UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 5:13-CV-01092-D
	§	
KATHLEEN SEBELIUS, et al.,	§	
	§	
Defendants.	§	

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION,
REQUEST FOR EXPEDITED CONSIDERATION,
AND BRIEF IN SUPPORT

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Plaintiffs Reaching Souls International, Inc. ("Reaching Souls"), Truett-McConnell College, Inc. ("Truett-McConnell"), by themselves and on behalf of all others similarly situated, and GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone") (collectively "Plaintiffs") seek a preliminary injunction prohibiting Defendants from enforcing the Affordable Care Act's ("ACA")[1] requirement that they facilitate access to abortion-inducing products and related education and counseling under their health plans (the "Mandate") in violation of their shared religious beliefs.

Reaching Souls and Truett-McConnell are ministries committed to living their Christian faith and sharing the good news about Jesus Christ. Reaching Souls does this by training evangelists and caring for orphans in Africa, Cuba, and India. Truett-McConnell equips its students with a Biblically-based liberal arts education.

Plaintiffs' commitment to their faith precludes them from participating in the government's scheme to subsidize and promote use of abortifacients under group health plans. As a matter of religious exercise, Reaching Souls and Truett-McConnell exclude abortifacients from their health plans through GuideStone, which offers health benefits for Southern Baptist and evangelical Christian employers consistent with their faith.

The government admits that the Mandate affects the religious liberty of non-profit organizations and has exempted a narrow category of religious organizations—institutional churches, their integrated auxiliaries, and the exclusively religious activities

[1] Together, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 1119 (2010) and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

of religious orders. Ministries like Reaching Souls and Truett-McConnell, that do not meet this strict test, must designate their insurer or health benefits administrator to deliver the objectionable abortifacients. The government calls this an "accommodation," but it fails to accommodate Reaching Souls and Truett-McConnell's religious beliefs, which preclude them from designating anyone to provide abortifacients.

Starting on January 1, 2014, Defendants will impose massive fines on non-exempt ministries that receive health benefits through GuideStone unless and until they cooperate with the Mandate in a manner that violates their religious beliefs. The Mandate will also force GuideStone to shrink its religious mission dedicated to offering health benefits to Southern Baptist and evangelical Christian employers consistent with their faith.

The Mandate violates the Religious Freedom Restoration Act ("RFRA") for the reasons recently set forth in *Hobby Lobby v. Sebelius*, 723 F.3d 1114, 1137-1145 (10th Cir. 2013). The Mandate also violates the First Amendment, both because it impermissibly prefers some religious organizations over others, and because it restricts Plaintiffs' speech. These openly religious Plaintiffs are currently in the process of arranging benefit plans for the coming year, and they should be free to do so without illegal coercion under the Mandate. Plaintiffs therefore request a preliminary injunction protecting them and other non-exempt ministries that depend on GuideStone for their health benefits from the Mandate during the course of this litigation. Other courts in this Circuit have not hesitated to grant a preliminary injunction under similar circumstances. *See Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1294-95 (D. Colo. 2012), *aff'd*, __ F.3d ____, 2013 WL 5481997 at **2-3 (10th Cir. Oct. 3, 2013); *Briscoe v. Sebelius*, 2013 WL

4781711, at *5 (D. Colo. Sept. 6, 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, No. CIV-12-1000-HE, 2013 WL 3869832, at *3 (W.D. Okla. July 19, 2013); *Armstrong v. Sebelius*, No. 13-CV-00563-RBJ, 2013 WL 5213640, at *3 (D. Colo. Sept. 17, 2013) (granting preliminary injunction on remand), *prior to remand*, No. 13-1218, 2013 WL 4757949 (10th Cir. Sept. 5, 2013) (vacating district court's order and remanding for reconsideration in light of Hobby Lobby).

BACKGROUND

The Abortifacient Mandate

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

HRSA's definition includes FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling, including "emergency contraception" such as Plan B (the "morning-after" pill), Ella (the "week-after" pill), and certain intrauterine devices. Dkt. 1 (Ex. 2) at 11-12.[2] The FDA's Birth Control Guide notes that these drugs and devices may work by preventing "attachment (implantation)" of a fertilized egg in the uterus. Dkt. 1 (Ex. 2) at 11-12.

HHS allowed HRSA "discretion" to create an exemption for "certain religious employers from the Guidelines" regarding "contraceptive services." 76 Fed. Reg. 46621-01 (published Aug. 3, 2011); 45 C.F.R. § 147.130(a)(1)(iv)(A)-(B). On June 28, 2013, HHS issued the long-awaited final rule—the Mandate. It treats only certain entities as

[2] Plaintiffs object to four of the twenty currently FDA approved methods (similar to the *Hobby Lobby* plaintiffs), namely: (1) Ella; (2) Plan B, Plan B One-Step, and Next Choice (Levonorgestrel); (3) the Copper IUD; and (4) the IUD with Progestin.

exempt "religious employers"—institutional churches, their integrated auxiliaries and the exclusively religious activities of a religious order—that are "organized and operate[d]" as nonprofit entities and "referred to in section 6033" of the Internal Revenue Code. 78 Fed. Reg. at 39874(a); 45 C.F.R. § 147.131(a).[3] The Mandate creates a separate "accommodation" for any non-exempt religious organization that (1) "[o]pposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." 78 Fed. Reg. at 39874; 45 C.F.R. § 147.131(b). Such entities must sign the certification before "the beginning of the first plan year" beginning on or after January 1, 2014, and deliver it to the plan's insurer or third party administrator. 78 Fed. Reg. at 39875.

Delivery triggers the insurer's or third party administrator's obligation to make "separate payments for contraceptive services directly for plan participants and beneficiaries." *Id.* at 39875-76; *see* 45 C.F.R. § 147.131(c)(2)(i)(B); 29 C.F.R. § 2590.715–2713A. If a third party administrator of a self-insured plan declines to provide the services, the objecting religious organization must find one that is willing in order for the accommodation to result in payments for the drugs. 78 Fed. Reg. at 39880.

If a third party administrator ("TPA") is willing, the religious organization—via its self-certification—must expressly designate the TPA as its "plan administrator and claims administrator solely for the purpose of providing payments for contraceptive

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

services for participants and beneficiaries." *Id.* at 39879. The self-certification must notify the TPA of its "obligations set forth in these final regulations." *Id.* at 39879.

By contrast to this convoluted "accommodation" for religious organizations, many secular businesses are simply exempt. Employers who provide "grandfathered" health care plans, covering an estimated 87 million people, are exempt. *See* 42 U.S.C. § 18011 (2010); Dkt. 1 (Ex. 4) at 5. Employers with fewer than fifty employees, covering an estimated 34 million individuals, also may avoid certain fines under the Mandate. *See* 26 U.S.C. § 4980H(c)(2)(A); 26 U.S.C. § 4980D(d); Dkt. 1 (Ex. 6) at 1.

The Parties and Their Religious Exercise

The Southern Baptist Convention formed GuideStone in 1918 to provide benefits for ministers of the gospel and denominational workers, "within the bounds" of the Southern Baptist Convention. Head Decl. ("Ex. 1") ¶ 4. In carrying out that mission, GuideStone established a health benefits plan for and limited to current and former employees of organizations (and their dependents) that are "controlled by or associated with" the Southern Baptist Convention (the "GuideStone Plan"). *Id.* The GuideStone Plan is one of the largest church health care plans in the country, serving hundreds of churches and ministries and providing health benefits to more than 78,000 people. *Id.*

As an arm of the Southern Baptist Convention, GuideStone shares the beliefs about the sanctity of human life stated in Article 15 of the *Baptist Faith and Message 2000* adopted by the Southern Baptist Convention:

> All Christians are under obligation to seek to make the will of Christ supreme in our own lives and in human society. . . . **We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.** . . . In order to promote these ends Christians should be ready to work with all men of good will in

> any good cause, always being careful to act in the spirit of love without compromising their loyalty to Christ and His truth.

Ex. 1 ¶ 17; Dr. Armstrong Decl. ("Ex. 3") ¶ 4. Consistent with those beliefs, the GuideStone Plan does not pay or reimburse for expenses associated with "elective termination of a pregnancy by any method," including contraceptive methods that may cause early abortions. Ex. 1 ¶ 18.

Reaching Souls is an Oklahoma not-for-profit corporation founded in 1986 by a Southern Baptist minister and evangelist with the mission of training African pastors and evangelists. Wells Decl. ("Ex. 2") ¶ 3. Reaching Souls believes the Bible teaches that all people are our neighbors, including the unborn. *Id.* ¶ 4. Reaching Souls' beliefs are consistent with the Southern Baptist Convention's teachings about the sanctity of all human life, and Reaching Souls has adopted the GuideStone Plan to provide health benefits for its 10 full time employees in a manner that is consistent with its commitment to the sanctity of human life and the well-being of its employees. *Id.* ¶¶ 5-6, 13.

Truett-McConnell is a private, Christian, coeducational liberal arts college that has adopted the Southern Baptist Convention's *Baptist Faith and Message 2000* as its own statement of faith. Ex. 3 ¶¶ 3-5. Truett-McConnell is committed to the sanctity of life from conception to natural death and has adopted the GuideStone Plan to provide health benefits for its employees consistent with those beliefs. *Id.* ¶¶ 5-7.

The class consists of employers that: (i) have adopted or will in the future adopt the GuideStone Plan to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in section 414(e)(3)(B) of the Internal Revenue Code of 1986 (the

"Code")); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Mandate; and (iii) are not "religious employers" within the meaning of the Mandate. Ex. 1 ¶ 30. The class includes approximately 187 employers in 26 states that are "eligible organizations" sharing the core convictions of the Southern Baptist Convention regarding the sanctity of life from conception to natural death. *Id.* ¶ 31.

The Mandate's Burden on Plaintiffs' Religious Exercise

The Plaintiffs' religion prohibits them from complying with the Mandate. Reaching Souls, Truett-McConnell and the other class members cannot trigger the provision of abortion-causing drugs and devices by providing a certification to another party, or by designating another party to do it for them. Ex. 2 ¶¶ 9, 19-20; Ex. 3 ¶¶ 10, 21-22. These Plaintiffs are barred by their religion from facilitating access to these products. Ex. 2 ¶¶ 9, 19-20; Ex. 3 ¶¶ 10, 21-22. Likewise, GuideStone cannot facilitate access to these products, whether by paying for them, contracting with a third party administrator who will pay for them, or otherwise allowing or helping any party to be designated to distribute them in connection with the GuideStone plan. Ex. 1 ¶¶ 19, 22-25. GuideStone is barred by its religion from facilitating access to these products. *Id.* If Plaintiffs continue their religious exercise of providing health benefits without abortion-inducing drugs and devices, however, they face enormous penalties from the government. Ex. 2 ¶ 13; Ex. 3 ¶¶ 14-15. For example, Reaching Souls currently has approximately 10 full time employees covered under its health plan and could incur penalties of approximately $365,000 per year based on its current employee count, which would have a devastating and fatal impact on its operations. Ex. 2 ¶ 13. Truett-McConnell has

approximately 78 full time employees and could incur penalties of approximately $2,847,000 per year, which would also have a devastating impact. Ex. 3 ¶ 14. With 187 non-exempt employers and over 5,144 full-time employees, Ex. 1 ¶ 31, if GuideStone continues to offer employee health benefits without the mandated items, class members would incur penalties of approximately $514,400 per day–$187,756,000 per year−and expose themselves to private enforcement suits. Ex. 1 ¶ 35; *see* 26 U.S.C. §§ 4980D & 9815 (preventive services requirements set forth in 42 U.S.C. § 300gg-13(a)(4)); 29 U.S.C. §§ 1185d(a)(1), 1132. These threatened penalties impose substantial pressure on Plaintiffs to stop their religious exercise. Ex. 1 ¶ 25; Ex 2 ¶ 17; Ex. 3. ¶ 19.

Similarly, GuideStone estimates losses of $39 million in contributions from "eligible organizations" that may be forced to leave the GuideStone Plan. Ex. 1 ¶ 43. This departure would have a dramatic financial impact upon GuideStone and likely require it to reduce its personnel and other resources that carry out its ministries. *See id.* ¶ 38. There would also be a significant impact upon the employers that remain in the GuideStone Plan because of increased costs resulting from loss of scale and the impact on the financial stability of the GuideStone Plan. *See id.* ¶ 42. These consequences impose substantial pressure on GuideStone to stop its religious exercise. *See id.* ¶ 25.

Moreover, forcing Plaintiffs to cancel their health plans would compromise their shared religious beliefs, which motivate them to promote the spiritual and physical well-being of their employees by providing health benefits. *See* Ex. 1 ¶ 38; Ex. 2 ¶¶ 6-7; Ex. 3 ¶¶ 6-8. By discontinuing all coverage, Plaintiffs would also be placed at a severe competitive disadvantage in their efforts to hire and retain employees, adversely

impacting Plaintiffs' ministries. Ex. 1 ¶¶ 39, 41; Ex. 2 ¶ 15; Ex. 3 ¶ 17. Some Plaintiffs would also face separate fines for canceling their plans. 26 U.S.C. § 4980H (a), (c)(1); Ex. 1 ¶ 36 ($7,608,000 penalty for the class); Ex. 3 ¶ 15 ($156,000 penalty for Truett-McConnell). The Mandate also substantially burdens GuideStone's religious ministry by pressuring it to stop its religious exercise of providing benefits without abortifacients, and forcing GuideStone to reduce its mission of providing health benefits to organizations sharing the core beliefs of the Southern Baptist Convention. *See* Ex. 1 at 25.

As they do every Fall, Plaintiffs are now planning for the 2014 plan year. Ex. 1 ¶ 48; Ex. 2 ¶ 22; Ex. 3 ¶ 24. This is a complex, time-consuming process, and it is already being burdened by the Mandate. Ex. 1 ¶ 48. The Mandate casts grave uncertainty on Plaintiffs' ability to provide health benefits for their employees and families next January — less than three months away. *See id.* ¶ 49. Enrollment must occur now. A lapse in coverage would be disastrous for Plaintiffs' operations and employees. *Id.* ¶ 49.

ARGUMENT

Injunctive relief is warranted here because (1) Plaintiffs have a likelihood of success on the merits, (2) there is a threat of irreparable harm, which (3) outweighs any harm to Defendants, and (4) the injunction would not adversely affect the public interest.[4] *See, e.g., Awad v. Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012).

[4] "[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *see also Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) ("The Federal Rules of Evidence do not apply to preliminary injunction hearings.").

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. The mandate violates the Religious Freedom Restoration Act

Under RFRA, the federal government "may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000bb-1(b); *see also United States v. Hardman*, 297 F.3d 1116, 1126 (10th Cir. 2002)(en banc). RFRA requires strict scrutiny to religious exercise claims. *See Gonzales*, 546 U.S. at 424, 430-31. The framework for analyzing a RFRA claim requires the court to "identify the religious belief" at issue; "determine whether this belief is sincere;" determine "whether the government places substantial pressure on the religious believer;" and finally, if there is substantial pressure, the government action will be upheld only if it satisfies strict scrutiny—*i.e.*, if it is "'the least restrictive means of advancing a compelling interest.'" *See Hobby Lobby*, 723 F.3d at 1140-43 (citation omitted); 42 U.S.C. § 2000bb-1.

Under this rubric, and under substantially similar facts, the *Hobby Lobby*, *Newland*, and *Armstrong* courts concluded that the Act's contraception mandate violated RFRA, because it substantially pressured the Plaintiffs to violate their sincere religious beliefs against facilitating access to abortion-inducing drugs and devices, without satisfying strict scrutiny. *See Hobby Lobby* at 723 F.3d at 1146-47; *Newland*, 2013 WL 5481997, at *2; *Armstrong*, 2013 WL 4757949 at 1.

1. Plaintiffs' religious beliefs forbid them from facilitating the provision of abortion-causing drugs and devices.

RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief,'" 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A), and abstaining from certain activities for religious reasons qualifies as "religious exercise," just as much as abstaining from work on certain days. *See Hobby Lobby CITE; see also Sherbert v. Verner*, 374 U.S. 398 (1963); *Thomas v. Review Bd.*, 450 U.S. 707 (1981); *see Wisconsin v. Yoder*, 406 U.S. 205 (1972); 42 U.S.C. § 2000bb(b)(1). Plaintiffs' religious beliefs are similar to the religious beliefs asserted in *Hobby Lobby* where the plaintiffs believed that human life begins when sperm fertilizes an egg and that it was "immoral for them to facilitate any act that causes the death of a human embryo." *Hobby Lobby*, 723 F.3d at 1122. The *Hobby Lobby* plaintiffs also objected to "'participating in, providing access to, paying for, training others to engage in, or otherwise supporting' the devices and drugs" at issue. *Id*. at 1140. In this case, Plaintiffs share the core convictions of the Southern Baptist Convention regarding the sanctity of life and believe that it would compromise their shared religious faith to intentionally facilitate the provision of abortifacient drugs and related services. *See* Ex. 1 ¶ 38; Ex. 2 ¶¶ 6-7; Ex. 3 ¶¶ 6-8. Paying for such benefits; providing paperwork that will trigger such benefits; designating another party to provide such benefits; and/or making certifications that would create a duty for third party administrators to provide such benefits would likewise impinge their religious beliefs. Ex. 1 ¶¶ 19, 22-25; Ex. 2 ¶¶ 9, 19-20; Ex. 3 ¶¶ 10, 21-22. Simply put, as a matter of religious faith, Plaintiffs may not participate in any way in the government's program to provide access to these services.

2. Plaintiffs' religious beliefs are sincere

In *Hobby Lobby*, the court saw "no reason to question" the plaintiffs' sincerity of similar beliefs. *See Hobby Lobby*, 723 F.3d at 1140. The court acknowledged the common nature of these beliefs in American culture: "The assertion that life begins at conception is familiar in modern religious discourse …. Moral culpability for enabling a third party's supposedly immoral act is likewise familiar." *Id*. at 1140 n.15. Under this element, the question is not "whether the reasonable observer would consider the plaintiffs complicit in an immoral act, but rather how the plaintiffs themselves measure their degree of complicity."[5] *Id.* at 1142; *see also A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 264 (5th Cir. 2010). Here, there is no legal basis to question the sincerity of Plaintiffs' beliefs, given the Southern Baptist Convention's long-standing and well publicized opposition to abortion. Ex. 1 ¶ 14; Ex. 2 ¶ 5 ; Ex. 3 ¶¶ 4-5.

3. The Mandate Requires Plaintiffs to Stop Their Religious Exercise

Government action substantially burdens a religious belief when it (i) "requires participation in an activity prohibited by a sincerely held religious belief," (ii) "prevents participation in conduct motivated by a sincerely held religious belief," or (iii) "places substantial pressure on an adherent . . . to engage in conduct contrary to a sincerely held religious belief." *Hobby Lobby*, 723 F.3d at 1138.

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[5] The *Hobby Lobby* court further noted that "it is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived the commands of [his] faith. Courts are not the arbiters of scriptural interpretation." *Hobby Lobby*, 723 F.3d at 1138 (quoting *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 716 (1982)(internal quotation marks omitted). Rather, the only task "is to determine whether the claimant's belief is sincere." *Id.* at 1137.

As to the first prong, the Mandate expressly requires Plaintiffs to participate directly in the government's scheme by either providing coverage for contraceptive abortifacients themselves or designating a third party administrator for the purpose of providing such converge. 78 Fed. Reg. at 39879. Failure to do so will result in enormous fines to employers, and severe financial and religious harms to GuideStone. Ex. 1 ¶¶ 35-38. Under the second prong, all Plaintiffs currently cooperate in their religious exercise of providing health benefits consistent with their religious faith. Yet the Mandate prevents that continued religious exercise on threat of the penalties described above. As to the third prong, the Mandate's threatened fines and other harms create enormous pressure on Plaintiffs to comply with the Mandate's requirements. Thus the mandate imposes more than "substantial pressure . . . to engage in conduct contrary to a sincerely held religious belief." *Hobby Lobby*, 723 F.3d at 1138.

Not surprisingly, in *Hobby Lobby*, the Tenth Circuit found that the Mandate imposed a substantial burden on religious exercise by "demand[ing]," on pain of onerous penalties, "that [plaintiffs] enable access to contraceptives that [they] deem morally problematic." *Hobby Lobby*, 2013 WL 3216103, at *21. The same is true here.

4. The mandate cannot satisfy strict scrutiny

Defendants thus must prove that the Mandate is the least restrictive means of advancing a compelling interest. *See O Centro Espirita Beneficiente Uniao do Vegetal v. Gonzales*, 546 U.S. 418, 423 (2006). RFRA imposes "the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Defendants cannot meet it here.

The *Hobby Lobby* court considered Defendants' asserted interests in promoting "public health" and "gender equality" and concluded that they failed to satisfy strict scrutiny. *See Hobby Lobby*, 723 F.3d at 1143-44. First, these asserted government interests are too "broadly formulated" to justify denying "specific exemptions to particular religious claimants." *Id*. at 1143. Second, these interests "cannot be compelling because the contraceptive-coverage requirement presently does not apply to tens of millions of people," including "those working for private employers with grandfathered plans," and those working "for employers with fewer than fifty employees." *Id*.; 77 Fed. Reg. 8725, 8726 (Feb. 15, 2012) (exempting other religious employers); 26 U.S.C. § 5000A(d)(2)(A),(B),(ii)&(2)(B)(i) (exempting certain religious sects that object to insurance). "[A] law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Id*. The *Hobby Lobby* court's conclusion compels the same result here.

Nor can Defendants plausibly claim that crushing the Plaintiffs with fines is the least restrictive means of meeting a compelling need for contraceptive access. Defendants have publicly acknowledged that "birth control … is the most commonly taken drug in America by young and middle-aged women" and that "contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support."[6] These services are widely available because the

[6] Statement by U.S. Dep't of Health & Human Servs. Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (Oct. 21, 2012). Statements on government websites are admissions under Fed. R. of Evid. 801(d)(2)(A) and are self-authenticating under Fed. R. of Evid. 902(5).

federal government has constructed an extensive funding network designed to increase contraceptive access, education, and use, including requested spending of almost $300 million in fiscal year 2013 to provide contraceptives directly through Title X funding.[7]

Such alternative means of addressing the claimed interest doom the Mandate. *See, e.g., U.S. v. Hardman*, 297 F.3d 1116, 1130 (10th Cir. 2002) (explaining that, under strict scrutiny, government must "demonstrate that *no alternative forms of regulation would combat such abuses without infringing First Amendment rights*") (quoting *Sherbert v. Verner*, 374 U.S. 398, 407 (1963)) (emphasis in original). In addition to such direct provision, Defendants could: allay the costs of the drugs through individual subsidies, reimbursements, tax credits or tax deductions; empower other *willing* actors to deliver the drugs and to sponsor education about them; or use their own healthcare exchanges to offer coverage they believe is needed, rather than forcing the Plaintiffs to do it for them. Because Defendants have not employed feasible, less restrictive alternatives instead of burdening religious objectors, the Mandate violates RFRA. *See, e.g., Newland*, 881 F. Supp. 2d at 129; *see also Grutter v. Bollinger*, 539 U.S. 306, 339 (2003) (narrow tailoring requires "serious, good faith consideration of workable . . . alternatives").

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7 *See* Department of Health and Human Services, *Announcement of Anticipated Availability of Funds for Family Planning Services Grants*, available at http://www.hhs.gov/opa/pdfs/fy-13-services-announcement.pdf at 9 (last visited Oct. 21, 2013) (announcing that "[t]he President[']s Budget for Fiscal Year (FY) 2013 requests approximately $297 million for the Title X Family Planning Program").

In sum, Plaintiffs are likely to prevail on their claim that the Mandate violates RFRA. *See Hobby Lobby*, 723 F.3d at 1137-1145; *Newland*, 2013 WL 5481997, at *2-3; *Briscoe*, 2013 WL 4781711, at *4; *Armstrong*, 2013 WL 4757949, at *1.

B. The Mandate Violates the First Amendment's Religion Clauses

The Mandate's second-class treatment of Reaching Souls and Truett-McConnell also violates the First Amendment. While the government has exempted other religious objectors from the Mandate (primarily, churches and their "integrated auxiliaries") it has refused to exempt the Plaintiffs and class members, even though they are engaged in the exact same religious exercise—and seek the exact same relief—as those preferred religious organizations the government has chosen to exempt. To put the matter bluntly: if these class members simply handed their ministry over to a church, to be funded and controlled directly by that church, the government would exempt them entirely. But because these class members instead fund, operate, and control their ministries themselves—in compliance with the long-held religious views of the Southern Baptist Convention regarding the sanctity of life—they face millions of dollars in fines.

The Free Exercise and Establishment Clauses prohibit the government from making such "explicit and deliberate distinctions between different religious organizations." *Larson v. Valente*, 456 U.S. 228, 246 n.23 (1982) (striking down laws that created differential treatment between "well-established churches" and "churches which are new and lacking in a constituency"). By preferring church-run organizations to other types of religious groups, the Mandate inappropriately "interfer[es] with an internal . . . decision that affects the faith and mission" of a religious organization, *Hosanna-*

Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694, 707 (2012), and engages in "discrimination . . . expressly based on the degree of religiosity of the institution and the extent to which that religiosity affects its operations[.]" *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1259 (10th Cir. 2008) (McConnell, J.) (applying *Larson* to invalidate distinction between "sectarian" and "pervasively sectarian" organizations). Such discrimination is forbidden by the Religion Clauses.

The Mandate runs afoul of the First Amendment in another way as well. By only exempting churches, religious orders, and non-profit religious organizations that receive at least 50% of their funding from a church or denomination and thus qualify as "integrated auxiliaries," the government is drawing the kind of "explicit and deliberate distinctions between different religious organizations" that *Larson* condemned. 456 U.S. at 246 n.23. Unlike Roman Catholics, Episcopalians, and other hierarchal churches, Southern Baptists are "congregational churches in which each local congregation is autonomous." *Lutheran Soc. Serv. of Minn. v. United States*, 758 F.2d 1283, 1288 (8th Cir. 1985). This autonomy naturally leads in many cases to financial and institutional autonomy. Whether a religious organization is exempt from the Mandate because it is an "integrated auxiliary" can turn in many cases on small differences in the organization's funding sources. Organizations affiliated with hierarchal churches, with their greater number of affiliates and the ability of religious organizations to direct subordinate organizations—unlike Southern Baptist organizations—are more likely to meet the "internally supported" requirement for integrated auxiliaries. Thus, the Mandate has the

effect of discriminating against religious organizations affiliated with non-hierarchal faiths like the Southern Baptists.

Defendants do not deny that they have engaged in this type of discrimination. Instead, they explained in the final regulations that they made assumptions about the likely religious beliefs of people who work for religious organizations like the Plaintiffs:

> 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 (emphases added). Defendants cite no factual authority for this assumption. Plaintiffs have explicitly religious missions to which their employees subscribe, Ex. 1 ¶ 6; Ex. 2 ¶¶ 3-4; Ex. 3 ¶¶ 3-5, and there is no reason to believe Plaintiffs' employees are less likely to share their religious beliefs. And Defendants cite no legal authority for the proposition that the government is permitted to discriminate among different religious institutions, giving religious liberty to some and not to others, based on government predictions about the religious beliefs of individuals who work for various ministries. The government has no power to do so. *See Weaver*, 534 F.3d at 1259 (noting that distinguishing religious organizations based on their internal religious characteristics is "even more problematic than the Minnesota law invalidated in *Larson*" and that government cannot engage in such "discrimination . . . expressly based on the degree of religiosity of the institution and the extent to which that religiosity affects its operations[.]").

C. The Mandate Violates the Free Speech Clause.

The First Amendment protects Plaintiffs' rights to be free from governmentally compelled speech or silence. *See Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 796-97 (1988) ("[T]he First Amendment guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what not to say."). The Mandate violates both rights.

The Mandate's proposed accommodation requires Plaintiffs to make statements that will trigger payments for the use of contraceptive and abortion-inducing drugs and devices, and for "education and counseling" about using such products. Ex. 1 ¶ 45; Ex. 2 ¶ 20; Ex. 3 ¶ 22; 29 C.F.R. § 2590.715-2713A (b)(2), (c)(2). This would compel Plaintiffs to engage in speech they wish to avoid: speech facilitating a message and activities that contradict their public witness to their religious faith. The Mandate also expressly prohibits the Plaintiffs from engaging in speech with a particular content and viewpoint: they are barred by federal law from talking to a third party administrator and encouraging them not to provide contraceptive and abortion-inducing drugs and devices. *See* 29 C.F.R. § 2590.715-2713A ("must not, directly or indirectly, seek to influence the third party administrator's decision to make any such arrangements").

Each violation—compelled speech and compelled silence—triggers strict scrutiny, *TBS, Inc. v. FCC*, 512 U.S. 624, 642 (1994), which the Mandate fails for the reasons discussed above. *See also Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2331 (2013) (rejecting forced speech requirement even for recipients of

government funds because it would render grantees able to express contrary beliefs "only at the price of evident hypocrisy").

II. IRREPARABLE HARM

The impending violation of Plaintiffs' rights under RFRA satisfies the irreparable harm factor. *See Hobby Lobby*, 723 F.3d at 1146; *Armstrong*, 2013 WL 5213640 *3 (D. Colo. Sept. 17, 2013); *Newland*, 881 F. Supp. 2d at 1294 (noting "it is well-established that the potential violation of Plaintiffs' constitutional and RFRA rights threatens irreparable harm") (citation omitted); *see also Kikumura*, 242 F.3d at 963.

The disruptions occasioned by this impending deadline are occurring *now*. Plaintiffs face the certain prospect of violating the mandate in less than three months' time—by January 1, 2014—and incurring steep penalties before a decision on the merits. *See Newland*, 881 F. Supp. 2d at 1294. Plaintiffs must: establish the structure and coverage provisions in advance of the 2014 plan year; make changes to the plan documentation and provide written notice of any material changes at least 60 days' in advance of the change; and coordinate with any third party administrators. As the *Newland* court found, Plaintiffs are confronted with imminent irreparable harm absent injunctive relief "[i]n light of the extensive planning involved in preparing and providing its employee insurance plan, and the uncertainty that this matter will be resolved before the coverage effective date." *Newland*, 881 F. Supp. 2d at 1294-95.

III. THE BALANCE OF EQUITIES TIPS IN PLAINTIFFS' FAVOR

The balance of equities tips strongly in favor of Plaintiffs. The Tenth Circuit has recognized the considerable importance of an entity's religious liberty interests, and that

the Defendants' interest in enforcing the Mandate in this context is not compelling. *See Hobby Lobby*, 723 F.3d at 1143-44, 1145-46; *Newland*, 2013 WL 5481997, *3; *Newland*, 881 F. Supp. 2d at 1295. As the Tenth Circuit acknowledged, Plaintiffs have a Hobson's choice between catastrophic fines or facing pressure to violate one's religious beliefs. *See Hobby Lobby*, 723 F.3d at 1146-47.

In contrast, Defendants have already exempted churches and certain church-related entities from the mandate, exempted smaller employers, and given many non-religious employers an open-ended exemption in the form of grandfathering. Given that these exemptions apply to tens of millions of people, preventing Defendants from enforcing the mandate against Plaintiffs would not "substantially injure" Defendants. *See Newland*, 881 F. Supp. 2d at 1295. Granting a preliminary injunction will merely preserve the status quo, and any minimal harm in temporarily foregoing enforcement of the Mandate "pales in comparison to the possible infringement upon Plaintiffs' constitutional and statutory rights." *Newland*, 881 F. Supp. 2d at 1295; *Hobby Lobby*, 723 F.3d at 1141.

IV. A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST

"[T]here is a strong public interest in the free exercise of religion even where that interest may conflict with [another statutory scheme] . . . ." *Newland*, 881 F. Supp. 2d at 1295 (quoting *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1010 (10th Cir. 2004) (en banc)). Indeed, "it is always in the public interest to prevent the violation of a party's constitutional rights" which are implicated by RFRA. *See Briscoe*, 2013 WL 4781711 at *5; *Hobby Lobby*, 723 F.3d at 1147. The public interest in enforcing a fundamental right outweighs the interest in immediate enforcement

of a new law that creates a "substantial expansion of employer obligations" and raises "concerns and issues not previously confronted." *Hobby Lobby Stores, Inc. v. Sebelius*, 870 F. Supp. 2d 1278, 1296 (W.D. Okla. Nov. 19, 2012); *see also Newland*, 881 F. Supp. 2d at 1295; *Armstrong*, 2013 WL 5213640, at *4. This is particularly true where the government has created numerous exceptions to enforcement of the statute. *See Newland*, 881 F. Supp. 2d at 1295; *Hobby Lobby*, 723 F.3d at 1143-44.

V. PRELIMINARY INJUNCTION THAT BENEFITS THE ENTIRE CLASS

Plaintiffs seek a preliminary injunction that will benefit the entire class. The scope of preliminary injunctive relief depends on the scope of the harm to be prevented during the pendency of the matter. *See O Centro Espirita*, 389 F.3d at 977 (explaining that "[t]he underlying purpose of the preliminary injunction is to preserve the relative positions of the parties until a trial on the merits can be held"). In this case, that harm is the impermissible government pressure to give up the religious exercise of providing, administering, and offering a health benefits plan consistent with Plaintiffs' faith.

Plaintiffs therefore request injunctive relief that maintains the status quo pending final resolution of the case. That status quo is the provision of health benefits that complies with Plaintiffs' faith, but without facing the enormous financial losses threatened by the Mandate. For Reaching Souls and Truett-McConnell, this requires an injunction permitting them to continue participation in the GuideStone Plan, and forbidding any application of the Mandate against them for that religious exercise. For GuideStone, preserving the status quo requires an injunction permitting it to continue offering the GuideStone Plan to all class members without facilitating access to the

products and services at issue, and without risk of penalty to participants in the GuideStone Plan. A preliminary injunction allowing GuideStone to continue offering its plan—and allowing employers to continue using it—is necessary to spare GuideStone from the illegal coercion imposed by the Mandate and described above.

The benefits of the injunction extend beyond the named plaintiffs to encompass all class members. But the court does not need to certify the proposed class now to provide adequate preliminary injunctive relief for the upcoming plan year. The Tenth Circuit has recognized that class certification is unnecessary if all class members will benefit from an injunction issued on behalf of the named plaintiffs. *See Kansas Health Care Assoc. v. Kansas Dept. of Soc. & Rehab. Servs.*, 31 F.3d 1536, 1548 (10th Cir. 1994).[8]

[8] *See also* 7B C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1785.2 (1986 & Supp. 1994); *Ill. League of Advocates v. Ill. Dept. of Human Servs.*, 13-C-1300, 2013 WL 3287145, at *3 (N.D. Ill. June 28, 2013) (holding that (1) "[d]istrict courts have the power to order injunctive relief covering potential class members prior to class certification" under their general equity powers; and (2) "[t]he lack of formal class certification does not create an obstacle to classwide preliminary injunctive relief when activities of the defendant are directed generally against a class of persons.") (citing 3 Newberg on Class Actions § 9:45 (4th ed. 2002)). Other circuits have similarly held that a broad injunction can be entered affecting unnamed parties prior to class certification if it would be necessary to give the named plaintiff effective relief. *See Washington v. Reno*, 35 F.3d 1093, 1103-04 (6th Cir. 1994) (upholding a nationwide injunction because it found that "the appropriate relief to be granted to the plaintiffs on their Commissary Fund claim necessarily implicate[d] nationwide relief" and would otherwise be "illusory"); *see, e.g. Richmond Tenants Org. v. Kemp*, 956 F.2d 1300, 1304-05, 1308-09 (4th Cir. 1992) (holding that an injunction prohibiting the eviction of public housing tenants beyond the named plaintiff without notice and a hearing was appropriate against government entities); *Bresgal v. Brock*, 843 F.2d 1163, 1165, 1169-71 (9th Cir. 1987) (finding that class-wide relief may be appropriate even in an individual action and that "[t]here is no general requirement that an injunction affect only the parties in the suit."); *Doe v. Rumsfeld*, 341 F. Supp. 2d 1, 19 (D.D.C. 2004) (issuing a permanent injunction enjoining the Department of Defense from inoculating employees with the anthrax vaccine without the employees' consent); *cf. Mainstream Mktg. Servs., Inc. v. Fed. Trade*

A good example of this kind of injunction in a RFRA case is *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, 546 U.S. 418 (2006). A church, its officers, and some of its members sought relief under RFRA to end the enforcement of importation restrictions on hoasca, a sacramental tea. The preliminary injunctive relief granted by the district court and affirmed by the Supreme Court not only protected the plaintiff church and its members, but also separately protected any other "bona fide participants in [church] ceremonies for religious use of hoasca." *O Centro Espirita Beneficiente Unaio Do Vegetal v. Ashcroft*, No. CV 00-1647, Document 100 (D.N.M. Nov. 13, 2002) (attached as Ex. 4). So, too, the named Plaintiffs here should receive an injunction prohibiting enforcement of the Mandate not only against them individually, but also against all other participants in the same church plan.

The only way to provide effective relief for GuideStone would be to enjoin enforcement of the Mandate with respect to all class members. The Mandate has provided Plaintiffs with a stark choice: (a) violate their religious beliefs by including this coverage in their health plans or involving the health plans' third-party administrators in doing so; or (b) oppose the Mandate and have the employers that remain in the plan incur devastating fines in the nature of $187,756,000 per year. Under either scenario, GuideStone is compromised in its ability to carry out its ministry assignment to provide health benefits in accordance with Southern Baptist teachings and will lose member

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Comm'n, 283 F. Supp. 2d 1151, 1158, 1171 (D. Colo. 2003) (addressing the constitutionality of a do-not-call regulation, the court permanently enjoined the FTC from enforcing the do-not-call list against any telemarketer nationwide), *rev'd on other grounds*, 358 F.3d 1228 (10th Cir. 2004).

participation and the $39,088,325 in health payments from employers that are forced to leave the plan. In the alternative, the Court could also certify the class, for the reasons set forth in Plaintiffs' forthcoming motion for class certification.

CONCLUSION

Plaintiffs request a preliminary injunction prohibiting Defendants, their agents, officers, and employees from making any effort to apply or enforce the substantive requirements imposed in 42 U.S.C. § 300gg-13(a)(4) (including, but not limited to, all requirements to provide health benefits for FDA approved contraceptive methods that are or could be abortifacients and related education and counseling (specifically including (1) ella; (2) Plan B, Plan B One-Step, and Next Choice (Levonorgestrel); (3) the Copper IUD; and (4) the IUD with Progestin)), and are enjoined and restrained from pursuing, charging, or assessing penalties, fines, assessments, or any other enforcement actions for noncompliance related thereto, including those found in 26 U.S.C. §§ 4980D, 4980H, and 29 U.S.C. §§ 1132, 1185d (and including, but not limited to, penalties for failure to offer or facilitate access to contraceptives that are or could be abortifacients and related education and counseling (including (1) ella; (2) Plan B, Plan B One-Step, and Next Choice (Levonorgestrel); (3) the Copper IUD; and (4) the IUD with Progestin)) against Reaching Souls, Truett-McConnell, GuideStone, all non-exempt employer participants in the GuideStone Plan, and all third party administrators for the aforementioned parties as their conduct relates to the GuideStone Plan. Plaintiffs are willing to post a bond in an amount the Court deems appropriate. FED. R. CIV. P. 65.

Respectfully submitted this 25th day of October, 2013.

/s/ Jared Giddens

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COUNSEL FOR PLAINTIFFS REACHING SOULS INTERNATIONAL, INC., TRUETT-MCCONNELL COLLEGE, INC., AND GUIDESTONE FINANCIAL RESOURCES OF THE SOUTHERN BAPTIST CONVENTION

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the Court's ECF filing system on October 25, 2013, and that a copy was served via first-class mail, postage prepaid, on the following:

Eric Holder
United States Attorney General 950
Pennsylvania Ave. NW
Washington, DC 20530

Ben Berwick
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs
Branch
20 Massachusetts Avenue NW,
Room 7219
Washington, DC 20530

_
/s/ Jared Giddens

CERTIFICATE OF CONFERENCE

I hereby certify that Mark Rienzi conferred with Ben Berwick, with the Department of Justice, on behalf of Defendants on October 25, 2013, and Mr. Berwick indicated that Defendants would be opposed to the relief requested herein.

_
/s/ Jared Giddens

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 5:13-CV-01092-D
KATHLEEN SEBELIUS, et al.,	§	
Defendants.	§	

DECLARATION OF TIMOTHY E. HEAD

I, Timothy E. Head, do hereby state and declare as follows:

1. My name is Timothy E. Head. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of GuideStone Financial Resources of the Southern Baptist Convention. If I were called upon to testify to these facts, I could and would competently do so.

2. I hold the position of Executive Officer – Denominational and Public Relations for GuideStone Financial Resources of the Southern Baptist Convention ("GuideStone"). GuideStone serves the retirement, health care and other benefit service needs of pastors, church staff members, missionaries, doctors, nurses, university professors and other workers of various Southern Baptist and evangelical Christian organizations.

3. I have served several Southern Baptist pastorates including as senior pastor of Cooper River Baptist Church in North Charleston, South Carolina, and Lighthouse Church in Mt. Pleasant, South Carolina. I earned a Bachelor of Arts in Political Science from Furman University, a Master's of Divinity from Southwestern Baptist Theological Seminary and a Doctor of Jurisprudence from the University of South Carolina School of Law. I served as a trustee of GuideStone prior to joining as an Executive Officer.

4. The Southern Baptist Convention formed GuideStone in 1918 (then called "The Board of Ministerial Relief and Annuities of the Southern Baptist Convention") to provide relief, support, benefits, and annuities for ministers of the gospel and denominational workers, "within the bounds" of the Southern Baptist Convention. In carrying out this mission, GuideStone has established a health benefits plan for and limited to current and former employees of organizations (and the employees' dependents) that are "controlled by or associated with" the Southern Baptist Convention (the "GuideStone Plan"). The GuideStone Plan is one of the largest "multiple employer" church health care plans in the country serving hundreds of employers (churches, denominational entities and other ministry organizations) and more than 78,000 participants (pastors, employees and their families).

5. Participation in the GuideStone Plan is limited to current and former employees (and the employees' dependents) of organizations that are "controlled by or associated with" the Southern Baptist Convention within the meaning of Internal Revenue Code ("Code") section 414(e)(3)(B).

6. The mission and ministry of GuideStone, as most recently set forth by the Southern Baptist Convention at its 2013 Annual Meeting, is as follows:

> GuideStone Financial Resources exists to assist the churches, denominational entities, and other evangelical ministry organizations by making available retirement plan services, life and health coverage, risk management programs, and personal and institutional investment programs.

7. GuideStone, in carrying out the mission and ministries assigned to it by the Southern Baptist Convention, established the GuideStone Plan for adoption by religious organizations associated with the Southern Baptist Convention.

8. The Southern Baptist Convention controls GuideStone by being its sole member and by having the sole authority to elect the members of the board of directors of GuideStone, which are generally referred to as "trustees."

9. The GuideStone Plan is a "church plan" within the meaning of section 414(e) of the Code and is not subject to the Employee Retirement Income Security Act of 1974 ("ERISA") because it has not made an election under section 410(d) of the Code.

10. The GuideStone Plan is a self-insured health plan. Therefore, the GuideStone Plan does not contract with an insurance company to provide the health benefits provided by the GuideStone Plan. Connecticut General Life Insurance Company and Highmark Health Services have entered into agreements with GuideStone to provide certain claims administration and other services with respect to medical benefits under the GuideStone Plan. Express Scripts, Inc. has entered into a similar agreement with respect to pharmaceutical benefits. The plan year for the GuideStone Plan currently begins on January 1st of each year.

11. The Southern Baptist Convention, a Georgia nonprofit corporation, was organized in 1845 by "messengers from missionary societies, churches, and other religious bodies of the Baptist denomination." According to Article II of its Constitution, the Southern Baptist Convention was formed for the purpose of providing "a general organization for Baptists in the United States and its territories for the promotion of Christian missions at home and abroad and any other objects such as Christian education, benevolent enterprises, and social services which it may deem proper and advisable for the furtherance of the Kingdom of God."

12. Since its founding, the Southern Baptist Convention has grown into a national network of more than 45,000 churches and church-type missions with nearly 16 million members residing throughout the United States and its territories.

13. The Southern Baptist Convention does not control Southern Baptist churches. Rather, it serves as the coordinating body facilitating ministries which the churches voluntarily support.

14. Beginning with a landmark pro-life resolution in 1982, the Southern Baptist Convention at its annual meetings has passed Resolutions supporting the sanctity of life and condemning elective abortions in general and abortifacient drugs in particular. Additional relevant Resolutions adopted by the Southern Baptist Convention that are still in force provide as follows:

> 1988 – "we call upon all Southern Baptists to take an active stand in support of the sanctity of human life"
>
> 1991 – "we oppose the testing, approval, distribution, and marketing in America of new drugs and technologies which will make the practice of abortion more convenient and more widespread"

> 1993 – "we oppose the testing, approval, distribution, marketing and usage in the United States of any abortion pills and urge U.S. corporations which are considering such business ventures to refuse to do so"
>
> 1994 – "we . . . condemn the blatant advocacy of RU 486 by the Clinton Administration, and oppose the testing, approval, manufacturing, marketing, and sale of the abortion pill in the United States"
>
> 2000 - "[we] reaffirm our abhorrence of elective abortion"

15. The *Baptist Faith and Message 2000* adopted by the Southern Baptist Convention is the statement of faith and message declared for the purpose of setting "forth certain teachings which we believe."

16. Article 15 of the *Baptist Faith and Message 2000*, which is titled, "The Christian and the Social Order," provides "[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death" (emphasis added).

17. As a ministry of the Southern Baptist Convention, GuideStone shares the beliefs about the sanctity of human life stated in the Resolutions adopted by the Southern Baptist Convention in paragraph 25 and in the *Baptist Faith and Message 2000.*

18. Consistent with the convictions of the Southern Baptist Convention, the GuideStone Plan does not pay or reimburse expenses associated with drugs or devices that are abortive in nature.

19. Requiring GuideStone to intentionally facilitate the provision of abortifacient drugs and related education and counseling, as would be required by the Final Mandate, impinges GuideStone's deeply held religious beliefs.

20. Obeying the Final Mandate's requirement to participate in the provision of abortion-inducing drugs will impinge its public witness to the respect for life and human dignity that GuideStone is committed to displaying, as stated in the Resolutions adopted by the Southern Baptist Convention in paragraph 25 and in the *Baptist Faith and Message 2000.*

21. GuideStone should not be required to compromise its commitment to its Christian witness by being seen as involved in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray. Nor should GuideStone be required to compromise its sincerely held religious beliefs, because doing so would jeopardize the ministries of the class members whose operating revenue often includes substantial voluntary donations.

22. Because of the religious beliefs set forth above, being required to provide health benefits that will include access to and abortion-inducing drugs, devices and related counseling and education will infringe upon GuideStone's sincerely held religious beliefs.

23. Because of the religious beliefs set forth above, having the third party administrator(s) of the Guidestone Plan, with whom GuideStone has a contractual relationship, provide or arrange access by GuideStone Plan participants to abortion-inducing drugs, devices and related counseling and education will infringe upon GuideStone's sincerely held religious beliefs.

24. Because of the religious beliefs set forth above, being required to provide any information to facilitate the government-required certifications to a third party to

require that third party to provide Plan participants or their employees with access to abortion-inducing drugs and devices will infringe upon GuideStone's sincerely held religious beliefs.

25. Because of the religious beliefs set forth above, GuideStone should not be forced to take any action that would assist the government in putting pressure on Plan participants to compromise their own religious beliefs in this regard. Requiring GuideStone to participate in the government's placing pressure on Plan participants infringes GuideStone's religious beliefs.

26. Additionally, GuideStone is directed by its ministry assignment from the Southern Baptist Convention to "[a]ssist churches, denominational entities and other evangelical ministry organizations by making available . . . health coverage."

27. GuideStone considers this assignment binding on how it carries out its religious ministry of providing health benefits to organizations controlled by or associated with the Southern Baptist Convention, that are consistent with their shared religious beliefs.

28. GuideStone understands the unique dynamics of organizations and institutions controlled by or associated with the Southern Baptist Convention, which are guided by and operated in accordance with Christian teachings about the sanctity of all human life. From my observation and constant interaction with GuideStone Plan employers, one of the many reasons employers choose to use the GuideStone Plan, which does not provide coverage for elective abortions or abortifacients, is because they share our religious beliefs and provide benefits accordingly.

29. It is my belief, based on the kinds of employers GuideStone allows to participate in the GuideStone Plan, that the proposed class members in this lawsuit—all of whom are controlled by or associated with the Southern Baptist Convention, and all of whom have chosen to provide health benefits through the Plan—likewise may not participate in the government's program without impinging their religious beliefs. They are similarly committed to the religious teachings on abortion set forth above.

30. According to my review of the Complaint filed in this action, Plaintiffs Reaching Souls International, Inc. ("Reaching Souls"), and Truett-McConnell College, Inc. ("Truett-McConnell") bring this action on behalf of themselves and all others similarly situated. The class consists of employers that: (i) have adopted or in the future may adopt the GuideStone Plan to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in Code section 414(e)(3)(B); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Final Mandate (as hereinafter defined); and (iii) are not "religious employers" within the meaning of the Final Mandate. The class members are all are controlled by or associated with the Southern Baptist Convention and are guided by and operated in accordance with Christian teachings about the sanctity of all human life.

31. Based upon my understanding of the criteria under the Final Mandate as discussed in the Complaint in this action, GuideStone Plan employers currently include approximately 187 organizations, located in approximately 26 states, that are or could be reasonably construed to be "eligible organizations" under 45 C.F.R. § 147.131(b)&(c) at

78 Fed. Reg. 39870, 39874. These organizations employ over 5,144 full-time employees. I estimate that 3,804 employees now work for employers in the GuideStone Plan that are large employers based upon GuideStone's records (*i.e.*, that average 50 or more full time employees).

32. To a large extent, the class members are small non-profit organizations operating on limited budgets and devoted to religious ministries. I believe it would be impractical to have all of these class members joined in a single action in a distant locale taking away time and resources from their ministry, and having them incur the expense to do so; accordingly, we brought this action as a class action. Additionally, the proposed class includes unknown, future employers that join the GuideStone Plan at a later date or employers that currently qualify for the religious employer exemption as "integrated auxiliaries" of a church but later cease to be integrated auxiliaries. I believe that resolution of the claims of these class members in a single class action will provide substantial benefits to all parties.

33. The GuideStone Plan encompasses both exempt religious non-profit entities and non-exempt religious non-profit entities. The Complaint in this lawsuit has defined the class to only include the religious non-profit entities that could be construed as non-exempt "eligible organizations." These entities include organizations that might fall within the definition of "integrated auxiliaries" except for the fact that more than 50% of their funding comes from sources other than churches.

34. Under the Final Mandate, employers in the GuideStone Plan are faced with the impossible dilemma of (1) paying significant fines and providing their employees

with health insurance that does not cover abortion-inducing drugs, devices and related counseling and education; or (2) eliminating their health insurance plans altogether and paying significant fines if they employ 50 or more employees.

35. Based on the penalties identified in the Complaint, if the GuideStone Plan continues to offer employee health insurance without the mandated items on January 1, 2014, each class member, regardless of its size, will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Thus, the non-exempt employers that have adopted the GuideStone Plan could incur penalties of approximately $514,400 per day – $187,756,000 per year – assuming 5,144 employees.

36. Additionally, it is my understanding, as alleged in the Complaint, that large employers (*i.e.,* those with 50 or more employees) that cancel coverage altogether will be exposed to significant annual excise tax penalties of $2,000 per full-time employee starting on January 1, 2015. Consequently, if the non-exempt participants in the GuideStone Plan dropped their health coverage altogether, they would face annual penalties of more than $7,608,000 per year, based on estimates of 3,804 employers working with large employers (*i.e.*, averaging 50 or more full time employees).

37. If the GuideStone Plan refuses to do anything that would facilitate coverage for contraceptives and related services, it would expose non-exempt "eligible organizations" that remain in the GuideStone Plan to financially ruinous penalties that could render them insolvent or foreclose their ability to provide health care coverage for their employees. Indeed, some class members will likely be forced to curtail or eliminate community and ministry programs.

38. If employer plan members discontinue participation in the GuideStone Plan and do not seek replacement coverage, GuideStone's ministry assignment from the Southern Baptist Convention to "[a]ssist churches, denominational entities and other evangelical ministry organizations by making available . . . health coverage" will be compromised.

39. Similarly, by discontinuing all coverage, these employers will be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which will likely adversely impact their ministries. In my experience, a key factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Any uncertainty regarding these factors undermines the class members' ability to retain existing employees and recruit new ones.

40. If class members chose to compromise their beliefs by eliminating health care coverage for their employees altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, they face the prospect of a loss of employees.

41. Other employers who, unlike those participating in the GuideStone Plan, do not object to the Final Mandate on religious grounds do not face this dilemma. The Final Mandate, therefore, is currently placing GuideStone Plan participants at a competitive disadvantage in their ability to recruit new and existing employees relative to employers who do not have religious objections to the Final Mandate.

42. If non-exempt "eligible organizations" in the GuideStone Plan were forced to drop coverage to avoid the provision of objectionable coverage, it would also have a substantial adverse financial impact on the GuideStone Plan and its remaining participating employers because there would be fewer participating employers to share the fixed costs of administration.

43. Similarly, the financial impact on GuideStone is substantial. For "eligible organizations" over 50 employees, GuideStone estimates losses of $27,804,821 in medical plan contributions for "eligible organizations" that may be forced to drop coverage, and losses of an additional $11,283,504 in medical plan contributions for "eligible organizations" under 50 employees that may be forced to drop coverage.

44. The Government's "accommodation" does not address GuideStone's fundamental religious objection to improperly facilitating access to the objectionable products and services. This arrangement still requires GuideStone to facilitate the provision of products and services antithetical to its beliefs, since the GuideStone Plan participants would only receive free abortifacients and related counseling by virtue of their participation in the GuideStone Plan provided through their employer.

45. In my opinion, the class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by our Southern Baptist beliefs. The Final Mandate forces Plaintiffs to contract for, facilitate, or provide abortifacients and related education and counseling in violation of their religious beliefs, by taking the following actions, among others:

- Establish a new, direct contractual relationship with the GuideStone Plan's third-party administrators for the specific purpose of providing abortifacient drugs and devices to their employees. The GuideStone Plan employs third-party administrators, but currently there is no direct contractual relationship between GuideStone's third-party administrators and individual employers like Reaching Souls and Truett-McConnell.

- By delivering a self-certification, Plaintiffs take action for which the ultimate result is to provide access to abortifacient coverage that is made possible through participation in their health plan.

- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and GuideStone is included in the Government's construct to provide that coverage in opposition to Southern Baptist convictions through third party administrators with whom it has existing contractual relationships.

- Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their health plan and, as a result, the Final Mandate's scheme.

- Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at 39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See 26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

- If Plaintiffs must leave the GuideStone Plan to avoid penalties because the GuideStone Plan does not provide the mandated coverage, Plaintiffs would be required to: (i) select another insurer or third party administrator, who under the terms of the Mandate must be willing to provide for or arrange abortifacient coverage; (ii) negotiate an administrative services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.

- The third party administrator would also be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77. Thus, any payment or coverage dispute would presumably be resolved under the terms of the

> Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator of a self-insured plan, the designation makes the third party administrator a plan administrator with fiduciary duties under a Plaintiff's plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan. Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the class action Plaintiffs and GuideStone as parties–for coverage that the Plaintiffs oppose.

46. The only way to provide effective relief for GuideStone and class members is to enjoin enforcement of the Final Mandate with respect to all non-exempt "eligible organizations" in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

47. In the past year, GuideStone has expended voluminous resources in studying, commenting on, and responding to every stage of the Final Mandate's administrative process. In addition, it has expended further resources in considering what must be done to comply with the Final Mandate.

48. GuideStone is now planning for the 2014 plan year. In addition to having the plan in place and funded by January 1, 2014, the Plaintiffs must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. This is a complex and time-consuming process and is presently underway as of the date of this declaration.

49. There is inadequate time to provide any changes in plan documentation to class members, including any Summary of Benefits and Coverage and notices of any material change in the Summary of Benefits and Coverage. A lapse in coverage will be disastrous for Plaintiffs' operations and for the employees and their families who depend on the GuideStone Plan for health care coverage.

50. I believe that the claims of the representatives Reaching Souls and Truett-McConnell are typical of the claims of the class in that all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate given the shared and like-minded Christian religious beliefs regarding the sanctity of life and the obligation to speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. I believe that the factual bases of Defendants' actions are common to all class members in that the class members share in the same religious beliefs set forth above and, therefore, will suffer the same violation of rights by enforcement of the Final Mandate.

51. As the Complaint has defined the class, the class members are not eligible for the religious employer's exemption under the Final Mandate. Thus, the Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class claims require a common finding by the Court as to whether the Final Mandate's accommodation and requirement that the class members facilitate access to abortifacient-related drugs and devices through their health plans violates their rights under the Religious Freedom Restoration Act and the First Amendment.

52. I believe that Reaching Souls and Truett-McConnell will fairly and adequately protect the interests of the Class. GuideStone, Reaching Souls, and Truett-McConnell have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. GuideStone,

Reaching Souls, Truett-McConnell, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. GuideStone is financially committed to assist Reaching Souls and Truett-McConnell in litigating this matter to conclusion on behalf of the class members. I do not believe that GuideStone, Reaching Souls, and Truett-McConnell have an interest adverse to those of the class members.

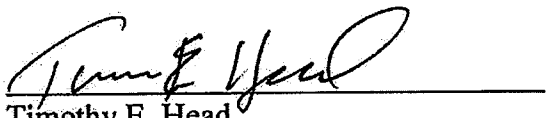
53. In this case, I believe that the prosecution of separate actions by individual class members creates a risk of inconsistent or varying adjudications with respect to Defendants, with respect to Defendants' enforcement of the Final Mandate, and with respect to individual members of the class. With an inconsistent application of the same federal regulation, the courts may establish incompatible and controverting standards of conduct for Defendants. GuideStone would be subject to intense confusion of the applicability of the Final Mandate as to seemingly identical plan employers located in different forums. GuideStone would not know how to administer the health plan with certainty, and Defendants would not know how to enforce the Final Mandate with certainty.

54. I believe that all members of the class and GuideStone are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and from charging or assessing penalties against them for failure to offer or facilitate access to abortifacient contraceptives and related education and counseling. I believe that Plaintiffs and class members will suffer immediate injury if an injunction is not

immediately issued, and any other remedies, such as monetary damages, are inadequate to prevent injury and fully compensate the class members and GuideStone from injury.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON OCTOBER 25, 2013



Timothy E. Head

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 5:13-CV-01092-D
KATHLEEN SEBELIUS, et al.,	§	
Defendants.	§	

DECLARATION OF JOSHUA WELLS

I, Joshua Wells, do hereby state and declare as follows:

1. My name is Joshua Wells. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true and correct and based on my personal knowledge or a review of the business records of Reaching Souls International, Inc. ("Reaching Souls"). If I were called upon to testify to these facts, I could and would competently do so.

2. I am the Director of Development & General Counsel of Reaching Souls. I received a B.A. in English from Oklahoma Baptist University. I also graduated in 2008 from the Oklahoma City University College of Law where I was the Executive Editor of the Law Review and a Research Assistant for the University General Counsel, J. William Conger. I am an attorney and a current member of the Oklahoma Bar and the bar of this Court.

3. Reaching Souls is an Oklahoma not for profit corporation founded in 1986 by a Southern Baptist minister and evangelist with the mission of "training Africans to reach Africa." Reaching Souls has since expanded its ministry to India and Cuba. Its principal officers, President, Chief Executive Officer, Chief Operating Officer and Chief Financial Officer, are all ordained Southern Baptist ministers and the majority of its staff are members of Southern Baptist Churches. Reaching Souls currently provides training and support for approximately 1,000 missionaries in seven nations in Africa, 10 missionaries in India, and 40 missionaries in Cuba. In response to the orphan crisis created by AIDS, war, and famine, Reaching Souls began an orphan care program called "Reaching Generations." Currently, Reaching Generations cares for nearly 500 orphans in Africa and India.

4. All of Reaching Souls' employees share its commitment to "obey our Lord Jesus Christ and His Word," including the command to respect the sanctity of human life from conception to natural death. Each job description provided to current and prospective employees of Reaching Souls requires that every individual holding a position at the ministry be a Christian, meaning they have a personal relationship with Jesus Christ. Further, it is formally stated in each job description provided that a person who follows Jesus Christ will follow His commands to: 1) love God with all their heart, soul, mind, and strength; 2) love their neighbors as themselves; and 3) go and make disciples. Reaching Souls believes the Bible teaches that all people are our neighbors, including the unborn.

5. Reaching Souls' beliefs regarding the sanctity of life are consistent with and like-minded to The Southern Baptist Convention's position on the sanctity of life which provides that Southern Baptists should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.

6. As part of its religious belief that it must promote the spiritual and physical well-being of its employees, Reaching Souls provides its employees with comprehensive health benefits. Reaching Souls participates in the health benefits plan sponsored by GuideStone Financial Resources of the Southern Baptist Convention (the "GuideStone Plan") and has adopted the GuideStone Plan (as hereinafter defined) to provide health benefits for its employees in compliance with Reaching Souls' commitment to its employees' well-being and to the sanctity of human life. I am very familiar with the Reaching Souls health benefit plan through the GuideStone Plan, including enrollment. Consistent with the convictions of the Southern Baptist Convention, the GuideStone Plan does not pay or reimburse expenses associated with drugs or devices that are abortive in nature.

7. Because of the religious beliefs set forth above, being required to provide health benefits that will include access to and abortion-inducing drugs, devices and related counseling and education will infringe upon Reaching Souls' sincerely held religious beliefs. Reaching Souls believes that it would impinge its religious beliefs if it were required to intentionally facilitate the provision of abortifacient drugs and related education and counseling, as would be required by the Final Mandate.

8. Because of the religious beliefs set forth above, being required to provide health benefits, by way of a third party administrator, that will include access to abortion-inducing drugs, devices and related counseling and education will infringe upon Reaching Souls' sincerely held religious beliefs.

9. Because of the religious beliefs set forth above, being required to provide any information to facilitate the government-required certifications to a third party to require that third party to provide employees with access to abortion-inducing drugs and devices will infringe upon Reaching Souls' sincerely held religious beliefs.

10. Reaching Souls should not be required to compromise its commitment to Christian witness by being seen to participate in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray.

11. One of the reasons that Reaching Souls chose to use the GuideStone Plan is because it shares our religious beliefs and does not provide access to abortion health benefits.

12. Reaching Souls and Truett-McConnell College, Inc. ("Truett-McConnell") bring this action on behalf of themselves and all others similarly situated. Their attorneys defined the class as employers that: (i) have adopted or in the future adopt the GuideStone Plan to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in section 414(e)(3)(B) of the Internal Revenue Code of 1986 (the "Code"); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the

Final Mandate (as hereinafter defined); and (iii) are not "religious employers" within the meaning of the Final Mandate. As like-minded organizations that hold to Southern Baptist convictions, it is my belief that the class members will be guided by and operated in accordance with Christian teachings about the sanctity of all human life.

13. Based on my understanding of the criteria under the Final Mandate as discussed in the Complaint in this action, if the GuideStone Plan continues to offer employee health insurance without the mandated items on January 1, 2014, each class member, regardless of its size, will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Reaching Souls currently has 10 full time employees covered under its health plan and would incur penalties of approximately $365,000 per year based on its current employee count, which would have a devastating and fatal impact on its operations. These penalties would limit Reaching Souls' ability to provide health care coverage for their employees or force it to curtail or eliminate community and ministry programs.

14. Nor can Reaching Souls avoid these fines by choosing not to provide health benefits at all. Cutting off all benefits for our employees is repugnant. We value and respect our employees and are dedicated to providing adequate health benefits. Cutting off all employee benefits would also have a severe negative impact on our employees and their families.

15. By discontinuing all coverage, Reaching Souls and class members would be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which would adversely impact their ministries. In my experience, a key

factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Benefits plans are an important reason that many employees make choices about which jobs to pursue, to keep, and to abandon. Any uncertainty regarding these factors undermines Reaching Souls and the class members' ability to retain existing employees and recruit new ones.

16. If Reaching Souls and class members chose to compromise their beliefs by eliminating their health care coverage for their employees altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, we face the prospect of a loss of employees.

17. By forcing Reaching Souls and other non-exempt "eligible organizations" to make the difficult decision to stay in the GuideStone Plan and incur massive penalties or to leave the GuideStone Plan either to avoid the penalties or to avoid providing contraception coverage because of their religious belief, the Final Mandate substantially burdens Reaching Souls and the class members' religious exercise and ministry of providing health insurance benefits to employees. The Final Mandate imposes enormous pressure on Reaching Souls to participate in activities prohibited by our sincerely held religious beliefs.

18. The Government's "accommodation" does not address Reaching Souls' and other class members' fundamental religious objection to improperly facilitate access to the objectionable products and services. This arrangement still requires us to facilitate the provision of products and services antithetical to our beliefs, since employees would

receive free abortifacients and related counseling only by virtue of their participation in our health plan.

19. Reaching Souls believes that the religious beliefs set forth above do not allow Reaching Souls and the class members as a matter of faith to participate in the government's program to promote and facilitate access to the use of abortion-inducing drugs and devices; provide health benefits to our employees that will include access to abortion-inducing drugs and devices; designate any third party to provide our employees with access to abortion-inducing drugs and devices; and make the government-required certifications to a third party to require that third party to provide our employees with access to abortion-inducing drugs.

20. Reaching Souls and the class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by our Southern Baptist convictions. The Final Mandate forces us to contract for, facilitate, or pay for the provision of abortifacients and related education and counseling in violation of our religious beliefs, by having to take one or more the following actions, among others:

- By delivering a self-certification, Plaintiffs take action for which the ultimate result is to provide access to abortifacient coverage that is made possible through participation in their health plan.
- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and Reaching Souls is included in the Government's scheme to provide the coverage in opposition to Southern Baptist convictions through third party administrators.
- Plaintiffs are required to be involved in the process by identifying its employees to the third party administrator for the purpose of enabling the Final Mandate's scheme.

- Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their health plans and, as a result, the Final Mandate's scheme.

- Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at 39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See 26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

- If Plaintiffs must leave the GuideStone Plan to avoid penalties because the GuideStone Plan does not provide the mandated coverage, Plaintiffs would be required to: (i) select another insurer or third party administrator willing to provide for or arrange abortifacient coverage; (ii) negotiate an administrative services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.

- The third party administrator would also be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77. Thus, any payment or coverage dispute would presumably be resolved under the terms of the Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator, the designation makes the third party administrator a plan administrator with fiduciary duties under a Plaintiff's plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan. Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the class members and GuideStone as parties–for coverage that the Plaintiffs oppose!

21. The only way to provide effective relief for Reaching Souls and class members is to enjoin enforcement of the Final Mandate with respect to all class members

in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

22. GuideStone is now planning for the 2014 plan year. Plaintiffs must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. A lapse in coverage will be disastrous for Reaching Souls' operations and for the employees and their families who depend on the GuideStone Plan for health care coverage.

23. I believe that the claims of Reaching Souls are typical of the claims of the class in that all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate given the shared and like-minded Christian religious beliefs regarding the sanctity of life and the obligation to speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. I believe that the factual bases of Defendants' actions are common to all class members in that the class members share in the same religious beliefs set forth above and, therefore, will suffer the same violation of rights by enforcement of the Final Mandate.

24. As the Complaint has defined the class, the class members are not eligible for the religious employer's exemption under the Final Mandate. Thus, the Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class claims require a common finding by the Court as to whether the Final Mandate's accommodation and requirement that the class members

provide abortifacient related health benefits in their health plans violates their rights under the Religious Freedom Restoration Act and the First Amendment.

25. I believe that Reaching Souls will fairly and adequately protect the interests of the Class. GuideStone, Reaching Souls, and Truett-McConnell have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. GuideStone, Reaching Souls, Truett-McConnell, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. GuideStone is financially committed to assist Reaching Souls and Truett-McConnell in litigating this matter to conclusion on behalf of the class members. I do not believe that GuideStone, Reaching Souls, and Truett-McConnell have an interest adverse to those of the class members.

26. I believe that all members of the class and GuideStone are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and from charging or assessing penalties against them for failure to offer or facilitate access to abortifacient contraceptives and related education and counseling. I believe that the Reaching Souls and class members will suffer injury if an injunction is not issued because of the need to make a decision on our health plans before January 1, 2014. Money damages awarded later would not be adequate to prevent injury and fully compensate us from injury because these decisions impact us now, will impact the benefits we can provide our employees now, and impact the services and ministry we can provide, now.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 10/25, 2013

JOSHUA WELLS

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

REACHING SOULS INTERNATIONAL, INC., et al.,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 5:13-CV-01092-D
KATHLEEN SEBELIUS, et al.,	§	
Defendants.	§	

DECLARATION OF DAVID ARMSTRONG

I, David Armstrong, do hereby state and declare as follows:

1. My name is David Armstrong. I am of sound mind and competent to make this declaration and swear to the matters herein. I am over the age of 21 years and have never been convicted of a felony or crime of moral turpitude. The statements herein are true, correct, and based on my personal knowledge or a review of the business records of Truett-McConnell. If I were called upon to testify to these facts, I could and would competently do so.

2. I am the Vice President of Finance and Operations at Truett-McConnell College ("Truett-McConnell"). I received my undergraduate and master's degrees from Texas A & M. I also hold Master of Divinity and Master of Theology Degrees from Southeastern Baptist Theological Seminary. I am currently a Doctor of Education Degree candidate from Southeastern Baptist Theological Seminary.

3. Truett-McConnell is a private, Christian, coeducational liberal arts college in Cleveland, Georgia. It is a single member, Georgia nonprofit corporation with the Georgia Baptist Convention as its sole member. As the sole member of Truett-McConnell, the Georgia Baptist Convention appoints the trustees of Truett-McConnell. The Georgia Baptist Convention is an association of Southern Baptist churches in the state of Georgia, and is one of the state conventions associated with the Southern Baptist Convention.

4. The *Baptist Faith and Message 2000* adopted by the Southern Baptist Convention is the statement of faith and message declared for the purpose of setting "forth certain teachings which we believe." Article 15 of the *Baptist Faith and Message 2000*, which is titled, "The Christian and the Social Order," provides "[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death." (emphasis added).

5. Truett-McConnell has adopted the Southern Baptist Convention's Baptist Faith and Message 2000 as its own statement of faith and official doctrinal statement. Truett-McConnell displays it on its website under the heading "About Us." See http://www.truett.edu/abouttmc/baptist-faith-a-message.html (last visited Oct. 11, 2013). All of Truett-McConnell's faculty share its commitment to the sanctity of life from conception to natural death as outlined in the Baptist Faith and Message 2000. The Baptist Faith and Message 2000 is listed in the Employee Handbook provided to all Truett-McConnell employees. Additionally, all full-time faculty have signed the document as part of their employment agreement since October 27, 2010. Further, all

Truett-McConnell Trustees must be active members of Southern Baptist churches that are in active participation with the Georgia Baptist Convention. Therefore, Truett-McConnell believes that an abortion or other method that harms an embryo from the moment of conception/fertilization, ends a human life and is a sin.

6. As part of its religious belief that it must promote the spiritual and physical well-being of its employees, Truett-McConnell provides them with comprehensive health benefits.

7. Truett-McConnell participates in the health benefits plan sponsored by GuideStone Financial Resources of the Southern Baptist Convention (the "GuideStone Plan") and has adopted the GuideStone Plan to provide health benefits for its employees. Truett-McConnell has adopted the GuideStone Plan because it complies with Truett-McConnell's religious commitment to its employees well-being and to the sanctity of human life.

8. Because of the religious beliefs set forth above, being required to provide health benefits that will include access to and abortion-inducing drugs, devices and related counseling and education will infringe upon Truett-McConnell's sincerely held religious beliefs. Truett-McConnell believes that it would impinge its religious beliefs if it were required to intentionally facilitate the provision of abortifacient drugs and related education and counseling, as would be required by the Final Mandate.

9. Because of the religious beliefs set forth above, being required to provide health benefits, by way of a third party administrator, that will include access to abortion-

inducing drugs, devices and related counseling and education will infringe upon Truett-McConnell's sincerely held religious beliefs.

10. Because of the religious beliefs set forth above, being required to provide any information to facilitate the government-required certifications to a third party to require that third party to provide employees with access to abortion-inducing drugs and devices will infringe upon Truett-McConnell's sincerely held religious beliefs.

11. Truett-McConnell should not be required to compromise its commitment to Christian witness by being seen to participate in the government's program. Doing so would not only impinge its sincerely held religious beliefs, but also would risk leading others astray.

12. One of the reasons that Truett-McConnell chose to use the GuideStone Plan is because it shares our religious beliefs and does not provide access to abortion health benefits.

13. Truett-McConnell brings this action on behalf of itself and all others similarly situated. Their attorneys defined the class as employers that: (i) have adopted or in the future adopt the GuideStone Plan to provide medical coverage for their "employees" or former employees and their dependents ("employees" for purposes of this requirement has the meaning set forth in section 414(e)(3)(B) of the Internal Revenue Code of 1986 (the "Code"); (ii) are or could be reasonably construed to be "eligible organizations" within the meaning of the Final Mandate (as hereinafter defined); and (iii) are not "religious employers" within the meaning of the Final Mandate. As like-minded

Baptist organizations, it is my belief that the class members will be guided by and operated in accordance with Christian teachings about the sanctity of all human life.

14. Based on my understanding of the criteria under the Final Mandate as discussed in the Complaint in this action, if the GuideStone Plan continues to offer employee health insurance without the mandated items on January 1, 2014, each class member, regardless of its size, will be subject to a penalty beginning on January 1, 2014, of $100 per day "per affected individual." Truett-McConnell currently has 78 full time employees covered under its health plan and would incur penalties of approximately $2,810,500 per year based on its current employee count, which would have a devastating impact on its operations. These penalties would limit Truett-McConnell's ability to operate.

15. Additionally, Based on my understanding of the criteria under the Final Mandate as discussed in the Complaint, large employers (*i.e.,* those with 50 or more employees) that cancel coverage altogether will be exposed to significant annual excise tax penalties of $2,000 per full-time employee. Truett-McConnell has approximately 78 full time employees and would incur penalties of approximately $156,000 per year.

16. Nor can Truett-McConnell avoid these fines by choosing not to provide health benefits at all. Cutting off all benefits for our employees is repugnant. We value and respect our employees and are dedicated to providing adequate health benefits. Cutting off all employee benefits would also have a severe negative impact on our employees and their families.

17. By discontinuing all coverage, Truett-McConnell and class members would be placed at a severe competitive disadvantage in their efforts to hire and retain employees, which would adversely impact their ministries. In my experience, a key factor to an employer's ability to retain existing employees and recruit new ones is the ability to offer and provide health benefits. Benefits plans are an important reason that many employees make choices about which jobs to pursue, to keep, and to abandon. Any uncertainty regarding these factors undermines Truett-McConnell and the class members' ability to retain existing employees and recruit new ones.

18. If Truett-McConnell and class members chose to compromise their beliefs by eliminating their health care coverage for their employees altogether, they would likely need to increase employee compensation so that employees could purchase their own health insurance and pay the additional income taxes resulting from the increased compensation. Otherwise, we face the prospect of a loss of employees.

19. By forcing Truett-McConnell and other non-exempt "eligible organizations" to make the difficult decision to stay in the GuideStone Plan and incur massive penalties or to leave the GuideStone Plan either to avoid the penalties or to avoid providing contraception coverage because of their religious belief, the Final Mandate substantially burdens Truett-McConnell and the class members' religious exercise and ministry of providing health insurance benefits to employees. The Final Mandate imposes enormous pressure on Truett-McConnell to participate in activities prohibited by our sincerely held religious beliefs.

20. The Government's "accommodation" does not address Truett-McConnell's and other class members' fundamental religious objection to improperly facilitating access to the objectionable products and services. This arrangement still requires us to facilitate the provision of products and services antithetical to our beliefs, since employees would receive free abortifacients and related counseling only by virtue of their participation in our health plan.

21. Truett-McConnell believes that the religious beliefs set forth above do not allow Truett-McConnell and the class members as a matter of faith to participate in the government's program to promote and facilitate access to the use of abortion-inducing drugs and devices; provide health benefits to our employees that will include access to abortion-inducing drugs and devices; designate any third party to provide our employees with access to abortion-inducing drugs and devices; and make the government-required certifications to a third party to require that third party to provide our employees with access to abortion-inducing drugs.

22. Truett-McConnell and the class members would be required to actively facilitate and promote the distribution of these services in ways that are forbidden by our Southern Baptist beliefs. The Final Mandate forces us to contract for, facilitate, or provide abortifacients and related education and counseling in violation of our religious beliefs, by having to take one or more the following actions, among others:

- By establishing a new, direct contractual relationship with the GuideStone Plan's third-party administrators for the specific purpose of providing abortifacient drugs and devices to their employees. The GuideStone Plan employs third-party administrators, but currently

there is no direct contractual relationship between GuideStone's third-party administrators and Truett-McConnell.

- By delivering a self-certification, Plaintiffs take action for which the ultimate result is to provide access to abortifacient coverage that is made possible through participation in their health plan.

- By delivering a self-certification, Plaintiffs facilitate the coverage at issue and Truett-McConnell is included in the Government's scheme to provide the coverage in opposition to Southern Baptist convictions through third party administrators.

- Plaintiffs are required to be involved in the process by identifying its employees to the third party administrator for the purpose of enabling the Final Mandate's scheme.

- Plaintiffs would have to coordinate with the third party administrator when they add or remove employees and beneficiaries from their health plans and, as a result, the Final Mandate's scheme.

- Plaintiffs would also have to coordinate with third party administrators to provide notice to plan participants and beneficiaries of the abortifacient payment benefit "contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment" in a group health plan, under the auspices of the Plaintiffs self-funded plan. 78 Fed. Reg. at 39876. Plan participants must be given a written notice of any material change in the Summary of Benefits and Coverage at least 60 days' in advance notice of any such change. See 26 C.F.R. § 54.9815-2715(b), 29 C.F.R. § 2590.715-2715(b) and 45 C.F.R. § 147.200(b); published 77 Fed. Reg. 8668, 8698-8705 (Feb. 14, 2012). The Affordable Care Act requires that participants in a group health plan be given a Summary of Benefits and Coverage that "accurately describes the benefits and coverage" of the plan. Pub. L. No. 111-148 § 1001(5), 124 Stat. 131 (codified at 42 U.S.C § 300gg-9).

- If Plaintiffs must leave the GuideStone Plan to avoid penalties because the GuideStone Plan does not provide the mandated coverage, Plaintiffs would be required to: (i) select another insurer or third party administrator who, under the terms of the Mandate, must be willing to provide for or arrange abortifacient coverage; (ii) negotiate an administrative services agreement with the third party administrator; and (iii) communicate the plan changes to their employees.

- The third party administrator would also be required to provide the abortifacient benefits "in a manner consistent" with the provision of other covered services. 78 Fed. Reg. at 39876-77. Thus, any payment or coverage dispute would presumably be resolved under the terms of the Plaintiffs' plan documents, making them complicit. By delivering a self-certification to the third party administrator of a self-insured plan, the designation makes the third party administrator a plan administrator with fiduciary duties under a Plaintiff's plan and payments for contraceptive and abortifacient services would be payments made under the auspices of the health plan. Similarly, litigation claims relating to or arising from this coverage could theoretically implicate the class members and GuideStone as parties–for coverage that the Plaintiffs oppose!

23. The only way to provide effective relief for Truett-McConnell and class members is to enjoin enforcement of the Final Mandate with respect to all class members in the GuideStone Plan; otherwise, they will be adversely affected by the application of the Final Mandate to these organizations and its penalty provisions.

24. GuideStone is now planning for the 2014 plan year. Plaintiffs must coordinate regarding the structure and provision of coverage well in advance of January 1, 2014. A lapse in coverage will be disastrous for Truett-McConnell' operations and for the employees and their families who depend on the GuideStone Plan for health care coverage.

25. I believe that the claims of Truett-McConnell are typical of the claims of the class in that all class members will be equally and similarly harmed by the Defendants' enforcement of the Affordable Care Act and Final Mandate given the shared and like-minded religious beliefs regarding the sanctity of life and the obligation to speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. I believe that the factual bases of Defendants' actions are common to all

class members in that the class members share in the same religious beliefs set forth above and, therefore, will suffer the same violation of rights by enforcement of the Final Mandate.

26. As the Complaint has defined the class, the class members are not eligible for the religious employer's exemption under the Final Mandate. Thus, the Final Mandate forces all of the class members to choose between incurring severe financial hardship or violating their religious beliefs by taking steps to invoke the "accommodation." All of the class members require a finding by the Court as to whether the Final Mandate's accommodation and requirement that the class members facilitate access to abortifacient-related drugs and devices through their health plans violates their rights under the Religious Freedom Restoration Act and the First Amendment.

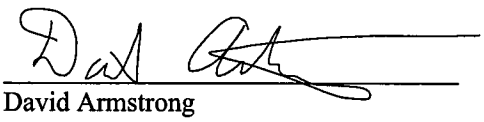
27. I believe that Truett-McConnell will fairly and adequately protect the interests of the Class. GuideStone, Reaching Souls, and Truett-McConnell have retained counsel with substantial experience in litigating class action cases and in litigating violations of religious and constitutional rights. GuideStone, Reaching Souls, Truett-McConnell, and their counsel are committed to prosecuting this action vigorously on behalf of the class members, and have the resources to do so. GuideStone is financially committed to assist Reaching Souls and Truett-McConnell in litigating this matter to conclusion on behalf of the class members. I do not believe that GuideStone, Reaching Souls, and Truett-McConnell have an interest adverse to those of the class members.

28. I believe that all members of the class and GuideStone are entitled to an injunction prohibiting Defendants from enforcing the Final Mandate against them and

from charging or assessing penalties against them for failure to offer or facilitate access to abortifacient contraceptives and related education and counseling. I believe that Truett-McConnell and class members will suffer injury if an injunction is not issued because of the need to make a decision on our health plans before January 1, 2014. Money damages awarded later would not be adequate to prevent injury and fully compensate us from injury because these decisions impact us now, will impact the benefits we can provide our employees now, and impact the services and ministry we can provide, now.

PURSUANT TO 28 U.S.C § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON October 25, 2013



David Armstrong

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

O CENTRO ESPIRITA BENEFICIENTE UNIAO DO VEGETAL, et al.,

Plaintiffs,

v.

JOHN ASHCROFT, et al.,

Defendants.

No. CV 00-1647 JP/RLP

PRELIMINARY INJUNCTION

This matter came before the Court for hearing on the motion of Plaintiffs for preliminary injunction. After considering all the evidence admitted in support of and in opposition to Plaintiffs' motion, and having considered the arguments and briefs of counsel, the Court entered its Memorandum Opinion and Order of August 12, 2002. The Court's Memorandum Opinion and Order is incorporated herein by reference.

As set forth in the August 12 Memorandum Opinion and Order, the Court concludes that plaintiffs have met the standards necessary for preliminary injunctive relief:

First: The plaintiffs have demonstrated a substantial likelihood of success on the merits of their claim under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb.

Second: The plaintiffs will suffer irreparable harm as a result of the impact of the defendants' conduct on the plaintiffs' ability to practice their religion unless the defendants are preliminarily enjoined from further interfering with the plaintiffs' practice of their religion.

Third: The threatened injury to the plaintiffs outweighs any injury to the defendants resulting from this injunction.

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Fourth: The public interest in the vindication of religious freedoms favors the entry of a preliminary injunction.

The Court therefore preliminarily enjoins Defendants as follows, and under the terms and conditions set forth below, from prohibiting or penalizing the sacramental use of *hoasca* by participants in bona fide religious ceremonies of the O Centro Espirita Beneficiente Uniao Do Vegetal (UDV).

1. The Defendants, their agencies, agents, employees, and those persons under their control are preliminarily enjoined from directly or indirectly treating Plaintiffs' importation, possession, and distribution of *hoasca* for use in bona fide religious ceremonies of the UDV as unlawful under the Controlled Substances Act ("CSA"). During the pendency of this injunction, the Defendants, their agencies, agents, employees, and those persons under their control shall not intercept or cause to be intercepted shipments of *hoasca* imported by the UDV for religious use, prosecute or threaten to prosecute the UDV, its members, or bona fide participants in UDV ceremonies for religious use of *hoasca*, or otherwise interfere with the religious use of *hoasca* by the UDV, its members, or bona fide participants in UDV ceremonies, subject to the terms and conditions set forth below.

2. Plaintiffs shall conduct themselves in accordance with the conduct that is described in the laws and regulations governing the importation and distribution of Schedule I Controlled Substances as set forth at 21 U.S.C. §§ 801-971 and 21 C.F.R. §§ 1300-1316, except as indicated below. Where this Order enjoins or modifies the application of a particular regulatory provision, the corresponding statutory provision shall be enjoined or modified accordingly. The Court preliminarily enjoins the Defendants from imposing on plaintiffs regulatory or other requirements, which by their terms apply to the importation, distribution, possession or religious use of *hoasca,* not set forth in this Order, without

further order of the Court. This prohibition shall not be construed to bar the United States Customs Service from discharging its normal duties with respect to the general oversight of international commerce.

3. By requiring the Plaintiffs to abide by the conduct set forth in the identified regulations, the Court makes no decision regarding whether the application of any such requirements does or does not violate the RFRA; nor does the Court decide whether any future enforcement of these requirements by DEA against the Plaintiffs will or will not violate RFRA. Similarly, by enjoining Defendants from requiring Plaintiffs to adhere to certain conduct set forth in the identified regulations, the Court makes no decision regarding whether the application of any such requirements would or would not violate the RFRA.

4. Defendants are enjoined from requiring the Plaintiffs to conform their conduct to the following regulations: 21 C.F.R. §§ 1301.34(a), 1301.34(b)(3), 1301.34(b)(5), 1301.34(b)(6), 1301.34(d), 1301.34(e), 1301.34(f), 1301.35(b), Part 1303, 1304.33, and 1312.13(a).

5. In applying for registration to import and distribute a controlled substance, Plaintiffs may strike out the word "business" on the relevant application form and specify that they are importing and distributing *hoasca* for religious purposes only. This modification of the form may not be deemed inconsistent with the requirements of 21 C.F.R. §§ 1301.13(i) or 1301.14(b). The Central Office of the UDV shall apply for registration as an importer, with distribution being a coincidental activity. The Central Office shall also apply on behalf of each individual congregation for registration as a distributor.

6. Where the relevant application form asks for information pertaining to "any officer, partner, stockholder or proprietor" of the UDV, these terms shall be deemed to apply to the

officers of the UDV as specified in the records of the New Mexico Corporation Commission at the time of application for registration.

7. If requested by DEA pursuant to 21 C.F.R. §§ 1301.14(d), 1301.15, or 1312.13(d), Plaintiffs shall provide the identities and social security numbers of those persons within the UDV who routinely handle *hoasca* outside of ceremonies. Plaintiffs shall not be required to provide the identities or social security numbers of any other UDV members.

8. Inasmuch as persons of authority within the UDV are not UDV "employees," the requirements of 21 C.F.R. §§ 1301.90-93 shall not apply. Instead, Plaintiffs are required to adhere to the conduct set forth in those sections, replacing the word "employee" with "person of authority within the UDV," defined as UDV members who are authorized to handle *hoasca* outside of ceremonies.

9. Inasmuch as persons of authority within the UDV are not UDV "employees," 21 C.F.R. § 1301.72(d) shall not apply. Instead, Plaintiffs are required to adhere to the following conduct: If someone, other than a person of authority within the UDV, is present in the room in which the hoasca is stored or a vehicle in which the hoasca is being conveyed (other than delivery by common carrier), that person shall be accompanied at all times by a person of authority within the UDV.

10. The requirements in 21 C.F.R. § 1312.12(a)(5) will be construed to mean that the Central Office of the UDV in Santa Fe, as importer, will measure its stock of *hoasca*, which will not include the *hoasca* in the possession of other registered locations.

11. The information required under 21 C.F.R. § 1312.12(a)(8) may be stated in liters or other measure of volume rather than kilograms.

12. The physical inventories referenced in 21 C.F.R. § 1316.03(c) shall be conducted by DEA,

except that the actual handling of the containers of *hoasca* will be by the responsible UDV representatives under the direction and oversight of DEA personnel.

13. If DEA asks to inspect an item or items pursuant to 21 C.F.R. § 1316.03(f), and Plaintiffs believe that DEA's inspection of such item or items would violate their right to freedom of association or the freedom of association of others associated with the UDV, Plaintiffs may withhold such items from inspection pending a determination by this Court of whether they may be lawfully inspected.

14. The requirement of 21 C.F.R. § 1316.05 that inspections be carried out at reasonable times and in a reasonable manner applies to inspections authorized under 21 C.F.R. § 1316.03 and shall be construed to prohibit inspections during bona fide religious ceremonies of the UDV.

15. In lieu of the requirements in 21 C.F.R. § 1307.21(b), Plaintiffs and Defendants shall arrive at a mutually acceptable means of disposal of any hoasca that must be disposed of, which means shall not include forfeiture to Defendants.

16. Defendants are enjoined from requiring Plaintiffs to specify the amount of dimethyltryptamine (DMT) to be imported in their application for an import permit, as provided for under 21 C.F.R. § 1312.12(a). Plaintiffs shall instead specify the volume of *hoasca* to be imported, and indicate that the concentration of DMT in the imported *hoasca* is the concentration contained in the sample provided to DEA.

17. Plaintiffs shall assign a unique identifying number to each batch of *hoasca* that is received through international shipment. Immediately upon receipt of such shipment, Plaintiffs shall extract an unadulterated small sample (not significantly more or less than 60 ml) from each batch shipped, and shall label each sample with the number of the batch from which it was

taken. Plaintiffs shall also arrange to have a small sample of each batch of shipped *hoasca* preserved in Brazil, labeled with the number that corresponds to the batch of *hoasca* from which the sample was taken. These samples shall be made available to DEA on request, and shall in any case be preserved for a period of three (3) years. Any untested samples made available to DEA shall be returned to the Plaintiffs after three years.

18. Each container of *hoasca* in Plaintiffs' possession and control will be labeled with the number of the batch from which its contents were taken. If *hoasca* originating from one batch is mixed with *hoasca* originating from a different batch, the resulting mix shall be stored in containers labeled with the numbers of any and all originating batches and the precise volume that was taken from each such batch.

19. Defendants are enjoined from denying Plaintiffs' applications for registration to import and distribute hoasca or for an import permit on the grounds that Plaintiffs' religious use of hoasca is prohibited by the CSA and/or international treaties, conventions, or protocols (21 C.F.R. § 1301.34(b)); is inconsistent with state and/or local law (21 C.F.R. § 1301.34(b)(2)); or is inconsistent with public health and safety (21 C.F.R. § 1301.34(b)(7)).

20. Defendants are enjoined from denying Plaintiffs' applications for registration to import and distribute hoasca or for an import permit on any of the following grounds: (a) the government must restrict importation to a number of establishments which can produce an adequate and uninterrupted supply of *hoasca* under adequately competitive conditions (21 C.F.R. § 1301.34(b)(1)); (b) importation of *hoasca* by Plaintiffs would not promote technical advances in the art of manufacturing *hoasca* and developing new substances (21 C.F.R. § 1301.34(b)(3)); (c) Plaintiffs lack sufficient past experience in the manufacturing

of controlled substances (21 C.F.R. § 1301.34(b)(5)).

21. Defendants are enjoined from enforcing 21 C.F.R. § 1301.34(b)(6) to restrict the amounts of *hoasca* imported by Plaintiffs.

22. Defendants are enjoined from charging Plaintiffs an application fee in connection with their applications for registration to import and distribute hoasca, and from enforcing 21 C.F.R. § 1301.21(b) against Plaintiffs. To the extent that Plaintiffs' nonpayment of an application fee is inconsistent with any of the requirements of 21 C.F.R. §§ 1301.13(e) or 1301.14(a), those requirements shall not be enforced.

23. Defendants are enjoined from enforcing the specific storage requirements of 21 C.F.R. § 1301.72(a) and are enjoined from enforcing 21 C.F.R. § 1301.71(a) insofar as that subsection would require Plaintiffs to employ materials and construction which provide a structural equivalent to the physical security controls set forth in 21 C.F.R. §§ 1301.72, 1301.73 and 1301.75.

24. The initial on-site inspection by the Drug Enforcement Administration (21 C.F.R. § 1301.31) of each UDV location applying for registration will take place within two (2) weeks of receipt of the application for registration of that location. The hoasca will be stored in a pad-locked refrigerator in a locked room at each UDV location where it is stored. The highest Church authority at each location will retain custody of the keys to the locks for the refrigerator and to the room where the hoasca is stored. If DEA after its on-site inspections takes the position that Plaintiffs' security measures are not in substantial compliance with the DEA's regulatory standards for the physical security controls and operating procedures necessary to prevent diversion of the *hoasca*, and if DEA and Plaintiffs are unable to agree on a mutually acceptable means and time frame for resolving

the issue, Defendants shall, within one (1) week of the on-site inspection, apply to the Court for resolution of the issue by filing a statement setting forth the basis for DEA's position.

25. The Drug Enforcement Administration will expedite Plaintiffs' applications for registration to import and distribute *hoasca* and Plaintiffs' application for an import permit. The DEA shall issue Plaintiffs a registration to import hoasca, a registration to distribute hoasca, and an import permit within thirty (30) days of receipt of Plaintiffs' applications for such items, or will show cause before this Court why such items have not yet been issued. Immediately upon registration, the UDV may resume its religious services using the *hoasca* presently in its possession, subject to compliance with the conduct set forth in this Order. The provisions of 21 C.F.R. § 1301.13(a) notwithstanding, Plaintiffs are entitled to import and distribute hoasca immediately upon issuance of the applicable registrations, even if the Certificate of Registration has not yet been issued.

26. Plaintiffs shall keep records relating to their dispensation of hoasca as set forth at 21 C.F.R. § 1304.24(a), with the following qualifications: subsection (a)(2) shall not apply, and Plaintiffs shall instead be required to list the appropriate batch number (as discussed above in paragraphs 17-18); subsection (a)(5) shall not apply, and Plaintiffs shall instead be required to indicate the number of bona fide participants in the religious ceremony/event who received hoasca; under subsection (a)(6), Plaintiffs shall specify the total amount of hoasca consumed during the ceremony/event.

27. If Defendants confiscate any shipment of *hoasca* under 21 C.F.R. § 1312.15(a) because the amount imported exceeds the amount specified on the import permit, they shall preserve all of the confiscated *hoasca* and return it to Plaintiffs promptly upon a satisfactory, non-

diversion explanation by Plaintiffs as to the additional amount. If any of the confiscated *hoasca* is delivered to any other departments, bureaus, or agencies of the United States or any State pursuant to 21 C.F.R. § 1307.22, said departments, bureaus, or agencies will similarly preserve the *hoasca* pending Plaintiffs' explanation.

28. Plaintiffs will comply with the requirements of 21 C.F.R. Part 1305, except that Plaintiffs shall complete the relevant order forms as follows: The Central Office of the UDV will fill out the order forms when sending any *hoasca* to any UDV congregation. At the time the *hoasca* is sent to the congregation, the UDV will mail one copy of the form to the site receiving the *hoasca* and one copy to the DEA, and will retain its own copy. The site receiving the *hoasca* will annotate the form to specify the volume of *hoasca* received. If the volume received differs from the volume shipped (as indicated on the form), Plaintiffs shall notify DEA immediately of the discrepancy.

29. The provisions of 21 C.F.R. §§ 1301.36 and 1312.16(a) notwithstanding, Defendants are enjoined from suspending or revoking Plaintiffs' registration to import and/or distribute *hoasca* and/or Plaintiffs' import permit on any grounds other than the following: (a) material falsification of an application; (b) conviction of the registrant of a felony relating to a controlled substance; or (c) evidence of diversion of *hoasca* for which Plaintiffs are responsible. If Defendants believe that evidence exists that *hoasca* has negatively affected the health of UDV members, Defendants may apply to the Court for an expedited determination of whether such evidence warrants suspension or revocation of Plaintiffs' registration. If Defendants believe that a shipment of *hoasca* contain particularly dangerous levels of DMT, Defendants may apply to the Court for an expedited determination of whether the evidence warrants suspension or revocation of Plaintiffs'

registration. If the United States, subsequent to the date of this Order, enters into a treaty or other international agreement that Defendants believe clearly prohibits the importation and/or distribution of *hoasca*, Defendants may apply to the Court for an expedited determination of whether the treaty or international agreement warrants suspension or revocation of Plaintiffs' registration.

30. The Defendants, their agencies, agents, employees, and persons under their control, are enjoined from applying or enforcing any of the laws, regulations, and treaties that govern the legal importation and distribution of Schedule I substances for the purpose of prohibiting, preventing, unduly delaying, or otherwise interfering with Plaintiffs' religious use of hoasca in a manner that is inconsistent with this Court's August 12, 2002, Memorandum and Opinion.

31. To enable Defendants to distinguish between authorized and unauthorized uses of *hoasca*, Plaintiffs will provide Defendants with general information about the times and locations of their ceremonies immediately upon entrance of this Order. Plaintiffs will notify Defendants in writing in advance of any significant changes to this information.

32. Plaintiffs shall maintain a thorough, accurate, updated list of prescription drugs, subject to reasonable inspection and approval by Defendants on a periodic basis, that may adversely interact with MAO inhibitors. Plaintiffs shall provide this list to all current and prospective members, shall inform them of the possibility of adverse interactions between these drugs and *hoasca*, and shall encourage them to notify a health care professional if they believe they may have experienced such an adverse interaction. These communications shall take place prior to any ingestion of *hoasca*, and shall be accomplished in one or both of the following ways: (a) direct mailing to the individual

member/potential member; (b) hand delivery to the individual member/potential member.

33. Plaintiffs shall inform all current and prospective members in writing that if they have a history of psychosis or psychotic episodes they may be particularly susceptible to an adverse reaction in using *hoasca*, and shall encourage such persons to seek the advice of a health care professional if they fall within this category. These communications shall take place prior to any ingestion of *hoasca*, and shall be accomplished in one or both of the following ways: (a) direct mailing to the individual member/potential member; (b) hand delivery to the individual member/potential member.

34. Defendants, their agencies, agents, and employees may not be held legally or otherwise responsible for any injury or other adverse effect incurred by any person or property as a direct or indirect result of Plaintiffs' importation, possession, distribution, and use of *hoasca*.

35. Plaintiffs will designate one person to coordinate importation, storage, and distribution of the hoasca, and to serve as a liaison with DEA. DEA will designate one person, or a small number of persons, to serve as a liaison with Plaintiffs.

36. Nothing in this Order precludes any party from applying to the Court for any relief available under the Federal Rules of Civil Procedure.

Date: _____

JAMES A. PARKER
Chief United States District Judge