberately induced abortion, except possibly to save the mother's life, is murder."

41. In support of this declaration, the Testimony cites Exodus 20:13 ("thou shalt not murder"), Exodus 21:22-23, and Psalm 139:13-16, all of which the College believes are part of the inerrant and infallible Word of God.

42. The Westminster Larger Catechism, another articulation of the Church's beliefs, sets forth the duties required by the Commandment against murder (which the Catechism numbers as the Sixth Commandment). These include "all careful studies, and lawful endeavors, to preserve the life of ourselves and others by resisting all thoughts and purposes, subduing all passions, and avoiding all occasions, temptations, and practices, which tend to the unjust taking away the life of any . . . and protecting and defending the innocent." In support of this statement, the Larger Catechism cites the following Scripture verses: Eph. 5:28-29; 1 Kings 18:4; Jer. 26:15-16; Acts 23:12, 16-17, 21, 27; Eph. 4:26-27; 2 Sam. 2:22; Deut. 22:8; Matt. 4:6-7; Prov. 1:10-11, 15-16; 1 Sam. 24:12; 1 Sam. 26:9-11; Gen. 37:21-22; Ps. 82:4; Prov.

24:11-12; 1 Sam. 14:45; Jas. 5:7-11; Heb. 12:9; 1 Thess. 4:11; 1 Pet. 3:3-4; Ps. 37:8-11; Prov. 17:22; Prov. 25:16, 27; 1 Tim. 5:23; Isa. 38:21; Ps. 127:2; Eccl. 5:12; 2 Thess. 3:10, 12; Prov. 16:26; Eccl. 3:4, 11; 1 Sam. 19:4-5; 1 Sam. 22:13-14; Rom. 13:10; Luke 10:33-34; Col. 3:12-13; Jas. 3:17; 1 Pet. 3:8-11; Prov. 15:1; Judg. 8:1-3; Matt. 5:24; Eph. 4:2, 32; Rom. 12:17, 20-21; 1 Thess. 5:14; Job 31:19-20; Matt. 25:35-36; and Prov. 31:8-9.

43. The Westminster Larger Catechism also identifies "the sins forbidden in the sixth commandment." Among these are "all taking away the life of ourselves, or of others, except in case of public justice, lawful war, or necessary defence; the neglecting or withdrawing the lawful and necessary means of preservation of life; . . . and whatsoever else tends to the destruction of the life of any." In support of this statement, the Larger Catechism cites the following Scripture verses: Acts 16:28; Gen. 9:6; Num. 35:31, 33; Jer. 48:10; Deut. 20:1-20; Ex. 22:2-3; Matt. 25:42-43; Jas. 2:15-16; Eccl. 6:1-2; Matt. 5:22; 1 John 3:15; Lev. 19:17; Prov. 14:30; Rom. 12:19; Eph. 4:31; Matt. 6:31, 34; Luke 21:34; Rom. 13:13; Eccl. 12:12; Eccl. 2:22-23; Isa. 5:12; Prov. 15:1; Prov. 12:18; Ezek. 18:18; Ex. 1:14; Gal. 5:15; Prov. 23:29; Num. 35:16-18, 21; and Ex. 21:18-36.

44. The Foreword to a recent re-issue of the 1888 *History of the Reformed Presbyterian Church in America* observes that the Testimony "has been updated to keep pace." As an example, the Foreword states that "[t]he Church of 1888 did not make reference to willful abortion, as that was not an issue. Today, however, abortion is one of the most dynamic social controversies, and we should praise God that he has enabled this church to maintain a testimony against such murder."

45. Geneva College unreservedly shares the RPCNA's religious views regarding abortion, believing that the procurement, participation in, facilitation of, or payment for abortion

(including abortion-causing drugs like Plan B and ella) violates the Commandment against murder (and the interpretation of that Commandment in the Westminster Standards) and is inconsistent with the dignity conferred by God on creatures made in His image.

46. By "conception," "pregnancy," "abortion" and related concepts referenced herein regarding the sanctity of innocent human life and prohibitions on its destruction, Geneva College understands such concepts to recognize and protect the lives of human beings from the moment of fertilization.

47. The College has participated in Life Ring, a community-wide pro-life awareness campaign that encourages churches with bell towers to ring their bells in mourning on the anniversary of the U.S. Supreme Court's 1973 decision in *Roe v. Wade*.

48. Geneva has sponsored public events in which it has explored the religious dimensions of the abortion issue. These include an October 18, 2011, panel discussion entitled, "Abortion: Is it an Issue of Justice for the Mother or Unborn Child?"

49. Geneva's publications frequently highlight the pro-life activities of students, alumni, and staff. For example, the March 2005 issue of a College newsletter reported on a letter sent by the College's student-led pro-life group to President George W. Bush, supporting the "culture of life" discussed in the President's 2005 state of the union address. The February/March 2009 issue of the newsletter reported on the volunteer work of three Geneva staff members at a local pro-life pregnancy resource center. On January 21, 2009, Brenda Schaeffer delivered a message at the College chapel service regarding the value of human life and the heartache she experienced after having an abortion.

50. In January 2012, a group of Geneva College students and a staff member went to Washington, DC, to participate in the annual March for Life, at which they expressed their

support for the sanctity of human life and their opposition to the Supreme Court's decision in *Roe v. Wade*.

51. Geneva College does not permit members of its community to participate in abortion. The Student Handbook states that "[m]orally unacceptable practices according to Biblical teaching are not acceptable for members of the Geneva College community. Specific acts such as . . . sexual sins (i.e. premarital sex, cohabitation with a member of the opposite sex, rape, adultery, homosexual behavior, abortion, etc.) . . . will not be tolerated."

III. Geneva College's Group Health Insurance Plans

52. To fulfill its religious commitments and duties in the Christ-centered educational context, Geneva College promotes the spiritual and physical well-being and health of its employees and students. This includes the provision of generous health insurance to employees and their dependants and the facilitation of a student health plan.

53. The plan year for the current employee health plan began on January 1, 2013. The next plan year is scheduled to begin on January 1, 2014.

54. Consistent with its religious beliefs about the sanctity of life, Geneva College's contract for employee health coverage states that it excludes "[a]ny drugs used to abort a pregnancy."

55. The College requires that all full-time undergraduate students carry health insurance. If a student does not provide the College information about his or her health insurance coverage, the student will be enrolled in the College's UnitedHealthcare Plan. Full-time graduate students may enroll in the College's UnitedHealthcare Plan on a voluntary basis.

56. The College's religious convictions prevent it from facilitating student health insurance coverage that enables or facilitates access to ella, Plan B, or IUDs. The student health plan for the 2013-14 academic year does not include coverage of these items.

57. The student plan does not possess grandfathered status.

58. The plan year for the student plan began on August 1, 2013. It is scheduled to begin on August 1, 2014 for the 2014-15 academic year.

IV. The Heplers and Their Religious Beliefs in Business Practice

59. Wayne L. Hepler, his wife, and their adult children and families including Carrie E. Kolesar (collectively, "the Heplers") are practicing and believing Catholic Christians.

60. They strive to follow Catholic ethical beliefs and religious and moral teachings in all areas of their lives, including in the operation of their businesses.

61. The Heplers' sincerely-held religious convictions do not allow them to violate Catholic religious and moral teachings in their decisions about the operation of their businesses. They believe that according to the Catholic faith their operation of their businesses must be guided by ethical social principles and Catholic religious and moral teachings, that the adherence of their business practice according to such Catholic ethics and religious and moral teachings is a genuine calling from God, that their Catholic faith prohibits them to sever their religious beliefs from their daily business practice, and that their Catholic faith requires them to integrate the gifts of the spiritual life, the virtues, morals, and ethical social principles of Catholic teaching, into their life and work.

62. The Catholic Church teaches that abortifacient drugs, contraception and sterilization are intrinsic evils.

63. As a matter of religious faith the Heplers believe that those Catholic teachings are among the religious ethical teachings they must follow throughout their lives including in their business practice.

64. Consequently, the Heplers believe that it would be immoral and sinful for them to intentionally participate in, pay for, facilitate, or otherwise support abortifacient drugs, contraception, sterilization, and related education and counseling, through the inclusion of such items in health insurance coverage they offer at their businesses or participate in for their own individual families.

65. Mr. Hepler and Mrs. Kolesar, as well as their family members who also own and/or are employed at Seneca Hardwood or WLH Enterprises, have strongly held religious beliefs against their own personal family contribution, as employees or beneficiaries of a health insurance plan, to a health insurance plan that covers abortifacient drugs, contraception, sterilization, and related education and counseling. Moreover, they oppose participation in such a plan in a way by which it would cover their minor or college-aged children for such items, and/or to the extent their children could access such items through their own plan, even without their knowledge or consent.

66. The Heplers likewise have religious beliefs in favor of providing health insurance coverage to their family members and other Catholic employees in a form that is consistent with those employees' religious beliefs against participating in a plan that covers abortifacient drugs, contraception, sterilization, and related education and counseling.

67. The Heplers have, for a substantial period of time to the present, striven to operate their businesses in promotion of Catholic ethical and religious principles in a variety of ways including but not limited to the structuring of their health insurance plan.

68. Heplers have displayed religious imagery at the offices of Seneca Hardwood, and are building a Catholic chapel in Seneca Hardwood's retail store.

69. The Heplers have directed their businesses to engage in charitable donations towards Catholic efforts.

70. Mr. Hepler has built and runs the St. Thomas More House of Prayer in Cranberry, Pennsylvania, a Catholic retreat house that promotes devotion to God and family prayer centered around the Psalms of the Bible.

71. For many years Mr. Hepler was a member of the board of the Couple to Couple League, a national Catholic organization dedicated to the promotion of "natural family planning," and an organization that for religious, moral and scientific reasons opposes all abortifacients, contraceptives, sterilization, and education and counseling in favor of the same.

72. Mr. Hepler and his thirteen children including Mrs. Kolesar are dedicated to the Catholic Church's teachings on the sanctity of human life and sexuality. Mrs. Kolesar and her siblings and their children have participated in many national and local pro-life activities such as public marches. Mrs. Kolesar and some of her siblings have taught marriage preparation for Catholic couples including teaching about the Church's position in favor of God's plan for sexuality and against abortifacients, contraceptives, and sterilization.

73. Mr. Hepler owns a 58% share in The Seneca Hardwood Lumber Company, Inc. ("Seneca Hardwood" or "Seneca"). Mrs. Kolesar and six of her adult siblings each own a 6% share. Together they constitute the owners and the Board of Directors of Seneca Hardwood.

74. Seneca Hardwood is a lumber company with 20 full-time employees. Sixteen of the 20 employees, including Mr. Hepler as well as Mrs. Kolesar's husband, are covered by Seneca Hardwood's health insurance plan.

75. In conjunction with Seneca Hardwood, Mr. Hepler owns and operates a sawmill under the sole proprietorship of WLH Enterprises. WLH Enterprises has six full-time employees. Four of those six employees are covered under Seneca Hardwood's health insurance plan, in which WLH Enterprises participates.

76. As part of fulfilling their organizational mission and Catholic beliefs and commitments, the Heplers, Seneca Hardwood, and WLH Enterprises provide generous health insurance for their employees.

77. The Hepler Plaintiffs have religious beliefs against dropping health insurance for their employees who need it.

78. The Hepler Plaintiffs have religious beliefs against requiring themselves and their families and their employees who share their beliefs and who are participants and beneficiaries in Seneca's health plan to lose a health plan that omits coverage of abortifacients, contraceptives and sterilization. This would require them to enter a health insurance market where they would need to buy health insurance for themselves. In that market, because of the Mandate, all such plans would include the coverage of abortifacients, contraceptives and sterilization. This would cause participation in morally unacceptable plans in violation of the beliefs of the Heplers, the Kolesars, their covered family members, and employees who share their beliefs.

79. The Hepler Plaintiffs have religious beliefs against participating in a health plan, either through Seneca or through one they would buy in the open market, that would cover abortifacients, contraceptives and sterilization for their minor children or college-aged children as beneficiaries in the plan.

80. The Hepler Plaintiffs purchase their business health insurance plan from a company in the health insurance market.

81. For many reasons, including significant plan changes made in the past several years, as well as a lack of the insurer providing the required notices, the Hepler Plaintiffs' plan is not grandfathered under ACA.

82. The next plan year for the Hepler Plaintiffs' plan will begin on July 1, 2014.

83. Consistent with the Hepler Plaintiffs' religious commitments, their health insurance plan does not cover abortifacient drugs, contraception, sterilization, or education or counseling in favor of the same. It has not done so for the present plan year and for multiple prior years.

84. However, the Mandate will force the Hepler Plaintiffs' July 2014 health insurance plan (and, absent court relief, possibly their present plan) to provide coverage of abortifacient drugs, contraception, sterilization, and related education and counseling against their religious beliefs.

V. The ACA and Defendants' Mandate Thereunder

85. In March 2010, Congress passed, and President Obama signed, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. No. 11-152 (March 30, 2010), together known as the "Affordable Care Act" (ACA).

86. The ACA regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

87. One ACA provision requires that any "group health plan" or "health insurance issuer offering group or individual health insurance coverage" provide coverage for certain preventive care services. 42 U.S.C. § 300gg-13(a).

88. These services include screenings, medications, and counseling given an "A" or "B" rating by the United States Preventive Services Task Force; immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and "preventive care and screenings" specific to infants, children, adolescents, and women that are subsequently "provided for in comprehensive guidelines supported by the Health Resources and Services Administration," an HHS sub-agency. 42 U.S.C. § 300gg-13(a)(1)-(4).

89. These services must be covered without "any cost sharing." 42 U.S.C. § 300gg-13(a).

The Interim Final Rule

90. On July 19, 2010, HHS published an interim final rule regarding the ACA's requirement that certain preventive services be covered without cost sharing. 75 Fed. Reg. 41726, 41728 (2010).

91. HHS issued the interim final rule without a prior notice of rulemaking or opportunity for public comment. Defendants determined for themselves that "it would be impracticable and contrary to the public interest to delay putting the provisions . . . in place until a full public notice and comment process was completed." 75 Fed. Reg. at 41730.

92. Although Defendants suggested in the Interim Final Rule that they would solicit public comments after implementation, they stressed that "provisions of the Affordable Care Act protect significant rights" and therefore it was expedient that "participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities." *Id.*

93. Defendants stated they would later "provide the public with an opportunity for comment, but without delaying the effective date of the regulations," demonstrating their intent to impose the regulations regardless of the legal flaws or general opposition that might be manifest in public comments. *Id*.

94. In addition to reiterating the ACA's preventive services coverage requirements, the Interim Final Rule provided further guidance concerning the Act's restriction on cost sharing.

95. The Interim Final Rule makes clear that "cost sharing" refers to "out-of-pocket" expenses for plan participants and beneficiaries. 75 Fed. Reg. at 41730.

96. The Interim Final Rule acknowledges that, without cost sharing, expenses "previously paid out-of-pocket" would "now be covered by group health plans and issuers" and that those expenses would, in turn, result in "higher average premiums for all enrollees." *Id.*; *see also id*. at 41737 ("Such a transfer of costs could be expected to lead to an increase in premiums.")

97. In other words, the prohibition on cost-sharing was simply a way "to distribute the cost of preventive services more equitably across the broad insured population." 75 Fed. Reg. at 41730.

98. After the Interim Final Rule was issued, numerous commenters warned against the potential conscience implications of requiring religious individuals and organizations to include certain kinds of services—specifically contraception, sterilization, and abortion services—in their health care plans.

99. HHS directed a private health policy organization, the Institute of Medicine (IOM), to make recommendations regarding which drugs, procedures, and services all health plans should cover as preventive care for women.

100. 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 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.

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

102. On July 19, 2011, the IOM published its preventive care guidelines for women, including a recommendation that preventive services include "[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures" and related "patient education and counseling for women with reproductive capacity." Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, at 102-10 and Recommendation 5.5 (July 19, 2011).

103. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices such as IUDs; Plan B (also known as the "morning-after pill") and its chemical cognates; ulipristal (also known as "ella" or the "week-after pill"); and other drugs, devices, and procedures.

104. Some of these drugs and devices—including "emergency contraceptives" such as Plan B and ella and certain IUDs—are known abortifacients – drugs and devices that can cause the death of an embryo by preventing it from implanting in the wall of the uterus.

105. Indeed, the FDA's own Birth Control Guide states that Plan B, its chemical cognates, ella, and IUDs can work by "preventing attachment (implantation) to the womb

(uterus)." FDA, Office of Women's Health, Birth Control Guide at 16-18, see FDA, Office of Women's Health, "Birth Control Guide," *available as* Addendum to Brief of Appellants at 50, Hobby Lobby Stores Inc. v. Sebelius, No. 12-6294, ECF Doc. No. 010189999834 (10th Cir. filed Feb. 11, 2013).

106. The manufacturers of some of the drugs, methods, and devices in the category of "FDA-approved contraceptive methods" indicate that they can function to cause the demise of an early embryo.

107. On August 1, 2011, a mere 13 days after the IOM published its recommendations, HRSA issued guidelines adopting them in full. *See* http://www.hrsa.gov/womensguidelines.

108. Insurance plans starting after August 1, 2012 were subject to the Mandate.

109. Any non-exempt employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the Mandate) to heavy fines approximating $100 per employee per day. Such employers are also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

110. A large employer entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the ACA imposes monetary penalties on entities that so refuse. The exact magnitude of these penalties seems to vary according to the complicated provisions of the ACA, but it is estimated the fine is approximately $2,000 per employee per year.

The Religious Employer Exemption

111. On the very same day HRSA rubber-stamped the IOM's recommendations, HHS promulgated an additional interim final rule regarding the preventive services mandate. 76 Fed. Reg. 46621 (published Aug. 3, 2011).

112. This Second Interim Final Rule granted HRSA "*discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46621, 46623 (emphasis added). The term "religious employer" was narrowly defined as one that (1) has as its purpose the "inculcation of religious values"; (2) "primarily employs persons who share the religious tenets of the organization"; (3) "serves primarily persons who share the religious tenets of the organization"; and (4) "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." 76 Fed. Reg. at 46626 (emphasis added).

113. The statutory citations in the fourth prong of this test refer to "churches, their integrated auxiliaries, and conventions or associations of churches" and the "exclusively religious activities of any religious order." 26 U.S.C. § 6033(a)(3).

114. The "religious employer" exemption was thus extremely narrow, limited to churches, their integrated auxiliaries, and religious orders, but only if their purpose was to inculcate faith and if they hired and served primarily people of their own faith tradition.

115. HRSA exercised its discretion to grant an exemption for religious employers via a footnote on its website listing the Women's Preventive Services Guidelines. The footnote states that "guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers." *See* http://www.hrsa.gov/womensguidelines.

116. Although religious organizations like the College and individuals and corporations like the Hepler Plaintiffs share the same religious beliefs and concerns as objecting churches, their integrated auxiliaries, and religious orders, HHS deliberately ignored the regulation's impact on their religious liberty, stating that the exemption sought only "to provide

for a religious accommodation that respects the unique relationship between a house of worship and its employees in ministerial positions." 76 Fed. Reg. 46621, 46623.

117. Therefore, the vast majority of organizations with conscientious objections to providing contraceptive or abortifacient services were excluded from the "religious employer" exemption.

118. Like the original Interim Final Rule, the Second Interim Final Rule was made effective immediately, without prior notice or an opportunity for public comment.

119. Defendants acknowledged that "while a general notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations," they had "good cause" to conclude that public comment was "impracticable, unnecessary, or contrary to the public interest" in this instance. 76 Fed. Reg. at 46624.

120. Upon information and belief, after the Second Interim Final Rule was put into effect, over 100,000 comments were submitted opposing the narrow scope of the "religious employer" exemption and protesting the contraception mandate's gross infringement on the rights of religious individuals and organizations.

121. HHS did not take into account the concerns of religious organizations in the comments submitted before the Second Interim Rule was issued. HHS was unresponsive to numerous and well-grounded assertions that the Mandate violated statutory and constitutional protections of rights of conscience.

The Temporary Enforcement Safe Harbor

122. The public outcry for a broader religious employer exemption continued for many months. On January 20, 2012, HHS issued a press release acknowledging "the important concerns some have raised about religious liberty" and stating that religious objectors would be

"provided an additional year . . . to comply with the new law." *See* Jan. 20, 2012 Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html.

123. On February 10, 2012, HHS formally announced a "temporary enforcement safe harbor" for non-exempt nonprofit religious organizations that objected to covering free contraceptive and abortifacient services.

124. HHS declared that it would not take any enforcement action against an eligible organization during the safe harbor period, which would extend until the first plan year beginning after August 1, 2013.

125. HHS also indicated it would develop and propose changes to the regulations in an effort to accommodate the religious liberty objections of non-exempt, nonprofit religious organizations following the expiration of the safe harbor.

126. Despite the safe harbor and HHS's accompanying promises, on February 10, 2012, HHS announced a final rule "finalizing, without change," the contraception and abortifacient mandate and narrow religious employers exemption. 77 Fed. Reg. 8725-01 (published Feb. 15, 2012).

The Advance Notice of Proposed Rulemaking

127. On March 21, 2012, HHS issued an Advance Notice of Proposed Rulemaking (ANPRM), presenting "questions and ideas" to "help shape" a discussion of how to "maintain the provision of contraceptive coverage without cost sharing," while accommodating the religious beliefs of non-exempt religious organizations. 77 Fed. Reg. 16501, 16503 (2012).

128. The ANPRM conceded that forcing religious organizations to "contract, *arrange*, or pay for" the objectionable contraceptive and abortifacient servicers would infringe their "religious liberty interests." *Id*. (emphasis added).

129. The ANPRM proposed, in vague terms, that the "health insurance issuers" for objecting religious employers could be required to "assume the responsibility for the provision of contraceptive coverage without cost sharing." *Id*.

130. For the first time, and contrary to the earlier definition of "cost sharing," Defendants suggested in the ANPRM that insurers and third party administrators could be prohibited from passing along their costs to the objecting religious organizations via increased premiums. *See id*.

131. "[A]pproximately 200,000 comments" were submitted in response to the ANPRM, 78 Fed. Reg. 8456, 8459, largely restating previous comments that the government's proposals would not resolve conscientious objections, because the objecting religious organizations, by providing a health care plan in the first instance, would still be coerced to arrange for and facilitate access to morally objectionable services.

The Notice of Proposed Rulemaking

132. On February 1, 2013, HHS issued a Notice of Proposed Rulemaking (NPRM) purportedly addressing the comments submitted in response to the ANPRM. 78 Fed. Reg. 8456 (published Feb. 6, 2013).

133. The NPRM proposed two changes to the then-existing regulations. 78 Fed. Reg. 8456, 8458-59.

134. First, it proposed revising the religious employer exemption by eliminating the requirements that religious employers have the purpose of inculcating religious values and primarily employ and serve only persons of their same faith. 78 Fed. Reg. at 8461.

135. Under the NPRM's proposal, a "religious employer" would be one "that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 8461.

136. HHS emphasized, however, that this proposal "would not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules." 78 Fed. Reg. 8456, 8461.

137. In other words, religious organizations like the College (much less individuals and entities like the Hepler Plaintiffs) that are not churches, integrated auxiliaries, or religious orders would continue to be denied the protection of the exemption.

138. Second, the NPRM followed up on HHS's earlier-stated intention to "accommodate" non-exempt, nonprofit religious organizations by making them "designate" their insurers and third party administrators to provide plan participants and beneficiaries with free access to contraceptive and abortifacient drugs and services.

139. The proposed "accommodation" did not resolve the concerns of religious organizations like the College because it continued to force them to deliberately provide health insurance that would trigger access to abortion-inducing drugs and related education and counseling.

140. "[O]ver 400,000 comments" were submitted in response to the NPRM, 78 Fed. Reg. 39870, 39871, with religious organizations again overwhelmingly decrying the proposed "accommodation" as a gross violation of their religious liberty because it would conscript their

health care plans as the main cog in the government's scheme for expanding access to contraceptive and abortifacient services.

141. Geneva College submitted comments on the NPRM, stating essentially the same objections set forth in this complaint.

142. On April 8, 2013, the very day that the notice-and-comment period ended, Defendant Secretary Sebelius answered questions about the contraceptive and abortifacient services requirement in a presentation at Harvard University.

143. In her remarks, Secretary Sebelius stated:

> We have just completed the open comment period for the so-called accommodation, and by August 1st of this year, every employer will be covered by the law with one exception. Churches and church dioceses as employers are exempted from this benefit. But Catholic hospitals, Catholic universities, other religious entities *will be providing coverage* to their employees starting August 1st. . . . [A]s of August 1st, 2013, every employee who doesn't work directly for a church or a diocese *will be included* in the benefit package.

See The Forum at Harvard School of Public Health, A Conversation with Kathleen Sebelius U.S. Secretary of Health and Human Services, Apr. 8, 2013, *available at* http://theforum.sph.harvard.edu/events/conversation-kathleen-sebelius (Episode 9 at 2:25) (emphasis added).

144. Given the timing of these remarks, it is clear that Defendants gave no consideration to the comments submitted in response to the NPRM's proposed "accommodation."

The Final Mandate

145. On June 28, 2013, Defendants issued a final rule (the "Final Mandate"), which ignores the objections repeatedly raised by religious organizations and others and continues to co-opt objecting employers into the government's scheme of expanding free access to

contraceptive and abortifacient services. 78 Fed. Reg. 39870. Defendants declared that the Final Mandate would be effective August 1, 2013, only one month after it was issued.

146. Under the Final Mandate, the discretionary "religious employer" exemption, which is still implemented via footnote on the HRSA website, *see* http://www.hrsa.gov/womensguidelines, remains limited to churches, integrated auxiliaries, and religious orders "organized and operate[d]" as nonprofit entities and "referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39874.

147. Defendants attempt to justify the extraordinarily narrow religious exemption as follows: "The Departments believe that the simplified and clarified definition of religious employer continues to respect the religious interests of houses of worship and their integrated auxiliaries in a way that does not undermine the governmental interests furthered by the contraceptive coverage requirement. Houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan." 78 Fed. Reg. at 39874.

148. All other organizations, including the College and the Heplers, are denied the exemption's protection.

149. Geneva College does not fall within the scope of this narrow religious exemption. It is not a church, the integrated auxiliary of a church, or a convention or association of churches, nor does it perform the exclusively religious activities of a religious order.

150. Despite the family composition of much of their business activities, and Wayne Hepler's identity as a religious person engaging in a sole proprietorship, the Hepler Plaintiffs are

also not "religious" enough under this definition, for similar reasons, because Seneca Hardwood and WLH Enterprises are business entities, and because Mr. Hepler and Mrs. Kolesar as individuals receive zero protection under the exemption.

151. The Final Mandate declares that the rules concerning contraceptive and abortifacient services will "apply to student health insurance coverage arranged by an eligible organization that is an institution of higher education in a manner comparable to that in which they apply to group health insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer." 78 Fed. Reg. at 39897.

152. The Final Mandate creates a separate "accommodation" for certain non-exempt religious organizations. 78 Fed. Reg. at 39874.

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

154. The College is eligible for the so-called accommodation. The Hepler Plaintiffs are not.

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

156. The Final Rule also extends the current Temporary Enforcement Safe Harbor through the end of 2013, only six months after the issuance of the Final Rule. 78 Fed. Reg. at 39889.

157. Thus, an eligible organization would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and deliver it to the organization's insurer. (If the organization has a self-insured plan, it would deliver the executed self-certification to the plan's third party administrator.) 78 Fed. Reg. at 39875.

158. If it elects to invoke the accommodation, Geneva would be required to execute the self-certification and deliver it to its insurance issuer before January 1, 2014.

159. By delivering its self-certification to its insurer, the College would trigger the insurer's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries." 78 Fed. Reg. at 39875-76.

160. By issuing its self-certification, the College would be identifying its participating employees to the insurer for the distinct purpose of enabling the government's scheme to facilitate free access to contraceptive and abortifacient services.

161. The insurer's obligation to make direct payments for contraceptive and abortion services would continue only "for so long as the participant or beneficiary remains enrolled in the plan." 78 Fed. Reg. at 39876.

162. Therefore, the College would have to coordinate with its insurer whenever it added or removed employees and beneficiaries from its healthcare plan and, as a direct and unavoidable result, from the abortifacient services payment scheme.

163. Insurers would be required to notify plan participants and beneficiaries of the contraceptive payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan. 78 Fed. Reg. at 39876.

164. This would also require the College to coordinate the notices with its insurer.

165. The College's insurer would be required to provide the contraceptive benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77.

166. Thus, any payment or coverage disputes presumably would be resolved under the terms of the College's existing plan documents.

167. Thus, even under the accommodation, the College and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to contraceptive and abortifacient services.

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

169. On information and belief, the studies Defendants rely upon to support this claim are severely flawed.

170. Nevertheless, even if the payments, over time, eventually resulted in cost savings in other areas, it is undisputed that it would cost money at the outset to make the payments. *See, e.g.*, 78 Fed. Reg. at 39877-78 (addressing ways insurers can cover up-front costs).

171. Moreover, if the cost savings that allegedly will arise make insuring an employer's employees cheaper, the savings would have to be passed on to employers through reduced premiums, not retained by insurance issuers.

172. HHS suggests that, to maintain cost neutrality, issuers may simply ignore this fact and "set the premium for an eligible organization's large group policy as if no payments for contraceptive services had been provided to plan participants." 78 Fed. Reg. at 39877.

173. This encourages issuers to artificially inflate the eligible organization's premiums.

174. Under this methodology—assuming it is even legal—the eligible organization would still bear the cost of the required payments for contraceptive and abortifacient services in violation of its conscience, as if the accommodation had never been made.

175. Defendants have suggested that "[a]nother option" would be to "treat the cost of payments for contraceptive services . . . as an administrative cost that is spread across the issuer's entire risk pool, excluding plans established or maintained by eligible organizations." 78 Fed. Reg. at 39878.

176. There is no legal authority for forcing third parties to pay for services provided to the employees of eligible organizations under the accommodation.

177. Furthermore, under the Affordable Care Act, Defendants lack authority in the first place to coerce insurers to directly purchase contraceptive and abortifacient services for an eligible organization's plan participants and beneficiaries.

178. Thus, the accommodation fails to protect objecting religious organizations for lack of statutory authority.

179. For all these reasons, the accommodation does nothing to relieve non-exempt religious organizations with insured plans from being co-opted as the central cog in the government's scheme to expand access to free contraceptive and abortifacient services even when the organizations object to facilitating those services.

180. In sum, the accommodation is nothing more than a shell game that attempts to disguise the religious organization's central and critical function in executing the government's scheme for enabling access to "free" contraceptive and abortifacient services.

181. Despite the accommodation's convoluted machinations, a religious organization's decision to offer health insurance and its self-certification continue to serve as the sole triggers for creating access to free contraceptive and abortifacient services to its employees and plan beneficiaries from the same insurer they are paying for their insurance plan.

182. The College cannot participate in or facilitate the government's scheme without violating its religious convictions.

The Final Mandate and Plaintiffs' Health Insurance Plans

183. The plan year for the College's next employee health plan begins on January 1, 2014. As a result, the College now faces a choice. It can transgress its religious commitments by including abortifacients in the plan or by directing its insurance issuer to provide the exact same services. Or it can transgress its religious duty to provide for the well-being of its employees and their families by dropping its employee health insurance plan altogether in order to avoid being complicit in the provision of abortifacients, thereby incurring annual fines of at least $500,000.

184. Although the government has recently announced that it will postpone implementing the annual fine of $2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015. This postponement does not delay the crippling daily fines under 26 U.S.C. § 4980D or lawsuits under 29 U.S.C. § 1132.

185. The plan year for the College's next student plan begins on August 1, 2014. As a result, the College will face a choice in the period leading up to that date. It can transgress its religious commitments by including abortifacients in the plan or by triggering its insurance issuer to provide the exact same services by providing the self-certification. Or it can transgress

its religious duty to provide for the well-being of its students by dropping its student health insurance plan altogether in order to avoid being complicit in the provision of abortifacients.

186. The College's religious convictions forbid it from participating in any way in the government's scheme to provide free access to abortifacient services through the College's health care plans.

187. Dropping its insurance plans would place the College at a severe competitive disadvantage in its efforts to recruit and retain employees and students.

188. The Final Mandate forces the College to deliberately provide health insurance that would facilitate free access to emergency contraceptives, including Plan B and ella, regardless of the ability of insured persons to obtain these drugs from other sources.

189. The Final Mandate forces the College to facilitate government-dictated education and counseling concerning abortion that directly conflicts with its religious beliefs and teachings.

190. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the sanctity of life that the College seeks to convey.

191. Small employers such as the Hepler Plaintiffs suffer substantial burdens under the Mandate if they are forced to choose between providing health insurance consistent with their religious beliefs or providing no health insurance at all.

192. The "option" of the Hepler Plaintiffs to drop their employee health insurance would take health insurance away from their needy employees in violation of the Heplers' religious beliefs.

193. The "option" of the Hepler Plaintiffs to drop their employee health insurance would take health insurance away from themselves, their sibling co-owners and their families as employees and beneficiaries of the same plans, harming their families' well-being.

194. The "option" of the Hepler Plaintiffs to drop their employee health insurance would cause Mr. Hepler, Mrs. Kolesar, their sibling co-owners and their families, and other Catholics and person with similar beliefs who work for them, to have to obtain their own health insurance (for health reasons, and because ACA compels them to do so) in a market where the Mandate forces all plans they could purchase to cover abortifacients, contraception, sterilization and related education and counseling for themselves and their minor children and college-aged children.

195. Losing the moral acceptability of their plan through Seneca and needing to obtain plans from the open market that the Mandate renders morally unacceptable violates the religious beliefs of Mr. Hepler, Mrs. Kolesar, their sibling co-owners and their families, and other Catholics who work for them. Similarly, it violates the religious beliefs of the Hepler Plaintiffs to force them to abandon their own family members and friends into a market of mandatorily immoral health insurance plans.

196. The Hepler Plaintiffs need to retain health insurance for their families and children, but object to being forced to participate in a plan, either through Seneca or the open market, wherein their minor children and college-aged children would, as beneficiaries of the plan, receive coverage of abortifacients, contraception, sterilization and related education and counseling, possibly even receiving such items without their knowledge or consent.

197. The "option" of the Hepler Plaintiffs to drop their employee health insurance would impose a competitive disadvantage on the Hepler Plaintiffs' businesses since they would be far less able to attract and keep good employees if they do not offer health insurance to their employees.

198. If the Hepler Plaintiffs tried to compensate their employees for the loss of health insurance benefits so the employees could purchase their own equivalent plans, it would cost the Hepler Plaintiffs significantly more to do so than those the Hepler Plaintiffs presently contribute to their employees' plans. This cost difference represents a financial penalty imposed on the Hepler Plaintiffs by the Mandate as a cost of complying with their religious beliefs. And, as asserted above, would force the Heplers and their employees to participate in morally objectionable plans obtained in the open market by operation of the Mandate.

199. The Mandate therefore imposes a variety of substantial burdens on the religious beliefs and exercise of each of the Plaintiffs.

The Lack of a Compelling Governmental Interest and the Availability of Less Restrictive Means

200. Coercing Plaintiffs to facilitate access to morally objectionable contraceptives and abortifacients advances no compelling governmental interest.

201. The required drugs, devices, and related services to which Plaintiffs object are already widely available at non-prohibitive costs.

202. There are numerous alternative mechanisms through which the government could provide access to the objectionable drugs and services without conscripting objecting employers and their insurance plans in violation of their religious beliefs.

203. For example, it could pay for the objectionable services through its existing network of family planning services funded under Title X, through direct government payments, or through tax deductions, refunds, or credits.

204. The government could also simply exempt all conscientiously objecting organizations, just as it has already exempted the small subset of nonprofit religious employers that are referred to in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

205. In one form or another, the government also provides exemptions for grandfathered plans, 42 U.S.C. § 18011; 75 Fed. Reg. 41,726, 41,731 (2010), and certain religious denominations, 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).

206. These broad exemptions further demonstrate that the government has no compelling interest in refusing to exempt organizations like the College or the Hepler Plaintiffs.

207. Employers who do not make modifications to their insurance plans that deprive the plans of "grandfathered" status may continue to use those grandfathered plans indefinitely.

208. Indeed, HHS itself has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans until at least 2014, and that a third of medium-sized employers with between 50 and 100 employees may do likewise. 75 Fed. Reg. 34538 (June 17, 2010); *see also* http://web.archive.org/web/20130620171510/http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (archived version); https://www.cms.gov/CCIIO/Resources/Files/factsheet grandfather amendment.html (noting that amendment to regulations "will result in a small increase in the number of plans retaining their grandfathered status relative to the estimates made in the grandfathering regulation"). The government has chosen to exclude entities with grandfathered health plans from the Mandate even if those entities are in every other respect identical to the Plaintiffs.

209. The Administration's recent postponement of the employer mandate (and its attendant penalties) also belies any claim that a compelling interest justifies coercing Plaintiffs to

comply with the Final mandate, as employers may now decide not to provide employee health plans, without incurring fines under 26 U.S.C. § 4980H, at least for one additional year.

210. These broad exemptions also demonstrate that the Final Mandate is not a generally applicable law entitled to some measure of judicial deference.

211. The available evidence does not support Defendants' contention that making contraceptives, abortifacients, and related counseling available without cost sharing decreases the rate of unintended pregnancy or the adverse health or equality consequences that allegedly flow from the unintended nature of a pregnancy.

212. The government's willingness to exempt various secular organizations and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for select religious organizations and a flimsy accommodation for others also shows that the Final Mandate is not neutral, but rather discriminates against certain organizations because of their religious commitment to following their faith-based convictions about the sanctity, dignity, and value of human life.

213. Indeed, the Final Mandate was promulgated by government officials, and supported by non-governmental organizations, who strongly oppose certain religious teachings and beliefs regarding marriage and family.

214. Defendant Sebelius, for example, has long been a staunch supporter of abortion rights and a vocal critic of certain religious teachings and beliefs regarding abortion and contraception.

215. On October 5, 2011, six days after the comment period for the original interim final rule 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."

216. She further criticized individuals and entities whose beliefs differed from those held by her and the others at the fundraiser, stating: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much."

217. On July 16, 2013, Secretary Sebelius further compared opponents of the Affordable Care Act generally to "people who opposed civil rights legislation in the 1960s," stating that upholding the Act requires the same action as was shown "in the fight against lynching and the fight for desegregation." *See* http://www.hhs.gov/secretary/about/speeches/sp20130716.html.

218. Consequently, on information and belief, the College and the Hepler Plaintiffs allege that the purpose of the Final Mandate, including the extraordinarily narrow scope of the religious employer exemption, is to penalize and discriminate against religious organizations that oppose contraception and abortion.

FIRST CLAIM FOR RELIEF[1]
By Geneva College against All Defendants
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

219. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

220. Geneva College's sincerely held religious beliefs prohibit it from providing, paying for, making accessible, or facilitating coverage or payments for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing or

[1] By omitting from this second amended complaint claims and theories that appeared in the original and first amended complaints but were dismissed under the Court's March 6, 2013 (ECF No. 74), Plaintiffs do not waive their right to seek appellate review of those dismissals and expressly reserve their right to do so.

facilitating a plan that causes access to the same through an insurance company or any other third party.

221. When the College complies with the Ten Commandments' prohibition on murder and with other sincerely held religious beliefs, it exercises religion within the meaning of the Religious Freedom Restoration Act.

222. The Mandate substantially burdens Geneva College's religious exercise and coerces it to violate or change its religious beliefs.

223. The Mandate chills the College's religious exercise within the meaning of RFRA and pressures it to abandon or modify its religious convictions and religious practice.

224. The Mandate exposes the College to substantial fines and/or financial burdens for its religious exercise.

225. The Mandate exposes the College to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

226. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

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

228. The Mandate and Defendants' threatened enforcement thereof violate the College's rights protected by the Religious Freedom Restoration Act.

229. Absent injunctive and declaratory relief against application and enforcement of the Mandate, the College will suffer irreparable harm.

SECOND CLAIM FOR RELIEF
By Geneva College against All Defendants
Violation of Free Exercise Clause of the First Amendment
to the United States Constitution

230. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

231. Geneva College's sincerely held religious beliefs prohibit it from providing, paying for, making accessible, or otherwise facilitating coverage or payments for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing or facilitating a plan that causes access to the same through an insurance company or any other third party.

232. When the College complies with the Ten Commandments' prohibition on murder and with other sincerely held religious beliefs, it exercises religion within the meaning of the Free Exercise Clause.

233. The Mandate is not neutral and is not generally applicable.

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

235. The Mandate furthers no compelling governmental interest.

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

237. The Mandate coerces the College to change or violate its religious beliefs.

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

239. The Mandate exposes the College to substantial fines and/or financial burdens for its religious exercise.

240. The Mandate exposes the College to substantial competitive disadvantages, in that it makes it unclear what health benefits it can offer to its employees and what health insurance coverage it can facilitate for its students.

241. The Mandate substantially burdens the College's religious exercise.

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

243. Despite being informed in detail of the religious objections of the College and thousands others, Defendants designed the Mandate and the religious exemption thereto to target the College and others like it, thereby making it impossible for the College and other similar religious organizations to comply with their religious beliefs without suffering crippling punishments.

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

245. By design, Defendants framed the Mandate to apply to some religious organizations but not others, resulting in discrimination among religions.

246. The Mandate violates Geneva College's rights secured to it by the Free Exercise Clause of the First Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF
By Geneva College against All Defendants
Violation of the Establishment Clause of the
First Amendment to the United States Constitution

247. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

248. The First Amendment's Establishment Clause, together with the Free Exercise Clause, prohibit the unjustified differential treatment of similarly situated religious organizations.

More specifically, the Religion Clauses forbid government from discriminating among religious entities because of their incidental institutional structure or affiliation.

249. Geneva falls outside the scope of the Mandate's narrow religious exemption simply because the College and the Reformed Presbyterian Church of North America decided that the College would not be an "integrated auxiliary" of the denomination.

250. Imposing the Mandate on the College simply because of this incidental structural decision violates the Establishment Clause's ban on unjustified treatment of similarly situated religious organizations.

251. Defendants attempt to justify their narrow religious exemption from the Mandate by claiming that exempt entities (churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order) "are more likely than other employers to employ people of the same faith who share the same objection [to some or all contraceptive services], and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan." 78 Fed. Reg. at 39,874.

252. The College's workforce consists exclusively of those who profess faith in Christ. Accordingly, the College is "more likely than other employers to employ people . . . who share the same objection, and who would therefore be less likely than other people to use [abortifacient] services even if such services were covered under their plan." Thus, under Defendants' own rationale, the College should enjoy the protection of the exemption. However, it does not—primarily because it and the RPCNA elected not to structure their relationship a certain way (*i.e.*, with the College as an "integrated auxiliary" of the

denomination). Again, this sort of unjustified differential treatment of a religious organization because of its incidental structural choices violates the Establishment Clause.

253. The Establishment Clause also forbids government from imposing burdens on or withholding benefits from a religious organization based upon animosity towards that organization or its religiously-based positions or policies.

254. The Mandate was imposed in an attempt to discriminate against religious organizations that object to some or all contraceptives. Decision-makers in the government and among its hand-selected outside third parties imposed the Mandate based on animus towards entities with beliefs like the ones possessed by Geneva College, and bias in favor of the use of abortifacients.

255. The government's willingness to exempt various secular organizations and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for select religious organizations and a flimsy accommodation for others also shows that the Final Mandate is not neutral, but rather discriminates against certain organizations because of their religious commitment to following their faith-based convictions about the sanctity, dignity, and value of human life.

256. The Final Mandate was promulgated by government officials, and supported by non-governmental organizations, who strongly oppose certain religious teachings and beliefs regarding marriage, family, and the dignity of human life, including the unborn.

257. Both the inclusion of abortifacients in the list of mandate preventive services as well as the extraordinarily narrow religious exemption from the mandate reveal and reflect the insidious purpose behind the challenged regulations, which thus transgress the Establishment Clause's restraints on government animus towards religion or particular religious ideas.

258. The Establishment Clause, together with the Free Exercise Clause, also protects the freedom of religious organizations to decide for themselves, free from governmental interference, matters of internal governance as well as those of doctrine and practice.

259. Under the First Amendment, government may not interfere with a religious organization's internal decisions concerning its religious structure, leadership, practice, discipline, membership, or doctrine.

260. Under the First Amendment, government may not interfere with a religious organization's internal decisions if that interference would affect the faith and mission of the organization itself.

261. The College made an internal decision, dictated by its Christian faith, that the health plans it makes available to employees and students may not include, subsidize, provide, pay for, or in any way facilitate access to abortifacient drugs, devices, or related services.

262. The Mandate interferes with the College's internal decisions concerning its structure and mission by requiring it to subsidize, provide, and facilitate practices that directly conflict with its Christian beliefs.

263. The Mandate's interference with the College's internal decisions affects its faith and mission by requiring it to subsidize, provide, and facilitate practices that directly conflict with its religious beliefs.

264. The College also made an internal decision to not be structured as an integrated auxiliary to a church, denomination, or association of churches.

265. The Mandate's narrow religious exemption unconstitutionally punishes the College for this structural choice, and pressures it to become an integrated auxiliary of a church or denomination in order to gain the protection of the exemption.

266. Because the Final Mandate interferes with the College's internal decision making in a manner that affects its faith and mission, it violates the Establishment Clause (and Free Exercise Clause) of the First Amendment.

267. Absent injunctive and declaratory relief against the Mandate, the College will suffer irreparable harm.

FOURTH CLAIM FOR RELIEF
By Geneva College against All Defendants
Violation of the Free Speech Clause of the First Amendment
to the United States Constitution

268. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

269. Defendants' requirement that the College facilitate insurance coverage or separate payments for education and counseling regarding contraception causing abortion forces Geneva College to speak in a manner contrary to its religious beliefs.

270. The College teaches that abortion violates God's law and that any participation in the unjustified taking of an innocent human life contradicts its religious beliefs, convictions, and its expectations about the behavior in which members of its community engage.

271. The Mandate compels the College to facilitate expression and activities that the College teaches are inconsistent with its religious beliefs, expression, and practices.

272. The Mandate compels the College to facilitate access to government-dictated education and counseling supportive of abortion and the use of items that can cause early embryo demise.

273. The Mandate necessarily includes coverage of education and counseling in favor of the items that the College objects to covering, and when medical providers prescribing those

items offer education and counseling they will have already decided that the patient should use the items, so the covered education and counseling will include speech in favor of the items.

274. Defendants thus violate the College's right to be free from compelled speech, a right secured to it by the Free Speech Clause of the First Amendment.

275. The Mandate's compelled speech requirement does not advance a compelling governmental interest.

276. Defendants' chosen mechanism of pursuing their stated goals is not the least restrictive means reasonably available to them.

277. The Free Speech Clause also forbids government from unduly interfering with the right of expressive association without adequate justification.

278. Geneva College exists in part to communicate its religious views to various constituencies: students and their families; potential students and their families; actual and potential faculty and staff; members of the RPCNA; the Christian community at large; and society as a whole.

279. One of the religious views it communicates is that God created human beings uniquely in His image, and thus that human beings are entitled to respect and protection from the moment of conception. The College teaches that abortion violates God's law and that any participation in the unjustified taking of an innocent human life contradicts its religious beliefs and convictions.

280. The College fosters a community that shares a commitment to Christian doctrinal and ethical precepts, including the sanctity and dignity of human life.

281. Facilitating access to abortifacients through its employee and/or student health plans undermines the College's ability effectively to associate around shared religious

commitments and to convey its religiously-based messages to its various constituencies. The Mandate compels the College to facilitate expression and activities that the College teaches are inconsistent with its religious beliefs, expression, and practices, thereby undermining its effort to foster a community committed to Christian doctrinal and ethical principles.

282. No compelling interest justifies Defendants' undue burden on the College's ability to associate around shared religious convictions and thereby to communicate its chosen messages.

283. The Mandate thus violates Geneva College's rights secured to it by the Free Speech Clause of the First Amendment to the United States Constitution.

284. Absent declaratory and injunctive relief, the College will suffer irreparable harm.

FIFTH CLAIM FOR RELIEF
By Geneva College against All Defendants
Violation of the Administrative Procedure Act

285. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

286. Because they did not give proper notice and an opportunity for public comment, Defendants did not take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

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

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

289. Defendants' issuance of the Mandate was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A). Defendants attempt to justify their narrow religious exemption from the Mandate by claiming that exempt entities (churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order) "are more likely than other employers to employ people of the same faith who share the same objection [to some or all contraceptive services], and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan." 78 Fed. Reg. at 39,874.

290. The College's workforce consists exclusively of those who profess faith in Christ. Accordingly, the College is "more likely than other employers to employ people . . . who share the same objection, and who would therefore be less likely than other people to use [abortifacient] services even if such services were covered under their plan." Thus, under Defendants' own rationale, the College should enjoy the protection of the exemption. However, it does not—primarily because it and the RPCNA elected not to structure their relationship a certain way (*i.e.*, with the College as an "integrated auxiliary" of the denomination). This differential treatment of organizations that share the same critical attribute is arbitrary and capricious.

291. The so-called "accommodation" forces third parties to initially bear the cost of abortifacient services provided to the employees of eligible organizations like the College. Neither the Affordable Care Act nor any other duly enacted law confers sufficient authority upon Defendants to impose this obligation

292. Accordingly, the Mandate's "accommodation" is contrary to law in violation of the Administrative Procedure Act.

SIXTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

293. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

294. The Hepler Plaintiffs' sincerely held religious beliefs prohibit them from providing or participating in coverage for abortion, abortifacients, embryo-harming pharmaceuticals, contraception, sterilization and related education and counseling, or providing a plan that causes access to the same through their insurance company.

295. When the Hepler Plaintiffs comply with their sincerely held religious beliefs, they exercise religion within the meaning of the Religious Freedom Restoration Act.

296. The Mandate imposes a substantial burden on the Hepler Plaintiffs' religious exercise and coerces them to change or violate their religious beliefs.

297. The Mandate chills the Hepler Plaintiffs' religious exercise within the meaning of RFRA.

298. The Mandate exposes the Hepler Plaintiffs to substantial fines and/or financial burdens for their religious exercise.

299. The Mandate exposes the Hepler Plaintiffs to substantial competitive disadvantages because of uncertainties about their health insurance benefits caused by the Mandate.

300. The Mandate not only compels the violation of the Hepler Plaintiffs' religious beliefs by operation against Seneca Hardwood's and WLH Enterprises' health plans, but also violates Mr. Hepler's and Mrs. Kolesar's religious beliefs to the extent they, their employees and family members are forced by practical need and/or by operation of law into an open market of

health insurance wherein all plans they could participate in, by operation of the Mandate, will cover these religiously objectionable items not only for themselves and for others but also for their minor and college-aged children, possibly even leading their children to obtain such items through their parents' own health plan without their knowledge or consent.

301. The Mandate exposes the individual Hepler Plaintiffs to harm to their own health insurance coverage as well as a violation of their religious beliefs not to participate in a plan that covers objectionable items for themselves or their children.

302. The Mandate also violates the rights of Wayne L. Hepler with respect to his operation of WLH Enterprises as a sole proprietor.

303. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

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

305. The Mandate violates RFRA.

SEVENTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of Free Exercise Clause of the First Amendment
to the United States Constitution

306. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

307. The Hepler Plaintiffs' sincerely held religious beliefs prohibit them from providing or participating in coverage for abortion, abortifacients, embryo-harming pharmaceuticals, contraception, sterilization and related education and counseling, or providing a plan that causes access to the same through their insurance company.

308. When the Hepler Plaintiffs comply with their sincerely held religious beliefs, they exercise religion within the meaning of the Free Exercise Clause.

309. The Mandate is not neutral and is not generally applicable.

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

311. The Mandate furthers no compelling governmental interest.

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

313. The Mandate coerces the Hepler Plaintiffs to change or violate their religious beliefs or suffer penalties and burdens if they wish not to.

314. The Mandate chills the Hepler Plaintiffs' religious exercise.

315. The Mandate exposes the Hepler Plaintiffs to substantial fines and/or financial and other burdens for their religious exercise.

316. The Mandate exposes the Hepler Plaintiffs to substantial competitive disadvantages for complying with their conscientious religious beliefs.

317. The Mandate not only compels the violation of the Hepler Plaintiffs' religious beliefs by operation against Seneca Hardwood's and WLH Enterprises' health plans, but also violates Mr. Hepler's and Mrs. Kolesar's religious beliefs to the extent they, their employees and family members are forced by practical need and/or by operation of law into an open market of health insurance wherein all plans they could participate in, by operation of the Mandate, will cover these religiously objectionable items not only for themselves and for others but also for their minor and college-aged children, possibly even leading their children to obtain such items through parents' their own health plan without their knowledge or consent.

318. The Mandate imposes a substantial burden on the Hepler Plaintiffs' religious exercise.

319. The Mandate also violates the rights of Wayne L. Hepler with respect to his operation of WLH Enterprises as a sole proprietor.

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

321. Defendants designed the Mandate and the religious exemption thereto in a way that make it impossible for the Hepler Plaintiffs and other similar individuals and entities to comply with their religious beliefs.

322. Defendants promulgated both the Mandate and the religious exemption in order to suppress the religious exercise of the Hepler Plaintiffs and others.

323. By design, Defendants framed the Mandate to apply to some religious entities and individuals but not on others, resulting in discrimination among religions.

324. The Mandate violates the Hepler Plaintiffs' rights secured to it by the Free Exercise Clause of the First Amendment to the United States Constitution.

EIGHTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Establishment Clause of the
First Amendment to the United States Constitution

325. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

326. The Establishment Clause forbids government from imposing burdens on or withholding benefits from a religious organization based upon animosity towards that organization or its religiously-based positions or policies.

327. The Mandate was imposed in an attempt to discriminate against organizations that object to some or all contraceptives. Decision-makers in the government and among its

hand-selected outside third parties imposed the Mandate based on animus towards entities with beliefs like the ones possessed by the Hepler Plaintiffs, and bias in favor of the use of abortifacients.

328. The government's willingness to exempt various secular organizations and postpone the employer mandate, while adamantly refusing to provide anything but the narrowest of exemptions for select religious organizations and a flimsy accommodation for others also shows that the Final Mandate is not neutral, but rather discriminates against certain organizations because of their religious commitment to following their faith-based convictions about the sanctity, dignity, and value of human life.

329. The Final Mandate was promulgated by government officials, and supported by non-governmental organizations, who strongly oppose certain religious teachings and beliefs regarding marriage, family, and the dignity of human life, including the unborn.

330. Both the inclusion of abortifacients in the list of mandate preventive services as well as the extraordinarily narrow religious exemption from the mandate reveal and reflect the insidious purpose behind the challenged regulations, which thus transgress the Establishment Clause's restraints on government animus towards religion or particular religious ideas.

331. The Mandate thus violates the Hepler Plaintiffs' rights secured to them by the Establishment Clause of the First Amendment to the United States Constitution.

NINTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Free Speech Clause of the First Amendment
to the United States Constitution

332. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

333. Defendants' requirement of provision of insurance coverage for education and counseling regarding abortifacients, contraception, and sterilization forces the Hepler Plaintiffs to speak in a manner contrary to their religious beliefs.

334. The Mandate necessarily includes coverage of education and counseling in favor of the items that the Hepler Plaintiffs object to covering, and when medical providers prescribing those items offer education and counseling they will have already decided that the patient should use the items, so the covered education and counseling will include speech in favor of the items.

335. Defendants have no narrowly tailored compelling interest to justify this compelled speech.

336. The Mandate violates the Hepler Plaintiffs' rights secured to them by the Free Speech Clause of the First Amendment to the United States Constitution.

TENTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Administrative Procedure Act

337. Plaintiffs reallege all matters set forth in paragraphs 1-218 and incorporate them herein.

338. Because they did not give proper notice and an opportunity for public comment, Defendants did not take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

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

340. Defendants issued its regulations on an interim final basis and only asked for comments thereafter. Yet Defendants signaled from regulatory text of its interim rules that it

had no intention of considering the objections by persons such as the Hepler Plaintiffs to provide them with exemptions, or to hold the effective date of its rules after it received and considered all the comments submitted.

341. Thus Defendants imposed its rules without the required "open-mindedness" that agencies must have when notice-and-comment occurs. Defendants also did not have good cause to impose the rules without prior notice and comment.

342. Therefore, Defendants have violated the notice and comment requirements of 5 U.S.C. §§ 553 (b) and (c), have taken agency action not in accordance with procedures required by law, and Geneva College is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to Plaintiffs and their insurance issuers with respect to their health insurance plans and similarly situated persons not before the Court to be a violation of their rights protected by RFRA, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate to the Plaintiffs and their insurance issuers with respect to their health insurance plans or in a way that violates the legally protected rights of any person, and prohibiting Defendants from continuing to illegally discriminate against Plaintiffs and others not before the Court by requiring them to provide health insurance coverage, or access to separate

payments for contraceptives, abortifacients, and related counseling to their employees and students;

C. That this Court award Plaintiffs court costs and reasonable attorney's fees, as provided by the Equal Access to Justice Act and RFRA (as provided in 42 U.S.C. § 1988); and

D. That this Court grant such other and further relief as to which the Plaintiffs may be entitled.

Respectfully submitted this 1st day of October, 2013.

s/ *Gregory S. Baylor*
Gregory S. Baylor
Texas Bar No. 01941500
gbaylor@alliancedefendingfreedom.org
Steven H. Aden
DC Bar No. 466777
saden@alliancedefendingfreedom.org
Matthew S. Bowman
DC Bar No. 993261
mbowman@alliancedefendingfreedom.org
ALLIANCE DEFENDING FREEDOM
801 G Street, NW, Suite 509
Washington, DC 20001
(202) 393-8690
(202) 237-3622 (facsimile)
Attorneys for Plaintiffs

Bradley S. Tupi
Pennsylvania Bar No. 28682
btupi@tuckerlaw.com
David J. Mongillo
Pennsylvania Bar No. 309995
dmongillo@tuckerlaw.com
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5545
(412) 594-5619 (facsimile)
Local Counsel for Plaintiffs

David A. Cortman
Georgia Bar No. 188810
dcortman@alliancedefendingfreedom.org
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Road NE
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-6744 (facsimile)
Attorney for Plaintiffs

Kevin H. Theriot
Kansas Bar No. 21565
ktheriot@alliancedefendingfreedom.org
Erik W. Stanley
Kansas Bar No. 24326
estanley@alliancedefendingfreedom.org
ALLIANCE DEFENDING FREEDOM
15192 Rosewood
Leawood, KS 66224
(913) 685-8000
(913) 685-8001 (facsimile)
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2013 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Gregory S. Baylor