

# Exhibit A

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION

AVE MARIA UNIVERSITY,

*Plaintiff,*

v.

KATHLEEN SEBELIUS, *et al.*

*Defendants.*

Civil No. 2:12-cv-00088-UA-SPC

**DECLARATION OF JIM TOWEY IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

**DECLARATION OF JIM TOWEY**

I, Jim Towey, under 28 U.S.C. § 1746, declare as follows:

1. My name is Jim Towey. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the President of Ave Maria University. I have held this position since 2011.

2. I make this declaration in support of Ave Maria University's Opposition to Defendants' Motion to Dismiss. In particular, I make this declaration in order to set forth for the Court the burdens and pressures on Ave Maria University that are presently ongoing while Ave Maria waits for the resolution of its constitutional and civil rights claims as set forth in this case.

3. Ave Maria University began as Ave Maria College in Ypsilanti, Michigan, and moved to its present campus in Naples, Florida in 2003.

4. Ave Maria University was founded to build an institution of Catholic higher education that would be faithful to the authoritative teachings of the Catholic

Church, in matters both of faith and morals. As stated in its mission, “Founded in fidelity to Christ and His Church in response to the call of Vatican II for greater lay witness in contemporary society, Ave Maria University exists to further teaching, research, and learning at the undergraduate and graduate levels in the abiding tradition of Catholic thought in both national and international settings.”

5. Ave Maria University’s sincere religious beliefs forbid it from providing insurance for, facilitating access to, or otherwise supporting contraception, sterilization, or abortion.

6. Ave Maria filed this lawsuit in order to obtain judicial protection from government efforts to pressure Ave Maria to violate its religion and provide insurance coverage for such drugs and devices. Ave Maria seeks the right to offer health insurance that does not violate its religion, and to do so without violating federal law, without exposing itself to private lawsuits, and without enduring government pressure to violate its faith.

7. Ave Maria’s first insurance plan subject to the Affordable Care Act takes effect on January 1, 2013. Even given the temporary “safe-harbor,” Ave Maria’s insurance plan will at that point be in violation of federal law if it comports with Ave Maria’s religious beliefs by refusing to offer the mandated drugs and services.

8. The government’s Mandate offers Ave Maria three options for its health insurance plans that take effect on January 1, 2013. First, Ave Maria could abandon its religious convictions and offer the insurance the government’s rule requires. Second, Ave Maria could stop offering employee health insurance entirely.

Third, Ave Maria could offer health insurance that does not violate its religion, knowing that by doing so it violates federal law, exposes itself to private ERISA lawsuits by employees and their families, and suffers disruption of its ability to hire faculty and staff because of uncertainties caused by the mandate.

9. The first option—abandoning the University’s religious obligations to comply with the Mandate—is not an option for Ave Maria. Ave Maria simply is not at liberty to ignore its religious obligations to satisfy the government’s rule.

10. The second option—cutting off employee health insurance entirely—is likewise impossible on such short notice. Generally speaking, stopping employee health insurance entirely could be institutional suicide for virtually any university or other large enterprise. Specifically, Ave Maria’s employees are quite concerned about Ave Maria’s ability to offer health insurance, both for the coming year and beyond. Issues of healthcare are particularly sensitive on our campus because we have a number of employees who are dealing with long term health concerns. Over the past five years, among our small faculty, we have had several employees receive treatment for cancer. On the other side of the health care spectrum, many of our employees follow Catholic teachings on life, and a disproportionate number of employees or their spouses have given birth in recent years or are planning to have children in the near future. Health care is of paramount importance to these families as well.

11. The Administration of the University has recently been approached by employees who have expressed fears for themselves and their families about what

would happen if Ave Maria is forced to stop offering health insurance. For example, at an October 3, 2012 faculty meeting, several professors expressed concern about the current uncertainty at Ave Maria. One said it would be “a frightening thought if health benefits went away.” Another commented that many faculty and staff would be forced to leave if the institution stopped offering benefits or provided a stipend that was insufficient to go out and buy health insurance on an individual basis. Were it not for the unwarranted and unnecessary HHS mandate, these professors and their colleagues in administration would have less anxiety about the future and meeting their health care needs.

12. Ave Maria cannot leave its employees and their families in this limbo. Accordingly, because its claims have not yet been resolved, Ave Maria has no choice but to go ahead and offer health insurance in 2013 that violates federal law and exposes Ave Maria to private ERISA lawsuits. Ave Maria does not violate federal law lightly. Nor does it expose itself to litigation lightly. But the pressures created by the government’s rule have left Ave Maria with no other plausible option, at least until judicial relief is available.

13. The burdens and pressures created by additional waiting are numerous.

14. First, with approximately 145 full time employees participating in our health care plan and 326 dependents enrolled, Ave Maria has to budget for (a) the possibility of annual fines of at least \$240,000 beginning in January 2014 if it decides not to offer health insurance; (b) the possibility of daily fines of at least \$47,100 per day if it offers insurance that does not comply with the Mandate, and

(c) the possibility of private ERISA lawsuits triggered by the final rule as early as January 2013.

15. Ave Maria typically operates on a fiscal year from July 1 to June 30.

Planning for the 2013-14 fiscal year is already underway as the University seeks to recruit faculty members for four positions, as well as retain existing faculty. The potential exposure to fines creates budget uncertainty that hampers University planning, and could jeopardize its ability to hire qualified faculty. Without prompt relief, Ave Maria will be forced to plan its finances to account for the possibility of these fines, penalties, and lawsuits, and thus jeopardize strategic initiatives which otherwise would be funded.

16. Less than a decade old, Ave Maria is a fragile institution and particularly susceptible to unexpected adverse budgetary developments. Our insurer, Blue Cross and Blue Shield of Michigan, told us in September that the cost for our current plan will increase an unprecedented 23.5% next year, which amounts to \$332,000, in part because of the changes required by the Affordable Care Act. These increases in health premiums will take effect on January 1, 2013 if we renew this policy. In light of this new cost which would have to be shouldered by employees because there are no funds budgeted for such a health insurance increase, the uncertainty of the HHS mandate exacerbates the proposed premium increase. Further, Ave Maria does not have an endowment or other reserves with which to afford the aforementioned penalties without making dramatic changes to the financing of the

institution. These changes could require the University to increase tuition, limit student services, and postpone campus investments and maintenance.

17. Ave Maria also needs to continue to recruit and retain faculty members. As with any university, Ave Maria's teachers are its lifeblood. Ave Maria typically begins recruiting new faculty members up to a year in advance, meaning that it is currently recruiting faculty to teach in the 2013-2014 academic year. Ave Maria is presently attempting to recruit four new faculty members. Recruiting and hiring faculty members is always a challenging task; doing so while unable to tell potential and current employees whether the University will be able to continue providing benefits for them and their families will certainly hamstring those efforts.

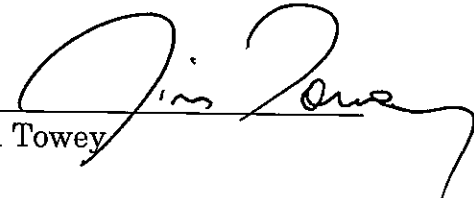
18. For those faculty members Ave Maria is able to hire, the University typically sends offer letters referring to their benefits packages beginning July 1, 2013. It is not at all clear what Ave Maria can or should say to such new hires, given that Ave Maria does not know what kind of insurance policies it can offer for the 2013-2014 academic year, in light of the Mandate. Likewise, next summer the University will send similar letters to all returning faculty that will also refer to their benefits packages. For the same reason, if Ave Maria cannot obtain judicial relief in the near term, Ave Maria will be unable to promise the benefits its employees have rightly come to expect and rely upon.

19. Finally, Ave Maria's existing employees are very concerned with the possibility that the University may soon be forced to stop offering health insurance. They are likewise concerned about the possible reduction of academic programming.

Since this litigation began in February, three faculty members have resigned. One of those individuals is an outstandingly qualified professor who is in remission for cancer. He expressly told me that among his reasons for leaving were concerns that he harbored and that were reinforced by his oncologist about his current health situation and the availability of health care at Ave Maria in the coming years. Retaining employees is obviously more difficult where, as here, the employees are rightfully concerned about how long the University will be able to continue offering health insurance for them and their families, and how long their careers at Ave Maria will last.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: 10 October 2012

  
Jim Towey