

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

SHARPE HOLDINGS, INC., a Missouri)
Corporation,)
)
OZARK NATIONAL LIFE INSURANCE)
COMPANY, a Missouri Corporation,)
)
CNS CORPORATION, a Missouri)
Corporation,)
)
N.I.S. FINANCIAL SERVICES, INC., a)
Missouri Corporation,)
)
CHARLES N. SHARPE,)
a Missouri resident,)
)
JUDI DIANE SCHAEFER,)
a Missouri resident, and)
)
RITA JOANNE WILSON,)
a Missouri resident,)
)
Plaintiffs,)
)
vs.) Case No. 2:12-cv-00092-DDN
)
UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN SERVICES,)
)
KATHLEEN SEBELIUS, in her official)
capacity as the Secretary of the United)
States Department of Health and Human)
Services,)
)
UNITED STATES DEPARTMENT OF)
THE TREASURY,)
)
JACOB J. LEW, in his official)
capacity as the Secretary of the United)
States Department of the Treasury,)
)
UNITED STATES DEPARTMENT OF)
LABOR, and)

)
SETH D. HARRIS, in his official capacity)
as Acting Secretary of the United States)
Department of Labor,)
)
Defendants.)

FIRST AMENDED COMPLAINT

Plaintiffs Sharpe Holdings, Inc., Ozark National Life Insurance Company, CNS Corporation, N.I.S. Financial Services, Inc., Charles N. Sharpe, Judi Diane Schaefer and Rita Joanne Wilson, for their First Amended Complaint, state:

NATURE OF THE ACTION

1. This case challenges regulations issued under the Patient Protection and Affordable Care Act of 2010 (“Act”) that force the Plaintiffs to either (a) violate their sincerely-held religious opposition to abortion on demand or (b) pay heavy fines and penalties (Sharpe Holdings, Inc., Ozark National Life Insurance Company, CNS Corporation, N.I.S. Financial Services, Inc. and Charles N. Sharpe) or lose health insurance coverage (Judi Diane Schaefer and Rita Joanne Wilson).

2. Sharpe Holdings, Inc. (“Sharpe Holdings”) is a Missouri for-profit general business corporation that employs more than 50 men and women in a variety of industries, including, but not limited to, farming, dairy, creamery, and cheese-making. Sharpe Holdings offers health insurance to its employees through its own self-insured program.

3. Ozark National Life Insurance Company (“Ozark”) is a Missouri for-profit insurance corporation that employs more than 50 men and women. Ozark offers health insurance to its employees through a third-party insurance company, Aetna.

4. N.I.S. Financial Services, Inc. (“N.I.S.”) is a Missouri for-profit general business corporation that employs fewer than 50 men and women. N.I.S. is a mutual fund broker. N.I.S.

offers health insurance to its employees through a third-party insurance company, Aetna. Sharpe Holding, Ozark, CNS Corporation and N.I.S. will hereafter be collectively referred to as "the Corporate Plaintiffs."

5. CNS Corporation is a Missouri for-profit general business corporation that employs fewer than 50 men and women. CNS Corporation is the holding company for Sharpe Holdings, Ozark and N.I.S. CNS Corporation offers health insurance to its employees through a third-party insurance company, Aetna.

6. Charles N. Sharpe is the founder, owner, chairman of the board and chief executive officer of Sharpe Holdings; the founder, owner, president and chairman of the board of Ozark; the founder, owner and chairman of the board of N.I.S; and the founder, owner, president and chairman of the board of CNS Corporation. Mr. Sharpe is responsible for setting all policies governing the conduct of all phases of the businesses of the Corporate Plaintiffs, and he strives to operate the Corporate Plaintiffs' businesses according to Christian principles and coinciding sincerely held religious beliefs.

7. Judi Diane Schaefer and Rita Joanne Wilson are Sharpe Holdings employees. Health insurance coverage is a benefit of Schaefer's and Wilson's employment at Sharpe Holdings. Schaefer and Wilson pay a portion of the premiums required in order to maintain their coverage. Said premiums partially fund medical services provided to other employees covered under the same plan. Schaefer and Wilson oppose the use, funding, provision or support of abortion on demand as a matter of sincerely held religious belief and practice.

8. The Plaintiffs' sincerely held religious beliefs forbid them from funding, participating in, paying for, sharing the costs of, training others to engage in, or otherwise supporting or providing a means of abortion on demand.

9. The Plaintiffs do not believe that abortion on demand constitutes medicine, health care, or a means of providing for the well-being of persons. Rather, Plaintiffs believe abortion on demand involves gravely immoral practices and the intentional destruction of innocent human life.

10. The Defendants have issued an administrative rule (“Mandate” or “Final Rule”) pursuant to authority created by the Act requiring that group health plans cover, without cost sharing, “all Food and Drug Administration-approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity” in plan years beginning as early as August 1, 2012. Such contraceptive methods include certain drugs and devices such as the “Plan B” and “ella” pills and copper IUDs, all of which are widely known as abortifacients in that they frequently function to destroy fertilized eggs, which Plaintiffs consider to be abortion on demand. This not only forces the Plaintiffs to treat abortion on demand and related education and counseling as health care, but also subverts the expression of the Plaintiffs’ religious beliefs (which they share with millions of other Americans), by forcing them to fund, promote, and assist and participate in the provision of the acquisition of drugs and services which they believe involve gravely immoral practices, including the intentional destruction of innocent human life.

11. The Mandate unconstitutionally forces the Plaintiffs to violate their sincerely held religious beliefs—under threat of heavy fines and penalties for the Corporate Plaintiffs and Charles N. Sharpe, and under threat of lost health coverage or employment at Sharpe Holdings for Judi Diane Schaefer and Rita Joanne Wilson. The Mandate also forces the Plaintiffs to fund government-dictated speech that is directly at odds with their own speech and religious teachings. Having to pay a fine to government authorities for the privilege of practicing one’s

religion or controlling one's own speech is un-American, unprecedented, and flagrantly unconstitutional. Forcing an employee to fund government-dictated speech that is directly at odds with her own speech and religious teachings, in order to maintain insurance as a job benefit, is similarly wrong.

12. The Defendants' refusal to accommodate conscience is selective. A patchwork of exemptions shows that Defendants do not believe every insurance plan in the country needs to cover these services. For instance, Defendants have issued thousands of waivers from the Act (in its entirety) for many large corporations and labor unions, purely for reasons of commercial or political convenience. Other exemptions have been awarded based on how old a plan is, or how large an employer is. There are several other exemptions from the Act and from the Mandate, for a variety of groups and for a variety of reasons, including exemptions for certain narrowly defined religious employers that have found favor with the Defendants. There is, however, no exemption for for-profit religious employers and the employees they insure, like the Plaintiffs.

13. Defendants acted with full knowledge of the beliefs of thousands of employers and the employees they insure, like the Plaintiffs, and because they arbitrarily exempt some plans for a wide range of reasons other than religious conviction, the Mandate can be interpreted as nothing other than callous disregard of the religious beliefs of the Plaintiffs and many other Americans. The Defendants accordingly seek refuge in this Court.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(4), 1346(a)(2), and 1361. This action arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory and injunctive relief under

28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000bb-1.

15. Venue lies in this district pursuant to 28 U.S.C. § 1391(e).

THE PARTIES

16. Plaintiff Sharpe Holdings is a for-profit Missouri corporation residing in Shelby County, Missouri.

17. Plaintiff Ozark is a for-profit Missouri corporation residing in Jackson County, Missouri.

18. Plaintiff CNS Corporation is a for-profit Missouri corporation residing in Jackson County, Missouri.

19. Plaintiff N.I.S. is a for-profit Missouri corporation residing in Jackson County, Missouri.

20. Charles N. Sharpe is the founder, owner, chairman of the board and chief executive officer of Sharpe Holdings; the founder, owner, president and chairman of the board of Ozark; the founder, owner and chairman of the board of N.I.S.; and the founder, owner, president and chairman of the board of CNS Corporation. He is a resident of Shelby County, Missouri.

21. Plaintiff Judi Diane Schaefer is an individual residing in Shelby County, Missouri.

22. Plaintiff Rita Joanne Wilson is an individual residing in Shelby County, Missouri.

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

24. 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.

25. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

26. Defendant Seth D. Harris is the Acting Secretary of the United States Department of Labor. In this capacity, he has responsibility for the operation and management of the Department of Labor. Harris is sued in his official capacity only.

27. 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.

28. Defendant Jacob J. Lew is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Lew is sued in his official capacity only.

29. 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.

FACTUAL ALLEGATIONS

I. Plaintiffs’ Religious Beliefs and Practices Related to Abortion

30. Charles N. Sharpe is the founder, owner, chairman of the board and chief executive officer of Sharpe Holdings; the founder, owner, president and chairman of the board of Ozark; the founder, owner and chairman of the board of N.I.S; and the founder, owner, president and chairman of the board of CNS Corporation. Mr. Sharpe is responsible for setting all policies governing the conduct of all phases of the businesses of the Corporate Plaintiffs,

and he strives to operate the Corporate Plaintiffs' businesses according to Christian principles and coinciding sincerely held religious beliefs. He is also a minister of the gospel.

31. Sharpe Holdings is a Missouri, for-profit corporation that employs individuals in a variety of industries, including but not limited to, farming, dairy, creamery and cheese-making. Sharpe Holdings promotes the Christian beliefs, practices, and aspirations espoused by its founder and owner, Charles N. Sharpe. Outward examples include its milk tankers, which are emblazoned with the message "Jesus is the Answer," and its milk and cheese products, marketed under the name of Heartland Creamery, which substitute the "T" in Heartland with a Christian cross.

32. The Sharpe Holdings website describes the corporation's various enterprises and contains several demonstrations of its faith-based mission, including, for instance, the front page of the website which is subtitled "Transforming Hearts and Lives through the Power of Jesus Christ." See <http://www.sharpeholdingsinc.com/>.

33. Sharpe Land & Cattle is a division within Sharpe Holdings. The Sharpe Holdings website says the following of Sharpe Land & Cattle:

The goal of Sharpe Land & Cattle goes far beyond the further growth of an already thriving agricultural enterprise. The heart behind the organization aspires to help people rebuild their lives through the changing power of Jesus Christ. By modeling their work ethic before the men at the Recovery Center, and by providing vocational opportunities for those in their community, the staff of Sharpe Land & Cattle strives to implement Godly principles in every aspect of their business. By remaining true to this calling, Sharpe Land & Cattle has experienced a sovereign move of God—and they plan to continue operating under God's blessing.

<http://www.sharpeholdingsinc.com/slc.html>.

34. Ozark is a Missouri, for-profit life insurance company.

35. N.I.S. is a Missouri, for-profit securities broker/dealer.

36. Ozark and N.I.S. work in conjunction in providing an insurance/investment

product called The Balanced Program which combines mutual fund investment and life insurance.

37. Ozark and N.I.S. share a website, which states that “Ozark National Life is proud to be associated with” and supports Heartland Ministries. <http://www.ozark-national.com/connect.aspx>. There is a link to the Heartland Ministries website, whose homepage states, among other things, “Jesus is the answer!” <http://heartland-ministries.org>. Charles N. Sharpe is the founder and head pastor for Heartland Ministries.

38. CNS Corporation is a Missouri, for-profit corporation that serves as a holding company for Sharpe Holdings, Ozark and N.I.S.

39. Christian belief and practice are integral to the identities of the Corporate Plaintiffs, and adherence to Christian tenets is a deeply and sincerely integral aspect of the Corporate Plaintiffs.

40. The Corporate Plaintiffs seek to defend and promote certain moral and ethical standards in their employees, including not just teaching them a life-sustaining work ethic but also promoting a belief in the sanctity and quality of life which precludes abortion on demand through abortifacient drugs and devices or otherwise.

41. As part of their missions, the Corporate Plaintiffs promote the well-being and health of their employees. In furtherance of these commitments, the Corporate Plaintiffs ensure that their employees have comprehensive medical coverage. Sharpe Holdings has a self-insured plan, while Ozark, CNS Corporation and N.I.S. have plans with a third-party provider, Aetna. The plans purposely exclude coverage for abortions or abortifacient drugs or devices.

42. Judi Diane Schaefer and Rita Joanne Wilson are Sharpe Holdings employees. Health insurance coverage is a benefit of their employment at Sharpe Holdings. They pay a

portion of the premiums required in order to maintain this coverage. Said premiums partially fund medical services provided to other employees covered under the same plan.

43. Mr. Sharpe, Ms. Schaefer and Ms. Wilson oppose the use, funding, provision or support of abortion on demand as a matter of sincerely held religious belief and practice.

44. The Plaintiffs cannot provide, fund or in any way be a participant in the provision of health care coverage for abortions or abortifacient drugs and devices, or related education and counseling, without violating their deeply and sincerely held religious beliefs.

45. The Plaintiffs cannot provide, fund or in any way be a participant in the provision of information or guidance to others under the same insurance plan about locations at which they can access abortifacients, or related education and counseling, without violating their deeply and sincerely held religious beliefs.

46. The Sharpe Holdings health insurance plan year began on January 1, 2013. The Ozark, CNS Corporation and N.I.S. plans begin on July 1, 2013.

II. Abortifacient Drugs and Devices

47. “Plan B” (levonorgestrel) was approved by the Food and Drug Administration (“FDA”) as a prescription-only drug product on July 28, 1999 and was approved by the FDA for over-the-counter sales on August 24, 2006 for women 18 years of age and older and by prescription for those 17 or younger. It is to be taken within three days after unprotected sex. On July 9, 2009, a more potent version, Plan B One Step, was approved by the FDA with the same restrictions. Next Choice is another FDA-approved levonorgestrel abortifacient. *See* FDA Birth Control Guide, available at <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (last visited May 27, 2013).

48. “ella” (ulipristal acetate) was approved by the FDA on August 13, 2010. ella is a prescription-only drug product which is taken within five days after a contraceptive failure or unprotected sex. *See* FDA Birth Control Guide, available at <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (last visited May 27, 2013).

49. Copper IUDs (intra-uterine devices) were approved by the FDA in 1984. *See* FDA Birth Control Guide, available at <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (last visited May 27, 2013).

50. Each of the aforementioned abortifacient drugs or devices frequently operates by stopping a fertilized egg from being implanted into the uterus.

III. The Affordable Care Act

51. In March 2010, Congress passed and President Obama signed into law the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the “Affordable Care Act.”

52. The Act regulates the national health insurance market by directly regulating “group health plans” and “health insurance issuers.”

53. The Act does not apply equally to all insurers, employers or individuals.

54. The Act does not apply its fine and penalty provisions for failure to offer employer-sponsored insurance to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

55. The Act is not generally applicable because it provides for numerous exemptions from its rules.

56. The Act's preventive care requirements do not apply to employers who provide so-called "grandfathered" health care plans. Given plan changes since March 23, 2010, the Plaintiffs' health insurance plan does not qualify as a grandfathered health plan. *See* 42 U.S.C. § 18011(a)(2); 26 C.F.R. § 54.9815-1251T; 29 C.F.R. § 2590.715-1251; 45 C.F.R. § 147.140.

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

58. HHS has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans through at least 2014, and that a third of small employers with between 50 and 100 employees may do likewise. *See Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans*, available at <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html> (last visited May 27, 2013). According to government estimates, a total of 191 million Americans belong to plans that may be grandfathered under the Act. Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538, 34540 (June 17, 2010).

59. In addition to grandfathering under the Act, the preventive care guidelines exempt certain religious employers (as more fully described *infra*) from any requirement to cover contraceptive services. 45 C.F.R. § 147.130(a)(iv)(B).

60. The Act is not neutral because some groups, both secular and religious, enjoy exemptions from the law, while certain religious groups do not.

61. None of the several exemptions from the law applies to any of the Plaintiffs.

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

63. The Department of Health and Human Services has the authority under the Act to grant compliance waivers (“HHS waivers”) to employers and other health insurance plan issuers. HHS waivers release employers and other plan issuers from complying with the provisions of the Act. HHS decides whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers. Upon information and belief, more than a thousand HHS waivers have been granted. The Act is not neutral because some religious groups have received HHS waivers while other religious groups have not.

64. The Act is not generally applicable because Defendants have granted numerous waivers from complying with the Act’s requirements.

65. The Act is not generally applicable because it does not apply equally to all individuals and plan issuers.

66. Defendants’ waiver practices create a system of individualized assessments to qualify for an exemption.

67. Violations of the Act can subject an employer and an insurer to substantial monetary penalties.

68. Under the Internal Revenue Code, certain employers who fail to offer “full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under

an eligible employer-sponsored plan” will be exposed to significant annual fines of \$2,000 per full-time employee. *See* 26 U.S.C. § 4980H(a), (c)(1).

69. Additionally, under the Internal Revenue Code, group health plans that fail to provide certain required coverage may be subject to an assessment of \$100 a day per individual. *See* 26 U.S.C. § 4980D(b); *see also* Jennifer Staman & Jon Shimabukuro, Cong. Research Serv., RL 7-5700, Enforcement of the Preventative Health Care Services Requirements of the Patient Protection and Affordable Care Act (2012) (asserting that this applies to employers who violate the “preventive care” provision of the Act).

70. Under the Public Health Service Act, the Secretary of HHS may impose a monetary penalty of \$100 a day per individual where an insurer fails to provide the coverage required by the U.S. Government Mandate. *See* 42 U.S.C. § 300gg-22(b)(2)(C)(i); *see also* Cong. Research Serv., RL 7-5700 (asserting that this penalty applies to insurers who violate the “preventive care” provision of the Affordable Care Act).

71. ERISA may provide for additional penalties. Under ERISA, plan participants can bring civil actions against insurers for unpaid benefits. 29 U.S.C. § 1132(a)(1)(B); *see also* Cong. Research Serv., RL 7-5700. Similarly, the Secretary of Labor may bring an enforcement action against group health plans of employers that violate the U.S. Government Mandate, as incorporated by ERISA. *See* 29 U.S.C. § 1132(b)(3); *see also* Cong. Research Serv., RL 7-5700 (asserting that these penalties can apply to employers and insurers who violate the “preventive care” provision of the Affordable Care Act).

IV. The Preventive Care Mandate

72. The Affordable Care Act mandates that health plans “provide coverage for and shall not impose any cost sharing requirements for[,] . . . with respect to women, such additional

preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration,” and directs the Secretary of HHS to determine what would constitute “preventive care” under the mandate. 42 U.S.C. § 300gg—l3(a)(4).

73. On July 19, 2010, HHS, along with the Department of Treasury and the Department of Labor, published an interim final rule under the Act. 75 Fed. Reg. 41726 (2010). The interim final rule requires providers of group health insurance to cover preventive care for women as provided in guidelines to be published by the Health Resources and Services Administration at a later date. 75 Fed. Reg. 41759 (2010).

74. A number of groups filed comments warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of “health care,” including abortion on demand and abortifacients.

75. HHS directed an independent, non-profit private health policy organization, the Institute of Medicine (“IOM”), to suggest a list of recommended guidelines describing which drugs, procedures, and services should be covered by all health plans as preventive care for women. *See Women’s Preventive Services: Required Health Plan Coverage Guidelines,* <http://www.hrsa.gov/womensguidelines> (last visited May 27, 2013).

76. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. These were the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists, John Santelli, the National Women’s Law Center, National Women’s Health Network, Planned Parenthood Federation of America, and Sara Rosenbaum.

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

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

79. FDA-approved “contraceptive” methods include birth-control pills; prescription contraceptive devices, including IUDs; Plan B, also known as the “morning-after pill”; ulipristal, also known as “ella” or the “week-after pill”; and other drugs, devices, and procedures. *See* FDA Birth Control Guide, available at <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (last visited May 27, 2013).

80. Thirteen days later, on August 1, 2011, without notice of rulemaking or opportunity for public comment, HHS, the Department of Labor, and the Department of Treasury adopted the IOM recommendations in full and promulgated an interim final rule (the Mandate), which requires that all “group health plan[s] and . . . health insurance issuer[s] offering group or individual health insurance coverage” provide all FDA-approved contraceptive methods and sterilization procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. On the same day the Health Services and Resources Administration (“HRSA”) issued guidelines adopting the IOM recommendations. *See* Women's Preventive Services: Required Health Plan Coverage Guidelines, <http://www.hrsa.gov/womensguidelines> (last visited May 27, 2013).

81. The Mandate also requires group health care plans and issuers to provide education and counseling, including on the subject of abortifacients, for all women

beneficiaries with reproductive capacity.

82. The Mandate went into effect immediately as an “interim final rule.”

83. HHS did not adequately accommodate the concerns of religious organizations or individuals in the comments submitted before the Mandate was issued. The Mandate was unresponsive to the concerns stated in the comments submitted by religious organizations.

84. When it issued the Mandate, HHS requested comments from the public by September 30, 2011, and indicated that comments would be available online. Upon information and belief, over 100,000 comments were submitted against the Mandate.

85. On October 5, 2011, six days after the comment period ended, Defendant Sebelius gave a speech at a fundraiser for NARAL (National Abortion Rights Action League) Pro-Choice America. She told the assembled crowd that “we are in a war.”

86. The Mandate fails to take into account the statutory and constitutional conscience rights of religious organizations and individuals like the Plaintiffs.

87. The Mandate requires that the Plaintiffs provide coverage for or otherwise participate in the provision of abortifacients and related education and counseling against Plaintiffs’ religiously informed consciences.

88. The Mandate constitutes government-imposed pressure and coercion on the Plaintiffs to change or violate their religious beliefs and practices.

89. The Mandate exposes the Corporate Plaintiffs and Charles N. Sharpe to substantial fines, and, in the case of Judi Diane Schaefer and Rita Joanne Wilson, jeopardizes access to affordable health insurance, because of Plaintiffs’ refusal to change or violate their religious beliefs and practices.

90. The Mandate forces the Plaintiffs to provide, fund or participate in the

provision of abortifacients and related education and counseling in violation of their religious beliefs, conduct which is equivalent to assisting another to intentionally destroy innocent human life.

91. It is the Plaintiffs' sincerely held religious belief that human life begins at conception.

92. The Plaintiffs believe that abortifacients such as Plan B, ella and copper IUDs can and do prevent the implantation of a human embryo in the wall of the uterus, and therefore can and do cause the death of the embryo, which is a human life.

93. Plan B, ella and copper IUDs can and do prevent the implantation of a human embryo in the wall of the uterus. Plan B, ella and copper IUDs can and do cause the death of the embryo. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus constitutes an "abortion" as that term is used in federal law and as that term is understood by Plaintiffs. The use of artificial means to cause the death of a human embryo constitutes an "abortion" as that term is used in federal law and as that term is understood by Plaintiffs.

94. The Mandate forces the Plaintiffs to provide, fund or participate in the provision of abortifacients such as Plan B, ella and copper IUDs, free of charge, regardless of the ability of employees to obtain these drugs from other sources.

95. The Mandate forces the Plaintiffs to fund or to otherwise participate in the provision of education and counseling concerning abortion that directly conflicts with the Plaintiffs' religious beliefs and/or teachings.

96. The Corporate Plaintiffs and Charles N. Sharpe cannot terminate their employees from health insurance coverage without violating their religious duty to provide for

the health and well-being of their employees, and would be hampered in their ability to hire and retain qualified employees if they were unable to provide health insurance. Additionally, employees such as Judi Diane Schaefer and Rita Joanne Wilson would be unable to attain similar coverage in the market as it exists today.

97. The Mandate forces the Plaintiffs to choose among violating their religious beliefs, incurring substantial fines, or terminating their employee health care plans.

98. Providing counseling and education about abortion directly undermines and subverts the explicit messages and speech of the Plaintiffs. Being compelled to provide such counseling and education constitutes compelled speech, in violation of the First Amendment. Being compelled to refer to abortifacients as “preventive care” also constitutes compelled speech in violation of the First Amendment.

V. The Narrow and Discretionary Religious Exemption

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

100. The Corporate Plaintiffs, though religious employers, do not qualify for this exemption because they are for-profit corporations.

101. On January 20, 2012, Defendant Sebelius announced that there would be no change to the narrow religious exemption. She added that “[n]onprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law,” on the condition that those employers certify that they qualify for the one-year extension. At the same time, however, Sebelius announced that HHS “intend[s] to require employers that do not offer coverage of contraceptive services to provide notice to employees, which will also state that contraceptive services are available at sites such as community health centers, public clinics, and hospitals with income-based support.” *See Statement by U.S. Dep’t of Health and Human Services’ Secretary Kathleen Sebelius, available at* <http://www.hhs.gov/news/press/2012pres/01/20120120a.html> (last visited May 27, 2013).

VI. The Mandate and the Religious Exemption Become Final, Without Change.

102. On February 10, 2012, President Obama held a press conference at which he announced an intention to initiate, at some unspecified future date, a separate rulemaking process that would work toward creating a different contraceptive services mandate. This promised mandate would, the President stated, attempt to take into account the kinds of religious objections voiced against the original Mandate contained in the interim final rule.

103. On that same day—February 10, 2012—the Defendants issued a “guidance bulletin” describing a “Temporary Enforcement Safe Harbor” (“Safe Harbor”) from the Mandate. The Safe Harbor applies to “non-exempted, non-grandfathered group health plans established and maintained by non-profit organizations with religious objections to contraceptive coverage (and any health insurance coverage offered in connection with such plans).” Under the Safe Harbor, the Defendants state that qualifying organizations will not be subject to

enforcement of the Mandate “until the first plan year that begins on or after August 1, 2013,” provided they meet certain criteria outlined in the guidance bulletin.

104. The Corporate Plaintiffs, though religious employers with religious objections to certain contraceptive (as that term is used by the FDA) coverage, do not qualify for the Safe Harbor because they are for-profit corporations.

105. An actual, justiciable controversy currently exists between Plaintiffs and Defendants. Absent a declaration resolving this controversy and the validity of the Mandate, Plaintiffs are uncertain as to their rights and duties in planning, negotiating, implementing and/or using their group health insurance plans, their hiring and retention programs, their employment, and/or their social, educational, and other programs and ministries.

106. Absent injunctive and declaratory relief against the Mandate, the Plaintiffs have endured and will continue to endure irreparable harm that outweighs any harm to the Defendants.

107. The Plaintiffs are likely to succeed on the merits of their claims.

108. An injunction, as sought by the Plaintiffs, would not adversely affect the public interest.

CAUSES OF ACTION

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

109. The Plaintiffs incorporate by reference all preceding paragraphs.

110. The Plaintiffs’ sincerely held religious beliefs prohibit them from providing, funding or participating in the provision of coverage for abortions or abortifacients, or related education and counseling. The Plaintiffs’ compliance with these beliefs is a religious exercise.

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

112. The Mandate exposes the Plaintiffs to substantial fines and penalties for their religious exercise or forces them to forfeit their right to employee health insurance.

113. The Mandate exposes the Corporate Plaintiffs and Charles N. Sharpe to substantial competitive disadvantages, in that they will no longer be permitted to offer health insurance to employees.

114. The Mandate imposes a substantial burden on the Plaintiffs' religious exercise, as to both belief and practice.

115. The Government has no compelling governmental interest to require Plaintiffs to comply with the Mandate.

116. The Mandate is not narrowly tailored to achieve any compelling governmental interest in a way that is least restrictive to Plaintiffs' rights.

117. The Mandate and Defendants' threatened enforcement of the Mandate violate the Plaintiffs' rights secured to them by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq.

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

COUNT II
Violation of the First Amendment to the United States Constitution
Free Exercise Clause

119. The Plaintiffs incorporate by reference all preceding paragraphs.

120. The Plaintiffs' sincerely held religious beliefs prohibit them from providing, funding or participating in the provision of coverage for abortion or abortifacients, or related education and counseling. The Plaintiffs' compliance with these beliefs is a religious exercise.

121. Neither the Affordable Care Act nor the Mandate is neutral.

122. Neither the Affordable Care Act nor the Mandate is generally applicable.

123. Defendants have created categorical exemptions and individualized assessment exemptions to the Mandate.

124. The Mandate furthers no compelling governmental interest.

125. The Mandate is not narrowly tailored to be the least restrictive means of furthering Defendants' stated interests.

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

127. The Mandate chills the Plaintiffs' religious exercise.

128. The Mandate exposes the Plaintiffs to substantial fines for their religious exercise or forces them to forfeit their right to employee health insurance.

129. The Mandate exposes the Corporate Plaintiffs and Charles N. Sharpe to substantial competitive disadvantages, in that they will no longer be permitted to offer health insurance to employees.

130. The Mandate imposes a substantial burden on the Plaintiffs' religious exercise, as to both belief and practice.

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

132. Despite being informed in detail of the fact that millions of Americans had beliefs similar to those of the Plaintiffs, Defendants designed the Mandate and the religious exemption to the Mandate in a way that made it impossible for the Plaintiffs to comply with their religious beliefs.

133. Defendants promulgated both the Mandate and the religious exemption to the Mandate in order to suppress the religious exercise of the Plaintiffs and others.

134. The Mandate and Defendants' threatened enforcement of the Mandate violate the Plaintiffs' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

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

COUNT III
Violation of the First Amendment to the United States Constitution
Establishment Clause

136. The Plaintiffs incorporate by reference all preceding paragraphs.

137. By design, Defendants imposed the Mandate on some religious organizations but not on others, resulting in discrimination among religions and in a selective burden on the Plaintiffs.

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

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

COUNT IV
Violation of the First Amendment to the United States Constitution
Freedom of Speech
Compelled Speech

140. The Plaintiffs incorporate by reference all preceding paragraphs.
141. The Plaintiffs teach and/or believe that abortion on demand violates their religious beliefs.
142. The Mandate would compel the Plaintiffs to subsidize and participate in activities that they teach are violations of their religious beliefs.
143. The Mandate would compel the Plaintiffs to provide, fund or participate in the provision of abortifacients and education and counseling related to abortion.
144. Expenditures are a form of speech protected by the First Amendment.
145. Defendants' actions thus violate the Plaintiffs' rights to be free from compelled speech as secured to them by the First Amendment of the United States Constitution.
146. The Mandate's compelled speech requirement is not narrowly tailored to achieve a compelling governmental interest in a way least restrictive to Plaintiffs' rights.
147. Absent injunctive and declaratory relief against the Mandate, the Plaintiffs have been and will continue to be harmed.

COUNT V
Violation of the First Amendment to the United States Constitution
Freedom of Speech
Expressive Association

148. The Plaintiffs incorporate by reference all preceding paragraphs.
149. The Plaintiffs teach and/or believe that abortion on demand violates their religious beliefs.

150. The Mandate would compel the Plaintiffs to subsidize, fund or participate in the subsidization of activities that they teach are violations of their religious beliefs.

151. The Mandate would compel the Plaintiffs to provide, fund or participate in the provision of abortifacients and education and counseling related to abortion.

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

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

COUNT VI
Violation of the Administrative Procedure Act

154. The Plaintiffs incorporate by reference all preceding paragraphs.

155. The Mandate is contrary to § 1303(b)(1)(A) of the Affordable Care Act, which provides that “nothing in this title” . . . “shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.” The Act also leaves it to “the issuer of a qualified health plan,” not the Government, “[to] determine whether or not the plan provides coverage of [abortion].” 42 U.S.C. § 18023(b)(1)(A)(ii).

156. The Defendants, in promulgating the Mandate, failed to consider the constitutional and statutory implications of the Mandate on organizations and individuals like the Plaintiffs.

157. The Mandate is contrary to existing law and is in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

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

PRAYER FOR RELIEF

Wherefore, these Plaintiffs request that the Court:

- a. Declare that the Mandate and Defendants' enforcement of the Mandate against these Plaintiffs violate the First Amendment to the United States Constitution;
- b. Declare that the Mandate and Defendants' enforcement of the Mandate against these Plaintiffs violate the Fifth Amendment to the United States Constitution;
- c. Declare that the Mandate and Defendants' enforcement of the Mandate against these Plaintiffs violate the Religious Freedom Restoration Act;
- d. Declare that the Mandate and Defendants' enforcement of the Mandate against these Plaintiffs violate the Administrative Procedure Act;
- e. Issue an order prohibiting Defendants from enforcing the Mandate against these Plaintiffs insofar as it requires them to provide, fund or participate in the provision of abortions or abortifacients, including Plan B, ella and copper IUDs, or related education and counseling;
- f. Award these Plaintiffs the costs of this action and reasonable attorney's and expert's fees pursuant to 42 U.S.C. § 1988 or as otherwise provided by law; and
- g. Award such other and further relief as it deems just and necessary.

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Certificate of Service

I hereby certify that on June 13, 2013, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri to be served by operation of the Court's electronic filing system upon the following registered CM/ECF participants:

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