

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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TYNDALE HOUSE PUBLISHERS, INC., a Delaware	)	)	
Corporation; MARK D. TAYLOR;	)	)	
	)	)	
Plaintiffs,	)	)	
	)	)	
v.	)	)	Civil Action No.
	)	)	1:12-CV-1635-RBW
KATHLEEN SEBELIUS, in her official capacity as	)	)	
Secretary of the United States Department of Health	)	)	
and Human Services; HILDA SOLIS, in her official	)	)	
capacity as Secretary of the United States Department	)	)	
of Labor; TIMOTHY GEITHNER, in his official	)	)	
capacity as Secretary of the United States Department	)	)	
of the Treasury; UNITED STATES DEPARTMENT	)	)	
OF HEALTH AND HUMAN SERVICES; UNITED	)	)	
STATES DEPARTMENT OF LABOR; and UNITED	)	)	
STATES DEPARTMENT OF THE TREASURY;	)	)	
	)	)	
Defendants.	)	)	
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**PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Plaintiffs TYNDALE HOUSE PUBLISHERS, INC. and MARK D. TAYLOR hereby move this Court to issue them summary judgment on their claim under the Religious Freedom Restoration Act, declaratory relief, a permanent injunction enjoining the government’s mandate against Tyndale House Publishers, an award of attorneys fees and costs, and other relief as the Court deems appropriate.<sup>1</sup> The Court’s January 30, 2013 order stayed this case “pending the Circuit Court’s resolution of the defendants’ appeal,” and that appeal is now resolved.

<sup>1</sup> Plaintiff move for judgment only on their RFRA claim, so in that respect the motion is for *partial* judgment on their complaint. But if relief is granted them under this claim, it would be unnecessary for the Court to consider their other claims; thus this motion seeks summary *judgment* in full, with respect to the scope of relief requested.

The government's position that not even a Bible publisher can exercise religion is so bizarre that it has decided to abandon its appeal of the preliminary injunction this Court issued in November 2012. By the Court's previous stay order, the stay was lifted upon that conclusion of the appeal. Plaintiffs are entitled to summary judgment because the legal parameters of the decision this Court already made are exactly the same as those that entitle Plaintiffs to summary judgment. This Court concluded in the preliminary injunction context that the Plaintiffs had standing to raise their claim, they could exercise religion, the Mandate substantially burdened such exercise, the government did not show the Mandate is served by a compelling interest, and the government did not show it is pursuing a least restrictive means. *Tyndale House Publishers, Inc. v. Sebelius*, --- F. Supp. 2d ----, 2012 WL 5817323 (D.D.C. 2012).<sup>2</sup> These substantive legal

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<sup>2</sup> In nineteen separate cases injunctions have been issued against this Mandate, compared to only six cases declining to do so. Compare *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. Dec. 28, 2012) (injunction pending appeal); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357 (8th Cir. Nov. 28, 2012) (injunction pending appeal); *Gilardi v. U.S. Dep't of Health and Human Servs.*, No. 13-5069 (D.C. Cir. Mar. 29, 2013) (injunction pending appeal); *Newland v. Sebelius*, 2012 WL 3069154 (D. Colo. July 27, 2012); *Legatus v. Sebelius*, 2012 WL 5359630 (E.D. Mich. Oct. 31, 2012) (preliminary injunction for Weingartz plaintiffs); *Tyndale House Publishers, Inc. v. Sebelius*, 2012 WL 5817323 (D.D.C. Nov. 16, 2012); *Am. Pulverizer Co. v. U.S. Dep't of Health and Human Servs.*, No. 6:12-cv-03459 (W.D. Mo. Dec. 20, 2012); *Monaghan v. Sebelius*, 2012 WL 6738476 (E.D. Mich. Dec. 30, 2012); *Sharpe Holdings, Inc. v. U.S. Dep't of Health and Human Servs.*, 2012 WL 6738489 (E.D. Mo. Dec. 31, 2012); *Triune Health Group, Inc. v. U.S. Dep't of Health and Human Servs.*, No. 1:12-cv-06756 (N.D. Ill. Jan. 3, 2013); *Grote Indus. LLC v. Sebelius*, No. 13-1077, 2013 WL 362725 (7th Cir. Jan. 30, 2013); *Annex Med., Inc. v. Sebelius*, No. 13-1118 (8th Cir. Feb. 1, 2013); *Sioux Chief Mfg. Co. v. Sebelius*, No. 13-0036-CV-W-ODS (W.D. Mo. Feb. 28, 2013); *Lindsay v. U.S. Dep't of Health and Human Servs.*, No. 13-cv-1210 (N.D. Ill. Mar. 20, 2013); *Bick Holding, Inc. v. Sebelius*, No. 4:13-cv-00462-AGF (E.D. Mo. Apr. 1, 2013); *Tonn & Blank Constr. v. Sebelius*, No. 1:12-cv-00325-JD-RBC (N.D. Ind. Apr. 1, 2013); *Hall v. Sebelius*, No. 0:13-cv-00295-JRT-LIB (D. Minn. Apr. 2, 2013); *Hartenbower v. U.S. Dep't of Health and Human Servs.*, No. 1:13-cv-02253 (N.D. Ill. Apr. 18, 2013); *Geneva College v. Sebelius*, No. 2:12-cv-00207-JFC (W.D. Pa. April 19, 2013) (preliminary injunction for Seneca Hardwood Lumber plaintiffs); ; with *Hobby Lobby Stores, Inc. v. Sebelius*, No. 12-6294 (10th Cir. Dec. 20, 2012); *Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir. Dec. 28, 2012); *Conestoga Wood Specialties Corp. v. Sebelius*, No. 13-1144 (3d Cir. Feb. 7, 2013); *Briscoe v. Sebelius*, No. 1:13-cv-00285-WYD-BNB (D. Colo. Feb. 27, 2013); *Eden Foods, Inc. v. Sebelius*, No. 2:13-cv-11229-DPH-MAR (E.D. Mich. Mar. 22, 2013); *MK Chambers Co. v. Dep't of Health and Human Servs.*, No. 13-cv-11379 (E.D. Mich. Apr. 3, 2013).

issues are the same at the summary judgment stage. For the same reasons as the Court's previous order, and on the same record, the Court should reach the same conclusions to grant plaintiffs' motion for summary judgment.

Summary judgment is appropriate because "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *AstraZeneca Pharmaceuticals LP v. FDA*, --- F.3d ---, 2013 WL 1776473, at \*3 (D.C. Cir. 2013) (quoting Fed. R. Civ. P. 56(a)). The issues surrounding this relief are almost entirely legal in character. The government did not challenge any of the facts verified in the record about Tyndale House Publishers itself, and indeed it would have no basis to make such a challenge. Pursuant to local rules, this motion is supported by the attached Statement of Facts with citations to the record.

The government's argument for dismissal of its appeal before the D.C. Circuit shows that it would not be helpful for this court to stay this case pending the Circuit's ruling in a separate appeal. In the government's motion to dismiss this appeal, it specifically argued that the other appeal pending in the D.C. Circuit brought by a food company (*Gilardi*) presents facts of a different character than the "unique" facts here, such that the two appeals should not be litigated together. Defendants-Appellants' Motion for Voluntary Dismissal at 2, *Tyndale House Publishers v. Sebelius*, No. 13-5018 (D.C. Cir. filed Apr. 25, 2013). The government also noted that the District Judge in the other appeal agreed that the present case is unique and distinct. *Id.* (citing *Gilardi v. Sebelius*, No. 1:13-cv-00104, at 15-16 (D.D.C. March 3, 2013)). It follows from the government's position that any future ruling from the D.C. Circuit in *Gilardi* will be substantially distinguishable from this case, if the government wins that case at all. Indeed—the D.C. Circuit granted *Gilardi* an injunction pending appeal after it stated that an injunction pending appeal is even harder to obtain, subject to far more "stringent" standards, than an ordinary preliminary injunction. *Gilardi v. U.S. Dep't of Health & Human Servs.*, No. 13-5069 (D.C. Cir., orders issued Mar. 21 & 29, 2013). If *Gilardi* wins that appeal, all the more should Tyndale House Publishers succeed. If not, the government has conceded the cases are distinct.

The government appears to know its legal argument that no for-profit entity can exercise religion is untenable, so much so that it yields the incongruous outcome that a Bible publisher is purely “secular.” Despite this knowledge, the government still refuses to exempt Tyndale House Publishers from its Mandate. It seeks to have its cake and eat it too, by avoiding an appellate ruling on the rights of entities like Tyndale House Publishers, while still imposing its Mandate on such entities. The government should not be permitted to avoid litigation of its RFRA argument against Tyndale House Publishers on the theory that Bible publishers and food companies are distinct, and then turn around and ask this Court to maintain its opposition to Tyndale House Publishers’ claims through a stay on the theory that if it wins *Gilardi* that will affect this Court’s resolution of Tyndale House Publishers’ case.

If the government wants to avoid this Court’s review of this case it can do so, not by a stay but by granting Tyndale House Publishers an exemption. Or it can oppose a ruling on this motion, showing that the government persists in believing the Mandate applies against a Bible publisher to the same extent that it applies against a food company. What the government should not be permitted to do is preserve this case in limbo on the Court’s docket, neither defending nor abandoning its untenable legal position. By the government’s refusal to exempt Tyndale House Publishers while it still insists that its status is “unique,” Plaintiffs are forced to ask for that exemption through this summary judgment motion. This Court should issue final judgment in Plaintiffs’ favor on that motion. There is no need to delay this case any further before final judgment. The Court has resolved the substantive issues in this case through its thorough opinion and order. The government’s position in opposition to this motion will simply be to disagree with the view that the Court already set forth on those same legal issues. The Court should reaffirm its existing rationale and grant summary judgment to Plaintiffs.

Because the parties already briefed these issues fully in the preliminary injunction posture, and this Court considered issued an extensive ruling as cited above, the Plaintiffs do not believe that the Court needs to be burdened by repetition of all those legal arguments again in a new round of briefing. Plaintiffs respectfully request that those briefs for and against

preliminary injunctive relief under RFRA be incorporated here by reference in support of and in opposition to summary judgment. Therefore Plaintiffs do not attach a new memorandum in support of this motion or a new statement of points and authorities (they do attach a statement of facts with citations to the record). If instead the Court desires to receive new briefing in support of this motion, the Plaintiffs would request a 30-day timeframe in which to prepare such briefing. If not, but if the government desires to re-brief its position in opposition to this motion, the Plaintiffs would seek to answer fully in reply.

Respectfully submitted this May 8, 2013.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the Court's ECF system on May 8, 2013, and was thereby electronically served on counsel for Defendants and others who have appeared in the case.

s/ Matthew S. Bowman  
Matthew S. Bowman

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**PLAINTIFFS’ STATEMENT OF MATERIAL FACTS**

In support of their Motion for Summary Judgment, Plaintiffs TYNDALE HOUSE PUBLISHERS, INC. and MARK D. TAYLOR file this Statement of Material Facts as to which the moving party contends there is no genuine issue, with references to the record.

1. Tyndale House Publishers originated with the vision of Dr. Kenneth N. Taylor, a publisher and Bible translator. To promote his paraphrases and translations of the Bible, he and his wife started Tyndale House Publishers, Inc. in 1962. In 1963, Dr. Taylor assigned his royalties from his books to the religious non-profit entity Tyndale House Foundation, which now owns 96.5% of Tyndale House Publishers, Inc. and has contributed more than \$76 million to

charitable causes using proceeds from Tyndale House Publishers. Dr. Taylor structured Tyndale to be primarily owned by the religious Foundation, and primarily directed by Tyndale Trust, whose trustees adhere to a biblical statement of faith and are the same individuals who serve as the board members of Tyndale House Publishers. Dr. Taylor's son Mark D. Taylor is President and CEO of Tyndale House Publishers and is a member of the board of directors of Tyndale House Publishers and the Foundation, as well as being a trustee of the Tyndale Trust. (Verified Complaint ("VC") ¶ 2.)

2. Tyndale House Publishers and its owners are Christians who are committed to biblical principles, including the belief that all human beings are created in the image and likeness of God from the moment of their conception/fertilization. The regulatory Mandate challenged in this case forces Tyndale House Publishers to provide and pay for drugs and devices that it and its owners' believe can cause the death of human beings created in the image and likeness of God shortly after their conception/fertilization. The government's mandate exempts what it calls "religious employers," but denies that status to Tyndale House Publishers. (VC ¶ 3.)

3. Plaintiff Tyndale House Publishers, Inc. is a Delaware corporation located at 351 Executive Drive, Carol Stream, Illinois. (VC ¶ 9.)

4. Tyndale House Publishers asserts its claims on behalf of itself as well as on behalf of its owners, all of whom share Tyndale House Publishers' religious beliefs against the Mandate's application in this case. (VC ¶ 10.)

5. Plaintiff Mark D. Taylor is a resident of Wheaton, Illinois. He is President and CEO of Tyndale House Publishers, and is the son of Tyndale House Publishers founder Dr. Kenneth Taylor. Mark Taylor is a member of the boards of directors of Tyndale House



Publishers and its primary owner Tyndale House Foundation, and is a trustee of Tyndale Trust and the Kenneth N. Taylor Trust, which are also owners of Tyndale House Publishers. (VC ¶ 11.)

6. Defendants are appointed officials of the United States government and United States Executive Branch agencies responsible for issuing and enforcing the Mandate. (VC ¶ 12.)

7. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (HHS). In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only. (VC ¶ 13.)

8. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration and enforcement of the Mandate. (VC ¶ 14.)

9. At the time of the filing of the Verified Complaint, Defendant Hilda Solis was the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Solis is sued in her official capacity only. (VC ¶ 15.)

10. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate. (VC ¶ 16.)

11. Defendant Timothy Geithner is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Geithner is sued in his official capacity only. (VC ¶ 17.)

12. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate. (VC ¶ 18.)

13. Tyndale House Publishers, Inc. is a Christian publishing company that was founded by Kenneth and Margaret Taylor. Tyndale House Publishers was founded in 1962 to publish, at first, a single book called *Living Letters*, which was Kenneth Taylor's modern paraphrase of portions of the New Testament. (VC ¶ 21.)

14. In the ensuing years, Kenneth Taylor paraphrased the rest of the text of the Holy Bible. Tyndale House Publishers published the entire project in 1971 as *The Living Bible*, sales of which have exceeded 40 million copies. (VC ¶ 22.)

15. In 1996 Tyndale House Publishers published an entirely new translation of the Holy Bible, called the *Holy Bible: New Living Translation*, of which 27 million copies have been sold. (VC ¶ 23.)

16. Tyndale House Publishers also publishes a wide array of Christian books ranging from Bible commentaries to books about family issues to Christian fiction. Tyndale House Publishers' authors include Dr. James Dobson (founder of Focus on the Family), the Rev. Dr. Tim LaHaye, Dr. Bill Bright (the founder of Campus Crusade for Crusade), the Rev. Josh McDowell (a world-renowned Christian apologist), and hundreds of other Christian authors. (VC ¶ 24.)

17. Tyndale House Publishers' Articles of Incorporation declare that Tyndale House Publishers' purpose is "1. To engage as a publisher of Christian and faith-enhancing books, periodicals, tracts, pamphlets, and other media of communication; and to engage in any related business that may be lawful." (VC ¶ 25.)

18. Tyndale House Publishers' Corporate Purpose is "to minister to the spiritual needs of people, primarily through literature consistent with biblical principles." (VC ¶ 26.)

19. Tyndale House Publishers' Core Values are to be "Dependent on God's leading," "Anchored in the Bible," "Driven to make God's Word accessible," "Trustworthy," and "Committed to excellence." (VC ¶ 27.)

20. Tyndale House Publishers' Corporate Goals are to "Honor God," "Excel in business," "Sustain controlled economic growth," "Operate profitably," and "Help employees grow." (VC ¶ 28.)

21. Tyndale House Publishers holds a weekly chapel service for its employees—a practice that was started in 1967. Attendance is voluntary, paid as work time, and attended by well over 50% of the employee population each week. (VC ¶ 29.)

22. Tyndale House Publishers opens most business meetings with prayer, asking God for wisdom. (VC ¶ 30.)

23. Since 1984 Tyndale House Publishers' executive team has spent half an hour together in prayer each Tuesday morning. (VC ¶ 31.)

24. Tyndale House Publishers' Board of Directors' meetings begin with a devotional prepared by one of the directors, followed by prayer, a practice they started in 1977. (VC ¶ 32.)

25. Tyndale House Publishers sends groups of employees on mission projects each year to provide support to Christian mission organizations. Tyndale House Publishers pays the employee's salary and expenses for these trips because it models generosity, one of Tyndale House Publishers' core values. This practice began in 2006, and Tyndale House Publishers has sponsored at least one such trip per year. (VC ¶ 33.)

26. Tyndale House Publishers has hosted monthly “build days” with Habitat for Humanity each month for the last 3 years for its employees. (VC ¶ 34.)

27. Tyndale House Publishers makes charitable contributions at the rate of 10% of its pretax profits each year. Most of the contributions go to Christian organizations like Wycliffe Bible Translators, Wheaton College (Illinois), Outreach Community Ministries, Habitat for Humanity, Casa Viva, and dozens of churches where Tyndale House Publishers’ employees attend. Tyndale House Publishers also sponsors a matching gift program for its employees. Since 2005, Tyndale House Publishers’ corporate contributions have amounted to more than \$5 million total. (VC ¶ 35.)

28. As part of Tyndale House Publishers’ investment portfolio, it has outstanding loans totaling \$5.3 million made to a Christian school and to a church in its community. (VC ¶ 36.)

29. As part of its commitment to running its business from a biblical perspective, Tyndale House Publishers pays its employees well above minimum wage and provides them with excellent benefits. In addition to a very good health plan, the company shares profits with all employees through a strong bonus program and a generous 401(k) and profit sharing plan which regularly contributes 9–11% of employees’ salary. (VC ¶ 37.)

30. Every book Tyndale House Publishers publishes has to have ministry value, otherwise it will not publish it. (VC ¶ 38.)

31. The Board of Directors of Tyndale House Publishers has adopted the following statement of belief and policy: “The first of five corporate goals of Tyndale House Publishers, Inc. is to ‘Honor God.’ The company’s corporate purpose is to ‘Minister to the spiritual needs of people, primarily through literature consistent with biblical principles.’ Among the biblical

principles the company is committed to following is respect for the inviolable sanctity of the life of every human being as created in the image and likeness of God from the moment of conception/fertilization (cf. Jeremiah 1:5; Genesis 1:26). Consistent with this belief, Tyndale House Publishers, Inc. omits from its employee health plan any coverage of abortions and of drugs (e.g., Plan B, ella) or devices (e.g., intrauterine devices) that can cause the demise of an already conceived/fertilized human embryo.” (VC ¶ 39.)

32. Tyndale House Publishers asserts that it brings its claims on its own behalf and on behalf of its owners. (VC ¶ 40.)

33. Tyndale House Publishers’ primary owner, Tyndale House Foundation (hereinafter “the Foundation”), was incorporated as an Illinois not-for-profit corporation by Kenneth and Margaret Taylor in 1963. (VC ¶ 41.)

34. The Foundation’s Mission is “to minister to the spiritual needs of people, primarily through grants to other Christian charities.” (VC ¶ 42.)

35. Starting with the publication of *Living Letters* and continuing through the very successful publication of *The Living Bible* and the *Holy Bible: New Living Translation*, Kenneth Taylor assigned his author royalties to the Foundation. (VC ¶ 43.)

36. As Kenneth Taylor wrote in his autobiography, *My Life: A Guided Tour*, “I had a strong conviction that the ability to write *Living Letters* was a special gift from God, and, because it was His word, He should get all the royalties. So we called on [an attorney] to set up a foundation with a board of directors who would be responsible to give the money away to properly qualified charitable causes.” (VC ¶ 44.)

37. The Foundation owns 96.5% of all shares of Tyndale House Publishers, which includes just over 8.4% of its voting shares. (VC ¶ 45.)

38. By virtue of the Foundation's nearly total ownership of Tyndale House Publishers, the Publishers' and the Foundation's religious missions are largely overlapping and mutually reinforcing. (VC ¶ 46.)

39. The Foundation receives 96.5% of all of Tyndale House Publishers' distributed profits. Since 2001, the Foundation has received \$38.8 million of Tyndale House Publishers' \$40.2 million in distributed profits. (VC ¶ 47.)

40. Tyndale House Publishers' non-distributed profits are reinvested into Tyndale House Publishers for the benefit of its religious publishing mission. (VC ¶ 48.)

41. In addition to dividends, Tyndale House Publishers also pays royalties to the Foundation in amounts exceeding \$1 million annually, because Dr. Taylor had donated his author rights to the Foundation. (VC ¶ 49.)

42. Since its inception, the Foundation has distributed more than \$76 million to various charitable causes, primarily through proceeds received from Tyndale House Publishers and from royalties assigned by Dr. Kenneth Taylor. (VC ¶ 50.)

43. The Foundation's Board of Directors has adopted the following statement of belief and policy: "Tyndale House Foundation shares the religious beliefs of Tyndale House Publishers, Inc., the entity in which it has an ownership interest, including a commitment to 'Honor God' and to act in a manner consistent with biblical principles. Among such biblical principles is respect for the inviolable sanctity of the life of every human being as created in the image and likeness of God from the moment of conception/fertilization (cf. Jeremiah 1:5; Genesis 1:26). Consistent with this religious belief, Tyndale House Foundation supports Tyndale House Publishers, Inc.'s omission from its employee health plan of any coverage of

abortions and of drugs (e.g., Plan B, ella) or devices (e.g., intrauterine devices) that can cause the demise of an already conceived/fertilized human embryo.” (VC ¶ 51.)

44. Of Tyndale House Publishers’ other shares, a small percentage is owned by Tyndale Trust, but those shares include 84% of the voting shares. (VC ¶ 52.)

45. Tyndale Trust was incorporated as an Illinois trust by Dr. Kenneth Taylor in 1988. (VC ¶ 53.)

46. The Trust is intended to help preserve and continue the biblical focus of Tyndale House Publishers’ mission. To help accomplish this goal, the Trust owns the large majority of voting shares. (VC ¶ 54.)

47. Trustees of Tyndale Trust are required to be the same persons as the members of the Board of Directors of Tyndale House Publishers. (VC ¶ 55.)

48. Trustees of the Tyndale Trust (and therefore board members of Tyndale House Publishers) are required to sign a Statement of Faith each year to show that they hold to certain religious beliefs, which are typically described as evangelical Christian beliefs. (VC ¶ 56.)

49. The statement of faith required of Tyndale Trust’s trustees (and therefore of board members of Tyndale House Publishers), is as follows:

1. I believe in the divine inspiration, truthfulness, and authority of both Old and New Testament Scriptures in their entirety as the only written word of God, without error in all that it affirms, and the only infallible rule of faith and practice.
2. I believe that there is one God, eternally existent in three persons: Father, Son, and Holy Spirit.
3. I believe in the deity of our Lord Jesus Christ, in his virgin birth, in his sinless life, in his miracles, in his atoning death, in his bodily resurrection, in his ascension to the right hand of the Father, and in his personal return in power and glory.
4. I believe that for the salvation of lost and sinful people, regeneration by the Holy Spirit is absolutely essential.

5. I believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a godly life.
6. I believe in the resurrection of both the saved and the lost: they that are saved unto the resurrection of life and they that are lost unto the resurrection of damnation.
7. I believe in the spiritual unity of believers in our Lord Jesus Christ.

(VC ¶ 57.)

50. All of the trustees of Tyndale Trust, and all of the members of the Board of Directors of Tyndale House Publishers, have subscribed to that statement of faith. (VC ¶ 58.)

51. Tyndale Trust has adopted the following statement of belief and policy: “Tyndale Trust shares the religious beliefs of Tyndale House Publishers, Inc., the entity in which it has an ownership interest, including a commitment to ‘Honor God’ and to act in a manner consistent with biblical principles. Among such biblical principles is respect for the inviolable sanctity of the life of every human being as created in the image and likeness of God from the moment of conception/fertilization (cf. Jeremiah 1:5; Genesis 1:26). Consistent with this religious belief, Tyndale Trust supports Tyndale House Publishers, Inc.’s omission from its employee health plan of any coverage of abortions and of drugs (e.g., Plan B, ella) or devices (e.g., intrauterine devices) that can cause the demise of an already conceived/fertilized human embryo.” (VC ¶ 59.)

52. The remaining percent of Tyndale House Publishers’ shares, just over 3.4%, are owned by two Illinois trusts that benefit Dr. Kenneth Taylor’s widow and children. The Margaret W. Taylor Trust accrues to the benefit of Mrs. Taylor during her lifetime, and she is the sole trustee of said trust. The trustees of the Kenneth N. Taylor Trust are Margaret W. Taylor and her sons Peter W. Taylor and Mark D. Taylor. (VC ¶ 60.)



53. Both the Margaret W. Taylor Trust and the Kenneth N. Taylor Trust share the beliefs of Tyndale House Publishers, Tyndale House Foundation, and Tyndale Trust, in general and with respect to Tyndale House Publishers' provision of health insurance and omission of abortifacients therefrom. (VC ¶ 61.)

54. The trustees of the Margaret W. Taylor Trust and the Kenneth N. Taylor Trust have adopted the following statement of belief and policy: "The trustees of the Kenneth N. Taylor Trust and the Margaret W. Taylor Trust share the religious beliefs of Tyndale House Publishers, Inc., the entity in which they have an ownership interest, including a commitment to 'Honor God' and to act in a manner consistent with biblical principles. Among such biblical principles is respect for the inviolable sanctity of the life of every human being as created in the image and likeness of God from the moment of conception/fertilization (cf. Jeremiah 1:5; Genesis 1:26). Consistent with this religious belief, the Kenneth N. Taylor Trust and the Margaret W. Taylor Trust support Tyndale House Publishers, Inc.'s omission from its employee health plan of any coverage of abortions and of drugs (e.g., Plan B, ella) or devices (e.g., intrauterine devices) that can cause the demise of an already conceived/fertilized human embryo." (VC ¶ 62.)

55. Tyndale House Publishers is a closely-held entity. It is not publicly traded. It is owned by four closely-related entities all founded by Dr. Kenneth Taylor, the father of Plaintiff Mark. D. Taylor and Tyndale House Publishers' founder. (Affidavit of Mark D. Taylor, Doc. # 24 at 1, filed Nov. 7, 2012.)

56. Dr. Taylor created the Publishers' ownership structure in order to achieve two main goals: to direct the Publishers' proceeds to religious charity and educational non-profit work, and simultaneously to ensure that the direction of the Publishers will remain be faithful to

his religious beliefs and Christian educational vision even after his passing. (Affidavit of Mark D. Taylor, Doc. # 24 at 2.)

57. To accomplish the first goal, Dr. Taylor established Tyndale House Foundation as a separate, non-profit religious entity that would receive nearly all of the Publishers' proceeds by ownership of 96.5% of its stock. As a religious non-profit entity, the Foundation is inherently religious and possesses religious beliefs, including as they are affirmed in the Complaint. (Affidavit of Mark D. Taylor, Doc. # 24 at 2.)

58. Secondly, the stock of the Publishers was separated into non-voting shares (891,240 shares) and voting shares (95 shares). Thus, nearly all of the total shares are nonvoting and most of those are owned by the Foundation, but most of the voting shares (80 out of 95) are owned by the Tyndale Trust. The Tyndale Trust is a separate entity Dr. Taylor created with the purpose of ensuring that the Publishers will maintain its religious identity, beliefs and mission. This is accomplished by means of a Statement of Faith to which all Tyndale Trust's trustees must adhere, and by requiring that the trustees of Tyndale Trust be the same people as the directors of the Publishers. (Affidavit of Mark D. Taylor, Doc. # 24 at 2.)

59. Finally, a small percentage (less than 3.5%) of the Publishers' shares are owned by two trusts Dr. Taylor created to fulfill his religious duty to provide for his family, by benefiting his widow—Mark D. Taylor's mother Margaret Taylor—and their children. These family trusts also possess some voting shares so that the religious beliefs of Dr. Taylor's family will continue to influence the Publishers' direction. (Affidavit of Mark D. Taylor, Doc. # 24 at 2.)

60. Thus all four entities owning Tyndale House Publishers have no public ownership or trading. Instead they are intimately connected entities created by the Publishers' founder to

pursue the religious purposes for which he created the Publishers. (Affidavit of Mark D. Taylor, Doc. # 24 at 3.)

61. As affirmed in the Complaint, all four entities owning Tyndale House Publishers and all of their directors and trustees share the religious beliefs of the Publishers including with respect to the issues raised in this case, and Tyndale House Publishers is asserting its claims on their behalf as well as on behalf of its own religious beliefs. (Affidavit of Mark D. Taylor, Doc. # 24 at 3.)

62. A true representation and description of the ownership structure of Tyndale House Publishers and its shareholders is attached as Exhibit A to the Affidavit of Mark D. Taylor, Doc. # 24.

63. A true and accurate recital of Tyndale House Publishers' Articles of Incorporation is attached as Exhibit B to the Affidavit of Mark D. Taylor, Doc. # 24.

64. Mark D. Taylor is the President and CEO of both Tyndale House Publishers and the Foundation. He is a trustee of the Tyndale Trust and of the Kenneth N. Taylor Trust. He is the son of Dr. Kenneth Taylor and Margaret W. Taylor, founders of the Tyndale entities. (VC ¶ 63.)

65. Mark Taylor is directly familiar with the facts and beliefs affirmed in the Verified Complaint relating to Tyndale House Publishers as well as to its owners. (VC ¶ 64.)

66. As President and CEO of Tyndale House Publishers and the Foundation, Mark Taylor is responsible for their overall operations, including the provision of Tyndale House Publishers' health insurance plan. (VC ¶ 65.)

67. As an employee of Tyndale House Publishers, Mark Taylor is a participant in its health plan, and his wife is a dependent beneficiary of the same plan. (VC ¶ 66.)

68. Mark Taylor shares the religious beliefs of Tyndale House Publishers and its owners, and his constitutional and statutory rights are burdened by the Mandate to the same extent. (VC ¶ 67.)

69. Tyndale House Publishers' owners assert that they possess religious beliefs against the government's requirement that their property and sister entity, Tyndale House Publishers, would be forced to offer immoral coverage of abortifacient drugs and devices. (VC ¶ 68.)

70. Tyndale House Publishers' owners assert that they exercise that religious belief by virtue of their ownership, voting rights in and receipt of benefit from an entity, Tyndale House Publishers, that shares the owners' same biblical beliefs in the inviolable sanctity of innocent human life. (VC ¶ 69.)

71. Tyndale House Publishers has 260 full-time employees. (VC ¶ 71.)

72. Apart from the dispute between the parties over coverage of certain FDA-approved contraceptive items, Tyndale House Publishers otherwise provides a generous health insurance plan for its employees. (VC ¶ 72.)

73. Tyndale House Publishers' group health plan for its employees is self-insured, and Tyndale House Publishers acts as its own insurer. (VC ¶ 73.)

74. The plan-year for Tyndale House Publishers' self-insured plan begins on October 1 of each year, including 2012–13. (VC ¶ 74.)

75. Consistent with the religious commitments of Tyndale House Publishers and its owners as explained in the Verified Complaint, Tyndale House Publishers' self-insured plan does not and has never covered abortions or abortifacient drugs or devices such as emergency contraception and intrauterine devices ("IUDs"). (VC ¶ 75.)

76. Tyndale House Publishers' self-insured plan is not subject to an Illinois state requirement to cover contraception including abortifacients. (VC ¶ 76.)

77. Under the PPACA, employers with over 50 full-time employees are required to provide a certain minimum level of health insurance to their employees. (VC ¶ 77.)

78. Under the PPACA, many health insurance plans must include "preventive services," which must be offered with no cost-sharing by the employee. (VC ¶ 78.)

79. On February 10, 2012, the Department of Health and Human Services finalized a rule (referred to here and in the Verified Complaint as "the Mandate") that imposes a definition of preventive services that includes all FDA-approved "contraceptive" drugs, surgical sterilization, and education and counseling for such services. (VC ¶ 79.)

80. In the category of FDA-approved contraceptives included in the Mandate are several drugs or devices, including "IUDs, Plan B, and Ella," that act in part by "altering the endometrium (thereby inhibiting implantation)" after fertilization. (VC ¶ 81; party admission by Defendants in "Brief for the Appellants" at 9 n.6, *Hobby Lobby Stores, Inc. v. Sebelius*, No. 12-6294 (10th Cir. filed Mar. 15, 2013).)

81. FDA-approved contraceptives that are included in the Mandate "prevent fertilization and implantation." They are "covered prescription drugs" and "are specifically those that are designed to prevent implantation." (Party admission by Defendant Sebelius in Kelly Wallace, "Health and Human Services Secretary Kathleen Sebelius Tells iVillage "Historic" New Guidelines Cover Contraception, Not Abortion," iVillage (Aug. 2, 2011), available at <http://www.ivillage.com/kathleen-sebelius-guidelines-cover-contraception-not-abortion/4-a-369771> (last visited Apr. 29, 2013). A true copy of this article is attached here as Exhibit 1.)

82. The Mandate also requires applicable group health care plans to pay for the provision of counseling, education, and other information for all women beneficiaries who are capable of bearing children concerning and in support of covered devices and drugs, including Plan B and ella and IUDs that cause early abortions or harm to human embryos. (VC ¶ 84.)

83. The Mandate by its terms applied to Tyndale House Publishers in the first health insurance plan-year beginning after August 1, 2012. (VC ¶ 85.)

84. Tyndale House Publishers was not exempt from the Mandate by self-insuring. (VC ¶ 86.)

85. Absent preliminary injunctive relief issued by this Court, Tyndale House Publishers would have been subject to the Mandate starting in its October 1, 2012 plan. (VC ¶ 87.)

86. Tyndale House Publishers and its owners have a sincere conscientious religious objection to providing coverage for what they consider to be abortifacients and related education and counseling in Tyndale House Publishers' health insurance plan. (VC ¶ 88.)

87. Tyndale House Publishers and its owners contend that they cannot in good conscience violate their religious beliefs by providing coverage for emergency contraception, IUDs, or counseling or education in furtherance of the same, in Tyndale House Publishers' health insurance plan. (VC ¶ 89.)

88. PPACA imposes monetary penalties on large entities that might attempt to avoid the Mandate by dropping employee health insurance altogether. The exact magnitude of these penalties may vary according to the provisions of the PPACA, but the fine is approximately \$2,000 per employee per year for employers such as Tyndale House Publishers. This penalty does not apply to employers having less than 50 full-time employees. (VC ¶¶ 92–93.)

89. If Tyndale House Publishers dropped insurance for its employees, such an action would harm Tyndale House Publishers' employees by depriving them of Tyndale House Publishers' insurance plan, and it would harm Tyndale House Publishers financially by adversely affecting its ability to retain and attract qualified employees, and it would violate Tyndale House Publishers' stated religious commitment to its core value of providing generous employee benefits. (VC ¶ 94.)

90. PPACA threatens monetary penalties against Tyndale House Publishers for continuing to offer its self-insured plan but continuing to omit abortifacients. The exact magnitude of these penalties may vary according to the provisions of the PPACA, but the fine is approximately \$100 per day per each individual to whom such failure relates. (VC ¶¶ 95–96; 26 U.S.C. § 4980D.)

91. The Mandate triggers a range of enforcement mechanisms against Tyndale House Publishers, including but not limited to civil actions by the Secretary of Labor or by plan participants and beneficiaries under ERISA, which would include but not be limited to relief in the form of judicial orders mandating that Tyndale House Publishers violate its and its owners' asserted religious beliefs by providing coverage for items to which they religiously object. (VC ¶ 97.)

92. The Mandate applies not only to sponsors of group health plans like Tyndale House Publishers, but also to issuers of insurance. Accordingly, Tyndale House Publishers cannot avoid the Mandate by shopping for an insurance plan omitting abortifacients. (VC ¶ 99.)

93. The Mandate offers an exemption to "religious employers," but only if the organization is a church, an integrated auxiliary of a church, a convention or association of

churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A). See 78 Fed. Reg. 8,456.

94. Tyndale House Publishers is not a church, integrated auxiliary of a particular church, convention or association of a church, or the exclusively religious activities of a religious order. (VC ¶ 102.)

95. Tyndale House Publishers, its owners, and Mark. D. Taylor experience pressure to change or violate their beliefs or else face harm to themselves or their property or livelihoods due to the Mandate's lawsuits, fines and penalties. (VC ¶¶ 1, 5, 8, 144–45, 152–66.)

96. The Mandate imposes a burden on Tyndale House Publishers' employee recruitment and retention efforts by creating uncertainty as to whether or on what terms they will be able to continue offering health insurance due to the prospect of suffering penalties as a result of the Mandate. (VC ¶ 111.)

97. The Mandate places Tyndale House Publishers at a competitive disadvantage in its efforts to recruit and retain employees, to attract Christian authors, and to maintain the confidence of churches and other religious customers who trust that the products produced by Tyndale House Publishers are created by a company that follows biblical principles. (VC ¶ 112.)

98. Tyndale House Publishers has expended considerable time and expense determining the application of the Mandate against its religious beliefs and its options in relation thereto. (VC ¶ 114.)

99. The Mandate causes Tyndale House Publishers to need to take its effects into account as it plans expenditures, including employee contracts, compensation and benefits packages, as well as potential government fines and lawsuits. (VC ¶ 115.)



100. The Mandate does not apply to members of a “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds. Tyndale House Publishers does not meet this exemption. (VC ¶ 117; 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii).)

101. The Mandate offers “accommodations” to non-profit religious entities. These are not available to Tyndale House Publishers. (VC ¶ 131–142; 78 Fed. Reg. 8,456.)

102. The Mandate does not apply to health insurance plans that are “grandfathered” under PPACA. (VC ¶ 121.)

103. Tyndale House Publishers’ plan is not grandfathered under PPACA. (VC ¶ 122.)

104. A health plan that has grandfathered status has a “right” to maintain that status if it complies with the grandfathering regulations set forth by Defendants. (75 Fed. Reg. 34,538 at 34,540, 34,558, 34,562, & 34,566; 75 Fed. Reg. 70,114 at 70,120–21.)

105. The grandfathering rule in PPACA and the regulations implementing that rule do not sunset or expire by operation of law. (See 75 Fed. Reg. 34,538; 75 Fed. Reg. 70,114.)

106. No provision of PPACA or its regulations force a health plan that has grandfathered status and that complies with the grandfathering regulations to abandon its grandfathered status at some later date. (See 75 Fed. Reg. 34,538; 75 Fed. Reg. 70,114.)

107. Tens of millions of Americans will be covered under grandfathered plans as far out as the government’s statistics predict. (75 Fed. Reg. 34,538 at 34,552–53.)

108. Through the following programs, Defendants provide, or fund the provision of, family planning or patient education and counseling services to women with reproductive capacity:

a. Family Planning grants, 42 U.S.C. 300, et seq.

- b. The Teenage Pregnancy Prevention Program Public Law 112-74 (125 Stat 786, 1080).
- c. The Healthy Start Program, 42 U.S.C. 254c-8.
- d. The Maternal, Infant, and Early Childhood Home Visiting Program, 42 U.S.C. 711.
- e. Maternal and Child Health Block Grants, 42 U.S.C. 703.
- f. 42 U.S.C. 247b-12.

(Defendants' Response to First Set of Interrogatories at 18–19, in *Colorado Christian University v. Sebelius*, No. 11-cv-03350-CMA-BNB (Oct. 1, 2012), attached as Exhibit 2.)

109. Through the following programs, Defendants provide a range of health care services, which are required to include, as necessary, contraceptives, family planning services, and patient education and counseling, to specified populations:

- a. Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
- b. The Indian Health Service, 25 U.S.C. 13, 42 U.S.C. 2001(a), and 25 U.S.C. 1601, et seq.
- c. Health center grants, 42 U.S.C. 254b(e), (g), and (h), and (i).
- d. The NIH Clinical Center, 42 U.S.C. 248.
- e. The Personal Responsibility Education Program, 42 U.S.C. 713.
- f. The Unaccompanied Alien Children Program, 8 U.S.C. 1232(b)(1).

(Defendants' Response to First Set of Interrogatories at 18–19, in *Colorado Christian University v. Sebelius*, No. 11-cv-03350-CMA-BNB (Oct. 1, 2012), attached as Exhibit 2.)

110. In enacting the Mandate, Defendants relied on a report by the Institute of Medicine and the sources cited therein. (77 Fed. Reg. 8,725.)

Respectfully submitted this 8th day of May, 2013.

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## Health and Human Services Secretary Kathleen Sebelius Tells iVillage "Historic" New Guidelines Cover Contraception, Not Abortion

One day after announcing new preventive health care regulations that will affect millions of women, Secretary of Health and Human Services Kathleen Sebelius takes on critics in an exclusive interview with iVillage

By Kelly Wallace - August 2, 2011



PHOTO CREDIT: TIM SLOAN/AFP/GETTY IMAGES

In an exclusive interview with iVillage, Secretary of Health and Human Services **Kathleen Sebelius** hailed [new federal guidelines](#) requiring new insurance plans to cover women's preventive health care services, including contraception, at no additional cost, as a "huge step forward" and "historic."

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control coverage would include the "morning after" pill. Anti-abortion rights groups said this was comparable to the federal government [mandating coverage of abortion](#).

"The science which has guided these recommendations is very clear," Sebelius told iVillage. "There are clearly drugs that are more akin to an abortion procedure. None of those are covered as part of these preventive services." What is covered, according to Sebelius, is what the FDA classifies as contraception. "The Food and Drug Administration has a category [of drugs] that prevent fertilization and implantation. That's really the scientific definition. So it's unfortunate there are some folks who continue to debate the science around fertility and what drugs do and do not do. These covered prescription drugs are specifically those that are designed to prevent implantation. They are contraceptives, they are not abortion pills."

There is, however, an amendment that would allow [religious organizations providing insurance plans to opt out of covering contraception](#), based on a "conscience clause" currently found in a majority of the 28 states that require contraception be part of any prescription drug package, said Sebelius. "This is a rule that is being put out for comments," she said. "We welcome comments. I'm sure we'll get comments, people who say it's too narrow, some who say it's too broad, but there is a lot of common ground," said Sebelius. "I would think there would be good common ground around appropriate, acceptable, available contraception as a big, important, preventive measure for women in their reproductive years. It just makes sense."

During our interview, [Sebelius](#) also talked to iVillage about how women are more likely to be underinsured than men; how [Governor Rick Scott](#) (R-Florida) refused millions of dollars in health care grants because he objects to the health care reform law; and how the

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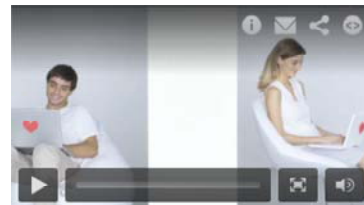
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More highlights from our interview:

***iVillage: What will the new requirements for covering women’s preventive health care services ultimately mean for the average iVillage woman?***

**Secretary Sebelius:** Well, I think its very good news for women. First of all, these guidelines are historic. There has never been a scientific look at the specific health needs women have that are unique to our bodies and our health histories. So starting a year from now, at the beginning of August 2012, all new health plans in the private market will be required to cover a variety of additional services with no co-pay and no charge to women. Those include domestic violence screenings, contraceptive services, well-women visits, screenings for diabetes, HIV screening and counseling, breastfeeding support, supplies and counseling. Insurance plans will have to cover services that women need.

***iVillage: Regarding free birth control coverage, how many women will benefit?***

**Secretary Sebelius:** Contraception is the most covered prescription drug for women between ages 14 to 40. It is the most commonly prescribed drug by their doctors. We also know that women traditionally are more likely to be underinsured and not have the full range of services they need. Also, data has documented over and over again that women pay more out of pocket than men do for their health care services, often because the services they need are not necessarily part of their benefits package. So, I don’t think there is any question that millions of women will benefit from this. We think about 34 million women, by the time we reach 2013, will be in new plans [with this new coverage].

***iVillage: As a former governor, what do you make of the governor of Florida, a state with the fourth largest unemployment rate, turning down millions of dollars in grants under the Affordable Care Act because he doesn’t support the law?***

**Secretary Sebelius:** I think it’s unfortunate. We have certainly seen this play out here in Washington in the past month or two, where there are some newly elected officials on the Republican side that have decided that their political ideology is more important than anything -- more important than the health needs of their citizens, more important than the economic stability of the economy, more important than the future of jobs in America -- so I think it is very unfortunate for citizens of Florida. It is very troubling for someone to suggest that they will not accept the resources that Congress wisely put forward so that states could really become the implementers of this bill. The irony in the way the law is written is that if Governor Scott chooses in Florida not to move ahead, the Affordable Care Act directs the Department of Health and Human Services to [implement it]. So the citizens of Florida will have the advantage of an exchange, they will have the same kind of rules that we just talked about. The women of Florida will have the same kind of preventive health plans that everyone else will around the country. The governor has really just ceded his own authority to the federal government, kind of an irony for someone who believes that the states should be deciding what’s going on.

***iVillage: Can I ask about Rep. Gabrielle Giffords and what it means, as a woman, as a lawmaker, to see her on the floor of the House?***

**Secretary Sebelius:** I think it was clearly the highlight of a very difficult struggle. I think it puts in perspective the struggles that people go through every day. To watch Gabby Giffords mobilize that strength and resolve to make that trip back to Washington and to be on the floor, I think it very symbolically said, "Its going to be okay, I’m here, I’m participating, I’m fighting my way back, we need to fight our way back as a country." I think it was just a very uplifting and wonderful moment, and she certainly gave a gift to

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her colleagues and the country to watch that active, incredible bravery and stamina, and there is no question that everybody is rooting for her full and speedy recovery. But seeing her on the floor of the house was terrific.

Kelly Wallace is Chief Correspondent of iVillage. Follow Kelly on Twitter @kellywallacetv

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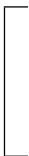
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# EXHIBIT 2



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-03350-CMA-BNB

COLORADO CHRISTIAN UNIVERSITY,

Plaintiff,

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and  
Human Services,

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

HILDA SOLIS, Secretary of the United States Department of Labor,

UNITED STATES DEPARTMENT OF LABOR,

TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and  
UNITED STATES DEPARTMENT OF THE TREASURY,

Defendants.

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**DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

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Defendants United States Department of Health and Human Services and its Secretary, Kathleen Sebelius (collectively, "HHS"); United States Department of Labor and its Secretary, Hilda Solis (collectively, "DOL"); and the United States Department of the Treasury and its Secretary, Timothy Geithner (collectively, "Treasury") in this civil action (hereinafter, "Defendants"), by and through undersigned counsel, hereby submit the following responses to Plaintiff's First Set of Interrogatories to Defendants:

**GENERAL RESPONSE**

1. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which permit the discovery of any matter not

privileged that is relevant to the claims in this civil action. Fed. R. Civ. P. 26(b)(1). Accordingly, Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, materiality, or any other appropriate ground.

### **GENERAL OBJECTIONS**

1. Defendants object to the definition of “You” and “Your” as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it includes “all of [Defendants’] employees, officers, agents, representatives, attorneys, divisions, committees, and sub-agencies” regardless of whether those individuals or entities were or are involved in promulgating or implementing the regulations that require group health plans and health insurance issuers that offer non-grandfathered group or individual health coverage to provide coverage, without cost-sharing, for all Food and Drug Administration (“FDA”)-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider (referred to hereinafter as “the contraceptive coverage requirement”). Accordingly, defendants’ responses will be based on the knowledge of, and information available to, those employees, officers, agents, representatives, divisions, committees, and sub-agencies of the three agency defendants that were or are involved in promulgating or implementing the contraceptive coverage requirement. Defendants further object to the definition of “You” and “Your,” which includes “attorneys,” and therefore implicates the attorney-client privilege and work product immunity.

2. Defendants object to the definition of “Mandate” as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it includes guidelines for preventive care and

screening for women other than the contraceptive coverage requirement, which is the requirement challenged in this lawsuit. Accordingly, defendants' responses will be limited to information about the contraceptive coverage requirement.

3. Defendants object to each interrogatory to the extent that it is deemed to require disclosure of matters subject to the attorney-client privilege, the attorney work product doctrine, the deliberative process privilege, other applicable privileges, or any statutory or regulatory restriction upon disclosure.

4. Defendants object to the definitions and instructions generally to the extent that they seek to impose obligations beyond those imposed by the Federal Rules of Civil Procedure. Defendants will answer these interrogatories consistent with the obligations imposed by the Federal Rules of Civil Procedure.

5. Defendants reserve the right to amend, supplement, or alter these objections and responses to the Interrogatories at any time. The following responses are based upon information currently known to defendants, and defendants reserve the right to supplement or amend their responses should additional or different information become available.

6. Nothing contained in the following responses constitutes a waiver of any applicable objection or privilege as to the requested discovery.

**SPECIFIC OBJECTIONS AND RESPONSES  
TO PLAINTIFF'S INTERROGATORIES**

Each of the foregoing statements and/or objections is incorporated by reference into each and every specific response set forth below, and defendants' response below is not a waiver of any of their General Objections.

**INTERROGATORY NO. 1:**

Identify each person likely to have discoverable information that you may use to support your claims or defenses, and as to each such person, identify the knowledge or information he or she possesses.

**RESPONSE**

Defendants refer plaintiffs to Defendants' Initial Rule 26(a)(1) Disclosures, which were provided to plaintiff on February 22, 2012 and will be supplemented as necessary and appropriate.

**INTERROGATORY NO. 2:**

Identify any organizations that were considered to develop guidelines under 42 U.S.C. § 300gg-13(a)(4) and describe why the IOM was selected and any other organizations were rejected.

**OBJECTIONS**

Defendants object to this interrogatory to the extent that it seeks information protected by the deliberative process privilege.

**RESPONSE**

Subject to this objection and defendants' General Objections above, defendants respond as follows:

HHS: HHS has a long-standing history working with the independent Institute of Medicine ("IOM"). The IOM is an independent, nonprofit organization that works outside of government to provide unbiased and authoritative advice to decision makers and the public. The IOM applies a research process that is aimed at providing objective and straightforward answers to difficult questions of national importance. Since the 1970s, HHS and its agencies have relied on the IOM to provide unbiased information.

HHS sought advice from the IOM due to its expertise in conducting objective analyses on scientific issues including public health and prevention matters. The IOM's

in-depth analysis and recommendations informed HHS's determination of whether a service should be included in the women's preventive services guidelines.

Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 3:**

Describe the history of your relationship with IOM, including all matters on which IOM has provided you with recommendations, guidelines, or expertise.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objection 1. Defendants further object to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it asks defendants to identify matters on which the IOM has provided recommendations, guidelines, or expertise prior to July 2009.

**RESPONSE**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

HHS: HHS has a long-standing history working with the independent IOM (see response to interrogatory no. 2, *supra*). Examples of recently completed commissioned studies include:

- Determination of Essential Health Benefits:  
<http://www.iom.edu/Activities/HealthServices/EssentialHealthBenefits.aspx>
- Primary Care and Public Health:  
<http://www.iom.edu/Reports/2012/Primary-Care-and-Public-Health.aspx>

- Initial National Priorities for Comparative Effectiveness:  
<http://www.iom.edu/Reports/2009/ComparativeEffectivenessResearchPriorities.aspx>
- Geographic Adjustments in Medicare Payment:  
<http://www.iom.edu/Reports/2012/Geographic-Adjustment-in-Medicare-Payment-Phase-II.aspx>
- The Mental Health and Substance Abuse Workforce for Older Adults:  
<http://www.iom.edu/Reports/2012/The-Mental-Health-and-Substance-Use-Workforce-for-Older-Adults.aspx>
- Adverse Effects of Vaccines: Evidence and Causality:  
<http://www.iom.edu/Reports/2011/Adverse-Effects-of-Vaccines-Evidence-and-Causality.aspx>

A complete list of IOM publications, including many commissioned by HHS through July 2009, can be found here:  
<http://www.iom.edu/~media/Files/About%20the%20IOM/IOM%20Publication%20List%2020-09.pdf>.

Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 4:**

Identify by name and title all persons at IOM who participated in developing guidelines for preventive care or screenings for women.

**OBJECTIONS**

Defendants object to this interrogatory to the extent that it seeks information of which defendants lack knowledge.

**RESPONSE**

Subject to this objection and defendants' General Objections above, defendants respond as follows:

HHS: Rose Marie Martinez (Director, Board on Population Health and Public Health Practice) and Karen Helsing (Study Director) were the IOM staff managing the study committee's work under contract to develop recommendations for guidelines. The IOM study committee members were Linda Rosenstock, Chair; Alfred Berg; Claire Brindis; Angela Diaz; Francisco Garcia; Melissa Gilliam (Resigned January 5, 2011); Kimberly Gregory; Paula Johnson; Anthony Lo Sasso; Jeanette Magnus; Heidi Nelson; Roberta Ness; Magda Peck; E. Reece; Alina Salganicoff; Sally Vernon; and Carol Weisman.

Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 5:**

Describe how you coordinated with IOM to develop guidelines for preventive care or screenings for women and all persons through whom you communicated with IOM about the development of the guidelines.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objection 1. Defendants further object to this interrogatory to the extent that it seeks information protected by the deliberative process privilege.

## RESPONSE

Subject to these objections and defendants' General Objections above, defendants respond as follows:

HHS: After consultation with the Health Resources and Services Administration ("HRSA"), HHS's Office of the Assistant Secretary for Planning and Evaluation ("ASPE") developed a statement of work, and its contracting office, the Program Support Center, awarded a contract to the IOM. HHS asked the IOM to conduct its review, identify gaps in existing guidelines, and provide evidence-informed recommendations that would support women's health and well-being.

After the contract was awarded, HHS staff met with the IOM staff to describe the intended purpose of the contract and the scope of work to be performed under the contract, to provide background information, and to address questions from the IOM staff.

The IOM followed its standard protocol for conducting its independent committee work, selecting subject matter experts for the study committee, scheduling committee meetings, and selecting panelists and presenters for committee meetings that were open to the public. To meet its charge, the Committee held three information-gathering meetings on preventive services for women and reviewed the relevant literature. At the first IOM committee meeting, the ASPE and the HRSA Administrator offered opening remarks and gave the study committee its charge to conduct its work. The Committee also invited comments from the general public and from representatives of numerous organizations with interest in women's preventive services. ASPE staff attended all three of the committee meetings that were open to the public. Rose Marie Martinez and Karen Helsing were the IOM staff managing the work performed under the contract. Adelle Simmons was the Federal Project Officer for the IOM contract.



Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 6:**

Describe your involvement in IOM's development of guidelines, including any involvement in selecting individuals or groups who made presentations to IOM.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objection 1. Defendants further object to this interrogatory to the extent that it seeks information protected by the deliberative process privilege.

**RESPONSE**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

HHS: National Academy of Sciences/IOM contracts have specific language restricting sponsors' involvement in IOM decisions or study committee deliberations. The IOM Study Director contacted the Federal Project Officer on an *ad hoc* basis if committee members requested clarification about the charge to the committee but ASPE and HHS more generally had no role in the IOM's development of its recommendations. ASPE and HHS also had no role in IOM's identification or selection of the panelists and presenters at its committee meetings.

Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 7:**

Describe the process by which you approved, adopted, or otherwise supported the guidelines issued by IOM under 42 U.S.C. § 300gg-13(a)(4) and your reasons for doing so.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objection 1. Defendants further object to this interrogatory to the extent that it seeks information protected by the deliberative process privilege.

**RESPONSE**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

HHS: Section 2713 of the Public Health Service Act ("PHSA") and the July 19, 2010 Interim Final Rules ("IFR") for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services (75 Fed. Reg. 41726) listed the recommended preventive services that many insurers and health plans must offer without imposing cost sharing requirements, including, with respect to women, evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA.

After consultation with HRSA, ASPE developed a statement of work, and its contracting office, the Program Support Center, awarded a contract to the IOM to provide recommendations for what constitutes a comprehensive set of preventive services that should be made available for women with no cost sharing. HHS's charge to the IOM Committee was to identify potential gaps in existing preventive services guidelines – that is gaps that go beyond the United States Preventive Services Task

Force A and B recommendations since those services had already been included as preventive services under section 2713 of the PHSA and the IFR of July 2010. The IOM's recommendations address insurance coverage of additional services that are focused on enhancing and supporting women's health and well-being.

HRSA, in collaboration with ASPE, received an advance copy of the IOM final report on July 14, 2011, and reviewed the content. Based on the review of the report and discussions with senior HHS officials with extensive expertise in maternal and child health issues, public health, and primary care, HRSA supported the IOM recommendations. On July 29, 2011, HRSA notified the Secretary of HHS that HRSA supported the additional guidelines for preventive screenings and services for women that were based on the recommendations of the IOM, subject to a religious employer exemption that was being authorized by an amendment to the interim final rules. On August 1, 2011, HRSA posted those guidelines, and notified the public that the guidelines became effective on August 1, 2012.

The Administrative Record, which defendants provided to plaintiffs on May 29, 2012, contains all non-privileged materials defendants considered in promulgating the contraceptive coverage requirement.

Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 8:**

State whether you were aware of any religious objections to the guidelines issued by IOM and why you supported the guidelines despite any religious objections.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objection 1. Defendants object to this interrogatory to the extent that it seeks information protected by the deliberative process privilege.

**RESPONSE**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

Pages 0001510 to 0181059 of the Administrative Record, which defendants provided to plaintiffs on May 29, 2012, contain all public comments defendants received on the Interim Final Rule (Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726 (July 19, 2010)) and the Amended Interim Final Rule (Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011)). The Administrative Record also contains all non-privileged materials defendants considered in promulgating the contraceptive coverage requirement, as well as guidance on a temporary enforcement safe harbor for certain non-profit organizations that object to covering contraceptive services on religious grounds. Defendants will supplement the Administrative Record as necessary and appropriate as the rulemaking process continues.

**INTERROGATORY NO. 9:**

Identify any government interest behind the Mandate that you assert qualifies as a compelling government interest.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objections 1-2.

**RESPONSE**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

HHS: The governmental interests advanced by the contraceptive coverage requirement are set forth in the Administrative Record as well as the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) ("ACA"), and specifically 42 U.S.C. 300gg-13(a)(4), and its legislative history. The contraceptive coverage requirement serves two compelling governmental interests: (1) promoting the health of women and newborn children, and (2) equalizing the provision of preventive health care services for men and women, so that women are able to contribute to the same degree as men as healthy and productive members of society.

Treasury: Because of HHS's expertise in the area of public health, Treasury relied on HHS's determination that the contraceptive coverage requirement serves the two compelling interests identified by HHS above.

DOL: Because of HHS's expertise in the area of public health, DOL relied on HHS's determination that the contraceptive coverage requirement serves the two compelling interests identified by HHS above.

**INTERROGATORY NO. 10:**

For each government interest identified in response to Interrogatory No. 9, state why you believe it is a compelling government interest, including by identifying any evidence you intend to rely on to support that conclusion in this lawsuit.

**RESPONSE**

Subject to defendants' General Objections above, defendants respond as follows:

HHS: The contraceptive coverage requirement advances the government's compelling interest in promoting the health of women and newborn children. Research shows that cost-sharing requirements can pose barriers to preventive care and result in reduced use of preventive services, particularly for women. A 2010 survey showed that less than half of women are up to date with recommended preventive care screenings and services. Specifically, many women do not utilize contraceptive methods or sterilization procedures because they are not covered by their health plan or they require costly copayments, coinsurance, or deductibles. Coverage, without cost-sharing, for FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling is necessary to increase utilization of these services, and thereby reduce unintended pregnancies (and the negative health outcomes that disproportionately accompany unintended pregnancies) and promote healthy birth spacing.

According to a national survey, in 2001, an estimated 49 percent of all pregnancies in the United States were unintended. When compared to intended pregnancies, unintended pregnancies are more likely to result in poorer health outcomes for mothers and children. Women with unintended pregnancies are more likely than those with intended pregnancies to receive delayed or no prenatal care, to smoke and/or consume alcohol during pregnancy, to be depressed during pregnancy, and to experience domestic violence during pregnancy. Children born as the result of unintended pregnancies are at increased risk of preterm birth and low birth weight as compared to children born as the result of intended pregnancies. The use of contraception also allows women to avoid short interpregnancy intervals, which have

been associated with low birth weight, prematurity, and small-for-gestational-age births. Moreover, women with certain chronic medical conditions may need contraceptive services to postpone pregnancy, or to avoid it entirely, and thereby reduce risks to themselves or their children. Additionally, contraceptive use has been shown to reduce the risk of a variety of cancers, including uterine, ovarian, and colorectal cancers, and to reduce the risk of anemia, ectopic pregnancies, and osteoporosis. Accordingly, through the requirement that certain health coverage include coverage for contraceptive services without cost-sharing, defendants seek to further an indisputably compelling interest in the promotion of women's health and the health of newborn children.

The contraceptive coverage requirement also advances the government's compelling interest in promoting gender equality. As the Supreme Court explained in *Roberts v. United States Jaycees*, 468 U.S. at 626, there is a fundamental "importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women." Thus, "[a]ssuring women equal access to . . . goods, privileges, and advantages clearly furthers compelling state interests." *Id.* In requiring health coverage to gender-specific preventive health services for women, Congress made clear that the goals and benefits of effective preventive health care apply with equal force to women, who might otherwise be excluded from such benefits if their unique health care needs were not taken into account in the ACA. Women have different health needs than men, and these needs often generate additional costs. Women of childbearing age spend 68 percent more in out-of-pocket health care costs than men. These costs result in women often forgoing preventive care. Accordingly, this disproportionate burden on women creates financial barriers that prevent women from achieving health and well-being for themselves and their families. Congress's and

defendants' attempt to equalize the provision of preventive health care services, with the resultant benefit of women being able to contribute to the same degree as men as healthy and productive members of society, furthers a compelling governmental interest.

The evidence defendants will rely on to establish the compelling governmental interests advanced by the contraceptive coverage requirement is set forth in the Administrative Record as well as the ACA, and specifically 42 U.S.C. 300gg-13(a)(4), and its legislative history.

Treasury: Because of HHS's expertise in the area of public health, Treasury relied on HHS's determination that the contraceptive coverage requirement serves the two compelling interests identified by HHS above.

DOL: Because of HHS's expertise in the area of public health, DOL relied on HHS's determination that the contraceptive coverage requirement serves the two compelling interests identified by HHS above.

**INTERROGATORY NO. 11:**

For each government interest identified in response to Interrogatory No. 9, state why you believe the final Mandate is narrowly tailored to protect the government interest, including by identifying all alternative measures you considered to protect that interest and the reasons why the alternative measures were rejected and the Mandate was adopted.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objections 1-2. Defendants further object to this interrogatory as vague, because the phrase "final Mandate" is not defined and lacks any commonly understood meaning.

**RESPONSE**



Subject to these objections and defendants' General Objections above, defendants respond as follows:

The Administrative Record, including pages 0000046 to 0000051, which defendants provided to plaintiffs on May 29, 2012, contains all non-privileged materials defendants considered in promulgating the contraceptive coverage requirement.

**INTERROGATORY NO. 12:**

Describe any internal discussions you have engaged in concerning the potential or actual objections to the Mandate that were based on religious belief.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objections 1-2. Defendants further object to this interrogatory as vague, because the phrase "potential or actual objections" is not defined and lacks any commonly understood meaning. Defendants further object because this interrogatory asks defendants to "describe . . . internal discussions" about a policy matter, which are protected by the deliberative process privilege as well as other privileges.

**INTERROGATORY NO. 13:**

Describe any internal discussions you engaged in concerning potential or actual objections to the Mandate that were based on an understanding that drugs or devices included in the Mandate may prevent implantation of a fertilized egg in the uterus.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objections 1-2. Defendants further object to this interrogatory as vague, because the phrase "potential or actual objections" is not defined and lacks any commonly understood meaning. Defendants further object because this interrogatory asks

defendants to “describe . . . internal discussions” about a policy matter, which are protected by the deliberative process privilege as well as other privileges.

**INTERROGATORY NO. 14:**

Identify all programs, funding initiatives, or other means through which you directly or indirectly facilitate access to contraceptives, sterilization procedures, or patient education and counseling for women with reproductive capacity.

**OBJECTIONS**

Defendants object to this interrogatory for the reasons described in General Objections 1. Defendants further object to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it asks defendants to identify programs, funding initiatives, or other means through which defendants “indirectly” facilitate access to contraceptives, sterilization procedures, or patient education and counseling for women with reproductive capacity.

**RESPONSE**

Subject to these objections and defendants’ General Objections above, defendants respond as follows:

HHS: HHS defines “programs, funding initiatives, or other means through which you directly or indirectly facilitate access to contraceptives, sterilization procedures, or patient education and counseling for women with reproductive capacity” as including programs through which defendants provide, or fund the provision by others, of contraceptives, sterilization procedures, or patient education and counseling to women with reproductive capacity, either as an express purpose of the program, or as expressly required by the program. Consistent with defendants’ objection, HHS does not include programs under which HHS provides funds to third parties for the provision

of health services and the provision of contraceptives, sterilization procedures, or patient education and counseling for women with reproductive capacity is neither an express purpose of the program, nor expressly required by the program. Consistent with defendants' objection, HHS does not include programs that provide or support the provision of health insurance.

(1) The following programs provide, or fund the provision of, family planning or patient education and counseling services to women with reproductive capacity:

- a. Family Planning grants, 42 U.S.C. 300, et seq.
- b. The Teenage Pregnancy Prevention Program Public Law 112-74 (125 Stat 786, 1080).
- c. The Healthy Start Program, 42 U.S.C. 254c-8.
- d. The Maternal, Infant, and Early Childhood Home Visiting Program, 42 U.S.C. 711.
- e. Maternal and Child Health Block Grants, 42 U.S.C. 703.
- f. 42 U.S.C. 247b-12.

(2) The following programs provide a range of health care services, which are required to include, as necessary, contraceptives, family planning services, and patient education and counseling, to specified populations:

- g. Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
- h. The Indian Health Service, 25 U.S.C. 13, 42 U.S.C. 2001(a), and 25 U.S.C. 1601, et seq.
- i. Health center grants, 42 U.S.C. 254b(e), (g), and (h), and (i).
- j. The NIH Clinical Center, 42 U.S.C. 248.
- k. The Personal Responsibility Education Program, 42 U.S.C. 713.
- l. The Unaccompanied Alien Children Program, 8 U.S.C. 1232(b)(1).

Treasury: Treasury does not have information in its possession, custody, or control that is responsive to this request.

DOL: DOL does not have information in its possession, custody, or control that is responsive to this request.

**INTERROGATORY NO. 15:**

Identify by name or by category any individuals or entities, or groups of individuals or entities, who have received a waiver from you from the obligation to comply with the final Mandate.

**OBJECTIONS**

Defendants object to this interrogatory as vague because the terms “waiver” and “final Mandate” are not defined and lack any commonly understood meaning.

**INTERROGATORY NO. 16:**

Identify by name or by category any individuals or entities, or groups of individuals or entities, who are exempt from the requirement to comply with the final Mandate.

**OBJECTIONS**

Defendants object to this interrogatory as vague because the terms “exempt” and “final Mandate” are not defined and lack any commonly understood meaning.

**RESPONSE**

Subject to this objection and defendants’ General Objections above, defendants respond as follows:

Defendants consider a group health plan or health insurance issuer to be “exempt” from the contraceptive coverage requirement if the group health plan or health insurance issuer offers non-grandfathered group or individual health coverage but that coverage is not required by the contraceptive coverage requirement to provide

coverage without cost sharing for all FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider. Consistent with this definition, group health plans sponsored by certain religious employers (and any associated group health insurance coverage) are exempt from the contraceptive coverage requirement. To qualify for the exemption, an employer must meet all of the following criteria:

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

See 45 C.F.R. § 147.130(a)(1)(iv).

**INTERROGATORY NO. 17:**

For purposes of the “religious employer” exemption to the final Mandate, identify the standards you will use to determine whether the inculcation of religious values is “the purpose” of an organization and whether an organization “primarily” employs and serves persons who share the religious tenets of the organization.

**OBJECTIONS**

Defendants object to this interrogatory as vague because the phrase “final Mandate” is not defined and lacks any commonly understood meaning. Defendants further object to this interrogatory as not reasonably calculated to lead to the discovery

of admissible evidence, because plaintiff acknowledges that it does not qualify for the religious employer exemption contained in 45 C.F.R. § 147.130(a)(1)(iv).

**RESPONSE**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

In determining whether an entity satisfies the requirements of the religious employer exemption, defendants will rely on the plain language of 45 C.F.R. § 147.130(a)(1)(iv) and other interpretive tools, taking into account all relevant facts and circumstances.

**INTERROGATORY NO. 18:**

For purposes of the "religious employer" exemption to the final Mandate, identify the standards you will use to determine whether a person "share[s] the religious tenets" of an organization.

**OBJECTIONS**

Defendants object to this interrogatory as vague because the phrase "final Mandate" is not defined and lacks any commonly understood meaning. Defendants further object to this interrogatory as not reasonably calculated to lead to the discovery of admissible evidence, because plaintiff acknowledges that it does not qualify for the religious employer exemption contained in 45 C.F.R. § 147.130(a)(1)(iv).

**RESPONSES**

Subject to these objections and defendants' General Objections above, defendants respond as follows:

In determining whether an entity satisfies the requirements of the religious employer exemption, defendants will rely on the plain language of 45 C.F.R. §

147.130(a)(1)(iv) and other interpretive tools, taking into account all relevant facts and circumstances.

**INTERROGATORY NO. 19:**

Describe how the safe harbor announced by you on February 10, 2012, applies to an entity that—consistent with its religious beliefs—has provided coverage for some but not all contraceptives since February 10, 2012.

**RESPONSE**

Defendants refer plaintiff to the August 15, 2012 bulletin clarifying the temporary enforcement safe harbor, entitled Guidance on the Temporary Enforcement Safe Harbor Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code (Aug. 15, 2012). It is available at: <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf>.

**INTERROGATORY NO. 20:**

Describe how the safe harbor announced by you on February 10, 2012, applies to an entity that—inconsistent with its religious beliefs—has unintentionally provided coverage for some or all contraceptives since February 10, 2012, but has excluded or will exclude such coverage before the final Mandate takes effect against that entity.

**OBJECTIONS**

Defendants object to this interrogatory as vague, because the phrase “final Mandate” is not defined and lacks any commonly understood meaning.

**RESPONSE**

Subject to this objection and defendants' General Objections above, defendants respond as follows:

Defendants refer plaintiff to the August 15, 2012 bulletin clarifying the temporary enforcement safe harbor, entitled Guidance on the Temporary Enforcement Safe Harbor Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code (Aug. 15, 2012). It is available at: <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf>.

**INTERROGATORY NO. 21:**

Explain how your responses to Interrogatories No. 20 and 21 can be read consistently with the following certification required to be made by any entity seeking to take advantage of the safe harbor:

I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, ***contraceptive coverage has not been provided*** by the plan, consistent with any applicable State law, because of the religious beliefs of the organization.

**OBJECTIONS**

Defendants object to this interrogatory as vague on the ground that it refers to itself.

**RESPONSE**

Subject to this objection and defendants' General Objections above, defendants respond as follows:

Defendants refer plaintiff to the August 15, 2012 bulletin clarifying the temporary enforcement safe harbor, entitled Guidance on the Temporary Enforcement Safe



Harbor Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code (Aug. 15, 2012). The August 15, 2012 bulletin, which is available at <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf>, includes a revised certification form.

**INTERROGATORY NO. 22:**

Describe what is intended by the language “consistent with any applicable State law” from the block quote in Interrogatory No. 22.

**OBJECTIONS**

Defendants object to this interrogatory as vague on the ground that it refers to itself and there is no block quote in Interrogatory No. 22.

**RESPONSE**

Subject to this objection and defendants’ General Objections above, defendants respond as follows:

The language “consistent with any applicable State law” speaks for itself.

As to Objections:

Dated: October 1, 2012

STUART F. DELERY  
Acting Assistant Attorney General

IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General

JOHN F. WALSH  
United States Attorney

JENNIFER RICKETTS  
Director

SHEILA M. LIEBER  
Deputy Director, Federal Programs Branch


s/ Michelle R. Bennett  
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Attorneys for Defendants.

VERIFICATION

I have reviewed Defendants' Responses to Plaintiff's First Set of Interrogatories, Nos. 1-11, 14, 16-22, in the matter of *Colorado Christian University v. Sebelius, et al.*, 11-cv-03350-CMA-BNB (D. Colo.). As to the Department of Health and Human Services (HHS), I hereby declare, under penalty of perjury, that the information contained therein is accurate to the best of my knowledge based upon my review of documents available to me and information furnished to me by other employees of HHS.

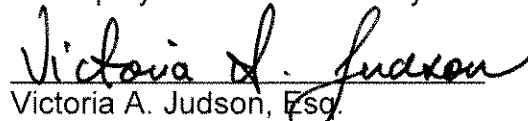
Date: 10/01/2012

  
[Name]

VERIFICATION

I have reviewed Defendants' Responses to Plaintiff's First Set of Interrogatories, Nos. 1-22, in the matter of *Colorado Christian University v. Sebelius, et al.*, 11-cv-03350-CMA-BNB (D. Colo.). As to the Department of the Treasury (Treasury), I hereby declare, under penalty of perjury, that the information contained therein is accurate to the best of my knowledge based upon my review of documents available to me and information furnished to me by other employees of the Treasury.

Date: 10/1/2012

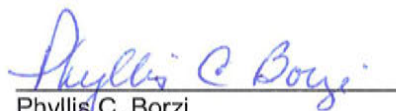


Victoria A. Judson, Esq.  
Division Counsel / Associate Chief Counsel (TEGE)  
Internal Revenue Service

VERIFICATION

I have reviewed Defendants' Responses to Plaintiff's First Set of Interrogatories, Nos. 1-22, in the matter of *Colorado Christian University v. Sebelius, et al.*, 11-cv-03350-CMA-BNB (D. Colo.). As to the Department of Labor (DOL), I hereby declare, under penalty of perjury, that the information contained therein is accurate to the best of my knowledge based upon my review of documents available to me and information furnished to me by other employees of DOL.

Date: 10/1/12



Phyllis C. Borzi  
Assistant Secretary  
Employee Benefits Security  
Administration  
U.S. Department of Labor

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that I served Defendants' Responses to Plaintiff's First Set of Interrogatories by electronic mail and regular mail upon the persons below on October 1, 2012:

Eric Baxter  
Becket Fund for Religious Liberty  
3000 South K Street, N.W., #220  
Washington, DC 20007  
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Eric Rassbach  
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s/ Michelle R. Bennett  
MICHELLE R. BENNETT