

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

M.K. CHAMBERS COMPANY, a Michigan corporation; GERALD D. CHAMBERS, an individual; and ROBERT W. CHAMBERS, an individual,

Judge

Magistrate Judge

Plaintiffs,

Case No. 2:13-cv-11379

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; SETH D. HARRIS, Acting Secretary of the United States Department of Labor; UNITED STATES DEPARTMENT OF LABOR; JACOB J. LEW, Secretary of the United States Department of the Treasury; and UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

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**VERIFIED COMPLAINT**

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Plaintiffs, M.K. Chambers Company (“MKC”), Gerald D. Chambers (“GDC”), and

Robert W. Chambers ("RWC"), (collectively MKC, GDC and RWC referred to as "Plaintiffs"), by their attorneys, The Troy Law Firm, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof state the following upon information and belief:

### **NATURE OF THE ACTION**

1. Plaintiffs bring this action to challenge Defendants' promulgation and implementation of certain regulations adopted under the "Patient Protection and Affordable Care Act" (Pub. L. 111-148, March 23, 2010, 124 Stat. 119) and the "Health Care and Education Reconciliation Act" (Pub. L. 111-152, March 30, 2010, 124 Stat. 1029) (collectively known and hereinafter referred to as the "Affordable Care Act"), which went into effect on August 1, 2012 and force individuals, such as Plaintiffs, to violate some of their deepest held religious beliefs and moral values.

2. One of the provisions of the Affordable Care Act mandates that health plans "provide coverage for and shall not impose any cost sharing requirements for ... with respect to women, such additional preventive care and screenings ... as provided for in comprehensive guidelines supported by the Health Resources and Services Administration" and directs the Secretary of the United States Department of Health and Human Services to determine what would constitute "preventative care." 42 U.S.C § 300gg-13(a)(4).

3. Without notice of rulemaking or opportunity for public comment, the United States Department of Health and Human Services, the United States Department of Labor, and the United States Department of Treasury adopted the Institute of Medicine ("IOM") recommendations in full and promulgated an interim final rule ("the Mandate"), which requires that all "group health plan[s] and ... health insurance issuer[s] offering group or individual health

insurance coverage" provide all FDA-approved contraceptive methods and procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.

4. The Health Resources and Services Administration also issued guidelines adopting the IOM recommendations. (<http://www.hrsa.gov/womensguidelines>).

5. Under the IOM guidelines, the Mandate requires *all* insurance insurers (e.g. Blue Cross/Blue Shield of Michigan) to provide in all of its insurance plans, group and individual, not only contraception, but also abortion, because certain drugs and devices such as the "morning-after pill," "Plan B," and "ella" come within the Mandate's and Health Resources and Services Administration's definition of "Food and Drug Administration-approved contraceptive methods," despite their known abortifacient mechanisms of action.

6. The Mandate forces employers and individuals, such as Plaintiffs, to violate their religious beliefs, because it requires employers and individuals to pay for insurance from insurance issuers which funds and directly provides for drugs, devices, and services which violate some of their deeply held religious beliefs.

7. Since under the Mandate all insurance issuers must provide what the United States Department of Health and Human Services has declared "preventative care," employers and individuals are stripped of any choice between insurance issuers or insurance plans to avoid violating their religious beliefs.

8. The United States Department of Health and Human Services, in an unprecedented despoiling of religious rights, forces religious employers and individuals, who believe that funding and providing for contraception, abortion, and abortifacients is wrong, to participate in acts that violate their beliefs and their conscience, and are forced out of the health insurance market in its entirety in order to comply with their religious beliefs.

9. Plaintiffs seek a Preliminary Injunction and Permanent Injunction, enjoining Defendants from further implementing and enforcing provisions of the regulations promulgated under the Affordable Care Act, specifically the Mandate. The Mandate violates Plaintiffs' rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

10. Plaintiffs also seek a Declaratory Judgment that the regulations promulgated under the Affordable Care Act, specifically the Mandate, violate Plaintiffs' rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

11. Plaintiffs bring this action to vindicate not only their own rights, but also to protect the rights of all Americans who care about our Constitutional guarantees of free exercise of religion and their freedom of speech, as well as the protection of innocent human life.

#### **JURISDICTION AND VENUE**

12. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1346 because it is a civil action against agencies and officials of the United States based on claims arising under the Constitution, laws of the United States, and regulations of executive departments and it seeks equitable or other relief under an Act of Congress, and also pursuant to 28 U.S.C. § 1361 as this Court may compel officers and agencies of the United States to perform a duty owed to Plaintiffs.

13. Plaintiffs' claims for declaratory and preliminary and permanent injunctive relief are authorized by 5 U.S.C. § 702, 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by 42 U.S.C. § 2000bb-1, and by the general legal and

equitable powers of this Court.

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

15. This Court has the authority to award Plaintiffs their costs and attorneys' fees pursuant to 28 U.S.C. § 2413 and 42 U.S.C. § 1988.

#### **PLAINTIFFS**

16. MKC is a Michigan corporation with a registered office in North Branch, Michigan.

17. GDC is an individual and a citizen of the State of Michigan and the United States.

18. RWC is an individual and a citizen of the State of Michigan and the United States.

19. GDC is the President of MKC and its 50% shareholder; RWC is Vice President of MKC and its other 50% shareholder. GDC and RWC are Christians and faith-driven individuals who are responsible for setting all policies that govern the conduct and all phases of business of MKC.

20. *For decades*, GDC and RWC, via MKC, formulated MKC's health insurance policy with Blue Cross/Blue Shield of Michigan, which specifically excluded contraception, abortion, drugs commonly referred to as "life style drugs," and otherwise exempted MKC from paying, contributing, or supporting contraception and abortion for others, or for "life style drugs."

21. GDC and RWC, via MKC, ensured that their insurance policy contained these exclusions, because they adhere to the Catholic Church's teachings regarding the immorality of artificial means of contraception and sterilization, and they believe, among other things, that actions intended to terminate an innocent human life by abortion are gravely sinful.

22. Based on their Christian faith and deeply held religious beliefs, Plaintiffs do not believe that contraception, or abortion are properly understood to constitute medicine, health care, or a means of providing for the well being of persons. Indeed, Plaintiffs' Christian beliefs and fundamental understanding of life, means that these procedures kill people.

23. Plaintiffs know and state unequivocally, that their Christian religious beliefs forbid them from participating in, paying for, training others to engage in, or otherwise supporting contraception or the killing of people by abortion.

24. GDC and RWC have always managed and operated MKC in a way that reflects the teachings, mission, and values of their Christian faith. Also, in furtherance of their Christian faith, they strongly support, financially and otherwise, Catholic fundraisers and other events, and have refused providing support, financially or otherwise, for events or entities that do not reflect the teachings, mission, and values of their Catholic faith, such as requiring that their facilities remain closed and otherwise not servicing any of their customers on Sundays, eliminate any organization from a supplier list that knowingly supports, endorses, or contributes to organizations that actively participate in killing people, such as Planned Parenthood.

#### **DEFENDANTS**

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

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

27. Defendant HHS is an executive agency of the United States government and is

responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

28. Defendant Seth D. Harris (or whoever is his successor) is the Acting Secretary of the United States Department of Labor. In this capacity, he holds responsibility for the operation and management of the United States Department of Labor. Defendant Harris is sued in his official capacity only.

29. Defendant United States Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

30. Defendant Jacob J. Lew (or whoever is his successor) is the Secretary of the United States Department of the Treasury. In this capacity, he holds responsibility for the operation and management of the United States Department of Treasury. Defendant Lew is sued in his official capacity only.

31. Defendant United States Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

#### **FACTUAL ALLEGATIONS**

32. MKC is family owned and operated and was created 56 years ago by the father of GDC and RWC.

33. Plaintiffs follow the teachings, mission, and values of the Catholic faith, and share a common mission of conducting their business operations in a manner that does not conflict with their Catholic faith and other Christian beliefs.

34. Plaintiffs do not discriminate against anyone's personal belief system in their

workforce, and would not base a hiring decision upon an applicant's religious or personal beliefs.

35. In an effort to be a competitive employer, Plaintiffs have striven over the years to provide its workforce with insurance coverage generally available in the Michigan market.

36. Plaintiffs obtain their group insurance through Blue Cross/Blue Shield of Michigan, and currently provide this insurance to its full-time workforce.

37. For decades, and in line with their religious beliefs, Plaintiffs specifically designed a workforce health insurance plan with Blue Cross/Blue Shield of Michigan to exclude contraception, abortion, and abortifacients.

38. So as not to violate their deeply held religious beliefs, and prior to January 1, 2013, Plaintiffs have not funded drugs, devices, services or procedures inconsistent with their faith or the otherwise abhorrent killing of voiceless people, or provided information or guidance to its workforce regarding artificial contraception, abortion, abortifacients or related education and counseling.

39. With full knowledge of these aforementioned beliefs, Defendants issued an administrative rule ("the Mandate") that destructively dismisses Plaintiffs' religious beliefs, the religious beliefs of millions of other Americans, and for that matter the religious beliefs of billions of people on this planet.

40. The Mandate not only forces Plaintiffs to now finance, support, *and even endorse* contraception, abortion, and related education and counseling as health care, but also subverts the expression of Plaintiffs' religious beliefs, and the beliefs of millions of other Americans, by forcing Plaintiffs to fund, promote, and assist others to acquire services which Plaintiffs believe involve gravely immoral practices and kill people.

41. The Mandate unconstitutionally coerces, if not requires, Plaintiffs to violate their



deeply held religious beliefs under threat of directly violating their consciences, in addition to any imposed fines and penalties. The Mandate also forces Plaintiffs to fund government-dictated speech that is directly at odds with their own speech and religious beliefs. Having to pay a fine to the taxing authorities or being entirely forced out of the insurance market in order to ensure the privilege of practicing one's religion or controlling one's own speech substantially burdens Plaintiffs' religious liberty and freedom of speech under the First Amendment.

42. The Mandate strips Plaintiffs of any choice to select an insurance plan that does not cover and finance contraception, the killing of people, and abortifacients, as the Mandate requires that all insurance insurers provide this coverage.

43. None of Plaintiffs' plans are considered "grandfathered" and are now subject to the provisions of the Mandate.

44. Blue Cross/Blue Shield of Michigan deemed that, due to the Mandate, Plaintiffs may no longer exclude contraception, abortion, and abortifacients from their insurance plans, and must now provide and pay for these services which violate their religious beliefs.

45. Plaintiffs wish to conduct their businesses in a manner that does not violate the principles of their religious faith.

46. Complying with the Mandate has resulted in a direct violation of Plaintiffs' religious beliefs, because it requires Plaintiffs to pay for and assist others in paying for or obtaining not only contraception, but also abortion, because certain drugs and devices such as the "morning-after pill," "Plan B," and "ella" come within the Mandate's and Health Resources and Services Administration's definition of "Food and Drug Administration-approved contraceptive methods," despite their known abortifacient mechanisms of action.

47. Defendants' refusal to accommodate the conscience of Plaintiffs, and of other Americans who share Plaintiffs' religious views, is highly selective. Numerous exemptions exist in the Affordable Care Act which appear arbitrary and were granted to employers who purchase group insurance. This evidences that Defendants do not mandate that all insurance plans need to cover "preventative services" (e.g. the thousands of waivers from the Affordable Care Act issued by Defendants for group insurance based upon the commercial convenience of large corporations, the age of the insurance plan, or the size of the employer).

48. Despite granting waivers upon a seemingly arbitrary basis, no exemption exists for an employer or individual whose religious conscience instructs him that certain mandated services are unethical, immoral, and volatile to one's religious beliefs. Defendants' plan fails to give the same level of weight or accommodation to the exercise of one's fundamental First Amendment freedoms that it assigns to the yearly earnings of a corporation.

49. Defendants' actions violate Plaintiffs' right to freedom of religion, as secured by the First Amendment to the United States Constitution and civil rights statutes, including the Religious Freedom Restoration Act (RFRA).

50. Defendants' actions also violate Plaintiffs' right to the freedom of speech, as secured by the First Amendment to the United States Constitution.

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

52. Had Plaintiffs' religious beliefs, or the beliefs of the million other Americans who share Plaintiffs' religious beliefs, been obscure or unknown, Defendants' actions might have been an accident. But because Defendants acted with full knowledge of those beliefs,

and because they arbitrarily exempt some plans for a wide range of reasons, other than religious conviction, the Mandate can be interpreted as nothing other than a deliberate attack by Defendants on the religious beliefs held by Plaintiffs and the similar religious beliefs held by millions of other Americans. Defendants have, in sum, intentionally used government power to force individuals to believe in, support, and endorse the mandated services manifestly contrary to their own religious convictions, and then to act on that coerced belief, support, or endorsement. Plaintiffs seek declaratory and injunctive relief to protect against this attack.

### **THE AFFORDABLE CARE ACT**

53. In March 2010, Congress passed, and President Obama signed into law, the "Patient Protection and Affordable Care Act" (Pub. L. 111-148, March 23, 2010, 124 Stat. 119) and the "Health Care and Education Reconciliation Act" (Pub. L. 111-152, March 30, 2010, 124 Stat. 1029) (referred to in this complaint as the "Affordable Care Act"). The Affordable Care Act regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

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

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

56. The Affordable Care Act requires employers with more than 50 full-time employees or full-time employee equivalents to provide federal government-approved health insurance or pay a substantial per-employee fine. 26 U.S.C. § 4980H.

57. MKC has a workforce of over 120 full-time employees.

58. Plaintiffs must provide federal government-approved health insurance under the Affordable Care Act or pay substantial per-employee fines; employers with at least 50 employees that do not comply with the Mandate are subject to "fines, penalties [in the form of a

tax], and enforcement actions for non-compliance. *See* 29 U.S.C. §1132(a) (civil enforcement actions by the Department of Labor and insurance plan participants); 26 U.S.C. §4980D(a), (b) (penalty of \$100 per day per employee for noncompliance with coverage provisions of the Affordable Care Act); 26 U.S.C. §4980H (annual tax assessment for noncompliance with requirement to provide health insurance).” *Tyndale House Publishers, Inc. v. Sebelius*, \_\_\_ F.Supp.2d \_\_\_, 2012 WL 5817323 \*2 (D.D.C., Nove. 16, 2012). *See also* 77 Fed. Reg. 8725, 8729 (Feb. 15, 2012).

59. The Affordable Care Act purports to not apply to the failure to offer employer-sponsored insurance to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

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

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

62. Plaintiffs do not qualify for an individual exemption under 26 U.S.C. § 5000A(d)(2)(A)(i) and (ii), as Plaintiffs do not object to acceptance of public or private insurance funds in their totality and currently enjoy health insurance benefits that exclude contraceptives, abortion, and abortifacients.

63. The Affordable Care Act's preventive care requirements do not apply to

employers who provide so-called "grandfathered" health care plans.

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

65. Plaintiffs' current insurance plans do not qualify as "grandfathered" health care plans, and are considered "non-grandfathered."

66. Furthermore, Plaintiffs do not qualify for the "religious employer" exemption contained in 45 C.F.R § 147.130 (a)(1)(A) and (B).

67. Since Plaintiffs do not qualify for the "religious employer" exemption, they are not permitted to take advantage of the "temporary safe harbor" as set forth by the Defendants at 77 Fed. Reg. 8725 (Feb. 15, 2012).

68. Plaintiffs are thus subjected to the Mandate now and are confronted with choosing between complying with its requirements in violation of their religious beliefs or violating federal law.

69. Plaintiffs must choose between complying with the requirements of the Affordable Care Act in violation of their religious beliefs or pay fines which would make MKC substantially and economically unviable as an ongoing business entity, or eliminate all health care programs.

70. Plaintiffs are collectively confronted with complying with the requirements of the Affordable Care Act in violation of their religious beliefs or removing themselves from the health insurance market in its entirety, endangering the health and economic stability of their workforce families and forcing their company to be non-competitive as an employer in a market where other employers will be able to provide insurance to their employees under the Affordable Care Act without violating their beliefs.

71. The Affordable Care Act creates a system that is not generally applicable because it provides for numerous individualized exemptions from its rules.

72. The Affordable Care Act is not neutral because some groups, both secular and religious, enjoy exemptions from the law, while certain religious groups do not. Some groups, both secular and religious, have received waivers from complying with the provisions of the Affordable Care Act, while others – such as Plaintiffs – have not.

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

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

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

76. Upon information and belief, more than one thousand HHS waivers have been granted.

#### **THE "PREVENTIVE CARE" MANDATE**

77. A provision of the Affordable Care Act mandates that health plans "provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration" and directs the Secretary of United States Department of Health and Human Services to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg-13(a)(4).

78. On July 19, 2010, HHS, along with the United States Department of Treasury and

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

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

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

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

82. The Mandate's reach seeks to control the decisions of employers, individuals and also the decisions of *all* insurance issuers (i.e. "Blue Cross/Blue Shield of Michigan," etc.). 42 USC§ 300gg-13 (a)(1)-(4). ("A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not

impose any cost sharing requirements for evidence-based items or services that have in effect a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force; ... with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.").

83. *All* insurance issuers are mandated to include contraception, abortion, and abortifacients such as the "morning-after pill," "Plan B," and "ella" in *all* of its group *and* individual plans, not specifically exempted, beginning as of August 1, 2012.

84. Individuals and employers, regardless of the number of employees they employ, will eventually be forced to select an insurance plan which includes what HHS deemed "preventative care."

85. All individuals and employers will be stripped of their choice not to pay for the "preventative care," regardless of whether paying for such "services" violates one's conscience or deeply held religious beliefs.

86. Health insurance issuers include insurance companies such as Blue Cross/Blue Shield of Michigan, which is the insurance issuer used by Plaintiffs.

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

88. Prior to promulgating the Mandate, HHS accepted public comments to the 2010 interim final regulations from July 19, 2010 to September 17, 2010. Upon information and belief, a large number of groups filed comments, warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of services,



including contraception, abortion, and abortifacients.

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

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

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

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

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

94. Thirteen days later, on August 1, 2011, without notice of rulemaking or opportunity for public comment, HHS, the United States Department of Labor, and the United

States Department of Treasury adopted the IOM recommendations in full and promulgated an interim final rule ("the Mandate"), which requires that all "group health plan[s] and ... health insurance issuer[s] offering group or individual health insurance coverage" provide all FDA-approved contraceptive methods and procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. Health Resources and Services Administration issued guidelines adopting the IOM recommendations. (<http://www.hrsa.gov/womensguidelines>).

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

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

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

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

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

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

101. The Mandate fails to take into account the statutory and constitutional conscience rights of Plaintiffs, which has been a subject of comment.

102. The Mandate requires that Plaintiffs assist, provide, endorse, or fund coverage for contraception, abortion, abortifacients, and related education and counseling against its conscience in a manner that is contrary to law.

103. The Mandate constitutes government-imposed pressure and coercion on Plaintiffs

to change or violate their religious beliefs.

104. The Mandate exposes Plaintiffs, as individuals and as employers of companies with over 50 full-time employees, to substantial fines for refusal to change or violate their religious beliefs.

105. The Mandate imposes a burden on Plaintiffs' workforce recruitment efforts by creating uncertainty as to whether Plaintiffs will be able to offer health insurance to its workforce.

106. The Mandate places Plaintiffs at a competitive disadvantage in its efforts to recruit and retain a workforce.

107. The Mandate forces Plaintiffs to provide, fund, or approve and assist its workforce in purchasing contraception and abortifacient drugs in violation of Plaintiffs' religious beliefs, that doing so is gravely immoral and, in certain cases, equivalent to assisting another to kill innocent human life.

108. Plaintiffs have a sincere religious objection to providing coverage for emergency contraceptive drugs such as Plan B and "ella" since they believe those drugs could prevent a human embryo, which they understand to include a fertilized egg before it implants in the uterus, from implanting in the wall of the uterus, causing the death of a person.

109. Plaintiffs consider the prevention by artificial means of the implantation of a human embryo to be an abortion.

110. Plaintiffs believe that Plan B and "ella" can cause the death of the embryo, which is a person.

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

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

113. Plan B and "ella" can cause the death of the embryo.

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

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

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

117. The Mandate forces Plaintiffs to fund education and counseling concerning contraception, and abortion that directly conflicts with Plaintiffs' religious beliefs and teachings.

118. Plaintiffs could not cease providing its workforce with health insurance coverage without violating its religious duty to provide for the health and well-being of its workforce and their families. Additionally, employees would be unable to attain similar coverage in the market as it now exists.

119. The Mandate forces Plaintiffs to choose among violating their religious beliefs, incurring substantial fines, or terminating their workforce or individual health insurance coverage.

120. Providing counseling and education about contraceptives and abortion directly undermines and subverts the explicit messages and speech of Plaintiffs.

121. Group health plans and insurance issuers were subject to the Mandate as of August 1, 2012.

122. Plaintiffs have already devoted significant institutional resources, including both staff time and funds, to determine how to respond to the Mandate.

### **THE NARROW AND DISCRETIONARY RELIGIOUS EXEMPTION**

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

124. The Mandate allows HRSA to grant exemptions for "religious employers" who "meet[ ] all of the following criteria: (1) The inculcation of religious values is the purpose of the organization. (2) The organization primarily employs persons who share the religious tenets of the organization. (3) The organization serves primarily persons who share the religious tenets of the organization. (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 45 C.F.R. § 147.130(a)(iv)(B).

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

126. Most companies, including MKC, have more than one purpose.

127. For Plaintiffs, the inculcation of religious values is only one purpose among others.

128. Many companies, including MKC, employ many persons who do not share common religious beliefs.

129. Many companies, including MKC, serve many persons who do not share certain religious tenets of a religious organization.

130. Plaintiffs are, as confirmed by their respective insurance issuers, subject to the Mandate despite the existence of exemptions to the Mandate, as none of the exemptions

apply to Plaintiffs.

131. On January 20, 2012, Defendant Sebelius announced that there would be no change to the religious exemption. She added that "[n]onprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law," on the condition that those employers certify they qualify for the extension. At the same time, however, Sebelius announced that HHS "intend[s] to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support." *See* Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, (<http://www.hhs.gov/news/press/2012pres/01/20120120a.html>). To date, Defendant HHS has not released any official rule implementing either the one-year extension or the additional forced-speech requirement that applies to Plaintiffs.

132. Plaintiffs have had to comply with the Mandate, despite the fact that Plaintiffs are violating the teachings of their religious beliefs by directly providing, funding, and/or engaging in disseminating information and guidance about where to obtain contraception, abortion, or abortifacient services.

## CLAIMS

### COUNT I

#### **Violation of the First Amendment to the United States Constitution Establishment Clause**

133. Plaintiffs incorporate by reference all preceding paragraphs.

134. By design, Defendants imposed the Mandate on some religious organizations but

not on others, resulting in a selective burden on Plaintiffs.

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

136. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of "religious employers."

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

138. The Mandate and Defendants' threatened enforcement of the Mandate therefore violates Plaintiffs' rights secured to them by the Establishment Clause of the First Amendment to the United States Constitution.

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

## COUNT II

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

140. Plaintiffs incorporate by reference all preceding paragraphs.

141. The Mandate compels Plaintiffs to fund and to provide education and counseling related to contraception, abortion, and abortifacients.

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

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

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

**COUNT III**

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

145. Plaintiffs incorporate by reference all preceding paragraphs.

146. The Mandate compels Plaintiffs to fund and to provide education and counseling related to contraception, abortion, and abortifacients.

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

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

**COUNT IV**

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

149. Plaintiffs incorporate by reference all preceding paragraphs.

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

151. The Mandate vests HRSA with unbridled discretion to determine whether religious individuals such as Plaintiffs fall under the individual religious exemption. *See* 26 U.S.C. § 5000A(d)(2)(a)(i)-(ii).

152. The Mandate furthermore seems to have completely failed to address the constitutional and statutory implications of the Mandate on for-profit, secular employers such as Plaintiffs. As such, Plaintiffs are subject to the unbridled discretion of HRSA to determine whether such companies would be exempt.

153. Defendants' actions therefore violate Plaintiffs' right not to be subjected to a



system of unbridled discretion when engaging in speech or when engaging in religious exercise, as secured to them by the First Amendment of the United States Constitution.

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

**COUNT V**  
**Violation of the Religious Freedom Restoration Act**

155. Plaintiffs incorporate by reference all preceding paragraphs.

156. Plaintiffs' sincerely held religious beliefs prohibit them from providing or purchasing coverage for contraception, abortion, abortifacients, or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

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

158. The Mandate chills Plaintiffs' religious exercise.

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

160. The Mandate exposes Plaintiffs, who constitute employers with 50 or more full-time employees to substantial fines for their religious exercise.

161. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that they will no longer be permitted to offer or purchase health insurance.

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

163. The Mandate furthers no compelling governmental interest.

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

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

166. The Mandate and Defendants' threatened enforcement of the Mandate violate

Plaintiffs' rights secured to them by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et. seq.* (“RFRA”).

167. Absent injunctive and declaratory relief against the Defendants, Plaintiffs *have been and will continue* to be harmed.

**COUNT VI**  
**Violation of the Administrative Procedure Act**

168. Plaintiffs incorporate by reference all preceding paragraphs.

169. The Affordable Care Act expressly delegates to an agency within Defendant United States Department of Health and Human Services, the Health Resources and Services Administration, the authority to establish “preventive care” guidelines that a group health plan and health insurance issuer must provide.

170. Given this express delegation, Defendants were obliged to engage in formal notice and comment rulemaking as prescribed by law before Defendants issued the guidelines regarding what group health plans and insurers must provide.

171. Proposed regulations were required to be published in the Federal Register and interested persons were required to be given a chance to take part in the rulemaking through the submission of written data, views, or arguments.

172. Defendants promulgated the “preventive care” guidelines without engaging in the formal notice and comment rulemaking as prescribed by law. Defendants delegated the responsibilities for issuing “preventive care” guidelines to a non-governmental entity, the Institute of Medicine, which did not permit or provide for broad public comment otherwise required by the Administrative Procedures Act.

173. Defendants also failed to engage in the required notice and comment rulemaking when Defendants issued the interim final rules and the final rule that incorporates the “preventive

care” guidelines.

174. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute "good cause."

175. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a meaningful "consideration of the relevant matter presented." Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

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

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

178. The Weldon Amendment provides that "[n]one of the funds made available in this Act [making appropriations for Defendants United States Department of Labor and United States Department of Health and Human Services] may be made available to a Federal agency or program ... if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."

179. The Mandate requires issuers, employers, and individuals, including Plaintiffs to provide and purchase coverage of all Federal Drug Administration-approved contraceptives.

180. Some FDA-approved contraceptives cause abortions.

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

182. Moreover, the Mandate is contrary to the provisions of the Affordable Care Act.

183. Section 1303(b)(1)(A) of the Affordable Care Act states that "nothing in this title"-i.e., title I of the Act, which includes the provision dealing with "preventive services"- "shall be construed to require a qualified health plan to provide coverage of [abortion] services ... as part of its essential health benefits for any plan year."

184. Section 1303 further states that it is "the issuer" of a plan that "shall determine whether or not the plan provides coverage" of abortion services.

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

186. However, the Mandate requires all issuers, including Plaintiffs and Plaintiffs' insurance issuer, Blue Cross/Blue Shield of Michigan, to provide coverage of all Federal Drug Administration-approved contraceptives.

187. Some FDA-approved contraceptives cause abortions.

188. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the Mandate on Plaintiffs and similar companies and individuals.

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

190. Thus, Defendants' issuance of the interim final rule was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the rules fail to consider the full extent of their implications and they do not take into consideration the evidence against them.

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

**PRAYER FOR RELIEF**

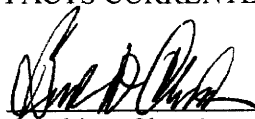
Wherefore, Plaintiffs request that the Court:

- a. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violates the First Amendment to the United States Constitution;
- b. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violates the Religious Freedom Restoration Act;
- c. Declare that the Mandate was issued in violation of the Administrative Procedure Act;
- d. Issue both a preliminary and a permanent injunction prohibiting and enjoining Defendants from enforcing the Mandate against Plaintiffs and other religious individuals, employers, and companies that object to funding and providing insurance coverage for contraceptives, abortion, abortifacients, and related education and counseling;
- e. Award Plaintiffs the costs of this action and reasonable attorney's fees; and
- f. Award such other and further relief as it deems equitable and just.

**VERIFICATIONS**

I HEREBY VERIFY, UNDER PENALTY OF PERJURY, THAT THE CONTENTS OF THE COMPLAINT ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF BASED ON THE FACTS CURRENTLY KNOWN BY ME.

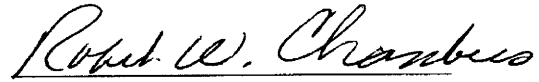
Dated: 3-28-13



\_\_\_\_\_  
Gerald D. Chambers, individually and  
as President of M.K. Chambers Company

I HEREBY VERIFY, UNDER PENALTY OF PERJURY, THAT THE CONTENTS OF THE COMPLAINT ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF BASED ON THE FACTS CURRENTLY KNOWN BY ME.

Dated: 3-28-2013

  
Robert W. Chambers, individually and as  
Vice President of M.K. Chambers Company

Dated: 3/28/13

Respectfully submitted,

/s/ Daniel E. Chapman  
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