

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**CHRISTOPHER YEP, MARY ANNE YEP, AND
TRIUNE HEALTH GROUP, INC., an Illinois
corporation,**

Plaintiffs,

vs.

**UNITED STATES DEPARTMENT OF HEALTH &
HUMAN SERVICES; KATHLEEN SEBELIUS, in
her official capacity as Secretary of the U.S. Depart-
ment of Health & Human Services; UNITED
DEPARTMENT OF THE TREASURY; TIMOTHY
F. GEITHNER, in his official capacity as the Secret-
ary of the U.S. Department of the Treasury;
UNITED STATES DEPARTMENT OF LABOR;
HILDA L. SOLIS, in her official capacity as Secret-
ary of the U.S. Department of Labor; ILLINOIS
DEPARTMENT OF INSURANCE; ANDREW
W. BORON, in his official capacity as Director of the
Illinois Department of Insurance.**

Defendants.

NO.

COMPLAINT

**Jury Demanded On All
Issues So Triable**

Plaintiffs, Christopher Yep, Mary Anne Yep, and Triune Health Group, Inc., an Illinois corporation, complain of the defendants, through their undersigned attorneys, as follows:

Nature of the Case

1. This is a civil rights action by which plaintiffs sue for declaratory and injunctive relief, to cease, redress, and repair the defendants' grave and ongoing infringement of their fundamental constitutional rights under the First Amendment of the United States Constitution and the corresponding provisions of the Illinois Constitution of 1970, as well as their statutory rights arising under other provisions of federal and Illinois law, to engage in the free and robust exercise of their religious beliefs, in strict and faithful adherence to the deepest dictates of their

private conscience as well as their publicly professed religious beliefs and the religious dimension of their corporate mission. More specifically, all three plaintiffs, including the individual co-owners of their privately owned close corporation and the corporation itself, through which the plaintiffs engaged in the provision of professional supportive services for the health care industry, affirm and embrace a solemn conviction and belief that is at the heart of their Roman Catholic religious faith. That conviction is also embedded in the corporate plaintiff's statement of mission, that "every person is precious, that people are more important than things, and that the measure of every institution is whether it threatens or enhances and life and dignity of the human person." Plaintiffs complain herein that federal and Illinois laws alike now purport to require them to provide their employees with drugs and services that they cannot continue to provide without offending and violating their sincere religious convictions and putting aside their conscientious beliefs about what is right and what is fundamentally, grievously wrong, and which also grossly disserves the health and welfare of their employees. In particular, plaintiffs deem it abhorrent and evil that they find themselves now doubly mandated – by federal and Illinois law alike – to provide other human beings, their cherished employees, with drugs and services relating to abortifacients, sterilization, and artificial reproductive and contraceptive technologies, which are inimical to their health and well-being, as well as being fundamentally at odds with plaintiffs' religious faith and corporate mission.

2. Plaintiffs, Christopher and Mary Anne Yep are ardent and faithful adherents of the Roman Catholic religion. They believe that the inherent dignity, and indeed the inviolable sanctity, of each and every human being rests ultimately on the immutable truth that each person has been *created* in the image and likeness of God, before whom they stand as equals, endowed with inalienable rights. Consequently, they believe that the life of each and every human being

must be protected, cherished, and even fostered from the moment of his or her conception until natural death, no matter whether that human being may be flawed or flawless, rich or poor, humble or exalted. They believe that the procreative capacity of human beings represents a precious gift from God by which individuals are allowed to participate in God's plan to share life and that, as a result, any acts of deliberate interference with that procreative capacity bound up with acts of unitive human love – including artificial contraception, abortion, and/or sterilization – are gravely wrong and sinful. They also believe that the use and promotion of reproductive technologies that involve the destruction of human embryos or which purport to divide and sunder the procreative core of human sexuality from its unitive elements are gravely wrong and sinful. That both the federal and state governments would coerce plaintiffs to flout such profound and fundamental beliefs seems totally at odds with repeated declarations of the Founding Fathers. It also runs wholly counter to the thrust of our modern Supreme Court jurisprudence to the effect that, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizens to confess by word or act their faith therein*. If there are any circumstances which permit an exception, they do not now occur to us." *West Virginia Bd. of Education v. Barnette*, 319 U.S. 624, 642 (1943)(emphasis added). *A fortiori*, that plaintiffs would be forced to underwrite abortifacients – drugs that kill human beings, such as the so-called "morning-after pill" and "Ella" – would put the lie to the stated ground on which a decisive plurality of Justices affirmed the right of citizens, whose values fall on the opposite side of the moral spectrum from plaintiffs', to choose to abort prenatal human beings, as follows: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life" *Planned Parenthood of Pennsylvania v. Casey*, 505

U.S. 833, 851 (1992). The fundamental liberties of citizens must surely encompass defining a concept of the meaning and mystery of human life that – in consonance with the resounding words of the Declaration of Independence – affirms a “right to life” that is “inalienable,” and thus protected against any government *fiat* to the contrary.

3. By reason of their religious conviction the Yeps sincerely believe that they cannot facilitate access to, subsidize, or materially cooperate with the provision of the offensive drugs or services described herein without breaching their solemn and sacred obligations to God, betraying their professed religious faith, and disserving the best interests of – as well as risking serious physical and/or spiritual injury to – their fellow human beings.

4. The Yeps own and control the corporate plaintiff, Triune Health Group, Inc., an Illinois corporation (“Triune Health Group” or “Triune”), and they wish to conduct their business in a manner that does not violate the principles of their religious faith relating to the sanctity of human life, the dignity of the individual, and the institution of marriage. They believe that their religious faith, which shapes and determines their understanding of the importance and meaning of their lives, must inform all of their actions, including their actions as directors and officers of Triune Health Group, in order for them to live fully integrated lives which provide for Christian witness to those around them.

5. Therefore, plaintiffs have filed this lawsuit to secure judicial review of the federal defendants’ violations of constitutional and statutory provisions in connection with the defendants’ promulgation and implementation of certain regulations adopted under the 2010 Patient Protection and Affordable Care Act (“the PPACA”). They seek review, specifically, of those regulations purporting to mandate that employers include in their employee group health benefit plans coverage for drugs and services that are so wholly at odds with their religious and

moral values and sincere religious beliefs and sacred commitments.

6. Plaintiffs ask the court for declaratory and injunctive relief from the operation of the Final Rule confirmed and promulgated by the federal defendants on February 15, 2012, mandating that group health plans include coverage, without cost sharing, for “all Food and Drug Administration-approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity” in plan years beginning on or after August 1, 2012 (hereafter, “the Mandate” or “the Final Rule” or “the Mandate/Rule”), see 45 CFR § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Register 8725 (Feb. 15, 2012), adopting and quoting Health Resources and Services Administration (HRSA) Guidelines found at <http://www.hrsa.gov/womensguidelines>. In addition, plaintiffs seek relief from the operation of Illinois state law, 215 ILCS 5/356z.4 and 5/356m, which requires that, in order to provide accident and health benefits for their employees, the insurance purchased by plaintiffs must include provisions for drugs and services that plaintiffs cannot make available to their employees without contravening the plaintiffs’ sincere religious convictions.

7. Plaintiffs contend that by requiring them to provide employees with access to drugs and services to which they object by reason of their sincere religious convictions, these federal and state laws operate together to violate their legal rights, including the fundamental rights to the free exercise of religion and free speech guaranteed by the Constitution of the United States of America and the Illinois Constitution of 1970, as well as their rights under other federal and state laws.

Jurisdiction and Venue

8. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1361, and 1367, as this action arises under the Constitution and laws of the United States or under state

laws giving rise to claims that form part of the same essential underlying case or controversy. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§2201, 2202 and 42 U.S.C. §2000bb-1.

9. Venue is appropriate in this district pursuant to 28 U.S.C. §1391(e)(1), as the plaintiffs reside within this district.

The Parties

10. Plaintiff, Christopher Yep, is an individual and a citizen of the State of Illinois and the United States.

11. Plaintiff, Mary Anne Yep, is an individual and a citizen of the State of Illinois and the United States.

12. The Yeps own and control Plaintiff, Triune Health Group, an Illinois for-profit corporation with its headquarters and principal place of business situated at Oakbrook, IL within the Northern District of Illinois.

13. Defendant United States Department of Health and Human Services (“HHS”), is an agency of the United States, and is responsible for administration and enforcement of the federal Mandate/Final Rule.

14. Defendant Kathleen Sebelius is Secretary of HHS, and is named as a party defendant in her official capacity.

15. Defendant United States Department of the Treasury is an agency of the United States, and is responsible for administration and enforcement of the federal Mandate/Final Rule.

16. Defendant Timothy F. Geithner is Secretary of the Treasury, and is named as a party in his official capacity.

17. Defendant United States Department of Labor (“DOL”) is an agency of the

United States, and is responsible for administration and enforcement of the federal Mandate/Final Rule.

18. Defendant Hilda L. Solis is Secretary of DOL, and is named as a party in her official capacity.

19. Defendant the Illinois Department of Insurance is responsible for enforcement of state law mandatory benefit provisions challenged here.

20. Defendant Andrew Boron is sued in his official capacity as Director of the Department of Insurance, the agency responsible for enforcing the state law insurance benefit mandates challenged here.

Factual Allegations

21. Plaintiff, Triune, is a corporation that specializes in facilitating the re-entry of injured workers into the workforce so that they can continue to live productive lives, enjoy the dignity of work, and achieve their personal goals.

22. Plaintiffs Christopher and Mary Anne Yep formed the corporation so that they could operate their business in a manner more consistent with their deeply held religious convictions, including their beliefs about the dignity of the human person and the dignity and central importance of the family.

23. The corporate name, “Triune,” reflects the Yeps’ religious conviction that a Triune God consisting of three persons, Father, Son, and Holy Spirit, created human beings in His image and likeness, a truth originally reflected in their earlier symbol, namely, three interlocking rings. The name “Triune” also reflects the Yeps’ conviction that total health of the person has three dimensions, namely, physical, mental, and spiritual. Plaintiffs regard this as a fundamental truth about the nature of the human person and a truth that must be taken into

account in connection with any effort to facilitate the full recovery of a person – physically, mentally, and spiritually. Thus from the earliest days of the Yeps’ efforts to run their business they have used as the corporate logo the circles, two on the bottom, one on top, united by a shared field, a longstanding representation of the Trinity.

24. As plaintiffs seek to facilitate the recovery of injured workers, they encourage their clients to assess their goals and determine the steps each needs to take in order to recover and live full and healthy lives. Plaintiffs believe that their efforts to help workers re-enter the workforce and enjoy the dignity of work is vitally important to total rehabilitation of injured workers and must be the focus of any rehabilitation. These efforts are done both in obedience to and in furtherance of plaintiffs’ Catholic faith.

25. Plaintiffs serve clients of all faiths and do not use Catholic faith or beliefs as a qualification for client selection or service.

26. Plaintiffs in no way impose their religious views upon their clients. Quite the contrary, they endeavor to help each and every client determine for himself or herself what goals he or she needs to achieve in order to live a full and flourishing, truly human life.

27. Plaintiffs’ treatment of their more than fifty employees is also informed by their religious faith and their desire to treat each employee as a person made in the image and likeness of God. Plaintiffs strive to create a workplace where each employee is respected, treated fairly, receives a just wage, and enjoys accident and health benefits that allow their employees to live consistent with their human dignity.

28. Plaintiffs do not require employees to be Catholic or use it in any way as a qualification of employment. Plaintiffs currently employ and will continue to hire individuals of all faiths.

29. By employing more than fifty individuals, Triune is defined by the PPACA as a “large employer” subject to penalties if it does not provide the mandated coverage.

30. These penalties can amount to a crippling \$100 per day per employee.

31. Because of the plaintiffs’ sincerely held religious beliefs, Triune’s employee handbook thus proclaims its mission, as follows: “We believe that every person is precious, that people are more important than things, and that the measure of every institution is whether it threatens or enhances the life and dignity of the human person.” Likewise, Triune’s Mission and Virtues Agreement states that “Triune Health Group is a mission and virtue based organization, which respects life from conception to natural death.”

32. Plaintiffs believe that Triune’s employees have acknowledged and expressed support for the plaintiffs’ efforts by voting Triune as one of the best places to work in the Chicago area, in 2010 and 2012, and further, by selecting Triune as “the Number One Place for Women to Work in 2012” by a prominent business publication in the Chicago metro area, namely, *Crain’s Chicago Business*. Plaintiffs are grateful to their employees for this acknowledgment of plaintiffs’ efforts to treat all of their employees with respect and dignity as creatures made in the image and likeness of a loving God.

33. From the first moment of their business operations the plaintiffs have tried to ensure that their operations are fully consistent with their sincere religious convictions.

34. Plaintiffs consider the provision of employee health insurance an integral component of furthering their corporate mission and values by treating their employees well. In addition, plaintiffs realize that providing some level of benefits is a practical business necessity because failure to do so would undermine their efforts to attract and retain quality employees which, in turn, would undermine their efforts to facilitate the recovery of injured workers.

35. Plaintiffs hold to the teachings of the Roman Catholic Church regarding the sanctity of human life from conception to natural death as well as to the Church's teaching about the sanctity of marriage and sexual morality. Plaintiffs believe abortion, contraception (including abortifacients), sterilization, and reproductive technologies that separate the unitive and procreative aspects of human sexuality or involve the destruction of human life are gravely wrong and sinful. They also believe such practices are harmful to the health and wellbeing of all human beings.

36. Plaintiffs believe that providing their employees with coverage for drugs and services that facilitate such immoral practices constitutes cooperation with evil that violates the laws of God. However, the only way in which Triune can provide accident and health benefits for its employees is by purchasing an insurance that covers such immoral practices.

37. Plaintiffs have no choice but to provide their employees with benefits required by state law, refuse to provide employee benefits, or go out of business.

38. Plaintiffs believe it would be immoral for them to strip their employees of benefits.

39. Plaintiffs believe that stripping their employees of benefits would cripple their business.

40. Plaintiffs do not wish to go out of business and do not believe they should be forced to choose between violating their sincerely held religious beliefs by engaging in wrongful and sinful acts and shutting down their business.

41. Currently, Illinois state law requires that plaintiffs violate their religious convictions because the state mandates that any insurance policy purchased by Triune provide benefits to its employees to include the drugs and services to which they object by reason of their

sincerely held religious convictions. More specifically, 215 ILCS 5/356z.4 requires Triune's policy to provide coverage for contraception, including abortifacient contraception, and sterilizations. Additionally, 215 ILCS 5/356m requires Triune's policy to provide coverage for reproductive technologies that are gravely at odds with plaintiffs' religious beliefs and convictions.

42. Further, the recently enacted federal Mandate also requires employers to provide coverage for the full range of FDA approved contraceptive methods, sterilization procedures, and also to provide education and counseling with respect to these matters for all women with reproductive capacity. More specifically, the federal Mandate requires the plaintiffs to violate their religious beliefs because it would require them to provide employees with contraception, including abortifacient contraception, because certain drugs and devices such as the "morning-after pill," "Plan B," and "Ella" come within the Mandate's and HRSA's definition of "Food and Drug Administration-approved contraceptive methods" despite their known abortifacient mechanisms of action, as well as sterilization.

43. Plaintiffs cannot avoid the state law mandates because they apply to any benefits policy issued in Illinois, where Triune is located, so Triune cannot secure the policy it needs to provide health benefits without inclusion of mandated benefits when facilitating in the provision of those benefits constitutes gravely wrong and sinful conduct.

44. Plaintiffs are subject to the federal Mandate that requires them to provide these benefits as well.

45. The plaintiffs do not qualify for the "religious employer" exemption contained in the Final Rule relating to the federal Mandate. *See* 45 CFR § 147.130(a)(1)(iv)(A) and (B) as Plaintiff A. is a for profit entity, B. hires many non-Catholics C. serves many non-Catholics and

D. does not have a primary purpose of inculcating religious values..

46. Triune cannot take advantage of the “temporary enforcement safe harbor” as set forth by the federal defendants at 77 Fed. Reg. 8725 (Feb. 15, 2012) because it is a profit entity.

47. Triune cannot avoid the federal Mandate by employing the “grandfathering” provision or the temporary safe harbor because even before the federal Mandate took effect Illinois state law required coverage for the drugs and services to which they object by reason of their sincerely held religious convictions. Triune currently has coverage that meets this requirement and thus is not grandfathered.

48. At present, the state and federal mandates described herein work together to force plaintiffs to violate their conscience and betray their religious convictions by requiring that they provide their employees with benefits which the plaintiffs believe to be intrinsically wrongful, evil, and sinful. Yet, plaintiffs believe that they are morally obliged to provide their employees with health and accident insurance benefits.

49. Triune’s group health plan is due for renewal on January 1, 2013.

50. Plaintiffs wish to renew coverage for their employees by purchasing an employee group insurance policy while excluding coverage for drugs and services to which they object by reason of their sincerely held religious convictions.

51. Plaintiffs cannot purchase an insurance policy in order to provide benefits consistent with their religious convictions because the state mandate requires any policy issued to Triune to provide their employees with access to drugs and services plaintiffs believe to be wrongful and intrinsically evil as described herein.

52. Plaintiffs cannot provide benefits to their employees consistent with their religious convictions because the federal Mandate requires that plaintiffs provide their

employees with access to drugs and services that plaintiffs believe to be wrongful and intrinsically evil.

53. Plaintiffs have fully researched the possibility of self-insurance to avoid state mandates, but this option is neither legally nor financially viable for them.

54. Consequently, the state and federal mandates at issue force plaintiffs to provide their employees with coverage of those services that plaintiffs consider wrongful, sinful and immoral.

55. Plaintiffs are subject to the federal Mandate and are confronted with a Hobson's choice: either choose to comply with the federal mandate's requirements in violation of their religious beliefs, or pay ruinous fines that would have a crippling impact on their business and force them to shut down.

56. The federal Mandate is not generally applicable to all business entities.

57. Grandfathered plans are exempt from the federal Mandate's preventative care requirement.

58. The federal Mandate is not generally applicable to all religious entities.

59. Some religious sects are exempted from compliance with the federal Mandate

60. Some religious divisions are exempted from compliance with the federal Mandate.

61. The PPACA creates a system of individualized mandates, rather than an otherwise uniformly and generally applicable governmental mandate, because it allows discretionary compliance waivers.

62. Plaintiffs are informed and believe that the federal defendants have already granted numerous waivers from compliance with the federal governmental Mandate to selected

business entities for purely secular reasons.

63. Entities granted waivers of the federal Mandate do not have to provide coverage mandated by HHS.

64. Entities granted waivers of the federal Mandate do not have to provide coverage for contraception, including abortifacient contraception, and sterilization.

65. The federal and state mandates challenged here do not advance a compelling interest.

66. The federal and state mandates challenged here are neither narrowly tailored nor the least restrictive means available to advance any interests the government may assert.

67. The federal and state mandates challenged here can be advanced by other means that are narrowly tailored and do not burden plaintiffs by requiring them to engage in conduct contrary to their religious conviction.

68. Failure to comply with the federal Mandate subjects an employer to liability for fines.

69. Failure to comply with the federal Mandate subjects an employer to liability for penalties.

70. The federal Mandate has the force of law.

71. No monetary damages could adequately compensate plaintiffs for the suppression of their constitutional rights stemming from their having been compelled to engage in acts contrary to their religious and moral beliefs and their accompanying statement of corporate mission. Thus an award of injunctive relief is necessary to avert and prevent plaintiffs from suffering immediate, grave, and ongoing illegal and irreparable harm.

72. Absent declaratory and injunctive relief, plaintiffs will continue to suffer harm by

reason of the federal and state mandates that force the plaintiffs to engage in conduct they believe to be intrinsically evil by providing their employees with access to drugs and benefits to which the plaintiffs object by reason of their sincerely held religious convictions.

73. Plaintiffs have filed suit because they cannot continue to comply with these immoral mandates, which they believe to be illegal and unconstitutional, and must seek relief to escape the dilemma in which they find themselves.

CLAIMS FOR RELIEF

Count I

Violation of the Federal Religious Freedom Restoration Act

74. Plaintiffs incorporate by reference all of the preceding paragraphs.

75. The federal Mandate/Final Rule, imposes a substantial burden on plaintiffs' free and robust exercise of their religious faith and convictions by coercing them to choose between conducting their business in accordance with their religious beliefs or paying substantial, prohibitively expensive penalties to the government – potentially forcing them out of business.

76. The federal Mandate/Final Rule furthers no compelling interest, is not narrowly tailored to any compelling interest, and is not the least restrictive means of advancing the governmental interest.

77. The Mandate/Final Rule and the defendants' threatened enforcement of same violate rights secured to the plaintiffs by the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb, *et seq.*

78. Absent declaratory and injunctive relief, the plaintiffs will be greatly, illegally, and irreparably harmed.

Count II

Violation of 1st Amendment to the U.S. Constitution: Religious Liberty & Establishment

79. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint.

80. The federal Mandate/Final Rule imposes a substantial burden on plaintiffs' free exercise of religion by coercing them to choose between conducting their business in accordance with their religious beliefs or paying substantial, prohibitively expensive penalties to the government – potentially forcing them out of business.

81. Operating a business in accordance with one's religious beliefs is a form of religious exercise.

82. The federal legislation and implementing regulations require an intrusive inquiry into whether entities are "religious" enough to qualify for an exemption and defines religious practice in a limited sense that deprives citizens of their right to lead their lives in accordance with their religious convictions by purporting to dictate when, and under what circumstances, citizens can conduct their affairs consistent with their faith. Moreover, said federal law and the regulatory Mandates handed down thereunder are not neutral laws of general applicability inasmuch as they are honeycombed with exceptions, waivers, and safe harbors. Thus while the Mandate's applicability to plaintiffs entails a severe curtailment and suppression of the plaintiffs' rights to free and robust exercise of their religious faith, those organizations that fall within the federal exceptions or are granted waivers suffer no such curtailment or suppression of their rights.

83. Additionally all employers with fewer than fifty employees are exempt.

84. Thus the Mandate is neither "neutral" nor "generally applicable."

85. Quite the contrary, the federal Mandate discriminates among religious groups and

other citizens by providing exemptions to some but not to others.

86. The Mandate discriminates among religious believers by providing exemptions to some but not others based on the government's unduly narrow and crabbed concept of what it means to practice religion, contrary to the Free Exercise Clause of the First Amendment, and also based on the government's manifest preference for certain religious denominations, and the tenets they embrace, and its disfavor of other denominations, in violation of the Establishment Clause of the First Amendment.

87. The Mandate grants different levels of importance and accommodation to both specific religious beliefs, as against other beliefs, and to specific religious groups and individuals, as against other groups and individuals with the same faith and beliefs.

88. The Mandate/Final Rule, moreover, furthers no compelling interest, is not narrowly tailored to advance the government's asserted interest, and is not the least restrictive means of advancing the government's asserted interest.

89. The federal Mandate/Final Rule and the defendants' threatened enforcement of same violate plaintiffs' right to religious liberty as guaranteed by the First Amendment to the United States Constitution, and also infringes the Establishment Clause of the First Amendment to the United States Constitution. If the government has an interest in the provision of contraception, there are many ways to accomplish this goal without burdening plaintiffs' religious liberty.

90. Absent injunctive and declaratory relief against the Mandate/Final Rule, plaintiffs will be greatly, illegally and irreparably harmed.

Count III

Violation of the First Amendment to the United States Constitution: Free Speech Clause

91. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint.

92. Plaintiffs believe that the aforementioned services covered by the federal Mandate/Final Rule are intrinsically wrongful, evil, and harmful to individuals who use them.

93. The Mandate/Final Rule and state law mandates compel the Plaintiffs to pay for and/or provide their employees with education and counseling related to contraception, sterilization, and abortion. Such education and counseling does not condemn these things as intrinsically wrongful, evil as well as harmful to individuals but instead treats such drugs and services as morally licit and beneficial. As a consequence, plaintiffs must stifle their own fundamental, conscientious beliefs to conform their speech to fit the government's mold.

94. The federal and state defendants' actions violate the plaintiffs' free speech rights as guaranteed by the First Amendment to the United States Constitution by forcing plaintiffs to sponsor and pay for speech advancing views with which plaintiffs deeply disagree, as those views are wholly at odds with their conscientious religious and moral principles and convictions.

95. The Mandate/Final Rule and state law mandates do not further a compelling interest, are not narrowly tailored to advance the governmental interest, and are not the least restrictive means of advancing the governmental interest.

96. Absent injunctive and declaratory relief against the Mandate/Final Rule and state law mandates, plaintiffs will continue to be greatly, illegally and irreparably harmed.

Count IV

Violation of the Administrative Procedure Act, 5 U.S.C. §§ 553, 706

97. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint.

98. The Mandate/Final Rule is contrary to section 1303(b)(1)(A) of Patient Protection and Affordable Care Act (“PPACA”), Pub. L. 111-148 § 1303, 124 Stat. 119, 168 (to be codified at 42 U.S.C. §18023(b)(1)(A)), which provides that “nothing in this title . . . shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.” The federal Mandate requires provision of abortifacients, drugs that will result in abortions, contrary to this statutory section.

99. The Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), states that “[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.” And the Church Amendment, 42 U.S.C. § 300a-7(d), provides that “No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.”

100. The Mandate/Final Rule is thus contrary to existing law, and therefore it should be judicially reviewed and declared void, pursuant to the 5 U.S.C. §706(2), as arbitrary, capricious, an abuse of discretion, and not in accordance with law, and in excess of statutory jurisdiction, authority, limitations, or short of statutory right. The Mandate/Final Rule should also be struck down as having been promulgated without observance of procedure required by

law, namely, 5 U.S.C. §553, in that no notice or comment period was provided before the federal defendants promulgated said Mandate/Final Rule, as legally required. The federal defendants disregarded and dispensed with these procedural protections requiring notice and comment on the part of interested parties without legally sufficient cause.

101. The federal defendants essentially delegated their rule making authority to a non-governmental organization so as to circumvent the APA and in violation of the Act.

102. The federal defendants acted in an arbitrary and capricious manner, furthermore, when they ignored comments indicating that abortifacient, contraceptive, and sterilization services, as well as counseling and education for these services, could not reasonably be viewed as preventative care. There is no sign that the many comments detailing these facts were given any actual consideration.

103. Thus the defendants' actions should be set aside, pursuant to 5 U.S.C. §706(2), on multiple grounds.

104. Absent injunctive and declaratory relief against the Mandate/Final Rule, plaintiffs have been and will continue to be greatly, irreparably and illegally harmed.

Count V

Violation of the Illinois Right of Conscience Act, 745 ILCS 70/1, et seq.

105. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint.

106. Plaintiff Triune is a healthcare payer within the meaning of the Illinois Right of Conscience Act, 745 ILCS 70/1, *et seq.*, because it arranges for payment of health care, medical services, and related procedures and products for its employees by purchasing an insurance policy.

107. Under the Illinois Right of Conscience Act, Triune is legally allowed to provide

healthcare benefits to its employees by purchasing an insurance policy that excludes coverage for medical services to which it objects by reason of its sincerely held religious conviction.

108. Under the Illinois Right of Conscience Act, Triune is authorized to purchase an insurance policy that does not comply with the state law mandates that in turn violate Triune's sincerely held religious conviction.

109. Under the Illinois Right of Conscience Act an insurer is authorized to issue to Triune a policy that that does not comply with the state law mandates to which Triune objects by reason of its sincere, conscientious religious beliefs and convictions.

110. Triune respectfully requests that the Court declare that the Illinois Right of Conscience Act allows Triune to purchase, and an insurer to issue to Triune, an insurance policy that excludes coverage for healthcare benefits to which Triune objects by reason of its sincerely held religious convictions as set forth herein.

111. Plaintiffs have been forced by government to act at odds with their sincerely held religious beliefs, for which they should be held entitled to recover compensatory damages. Furthermore, absent declaratory and injunctive relief the plaintiffs have been and will continue be greatly, illegally and irreparably harmed.

Count VI

Violation of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1, et seq.

112. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint.

113. The state law mandates at issue require plaintiffs to provide benefits to which they object by reason of their sincerely held religious convictions.

114. The state law requirements at issue impose a substantial burden on plaintiffs' free exercise of religion by forcing the plaintiffs to either engage in conduct they believe to be sinful

or go out of business.

115. The state law mandates at issue do not advance a compelling governmental interest, are not narrowly tailored to advance the governmental interest, and are not the least restrictive means of advancing the governmental interest.

116. The state law mandate at issue violates the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1, *et. seq.*

117. Absent declaratory and injunctive relief the plaintiffs have been, and will continue to be, greatly, illegally and irreparably harmed.

Count VII

Violation of the Illinois Bill of Rights: Religious Freedom

118. Plaintiffs incorporate the prior allegations of the complaint herein.

119. The state law mandate at issue here requires plaintiffs to provide benefits they believe to be gravely wrong and sinful, and indeed, deeply at odds with their sincerely held religious beliefs and convictions.

120. The state law mandate at issue constitutes a substantial burden on plaintiffs' free and robust exercise of their religious faith and convictions by forcing them either to provide benefits in violation of their sincerely held religious convictions or go out of business.

121. The state law mandate does not advance a compelling governmental interest, is not narrowly tailored to governmental interest, and is not the least restrictive means of advancing the governmental interest.

122. The state law mandate at issue violates the right to religious liberty guaranteed by Article I, §3 of the Illinois Constitution of 1970.

123. Absent declaratory and injunctive relief the plaintiffs have been, and will continue

to be, greatly, illegally and irreparably harmed.

Count VIII

Violation of the Illinois Bill of Rights: Freedom Of Speech

124. The state law mandate at issue requires plaintiffs to pay for speech in furtherance of the use of drugs and services that the plaintiffs believe to be intrinsically evil as well as harmful to individuals.

125. The state law requirement compels plaintiffs to support speech that is contrary to their deeply held religious convictions and directly contrary to the information plaintiffs would prefer to provide to their employees about contraceptives, including abortifacient contraceptives, and sterilization.

126. The state law requirement violates the freedom of speech guaranteed by Article I, §4 of the Illinois Constitution of 1970.

127. Absent declaratory and injunctive relief, the plaintiffs have been, and will continue to be, greatly, illegally and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that the Court:

- a. Declare that the federal and state law mandates at issue here and defendants' enforcement thereof violate and infringe upon the plaintiffs' constitutional and/or statutory rights as alleged herein;
- b. Declare that Triune is authorized to purchase, and that an insurer is authorized to issue to Triune, a policy that excludes benefits to which the plaintiffs object by reason of their sincerely held, conscientious religious beliefs and convictions;
- c. Issue preliminary and permanent injunction prohibiting the defendants from

enforcing the federal and state laws alleged to violate plaintiffs' constitutional and/or statutory rights;

d. Award the plaintiffs nominal damages as well as their costs and reasonable attorney's fees as may be authorized by 42 U.S.C. §1988, 745 ILCS 70/12, 775 ILCS 35/20, the Illinois Civil Rights Act of 2003, 740 ILCS 23/1 *et seq.*, and any other applicable Illinois or other law authorizing such fees; and

e. Award such other relief as the Court deems just and proper.

Submitted this 22nd day of August, 2012.

s/ Thomas Brejcha
s/ Patrick Gillen*
s/ Samuel B. Casey *
s/ David B. Waxman*
s/ Peter Breen
s/ Jason Craddock
Attorneys for Plaintiffs

**Pro hac vice applications to be filed*

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CERTIFICATE OF SERVICE

I, Thomas Brejcha, plaintiffs' counsel, hereby certify that on or before August 23, 2012, a true and correct copy of the foregoing was caused to be filed electronically with this Court through the CM/ECF filing system and that I mailed a copy of the foregoing complaint by placing same in a sealed envelope, together with the requisite waiver forms, and properly addressing same to the following persons, affixing proper first class postage prepaid thereto, and depositing same in the U.S. mail chute at 29 South LaSalle St., Suite 440, Chicago, IL 60603:

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