IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

LEGATUS;
WEINGARTZ SUPPLY COMPANY; and
DANIEL WEINGARTZ, President of Weingartz Supply Company,

Plaintiffs,

v.

COMPLAINT
[Civil Rights Action under 42 U.S.C. § 1983]

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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COMPLAINT

Comes now Plaintiffs Legatus, Weingartz Supply Company, and Daniel Weingartz (collectively "Plaintiffs"), by and through undersigned counsel, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof state the following upon information and belief:

NATURE OF THE ACTION

1. This is a case about religious freedom. Thomas Jefferson, a Founding Father of our country, principal author of the Declaration of Independence, and our third president, when describing the construct of our Constitution proclaimed, "No provision in our Constitution ought to be dearer to man than *that which protects the rights of conscience* against the enterprises of the civil authority." Letter from Thomas Jefferson, United States Office of the President, to the Soc'y of the Methodist Episcopal Church at New London, Conn. (Feb. 4, 1809) *cited in People v. Dejonge*, 442 Mich. 266, 278 (1993) (emphasis added).

2. This is a challenge to regulations ostensibly issued under the "Patient Protection and Affordable Care Act" (Pub. L. 111-148, March 23, 2010, 124 Stat. 119) and the "Health Care and Education Reconciliation Act" (Pub. L. 111-152, March 30, 2010, 124 Stat. 1029) (collectively known and hereinafter referred to as the "Affordable Care Act") that force individuals to violate their deepest held religious beliefs.

3. The Affordable Care Act, through a Mandate from the United States Department of Health and Human Services, attacks and desecrates a foremost tenet of the Catholic Church, as stated by Pope Paul VI in His 1968 encyclical *Humanae Vitae*, that "any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means"—including contraception, abortion, and abortifacients—is a grave sin.

4. One of the provisions of 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 the United States Department of Health and Human Services to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg–13(a)(4).

5. Without notice of rulemaking or opportunity for public comment, the United States Department of Health and Human Services, the United States Department of Labor, and the United States Department of Treasury adopted the Institute of Medicine ("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 procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.

6. The Mandate requires all insurance issuers (e.g. Blue Cross/Blue Shield of Michigan) to provide contraception, abortion, and abortifacients in all of its insurance plans, group and individual.

7. Health Resources and Services Administration also issued guidelines adopting the IOM recommendations. (http://www.hrsa.gov/womensguidelines).

8. Under the IOM guidelines, the Mandate requires *all* insurance insurers to provide not only contraception, but also abortion, because certain drugs and devices such as the "morning-after pill," "Plan B," and "ella" come within the Mandate's and Health Resources and Services Administration's definition of "Food and Drug Administration-approved contraceptive methods" despite their known abortifacient mechanisms of action.

9. The Mandate forces employers and individuals to violate their religious beliefs because it requires employers and individuals to pay for insurance from insurance issuers which fund and directly provide for drugs, devices, and services which violate their deeply held religious beliefs.

10. Since under the Mandate all insurance issuers must provide what the United States Department of Health and Human Services has deemed "preventative care," employers and individuals are stripped of any choice between insurance issuers or insurance plans to avoid violating their religious beliefs.

11. The United States Department of Health and Human Services in an unprecedented despoiling of religious rights forces religious employers and individuals, who believe that funding and providing for contraception, abortion, and abortifacients is wrong, to participate in acts that violate their beliefs and their conscience—and are forced out of the health insurance market in its entirety in order to comply with their religious beliefs.

12. Plaintiffs seek a Preliminary Injunction and Permanent Injunction, enjoining Defendants from implementing and enforcing provisions of the regulations promulgated under the Affordable Care Act, specifically the Mandate. The Mandate violates Plaintiffs' rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

13. Plaintiffs also seek a Declaratory Judgment that the regulations promulgated under the Affordable Care Act, specifically the Mandate, violate Plaintiffs' rights to the free exercise of religion and the freedom of speech under the First Amendment to the United States Constitution, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

14. The Affordable Care Act's contraception, abortion, and abortifacient mandate violates the rights of Plaintiff Legatus as a Catholic organization, and the individuals that comprise Legatus, such as its employees and its over 4,000 members comprised of devoutly Catholic business persons and their spouses from over 2,100 Catholic-run companies in the United States.

15. The majority of the 2,100 companies that comprise Legatus have over 50 or more full-time employees and are subject to monetary penalties under the Affordable Care Act and are forced under the Mandate to conduct business in a manner that violates their religious faith.

16. Plaintiff Daniel Weingartz is an active member of Legatus and is the President of Plaintiff Weingartz Supply Company, a company with over 50 full-time employees required to provide health insurance under the Affordable Care Act under penalty of heavy fines and therefore forced under the Mandate to provide and fund contraceptives, abortion, and abortifacients, which violates his deeply held religious beliefs.

17. Plaintiffs bring this action to vindicate not only their own rights, but also to protect the rights of all Americans who care about our Constitutional guarantees of free exercise of religion and their freedom of speech, as well as the protection of innocent human life.

JURISDICTION AND VENUE

18. This action in which the United States is a defendant arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1346.

19. Plaintiffs' claims for declaratory and preliminary and permanent injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by 28 U.S.C. § 2000bb-1, and by the general legal and equitable powers of this Court.

20. Venue is proper under 28 U.S.C. § 1391(e) because this is the judicial district in which Plaintiffs are located.

PLAINTIFFS

21. Plaintiff Legatus is an organization incorporated under the laws of the State of Michigan.

22. Plaintiff Legatus is registered at One Ave Maria Drive, Ann Arbor, MI 48106.

23. Plaintiff Legatus is recognized by the Internal Revenue Service as a 501(c)(3), non-profit organization.

24. "Legatus" is the Latin word for ambassador, and Plaintiff Legatus is a Catholic organization which provides "for its members to become ambassadors for the Catholic Faith they share in common." (http://www.legatus.org/).

25. The mission of Legatus is "[t]o study, live and spread the Catholic faith in our business, professional and personal lives." (http://www.legatus.org/).

26. Plaintiff Legatus "is an international organization of practicing Catholic laymen and laywomen, comprised of Chief Executive Officers, Presidents, Managing Partners and Business Owners, with their spouses, from the business community and professional enterprises." Legatus Amended and Restated International Bylaws § 2.1.

27. Plaintiff Legatus is comprised of over 4,000 members, including 2,124 dues paying members and their member spouses.

28. Plaintiff Legatus has a total of 73 chapters in the United States located in 31 states with 3 international chapters.

29. Plaintiff Legatus has three chapters located in Southeastern Michigan, including chapters located in the cities of Detroit and Ann Arbor.

30. The members of Legatus join the organization with purpose of deepening and strengthening their Catholic faith. Legatus nurtures spiritual growth in its members' Catholic beliefs by fostering a stronger relationship with Jesus Christ and by educating its members in the teachings of the Catholic Church.

31. Plaintiff Legatus, its employees, and its members follow the teachings of the Catholic faith as defined by the Magisterium (teaching authority) of the Catholic Church. Plaintiffs carry and live out their religious beliefs daily by helping and assisting their members follow the teachings of the Catholic Church and strengthen their faith.

32. The members of Legatus share religious beliefs that forbid them from participating in, paying for, training others to engage in, or otherwise supporting contraception, abortion, and abortifacients.

33. Plaintiff Legatus and its members follow with devotion the teachings and the tenets of the Catholic Church.

34. Furthermore, Plaintiff Legatus provides education to its members pertaining to the teachings and tenets of the Catholic Faith.

35. Prior to the issuance of the Mandate, Plaintiff Legatus engineered an insurance policy with Blue Cross/Blue Shield of Michigan and through the Ave Maria Foundation located in Ann Arbor, Michigan which specifically excluded contraception, abortion, and abortifacients, and exempts Plaintiff from paying, contributing, or supporting contraception and abortion for others.

36. Plaintiff Legatus obtained these exclusions due to the deeply held religious beliefs of its members and to comply with the organization's mission and purpose.

37. Plaintiff Legatus' employees receive insurance under this engineered insurance policy with Blue Cross/Blue Shield of Michigan which specifically excluded contraception, abortion, and abortifacients, and exempts Plaintiff from paying, contributing, or supporting contraception and abortion for others.

38. Plaintiff Weingartz Supply Company is incorporated in the State of Michigan and under the laws of the State of Michigan.

39. Plaintiff Weingartz Supply Company is located at 46061 Van Dyke, Utica, Michigan, 48371, with five locations in the Metro Detroit area including Ann Arbor, Michigan.

40. Plaintiff Daniel Weingartz is an individual and a citizen of the State of Michigan and the United States.

41. Plaintiff Daniel Weingartz is the President of Weingartz Supply Company. He is responsible for setting all policies governing the conduct of all phases of business of Weingartz Supply Company, its subsidiaries, and the Weingartz family companies.

42. Plaintiff Daniel Weingartz is an active member of Legatus.

43. Plaintiff Daniel Weingartz holds religious beliefs which forbid him from participating in, paying for, training others to engage in, or otherwise supporting contraception, and abortion.

44. Plaintiff Weingartz Supply Company, its subsidiaries, and the Weingartz family companies are secular companies led by Plaintiff Daniel Weingartz, who is a devout Catholic.

45. Plaintiff Daniel Weingartz through his company Plaintiff Weingartz Supply Company engineered an insurance policy with Blue Cross/Blue Shield of Michigan which specifically excluded contraception, and abortion and exempts Plaintiff from paying, contributing, or supporting contraception, or abortion for others.

46. Plaintiff Daniel Weingartz and his company Plaintiff Weingartz Supply Company ensured that their insurance policy contained these exclusions to reflect their deeply held religious beliefs.

47. Based on the teachings of the Catholic Church, and their deeply held religious beliefs, Plaintiffs do not believe that contraception, or abortion are properly understood to constitute medicine, health care, or a means of providing for the well being of persons. Indeed, Plaintiffs believe these procedures involve gravely immoral practices, specifically the intentional destruction of innocent human life.

DEFENDANTS

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

49. 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. Defendant Sebelius is sued in her official capacity only.

50. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

51. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she holds responsibility for the operation and management of the United States Department of Labor. Defendant Solis is sued in her official capacity only.

52. Defendant United States Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

53. Defendant Timothy Geithner is the Secretary of the United States Department of the Treasury. In this capacity, he holds responsibility for the operation and management of the United States Department of Treasury. Defendant Geithner is sued in his official capacity only.

54. Defendant United States Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the regulation which is the subject of this lawsuit.

FACTUAL ALLEGATIONS

Plaintiffs' Religious Beliefs

55. Plaintiffs hold and actively profess religious beliefs in accordance with the traditional Christian teachings on the sanctity of life. Plaintiffs believe that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious, from the moment of conception. Plaintiffs therefore believe that abortion ends a human life and is a grave sin.

56. Plaintiffs' religious beliefs also include traditional Christian teaching on the nature and purpose of human sexuality. In particular, Plaintiffs believe, in accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, that human sexuality has two primary purposes: to "most closely unit[e] husband and wife" and "for the generation of new lives." Accordingly, Plaintiffs believe and actively profess, with the Catholic Church, that "[t]o use this divine gift destroying, even if only partially, its meaning and its purpose is to contradict the nature both of man and of woman and of their most intimate relationship, and therefore it is to contradict also the plan of God and His Will." Therefore, Plaintiffs believe and teach that "any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation, whether as an end or as a means"—including contraception—is a grave sin.

57. Furthermore, Plaintiffs subscribe to authoritative Catholic teaching about the proper nature and aims of health care and medical treatment. For instance, Plaintiffs believe, in accordance with Pope John Paul II's 1995 encyclical *Evangelium Vitae*, that "'[c]ausing death' can never be considered a form of medical treatment," but rather "runs completely counter to the health-care profession, which is meant to be an impassioned and unflinching affirmation of life."

58. Recently, several leaders within the Catholic Church have publicly spoken out about how the Mandate is a direct violation of Catholic Faith.

59. Cardinal Timothy Dolan, Archbishop of New York and President of the United States Conference of Catholic Bishops wrote, "Since January 20 [2012], when the final, restrictive HHS Rule was first announced, we have become certain of two things: religious freedom is under attack, and we will not cease our struggle to protect it. We recall the words of our Holy Father Benedict XVI to our brother bishops on their recent ad limina visit: 'Of particular concern are certain attempts being made to limit that most cherished of American freedoms, the freedom of religion.' We have made it clear in no uncertain terms to the government that we are not at peace with its invasive attempt to curtail the religious freedom we cherish as Catholics and Americans." (http://www.usccb.org., March 2, 2012).

60. Archbishop Charles J. Chaput, the Archbishop of Philadelphia, has expressed that the Affordable Care Act and the Mandate seek "to coerce Catholic employers, private and corporate, to violate their religious convictions . . . [t]he HHS mandate, including its latest variant, is belligerent, unnecessary, and deeply offensive to the content of Catholic belief . . . The HHS mandate needs to be rescinded. In reality, no similarly aggressive attack on religious freedom in our country has occurred in recent memory . . . [t]he HHS mandate is bad law; and not merely bad, but dangerous and insulting. It needs to be withdrawn—now." (http://the-

american-catholic.com/2012/02/14/archbishop-chaput-hhs-mandate-dangerous-and-insulting/, Feb. 14, 2012).

Plaintiff Legatus

61. Plaintiff Legatus, a Catholic organization which adheres to the teachings of the Catholic Church, has 17 full-time employees and 52 part-time employees.

62. Plaintiff Legatus is composed of over 4,000 members and Catholic business persons and their spouses who represent over 2,100 companies, many companies being comprised of 50 or more full-time employees.

63. Plaintiff Legatus purchases group insurance through insurance issuer Blue Cross/Blue Shield of Michigan and provides this insurance to its full-time employees.

64. Plaintiff Legatus has striven over the years to provide its employees with employee health coverage superior to coverage generally available in the Michigan market in order to be a competitive employer.

65. Plaintiff Legatus specifically designed a health insurance plan with Blue Cross/Blue Shield of Michigan to exclude contraception, abortion, and abortifacients in line with the religious beliefs of the members of Legatus and in line with the mission of Legatus, a Catholic organization.

66. Moreover, as part of its religious commitment to the authoritative teachings of the Catholic Church, Plaintiff educates its members about the teachings of the Catholic Church and steadfastly avoid practices that subvert the teaching of the Catholic Church such as providing or funding drugs, devices, services or procedures inconsistent with its faith.

67. Plaintiff Legatus has taken great pains through the years to ensure that its employees' insurance plans do not cover contraception or abortion.

68. Plaintiff Legatus cannot provide, fund, or participate in health care insurance which covers artificial contraception, abortion, or abortifacients, or related education and counseling, without violating its deeply held religious beliefs.

69. Plaintiff Legatus cannot provide information or guidance to its employees or its members regarding artificial contraception, abortion, abortifacients or related education and counseling, without violating their deeply held religious beliefs.

70. Plaintiff Legatus exists through its members, such as Plaintiff Daniel Weingartz, who seek advice regarding business practices in compliance with their religious views. Pursuant to Plaintiff Legatus' mission, Plaintiff Legatus will continue to adhere to, disseminate, and report reliable Catholic teachings on morality and practices in its business dealings and in its advice to employees and members, as its Mission Statement has declared since its inception.

Plaintiffs Weingartz Supply Company and Daniel Weingartz, President of Weingartz Supply Company

71. Plaintiff Daniel Weingartz, the President of Plaintiff Weingartz Supply Company, is an active member of Plaintiff Legatus.

72. As a member of Legatus, Plaintiff Daniel Weingartz is an ambassador of the Catholic Faith and follows the teachings of the Catholic Church.

73. Plaintiff Weingartz Supply Company, along with W & P Management LLC and its subsidiaries employ a total of 170 employees including 60 part-time employees.

74. Plaintiff Weingartz Supply Company and its subsidiary companies are family owned and operated and have been for the last 65 years.

75. Plaintiff Weingartz Supply Company and its subsidiaries are for-profit, secular companies.

76. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company and its subsidiaries share a common mission of conducting their business operations with integrity.

77. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company adhere to fair, ethical, and honest business practices with both its employees and its valued customers.

78. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company follow the teachings, mission, and values of the Catholic faith.

79. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company does not discriminate against anyone's personal belief system in their hiring process, and would not base a hiring decision upon an applicant's religious or personal beliefs.

80. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company purchase group insurance through its subsidiary W & P Management, LLC through insurance agent Brown & Brown Detroit and insurance issuer Blue Cross/Blue Shield of Michigan, and currently provide this insurance to its full-time employees.

81. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company have striven over the years to provide its employees with employee health coverage superior to coverage generally available in the Michigan market in order to be a competitive employer.

82. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company specifically designed a health insurance plan with Blue Cross/Blue Shield of Michigan to exclude contraception, abortion, and abortifacients in line with the religious beliefs of Plaintiff Daniel Weingartz, the Weingartz family, the mission of the Catholic Church, and Legatus, a Catholic organization to which Plaintiff Daniel Weingartz belongs.

83. As part of their religious commitment to the authoritative teachings of the Catholic Church, Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company

steadfastly avoid practices that subvert the teaching of the Catholic Church such as providing or funding drugs, devices, services or procedures inconsistent with their faith.

84. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company have taken great pains through the years to ensure that its employees' insurance plans do not cover contraception, abortion, or abortifacients.

85. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company cannot provide, fund, or participate in health care insurance which covers artificial contraception, abortion, or abortifacients, or related education and counseling, without violating their deeply held religious beliefs.

86. Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company cannot provide information or guidance to its employees regarding artificial contraception, abortion, abortifacients or related education and counseling, without violating their deeply held religious beliefs.

87. With full knowledge of these aforementioned beliefs, Defendants issued an administrative rule ("the Mandate") that runs roughshod over Plaintiffs' religious beliefs, and the beliefs of millions of other Americans.

88. The Mandate not only forces Plaintiffs to finance contraception, abortion, and related education and counseling as health care, but also subverts the expression of Plaintiffs' religious beliefs, and the beliefs of millions of other Americans, by forcing Plaintiffs to fund, promote, and assist others to acquire services which Plaintiffs believe involve gravely immoral practices, including the destruction of innocent human life.

89. The Mandate unconstitutionally coerces Plaintiffs to violate their deeply-held religious beliefs under threat of directly violating their consciences, in addition to any imposed

fines and penalties. The Mandate also forces Plaintiffs to fund government-dictated speech that is directly at odds with their own speech and religious beliefs. Having to pay a fine to the taxing authorities or being entirely forced out of the insurance market in order to ensure the privilege of practicing one's religion or controlling one's own speech substantially burdens Plaintiffs' religious liberty and freedom of speech under the First Amendment.

90. The Mandate strips the Plaintiffs of any choice to select an insurance plan that does not cover and finance contraception, abortion, and abortifacients, as the Mandate requires that all insurance insurers provide this coverage.

91. None of the Plaintiffs have plans that are considered "grandfathered" and will be subject to the provisions of the Mandate.

92. Blue Cross/Blue Shield of Michigan deemed that due to the Mandate, Plaintiff Legatus will no longer be allowed to exclude contraception, abortion, and abortifacients from their insurance plans—and will be forced to provide and pay for these services which violate its religious beliefs.

93. Blue Cross/Blue Shield of Michigan deemed that due to the Mandate, Plaintiff Daniel Weingartz and Plaintiff Weingartz Supply Company will no longer be allowed to exclude contraception, abortion, and abortifacients from their insurance plans—and will be forced to provide and pay for these services which violate their religious beliefs.

94. Plaintiffs wish to conduct their business in a manner that does not violate the principles of their religious faith.

95. Plaintiff Legatus additionally seeks for the members of Legatus to be able to conduct their respective businesses in a manner that does not violate the principles of the religious faith of its over 4,000 members.

96. Complying with the Mandate requires a direct violation of the Plaintiffs' religious beliefs because it would require Plaintiffs to pay for and assist others in paying for or obtaining not only contraception, but also abortion, because certain drugs and devices such as the "morning-after pill," "Plan B," and "ella" come within the Mandate's and Health Resources and Services Administration's definition of "Food and Drug Administration-approved contraceptive methods" despite their known abortifacient mechanisms of action.

97. Defendants' refusal to accommodate the conscience of the Plaintiffs, and of other Americans who share the Plaintiffs' religious views, is highly selective. Numerous exemptions exist in the Affordable Care Act which appear arbitrary and were granted to employers who purchase group insurance. This evidences that Defendants do not mandate that all insurance plans need to cover "preventative services" (e.g. the thousands of waivers from the Affordable Care Act issued by Defendants for group insurance based upon the commercial convenience of large corporations, the age of the insurance plan, or the size of the employer).

98. Despite granting waivers upon a seemingly arbitrary basis, no exemption exists for an employer or individual whose religious conscience instructs him that certain mandated services are unethical, immoral, and volatile to one's religious beliefs. Defendants' plan fails to give the same level of weight or accommodation to the exercise of one's fundamental First Amendment freedoms that it assigns to the yearly earnings of a corporation.

99. The Defendants' actions violate Plaintiffs' right to freedom of religion, as secured by the First Amendment to the United States Constitution and civil rights statutes, including the Religious Freedom Restoration Act (RFRA).

100. The Defendants' actions also violate Plaintiffs' right to the freedom of speech, as secured by the First Amendment to the United States Constitution.

101. Furthermore, the Mandate is also illegal because it was imposed by Defendants without prior notice or sufficient time for public comment, and otherwise violates the Administrative Procedure Act, 5 U.S.C. § 553.

102. Had Plaintiffs' religious beliefs, or the beliefs of the million other Americans who share Plaintiffs' religious beliefs been obscure or unknown, the Defendants' actions might have been an accident. But because the Defendants acted with full knowledge of those beliefs, 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 a deliberate attack by the Defendants on the Catholic Church, the religious beliefs held by Plaintiffs and the similar religious beliefs held by millions of other Americans. The Defendants have, in sum, intentionally used government power to force individuals to believe in, support, and endorse the mandated services manifestly contrary to their own religious convictions, and then to act on that coerced belief, support, or endorsement. Plaintiffs seek declaratory and injunctive relief to protect against this attack.

The Affordable Care Act

103. 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, 124 Stat. 119) and the "Health Care and Education Reconciliation Act" (Pub. L. 111-152, March 30, 2010, 124 Stat. 1029) (referred to in this complaint as the "Affordable Care Act").

104. The Affordable Care Act regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

105. The Affordable Care Act does not apply equally to all insurers.

106. The Affordable Care Act does not apply equally to all individuals.

107. The Affordable Care Act requires employers with more than 50 full-time employees or full-time employee equivalents to provide federal government-approved health insurance or pay a substantial per-employee fine. (26 U.S.C. § 4980H).

108. Plaintiff Weingartz Supply Company and its subsidiaries employ well over 50 full-time employees.

109. Plaintiff Weingartz Supply Company and its subsidiaries constitute a "single employer" for purposes of the Affordable Care Act as defined at 42 U.S.C. § 18024(b)(4)(A).

110. Plaintiff Weingartz Supply Company and its subsidiaries, as well as Plaintiff Daniel Weingartz as the President of Weingartz Supply Company must provide federal government-approved health insurance under the Affordable Care Act or pay substantial per-employee fines.

111. The Affordable Care Act purports to not apply to the 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).

112. However, even employees with fewer than 50 employees purchase insurance from health insurance issuers, who are subject to the Affordable Care Act. 42 USC § 300GG-13 (a)(1),(4).

113. Certain provisions of the Affordable Care 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 "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 "health care sharing ministry" that meets certain criteria).

114. Plaintiffs do not qualify for an individual exemption under 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) as Plaintiffs do not object to acceptance of public or private insurance funds in their totality and currently enjoy health insurance benefits that exclude contraceptives, abortion, and abortifacients.

115. The Affordable Care Act's preventive care requirements do not apply to employers who provide so-called "grandfathered" health care plans.

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

117. Plaintiffs' current insurance plans do not qualify as "grandfathered" health care plans, and are considered "non-grandfathered."

118. Furthermore, Plaintiffs do not qualify for the "religious employer" exemption contained in 45 CFR § 147.130 (a)(1)(A) and (B).

119. Since the Plaintiffs do not qualify for the "religious employer" exemption, they are not permitted to take advantage of the "temporary safe-harbor" as set forth by the Defendants at 77 Fed. Register 8725 (Feb. 15, 2012).

120. Plaintiffs are thus subjected to the Mandate now and are confronted with choosing between complying with its requirements in violation of their religious beliefs or violating federal law.

121. Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz must choose between complying with the requirements of the Affordable Care Act in violation of their religious beliefs or either paying ruinous fines that would have a crippling impact on their ability to survive economically.

122. Plaintiffs are collectively confronted with complying with the requirements of the Affordable Care Act in violation of their religious beliefs or removing themselves from the health insurance market in its entirety—endangering the health and economic stability of their families and forcing Plaintiff Legatus and Plaintiff Weingartz Supply Company and its subsidiaries to be non-competitive as employers in a market where other, non-Catholic employers will be able to provide insurance to their employees under the Affordable Care Act without violating their religious beliefs.

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

124. The Affordable Care Act is not neutral because some groups, both secular and religious, enjoy exemptions from the law, while certain religious groups do not. Some groups, both secular and religious, have received waivers from complying with the provisions of the Affordable Care Act, while others—such as the Plaintiffs—have not.

125. The Affordable Care Act creates a system of individualized exemptions.

126. The United States Department of Health and Human Services has the authority under the Affordable Care Act to grant compliance waivers ("HHS waivers") to employers and other health insurance plan issuers.

127. HHS waivers release employers and other plan issuers from complying with the provisions of the Affordable Care Act.

128. HHS decides whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers.

129. Upon information and belief, more than a thousand HHS waivers have been granted.

The "Preventive Care" Mandate

130. A provision of 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 United States Department of Health and Human Services to determine what would constitute "preventative care" under the mandate. 42 U.S.C § 300gg–13(a)(4).

131. On July 19, 2010, HHS, along with the United States Department of Treasury and the United States Department of Labor, published an interim final rule under the Affordable Care Act. 75 Fed. Reg. 41726 (2010). The interim final rule required 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).

132. On February 15, 2012, the United States Department of Health and Human Services promulgated a mandate that group health plans include coverage for all Food and Drug Administration-approved contraceptive methods and procedures, patient education, and counseling for all women with reproductive capacity in plan years beginning on or after August 1, 2012 (hereafter, "the Mandate"). *See* 45 CFR § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Register 8725 (Feb. 15, 2012), adopting and quoting Health Resources and Services Administration (HRSA) Guidelines, (http://www.hrsa.gov/womensguidelines).

133. The Mandate was enacted pursuant to statutory authority under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Act of 2010, Pub. L. No. 111-152 (ACA). 77 Fed. Reg. 31, 8725 ("Affordable Care Act").

134. In its ruling, HHS included all FDA-approved contraceptives under the banner of preventive services, including contraception, abortion, and abortifacients such as the "morning-after pill," "Plan B," and "ella," a close cousin of the abortion pill RU-486. (http://www.hrsa.gov/womensguidelines).

135. The Mandate's reach seeks to control the decisions of employers, individuals and also the decisions of *all* insurance issuers (i.e. "Blue Cross/Blue Shield of Michigan," etc.). 42 USC § 300gg-13 (a)(1),(4). ("A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for evidence-based items or services that have in effect a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force; . . . with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.").

136. *All* insurance issuers are mandated to include contraception, abortion, and abortifacients such as the "morning-after pill," "Plan B," and "ella" in *all* of its group *and* individual plans, not specifically exempted, beginning as of August 1, 2012.

137. Individuals and employers, regardless of the number of employees they employ, will eventually be forced to select an insurance plan which includes what HHS deemed "preventative care."

138. All individuals and employers will be stripped of their choice not to pay for the "preventative care," regardless of whether paying for such "services" violates one's conscience or deeply held religious beliefs.

139. Health insurance issuers include insurance companies such as Blue Cross/Blue Shield of Michigan, which is the insurance issuer used by Plaintiffs.

140. The Mandate reaches even further than the Affordable Care Act to eliminate all employers and individuals from selecting a health insurance plan in which the insurance issuers do not automatically provide contraception, abortion, and abortifacients.

141. Prior to promulgating the Mandate, HHS accepted public comments to the 2010 interim final regulations from July 19, 2010 to September 17, 2010. Upon information and belief, a large number of groups filed comments, warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of services, including contraception, abortion, and abortifacients.

142. HHS directed a 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 preventative care for women. (http://www.hrsa.gov/womensguidelines).

143. 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 (ACOG), John Santelli, the National Women's Law Center, National Women's Health Network, Planned Parenthood Federation of America and Sara Rosenbaum. (http://www.nap.edu/openbook.php?record_id=13181&PAGE=217).

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

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

146. Preventative services therefore include FDA-approved contraceptive methods such as birth-control pills; prescription contraceptive devices, including IUDs; Plan B, also known as the "morning-after pill"; and ulipristal, also known as "ella" or the "week-after pill"; and other drugs, devices, and procedures.

147. Plan B and "ella" can prevent the implantation of a human embryo in the wall of the uterus and can cause the death of an embryo. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus or to cause the death of an embryo each constitute an "abortion" as that term is used in federal law and Catholic teaching. Consequently, Plan B and "ella" are abortifacients.

148. Thirteen days later, on August 1, 2011, without notice of rulemaking or opportunity for public comment, HHS, the United States Department of Labor, and the United States 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 procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. Health Resources and Services Administration issued guidelines adopting the IOM recommendations. (http://www.hrsa.gov/womensguidelines).

149. The Mandate also requires group health care plans and insurance issuers to provide education and counseling for all women beneficiaries with reproductive capacity.

150. The Mandate went into effect immediately as an "interim final rule."

151. HHS did not take into account the concerns of religious organizations in the comments submitted before the Mandate was issued.

152. Instead the Mandate was unresponsive to the concerns stated in the comments submitted by religious organizations.

153. When it issued the Mandate, HHS requested comments from the public by September 30th and indicated that comments would be available online.

154. Upon information and belief, over 100,000 comments were submitted against the Mandate.

155. On October 5, 2011, six days after the comment period ended, Defendant Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that "we are in a war." She did not state whom she and NARAL Pro-Choice America were warring against.

156. During a Congressional hearing on April 26, 2012, Defendant Sebelius admitted that she is totally unfamiliar with the United States Supreme Court religious freedom cases.

157. Defendant Sebelius showed little concern for the constitutional issues involved in promulgating the Mandate. At the aforementioned congressional hearing, she admitted that prior to issuing the Mandate she did not review any written materials or any sort of legal memo from her general counsel discussing the effects of the Mandate on religious freedom.

158. The Mandate fails to take into account the statutory and constitutional conscience rights of religious organizations, like Plaintiff Legatus and the over 2100 member-businesses of Plaintiff Legatus such as Plaintiff Daniel Weingartz's company Plaintiff Weingartz Supply Company, which has been a subject of comment.

159. The Mandate requires that Plaintiffs assist, provide, or fund coverage for contraception, abortion, abortifacients, and related education and counseling against its conscience in a manner that is contrary to law.

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

161. The Mandate exposes Plaintiff Legatus' members including Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz, as individuals and as employers or companies with over 50 full-time employees, to substantial fines for refusal to change or violate their religious beliefs.

162. The Mandate imposes a burden on Plaintiffs' employee recruitment efforts by creating uncertainty as to whether Plaintiffs will be able to offer health insurance beyond August 1, 2012.

163. The Mandate places on Plaintiff Legatus and the over 2100 member-businesses of Plaintiff Legatus, such as Plaintiff Weingartz Supply Company, at a competitive disadvantage in its efforts to recruit and retain employees and members.

164. The Mandate forces Plaintiffs to provide, fund, or approve and assist its employees and members in purchasing contraception and abortifacient drugs in violation of Plaintiffs' religious beliefs that doing so is gravely immoral and, in certain cases, equivalent to assisting another to destroy innocent human life.

165. Plaintiffs have a sincere religious objection to providing coverage for emergency contraceptive drugs such as Plan B and "ella" since they believe those drugs could prevent a human embryo, which they understand to include a fertilized egg before it implants in the uterus, from implanting in the wall of the uterus, causing the death of a person.

166. Plaintiffs consider the prevention by artificial means of the implantation of a human embryo to be an abortion.

167. Plaintiffs believe that Plan B and "ella" can cause the death of the embryo, which is a person.

168. Plan B can prevent the implantation of a human embryo in the wall of the uterus.

169. "Ella" can prevent the implantation of a human embryo in the wall of the uterus.

170. Plan B and "ella" can cause the death of the embryo.

171. 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.

172. The use of artificial means to cause the death of a human embryo constitutes an "abortion" as that term is used in federal law.

173. The Mandate forces Plaintiffs to provide emergency contraception, including Plan B and "ella," free of charge, regardless of the ability of insured persons to obtain these drugs from other sources.

174. The Mandate forces Plaintiffs to fund education and counseling concerning contraception, and abortion that directly conflicts with Plaintiffs' religious beliefs and teachings.

175. Plaintiffs could not cease in providing its employees with health insurance coverage without violating its religious duty to provide for the health and well-being of its employees and their families. Additionally, employees would be unable to attain similar coverage in the market as it now exists.

176. The Mandate forces Plaintiffs to choose among violating their religious beliefs, incurring substantial fines, or terminating their employee or individual health insurance coverage.

177. The Mandate forces Plaintiff Legatus' members composed of over 2,100 Catholic-run businesses, such as Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz, to choose among violating their religious beliefs, incurring substantial fines, or terminating their employee or individual health insurance coverage.

178. Providing counseling and education about contraceptives, and abortion directly undermines and subverts the explicit messages and speech of Plaintiffs.

179. Group health plans and insurance issuers will be subject to the Mandate starting on August 1, 2012.

180. Plaintiffs have already had to devote significant institutional resources, including both staff time and funds, to determine how to respond to the Mandate. Plaintiffs anticipate continuing to make such expenditures of time and money up until and after the time that the Mandate goes into effect.

The Narrow and Discretionary Religious Exemption

181. The Mandate indicates that the Health Resources and Services Administration ("HRSA") "may" grant religious exemptions to certain religious employers. 45 C.F.R. § 147.130(a)(iv)(A).

182. The Mandate allows 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).

183. The Mandate imposes no constraint on HRSA's discretion to grant exemptions to some, all, or none of the organizations meeting the Mandate's definition of "religious employers."

184. HHS stated that it based the exemption on comments on the 2010 interim final rule. 76 Fed. Reg. 46621.

185. Most Catholic-run companies and religious organizations, including Plaintiffs and other members of Plaintiff Legatus, have more than one purpose.

186. For most Catholic-run companies and religious organizations, including Plaintiffs and other members of Plaintiff Legatus, the inculcation of religious values is only one purpose among others.

187. Many Catholic-run companies and religious organizations, including Plaintiffs, employ many persons who do not share the religious organization's beliefs.

188. Many Catholic-run companies and religious organizations, including Plaintiffs and other members of Plaintiff Legatus, serve many persons who do not share the religious tenets of the religious organization.

189. Plaintiffs reasonably expect, as confirmed by their respective insurance issuers, that they will be subject to the Mandate despite the existence of exemptions to the Mandate as none of the exemptions apply to Plaintiffs.

190. On January 20, 2012, Defendant Sebelius announced that there would be no change to the 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 they qualify for the 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. Department of Health and Human Services Secretary Kathleen Sebelius, (http://www.hhs.gov/news/press/2012pres/01/20120120a.html). To date, Defendant HHS has not released any official rule implementing either the one-year extension or the additional forced-speech requirement that applies to either Plaintiff.

191. It is inevitable with the current state of the law that Plaintiffs will have to comply with the Mandate, despite the fact that Plaintiffs will violate the teachings of their religious beliefs and the teachings of their Catholic faith by directly providing, funding, and/or allowing its members to engage in disseminating information and guidance about where to obtain contraception, abortion, or abortifacient services.

CLAIMS

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

192. Plaintiffs incorporate by reference all preceding paragraphs.

193. Plaintiffs' sincerely held religious beliefs prohibit it from providing coverage for contraception, abortion, or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

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

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

196. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

197. The Mandate furthers no compelling governmental interest.

198. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

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

200. The Mandate chills Plaintiffs' religious exercise.

201. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that it will no longer be permitted to offer health insurance.

202. The Mandate exposes the members of Plaintiff Legatus, Plaintiff Weingartz Supply Company, and Plaintiff Daniel Weingartz to substantial fines for their religious exercise.

203. The Mandate exposes Plaintiffs to monetary and health risks as they will no longer be able to accept health insurance, nor be able to purchase or provide health care insurance without violating their religious beliefs.

204. The Mandate imposes a substantial burden on Plaintiffs' religious exercise.

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

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

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

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

208. Plaintiffs incorporate by reference all preceding paragraphs.

209. Plaintiffs' sincerely held religious beliefs prohibit them from purchasing or providing coverage for contraception, abortion, or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

210. Despite being informed in detail of these beliefs beforehand, Defendants designed the Mandate and the religious exemption to the Mandate in a way that made it impossible for Plaintiffs to comply with their religious beliefs.

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

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

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

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

214. Plaintiffs incorporate by reference all preceding paragraphs.

215. By design, Defendants imposed the Mandate on some religious organizations or religious individuals but not on others, resulting in discrimination among religions.

216. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of "religious employers."

217. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no religious individuals.

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

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

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

220. Plaintiffs incorporate by reference all preceding paragraphs.

221. By design, defendants imposed the Mandate on some religious organizations but not on others, resulting in a selective burden on Plaintiffs.

222. Defendants also imposed the Mandate on some religious individuals and religious organizations but not on others, resulting in a selective burden on Plaintiffs.

223. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of "religious employers."

224. The Mandate also vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no individuals.

225. The Mandate and Defendants' threatened enforcement of the Mandate therefore violates Plaintiffs' rights secured to it by the Establishment Clause of the First Amendment to the United States Constitution.

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

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

227. Plaintiffs incorporate by reference all preceding paragraphs.

228. Plaintiffs profess, educate, lecture, give presentations, and engage in outreach amongst Legatus members and in their community that contraception, abortion, and abortifacients violate their religious beliefs.

229. The Mandate would compel Plaintiffs to provide or subsidize activities that Plaintiffs profess, educate, lecture, give presentations, and engage in outreach amongst over 4,000 members of Legatus and in their community are violations of the Plaintiffs' religious beliefs.

230. The Mandate would compel Plaintiffs to fund and to provide education and counseling related to contraception, abortion, and abortifacients.

231. Defendants' actions thus violate Plaintiffs' right to be free from compelled speech as secured to it by the First Amendment of the United States Constitution.

232. The Mandate's compelled speech requirement is not narrowly tailored to a compelling governmental interest.

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

COUNT VI
Violation of the First Amendment to the United States Constitution
Expressive Association

234. Plaintiffs incorporate by reference all preceding paragraphs.

235. Plaintiffs profess, educate, lecture, give presentations, and engage in outreach amongst the over 4,000 members of Legatus and in their community that contraception, abortion, and abortifacients violate their religious beliefs.

236. The Mandate would compel Plaintiffs to subsidize activities that Plaintiffs profess, educate, lecture, give presentations, and engage in outreach amongst the over 4,000 members of Legatus and in their community are violations of Plaintiffs' religious beliefs.

237. The Mandate would compel Plaintiffs to fund and to provide education and counseling related to contraception, abortion, and abortifacients.

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

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

COUNT VII
Violation of the First Amendment to the United States Constitution
Free Exercise Clause and Freedom of Speech

240. Plaintiffs incorporate by reference all preceding paragraphs.

241. By stating that HRSA "may" grant an exemption to certain religious groups, the Mandate vests HRSA with unbridled discretion over which organizations or individuals can have its First Amendment interests accommodated.

242. The Mandate vests HRSA with unbridled discretion to determine whether a religious organization such as Plaintiff Legatus "primarily" serves and employs members of the same faith as the organization.

243. The Mandate vests HRSA with unbridled discretion to determine whether a religious individual such as a member or employee of Plaintiff Legatus or Plaintiff Daniel Weingartz falls under the individual religious exemption. *See* 26 U.S.C. § 5000A(d)(2)(a)(i)-(ii).

244. The Mandate furthermore seems to have completely failed to address the constitutional and statutory implications of the Mandate on for-profit, secular employers such as Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz. As such, Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz are subject to the unbridled discretion of HRSA to determine whether such companies would be exempt.

245. Defendants' actions therefore violate Plaintiffs' right not to be subjected to a system of unbridled discretion when engaging in speech or when engaging in religious exercise, as secured to it by the First Amendment of the United States Constitution.

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

COUNT VIII
Violation of the Religious Freedom Restoration Act

247. Plaintiffs incorporate by reference all preceding paragraphs.

248. Plaintiffs' sincerely held religious beliefs prohibit it from providing or purchasing coverage for contraception, abortion, abortifacients, or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

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

250. The Mandate chills Plaintiffs' religious exercise.

251. The Mandate exposes Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz to substantial fines for their religious exercise.

252. The Mandate exposes members of Plaintiff Legatus, including Plaintiff Weingartz Supply Company and Plaintiff Daniel Weingartz, who constitute employers with 50 or more full-time employees to substantial fines for their religious exercise.

253. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that it will no longer be permitted to offer or purchase health insurance.

254. The Mandate imposes a substantial burden on Plaintiffs' religious exercise.

255. The Mandate furthers no compelling governmental interest.

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

257. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

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

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

COUNT IX
Violation of the Administrative Procedure Act

260. Plaintiffs incorporate by reference all preceding paragraphs.

261. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute "good cause."

262. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a meaningful "consideration of the relevant matter presented." Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

263. Therefore, Defendants have taken agency action not in observance with procedures required by law, and Plaintiffs are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

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

COUNT X
Violation of the Administrative Procedure Act

265. Plaintiffs incorporate by reference all preceding paragraphs.

266. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Plaintiffs and similar organizations, companies, and individuals.

267. Defendants' explanation for its decision not to exempt Plaintiffs and similar religious organizations and religious individuals from the Mandate runs counter to the evidence submitted by religious organizations during the comment period.

268. Thus, Defendants' issuance of the interim final rule was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the rules fail to consider the full extent of their implications and they do not take into consideration the evidence against them.

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

COUNT XI
Violation of the Administrative Procedure Act

270. Plaintiffs incorporate by reference all preceding paragraphs.

271. The Mandate is contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (September 30, 2008).

272. The Weldon Amendment provides that "[n]one of the funds made available in this Act [making appropriations for Defendants United States Department of Labor and United States Department of Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."

273. The Mandate requires issuers, employers, and individuals, including Plaintiffs and Plaintiff Legatus' members to provide and purchase coverage of all Federal Drug Administration-approved contraceptives.

274. Some FDA-approved contraceptives cause abortions.

275. As set forth above, the Mandate violates RFRA and the First Amendment.

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

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

COUNT XII
Violation of the Administrative Procedure Act

278. Plaintiffs incorporate by reference all preceding paragraphs.

279. The Mandate is contrary to the provisions of the Affordable Care Act.

280. Section 1303(b)(1)(A) of the Affordable Care Act states that "nothing in this title"—i.e., title I of the Act, which includes the provision dealing with "preventive services"—"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."

281. Section 1303 further states that it is "the issuer" of a plan that "shall determine whether or not the plan provides coverage" of abortion services.

282. Under the Affordable Care Act, Defendants do not have the authority to decide whether a plan covers abortion; only the issuer does.

283. However, the Mandate requires all issuers, including Plaintiffs and Plaintiffs' insurance issuer Blue Cross/Blue Shield of Michigan, to provide coverage of all Federal Drug Administration-approved contraceptives.

284. Some FDA-approved contraceptives cause abortions.

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

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

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

a. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violates the First Amendment to the United States Constitution;

b. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violates the Religious Freedom Restoration Act;

c. Declare that the Mandate was issued in violation of the Administrative Procedure Act;

d. Issue both a preliminary and a permanent injunction prohibiting and enjoining Defendants from enforcing the Mandate against Plaintiffs and other religious organizations,

religious individuals, employers, and companies that object to funding and providing insurance coverage for contraceptives, abortion, abortifacients, and related education and counseling;

e. Award Plaintiffs the costs of this action and reasonable attorney's fees; and

f. Award such other and further relief as it deems equitable and just.

Respectfully submitted,

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