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

CHRISTOPHER YEP, MARY ANNE YEP, AND TRIUNE HEALTH GROUP, LTD*., an Illinois corporation*, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; UNITED STATES DEPARTMENT OF THE TREASURY; TIMOTHY F. GEITHNER, *in his official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; UNITED STATES DEPARTMENT OF LABOR; HILDA L. SOLIS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF LABOR, Defendants.	Civil Action No. 12-cv-06756

MOTION FOR PRELIMINARY INJUNCTION

NOW COME Plaintiffs Triune Health Group, Ltd., Christopher Yep, and Mary Anne Yep, by and through their undersigned counsel, who hereby move this Court to enter a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a) in order to prevent immediate irreparable injury to Plaintiffs' fundamental rights and interests.

In support of their motion, Plaintiffs rely upon the pleadings and papers of record, as well as their memorandum filed with this motion, and the declaration of Christopher

and Mary Anne Yep attached hereto. For the reasons set forth more fully in the attached memorandum, Plaintiffs hereby request that this court enjoin the enforcement of Defendants' Health and Human Services Mandate (hereinafter "HHS Mandate" or "Federal Mandate" or "the Mandate") which violates Plaintiffs' rights guaranteed by the First Amendment to the United States Constitution and the Religious Freedom Restoration Act of 1993, 107 Stat. 1488, as amended, 42 U.S.C. § 2000bb et seq.

Prior to the filing of this Motion for Preliminary Injunction, attorneys for the Plaintiffs and the Defendant, at a status conference, agreed upon a briefing schedule (reflected in Minute Entry Doc. # 31) in response to Defendants' Motion to Dismiss. (Doc. # 24). Plaintiffs Motion for Preliminary Injunction is supported by the same memorandum submitted in opposition to Defendant's Motion to Dismiss. Prior to the filing of this motion attorneys for the Plaintiffs and the Defendants conferred by telephone and agreed that no new briefing schedule is necessary and that the current briefing schedule set in response to Defendant's Motion to Dismiss is sufficient.

The Plaintiffs request oral argument on the motion.

Submitted this 28th day of November, 2012.

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s/ Patrick Gillen*
s/ Samuel B. Casey
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CERTIFICATE OF SERVICE

I, David B. Waxman, plaintiffs' counsel, hereby certify that on November 28, 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 Defendants, listed below, were served by email.

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CHRISTOPHER YEP, MARY ANNE YEP, AND TRIUNE HEALTH GROUP, LTD., *an Illinois corporation*, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; UNITED STATES DEPARTMENT OF THE TREASURY; TIMOTHY F. GEITHNER, *in his official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; UNITED STATES DEPARTMENT OF LABOR; HILDA L. SOLIS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF LABOR, Defendants.	Civil Action No. 12-cv-06756

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FORPRELIMINARY INJUNCTION AND IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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MEMORANDUM OF LAW

Plaintiffs respectfully offer this Memorandum of Law in support of their accompanying Motion for a Preliminary Injunction against the above-named Defendants, as also supported by the accompanying Joint Declaration (hereinafter "Decl.") of Plaintiffs Christopher and Mary Anne Yep (the Yeps), to preliminarily enjoin the HHS's mandated contraception health insurance coverage ("Federal Mandate" or "HHS Mandate" or "the Mandate") that will otherwise become effectively applicable to Plaintiffs on January 1, 2013, and in opposition to the arguments set forth in Defendants' Memorandum of Law (Document 24, hereafter "Def. Br.") in Support of their pending Motion to Dismiss Plaintiffs' Amended Complaint (Document 21).

INTRODUCTION

This action arises because the federal government has deemed a devout Roman Catholic husband and wife who founded and currently wholly own a corporation that is based and operated upon their Roman Catholic religious values as not "religious" enough to enjoy the same freedom in America the government has granted other religious organizations. Indeed, while exempting millions of others, Defendants nevertheless mandate that Plaintiffs violate its corporate and owners' beliefs by covering items in their health plan that they believe to be sterilizing, contraceptive, or abortifacient, all violations of the very principles upon which Plaintiffs founded and currently operate their business. Defendants have already been the subject of preliminary injunctions against this Mandate, so as to protect a company owned by religious believers, just like the Plaintiffs in this case. *See, e.g., Newland, et al. v. Sebelius, et al.*, 2012 WL 3069154 (D. Colo. July 27, 2012).

Defendants' mandate of insurance coverage subjects Plaintiffs to draconian penalties, including lawsuits by Defendant Secretary of Labor as well as fines and penalties accruing in the millions. Forcing Plaintiffs to choose between their faith and such penalties is a blatant violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq. (RFRA), the First and Fifth

Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, et seq. Defendants cannot satisfy the strict scrutiny required under RFRA and these laws. Defendants "completely undermine[d]" their alleged interests by exempting millions of Americans and staying enforcement against many others, *Newland*, 2012 WL 3069154 at *7–*8 , yet they refuse to exempt Plaintiffs. And the government could pursue, and already does pursue, the less restrictive means of directly delivering the drug items at issue here. *Id.*

Plaintiffs are faced with imminent harm under Defendants' mandate. The government refuses to consent to this motion and instead fully threatens its penalties. Immediate injunctive relief is needed to protect Triune's religious freedom and preserve the status quo.

FACTUAL BACKGROUND

The Yeps founded the Disability Management Network and in 2007 renamed it Triune Health Group, Ltd. ("Triune"). The Yeps are Triune's controlling owners responsible for its management, including the terms and provision of the group health care coverage Triune provides to its employees.[1] (Decl. ¶¶ 2, 6).

The Yeps are faithful worshippers of Jesus Christ and are ardent and faithful adherents to the faith and teachings of the Roman Catholic Church ("the Church"). (Decl. ¶ 7). In communion with the Church, the Yeps 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. (Decl. ¶ 24).

The Yeps also believe, in communion with the Church, that the use and promotion of

[1] Christopher Yep, at all times relevant, has served as the President of Triune. Mary Ann Yep, at all times relevant, has served as the Vice-President of Triune. As a result of their 100% ownership of the company and management roles in the company, they are primarily responsible for the overall operation of Triune, including the terms and provisions of the health care coverage Triune provides its employees. (Decl. ¶ 6).

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 through contraceptive drugs are gravely wrong and sinful. (Decl. ¶¶ 26–29). By reason of these sincerely held religious convictions, they believe that they cannot facilitate access to, subsidize, or materially cooperate with the provision of the offensive contraceptive and abortifacient drugs or sterilization and related counseling 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. (Decl. ¶ 28). Consequently, in communion with the Church, they believe that *any* involvement in the facilitation or subsidization of such drugs whatsoever, whether contraceptive or abortifacient in their potential effect, is as morally unacceptable as the direct provision of such drugs. (Decl. ¶ 29).

Triune Health Group 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. (Decl. ¶¶ 43, 44). Triune's employees have acknowledged and expressed support for Triune's operating principles 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" in *Crain's Chicago Business*, a prominent business publication in the Chicago metro area. (Decl. ¶¶ 40–41). The Yeps consider the provision of employee health insurance an integral component of furthering Triune's corporate mission and value of treating their employees well. (Decl. ¶ 52). In addition, providing some level of benefits is a practical business necessity because failure to do so would undermine Triune's efforts to attract and retain quality employees and, in turn, would cripple Triune's efforts to facilitate the recovery of injured workers. (*Id.*).

The Yeps wish to conduct their business through Triune 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. (Decl. ¶¶ 16–18, 23). They believe that their religious faith, which shapes and determines their marriage and their understanding of the importance and meaning of their lives, must inform all of their actions, including their actions as directors, officers, and controlling shareholders of Triune, in order for them to live fully integrated lives which provides their Christian witness and best promotes the Church's evangelization to those around them. (Decl. ¶¶ 2, 35).

The Yeps formed Triune so that they could operate their business in a manner most 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. (Decl. ¶ 32). The corporate name, "Triune," reflects their religious conviction, in communion with the Church, 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 Triune's earlier symbol, namely, three interlocking rings. (Decl. ¶¶ 19, 20). The name "Triune" also reflects their conviction that the total health of the person has three dimensions, namely, physical, mental, and spiritual. (Decl. ¶¶ 3, 19).

The Yeps do not consider Triune to be a secular organization, but rather a sacred calling. (Decl. ¶ 33). The religious beliefs of Triune are one and the same with their religious beliefs as Triune's owners and managers. (Decl. ¶ 10). Because of these sincerely held religious beliefs, Triune's employee handbook proclaims Triune's 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." (Decl. ¶ 37). 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." (*Id.*).

For the reasons set forth above, Triune holds to the teachings of the 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. (Decl. ¶¶ 23, 25). Triune believes abortion, contraception (including abortifacients), sterilization, and reproductive technologies like contraceptive drugs that separate the unitive and procreative aspects of human sexuality or involve the destruction of human life are gravely wrong and sinful. (Decl. ¶ 26). Triune also believes such practices are harmful to the health and well-being of all human beings. (Decl. ¶ 54). As such, Triune made the choice to not facilitate the coverage of contraceptives or abortifacients in the employee health care it provides and, beginning with its new policy in the new year, wishes to again provide employee health care without covering these drugs which it finds immoral.

On March 23, 2010, the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), became law. PPACA requires health plans to include coverage of preventive health services at no cost-sharing to patients, but does not define what exactly "preventative health services" does and does not cover. 42 U.S.C. § 300gg-13(a)(4). Defendants issued regulations ordering HHS's Health Resources and Services Administration (HRSA) to decide what would be mandated as women's preventive care. 75 Fed. Reg. 41,726–60 (July 19, 2010). HRSA issued such guidelines in July 2011, mandating coverage of, among other things, "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." HRSA, "Women's Preventive Services," *available at* http://www.hrsa.gov/womensguidelines/. These guidelines were adopted at the recommendation of the Institute of Medicine ("IOM") after presentations from groups that vigorously advocate for abortion and contraception, including the Guttmacher Institute, the National Women's Law Center and Planned Parenthood Federation of America. No groups with religious objections to contraception, sterilization or abortion were allowed to make a presentation or rebut the presentations of pro-abortion groups.

On August 1, 2011, Defendants promulgated an interim final rule ("the HHS Mandate"), requiring all "group health plan[s] and . . . health insurance issuer[s] offering group or individual health insurance coverage" to provide coverage for all FDA-approved contraceptive methods and sterilization procedures as well as patient education and counseling about those services. 76 Fed. Reg. 46,621, 46,622 (Aug. 3, 2011); 45 C.F.R. § 147.130. This interim rule, along with the religious employer exemption described below, was adopted as final, "without change," on February 15, 2012. 77 Fed. Reg. 8,725, 8,729 (Feb. 15, 2012).

To be a religious employer under Defendants' definition, an entity must meet *all* four of the following factors:

1. The inculcation of religious values is the purpose of the organization;
2. The organization primarily employs persons who share the religious tenets of the organization;
3. The organization serves primarily persons who share the religious tenets of the organization;
4. The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

45 C.F.R. § 147.130(a)(1)(iv)(B)(1)–(4) (HHS); *see also* 26 C.F.R. § 54.9815-2713T (Treasury); 29 C.F.R. § 2590.715-2713 (Labor). Notably, this fourth factor only includes churches, church auxiliaries, and religious orders. *See* IRC §§ 6033(a)(1), 6033(a)(3)(A)(i) & (iii).

Not all employers are required to comply with the HHS Mandate. Grandfathered health plans, i.e., a plan in existence on March 23, 2010, and that has not undergone any of a defined set of changes, are exempt from compliance with the HHS Mandate. *See* 75 Fed. Reg. 41,726, 41,731 (July 19, 2010). HHS estimates that "98 million individuals will be enrolled in grandfathered group health plans in 2013." *Id.* at 41,732. Though the HHS Mandate does not apply to grandfathered health plans, many provisions of PPACA do. 75 Fed. Reg. 34,538, 34,542 (June 17, 2010).

Additionally, employers with fewer than fifty full-time employees have no obligation to

provide health insurance for their employees under the PPACA, and thus have no obligation to comply with the HHS Mandate. 26 U.S.C. § 4980H(c)(2)(A). Finally, under the PPACA, individuals are exempt from the requirement to obtain health insurance if they are members of a "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds or are members of a "health care sharing ministry." 26 U.S.C. §§ 5000A(d)(2)(A)(i), (ii), (B)(ii). Non-exempt employers who fail to provide an employee health insurance plan will be exposed to annual fines of roughly $2,000 per full-time employee. *See* 26 U.S.C. §§ 4980H(a), (c)(1). Additionally, failure to provide certain required coverage may be subject to an assessment of $100 a day per employee. *See* 26 U.S.C. § 4980D(b); *see also* Staman & Shimabukuro, Cong. Research Serv., RL 7-5700, *Enforcement of the Preventative Health Care Services Requirements of the Patient Protection and Affordable Care Act* (2012).

By employing more than fifty individuals on a full-time equivalence, Triune is defined by the PPACA as a "large employer," subject to the above-described penalties if Triune does not provide employee health insurance including the mandated coverage of sterilization, contraceptives, and abortifacient drugs that HHS regulations now require. (*See* Decl. ¶ 2 (explaining that Triune currently has approximately 80 employees)). Additionally, Triune does not qualify for any of the regulatory exemptions from the federal Mandate. Triune's group health plan is due for renewal on January 1, 2013, at which time, unless enjoined from doing so by the injunctive relief being requested in this action and soon to be requested in the pending state action, Triune will become subject to penalties for non-compliance with the federal and state laws if it fails to provide health coverage mandated by those laws. (Decl.¶ 70). The only way in which Triune can now lawfully provide accident and health benefits for its employees under both state and federal law is by purchasing insurance that covers practices it finds intrinsically evil, gravely wrong and sinful. (Decl. ¶¶ 56–66).

Unless the HHS Mandate's applicability to Triune is enjoined, Triune will have no other choice but to provide its employees with the wholly morally objectionable benefits required by federal law or reduce its full-time workforce below fifty employees and cancel all insurance as permitted by federal law or cease doing business altogether.

ARGUMENT

I. THIS CASE IS PROPERLY BEFORE THIS COURT BECAUSE PLAINTIFFS HAVE PLEAD THREATENED INJURIES CAUSED BY DEFENDANTS' ILLEGAL CONDUCT THAT IS LIKELY TO BE REDRESSED THROUGH A FAVORABLE DECISION IN THIS CASE.

Under Article III of the Constitution, a party must demonstrate standing in order to satisfy the "case or controversy" requirement necessary to the exercise of our judicial power. *Simmons v. I.C.C.,* 900 F.2d 1023, 1026 (7th Cir. 1990), *cert. denied,* 499 U.S. 919 (1991). The standing inquiry demands a three-part showing: "(1) the party must personally have suffered an actual or threatened injury caused by the defendant's allegedly illegal conduct, (2) the injury must be fairly traceable to the defendant's challenged conduct, and (3) the injury must be one that is likely to be redressed through a favorable decision." *Id.* (quoting *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464, 472 (1982)).

A. PLAINTIFFS ARE THREATENED WITH GRAVE INJURY WHICH IS TRACEABLE DIRECTLY TO ENFORCEMENT OF THE FEDERAL MANDATE AND WHICH IS DISTINCT FROM INJURIES SUFFERED UNDER THE ILLINOIS MANDATE.

Defendants argue that the "causation" element embodied by the second and third standing prongs is missing in this case, since Plaintiffs are required under Illinois law to provide a health insurance plan which covers all FDA-approved contraceptive services. Def. Br. at 13. Defendants ignore the fact that the federal contraceptive mandate bears unique fines and penalties, which if not relieved by this Court, would be ruinous to Plaintiffs. Amend. Compl. ¶ 53. Plaintiffs are subject to

separate, additional and distinct injury under the federal contraceptive mandate, and, thus, have standing to challenge that mandate here.[2]

Although several exemptions and safe-harbor provisions excuse certain employers from providing group health plans that cover women's preventive services as defined by HHS regulations, Plaintiffs do not meet any of the exemptions, as described above. Plaintiffs do not meet the definition of a "religious employer" as laid out by HHS, the Department of Labor, and the Department of Treasury. 77 Fed. Reg. 8,725, 8,726.

The group health plan for Plaintiff Triune Health Group, Inc.'s employees is due for renewal on January 1, 2013. (Decl. ¶ 70). Triune's current group health plan includes coverage for contraceptives, sterilization, and abortion, which is an error and that is completely contrary to what Plaintiffs want based on their religious beliefs and contradicts the ethical guidelines of Plaintiff Triune Health Group, Ltd.[3] The company is investigating ways to obtain employee health insurance coverage that complies with their Catholic faith and the company's ethical guidelines. To that end, Plaintiffs have filed the amended complaint in this federal action challenging the Federal

[2] While both the Federal and Illinois Mandates both require coverage of "FDA approved contraceptives", the Illinois state law and not the Federal Mandate exempt sterilization and abortion. Additionally, the IL Mandate does not require coverage of counseling or education services while the Federal Mandate does. See Sec. 356z.4 of the Illinois Insurance Code (215 ILCS § 5/356z.4) and HRSA, "Women's Preventive Services," *available at* http://www.hrsa.gov/womensguidelines/.

[3] Triune has been told that it cannot purchase an insurance policy in order to provide benefits consistent with its religious convictions because the Illinois Mandate requires any policy issued to Triune to provide its employees with access to drugs and services that its Roman Catholic faith teaches and which it sincerely believes to be intrinsically evil, gravely wrongful and sinful. Plaintiffs had reasonably believed their policies were not providing such offensive coverage. When they first learned that they were, they instructed their brokers to locate and purchase new and conscious compliant policies. When they discovered that they had failed to do so, they retained new brokers. Their new brokers also were instructed to locate and purchase new and "conscience compliant" policies. When the new brokers reported that they too did not think this was possible, Plaintiffs continued to research a solution. To avoid the Illinois mandate, in late 2011 and early 2012 Plaintiffs even considered moving their business to another state. The Federal Mandate mooted that option which is why they brought this action in federal court. (Decl. ¶ 72).

Contraceptive Mandate, as well as a suit in Illinois state court, challenging the Illinois Contraceptive Mandate as violative of their rights under the Illinois Constitution and laws.[4]

Defendants argue that because Plaintiffs are currently obligated under state law to provide their employees health insurance which covers FDA-approved contraceptive services, that Plaintiffs suffer no legally cognizable injury under the federal contraceptive mandate. Defendants' argument is erroneous because Plaintiffs may prevail in their state action or, failing in so doing, may yet be able to exempt themselves from the State Contraceptive Mandate by self-insurance. Moreover, because self-insurance does not provide an exemption from the Federal Contraceptive Mandate, the Defendants ignore the separate injuries which Plaintiffs will surely face if they adhere to their federal constitutionally and statutorily protected rights of conscience when the time to renew their health insurance plan arrives in January 2013. As discussed above, under the Federal Mandate, non-exempt employers, like Triune, who do not offer insurance plans that are federal contraceptive mandate-compliant by covering early-abortion pills may be fined $100 per employee per day, sued by the U.S. Department of Labor and by its plan participants, fined approximately $2,000 per employee per year.[5] Plaintiffs believe that they cannot legally be made to provide such services which violate their deeply held religious tenets as are mandated by the federal law. Without a preliminary injunction in place to ensure the *status quo* while this case is litigated, the Plaintiffs will be forced to either violate their sincerely-held religious beliefs or comply with their conscience and

[4] For example, Illinois requires coverage for outpatient contraceptive services and drugs in individual and group health insurance policies. 215 Ill. Comp. Stat. § 5/356z.4. Yet, the Illinois Health Care Right of Conscience Act, 745 Ill. Comp. Stat. § 70/1, *et seq*., provides "health care payers," 745 Ill. Comp. Stat. § 70/3(f), such as Plaintiffs, with an exemption from having to pay for, or having to arrange for the payment of, any health care services, including "family planning, counseling, referrals, or any other advice in connection with the use or procurement of contraceptives and sterilization or abortion procedures; medication; or surgery or other care or treatment," 745 Ill. Comp. Stat. § 70/3(a), that violates the health care payer's conscience as documented in its ethical guidelines or the like, 745 Ill. Comp. Stat. §§ 70/2, 70/3(e), 70/11.2.

[5] *See* 26 USC § 4980D; 26 U.S.C. § 4980H; 29 U.S.C. § 1132; 42 U.S.C. § 300gg-13; Patient Protection and Affordable Care Act ("PPACA") § 1562(e)-(f).

religious faith and face ruinous fines. That Plaintiffs' refusal to provide their employees health insurance which covers contraceptives starting in January 2013 might also subject them to fines under the Illinois law is of no effect to the fines Plaintiffs will face under federal law. They are two separate injuries. Only this Court may properly redress the legal injuries being caused by Defendants' unlawful action acting under color of the Federal Contraceptive Mandate.

B. THAT PLAINTIFFS' STATE LAW CLAIMS ARE PROPERLY NOT BEFORE THIS COURT IS OF NO EFFECT ON PLAINTIFFS' STANDING TO CHALLENGE THE FEDERAL MANDATE IN THIS ACTION.

Tellingly, the Defendants' memorandum in support of the motion to dismiss disingenuously states: "Because there is an additional state law requirement that Triune's insurance include coverage for the services to which its owners object, and plaintiffs do not challenge the lawfulness of that requirement *in this lawsuit*, the Court cannot redress plaintiffs' alleged injury." Def. Br. at 15 (emphasis added). Thus, the Defendants do not argue that even if the State Mandate were non-existent the plaintiffs would still lack standing to challenge the Federal Mandate. In fact, Defendants implicitly agree that if Plaintiffs were challenging the State Mandate *in this lawsuit* then plaintiffs would have standing to challenge the Federal Mandate. This mendaciousness of Defendants' argument is only revealed by the fact that the federal court does not necessarily even have jurisdiction to adjudicate the state claims in the first instance in this action.

At the first status conference, the Illinois Attorney General's office made clear that they intended to file a motion to dismiss the state law claims on the grounds of the *Pennhurst* Doctrine. The *Pennhurst* Doctrine states that the Eleventh Amendment bars injunctive relief against state officers on the basis of state law. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). The Plaintiffs recognized the potential validity of this argument and also acknowledged that the Court might nevertheless abstain on the grounds of the *Burford* doctrine. *See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Plaintiffs' challenge of the Illinois contraceptive mandate alleges state

law claims which implicates important state regulatory issues, and state courts are part of the regulatory process. Thus, traditionally the federal court will usually abstain out of considerations of the comity and respect for the paramount state interest, and will not retain jurisdiction over the state law claims. *See* COMM. ON FED'L COURTS OF THE NEW YORK STATE BAR ASSOCIATION, REPORT ON THE ABSTENTION DOCTRINE: THE CONSEQUENCES OF FEDERAL COURT DEFERENCE TO STATE COURT PROCEEDINGS, 122 F.R.D. 89, 95 (1988). Thus, Plaintiffs sought permission to file an amended complaint. The Defendants did not challenge this course of proceedings at the status conference, and thus should not be allowed now to raise the argument now that the state law claims are not currently before this Court. Plaintiffs should not be penalized by federalism.

The only difference, then, between the scenario that Defendants would concede demonstrates standing and the situation here is that Plaintiffs have chosen to bring their challenge to the state law in state court. But Plaintiffs voluntarily chose to pursue that course to avoid a consuming calendar here arguing a motion to dismiss in this court by the State of Illinois based upon the *Pennhurst* Doctrine. And it was for that very reason that Defendants made no objection to so proceeding.

Given the urgency and severity of the effects on Triune by the Federal Mandate, as discussed herein, simple justice ought to preclude making Plaintiffs wait unnecessarily for a determination of the legality of the Illinois mandate by the Illinois court system, or go through the possibly infeasible process of attempting to self-insure to avoid the State Contraceptive Mandate before this Court may properly rule on the constitutionality and lawfulness of the federal contraceptive mandate.

A federal district court in Missouri, with facts almost identical to the ones presented here, found that standing existed for plaintiffs to challenge the federal mandate. *See O'Brien v. U.S. Dept. Health & Human Servs.*, 2012 WL 4481208 (E.D. Mo. Sept. 28, 2012). Missouri, like

Illinois, has its own contraceptive mandate, though it differs in respects material here. O'Brien, like the Yeps, was unwittingly funding a health insurance plan that covered services to which he strenuously objected. Upon discovery, because of the Federal Mandate, and he immediately sought to remedy the situation. However, the plaintiffs in that case were unable to qualify for any of the exemptions provided by the federal government. It was this fact which caused the District Court to distinguish the case from other similar cases against HHS that were dismissed for lack of Article III standing or ripeness. *Id*. at 5 n.7 (distinguishing *Wheaton College v. Sebelius*, 2012 WL 3637162 (D.D.C. Aug. 24, 2012); *Nebraska v. HHS*, 2012 WL 2913402 (D. Neb. July 17, 2012)). The court considered both defendants' Fed. R. Civ. P. 12(b)(1) and 12(b)(6) motions, and apparently had no qualms finding jurisdiction. Indeed, the court went to great lengths to examine the merits of each of plaintiffs' claims, an unnecessary process if plaintiffs never had standing in the first place.

Plaintiffs face grave injury should they be forced to comply with the Federal Mandate in violation of their religious freedom. It is this injury which provides the causal link for standing that Defendants erroneously state is missing. Only this Court can provide the redress needed to prevent Plaintiffs from facing ruinous consequences under the Federal Contraceptive Mandate.

II. PLAINTIFFS SATISFY EACH OF THE LEGAL STANDARDS REQUIRED FOR ISSUANCE OF A PRELIMINARY INJUNCTION TO PRESERVE THE STATUS QUO PENDING LITIGATION OF THIS MATTER.[6]

To obtain a preliminary injunction, Plaintiffs must demonstrate a reasonable likelihood of success on the merits, no adequate remedy at law, and irreparable harm absent the injunction. *See ACLU v. Alvarez,* 679 F.3d 583, 589–90 (7th Cir. 2012); *Christian Legal Soc'y v. Walker,* 453 F.3d 853, 859 (7th Cir. 2006); *Joelner v. Village of Washington Park, Ill.,* 378 F.3d 613, 619 (7th Cir.

[6] Not only is Defendants' standing argument without merit for the reasons discussed above, but so, too, are all their arguments included in the Motion to Dismiss that Plaintiffs have failed to state a claim upon which relief can be granted defeated by the arguments made herein in support of Plaintiffs' Motion for a Preliminary Injunction.

2004). Upon the moving party's demonstration of this threshold showing, the district court must weigh the balance of harm to the parties if the injunction is granted or denied and also evaluate the effect of an injunction on the public interest. *See Alvarez,* 679 F.3d at 589–90; *Christian Legal Soc'y,* 453 F.3d at 859. "The strength of the moving party's likelihood of success on the merits affects the balance of harms. 'The more likely it is that [the moving party] will win its case on the merits, the less the balance of harms need weigh in its favor.'" *Planned Parenthood of Indiana, Inc. v. Comm'r of Indiana State Dept. Health*, 2012 WL 5205533 (7th Cir. Oct. 23, 2012) (citing *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.,* 549 F.3d 1079, 1100 (7th Cir. 2008)). Plaintiffs satisfy each of these standards.

III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF EACH OF THEIR CLAIMS.

A. THE HHS MANDATE VIOLATES THE RELIGIOUS FREEDOM RESTORATION ACT.

Congress passed the Religious Freedom Restoration Act ("RFRA") as a reaction to the decision in *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990). RFRA holds government burdens on religious exercise to "the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972)." 42 U.S.C. § 2000bb-1(b); *see generally Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424, 431 (2006). Under RFRA, the federal government may not "substantially burden" a person's exercise of religion unless the government "'demonstrates that application of the burden to the person' represents the least restrictive means of advancing a compelling interest." *O Centro*, 546 U.S. at 423 (quoting 42 U.S.C. § 2000bb-1(b)). According to the Seventh Circuit, a substantial burden under RFRA "is one that forces the adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a

person's religious beliefs, or compels conduct or expression that is contrary to those beliefs." *Mack v. O'Leary,* 80 F.3d 1175, 1179 (7th Cir. 1996).

Once a plaintiff demonstrates a substantial burden on his religious exercise, RFRA requires that the compelling interest test be satisfied not generically, but with respect to "the particular claimant." *O Centro*, 546 U.S. at 430–31. The government's burden to satisfy strict scrutiny under RFRA is the same at the preliminary injunction stage as at trial. *See O Centro*, 546 U.S. at 429-30 (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)). *See Newland, et al. v. Sebelius, et al*, 2012 WL 3069154, *8–*9 (D. Colo. July 27, 2012) (enjoining HHS Mandate due to violation of RFRA). "The initial burden is borne by the party challenging the law. Once that party establishes that the challenged law substantially burdens her free exercise of religion, the burden shifts to the government to justify that burden." *Id.* at *5 (quoting *O Centro,* 546 U.S. at 429).

1. Triune Can and Does Exercise Religion.

RFRA broadly defines "religious exercise" to "include[] any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'" 42 U.S.C. § 2000bb-2(4), *as amended by* 42 U.S.C. § 2000cc-5(7)(A). The exercise of religion involves not only participation in certain activities but also the abstention and avoidance of certain activities. *See, e.g.*, *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872, 877 (1990). Examples of abstention as religious exercise include choosing not to work on certain days (*see Sherbert*, 374 U.S. at 399), not to build arms for war (*see Thomas v. Review Bd.*, 450 U.S. 707, 714–16 (1981)), or to not send one's children to school (*see Wisconsin v. Yoder*, 406 U.S. 205, 208 (1972)).

As detailed above, Triune, based on its religious beliefs founded in Catholic faith, has chosen to not participate in the provision of contraceptives and abortifacients. (Decl. ¶ 72–75). To force Triune to facilitate the provision of these drugs which it believes to be immoral inhibits Triune's ability to exercise its faith.

Defendants have argued that Triune does not and cannot exercise religion because it is a secular, for-profit entity. First, Triune is not a secular entity. (Decl. ¶ 33). Triune was created deliberately to further the Yeps' religious exercise and is an extension of the Yeps' religious convictions. By being owned and controlled by religious individuals and existing as an outlet for these individuals to practice their faith, Triune cannot be considered wholly secular. (*See* Decl. ¶ 2). Triune's origins and continued existence, its business model and practices, and even its own name evidence the religious purpose behind Triune's formation and existence. (Decl. ¶¶ 19–22).

Second, there is no justification for the assertion that making a profit bars an entity from religious exercise. The "free exercise of religion" in RFRA and the First Amendment that RFRA was created to enhance, has always been recognized as including the exercise of religion in all areas of life including in business and "profitable" enterprise. In *Morr-Fitz, Inc. et al. v. Blagojevich*, 2011 WL 1338081 (Ill. Cir. Ct. 7th, Apr. 5, 2011), the court found in favor of the free exercise rights of three pharmacy corporations and their owners. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119–20 & n.9 (9th Cir. 2009), and *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 620 n.15 (9th Cir. 1988), both recognized that a for-profit and even "secular" corporation could assert free exercise claims.

The government tries to defend its assertion that Triune cannot exercise religion by confusing the protection of religious exercise under RFRA with more restrictive categories such as that of "religious employer" as defined in Title VII regarding employment discrimination. *See* 42 U.S.C. § 2000e–1(a). Triune is not attempting to qualify for the ability to discriminate amongst employees. On the contrary, Triune employs people of all faiths. (Decl. ¶ 36). Nothing in Title VII implies that not meeting the definition of "religious employer" equates to being completely secular or not having any ability or right to exercise religion. To read a "religious employer" limit into RFRA would violate the text of the statute that expressly states it broadly applies to "any person"

not just to a "religious employer" as is the case with Title VII.[7] *Cf. Norinsberg v. U.S. Dept. of Agric.*, 162 F.3d 1194, 1200 (D.C. Cir. 1998) ("Congress' different wording from past indicates intent that new word has different meaning"; citation omitted).

Defendants want to portray Triune's own religious exercise as "using RFRA as a sword." Def. Br. at 22. This is complete misunderstanding of Triune's abstention from the provision of contraceptives. Triune is not stopping its employees from using contraceptives, and though Triune may not approve of the use of such drugs, their use does not affect Triune's exercise of religion. On the contrary, Triune, simply does not want to be involved with or forced to be an accessory to that which it finds intrinsically evil, gravely wrong and sinful. Triune's employees remain free to use their own wages to purchase whatever they please.

Finally, it is clear that First Amendment and RFRA protections extend to corporations and are not conferred only upon individuals. "First Amendment protection extends to corporations," and a First Amendment right "does not lose First Amendment protection simply because its source is a corporation." *See Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 130 S. Ct. 876, 900 (2010). Speech alone can easily be considered religious practice. If a corporation has the ability to speak under the First Amendment, then by what logic can a corporation, at least if closely held, not also have the right to speak about and thereby exercise religion. And the Supreme Court has never held that an entity has the right of free speech but not the right to religious exercise.

The natural reading of "person" in RFRA includes Triune Health Group. According to 1 U.S.C. § 1, "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . 'person' . . . include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." *See also Mohamad v. Palestinian*

[7] "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 USC § 2000bb–1

Auth., __U.S.__, 132 S. Ct. 1702, 1707 (2012) (explaining the word "person" often includes corporations, and Congress and the Supreme Court often use the word "individual" "to distinguish between a natural person and a corporation"); *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 687 (1978) ("[B]y 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis").

2. Triune Represents and Has Standing to Assert the Yeps' Religious Liberty Interests.

Triune not only brings free exercise of religion claims regarding its own exercise of religion but also asserts these same claims on behalf of the Yeps, its religious owners whose beliefs define Triune's beliefs. (Decl. ¶ 6).

In *Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir. 2009), Ralph's Thriftway, a for-profit grocery store with a pharmacy, challenged a Washington law requiring pharmacies to dispense emergency contraception. Defendants argued that Stormans could not make a claim under the Free Exercise Clause. Stormans explained that "Ralph's is an extension of the beliefs of members of the Stormans family, and that the beliefs of the Stormans family are the beliefs of Ralph's." *Id*. at 1120. While the court did not "decide whether a for-profit corporation can assert its own rights under the Free Exercise Clause," it held that Ralph's had standing to assert the free exercise rights of the Stormans, its owners. *Id*. at 1119–20.

In *EEOC v. Townley Eng'g & Mfg. Co*., 859 F.2d 610 (9th Cir. 1988), employees were required to attend weekly devotional services, and an employee claimed religious discrimination under Title VII. The EEOC sued and obtained an injunction which the company appealed, claiming an infringement of their free exercise of religion. The Ninth Circuit held that the for-profit corporation could assert the free exercise rights of its owners. *Id*. at 620 n.15, stating that, "Townley presents no rights of its own different from or greater than its owners' rights."

As in *Townley* and *Stormans*, Triune has the same faith and beliefs of the Yeps, as Triune is an extension of the Yeps in this and many other regards. (Decl. ¶ 33). Defendants try to argue that because the Yeps receive some legal protection by organizing their business as a corporation, the Yeps and Triune are distinct and wholly separate. Triune may be a distinct legal entity from the Yeps in a different context, but every action a corporation takes must be taken through human agency. Here, forcing Triune to act is the same as forcing the Yeps to act.

3. The HHS Mandate Substantially Burdens Plaintiffs' Religious Exercise.

The HHS Mandate creates government-imposed coercive pressure on Plaintiffs to purchase insurance and provide contraception, abortion, and abortifacients—or in other words, to change or violate their beliefs. By selectively failing to provide an exemption for the Plaintiffs' religious beliefs, the HHS Mandate not only exposes Plaintiffs to substantial per employee fines for their religious exercise significantly more severe than the $5 per student fine struck down by the Court in *Yoder*—but also exposes all Plaintiffs to substantial competitive disadvantages if they are no longer permitted to offer or purchase health insurance due to their religious beliefs. 26 U.S.C. §§ 4980D & 4980H; (Decl. ¶ 52); *see also Sherbert v. Verner*, 374 U.S. 398, 403–04 (finding "a fine imposed against appellant" to be a quintessential burden). Worse, the HHS Mandate imposes a substantial burden on Plaintiffs' religious exercise by forcing Plaintiffs to violate their deeply held religious beliefs and the teachings of the Catholic Church to which they belong, or shutter their business.

If Plaintiffs do not conform to the HHS Mandate they will be subject to severe penalties. In addition to penalties which can amount to a staggering $100 per day per employee (*see* 26 U.S.C. § 4980D(a), (b)), Plaintiffs are exposed to possible lawsuits by the Defendant Secretary of Labor as well as by the participants in Triune's health plan. 29 U.S.C. § 1132(a). These penalties, whether labeled taxes or fines would cripple and ultimately destroy Triune's business. (Decl. ¶ 51).

This is clearly a substantial burden as the government is putting "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981). The loss of one's entire business is clearly substantial pressure. Defendants understand that this burden is real and substantial. Helping some entities avoid this burden was the motive for providing exceptions to the HHS Mandate. Defendants wanted to "take[] into account the effect on the religious beliefs of certain religious employers." 76 Fed. Reg. at 46,623. It was also the motivation for the most recent rule-making. *See* 77 Fed. Reg. 16,501, 16,503.

Defendants argue that the burden is not substantial based on a belief that Plaintiffs are not directly involved in their employee's use of contraception and that their involvement in the facilitation of such drugs is minimal. Def. Br. at 21–22. They compare this facilitation of contraceptives to paying taxes for that which Plaintiffs' disagree. That argument fails because it ignores the near identity between the Yeps' beliefs and how they have conducted their business.

In *Thomas v. Review Bd.*, 450 U.S. 707 (1981) the Supreme Court rejected similar arguments and held that an individual had the right to decide what level of involvement in activities he found immoral constituted a violation of his own religious conscience.[8] Thomas drew the line at the manufacture of arms used in war, and this was acceptable. Direct involvement in the production or facilitation of immoral products or activities is not the same as paying taxes for that which one believes to be immoral. Much like Thomas was not objecting to paying taxes which go toward war, Plaintiffs here are not objecting to the taxes they must pay, some of which does go to subsidize that which they find immoral, including the provision of contraceptives. In response to similar arguments by Defendants in the case of *Newland, et al. v. Sebelius, et al.*, Judge Kane wrote in his

[8] In *Thomas*, the Court held that an employee's right to religious exercise was infringed by forcing him to manufacture items used in warfare even though he had previously not objected to the manufacture of metal which could be eventually used to make items used in war.

Order imposing a Preliminary Injunction that "[t]his argument requires impermissible line drawing, and [he] reject[s] it out of hand." *Newland*, 2012 WL 3069154, *6 n.9 (D. Colo. July 27, 2012).

Indeed, *Newland* is not the only Federal Mandate challenge to find it a substantial burden. *See also Tyndale House Publishers, Inc. v. Sebelius*, 2012 WL 5817323, at *12 (D.D.C. Nov. 16, 2012) ("The contraceptive coverage mandate . . . places the plaintiffs in the untenable position of choosing either to violate their religious beliefs by providing coverage of the contraceptives at issue or to subject their business to the continual risk of the imposition of enormous penalties for its noncompliance. Such a threat to the very continued existence of the plaintiffs' business necessarily places substantial pressure on the plaintiffs to violate their beliefs."); *Legatus v. Sebelius*, 2012 WL 5359630, at *6 (E.D. Mich. Oct. 31, 2012) ("[T]he court assumes that the Weingartz Plaintiffs are likely to show at trial that the HRSA Mandate substantially burdens the observance of the tenets of Catholicism.")

The Supreme Court has invalidated pressure on religious exercise that was less weighty and/or less direct than the harsh pressure imposed by the HHS Mandate. *See, e.g., Sherbert*, 374 U.S. at 404 (loss of unemployment benefits but not job for refusing to work on Sabbath placed "unmistakable" pressure on plaintiff to abandon that observance); *Yoder*, 406 U.S. at 208, 218 (five dollar fine on plaintiffs' religious practice was "not only severe, but inescapable"). Fining someone for exercising his faith is the paradigmatic example of a substantial burden. *See, e.g., Sherbert*, 374 U.S. at 403–04 (explaining that forcing choice between plaintiff's faith and unemployment benefits "puts the same kind of burden upon the free exercise of religion as would a fine imposed against [plaintiff] for her Saturday worship").

"As in *Yoder*, the contraceptive coverage mandate affirmatively compels the [Tyndale] plaintiffs to violate their religious beliefs in order to comply with the law and avoid the sanctions that would be imposed for their noncompliance. Indeed, the pressure on the[se] plaintiffs to violate

their religious beliefs is 'unmistakable.'" *Tyndale House Publishers, Inc. v. Sebelius*, 2012 WL 5817323, at *11 (D.D.C. Nov. 16, 2012) (quoting *Sherbert*, 374 U.S. at 404). Though Triune's employee health plan is not organized in exactly the same way as that of the Plaintiffs in *Tyndale*, Plaintiffs are subject to the same "unmistakable pressure" that exists in *Tyndale.* They must violate their sincerely held beliefs or abandon their business, which is both a source of financial livelihood as well as mission of service to the community. This is "a Hobson's choice—an illusory choice where the only realistically possible course of action trenches on an adherent's sincerely held religious belief." *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010).

4. The HHS Mandate Cannot Survive the Strict Scrutiny Review Required Under RFRA.

a. RFRA Imposes Strict Scrutiny.

RFRA requires application of the "strict scrutiny test." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430 (2006). This test, which requires "the most rigorous of scrutiny," *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), "is the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). In order to satisfy this test, the government must demonstrate that the challenged law serves "a compelling governmental interest" *and* is the "least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b). The strict scrutiny test imposed by RFRA must be conducted "through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *O Centro Espirita*, 546 U.S. at 430–31. It is therefore not enough for the government to describe a compelling interest in the abstract or in a categorical fashion; the government must demonstrate that the interest "would be adversely affected by granting an exemption" to the religious claimant. *Id*.; *see also Olsen v. Mukasey*, 541 F.3d 827, 831 (8th Cir. 2008) (under RFRA,

"the compelling interest of a challenged law must be evaluated with respect to the particular claimant whose religious exercise is substantially burdened").

In other words, in this case, the government must demonstrate that requiring the Yeps and Triune Health Group to participate in the Federal Contraceptive Mandate is necessary to advance its compelling interest even while the same government willingly exempts thousands of other employers who employ nearly 100 million employees.

b. The HHS Mandate Cannot Survive Strict Scrutiny Review.

Defendants cannot establish that their coercion of Triune Health Group is "in furtherance of a compelling governmental interest." The government must "specifically identify an 'actual problem' in need of solving" and show that coercing Triune Health Group is "actually necessary to the solution." *Brown v. Entm't Merchs. Ass'n*, __U.S.__, 131 S. Ct. 2729, 2738 (June 27, 2011). If Defendants' "evidence is not compelling," they fail their burden. *Id.* at 2739. To be compelling, the government's evidence must show not merely a correlation but a "caus[al]" nexus between their Mandate and the grave interest it supposedly serves. *Id.* The government "bears the risk of uncertainty . . . ambiguous proof will not suffice." *Id.*

Defendants' interest in coercing Plaintiffs to provide coverage of abortifacients is not compelling. In other cases the government has attempted to identify two interests—women's health and equality by reducing unintended pregnancy—as justifying the Mandate under RFRA. But these interests are generic and abstract. In *O Centro Espirita*, the Court held evidence to be insufficient showing that Schedule I controlled substances were "extremely dangerous," because that "categorical" support could not meet the government's RFRA burden to consider the "particular" exception requested by Triune Health Group. *Id.* at 432.

The simple fact is that even if abortifacient drugs are assumed to provide health and equality to women, Defendants have not shown a compelling interest to deliver those benefits by means of

coercing Plaintiffs into providing them. As discussed below, the government already delivers and subsidizes abortifacients to women and could do so here as well without forcing Plaintiffs to do it.

c. The Defendants Cannot Demonstrate a Compelling Government Interest.

To demonstrate a compelling government interest, Defendants must show that the alleged harm to Plaintiffs' employees is not mild, but extreme: that it threatens the "gravest," "highest" and most "paramount" consequences for Plaintiffs' employees absent the Mandate. But the Mandate's regulations cite no rash of contraception-deprived deaths among employees of religiously-devout employers. They also cite no pandemic of unwanted births causing catastrophic consequences among such employees. It could be that employees of Plaintiffs and similar entities experience zero negative health consequences absent the Mandate, for any number of reasons. At best, Defendants do not know. But Defendants "bear the risk of uncertainty," and cannot satisfy their burden under RFRA with speculation and generalizations. Even if gravely at-risk employees exist, it is possible that they all obtain the mandated items outside of Plaintiffs' coverage. Defendants cannot connect the Mandate to *causation* of grave harm among Plaintiffs' employees. *See O Centro Espirita*, 546 U.S. at 438 (Where "the Government did not even *submit* evidence addressing" the specific consequences of an alleged interest, but only offered affidavits "attesting to the general importance" of that interest, "under RFRA invocation of such general interests, standing alone, is not enough.").

However, the most striking obstacle to Defendants' assertion of a compelling interest is that the government itself has voluntarily omitted 191 million people from the Mandate. *Newland, et al. v. Sebelius, et al.*, 2012 WL 3069154, *1 (D. Colo. July 27, 2012). This amounts to nearly two-thirds of the nation, and is being offered by the government for secular reasons. But Defendants still refuse to exempt Plaintiffs just because Plaintiff's are not religious enough.

As discussed above, the Mandate does not apply to thousands of plans that are "grandfathered" under PPACA, who are members of a "recognized religious sect or division" that

conscientiously objects to acceptance of public or private insurance funds, or who are "religious employers" defined as churches or religious orders that primarily hire and serve their own adherents and that have the purpose of inculcating their values.[9] The federal government has decided that employers in any of these categories simply do not have to comply with the Mandate.

These are massive exemptions that cannot coexist with a compelling interest against Plaintiffs. "[A] law cannot be regarded as protecting an interest 'of the highest order' when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 520. Defendants cannot claim a "grave" or "paramount" interest to impose the Mandate on Triune or other religious objectors while allowing the identical "appreciable damage" to 191 million people. No compelling interest exists when the government "fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort." *Id*. at 546–47. The exemptions to the Mandate "fatally undermine[] the Government's broader contention that [its law] will be 'necessarily . . . undercut'" if Triune is exempted too. *O Centro Espirita*, 546 U.S. at 434.

Defendants' immense grandfathering exemption has nothing to do with a determination that those 191 million people do not need contraceptive coverage, whereas Triune's employees somehow do. The grandfathering rule is in no way temporary. There is no sunset on grandfathering status in PPACA or its regulations. Instead, a plan can keep grandfathered status in perpetuity, even if it raises fixed-cost employee contributions and, for several items, even if the increases exceed medical inflation plus 15% every year. *Id.* The government repeatedly calls it a "right" for a plan to maintain grandfathered status. *See* 75 Fed. Reg. 34,540, 34,558, 34,562, 34,566.

Notably, grandfathered plans *are* subject to a variety of mandates under PPACA: no lifetime limits on coverage; extension of dependent coverage to age 26; no exclusions for children with pre-existing conditions; and others. But Congress deemed the Mandate in this case *not important*

[9] *See* 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii); 76 Fed. Reg. at 46,623 & n.4; 76 Fed. Reg. at 46,626.

enough to impose it on grandfathered plans. Defendants therefore contradict the text of PPACA when they take a litigation position, contrary to Congress, that the Mandate of abortifacient coverage is an interest "of the highest order."

The flaw of Defendants' supposed compelling interest is even more fatal here because Triune is a large employer of some 80 employees, and according to Defendants, "[m]ost of the 133 million Americans with employer-sponsored health insurance through large employers will maintain the coverage they have today." *Id.* When this figure is added to the number of employees of businesses with fewer than 50 employees, it is fair to say that well over 100 million employees are left untouched by the government's claim of compelling interests. In other words, Defendants have voluntarily excluded most Americans situated alongside the employees of Triune. Defendants cannot demonstrate they have a paramount interest to force Triune to violate its own beliefs. "It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547 (citations and internal quotation marks omitted).

Defendants are completely content to leave 2/3 of the nation's women without "health and equality" flowing from this Mandate. Yet Defendants would insist those same interests can pass the most demanding test known to constitutional law. They cannot. If the government can toss aside such a massive group of employees for political expediency, their "interest" in mandating cost-free birth control coverage cannot possibly be "paramount" or "grave" enough to justify coercing Triune to violate its and its owners' religious beliefs. *See O Centro Espirita*, 546 U.S. at 434 ("Nothing about the unique political status of the [exempted peoples] makes their members immune from the health risks the Government asserts").

In *O Centro Espirita* the Supreme Court held that no compelling interest existed behind a law that had a much more urgent goal—regulating extremely dangerous controlled substances—and

that had many fewer exemptions than the broad swath of omissions from the Mandate. In that case the Court dealt with the Controlled Substances Act's prohibition on "all use," with "no exception," of a hallucinogenic ingredient in a tea along with other Schedule I substances. 546 U.S. at 423, 425. But because elsewhere in the statute there was a narrow religious exemption for Native American use of a different substance, peyote, the Court held that the government could not meet its compelling interest burden even in its generalized interest to regulate Schedule I substances as applied to the plaintiffs in that case. *Id.* at 433. Even more so here, the government cannot satisfy its burden by pointing to general health benefits of contraception. Halting the use of extremely dangerous drugs is far more urgent than forcing religious objectors to provide contraception coverage. Defendants' grant of secular and religious exemptions for millions of other employees betrays any alleged compelling interest they may have in forcing Triune to comply with the Mandate against their religious beliefs.

The government cannot satisfactorily explain why Plaintiffs must be subject to its Mandate while the government itself voluntarily omits 191 million people. The government has no data showing how many religious employers objecting to the Mandate exist, but their total number of employees could only constitute a fraction of a percent of the tens of millions of employees the government is voluntarily omitting. This is a quintessential illustration of *Brown v. Entm't Merchs.*'s insistence that the "government does not have a compelling interest in each marginal percentage point by which its goals are advanced." 131 S. Ct. at 2741. As in *O Centro*, where government exclusions apply to "hundreds of thousands" (here, millions), RFRA requires "a similar exception for the 130 or so" and even less affected here. 546 U.S. at 433.

The Mandate on its face also is inconsistent with a compelling interest rationale. Defendants have used their discretion to write a "religious employer" exemption into the Mandate for certain churches. 76 Fed. Reg. at 46,626. But there is no nexus between the Mandate exemption's criteria

and Defendants' alleged interest, such that a compelling interest exists for non-exempt religious entities like Triune but is absent for exempt ones like churches. Under RFRA, Triune cannot be denied a religious exemption on the premise that Defendants can pick and choose between religious objectors. *See O Centro Espirita*, 546 U.S. at 434 (since the law does "not preclude exceptions altogether; RFRA makes clear that it is the obligation of the courts to consider" other exemptions).

d. There Is No "Business Exception" to RFRA's Compelling Interest Test.

In other cases the government has attempted to use *United States vs. Lee*, 455 U.S. 252 (1982), to characterize RFRA's scrutiny as not being very strict in commercial contexts. But *O Centro Espirita* does not allow the Court to apply a "strict scrutiny light" for a business RFRA claim, or indeed for any RFRA claim. "[T]he compelling interest test" of "RFRA challenges should be adjudicated in the same manner as constitutionally mandated applications of the test," such as in speech cases. 546 U.S. at 430. *O Centro* explicitly cabined *Lee* to its context of a tax that was nearly universal, and the court did not allow the government to claim "that a general interest in uniformity justified a substantial burden on religious exercise." *Id.* at 435.

Lee does discuss "statutory schemes which are binding on others in that activity." 455 U.S. at 261. But the Mandate here is emphatically not "binding on others in th[e] activity" of large employers providing insurance. Whereas *Lee*'s tax contained only a tiny exemption for some Amish, the Mandate here excludes:

- 191 million Americans in "grandfathered" plans are not subject to the Mandate, including "most" large employers, of which Triune is one.[10]
- Members of certain objecting religious groups need not carry insurance at all. *See*, *e.g.*, 26 U.S.C. § 5000A(d)(2)(a) ("recognized religious sect or division"); *id.* § 5000A(d)(2)(b)(ii) ("health care sharing ministries").
- Small employers (*i.e.*, those with fewer than 50 employees) can drop employee insurance with no government penalty. 26 U.S.C. § 4980H(c)(2).

[10] HHS, HealthCare.Gov, "Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans," *available at* http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html (last visited Nov. 24, 2012).

- Churches, church auxiliaries, and religious orders enjoy a blanket exemption from the mandate. 77 Fed. Reg. 8,725, 8,726 (Feb. 15, 2012).
- Certain religiously affiliated non-profits were recently given an additional year before the mandate would be enforced against them.[11]

The Mandate is many things, but "uniform" is not one of them. *O Centro* was impatient with the government's uniformity argument:

> The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions. But RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability."

546 U.S. at 436. *Lee*'s universal tax is not comparable to the Mandate and its exceptions.

The law upheld in *Lee* was a tax to raise government funding. Governments cannot function without taxes. *Lee* ruled that if exemptions were allowed "[t]he tax system could not function." 455 U.S. at 260. But the United States has functioned for over 200 years without a federal mandate compelling Triune or anyone else to cover sterilizations and contraceptive abortifacients in insurance. The Mandate is not a "government program," as discussed in *Lee*. It requires Triune to give specific contraceptive or abortifacient drugs and sterilization and related counseling services to private citizens, not to pay money to the government for use in the government's own activities. This Mandate is private, not governmental. In fact, the government has decided *not* to pursue its goals with a government program offering contraception—of which many exist—but instead to conscript religiously objecting citizens.

Lee does not apply the scrutiny test applicable under RFRA. *Lee* was a precursor to *Smith*, which expanded on *Lee* to adopt the standard that RFRA affirmatively rejected. RFRA specifies that it is codifying its test "as set forth in *Sherbert*, 374 U.S. 398 and *Wisconsin v. Yoder*, 406 U.S.

[11] *See* Ctr for Consumer Information & Insurance Oversight and Ctrs for Medicare & Medicaid Services, "Guidance on the Temporary Enforcement Safe Harbor for Certain Employers . . ." Feb. 10, 2012, *available at* http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf.

205 (1972)." 42 U.S.C. § 2000bb. RFRA omits *Lee* from this list. *Lee* itself never says it is requiring a "compelling interest" or "least restrictive means." But *Sherbert* and *Yoder did* apply RFRA's test. *Sherbert* involved a plaintiff's bid for financial gain, despite the government's generally applicable law. As scholars note:

> The standard thus incorporated [by RFRA] is a highly protective one. . . . The cases incorporated by Congress explain "compelling" with superlatives: "paramount," "gravest," and "highest." Even these interests are sufficient only if they are "not otherwise served," if "no alternative forms of regulation would combat such abuses". . . .

Douglas Laycock and Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 TEX. L. REV. 209, 224 (1994).

e. The HHS Mandate Is Not the Least Restrictive Means of Achieving the Government's Interests, Compelling or Not.

Assuming *arguendo* that the interests proffered by the government are compelling, the Defendants cannot show that enforcing the Mandate against Triune is "the least restrictive means of furthering" the governments supposed interests for requiring it under 42 U.S.C. 2000bb-1. If the government wishes to further the interests of health and equality by means of free access to contraceptive services, it could do so in a myriad of ways without coercing Triune, in violation of its religious exercise, into doing so. Defendants bear the burden to show both of these elements—compelling interest and least restrictive means—including at the preliminary injunction stage. *O Centro Espirita*, 546 U.S. at 428–30.

First and foremost, the government could provide these services to citizens itself. In fact, the government already provides the needy with free access to contraceptives through Medicaid. It could similarly do so for all citizens, without a showing of need.

Second, in an effort to meet its compelling governmental interests, the government could reimburse citizens who pay to use contraceptives, allowing citizens to submit receipts to the government for payment.

Third, the government could offer tax deductions or credits for the purchase of contraceptive services. The government already offers deductions and credits for such things as educational expenses and child and dependent care expenses. It could similarly do so here.

Fourth, the government could impose a mandate on pharmaceutical companies that manufacture contraceptives to provide such products through pharmacies, doctor's offices, and health clinics free of charge.

Each of these options would further the government's proffered compelling interests in a direct way that would not impose a substantial burden on businesses such as Triune. *See Newland, et al. v. Sebelius, et al.*, 2012 WL 3069154, *7–*8 (D. Colo. July 27, 2012) (rejecting government's claim that the Mandate furthers a compelling governmental interest through the least restrictive means.) Of the various and sundry ways the government could achieve its interests, it has chosen a path with clear and undeniable adverse consequences to employers with religious objections to contraceptive services, such as Plaintiffs.

While the government may contend that any or all of these options would prove difficult to establish or operate, "least restrictive means" does not mean the most convenient way for the government. Even if *the government* claims these or other options would not be as effective or efficient as the Mandate, "*a court* should not assume a plausible, less restrictive alternative would be ineffective." *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 824 (2000). Political difficulty does not exonerate the Mandate's burdens on Plaintiffs religious beliefs, or allow it to pass RFRA's strict scrutiny. In fact, if a less restrictive alternative would serve the government's purpose, "the legislature must use that alternative." *Id.* at 813. The asserted interests of health and

equality "cannot be invoked as a talismanic incantation to support any [law]." *United States v. Robel,* 389 U.S. 258, 263 (1967).

Since many methods less restrictive of religious beliefs exist, this alone fatally undermines Defendants' burden under RFRA and the Mandate from applying to Plaintiffs, it is clear that Plaintiffs have a strong likelihood of success on their RFRA claim.

B. THE HHS MANDATE VIOLATES THE FIRST AMENDMENT.

1. The HHS Mandate Violates the Free Exercise Clause of the First Amendment.

In addition to showing a violation of RFRA, Plaintiffs are likely to succeed in showing that the HHS Mandate also violates the Supreme Court's current standard for religious liberty claims when the more stringent standard for RFRA is not applicable. The First Amendment prohibits the government from making any law "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. CONST. amend. I. Under the First Amendment, the government may not impose special restrictions, prohibitions, or disabilities on the basis of religious beliefs. *See generally McDaniel v. Paty*, 435 U.S. 618 (1978). "The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such." *Id.* at 626.

Under the Free Exercise Clause, the Supreme Court has ruled that the government may only pass a law that burdens certain religious exercises when the law is facially neutral and of general applicability. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 545 (1993). The HHS Mandate is not facially neutral because it chooses which religious entities are subject and which are exempt. By discriminating on a religious basis, the HHS Mandate clearly fails the test of neutrality. "A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context." *Id*. at 533.

By choosing which entities are subject to the HHS Mandate by creating standards based on the entities' religious characteristics with no discernible secular purpose the HHS Mandate does precisely what *Lukumi* held a neutral law cannot do. The exceptions made in the HHS Mandate are clearer and more blatant violations of this standard than those struck down in *Lukumi*,[12] Unlike the ordinance in *Lukumi*, the HHS Mandate actually chooses who is subject to the law bases on criteria at the heart of an individual or an entity's core religious values. This includes the "purpose" of an organization: one whose purpose is to inculcate religious values is exempt while one whose purpose is to serve the community in another fashion is subject. It also includes whom the entity chooses to serve: an organization encouraged by its religious beliefs to serve only those of the same faith is exempt while an organization encouraged by its religious beliefs to serve the entire community is subject. *See* 45 C.F.R. § 147.130(a)(iv)(B)(1)–(4). The HHS Mandate is subject to strict scrutiny as it is not neutral on its face.

Additionally the HHS Mandate is subject to strict scrutiny as it is not generally applicable. As described in detail above, many entities are exempt from the HHS Mandate for a variety of reasons, most of them exempt for purely secular reasons and not by meeting the religious exemption. A law is not generally applicable if it regulates religiously motivated conduct while leaving similar secular conduct unregulated. *See, e.g., Lukumi*, 508 U.S. at 544–45. The HHS Mandate does just that by requiring religious organizations to violate their consciences by facilitating the provision of drugs and services which they find to be gravely immoral while not requiring the same from organizations who have no religious or moral objection.

[12] In *Church of the Lukumi*, the City of Hialeah enacted an ordinance prohibiting the public sacrifice of animals. *Id.* at 527. The ordinance also contained exemptions for the slaughtering of animals raised for food purposes and for sale in accordance with state law. *Id.* at 528. The ordinance had the stated purpose of promoting "public health, safety, welfare, and the morals of the community" and carried a maximum fine of $500. *Id.* at 528. The ordinance, however, prevented members of the church of Santeria from engaging in a principal aspect of their religious worship, which was the public, sacrificial killing of animals. *Id.* at 524-25. This practice was known to the Defendant prior to the enactment of the ordinance. *Id.* at 526-27.

The religious exemption itself is also not generally applicable. The PPACA gives Defendants unlimited discretion to shape its scope as defendants "*may* establish exemptions," 45 C.F.R. § 147.130 (emphasis added), and this discretion to craft exemptions is boundless. *See* 42 U.S.C. § 300gg-13 and 76 Fed. Reg. at 46,623 (asserting that § 300gg-13 grants HHS/HRSA "authority to develop comprehensive guideless" under which Defendants believe "it is appropriate that HRSA, in issuing these Guidelines, takes into account the effect on the religious beliefs of certain religious employers".)

Using this discretion, Defendants continue to change their exemptions and accommodations. Defendants have created two different versions of a "safe harbor" in addition to the religious exemption and in recent rulemaking, yet another category of non- profit religious entities subject to different treatment than the Mandate will be created. 77 Fed. Reg. 16,501. This built-in discretion gives Defendants broad discretion to create exemptions based on an "individualized ... assessment of the reasons for the relevant conduct," a feature that prevents the mandate from meeting the general applicability standard and subjects it to strict scrutiny. *Lukumi*, 508 U.S. at 537 (quoting *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 884 (1990)).

2. The HHS Mandate Violates the Establishment Clause of the First Amendment.

The HHS Mandate's religious employer exemption decides which kinds of religious beliefs are important enough to be protected and which are not. As discussed above, how a religious organization chooses to serve the community or whom it chooses to serve must be examined to discover if such religiously motivated actions are good enough to be worthy of coverage.

This is a clear choosing of some denominations and sets of religious beliefs over others. "Since the challenged statute grants denominational preferences, it must be treated as suspect, and strict scrutiny must be applied in adjudging its constitutionality." *Larson v. Valente*, 456 U.S. 228, 229 (1982). If this exemption is allowed to exist it will set a new precedent allowing federal law to

favor certain types of religious belief over others, drastically changing the right to be free from establishment of religion as it exists today.

3. The HHS Mandate Violates the Free Speech Clause of the First Amendment.

The Mandate also violates the right to Free Speech under the First Amendment by coercing Triune to provide for speech that is contrary to its and its owners' religious beliefs. The "right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'" *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (quoting *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)). This is precisely why the First Amendment protects the right to "decide what not to say" as much as it protects the right to decide what to say. *Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995) (internal quotation marks omitted).

The Mandate requires Triune to cover "education and counseling" in favor of contraception and abortifacients. Education and counseling are, by definition, speech. Requiring Triune to facilitate speech with which it disagrees violates the First Amendment as requiring Triune to itself say the offensive speech. The Supreme Court has explained that its compelled speech jurisprudence is triggered when the government forces a speaker to fund objectionable speech. *See, e.g, Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 234– 35 (1977) (forced contributions for union political speech); *United States v. United Foods*, 533 U.S. 405, 411 (2001) (forced contributions for advertising).

The Supreme Court recently reaffirmed that "compulsory subsidies for private speech" violate the First Amendment unless they involve a "mandated association" that meets the compelling interest / least restrictive means test. *Knox v. Service Employees Intern. Union*, __U.S.__, 132 S. Ct. 2277, 2289 (June 21, 2012). Here there is no "mandated association" as many employers are omitted from the Mandate, and the Mandate violates the compelling interest test. These factors, and because the Mandate is not a condition on government funding, distinguish it

from *Rumsfeld v. Forum for Academic & Inst. Rights, Inc.*, 547 U.S. 47 (2006). *Rumsfeld* does not negate *Knox*, *Abood*, and *United Foods*.

C. THE HHS MANDATE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT.

It is an axiomatic principle of law that Defendants, as administrative agencies, are "'creature[s] of statute,' having 'no constitutional or common law existence or authority,'" *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (citation omitted), and which "literally have no power to act . . . unless and until Congress confers power upon [them]." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). In this case, Defendants, in adopting the Mandate, violated the powers conferred on them by the Administrative Procedure Act (APA) in two ways.

First, Defendants contravened both the APA's command to provide the public a meaningful opportunity to comment on proposed rules, 5 U.S.C. §§ 553(b)-(c), 706(2)(D), and Defendant's duty to consider all relevant factors and data before taking action. *See id.* § 706(2)(A*)*; *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011). *Second*, the Mandate also violates the APA for being "contrary to law" and "constitutional right" under 5 U.S.C. § 706(2)(A) & (B). *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–17 (1971). It is contrary to law and constitutional right for all the reasons stated above: its violation of RFRA, the First Amendment clauses, and the Due Process Clause. Moreover, the Mandate is not even authorized by Section 2713(a)(4) of the Public Health Act, as amended by the Patient Protection and Affordable Care Act (PPACA), the provision of the PPACA which Defendants erroneously claim authorize the Mandate.

For these reasons more fully argued below, the Mandate must be "h[eld] unlawful and set aside." 5 U.S.C. § 706(2); see *Petrol. Comm'ns, Inc. v. FCC*, 22 F.3d 1164, 1171–73 (D.C. Cir. 1994).

1. Defendants Violated Their Statutory Duty under the APA to Consider Public Objections during the Comment Period.

Section 706 of the APA provides that courts "shall hold unlawful and set aside agency action, findings, and conclusions found to be without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Defendants must follow the procedure found in § 553, which requires administrative agencies to: (1) publish notice of proposed rulemaking in the Federal Register; (2) "give interested parties an opportunity to participate in the rule making through submission of written data, views, or arguments"; and (3) consider all relevant matter presented before adopting a final rule that includes a statement of its basis and purpose. 5 U.S.C. § 553(b) & (c). "An agency is required to provide a meaningful opportunity for comments, which means that the agency's mind must be open to considering them." *Grand Canyon Air Tour Coalition v. F.A.A.*, 154 F.3d 455, 468 (D.C. Cir. 1998) (citing *McLouth Steel Products Corporation v. Thomas*, 838 F.2d 1317, 1323 (D.C. Cir. 1988). The Court need not engage in any subjective judgment about whether Defendants provided due consideration to objections to the Mandate.

In this case Defendants essentially admit that they did not do so. Central to this implicit concession are five facts acknowledged by Defendants themselves:

(1) The Patient Protection and Affordable Care Act (PPACA) prohibits the Mandate from going into effect until one year after it is in final, unchanged form. 75 Fed. Reg. at 41.726; 76 Fed. Reg. at 46,624.

(2) Defendants themselves insisted, in August 2011, prior to the comment period, that they believed the Mandate must exist in final form unchanged as it was written on August 1, 2011, in order to deliver mandated items to college women by August 2012. 76 Fed. Reg. 46,621–26.

(3) Defendants delivered on their promise to ignore comments by finalizing their rule "without change" in February 2012. 77 Fed. Reg. 8,725–30.

(4) Due to public outcry Defendants then admitted in a new regulatory process in March 2012, 77 Fed. Reg. 16,501, that the same objections offered in the 2011 comment period actually did require alterations that they had refused to consider in 2011 but would now pursue.

(5) Yet Defendants continue to impose their Mandate on Plaintiffs and others as if their rule had actually been finalized in August 2011 *in a process that meaningfully considered*

suggested changes prior to finalization.

If Defendants had not been close-minded about their Mandate, it would not have been finalized without change in February 2012, and would still not be finalized (because the March 2012 process continues indefinitely). Thus if the government had complied with the APA, Plaintiffs would not be subject to it now; they would be more than a year away from its effect. Defendants' mockery of the notice and comment process has led to palpable injury to Plaintiffs. The Mandate's adoption of HRSA's preventive services guidelines against religious objectors should be vacated and remanded to the Defendant agencies until they actually finalize a Mandate after meaningful consideration, and *then* wait an additional year to impose it.

2. Defendants' Mandate Also Violates the APA for Being "Contrary to Law" and "Constitutional Right."

The Mandate also violates the APA for being "contrary to law" and "constitutional right" under 5 U.S.C. § 706(2)(A) & (B). *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–17 (1971). It is not only contrary to law and constitutional right for all the reasons stated above: its violation of RFRA, the First Amendment clauses, and the Due Process Clause. The Mandate is also unauthorized by a plain reading and the legislative history of the provision of the Act which Defendants claim to be implementing with the Mandate.

On July 19, 2010, the Department of the Treasury (*Internal Revenue Service*), the Department of Labor (*Employment Benefits Security Administration*), and the Department of Health and Human Services (*HHS*) (collectively the "Departments") jointly published their "INTERIM FINAL RULES (75 FR 41,726, hereinafter "IFR") FOR GROUP HEALTH PLANS AND HEALTH INSURANCE ISSUERS RELATING TO COVERAGE OF PREVENTIVE SERVICES UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT" that required, *inter alia*, that a group health plan or health insurance issuer must cover certain items and services, without cost-sharing, as

recommended, by HHS' Health Resources and Services Administration (HRSA). In particular HRSA, pursuant to Section 2713 of the PUBLIC HEALTH ACT, as amended by the PATIENT PROTECTION AND AFFORDABLE CARE ACT (popularly known as the 'Affordable Care Act,' Obamacare, or 'PPACA'), and the IFR (26 C.F.R. 54.9815–2713T, 29 C.F.R. 2590.715–2713, 45 C.F.R. 147.130), "with respect to women," was charged with developing, "evidence informed preventive care and screening provided for in comprehensive guidelines."

A review of the legislative history of the Affordable Care Act, specifically, Section 2713(a)(4), shows that it is clear that the Affordable Care Act never expressly stipulates the intent to mandate the inclusion of contraceptives, abortifacients, or sterilizations, with no co-pay, within "preventive care and screenings" for women. Furthermore, the Senate floor debate over the addition of Section 2713(a)(4) to the Act indicated no intent to include abortion. Section 2713(a)(4), which requires private insurance plans to cover certain preventive services for women, was added to the Act in an amendment offered by Senator Barbara Mikulski (D. MD) who issued a press release describing that amendment, as follows:

> Services that would be covered under the Mikulski Amendment are likely to include cervical cancer screenings for a broad group of women; annual mammograms for women under 50; pregnancy and postpartum depression screenings; screenings for domestic violence; and annual women's health screenings, which would include testing for diseases that are leading causes of death for women such as heart disease and diabetes. [13]

In her prepared floor statement, Senator Mikulski concluded:

> Often health care doesn't cover basic women's health care like mammograms and cervical cancer screenings. My amendment is about

[13] Press Release, Sen. Barbara Mikulski, Mikulski Amendment Improves Coverage of Women's Preventive Health Services and Lowers Cost to Women (Dec. 3, 2009), *available at* http://www.mikulski.senate.gov/pdfs/Press/MikulskiAmendmentSummary.pdf

> saving lives and saving money to give women access to comprehensive preventive services that are affordable and life-saving.[14]

She stated further, in terms of abortion (emphasis added):

> This amendment does not cover abortion. Abortion has never been defined as a preventive service. This amendment is strictly concerned with ensuring that women get the kind of preventive screenings and treatments they may need to prevent diseases particular to women such as breast cancer and cervical cancer. There is neither legislative intent nor legislative language that would cover abortion under this amendment, nor would abortion coverage be mandated in any way by the Secretary of HHS. [15]

Nonetheless, on August 1, 2011, in complete disregard of this legislative history, HHS' Health Resources and Services Administration (HRSA) adopted its WOMEN'S PREVENTIVE SERVICES: REQUIRED HEALTH PLAN COVERAGE GUIDELINES (the "Contraceptives Mandate") for Women's Preventive Services—including contraception—that will be covered without cost sharing in new health plans starting in August 2012. The required "contraceptive" services expressly include: "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." Until now, no federal law has required private health plans and health insurance issuers to cover these services. In its misleading August 1, 2011, news release, HRSA describes its Guidelines mandating comprehensive contraceptive coverage, as follows:

> Contraception and contraceptive counseling: Women will have access to all Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling. These recommendations do not include abortifacient drugs. Most workers in employer-sponsored plans are currently covered for contraceptives.

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[14] Press Release, Sen. Barbara Mikulski, Mikulski Puts Women First in Health Care Reform Debate (Nov. 30, 2009), *available at* http://www.mikulski.senate.gov/media/record.cfm?id=320304.

[15] Cong. Rec. S12274 (daily ed. Dec. 3, 2009) (colloquy between Sen. Mikulski and Sen. Casey), *available at* http://thomas.loc.gov. On December 1, 2009, Senator Mikulski stated: "There are no abortion services included in the Mikulski amendment. It is screening for diseases that are the biggest killers for women – the silent killers of women. It also provides family planning – but family planning as recognized by other acts." Cong. Rec. S12028 (daily ed. Dec. 1, 2009) (statement of Senator Mikulski), *available at* http://thomas.loc.gov.

> Family planning services are an essential preventive service for women and critical to appropriately spacing and ensuring intended pregnancies, which results in improved maternal health and better birth outcomes.[16]

HRSA's statement that these recommendations "do not include abortifacient drugs" is misleading and inaccurate. The FDA-approved "emergency contraception" (EC) drugs covered by this mandate, like Plan B (Next Choice) and "ella," a close analogue to the abortion drug RU-486, most recently approved for EC can work by interfering with implantation after fertilization occurs. Ella has been shown in animal tests to cause abortion. Thus, the mandate includes drugs that may cause an abortion both before and after implantation.[17]

Likewise, there are also studies that levongestral emergency contraception provided in Plan B prevents or compromises endometrial implantation of a fertilized ovum.[18] Since ella and

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[16] Affordable Care Act Rules on Expanding Access to Preventive Services for Women, HealthCare.gov, http://www.healthcare.gov/news/factsheets/2011/08/womensprevention08012011a.html (last accessed Nov. 27, 2012).

[17] On August 2, 2010, ninety Congressmen sent a letter to the Food and Drug Administration expressing concern about the drug ella, which was under consideration for approval as an "emergency contraceptive" by the agency. The bipartisan letter raised concerns regarding (a) the similar chemical makeup of ella and the abortion drug RU-486, (b) the absence of evidence that the drug does not cause abortion, (c) the failure to address the dangers of off-label use (i.e., for conditions other than those approved by the FDA), and (d) the lack of information about health risks. LETTER TO MARGARET HAMBURG, FDA COMMN'ER, Aug. 2, 2010, http://www.aul.org/wp-content/uploads/2010/09/08-02-10-Letter-to-Commissioner-Hamburg-Re-Ulipristal-Acetate.pdf. The signers included fourteen Democrats. Nonetheless, the FDA approved ella on August 13, 2010 as an "emergency contraceptive," despite the fact that the agency's own prescribing instructions indicate that ella can cause abortions. (Like RU-486 [mifepristone], ella is a selective progesterone receptor modulator. By blocking progesterone, an SPRM can either prevent a developing human embryo from implanting in the uterus or starve an implanted embryo to death.) The FDA's prescribing instructions raise other red flags about ella, corresponding to those raised in the Congressional letter. Classifying ella as a contraceptive means that money from federal and state taxpayers will be used to subsidize the drug through "family planning" programs such as Title X. See Family Planning Services and Population Research Act of 1970, Public Law 91-572, U.S. Statutes at Large 84 (1971): 1504. The FDA's allowance for ella to be mis-marketed as a "contraceptive" also has implications for its funding under the Affordable Care Act and IFR promulgated there under, as described above, that requires all insurance plans—even those that do not participate in the new exchanges—to provide coverage for "preventive care" for women. Since ella has been inaccurately approved as merely a 'contraceptive' and has not been labeled as an abortion drug, HRSA's decision to classify "contraception" as 'preventive care' now funnels federal tax dollars towards funding abortion in violation of President Obama's EXECUTIVE ORDER 13,535 (Mar. 29, 2010).

[18] As summarized in *Plan B Agonistics: Doubt Debate & Denial*, 10 NAT'L CATHOLIC BIOETHICS QTLY 741 et seq. "(Duramed Pharmaceuticals) and Next Choice (a generic version marketed by Watson Laboratories)

Plan B have been inaccurately approved as merely a 'contraceptive' and not been labeled for what they actually are in certain circumstance—abortion drugs, HRSA's decision to classify "contraception" as 'preventive care' now effectively funnels federal tax dollars towards funding abortion in violation of President Obama's EXECUTIVE ORDER 13,535.[19] Viewed from this perspective, such "preventative care" is not "care" at all, but simply a cover to fool the American public into paying for the elimination of "unwanted" pregnancies when, in fact, "pregnancy is not a disease" to be prevented and "children are not a 'health problem' to be surgically or medically removed—they are the next generation of Americans."[20]

Because the Mandate violates the APA for each of the above-described reason, it highly likely the Mandate must be "h[eld] unlawful and set aside." 5 U.S.C. § 706(2).

IV. PLAINTIFFS HAVE NO OTHER ADEQUATE REMEDY AT LAW.

Two threshold elements plaintiffs must prove to support the issuance of a preliminary injunction are that plaintiffs have no adequate remedy at law, and that plaintiffs will suffer irreparable harm if the injunction is not issued. "In the preliminary injunction analysis these two

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are the trade names of the two levonorgestrel-based emergency Contraceptives available in the United States. Broad survey articles that assess most of the scientific literature include Vivian W. Y. Leung, Marc Levine, and Judith A. Soon, "Mechanisms of Action of Hormonal Emergency Contraceptives," PHARMACOTHERAPY 30.2 (February 2010): 158–168, http://www.medscape.com/viewarticle/719473; and James Trussell and Elizabeth G. Raymond, "Emergency Contraception: A Last Chance to Prevent Unintended Pregnancy," September 2010, http://ec.princeton.edu/questions/ec-review.pdf. For a specifically Catholic perspective, essential reading includes the following chapters in the 2009 edition of Catholic Health Care Ethics: A Manual for Practitioners, ed. Edward J. Furton (Philadelphia: National Catholic Bioethics Center).

[19] EXECUTIVE ORDER 13,535 (Mar. 29, 2010) provides, in pertinent part: "Following the recent enactment of the Patient Protection and Affordable Care Act ("the Act"), it is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment. The purpose of this order is to establish a comprehensive, Government-wide set of policies and procedures to achieve this goal and to make certain that all relevant actors — Federal officials, State officials (including insurance regulators) and health care providers — are aware of their responsibilities, new and old."

[20] Cardinal Daniel N. DiNardo, Archbishop of Galveston-Houston, and Chairman, Committee on Pro-Life Activities US CONFERENCE OF CATHOLIC BISHOPS, as quoted in WORLD MAGAZINE, Aug. 27, 2011 at 20.

requirements—irreparable harm and no adequate remedy at law—tend to merge.*"* *Illinois Sporting Goods Ass'n v. County of Cook*, 845 F. Supp. 582, 585 (N.D. Ill. 1994) (citing *Roland Machinery Co. v. Dresser Indus., Inc.,* 749 F.2d 380, 386 (7th Cir. 1984) ("The question is then whether the plaintiff will be made whole if he prevails on the merits and is awarded damages.")).

To prove that they have no adequate remedy at law plaintiffs must show that an award of damages at the end of trial will be "seriously deficient as a remedy for the harm suffered." *Roland,* 749 F.2d at 386. *See also, Kellas v. Lane,* 923 F.2d 492, 496 (7th Cir. 1991). To satisfy the requirement of irreparable harm, plaintiffs must show that their harm "cannot be prevented or fully rectified by the final judgment after trial." *Roland,* 749 F.2d at 386.

In *Roland* the Seventh Circuit listed four situations where damages may be inadequate:

1. Plaintiffs may be forced to close their businesses while awaiting final judgment.
2. Plaintiffs are unable to finance their lawsuit without the revenues from their businesses that defendants are threatening to destroy.
3. Defendant may become insolvent before a final judgment can be entered.
4. Plaintiffs' losses make damages difficult to calculate, such as lost business profits.

Roland, 749 F.2d at 386. *See also Somerset House, Inc. v. Turnock,* 900 F.2d 1012, 1018 (7th Cir. 1990) and *Zurn Constructors, Inc. v. B.F. Goodrich Co.,* 685 F.Supp. 1172, 1181 (D. Kan. 1988) and cases cited therein ("Numerous cases support the conclusion that loss of customers, loss of goodwill, and threats to a business' viability can constitute irreparable harm.").

This Court is the only recourse to protect Triune and its owners from the Mandate's assault on their religious freedom. Triune has no adequate remedy at law. It faces immediate threat of the Mandate's penalties, endangerment of its employees' health plan, and perhaps even endangerment of the company itself, unless this Court orders preliminary injunctive relief as soon as possible. Triune is suffering irreparable harm by Defendants' coercion, which blatantly violates longstanding religious conscience, speech and other protections found in federal statutes and the constitution.

Recognizing it had no other options, Triune filed its complaint on October 15, 2012 to challenge the Mandate on a variety of federal law grounds and seek injunctive relief.

V. ABSENT INJUNCTIVE RELIEF PLAINTIFFS WILL SUFFER IRREPARABLE HARM.

To obtain a preliminary injunction, the moving party must show that its case has "some likelihood of success on the merits" and that it has "no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied." *Ezell v. City of Chicago,* 651 F.3d 684, 694 (7th Cir. 2011). After the moving party meets these threshold requirements, the district court "must consider the irreparable harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied." *Ty, Inc. v. Jones Group, Inc.,* 237 F.3d 891, 895 (7th Cir. 2001). The district court must also consider the public interest in granting or denying an injunction. *Id.* In this balancing of harms conducted by the district court, the court weighs these factors against one another "in a sliding scale analysis." *Christian Legal Soc'y v. Walker,* 453 F.3d 853, 859 (7th Cir. 2006). "The sliding scale approach is not mathematical in nature, rather 'it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.'" *Ty, Inc.,* 237 F.3d at 895–96 (quoting *Abbott Labs. v. Mead Johnson & Co.,* 971 F.2d 6, 12 (7th Cir. 1992)). Stated another way, the district court "sit[s] as would a chancellor in equity" and weighs all the factors, "seeking at all times to 'minimize the costs of being mistaken.'" *Abbott Labs.,* 971 F.2d at 12 (quoting *Am. Hosp. Supply Corp. v. Hosp. Prods. Ltd.,* 780 F.2d 589, 593 (7th Cir.1986)).

"[I]n First Amendment cases, the likelihood of success on the merits will often be the determinative factor." *ACLU of Ill. v. Alvarez,* 679 F.3d 583, 589 (7th Cir. 2012) (internal citation omitted). The loss of First Amendment freedoms is presumed to constitute an irreparable injury for

which money damages are not adequate, and, thus, "injunctions protecting First Amendment freedoms are always in the public interest." *Christian Legal Soc'y*, 453 F.3d at 859 (internal citation omitted). This is because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter a preliminary injunction against enforcement of the HHS Mandate and deny Defendants' Motion to Dismiss.

Submitted this 28th day of November, 2012.

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

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CERTIFICATE OF SERVICE

The undersigned plaintiffs' counsel, hereby certify that on November 28, 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 Defendants, listed below, were served by email.

Eric H. Holder, Jr.
U.S. Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Timothy F. Geithner
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Kathleen Sebelius
U.S. Depart. of Health & Human Services
200 independence Avenue, SW
Washington, DC 20201

Hilda Solis
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

s/ David B. Waxman

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

CHRISTOPHER YEP, MARY ANNE YEP, AND TRIUNE HEALTH GROUP, LTD., *an Illinois corporation*, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; UNITED STATES DEPARTMENT OF THE TREASURY; TIMOTHY F. GEITHNER, *in his official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; UNITED STATES DEPARTMENT OF LABOR; HILDA L. SOLIS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF LABOR, Defendants.	)	Civil Action No. 12-cv-06756

PRELIMINARY INJUNCTION (PROPOSED) ORDER

This matter having come before the Court on Plaintiff's Motion for Preliminary Injunction (Doc. #___), and this Court having reviewed the pleadings and heard arguments from counsel, the Court hereby grants Plaintiff's Motion for Preliminary Injunction.

Plaintiffs have satisfied all of the requirements for preliminary injunctive relief. In particular, Plaintiffs have demonstrates a substantial likelihood of success in proving

that the regulations at issue are invalid under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*., and the First Amendment and the Administrative Procedure Act.

Plaintiffs have demonstrated that, without injunctive relief, they would suffer substantial, irreparable harm, and have no adequate remedy at law. The public interest favors and injunction, as the public interest always favors the enforcement of Constitutional rights, and the Defendants have other means available to achieve their stated policy goals.

Accordingly, the Defendants, their agents, officer, and employees, and any requirement that Plaintiffs provide contraception, abortifacients, or related education and counseling in its employee health plans contrary to its religious objections, are hereby ENJOINED from any application or enforcement thereof against Plaintiffs, including the substantive requirements imposed in 42 U.S.C. § 300gg-13(a)(4), Pub. L. 111-148, § 1563(e)-(f), the application of the penalties found in 26 U.S.C. §§ 4980D & 4980H and 29 U.S.C. §1132, and any determination that any requirement is applicable to the Plaintiffs.

It is so ORDERED, this ___ day of _____, 2012.

_____
Honorable Amy J. St. Eve, U.S.D.J.

CERTIFICATE OF SERVICE

I, David B. Waxman, plaintiffs' counsel, hereby certify that on November 28, 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 Defendants, listed below, were served by email.

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s/ David B. Waxman

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

CHRISTOPHER YEP, MARY ANNE YEP, AND TRIUNE HEALTH GROUP, LTD., *an Illinois corporation*, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; UNITED STATES DEPARTMENT OF THE TREASURY; TIMOTHY F. GEITHNER, *in his official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; UNITED STATES DEPARTMENT OF LABOR; HILDA L. SOLIS, *in her official capacity as* SECRETARY OF THE U.S. DEPARTMENT OF LABOR, Defendants.	Civil Action No. 12-cv-06756

JOINT DECLARATION OF CHRISTOPHER AND MARY ANNE YEP, HUSBAND & WIFE, IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO MOTION TO DISMISS

CHRISTOPHER YEP AND MARY ANNE YEP, each being duly sworn and under oath, each and jointly declare on behalf of themselves and TRIUNE HEALTH GROUP, LTD., depose, as follows:

1. We are over the age of eighteen, authorized, competent and fully knowledgeable to testify as set forth in this Declaration. We are both currently residents of Lemont, Illinois.

2. Through our 100% ownership of its stock and voting control of its Board of Directors, together we own and control the corporate plaintiff, Triune Health Group, Ltd., an Illinois corporation ("THG" or "Triune"). Triune stock is not publicly registered or traded. Triune currently has approximately 80 employees, and does business throughout the United States.

3. Triune is a national health care company providing services in both the major medical health and worker's compensation arena. Triune provides our clients both proactive and reactive services intended to avoid employee injury and illness and, in the event of such injury or illness, to provide caring, cost effective, and prompt rehabilitation. As described in its mission statement, Triune is "people helping people with their total health." Acting proactively, Triune offers its clients, among other things, health risk assessments, personal self-care planning, and executive health coaching. Managing rehabilitation, Triune offers its clientele, among other things, medical case management, vocational rehabilitation, and bill auditing services.

4. Triune's employees are well-seasoned and highly-trained professionals, primarily nurses, certified case managers, most with bachelors or masters degrees. Triune's vocational rehabilitation consultants all have masters degrees or above. Our employee base is also very stable. Some 25% of Triune's employees have been employed by the company for more than ten years.

5. Triune's customers include public and private clientele. Among others, Triune serves self-insured employers, third party administrators, insurance carriers, attorneys, government agencies, and trustees.

6. Declarant Christopher Yep, at all times relevant, has served as the President of Triune. Declarant Mary Anne Yep, at all times relevant, has served as the Vice President

of Triune. As a result of our 100% ownership of the company, and our senior management roles in the company, we are primarily responsible for the overall operation of Triune, including the terms and provisions of the health care coverage Triune provides its employees.

7. We have been married to one another for 39 years and are both devout practicing Roman Catholics. In the course of our marriage, we have had ten children, two of which we lost in miscarriage, and eight of which have survived to adulthood.

8. Our eight surviving children all were raised as practicing Roman Catholics. Starting with grammar school continuing through where they obtained their advanced degrees, all were and/or are being educated in authentically Roman Catholic schools. All have earned, or are earning college degrees in authentically Roman Catholic institutions of higher education. Two of our sons are currently studying for the priesthood. With the exception of our sons studying for the Roman Catholic priesthood, all of our other children are currently employed in various capacities by Triune.

9. In the course of bringing up our children as Roman Catholics, among other things, we have instructed and trained each of them in the basic tenets of our Roman Catholic faith, as set forth in the Church's catechism and other foundational documents, including the encyclicals and other fundamental teaching documents of the Church.

10. By raising our children as we have, educating them personally in our faith, having them educated at authentically Catholic institutions, and by employing them at Triune, we are attempting to assure that upon our retirement from the company, Triune will continue to be inculcated with the Roman Catholic values to which we have ascribed since the company was founded, and to which we and Triune owe our success as a business, as described at greater length below.

11. Our Roman Catholic faith has shaped and determined everything about our lives, including our marriage, our personal conduct, how we raise our family, treat others around us, and conduct ourselves as directors, officers, and controlling shareholders of Triune. Only by living our lives in this way, and as our Roman Catholic faith instructs, can we fulfill our affirmative duties as Christians and as Roman Catholics, to care for and serve others and thereby "Go ye into the whole world, and preach the gospel to every creature." Mark 16:14-16. *See also* Matthew 28:19 ("Going therefore, teach ye all nations; baptizing them in the name of the Father, and of the Son, and of the Holy Ghost"); James 1:22 ("But be ye doers of the word, and not hearers only, deceiving your own selves.").

12. In pursuit of a deeper and more thorough understanding of the tenets of our Roman Catholic faith, throughout our married life we have both engaged in outside educational activities, to better know the history, scriptural basis, and essential tenets of the Roman Catholic church. These outside activities have included, among other things and without limitation:

a. Training for and teaching "Familia," a four year curriculum on the foundational teachings of the Roman Catholic Church regarding family life, including the sublime danger of contraception;

b. Training for and teaching the Rite of Christian Initiation of Adults ("RCIA") at our local parish;

c. Training for and administrating a two year program on Catholic stewardship (using our God-given "time, talent, and treasure" to proselytize the faith) at our local parish; and

d. Participating regularly in retreats and other forms of spiritual direction.

13. In addition to our pursuit of a deeper understanding of the tenets of our Roman Catholic faith and how to apply those tenets to our management of Triune, throughout

our married life we have both also attempted to live our faith in our larger community, among other things and without limitation, by:

a. Immersing ourselves in a multi-year effort to regenerate a local authentically Roman Catholic grammar school that without our intervention likely would have shuttered its doors permanently but which is now self-sustaining;

b. Serving as an executive administration office for the local superior of an international Roman Catholic religious congregation; and

c. Generating funding for and overseeing the installation of a computer lab for our local Roman Catholic grade school.

14. When we first established the company today known as Triune, it was known as "Disability Management Network." At that time, Declarant Christopher Yep was employed by a company doing similar work, but with corporate values which we believed were inconsistent with our religious beliefs regarding our obligations to our family, among other things, which in turn impelled us to form our own company with values more compatible with our Roman Catholic faith.

15. In originally creating and developing our own business, we deliberately attempted to conform it to the Holy Bible and the tenets of our Roman Catholic faith.

16. Originally regular listeners to Dr. James Dobson's' radio program, "Focus on The Family," we were deeply inspired and motivated by one of Dr. Dobson's guest, Larry Burkett, the author of "Business by the Book." (The "book" referenced in the title is the Holy Bible). Unable to find at that time a Roman Catholic business planner taking the same approach, we contacted Burkett who directed us to a local Christian (not Catholic) financial planner trained in Burkett's approach to managing a business "By the Book."

17. As we continued to deepen our understanding of our Roman Catholic faith, we also sought to conform how we were operating what today is known as Triune to the values promulgated by Blessed John Paul II, in his Encyclical Letter, "On Human Work"

(1981) and in the "Charter for Health Care Workers," published by the Vatican's Pontifical Council for Pastoral Assistance. The book "Business as a Calling—Work and the Examined Life," (1996) by the Roman Catholic writer Michael Novak, was also instrumentally influential to us in that effort.

18. As a constant reminder to us of what, through Triune, we are trying to accomplish, these above referenced publications, among others continue to be displayed in the board room of Triune's Oak Brook, Illinois headquarters, along with other items reflecting the history of our company.

19. As Disability Management Network, our original corporate logo was three concentric red circles. To the public, these three concentric circles represented the three components of our approach to wellness: that of "body, mind and spirit."

20. To us and to those who knew us well, however, our corporate logo also provided a constant reminder of the values of our Roman Catholic faith that we were attempting to live through our company. This is because, to anyone familiar with our faith, the corporate name "Triune," like the corporate logo we adopted for our company, reflects our conviction, as our Roman Catholic faith instructs, of a triune God consisting of three persons in one, Father, Son, and Holy Spirit, who created human beings in His image and likeness and making each, as such, inherently valuable.

21. That is, though we did not at Triune's inception and do not now advertise ourselves as a "Roman Catholic" business, or even as a faith-based one, anyone familiar with how we approach our business and the tenets of our Roman Catholic faith could recognize that the logo of our business evokes that Roman Catholic faith. Even our competitors, in an effort to win business from us, sometimes refer to Triune as the

"crucifix company," even though (other than voluntarily and then only in an employee's personal work space) the company displays no overtly religious imagery in its offices.

22. We re-named our company Triune Health Group, Ltd. in 2007, to better reflect the more wholistic approach we wished Triune to be taking in serving our clients. When we renamed our company Triune, however, we continued to maintain our concentric ring triune logo for the same reasons that we adopted it upon our founding.

23. Since we created the business today known as Triune Health Group, Ltd., we have continued to conduct Triune in a manner consistent with and not violative of our Roman Catholic faith, and in particular regarding the tenets of the Roman Catholic Church relating to the sanctity of human life, the dignity of the human person, and the institution of marriage as historically and traditionally understood in our Roman Catholic faith.

24. Our Roman Catholic faith professes and we sincerely believe in the inherent dignity, and indeed the inviolable sanctity, of each and every human being that rests ultimately on the immutable truth that every human being has been created in the image and likeness of God, before whom all human beings stand as equals, whether acknowledged or not, and as such all human beings are endowed with inalienable rights.

25. Our Roman Catholic faith further professes and we sincerely believe that the life of each and every human being must be protected, cherished, and nurtured 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.

26. Our Roman Catholic faith further professes and we sincerely believe that the procreative capacity of human beings is a precious gift from God by which human beings are allowed to participate in God's plan to share in the process of creation and that, as a result, any acts of deliberate interference with that process of creation bound up with acts

of unitive human love—including artificial contraception, abortion, and/or sterilization—are inherently evil, gravely wrong, and sinful.

27. Our Roman Catholic faith further professes and we sincerely 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 inherently evil, gravely wrong, and sinful.

28. Our Roman Catholic faith further professes and we sincerely believe that as believers neither we nor Triune can facilitate access to, subsidize, or materially cooperate with the provision of the offensive drugs or services described herein without breaching our solemn and sacred obligations to God, betraying our professed religious faith, and thereby disserving the best interests of—as well as risking serious physical and/or spiritual injury to—our fellow human beings.

29. Our Roman Catholic faith further professes and we believe that any involvement by us or Triune in the facilitation or subsidization of such drugs what so ever, whether contraceptive or abortifacient in their potential effect, is itself as morally unacceptable, gravely wrong and sinful, as the direct provision of such drugs.

30. Our Roman Catholic faith further professes and we sincerely believe that by Triune paying for health insurance that will provide Triune employees with access to drugs and services to which we object by reason of our sincerely held religious convictions, such federal and state laws operate together to violate our legal rights, including our 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 our rights under other federal and state laws.

31. This is not to say that we are attempting to impose our religious views on Triune's employees—we are not. It is to say that for us to provide for such coverage violates one of the central precepts for which Triune stands—a consistency between one's spiritual beliefs and how one conducts his or her life. Just as we are not seeking to impose our religious views on anyone, so too do we believe we cannot be forced to facilitate or participate, directly or indirectly, in conduct that our Roman Catholic faith professes, and we believe to be inherently evil, gravely wrong and sinful.

32. It is against this backdrop of our Roman Catholic faith that we formed Triune and thereafter have always attempted to operate the business in a manner most consistent with our deeply held religious convictions, including our beliefs about the sanctity of human life, the dignity of the human person, and the institution of marriage as historically and traditionally understood by the Roman Catholic faith.

33. As reflected in the writings that guided our creation and development of Triune, described above, we have never considered Triune to be solely a secular business but rather as a mission and an instrument of our Christian calling as Roman Catholics. As Triune's owners, senior management, and controlling shareholders our religious beliefs as devout and practicing Roman Catholics are one and the same as Triune's religious beliefs.

34. Our religious convictions are reflected in at least two major ways at Triune: how we treat our employees internally and how we present Triune in every interaction with the clients Triune serves.

35. We conform our conduct as best we can in obedience to and in furtherance of the tenets of our Roman Catholic faith. That is, Triune's treatment of our own employees is also driven and directed by our religious obligation to treat each employee as a person

made in the image and likeness of God. Thus, and as mandated by the Roman Catholic faith that we profess, we strive to create a workplace at Triune where each employee is respected, treated fairly, receives a just wage, and enjoys accident and health benefits that allow our employees to live lives consistent with their individual human dignity.

36. For example, in our hiring and in our terms and conditions of employment, Triune never imposes any "religious test" on or otherwise discriminates against the religious beliefs of our potential employees. We do nevertheless make clear to our employees that Triune believes in the sanctity of every human life, from conception to natural death, and in the inherent dignity of every person. These concepts are in no way presented by us as "religious" in origin; they are presented however as being at the core of our wholistic approach to health and wellness.

37. Likewise, Triune's Mission and Virtues Agreement, which every new employee in orientation reviews and acknowledges, states that "Triune Health Group is a mission and virtue based organization, which respects life from conception to natural death." Consistently, Triune's employee handbook also proclaims Triune's 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."

38. To the end of nurturing their spiritual well-being, and also pursuant to our sincerely held religious convictions, Triune among other things and without limitation periodically make available to its employees (but never require in any form, directly or indirectly) spiritual guidance in our corporate offices. This we do unobtrusively and discretely because by design our offices allow such activities to occur separate and apart

from the work spaces of anyone in the office who does not wish to participate in such spiritual guidance.

39. Triune also has openly supported, at times financially but also by in-kind contributions of time off, employees engaging in overseas mission work, whether or not it is sponsored by Roman Catholic organizations. Triune also annually closes its offices for a half day on Good Friday, the day our Roman Catholic faith marks as the anniversary of Jesus Christ's crucifixion and death on Calvary. Upon doing so, for those who are not Catholic, or even Christian, Triune encourages (but does not require) all of its employees on that afternoon to engage in some form of spiritual reflection.

40. Our operating principals, applied as described above, have been and continue to be at the core of our business model, and integral to our success. According to the highly respected "Crain's Chicago Business" publication, Crain's and Triune's own employees have acknowledged, endorsed, and otherwise indicated their expressed support for these operating principles by voting Triune as one of the best places to work in the Chicago area in 2010. Triune again earned that designation by Crain's and by Triune's employees, in 2012.

41. Additionally, in 2012, Triune also was selected by Crain's Chicago Business as "the Number One Place for Women to Work in 2012." This most recent recognition by Crain's, and by Triune's employees, as "the Number One Place for Women to Work" is particularly meaningful and gratifying to Triune, given that some 78% of our employees are women.

42. As Triune's senior management, we are reliably informed by Crain's and believe that balloting for this designation is done in secret and Triune management has never had any input regarding or participation in the polling for these designations.

43. As to how, consistent with our Roman Catholic faith, Triune seeks to maintain the health of our clients' employees and to expedite and otherwise to facilitate the recovery of their injured or ill employees, we encourage our clients to assess their goals and determine the steps each employee needs to take in order to recover and live full and healthy lives. We believe and are convinced that that Triune's motivational efforts to help workers remain in and/or re-enter the workforce and enjoy the dignity of work is vitally important to their total rehabilitation and must therefore be the focus of any rehabilitation.

44. Under our management, Triune also endeavors to help each and every client determine for him or herself what goals he or she needs to achieve in order to live a full and flourishing, truly human life. This is consistent with our understanding of our Roman Catholic faith, which has long taught that a conversion must always be of the heart, and completely voluntary, and not in any way coerced. Thus, these efforts also are undertaken both in obedience to and in furtherance of the tenets of the Roman Catholic faith professed and practiced by us through Triune.

45. Consistent with these beliefs, Triune works to serve clients of all faiths (or of no faith at all) and does not consider a potential clients' adherence to any faith tradition or beliefs as a qualification for client selection or service. That is, and consistent with the teachings of our Roman Catholic faith, Triune in no way attempts imposes its religious views upon its clients.

46. We authorized the filing of this lawsuit to secure judicial review of what we understand will be construed as violations by Triune of certain regulations adopted under the 2010 Patient Protection and Affordable Care Act ("the PPACA"). We are seeking review, specifically, of those regulations purporting to mandate that employers include in

their employee group health benefit plans coverage for contraceptive and abortifacient drugs and sterilization and related counseling services that are wholly at odds with our sincerely held religious beliefs, as set forth in the tents of our Roman Catholic faith.

47. We also seek 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 Federal Mandate" or "the Final Rule" or "the Federal 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.

48. As such, the Federal Mandate purports to require Triune to provide our employees with coverage for 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 what we believe and understand are their known abortifacient mechanisms of action, as well as sterilization. Our providing such coverage is wholly at odds with our sincerely held religious beliefs, as set forth in the tenets of our Roman Catholic faith.

49. In addition, and in a separate and parallel Illinois state court proceeding commenced contemporaneously herewith, we seek relief from the operation of Illinois state law, 215 ILCS §§ 5/356z.4 and 5/356m (the "Illinois Mandate"), which requires

that, in order to provide accident and health benefits for our employees, any insurance that we purchase for our employees must include coverage provisions for contraceptive drugs and services that are also wholly at odds with our sincerely held religious convictions and which consistent with the tenets of our Roman Catholic faith, we cannot facilitate making available to our employees.

50. As an employer of more than fifty individuals on a full-time equivalence, we are advised and understand that Triune is defined by the PPACA as a "large employer," subject to severe penalties if Triune does not provide the mandated health coverage for sterilization, as well as contraceptive and abortifacient drugs that the above described HHS regulations now require Triune to provide.

51. We are further reasonably advised and understand that these "penalties" are now to be deemed "taxes" presumably to be reported on our tax returns, and that in total may amount to a crippling $100 per day per employee for each employee/day if we do not provide such coverage.

52. Since the creation of Triune, we have believed, and our Roman Catholic faith instructs, that the provision of employee health insurance is an integral component of our corporate mission and values. In today's business climate, providing some level of benefits is also a practical business necessity. Failure to offer such benefits to our employees will fatally undermine our thus far successful efforts to attract and retain the kinds of quality employees which we attract now, which will, in turn, undermine and destroy our efforts to facilitate the recovery of injured workers pursuant to the principals that have guided us since the creation of Triune.

53. On the other hand, if we are forced to provide insurance to our employees that we believe conflicts with our fundamental Roman Catholic religious values, as set forth

above, our business also will also suffer irreparable harm. It is simply not possible to pursue our current business model, premised on the teachings of our Roman Catholic faith, and at the same time participate in what that faith teaches is inherently evil, gravely wrong and sinful.

54. As Triune believes that 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 inherently evil, gravely wrong and sinful, Triune also believes such practices are harmful to the health and well-being of all human beings.

55. Consequently, Triune believes that providing its employees with insurance coverage for contraceptive and abortifacient drugs and sterilization and related counseling services that facilitate such immoral practices constitutes cooperation with intrinsic evil and violates the laws of God.

56. However, the only way in which Triune can now lawfully provide accident and health benefits for its employees, under both state and federal law, is by purchasing an insurance that covers such immoral practices since the only exemption from state law is self-insurance and Triune is not does quality for any of the current exemptions under federal law that do not include an exemption for self-insurance.

57. Unless current state and federal laws applicability to Triune are enjoined, Triune would have no other choices but to continue to provide our employees with the morally objectionable benefits required by state and federal law, reduce our full-time workforce below 50 employees and cancel all insurance as permitted by federal law, but still go out of business because it is not financially feasible at this time to self-insure and thereby qualify for the exemption from state law.

58. Unless current state and federal laws applicability to each of us personally is also enjoined, we too would be forced to continue to purchase for ourselves and our families insurance coverage with morally objectionable benefits required by state and federal law, or leave ourselves exposed to potentially catastrophic health care expenses and also the personal tax penalties currently provided for by law.

59. On or about November 26, 2012, we commenced a civil action against the State of Illinois in state court to enjoin as applied to Triune the Illinois state law requirement, exempting self-insured employers, but requiring all other non-self-insured employers, like Triune, to provide and pay for the religiously objectionable coverage of sterilizations, as well contraceptive and abortifacient drugs.

60. We do not wish for Triune go out of business. Were Triune to go out of business we, our families, our Triune employees and the families of those employees will all be deprived of what is currently and for us all now is a good and sustaining livelihood.

61. We reasonably believe and are advised that we cannot avoid the Illinois Mandate because that mandate applies to any health insurance policy issued in Illinois, where we and Triune reside. Triune also cannot secure the policy it needs to provide health benefits without inclusion of mandated benefits whose provision by us we believe constitutes intrinsically evil, gravely wrong and sinful conduct.

62. Although the Illinois Mandate purports to exempt employers who are self-insured, we are informed and reasonably believe that Triune cannot legally or affordably become a self-insured employer. Even if Triune had the size or resources adequate to self-insure, and it does not, federal law does not exempt self-insured employers.

63. We are informed and reasonably believe that Triune also is subject to the Federal Mandate that requires them to provide these religiously objectionable benefits because Triune does not qualify for any of the regulatory exemptions from the Federal Mandate.

64. We are informed and reasonably believe that Triune also does 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). This is because, among other things, Triune is a for profit entity, hires many non-Catholics, serves many non-Catholics, and does not qualify as having as its primary purpose of inculcating religious values in its employees or clients.

65. We are informed and reasonably believe that 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 for-profit entity.

66. We are informed and reasonably believe that Triune cannot avoid the Federal Mandate by employing the "grandfathering" provision or the temporary safe harbor because, on an annual basis, Triune must seek out and purchase renewed coverage for its employees which coverage, from year to year changes materially enough that its carriers will not certify the plans as "grandfathered" under the Federal Mandate.

67. Additionally, and even before the Federal Mandate took effect Illinois state law purported to require coverage for the drugs and services to which we object by reason of our Roman Catholic faith and our sincerely held religious convictions opposed to being a health care payer required to provide the insurance coverage for contraceptives as required by the Illinois Mandate, described above. Because to date we have not determined any way short of a court order to avoid the Illinois Mandate being challenged

in the state action, Triune currently has coverage that meets these Illinois requirements and thus is not grandfathered under the Federal Mandate..

68. In sum, at present, the state and federal mandates, described above, now work together to force us and Triune to violate our conscience and betray our religious convictions by requiring us to provide Triune's employees with benefits which our Roman Catholic faith teaches and which we believe to be intrinsically evil, gravely wrongful, and sinful.

69. Yet, we also believe that we are morally obliged to provide our employees with health and accident insurance benefits. Indeed, under federal law, if we employ more than 50 employees we must do so or pay severe financial penalties. The Constitution and laws of the United States and Illinois should not be permitted to impose on Triune such a Hobson's Choice.

70. Triune's group health plan is due for renewal on January 1, 2013, at which time, unless enjoined from doing so by the injunctive relief being requested in this action and soon to be requested in the pending state action, Triune will become subject to penalties for non-compliance with the federal and state laws if it fails to provide health coverage mandated by those laws.

71. Triune wishes to renew coverage for our employees by purchasing an employee group insurance policy while excluding coverage for drugs and services to which we object by reason of our sincerely held religious convictions.

72. Triune cannot purchase an insurance policy in order to provide benefits consistent with our religious convictions because the Illinois Mandate requires any policy issued to Triune to provide its employees with access to drugs and services that our Roman Catholic faith teaches us and which we sincerely believe to be intrinsically evil, gravely

wrongful and sinful. Until very recently we understood and reasonably believed our policies were not providing such offensive coverage. When we first learned that they were, we instructed our brokers to locate and purchase new and conscious compliant policies. When we discovered that they had failed to do so, we retained new brokers. Our new brokers also were instructed to locate and purchase new and "conscience compliant" policies for Triune. When the new brokers reported that they too did not think this was possible, we continued to research a solution. To avoid the Illinois Mandate, in late 2011 and early 2012 we even considered moving our business to another state. The Federal Mandate mooted that option which is why we brought this action in federal court. We now are reliably informed and believe that, even in the absence of the Federal Mandate, as an Illinois corporation no such coverage is legally available to us unless this court so declares and authorizes the issuance of such a policy to avoid these offensive mandates.

73. Triune cannot provide benefits to our employees consistent with our Roman Catholic faith because the Federal Mandate requires that we provide our employees with access to drugs and services that our Roman Catholic faith teaches us and which we believe to be intrinsically evil, gravely wrongful and sinful.

74. At all times relevant, we have been researching and continue to research for any means to self-insure or otherwise avoid these federal and state mandates, but to date we have found no such means that are legally, financially, or otherwise available to us.

75. Consequently, the Federal and Illinois Mandates at issue force us to provide our employees with coverage of those services which our Roman Catholic faith instructs us are inherently evil, gravely wrongful and sinful.

76. If subject to the Federal Mandate, we will be compelled either to comply with the Federal Mandate's requirements in violation of our sincerely held religious convictions, or pay ruinous fines that would have a crippling impact on our business and in short order force Triune to cease doing business and shut down.

77. We are reliably 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. These exemptions to date have omitted in excess of 191 *million* persons from the federal government Mandate.

78. We are reliably informed and believe that, as a result, entities granted waivers of the Federal Mandate do not have to provide coverage mandated by HHS to in excess of some 191 million persons.

79. We are reliably informed and believe that entities granted waivers of the federal Mandate do not have to provide coverage for contraception, including abortifacient contraception and sterilization.

80. We have filed suit both in this case, as well as in the Illinois state court action, to escape the dilemma in which we and Triune find ourselves. We cannot continue in good conscience to comply with these immoral mandates in violation of our faith and the teaching of the Roman Catholic Church, the tenets to which we devoutly adhere, and which immoral mandates we also believe to be an illegal and unconstitutional infringement on our state and federal rights.

Pursuant to 28 U.S.C. § 1746, we, and each of us, declare under penalty of perjury under the laws of the United States that to the best of our knowledge that the foregoing is true and correct.

Executed on this 28th day of November, 2012.

Christopher Yep

Mary Anne Yep

OFFICIAL SEAL
CHARLES P FEDOR
Notary Public - State of Illinois
My Commission Expires Aug 16, 2015