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## INTRODUCTION AND SUMMARY OF ARGUMENT

The central question presented by this case is straightforward: Can the government force conscientious objectors to aid and abet what they believe to be the taking of innocent life?

No one disputes in this case that the Plaintiff Universities sincerely believe that they must not abet abortions. And no one disputes that the Mandate makes Plaintiffs, as employers, part of the mechanism by which employees or their dependents are able to obtain coverage for the drugs and devices Plaintiffs object to. The disagreement in this case concerns whether the Defendants' "accommodation" has solved the moral problem of complicity. It has not.

The government will argue that its "accommodation" puts enough moral distance between Plaintiffs and the provision of the objectionable drugs and devices to their employees. But this argument fails for several reasons. First, the government cannot tell Plaintiffs and others what they believe—Plaintiffs, not the government are the arbiters of whether a particular set of actions would be immoral in their own eyes. Second, the Plaintiffs are inescapably part of the mechanism for obtaining the drugs and devices. Without Plaintiffs' acting to trigger the accommodation mechanism, their employees and dependents would not receive the abortion-causing items. Third, the government cannot command Plaintiffs and other religious organizations to outsource their consciences to third party administrators or others; as the Supreme Court stated just last Term, government cannot force religious

groups to express their beliefs “only at the price of evident hypocrisy.” See *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321, 2331 (2013).

Indeed, the moral dilemma confronted by the Universities is not unlike the one faced by a person who is solicited to commit a crime, or invited to join a conspiracy or a fraud. There is a moment of decision where the person must decide whether to aid and abet the existing criminals and thus become a criminal herself, or whether to abstain. The law makes individuals culpable for their decisions to participate as accomplices or co-conspirators. Similarly, the moral law that ETBU and HBU follow would make them culpable for a decision to act as the government’s accomplice or co-conspirator in committing what they believe to be the taking of innocent human life. The government should not be able to tell Plaintiffs not to use their own standard of culpability, especially when federal standards of culpability are so similar.<sup>1</sup>

Perhaps the worst part of this entire situation is that the government could have avoided this problem altogether. If, for example, Congress or the Defendant agencies had structured the law and regulations in a way that had the government

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<sup>1</sup> Judge Gorsuch explained the problem well in *Hobby Lobby Stores, Inc. v. Sebelius*, --- F.3d. ---, No. 12-6294, 2013 WL 3216103 (June 27, 2013) (*en banc*):

All of us face the problem of complicity. All of us must answer for ourselves whether and to what degree we are willing to be involved in the wrongdoing of others. For some, religion provides an essential source of guidance both about what constitutes wrongful conduct and the degree to which those who assist others in committing wrongful conduct themselves bear moral culpability. The [plaintiffs] are among those who seek guidance from their faith on these questions. Understanding that is the key to understanding this case.

*Id.* at \*31 (Gorsuch, J., concurring).

or the private market deliver the objected-to drugs and devices instead of employers, as under Title X, 42 U.S.C. § 300 *et seq.*, then there would also have been no problem of moral complicity.

But because the government chose instead to make employers, including Plaintiffs, the means to its chosen end, the issue of conscientious objection is squarely presented.

That conscientious objection is protected under the Religious Freedom Restoration Act (RFRA), the Free Exercise Clause, the Establishment Clause, and the Free Speech Clause. The Mandate creates a substantial burden on Plaintiffs' religious exercise of refusing to assist in abortion, triggering strict scrutiny under RFRA. The Mandate is neither neutral nor generally applicable, triggering strict scrutiny under the Free Exercise Clause. The Mandate discriminates among religions to the detriment of Plaintiffs, triggering strict scrutiny under the Establishment Clause. And the Mandate compels Plaintiffs to speak when they don't want to speak and be silent when they don't want to be silent, triggering strict scrutiny under the Free Speech Clause.

As several Courts of Appeals have already held, the Mandate cannot be justified under strict scrutiny. The government invokes no compelling interest to justify it, the Mandate does not actually further the interests the government has identified, and it is not the means least restrictive of Plaintiffs' constitutional and RFRA rights.

Because there is no dispute of material fact regarding the foregoing claims, summary judgment should be entered for Plaintiffs on those claims. And because the Mandate will soon coerce Plaintiffs absent an order from this Court, a preliminary injunction should issue protecting Plaintiffs from the Mandate during the pendency of litigation in this Court and any subsequent appeal.

**STATEMENT OF FACTS SUPPORTING  
SUMMARY JUDGMENT AND INJUNCTIVE RELIEF**

**I. The HHS Mandate**

**A. Promulgation of the Mandate and the “Religious Employer” Exemption**

Signed into law by President Obama in March of 2010, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010) (collectively, “ACA”) instituted a number of significant changes to our nation’s health care and health insurance systems. Among other things, the ACA mandates that any “group health plan” or “health insurance issuer offering group or individual health insurance coverage” must provide coverage for certain “preventive care and screening” services without “any cost sharing.” 42 U.S.C. § 300gg-13(a). The ACA does not specify what “preventive care and screenings” include, but rather leaves that task to the Health Resources and Services Administration (HRSA), a division of Defendant Department of Health and Human Services (HHS).<sup>2</sup> 42 U.S.C. § 300gg-13(a)(4); 75 Fed. Reg. 41726, 41728 (July 19, 2010).

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<sup>2</sup> Unless context indicates otherwise, all references to “HHS” or “Defendants” also include Defendants Department of Labor and Department of Treasury.

On July 19, 2010, HHS published an interim final rule under the Affordable Care Act, (First Interim Final Rule). 75 Fed. Reg. 41726 (2010). The First Interim Final Rule, enacted without prior notice of rulemaking or public comment, provided that at a later date HRSA would publish guidelines specifying what would constitute preventive care. 75 Fed. Reg. at 41759. The First Interim Final Rule explained that “cost sharing” refers to “out-of-pocket” expenses for plan participants and beneficiaries, 75 Fed. Reg. 41730, and acknowledged that those expenses would be “covered by group health plans and issuers” which would, in turn, result in “higher average premiums for all enrollees[.]” *id.*, and “an increase in premiums,” *id.* at 41737. In other words, the prohibition on cost sharing was a way “to distribute the cost of preventive services more equitably across the broad insured population.” *Id.*

On August 1, 2011, HRSA issued guidelines stating that preventive services would include “[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.” Health Resources and Services Administration, *Women’s Preventive Services: Required Health Plan Coverage Guidelines* (Aug. 1, 2011), Ex. C-1. FDA-approved contraceptive methods include “emergency contraception” such as Plan B (commonly known as the “morning-after pill”) and ulipristal (also known as “Ella” or the “week-after pill”). FDA Birth Control Guide (August 2012), Ex. C-2 at 9. The FDA birth control guide specifically notes that Plan

B and Ella (and certain intrauterine devices (IUDs)) may work by preventing “attachment (implantation)” of a fertilized egg in a woman’s uterus. *Id.*

On the same day that HRSA issued these guidelines, HHS promulgated an amended interim final rule (Second Interim Final Rule) which reiterated the mandate and added a narrow exemption for “religious employer[s].” 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130. The Second Interim Final Rule granted HRSA “*discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned.” 76 Fed. Reg. at 46623 (emphasis added). A “religious employer” was restrictively defined as one that (1) has as its purpose the “inculcation of religious values”; (2) “primarily employs persons who share the religious tenets of the organization”; (3) “primarily serves persons who share its religious tenets”; and (4) “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.” 76 Fed. Reg. at 46626. The fourth of these requirements refers to “churches, their integrated auxiliaries, and conventions or associations of churches” and the “exclusively religious activities of any religious order.” 26 U.S.C. § 6033. Like the First Interim Final Rule, the Second Interim Final Rule went into effect immediately, without prior notice or comment. 76 Fed. Reg. 46621.

## **B. The Safe Harbor**

Controversy ensued over the mandate and the religious employer exemption, and hundreds of thousands of public comments were filed in response to the mandate and the religious employer exemption. *See* 77 Fed. Reg. 8725, 8726 (Feb.

15, 2012).<sup>3</sup> In response, Secretary Sebelius announced in January 2012 that certain non-exempt religious objectors would be granted an “additional year” before the mandate was enforced against them, in order to “allow these organizations more time and flexibility to adapt to this new rule.” January 20, 2012 Statement of HHS Secretary Kathleen Sebelius, Ex. C-3. Accordingly, on February 10, 2012, HHS issued a bulletin describing a “Temporary Enforcement Safe Harbor” from the mandate. Department of Health and Human Services, *Guidance on the Temporary Enforcement Safe Harbor for Certain Employers* (updated June 28, 2013), Ex. C-4. The bulletin advised that Defendants would not enforce the mandate for one additional year against certain non-profit organizations who have religious objections to covering the mandated services but who did not qualify for the religious employer exemption. Ex. C-4 at 3. Under the safe harbor, the mandate would not apply until an organization’s first insurance plan year that began after August 1, 2013 (as opposed to August 2012 under the Second Interim Final Rule). Ex. C-4 at 3. The safe harbor is available to non-profit organizations that self-certify that they have not offered the offending coverage “from February 10, 2012 onward” and that provide notice to plan participants. Ex. C-4 at 4. The safe harbor did not alter the religious employer exemption, however. On that same afternoon,

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<sup>3</sup> Additionally, in 2011, religious organizations that did not qualify for the exemption began filing lawsuits challenging the interim final rules. *See, e.g., Belmont Abbey College v. Sebelius*, No. 11-1989 (D.D.C. Nov. 10, 2011), *dismissed as moot*, Dkt. 41 (Aug. 19, 2013) (first lawsuit filed). To date, 30 lawsuits have been filed by nonprofit religious organizations and 37 lawsuits have been filed by business owners. Their status is kept reasonably updated by Plaintiffs’ counsel at HHS Mandate Information Central, [www.becketfund.org/hhsinformationcentral](http://www.becketfund.org/hhsinformationcentral).

Defendants issued regulations adopting that exemption “as a final rule without change.” 77 Fed. Reg. 8725, 8729 (published Feb. 15, 2012).

**C. The Advance Notice of Proposed Rulemaking**

On March 16, 2012, Defendants Announced an “Advance Notice of Proposed Rulemaking” (ANPRM). 77 Fed. Reg. 16501, 16503 (published March 21, 2012). The ANPRM announced the Defendants’ intention to finalize an accommodation by the end of the safe harbor period. 77 Fed. Reg. at 16503. The ANPRM did not announce any intention to alter the mandate. *Id.* In vague terms, the ANPRM proposed that “health insurance issuers” for objecting religious employers could be required to “assume the responsibility for the provision of contraceptive coverage without cost sharing.” *Id.* For self-insured plans, the ANPRM suggested that third party plan administrators “assume this responsibility.” *Id.* For the first time, the ANPRM suggested that the cost for the separate contraceptive coverage could not result in increased premiums for conscientious objectors. *Id.* at 16503 (“the Departments would require that, in this circumstance, there be no premium charge for the separate contraceptive coverage”). Defendants recognized “approximately 200,000 comments” submitted in response to the ANPRM, which for the most part objected to the scheme. 78 Fed. Reg. 8456, 8459 (published Feb. 6, 2013).

**D. The Notice of Proposed Rulemaking**

On February 1, 2013, HHS issued a Notice of Proposed Rulemaking (NPRM). 78 Fed. Reg. 8456. The NPRM proposed two major changes to the then-existing regulations. 78 Fed. Reg. at 8458-59. First, it proposed revising the religious employer exemption by eliminating the requirements that religious employers have

the purpose of inculcating religious values and primarily employ and serve persons of their own faith. *Id.* It did not, however, “expand the universe of employer plans that would qualify for the exemption.” *Id.* Second, it proposed to “accommodate” non-exempt religious organizations like the Plaintiffs by requiring those religious insurers to force their insurers and third party administrators to provide “separate . . . coverage” for the free contraceptive and abortifacient drugs and services. 78 Fed. Reg. 8463. “[O]ver 400,000 comments” were submitted in response to the NPRM. 78 Fed. Reg. 39870, 39871 (published July 2, 2013). On April 8, 2013, the same day the notice-and-comment period ended, Defendant Secretary Sebelius answered questions about the contraceptive and abortifacient services requirement in a presentation at Harvard University.<sup>4</sup> In response to a question, she explained that “religious entities will be providing coverage to their employees starting August 1st.” *Id.* at 51:30-52:00.

### **E. The Final Form of the Mandate**

On June 28, 2013, Defendants issued a final rule (the “Mandate”). Under the Mandate, the “religious employer” exemption remains limited to institutional churches and religious orders “organized and operate[d]” as nonprofit entities “referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code.” 78 Fed. Reg. at 39874(a). The Mandate creates a separate “accommodation” for certain non-exempt religious organizations. 78 Fed. Reg. at 39874; 45 C.F.R. § 147.131(b). An organization is eligible for the accommodation if it (1) “opposes providing

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<sup>4</sup> The Forum, *A Conversation with Kathleen Sebelius, U.S. Secretary of Health & Human Services* (April 8, 2013) available at [http://theforum.sph.harvard.edu/sites/default/files/downloads/audio/20130408\\_Sebelius\\_PODCAST.mp3](http://theforum.sph.harvard.edu/sites/default/files/downloads/audio/20130408_Sebelius_PODCAST.mp3) (last visited August 30, 2013).

coverage for some or all of the contraceptive services required”; (2) “is organized and operates as a nonprofit entity”; (3) “holds itself out as a religious organization”; and (4) “self-certifies that it satisfies the first three criteria.” 78 Fed. Reg. at 39874; 45 C.F.R. § 147.131(b). The final rule extends the current safe harbor through the end of 2013. 78 Fed. Reg. at 39889. An eligible organization would need to execute its self-certification “prior to the beginning of the first plan year” which begins on or after January 1, 2014, and deliver it to the organization’s insurer, or, if the organization has a self-insured plan, to the plan’s third party administrator. *Id.* at 39875. The delivery of the self-certification would trigger the insurer’s or third party administrator’s obligation to make “separate payments for contraceptive services directly for plan participants and beneficiaries.” *Id.* at 39875-76; *see* 45 C.F.R. § 147.131(c). This obligation would continue only “for so long as the participant or beneficiary remains enrolled in the plan.” 78 Fed. Reg. 39876; *see* 45 C.F.R. § 147.131(c)(2)(i)(B). Insurers and third party administrators would be required to notify plan participants and beneficiaries of the contraceptive payment benefit “contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment” in a group health plan. *Id.* at 39876; 45 C.F.R. § 147.131(d). The insurers and third party administrators are expected to provide the emergency contraceptives “in a manner consistent” with the provision of other covered services, 78 Fed. Reg. at 39876-77, and “may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or impose any premium, fee, or other charge, or any portion thereof, directly or

indirectly, on the eligible organization.” *Id.* at 39896; 45 C.F.R. § 147.131(c)(2)(ii). The burden remains on the objecting religious organization to find a third party administrator who will agree to provide free access to the same contraceptive and abortifacient services the religious organization cannot provide directly. 78 Fed. Reg. at 39880 (“[T]here is no [legal] obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities.”).

Defendants state in the final rule that they “have evidence to support” that providing payments for contraceptive and abortifacient services will be “cost neutral for issuers.” *Id.* at 39877. Nevertheless, even if the payments were, over time, to become cost neutral, it is undisputed that there will be up-front costs for making the payments. *Id.* at 39877-78 (addressing ways insurers can cover up-front costs). The final rule suggests that issuers may ignore this fact and “set the premium for an eligible organization’s large group policy as if no payments for contraceptive services had been provided to plan participants.” *Id.* at 39877. Another suggestion Defendants have provided is to “treat the cost of payments for contraceptive services . . . as an administrative cost that is spread across the issuer’s entire risk pool, excluding plans established or maintained by eligible organizations.” *Id.* at 39878.

The Mandate requires that, even if the third party administrator consents, the religious organization—via its self-certification—must expressly designate the third party administrator as “an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive

services for participants and beneficiaries.” *Id.* at 39879. The self-certification must specifically notify the third party administrator of its “obligations set forth in the[] final regulations, and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA.” *Id.* at 39879.

Employers with fewer than fifty employees are exempt from the Mandate. 26 U.S.C. § 4980H(c)(2)(A); 26 U.S.C. § 4980D(d). Nearly 34 million individuals are employed by firms with fewer than fifty employees. WhiteHouse.Gov, *The Affordable Care Act Increases Choice and Saving Money for Small Business*, [http://www.whitehouse.gov/files/documents/health\\_reform\\_for\\_small\\_businesses.pdf](http://www.whitehouse.gov/files/documents/health_reform_for_small_businesses.pdf) (last visited Aug. 30, 2013), Ex. C-5 at 3. Also exempt from the Mandate are employers who provide “grandfathered” health care plans. 42 U.S.C. § 18011. In 2010, the government predicted that 87 million people would remain on grandfathered plans in 2013. Ex. C-6 at 4.

## **II. East Texas Baptist University and Houston Baptist University**

### **A. East Texas Baptist University**

East Texas Baptist University (ETBU) is a Christian liberal arts university located in Marshall, Texas. Declaration of Samuel W. Oliver, Ex. A ¶ 4. Founded in 1912, ETBU is affiliated with the Baptist General Convention of Texas and is in cooperation with the national Southern Baptist Convention. Ex. A ¶¶ 4, 11. ETBU’s motto is “A World of Opportunity in a Community of Faith.” Ex. A ¶ 6. Its central purpose is to “prepare students to accept the obligations and opportunities to serve humanity and the Kingdom of God.” Ex. A ¶ 5. Today, ETBU is a thriving academic

community, serving over 1,250 students in thirty undergraduate degree programs and four graduate degree programs. Ex. A ¶ 7.

In keeping with its Christian identity, ETBU employs “administrators, academic officers, faculty, and staff who have a personal relationship with Christ, who are familiar with truth as revealed in the Bible, who live out this truth in the presence of others, [and] who can create an environment where Christ is lived out in the life of the individual” in both “their initial and continuing employment[.]” Ex. A ¶ 13. ETBU is governed by a 36-member Board of Trustees, all of whom must be active members of Baptist churches. Ex. A ¶ 10.

ETBU holds and follows traditional Christian beliefs about the sanctity of life. Ex. A ¶ 16. ETBU believes that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death. Ex. A ¶ 16-17. ETBU affirms that “[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.” Ex. A ¶ 18. ETBU believes and teaches that abortion ends a human life and is a sin. Ex. A ¶ 19.

Consequently, it is a violation of ETBU’s teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services. Ex. A ¶ 20. Specifically, ETBU has a sincere religious objection to covering the emergency contraceptive drugs popularly known as Plan B, Ella, and certain abortifacient IUDs. Ex. A ¶ 21. ETBU believes that those drugs could prevent a

human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo. Ex. A ¶ 21. It is similarly a violation of ETBU’s religious beliefs to deliberately provide health insurance that would facilitate access to abortion-causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a third-party administrator and not by ETBU. Ex. A ¶ 24.

It is also part of ETBU’s religious convictions to provide for the well-being and care of the employees who further its mission and make up an integral part of its community. Ex. A ¶ 27. The overwhelming majority of ETBU’s 227 full time employees and their families rely upon ETBU’s health benefits. Ex. A ¶ 28. It is important to ETBU that its insurance plan is consistent with its religious beliefs. Ex. A ¶ 20. Consistent with these religious beliefs, ETBU’s employee health insurance plans do not cover abortions or emergency contraception such as Plan B, Ella, or abortion-causing IUDs. Ex. A ¶ 20-21. ETBU cannot, in good conscience, participate in the Mandate. Ex. A ¶ 38. ETBU is self-insured, and while it was initially unclear whether its plan was grandfathered, its current plan is not grandfathered. Ex. A ¶ 33.

The mandate will take effect against ETBU on January 1, 2014. Ex. A ¶ 66. On that date, it will face an unconscionable choice: either violate the law, or violate its faith. Ex. A ¶ 66. If ETBU violates the law by ceasing to offer employee health insurance, it will face the prospect of fines of \$2000 per employee per year, or roughly \$454,000 per year, every year. Ex. A ¶ 67; 26 U.S.C. § 4980H. Although the

government has recently announced that it will postpone implementing the annual fine of \$2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015. Mark J. Mazur, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, *Continuing to Implement the ACA in a Careful, Thoughtful Manner* (July 2, 2013), Ex. C-7. Furthermore, if ETBU violates the law by offering insurance that fails to comply with the Mandate, it could also incur penalties of \$100 per day “for each individual to whom such failure relates,” or up to \$8 million per year for ETBU’s 227 full-time employees. Ex. A ¶ 69; 26 U.S.C. § 4980D; 29 U.S.C. § 1132. Terminating its health Plan would be a serious hardship for ETBU’s faculty and staff. Ex. A ¶ 35. Terminating its health plan would result in serious competitive disadvantages for ETBU in recruiting and retaining faculty and staff. Ex. A ¶ 36. ETBU could also face regulatory action and lawsuits under ERISA. Ex. A ¶ 71.

ETBU has raised its objections to the Mandate with Congress. Ex. A ¶ 41. On February 16, 2012, ETBU’s president testified before the House Committee on Oversight and Government Reform that ETBU objected to the Mandate. Ex. A ¶ 41. ETBU submitted public comments on the ANPRM and the NPRM objecting to the scheme they proposed. Ex. A ¶ 42-44.

#### **B. Houston Baptist University**

Houston Baptist University (HBU) is a Christian liberal arts university located in Houston, Texas. Declaration of Dr. Robert B. Sloan, Ex. B ¶ 4. Founded in 1960 by the Baptist General Convention of Texas, HBU is also connected with the national Southern Baptist Convention. Ex. B ¶¶ 4-5. HBU’s mission is “to provide a

learning experience that instills in students a passion for academic, spiritual, and professional excellence as a result of [its] central confession, ‘Jesus Christ is Lord.’”

Ex. B ¶ 6. Today, HBU is a thriving academic community, serving over 2,800 students in 33 undergraduate degree programs and 15 graduate degree programs.

Ex. B ¶ 7.

In keeping with its Christian identity, HBU’s bylaws have required that “all those who become associated with [HBU] as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the sins of all men and thereafter arose from the grave, that by repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God . . . .” Ex. B ¶ 8.

HBU’s mission as an academic community is not merely the transmission of information; its goal is to “express Christ’s Lordship as a function of its academic mission.” Ex. B ¶ 10.

HBU holds and follows traditional Christian beliefs about the sanctity of life. Ex. B ¶ 11-12. HBU believes that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death. Ex. B ¶ 11. HBU affirms that “[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.” Ex. B

¶ 13. HBU believes and teaches that abortion ends a human life and is a sin. Ex. B

¶ 14. HBU expects all of its faculty to affirm and teach these beliefs. Ex. B ¶ 14. HBU's beliefs about the sanctity of life are also reflected in its Student Code of Conduct, which affirms that Houston Baptist “embraces a biblical position which honors the sanctity of life,” and “cannot support actions which encourage or result in the termination of human life through suicide, euthanasia, or abortion-on-demand.” Ex. B ¶ 15. As a result, when students face a crisis pregnancy, “the campus community is prepared to stand with both the father and mother of the unborn child” and is “committed to assisting the student(s) with” alternatives to abortion. Ex. B ¶ 15.

Consequently, it is a violation of HBU's teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services. Ex. B ¶ 16. Specifically, HBU has a sincere religious objection to covering the emergency contraceptive drugs popularly known as Plan B and Ella. Ex. B ¶ 19. HBU believes that those drugs could prevent a human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo. Ex. B ¶ 17. It is similarly a violation of HBU's beliefs to deliberately provide health insurance that would facilitate access to abortion-causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a third-party administrator and not by HBU. Ex. B ¶ 20.

It is also a part of HBU's religious convictions to provide for the well-being and care of the employees who further its mission and make up an integral part of its community. Ex. B ¶ 23. The overwhelming majority of HBU's 355 full time employees and their families rely upon HBU's health benefits. Ex. B ¶ 24. It is important to HBU that its insurance plan is consistent with its religious beliefs. Ex. B ¶ 22. Consistent with these religious beliefs, HBU's employee health insurance plans do not cover abortions or emergency contraception such as Plan B, Ella, or abortion-causing IUDs. Ex. B ¶ 22. HBU cannot, in good conscience, participate in the Mandate scheme. Ex. B ¶ 36.

HBU's health benefits plan (plan) is provided through GuideStone Financial Resources of the Southern Baptist Convention (GuideStone). Ex. B ¶ 25. GuideStone's mission is "to assist churches, denominational entities, and other evangelical ministry organizations by making available" a variety of retirement, investment, and insurance programs. Ex. B ¶ 26. GuideStone is a church health plan, which is a "self-funded, multiple employer health plan[] operated by not-for-profit church benefit boards" and given special status by the IRS. Ex. B ¶ 27. Although GuideStone provides preventive services—including most FDA-approved contraceptives—without cost sharing, GuideStone "does not provide coverage for abortions and abortion-causing drugs, as this violates [its] Biblical convictions on the sanctity of life." Ex. B ¶ 28. HBU's plan is not grandfathered. Ex. B ¶ 31.

The Mandate will take effect against HBU on January 1, 2014. Ex. B ¶ 66. On that date, it will face an unconscionable choice: either violate the law, or violate its

faith. Ex. B ¶ 66. If HBU violates the law by ceasing to offer employee health insurance, it will face the prospect of fines of \$2000 per employee per year, or roughly \$710,000 per year, every year. Ex. B ¶ 67; 26 U.S.C. § 4980H. Although the government has recently announced that it will postpone implementing the annual fine of \$2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015. Ex. B ¶ 68; Mark J. Mazur, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, *Continuing to Implement the ACA in a Careful, Thoughtful Manner* (July 2, 2013), Ex. C-7. If HBU violates the law by offering insurance that fails to comply with the Mandate, it could also incur penalties of \$100 per day “for each individual to whom such failure relates,” or up to nearly \$13 million annually. Ex. B ¶ 69. HBU could also face regulatory action and lawsuits under ERISA. Ex. B ¶ 71.

### **III. The Mandate’s Impact on ETBU and HBU**

Both ETBU and HBU will be subject to the Mandate on January 1, 2014. Ex. A ¶ 66; Ex. B ¶ 66. Although the Universities have no objection to including free coverage for non-abortifacient contraceptive services, their religious convictions forbid them from including free coverage for abortifacient services in their employee healthcare plans. Ex. A ¶ 75; Ex. B ¶ 75. The Plaintiffs cannot take advantage of the religious employer exemption. Ex. A ¶ 39; Ex. B ¶ 39. In order to comply with the Mandate under the “accommodation,” the Plaintiffs would need to execute their self-certifications prior to January 1, 2014. Ex. A ¶ 47; Ex. B ¶ 45. The Mandate does not provide any guidance for “eligible organizations” that are insured through church health plans like GuideStone. Ex. B ¶ 46. GuideStone also has a religious

objection to providing abortion-causing drugs. Ex. B ¶ 28. Neither GuideStone nor ETBU's third party administrator has a legal obligation to cooperate in providing the Plaintiffs with the accommodation. Ex. A ¶ 50; Ex. B ¶ 52; 78 Fed. Reg. at 39880. The Plaintiffs' beliefs preclude them from soliciting, contracting with, or designating a third party to provide these drugs and services. Ex. A ¶ 53; Ex. B ¶ 50.

Expressly designating a third party administrator as "an ERISA section 3(16) plan administrator" and notifying the third party administrator of its "obligations set forth in the[] final regulations" would make the Plaintiffs morally complicit in providing the drugs and services. Ex. A ¶¶ 54-56; Ex. B ¶¶ 54-56; 78 Fed. Reg. 39879.

If they were to violate their beliefs and designate a new insurer or designate a third party administrator for the distinct purpose of facilitating access to free abortifacients, the Plaintiffs would have to identify their employees to that entity. Ex. A ¶ 58; Ex. B ¶ 58. Both Universities would have to coordinate with their designees regarding when they added or removed employees and beneficiaries from their healthcare plan and, as a result, from the contraceptive and abortifacient services payment scheme. Ex. A ¶ 60; Ex. B ¶ 60; 78 Fed. Reg. 39876. Both Universities would be required to coordinate notices with their designees. Ex. A ¶ 62; B ¶ 62; 78 Fed. Reg. 39876.

Thus, the burden remains on the Plaintiffs to find an insurer or third party administrator that will agree to provide free access to the abortifacient drugs and

devices that Plaintiffs object to. Ex. A ¶ 52; Ex. B ¶ 59. There is no way to ensure that the cost of administering the abortifacient services would not be passed down to the Plaintiffs through increased premiums or fees. Ex. A ¶ 65; Ex. B ¶ 65.

The Mandate burdens the Plaintiffs' employee recruitment and retention efforts by creating uncertainty as to whether they will be able to offer health benefits beyond 2013. Ex. A ¶ 72-73; Ex. B ¶ 72-73. The Mandate forces the Plaintiffs to choose between, on the one hand, violating their religious beliefs, and, on the other hand, incurring substantial fines and terminating their employee benefits. Ex. A ¶ 74; Ex. B ¶ 74.

The Plaintiffs must begin planning now for the 2014 insurance plan year. Ex. A ¶ 77; Ex. B ¶ 77. The Plaintiffs need immediate relief from the Mandate in order to arrange for and continue providing employee health insurance. Ex. A ¶ 81; Ex. B ¶ 81.

#### **STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING**

Plaintiffs filed an original complaint in this matter on October 9, 2012. Dkt. 1. On December 20, 2012, this Court held a status conference and stayed the case pending the promulgation of new regulations. Dkt. 25. Defendants issued the new regulations on June 28, 2013, 78 Fed. Reg. 39870-01 (published July 2, 2013), and this Court lifted the stay on August 1, 2013. Dkt. 57. Following a status conference on August 2, 2013, this Court ordered *inter alia* that Plaintiffs file their motion for partial summary judgment and preliminary injunction on August 30, 2013. Dkt. 60. On August 6, 2013, Plaintiffs filed their first amended complaint addressing the

new regulations. Dkt. 61. On August 30, 2013, the Court granted permissive intervention to Plaintiff-Intervenor Westminster Theological Seminary. Dkt. 68. Plaintiffs now timely file their motion for partial summary judgment and a preliminary injunction.

## **STATEMENT OF THE ISSUES AND APPLICABLE STANDARDS OF REVIEW**

### **I. Preliminary Injunction**

Plaintiffs seek a preliminary injunction barring enforcement of the Mandate against them during the pendency of proceedings in this Court and any subsequent appeal.

To obtain a preliminary injunction, a plaintiff must establish: “(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.” *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011); *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008). *See also Blanco v. Select Specialty Hosp. Houston, L.P.*, CIV.A. H-13-1591, 2013 WL 2408189 (S.D. Tex. May 31, 2013).

### **II. Summary Judgment**

Plaintiffs request that summary judgment be entered in their favor on some of their claims brought under RFRA, the Free Exercise Clause, the Establishment Clause, and the Free Speech Clause.

Pursuant to Federal Rule of Civil Procedure 56(a), summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine dispute as to a material fact exists when, after considering the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, a court determines that the evidence is such that a reasonable jury could return a verdict for the party opposing the motion. *LeMaire v. La. Dep’t of Transp. & Dev.*, 480 F.3d 383, 387 (5th Cir. 2007) (citations omitted). A court considering a motion for summary judgment must consider all facts and evidence in the light most favorable to the nonmoving party. *Id.* (citing *United Fire & Cas. Co. v. Hixson Bros., Inc.*, 453 F.3d 283, 285 (5th Cir.2006)).

## ARGUMENT

### **I. Plaintiffs are entitled to summary judgment on their RFRA, Free Exercise, Establishment Clause, and Free Speech claims.**

The Mandate violates federal constitutional and statutory law in four independent ways.<sup>5</sup> Most obviously, it is a flagrant violation of the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et. seq.*. It also violates the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment to the U.S. Constitution. Each violation subjects the Mandate to strict scrutiny, a test it cannot possibly survive. Any one violation is sufficient to invalidate the Mandate and entitle the Plaintiffs to summary judgment.

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<sup>5</sup> Plaintiffs have raised other claims in addition to these four, but do not currently seek a preliminary injunction or summary judgment on the basis of those other claims.

**A. The Mandate violates the Religious Freedom Restoration Act.**

Under RFRA, the federal government “may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1 (b).

RFRA thus restored strict scrutiny to religious exercise claims. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424, 431 (2006); *see also* 42 U.S.C. § 2000bb (b)(1) (RFRA “restore[s] the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972)).”<sup>6</sup> A plaintiff makes a prima facie case under RFRA by showing the government substantially burdens its sincere religious exercise. *O Centro*, 546 U.S. at 428. The burden then shifts to the government to show that “the compelling interest test is satisfied through application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Id.* at 430-31 (quoting 42 U.S.C. § 2000bb-1(b)).<sup>7</sup>

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<sup>6</sup> Although RFRA is unconstitutional as applied to States, it continues to apply “to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.” 42 U.S.C. § 2000bb-3(a). Some states have enacted their own individual RFRA. The Fifth Circuit has previously applied Texas’ RFRA. The analysis for that statute is the same as the federal RFRA. *See, e.g., Merced v. Kasson*, 577 F.3d 578, 587 (5th Cir. 2009).

<sup>7</sup> These burdens are the same at the preliminary injunction stage as at trial. *O Centro*, 546 U.S. at 429-30 (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)).

**1. Plaintiffs' abstention from facilitating access to abortion-causing drugs and devices is sincere religious exercise.**

RFRA broadly defines "religious exercise" to "include[] any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000bb-2(4), *as amended by* 42 U.S.C. § 2000cc-5(7)(A); *see also Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004).

Plaintiffs have demonstrated their sincere commitment to the Christian faith, and specifically to Christian teachings on the sanctity of life. Ex. A ¶ 4-5, 10-15, 16-20; Ex. B ¶ 4-5, 8-10, 11-15. Plaintiffs cannot, in good conscience, support activities or products they believe to be immoral. Ex. A ¶ 20-26, 16-22. The Mandate requires Plaintiffs to actively participate in a scheme to provide their employees with drugs and devices that risk destroying human life. Their religious beliefs forbid them from participating in that scheme. Under the accommodation, Plaintiffs' self-certification sets in motion a chain of events that results in their employees receiving free abortifacients through the insurance plans that Plaintiffs provide and pay for. 78 Fed. Reg. at 39875-77. It violates Plaintiffs' Christian faith to act as a conduit for these drugs and devices. Ex. A ¶ 20-26; Ex. B ¶ 16-22. Plaintiffs have always sought to avoid facilitating access to abortifacients through their insurance plans, and the Mandate forces them to abandon this practice. Ex. A ¶ 26, 31; Ex. B ¶ 22, 29. Abstaining for religious reasons from facilitating evil easily qualifies as "religious exercise," just as much as refusing to manufacture items that will later be used for the destruction of human life in a war, *see Thomas v. Review Bd.*, 450 U.S. 707 (1981), abstaining from work on certain days, *see Sherbert*, 374 U.S. 398, or

providing alternative education for children, *see Yoder*, 406 U.S. 205. *See also* 42 U.S.C. § 2000bb (b)(1) (incorporating *Sherbert* and *Yoder* in RFRA).

**2. The Mandate imposes a substantial burden of enormous fines on Plaintiffs’ religious exercise of abstention.**

Once the sincerity of the specific religious exercise at issue is determined, the Court must answer the question of whether the burden is substantial. This is an objective test. It does not matter what the belief is that is being violated, what matters is the objectively-measured burden imposed by the government upon the plaintiff.<sup>8</sup> In *Hobby Lobby v. Sebelius*, the *en banc* Tenth Circuit confirmed that the existence of a substantial burden does not turn on whether the government coercion “somehow depends on the independent actions of third parties.” *Hobby Lobby Stores, Inc. v. Sebelius*, --- F.3d ---, No. 12-6294, 2013 WL 3216103, at \*17 (10th Cir. June 27, 2013) (*en banc*). In that case, the government argued that the burden on Hobby Lobby to comply with the same Mandate at issue here was too attenuated because it was the employees, not Hobby Lobby itself, that would have access to the problematic drugs and devices. The Tenth Circuit explained that the government’s argument mistakenly transformed the objective substantial burden test into a subjective test. The government would have wrongly required a subjective review of the *Hobby Lobby* plaintiffs’ belief that delved into “the theological merit of the belief

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<sup>8</sup> One way to think about the burden analysis is whether the burden would be considered “substantial” when imposed on *any* activity, religious or not. For example, if the government imposed the burdens here—massive fines—on for-profit corporations engaged in political speech, those burdens would easily be considered “substantial.” *Cf. Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 336-37 (2010) (describing unconstitutional restrictions on speech such as “imposing a burden by impounding proceeds on receipts or royalties”).

in question.” *Id.* Instead, the Tenth Circuit squarely held that the controlling consideration was the *intensity of the coercion* applied by the government to act contrary to those beliefs. *Id.*; see also *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 264 (5th Cir. 2010) (“The focus of the inquiry is on the degree to which a person’s religious conduct is curtailed and the resulting impact on his religious expression, as measured . . . from the person’s perspective, not from the government’s.”) (quotations omitted).

To explain Plaintiffs’ quandary another way, if the accommodation were in furtherance of a crime rather than access to abortifacients, Plaintiffs would be subject to liability for conspiracy and accomplice liability under, for example, 18 U.S.C. § 371 (conspirator liable for “any act to effect the object of the conspiracy”) or 21 U.S.C. § 846 (liability for “[a]ny person who attempts or conspires to commit any offense”). Plaintiffs’ understanding of moral culpability should be given at least as much deference as that of culpability in federal criminal law. Of course the Court need not agree with Plaintiffs that abortion constitutes taking innocent human life in order to defer to their understanding of moral culpability. But Defendants cannot—without hypocrisy—claim that Plaintiffs’ understanding of their own moral complicity is wrong when they frequently use a similar standard in conspiracy and accomplice liability prosecutions.

In the Fifth Circuit, a government action substantially burdens a religious belief “when it either (1) influences the adherent to act in a way that violates his religious beliefs, or (2) forces the adherent to choose between, on the one hand, enjoying some

generally available, non-trivial benefit, and, on the other hand, following his religious beliefs.” *Moussazadeh v. Tex. Dep’t of Criminal Justice*, 703 F.3d 781, 793 (5th Cir. 2013) (citation omitted). The Mandate easily qualifies as a substantial burden under both prongs of that test. As to the first prong, the Mandate compels Plaintiffs to participate in a scheme that they believe is immoral. Ex. A ¶ 20-26; Ex. B ¶ 16-22. By paying for the insurance and communicating with an outside party through the self-certification, Plaintiffs facilitate the use of emergency contraceptives. *See* Ex. A ¶ 53, 57; Ex. B ¶ 47, 48, 50, 57. This violates their sincere religious belief. Since the Plaintiffs can continue to exercise their faith only by dropping their insurance and facing enormous penalties, 26 U.S.C. §§ 4980D, 4980H; 29 U.S.C. § 1132(a), the Mandate most certainly “influences” them “to act in a way that violates [their] religious beliefs.” *See Moussazadeh*, 703 F.3d at 793; *see also* Ex. A ¶ 66-73, 82-85; Ex. B ¶ 66-73, 82-84 (discussing the impact of penalties and potential loss of health benefits). As for the second prong, the Mandate forces the Plaintiffs to forgo the “non-trivial benefit,” *Moussazadeh*, 703 F.3d at 793, of providing insurance to their employees that does not violate their conscience. Ex. A ¶ 72-73, 82-85; Ex. B ¶ 72-73, 82-84 (discussing the impact that the threat of losing health benefits has on the Universities’ ability to hire and retain faculty). The imposition of fines for non-compliant insurance leaves Plaintiffs with a “Hobson’s choice” between obeying their conscience and providing health insurance to their employees. *Hobby Lobby*, 2013 WL 3216103, at \*21.

**3. The Mandate cannot satisfy strict scrutiny.**

The Mandate fails strict scrutiny for three separate reasons: (1) the government has neither identified an “interest of the highest order” nor has it acted as if its interests are compelling; (2) the Mandate will not further the government’s purported interests; and (3) Defendants have multiple alternative means of pursuing their ends that are less restrictive of Plaintiffs’ constitutional and civil rights than the Mandate. Any one of these reasons suffices to defeat Defendants’ affirmative defense of strict scrutiny.

**a. The government has identified no compelling interest.**

Strict scrutiny requires “the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law “to the person”—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Merced*, 577 F.3d at 592 (quoting *O Centro*, 546 U.S. at 430-31).

**i. Providing Plaintiffs’ employees access to the objectionable drugs and devices is not an “interest of the highest order.”**

In other lawsuits, the government has identified its compelling interests in imposing the Mandate as “public health” and “gender equality.” *Hobby Lobby*, 2013 WL 3216103 at \*23. Although these are important interests in the abstract, they do not meet the *O Centro* test because they are “broadly formulated interests justifying the general applicability of government mandates.” *Id.* (quoting *O Centro*, 546 U.S. at 431). *Cf. Betenbaugh*, 611 F.3d at 268 (“invocation of general interests, standing alone, is not enough”). The government has thus far in the litigation failed to bring forward information explaining why it has a compelling interest in

specifically ensuring insurance coverage of the mandated abortion-causing drugs and devices—Plan B, Ella, and certain IUDs—to ETBU and HBU employees, which is what it must do to meet the “to the person” standard articulated in *O Centro*. Since it is the government’s burden to do so, the Mandate fails strict scrutiny as a threshold matter.

**ii. Defendants’ purported interest is not compelling because the government has issued numerous exemptions and because the objectionable drugs and devices are already widely available.**

A purported government interest also will not qualify as compelling unless the government has consistently demonstrated that it has a critical need to pursue the interest. “Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling.” *Merced*, 577 U.S. at 594 (quoting *Lukumi*, 508 U.S. at 546-47).

Here, the government’s interests “cannot be compelling because the contraceptive-coverage requirement presently does not apply to tens of millions of people.” *Hobby Lobby*, 2013 WL 3216103 at \*23. “[T]his exempted population includes those working for private employers with grandfathered plans, [and] for employers with fewer than fifty employees.” *Id.* In addition, some religious organizations are exempt from the Mandate altogether. *See* 45 C.F.R. § 147.131 (religious exemptions); 26 U.S.C. § 5000A (d)(2)(A) & (B) (exempting “health care sharing ministr[ies]”). These massive exemptions cover upwards of 120 million

people.<sup>9</sup> That means that the Mandate fails strict scrutiny, because “a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Hobby Lobby*, 2013 WL 3216103 at \*23 (citations omitted).

**b. The Mandate will not further the government’s purported interest.**

The Mandate also does not further Defendants’ purported interest in expanding the availability of contraceptives (including abortifacient contraceptives) to citizens. For a strict scrutiny affirmative defense to be successful, there must be a causal link between the end in view and the means applied “to the person.” *O Centro*, 546 U.S. at 430. In *O Centro*, for example, the Court recognized that in applying strict scrutiny courts “must searchingly examine the interests that the State seeks to promote . . . and the impediment to those objectives that would *flow from* recognizing [the claimed exemption].” *Id.* at 431 (quoting *Yoder*, 406 U.S. at 221) (emphasis added). Moreover, the government had “to show with more particularity *how* its admittedly strong interest . . . would be adversely affected by granting an exemption *to the Amish*.” *O Centro*, 546 U.S. at 431 (quoting *Yoder*, 406 U.S. at 236) (first emphasis added). Indeed, the government “cannot rely on ‘general platitudes,’ but ‘must show by specific evidence that [the adherent’s] religious practices jeopardize its stated interests.’” *Betenbaugh*, 611 F.3d at 268 (quoting *Merced*, 577 F.3d at 592). *See also City of Erie v. Pap’s A.M.*, 529 U.S. 277, 300 (2000) (in

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<sup>9</sup> The government expects 87 million people to be on grandfathered plans. See Ex. C-7 at 4. And “small employers,” employing nearly 34 million people, need not offer health insurance at all and can therefore avoid the Mandate. Ex. C-5 at 2.

applying *intermediate* scrutiny, courts must not conflate “two distinct concepts . . . whether there is a substantial government interest and whether the regulation furthers that interest”).

Forcing ETBU and HBU to terminate their employee health insurance coverage—or face the threat of having to cease their operations altogether because they cannot sustain the crippling fines imposed—will not advance the government’s claimed purpose of expanding contraceptive insurance coverage. *See* Ex. A ¶ 70; Ex. B ¶ 70. Indeed, by forcing Plaintiffs to drop coverage of their employees, *fewer* people will have insurance coverage for contraceptives, not more.

And it is no answer for the government to speculate that employees might obtain insurance on the exchanges it has yet to set up. Aside from the fact that the eventual functioning of an exchange in Texas is at this point at least an open question, there is little reason to think that *every* person covered under ETBU’s and HBU’s plans would seek coverage on the exchange rather than paying the relatively small penalty under the individual mandate. *See Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2595-96 (2012) (“for most Americans the amount due will be far less than the price of insurance, and, by statute, it can never be more” so “[i]t may often be a reasonable financial decision to make the payment rather than purchase insurance”). Thus, the means (the Mandate) chosen by the government to advance its purported end (expanding contraceptive coverage) does not just fail to advance that goal, but actually tends to defeat it.

**c. Defendants have numerous alternative less restrictive means of furthering their purported interest.**

Even were one to assume that Defendants had identified a compelling interest and that the Mandate advanced that interest, the Mandate still fails strict scrutiny because there are other readily-available means of expanding contraception coverage that are far less restrictive of Plaintiffs' constitutional and RFRA rights. *See, e.g., Merced*, 577 F.3d at 595 (“If a less restrictive alternative would serve the Government’s purpose, the legislature must use that alternative.”) (quoting *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 813 (2000)). Moreover, the government must put forward “specific evidence” explaining why there is no less restrictive means of applying it “to the person”—that is, specifically to ETBU and HBU. *Betenbaugh*, 611 F.3d at 268; *O Centro*, 546 U.S. at 430.

In nationwide litigation over the Mandate, the government has failed to “advance[] an argument that the contraception mandate is the least restrictive means of furthering” its general interest in ensuring contraceptive access. *Korte v. Sebelius*, 2012 WL 6757353, at \*4 (7th Cir. Dec. 28, 2012) (emphasis added); *accord Grote v. Sebelius*, 708 F.3d 850, 855 (7th Cir. 2013) (government “has not demonstrated that requiring religious objectors to provide cost-free contraception coverage is the least restrictive means of increasing access to contraception”).

Indeed, Defendants have a host of readily available alternatives for expanding contraceptive access that would avoid any need to conscript religious objectors. Defendants could:

- Provide a tax credit to employees who purchase emergency contraceptives with their own funds.
- Directly provide the drugs at issue, or directly provide insurance coverage for them through the state and federal health exchanges.
- Empower willing actors—for instance, physicians, pharmaceutical companies, or various interest groups—to deliver the drugs and sponsor education about them.
- Use their own resources to inform the public that these drugs are available in a wide array of publicly-funded venues.

This array of alternatives is real. Plan B is available over the counter to anyone, from a leading online pharmacy for \$50, and even in many college vending machines.<sup>10</sup> Ella can be purchased online for \$40, with no need for a physician's visit.<sup>11</sup> Moreover, HHS planned to spend over \$300 million in 2012 to provide

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<sup>10</sup> Teva Women's Health, Find Plan B One-Step in the Aisle and Pick It Up Yourself, <http://planbonestep.com/pharmacylocator.aspx> (last visited Aug. 30, 2013) ("just take it off the shelf, and pay for it at the cashier"); Drugstore.com, Plan B One Step Emergency Contraceptive, <http://www.drugstore.com/plan-b-one-step-emergency-contraceptive/qxp387630?catid=183040> (last visited Aug. 30, 2013) (advertising Plan B for \$49.99 with free shipping); James Eng, FDA OK with college's Plan B contraceptive vending machine, MSN News, Jan. 29, 2013, *available at* <http://news.msn.com/us/fda-ok-with-colleges-plan-b-contraceptive-vending-machine?stay=1> (last visited Aug. 29, 2013) (reporting that "Plan B is available widely in colleges and universities throughout . . . the nation," and that a Pennsylvania college that dispenses Plan B from a vending machine for \$25 is "far from the first to do this").

<sup>11</sup> KwikMed, ella Prescribed Online Legally, <http://ella-kwikmed.com/> (last visited Aug. 29, 2013) (physicians licensed to prescribe online offering free medical consultation and free next day shipping for Ella); Watson Pharmacy, Understanding How Your Patients Can Get ella, <http://www.ella-rx.com/wheredoigetella.asp> (last visited Aug. 29, 2013) (noting "ella is also available at Planned Parenthood clinics").

contraceptives directly through Title X funding.<sup>12</sup> And the federal government, in partnership with state governments, has constructed an extensive funding network designed to increase contraceptive access, education, and use, including:

- \$2.37 billion for family planning in FY 2010.
- \$228 million in FY 2010 for Title X program.
- \$294 million in state spending for family planning in FY 2010.<sup>13</sup>

The government can employ such pre-existing sources to increase contraceptive access. *See Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1299 (D. Colo. 2012) (noting existence of “analogous programs” and concluding that government has “failed to adduce facts establishing that government provision of contraception services will necessarily entail logistical and administrative obstacles defeating the ultimate purpose of providing no-cost preventive health care coverage to women”).

**B. The Mandate violates the Free Exercise Clause.**

Laws which are not neutral or generally applicable face strict scrutiny under the Free Exercise Clause. *Lukumi*, 508 U.S. at 520. The Mandate is neither generally applicable nor neutral and cannot satisfy strict scrutiny.

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<sup>12</sup> *See* HHS Grant Announcement, 2012 Family Planning Services FOA, *available at* <https://www.grantsolutions.gov/gs/preaward/previewPublicAnnouncement.do?id=12978> (click on Grant Announcement – View PDF Version) (last visited Aug. 29, 2013) (announcing that “[t]he President’s Budget for . . . (FY) 2012 requests approximately \$327 million for the Title X Family Planning Program”).

<sup>13</sup> Guttmacher Inst., *Facts on Publicly Funded Contraceptive Services in the United States* (May 2012), [http://www.guttmacher.org/pubs/fb\\_contraceptive\\_serv.html](http://www.guttmacher.org/pubs/fb_contraceptive_serv.html) (last visited Aug. 29, 2013) (citations omitted).

**1. The Mandate is not generally applicable.**

A regulation fails general applicability when it “creates a categorical exemption for individuals with a secular objection but not for individuals with a religious objection.” *Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 365 (3rd Cir. 1999) (Alito, J.) (*FOP*). The animal slaughter ordinances in *Lukumi*, for example, ostensibly protected public health and prevented animal cruelty, but “fail[ed] to prohibit nonreligious conduct that endanger[ed] these interests.” 508 U.S. at 543. Because the ordinances exempted many types of animal killing—such as hunting, fishing, pest eradication, and euthanasia—the ordinances were not generally applicable. *Id.* at 543-44.

To be sure, not every exemption dooms a regulation. The problem arises when government allows secular exemptions that undermine a regulation’s interests but disallows religious exemptions, thus making a “value judgment in favor of secular motivations, but not religious motivations.” *FOP*, 170 F.3d at 366. In *FOP*, a regulation prohibiting police officers from growing beards allowed one exemption for undercover officers and another for medical reasons. *Id.* Two Muslim officers sued because the regulation forbade beards for religious reasons. The Third Circuit found that, whereas the undercover-officer exemption “d[id] not undermine the Department’s interest in uniformity [of appearance],” the medical exemption did. *Id.* The court therefore found the policy failed general applicability.

Here, the Mandate goes far beyond the exemption scheme in *FOP*. The Mandate allows massive categorical exemptions for secular conduct that undermine the Mandate’s purposes. Most notably, over 87 million Americans are covered under

“grandfathered” plans that are indefinitely excused, not only from complying with the Mandate, but from covering *any* of the mandated preventive services. Additionally, 34 million more Americans are employed by small businesses which may avoid the Mandate. Ex. C-5 at 2; *see* 26 U.S.C. § 4980H(c)(2). While these secular exemptions severely undermine the Mandate’s interest in increasing insurance coverage for the whole range of women’s preventive services, HBU and ETBU get no exemption even from the narrow slice of the Mandate to which they object for religious reasons. This is exactly the kind of “value judgment in favor of secular motivations, but not religious motivations” that fails general applicability and triggers strict scrutiny. *FOP*, 170 F.3d at 366.

**2. The Mandate is not neutral.**

In addition to failing the requirement of general applicability, the Mandate also fails the requirement of neutrality for three reasons: (1) it produces differential treatment among religions; (2) it accomplishes a “religious gerrymander”; and (3) it favors secular over religious values.

**a. The Mandate produces differential treatment among religions.**

One way to prove that a law is not neutral is to show that it produces “differential treatment of two religions.” *Lukumi*, 508 U.S. at 536. In *Lukumi*, for example, the Court said that prohibiting killing animals for one religious purpose (sacrifice) while exempting other religious killings (kosher slaughter) created “differential treatment of two religions,” which could constitute “an independent constitutional violation.” *Id.* Similarly, in *Larson v. Valente*, 456 U.S. 228, 246 n.23

(1982), the Court struck down registration and reporting requirements that created differential treatment between “well-established churches” and “churches which are new and lacking in a constituency.”<sup>14</sup> *Cf. O Centro*, 546 U.S. at 432-37 (requiring exemption under RFRA for one religion where exemption was granted for another).

Here, the Mandate establishes three tiers of religious objectors: favored “religious employers” (who are exempt), less-favored non-profit religious objectors (who are forced to facilitate access to abortion-causing drugs), and disfavored for-profit religious objectors (who are forced to facilitate and pay for access). *See* 78 Fed. Reg. at 39874-75; *Lukumi*, 508 U.S. at 533 (“[T]he minimum requirement of neutrality is that a law not discriminate on its face.”).

The government cannot rank in different tiers the rights of people with identical religious objections. *See Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1257 (10th Cir. 2008) (“[W]hen the state passes laws that facially regulate religious issues, it must treat individual religions and religious institutions without discrimination or preference.”) (quotations omitted); *see also Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, 167 (3d Cir. 2002) (law non-neutral where the government “granted exemptions from the ordinance’s unyielding language for various secular and religious” groups, but rejected exemption for plaintiffs).

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<sup>14</sup> Although *Larson* was decided under the Establishment Clause, 456 U.S. at 230, it is significant for interpreting the neutrality requirement of both Religion Clauses. *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1258 (10th Cir. 2008) (“[W]hile the Establishment Clause frames much of our [religious discrimination] inquiry, the requirements of the Free Exercise Clause . . . proceed along similar lines.”). For further discussion of *Larson* under the Establishment Clause, see *infra* Argument I.C.

**b. The Mandate accomplishes a religious gerrymander.**

Another way to prove that a law is not neutral is to show that “the effect of [the] law” is to accomplish a “religious gerrymander.” *Lukumi*, 508 U.S. at 535. In *Lukumi*, the Court found that a “pattern of exemptions,” *id.* at 537, was impermissibly used to narrow the law’s prohibitions specifically “to target petitioners and their religious practices.” *Id.* at 535. A similar pattern is manifest here.

Defendants have repeatedly recognized the sincerity of religious organizations’ objections to facilitating access to abortion-causing drugs and devices. *See, e.g.*, January 20, 2012 Statement of Defendant Secretary Sebelius, Ex. C-3 (recognizing the “important concerns some have raised about religious liberty” and the need to “respect[] religious freedom”); *see also Hobby Lobby*, 2013 WL 3216103, at \*20 (noting the government did not dispute religious sincerity of objections). Nevertheless, the “religious employers” exemption protects only institutional churches, their “integrated auxiliaries,” “conventions or associations of churches,” and “the exclusively religious activities of any religious order.” *See* 78 Fed. Reg. at 39871. Yet other religious organizations—like HBU and ETBU—are excluded from the exemption, even though they share the same religious objections. On its face, the exemption is thus narrowed to specifically target all religious organizations except institutional churches.

This facial evidence of targeting is bolstered in that the government’s proffered justification for discriminating lacks legitimacy. Defendants claim that objecting

“[h]ouses of worship and their integrated auxiliaries . . . are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan.” 78 Fed. Reg. at 39874. But the same can be said for HBU and ETBU. Both limit employment to persons “who have a personal relationship with Christ, who are familiar with truth as revealed in the Bible, who live out this truth in the presence of others, [and] who can create an environment where Christ is lived out in the life of the individual.” Ex. A ¶ 13 (ETBU); *see also* Ex. B ¶ 8 (HBU employees “must believe in the divine inspiration of the Bible, . . . that man was directly created by God, the virgin birth of Jesus Christ” and be willing “express Christ’s Lordship as a function of [HBU’s] academic mission”); *id.* ¶ 14 (HBU faculty are “expected to affirm and teach that human life exists from conception to natural death, that the dignity of life is a gift from God, and that as a result abortion, except in cases where it is necessary to save the physical life of the mother, is sin”). The inconsistency in Defendants’ justifications underscores the Mandate’s targeting effect. *See Mayfield v. Texas Dep’t of Criminal Justice*, 529 F.3d 599, 609 (5th Cir. 2008) (neutrality requires that government policy be “actually based on the justifications it purports, and not something more nefarious”).

**c. The Mandate favors secular reasons for noncompliance over religious reasons.**

Finally, the Mandate also fails neutrality by honoring certain secular reasons for failure to comply, while rejecting the University’s religious reasons. *See supra*

Argument I.B.1 (cataloguing secular reasons that many employers may avoid Mandate). The net effect is that policies covering tens of millions of Americans are exempt for secular reasons, while HBU and ETBU must drop their insurance and pay fines for their religious inability to comply with the Mandate. *See Lukumi*, 508 U.S. at 535 (noting “the effect of a law in its real operation is strong evidence of its object”); *Hartmann v. Stone*, 68 F.3d 973, 978 (6th Cir. 1995) (“[T]he Supreme Court has made it clear that ‘neutral’ also means that there must be neutrality *between* religion and non-religion.”).

\* \* \*

Because the Mandate cannot qualify as a neutral or generally applicable law, Defendants must satisfy strict scrutiny. They cannot do so. *See supra* Argument I.A.3.

### **C. The Mandate violates the Establishment Clause**

The Mandate’s “explicit and deliberate distinctions between different religious organizations” also violate the Establishment Clause. *See Larson*, 456 U.S. at 247 n.23; *see Croft v. Perry*, 624 F.3d 157, 165-66 (5th Cir. 2010) (quoting *Larson*) (a denominational preference would contravene the clearest command of the Establishment Clause”). The government exempts favored religious organizations only if they are an institutional church or have structural, doctrinal, and financial affiliation—as defined by the government—with an institutional church. By structuring the exemption in this way, the Mandate engages in “discrimination . . . expressly based on the degree of religiosity of the institution and the extent to which that religiosity affects its operations[.]” *Weaver*, 534 F.3d at 1257 (McConnell,

J.) (applying *Larson* to invalidate distinction between “sectarian” and “pervasively sectarian” organizations). This is forbidden by the Establishment Clause.

*Larson* invalidated a Minnesota law that imposed anti-fraud disclosure requirements on religious organizations that did not “receive[] more than half of their total contributions from members or affiliated organizations.” 456 U.S. at 231-32. The law thus exempted established, self-supported churches, while targeting churches that relied on outside donations. *Id.* at 247 n.23; *see also Weaver*, 534 F.3d at 1259 (explaining that the law in *Larson* “discriminated against religions . . . that depend heavily on soliciting donations from the general public”). This was an “explicit and deliberate distinction[] between different religious organizations,” one that failed strict scrutiny and violated the Establishment Clause. *Id.* at 247 n.23, 255.

Like the exemption struck down by *Larson*, the Mandate’s “religious employer” exemption impermissibly distinguishes religious organizations based on internal religious characteristics. An organization is exempt if it qualifies as an “integrated auxiliary” of a church—meaning that it has a particular church “affiliation” and is “internally supported.”<sup>15</sup> As detailed in Treasury Regulations, these requirements measure the quality of an organization’s ties to a church as well as its funding

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<sup>15</sup> *See* 45 C.F.R. § 147.131(a) (exempting as “religious employers” churches, their “integrated auxiliaries,” and religious orders) (referring to 26 U.S.C. §§ 6033(a)(3)(A)(i) & (iii)); 26 C.F.R. § 1.6003-2(h)(1) (defining a non-profit organization as an exempt “integrated auxiliary” if “[a]ffiliated” with a church and “[i]nternally supported”). The Mandate co-opts tax code criteria that relieve certain tax exempt entities from filing an “annual information return,” or “Form 990.” *See* 26 C.F.R. § 1.6033-2(a)(1).

sources. *See* 26 C.F.R. § 1.6033-2(h)(2) and (3) (“affiliation”); *id.* § 1.6033-2(h)(4) (“internal support”). So, an organization is exempt depending on, for instance:

- (1) whether it is “operated, supervised, or controlled by or in connection with . . . a church,” *id.* § 1.6033-2(h)(2)(iii);
- (2) whether its “enabling instrument . . . affirm[s] that [it] shares common religious doctrines, principles, disciplines, or practices with a church,” *id.* § 1.6033-2(h)(3)(i);
- (3) whether “[a] church . . . has the authority to appoint or remove . . . [its] officers or directors,” *id.* § 1.6033-2(h)(3)(ii);
- (4) whether, “[i]n the event of dissolution, [its] assets are required to be distributed to a church,” *id.* § 1.6033-2(h)(3)(vi); and,
- (5) whether it “[n]ormally receives more than 50 percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses,” *id.* § 1.6033-2(4)(ii).

If it fails to meet these requirements, a religious organization cannot qualify for an exemption and must therefore participate in the government’s scheme to facilitate employee access to free contraception, sterilization, and abortion-causing drugs and devices.

As previously noted, the government has candidly explained the assumptions that led it to structure the Mandate exemption this way:

Houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are *more likely* than other employers to employ people of the same faith who share the same objection, and who would therefore be *less likely* than other people to use contraceptive services even if such services were covered under their plan.

78 Fed. Reg. at 39874 (emphases added). In other words, whether or not a religious organization is exempt turns on the government’s estimate of whether its faith does, or does not, line up with the faith of its employees. This distinction is just as suspect

as the one invalidated in *Larson*. There, the Minnesota law's premise was that, if a church is not predominantly self-supporting, it poses a fraud risk and needs regulation. 456 U.S. at 249-51. Here, the Mandate's premise is that, if a religious organization is not closely affiliated with (and financially tied to) a church, its employees are "more likely" to disagree with it about the morality of contraception, and its insurance should therefore be made to facilitate access to the mandated contraceptive services. *Cf.* 78 Fed. Reg. at 39874 (estimating that the employees of "[h]ouses of worship and their integrated auxiliaries" are "less likely than other people to use contraceptive services even if such services were covered").

As explained by Judge McConnell in *Weaver*, the leading circuit case applying *Larson*, distinguishing religious organizations based on internal religious characteristics is "even more problematic than the Minnesota law invalidated in *Larson*." 534 F.3d at 1259. *Weaver* invalidated a Colorado state scholarship program's exclusion of "*pervasively* sectarian" schools, but not mere "sectarian" schools, as "discrimination . . . expressly based on the degree of religiosity of the institution and the extent to which that religiosity affects its operations[.]" *Id.* Judge McConnell's description of the program's constitutional infirmity applies equally well to the Mandate, which separates exempt from non-exempt organizations based on their "degree of religiosity" (i.e., their doctrinal, structural, and financial connection to an institutional church) and "the extent to which that

religiosity affects [their] operations” (i.e., whether employees are more or less likely to share an organization’s beliefs about contraception). *Id.*<sup>16</sup>

The Mandate’s impermissible distinction among religious organizations triggers strict scrutiny regardless of whether it “substantially burdens” Plaintiffs’ religious exercise under the Free Exercise Clause or RFRA.<sup>17</sup> *See Larson*, 456 U.S. at 253-54 (explaining that the Establishment Clause is offended by “the *selective* legislative imposition of burdens and advantages upon particular denominations,” whether or not those “burdens . . . would be intrinsically impermissible if they were imposed evenhandedly”) (emphasis in original); *Weaver*, 534 F.3d at 1257 (observing that “neutral treatment of religions [is] [t]he clearest command of the Establishment Clause”) (quoting *Larson*). And, for the reasons already discussed, the Mandate cannot be justified under strict scrutiny. *See supra* Argument I.A.3.

#### **D. The Mandate violates the Free Speech Clause.**

For similar reasons, the Mandate violates ETBU’s and HBU’s free speech rights under the First Amendment. The First Amendment protects Plaintiffs’ rights to be free both from government efforts to compel their speech, and government efforts to compel their silence. *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S.

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<sup>16</sup> The Mandate also violates the Establishment Clause for the reasons set forth *supra* in Arguments II.B.2(b) and (c)—it creates a religious gerrymander targeting the sincere religious beliefs of organizations that are not institutional churches and favors secular reasons for non-compliance over religious reasons. In both instances, the government is establishing a preference for institutional churches that are focused on inculcating faith over organizations that pursue their religious missions in other ways.

<sup>17</sup> Most Establishment Clause violations are not subject to an affirmative defense of strict scrutiny, but *Larson* claims are. *See Weaver*, 534 F.3d at 1266.

781, 796-97 (1988) (“[T]he First Amendment guarantees “freedom of speech,” a term necessarily comprising the decision of both what to say and what *not* to say.”) (emphasis added); *see also* *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (the “right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’”) (citing *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)). The Mandate violates the First Amendment in both respects.

First, the Mandate’s proposed accommodation purports to require ETBU and HBU to make statements that will trigger payments for the use of abortion-inducing drugs and devices. Ex. A ¶ 47, 54-56; Ex. B ¶ 45-49, 54-56. In particular, Plaintiffs would have to make certifications about their religious objections to their insurers and/or third party administrators “in a form and manner specified by the Secretary.” 29 C.F.R. § 2590.715-2713A (a)(4), (b)(1)(ii), (c)(1). In HBU’s case, it may have to ask another Baptist organization to violate its *own* conscience, creating an additional moral dilemma. Ex. B ¶ 47. Making these statements will trigger payments for the use of abortion-inducing drugs and devices. 29 C.F.R. § 2590.715-2713A (b)(2), (c)(2). As set forth above, ETBU and HBU cannot engage in the speech required by the Mandate because they are forbidden by their religion from doing so. Ex. A ¶ 53, 57; Ex. B ¶ 50, 57.

Second, the Mandate expressly prohibits ETBU and HBU from engaging in speech with a particular content and viewpoint: they are barred by federal law from talking to their third party administrators and encouraging them not to provide

abortion-inducing drugs. 29 C.F.R. § 2590.715-2713A (“must not, directly or indirectly, seek to influence the third party administrator’s decision to make any such arrangements”). Ex. A ¶ 48.

None of this is remotely permissible under the First Amendment. The government cannot force ETBU and HBU to make statements about their religious beliefs to third parties. Nor can it forbid them from trying to convince others to exercise their own lawful right to choose not to pay for abortion-inducing drugs. Where, as here, the government has compelled speech, dictated its content, and forbade speakers from conveying particular messages, strict scrutiny applies. *See, e.g., Turner Broad. Sys. Inc. v. FCC* (“*Turner I*”), 512 U.S. 624, 642 (1994) (stating that “laws that compel speakers to utter or distribute speech bearing a particular message are subject to the same rigorous scrutiny” as those “that suppress, disadvantage, or impose differential burdens upon speech because of its content”).

The mechanism of the accommodation also triggers strict scrutiny because “[l]aws singling out a small number of speakers for onerous treatment are inherently suspect.” *Time Warner Cable, Inc. v. Hudson*, 667 F.3d 630, 638 (5th Cir. 2012). The number of speakers here—“eligible [religious] organizations”—is quite small, especially when taken in the context of the sheer number of organizations subject to the Mandate. Thus this targeted speech regulation triggers strict scrutiny.

The Mandate fails strict scrutiny for all the reasons set forth in Section I.A.

Nor can the government justify controlling ETBU's and HBU's speech as the price of obtaining the alleged benefit of the accommodation—even where the government is *paying* speakers, it cannot force them speak the government's preferred message. *See Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2331 (2013) (rejecting forced speech requirement because it would render grantees able to express contrary beliefs “only at the price of evident hypocrisy”).

Finally, ETBU and HBU are not even able to avoid these coercive requirements about what they must say and what they must not say by foregoing the accommodation. That course of action would leave them subject to the original Mandate, meaning they would be forced by Defendants to pay directly for abortion-inducing drugs and devices, and for “patient education and counseling for all women with reproductive capacity” about these drugs and devices.<sup>18</sup> For the reasons set forth above, such a course would violate Plaintiffs' religious liberty. And forcing them to pay for speech counseling and educating people about how to use abortion-inducing drugs would separately violate ETBU's and HBU's speech rights. *See, e.g., Abood v. Detroit Bd. of Educ.* 431 U.S. 209, 234-35 (1977) (finding that forced contributions for union political speech violate the First Amendment “notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State”); *United States v. United Foods Inc.*, 533 U.S. 405, 411 (2001) (finding that forced

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<sup>18</sup> Health Resources and Services Administration, *Women's Preventive Services: Required Health Plan Coverage Guidelines* (Aug. 1, 2011), Ex. C-1..

contributions for advertising related to unbranded mushrooms violates First Amendment).

For these reasons, the Mandate and proposed accommodation violate the Free Speech Clause of the First Amendment.

## **II. This Court should grant a preliminary injunction.**

As previously discussed at the August 2 conference with the Court, Plaintiffs need speedy interim relief, at the latest before January 1, 2014, which marks the beginning of their respective plan years. Ex. A ¶¶ 66, 77; Ex. B ¶¶ 66, 77. Therefore, regardless of how the Court rules on the motion for partial summary judgment, Plaintiffs request the entry of a preliminary injunction to last during the pendency of litigation in this Court and until the resolution of any subsequent appeal. For the reasons stated below, Plaintiffs easily meet all four preliminary injunction factors. *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (citation omitted).

### **A. Plaintiffs have a substantial likelihood of success on the merits.**

For the same reasons set forth in Section I above, the Court should also find that Plaintiffs' burden has been met by demonstrating a substantial likelihood of success on the merits. Indeed, showing a substantial likelihood of success on the merits is by definition a lower standard than the standard governing whether the Court may grant summary judgment on the same claim. *Byrum v. Landreth*, 566 F.3d 442, 446 (5th Cir. 2009) ("A plaintiff is not required to prove its entitlement to summary judgment in order to establish 'a substantial likelihood of success on the merits' for preliminary injunction purposes.")

**B. Plaintiffs face a substantial threat of irreparable injury if the injunction is not issued.**

It is settled law that a potential violation of Plaintiffs' rights under the First Amendment and RFRA threatens irreparable harm. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). "By extension, the same is true of rights afforded under the RFRA, which covers the same types of rights as those protected under the Free Exercise Clause of the First Amendment." *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp. 2d 106, 129 (D.D.C. 2012), *appeal dismissed*, 2013 WL 2395168 (D.C. Cir. May 3, 2013) (citation omitted). *See also Newland*, 881 F. Supp. 2d at 1294-95 (irreparable harm established under RFRA claim against Mandate); *Legatus v. Sebelius*, 901 F. Supp. 2d 980, 997-98 (E.D. Mich. 2012) (same). Here, coercing Plaintiffs to facilitate access to abortion-causing drugs in direct violation of their faith is the epitome of irreparable injury. Once they have been forced to violate their conscience by providing access to objectionable drugs and services, future remedies cannot change that violation.

The impending enforcement of the Mandate is also causing significant disruption to Plaintiffs' hiring and human-resources planning. Ex. A ¶¶ 77-85; Ex. B ¶¶ 72-86. Health plans do not take shape overnight, but instead require a number of analyses, negotiations, and decisions before Plaintiffs can offer a health benefits package to their employees. Ex. A ¶ 78; Ex. B ¶ 78. Employers like ETBU that are self-insured must negotiate with third-party administrators, and employers like HBU that are

insured under church health plans must negotiate with their church health plan provider. Ex. A ¶ 78; Ex. B ¶ 78. Under normal circumstances, Plaintiffs must begin the process of determining their health care package for a plan year several months before the plan year begins. Ex. A ¶ 79; Ex. B ¶ 79. The multiple levels of uncertainty surrounding the Mandate make this already lengthy process even more complex. In addition, if Plaintiffs choose to follow their religious conscience instead of complying with the Mandate, they will be subject to massive fines and penalties. Ex. A ¶¶ 66-70; Ex. B ¶¶ 66-70. Plaintiffs require time to budget for such additional expenses. Such jarring uncertainties adversely affect Plaintiffs' ability to hire and retain employees, and constitute irreparable injury difficult to evaluate in terms of money damages. Ex. A ¶¶ 72-73, 82-85; Ex. B ¶¶ 72-73, 82-84.

**C. The threatened injury to Plaintiffs far outweighs any harm that might result.**

There is no real dispute that, absent an injunction, Plaintiffs face grievous harm—namely, government compulsion to violate their religious beliefs or face crippling fines of up to \$8 million and nearly \$13 million per year. Ex. A ¶ 69; Ex. B ¶ 69. Nor has anyone questioned the reality and severity of the fines Plaintiffs face for exercising those sincerely held religious beliefs. In contrast, granting the injunction will merely prevent the government from enforcing one element of the mandate (the requirement to cover emergency contraceptives) against two employers during the pendency of this appeal.

In other words, an injunction will merely preserve the status quo. The Government has never mandated contraception before, and there is no urgent need

to enforce the Mandate immediately against Plaintiffs before its legality can be adjudicated. When the government has “alternative, constitutional ways of regulating . . . to achieve its goals,” as it does here, compared to the denial of “First Amendment freedoms,” the government cannot show that its interest outweighs constitutional freedoms. *See RTM Media, L.L.C. v. City of Houston*, 518 F. Supp. 2d 866, 875 (S.D. Tex. 2007). Both the ubiquity of contraception access and government subsidization thereof, and the fact that the government has exempted “over 190 million health plan participants and beneficiaries,” *Newland*, 881 F. Supp. 2d at 1298, make it impossible for the Government to claim that it will be harmed by a temporary delay in enforcement against Plaintiffs. Moreover, while a “preliminary injunction would forestall the government’s ability to extend all twenty approved contraceptives” to Plaintiffs’ employees, Plaintiffs “will continue to provide sixteen of the twenty contraceptive methods, so the government’s interest is largely realized while coexisting with” Plaintiffs’ “religious objections.” *Hobby Lobby*, 2013 WL 3216103, at \*26.

Any claim of harm by the Government is further undermined by the fact that it consented to or did not oppose preliminary injunctive relief in numerous other cases challenging the Mandate. *See, e.g., Mot. to Stay, Sharpe Holdings, Inc. v. U.S. Dep’t of Health & Human Servs.*, No. 2:12-cv-00092 (E.D. Mo. Mar. 11, 2013) (Dkt. 41); Order, *Sioux Chief Mfg. Co. v. Sebelius*, No. 4:13-cv-00036 (W.D. Mo. Feb. 28, 2013) (Dkt. 9); Order, *Hall v. Sebelius*, No. 13-cv-00295 (D. Minn. Apr. 2, 2013) (Dkt. 11). The Government “cannot claim irreparable harm in this case while acquiescing to

preliminary injunctive relief in several similar cases.” *Geneva Coll. v. Sebelius*, 2013 WL 1703871, at \*12 (W.D. Pa. Apr. 19, 2013). “If the government is willing to grant exemptions for no less than one third of all Americans, and it is willing to consent to injunctive relief in cases that do not fall within those exemptions, then it can suffer no appreciable harm” were an injunction entered here. *Beckwith Elec. Co., Inc. v. Sebelius*, 2013 WL 3297498, at \*18 (M.D. Fla. June 25, 2013). In short, especially when balanced against the serious irreparable injury being inflicted on Plaintiffs, any harm the Defendants might claim from a preliminary injunction is *de minimis*.

**D. An injunction will not disserve the public interest.**

Finally, issuing a preliminary injunction will not disserve the public interest. In this matter, there are two statutory schemes in potential conflict with each other. While the ACA requires Plaintiffs to purchase abortion-causing drugs for any interested employees, RFRA would protect them in exercising their religion by not purchasing those same drugs. The public interest in enforcing long-standing First Amendment and religious freedom protections certainly outweighs the interest in immediate enforcement of a new law that creates a “substantial expansion of employer obligations” and raises “concerns and issues not previously confronted.” *Hobby Lobby Stores, Inc. et al. v. Sebelius*, 870 F. Supp. 2d 1278, 1296 (W.D. Okla. Nov. 19, 2012), *rev’d on other grounds*, 2013 WL 3216103 (10th Cir. June 27, 2013); *see also Newland*, 881 F. Supp. 2d at 1295 (finding “there is a strong public interest in the free exercise of religion even where that interest may conflict with [another statutory scheme]”) (quoting *O Centro*, 389 F.3d at 1010).

Congress decided that RFRA trumps in this battle between statutes when it enacted RFRA; the statute reads: “[f]ederal statutory law adopted after November 16, 1993 is subject to [RFRA] unless such law explicitly excludes such application by reference to this chapter.” 42 U.S.C. § 2000bb-3(b). “Congress thus obligated itself to *explicitly exempt* later-enacted statutes from RFRA, which is conclusive evidence that RFRA trumps later federal statutes when RFRA has been violated. That is why our case law analogizes RFRA to a constitutional right.” *Hobby Lobby*, 2013 WL 3216103, at \*26. Here, “Congress did not exempt the ACA from RFRA.” *Id.* And of course the protection of Plaintiffs’ *constitutional* rights is also very much in the public interest.

Furthermore, any government interest in uniform application of the mandate is again “undermined by the creation of exemptions for certain religious organizations and employers with grandfathered health insurance plans.” *Newland*, 881 F. Supp. 2d at 1295.

In sum, all of the factors weigh heavily in favor of granting a preliminary injunction to stay application of the Mandate and avoiding grave harm to Plaintiffs’ consciences and First Amendment liberties.

## CONCLUSION

Plaintiffs respectfully request that the Court grant them summary judgment on their RFRA, Free Exercise, Establishment Clause, and Free Speech claims, and issue a preliminary injunction relieving them from the Mandate during the pendency of this litigation, including any appeals.

Respectfully submitted,

s/Eric C. Rassbach

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Dated: August 30, 2013

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2013, the foregoing memorandum was served on all counsel of record via the Court's electronic case filing (ECF) system.

*/s/ Eric C. Rassbach*  
Eric C. Rassbach

# **Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

EAST TEXAS BAPTIST UNIVERSITY, and  
HOUSTON BAPTIST UNIVERSITY,

*Plaintiffs,*

v.

KATHLEEN SEBELIUS, *et al.*

*Defendants.*

Civil No. 12-3009

**DECLARATION OF SAMUEL W.  
OLIVER**

**Declaration of Samuel W. Oliver, Ph.D  
President, East Texas Baptist University**

1. My name is Samuel W. Oliver. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of East Texas Baptist University (“East Texas Baptist”). I have served as East Texas Baptist’s President since June 1, 2009.

2. Like other employees of East Texas Baptist, my family and I depend upon East Texas Baptist’s health insurance. I make this declaration not only as a college president, but as an employee, a husband and father. The loss of East Texas Baptist’s insurance plan would not only be a professional crisis, but a deep personal concern for my family.

3. I understand that East Texas Baptist will face \$8 million in annual fines—along with potential penalties and lawsuits—if it continues to follow its religious beliefs by refusing to offer health insurance that covers abortion-causing drugs and devices. As a college president, I know the kind of strain that this would place on a small liberal arts college. As the president of a Christian college, I know that our responsibility is to the faith that animates us, the reason East Texas Baptist exists.

**I. East Texas Baptist's history and beliefs**

4. East Texas Baptist is a Christian liberal arts college in Marshall, Texas. East Texas Baptist was founded as the College of Marshall in 1912, and is affiliated with the Baptist General Convention of Texas. East Texas Baptist University Policy and Procedures Manual, 1.1.00 ("Policy Manual," approx. 300 p.). A true and complete copy of the sections of the Policy Manual cited in this Declaration is attached as Exhibit A-1.

5. East Texas Baptist's purpose is "the development of intellectual inquiry, social consciousness, wellness, skills for a contemporary society, global awareness, and Christian character, for we believe that these endeavors prepare students to accept the obligations and opportunities to serve humanity and the Kingdom of God." Ex. A-1 (Policy Manual, 1.1.01).

6. East Texas Baptist's motto is "A World of Opportunity in a Community of Faith." East Texas Baptist Application for Admission ("Application," 4 p.). A true and complete copy of the sections of the Application cited in this Declaration is attached as Exhibit A-2.

7. Today, East Texas Baptist is a thriving academic community, serving over 1,250 students in 30 undergraduate degree programs and 4 graduate degree programs.

8. Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon religious liberty. America's first Baptist leader, Roger Williams, had to flee Massachusetts, where his religious beliefs were not tolerated, and found a colony in Providence, Rhode Island.

9. As Baptists, we are alarmed whenever any religious group's rights are threatened. As the famous Baptist preacher, George W. Truett once said, "A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else."

10. East Texas Baptist is governed by a 36-member Board of Trustees a majority of whom are elected by the Baptist General Convention of Texas. All of East Texas Baptist's trustees must be active members of Baptist churches. Bylaws of East Texas Baptist University (as amended Sept. 7, 2012) ("Bylaws"), Arts. 2.01; 2.04. A true and complete copy of the sections of the Bylaws cited in this Declaration is attached as Exhibit A-3.

11. East Texas Baptist's theological heritage is Southern Baptist, and through its affiliation with the Baptist General Convention of Texas, it is also connected with the national Southern Baptist Convention.

12. East Texas Baptist seeks employees "who possess the necessary experience, competence, and capacity to provide leadership compatible with the mission and purpose of the University." Ex. A-1 (Policy Manual, 1.1.02).

13. To that end, it employs "administrators, academic officers, faculty, and staff who have a personal relationship with Christ, who are familiar with truth as revealed in the Bible, who live out this truth in the presence of others, who can create an environment where Christ is lived out in the life of the individual[.]" In both "their initial and continuing employment, administrators, faculty, and staff at East Texas Baptist University are to profess a saving relationship with Jesus Christ and to exhibit a lifestyle that demonstrates that commitment." Ex. A-1 (Policy Manual, 1.1.02).

14. East Texas Baptist welcomes students of all religious backgrounds. But because East Texas Baptist "emphasizes a biblical standard of personal conduct and moral character by all students," every admitted student must agree in writing to "act in accordance with the student handbook." Ex. A-2 (Application at 4). Once enrolled, all full-time students must complete at least six credits of chapel in order to graduate.

15. East Texas Baptist's mission as an academic community is not merely the transmission of information; "as a Baptist university it is committed to the integration of learning and Christian faith in the pursuit of truth." Ex. A-1 (Policy Manual, 1.1.01).

## **II. East Texas Baptist's beliefs and teachings on abortion**

16. East Texas Baptist affirms that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death. As Genesis 1 says, "God created mankind in his own image." Genesis 1:27a (NIV). And as Psalm 139 says, "For you [God] created my inmost being; you knit me together in my mother's womb. . . . all the days ordained for me were written in your book before one of them came to be." Psalm 139:13, 16 (NIV).

17. The 2000 Baptist Faith & Message, a statement of "doctrines . . . essential to the Baptist tradition of faith and practice" puts it this way: "[t]he sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love." 2000 Baptist Faith & Message (8 p.). A true and complete copy of these sections of the 2000 Baptist Faith & Message cited in this Declaration is attached as Exhibit A-4.

18. East Texas Baptist affirms that Scripture condemns the taking of innocent human life (Exodus 20:13 (NIV)) and commands Christians to protect the weak and vulnerable. As the Scriptures say, we are to "[d]efend the weak and the fatherless," "[r]escue the weak and the needy," and "speak up for those who cannot speak for themselves." Psalm 82:3-4b (NIV); Proverbs 31:8a (NIV). And as the 2000 Baptist Faith & Message says, "We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death." Ex. A-4.

19. East Texas Baptist believes and teaches that abortion ends a human life and is a sin. But it also believes and teaches that it is important to care for every life involved in a crisis pregnancy: the unborn, the mother, the father, and the extended family. Thus, as its student handbook says, East Texas Baptist “supports a culture of life” and seeks to support not only unborn children but also parents facing a crisis pregnancy. 2013-14 East Texas Baptist Student Handbook (“Handbook,” approx. 50 p.) at 21. A true and complete copy of the sections of the Handbook cited in this Declaration is attached as Exhibit A-5.

20. It is a violation of East Texas Baptist’s teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services.

21. East Texas Baptist has a sincere religious objection to providing coverage for the emergency contraceptive drugs Plan B and Ella, since it believes those drugs could prevent a human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo. The same objection applies to abortion-causing IUDs.

22. East Texas Baptist considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

23. Therefore it is a violation of East Texas Baptist’s teachings and religious beliefs for it to deliberately fund, sponsor, underwrite, or otherwise facilitate access to Plan B and Ella, or abortion-causing IUDs.

24. It is similarly a violation of East Texas Baptist’s religious beliefs to deliberately take any action (including providing access to health insurance) that would facilitate access to abortion-

causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a third party administrator and not by East Texas Baptist.

25. As the Ethics & Religious Liberty Commission—the public policy arm of the Southern Baptist Convention—has said, requiring employers to provide “free access to . . . abortion-inducing drugs like Ella and Plan B (the “morning after” pill), abortion-causing IUDs, and . . . will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience.” Ethics & Religious Liberty Commission HHS Fact Sheet (“ERLC Fact Sheet,” 2 p.). A true and complete copy of the sections of the ERLC Fact Sheet cited in this Declaration is attached as Exhibit A-6.

26. Consistent with these religious beliefs, East Texas Baptist’s employee health insurance plans do not cover abortions or emergency contraception such as Plan B, Ella, or abortion-causing IUDs. East Texas Baptist Healthcare Benefits Plan (“Plan,” approx. 100 p.) at 35-36, 38, 47-48. A true and complete copy of the sections of the Plan cited in this Declaration is attached as Exhibit A-7.

### **III. East Texas Baptist’s health benefits and practices**

27. As part of its religious convictions, East Texas Baptist promotes the well-being and health of its employees. This includes provision of generous health services and health benefits for its employees. *See generally* Ex. A-7.

28. East Texas Baptist has about 227 full-time employees and 56 part-time employees. All of these employees “profess a saving relationship with Jesus Christ” and have agreed to “exhibit a lifestyle that demonstrates that commitment.” Ex. A-1 (Policy Manual, 1.1.02). The overwhelming majority of these full-time employees and their families rely upon East Texas Baptist’s health benefits.

29. East Texas Baptist is self-insured, and its employees receive health benefits through the East Texas Baptist University Healthcare Benefits Plan, or “Plan.” East Texas Baptist is both the Plan Sponsor and the Plan Administrator. Ex. A-7 (Plan at 1).

30. East Texas Baptist has contracted with Mutual Assurance Administrators, Inc. to act as the third party administrator for the Plan. Ex. A-7 (Plan at 1).

31. East Texas Baptist’s Plan excludes abortions and emergency contraceptives, including Plan B, Ella, and abortifacient IUDs. Ex. A-7 (Plan at 35-36, 38, 47-48).

32. East Texas Baptist’s Plan covers other types of contraceptives. East Texas Baptist does not have religious objections to non-abortion-causing forms of contraception. Ex. A-7 (Plan at 35-36, 38, 47-48).

33. I have been informed that East Texas Baptist’s Plan does not meet the definition of a “grandfathered” plan under 42 U.S.C. § 18011 and 75 Fed. Reg. 41,726, 41,731 (2010).

34. East Texas Baptist wishes to continue to provide high-quality, affordable health benefits for its employees. Doing so is consistent with our religious commitment to support our faculty, staff, and their families.

35. If East Texas Baptist had to terminate the Plan and stop offering health benefits, it would be a serious hardship on most faculty and staff, including myself.

36. If East Texas Baptist had to terminate the Plan and stop offering health benefits, it would suffer serious competitive disadvantages in recruiting and retaining faculty and staff.

37. If East Texas Baptist had to terminate the Plan and stop offering health benefits, it is inevitable that, due to the loss of competitive advantage, the quality of its programs and instruction would suffer.

#### **IV. The final form of the Mandate and East Texas Baptist's choice**

38. The regulations imposing these requirements ("Mandate") force East Texas Baptist to provide access to abortion-causing drugs, including Plan B, Ella, and abortion-causing IUDs, in violation of East Texas Baptist's religious beliefs. The Mandate also forces East Texas Baptist to provide access to education and counseling concerning abortion that directly conflicts with East Texas Baptist's religious beliefs and teachings. Providing these drugs, counseling, and education is incompatible and irreconcilable with East Texas Baptist's religious beliefs, express messages, and speech.

39. I am aware of the Mandate's exemption provision for religious employers. East Texas Baptist cannot qualify for this exemption. East Texas Baptist is not 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. Specifically, it is not a church, an integrated auxiliary of a church, a convention or association of churches, or a religious order.

40. Because East Texas Baptist does not qualify for an exemption to the Mandate, we sincerely hoped the U.S. Department of Health and Human Services ("HHS") would decide to broaden the exemption to cover religious institutions like East Texas Baptist.

41. East Texas Baptist has raised its objections to the Mandate with Congress. On February 16, 2012, I testified before the House Committee on Oversight and Government Reform. In my testimony, I told members of Congress that East Texas Baptist had a religious objection to the Mandate, and that the Mandate violated our religious liberty. I also told them that we were "offended" that HHS said that we weren't "religious enough to have our religious beliefs respected." Oliver Congressional Testimony ("Congressional Testimony," 3 p.). A true and

complete copy of the sections of the Congressional Testimony cited in this Declaration is attached as Exhibit A-8.

42. East Texas Baptist has also raised its objections to the Mandate with HHS directly. For example, in June 2012, East Texas Baptist submitted public comments on the Advance Notice of Proposed Rulemaking (“ANPRM”) regarding HHS’ proposed amendments to the Mandate (77 Fed. Reg. 16501 (Mar. 21, 2012)).

43. In its ANPRM comments, East Texas Baptist expressed its “grave concern” that the ANPRM “fail[ed] to address the violation of religious liberty at the heart of the HHS [M]andate” in two ways: first, it “creat[ed] different classes of religious groups and assign[ed] each group different rights,” and second, it required “accommodated” religious groups to continue to participate in the provision of “morally objectionable drugs.” East Texas Baptist implored HHS to broaden the existing “religious employer” exemption to cover East Texas Baptist and similar religious organizations. East Texas Baptist ANPRM Comments (“ANPRM Comments,” 3 p.). A true and complete copy of the sections of the ANPRM Comments cited in this Declaration is attached as Exhibit A-9.

44. On July 2, 2013, HHS published its final amendments to the Mandate. 78 Fed. Reg. 39,870 (“Final Rule”). Despite over 400,000 comments filed by East Texas Baptist and others, HHS did not abolish the distinction between churches and religious institutions like East Texas Baptist. Instead, HHS adopted an “accommodation” that requires East Texas Baptist to play a central role in facilitating access to abortion-causing drugs and devices by—among other things—finding and designating a third party administrator to provide abortion-causing drugs and devices on our behalf.

45. The Final Rule also extends the current safe harbor—which is a temporary halt on government (but not private) enforcement of the Mandate—through the end of 2013. 78 Fed. Reg. at 39889.

#### **V. The effects of the “accommodation” on East Texas Baptist**

46. An organization is eligible for the accommodation if it (1) “opposes providing coverage for some or all of the contraceptive services required”; (2) “is organized and operates as a nonprofit entity”; (3) “holds itself out as a religious organization”; and (4) “self-certifies that it satisfies the first three criteria.” 78 Fed. Reg. at 39874. I understand that East Texas Baptist is an “eligible organization.”

47. Thus, East Texas Baptist would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014, and deliver it to East Texas Baptist’s third party administrator, Mutual Assurance Administrators, Inc. 78 Fed. Reg. at 39879. Delivery of the self-certification would trigger an obligation on the part of Mutual Assurance Administrators to begin providing East Texas Baptist employees with payment coverage for abortion-causing drugs and devices. East Texas Baptist would be arranging for this coverage to be “outsourced” to Mutual Assurance Administrators.

48. As a condition of complying with the accommodation, East Texas Baptist would also have to refrain from “[d]irectly or indirectly interfering with a third party administrator’s efforts to provide or arrange separate payments for contraceptive services for participants or beneficiaries in the plan” or “directly or indirectly seeking to influence a third party administrator’s decision to provide or arrange such payments.” 78 Fed. Reg. at 39879-80.

49. The Mandate assumes that once it has received the self-certification, Mutual Assurance Administrators, Inc. will be willing to make “separate payments for contraceptive services for participants and beneficiaries in the plan.” 78 Fed. Reg. at 39880.

50. However, I understand that HHS has acknowledged that “there is no legal obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities.” 78 Fed. Reg. at 39880.

51. At this time, I do not know whether Mutual Assurance Administrators, Inc. will be willing to carry out the obligations of the Mandate.

52. Thus, the burden remains on East Texas Baptist to find a third party administrator that will agree to providing free access to the same contraceptive and abortifacient services that East Texas Baptist cannot directly provide.

53. East Texas Baptist’s religious beliefs preclude it from soliciting, contracting with, or designating a third party to provide these services. From East Texas Baptist’s perspective, forcing a third party administrator to provide free access to abortifacient services is no different than directly providing that access. East Texas Baptist cannot outsource its conscience.

54. Moreover, the Mandate requires that, even if the third party administrator consents, the religious organization—via its self-certification—must expressly designate the third party administrator as “an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries.” 78 Fed. Reg. at 39879.

55. The self-certification must specifically notify the third party administrator of its “obligations set forth in the[] final regulations, and will be treated as a designation of the third

party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA.” 78 Fed. Reg. at 39879.

56. Because the designation makes the third party administrator a plan administrator with fiduciary duties, the payments for contraceptive and abortifacient services would be payments made under East Texas Baptist’s health benefits plan.

57. Because East Texas Baptist would be required to identify and designate a third party administrator willing to administer the contraceptive and abortifacient services, East Texas Baptist’s religious beliefs preclude it from complying with the accommodation.

58. East Texas Baptist would have to identify their employees to the third party administrator for the distinct purpose of assisting the government’s scheme to provide free access to contraceptive and abortifacient services.

59. The third party administrator’s obligation to make direct payments for contraceptive services and abortion services would presumably continue only “for so long as the participant or beneficiary remains enrolled in the plan.” 78 Fed. Reg. 39876 (discussing insured plans).

60. Thus, East Texas Baptist would have to coordinate with their third party administrator regarding when it was adding or removing employees and beneficiaries from its healthcare plan and, as a result, from the contraceptive and abortifacient services payment scheme.

61. Third party administrators would be required to notify plan participants and beneficiaries of the contraceptive payment benefit “contemporaneous with (to the extent possible) but separate from, any application materials distributed in connection with enrollment” in a group health plan. 78 Fed. Reg. at 39880.

62. This would also require East Texas Baptist to coordinate the notices with its third party administrators.

63. Thus, even under the accommodation, East Texas Baptist and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to contraceptive and abortifacient services.

64. I understand that the Mandate sets forth complex means through which a third party administrator may seek to recover its costs incurred in making payments for contraceptive and abortifacient services.

65. But I also understand that there is no way to ensure that the cost of administering the abortifacient services would not be passed down to East Texas Baptist through increased fees.

## **VI. The Mandate's impact on East Texas Baptist**

66. East Texas Baptist will be subject to enforcement under the Mandate—enforcement that includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2014. The only way East Texas Baptist could avoid those harsh consequences would be to publicly abandon its faith commitments and violate its religious convictions. This is no choice at all, because East Texas Baptist's faith is central to its identity, its mission, and its very existence.

67. If East Texas Baptist chooses to violate the law—by ceasing to offer employee health insurance altogether, or by offering insurance without the objectionable coverage—then it will be penalized with fines of \$2000 per full-time employee per year, or roughly \$454,000 per year, every year.

68. Although the government has recently announced that it will postpone implementing the annual fine of \$2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015.

69. In addition to the \$2000 per-employee penalty, East Texas Baptist could also face tax penalties of \$100 per day “for each individual to whom such failure relates” 26 U.S.C. §

4980D(b)(1), for offering insurance that fails to comply with the ACA, which would come to \$8,285,500 per year for our 227 full-time employees alone.

70. An \$8 million fine would be devastating for nearly any college, but it is particularly devastating for a small Christian liberal arts college like East Texas Baptist.

71. I also understand that East Texas Baptist could also face regulatory action and law suits under ERISA.

72. The Mandate imposes a burden on East Texas Baptist's employee recruitment and retention efforts by creating uncertainty as to whether East Texas Baptist will be able to offer health benefits beyond 2013.

73. The Mandate places East Texas Baptist at a competitive disadvantage in its efforts to recruit and retain employees.

74. The Mandate forces East Texas Baptist to choose between, on the one hand, violating its religious beliefs, and, on the other hand, incurring substantial fines and terminating its employee health benefits.

75. East Texas Baptist wants to continue to provide high-quality health benefits for its employees. It has no objections to providing almost all of the mandated services, including gestational diabetes screenings, well-woman visits, and most prescription contraceptives. It asks only that it be permitted to follow its beliefs by continuing to refuse to pay for, or provide access to, abortifacients.

76. East Texas Baptist does not have a real choice in this matter. Its religious beliefs are deep, longstanding, and sincere.

**VII. The need for immediate action**

77. The plan year for East Texas Baptist's health benefits begins on January 1, 2014. East Texas Baptist must begin planning very soon for the 2014 insurance plan year.

78. Every fall, East Texas Baptist works with its third party administrator to set the terms of the Plan for the upcoming year. The process is time consuming: East Texas Baptist's staff must negotiate and work with its third party administrator on plan changes and on the production and distribution of plan materials and employee health benefit cards. This process typically takes East Texas Baptist several months.

79. East Texas Baptist plans to begin the planning process in October, to give itself adequate time to make any necessary changes before the January 2014 plan year begins.

80. East Texas Baptist needs to implement any major changes prior to November 1, 2014, the first date of the two-week open enrollment period for employees and their families.

81. East Texas Baptist needs immediate relief from the Mandate in order to arrange for and continue providing employee health insurance. Delay could lead to a lapse in coverage. Denial of immediate relief will force East Texas Baptist to choose between its religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

82. The consequences for East Texas Baptist's employees would be severe. If my family's insurance plan is cancelled, we will be forced to seek expensive individual policies on the private market.

83. Currently, the cost of coverage under East Texas Baptist's Plan is significantly lower than the national average—40% lower, by one calculation made by my staff. The additional cost of seeking insurance under the federal health insurance exchange would be extremely burdensome for our faculty and staff.

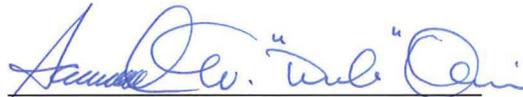
84. I have received reports from the Faculty Senate collecting statements from numerous faculty members who have stated that if East Texas Baptist dropped its health benefits, they would be forced to leave East Texas Baptist and find employment elsewhere. The same reports have also stated that dropping insurance would greatly affect East Texas Baptist's ability to recruit new faculty and staff.

85. I have also received reports from individual faculty members, including Dr. Gerald Nissley, Assistant Professor of Psychology and director of our Counseling program. Dr. Nissley reported to me that his wife, a cancer survivor and mother of three children, would likely be classified as part of costly "high-risk" pool in the individual health insurance market. As a result, if East Texas Baptist dropped its health benefits, he told me that he would likely have to seek employment elsewhere in order to cover the cost of health insurance for his wife and children.

86. My answer to Dr. Nissley and his colleagues is that I hope he will not have to make that choice. I hope that we will have relief from the Mandate prior to January 1.

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

Executed on August 30, 2013 in Marshall, Texas

  
Samuel W. "Dub" Oliver, Ph.D.

**Exhibit A-1**

# **POLICY AND PROCEDURES MANUAL**



## **EAST TEXAS BAPTIST UNIVERSITY**

Classification  
Number: 1.1.00  
Page: 1 of 1

Issued: September 3, 1999  
Revised: September 7, 2012

### **EAST TEXAS BAPTIST UNIVERSITY LEGAL BASIS**

The legal basis presented below is for use in grant applications, contracts, and other purposes requiring a citation of legal authority.

East Texas Baptist University is a coeducational institution located in the city of Marshall, Texas. A campaign to launch the University was begun in 1911 and the State of Texas granted a charter on October 22, 1912 as College of Marshall, a two-year institution. The first freshman class registered in 1917. In 1924, the college debt was assumed by the Baptist General Convention of Texas with the assistance of the Marshall Chamber of Commerce. The name was changed to East Texas Baptist College in 1944 when it was elevated to four-year status. Accreditation by the Southern Association of Colleges and Schools was granted in 1957. In 1984, a University Charter revision changed the institutional name to East Texas Baptist University.

The University is chartered as a religious, arts and sciences and pre-professional studies institution of higher education. It is a nonprofit corporation operated in affiliation with the Baptist General Convention of Texas. The University holds all of its property in trust for and conducts its affairs in accordance with the policies of the Board of Trustees of East Texas Baptist University. The affairs of the University are governed by a 36 member Board of Trustees elected by the Baptist General Convention of Texas (19 members elected by the Baptist General Convention of Texas; 17 members elected by the East Texas Baptist University Board of Trustees).

Contact for Interpretation: President

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This Policy statement supersedes all previous policy statements on this subject.

# **POLICY AND PROCEDURES MANUAL**



## **EAST TEXAS BAPTIST UNIVERSITY**

Classification  
Number: 1.1.01

Page: 1 of 1

Issued: September 3, 1999  
Revised: January 23, 2009

### **STATEMENT OF INSTITUTIONAL PURPOSE**

East Texas Baptist University is an institution affiliated with the Baptist General Convention of Texas since 1912. Our purpose is the development of intellectual inquiry, social consciousness, wellness, skills for a contemporary society, global awareness, and Christian character, for we believe that these endeavors prepare students to accept the obligations and opportunities to serve humanity and the Kingdom of God. Our primary focus is on quality academic programs in the humanities, natural and social sciences, fine arts, and selected professional areas. We are committed to Christian stewardship and to providing and maintaining an environment conducive to learning, leadership development, and academic excellence. We affirm that the liberal arts form the surest foundation for education and that the Christian faith provides the surest foundation for life.

We strive to serve students of varied ages and of diverse socioeconomic, geographic, cultural, ethnic, and religious backgrounds. We seek students who demonstrate a potential for success in our supportive and challenging environment. We employ Christian faculty who are dedicated to teaching, scholarship, advising, and service as they model the principles of the Christian faith. As a Baptist university we are committed to the integration of learning and Christian faith in the pursuit of truth.

Contact for Interpretation: President

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This Policy statement supersedes all previous policy statements on this subject.

# **POLICY AND PROCEDURES MANUAL**



## **EAST TEXAS BAPTIST UNIVERSITY**

Classification

Number: 1.1.02

Page: 1 of 2

Issued: September 3, 1999

Revised: February 15, 2007

**SUBJECT: EMPLOYMENT AND RETENTION EXPECTATIONS FOR EMPLOYEES**

### **POLICY STATEMENT**

It is the policy of East Texas Baptist University to employ qualified employees who possess the necessary experience, competence, and capacity to provide leadership compatible with the mission and purpose of the University.

### **FACTS OF INTEREST**

East Texas Baptist University seeks administrators, academic officers, faculty, and staff who have a personal relationship with Christ, who are familiar with truth as revealed in the Bible, who live out this truth in the presence of others, who can create an environment where Christ is lived out in the life of the individual, and who have the necessary knowledge, experience, and competence for the position.

### **PROCEDURES**

In their initial and continuing employment, administrators, faculty, and staff at East Texas Baptist University are to profess a saving relationship with Jesus Christ and to exhibit a lifestyle that demonstrates that commitment.

The University expects that employees will refrain from behaviors such as sexual misconduct, abusive and profane behavior, the casual use and especially the abuse of alcoholic beverages and/or drugs.

As a professional organization, East Texas Baptist University expects employees to demonstrate professionalism in dress, actions, and fulfilling position responsibilities. Unprofessional behavior such as inappropriate dress, conducting personal business while at work, and bringing children to the workplace is not acceptable. The University administration, through prudent selection, guidance, development, and reappointment decisions, is provided the flexibility to carry out these types of expectations.

The immediate supervisor will screen all applicants to ensure compatibility with the University mission and capabilities for the position. The supervisor may utilize a search/screening committee to assist with the evaluation of the applicants.

For administrators, administrative officers, and staff: All applicants shall be interviewed by the appropriate administrative personnel who at a minimum will include the applicant, potential supervisor, and his/her supervisor.

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This Policy statement supersedes all previous policy statements on this subject.

# **POLICY AND PROCEDURES MANUAL**



**EAST TEXAS BAPTIST UNIVERSITY**

Classification  
Number: 1.1.02

Page: 2 of 2

Issued: September 3, 1999

Revised: February 15, 2007

## **EMPLOYMENT AND RETENTION EXPECTATIONS FOR EMPLOYEES, CONT...**

All faculty shall be interviewed by:

1. Chair of the Department in which the position is open
2. Dean of the School
3. Vice President for Academic Affairs
4. Vice President for Spiritual Development
5. President

The credentials for newly hired faculty shall be presented for review by the Executive Committee of the Board of Trustees at its fall meeting. The purpose for the review will be to guide future hiring policies as the Board shall not interfere in the hiring process of specific faculty or staff.

Contact for Interpretation: President

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This Policy statement supersedes all previous policy statements on this subject.

**Exhibit A-2**



EAST TEXAS BAPTIST UNIVERSITY

"A World of Opportunity in a Community of Faith"

Application for Undergraduate Admission and Financial Aid

East Texas Baptist University welcomes all applicants who meet its requirements and qualifications, and does not illegally discriminate on the basis of sex, handicap, age, race, color, religion, national or ethnic origin, or veteran status.

PERSONAL DATA (Please print or type)

Legal Name Last First Middle Maiden Preferred Name

Address Street P.O. Box

City State Zip

Home County/Parish Social Security Number T-Shirt Size

E-Mail Date of Birth

Home Phone Gender Male Female Marital Status Single Married

Cell Phone May the Admissions Office to contact you via text message? Yes No

What is the best way for you to be contacted by the Admissions Office? Home Phone Cell Phone Email

U.S. Citizen? Yes No Resident Alien? Yes No If not a US citizen, country of citizenship

APPLICATION STATUS

Freshman Transfer Re-enter ETBU

Starting Term: Year Fall Spring May Term June Term July Term

Will you be living in an ETBU Residence Hall? Yes No (Students under the age of 25 are required to live in ETBU housing If yes, single student housing or family housing unless you live within commuting distance. See catalog for more details.)

Will you enroll full-time (12 or more hours)? Yes or Part-time?

Have you ever been convicted or adjudicated of a felony or Class A misdemeanor? Yes No (If yes, explain your circumstances and rehabilitation program on a separate sheet of paper and attach to this application)

If you have a physical disability that will require special accommodation, you must contact the Office of Advising in writing at least 60 days before classes begin to see what arrangements can be made. You will need to explain your circumstances and accommodation requests.

ADDITIONAL INFORMATION (This information will be used in a non-discriminatory manner, consistent with applicable civil rights laws)

Contributing factors for choosing to apply to ETBU. Check all that apply:

- Alumni Church Staff Member High School Counselor Admissions Counselor Other Attended Summer Camp at ETBU Rec Team Scholarship/Financial Aid ETBU Faculty/Staff Member Parents/Siblings Magazine Ad Location College Fair Current Students Brochures Academic Program Campus Visit Home Church/Religious Preference

List any extra-curricular activities you would like to continue in college:

Did your parent(s) attend ETBU? Yes No If so, what years? What is the name of the parent(s) who attended? Does either one of your parents work full-time for a Southern Baptist Church or Agency? Yes No If so, what church/agency?

Universities are asked by many, including the federal government, accrediting associations, college guides, newspapers, and our own university communities, to describe the racial/ethnic backgrounds of our students and employees. In order to respond to these requests, we ask you to answer the following two questions:

- (1) Do you consider yourself to be Hispanic/Latino? Yes No (2) In addition, select one or more of the following racial categories to describe yourself: American Indian or Alaska Native Native Hawaiian or Pacific Islander Asian White Black or African American

## Signature and Honor Agreement

East Texas Baptist University emphasizes a biblical standard of personal conduct and moral character by all students. ETBU is committed to providing and maintaining an environment conducive to the integration of faith and learning, leadership development and academic excellence. Therefore, if accepted for admission, I promise to act in accordance with the student handbook. I understand that signing this statement is a condition of my acceptance to East Texas Baptist University. ETBU has my permission to verify the information contained in this application. I consent to the release of information concerning my academic and/or financial status to scholarship donors. I understand that if any information on this form is found to be inaccurate or incomplete, it will be sufficient cause for rejection or dismissal. I agree that if my student account, for any semester enrolled, becomes delinquent and all methods of collection have been exhausted by the University, my account will be turned over to a third party collector and I will be responsible for all collection and legal fees.

Applicant Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Submit this Application with the following credentials:

1. Non-refundable application fee of \$25.00 (*International fee - \$50.00; Re-enter fee - \$15.00*)
2. **Freshman Admission:** ACT or SAT Scores; High School Transcript/GED Certificate;  
College Transcript *if applicable*.

**Transfer Admission:** (24+ transferable hours) Transcripts from all colleges attended

3. Return to: Office of Admissions  
East Texas Baptist University  
One Tiger Drive  
Marshall, TX 75670  
FAX: 903-923-2001

(For other forms, please visit our website: [www.etbu.edu](http://www.etbu.edu))

Updated 09/2012

**Exhibit A-3**

## **BYLAWS OF EAST TEXAS BAPTIST UNIVERSITY**

As Adopted September 7, 2012

### **ARTICLE I. – MISSION**

1.01. The University shall have a mission statement which shall guide the University which shall be approved by the Board of Trustees. The statement shall be reviewed periodically by the Board, and communicated to the institution's constituencies. It shall be a clearly defined statement specific to this University and appropriate to an institution of higher education. It shall address both teaching and learning, and the religious nature of the University.

### **ARTICLE II. – BOARD OF TRUSTEES**

2.01. Composition of the Board of Trustees. The Board of Trustees is composed of thirty-six (36) members. The Board shall be divided into two classes: One class shall be composed of a simple majority (50% + 1) of the total number of members and shall be appointed by the Baptist General Convention of Texas and shall be designated as "Convention-appointed" Trustees; and another class, composed of the remaining number of members who shall be elected by the Board of Trustees and shall be designated "Board-elected."

2.02. Term of Office of Trustees. Trustees shall be elected or appointed for a term of three years unless (a) elected or appointed to fill a vacancy, in which case Trustees may be elected by the Board for the unexpired term of the predecessor in office, and Trustees may be appointed by the Convention to serve some or all of the unexpired term of the predecessor in office; or (b) elected or appointed to a term of office of one or two years in order to accomplish the rotation of the Board to achieve a rotation in office whereby the terms of one-third of each class expire each year; or (c) the Trustee dies, resigns, or is removed from office prior to the expiration of the term. Unless removed, each Trustee shall hold office for the term for which the Trustee is elected or appointed and until the Trustee's successor shall have been elected or appointed, and qualified. A Trustee's term shall commence on the date of the annual organizational meeting for the Board immediately following the Trustee's election.

2.03. Election and Appointment of Trustees.

a. Board-elected Trustees. The Board of Trustees may elect persons to fill vacancies which occur in positions in the Board-elected class, and, upon the expiration of the terms of Board-elected Trustees, the Board may elect the successors. The Board Chair shall appoint three (3) at-large Trustee members at the January Board meeting to serve on a Trustee Nominating Committee along with the Vice Chair of the Board and the Chair of the Board. The Chair of the Board will serve as the Trustee Nominating Committee Chair. This five (5) member Trustee Nominating Committee shall nominate individuals to fill vacancies in positions in the Board-elected class of Trustees. The nominations shall be presented to the full Board at the May Board meeting for consideration and election. The elected Trustees will take office at the annual reorganization Board meeting the following January. Election of a Trustee shall occur upon the affirmative vote of a majority of Trustees present and voting in a meeting at which a majority of the Trustees in office are present.

b. Convention-appointed Trustees. The Baptist General Convention of Texas may appoint persons to fill vacancies which occur in positions in the Convention-appointed positions, and, upon the expiration of the terms of Convention-appointed Trustees; the Convention may appoint the successors. The Baptist General Convention of Texas may delegate its authority to appoint Trustees to its Executive Board.

2.04. Qualifications. Trustees shall be active members of Baptist churches. A Trustee who has served three full successive terms shall not be eligible for re-election until he or she shall have been out of office for one year.

2.05. Conflict of Interest. Placed in a position of trust, individual Trustees shall act in good faith, with ordinary care, and in a manner the Trustee reasonably believes to be in the best interest of the Corporation. Trustees owe a duty of loyalty to East Texas Baptist University. Having been charged with a fiduciary responsibility, the Trustee must place the interests of the University first and foremost, keeping in mind the unique nature and mission of the University as an institution affiliated with the Baptist General Convention of Texas. A Trustee shall claim no higher allegiance to a special interest group such as alumni, faculty, outside business interest, or church or denominational affiliation. Trustees shall cause the Board of Trustees to be free from undue influence from political, religious, or other external bodies and shall protect the institution and its officers from such influence. The overriding premise of a Trustee's duty of loyalty is that of fairness to East Texas Baptist University. The standard commonly used to determine fairness is whether a proposed transaction is at least as favorable to the institution as it would be should the transaction be entered into with strangers. Accordingly, a Trustee must avoid using his or her position for personal gain or advantage, or to obtain favored status for any special group, business, or family entity with which the Trustee is affiliated. In the spirit of disclosure, the Trustee shall notify the Board of Trustees of a potential conflict of interest and shall recuse him/herself from all votes pertaining to the contract or transaction. Contracts or transactions between the University and a Trustee or officer, or an entity or other organization in which one or more of the University's Trustees or officers is a managerial official or a member or has a financial interest, shall be governed by Section 22.230 of the Texas Business Organizations Code and East Texas Baptist University Policy 1.4.00.

2.06. Removal. A Trustee may be removed from office by whoever, the Convention or the Board of Trustees, appointed or elected the Trustee. Removal shall occur only upon the finding of cause and following a fair process which shall include notice to the Trustee of the reason for removal and an opportunity for the Trustee to be heard. Removal by the Board of Trustees shall occur upon the vote of two-thirds of the Trustees in attendance at a regular meeting. Removal by the Convention shall occur upon the vote of a majority of a quorum of messengers. "Cause" shall include excessive unexcused absences from the meetings of the Board, and conduct which is illegal, or deemed immoral or not to be in the best interests of the University.

a. With regard to excessive unexcused absences, the Trustee shall be removed from office by the body which elected or appointed the Trustee upon the Board's finding that the Trustee should be removed. The duty of care owed by the Trustee to the University requires that the Trustee be faithful in attending meetings of the Board and of committees of which the Trustee is a member. Any Trustee who, within one year, is absent from three meetings, shall be contacted by the Board Chair to determine the cause of the absences and their commitment as a Trustee. If the chairperson is not satisfied with the response,

**Exhibit A-4**

[Close Window](#)

## Report of the Baptist Faith and Message Study Committee to the Southern Baptist Convention

Adopted, June 14th, 2000

The 1999 session of the Southern Baptist Convention, meeting in Atlanta, Georgia, adopted the following motion addressed to the President of the Convention:

**"I move that in your capacity as Southern Baptist Convention chairman, you appoint a blue ribbon committee to review the Baptist Faith and Message statement with the responsibility to report and bring any recommendations to this meeting next June in Orlando."**

President Paige Patterson appointed the committee as follows: Max Barnett (OK), Steve Gaines (AL), Susie Hawkins (TX), Rudy A. Hernandez (TX), Charles S. Kelley, Jr. (LA), Heather King (IN), Richard D. Land (TN), Fred Luter (LA), R. Albert Mohler, Jr. (KY), T. C. Pinckney (VA), Nelson Price (GA), Adrian Rogers (TN), Roger Spradlin (CA), Simon Tsoi (AZ), Jerry Vines (FL). Adrian Rogers (TN) was appointed chairman.

Your committee thus constituted begs leave to present its report as follows:

Baptists are a people of deep beliefs and cherished doctrines. Throughout our history we have been a confessional people, adopting statements of faith as a witness to our beliefs and a pledge of our faithfulness to the doctrines revealed in Holy Scripture.

Our confessions of faith are rooted in historical precedent, as the church in every age has been called upon to define and defend its beliefs. Each generation of Christians bears the responsibility of guarding the treasury of truth that has been entrusted to us [2 Timothy 1:14]. Facing a new century, Southern Baptists must meet the demands and duties of the present hour.

New challenges to faith appear in every age. A pervasive anti-supernaturalism in the culture was answered by Southern Baptists in 1925, when the Baptist Faith and Message was first adopted by this Convention. In 1963, Southern Baptists responded to assaults upon the authority and truthfulness of the Bible by adopting revisions to the Baptist Faith and Message. The Convention added an article on "The Family" in 1998, thus answering cultural confusion with the clear teachings of Scripture. Now, faced with a culture hostile to the very notion of truth, this generation of Baptists must claim anew the eternal truths of the Christian faith.

Your committee respects and celebrates the heritage of the Baptist Faith and Message, and affirms the decision of the Convention in 1925 to adopt the New Hampshire Confession of Faith, "revised at certain points and with some additional articles growing out of certain needs . . . ." We also respect the important contributions of the 1925 and 1963 editions of the Baptist Faith and Message.

With the 1963 committee, we have been guided in our work by the 1925 "statement of the historic Baptist conception of the nature and function of confessions of faith in our religious and denominational life . . . ." It is, therefore, quoted in full as a part of this report to the Convention:

(1) That they constitute a consensus of opinion of some Baptist body, large or small, for the general instruction and guidance of our own people and others concerning those articles of the Christian faith which are most surely held among us. They are not intended to add anything to the simple conditions of salvation revealed in the New Testament, viz., repentance toward God and faith in Jesus Christ as Saviour and Lord.

(2) That we do not regard them as complete statements of our faith, having any quality of finality or infallibility. As in the past so in the future, Baptists should hold themselves free to revise their statements of faith as may seem to them wise and expedient at any time.

(3) That any group of Baptists, large or small, have the inherent right to draw up for themselves and publish to the world a confession of their faith whenever they may think it advisable to do so.

(4) That the sole authority for faith and practice among Baptists is the Scriptures of the Old and New Testaments. Confessions are only guides in interpretation, having no authority over the conscience.

(5) That they are statements of religious convictions, drawn from the Scriptures, and are not to be used to hamper freedom of thought or investigation in other realms of life.

Baptists cherish and defend religious liberty, and deny the right of any secular or religious authority to impose a confession of faith upon a church or body of churches. We honor the principles of soul competency and the priesthood of believers, affirming together both our liberty in Christ and our accountability to each other under the Word of God.

Baptist churches, associations, and general bodies have adopted confessions of faith as a witness to the world, and as instruments of doctrinal accountability. We are not embarrassed to state before the world that these are doctrines we hold precious and as essential to the Baptist tradition of faith and practice.

As a committee, we have been charged to address the "certain needs" of our own generation. In an age increasingly hostile to Christian truth, our challenge is to express the truth as revealed in Scripture, and to bear witness to Jesus Christ, who is "the Way, the Truth, and the Life."

The 1963 committee rightly sought to identify and affirm "certain definite doctrines that Baptists believe, cherish, and with which they have been and are now closely identified." Our living faith is established upon eternal truths. "Thus this generation of Southern Baptists is in historic succession of intent and purpose as it endeavors to state for its time and theological climate those articles of the Christian faith which are most surely held among us."

It is the purpose of this statement of faith and message to set forth certain teachings which we believe.

Respectfully Submitted,

*The Baptist Faith and Message Study Committee*

*Adrian Rogers, Chairman*

Committee Members:

Adrian Rogers, Chairman

Max Barnett

Steve Gaines

Susie Hawkins

Rudy A. Hernandez

Charles S. Kelley, Jr.

Heather King

Richard D. Land

Fred Luter

R. Albert Mohler, Jr.

T. C. Pinckney

Nelson Price

Roger Spradlin

Simon Tsoi

Jerry Vines

<http://www.sbc.net/bfm/bfmpreamble.asp>

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[Close Window](#)

## The Baptist Faith and Message

The Baptist Faith and Message is also available in the following languages: <%=MultiLingualPage(2)%>

### I. The Scriptures

The Holy Bible was written by men divinely inspired and is God's revelation of Himself to man. It is a perfect treasure of divine instruction. It has God for its author, salvation for its end, and truth, without any mixture of error, for its matter. Therefore, all Scripture is totally true and trustworthy. It reveals the principles by which God judges us, and therefore is, and will remain to the end of the world, the true center of Christian union, and the supreme standard by which all human conduct, creeds, and religious opinions should be tried. All Scripture is a testimony to Christ, who is Himself the focus of divine revelation.

*Exodus 24:4; Deuteronomy 4:1-2; 17:19; Joshua 8:34; Psalms 19:7-10; 119:11,89,105,140; Isaiah 34:16; 40:8; Jeremiah 15:16; 36:1-32; Matthew 5:17-18; 22:29; Luke 21:33; 24:44-46; John 5:39; 16:13-15; 17:17; Acts 2:16ff.; 17:11; Romans 15:4; 16:25-26; 2 Timothy 3:15-17; Hebrews 1:1-2; 4:12; 1 Peter 1:25; 2 Peter 1:19-21.*

### II. God

There is one and only one living and true God. He is an intelligent, spiritual, and personal Being, the Creator, Redeemer, Preserver, and Ruler of the universe. God is infinite in holiness and all other perfections. God is all powerful and all knowing; and His perfect knowledge extends to all things, past, present, and future, including the future decisions of His free creatures. To Him we owe the highest love, reverence, and obedience. The eternal triune God reveals Himself to us as Father, Son, and Holy Spirit, with distinct personal attributes, but without division of nature, essence, or being.

#### A. God the Father

God as Father reigns with providential care over His universe, His creatures, and the flow of the stream of human history according to the purposes of His grace. He is all powerful, all knowing, all loving, and all wise. God is Father in truth to those who become children of God through faith in Jesus Christ. He is fatherly in His attitude toward all men.

*Genesis 1:1; 2:7; Exodus 3:14; 6:2-3; 15:11ff.; 20:1ff.; Leviticus 22:2; Deuteronomy 6:4; 32:6; 1 Chronicles 29:10; Psalm 19:1-3; Isaiah 43:3,15; 64:8; Jeremiah 10:10; 17:13; Matthew 6:9ff.; 7:11; 23:9; 28:19; Mark 1:9-11; John 4:24; 5:26; 14:6-13; 17:1-8; Acts 1:7; Romans 8:14-15; 1 Corinthians 8:6; Galatians 4:6; Ephesians 4:6; Colossians 1:15; 1 Timothy 1:17; Hebrews 11:6; 12:9; 1 Peter 1:17; 1 John 5:7.*

#### B. God the Son

Christ is the eternal Son of God. In His incarnation as Jesus Christ He was conceived of the Holy Spirit and born of the virgin Mary. Jesus perfectly revealed and did the will of God, taking upon Himself human nature with its demands and necessities and identifying Himself completely with mankind yet without sin. He honored the divine law by His personal obedience, and in His substitutionary death on the cross He made provision for the redemption of men from sin. He was raised from the dead with a glorified body and appeared to His disciples as the person who was with them before His crucifixion. He ascended into heaven and is now exalted at the right hand of God where He is the One Mediator, fully God, fully man, in whose Person is effected the reconciliation between God and man. He will return in power and glory to judge the world and to consummate His redemptive mission. He now dwells in all believers as the living and ever present Lord.

*Genesis 18:1ff.; Psalms 2:7ff.; 110:1ff.; Isaiah 7:14; 53; Matthew 1:18-23; 3:17; 8:29; 11:27; 14:33; 16:16,27; 17:5; 27; 28:1-6,19; Mark 1:1; 3:11; Luke 1:35; 4:41; 22:70; 24:46; John 1:1-18,29; 10:30,38; 11:25-27; 12:44-50; 14:7-11; 16:15-16,28; 17:1-5, 21-22; 20:1-20,28; Acts 1:9; 2:22-24; 7:55-56; 9:4-5,20; Romans 1:3-4; 3:23-26; 5:6-21; 8:1-3,34; 10:4; 1 Corinthians 1:30; 2:2; 8:6; 15:1-8,24-28; 2 Corinthians 5:19-21; 8:9; Galatians 4:4-5; Ephesians 1:20; 3:11; 4:7-10; Philippians 2:5-11; Colossians 1:13-22; 2:9; 1 Thessalonians 4:14-18; 1 Timothy 2:5-6; 3:16; Titus 2:13-14; Hebrews 1:1-3; 4:14-15; 7:14-28; 9:12-15,24-28; 12:2; 13:8; 1 Peter 2:21-25; 3:22; 1 John*

1:7-9; 3:2; 4:14-15; 5:9; 2 John 7-9; Revelation 1:13-16; 5:9-14; 12:10-11; 13:8; 19:16.

### C. God the Holy Spirit

The Holy Spirit is the Spirit of God, fully divine. He inspired holy men of old to write the Scriptures. Through illumination He enables men to understand truth. He exalts Christ. He convicts men of sin, of righteousness, and of judgment. He calls men to the Saviour, and effects regeneration. At the moment of regeneration He baptizes every believer into the Body of Christ. He cultivates Christian character, comforts believers, and bestows the spiritual gifts by which they serve God through His church. He seals the believer unto the day of final redemption. His presence in the Christian is the guarantee that God will bring the believer into the fullness of the stature of Christ. He enlightens and empowers the believer and the church in worship, evangelism, and service.

*Genesis 1:2; Judges 14:6; Job 26:13; Psalms 51:11; 139:7ff.; Isaiah 61:1-3; Joel 2:28-32; Matthew 1:18; 3:16; 4:1; 12:28-32; 28:19; Mark 1:10,12; Luke 1:35; 4:1,18-19; 11:13; 12:12; 24:49; John 4:24; 14:16-17,26; 15:26; 16:7-14; Acts 1:8; 2:1-4,38; 4:31; 5:3; 6:3; 7:55; 8:17,39; 10:44; 13:2; 15:28; 16:6; 19:1-6; Romans 8:9-11,14-16,26-27; 1 Corinthians 2:10-14; 3:16; 12:3-11,13; Galatians 4:6; Ephesians 1:13-14; 4:30; 5:18; 1 Thessalonians 5:19; 1 Timothy 3:16; 4:1; 2 Timothy 1:14; 3:16; Hebrews 9:8,14; 2 Peter 1:21; 1 John 4:13; 5:6-7; Revelation 1:10; 22:17.*

### III. Man

Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation. In the beginning man was innocent of sin and was endowed by his Creator with freedom of choice. By his free choice man sinned against God and brought sin into the human race. Through the temptation of Satan man transgressed the command of God, and fell from his original innocence whereby his posterity inherit a nature and an environment inclined toward sin. Therefore, as soon as they are capable of moral action, they become transgressors and are under condemnation. Only the grace of God can bring man into His holy fellowship and enable man to fulfill the creative purpose of God. The sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love.

*Genesis 1:26-30; 2:5,7,18-22; 3; 9:6; Psalms 1; 8:3-6; 32:1-5; 51:5; Isaiah 6:5; Jeremiah 17:5; Matthew 16:26; Acts 17:26-31; Romans 1:19-32; 3:10-18,23; 5:6,12,19; 6:6; 7:14-25; 8:14-18,29; 1 Corinthians 1:21-31; 15:19,21-22; Ephesians 2:1-22; Colossians 1:21-22; 3:9-11.*

### IV. Salvation

Salvation involves the redemption of the whole man, and is offered freely to all who accept Jesus Christ as Lord and Saviour, who by His own blood obtained eternal redemption for the believer. In its broadest sense salvation includes regeneration, justification, sanctification, and glorification. There is no salvation apart from personal faith in Jesus Christ as Lord.

A. Regeneration, or the new birth, is a work of God's grace whereby believers become new creatures in Christ Jesus. It is a change of heart wrought by the Holy Spirit through conviction of sin, to which the sinner responds in repentance toward God and faith in the Lord Jesus Christ. Repentance and faith are inseparable experiences of grace.

Repentance is a genuine turning from sin toward God. Faith is the acceptance of Jesus Christ and commitment of the entire personality to Him as Lord and Saviour.

B. Justification is God's gracious and full acquittal upon principles of His righteousness of all sinners who repent and believe in Christ. Justification brings the believer unto a relationship of peace and favor with God.

C. Sanctification is the experience, beginning in regeneration, by which the believer is set apart to God's purposes, and is enabled to progress toward moral and spiritual maturity through the presence and power of the Holy Spirit dwelling in him. Growth in grace should continue throughout the regenerate person's life.

D. Glorification is the culmination of salvation and is the final blessed and abiding state of the redeemed.

*Genesis 3:15; Exodus 3:14-17; 6:2-8; Matthew 1:21; 4:17; 16:21-26; 27:22-28:6; Luke 1:68-69; 2:28-32; John 1:11-14,29; 3:3-21,36; 5:24; 10:9,28-29; 15:1-16; 17:17; Acts 2:21; 4:12; 15:11; 16:30-31; 17:30-31; 20:32; Romans 1:16-18; 2:4; 3:23-25; 4:3ff.; 5:8-10; 6:1-23; 8:1-18,29-39; 10:9-10,13; 13:11-14; 1 Corinthians 1:18,30;*

God is the source of all blessings, temporal and spiritual; all that we have and are we owe to Him. Christians have a spiritual debtorship to the whole world, a holy trusteeship in the gospel, and a binding stewardship in their possessions. They are therefore under obligation to serve Him with their time, talents, and material possessions; and should recognize all these as entrusted to them to use for the glory of God and for helping others. According to the Scriptures, Christians should contribute of their means cheerfully, regularly, systematically, proportionately, and liberally for the advancement of the Redeemer's cause on earth.

*Genesis 14:20; Leviticus 27:30-32; Deuteronomy 8:18; Malachi 3:8-12; Matthew 6:1-4,19-21; 19:21; 23:23; 25:14-29; Luke 12:16-21,42; 16:1-13; Acts 2:44-47; 5:1-11; 17:24-25; 20:35; Romans 6:6-22; 12:1-2; 1 Corinthians 4:1-2; 6:19-20; 12; 16:1-4; 2 Corinthians 8-9; 12:15; Philippians 4:10-19; 1 Peter 1:18-19.*

#### **XIV. Cooperation**

Christ's people should, as occasion requires, organize such associations and conventions as may best secure cooperation for the great objects of the Kingdom of God. Such organizations have no authority over one another or over the churches. They are voluntary and advisory bodies designed to elicit, combine, and direct the energies of our people in the most effective manner. Members of New Testament churches should cooperate with one another in carrying forward the missionary, educational, and benevolent ministries for the extension of Christ's Kingdom. Christian unity in the New Testament sense is spiritual harmony and voluntary cooperation for common ends by various groups of Christ's people. Cooperation is desirable between the various Christian denominations, when the end to be attained is itself justified, and when such cooperation involves no violation of conscience or compromise of loyalty to Christ and His Word as revealed in the New Testament.

*Exodus 17:12; 18:17ff.; Judges 7:21; Ezra 1:3-4; 2:68-69; 5:14-15; Nehemiah 4; 8:1-5; Matthew 10:5-15; 20:1-16; 22:1-10; 28:19-20; Mark 2:3; Luke 10:1ff.; Acts 1:13-14; 2:1ff.; 4:31-37; 13:2-3; 15:1-35; 1 Corinthians 1:10-17; 3:5-15; 12; 2 Corinthians 8-9; Galatians 1:6-10; Ephesians 4:1-16; Philippians 1:15-18.*

#### **XV. The Christian and the Social Order**

All Christians are under obligation to seek to make the will of Christ supreme in our own lives and in human society. Means and methods used for the improvement of society and the establishment of righteousness among men can be truly and permanently helpful only when they are rooted in the regeneration of the individual by the saving grace of God in Jesus Christ. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. Every Christian should seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love. In order to promote these ends Christians should be ready to work with all men of good will in any good cause, always being careful to act in the spirit of love without compromising their loyalty to Christ and His truth.

*Exodus 20:3-17; Leviticus 6:2-5; Deuteronomy 10:12; 27:17; Psalm 101:5; Micah 6:8; Zechariah 8:16; Matthew 5:13-16,43-48; 22:36-40; 25:35; Mark 1:29-34; 2:3ff.; 10:21; Luke 4:18-21; 10:27-37; 20:25; John 15:12; 17:15; Romans 12-14; 1 Corinthians 5:9-10; 6:1-7; 7:20-24; 10:23-11:1; Galatians 3:26-28; Ephesians 6:5-9; Colossians 3:12-17; 1 Thessalonians 3:12; Philemon; James 1:27; 2:8.*

#### **XVI. Peace and War**

It is the duty of Christians to seek peace with all men on principles of righteousness. In accordance with the spirit and teachings of Christ they should do all in their power to put an end to war.

The true remedy for the war spirit is the gospel of our Lord. The supreme need of the world is the acceptance of His teachings in all the affairs of men and nations, and the practical application of His law of love. Christian people throughout the world should pray for the reign of the Prince of Peace.

*Isaiah 2:4; Matthew 5:9,38-48; 6:33; 26:52; Luke 22:36,38; Romans 12:18-19; 13:1-7; 14:19; Hebrews 12:14; James 4:1-2.*

#### **XVII. Religious Liberty**

God alone is Lord of the conscience, and He has left it free from the doctrines and commandments of men which are

contrary to His Word or not contained in it. Church and state should be separate. The state owes to every church protection and full freedom in the pursuit of its spiritual ends. In providing for such freedom no ecclesiastical group or denomination should be favored by the state more than others. Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. The church should not resort to the civil power to carry on its work. The gospel of Christ contemplates spiritual means alone for the pursuit of its ends. The state has no right to impose penalties for religious opinions of any kind. The state has no right to impose taxes for the support of any form of religion. A free church in a free state is the Christian ideal, and this implies the right of free and unhindered access to God on the part of all men, and the right to form and propagate opinions in the sphere of religion without interference by the civil power.

*Genesis 1:27; 2:7; Matthew 6:6-7,24; 16:26; 22:21; John 8:36; Acts 4:19-20; Romans 6:1-2; 13:1-7; Galatians 5:1,13; Philippians 3:20; 1 Timothy 2:1-2; James 4:12; 1 Peter 2:12-17; 3:11-17; 4:12-19.*

### **XVIII. The Family**

God has ordained the family as the foundational institution of human society. It is composed of persons related to one another by marriage, blood, or adoption.

Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God's unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race.

The husband and wife are of equal worth before God, since both are created in God's image. The marriage relationship models the way God relates to His people. A husband is to love his wife as Christ loved the church. He has the God-given responsibility to provide for, to protect, and to lead his family. A wife is to submit herself graciously to the servant leadership of her husband even as the church willingly submits to the headship of Christ. She, being in the image of God as is her husband and thus equal to him, has the God-given responsibility to respect her husband and to serve as his helper in managing the household and nurturing the next generation.

Children, from the moment of conception, are a blessing and heritage from the Lord. Parents are to demonstrate to their children God's pattern for marriage. Parents are to teach their children spiritual and moral values and to lead them, through consistent lifestyle example and loving discipline, to make choices based on biblical truth. Children are to honor and obey their parents.

*Genesis 1:26-28; 2:15-25; 3:1-20; Exodus 20:12; Deuteronomy 6:4-9; Joshua 24:15; 1 Samuel 1:26-28; Psalms 51:5; 78:1-8; 127; 128; 139:13-16; Proverbs 1:8; 5:15-20; 6:20-22; 12:4; 13:24; 14:1; 17:6; 18:22; 22:6,15; 23:13-14; 24:3; 29:15,17; 31:10-31; Ecclesiastes 4:9-12; 9:9; Malachi 2:14-16; Matthew 5:31-32; 18:2-5; 19:3-9; Mark 10:6-12; Romans 1:18-32; 1 Corinthians 7:1-16; Ephesians 5:21-33; 6:1-4; Colossians 3:18-21; 1 Timothy 5:8,14; 2 Timothy 1:3-5; Titus 2:3-5; Hebrews 13:4; 1 Peter 3:1-7.*

<http://www.sbc.net/bfm/bfm2000.asp>

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**Exhibit A-5**

# STUDENT HANDBOOK 2013-14



**ETBU  TIGERS**

### **Public Display of Affection**

In an effort to encourage high moral standards and promote sensitivity to others, students are encouraged to practice restraint in any public display of affection. Any behavior beyond holding hands, being arm in arm, hugging, or light kissing is discouraged in public. Students are not allowed to lie down together on furniture in any location on campus. Any public display beyond these guidelines may lead to disciplinary sanctions.

### **Sexual Harassment**

Sexual harassment is a form of sexual discrimination prohibited by civil rights laws and university policy. Those who engage in sexual harassment may be subject to civil and criminal penalties as well as disciplinary action by the University. Sexual harassment is defined as unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of any right, privilege, power or immunity, either explicitly or implicitly. Sexual harassment may range from unthinking and often unintentional verbal denigration of a person on the basis of gender to actual physical assault. Some examples that may constitute sexual harassment include but are not limited to: offensive sexual flirtations, advances, or pressure for sexual activity; unwanted touching, hugging, rubbing, patting, pinching or unnecessary brushing another's body; unwanted exposure to sexual graffiti, photographs or suggestive objects; obscene gestures, or sexual innuendoes or statements made at inappropriate times or disguised as humor; disparaging remarks about one's gender; or any offensive or abusive physical contact. Individuals who believe they have been subjected to sexual harassment may report the incident to Student Affairs. The sexual harassment policy of ETBU can be viewed on the web at: <http://www.etbu.edu/php/pnpmanual/3.4.05.pdf>.

### **Sexual Misconduct**

Members of the ETBU community are expected to live a life exhibiting high moral standards, including the Biblical view that sexual relations are reserved for the covenant of marriage between one man and one woman. The University prohibits inappropriate sexual behavior including, but not limited to, premarital sex, homosexuality, adultery, and indecent or obscene conduct or expression. The University reserves the right to discipline behavior which is deemed detrimental to individuals and/or the University community at large. Any of the above behaviors could lead to probation, suspension, or dismissal from ETBU.

Because of health concerns, a student who becomes pregnant may not reside in a residence hall, but will be allowed to remain enrolled. Future enrollment of both the father and mother will be determined based on a number of circumstances reviewed on a case by case basis. The University may impose a disciplinary sanction that is appropriate for the situation, while offering counsel and assistance so that the sanction may be a catalyst for redemption.

ETBU supports a culture of life, and would not intend to do anything that would encourage a student to terminate a pregnancy.

### **Skateboards/Roller Blades/Scooters**

East Texas Baptist University prohibits the use of skateboards, roller blades, and scooters on campus sidewalks, walkways, and in campus buildings.

The University assumes no liability for injury to students and/or property.

### **Solicitation**

For the protection of students, no solicitation of any type (selling, promoting, etc.) is permitted by students or others on the University campus in offices, residence halls, houses, apartment areas, or through the University Post Office.

No personal business (music lessons, computer sales, etc.) may be operated from any campus location without a letter of permission from the Dean of Students.

Personal items may be advertised for sale on campus bulletin boards and the University website. Approval must be obtained from Student Affairs.

### **Stolen Property**

Students responsible for theft of University property and/or private or personal property will be subject to strict disciplinary sanction by the Dean of Students and will be held responsible for the return of the stolen property or the costs to replace it.

### **Student ID Cards**

Students are required to show proper identification upon request by ETBU personnel or the Marshall Police Department. Students are not allowed to use ID cards that do not belong to them, whether authorized or unauthorized, for any reason. Failure to comply with this policy may result in disciplinary sanctions and/or the filing of criminal charges.

### **Student Travel**

East Texas Baptist University student groups supported by University funding and traveling in University vehicles must obtain University permission and be accompanied by an approved sponsor. Group sponsors must be members of the University faculty or professional staff. The names of all persons participating in the trip must be submitted to Student Affairs. Non-academic student groups not receiving University funding, traveling without University funding and not being transported in University vehicles, are not required to file a travel request. An application for Approval of Off-Campus Trips must be submitted by the trip sponsor to Student Affairs at least three days prior to the group's departure date. Each request is acted upon by Student Affairs and forwarded to the Vice President for Academic Affairs when appropriate. A copy of the request will be forwarded to the trip sponsor. Students are encouraged to purchase the University insurance or provide proof of other coverage when traveling on ETBU-sponsored trips.

**Exhibit A-6**



## **THE THREAT TO RELIGIOUS FREEDOM: THE OBAMA ADMINISTRATION'S CONTRACEPTIVES MANDATE**

### **THE ISSUE: HEALTH AND HUMAN SERVICES MANDATE VIOLATES RELIGIOUS FREEDOM**

Under a regulation issued in January 2012 by the U.S. Department of Health and Human Services (HHS), nearly all insurance plans will be forced to provide their employees with free access to all FDA-approved contraceptives. This mandate includes coverage of abortion-inducing drugs like ella and Plan B (the "morning after" pill), abortion-causing IUDs, and sterilization. This mandate will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience.

### **HOW THE HHS MANDATE TRAMPLES RELIGIOUS FREEDOM**

Not only does the Patient Protection and Affordable Care Act mark the first time the U.S. government has forced citizens to purchase a product (health insurance), the HHS contraceptives mandate marks the first time people of faith have been forced by the government to purchase products that violate their consciences.

### **A MATTER OF CONSCIENCE AND RELIGIOUS FREEDOM**

Some people say this is about contraception. It is not. Many Southern Baptists accept the use of non-abortive contraceptives within marriage. The HHS mandate goes far beyond that. It requires that all insurance plans provide coverage for abortion-causing products. This means employers, including faith-based organizations, must make insurance plans available to their employees in violation of their religious beliefs. It also means that either the employers or the employees will be required to pay for these products through their premium payments.

In effect, the Obama administration has declared that religious conviction about abortion is not an acceptable reason for exemption from this requirement. While the presenting offense is about abortion, the dominant issue is the government's determination to violate the constitutionally-protected freedom of conscience. No one should be forced by the government to buy or subsidize products that result in the killing of innocent human beings in violation of their consciences. What is at stake is whether our nation will protect our God-given and constitutionally-protected freedom of religion and conscience fought for by our Baptist forebears.

### **LIMITED EXEMPTIONS**

The Obama administration's very narrow religious exemption means that most religious groups will be required to provide access to contraceptives, including ones that cause abortions. Even under a rule proposed in January 2013, the religious exemption may not include organizations such as local Christian schools and soup kitchens or larger entities such as Christian universities that are not expressly tied to a house of worship. Institutions not covered by the narrow exemption will be forced to choose one of three untenable options:

- Obey the law at the expense of their conscience.
- Cease providing coverage—which would force the employees of these religious institutions to obtain coverage with offensive provisions and could subject the religious institution employer to fines if it is considered a large employer under applicable rules.
- Provide coverage but without complying with the HHS mandate that assaults the religious institution's conscience—which could result in fines to participants if their coverage through the religious institution employer is non-compliant.

### **LIMITED ACCOMMODATIONS**

According to the original mandate, the only accommodation afforded religious institutions was a one-year extension to comply. Practically, this meant religious employers morally opposed to the mandate were granted an additional year before they must begin violating their consciences. That one-year extension ends Aug. 1, 2013.

## **NO COMPROMISE IN FORCE**

On multiple occasions, President Obama announced so-called “compromises.” One proposal was to supposedly exempt religiously-affiliated employers opposed to the mandate by allowing them to shift the burden of covering contraceptives and abortifacients to their insurance companies. This was merely an accounting gimmick. Employers would still have to make abortion-causing products available in the plans they offer their employees, and the insurance companies would be recovering the cost of these products indirectly through the premiums they charge. These so-called compromises were never formally adopted. Yet even if any of the president’s “compromises” are adopted by HHS, the violation of constitutionally-protected religious conscience remains.

In January 2013, HHS issued a “Notice of Proposed Rule Making” or NPRM. That *proposed* rule would provide relief for a slightly larger category of houses of worship and their integrated auxiliaries. This does nothing to provide relief for institutions which fall outside the administration’s narrow definition of “religious institution.” This includes many hospitals, universities, businesses, and schools. As of June 2013, more than 60 lawsuits have been filed challenging the mandate.

## **DIRECTLY IMPACTS SELF-INSURED RELIGIOUS INSTITUTIONS**

Neither the current HHS rule nor the so-called “compromise” provides an exemption for religious employers that self-insure, which means they serve as the source of benefit payments instead of contracting with a third party. That includes GuideStone Financial Resources, the Southern Baptist Convention’s medical plan provider covering tens of thousands of pastors, church workers, professors, secretaries, social workers, missionaries, other agency workers, and their families. The HHS mandate reflects a sobering disregard for the unique and historic structure and role of self-insured medical programs like GuideStone and other large and established church health plans, as well as a shocking encroachment on religious freedom.

## **DIRECTLY IMPACTS PEOPLE OF FAITH**

If the HHS mandate is not overturned or changed, many employers whose consciences are violated will have to stop providing insurance for their employees. As a result, when these employees seek to purchase their own insurance plans, they will find that the Obama administration’s mandate requires every insurance plan to pay for these abortion-causing products and services. This will mean that all of us whose consciences are violated by this morally reprehensible mandate will be forced to choose between paying for these products and services, whether we use them or not, or not having insurance for ourselves and our families and paying a government fine for not having insurance.

## **UPSETS CHURCH AND STATE BALANCE**

In recent decades, most conflicts over the church-state relationship have had to do with the Establishment Clause of the First Amendment, with debates about the appropriate role of faith in public life. The HHS mandate is the culmination of a shift in church-state relations that has been emerging over the last decade or so, in which the conflict has gone from potential violations of the Establishment Clause to actual violations of the Free Exercise Clause. The HHS mandate is a direct assault on how people of faith can conduct their own lives according to the dictates of their consciences. The mandate puts the federal government in the position of imposing its will on the conscience by executive edict, casting aside individual conscience and religious freedom.

## **SETS DANGEROUS PRECEDENT**

If the federal government can force religious employers and people of faith to purchase products that offend their faith and conscience, what can’t it force them to do?

## **THE SOLUTION: RESTORE RELIGIOUS FREEDOM WITH RESPECT FOR RIGHTS OF CONSCIENCE ACT**

Jesus instructed us to “render to Caesar what is Caesar’s.” How now shall we respond when Caesar demands what is God’s?

An effort to protect the freedoms of religion and conscience is taking form on Capitol Hill as the Health Care Conscience Rights Act (H.R. 940 / S. 1204). This would safeguard employers and individuals from being forced to violate their religious convictions on contraceptives and abortion-inducing drugs under health care.

With our God-given and constitutionally-protected freedoms of religion and conscience at stake, the church cannot afford to be silent.

**Exhibit A-7**

East Texas Baptist University  
HEALTHCARE BENEFITS PLAN

PLAN DOCUMENT AND  
SUMMARY PLAN DESCRIPTION

Effective: January 1, 2000

Restated: January 1, 2010

Restated: January 1, 2011

Restated March 1, 2012

Third Party Administrator:  
Mutual Assurance Administrators, Inc.  
4004 Belt Line Rd, Suite 160  
Addison, TX 75001

**GENERAL PLAN INFORMATION**

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**What is the purpose of the Plan?**

The *Plan Sponsor* has established the *Plan* for your benefit, on the terms and conditions described herein. The *Plan Sponsor's* purpose in establishing the *Plan* is to help to offset, for you, the economic effects arising from an *injury* or *illness*. To accomplish this purpose, the *Plan Sponsor* must be cognizant of the necessity of containing health care costs through effective plan design, and the *Plan Administrator* must abide by the terms of the *summary plan description*, to allow the *Plan Sponsor* to allocate the resources available to help those individuals participating in the *Plan* to the maximum feasible extent.

The *Plan* is not a contract of employment between you and your *participating employer* and does not give you the right to be retained in the service of your *participating employer*.

The purpose of this *summary plan description* is to set forth the terms and provisions of the *Plan* that provide for the payment or reimbursement of all or a portion of certain medical expenses. The *summary plan description* is maintained by the *Plan Administrator* and may be inspected at any time during normal working hours by any *covered person*.

**General Plan Information You Should Know**

**Name of Plan:** East Texas Baptist University Healthcare Benefits Plan

**Plan Sponsor:** East Texas Baptist University  
1209 N. Grove  
Marshall, TX 75670  
903 923-2120

**Plan Administrator:** East Texas Baptist University  
(Named Fiduciary) 1209 N. Grove  
Marshall, TX 75670  
903 923-2120

**Plan Sponsor ID No. (EIN):** 75-0859801

**Plan Year:** January 1 through December 31

**Plan Number:** 501

**Plan Type:** Medical  
Prescription Drug

**Source of Contributions:** Employee Contributory

**Third Party Administrator:** Mutual Assurance Administrators, Inc.  
4004 Belt Line Rd., Suite 160  
Addison, TX 75001  
972 774-1100

**Participating Employer(s):** East Texas Baptist University  
1209 N. Grove  
Marshall, TX 75670  
903 923-2120

**MEDICAL COVERED EXPENSES (Continued)****Hospice Care**

*Covered expenses* include hospice care services for a terminally ill *covered person* when provided by a *hospice care agency*. The services must be provided through a formal, written hospice care treatment program and certified by the attending *physician* as *medically necessary*. Benefits are provided for:

- *Room and board* for confinement in a licensed, accredited hospice facility.
- Services and supplies furnished by the hospice while the patient is confined.
- Part-time nursing care by or under the supervision of a registered nurse.
- Nutrition services and/or special meals.
- Respite services.
- Counseling services by a licensed social worker or a licensed counselor.
- Bereavement counseling by a licensed social worker or a licensed counselor for the *employee* and/or *covered dependent(s)*.

The attending *physician* must certify that the *covered person* is expected to continue to live for six months or less in order to qualify for this benefit.

If the *covered person* lives beyond six months, the *Plan* will approve additional hospice care benefits on receipt of satisfactory evidence of the continued *medical necessity* of the services.

**Infertility Testing**

Covered expenses will be limited to infertility testing only.

**Other Covered Expenses Also Include:**

- **Blood transfusions and blood products**, to the extent not replaced. The Plan will not cover expenses in connection with autologous blood acquisition and storage.
- **Oxygen**.
- **R.N. and L.P.N.** private duty nursing services for outpatient care when medically necessary.
- **Prosthetic devices and supplies**, including initial purchase price, fitting, adjustment and repairs. Replacements of prosthetic devices are not covered unless due to a significant change in the *covered person's* physical structure and the current device cannot be made serviceable.
- **Surgical dressings, splints, casts**, and other devices used in the reduction of fractures and dislocations, as well as other similar items that serve only a medical purpose, excluding items usually stocked in the home, or that have a value in the absence of an *illness* or *injury*.
- **One set of lenses** (contact or frame-type) following *surgery* for cataracts.
- **Reconstruction of a breast** following a *mastectomy*, reconstruction of the other breast to produce a symmetrical appearance, and prosthesis and physical complications from all stages of a *mastectomy*, including

**MEDICAL COVERED EXPENSES (Continued)**

lymphademas, in a manner determined in consultation with the attending *physician* and the *covered person*. Reimbursement will be made according to the “Schedule of Benefits” section by type of service.

- **Birth control *drugs* or devices.** Covered expenses include oral contraceptives, implants and devices except for “emergency” contraceptives such as Levonelle, EllaOne, or Mifeprex or “emergency IUD’s”. Also see provisions of your Prescription *Drug* Card Program.
- **Cochlear implant.**
- **Educational.** Expenses that are related to educational services rendered for diabetic counseling, peritoneal dialysis, or any other educational service deemed to be *medically necessary* by the *Plan*.
- **Genetic testing and/or counseling.** For genetic testing or counseling.
- **Midwives.**
- **Orthotics**
- **Growth hormone therapy** as part of a treatment program approved by the *Plan Administrator*.
- **Surgical extraction of bone-impacted teeth.**
- **Prenatal vitamins.**
- **Sterilization procedures, elective.**
- **Oral *surgical* procedures**, including:
  - Excision of tumors and cysts of the jaws, cheeks, lips, tongues, roof and floor of the mouth.
  - *Emergency* repair due to *injury* to sound natural teeth.
  - *Surgery* needed to correct accidental *injuries* to the jaws, cheeks, lips, tongue, floor and roof of the mouth.
  - Excision of benign bony growths of the jaw and hard palate.
  - External incision and drainage of cellulitis.
  - Incision of sensory sinuses, salivary glands or ducts.
- **Treatment of temporomandibular joint dysfunction.** Treatment will be limited according to the “Schedule of Benefits” section.
- **Chelation therapy** for a diagnosis of lead poisoning, or a diagnosis of anemia for a *child*.
- **Wig** for hair loss after receiving chemotherapy– 1 wig per calendar year, maximum payment \$500 per calendar year.

## MEDICAL EXCLUSIONS AND LIMITATIONS

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This Plan will not reimburse any expense that is not a *covered expense*. This *Plan* does not cover any charge for services or supplies:

- **Abortion.** Expenses that are *incurred* directly or indirectly as the result of an abortion except when the life of the mother would be threatened if the fetus were carried to term, or when complications arise.
- **Acupuncture.**
- **Chemical Dependency.**
- **Corrective shoes.** For corrective shoes.
- **Counseling.** For counseling, except as specifically the result of a *mental or nervous condition*, for:
  - Marital difficulties
  - Social maladjustment
  - Pastoral issues
  - Financial issues
  - Behavioral issues
  - Lack of discipline or other antisocial action.
- **Custodial care.** For *custodial care*, except as specified.
- **Dental hospital admissions.** Related to dental *hospital* admissions, unless determined to be *medically necessary* because of a concomitant condition.
- **Dental prescriptions.** For dental prescriptions (e.g., Peridex, fluoride).]
- **Dental.** Expenses that are related to dental treatment, except as specifically provided in this *Plan*.
- **Developmental delay.** For developmental disorders, including learning disabilities, mental retardation or autism.
- **Eating disorders.** That are related to eating disorders (e.g., anorexia and bulimia). This does not apply to any care for an underlying *mental or nervous condition*.
- **Educational.** Expenses that are related to education or vocational training.
  - This exclusion does not apply to educational services rendered for diabetic counseling, peritoneal dialysis, or any other educational service deemed to be *medically necessary* by the *Plan*.
- **Excess over semi-private rate.** That are in excess of the semi-private room rate, except as otherwise noted.
- **Experimental.** That are *experimental*.

**PRESCRIPTION DRUG BENEFIT LIBRARY OPTIONS (Continued)**

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Benefits are provided for the purchase of *drugs* through the *Plan's* Prescription Drug Card Program. The *covered person* must purchase the prescription *drugs* through the Prescription Drug Card Program, and use either a participating pharmacy or the "mail order option." If a *covered person*, who is traveling and is at least 100 miles from home, must purchase a prescription *drug* at a non-participating pharmacy due to an *emergency*, the *Plan* will reimburse the cost of the *drug* at the *PPO Network Provider* percentage payable after satisfaction of the *PPO Network Provider deductible*, shown above."

**Prescription *drugs* that are not purchased through the *Plan's* Prescription Drug Card Program will be covered as Drugs integrated with medical plan above.**

**The *Plan's* Prescription Drug Card Program is administered by Caremark. Caremark has a network of pharmacies which can identify *covered persons* and the *Plan's* coverage provisions. To find out which pharmacies participate, contact Caremark at (866) 475-0056.**

**Covered Prescriptions**

Under the Prescription Drug Card Program, *covered expenses* include:

- Federal legend *drugs*.
- State-restricted *drugs*.
- Insulin.
- Syringes and needles used only to inject insulin.
- **Contraceptives including devices, implants, injectables, and oral contraceptives except for all "emergency" contraceptives such as Levonelle, EllOne & Mifeprex and "emergency" IUD's.**
- **Acne/ Skin Disease Medications**
- **Prenatal and Pediatric Vitamins**

Certain *drugs* are not covered, even when prescribed by your *physician*. Please refer to the list of "Excluded Drugs" below.

**How the Program Works**

There are two ways to purchase drugs through the *Plan's* Prescription Drug Card Program. You may save money by using the "mail order option" if you have prescription *drug(s)* that you must take on an on-going basis.

- To fill a prescription at a participating pharmacy (the "pharmacy option"), simply present your *Plan* ID card and pay your portion of the cost (shown in the "Schedule of Benefits"). The pharmacist will file the claim for you.
- To fill a prescription through the Drug Card Program's "mail order option":
  - Obtain a copy of the mail order form from CVS Caremark.
  - Complete the patient profile questionnaire (for your first order only).

**PRESCRIPTION DRUG BENEFIT LIBRARY OPTIONS (Continued)**

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- Ask your *physician* to prescribe the needed medication for a 90-day supply, plus refills.
- If you are presently taking medication, you will need a new prescription.
- If you need the medication immediately, **but will be taking it on an on-going basis**, ask your *physician* for two prescriptions: one for a 14-day supply that you can have filled at a local pharmacy, and one for the balance of the prescription, up to a 90-day supply, that you can submit through the “mail order option.”
- Send the completed patient profile questionnaire to the address on the form with your original prescription(s), along with your check for payment of your portion of the cost (shown in the “Schedule of Benefits”).

**Once your order is processed, it will be sent to you via First Class Mail and it will include instructions for the re-order of future prescriptions and/or refills.**

Copayments for the Prescription Drug Card Program do not accumulate toward the *out-of-pocket expense* limit.

**Excluded Drugs**

The *Plan* will not cover the following *drugs*, even when prescribed by the *covered person's physician*:

- **Anorexiant**s (weight control *drugs*).
- **“Emergency Contraceptives”** all emergency contraceptives such as Levonelle, EllaOne, & Mifeprex and all emergency IUD's and devices.
- ***Experimental or investigational drugs***, including compounded medications for non-FDA-approved use.
- ***Drugs which are not medically necessary for the treatment of an illness, injury or pregnancy.***
- **Fertility medications.**
- **Fluoride.**
- **Growth hormones.**
- **Non-legend *drugs***, other than insulin.
- **Provided in or through a *Physician's office*** (*drugs* intended for use in a setting other than the *physician's office*).
- **Cosmetic for Hair loss including but not limited to Rogaine.**
- **Smoking cessation products.**
- **Therapeutic devices** or appliances, support garments, and other non-medical substances.]
- **Vitamins**, except prenatal and pediatric.
- **Workers' Compensation:** prescriptions which an eligible person is entitled to receive, without charge, under any workers' compensation law, or under any municipal, state or federal program.

**Exhibit A-8**

**“Lines Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?”**

**Testimony of Dr. Samuel W. “Dub” Oliver  
President, East Texas Baptist University, Marshall, Texas  
Before the  
Committee on Oversight & Government Reform  
U.S. House of Representatives**

**February 16, 2012**

Good afternoon Chairman Issa and Ranking Member Cummings.

I appreciate your invitation to share my concerns about this serious threat to religious liberty. My name is Dub Oliver and I serve as the President of East Texas Baptist University in Marshall, Texas, a Christ-centered university founded in 1912.

I would like to raise four main points during my testimony this morning.

**1. East Texas Baptist University has a religious objection to this mandate, and this mandate violates our constitutional rights.**

Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon religious liberty. America’s first Baptist leader, Roger Williams, had to flee Massachusetts and found a colony in Providence, Rhode Island, because his religious beliefs were not tolerated.

But it’s not just about us. Baptists are alarmed whenever any religious group’s rights are threatened. As the famous Baptist preacher, George W. Truett once said, “A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else.”

I would be testifying here even if this mandate only affected my Catholic neighbors. But I must point out that this is not just a Catholic issue. While many Christians do not share the Catholic beliefs against contraception, there is wide agreement that abortion is wrong. And we believe, based on the Bible, that life begins at conception. The Administration’s mandate covers emergency contraceptives such as Plan B and *ella*, which even this Administration admits interfere with a human embryo.

Our faith and the most recent science tells us that these drugs cause abortions. But under the Administration’s mandate, my university will be required to buy insurance so that our employees

can obtain these drugs for free, as if these drugs are no different than penicillin. We believe that is wrong.

**2. We are offended that this Administration says that we aren't "religious" enough to have our religious beliefs respected.**

Last Friday, the Administration gave final approval to a rule that includes the narrowest definition of a religious organization ever to appear in federal law. ETBU does not qualify because we teach and serve non-Christians (we accept students of all faiths and students of no faith).

The President has now promised that he will someday propose another regulation that will protect groups that the government says aren't religious enough for an exemption, but still religious enough for some accommodation.

Why is the government creating different classes of religious groups and assigning each group different rights? That is not the government's job. The First Amendment is designed precisely to stop the government from this sort of picking and choosing.

**3. This issue is not about women's health.**

This is about whether the government can get away with trampling on the rights of religious organizations.

It's ridiculous to claim that organizations like mine don't care about women's health. As far as I am aware, no religious group objects to most of the preventative services in the mandate. In fact, we already cover preventative services, including contraceptives, under our employee health plan. We simply object to a few drugs, which the government calls contraceptives, because we believe they cause abortions.

Additionally, I've heard it suggested that this mandate is necessary to increase access to contraception. The President said last Friday that close to 99% of women use contraception. I don't know if that number is true, but surely if the President is quoting this number he knows there is no problem accessing these drugs.

This issue is not about women's health, it is about religious liberty. It is about whether the government will force religious people and organizations to do something they believe is wrong. Everyone here wants women to have access to quality health care. What we are asking is that our religious views be respected.

**4. If the government is allowed to go down this road, where will it end?**

To close, perhaps the most frightening aspect of this entire episode for ETBU is that we have no idea where this road will end. Today, the Administration is trying to force us to provide our employees with abortion causing drugs. What's next?

If the government can force Catholic monks to dispense birth control, what can't the government do? If the government can decide that ETBU is not religious enough to have the right to religious liberty, what can't the government do? If this administration can just decide that religious beliefs are less important than its chosen policy goals, what can't it do?

These questions are alarming. And that is why people from all across the spectrum are joining together out of concern that this mandate threatens to erode one of our most precious rights, our religious liberty, guaranteed to us by the First Amendment. I urge this Committee and Congress to act to ensure religious liberty for those of us at East Texas Baptist University, and for all Americans.

**Exhibit A-9**



# EAST TEXAS BAPTIST UNIVERSITY

June 19, 2012

## Submitted Electronically

**TO:** Secretary Kathleen Sebelius  
Department of Health and Human Services

**FROM:** Samuel W. "Dub" Oliver, Ph.D.  
President

A handwritten signature in blue ink, reading "Samuel W. 'Dub' Oliver", is written over the printed name of the sender.

**SUBJECT:** CMS-9968-ANPRM

I write on behalf of East Texas Baptist University to express our grave concern about the regulations regarding certain preventive health services under provisions of the Patient Protection and Affordable Care Act (Affordable Care Act) including the proposed amendments published as final regulations February 15, 2012.

Our institution objects to the mandate for several reasons. While the use of the term "accommodation" has created the impression that the Administration has alleviated the concerns of the religious community, nothing could be further from the truth. The proposed accommodation fails to address the violation of religious liberty at the heart of the HHS mandate.

We are offended that this Administration says that we aren't religious enough to have our beliefs respected. The Administration has given final approval to a rule that includes the narrowest definition of a religious organization ever to appear in federal law or rule making. East Texas Baptist University does not qualify for the religious exemption because we teach and serve non-Christians (we accept students of all faiths and students of no faith). The Administration's definition of religious groups undermines a fundamental truth of our faith, our call to go into all the world serving, teaching, and preaching the gospel. The Administration's definition of religious activity is also directly contrary to the mission of East Texas Baptist University because we believe that faith can and should be integrated with all things and our goal is to teach our students to live out their faith in all aspects of their lives.

Why is the government creating different classes of religious groups and assigning each group different rights? That is not the government's job. The First Amendment is designed precisely to stop the government from this sort of picking and choosing. East Texas Baptist University objects to the creation, in federal law, of two classes of religious organizations (churches,

**PRESIDENT**

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(903) 923-2222 WWW.ETBU.EDU

dedicated to worship and religious training, which are fully exempt, and religious organizations like ours, dedicated to serving those outside our faith community, whose conscience concerns receive less protection). The best corrective action the Administration can take is to extend to faith based organizations the same exemption that the regulations currently grant to churches. This would bring the regulations in line with the long standing, respected, and court tested provisions of Title VII of the 1964 Civil Rights Act [§§702, 703(e)] which provide a specific employment exemption for every kind of religious organization, whether they be defined as “a religious corporation, association, educational institution, or society.”

Additionally, East Texas Baptist University objects, for religious and moral reasons, to including abortifacients in our health plan. We believe, based on the Bible, that life begins at conception, and that abortion on demand is wrong. We object to the Administration’s mandated coverage of emergency contraceptives such as Plan B (the morning after pill) and *ella* (the week after pill), which even this Administration admits interfere with a human embryo. Our faith and the most recent science tell us that these drugs cause abortions. However, under the Administration’s mandate, our University will be required to buy insurance so that our employees can obtain these drugs for free, as if these drugs are no different than penicillin. We believe that is wrong.

Further, we object to an “accommodation” in which the insurance company will provide abortifacients to our employees. As a self-funded plan, we are the insurer. To act as though the costs associated with morally objectionable drugs would not be directly contributed by the institution is to demonstrate a fundamental lack of understanding of markets for goods and services.

Baptists in America, by virtue of our history, are particularly sensitive to coercive government actions that infringe upon religious liberty. America’s first Baptist leader, Roger Williams, had to flee Massachusetts and found a colony in Providence, Rhode Island, because his religious beliefs were not tolerated. But it’s not just about us. Baptists are alarmed whenever any religious group’s rights are threatened. As the famous Baptist preacher, George W. Truett once said, “A Baptist would rise at midnight to plead for absolute religious liberty for his Catholic neighbor, and for his Jewish neighbor, and for everybody else.” We stand in solidarity with other religious communities that have deep moral objections to the use of contraceptives and abortifacient drugs.

East Texas Baptist University cares deeply about the health of our employees – women and men alike. This issue is not about women’s health, it is about religious liberty. It is about whether the government will force religious people and organizations to do something they believe to be wrong. If the government is allowed to go down this road, where will it end? Today, the Administration is trying to force us to provide our employees with abortion-causing drugs. What’s next?

If the government can force Catholic monks to dispense birth control, what can’t the government do? If the government can decide that East Texas Baptist University is not religious enough to have the right to religious liberty, what can’t the government do? If this Administration can just decide that religious beliefs are less important than its chosen policy goals, what can’t it do?

These questions are alarming. And that is why people are joining together out of concern that this mandate threatens to erode one of our most precious rights, our religious liberty, guaranteed to us by the First Amendment. I urge you and your colleagues to act to ensure religious liberty for those of us at East Texas Baptist University, and for all Americans.

# **Exhibit B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

EAST TEXAS BAPTIST UNIVERSITY, and  
HOUSTON BAPTIST UNIVERSITY,

*Plaintiffs,*

v.

KATHLEEN SEBELIUS, *et al.*

*Defendants.*

Civil No. 12-3009

**DECLARATION OF  
DR. ROBERT B. SLOAN**

**Declaration of Dr. Robert B. Sloan  
President, Houston Baptist University**

1. My name is Robert B. Sloan. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of Houston Baptist University (“Houston Baptist”). I have served as Houston Baptist’s President since September 1, 2006.

2. Like other employees of Houston Baptist, my family and I depend upon Houston Baptist’s health insurance. I make this declaration not only as a college president, but as an employee, a husband and father. The loss of Houston Baptist’s insurance plan would not only be a professional crisis, but a deep personal concern for my family.

3. I understand that Houston Baptist will face nearly \$13 million in annual fines—along with potential penalties and lawsuits—if it continues to follow its religious beliefs by refusing to offer health insurance that covers abortion-causing drugs and devices. As a college president, I know the kind of strain that this would place on a small liberal arts college. As the president of a Christian college, I know that our responsibility is to the faith that animates us, the reason Houston Baptist exists.

**I. Houston Baptist's history and beliefs**

4. Houston Baptist is a Christian liberal arts college in Houston, Texas that was founded in 1960 by the Baptist General Convention of Texas. Houston Baptist Website – About – History. A true and complete copy of the sections of Houston Baptist's website cited in this Declaration is attached as Exhibit B-1.

5. Houston Baptist's theological heritage is with Texas Baptists, and through its affiliation with the Baptist General Convention of Texas, it is also connected with the national Southern Baptist Convention.

6. Houston Baptist's mission is "to provide a learning experience that instills in students a passion for academic, spiritual, and professional excellence as a result of our central confession, 'Jesus Christ is Lord.'" Houston Baptist 2012-13 Student Handbook at 12 ("Student Handbook," 84 p.). A true and complete copy of the sections of the Student Handbook cited in this Declaration is attached as Exhibit B-2.

7. Today, Houston Baptist is a thriving academic community, serving over 2,800 students in 33 undergraduate degree programs and 15 graduate degree programs.

8. Houston Baptist is guided by its commitment to "stand as a witness for Jesus Christ." To that end, since 1974, Houston Baptist's bylaws have required that "all those who become associated with Houston Baptist University as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the sins of all men and thereafter arose from the grave, that by

repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God . . . .” Ex. B-2 (Student Handbook at 12).

9. Houston Baptist welcomes students of all religious backgrounds. But because Houston Baptist is a distinctively Christian community, all students who enroll at Houston Baptist are expected to abide by the Student Code of Conduct, which reflects Houston Baptist’s commitment to the sanctity of life from conception to death. Ex. B-2 (Student Handbook at 54).

10. Houston Baptist’s mission as an academic community is not merely the transmission of information; its goal is to “express Christ’s Lordship as a function of its academic mission.” The Ten Pillars: A 12 Year Vision for the Future of Houston Baptist at 4 (“Ten Pillars,” approx. 30 p.). A true and complete copy of the sections of Ten Pillars cited in this Declaration is attached as Exhibit B-3.

## **II. Houston Baptist’s Beliefs and Teachings on Abortion**

11. Houston Baptist affirms that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death. As Genesis 1 says, “God created mankind in his own image.” Genesis 1:27a (NIV). And as Psalm 139 says, “For you [God] created my inmost being; you knit me together in my mother’s womb. . . . all the days ordained for me were written in your book before one of them came to be.” Psalm 139:13, 16 (NIV).

12. The 2000 Baptist Faith & Message, a statement of “doctrines . . . essential to the Baptist tradition of faith and practice” puts it this way: “[t]he sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love.” 2000

Baptist Faith & Message (8 p.). A true and complete copy of the sections of the 2000 Baptist Faith & Message cited in this Declaration is attached as Exhibit B-4.

13. Houston Baptist affirms that Scripture condemns the taking of innocent human life (Exodus 20:13 (NIV)) and commands Christians to protect the weak and vulnerable. As the Scriptures say, we are to “[d]efend the weak and the fatherless,” “[r]escue the weak and the needy,” and “speak up for those who cannot speak for themselves.” Psalm 82:3-4b (NIV); Proverbs 31:8a (NIV). And as the 2000 Baptist Faith & Message says, “We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.” Ex. B-4.

14. Houston Baptist’s beliefs about the sanctity of life are reflected in its requirements for faculty, all of whom are expected to affirm and teach that human life exists from conception to natural death, that the dignity of life is a gift from God, and that as a result abortion, except in cases where it is necessary to save the physical life of the mother, is sin.

15. Houston Baptist’s beliefs about the sanctity of life are also reflected in its Student Code of Conduct, which affirms that Houston Baptist “embraces a biblical position which honors the sanctity of life,” and “cannot support actions which encourage or result in the termination of human life through suicide, euthanasia, or abortion-on-demand.” As a result, when students face a crisis pregnancy, “the campus community is prepared to stand with both the father and mother of the unborn child” and is “committed to assisting the student(s) with” alternatives to abortion in a way that is “supportive and redemptive.” Ex. B-2 (Student Handbook at 57).

16. It is a violation of Houston Baptist’s teachings and religious beliefs to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services.

17. Houston Baptist has a sincere religious objection to providing coverage for the emergency contraceptive drugs Plan B and Ella, since it believes those drugs could prevent a human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo. The same objection applies to abortion-causing IUDs.

18. Houston Baptist considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

19. Therefore it is a violation of Houston Baptist's teachings and religious beliefs for it to deliberately fund, sponsor, underwrite, or otherwise facilitate access to Plan B and Ella, or abortion-causing IUDs.

20. It is similarly a violation of Houston Baptist's religious beliefs to deliberately take any action (including providing access to health insurance) that would facilitate access to abortion-causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a third party administrator and not by Houston Baptist.

21. As the Ethics & Religious Liberty Commission—the public policy arm of the Southern Baptist Convention—has said, requiring employers to provide “free access to . . . abortion-inducing drugs like Ella and Plan B (the “morning after” pill), [and] abortion-causing IUDs . . . will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience.” Ethics & Religious Liberty Commission HHS Fact Sheet (“ERLC Fact Sheet,” 2 p.). A true and complete copy of the sections of the ERLC Fact Sheet cited in this Declaration is attached as Exhibit B-5.

22. Consistent with these religious beliefs, Houston Baptist's employee health benefit plan does not cover abortions or emergency contraception such as Plan B, Ella, or abortion-causing

IUDs. GuideStone Health Choice 2000 Plan Summary at 2, 4 (“GuideStone Plan Summary,” 6 p.); GuideStone Preventive Care Schedule at 4 (4 p.). A true and complete copy of the sections of the GuideStone Plan Summary cited in this Declaration is attached as Exhibit B-6. A true and complete copy of the sections of the GuideStone Preventive Care Schedule cited in this Declaration is attached as Exhibit B-7.

### **III. Houston Baptist’s health benefits and practices**

23. As part of its religious convictions, Houston Baptist promotes the well-being and health of its employees. This includes provision of generous health services and health benefits for its employees.

24. Houston Baptist has about 355 full-time and 118 part-time employees. All of these employees believe and teach the historic Christian message that salvation is found through Jesus Christ. The overwhelming majority of these full-time employees and their families rely upon Houston Baptist’s health benefits.

25. Houston Baptist’s health benefits plan (“Plan”) is provided through GuideStone Financial Resources of the Southern Baptist Convention (“GuideStone”).

26. Started in 1918 to provide financial relief to aging ministers and their families, GuideStone’s mission is “to assist churches, denominational entities, and other evangelical ministry organizations by making available” a variety of retirement, investment, and insurance programs. Meet Southern Baptists, Your GuideStone Financial Resources at 1 (“GuideStone Brochure,” 2 p.). A true and complete copy of the sections of the GuideStone Brochure cited in this Declaration is attached as Exhibit B-8.

27. GuideStone is a church health plan. “Among the oldest health plans in the nation, church health plans are self-funded, multiple employer health plans operated by not-for-profit church benefits boards” and given a special status by the IRS. GuideStone PPCA Overview at 3 (16 p.).

A true and complete copy of the sections of the GuideStone PPCA Overview cited in this Declaration is attached as Exhibit B-9.

28. Although GuideStone provides women's preventive services—including most FDA-approved contraceptives—without cost-sharing, GuideStone “does not provide coverage for abortions and abortion-causing drugs, as this violates [its] Biblical convictions on the sanctity of life.” Ex. B-9 (GuideStone, PPCA Overview at 5).

29. Thus, Houston Baptist's Plan excludes abortions and emergency contraceptives, including Plan B, Ella, and abortifacient IUDs.

30. Houston Baptist's Plan covers other types of contraceptives. Houston Baptist does not have religious objections to non-abortion-causing forms of contraception.

31. I have been informed that Houston Baptist's Plan does not meet the definition of a “grandfathered” plan under 42 U.S.C. § 18011 and 75 Fed. Reg. 41,726, 41,731 (2010).

32. Houston Baptist wishes to continue to provide high-quality, affordable health benefits for its employees. Doing so is consistent with our religious commitment to support our faculty, staff, and their families.

33. If Houston Baptist had to terminate the Plan and stop offering health benefits, it would be a serious hardship on most faculty and staff, including myself.

34. If Houston Baptist had to terminate the Plan and stop offering health benefits, it would suffer serious competitive disadvantages in recruiting and retaining faculty and staff.

35. If Houston Baptist had to terminate the Plan and stop offering health benefits, it is inevitable that, due to the loss of competitive advantage, the quality of its programs and instruction would suffer.

#### **IV. The final form of the Mandate and Houston Baptist's choice**

36. The regulations imposing these requirements (“Mandate”) force Houston Baptist to provide access to abortion-causing drugs, including Plan B, Ella, and abortion-causing IUDs, in violation of Houston Baptist’s religious beliefs. The Mandate also forces Houston Baptist to provide access to education and counseling concerning abortion that directly conflicts with Houston Baptist’s religious beliefs and teachings.

37. Providing these drugs, counseling, and education is incompatible and irreconcilable with Houston Baptist’s religious beliefs, express messages, and speech.

38. Providing these drugs, counseling, and education is also incompatible and irreconcilable with the religious beliefs, express messages, and speech of Houston Baptist’s health benefit provider, GuideStone.

39. I am aware of the Mandate’s exemption provision for religious employers. Houston Baptist cannot qualify for this exemption. Houston Baptist is not 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. Specifically, it is not a church, an integrated auxiliary of a church, a convention or association of churches, or a religious order.

40. Because Houston Baptist does not qualify for an exemption to the Mandate, we sincerely hoped the U.S. Department of Health and Human Services (“HHS”) would decide to broaden the exemption to cover religious institutions like Houston Baptist. However, HHS did not do so.

41. On July 2, 2013, HHS published its final amendments to the Mandate. 78 Fed. Reg. 39,870 (“Final Rule”). Despite over 400,000 comments filed by members of the public, HHS did not abolish the distinction between churches and religious institutions like Houston Baptist. Instead, HHS adopted an “accommodation” that requires Houston Baptist to play a central role in facilitating access to abortion-causing drugs and devices by—among other things—finding and

designating a third party administrator to provide abortion-causing drugs and devices on our behalf.

42. The Final Rule also extends the current safe harbor—which is a temporary halt on government (but not private) enforcement of the Mandate—through the end of 2013. 78 Fed. Reg. at 39889.

#### **V. The effects of the “accommodation” on Houston Baptist**

43. An organization is eligible for the accommodation if it (1) “opposes providing coverage for some or all of the contraceptive services required”; (2) “is organized and operates as a nonprofit entity”; (3) “holds itself out as a religious organization”; and (4) “self-certifies that it satisfies the first three criteria.” 78 Fed. Reg. at 39874. I understand that Houston Baptist is an “eligible organization.”

44. The self-certification must be executed “prior to the beginning of the first plan year to which the accommodation is to apply.” 78 Fed. Reg. at 39875.

45. Thus, Houston Baptist would need to execute the self-certification prior to its first plan year that begins on or after January 1, 2014. 78 Fed. Reg. at 39875.

46. The Mandate does not provide any guidance for “eligible organizations” that are insured through church health plans like GuideStone. For example, it is not clear whether Houston Baptist is required to deliver its self-certification to GuideStone, which provides Houston Baptist with its health plan, or Highmark Blue Cross Blue Shield (“Highmark”), the third party administrator that GuideStone has contracted with to administer its church health plan. Either course of action would violate Houston Baptist’s religious beliefs.

47. If Houston Baptist delivered its self-certification to GuideStone, Houston Baptist would be asking another Baptist organization to violate Baptist teaching and deliver morally

problematic drugs to its employees. This is an independent burden on Houston Baptist's conscience.

48. Delivering the self-certification to GuideStone's third party administrator Highmark is also morally unacceptable, because it forces Houston Baptist to enter into a new relationship with GuideStone's third party administrator for the specific purpose of providing objectionable drugs.

49. In either event, delivery of the self-certification would trigger an obligation to begin providing Houston Baptist employees with payment coverage for abortion-causing drugs and devices. Houston Baptist would be arranging for this coverage to be "outsourced" to another entity.

50. Houston Baptist's religious beliefs preclude it from soliciting, contracting with, or designating a third party to provide the objectionable drugs and services. From Houston Baptist's perspective, forcing GuideStone or Highmark to provide free access to abortifacient services is no different than directly providing that access. Houston Baptist cannot outsource its conscience.

51. The Mandate assumes that once it has received the self-certification, Highmark will be willing to make "separate payments for contraceptive services for participants and beneficiaries in the plan." 78 Fed. Reg. at 39880.

52. However, I understand that HHS has acknowledged that "there is no legal obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities." 78 Fed. Reg. at 39880.

53. At this time, I do not know whether Highmark will be willing to carry out the obligations of the Mandate.

54. Moreover, the Mandate requires that, even if the third party administrator consents, the religious organization—via its self-certification—must expressly designate the third party administrator as “an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries.” 78 Fed. Reg. at 39879.

55. The self-certification must specifically notify the third party administrator of its “obligations set forth in the[] final regulations, and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA.” 78 Fed. Reg. at 39879.

56. Because the designation makes the third party administrator a plan administrator with fiduciary duties, the payments for contraceptive and abortifacient services would be payments made under Houston Baptist’s health benefits plan.

57. Because Houston Baptist would be required to identify and designate a third party administrator willing to administer the contraceptive and abortifacient services, Houston Baptist’s religious beliefs preclude it from complying with the accommodation.

58. Houston Baptist would have to identify its employees to the third party administrator for the distinct purpose of assisting the government’s scheme to provide free access to contraceptive and abortifacient services.

59. The third party administrator’s obligation to make direct payments for contraceptive services and abortion services would presumably continue only “for so long as the participant or beneficiary remains enrolled in the plan.” 78 Fed. Reg. 39876 (discussing insured plans).

60. Thus, Houston Baptist would have to coordinate with its third party administrator regarding when it was adding or removing employees and beneficiaries from its healthcare plan and, as a result, from the contraceptive and abortifacient services payment scheme.

61. Third party administrators would be required to notify plan participants and beneficiaries of the contraceptive and abortifacient payment benefit “contemporaneous with (to the extent possible) but separate from, any application materials distributed in connection with enrollment” in a group health plan. 78 Fed. Reg. at 39880.

62. This would also require Houston Baptist to coordinate the notices with its third party administrators.

63. Thus, even under the accommodation, Houston Baptist and every other non-exempt objecting religious organization would continue to play a central role in facilitating free access to contraceptive and abortifacient services.

64. I understand that the Mandate sets forth complex means through which a third party administrator may seek to recover its costs incurred in making payments for contraceptive and abortifacient services.

65. But I also understand that there is no way to ensure that the cost of administering the abortifacient services would not be passed down to Houston Baptist through increased fees.

## **VI. The Mandate’s impact on Houston Baptist**

66. Houston Baptist will be subject to enforcement under the Mandate—enforcement that includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2014. The only way Houston Baptist could avoid those harsh consequences would be to publicly abandon its faith commitments and violate its religious convictions. This is no choice at all, because Houston Baptist’s faith is central to its identity, its mission, and its very existence.

67. If Houston Baptist chooses to violate the law—by ceasing to offer employee health insurance altogether, or by offering insurance without the objectionable coverage—then it will be penalized with fines of \$2000 per full-time employee per year, or roughly \$710,000 per year, every year.

68. Although the government has recently announced that it will postpone implementing the annual fine of \$2000 per employee for organizations that drop their insurance altogether, the postponement is only for one year, until 2015.

69. In addition to the \$2000 per-employee penalty, Houston Baptist could also face tax penalties of \$100 per day “for each individual to whom such failure relates” 26 U.S.C. § 4980D(b)(1), for offering insurance that fails to comply with the ACA, which would come to \$12,957,500 per year for our 355 full-time employees alone.

70. A nearly \$13 million fine would be devastating for nearly any college, but it is particularly devastating for a small liberal arts college like Houston Baptist.

71. I also understand that Houston Baptist could also face regulatory action and lawsuits under ERISA.

72. The Mandate imposes a burden on Houston Baptist’s employee recruitment and retention efforts by creating uncertainty as to whether Houston Baptist will be able to offer health benefits beyond 2013.

73. The Mandate places Houston Baptist at a competitive disadvantage in its efforts to recruit and retain employees.

74. The Mandate forces Houston Baptist to choose between, on the one hand, violating its religious beliefs, and, on the other hand, incurring substantial fines and terminating its employee health benefits.

75. Houston Baptist wants to continue to provide high-quality health benefits for its employees. It has no objections to providing almost all of the mandated services, including gestational diabetes screenings, well-woman visits, and most prescription contraceptives. It asks only that it be permitted to follow its beliefs by continuing to refuse to pay for, or provide access to, abortifacients.

76. Houston Baptist does not have a real choice in this matter. Its religious beliefs are deep, longstanding, and sincere.

## **VII. The need for immediate action**

77. Houston Baptist's plan year begins on January 1, 2014. Houston Baptist must begin planning now for the 2014 insurance plan year.

78. Every fall, Houston Baptist works with Guide Stone to set the terms of the Plan for the upcoming year. The process is time consuming: Houston Baptist's HR department must negotiate and work with GuideStone on plan changes and on the production and distribution of plan materials and employee health benefit cards. This process typically takes Houston Baptist two months.

79. Houston Baptist plans to begin the planning process in August, to give itself adequate of time to make any necessary changes before the January 2014 plan year begins. Therefore any major changes must be known to Houston Baptist by September at the latest.

80. Houston Baptist needs to implement any major changes prior to November 4, 2013, the first date of the two-week open enrollment period for employees and their families.

81. Houston Baptist needs immediate relief from the Mandate in order to arrange for and continue providing employee health benefits. Delay could lead to a lapse in coverage. Denial of

immediate relief will force Houston Baptist to choose between its religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

82. The consequences for Houston Baptist's employees would be severe. If my family's insurance plan is cancelled, we will be forced to seek expensive individual policies on the private market.

83. I am not alone. As Houston Baptist confronts the looming deadline, I have been approached by employees who have expressed fears for themselves and their families about what would happen if Houston Baptist is forced to stop offering health insurance.

84. Not being covered by Houston Baptist's insurance would create serious hardship for many. Our employees include people battling cancer, people undergoing dialysis, and people with dependents who require repeated medical interventions. For these employees in particular, seeking insurance on the health insurance exchanges would present a significant burden.

85. I hope they will not have to make that choice. I hope that we will have relief from the Mandate prior to January 1.

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

Executed on Thursday, August 30, 2013 in Houston, Texas.

  
Dr. Robert B. Sloan

**Exhibit B-1**

## GENERAL INFORMATION

President's Welcome

Accreditation

History

Writing 50 Years of History

University Leadership

Mission and Values

The Ten Pillars

University  
Calendar Spirit of Excellence

HBU in the News

Viewbook

Giving to HBU

Consumer Information

The Guild

## History

Houston Baptist College was created by action of the Baptist General Convention of Texas on November 15, 1960, culminating many years of work and study. The aim of our founders was to establish a Christian college of the highest order in the city of Houston that stressed quality of life as well as quality of learning.

In 1952, the Union Baptist Association authorized a committee to study the possibility of locating a Baptist college in Houston. With the assistance and encouragement of the Education Commission of the Baptist General Convention of Texas, the committee conducted a survey in 1955. Acting upon information obtained with the endorsement of the Education Commission, the Association approved the concept of establishing a new college. In 1956, the Executive Board of the Baptist General Convention of Texas agreed to support such a college when the College Committee of Union Baptist Association had succeeded in acquiring both (1) a satisfactory site for a campus of at least one hundred acres, and (2) a minimum corpus of at least three million dollars. Of this sum, one and a half million dollars would constitute a nucleus endowment fund; one and a half million dollars would be designated for a physical plant. The Union Baptist Association accepted these conditions and endorsed the requirements set up by the state Baptist convention.

In 1957, a Houston land developer, Frank Sharp, offered to sell Union Baptist Association 390 acres in southwest Houston for the construction of a college. The Board of Governors of Rice University agreed to lend most of the money needed with the land as collateral. To complete the funding, twenty-five businessmen, since called "founders," pledged to be responsible for \$10,000 each. Therefore, by 1958, a campus site of 196 acres was acquired in southwest Houston, and in 1960, the initial financial goal of repaying the loan was reached as a result of a campaign among the churches.

In 1960, the Baptist General Convention of Texas elected the first Board of Trustees. On November 15, 1960, the board approved and signed the college charter. The next day, this charter was ratified and recorded with the Secretary of State in Austin. The way was then cleared to select administrative officers, develop a suitable physical plant and design an appropriate academic program. Dr. W. H. Hinton began service as the first President of the college on July 1, 1962.

The college opened in September 1963 with a freshman class of 193 students, a cluster of new buildings and thirty faculty. When classes began, only the Brown Academic Quadrangle and the campus dormitories were completed. A new class was added each year until the college attained a four-year program in 1966-67. By then, the full-time faculty had grown to fifty-four members, serving an enrollment of approximately 900 undergraduate students.

In 1973, Houston Baptist College officially became Houston Baptist University. And in 1977, the first master's degree program, the Master of Business Administration, was offered.

HBU has grown into a thriving community of faith and scholarship since its founding more than 50 years ago. And today, HBU has more than 2,500 students and offers in excess of 40 majors through its six colleges, including the Honors College added in 2008. The campus now holds 27 buildings, including three residence colleges, the Husky Village apartments and three museums.

### Further Reading

Retired University professor Dr. Marilyn McAdams Sibley authored a history of the early years of the founding of the University, *To Benefit a University: The Union Baptist Association College Property Committee, 1958-1975*. A more complete history of the University covering the period from its chartering in 1960 to its fiftieth anniversary, *An Act of Providence*, was written by Dr. Don Looser, Vice President Emeritus, and published in 2011.

**Exhibit B-2**

## **Student Handbook 2012-2013**

HBU complies with all applicable federal and state non-discrimination laws and does not engage in prohibited discrimination on the basis of race, color, nationality, or ethnic origin, gender, age, or disability in either employment or the provision of services.

Inquiries concerning the notice or the application of the laws referenced herein should be referred to the Director of Student Life.

The content of this handbook is subject to change when deemed necessary by the University to meet the evolving needs of students, the community and the institution. Changes will be noted in the online version of the handbook.

## HBU Distinctives

### Our Mission

*The mission of Houston Baptist University is to provide a learning experience that instills in students a passion for academic, spiritual, and professional excellence as a result of our central confession, "Jesus Christ is Lord."*

-- Unanimously approved by the Board of Trustees, February 24, 2009

### Our Values

The Preamble to the University By-Laws as stated below describes the distinctive nature of the institution.

*The Houston Baptist University is a Christian liberal arts university dedicated to the development of moral character, the enrichment of spiritual lives, and the perpetuation of growth in Christian ideals.*

*Founded under the providence of God and with the conviction that there is a need for a university in this community that will train the minds, develop the moral character and enrich the spiritual lives of all people who may come within the ambit of its influence, HOUSTON BAPTIST UNIVERSITY shall stand as a witness for Jesus Christ expressed directly through its administration, faculty and students. To assure the perpetuation of these basic concepts of its founders, it is resolved that all those who become associated with Houston Baptist University as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the sins of all men and thereafter arose from the grave, that by repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God; and it is further resolved that the ultimate teachings in this University shall never be inconsistent with the above principles.*

### The University Vision:

*The Ten Pillars: Faith and Reason in a Great City*

HBU will fulfill its responsibility for the renewal of Christian higher education through a vision organized around Ten Pillars. These Ten Pillars are the reflection of envisioning sessions and conversations held with HBU faculty, staff, students, trustees, alumni, and selected members of the community. The ideas and initiatives listed in this vision document all have their roots in those sessions. While the Ten Pillars do not exhaustively list all the suggestions, or all of our plans, they do capture the spirit and direction of our university family's aspirations for HBU.

- Build on the Classics
- Recruit for National Influence
- Embrace the Challenge of Christian Graduate Education
- Establish a Residential Society of Learning

## Student Code of Conduct

### Preamble

#### *Philosophical Approach*

Houston Baptist University has chosen to set itself apart for the purpose of preparing students for meaningful lives and work and for service to God and the peoples of the world. The University is dedicated to the development of moral character, the enrichment of spiritual lives, and the perpetuation of growth in Christian ideals. Spiritual maturity, strength of character, and moral virtue are considered foundational for successful living. The University shall stand as a witness for Jesus Christ expressed directly through its administration, faculty, and students.

Students, by their voluntary membership in this Christian community, assume responsibility to abide by all the standards, rules, and regulations of the University, as well as to use personal discretion involving any activities which may be morally or spiritually destructive or reflect poorly on the campus community. All members of the campus community share mutual responsibility for confronting actions that violate established standards for conduct or reflect poorly on the University. It is essential that this confrontation is exercised in a spirit of love and gentleness—a hallmark characteristic of biblical Christianity.

The Student Code of Conduct serves the educational mission of the University in achieving the aforementioned objectives. Community standards, policies and regulations, and the Student Discipline System are in place for the expressed purpose of moving students towards personal maturity and creating an environment that is conducive to academic learning, personal development, and spiritual growth.

The Student Discipline System is an educational and restorative process, not a legal proceeding. The disciplinary process always attempts to confront misconduct in an educative posture that the student might learn from the experience, respond to the correction, and be reconciled to the community whenever possible. The disciplinary system provides University personnel opportunities to educate students and to help them attain better decision-making, character formation, and spiritual maturity. The effectiveness of these *teachable moments* requires that each student be treated with equal care, concern, honor, fairness, and dignity.

### Article I: Definitions

1. The term “University” means Houston Baptist University.
2. The term “student” includes all persons taking courses at the University, either full-time or part-time, pursuing undergraduate or graduate studies. Persons who withdraw after allegedly violating the Student Code of Conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the University or who have been notified of their acceptance for admission are considered “students” as are persons who are living in University housing, although not enrolled in this institution. This Student Code of Conduct applies to the main campus, University-sponsored events, and activities at which the University is substantially represented.
3. The term “faculty member” means any person hired by the University to conduct classroom or teaching activities or who is otherwise considered by the University to be a member of its faculty.
4. The term “University official” includes any person employed by the University, performing assigned administrative or professional responsibilities.

## B. Community Standards

“Community Standards” refer to general guidelines or biblical principles that are represented in University policies and expectations for the conduct of community members. They may be articulated in written or spoken directives or may be implicitly understood as “common sense” or basic to Christian teaching or practice. The following Community Standards are not meant to be an exhaustive list, but rather touch on topics of particular concern, interest, or conflict with contemporary culture.

1. *Respect.* Students are expected to demonstrate respect for those in authority including faculty, staff, and student leaders/workers. Respect is also expected to be extended to policies, procedures and regulations established by the University for the orderly administration of University activities and the welfare of the members of the HBU community. Furthermore, respect for the rights and human dignity of others, especially in the conduct of relationships; Respect for the rights and needs of the community to develop and maintain an atmosphere conducive to academic study and personal development; and, Respect for Federal, State, and Local laws and ordinances is expected.
2. *Integrity and accountability.* Members of the campus community are expected to maintain lives of integrity regarding biblical principles and standards of conduct adopted by the campus community. The University firmly believes that mature individuals submit themselves to accountability within a community of persons and take responsibility for actions that violate that covenant relationship. Members are equally responsible to bring to bear accountability where there is knowledge that fellow members are violating community standards for conduct and should exercise such action in humility with concern for the offender.
3. *Affirmation of diversity.* The University recognizes the influence that diversity has in shaping the unique contributions of community members. The University is committed to affirming these contributions and creating opportunities for synergistic reasoning and insights. This commitment is based on a belief that community members should be able to maintain their unique distinctiveness while sharing mutual respect and dignity for the experiences and beliefs of others. Consistent with its educational objectives, the University refrains from endorsing or permitting conduct deemed to be in conflict with biblical principles or expressions of non-Christian religious worship or ceremony on University premises or at University-sponsored gatherings.
4. *Sanctity of life.* The University embraces a biblical position which honors the sanctity of life. Consequently, the University cannot support actions which encourage or result in the termination of human life through suicide, euthanasia, or abortion-on-demand. The University’s belief in the sanctity of life influences its response to those students who are involved in a crisis pregnancy. The campus community is prepared to stand with both the father and mother of the unborn child as they consider the results of their actions and experience forgiveness that comes from genuine repentance. Subsequently, abortion is not advised or entertained as an alternative solution. The University is committed to assisting the student(s) with other alternatives. Continuity of on-campus student residency will be considered in light of what is best for all those impacted by the pregnancy. As always, persons in such a crisis will find University officials supportive and redemptive.

**Exhibit B-3**

# THE TEN PILLARS

FAITH AND REASON IN A GREAT CITY

A 12 YEAR VISION FOR THE FUTURE OF HOUSTON  
BAPTIST UNIVERSITY

## Preface to a Vision

This document contains Houston Baptist University's vision for the next 10-12 years. We have not limited our plans to incremental improvements, but have instead decided to reach for a space in American higher education that is almost unoccupied. We intend to build on our reputation as an outstanding, regional master's degree-granting institution to become a comprehensive national university firmly rooted in the Christian faith. Before we reveal our ideas for the future, I would like to first recall our beginnings.

In 1961, Stewart Morris and Rex Baker submitted the final draft of the preamble to the bylaws of what was then Houston Baptist College. One trustee described the preamble as the steel that makes the foundation of the university. The express desire of HBU's founders was to birth and nurture a university that would remain unequivocally wedded to the Christian faith. The current preamble, modified in only minor ways to reflect the transition from college to university and to be even clearer about the necessary Christian convictions of those who work for HBU, reads as follows:

### **Nature of the Institution**

*The Preamble to the University By-Laws as stated below describes the distinctive nature of the institution.*

The Houston Baptist University is a Christian liberal arts university dedicated to the development of moral character, the enrichment of spiritual lives, and the perpetuation of growth in Christian ideals. Founded under the providence of God and with the conviction that there is a need for a university in this community that will train the minds, develop the moral character and enrich the spiritual lives of all people who may come within the ambit of its influence, HOUSTON BAPTIST UNIVERSITY shall stand as a witness for Jesus Christ expressed directly through its administration, faculty and students. To assure the perpetuation of these basic concepts of its founders, it is resolved that all those who become associated with Houston Baptist University as a trustee, officer, member of the faculty or of the staff, and who perform work connected with the educational activities of the University, must believe in the divine inspiration of the Bible, both the Old Testament and New Testament, that man was directly created by God, the virgin birth of Jesus Christ, our Lord and Savior, as the Son of God, that He died for the

sins of all men and thereafter arose from the grave, that by repentance and the acceptance of and belief in Him, by the grace of God, the individual is saved from eternal damnation and receives eternal life in the presence of God; and it is further resolved that the ultimate teachings in this University shall never be inconsistent with the above principles.

Amended by the Board of Trustees

February 22, 1974

Our historic preamble continues to be the source of our vitality and inspiration. The central confession of the New Testament, as reflected by the preamble, is that "Jesus Christ is Lord." Such a claim has deep implications not only for the church, but also for the institutions of higher learning to which the church has given birth. The Gospels, Acts, the Letters, and the Apocalypse all bear testimony to the foundational assertion that the same Jesus who was crucified has now been vindicated by the covenant God of Abraham, Isaac, and Jacob. Furthermore this resurrected One is now installed on a heavenly throne expressive of His universal sovereignty. All peoples, tongues, and nations fall under the sway of His Lordship, whether acknowledged or not. He is the One through whom God made the world, by whom all things are reconciled, and unto whom and for whom all of history will find its consummation (Ephesians 1:10).

To say "Jesus Christ is Lord" is not merely to affirm a religious confession, nor to say something only about an interior faith or personal, individualistic values. Rather, to say "Jesus Christ is Lord" is to make a statement that touches not only the private spiritual lives of believers, but encompasses all of the ranges of the created order, including the scope and breadth, as well as the complexities, of social, political, emotional, and physical experience. He is Lord, not only of the church, but over all things visible and invisible (Colossians 1:16), and therefore there is no area of reality which is, or even can be, outside the sphere of His Lordship. For a university to express Christ's Lordship as a function of its academic mission is to embrace in principle, through research, teaching, and the learning community, all the questions, issues, and intricacies which curiosity and imagination can engender, from undergraduate through graduate experience.

Our vision for HBU brims with ideas, plans, and objectives, but we view it all as nothing if we follow the all-too-familiar path of gaining distinction at the price of the loss of our faith. For that reason, we have proposed a vision for a

Christian university and not a university that happens to have denominational trappings ancillary to the core mission. We aspire to nothing less than becoming a university whose learning environment challenges every member of the community to academic excellence and authentic spirituality, both of which are consequences of our central confession: "Jesus Christ is Lord."

Robert B. Sloan, Jr.  
President, Houston Baptist University

**Exhibit B-4**

[Close Window](#)

## Report of the Baptist Faith and Message Study Committee to the Southern Baptist Convention

Adopted, June 14th, 2000

The 1999 session of the Southern Baptist Convention, meeting in Atlanta, Georgia, adopted the following motion addressed to the President of the Convention:

**"I move that in your capacity as Southern Baptist Convention chairman, you appoint a blue ribbon committee to review the Baptist Faith and Message statement with the responsibility to report and bring any recommendations to this meeting next June in Orlando."**

President Paige Patterson appointed the committee as follows: Max Barnett (OK), Steve Gaines (AL), Susie Hawkins (TX), Rudy A. Hernandez (TX), Charles S. Kelley, Jr. (LA), Heather King (IN), Richard D. Land (TN), Fred Luter (LA), R. Albert Mohler, Jr. (KY), T. C. Pinckney (VA), Nelson Price (GA), Adrian Rogers (TN), Roger Spradlin (CA), Simon Tsoi (AZ), Jerry Vines (FL). Adrian Rogers (TN) was appointed chairman.

Your committee thus constituted begs leave to present its report as follows:

Baptists are a people of deep beliefs and cherished doctrines. Throughout our history we have been a confessional people, adopting statements of faith as a witness to our beliefs and a pledge of our faithfulness to the doctrines revealed in Holy Scripture.

Our confessions of faith are rooted in historical precedent, as the church in every age has been called upon to define and defend its beliefs. Each generation of Christians bears the responsibility of guarding the treasury of truth that has been entrusted to us [2 Timothy 1:14]. Facing a new century, Southern Baptists must meet the demands and duties of the present hour.

New challenges to faith appear in every age. A pervasive anti-supernaturalism in the culture was answered by Southern Baptists in 1925, when the Baptist Faith and Message was first adopted by this Convention. In 1963, Southern Baptists responded to assaults upon the authority and truthfulness of the Bible by adopting revisions to the Baptist Faith and Message. The Convention added an article on "The Family" in 1998, thus answering cultural confusion with the clear teachings of Scripture. Now, faced with a culture hostile to the very notion of truth, this generation of Baptists must claim anew the eternal truths of the Christian faith.

Your committee respects and celebrates the heritage of the Baptist Faith and Message, and affirms the decision of the Convention in 1925 to adopt the New Hampshire Confession of Faith, "revised at certain points and with some additional articles growing out of certain needs . . . ." We also respect the important contributions of the 1925 and 1963 editions of the Baptist Faith and Message.

With the 1963 committee, we have been guided in our work by the 1925 "statement of the historic Baptist conception of the nature and function of confessions of faith in our religious and denominational life . . . ." It is, therefore, quoted in full as a part of this report to the Convention:

(1) That they constitute a consensus of opinion of some Baptist body, large or small, for the general instruction and guidance of our own people and others concerning those articles of the Christian faith which are most surely held among us. They are not intended to add anything to the simple conditions of salvation revealed in the New Testament, viz., repentance toward God and faith in Jesus Christ as Saviour and Lord.

(2) That we do not regard them as complete statements of our faith, having any quality of finality or infallibility. As in the past so in the future, Baptists should hold themselves free to revise their statements of faith as may seem to them wise and expedient at any time.

(3) That any group of Baptists, large or small, have the inherent right to draw up for themselves and publish to the world a confession of their faith whenever they may think it advisable to do so.

(4) That the sole authority for faith and practice among Baptists is the Scriptures of the Old and New Testaments. Confessions are only guides in interpretation, having no authority over the conscience.

(5) That they are statements of religious convictions, drawn from the Scriptures, and are not to be used to hamper freedom of thought or investigation in other realms of life.

Baptists cherish and defend religious liberty, and deny the right of any secular or religious authority to impose a confession of faith upon a church or body of churches. We honor the principles of soul competency and the priesthood of believers, affirming together both our liberty in Christ and our accountability to each other under the Word of God.

Baptist churches, associations, and general bodies have adopted confessions of faith as a witness to the world, and as instruments of doctrinal accountability. We are not embarrassed to state before the world that these are doctrines we hold precious and as essential to the Baptist tradition of faith and practice.

As a committee, we have been charged to address the "certain needs" of our own generation. In an age increasingly hostile to Christian truth, our challenge is to express the truth as revealed in Scripture, and to bear witness to Jesus Christ, who is "the Way, the Truth, and the Life."

The 1963 committee rightly sought to identify and affirm "certain definite doctrines that Baptists believe, cherish, and with which they have been and are now closely identified." Our living faith is established upon eternal truths. "Thus this generation of Southern Baptists is in historic succession of intent and purpose as it endeavors to state for its time and theological climate those articles of the Christian faith which are most surely held among us."

It is the purpose of this statement of faith and message to set forth certain teachings which we believe.

Respectfully Submitted,

*The Baptist Faith and Message Study Committee*

*Adrian Rogers, Chairman*

Committee Members:

Adrian Rogers, Chairman

Max Barnett

Steve Gaines

Susie Hawkins

Rudy A. Hernandez

Charles S. Kelley, Jr.

Heather King

Richard D. Land

Fred Luter

R. Albert Mohler, Jr.

T. C. Pinckney

Nelson Price

Roger Spradlin

Simon Tsoi

Jerry Vines

<http://www.sbc.net/bfm/bfmpreamble.asp>

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## The Baptist Faith and Message

The Baptist Faith and Message is also available in the following languages: <%=MultiLingualPage(2)%>

### I. The Scriptures

The Holy Bible was written by men divinely inspired and is God's revelation of Himself to man. It is a perfect treasure of divine instruction. It has God for its author, salvation for its end, and truth, without any mixture of error, for its matter. Therefore, all Scripture is totally true and trustworthy. It reveals the principles by which God judges us, and therefore is, and will remain to the end of the world, the true center of Christian union, and the supreme standard by which all human conduct, creeds, and religious opinions should be tried. All Scripture is a testimony to Christ, who is Himself the focus of divine revelation.

*Exodus 24:4; Deuteronomy 4:1-2; 17:19; Joshua 8:34; Psalms 19:7-10; 119:11,89,105,140; Isaiah 34:16; 40:8; Jeremiah 15:16; 36:1-32; Matthew 5:17-18; 22:29; Luke 21:33; 24:44-46; John 5:39; 16:13-15; 17:17; Acts 2:16ff.; 17:11; Romans 15:4; 16:25-26; 2 Timothy 3:15-17; Hebrews 1:1-2; 4:12; 1 Peter 1:25; 2 Peter 1:19-21.*

### II. God

There is one and only one living and true God. He is an intelligent, spiritual, and personal Being, the Creator, Redeemer, Preserver, and Ruler of the universe. God is infinite in holiness and all other perfections. God is all powerful and all knowing; and His perfect knowledge extends to all things, past, present, and future, including the future decisions of His free creatures. To Him we owe the highest love, reverence, and obedience. The eternal triune God reveals Himself to us as Father, Son, and Holy Spirit, with distinct personal attributes, but without division of nature, essence, or being.

#### A. God the Father

God as Father reigns with providential care over His universe, His creatures, and the flow of the stream of human history according to the purposes of His grace. He is all powerful, all knowing, all loving, and all wise. God is Father in truth to those who become children of God through faith in Jesus Christ. He is fatherly in His attitude toward all men.

*Genesis 1:1; 2:7; Exodus 3:14; 6:2-3; 15:11ff.; 20:1ff.; Leviticus 22:2; Deuteronomy 6:4; 32:6; 1 Chronicles 29:10; Psalm 19:1-3; Isaiah 43:3,15; 64:8; Jeremiah 10:10; 17:13; Matthew 6:9ff.; 7:11; 23:9; 28:19; Mark 1:9-11; John 4:24; 5:26; 14:6-13; 17:1-8; Acts 1:7; Romans 8:14-15; 1 Corinthians 8:6; Galatians 4:6; Ephesians 4:6; Colossians 1:15; 1 Timothy 1:17; Hebrews 11:6; 12:9; 1 Peter 1:17; 1 John 5:7.*

#### B. God the Son

Christ is the eternal Son of God. In His incarnation as Jesus Christ He was conceived of the Holy Spirit and born of the virgin Mary. Jesus perfectly revealed and did the will of God, taking upon Himself human nature with its demands and necessities and identifying Himself completely with mankind yet without sin. He honored the divine law by His personal obedience, and in His substitutionary death on the cross He made provision for the redemption of men from sin. He was raised from the dead with a glorified body and appeared to His disciples as the person who was with them before His crucifixion. He ascended into heaven and is now exalted at the right hand of God where He is the One Mediator, fully God, fully man, in whose Person is effected the reconciliation between God and man. He will return in power and glory to judge the world and to consummate His redemptive mission. He now dwells in all believers as the living and ever present Lord.

*Genesis 18:1ff.; Psalms 2:7ff.; 110:1ff.; Isaiah 7:14; 53; Matthew 1:18-23; 3:17; 8:29; 11:27; 14:33; 16:16,27; 17:5; 27; 28:1-6,19; Mark 1:1; 3:11; Luke 1:35; 4:41; 22:70; 24:46; John 1:1-18,29; 10:30,38; 11:25-27; 12:44-50; 14:7-11; 16:15-16,28; 17:1-5, 21-22; 20:1-20,28; Acts 1:9; 2:22-24; 7:55-56; 9:4-5,20; Romans 1:3-4; 3:23-26; 5:6-21; 8:1-3,34; 10:4; 1 Corinthians 1:30; 2:2; 8:6; 15:1-8,24-28; 2 Corinthians 5:19-21; 8:9; Galatians 4:4-5; Ephesians 1:20; 3:11; 4:7-10; Philippians 2:5-11; Colossians 1:13-22; 2:9; 1 Thessalonians 4:14-18; 1 Timothy 2:5-6; 3:16; Titus 2:13-14; Hebrews 1:1-3; 4:14-15; 7:14-28; 9:12-15,24-28; 12:2; 13:8; 1 Peter 2:21-25; 3:22; 1 John*

1:7-9; 3:2; 4:14-15; 5:9; 2 John 7-9; Revelation 1:13-16; 5:9-14; 12:10-11; 13:8; 19:16.

### C. God the Holy Spirit

The Holy Spirit is the Spirit of God, fully divine. He inspired holy men of old to write the Scriptures. Through illumination He enables men to understand truth. He exalts Christ. He convicts men of sin, of righteousness, and of judgment. He calls men to the Saviour, and effects regeneration. At the moment of regeneration He baptizes every believer into the Body of Christ. He cultivates Christian character, comforts believers, and bestows the spiritual gifts by which they serve God through His church. He seals the believer unto the day of final redemption. His presence in the Christian is the guarantee that God will bring the believer into the fullness of the stature of Christ. He enlightens and empowers the believer and the church in worship, evangelism, and service.

*Genesis 1:2; Judges 14:6; Job 26:13; Psalms 51:11; 139:7ff.; Isaiah 61:1-3; Joel 2:28-32; Matthew 1:18; 3:16; 4:1; 12:28-32; 28:19; Mark 1:10,12; Luke 1:35; 4:1,18-19; 11:13; 12:12; 24:49; John 4:24; 14:16-17,26; 15:26; 16:7-14; Acts 1:8; 2:1-4,38; 4:31; 5:3; 6:3; 7:55; 8:17,39; 10:44; 13:2; 15:28; 16:6; 19:1-6; Romans 8:9-11,14-16,26-27; 1 Corinthians 2:10-14; 3:16; 12:3-11,13; Galatians 4:6; Ephesians 1:13-14; 4:30; 5:18; 1 Thessalonians 5:19; 1 Timothy 3:16; 4:1; 2 Timothy 1:14; 3:16; Hebrews 9:8,14; 2 Peter 1:21; 1 John 4:13; 5:6-7; Revelation 1:10; 22:17.*

### III. Man

Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation. In the beginning man was innocent of sin and was endowed by his Creator with freedom of choice. By his free choice man sinned against God and brought sin into the human race. Through the temptation of Satan man transgressed the command of God, and fell from his original innocence whereby his posterity inherit a nature and an environment inclined toward sin. Therefore, as soon as they are capable of moral action, they become transgressors and are under condemnation. Only the grace of God can bring man into His holy fellowship and enable man to fulfill the creative purpose of God. The sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love.

*Genesis 1:26-30; 2:5,7,18-22; 3; 9:6; Psalms 1; 8:3-6; 32:1-5; 51:5; Isaiah 6:5; Jeremiah 17:5; Matthew 16:26; Acts 17:26-31; Romans 1:19-32; 3:10-18,23; 5:6,12,19; 6:6; 7:14-25; 8:14-18,29; 1 Corinthians 1:21-31; 15:19,21-22; Ephesians 2:1-22; Colossians 1:21-22; 3:9-11.*

### IV. Salvation

Salvation involves the redemption of the whole man, and is offered freely to all who accept Jesus Christ as Lord and Saviour, who by His own blood obtained eternal redemption for the believer. In its broadest sense salvation includes regeneration, justification, sanctification, and glorification. There is no salvation apart from personal faith in Jesus Christ as Lord.

A. Regeneration, or the new birth, is a work of God's grace whereby believers become new creatures in Christ Jesus. It is a change of heart wrought by the Holy Spirit through conviction of sin, to which the sinner responds in repentance toward God and faith in the Lord Jesus Christ. Repentance and faith are inseparable experiences of grace.

Repentance is a genuine turning from sin toward God. Faith is the acceptance of Jesus Christ and commitment of the entire personality to Him as Lord and Saviour.

B. Justification is God's gracious and full acquittal upon principles of His righteousness of all sinners who repent and believe in Christ. Justification brings the believer unto a relationship of peace and favor with God.

C. Sanctification is the experience, beginning in regeneration, by which the believer is set apart to God's purposes, and is enabled to progress toward moral and spiritual maturity through the presence and power of the Holy Spirit dwelling in him. Growth in grace should continue throughout the regenerate person's life.

D. Glorification is the culmination of salvation and is the final blessed and abiding state of the redeemed.

*Genesis 3:15; Exodus 3:14-17; 6:2-8; Matthew 1:21; 4:17; 16:21-26; 27:22-28:6; Luke 1:68-69; 2:28-32; John 1:11-14,29; 3:3-21,36; 5:24; 10:9,28-29; 15:1-16; 17:17; Acts 2:21; 4:12; 15:11; 16:30-31; 17:30-31; 20:32; Romans 1:16-18; 2:4; 3:23-25; 4:3ff.; 5:8-10; 6:1-23; 8:1-18,29-39; 10:9-10,13; 13:11-14; 1 Corinthians 1:18,30;*

God is the source of all blessings, temporal and spiritual; all that we have and are we owe to Him. Christians have a spiritual debtorship to the whole world, a holy trusteeship in the gospel, and a binding stewardship in their possessions. They are therefore under obligation to serve Him with their time, talents, and material possessions; and should recognize all these as entrusted to them to use for the glory of God and for helping others. According to the Scriptures, Christians should contribute of their means cheerfully, regularly, systematically, proportionately, and liberally for the advancement of the Redeemer's cause on earth.

*Genesis 14:20; Leviticus 27:30-32; Deuteronomy 8:18; Malachi 3:8-12; Matthew 6:1-4,19-21; 19:21; 23:23; 25:14-29; Luke 12:16-21,42; 16:1-13; Acts 2:44-47; 5:1-11; 17:24-25; 20:35; Romans 6:6-22; 12:1-2; 1 Corinthians 4:1-2; 6:19-20; 12; 16:1-4; 2 Corinthians 8-9; 12:15; Philippians 4:10-19; 1 Peter 1:18-19.*

#### **XIV. Cooperation**

Christ's people should, as occasion requires, organize such associations and conventions as may best secure cooperation for the great objects of the Kingdom of God. Such organizations have no authority over one another or over the churches. They are voluntary and advisory bodies designed to elicit, combine, and direct the energies of our people in the most effective manner. Members of New Testament churches should cooperate with one another in carrying forward the missionary, educational, and benevolent ministries for the extension of Christ's Kingdom. Christian unity in the New Testament sense is spiritual harmony and voluntary cooperation for common ends by various groups of Christ's people. Cooperation is desirable between the various Christian denominations, when the end to be attained is itself justified, and when such cooperation involves no violation of conscience or compromise of loyalty to Christ and His Word as revealed in the New Testament.

*Exodus 17:12; 18:17ff.; Judges 7:21; Ezra 1:3-4; 2:68-69; 5:14-15; Nehemiah 4; 8:1-5; Matthew 10:5-15; 20:1-16; 22:1-10; 28:19-20; Mark 2:3; Luke 10:1ff.; Acts 1:13-14; 2:1ff.; 4:31-37; 13:2-3; 15:1-35; 1 Corinthians 1:10-17; 3:5-15; 12; 2 Corinthians 8-9; Galatians 1:6-10; Ephesians 4:1-16; Philippians 1:15-18.*

#### **XV. The Christian and the Social Order**

All Christians are under obligation to seek to make the will of Christ supreme in our own lives and in human society. Means and methods used for the improvement of society and the establishment of righteousness among men can be truly and permanently helpful only when they are rooted in the regeneration of the individual by the saving grace of God in Jesus Christ. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. Every Christian should seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love. In order to promote these ends Christians should be ready to work with all men of good will in any good cause, always being careful to act in the spirit of love without compromising their loyalty to Christ and His truth.

*Exodus 20:3-17; Leviticus 6:2-5; Deuteronomy 10:12; 27:17; Psalm 101:5; Micah 6:8; Zechariah 8:16; Matthew 5:13-16,43-48; 22:36-40; 25:35; Mark 1:29-34; 2:3ff.; 10:21; Luke 4:18-21; 10:27-37; 20:25; John 15:12; 17:15; Romans 12-14; 1 Corinthians 5:9-10; 6:1-7; 7:20-24; 10:23-11:1; Galatians 3:26-28; Ephesians 6:5-9; Colossians 3:12-17; 1 Thessalonians 3:12; Philemon; James 1:27; 2:8.*

#### **XVI. Peace and War**

It is the duty of Christians to seek peace with all men on principles of righteousness. In accordance with the spirit and teachings of Christ they should do all in their power to put an end to war.

The true remedy for the war spirit is the gospel of our Lord. The supreme need of the world is the acceptance of His teachings in all the affairs of men and nations, and the practical application of His law of love. Christian people throughout the world should pray for the reign of the Prince of Peace.

*Isaiah 2:4; Matthew 5:9,38-48; 6:33; 26:52; Luke 22:36,38; Romans 12:18-19; 13:1-7; 14:19; Hebrews 12:14; James 4:1-2.*

#### **XVII. Religious Liberty**

God alone is Lord of the conscience, and He has left it free from the doctrines and commandments of men which are

contrary to His Word or not contained in it. Church and state should be separate. The state owes to every church protection and full freedom in the pursuit of its spiritual ends. In providing for such freedom no ecclesiastical group or denomination should be favored by the state more than others. Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. The church should not resort to the civil power to carry on its work. The gospel of Christ contemplates spiritual means alone for the pursuit of its ends. The state has no right to impose penalties for religious opinions of any kind. The state has no right to impose taxes for the support of any form of religion. A free church in a free state is the Christian ideal, and this implies the right of free and unhindered access to God on the part of all men, and the right to form and propagate opinions in the sphere of religion without interference by the civil power.

*Genesis 1:27; 2:7; Matthew 6:6-7,24; 16:26; 22:21; John 8:36; Acts 4:19-20; Romans 6:1-2; 13:1-7; Galatians 5:1,13; Philippians 3:20; 1 Timothy 2:1-2; James 4:12; 1 Peter 2:12-17; 3:11-17; 4:12-19.*

### **XVIII. The Family**

God has ordained the family as the foundational institution of human society. It is composed of persons related to one another by marriage, blood, or adoption.

Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God's unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race.

The husband and wife are of equal worth before God, since both are created in God's image. The marriage relationship models the way God relates to His people. A husband is to love his wife as Christ loved the church. He has the God-given responsibility to provide for, to protect, and to lead his family. A wife is to submit herself graciously to the servant leadership of her husband even as the church willingly submits to the headship of Christ. She, being in the image of God as is her husband and thus equal to him, has the God-given responsibility to respect her husband and to serve as his helper in managing the household and nurturing the next generation.

Children, from the moment of conception, are a blessing and heritage from the Lord. Parents are to demonstrate to their children God's pattern for marriage. Parents are to teach their children spiritual and moral values and to lead them, through consistent lifestyle example and loving discipline, to make choices based on biblical truth. Children are to honor and obey their parents.

*Genesis 1:26-28; 2:15-25; 3:1-20; Exodus 20:12; Deuteronomy 6:4-9; Joshua 24:15; 1 Samuel 1:26-28; Psalms 51:5; 78:1-8; 127; 128; 139:13-16; Proverbs 1:8; 5:15-20; 6:20-22; 12:4; 13:24; 14:1; 17:6; 18:22; 22:6,15; 23:13-14; 24:3; 29:15,17; 31:10-31; Ecclesiastes 4:9-12; 9:9; Malachi 2:14-16; Matthew 5:31-32; 18:2-5; 19:3-9; Mark 10:6-12; Romans 1:18-32; 1 Corinthians 7:1-16; Ephesians 5:21-33; 6:1-4; Colossians 3:18-21; 1 Timothy 5:8,14; 2 Timothy 1:3-5; Titus 2:3-5; Hebrews 13:4; 1 Peter 3:1-7.*

<http://www.sbc.net/bfm/bfm2000.asp>

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**Exhibit B-5**



## **THE THREAT TO RELIGIOUS FREEDOM: THE OBAMA ADMINISTRATION'S CONTRACEPTIVES MANDATE**

### **THE ISSUE: HEALTH AND HUMAN SERVICES MANDATE VIOLATES RELIGIOUS FREEDOM**

Under a regulation issued in January 2012 by the U.S. Department of Health and Human Services (HHS), nearly all insurance plans will be forced to provide their employees with free access to all FDA-approved contraceptives. This mandate includes coverage of abortion-inducing drugs like ella and Plan B (the "morning after" pill), abortion-causing IUDs, and sterilization. This mandate will force millions of Southern Baptists and other people of faith to violate their God-given and constitutionally-protected freedom of religion and conscience.

### **HOW THE HHS MANDATE TRAMPLES RELIGIOUS FREEDOM**

Not only does the Patient Protection and Affordable Care Act mark the first time the U.S. government has forced citizens to purchase a product (health insurance), the HHS contraceptives mandate marks the first time people of faith have been forced by the government to purchase products that violate their consciences.

### **A MATTER OF CONSCIENCE AND RELIGIOUS FREEDOM**

Some people say this is about contraception. It is not. Many Southern Baptists accept the use of non-abortive contraceptives within marriage. The HHS mandate goes far beyond that. It requires that all insurance plans provide coverage for abortion-causing products. This means employers, including faith-based organizations, must make insurance plans available to their employees in violation of their religious beliefs. It also means that either the employers or the employees will be required to pay for these products through their premium payments.

In effect, the Obama administration has declared that religious conviction about abortion is not an acceptable reason for exemption from this requirement. While the presenting offense is about abortion, the dominant issue is the government's determination to violate the constitutionally-protected freedom of conscience. No one should be forced by the government to buy or subsidize products that result in the killing of innocent human beings in violation of their consciences. What is at stake is whether our nation will protect our God-given and constitutionally-protected freedom of religion and conscience fought for by our Baptist forebears.

### **LIMITED EXEMPTIONS**

The Obama administration's very narrow religious exemption means that most religious groups will be required to provide access to contraceptives, including ones that cause abortions. Even under a rule proposed in January 2013, the religious exemption may not include organizations such as local Christian schools and soup kitchens or larger entities such as Christian universities that are not expressly tied to a house of worship. Institutions not covered by the narrow exemption will be forced to choose one of three untenable options:

- Obey the law at the expense of their conscience.
- Cease providing coverage—which would force the employees of these religious institutions to obtain coverage with offensive provisions and could subject the religious institution employer to fines if it is considered a large employer under applicable rules.
- Provide coverage but without complying with the HHS mandate that assaults the religious institution's conscience—which could result in fines to participants if their coverage through the religious institution employer is non-compliant.

### **LIMITED ACCOMMODATIONS**

According to the original mandate, the only accommodation afforded religious institutions was a one-year extension to comply. Practically, this meant religious employers morally opposed to the mandate were granted an additional year before they must begin violating their consciences. That one-year extension ends Aug. 1, 2013.

## **NO COMPROMISE IN FORCE**

On multiple occasions, President Obama announced so-called “compromises.” One proposal was to supposedly exempt religiously-affiliated employers opposed to the mandate by allowing them to shift the burden of covering contraceptives and abortifacients to their insurance companies. This was merely an accounting gimmick. Employers would still have to make abortion-causing products available in the plans they offer their employees, and the insurance companies would be recovering the cost of these products indirectly through the premiums they charge. These so-called compromises were never formally adopted. Yet even if any of the president’s “compromises” are adopted by HHS, the violation of constitutionally-protected religious conscience remains.

In January 2013, HHS issued a “Notice of Proposed Rule Making” or NPRM. That *proposed* rule would provide relief for a slightly larger category of houses of worship and their integrated auxiliaries. This does nothing to provide relief for institutions which fall outside the administration’s narrow definition of “religious institution.” This includes many hospitals, universities, businesses, and schools. As of June 2013, more than 60 lawsuits have been filed challenging the mandate.

## **DIRECTLY IMPACTS SELF-INSURED RELIGIOUS INSTITUTIONS**

Neither the current HHS rule nor the so-called “compromise” provides an exemption for religious employers that self-insure, which means they serve as the source of benefit payments instead of contracting with a third party. That includes GuideStone Financial Resources, the Southern Baptist Convention’s medical plan provider covering tens of thousands of pastors, church workers, professors, secretaries, social workers, missionaries, other agency workers, and their families. The HHS mandate reflects a sobering disregard for the unique and historic structure and role of self-insured medical programs like GuideStone and other large and established church health plans, as well as a shocking encroachment on religious freedom.

## **DIRECTLY IMPACTS PEOPLE OF FAITH**

If the HHS mandate is not overturned or changed, many employers whose consciences are violated will have to stop providing insurance for their employees. As a result, when these employees seek to purchase their own insurance plans, they will find that the Obama administration’s mandate requires every insurance plan to pay for these abortion-causing products and services. This will mean that all of us whose consciences are violated by this morally reprehensible mandate will be forced to choose between paying for these products and services, whether we use them or not, or not having insurance for ourselves and our families and paying a government fine for not having insurance.

## **UPSETS CHURCH AND STATE BALANCE**

In recent decades, most conflicts over the church-state relationship have had to do with the Establishment Clause of the First Amendment, with debates about the appropriate role of faith in public life. The HHS mandate is the culmination of a shift in church-state relations that has been emerging over the last decade or so, in which the conflict has gone from potential violations of the Establishment Clause to actual violations of the Free Exercise Clause. The HHS mandate is a direct assault on how people of faith can conduct their own lives according to the dictates of their consciences. The mandate puts the federal government in the position of imposing its will on the conscience by executive edict, casting aside individual conscience and religious freedom.

## **SETS DANGEROUS PRECEDENT**

If the federal government can force religious employers and people of faith to purchase products that offend their faith and conscience, what can’t it force them to do?

## **THE SOLUTION: RESTORE RELIGIOUS FREEDOM WITH RESPECT FOR RIGHTS OF CONSCIENCE ACT**

Jesus instructed us to “render to Caesar what is Caesar’s.” How now shall we respond when Caesar demands what is God’s?

An effort to protect the freedoms of religion and conscience is taking form on Capitol Hill as the Health Care Conscience Rights Act (H.R. 940 / S. 1204). This would safeguard employers and individuals from being forced to violate their religious convictions on contraceptives and abortion-inducing drugs under health care.

With our God-given and constitutionally-protected freedoms of religion and conscience at stake, the church cannot afford to be silent.

**Exhibit B-6**



**This is only a summary.** If you want more detail about your coverage and costs, you can get the complete terms in the policy or plan document at [www.GuideStone.org/Summaries](http://www.GuideStone.org/Summaries) or by calling 1-888-98-GUIDE (1-888-984-8433).

Important Questions	Answers	Why this Matters:
What is the overall deductible?	In-network: <b>\$2,000</b> person / <b>\$4,000</b> family. Out-of-network: <b>\$4,000</b> person / <b>\$8,000</b> family. Doesn't apply to preventive care and co-pays.	You must pay all the costs up to the <b>deductible</b> amount before this plan begins to pay for covered services you use. Check your policy or plan document to see when the <b>deductible</b> starts over (usually, but not always, January 1 <sup>st</sup> ). See the chart starting on page 2 for how much you pay for covered services after you meet the <b>deductible</b> .
Are there other deductibles for specific services?	No.	You don't have to meet <b>deductibles</b> for specific services, but see the chart starting on page 2 for other costs for services this plan covers.
Is there an out-of-pocket limit on my expenses?	Yes. For in-network: <b>\$5,000</b> person / family. For out-of-network: <b>\$10,000</b> person / family.	The <b>out-of-pocket limit</b> is the most you could pay during a coverage period (usually one year) for your share of the cost of covered services. This limit helps you plan for health care expenses.
What is not included in the out-of-pocket limit?	Premiums, balance-billed charges, health care this plan doesn't cover, deductibles and co-pays.	Even though you pay these expenses, they don't count toward the <b>out-of-pocket limit</b> .
Is there an overall annual limit on what the plan pays?	No.	The chart starting on page 2 describes any limits on what the plan will pay for <i>specific</i> covered services, such as office visits.
Does this plan use a network of providers?	Yes. See <a href="http://www.highmarkbcbs.com">www.highmarkbcbs.com</a> or call 1-800-810-2583 for a list of participating providers.	If you use an in-network doctor or other health care <b>provider</b> , this plan will pay some or all of the costs of covered services. Be aware, your in-network doctor or hospital may use an out-of-network <b>provider</b> for some services. Plans use the term in-network, <b>preferred</b> , or participating for <b>providers</b> in their <b>network</b> . See the chart starting on page 2 for how this plan pays different kinds of <b>providers</b> .
Do I need a referral to see a specialist?	No. You don't need a referral to see a specialist.	You can see the <b>specialist</b> you choose without permission from this plan.
Are there services this plan doesn't cover?	Yes.	Some of the services this plan doesn't cover are listed on page 4. See your policy or plan document for additional information about <b>excluded services</b> .

**Questions:** Call 1-888-98-GUIDE (1-888-984-8433) or visit us at [www.GuideStoneInsurance.org](http://www.GuideStoneInsurance.org).

If you aren't clear about any of the bolded terms used in this form, see the Glossary. You can view the Glossary at [www.GuideStone.org/Summaries](http://www.GuideStone.org/Summaries) or call 1-888-98-GUIDE (1-888-984-8433) to request a copy.



- **Co-payments** are fixed dollar amounts (for example, \$15) you pay for covered health care, usually when you receive the service.
- **Co-insurance** is *your* share of the costs of a covered service, calculated as a percent of the **allowed amount** for the service. For example, if the plan's **allowed amount** for an overnight hospital stay is \$1,000, your **co-insurance** payment of 20% would be \$200. This may change if you haven't met your **deductible**.
- The amount the plan pays for covered services is based on the **allowed amount**. If an out-of-network **provider** charges more than the **allowed amount**, you may have to pay the difference. For example, if an out-of-network hospital charges \$1,500 for an overnight stay and the **allowed amount** is \$1,000, you may have to pay the \$500 difference. (This is called **balance billing**.)
- This plan may encourage you to use in-network **providers** by charging you lower **deductibles**, **co-payments** and **co-insurance** amounts.

Common Medical Event	Services You May Need	Your cost if you use an		Limitations & Exceptions
		In-network Provider	Out-of-network Provider	
If you visit a health care <b>provider's</b> office or clinic	Primary care visit to treat an injury or illness	\$25 co-pay/visit	50% co-insurance	Includes one comprehensive annual eye exam.
	Specialist visit	\$45 co-pay/visit	50% co-insurance	-----none-----
	Other practitioner office visit	\$45 co-pay for chiropractor	50% co-insurance for chiropractor	Limited to 20 visits per coverage period.
	Preventive care/screening/immunization	No charge	Not covered	See <i>Preventive Care Schedule</i> for covered services in-network. Abortive services and certain contraceptives are not covered.
If you have a test	Diagnostic test (x-ray, blood work)	20% co-insurance	50% co-insurance	If performed in a primary care or specialist office, primary care or specialist co-pay applies.
	Imaging (CT/PET scans, MRIs)	20% co-insurance	50% co-insurance	-----none-----
If you need drugs to treat your illness or condition  More information about <b>prescription drug coverage</b> is available at <a href="http://www.express-scripts.com">www.express-scripts.com</a>	Generic drugs	\$15 co-pay (retail)/ \$35 co-pay (mail order)	100% of drug cost with reimbursement at plan costs upon manual claim form submission.	Covers up to a 30-day supply (retail) and a 90-day supply (mail order). You must pay the generic co-payment and the difference in the cost between the preferred/non-preferred drug and its generic equivalent if available. Certain contraceptives are not covered.
	Preferred brand drugs	\$35 co-pay (retail)/ \$90 co-pay (mail order)		
	Non-preferred brand drugs	\$50 co-pay (retail)/ \$125 co-pay (mail order)		
	Specialty drugs	\$50 co-pay (mail order only)		Covers up to a 30-day supply.

## Excluded Services & Other Covered Services:

### Services Your Plan Does NOT Cover (This isn't a complete list. Check your policy or plan document for other [excluded services](#).)

- Acupuncture
- Certain contraceptives
- Cosmetic surgery
- Dental care (Adult)
- Elective abortion
- Experimental or investigational treatment
- Hearing aids
- Infertility treatment
- Long-term care
- Private-duty nursing
- Private hospital room
- Routine foot care
- Weight loss program

### Other Covered Services (This isn't a complete list. Check your policy or plan document for other covered services and your costs for these services.)

- Bariatric surgery
- Chiropractic care — limited to 20 visits per coverage period
- Non-emergency care when traveling outside the U.S.

## Your Rights to Continue Coverage:

If you lose coverage under the plan, then, depending upon the circumstances, Federal and State laws may provide protections that allow you to keep health coverage. Any such rights may be limited in duration and will require you to pay a **premium**, which may be significantly higher than the premium you pay while covered under the plan. Other limitations on your rights to continue coverage may also apply.

For more information on your rights to continue coverage, contact the plan at 1-888-98-GUIDE (1-888-984-8433). You may also contact the U.S. Department of Labor, Employee Benefits Security Administration at 1-866-444-3272 or [www.dol.gov/ebsa](http://www.dol.gov/ebsa), or the U.S. Department of Health and Human Services at 1-877-267-2323 x61565 or [www.cciio.cms.gov](http://www.cciio.cms.gov).

## Your Grievance and Appeals Rights:

If you have a complaint or are dissatisfied with a denial of coverage for claims under your plan, you may be able to **appeal** or file a **grievance**. For questions about your rights, this notice, or assistance, you can contact: 1-866-472-0924 or visit [www.highmarkbcbs.com](http://www.highmarkbcbs.com).

## Spanish Assistance (Asistencia en Español):

Para obtener asistencia en Español, llame al 1-888-98-GUIDE (1-888-984-8433).

—————*To see examples of how this plan might cover costs for a sample medical situation, see the next page.*—————

**Exhibit B-7**

# Preventive Care Schedule

## Effective January 1, 2013

The plan pays for preventive care only when given by a network provider. For in-network preventive care, use your Highmark Blue Cross Blue Shield ID card.

Well child visits (birth – age 18)	Preventive schedule
<ul style="list-style-type: none"> <li>Wellness exam</li> <li>Visual screening</li> <li>Hearing screening</li> </ul>	<ul style="list-style-type: none"> <li>Standard incremental infant check-ups for the first 12 months; every 12 months ages 1-18</li> <li>Every 12 months ages 3-5; then at ages 6, 8, 10, 12, 15 and 18</li> <li>Every 12 months ages 4-6; then at ages 8, 10, 12 and 15</li> </ul>
<b>Immunizations:</b> Includes standard childhood immunizations	At scheduled ages for each childhood immunization
Adult (age 19+)	Preventive schedule
<b>Physical examination</b>	Every 12 months
<b>Pelvic and breast examination</b>	Every 12 months
<b>Pap test</b>	Every 12 months
<b>Mammogram</b>	Every 12 months after age 39
<b>Urinalysis, venipuncture and CBC</b>	Every 12 months
<b>Lipid panel</b>	Every 12 months
<b>Glucose testing</b> (for high-risk patients)	Every 3 years after age 45
<b>Bone mineral density screening</b>	Every 2 years if high risk for osteoporosis
<b>Colorectal cancer screening</b> <ul style="list-style-type: none"> <li>Fecal occult blood test</li> <li>Screening with flexible sigmoidoscopy or double contrast barium enema</li> <li>Colonoscopy</li> </ul>	As directed by a physician <ul style="list-style-type: none"> <li>Every 12 months after age 50</li> <li>Every 5 years after age 50</li> <li>Every 10 years after age 50 (or as recommended by your doctor if high risk)</li> </ul>
<b>Immunizations:</b> Includes expanded age ranges for some immunizations	Expanded adult immunizations for at-risk patients
Maternity	
<p><b>You should expect to receive the following screenings and procedures:</b></p> <ul style="list-style-type: none"> <li>Hematocrit and/or Hemoglobin (Anemia)</li> <li>Urine Culture &amp; Sensitivity (C &amp; S)</li> <li>Rh typing during your first visit</li> <li>Rh antibody testing for Rh-negative women</li> <li>Hepatitis B</li> </ul> <p>In addition, your doctor may discuss breast feeding during weeks 28 through 36 and/or post-delivery, tobacco use and behavioral counseling to reduce alcohol use.</p>	

**Note:** This schedule is based on services required under the Patient Protection and Affordable Care Act of 2010 (PPACA), as amended, including expanded women's preventive health services such as approved contraceptives, gestational diabetes screening and breastfeeding support. GuideStone does not provide coverage for abortions or abortion-inducing drugs as this violates our Biblical convictions on sanctity of life. This schedule is reviewed and updated periodically based on the advice of the U.S. Preventive Services Task Force and updates according to clinical guidelines established by national medical organizations. Your specific needs for preventive services may vary according to your personal risk factors. Your doctor is always your best resource for determining if you're at increased risk for a condition. Some services may require prior authorization. If you have questions about this schedule or prior authorizations, please call the Member Service number on the back of your ID card.

## Women's Health Preventive Schedule

SERVICES	
<b>Contraception and Counseling</b>	All women with reproductive capacity: patient education, counseling and certain Food and Drug Administration (FDA)-approved contraceptive methods*, including sterilization and procedures as prescribed
<b>Well-Woman Visits</b>	Up to 4 visits annually for adult women to obtain the recommended preventive services that are age and developmentally appropriate, including preconception and the first visit to determine pregnancy
SCREENINGS/PROCEDURES	
<b>Gestational Diabetes Screening</b>	All women: between 24 and 28 weeks of gestation. High-risk: at the first prenatal visit
<b>Interpersonal and Domestic Violence Screening and Counseling</b>	Annually
<b>Lactation (Breastfeeding) Counseling, Support and Supplies</b>	Comprehensive lactation support and counseling by a trained provider during pregnancy and/or in the postpartum period and costs for renting breastfeeding equipment

\* **GuideStone will not provide coverage for abortion services or abortion-inducing drugs such as Ella and Plan B, as this violates our Biblical convictions on sanctity of life. GuideStone covers certain non-abortive generic contraceptives under the Preventive Care Schedule.**

*Because the Children's Health Insurance Program (CHIP) is a government sponsored program and not subject to PPACA, certain preventive benefits may not apply to CHIP members and / or may be subject to co-payments.*

## Prevention of Obesity

Obesity places individuals at risk for a number of chronic and debilitating diseases. Highmark is working with physicians, policymakers, The Children's Health Fund and representatives from the private sector to address the childhood obesity crisis and to create solutions to obesity-related problems. As part of Highmark's "Prevention of Obesity" initiative, the following benefits are part of our preventive schedule. For in-network services for the prevention of obesity, use your Highmark BCBS ID card.

Schedule for children	Preventive schedule
<b>Children with a body mass index (BMI) in the 95<sup>th</sup> percentile are eligible for:</b>	<ul style="list-style-type: none"> <li>• Two additional annual preventive office visits specifically for obesity</li> <li>• Two annual nutritional counseling visits specifically for obesity</li> <li>• One set of recommended laboratory studies</li> </ul>
<b>Children with a BMI in the 85<sup>th</sup> percentile are eligible for:</b>	<ul style="list-style-type: none"> <li>• One additional annual preventive office visit specifically for obesity and blood pressure measurement</li> </ul>
Schedule for adults (age 19+)	Preventive schedule
<b>Adults with a BMI over 30 are eligible for:</b>	<ul style="list-style-type: none"> <li>• Two additional annual preventive office visits specifically for obesity and blood pressure measurement</li> <li>• Two annual nutritional counseling visits specifically for obesity</li> <li>• One set of recommended laboratory studies</li> </ul>

## Preventive Medications

The plan pays for preventive care only when given by a network provider. To determine if a specific medication is covered under the wellness benefit, call Express Scripts at 1-800-555-3432. For over-the-counter medications purchased with a prescription from an in-network pharmacy, use your Express Scripts ID card.

Medication	Coverage
<b>Aspirin</b>	Coverage to persons ages 45 years for men (55 years for women) through 79 years
<b>Fluoride</b>	Coverage to persons through the age of 5 years old
<b>Folic acid</b>	Coverage to females through the age of 50 years old
<b>Iron</b>	Coverage to persons less than 1 year of age
<b>Smoking cessation</b>	Coverage to persons age 18 years and older

This general summary is a reference tool for planning your family's preventive care and not a complete list of the preventive health schedule provided under your plan. Your specific needs may vary according to your personal risk factors. Your doctor is always your best resource for determining if you're at an increased risk for a condition. To determine if a specific procedure is covered under the wellness benefit, call Highmark Blue Cross Blue Shield® at 1-866-472-0924.

**Exhibit B-8**

## MEET SOUTHERN BAPTISTS

# Your GuideStone Financial Resources



Started in 1918 to provide financial relief to aging ministers and their widows, GuideStone is one of the largest faith-based entities to offer financial services for church and denominational workers. Formerly known to Southern Baptists as the Annuity Board of the Southern Baptist Convention, GuideStone's mission to support aging ministers and their widows and orphans began with a \$100,000 gift from the Sunday School Board (now LifeWay Christian Resources) and a nearly \$1,000,000 gift from John D. Rockefeller and his son.

The stated mission of GuideStone Financial Resources is: "to assist churches, denominational entities, and other evangelical ministry organizations by making available **retirement** plan services, **life and health coverage**, **risk management** programs, and **personal and institutional investment** programs."

Founded in an era when many churches and Christian organizations provided little retirement or insurance support for their staff, GuideStone provided vital services to leaders and staff of local churches and Convention ministries, giving them peace of mind to concentrate on the Great Commission as they reach out to their communities with the Gospel (Matthew 28:18-20; 2 Timothy 2:3-4).

GuideStone also supports the Great Commission by its sponsorship of the "**Widow's Might**" ministry. This ministry encourages widows to pray for Southern Baptist ministries worldwide—especially in the area of evangelism. As the GuideStone website reflects, this ministry encourages prayer for regular ongoing ministry needs as well as specific prayer requests that are posted on a quarterly basis.

Unlike many Southern Baptist entities that are supported by the Cooperative Program, GuideStone Financial Resources receives no funding from the

Southern Baptist Convention Cooperative Program allocation budget. It is supported by the fees earned on its services and the growth of its investments.

In 2007, GuideStone voluntarily stopped receiving Cooperative Program funds in order to release those funds to enhance the spread of the Gospel through other SBC ministries. Prior to then, 100 percent of the Cooperative Program funds received by GuideStone was used to support its **Mission:Dignity** ministry that provides relief support for retired pastors, denominational workers, and their widows who live in financial need.

Formerly called "Adopt an Annuitant," GuideStone's **Mission:Dignity** provides assistance for approximately two thousand retired ministers, denominational workers, or their widows living on meager incomes. Many of these individuals once served small, often rural, churches which were unable to provide retirement support for them during their years of ministry. Operating largely by donations that GuideStone receives, manages, and disperses, almost \$6.5 million were given to these deserving individuals in the last recorded year.

What financial services are offered by GuideStone Financial Resources? First, GuideStone provides

The stated mission of GuideStone Financial Resources is: "to assist churches, denominational entities, and other evangelical ministry organizations by making available retirement plan services, life and health coverage, risk management programs, and personal and institutional investment programs."



GuideStone Funds is GuideStone's affiliate for providing Christian-based socially screened registered mutual funds.

several **retirement plans** for churches, Christian organizations, and individuals desiring to set up and maintain a retirement plan. These include employer-sponsored plans, deferred compensation plans, and even individual retirement plans. Originally only marketed to pastors and their families, over the years these retirement plans eventually were offered to a wide array of Christian organizations and the individuals connected to them.

In addition GuideStone offers **personal investment accounts** that individuals might use for either retirement or as part of an assets management plan for producing additional income aside from retirement.

GuideStone also offers a wide variety of **insurance plans**. These include various levels of **medical insurance**. Group medical plans are provided for any group that possesses 10 or more employees. These medical plans also include optional health savings accounts. Since insurance plays such a critical role in contemporary society, other insurance options beside medical insurance include **dental, life, disability, property, and casualty insurance**.

Furthermore, GuideStone provides financial services geared to specific financial needs of organizations and individuals. These include executive benefit services and actuarial services.

**GuideStone Funds** is GuideStone's affiliate for providing Christian-based, socially screened, registered mutual funds. It offers a variety of mutual funds available to meet the needs of its participants. GuideStone Funds operates a "manager-of-managers" investment model. Providing access to world class investment firms within a single investment fund, this approach benefits the individual investor. The firms utilized by GuideStone Funds have specific guidelines for each fund, and the funds themselves are carefully chosen based on a rigorous selection process utilizing both quantitative and qualitative measures and analysis.

A controlled affiliate of GuideStone Financial Resources, **GuideStone Capital Management**, is the investment advisor for GuideStone Funds. At the end of 2011 this affiliate managed \$9.6 billion in assets. In its advisory role GuideStone Capital Management currently serves more than 800 plan sponsors and over 200,000 participants. *All investments are managed consistently with a Christian worldview orientation and each investment is screened for its compatibility with the established biblical guidelines as determined by GuideStone policy.*

In recent years GuideStone Funds has won numerous national awards for outstanding investment performance from industry ranking firms like Lipper, fi360, and Morningstar. GuideStone Funds in March became the first ever Christian-based, socially screened mutual fund family to win the prestigious Lipper trophy for Best Overall Small Fund Group in the U.S., ranking #1 out of 182 eligible companies. (Lipper classifies fund families with up to \$40 billion in assets under management in its Small Fund Group.) "This is the first time that a Socially Responsible Investing fund group has won the award," said Jeff Tjornehoj, head of Lipper Americas Research. "2011 was a challenging year for the industry; GuideStone and all our winners should be congratulated for their achievements."

To accomplish its mission GuideStone Financial Resources develops its products and services in consultation with churches, state conventions, representatives from the other national entities, and the experience and expertise of the personnel from the six Southern Baptist Theological Seminaries. GuideStone maintains a long tradition of cooperating and working alongside other Convention entities, and encourages its employees to donate time and resources to Southern Baptist ministries all around the world. The spirit of these initiatives demonstrates the long history of cooperation in Southern Baptist life. Indeed this principle of cooperation is one of the eighteen spiritual principles enshrined in *The Baptist Faith and Message*.



**GuideStone**<sup>®</sup>  
Financial Resources

*Do well. Do right.*<sup>®</sup>

For more information call 1-888-984-8433,  
or visit [www.GuideStone.org](http://www.GuideStone.org).

All investments are managed consistently with a Christian worldview orientation and each investment is screened for its compatibility with the established biblical guidelines as determined by GuideStone policy.

**Exhibit B-9**



## *PPACA Overview*

- ▶ Your guide to health care reform law

Revised on August 15, 2013

The foregoing information is general in nature and is intended to keep you apprised of certain important developments. This information may be subject to interpretation or clarification over time, so we cannot guarantee its long-term accuracy or how it might be determined to apply in certain situations.

  
**GuideStone**<sup>®</sup>  
Insurance Plans

*Do well. Do right.*<sup>®</sup>

## What is PPACA?

In March 2010, President Obama signed the **Patient Protection and Affordable Care Act (PPACA)** into law, ushering in sweeping changes to how Americans access and pay for health care. On June 28, 2012, the U.S. Supreme Court upheld the vast majority of the law. With President Obama's re-election in November 2012, the way has been paved for full implementation. Though many provisions have already come into effect, 2014 is the critical year for PPACA. That's when many of the most substantial changes — including health care insurance exchanges and the individual and employer mandates — are slated to arrive. This is an overview of the provisions scheduled to take effect between 2012 and 2015.

### Church health plans and PPACA

#### ► What are church health plans?

Among the oldest health plans in the nation, church health plans are self-funded, multiple employer health plans operated by not-for-profit church benefits boards. They're designed specifically to meet the unique needs of those in ministry and have special standing with the IRS for this purpose. Because GuideStone's health plans exist solely to serve those in ministry, they include special benefits like:

- Increased flexibility for employers in structuring their plans to meet their ministry's unique needs
- Plan designs that adhere to shared Biblical values, particularly regarding sanctity of life
- Plan designs that you are accustomed to
- The freedom for employees to move between available plans during annual re-enrollment
- No commission benefit advisers and a not-for-profit approach to plan management
- Access to some of the largest, nationwide networks so our participants can choose best-in-class doctors, hospitals, pharmacies and other health care providers at discounted rates
- Family friendly plans that do not charge additional costs for more children and have maternity coverage
- Potential for plan cost-containment results to be returned to our participants and employers in the form of lower rates

#### ► How does PPACA address church health plans?

PPACA does not directly address church plans. Therefore, in cooperation with church benefits boards throughout the country, GuideStone is working with legislators, regulatory agencies and the White House to gain legislation and regulatory relief that speaks to the unique needs of church plans. We remain committed to standing strong for those in ministry and will continue to promptly inform our employers and participants as provisions come into effect.

## Provisions in place

### Women's preventive health expansion

**EFFECTIVE DATE:**

As of the first renewal on or after August 1, 2012

**EFFECTIVE DATE FOR GUIDESTONE PLANS:**

January 1, 2013

PPACA requires that health plans expand the preventive health services they cover for women at no cost-sharing under the *Preventive Care Schedule*. These expanded benefits include:

- Well-woman visits
- Gestational diabetes screening
- Human Papillomavirus (HPV) DNA testing
- Sexually-transmitted infection (STI) counseling
- HIV screening and counseling
- Contraception and contraceptive counseling  
(Note: GuideStone does not provide coverage for abortions or abortion-causing drugs.)
- Breastfeeding support, supplies and counseling
- Interpersonal and domestic violence screening and counseling

Effective January 1, 2013, GuideStone covers all of these expanded services at 100%, in-network, per the *Preventive Care Schedule*. The only exception is that GuideStone does not provide coverage for abortions and abortion-causing drugs, as this violates our Biblical convictions on the sanctity of life.

### Medical Loss Ratio rebates

**EFFECTIVE DATE:**

August 1, 2012

**EFFECTIVE DATE FOR GUIDESTONE PLANS:**

Not applicable

A “Medical Loss Ratio (MLR)” is the percentage of insurance premium dollars spent on reimbursement for clinical services or activities to improve health care quality. PPACA requires insurers to meet minimum MLR standards — 85% and 80% respectively for large group and small group/individual policy business. If a state-regulated insurer does not meet these minimums, the insurer is required to issue rebates to plan sponsors (i.e., employers), which they must pass along to participants.

Beginning August 1, 2012, some plan sponsors began receiving rebates from insurers who failed to meet these minimum standards. Going forward, state-regulated insurers are required to submit data to the government to determine if rebates will be paid to policyholders. These rebates will be paid every August 1.

As a self-funded plan, GuideStone's medical plans are exempt from this requirement. Self-funded plans exist solely to pay claims for a specified group and ensure adequate reserves. Because GuideStone is non-profit, GuideStone's self-funded church plans are not intended to make a profit — unlike many state-regulated insurance carriers — and are therefore exempt from the provision.

GuideStone's claims-to-premium ratio exceeds the minimum standard set by the federal government. This means that even if GuideStone were subject to this provision, we would not be required to issue rebates. As a non-profit church plan, GuideStone uses any additional funds it receives for the benefit of the plan and those participating. Those benefits are seen in reduced plan pricing and/or increased plan benefits.

# **Exhibit C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

EAST TEXAS BAPTIST UNIVERSITY,  
and  
HOUSTON BAPTIST UNIVERSITY,

*Plaintiffs,*

v.

KATHLEEN SEBELIUS, *et al.*

*Defendants.*

Civil No. 12-3009

**DECLARATION OF  
DIANA M. VERM**

I, Diana M. Verm, hereby state under penalty of perjury as follows:

1. I am one of the counsel representing Plaintiffs in the above-captioned matter and am admitted *pro hac vice* before this Court in connection with this case. I have personal knowledge of everything testified to in this declaration.
2. Attached hereto as Exhibit C-1 is a true and complete copy of Health Resources and Services Administration, *Women's Preventive Services: Required Health Plan Coverage Guidelines* (Aug. 1, 2011).
3. Attached hereto as Exhibit C-2 is a true and complete copy of the FDA Birth Control Guide (Aug. 2012).
4. Attached hereto as Exhibit C-3 is a true and complete copy of the January 20, 2012 Statement of U.S. Department of Health and Human Services Secretary Kathleen Sebelius.
5. Attached hereto as Exhibit C-4 is a true and complete copy of the Department of Health and Human Services *Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code* (updated June 28, 2013).

6. Attached hereto as Exhibit C-5 is a true and complete copy of The White House, *The Affordable Care Act Increases Choice and Saving Money for Small Businesses*.
7. Attached hereto as Exhibit C-6 is a true and complete copy of the Department of Health and Human Services' "Keeping the Health Plan You Have: The Affordable Care Act and 'Grandfathered' Health Plans" document (2010).
8. Attached hereto as Exhibit C-7 is a true and complete copy of Mark J. Mazur, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, *Continuing to Implement the ACA in a Careful, Thoughtful Manner* (July 2, 2013), available at <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx>.

Executed this 30th day of August, 2013, in Washington, D.C.



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Diana M. Verm

# **Exhibit C-1**

[HRSA Home](#)

## Women's Preventive Services Guidelines

Share      43

### Affordable Care Act Expands Prevention Coverage for Women's Health and Well-Being

The Affordable Care Act – the health insurance reform legislation passed by Congress and signed into law by President Obama on March 23, 2010 – helps make prevention affordable and accessible for all Americans by requiring health plans to cover preventive services and by eliminating cost sharing for those services. Preventive services that have strong scientific evidence of their health benefits must be covered and plans can no longer charge a patient a copayment, coinsurance or deductible for these services when they are delivered by a network provider.

### Women's Preventive Services Guidelines Supported by the Health Resources and Services Administration

Under the Affordable Care Act, women's preventive health care – such as mammograms, screenings for cervical cancer, prenatal care, and other services – generally must be covered by health plans with no cost sharing. However, the law recognizes and HHS understands the need to take into account the unique health needs of women throughout their lifespan.

The HRSA-supported health plan coverage guidelines, developed by the Institute of Medicine (IOM), will help ensure that women receive a comprehensive set of preventive services without having to pay a co-payment, co-insurance or a deductible. HHS commissioned an IOM study to review what preventive services are necessary for women's health and well-being and therefore should be considered in the development of comprehensive guidelines for preventive services for women. HRSA is supporting the IOM's recommendations on preventive services that address health needs specific to women and fill gaps in existing guidelines.

### Health Resources and Services Administration Women's Preventive Services Guidelines

*Non-grandfathered plans (plans or policies created or sold after March 23, 2010, or older plans or policies that have been changed in certain ways since that date) generally are required to provide coverage without cost sharing consistent with these guidelines in the first plan year (in the individual market, policy year) that begins on or after August 1, 2012.*

#### Learn More

[Clinical Preventive Services for Women: Closing the Gaps](#) Institute of Medicine report

**HealthCare.gov**

[Prevention](#)

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HealthCare.gov

Type of Preventive Service	HHS Guideline for Health Insurance Coverage	Frequency
Well-woman visits.	Well-woman preventive care visit annually for adult women to obtain the recommended preventive services that are age and developmentally appropriate, including preconception care and many services necessary for prenatal care. This well-woman visit should, where appropriate, include other preventive services listed in this set of guidelines, as well as others referenced in section 2713.	Annual, although HHS recognizes that several visits may be needed to obtain all necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.* (see note)
Screening for gestational diabetes.	Screening for gestational diabetes.	In pregnant women between 24 and 28 weeks of gestation and at the first prenatal visit for pregnant women identified to be at high risk for diabetes.
Human papillomavirus testing.		Screening should begin at 30 years of age and should occur

	High-risk human papillomavirus DNA testing in women with normal cytology results.	no more frequently than every 3 years.
<b>Counseling for sexually transmitted infections.</b>	Counseling on sexually transmitted infections for all sexually active women.	Annual.
<b>Counseling and screening for human immune-deficiency virus.</b>	Counseling and screening for human immune-deficiency virus infection for all sexually active women.	Annual.
<b>Contraceptive methods and counseling.</b> <a href="#">** (see note)</a>	All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.	As prescribed.
<b>Breastfeeding support, supplies, and counseling.</b>	Comprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding equipment.	In conjunction with each birth.
<b>Screening and counseling for interpersonal and domestic violence.</b>	Screening and counseling for interpersonal and domestic violence.	

\* Refer to guidance issued by the Center for Consumer Information and Insurance Oversight entitled [Affordable Care Act Implementation FAQs, Set 12, Q10](#). In addition, refer to recommendations in the July 2011 IOM report entitled *Clinical Preventive Services for Women: Closing the Gaps* concerning distinct preventive services that may be obtained during a well-woman preventive services visit.

\*\* The guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers. Effective August 1, 2013, a religious employer is defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. HRSA notes that, as of August 1, 2013, group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the requirement to cover contraceptive services under section 2713 of the Public Health Service Act, as incorporated into the Employee Retirement Income Security Act and the Internal Revenue Code. HRSA also notes that, as of January 1, 2014, accommodations are available to group health plans established or maintained by certain eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations, with respect to the contraceptive coverage requirement. See Federal Register Notice: [Coverage of Certain Preventive Services Under the Affordable Care Act](#) (PDF - 327 KB)

# **Exhibit C-2**



# Birth Control Guide

This guide gives the basic facts about the different kinds of FDA-approved medicines and devices for birth control. Ask your doctor to tell you about all of the risks and benefits of using these products.



If you do not want to get pregnant, there are many birth control options to choose from. No one product is best for everyone. The only sure way to avoid pregnancy and sexually transmitted infections (STIs or STDs) is not to have any sexual contact (abstinence). This guide lists FDA-approved products for birth control. Talk to your doctor, nurse, or pharmacist about the best method for you.

There are different kinds of medicines and devices for birth control:

- Barrier Methods** .....4
- Hormonal Methods** .....10
- Emergency Contraception** .....16
- Implanted Devices** .....18
- Permanent Method for Men** .....21
- Permanent Methods for Women** .....22

**2**

**Some things to think about when you choose birth control:**

- Your health
- How often you have sex.
- How many sexual partners you have.
- If you want to have children in the future.
- If you will need a prescription or if you can buy the method over-the-counter.
- The number of pregnancies expected per 100 women who use a method for 1 year. For comparison, about 85 out of 100 sexually active women who do not use any birth control can expect to become pregnant in a year.
- This booklet lists pregnancy rates of **typical use**. Typical use shows how effective the different methods are during actual use (including sometimes using a method in a way that is not correct or not consistent).
- For more information on the chance of getting pregnant while using a method, please see Trussell, J. (2011). "Contraceptive failure in the United States." Contraception 83(5):397-404.

**Tell your doctor, nurse, or pharmacist if you:**

- Smoke.
- Have liver disease.
- Have blood clots.
- Have family members who have had blood clots.
- Are taking any other medicines, like antibiotics.
- Are taking any herbal products, like St. John's Wort.

**To avoid pregnancy:**

- No matter which method you choose, it is important to follow all of the directions carefully. If you don't, you raise your chance of getting pregnant.
- The best way to avoid pregnancy and sexually transmitted infections (STIs) is to practice total abstinence (do not have any sexual contact).

**To Learn More:**

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change. To get the most recent information for your birth control go to:

**Drugs**

Go to <http://www.accessdata.fda.gov/scripts/cder/drugsatfda>  
(type in the name of your drug)

**Devices**

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm>  
(type in the name of your device)

# BARRIER METHODS

Block sperm from reaching the egg

## Male Condom (Latex or Polyurethane)



### What is it?

- A thin film sheath placed over the erect penis.

### How do I use it?

- Put it on the erect penis right before sex.
- Pull out before the penis softens.
- Hold the condom against the base of the penis before pulling out.
- Use it only once and then throw it away.

### How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

4

## Female Condom



### What is it?

- A lubricated, thin polyurethane pouch that is put into the vagina.

### How do I use it?

- Put the female condom into the vagina right before sex.
- Use it only once and then throw it away.

### How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

5

### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 21 may get pregnant.
- The most important thing is that you use a condom every time you have sex.

### Some Risks

- Irritation
  - Allergic reactions
- Does it protect me from sexually transmitted infections (STIs)?**
- May give some protection against STIs, but more research is needed.
  - Not as effective as male latex condoms.

## BARRIER METHODS

Block sperm from reaching the egg

### Diaphragm with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



#### 4 What is it?

- A dome-shaped flexible disk with a flexible rim.
- Made from latex rubber or silicone.
- It covers the cervix.

#### How do I use it?

- You need to put spermicidal jelly on the inside of the diaphragm before putting it into the vagina.
- You must put the diaphragm into the vagina before having sex.
- You must leave the diaphragm in place at least 6 hours after having sex.
- It can be left in place for up to 24 hours. You need to use more spermicide every time you have sex.

#### How do I get it?

- You need a prescription.
- A doctor or nurse will need to do an exam to find the right size diaphragm for you.
- You should have the diaphragm checked after childbirth or if you lose more than 15 pounds. You might need a different size.

#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 12 may get pregnant.

#### Some Risks

- Irritation, allergic reactions, and urinary tract infection.
- If you keep it in place longer than 24 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

**Does it protect me from sexually transmitted infections (STIs)?** No.

### Sponge with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



#### What is it?

- A disk-shaped polyurethane device with the spermicide nonoxynol-9.

#### How do I use it?

- Put it into the vagina before you have sex.
- Protects for up to 24 hours. You do not need to use more spermicide each time you have sex.
- You must leave the sponge in place for at least 6 hours after having sex.
- You must take the sponge out within 30 hours after you put it in. Throw it away after you use it.

#### How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, 12 to 24 may get pregnant.
- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the sponge may not fit as well.

#### Some Risks

- Irritation
- Allergic reactions
- Some women may have a hard time taking the sponge out.
- If you keep it in place longer than 24-30 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

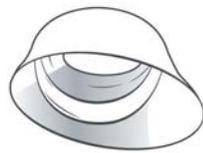
**Does it protect me from sexually transmitted infections (STIs)?** No.

## BARRIER METHODS

Block sperm from reaching the egg

### Cervical Cap with Spermicide

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



#### What is it?

- A soft latex or silicone cup with a round rim, which fits snugly around the cervix.

#### How do I use it?

- You need to put spermicidal jelly inside the cap before you use it.
- You must put the cap in the vagina before you have sex.
- You must leave the cap in place for at least 6 hours after having sex.
- You may leave the cap in for up to 48 hours.
- You do NOT need to use more spermicide each time you have sex.

#### How do I get it?

- You need a prescription.

#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 17 to 23 may get pregnant.
- It may not work as well for women who have given birth. Childbirth stretches the vagina and cervix and the cap may not fit as well.

#### Some Risks

- Irritation, allergic reactions, and abnormal Pap test.
- You may find it hard to put in.
- If you keep it in place longer than 48 hours, there is a risk of toxic shock syndrome. Toxic shock is a rare but serious infection.

**Does it protect me from sexually transmitted infections (STIs)?** No

### Spermicide Alone

Spermicides containing N9 can irritate the vagina and rectum. It may increase the risk of getting the AIDS virus (HIV) from an infected partner.



#### What is it?

- A foam, cream, jelly, film, or tablet that you put into the vagina.

#### How do I use it?

- You need to put spermicide into the vagina 5 to 90 minutes before you have sex.
- You usually need to leave it in place at least 6 to 8 hours after sex; do not douche or rinse the vagina for at least 6 hours after sex.
- Instructions can be different for each type of spermicide. Read the label before you use it.

#### How do I get it?

- You do not need a prescription.
- You can buy it over-the-counter.

#### Chance of getting pregnant with typical use

(Number of pre

Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 28 may get pregnant.
- Different studies show different rates of effectiveness.

#### Some Risks

- Irritation
- Allergic reactions
- Urinary tract infection
- If you are also using a medicine for a vaginal yeast infection, the spermicide might not work as well.

**Does it protect me from sexually transmitted infections (STIs)?** No.

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

## Oral Contraceptives (Combined Pill)

### “The Pill”



#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

#### Some Side Effects

- Changes in your cycle (period)
- Nausea
- Breast tenderness
- Headache

#### Less Common Serious Side Effects

- It is not common, but some women who take the pill develop high blood pressure.
- It is rare, but some women will have blood clots, heart attacks, or strokes.

**Does it protect me from sexually transmitted infections (STIs)?** No.

#### How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

## Oral Contraceptives (Progestin-only)

### “The Mini Pill”



#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

#### Some Risks

- Irregular bleeding
- Headache
- Breast tenderness
- Nausea
- Dizziness

**Does it protect me from sexually transmitted infections (STIs)?** No.

#### What is it?

- A pill that has only 1 hormone, a progestin.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- Less often, it stops the ovaries from releasing eggs.

#### How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

#### How do I get it?

- You need a prescription.

# HORMONAL METHODS

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

## Oral Contraceptives (Extended/Continuous Use)

### “The Pill”



#### What is it?

- A pill that has 2 hormones (estrogen and progesterin) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.
- These pills are designed so women have fewer or no periods.

#### How do I use it?

- You should swallow the pill at the same time every day, whether or not you have sex.
- If you miss 1 or more pills, or start a pill pack too late, you may need to use another method of birth control, like a condom.

#### How do I get it?

- You need a prescription.

#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

#### Some Risks

- Risks are similar to other oral contraceptives with estrogen and progesterin.
- You may have more light bleeding and spotting between periods than with 21 or 24 day oral contraceptives.
- It may be harder to know if you become pregnant, since you will likely have fewer periods or no periods.

#### Does it protect me from sexually transmitted infections (STIs)? No.

### Patch



#### What is it?

- This is a skin patch you can wear on the lower abdomen, buttocks, or upper arm or back.
- It has hormones (estrogen and progesterin) that stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

#### How do I use it?

- You put on a new patch and take off the old patch once a week for 3 weeks (21 total days).
- Don't put on a patch during the fourth week. Your menstrual period should start during this patch-free week.

- If the patch comes loose or falls off, you may need to use another method of birth control, like a condom.

#### How do I get it?

- You need a prescription.

#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

#### Some Risks

- It will expose you to higher levels of estrogen compared to most combined oral contraceptives.
- It is not known if serious risks, such as blood clots and strokes, are greater with the patch because of the greater exposure to estrogen.

#### Does it protect me from sexually transmitted infections (STIs)? No.

Prevent pregnancy by interfering with ovulation and possibly fertilization of the egg

## Vaginal Contraceptive Ring



### ∞ What is it?

- It is a flexible ring that is about 2 inches around.
- It releases 2 hormones (progesterin and estrogen) to stop the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps sperm from getting to the egg.

### How do I use it?

- You put the ring into your vagina.
- Keep the ring in your vagina for 3 weeks and then take it out for 1 week. Your menstrual period should start during this ring-free week.

- If the ring falls out and stays out for more than 3 hours, replace it but use another method of birth control, like a condom, until the ring has been in place for 7 days in a row.

- Read the directions and talk to your doctor, nurse or pharmacist about what to do.

### How do I get it?

- You need a prescription.

### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, about 9 may get pregnant.

### Some Side Effects and Risks

- Vaginal discharge, discomfort in the vagina, and mild irritation.
- Other risks are similar to oral contraceptives (combined pill).

**Does it protect me from sexually transmitted infections (STIs)?** No.

## Shot/Injection



### What is it?

- A shot of the hormone progesterin, either in the muscle or under the skin.

### How does it work?

- The shot stops the ovaries from releasing eggs.
- It also thickens the cervical mucus, which keeps the sperm from getting to the egg.

### How do I get it?

- You need 1 shot every 3 months from a health care provider.

### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, including women who don't get the shot on time, 6 may get pregnant.

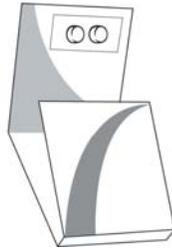
### Some Risks

- You may lose bone density if you get the shot for more than 2 years in a row.
- Bleeding between periods
- Headaches
- Weight gain
- Nervousness
- Abdominal discomfort

**Does it protect me from sexually transmitted infections (STIs)?** No.

May be used if you did not use birth control or if your regular birth control fails. It should not be used as a regular form of birth control.

## Plan B, Plan B One-Step and Next Choice (Levonorgestrel)



### What is it?

- These are pills with the hormone progesterin.
- They help prevent pregnancy after birth control failure or unprotected sex.

### How does it work?

- It works mainly by stopping the release of an egg from the ovary. It may also work by preventing fertilization of an egg (the uniting of sperm with the egg) or by preventing attachment (implantation) to the womb (uterus).
- For the best chance for it to work, you should take the pill(s) as soon as possible after unprotected sex.

- You should take emergency contraception within 3 days after unprotected sex.

### How do I get it?

- You can get Plan B, Plan B One-Step and Next Choice without a prescription if you are 17 years or older.
- If you are younger than 17, you need a prescription.

### Chance of getting pregnant with typical use

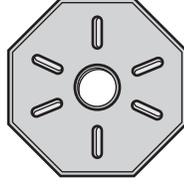
- 7 out of every 8 women who would have gotten pregnant will not become pregnant after taking Plan B, Plan B One-Step, or Next Choice.

### Some Risks

- Nausea
- Vomiting
- Abdominal pain
- Fatigue
- Headache

**Does it protect me from sexually transmitted infections (STIs)?** No.

## Ella (ulipristal acetate)



### What is it?

- A pill that blocks the hormone progesterone.
- It helps prevent pregnancy after birth control failure or unprotected sex.

### How does it work?

- It works mainly by stopping or delaying the ovaries from releasing an egg. It may also work by changing the lining of the womb (uterus) that may prevent attachment (implantation).
- For the best chance for it to work, you should take the pill as soon as possible after unprotected sex.
- You should take Ella within 5 days after having unprotected sex.

### How do I get it?

- You need a prescription.

### Chance of getting pregnant with typical use

- 6 or 7 out of every 10 women who would have gotten pregnant will not become pregnant after taking Ella.

### Some Risks

- Headache
- Nausea
- Abdominal pain
- Menstrual pain
- Tiredness
- Dizziness

**Does it protect me from sexually transmitted infections (STIs)?** No.

Inserted/implanted into the body and can be kept in place for several years

## Copper IUD



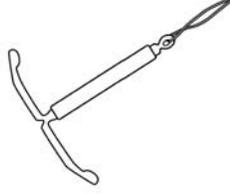
10

### What is it?

- A T-shaped device that is put into the uterus by a healthcare provider.

### How does it work?

- The IUD prevents sperm from reaching the egg, from fertilizing the egg, and may prevent the egg from attaching (implanting) in the womb (uterus).
- It does not stop the ovaries from making an egg each month.
- The Copper IUD can be used for up to 10 years.
- After the IUD is taken out, it is possible to get pregnant.



### What is it?

- A T-shaped device that is put into the uterus by a healthcare provider.

### How does it work?

- It may thicken the mucus of your cervix, which makes it harder for sperm to get to the egg, and also thins the lining of your uterus.
- After a doctor or other healthcare provider puts in the IUD, it can be used for up to 5 years.
- After the IUD is taken out, it is possible to get pregnant.

## IUD with progestin

### How do I get it?

- A doctor or other healthcare provider needs to put in the IUD.

### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

### Some Side Effects

- Irregular bleeding
- No periods
- Abdominal/pelvic pain
- Ovarian cysts

### Uncommon Risks

- Pelvic inflammatory disease
- Infertility

### Rare Risk

- IUD is stuck in the uterus or found outside the uterus.

- Life-threatening infection

**Does it protect me from sexually transmitted infections (STIs)?** No.

18

19

## IMPLANTED METHODS

Inserted/implanted into the body and can be kept in place for several years

### Implantable Rod



#### What is it?

- A thin, matchstick-sized rod that contains the hormone progesterin.
- It is put under the skin on the inside of your upper arm.

#### How does it work?

- It stops the ovaries from releasing eggs.
- It thickens the cervical mucus, which keeps sperm from getting to the egg.
- It can be used for up to 3 years.

#### How do I get it?

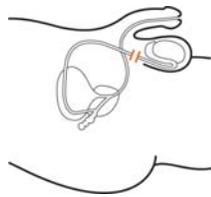
- After giving you local anesthesia, a doctor or nurse will put it under the skin of your arm with a special needle.

## PERMANENT METHODS

For people who are sure they never want to have a child or do not want any more children.

### Sterilization Surgery for Men Vasectomy

This method is for men who are sure they never want to have a child or do not want any more children. If you are thinking about reversal, vasectomy may not be right for you. Sometimes it is possible to reverse the operation, but there are no guarantees. Reversal involves complicated surgery that might not work.



#### What is it?

- This is a surgery a man has only once.
- It is permanent.

#### How does it work?

- A surgery blocks a man's vas deferens (the tubes that carry sperm from the testes to other glands).
- Semen (the fluid that comes out of a man's penis) never has any sperm in it.
- It takes about 3 months to clear sperm out of a man's system. You need to use another form of birth control until a test shows there are no longer any sperm in the seminal fluid.

#### How do I get it?

- A man needs to have surgery.
- Local anesthesia is used.

#### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women whose partner has had a vasectomy, less than 1 may get pregnant.

#### Some Risks

- Pain
- Bleeding
- Infection

#### Does it protect me from sexually transmitted infections (STIs)? No.

#### The success of reversal surgery depends on:

- The length of time since the vasectomy was performed.
- Whether or not antibodies to sperm have developed.
- The method used for vasectomy
- Length and location of the segments of vas deferens that were removed or blocked.

# PERMANENT METHODS

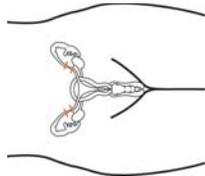
For people who are sure they never want to have a child or do not want any more children.

## Can it be reversed?

Reversals require complicated surgery. Even though tubes can sometimes be rejoined, there are no guarantees. For many women, reversals are not possible because there is not enough of their tubes left to reconnect.

## Sterilization Surgery for Women

Surgical Implant (also called trans-abdominal surgical sterilization)



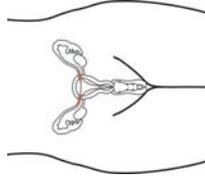
- This is a surgery a woman has only once.
  - It is permanent.
- How do I get it?**
- This is a surgery you ask for.
  - You will need general anesthesia.

### 12 What is it?

- A device is placed on the outside of each fallopian tube.
- How does it work?**
- One way is by tying and cutting the tubes — this is called tubal ligation. The fallopian tubes also can be sealed using an instrument with an electrical current. They also can be closed with clips, clamps or rings. Sometimes, a small piece of the tube is removed.
  - The woman's fallopian tubes are blocked so the egg and sperm can't meet in the fallopian tube. This stops you from getting pregnant.

### What is it?

- Small flexible, metal coil that is put into the fallopian tubes through the vagina.
- The device works by causing scar tissue to form around the coil. This blocks the fallopian tubes and stops you from getting pregnant.



### How does it work?

- The device is put inside the fallopian tube with a special catheter.
- You need to use another birth control method during the first 3 months. You will need an X-ray to make sure the device is in the right place.

- It is permanent.

### How do I get it?

- The devices are placed into the tubes using a camera placed in the uterus.
- Once the tubes are found, the devices are inserted.
- Since it is inserted through the vagina, no skin cutting (incision) is needed.
- You may need local anesthesia.

### Chance of getting pregnant with typical use

(Number of pregnancies expected per 100 women who use this method for 1 year)

- Out of 100 women who use this method, less than 1 may get pregnant.

### Some Risks

- Mild to moderate pain after insertion
  - Ectopic (tubal) pregnancy
- Does it protect me from sexually transmitted infections (STIs)?** No.



**Office of  
Women's  
Health**

<http://www.fda.gov/birthcontrol>

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### **To Learn More:**

This guide should not be used in place of talking to your doctor or reading the label for your product. The product and risk information may change. To get the most recent information for your birth control go to:

#### **Drugs**

Go to <http://www.accessdata.fda.gov/scripts/cder/drugsatfda>  
(type in the name of your drug)

#### **Devices**

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/LSTSimpleSearch.cfm>  
(type in the name of your device)

**UPDATED AUGUST 2012**

TAKE TIME TO CARE ... For yourself, for those who need you.

# **Exhibit C-3**

HHS Home > Newsroom

## News Release

<b>Newsroom</b>
<b>Speeches and Testimony</b>
<b>Reports</b>
<b>Freedom of Information Act (FOIA)</b>
<b>Audio / Video / Photo</b>
<b>E-mail Updates/RSS Feeds</b>
<b>Social Hub</b>
<b>Contacts</b>

FOR IMMEDIATE RELEASE  
January 20, 2012

Contact: HHS Press Office  
(202) 690-6343

### A statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius

In August 2011, the Department of Health and Human Services issued an interim final rule that will require most health insurance plans to cover preventive services for women including recommended contraceptive services without charging a co-pay, co-insurance or a deductible. The rule allows certain non-profit religious employers that offer insurance to their employees the choice of whether or not to cover contraceptive services. Today the department is announcing that the final rule on preventive health services will ensure that women with health insurance coverage will have access to the full range of the Institute of Medicine's recommended preventive services, including all FDA -approved forms of contraception. Women will not have to forego these services because of expensive co-pays or deductibles, or because an insurance plan doesn't include contraceptive services. This rule is consistent with the laws in a majority of states which already require contraception coverage in health plans, and includes the exemption in the interim final rule allowing certain religious organizations not to provide contraception coverage. Beginning August 1, 2012, most new and renewed health plans will be required to cover these services without cost sharing for women across the country.

After evaluating comments, we have decided to add an additional element to the final rule. Nonprofit 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. Employers wishing to take advantage of the additional year must certify that they qualify for the delayed implementation. This additional year will allow these organizations more time and flexibility to adapt to this new rule. We intend 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. We will continue to work closely with religious groups during this transitional period to discuss their concerns.

Scientists have abundant evidence that birth control has significant health benefits for women and their families, is documented to significantly reduce health costs, and is the most commonly taken drug in America by young and middle-aged women. This rule will provide women with greater access to contraception by requiring coverage and by prohibiting cost sharing.

This decision was made after very careful consideration, including the important concerns some have raised about religious liberty. I believe this proposal strikes the appropriate balance between respecting religious freedom and increasing access to important preventive services. The administration remains fully committed to its partnerships with faith-based organizations, which promote healthy communities and serve the common good. And this final rule will have no impact on the protections that existing conscience laws and regulations give to health care providers.

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Note: All HHS news releases, fact sheets and other press materials are available at <http://www.hhs.gov/news>.

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Follow HHS Secretary Kathleen Sebelius on Twitter [@Sebelius](#) .

Last revised: February 2, 2012

# **Exhibit C-4**

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information & Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



**Date:** June 28, 2013<sup>1</sup>

**From:** Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS)

**Title:** Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code<sup>2</sup>

## I. Purpose

Section 2713(a)(4) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires non-grandfathered group health plans and health insurance issuers to provide coverage for recommended women's preventive health services without cost sharing. The Affordable Care Act also added section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act (including section 2713) into ERISA and the Code to make them applicable to group health plans.

Interim final regulations were issued by the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury (collectively, the Departments) on July 19, 2010 (codified at 26 CFR §54.9815-2713T; 29 CFR §2590.715-2713; and 45 CFR §147.130), which provide that a non-grandfathered group health plan or health insurance issuer must cover certain items and services, without cost sharing, as recommended by the U.S. Preventive Services Task Force (USPSTF), the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the Health Resources and Services

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<sup>1</sup> This bulletin was originally issued on February 10, 2012, and reissued on August 15, 2012, to describe the temporary enforcement safe harbor. In reissuing this bulletin, CMS is not changing the substance of the policy; it is only extending the temporary enforcement safe harbor to encompass plan years beginning on or after August 1, 2013 (the prior expiration date of the safe harbor), and before January 1, 2014 (the applicability date of final regulations establishing accommodations for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations that are institutions of higher education, with respect to the contraceptive coverage requirement).

<sup>2</sup> The terms of this bulletin apply to student health insurance coverage in a manner comparable to that in which they apply to insured group health plan coverage.

Administration (HRSA). Among other things, the interim final regulations provide that, if a new recommendation or guideline is issued, a plan or issuer must provide coverage consistent with the new recommendation or guideline (with no cost sharing) for plan years (or, in the individual market, policy years) that begin on or after the date that is one year after the date on which the new recommendation or guideline is issued.

HRSA was charged by statute with developing comprehensive guidelines for preventive care and screenings with respect to women, to the extent not already recommended by USPSTF. On August 1, 2011, HRSA adopted and released guidelines for women's preventive services based on recommendations developed by the Institute of Medicine at the request of HHS (Women's Preventive Services: Required Health Plan Coverage Guidelines, or HRSA Guidelines). One of HRSA's recommendations is that all Food and Drug Administration-approved contraceptives for women, as prescribed by a provider, be covered by non-grandfathered group health plans and health insurance issuers without cost sharing.

That same day, the Departments issued an amendment to the interim final regulations that provided HRSA discretion to exempt group health plans established or maintained by certain religious employers (and any group health insurance provided in connection with such plans) from any requirement to cover contraceptive services, and this discretion was exercised by HRSA in the HRSA Guidelines such that group health plans established or maintained by these religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the contraceptive coverage requirement. Final regulations issued on February 10, 2012, adopted the definition of religious employer in the amended interim final regulations, which has subsequently been modified (see description below).

For all non-exempted, non-grandfathered plans and policies, the regulations require coverage of the recommended women's preventive services, including the recommended contraceptive services, without cost sharing, for plan years (or, in the individual market, policy years) beginning on or after August 1, 2012.

On February 10, 2012, CMS established a temporary enforcement safe harbor with respect to non-grandfathered health plans established or maintained or arranged by certain nonprofit organizations with religious objections to contraceptive coverage (and any health insurance coverage offered in connection with such plans).<sup>3</sup>

This bulletin modifies the applicable time period of the previous version of this bulletin. Originally issued on February 10, 2012, and reissued on August 15, 2012, this bulletin describes the temporary enforcement safe harbor available to non-grandfathered health plans established or maintained or arranged by nonprofit organizations whose plans have consistently not covered all or the same subset of contraceptive services for religious reasons at any point from the original issuance date of this bulletin (i.e., February 10, 2012) onward, consistent with any applicable

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<sup>3</sup> The bulletin was originally reissued on August 15, 2012, to clarify that: (1) the safe harbor is also available to nonprofit organizations with religious objection to some but not all contraceptive coverage; (2) group health plans that took some action to try to exclude or limit contraceptive coverage that was not successful as of February 10, 2012, are not for that reason precluded from eligibility for the safe harbor; and (3) the safe harbor may be invoked without prejudice by nonprofit organizations that are uncertain whether they qualify for the religious employer exemption.

State law (and any group health insurance coverage provided in connection with such plans). Under the original terms of the bulletin, the temporary enforcement safe harbor would remain in effect until the first plan year beginning on or after August 1, 2013. A commitment was made to rulemaking during the one-year safe harbor period to accommodate certain additional nonprofit religious organizations with religious objections to contraceptive coverage by providing women in their plans with alternative methods to obtain contraceptive coverage without cost sharing.

Contemporaneous with the reissuance of this bulletin, the Departments are issuing final regulations under section 2713 of the PHS Act and the companion provisions of ERISA and the Code. The final regulations simplify and clarify the definition of religious employer for purposes of the religious employer exemption. The regulations also establish accommodations that are available to group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations that are institutions of higher education, with respect to the contraceptive coverage requirement. The final regulations generally apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014.<sup>4</sup>

Also contemporaneous with this bulletin and the final regulations, the Departments of HHS and Labor are issuing a self-certification form to be executed by an organization seeking to be treated as an eligible organization for purposes of an accommodation under the final regulations. This self-certification form is applicable in conjunction with the accommodations under the final regulations (i.e., for plan years beginning on or after January 1, 2014), after the expiration of the temporary enforcement safe harbor. The self-certification form associated with the final regulations is different from the self-certification form associated with the temporary enforcement safe harbor and provided at the end of this bulletin. The self-certification associated with the temporary enforcement safe harbor is to be used only for plan years beginning before January 1, 2014.

In reissuing this bulletin, CMS is not changing the substance of the temporary enforcement safe harbor policy; it is only extending the safe harbor to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This transitional enforcement safe harbor is intended to maintain the status quo with respect to organizations that qualify for the safe harbor during the period that exists between the prior expiration date of the safe harbor and the applicability date of the final regulations. As described herein, organizations that qualify under the safe harbor are not required to execute another self-certification, but are required to provide another notice to plan enrollees in connection with any new plan year.

The Department of Labor and the Department of the Treasury agree with the need for such transitional relief and will not take any enforcement action against an employer or group health plan that complies with the conditions of the temporary enforcement safe harbor described herein.

## II. Temporary Enforcement Safe Harbor

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<sup>4</sup> The amendments to the religious employer exemption apply for plan years beginning on or after August 1, 2013.

The temporary enforcement safe harbor will be in effect until the first plan year that begins on or after January 1, 2014. Neither employers, nor group health plans, nor group health insurance issuers will be subject to any enforcement action by the Departments for failing to cover some or all of the recommended contraceptive services without cost sharing in non-grandfathered group health plans established or maintained by an organization, including a group or association of employers within the meaning of section 3(5) of ERISA, (and any group health insurance coverage provided in connection with such plans) meeting all of the following criteria:

1. The organization is organized and operates as a nonprofit entity.
2. From February 10, 2012 onward, the health plan established or maintained or arranged by the organization has consistently not provided all or the same subset of the contraceptive coverage otherwise required, at any point, consistent with any applicable State law, because of the religious beliefs of the organization.
3. As detailed below, the health plan established or maintained or arranged by the organization (or another entity on behalf of the plan, such as a health insurance issuer or third-party administrator) must provide to plan enrollees the attached notice, as described below, which states that some or all contraceptive coverage will not be provided under the plan during the temporary enforcement safe harbor period.<sup>5</sup>
4. The organization self-certifies that it satisfies criteria 1-3 above, and documents its self-certification in accordance with the procedures detailed herein.

With respect to the second criterion above, the following exception applies. A health plan will be considered not to have provided all or the same subset of the contraceptive coverage otherwise required if it took some action to try to exclude or limit such coverage that was not successful as of February 10, 2012. Accordingly, such coverage will not disqualify an employer, a group health plan, or a group health insurance issuer from eligibility for the safe harbor. To qualify, the organization must certify that it (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action. Section IV describes the specifications for the certification.

Any employer that potentially qualifies for the religious employer exemption may, if eligible, opt to invoke the temporary enforcement safe harbor. Doing so would not preclude the employer from later invoking the exemption, if eligible.

### III. Notice

The attached notice must be in any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective for each plan year beginning before

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<sup>5</sup> Nothing in this bulletin precludes employers or others from expressing their opposition, if any, to the final regulations or to the use of contraceptives.

January 1, 2014.<sup>6</sup> (For example, for a calendar year plan with an open enrollment period beginning November 1, the notice must be in any application materials provided to plan enrollees on or after November 1, 2013.).

This notice is required to be provided by the health plan (although the plan may ask another entity, such as a health insurance issuer or third-party administrator, to accept responsibility for providing the notice on its behalf). With respect to insured coverage, unless it accepts in writing the responsibility for providing the notice, a group health insurance issuer does not lose its protection under the temporary enforcement safe harbor solely because the notice is not distributed by the plan as described herein, or because the issuer relies in good faith on a representation by the plan that turns out to be incorrect.

Organizations that exclude some contraceptive coverage must use the term “some” in the notice where indicated.

#### IV. Certification

A certification must be made by the organization described in section II.<sup>7</sup> The certification must be signed by an organizational representative who is authorized to make the certification on behalf of the organization. The specifications for the certification are attached.

The certification must be completed and made available for examination by the first day of the plan year(s) to which the temporary enforcement safe harbor applies. Organizations need only complete the certification one time.

#### Where to get more information:

If you have any questions regarding this bulletin, contact CCIIO at CMS at 410-786-1565 or at [marketreform@cms.hhs.gov](mailto:marketreform@cms.hhs.gov).

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<sup>6</sup> CMS has determined that the notice is not a collection of information under the Paperwork Reduction Act because it is “[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.” 5 CFR §1320.3(c)(2).

<sup>7</sup> CMS has determined that the certification is not a collection of information under the Paperwork Reduction Act because, although it is a third-party disclosure, it is a certification that does not entail burden other than that necessary to identify the respondent, the date, the respondent’s address, and the nature of the instrument. 5 CFR §1320.3(h)(1).

**NOTICE TO PLAN ENROLLEES**

*The organization that sponsors or arranges your health plan has certified that it qualifies for a temporary enforcement safe harbor with respect to the Federal requirement to cover contraceptive services without cost sharing. During this period, coverage under your health plan will not include coverage of [some] contraceptive services.*

**CERTIFICATION**

**(To Be Used for Plan Years Beginning BEFORE January 1, 2014)**

This form is to be used to certify that the health plan established or maintained or arranged by the organization listed below qualifies for the temporary enforcement safe harbor, as described in HHS bulletin entitled “Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code,” pertaining to coverage of FDA-approved contraceptive services for women without cost sharing.

Please fill out this form completely.

	Name of the organization establishing or maintaining or arranging the plan
	Name of the individual who is authorized to make, and makes, this certification on behalf of the organization
	Mailing and email addresses and phone number for the individual listed above

*(Check the applicable box)*

- I certify that the organization is organized and operated as a nonprofit entity; and that, from February 10, 2012 onward, the plan has consistently not provided all or the same subset of the contraceptive coverage otherwise required, at any point, consistent with any applicable State law, because of the religious beliefs of the organization.
- I certify that the organization (or its plan or its issuer) took some action before February 10, 2012, to try to exclude from coverage under the plan some or all contraceptive services because of the religious beliefs of the organization, but that, subsequently, such contraceptive services were covered under the plan despite such action, and that, but for that coverage, I could make the certification above.

*I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.*

\_\_\_\_\_  
Signature of the individual listed above

\_\_\_\_\_  
Date

Failure to provide the requisite notice to plan enrollees renders a health plan ineligible for the temporary enforcement safe harbor.

# **Exhibit C-5**



HEALTH REFORM FOR SMALL BUSINESSES

# The Affordable Care Act Increases Choice and Saving Money for Small Businesses

 [WHITEHOUSE.GOV/HEALTHREFORM](http://WHITEHOUSE.GOV/HEALTHREFORM) 

## HEALTH REFORM FOR SMALL BUSINESSES

## The Affordable Care Act Increases Choice and Saving Money for Small Businesses.

Small businesses are the backbone of our economy, but high health care costs and declining coverage have hindered small business owners and their employees. Over the past decade, average annual family premiums for workers at small firms increased by 123 percent, from \$5,700 in 1999 to \$12,700 in 2009, while the percentage of small firms offering coverage fell from 65 to 59 percent. The Affordable Care Act will provide enormous benefits to the millions of small business owners and the tens of millions of small business employees by expanding coverage options, increasing purchasing power, lowering costs and giving consumers, not insurance companies, control over their own health care.

### No Employer Mandate, Exempts Small Firms from Employer Responsibility Requirement

The Affordable Care Act does not include an employer mandate. In 2014, as a matter of fairness, the Affordable Care Act requires large employers to pay a shared responsibility fee only if they don't provide affordable coverage and taxpayers are supporting the cost of health insurance for their workers through premium tax credits for middle to low income families.

- The law specifically exempts all firms that have fewer than 50 employees – 96 percent of all firms in the United States or 5.8 million out of 6 million total firms – from any employer responsibility requirements. These 5.8 million firms employ nearly 34 million workers. More than 96 percent of firms with 50 or more employees already offer health insurance to their workers. Less than 0.2 percent of all firms (about 10,000 out of 6 million) may face employer responsibility requirements. Many firms that do not currently offer coverage will be more likely to do so because of lower premiums and wider choices in the Exchange.

> For more information, please visit:  
[www.healthreform.gov/about/answers.html](http://www.healthreform.gov/about/answers.html).

### Small Business Health Care Affordability Tax Credits

Under the Affordable Care Act, an estimated 4 million small businesses nationwide could qualify for a small

business tax credit this year, which will provide a total of \$40 billion in relief for small firms over the next 10 years.

- Small employers with fewer than 25 full-time equivalent employees and average annual wages of less than \$50,000 that purchase health insurance for employees are eligible for the tax credit. The maximum credit will be available to employers with 10 or fewer full-time equivalent employees and average annual wages of less than \$25,000. To be eligible for a tax credit, the employer must contribute at least 50 percent of the total premium cost.
  - Businesses that receive state health care tax credits may also qualify for the federal tax credit. Dental and vision care qualify for the credit as well.
  - For 2010 through 2013, eligible employers will receive a small business credit for up to 35 percent of their contribution toward the employee's health insurance premium. Tax-exempt small businesses meeting the above requirements are eligible for tax credits of up to 25 percent of their contribution.
  - For 2014 and beyond, small employers who purchase coverage through the new Health Insurance Exchanges can receive a tax credit for two years of up to 50 percent of their contribution. Tax-exempt small businesses meeting the above requirements are eligible for tax credits of up to 35 percent of their contribution.
- > For more information on tax credits, please visit:  
[www.irs.gov/newsroom/article/0,,id=223666,00.html](http://www.irs.gov/newsroom/article/0,,id=223666,00.html).

## HEALTH REFORM FOR SMALL BUSINESSES

## The Affordable Care Act Increases Choice and Saving Money for Small Businesses.

### Better Information on Affordable Health Care Options

In July 2010, the Department of Health and Human Services will establish a new consumer website with easy to understand information about affordable and comprehensive coverage choices. The website will also provide information to small businesses about available health coverage options, including information on reinsurance for early retirees, small business tax credits, and how to shop for insurance in the Exchanges that will increase the purchasing power of small businesses.

### Administrative Simplification

The Affordable Care Act accelerates adoption of standard "operating rules" for health insurance plan administration. Operating rules are the business rules and guidelines for electronic transactions with health insurance plans, and the current non-standard environment is a source of waste, unnecessary cost, and frustration for small business owners and others. Under administrative simplification, there will be one format and one set of codes for claims, remittance advice, service authorization, eligibility verification, and claims status inquiry.

By establishing uniform operating rules, the Affordable Care Act ensures that small businesses, health plans, physicians, hospitals, and patients are all speaking the same language. Benefits include:

- Improved coordination of care for the patient
- Increased payment accuracy and timeliness
- Reduced administrative cost and hassle factor for small businesses
- Payment transparency

The Affordable Care Act requires standard operating rules for eligibility and claims status to be adopted by July 1, 2011 and fully implemented by January 1, 2013.

### Increases Quality, Affordable Options for Small Businesses

Currently, small businesses face not only premiums that are 18 percent higher than large businesses pay, but also face higher administrative costs to set up and maintain a health plan. The premiums they pay have up to three times as much administrative cost built into them as plans in the large group market. They are also at a disadvantage in negotiating with insurance companies because they lack bargaining power. The Affordable Care Act will change this dynamic. Starting in 2014, small businesses with up to 100 employees will have access to state-based Small Business Health Options Program (SHOP) Exchanges, which will expand their purchasing power. The Congressional Budget Office (CBO) stated that the Exchanges will reduce costs and increase competitive pressure on insurers, driving down premiums by up to 4 percent for small businesses.

- These Exchanges would include web portals that provide standardized, easy-to-understand information that make comparing and purchasing health care coverage easier for small business employees, and reduce the administrative hassle that small businesses currently face in offering plans.
- Starting in 2017, the Affordable Care Act also provides states flexibility to allow businesses with more than 100 employees to purchase coverage in the SHOP Exchange.
- If businesses don't offer coverage, workers at small firms and their families would be eligible for their own tax credits to purchase coverage through the Exchange.
- The Affordable Care Act streamlines health plans to keep premiums lower by instituting a premium rate review process and setting standards for how much insurance companies can spend on administrative costs, also known as the medical loss ratio.

> To learn more, visit:  
[www.healthreform.gov/newsroom/naicletter.html](http://www.healthreform.gov/newsroom/naicletter.html).

HEALTH REFORM FOR SMALL BUSINESSES

## The Affordable Care Act Increases Choice and Saving Money for Small Businesses.

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### Security and Stability that Promotes Entrepreneurship

In 2014, the Affordable Care Act ends the discriminatory insurance industry practices of jacking up premiums by up to 200 percent because an employee got sick or older, or because the business hired a woman. In many cases, women can be charged higher premiums than men, simply because of their gender. It will also reduce “job lock” – the fear of switching jobs or starting a small business due to concerns over losing health coverage – by guaranteeing access to coverage for all Americans. This will encourage more people to launch their own small businesses, or join existing small employers.

### Reviews the Impact of Reform on Small Businesses

The Affordable Care Act requires the Government Accountability Office (GAO) to specifically review the impact of Exchanges on increasing access to affordable health care for small businesses to ensure that Exchanges are indeed making a difference for small business owners.

# **Exhibit C-6**



Find Insurance  
Options Now

Prepare for the Health  
Insurance Marketplace

Health Insurance Basics

The Health Care Law &  
You

Prevention, Wellness &  
Comparing Providers

Home > Newsroom > Fact Sheets > Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans

## Newsroom

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### Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans

The Affordable Care Act gives American families and businesses more control over their health care by providing greater benefits and protections for family members and employees. It also provides the stability, and also the flexibility, that families and businesses need to make the choices that work best for them.

During the health reform debate, President Obama made clear to Americans that "if you like your health plan, you can keep it." He emphasized that there is nothing in the new law that would force them to change plans or doctors. Today, the Departments of Health and Human Services, Labor, and Treasury issued a new regulation for health coverage in place on March 23, 2010 that makes good on that promise by:

- Protecting the ability of individuals and businesses to keep their current plan;
- Providing important consumer protections that give Americans – rather than insurance companies – control over their own health care.
- Providing stability and flexibility to insurers and businesses that offer insurance coverage as the nation transitions to a more competitive marketplace in 2014 where businesses and consumers will have more affordable choices through Exchanges.

The rule announced today preserves the ability of the American people to keep their current plan if they like it, while providing new benefits, by minimizing market disruption and putting us on a glide path toward the competitive, patient-centered market of the future. While it requires all health plans to provide important new benefits to consumers, it allows plans that existed on March 23, 2010 to innovate and contain costs by allowing insurers and employers to make routine changes without losing grandfather status. Plans will lose their "grandfather" status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers – and consumers in plans that make such changes will gain new consumer protections.

Most of the 133 million Americans with employer-sponsored health insurance through large employers will maintain the coverage they have today. Large employer-based plans already offer most of the comprehensive benefits and consumer protections that the Affordable Care Act will provide to all Americans this year – such as preventing lifetime limits on coverage – and in the future.

People who work in smaller firms – which change insurers more often due to annual fluctuations in premiums – and people who purchase their own insurance in the individual market – a group that frequently changes coverage – will enjoy all of the benefits of the Affordable Care Act when they choose a new plan. These Americans also will benefit from the new competitive Exchanges that will be established in 2014 to offer individuals and workers in small businesses with greater choice of plans at more affordable rates – the same choice of plans as members of Congress.

#### Protecting Patients' Rights in All Plans

All health plans – whether or not they are grandfathered plans – must provide certain benefits to their customers for plan years starting on or after September 23, 2010 including:

- No lifetime limits on coverage for all plans;

- No rescissions of coverage when people get sick and have previously made an unintentional mistake on their application;
- Extension of parents' coverage to [young adults under 26 years old](#); and the

For the vast majority of Americans who get their health insurance through employers, additional benefits will be offered, irrespective of whether their plan is grandfathered, including:

- No coverage exclusions for children with pre-existing conditions; and
- No "restricted" annual limits (e.g., annual dollar-amount limits on coverage below standards to be set in future regulations).

### **Additional Consumer Protections Apply to Non-Grandfathered Plans**

Grandfathered health plans will be able to make routine changes to their policies and maintain their status. These routine changes include cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting new consumer protections under the new law, or making changes to comply with State or other Federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. If a plan loses its grandfathered status, then consumers in these plans will gain additional new benefits including:

- Coverage of recommended prevention services with no cost sharing; and
- Patient protections such as guaranteed access to OB-GYNs and pediatricians.

Under the Affordable Care Act, these requirements are applicable to all new plans, and existing plans that choose to make the following changes that would cause them to lose their grandfathered status.

Compared to their policies in effect on March 23, 2010, grandfathered plans:

- **Cannot Significantly Cut or Reduce Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Cannot Raise Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Cannot Significantly Raise Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its copayment from \$30 to \$50 over the next 2 years, it will lose its grandfathered status.
- **Cannot Significantly Raise Deductibles.** Many plans require patients to pay the first bills they receive each year (for example, the first \$500, \$1,000, or \$1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points. In recent years, medical costs have risen an average of 4-to-5% so this formula would allow deductibles to go up, for example, by 19-20% between 2010 and 2011, or by 23-25% between 2010 and 2012. For a family with a \$1,000 annual deductible, this would mean if they had a hike of \$190 or \$200 from 2010 to 2011, their plan could then increase the deductible again by another \$50 the following year.
- **Cannot Significantly Lower Employer Contributions.** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- **Cannot Add or Tighten an Annual Limit on What the Insurer Pays.** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).

- **May Change Insurance Companies.** An employer with a group health plan can switch plan administrators as well as buy insurance from a different insurance company without losing grandfathered status—provided the plan does not make any of the above six changes to its cost or benefits structure.\*

\* Previously, one way an employer group health plan could lose its grandfather status was to change issuers—switch from one insurance company to another. The original regulation allowed only self-funded plans to change third-party administrators without necessarily losing their grandfathered plan status. On November 15, the regulation was amended to allow all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered status, as long as the structure of the coverage doesn't violate one of the other rules for maintaining grandfathered plan status.

### **Protecting Against Abuse of Grandfathered Health Plan Status**

To prevent health plans from using the grandfather rule to avoid providing important consumer protections, the regulation provides for:

- Promoting transparency by requiring a plan to disclose to consumers every time it distributes materials whether the plan believes that it is a grandfathered plan and therefore is not subject to some of the additional consumer protections of the Affordable Care Act. This allows consumers to understand the benefits of staying in a grandfathered plan or switching to a new plan. The plan must also provide contact information for enrollees to have their questions and complaints addressed;
- Revoking a plan's grandfathered status if it forces consumers to switch to another grandfathered plan that, compared to the current plan, has less benefits or higher cost sharing as a means of avoiding new consumer protections; or
- Revoking a plan's grandfathered status if it is bought by or merges with another plan simply to avoid complying with the law.

### **Projected Impact on Consumers and Plans**

#### **Large Employer Plans**

The 133 million Americans with employer-sponsored health insurance through large employers (100 or more workers)—who make up the vast majority of those with private health insurance today—will not see major changes to their coverage as a result of this regulation. This regulation affirms that most of these plans will remain grandfathered – more than three-quarters of firms in 2011 – based on the way they changed cost sharing from 2008-2009. Most of these plans already offer the patient protections applied to grandfathered plans such as no pre-existing condition exclusions for children and no rescissions of coverage when a person gets sick. In addition, they are likely to already give their workers and families protections like a choice of OB-GYN and pediatrician and access to emergency rooms in other states without prior authorization. Based on past patterns of behavior, it is expected that large employers will continue to make adjustments to the health plans they offer from year to year so that, by the time the health insurance Exchanges are established in 2014, fewer – but still most – large employer plans will have grandfather status. However, the assumed market changes depend on the choices large employers make in the future.

#### **Small Business Plans**

The roughly 43 million people insured through small businesses will likely transition from their current plan to one with the new protections over the next few years. Small plans tend to make substantial changes to cost sharing, employer contributions, and health insurance issuers more frequently than large plans. As such, we estimate that 70% of plans will be grandfathered in the first year, but depending on the choices these employers make, this could drop to about one-third over several years. To help sustain small business coverage, the Affordable Care Act also includes a tax credit for up to 35% of their premium contributions.

#### **Individual Health Market**

The 17 million people who are covered in the individual health insurance market, where switching of plans and substantial changes in coverage are common, will receive the new protections of the Affordable Care Act sooner rather than later. Roughly 40 percent to two-thirds of people in individual market policies change plans within a year. Given this "churn," the transition for the 17 million people in this market will be swift. In the short run, individuals whose plan changes and is no longer grandfathered will gain access to free preventive services, protections against restricted annual limits, and patient protections such as improved access to emergency rooms. These Americans also will benefit from the Health Insurance Exchanges that will be established in 2014 to offer individuals and workers in small businesses a much greater choice of plans at more affordable rates.

#### **People in Special Types of Health Plans**

Fully-insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until their agreement terminates. After that point, they are subject to the same rules as other health plans; in other words, they will lose their grandfathered status if they make any of the substantial changes described above. Retiree-only and "excepted health plans" such as dental plans, long-term care insurance, or Medigap, are exempt from the Affordable Care Act insurance reforms.

### Projections of Employer Plans Remaining Grandfathered, 2011-2013

There is considerable uncertainty about what choices employers will make over the next few years as the market prepares for the establishment of the competitive Exchanges and other market reforms such as new consumer protections, middle-class tax credits and other steps to expand affordability and choice for millions more Americans. This rule estimates the likely decisions of employers based on assumptions and extrapolations of recent market behavior, including the decisions by employers to change their health plans in 2008 and 2009. The table below depicts the results of this analysis:

Type of Plan	Enrollees	Employer Plans Remaining Grandfathered		Explanation
		2011	2013	
		Medical inflation* (4%) + 15% = 19%	Medical inflation* (4% <sup>3</sup> = 12%) + 15% = 27%	Deductibles, copayments can increase faster than medical inflation over time
Large Employer	133 million	Low: 87% remain grandfathered Mid-range: 82% remain grandfathered High: 71% remain grandfathered	Low: 66% remain grandfathered Mid-range: 55% remain grandfathered High: 36% remain grandfathered	Large plans are more stable and often self-insured. Regulation permits plans to make routine changes needed to keep premium growth in check.
Small Employer	43 million	Low: 80% remain grandfathered Mid-range: 70% remain grandfathered High: 58% remain grandfathered	Low: 51% remain grandfathered Mid-range: 34% remain grandfathered High: 20% remain grandfathered	Small businesses typically buy commercial insurance and frequently make changes in insurers and coverage. Limited purchasing power and high overhead often force a trade-off between dramatic changes in benefits and cost sharing and affordable premiums.

\* Assumes medical inflation at 4%

The "low" percentage is based on the mid-range percentages plus plans that could stay grandfathered with small premium changes.

The "mid-range" percentage is based on assumptions of the number of plans that would lose their grandfathered status if they made changes consistent with the changes that they made in 2008 and 2009 that would not lead to premium increases.

The "high" percentage assumes that some plans would not be able to make the adjustments to employer premium contribution they would need to keep premiums the same while keeping their other cost-sharing parameters within the grandfathering rules. The estimates in this case assume these plans will choose to relinquish their grandfathered status instead.

#### Choices in 2014 and Subsequent Years

In 2014, small businesses and individuals who purchase insurance on their own will gain access to the competitive market Exchanges. These Exchanges will offer individuals and workers in small businesses with a much greater choice of plans at more affordable rates – the same choice as members of Congress. In fact, the Congressional Budget Office (CBO) has estimated that, on an apples-to-apples basis, premiums will be 14- 20 percent lower than they would be under current law in 2016 due to competition, lower insurance overhead, and increased pooling and purchasing power. Small

businesses also will have more affordable options. CBO has estimated that a family policy for small businesses would be available in the Exchanges at a premium that is \$4,000 lower than under current law in 2016.

These reduced premiums do not take into account the tax credits available to small businesses and middle-class families to help make insurance affordable. These additional new choices may further lower the likelihood that small businesses workers will remain in grandfathered health plans. Consumers insured through large employers are more likely to remain in grandfathered plans in 2014 and beyond.

Read the Press Release at: <http://www.hhs.gov/news/press/2010pres/06/20100614e.html>.

Read the Questions and Answers on the Regulation at <http://www.healthreform.gov/about/grandfathering.html>.

You can view the Regulation at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2010\\_register&docid=DOCID:fr17jn10-25.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2010_register&docid=DOCID:fr17jn10-25.pdf).

**Posted: June 14, 2010**

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# **Exhibit C-7**

## Continuing to Implement the ACA in a Careful, Thoughtful Manner

Over the past several months, the Administration has been engaging in a dialogue with businesses - many of which already provide health coverage for their workers - about the new employer and insurer reporting requirements under the Affordable Care Act (ACA).

We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively.

We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so.

We have listened to your feedback.

The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. Within the next week, we will publish formal guidance describing this transition. Just like the Administration's effort to turn the initial 21-page application for health insurance into a three-page application, we are working hard to adapt and to be flexible about reporting requirements as we implement the law. Here is some additional detail. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders - including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements - in an effort to minimize the reporting, consistent with effective implementation of the law. Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015. We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015. During this 2014 transition period, we strongly encourage employers to maintain or expand health coverage. Also, our actions today do not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA).

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