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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

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GRACE SCHOOLS and BIOLA UNIVERSITY,)
INC.)

Plaintiffs,)

v.)

KATHLEEN SEBELIUS, in her official capacity)
as Secretary of the United States Department of)
Health and Human Services; HILDA SOLIS, in)
her official capacity as Secretary of the United)
States Department of Labor; TIMOTHY)
GEITHNER, in his official capacity as Secretary)
of the United States Department of the Treasury;)
UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES; UNITED)
STATES DEPARTMENT OF LABOR; and)
UNITED STATES DEPARTMENT OF THE)
TREASURY,)

Defendants.

Case No.

3:12CV 459

COMPLAINT

Plaintiffs Grace Schools (hereinafter “Grace College and Seminary,” “Grace College,” “the College,” or “Grace”) and Biola University, Inc. (hereinafter “Biola” or “the University”) (collectively, “the Schools”), by their attorneys, state as follows:

NATURE OF THE CASE

1. In this action, the Plaintiffs seek judicial review of the Defendants’ violations of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (RFRA), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* (APA), by their actions implementing the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148 (March 23, 2010), and Pub. L. No. 111-152 (March 30, 2010); hereinafter PPACA), in ways that coerce thousands of religious institutions and individuals to

engage in acts they consider sinful and immoral in violation of their most deeply held religious beliefs.

2. Plaintiffs Grace College and Seminary and Biola University are Christ-centered institutions of higher learning. As such, they believe that God, in His Word, has condemned the intentional destruction of innocent human life. The Schools believe, as a matter of religious conviction, that it would be sinful and immoral for them intentionally to participate in, pay for, facilitate, or otherwise support abortion, which destroys human life. They believe that the Sixth Commandment (“thou shalt not murder”) proscribes payment for and facilitation of the use of drugs that can and do destroy very young human beings in the womb.

3. With full knowledge that many religious organizations hold the same or similar beliefs, Defendants issued regulations that, by forcing these organizations to pay for and otherwise facilitate the use of abortifacient drugs and related education and counseling, trample on the freedom of the Schools and millions of other American organizations and individuals to abide by their religious convictions, to comply with moral imperatives they believe are decreed by God Himself.

4. The regulation—the HHS Preventive Services Mandate¹—illegally and unconstitutionally coerces Grace College and Seminary and Biola University to violate the

¹ The Mandate consists of a conglomerate of authorities, including: “Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act,” 77 Fed. Reg. 8725–30 (Feb. 15, 2012); the prior interim final rule found at 76 Fed. Reg. 46621–26 (Aug. 3, 2011), which the Feb. 15 rule adopted “without change”; the guidelines by Defendant HHS’s Health Resources and Services Administration (HRSA), <http://www.hrsa.gov/womensguidelines/>, mandating that health plans include no-cost-sharing coverage of “All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity” as part of required women’s “preventive care”; regulations issued by Defendants in 2010 directing HRSA to develop those guidelines, 75 Fed. Reg. 41726 (July 19, 2010); the statutory authority found in 42 U.S.C. § 300gg-13(a)(4), requiring unspecified preventive health services generally, to the extent Defendants have used it to mandate coverage

Sixth Commandment under threat of heavy fines and penalties. The Mandate also forces the Schools to fund government-dictated speech that is directly at odds with the religious message they wish to convey to their students and to the broader culture.

5. Defendants' refusal to accommodate conscience in this matter is highly selective. Upon information and belief, the government has provided thousands of exemptions from the PPACA for various groups, such as large corporations, but the government refuses to exempt most religious groups from this unprecedented Mandate. Moreover, the Mandate does not apply to countless "grandfathered" employer group health plans, through which millions of American women receive health insurance coverage, belying any contention that the Mandate advances any compelling government interest.

6. Defendants' actions violate the Schools' right freely to exercise their religion, protected by the Religious Freedom Restoration Act and the Religion Clauses of the First Amendment to the United States Constitution.

7. Defendants' actions also violate the Schools' right to the freedom of speech, as secured by the Free Speech Clause of the First Amendment to the United States Constitution, and due process rights secured by the Fifth Amendment to the United States Constitution.

8. Additionally, Defendants violated the Administrative Procedure Act, 5 U.S.C. § 553, by imposing the Mandate without prior notice or public comment, and for other reasons.

9. Defendants knew, in imposing their Mandate, that it would coerce thousands of individuals and organizations like Grace College and Seminary and Biola University to violate their religious convictions. The Schools seek declaratory and injunctive relief to protect against this unjustified impairment of conscience.

to which Plaintiffs and other employers have religious objections; penalties existing throughout the United States Code for noncompliance with these requirements; and other provisions of PPACA or its implementing regulations that affect exemptions or other aspects of the Mandate.

IDENTIFICATION OF PARTIES AND JURISDICTION

10. Plaintiff Grace Schools is a Christ-centered institution of higher learning located in Winona Lake, Indiana. It is an Indiana not-for-profit corporation. It operates as, among other assumed names, Grace College, Grace Theological Seminary, and Grace College & Seminary.

11. Plaintiff Biola University, Inc., is a Christ-centered institution of higher learning located in La Mirada, California. It is a California not-for-profit religious corporation.

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

13. 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.

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

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

16. 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.

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

18. 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.

19. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, and Fed. R. Civ. P. 65, and to award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

20. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to the claim occurred in this district, and Plaintiff Grace College and Seminary is located in this district.

FACTUAL ALLEGATIONS

I. Grace College and Seminary's Religious Beliefs and General Provision of Educational Services

21. Grace College and Seminary was founded in 1937 under the leadership of Dr. Alva J. McClain, President. The College's mission is to be "an evangelical Christian community of higher education which applies biblical values in strengthening character, sharpening competence, and preparing for service." Grace is a learning community dedicated to teaching, training, and transforming the whole person for local church and global ministry. Grace's aspirational vision is to "be an exceptional learning community that transforms people to live their lives for God and others."

22. Grace College and Seminary embraces these core values:

- "A relationship with the God of Scripture is foundational to all of life."
- "Exceptional learning experiences drive all educational programs."
- "Nurturing the transformation of life is deeply integrated in all institutional life."

- “Appreciating and valuing others as God does characterizes all relationships.”
- “Doing good for others in the intended outcome of institutional life and service.”
- “Managing institutional and constituents’ resources in a disciplined and biblical way is essential to institutional life.”

23. At Grace, the students, administration, faculty, and staff aim together to make Christ preeminent in all things. Students learn this by living, studying, working, worshipping, and achieving academic success with other young people who share similar Christian ideals in a setting where the community lifestyle fosters devotion to serious academic inquiry, wholesome recreation and relaxation, and mature spiritual growth.

24. Grace pursues its mission through biblically-based programs and services anchored in the historic Fellowship of Grace Brethren Churches. The curriculum is rooted in the liberal arts and sciences and is delivered through traditional and specialized programs.

25. Grace College and Seminary has a “Covenant of Faith” that “[a]ffirm[s] biblical truth and God’s grace.”

26. Grace College and Seminary is affiliated with the Fellowship of Grace Brethren Churches. The Fellowship of Grace Brethren Churches traces its denominational heritage back to 1708 and the pietistic movement in Germany following the Reformation.

27. Members of Grace’s Board of Trustees, which governs the College, must subscribe annually to the Covenant of Faith, which is consistent with the beliefs of the Fellowship of Grace Brethren Churches.

28. Grace College and Seminary draws its faculty, staff, and administration from among those who profess the Covenant of Faith of the College and Statement of Faith of the Fellowship of Grace Brethren Churches.

29. Although the College does require a profession of faith as a prerequisite for student admission, it does not require membership in the Grace Brethren denomination. Approximately 30 denominations are represented in its student body. All students are expected to adhere to the standards set forth in the Grace College Community and Lifestyle Statement.

30. The College will serve approximately 2,700 students in the fall 2012 semester. This number includes approximately 1,800 students in higher education degree programs and approximately 900 students in its basic education prison program, which is located in five Indiana prisons. The campus enrolls students from more than 20 countries.

31. The College currently has approximately 457 employees.

II. The Religious Beliefs of Grace College and Seminary Regarding Abortion

32. The Fellowship of Grace Brethren Churches believes that human life is worthy of protection and respect at all stages from the time of conception.

33. The Fellowship of Grace Brethren Churches believes that the sanctity of human life is established by creation (Gen. 1:26-27), social protection (Gen. 9:6) and redemption (John 3:16).

34. The College agrees with the Fellowship of Grace Brethren Churches' religious views regarding abortion, believing that the procurement, participation in, facilitation of, or payment for abortion (including abortion-causing drugs like Plan B and ella) violates the Sixth Commandment and is inconsistent with the dignity conferred by God on creatures made in His image.

35. By "conception," "pregnancy," "abortion" and related concepts referenced herein regarding the sanctity of innocent human life and prohibitions on its destruction, Grace College understands such concepts to recognize and protect the lives of human beings from the moment of fertilization.

36. In September 2009, crosses representing the 2,016 abortions (1982-2008) in Kosciusko County, Indiana, where Grace is located, were placed on the north and east lawns of Morgan Library on the Grace campus. The crosses were a reminder of the human beings, each created in the image and likeness of God (Genesis 1:26), whose lives were so tragically ended by abortionists.

37. In June 2007, Grace College hosted the Pro-Life Music Festival, which drew several thousand attendants to see a number of popular Christian bands.

38. Grace College students have participated in the Pro-Life Day of Silent Solidarity.

III. Grace College's Group Health Insurance Plans

39. Grace College promotes the physical, spiritual and well-being and health of its employees. This includes provision of generous health insurance.

40. Consistent with its religious commitments, Grace College provides a self-insured group plan for its employees, acting as its own insurer.

41. Approximately 179 employees are enrolled in Grace's group health plan. Including dependents, the total number of people enrolled in the group health plan is approximately 383.

42. Under the terms of Grace's plan for its employees, coverage excludes abortifacient drugs like Plan B and ella.

43. The plan does, however, include a variety of contraceptive methods that Grace does not consider to be morally objectionable.

44. The next plan year for the College's employee health insurance plan will start on January 1, 2013.

45. Effective June 2010, the College made changes to its employee health plan that caused the plan to lose its grandfathered status. Co-pays for specialty pharmacy products were

increased from 20% with a maximum of \$1000 per year to 50% with a maximum of \$250 per prescription.

46. Grace requires all registered residential students to have health insurance. If a student does not submit proof of coverage to the College, it will enroll the student in a health insurance plan issued by Gallagher Koster. The College will bill enrolled students for the cost of the coverage. In the 2012-2013 school year, approximately 50 students were enrolled in the insurance plan facilitated by the College.

IV. Biola University's Religious Beliefs and General Provision of Educational Services

47. Biola University was founded in 1908 as the Bible Institute of Los Angeles.

48. The mission of Biola University is biblically centered education, scholarship and service – equipping men and women in mind and character to impact the world for the Lord Jesus Christ.

49. Biola's vision is to be an exemplary Christian university characterized as a community of grace that promotes and inspires personal life transformation in Christ which illuminates the world with His light and truth. As a global center for Christian thought and an influential evangelical voice that addresses crucial cultural issues, Biola University aspires to lead, with confidence and compassion, an intellectual and spiritual renewal that advances the purpose of Christ.

50. Biola believes that there is truth – that it is knowable and revealed in God's inerrant Word. Biola believes that Christians can accordingly live with unshakeable confidence and hope, knowing that the Bible and God's truth have direct application to their lives, their work, their relationships, and the culture around them.

51. Biola believes that holding a biblical worldview is foundational to understanding life and Truth. It believes that God has equipped it to uphold truth and sustain community at

the University through Christ-centered and Spirit-led education, scholarship, and service that is grounded in Scripture and that challenges its community to seek and integrate biblical principles into its fields of study. Biola believes that all it does should be Christ-centered and based on the teachings of Jesus. It believes that Christ provided the best model for how to live and that following Him is a way of life that, when followed to its fullest expression, will impact how Christians live and the choices they make.

52. Biola believes that participating in a Christian community of grace is important in the life of the believer. It believes that the identity of Christians as children of the Triune God lies in their lives lived in and through community, holistic relationships, mutual interdependence upon the Indwelling Spirit and members of the Body and seeking the unity of the Spirit.

53. Biola believes that through the renewing of the mind and care of the body its prepares its students to live within the culture in a loving and Christ-honoring way. Through a rigorous, Christ-centered and Spirit-led education, the University enables its students to grapple with and engage in the spiritual, intellectual, ethical and cultural issues of our time, their implications and application to everyday life.

54. Biola believes that through community and dependence upon the Spirit, character is sharpened and Christians grow in their ability to live their lives as the Lord Jesus Christ would. It believes that interactions with fellow Christians provide one of the essential means of character development in the life of the believer.

55. Biola believes that integrity and authenticity should be hallmarks of every believer. It believes their relationships should be models of transparency, truth-telling, and unwavering commitment to the example set by the Lord Jesus Christ.

56. Biola believes that we exist to serve God and His Great Commission in reaching the world for the Lord Jesus Christ. It believes that Christ-followers are His light to a dark world and that it is their duty and privilege to make disciples.

57. Biola believes that God uses the faculty, staff, students and alumni to accomplish His plans. It believes that, as servant leaders, each person who is part of Biola's community can make a difference in their families, churches, communities, and vocations for Christ's Kingdom.

58. The University believes that service is an act of worship to God. As followers of the Lord Jesus Christ, members of the Biola community desire to worship God by living in a way that is worthy of the calling they have received.

59. Biola believes that the Lord Jesus Christ intends His Church to be a multi-ethnic, multi-cultural, and multi-national body of believers. We have been called to respect, and when appropriate, reflect the diversity of God's kingdom throughout the world. The University holds that believers have a responsibility to spread the Gospel through evangelism, missions and outreach.

60. Biola believes that it has been blessed with kingdom resources and desires to steward them in a God-honoring way. Its desire is to manage its time, money, and gifts and to care for the students, whose lives have been entrusted to it, in a way that models a commitment to excellence and a total-life attitude of stewardship.

V. The Religious Beliefs of Biola University Regarding Abortion

61. Biola's "Doctrinal Statement," which is part of its Articles of Incorporation, declares that "[t]he Bible is clear in its teaching on the sanctity of life. Life begins at conception. We reject the destruction or termination of innocent human life through human intervention in

any form after conception including, but not limited to, abortion, infanticide or euthanasia because it is unbiblical and contrary to God's will. Life is precious and in God's hands."

62. The Biola University Employee Handbook, in a section entitled "Standard of Conduct," states in part as follows: "Consistent with the example and command of Jesus Christ, we believe that life within a Christian community must be lived to the glory of God, with love for God and for our neighbors. Being indwelt by the Holy Spirit, we strive to walk by the Spirit, 'crucifying the flesh with its passions and desires' (Galatians 5:24). To this end, members of the Biola community are not to engage in activities that Scripture forbids. Such activities include . . . the destruction or termination of innocent human life through human intervention in any form after conception including, but not limited to, abortion, infanticide or euthanasia."

63. Biola's Student Handbook provides in part as follows: "The University wants to assist those involved in unplanned pregnancy while at Biola to consider the options available to them within the Christian moral framework. These include marriage of the parents, single parenthood, or offering the child for adoption. Because the Bible is clear in its teaching on the sanctity of human life, life begins at conception; we abhor the destruction of innocent life through abortion on demand. Student Development stands ready to help those involved to cope effectively with the complexity of needs that a crisis pregnancy presents."

VI. Biola University's Group Health Insurance Plans

64. Biola supports the physical, emotional, and spiritual well-being of its employees and their dependents by offering health insurance coverage as a benefit of employment. Health insurance is available to regular employees who work at least 30 hours per week, for at least ten months of the year.

65. Biola offers two medical insurance plans for its employees, one through Kaiser and the other through Blue Shield.

66. Biola has approximately 856 full-time, benefit-eligible employees.

Approximately 1,835 individuals are covered under its two employee health insurance plans.

67. After the enactment of the Affordable Care Act, Biola made a number of changes to its employee health plans that deprived them of “grandfathered” status. Upon the renewal of the two employee plans effective April 1, 2010, Biola changed the methodology by which it supported the cost of employee health insurance. It moved from contributing the same number of dollars to the Anthem Blue Cross and Kaiser plans to contributing the same percentage of the total premium. Upon renewal of the two employee plans effective April 1, 2011, Biola increased HMO co-pays from \$10 per office visit to \$15 per office visit for both plans. It also at that time raised the prescription drug co-pays for the Blue Cross plan. Biola never conveyed to employees or dependent beneficiaries that its employee group health plans possessed grandfathered status.

68. Blue Shield replaced Anthem Blue Cross effective April 1, 2012. Prior to that date, the Anthem Blue Cross plan did cover all FDA-approved contraceptives, including ella and Plan B. The prior inclusion of abortion-inducing drugs like ella and Plan B was neither knowing nor intentional.

69. The Blue Shield plan does not cover abortion-inducing drugs such as ella and Plan B. The plan does provide coverage of other drugs characterized by the Food and Drug Administration as “contraceptives.”

70. Prior to April 1, 2012, the Kaiser plan covered all FDA-approved contraceptives, including ella and Plan B. The prior inclusion of abortion-inducing drugs like ella and Plan B was neither knowing nor intentional. Effective April 1, 2012, Biola eliminated coverage of any “contraceptives” from the Kaiser plan. Effective April 1, 2012, employees enrolled in the Kaiser plan receive coverage of non-abortifacient prescription contraceptive drugs through

Script Care, a pharmacy benefits manager. Abortion-inducing drugs, such as ella and Plan B, are not covered. The plan does provide coverage of other drugs characterized by the Food and Drug Administration as “contraceptives.”

71. Biola facilitates health insurance for its students who are not otherwise covered by health insurance. The University requires its students to have health insurance coverage. It facilitates coverage through United Health Care. Students who enroll in this plan pay the premium to Biola and the University remits payment to the carrier on behalf of the students. Ella and Plan B are excluded from this plan.

VII. The PPACA and Defendants’ Mandate Thereunder

72. Under the PPACA, employers with over 50 full-time employees are required to provide a certain level of health insurance to their employees.

73. Nearly all such plans must include “preventive services,” which must be offered with no cost-sharing by the employee.

74. On February 10, 2012, the Department of Health and Human Services finalized a rule (previously referred to in this Complaint as the Mandate) that imposes a definition of preventive services to include all FDA-approved “contraceptive” drugs, surgical sterilization, and education and counseling for such services.

75. This final rule was adopted without giving due weight to the tens of thousands of public comments submitted to HHS in opposition to the Mandate.

76. In the category of “FDA-approved contraceptives” included in this Mandate are several drugs or devices that may cause the demise of an already-conceived but not-yet-implanted human embryo, such as “emergency contraception” or “Plan B” (the “morning after” pill).

77. The FDA approved in this same category a drug called “ella” (the “week after” pill), which studies show can function to kill embryos even after they have implanted in the uterus, by a mechanism similar to the abortion drug RU-486.

78. The manufacturers of some such drugs, methods and devices in the category of “FDA-approved contraceptive methods” indicate that they can function to cause the demise of an early embryo.

79. The Mandate also requires group health care plans to pay for the provision of counseling, education, and other information concerning contraception (including devices and drugs such as Plan B and ella that cause early abortions or harm to embryos) for all women beneficiaries who are capable of bearing children.

80. The Mandate applies to the first health insurance plan-year beginning after August 1, 2012.

81. The Mandate makes little or no allowance for the religious freedom of entities and individuals, including Christian ministries and educational institutions like Grace College and Seminary and Biola University, who object to paying for or providing insurance coverage for such items.

82. Any employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the Mandate) to heavy fines approximating \$100 per employee per day. Such employers are also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

83. A relatively large employer cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the PPACA imposes monetary penalties on entities that would so refuse.

84. The exact magnitude of these penalties seems to vary according to the complicated provisions of the PPACA, but the fine is approximately \$2,000 per employee per year.

85. If Grace College and Seminary dropped its employee health insurance plan in order to avoid the Mandate, it would face annual fines of at least \$900,000. If Biola University dropped its employee health insurance plans in order to avoid the Mandate, it would face annual fines of at least \$1,700,000.

86. PPACA also imposes monetary penalties on the Schools if they were to continue offering health insurance plans that omitted abortifacients.

87. The exact magnitude of these penalties seems to vary according to the complicated provisions of the PPACA, but the fine is approximately \$100 per day per employee, with minimum amounts applying in different circumstances.

88. If the Schools do not submit to the Mandate, they will also be subject to a range of enforcement mechanisms that exist under ERISA, including but not limited to civil actions by the Secretary of Labor or by plan participants and beneficiaries, which would include but not be limited to relief in the form of judicial orders mandating that the Schools violate their beliefs and provide coverage for items to which they object on religious grounds.

89. The Mandate applies not only to sponsors of group health plans like the Schools, but also to issuers of insurance. Accordingly, Grace College and Seminary (which self-insures its employee plan) cannot avoid the Mandate by shopping for a plan from insurance companies.

90. The Mandate offers a narrow exemption to religious employers, but only if they meet all of the following requirements:

- (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”; and

(4) “The organization is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A).”

91. The Mandate imposes no constraint on the discretion of HHS’s Health Resources and Services Administration (HRSA) to grant exemptions to some, all, or none of the organizations meeting the Mandate’s definition of “religious employers.”

92. The Schools are not “religious” enough under this definition in several respects, including, but not limited to, because they have purposes other than the “inculcation of religious values” and because they are not churches, integrated auxiliaries of particular churches, conventions or associations of a church, or the exclusively religious activities of a religious order.

93. Even if the Schools were granted exempt status by HRSA under this exemption, they would only be exempt from offering coverage in their employee plans. The Mandate would require coverage of all FDA-approved contraceptive methods (including ella and Plan B), and counseling and education, in any health plan offered to students.

94. There are no clear guidelines restricting the discretion of Defendants when applying the Mandate and its many exceptions.

95. In order to determine whether employees, or persons an entity serves, share an institution’s “religious tenets,” someone would need to inquire into the detailed religious beliefs of all individuals that an entity employs, and that it serves.

96. It is unclear how Defendants define or will interpret religious “purpose.”

97. It is unclear how Defendants define or will interpret vague terms, such as “primarily,” “share,” and “religious tenets.”

98. It is unclear how Defendants will ascertain the “religious tenets” of an entity, those it employs, and those it serves.

99. It is unclear how much overlap Defendants will require for religious tenets to be “share[d].”

100. The limited and ill-defined religious employer exemption provided in the Mandate conflicts with the Constitution.

101. Moreover, the process by which Defendants determine whether an organization qualifies for the exemption will require Defendants to engage in an intrusive inquiry into whether, in the view of HHS, the organization’s “purpose” is the “inculcation of religious values” and whether it “primarily” employs and serves people who “share” its “religious tenets.” The standards are impermissibly vague and subjective.

102. By basing the exemption on shared religious tenets, the Mandate compels the Schools to restructure their religious affiliation, admissions, employment, and service programs in order to fall within the scope of the Mandate’s religious exemption.

103. The Mandate fails to protect the statutory and constitutional conscience rights of religious organizations like Grace College and Seminary and Biola University even though those rights were repeatedly raised in the public comments.

104. The Mandate requires that the Schools provide coverage for abortifacient methods, and education and counseling related to abortifacients, against their consciences in a manner that is contrary to law.

105. The Mandate constitutes government-imposed coercion on the Schools to change or violate their religious beliefs.

106. The Mandate exposes the Schools to substantial fines for refusal to change or violate their religious beliefs.

107. The Mandate will impose a burden on the Schools' employee and student recruitment efforts by creating uncertainty as to whether or on what terms they will be able to offer health insurance or will suffer penalties therefrom.

108. If the Schools drop health insurance to avoid application of the Mandate, they will experience a competitive disadvantage in their efforts to recruit and retain employees and students.

109. The Mandate coerces the Schools to provide coverage for and otherwise facilitate the provision of Plan B, ella, other abortifacient drugs, and related counseling in violation of their religious beliefs.

110. The Schools have a sincere religious objection to providing coverage for Plan B because they believe the drug could prevent a human embryo, which they believes is a human being from the moment of conception/fertilization (including before it implants in the uterus), from implanting in the wall of the uterus, causing the death of the embryo.

111. The Schools have a sincere religious objection to providing coverage for ella because they believe the drug could either prevent a human embryo from implanting, or could cause the death of a recently implanted embryo.

112. The Mandate does not apply equally to various religious groups.

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

114. For instance, the Mandate does not apply to members of a "recognized religious sect or division" that conscientiously objects to acceptance of public or private insurance funds. See 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii).

115. In addition, as described above, the Mandate exempts certain churches narrowly considered to be religious employers, exempts grandfathered plans, and does not apply through the employer mandate to employers having fewer than 50 full-time employees.

116. Furthermore, the PPACA creates a system of individualized exemptions because under the PPACA's authorization the federal government has granted discretionary compliance waivers to a variety of businesses for purely secular reasons.

117. The Mandate does not apply to employers with group health plans that are "grandfathered."

118. Neither of the Schools' employee health insurance plans possess grandfathered status.

119. President Obama held a press conference on February 10, 2012, and the Defendants later issued an "Advance Notice of Proposed Rulemaking" ("ANPRM") on March 21, 2012 (77 Fed. Reg. 16501-08), claiming to offer some sort of accommodation under which some religious non-profit organizations not qualifying for the religious exemption would still have to comply with the Mandate, but by means of the employer's insurer offering the employer's employees the same coverage for "free."

120. This alleged accommodation is not helpful to Grace College and Seminary because, among other reasons, it is its own insurer. Therefore requiring Grace College and Seminary's insurer to provide the objectionable coverage is simply a requirement that Grace College provide the coverage.

121. This alleged accommodation is not helpful to the Schools because, among other reasons, it does not yet actually exist. It does not exist in the rule or guidance the Administration made final on February 10, and it need never be formally proposed or adopted, much less adopted unchanged.

122. The PPACA and its statutory preventive services requirement do not authorize Defendants to compel insurers or any other third-party source to offer free and allegedly independent coverage of items not covered by the employer's plan; it only encompasses requirements of the employer's plan itself. Therefore, the president's alleged accommodation is either illegal, or it mandates that the coverage occur through the employer's own plan.

123. Even if the president's "compromise" did exist in binding law, was statutorily authorized and had coherent boundaries, it would still violate the Schools' religious beliefs by forcing them directly to facilitate objectionable coverage by providing and paying for a plan that is itself necessary for the employee to obtain the coverage in question, and which coverage is not separate from the employer's plan. Nor are such services apparently "free," since a variety of costs contained in the Mandate would necessarily be passed onto the employer through premiums and/or administrative charges.

124. Also on March 21, 2012, HHS issued final regulations governing student plans, which, in conjunction with its Mandate, require that objectionable coverage be offered in student plans that the Schools make available to their students.

125. The Mandate makes it unclear whether the Schools will be able to offer health insurance as a benefit to their employees, and if so, the terms upon which it will be offered.

126. The Schools must take the Mandate into account now and in the near future as they plan expenditures, including employee compensation and benefits packages, for the next several years. They will have to negotiate contracts for new and existing employees and these contracts will extend into the time frame when the Mandate begins to apply to their health insurance plans (January 1, 2013 for Grace, April 1, 2013 for Biola).

127. The Mandate, regardless of the president's proposed accommodations, will have a profound and adverse effect on the Schools and how they negotiate contracts and compensate their employees.

128. Because the Mandate is prompting the Schools to contemplate the elimination of health insurance benefits, Defendants are undermining the Schools' efforts to attract quality employees.

129. Any alleged interest Defendants have in providing free FDA-approved abortifacients without cost-sharing could be advanced through other, more narrowly tailored mechanisms that do not burden the fundamental rights of the Schools.

130. The Schools have expended and will continue to expend a great deal of time and money ascertaining the requirements of the Mandate and how it applies to their health insurance benefits.

131. The Schools wish to continue offering and facilitating health insurance coverage consistent with their religious beliefs without suffering penalties or burdens resulting from the Mandate.

132. Without injunctive and declaratory relief as requested herein, the Schools are suffering and will continue to suffer irreparable harm.

133. The Schools have no adequate remedy at law.

FIRST CLAIM FOR RELIEF
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

134. Plaintiffs reallege all matters set forth in paragraphs 1-133 and incorporate them herein.

135. The Schools' sincerely held religious beliefs prohibit them from providing or facilitating coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related

education and counseling, or providing a plan that causes access to the same through their insurance companies.

136. When the Schools comply with the Sixth Commandment and other sincerely held religious beliefs, they exercise religion within the meaning of the Religious Freedom Restoration Act.

137. The Mandate imposes a substantial burden on the Schools' religious exercise and coerces them to change or violate their religious beliefs. It penalizes them for offering health insurance plans that do not cover abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or that cause access to the same through their insurance companies. Defendants substantially burden the Schools' religious exercise when they force the Schools to choose between either following their religious commitments and suffering debilitating punishments or violating their consciences in order to avoid those punishments.

138. The Mandate chills the Schools' religious exercise within the meaning of RFRA.

139. The Mandate exposes the Schools to substantial fines and/or financial burdens for their religious exercise.

140. The Mandate exposes the Schools to substantial competitive disadvantages because of uncertainties about their health insurance benefits caused by the Mandate.

141. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest. The Mandate does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies the Mandate. The Mandate also does not apply to plans sponsored by employers that qualify for the religious exemption. Access to abortifacients is not a significant social problem, and compelling Grace

and Biola to pay for or otherwise facilitate access to such drugs and devices is hardly the least restrictive means of advancing any interest the government that Defendants might have.

142. The Mandate violates RFRA.

SECOND CLAIM FOR RELIEF
**Violation of Free Exercise Clause of the First Amendment
to the United States Constitution**

143. Plaintiffs reallege all matters set forth in paragraphs 1-133 and incorporate them herein.

144. The Schools' sincerely held religious beliefs prohibit them from providing coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing plans that cause access to the same through their insurance company.

145. When the Schools comply with the Sixth Commandment and other sincerely held religious beliefs, they exercise religion within the meaning of the Free Exercise Clause.

146. The Mandate imposes a substantial burden on the Schools' religious exercise and coerces them to change or violate their religious beliefs. Defendants substantially burden the Schools' religious exercise when they force the Schools to choose between either following their religious commitments and suffering debilitating punishments or violating their consciences in order to avoid those punishments.

147. The Mandate is not neutral and is not generally applicable. It does not apply to the enormous number of health insurance plans that enjoy "grandfathered" status. It does not apply to religious employers that qualify for the Mandate's extraordinarily narrow religious exemption. It does not apply to the employers to whom the Defendants have given waivers from the Affordable Care Act.

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

149. The Mandate furthers no compelling governmental interest. The Mandate does not apply to the enormous number of health insurance plans that enjoy “grandfathered” status, conclusively demonstrating the less-than-compelling nature of the interest that allegedly underlies the Mandate. The Mandate also does not apply to plans sponsored by employers that qualify for the religious exemption. Access to abortifacients is not a significant social problem, and compelling Grace and Biola to pay for or otherwise facilitate access to such drugs and devices is hardly the least restrictive means of advancing any interest the government that Defendants might have.

150. The Mandate coerces the Schools to change or violate their religious beliefs.

151. The Mandate chills the Schools’ religious exercise.

152. The Mandate exposes the Schools to substantial fines and/or financial burdens for their religious exercise.

153. The Mandate exposes the Schools to substantial competitive disadvantages because of uncertainties about their health insurance benefits caused by the Mandate.

154. Defendants designed the Mandate and the religious exemption therefrom in a way that make it impossible for the Schools and other similar religious organizations to comply with their religious beliefs.

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

156. By design, Defendants framed the Mandate to apply to some religious organizations but not to others, resulting in discrimination among religions.

157. The Mandate violates the Schools' rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

THIRD CLAIM FOR RELIEF
Violation of the Establishment Clause of the
First Amendment to the United States Constitution

158. Plaintiffs reallege all matters set forth in paragraphs 1-133 and incorporate them herein.

159. The First Amendment's Establishment Clause prohibits the establishment of any religion and/or excessive government entanglement with religion.

160. To determine whether religious organizations like Grace College and Seminary and Biola University are required to comply with the Mandate, continue to comply with the Mandate, are eligible for an exemption, or continue to be eligible for an exemption, Defendants must examine the organization's religious beliefs and doctrinal teachings, and that of its employees and persons it serves.

161. Obtaining sufficient information for the Defendants to analyze the content the Schools' religious beliefs requires ongoing, comprehensive government surveillance that impermissibly entangles Defendants with religion.

162. The Mandate discriminates among religions and among denominations, favoring some over others.

163. The Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient coverage and imposes it upon all religionists who must either conform their consciences or suffer penalty.

164. The Mandate violates the Schools' rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

FOURTH CLAIM FOR RELIEF

**Violation of the Free Speech Clause of the First Amendment
to the United States Constitution**

165. Plaintiffs reallege all matters set forth in paragraphs 1-133 and incorporate them herein.

166. Defendants' requirement of provision of insurance coverage for education and counseling regarding contraception causing abortion forces the Schools to speak in a manner contrary to their religious beliefs.

167. Defendants have no narrowly tailored compelling interest to justify this compelled speech.

168. The Mandate violates the Schools' rights secured to them by the Free Speech Clause of the First Amendment of the United States Constitution.

FIFTH CLAIM FOR RELIEF

**Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution**

169. Plaintiffs reallege all matters set forth in paragraphs 1-133 and incorporates them herein.

170. Because the Mandate sweepingly infringes upon religious exercise and speech rights that are constitutionally protected, it is unconstitutionally overbroad in violation of the due process rights of the Schools and other parties not before the Court.

171. Persons of common intelligence must necessarily guess at the meaning, scope, and application of the Mandate and its exemptions.

172. This Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner, and lawsuits by private persons, based on the Defendants' vague standards.

173. The Mandate vests Defendants with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations that possess religious beliefs and/or that meet the Defendants' definition of "religious employer."

174. This Mandate is an unconstitutional violation of the Schools' due process rights under the Fifth Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

175. Plaintiffs reallege all matters set forth in paragraphs 1-133 and incorporate them herein.

176. Because they did not give proper notice and an opportunity for public comment, Defendants did not take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

177. Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

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

179. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Grace College and Seminary, Biola University, and similar organizations.

180. Defendants' explanation (and lack thereof) for its decision not to exempt the Schools and similar religious organizations from the Mandate runs counter to the evidence submitted by religious organizations during the comment period.

181. Thus, Defendants' issuance of the Mandate was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the Mandate fails to consider the full extent of its implications and it does not take into consideration the evidence against it.

182. As set forth above, the Mandate violates RFRA and the First and Fifth Amendments.

183. The Mandate is also contrary to the provisions of the PPACA which 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." Section 1303(b)(1)(A).

184. The Mandate is also 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 (Sept. 30, 2008), which provides that "[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and 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."

185. The Mandate also violates the provisions of the Church Amendment, 42 U.S.C. § 300a-7(d), which provides that "No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions."

186. The Mandate is contrary to existing law and is in violation of the APA under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

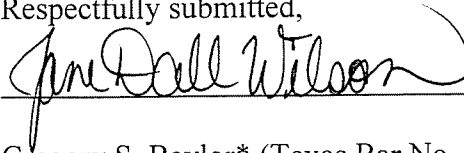
A. That this Court enter a judgment declaring the Mandate and its application to Grace College and Seminary, Biola University, and others not before the Court to be an unconstitutional violation of its rights protected by RFRA, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act;

B. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate in a way that substantially burdens the religious belief of any person in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against Grace College and Seminary, Biola University, and others not before the Court by requiring them to provide health insurance coverage for abortifacients and abortion/abortifacient counseling to their employees and/or to their students;

C. That this Court award Plaintiffs court costs and reasonable attorney's fees, as provided by the Equal Access to Justice Act and RFRA (as provided in 42 U.S.C. § 1988);

D. That this Court grant such other and further relief as to which the Plaintiffs may be entitled.

Respectfully submitted,



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*Motion to appear *pro hac vice* to be submitted