

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FELTL AND COMPANY, INC., JOHN C.
FELTL and MARY JO FELTL,

Plaintiffs,

vs

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the United States
Department of Health and Human Services
and her successor; and the UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES;

SETH D. HARRIS, in his official capacity as
Acting Secretary of the United States
Department of Labor and his successor; and
the UNITED STATES DEPARTMENT OF
LABOR;

JACOB LEW, in his official capacity as U.S.
Secretary of the Treasury and his successor;
and the UNITED STATES DEPARTMENT
OF THE TREASURY, and

DANIEL I. WERFEL, in this official capacity
as Acting Commissioner of Internal Revenue
and his successor; and the INTERNAL
REVENUE SERVICE,

Defendants.

Civil File No. 13-CV-1375

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Verified Complaint for Declaratory and Injunctive Relief

Plaintiffs John Feltl, Mary Jo Feltl, (“the Feltls”) and their company, Feltl and Company, Inc. (“Company”), through their counsel, complain against the above-named Defendants (collectively “HHS”) as follows:

Introduction

1. In this action, the Feltls and their privately-held Company challenge certain regulations adopted under the 2010 Patient Protection and Affordable Care Act (“Affordable Care Act”), Pub. L. No. 111-148, 124 Stat. 119. The regulations force certain religious persons who own and/or operate for-profit companies to include in their group health plans coverage for products and services that violate their religious beliefs under threat of substantial monetary fines and penalties.

2. Specifically, the Feltls and their Company seek declaratory and injunctive relief from the operation of the final rules promulgated by the HHS, mandating that all group health plans, inclusive of self-insured plans, include coverage, without cost sharing, for “[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity” in plan years beginning on or after August 1, 2012 (“the HHS Mandate”), *see* 45 CFR § 147.130 (a)(1)(iv), as confirmed at 77 Fed. Reg. 8725 (Feb. 15, 2012), adopting and quoting Health

Resources and Services Administration Guidelines found at <http://www.HealthResourcesServices.gov/womensguidelines>.

3. John C. Feltl owns 51.24% of the shares of the Company. The Mary Joanne Feltl JCF Trust, an irrevocable trust whose grantor is Mary Jo Feltl, whose trustee is Michael B. Schierman, and whose sole beneficiary is John C. Feltl, owns 48.76% of the Company. John Feltl, Mary Jo Feltl, and Michael B. Schierman are Roman Catholic. The Feltls hold sincere religious beliefs based on the Roman Catholic Catechism which states “abortion willed as an end or as a means, is a ‘criminal’ practice” and which states “direct sterilization” and “contraception” are morally unacceptable. The Catechism also instructs that a person who deviates from its teachings is involved in a “public scandal.” As Catholic laypersons, the Feltls must avoid public scandal.

4. The HHS Mandate to the Feltls is sinful and immoral. Yet, the Mandate is coercing them and their Company to violate their religious beliefs and expose them or their Company or both to governmental imposition of substantial fines and penalties. As the deadline for the renewal of the Company’s group health plan arrives on December 1, 2013 (pending approval by HealthPartners), the Feltls, knowing that they have a religious obligation to provide for their employees through health care plans, must now confront the federal coercion imposed upon them and violate the HHS Mandate.

5. As it presently stands, the HHS Mandate violates the Feltls' constitutionally protected rights of freedom of speech, freedom of religion, due process and equal protection. The Mandate further violates the Religious Freedom Restoration Act and the Administrative Procedures Act. Injunctive relief will, in the first instance, allow the Feltls and their Company to continue providing for their employees with group health insurance without an HHS Mandate, avoid public scandal, and free them and the Company from governmental constitutional burdens that interfere with their religious beliefs. The injunction will permit the Feltls and the Company to operate their current and future businesses in a manner consistent with and not in violation of their sincerely-held religious beliefs. Likewise, if the Feltls and the Company fail to provide health coverage to their employees, the Internal Revenue Service may impose significant penalties upon the employees. Similarly, without health insurance coverage, the government places the Feltls and the Company in a difficult position by causing them to harm their employees who have relied upon the Company's insurance benefits because the employees in turn may be exposed to possible significant IRS penalties as well.

6. HHS' actions violate the Feltls' and the Company's right to freely exercise their religion, which are protected by the First Amendment and the Fifth Amendment of the United States Constitution and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA").

7. HHS' actions in providing an exemption to religious non-profit employers, but not to for-profit business owners with the same religious objections, violate the Establishment Clause of the First Amendment to United States Constitution.

8. HHS' actions also violate the Feltls' and the Company's rights to freedom of speech, which are protected by the Free Speech Clause of the First Amendment to the United States Constitution.

9. Further, HHS' actions violated the Administrative Procedures Act, 5 U.S.C. § 553, by adopting and imposing the HHS Mandate without prior notice or public comment.

10. The Feltls and Company are currently being impermissibly coerced by the HHS Mandate and its substantial fines and penalties to violate their religious beliefs.

11. The Feltls and Company will continue to be harmed unless this Court provides them their requested injunctive relief from HHS's illegal and unconstitutional actions. This injunctive relief must include barring the IRS and all agencies from the imposition of fines and penalties against the Company, the Feltls, and their employees.

Jurisdiction and Venue

12. This action arises under the Constitution and laws of the United States. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361 and 42 U.S.C. § 1983. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, and 5 U.S.C. § 702. This Court has jurisdiction to award reasonable attorney's fees and costs under the Equal Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

13. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(e)(1) because the Plaintiffs reside within this district.

The Parties

14. Plaintiff John Feltl is an individual and a citizen of the State of Minnesota. He is a majority owner of the Company and is Chief Executive Officer of the Company. He is a member of the parish of St. John the Baptist in Excelsior, Minnesota, and attends religious services there and at St. Olaf Catholic Church in downtown Minneapolis. He is President of the Minnesota chapter of Legatus. Legatus is an international organization of practicing Catholic laymen and laywomen, comprised of CEOs, Presidents, Managing Partners and Business Owners, with their spouses, from the business community and professional enterprises. He is a member of the Board of Directors of Relevant Radio. There are currently 13 Relevant Radio stations nationwide.

15. Plaintiff Mary Jo Feltl is an individual and a citizen of the State of Minnesota. She is the grantor of the Mary Joanne Feltl JCF Trust, which is a minority owner of the Company. Mary Jo Feltl is President of the Company. She is a member of the parish of Our Lady of Grace Catholic Parish in Minneapolis, Minnesota, and attends religious services there and at St. Olaf Catholic Church in downtown Minneapolis. She is active in promoting Relevant Radio along with donating to Catholic Parishes, Catholic Pilgrimages to Holy Land, Rome and alike. She also administers St. Agnes Catholic Education Foundation, which aids in the support of Catholic Education.

16. Plaintiff Feltl and Company, Inc. (“Company”) is a Minnesota corporation owned by the Feltls. The address of the Company’s corporate headquarters is 800 LaSalle Avenue, Suite 2100, Minneapolis MN 55402. The Company is privately held. The Company is a securities brokerage and investment banking company that serves individual investors by providing advice on stocks, bonds, and mutual funds and corporations by providing services related to corporate finance, equity research, institutional equity sales, and equity trading.

17. Defendant United States Department of Health and Human Services (“HHS”) is an agency of the United States. HHS is responsible for the administration and enforcement of the HHS Mandate.

18. Defendant Kathleen Sebelius is the Secretary of Health and Human Services. As Secretary. She is responsible for the operation and management of the HHS. She is sued in her official capacity only.

19. Defendant United States Department of Labor is an agency of the United States government. The Department of Labor is responsible for the administration and enforcement of the HHS Mandate.

20. Defendant Seth D. Harris is the Acting Secretary of the United States Department of Labor. As Acting Secretary, he is responsible for the operation and management of the Department. He is sued in his official capacity only.

21. Defendant United States Department of the Treasury is an agency of the United States government. The Department of the Treasury is responsible for the administration and enforcement of the Mandate.

22. Defendant Jacob Lew in his official capacity as U.S. Secretary of the Department of the Treasury is responsible for the operation and management of the United States Department of the Treasury. He is sued in his official capacity only.

23. Defendant Internal Revenue Service is an agency of the United States government. The IRS is responsible for the administration and enforcement of the Affordable Care Act.

24. Defendant Daniel I. Werfel in his official capacity as Acting Commissioner of Internal Revenue. The Internal Revenue Service is responsible

for the operation, administration and enforcement of the ACA. He is sued in his official capacity only.

Factual Allegations

The Feltls hold sincere religious beliefs which conflict with the HHS Mandate.

25. The Feltls are Roman Catholic and hold sincere religious beliefs based on Catholic teaching.

26. The Feltls, as owners and officers of the Company, are responsible for the Company's day-to-day operations and overall well-being. The Company reflects the Feltls' business and personal belief philosophies. In addition, their positions and ownership in the Company are the source of support for their respective families.

27. John Feltl is a practicing, orthodox Roman Catholic. He believes in the doctrine of the Catholic Church, with which he has become intimately familiar through personal study, practice, and catechesis. Mr. Feltl observes his religious views as a practicing Catholic through prayer, observance of Holy Days, and daily Mass, among other faith-based activities.

28. John Feltl sees his role as CEO of the Company as his personal vocation that requires from him a daily commitment to excellently serve the Lord Jesus Christ according to the teachings of the Catechism. He asserts that the Company is the place he goes daily to "live out" his Christian beliefs in work and

provision for his family and others. He also lives out his Christian beliefs through his position as a board member of Relevant Radio. It is Mr. Feltl's religious beliefs that have established in his mind the value of work as a gift from God, and that every Christian and Roman Catholic must wisely use the "talents" that have been entrusted them by God. Mr. Feltl exercises his religion throughout the day at work—in his work ethic; in his openness about his Catholic faith with anyone and everyone; in his respect for the dignity of each of his employees as human beings and children of an Almighty God. Mr. Feltl firmly believes that he is a Catholic regardless of where he goes and what he does, and the workplace is no exception.

29. Mary Jo Feltl is also a Roman Catholic. She was born and raised in a Catholic family and attended Catholic grade school and high school. She believes that she should have the right to practice religion without interference from government, a major reason this country was founded. She believes that her religion is not "what" she is, but "who" she is. To that end, Mary Jo Feltl believes that her religious views influence her work in that they make her a better boss and significantly influence the way she treats others, for good. These beliefs have also led Mary Jo Feltl to promote Relevant Radio, of which John Feltl is a board member. To Mary Jo Feltl, treating others well includes not paying for what she considers immoral choices that damage the persons making the choices and others, like unborn children.

30. Relevant Radio, of which John Feltl is a board member and which Mary Jo Feltl promotes, is “Talk Radio for Catholic Life”. Relevant Radio exists to assist the Roman Catholic Church in the New Evangelization by providing relevant programming through media platforms to help people bridge the gap between faith and everyday life. Relevant Radio is faithful to the Magisterium of the Catholic Church, united to the Bishops, and under the protective intercession of the Blessed Virgin Mary. Thus, through Relevant Radio, the Feltls promote Catholic doctrine and its application to everyday life—such as work—and promote the Catholic view that life begins at conception.

31. As members of the Roman Catholic Church, the Feltls adhere to the Catechism of the Catholic Church (“Catechism”) on abortion and contraception. *See, e.g.,* Code of Canon Law § 757. The Feltls came to believe what they believe through personal study and through significant learning in Catholic schools and frequent Mass.

32. The Catechism § 2322 states abortion is a criminal practice under religious law:

2322 From its conception, the child has the right to life. Direct abortion, that is, abortion willed as an end or as a means, is a "criminal" practice (*GS* 27 § 3), gravely contrary to the moral law. The Church imposes the canonical penalty of excommunication for this crime against human life.

33. The Catechism §§ 2367-2372, 2399 state that “direct sterilization and contraception” are “morally unacceptable” under Catholic religious law.

34. Thus, the Feltls are required to adhere to the religious teaching that contraception and abortion are sinful and morally unacceptable under Catholic religious law and sincerely hold and exercise those beliefs.

35. The Feltls are required to follow this religious teaching in their lives, even if it relates to their Company and requires action through their Company.

36. In fact, the Catholic Church considers it a “public scandal”, according to its own meaning of the term, if the Feltls were to materially deviate from the Catechism in their lives. Catechism §§ 2284-2287.

37. Catechism § 2285 states:

Scandal takes on a particular gravity by reason of the authority of those who cause it or the weakness of those who are scandalized. It prompted our Lord to utter this curse: "Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened round his neck and to be drowned in the depth of the sea." Scandal is grave when given by those who by nature or office are obliged to teach and educate others. Jesus reproaches the scribes and Pharisees on this account: he likens them to wolves in sheep's clothing.

(Footnotes omitted).

38. Accordingly, the Feltls, as Catholic laypersons, are very careful to avoid public scandal.

39. Not only does the Catechism lead the Feltls to support life by opposing the murderous practices required by the HHS Mandate, but the Feltls have each also had multiple life experiences that have reinforced in their minds the unparalleled value of human life and human dignity. John Feltl was impacted most regarding the importance of human life and its protection when he experienced the tragic death of his daughter, Claudia. Mary Jo Feltl has always supported adoption as a loving alternative to abortion—she adopted two children of her own. To John and Mary Jo Feltl, there is no more valuable commodity than human life, and protecting it is their duty as Roman Catholics.

40. Thus, with respect to the Company, the Feltls operate their Company in ways that adhere to and are not violative of the Catechism. The Feltls and their Company strive to support life and avoid public scandal.

41. John Feltl, as a member of a parish, President of the Minnesota chapter of Legatus, and as a member of the Board of Directors of Relevant Radio, is very concerned about violating Catholic teaching and the public scandal which would accompany those violations.

42. Mary Jo Feltl, as a member of a parish, as a promoter of Relevant Radio and as administrator of the St. Agnes Catholic Education Foundation, is very concerned about violating Catholic teaching and the public scandal which would accompany those violations.

43. The Catechism also compels the Feltls to provide for the physical health of their employees. Moreover, the Feltls believe that the Catholic faith proposes that they ought to do the best they can for their employees. They exercise their religious beliefs by offering group health plans for their employees consistent with the Catechism.

44. The HHS Mandate requires that the Company's group health plan provide and pay for coverage for contraception, sterilization, abortifacient drugs, and related education and counseling. Among the products the HHS Mandate requires Company's group plan to fund are Plan B (the "morning after pill") and Ella (the "week after pill"),¹ drugs that are designed to destroy early human life shortly after conception.

45. The Feltls believe that paying for a group health plan that complies with the HHS Mandate is sinful and immoral because it requires the Feltls, through their Company, to pay for contraception, sterilization, abortifacient drugs and related education and counseling violating the Catechism.

46. The Feltls desire to continue offering a group health plan to Company employees, but wish to exclude coverage for products and services that violate their religious beliefs, such as those required by the HHS Mandate.

¹ FDA Office of Women's Health, *Birth Control Guide*, available at www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf.

47. HHS will not allow the Feltls to exclude these Mandate coverages when the Company plans to renew its group health plan coverage.

48. In short, the HHS Mandate will not permit the Feltls to operate their business in accordance with the Catechism and their sincerely held religious beliefs.

49. In order for the Feltls to avoid involvement in a public scandal, as defined by the Catechism and Code of Canon Law, the Feltls and their Company would have to obtain a group health plan that does not comply with the HHS Mandate. Instead, HHS is coercing the Feltls and their Company to violate the HHS Mandate, exposing them and their Company to substantial fines and penalties. 26 U.S.C. § 4980D.

50. If the Feltls and their Company must choose to exercise their religious beliefs by offering a group health plan that does not comply with the HHS Mandate, they subject themselves to substantial fines and penalties. 26 U.S.C. § 4980D.

51. The Company will not be compliant with the HHS Mandate when it chooses to discontinue a legally-compliant group health plan, subjecting it to substantial fines and penalties, unless it receives relief from this Court.

52. The Feltls' and their Company's decision to discontinue a legally-required health plan because of the HHS Mandate will not be done willingly, but

under the coercive pressure of the HHS Mandate and the public scandal it would create for the Feltls if they were to comply with the HHS Mandate.

53. The HHS has exempted certain non-profit employers from complying with the requirements of the HHS Mandate in an attempt to accommodate the religious beliefs of those employers, *see* 76 Fed. Reg. 46621, 46623 (issued on August 1, and published on August 3). However, despite the same sincere religious objections, the Company does not, and can not, meet the HHS's narrow qualifications for such an exemption.

The Company reflects the religious beliefs of its owners.

54. The Company currently employs approximately 46 full-time and 2 part-time employees. Thus, the Company currently employs fewer than 49 full-time employees and full-time equivalents.

55. John Feltl owns a majority share of the Company and the Mary Joanne Feltl JCF Trust owns a minority share of the Company. Together, John Feltl and the Mary Joanne Feltl JCF trust own all shares of the Company. John Feltl and Mary Jo Feltl own or are employed by the Company.

56. The Feltls, personally, and consistent with their membership in the Roman Catholic Church, strive to operate their Company in accordance with the religious, ethical, and moral teachings of the Catholic Church.

57. The Company currently has a group health plan.

58. According to HHS regulations, 77 Fed. Reg. at 8725, the Company's group health plan is subject to the HHS Mandate.

59. The Feltls' religious beliefs prohibit the Company from intentionally providing a group health plan that provides coverage for contraception, sterilization, abortion and abortifacient drugs and related education and counseling. They believe that doing so would be acting as an accomplice to sin, which is still a sin in and of itself.

60. The Feltls are aware of the national controversy surrounding the HHS Mandate and the many lawsuits filed by Catholics and others around the country who own businesses and have the same religious objections to the HHS Mandate.

61. The HHS Mandate denies the Feltls and Company of any choice to select a group health plan that does not cover and finance contraception, sterilization, and abortifacient drugs and related education and counseling.

62. As a result of the HHS Mandate, the Feltls and the Company cannot offer a group health plan to its employees that accords with and does not violate the Feltls' sincerely-held religious beliefs.

63. The Feltls believe they have a moral and religious duty to provide the best they can for their employees, which, until the enactment of the HHS Mandate, they have accomplished by providing a group health plan for the Company

employees; however, they cannot continue to do so without violating their religious beliefs because of the HHS Mandate.

64. If the Company provides a group health plan that does not comply with the HHS Mandate, the Company is subject to the imposition of substantial fines and penalties.

The ACA and the HHS Mandate

65. The Patient Protection and Affordable Care Act (“ACA”), Pub. L. No. 111-148, 124 Stat. 119, enacted in March 2010, requires group health plans to provide women with “preventive care and screenings” at no charge to the patient. *See* 42 U.S.C. § 300gg-13(a)(4).

66. The ACA provides:

A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for... (4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph.

Id.

67. In July, 2010, HHS issued regulations ordering HHS’s Health Resources Services Administration (“Health Resources Services”) to develop

guidelines that would determine what preventative care and screenings would be mandated under the ACA. *See* 75 Fed. Reg. 41728 (July 19, 2010).

68. Health Resources Services commissioned and funded a committee at the Institute of Medicine to recommend which drugs, procedures, and services should be covered by all health plans as preventive care for women.

69. The Institute of Medicine's report² to Health Resources Services recommended that preventative care for women include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity."

70. On August 1, 2011, without notice of rulemaking or opportunity for public comment, the Health Resources Services adopted the Institute of Medicine's recommendations in full. *See* Health Resources and Services Administration, Women's Preventive Services: Required Health Plan Coverage Guidelines, <http://www.HealthResourcesServices.gov/womensguidelines> (last visited Oct. 31, 2012) ("Health Resources Services Guidelines").

71. Contemporaneously, HHS issued an "interim final rule" requiring "group health plan[s] and ... health insurance issuer[s] offering group or individual

² INSTITUTE FOR MEDICINE, CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS (2011), *available at* <http://cnsnews.com/sites/default/files/documents/PREVENTIVE%20SERVICESINSTITUTE%20OF%20MEDICINE%20REPORT.pdf>.

insurance coverage [to] provide benefits for and prohibit the imposition of cost-sharing with respect to” the women’s preventive care and services included in the Health Resources Services Guidelines for plan years beginning on or after August 1, 2012. 76 Fed. Reg. 46622, 46629 (issued on August 1, and published on August 3); 45 CFR 147.130(a)(1)(iv).

72. On February 15, 2012, HHS issued final regulations—the HHS Mandate—by adopting the August 1 interim final rule “without change.” 77 Fed. Reg. 8725-30 (Feb. 15, 2012).

73. On July 2, 2013, HHS finalized its regulations related to the exemptions for “religious employers” and nonprofit religious organizations which establish, maintain, or arrange health coverage. 78 Fed. Reg. 39870 *et seq.* The final regulations became effective August 1, 2013. *Id.* However, the final regulations did not affect the then-existing regulations governing “for-profit employers with religious objections to contraceptive coverage” because HHS specifically “decline[d] to adopt . . . suggestions” that would have made accommodations for these religious objectors. 78 Fed. Reg. 39874-75.

74. Among the Federal Drug Administration approved “contraceptive methods” that all group health plans must provide at no cost are Plan B (the

“morning after pill”) and Ella (the “week after pill”),³ drugs that are designed to destroy early human life shortly after conception.

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

76. The ACA, under 26 U.S.C. § 4980H, requires employers with more than 50 full-time employees (or full-time employee equivalents) to provide federal government-approved health insurance coverage or pay substantial fines and penalties.

77. Employers with fewer than 50 full-time employees must comply with the HHS Mandate, under threat of substantial fines, if they offer a group health plan because the Mandate applies to *all* non-exempt, non-grandfathered group health plans regardless of the employer’s size. 42 U.S.C. § 300gg-13(a)(4)

³ FDA Office of Women’s Health, *Birth Control Guide*, available at www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf.

(Mandate applies to all group health plans); 26 U.S.C § 4980D (imposing fines on “failure of a group health plan to meet the requirements” of the ACA).⁴

78. Moreover, the ACA and the HHS Mandate prevents *all* employers (and individuals) from selecting a group health plan that does not include coverage for contraceptives, sterilization, abortifacient drugs and related education and counseling because the ACA requires all “health insurance issuers offering group or individual health insurance coverage” to provide Mandate-compliant coverage. 42 U.S.C. § 300gg-13(a)(4).

79. Therefore, the Felts and Company cannot avoid the HHS Mandate by purchasing a group health plan that accommodates their conscience and religious beliefs because no such plan exists.

80. The HHS Mandate does not apply to preexisting group health plans that are considered “grandfathered.” 76 Fed. Reg. 46623 & n.4; *see also* 42 U.S.C. § 18011(a)(3-4) (specifying those provisions of the ACA that apply to grandfathered health plans).

⁴ Although the Obama Administration claimed to push back the application of the requirement, under 26 U.S.C. § 4980H, that “large employers” offer group health care to their employees by one year, until 2015, this “push-back,” the constitutionality of which has been questioned, does not affect the penalties assessed under 26 U.S.C. § 4980D. *See* Mark J. Mazur, *Treasury Notes*, “Continuing to Implement the ACA in a Careful, Thoughtful Manner,” *available at* <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx>, July 2, 2013.

81. To remain “grandfathered,” a group health plan must now and in the future comply with regulations issued by the HHS. *See* 42 U.S.C. § 18011(a)(2); 45 CFR § 147.140; 75 Fed. Reg. 34538, 34545 (June 17, 2010); *see also* HealthReform.gov, “Fact Sheet: Keeping the Health Plan You Have: The Affordable Care Act and “Grandfathered” Health Plans,” http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html (last visited Oct. 31, 2010).

82. The ACA and the HHS Mandate do not apply equally to members of certain religious groups.

83. Individual “member[s] of a recognized religious sect or division thereof” who are “conscientiously opposed to acceptance of the benefits of any private or public insurance” are exempted from complying with certain provisions of the ACA. 26 U.S.C. §§ 5000A(d)(2)(a)(i), 1402(g)(1).

84. The HHS Mandate indicates that Health Resources Services “may” exempt certain “religious employers” from complying with the HHS Mandate. 45 C.F.R. § 147.130(a)(iv)(A); 76 Fed. Reg. at 46623; 78 Fed. Reg. 39870 *et seq.*

85. The HHS has defined which employers are “religious” for purposes of this exemption. 45 C.F.R. § 147.130(a)(iv)(B); 78 Fed. Reg. 39870 *et seq.*

86. Health Resources Services may grant exemptions for “religious employers” that “meet[] all of the following criteria: (1) The inculcation of

religious values is the purpose of the organization. (2) The organization primarily employs persons who share the religious tenets of the organization. (3) The organization serves primarily persons who share the religious tenets of the organization. (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.” 45 C.F.R. § 147.130(a)(iv)(B)(1)-(4).

87. However, under amended guidelines issued July 2, 2013 and effective as of August 1, 2013, the HRSA states: “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.”

<http://www.hrsa.gov/womensguidelines/>; 78 Fed. Reg. 39870 *et seq.*⁵

88. The sections of the Internal Revenue Code referenced in the fourth criterion refer to “churches, their integrated auxiliaries, and conventions or associations of churches” and “the exclusively religious activities of any religious order,” that are exempt from taxation under 26 U.S.C. § 501(a). 26 U.S.C. § 6033(a)(1), (a)(3)(A)(i), (a)(3)(A)(iii).

89. The HHS Mandate does not place limits on Health Resource Services’ discretion to establish an exemption for “religious employers,” or to grant such

⁵ Although the CFR definition of “religious employer” itself has not been modified as of September 11, 2013, the Federal Register and the HRSA have announced this interpretation of “religious employer.” The change does not affect for-profit companies.

exemptions to organizations meeting the Defendants' definition of "religious employer."

90. The HHS Mandate contains no exemptions for for-profit organizations, such as plaintiff Company, even when those organizations have a sincere religious objection to the HHS Mandate's requirement that their group health plans provide coverage, at no cost, for contraception, sterilization, abortifacient drugs and related education and counseling.

91. The HHS stated that it based the exemption for "religious employers" on comments and feedback received on the July 19, 2010 interim final rule, *see* 76 Fed. Reg. at 46623, the August 1, 2011 amendments to the interim final rule, *see* 77 Fed. Reg. at 8726, and in amended guidelines adopted July 2, 2013 and effective August 1, 2013, *see* 78 Fed. Reg. 39874 and <http://www.hrsa.gov/womensguidelines/>.

92. The HHS stated they received over 200,000 responses to the request for comments to the August 1, 2011 amendments to the interim final rule. 77 Fed. Reg. at 8726.

93. Through these comments, the HHS was made aware of numerous objections to the HHS Mandate, including, but not limited to, the following:

- "the religious employer exemption is too narrow";

- “the definition of religious employer [should] be broadened so that more sponsors of group health plans would qualify for the exemption”;
- “the exemption for religious employers will not allow them to continue their current exclusion of contraceptive services from coverage under their group health plans”;
- that for certain employers to “pay for [contraceptive] services... would be contrary to their religious beliefs”; and
- “if the definition of religious employer is not broadened, [employers] could cease to offer health coverage to their employees in order to avoid having to offer coverage to which they object on religious grounds.”

77 Fed. Reg. at 8726-27.

94. Despite these, and other, known religious objections, the HHS did not expand the narrow exemption for organizations defined as “religious employers,” but finalized the interim final rule “without change.” 77 Fed. Reg. at 8730.

95. With full knowledge of the aforementioned objections, the HHS issued the HHS Mandate, which substantially burdens the religious exercise of the Feltls, Company and millions of other Americans.

96. Because the HHS Mandate arbitrarily exempts certain plans and employers for a variety of secular reasons, but does not exempt similar plans and employers for religious reasons, the HHS Mandate impermissibly targets religious conduct.

97. The HHS Mandate was adopted without giving due weight to the tens of thousands of public comments submitted to HHS in opposition to the HHS Mandate.

98. The HHS Mandate forces the Feltls and the Company and others to adopt and endorse the HHS moral view of contraception, sterilization, abortifacient drugs and related education and counseling.

99. On February 10, 2012, HHS issued a document 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” (“Guidance”),⁶ which established a “temporary enforcement safe harbor.”

100. Under the “Guidance,” until “the first plan year that begins on or after August 1, 2013...[n]either employers, nor group health plans, nor group health insurance issuers will be subject to any enforcement action by the Departments for failing to cover recommended contraceptive services without cost sharing in non-

⁶ HHS, Guidance on the Temporary Enforcement Safe Harbor, <http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf> (last visited Oct. 31, 2012).

exempted, non-grandfathered group health plans established or maintained by an organization...that meets *all* of the following criteria:

1. The organization is organized and operates as a non-profit entity.
2. From February 10, 2012 onward, contraceptive coverage has not been provided at any point by the group health plan established or maintained by the organization, consistent with any applicable State law, because of the religious beliefs of the organization.
3. ...the group health plan established or maintained by the organization (or another entity on behalf of the plan, such as a health insurance issuer or third-party administrator) must provide to participants the attached notice, as described below, which states that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012.
4. The organization self-certifies that it satisfies criteria 1-3 above, and documents its self-certification in accordance with the procedures detailed herein.”

HHS, Guidance on the Temporary Enforcement Safe Harbor,

<http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf> (last visited Oct. 31, 2012).⁷

⁷ On August 15, 2012, Defendants issued a revised Guidance, clarifying certain criteria with respect to the Temporary Enforcement Safe Harbor. HHS, Revised Guidance on the Temporary Enforcement Safe Harbor at 1 n.1, <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf> (last visited Oct. 16, 2012).

101. On March 21, 2012, the HHS issued an Advanced Notice of Proposed Rulemaking” (“Advanced Notice”) stating their intentions to propose certain amendments to the Mandate. 77 Fed. Reg. 16501 (March 21, 2012).

102. In the Advanced Notice, the HHS stated an intention to “accommodate” some religious non-profit employers not defined as “religious employers” by HHS by requiring compliance with the mandate by means of requiring those employers’ insurers to offer the employer’s employees the coverage required by the HHS Mandate at no cost. *See* 77 Fed. Reg. at 16503.

103. The Advanced Notice is neither a rule, a proposed rule, nor the specification of what a rule proposed in the future would actually contain. It in no way changes or alters the final status of the HHS Mandate. It does not even create a legal requirement that HHS change the HHS Mandate at some time in the future.

104. On February 6, 2013, the Departments of HHS, Treasury, and Labor proposed to eliminate the first three prongs of the test for what constitutes a “religious employer” as described in paragraph 79, *supra*. 78 Fed. Reg. 8461.

105. On July 2, 2013, HHS finalized without change the proposed regulations described in paragraph 97, *supra*, so that, as of August 1, 2013, the definition of “religious employer” had become only the fourth prong of the prior test: “The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of

1986, as amended.” 78 Fed. Reg. 39874; *see also*

<http://www.hrsa.gov/womensguidelines/>. However, HHS specifically “decline[d] to adopt . . . suggestions” that would have made accommodations for for-profit companies and their owners with religious objections to the HHS Mandate. 78 Fed. Reg. 39874-75. In other words, for-profit employers with religious objections remain subject to the HHS Mandate’s contraception coverage requirements. *See id.*

106. The ACA creates a system of individualized exemptions.

107. The ACA grants HHS the authority to grant compliance waivers, which exempt certain entities from complying with certain provisions of the ACA, including the requirement that employers provide health care coverage.

108. Employers who are exempt from providing health care coverage are exempt from complying with the HHS Mandate.

109. Upon information and belief, HHS has granted over 1,000 compliance waivers.

110. HHS has granted compliance waivers to for-profit businesses, unions, and other organizations for purely secular reasons, but has not exempted Company despite the Feltls’ sincere religious objections.

111. The ACA is not generally applicable because it provides numerous exemptions from its rules and applicability.

112. The ACA is not neutral because some organizations and individuals, both secular and religious, are exempt from complying with certain provisions it, including the HHS Mandate.

113. The ACA is not neutral because some organizations and individuals, both secular and religious, have been granted compliance waivers, exempting them from complying with certain provisions of it, including the HHS Mandate.

The Feltls, their Company and the HHS Mandate

114. The HHS Mandate applied to the Company's first group health plan year after August 1, 2012.

115. The plan year for the Company's current group health plan is through December 1, 2013 (pending approval from HealthPartners).

116. The HHS Mandate applies to any group health plan provided by the Company.

117. The Company does not qualify for any of the exemptions to the ACA.

118. The Company does not qualify for an individual exemption under 26 U.S.C. § 5000A(d)(2)(a)(i) and (ii) as the Company does not object to acceptance of public or private insurance funds in their totality -- a requirement for the exemption.

119. The Company's current group health plan also does not qualify as a "grandfathered" group health plan.

120. Specifically, the Company's current group health plan does not qualify as a "grandfathered" group health plan because HealthPartners, the insurer for the Company's group health plan, along with all the other Minnesota group health insurance carriers, decided not to keep their small group plans—a form of which the Company offers to its employees—grandfathered. Upon information and belief, HealthPartners made significant enough plan changes to the Company's small group plan that resulted in loss of grandfathered status.

121. Even if this were not so, the Company could not qualify for grandfather status because the Company did not provide the required notification, *see* 45 CFR § 147.140(a)(2)(i)-(ii), to plan participants that its plan was considered grandfathered (because the plan was not considered grandfathered).

122. The Company does not qualify as exempt "religious employers" under 45 CFR § 147.130(a)(1)(iv)(A)-(B) or under the guidelines set forth by the HRSA and effective August 1, 2013, available at <http://www.hrsa.gov/womensguidelines/>.

123. The Company is not "religious" enough under the HHS's definition of "religious employer" in several respects because, including but not limited to, the Company has purposes other than the "inculcation of religious values," it does not primarily hire or serve Catholics, and because the Feltls' current businesses are not churches, integrated auxiliaries of particular churches, convention, or association of churches, or the exclusively religious activities of a religious order.

124. Because the Company does not qualify for the “religious employer” exemption, it is not permitted to take advantage of the “temporary enforcement safe-harbor” as set forth by the Defendants at 77 Fed. Reg. 8725 and the contemporaneously-issued Guidance.

125. The HHS Mandate requires that the Company finance coverage for and facilitate access to contraception, sterilization, abortifacient drugs and related education and counseling against the Plaintiffs’ conscience and in violation of their religious beliefs, in a manner that is contrary to law.

126. The HHS Mandate constitutes government-imposed coercion on the Feltls and Company to change or violate the Feltls’ sincerely held religious beliefs.

127. The HHS Mandate exposes the Company and the Feltls to the imposition of substantial fines and penalties for refusing to change or violate their religious beliefs.

128. Pursuant to the HHS Mandate, all insurance issuers must provide coverage for contraception, sterilization, abortion and abortifacient drugs and related counseling services in all group health plans as of August 1, 2012.

129. HHS has deprived the Feltls and the Company of any choice to select a group health plan that excludes coverage for these drugs, devices, and services.

130. The Feltls and the Company are forced to select and pay for a group health plan that includes the HHS Mandate-compliant coverage in violation of their religious beliefs.

Protecting employees is also a sincere religious based belief and the offer of health insurance meets that obligation.

131. The HHS Mandate will prevent the Feltls from exercising their religiously-held duty to provide for the health and welfare of their current and future employees by providing them a group health plan without the objectionable HHS Mandate-compliant coverage.

132. The Feltls have a sincere conscientious religious objection to funding coverage for and facilitating access to contraception, sterilization, abortifacient drugs and related education and counseling.

133. The HHS Mandate directly punishes, with substantial fines and penalties, the Feltls' exercise of their religious beliefs.

134. The HHS Mandate imposes substantial burdens on the Feltls' exercise of their sincerely-held religious beliefs through the Company.

The Plaintiffs are exposed to substantial tax penalties and interest.

135. The Defendant IRS is the responsible governmental agency for the application and enforcement of fines or monetary tax penalties through IRS rules and regulations. Failure to abide by those rules and regulations will result in substantial penalties for both employers and employees.

136. Violations of the Affordable Care Act coverage mandates are subject to tax under Internal Revenue Code section 4980D and the employer must pay an excise tax of \$100 per day during the noncompliance period with respect to each individual to whom the violation relates. This tax must be self-reported annually to the Internal Revenue Service on Form 8928 under Chapter 43 of the Internal Revenue Code no later than the deadline for the filing of the entity's federal income tax return. Payment of the excise tax is due upon the filing of Form 8928.

137. Interest is charged on taxes not paid by the due date even if an extension of time to file is granted regarding Form 8928. The interest rate is determined under Internal Revenue Code § 6621. There is a penalty for a late filing of the Form 8928 return, including extensions. The payment may include a penalty of up to 5% of the unpaid tax for each month or part of the month the unpaid tax return is late, up to a maximum of 25% of the unpaid tax. Failure to pay any excise tax with the filing of Form 8928 will also result in an additional penalty of $\frac{1}{2}$ of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax.

138. The implementation of the self-reporting obligation of the excise tax began for health insurance plan years beginning on or after January 1, 2010. The Feltls and the Company's group health insurance plan renewal period will begin on December 1, 2013 (pending approval by HealthPartners). The Feltls and the

Company will have to file Form 8928, return of certain excise taxes under Chapter 43 of the Internal Revenue Code, when they fail to meet the requirements under section 4980D.

139. In addition, under section 4980H of the Affordable Care Act, large employers, who employ 50 or more full-time employees, including full-time equivalents, may be subject to a penalty if they do not offer health coverage, or if they offer coverage, that is unaffordable or does not provide minimum value.

140. Under section 4980H(a) of the Internal Revenue Code, if an employer fails to offer health coverage to its full-time employees and their dependents, and at least one full-time employee obtains subsidized coverage in a state health insurance Exchange, the 4980H(a) annual tax penalty is \$2,000 times the total number of full-time employees employed by the employer. For purposes of calculating the 4980H(a) penalty, the number of full-time employees is reduced by 30.

141. The State of Minnesota will have an American Health Benefit Exchange as one avenue individuals may purchase insured coverage. (*See*, ACA § 1311(b)). Individual health insurance coverage is also available outside of the Exchange depending upon the individual's determination of what is the best value for him or her.

142. The Feltls and the Company employ Minnesota residents. At least one employee, upon information and belief, will seek insurance through the Minnesota Exchange.

143. Under the present proposed rules and regulations, the Feltls and the Company do not employ over 50 full-time employees, and are not considered a large employer under 26 U.S.C. § 4890H. However, there exists the possibility that the Company could employ over 50 employees for ACA counting purposes at some point in the near future, which would subject them to substantial tax penalties if they fail to meet certain requirements for health insurance coverage to their employees.

144. Likewise, individuals such as the Feltls and the Company's employees who fail to obtain compliant health insurance will be subject to substantial IRS tax penalties collectable through the withholding of federal tax refunds.

145. The Feltls and the Company, based on their religious beliefs, consider it a moral obligation to offer their employees the benefit of health insurance to protect their employees' well-being and that of their family members.

146. The Feltls and the Company's employees have and continue to rely upon offered health insurance to protect themselves and family members.

147. The Affordable Care Act is coercing the Feltls and the Company to forego their religious beliefs and refuse to offer health insurance to employees. As

a consequence, the Feltls and the Company will face substantial tax penalties as imposed through the Defendant IRS.

148. The Feltls and the Company bring this action to enjoin HHS's violations of the Feltls' and the Company's statutory and constitutional rights and to permit the Feltls and the Company to operate their current and future businesses in a manner consistent with and not in violation of their sincerely-held religious beliefs.

149. The Feltls and Company have no adequate remedy at law.

Claims for Relief

COUNT I

Violation of the Religious Freedom Restoration Act 42 U.S.C. § 2000bb

150. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

151. The Feltls' sincerely-held religious beliefs prohibit them, through the Company, from purchasing or providing coverage for contraception, sterilization, abortifacient drugs and related education and counseling in Company's group health plan.

152. The Feltls, as members of the Catholic Church, adhere to Catholic teachings with regard to contraception, sterilization, abortion, abortifacient drugs and related education and counseling. They exercise religion with respect to those

teachings within the meaning of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (“RFRA”).

153. The HHS Mandate coerces the Feltls to change or violate their sincerely-held religious beliefs by requiring the Company to provide group health plans compliant with the HHS Mandate or be charged with substantial fines and penalties.

154. According to Roman Catholic religious law, it would be public scandal for the Feltls to knowingly continue owning a business that provides health care coverage for contraception, sterilization, abortion, abortifacient drugs and related education and counseling.

155. The HHS Mandate coerces the Feltls through the Company to violate their sincerely-held religious beliefs.

156. The HHS Mandate forces the Feltls to choose between violating their religious exercise by complying with the HHS Mandate or paying substantial fines and penalties for not complying with the HHS Mandate.

157. The HHS Mandate imposes a substantial burden on the Feltls’ and the Company’s exercise of religion.

158. The HHS Mandate furthers no compelling government interest.

159. The HHS Mandate is not narrowly tailored to any compelling government interest.

160. The HHS Mandate is not the least restrictive means of furthering Defendants' alleged interests.

161. The HHS Mandate, as implemented, is facially invalid under the Religious Freedom Restoration Act.

162. The HHS Mandate, as implemented, is invalid as applied under the Religious Freedom Restoration Act.

163. Because of the direct harm the HHS Mandate imposes upon the Feltls and the Company in violation of the Religious Freedom Restoration Act, immediate injunctive relief is necessary to prevent governmental intrusion and punishment of the Plaintiffs for exercising their sincerely-held religious beliefs.

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

164. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

165. The First Amendment of the United States Constitution protects the free exercise of religion.

166. The Feltls' sincerely-held religious beliefs prohibit them from purchasing or providing coverage for contraception, sterilization, abortifacient drugs and related education and counseling in the Company's employee group health plan.

167. When the Feltls adhere to Catholic teaching with regard to contraception, sterilization, abortion, abortifacient drugs and related education and counseling, they are exercising religion within the meaning of the Free Exercise of the First Amendment.

168. The HHS Mandate is not neutral and is not generally applicable.

169. HHS has created categorical and individualized exemptions to the HHS Mandate.

170. The HHS Mandate coerces the Feltls and the Company to change or violate sincerely-held religious beliefs.

171. The HHS Mandate coerces the Feltls to change or violate their sincerely-held religious beliefs by requiring the Company to purchase group health plans compliant with the HHS Mandate or be charged with substantial fines and penalties.

172. The HHS Mandate prevents the Feltls' religious exercise.

173. According to Roman Catholic religious law, it would be public scandal for the Feltls to knowingly continue owning a business that provides health care coverage for contraception, sterilization, abortion, abortifacient drugs and related education and counseling.

174. The HHS Mandate imposes a substantial burden on the Feltls' exercise of their religion.

175. The HHS Mandate is designed to apply to some religious American citizens but not to others, which results in discrimination among religions.

176. The HHS Mandate permits Health Resources Services unlimited discretion to decide to exempt some, all, or no organizations meeting the HHS's definition of "religious employers."

177. HHS has created exemptions to the HHS Mandate for some religious believers but not others based on characteristics of their beliefs, the types of organizations, and the manner in which they exercise those beliefs.

178. Despite having prior detailed knowledge of the kind of religious objections contained in this complaint, HHS designed the HHS Mandate and the religious exemption to the HHS Mandate in a way that made it impossible for the Feltls, through their Company and others similarly situated, to comply with their religious beliefs.

179. HHS promulgated both the HHS Mandate and the religious exemptions thereto with the purpose and intent to suppress the religious exercise of owners of for-profit companies like the Plaintiffs.

180. The HHS Mandate furthers no compelling governmental interest.

181. The HHS Mandate is not the least restrictive means of furthering HHS' alleged interests.

182. As a result of HHS' violations of the First Amendment's Free Exercise Clause as described above, the HHS Mandate is facially invalid.

183. As a result of HHS' violations of the First Amendment's Free Exercise Clause as described above, the HHS Mandate is invalid as applied.

184. The HHS Mandate violates the Feltls' rights secured to them by the Free Exercise Clause of the First Amendment of the United States Constitution. Because of the direct harm the HHS Mandate imposes upon the Feltls and the Company in violation of their constitutional right to freedom of religion, immediate injunctive relief is necessary to prevent governmental intrusion and punishment of the Plaintiffs for exercising their sincerely-held religious beliefs as protected under the First Amendment.

COUNT III
Violation of the Establishment Clause of
the United States Constitution

185. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

186. The First Amendment's Establishment Clause prohibits the establishment of any religion as well as excessive government entanglement with religion.

187. The Establishment Clause requires government neutrality in matters of religion and in matters of religious organization.

188. The HHS Mandate discriminates among religious organizations, favoring some over others, and exhibits hostility to religious beliefs.

189. The HHS Mandate establishes which individuals and entities are “sufficiently religious” to warrant exemption from the requirements of the ACA and the HHS Mandate.

190. Owners of for-profit companies, no matter how religious, are not included in the exemption from the requirements of the ACA and the HHS Mandate.

191. The exemptions from the HHS Mandate do exclude Bishops and their church organizations, but do not exclude lay people who own for-profit businesses and have the same religious objections to the HHS Mandate as the Bishops and their church organizations.

192. Thus, the exemption from the HHS Mandate unconstitutionally discriminates in favor of the Bishop (the Shepherd) and against the lay people (the Flock).

193. Additionally, by enforcing the HHS Mandate, HHS adopts a particular theological view of what is acceptable moral complicity in provision of abortifacients, contraceptives and sterilization coverage and imposes it upon all religionists who must either conform their consciences or suffer fines and penalties.

194. The government's use of the political tactic of dividing the Shepherd from the Flock is a violation of the Establishment Clause's neutrality requirement. In using this political tactic, the government is unconstitutionally favoring religious objectors who are Bishops or those who are organized as church organizations over religious objectors who are individuals who own for-profit businesses.

195. As a result of the HHS violations under the First Amendment's Establishment Clause as described above, the HHS Mandate is facially invalid.

196. As a result of the HHS violations under the First Amendment's Establishment Clause as described above, the HHS Mandate is invalid as applied.

197. The HHS Mandate violates the Feltls' and the Company's rights secured to them by the Fifth Amendment of the United States Constitution. Because of the direct harm the HHS Mandate imposes upon Mr. Feltl and the Company in violation of their constitutional rights of due process, equal protection and neutrality, immediate injunctive relief is necessary to prevent governmental intrusion of the Plaintiffs protected constitutional rights.

COUNT IV
Violation of the Fifth Amendment
of the United States Constitution

198. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

199. The Fifth Amendment of the United States Constitution has an explicit requirement that the federal government not deprive individuals of "life, liberty, or property" without due process of the law and an implicit guarantee that each person receive equal protection of the laws.

200. The Fifth Amendment requires government neutrality in matters of religion and in matters of religious organization.

201. The HHS Mandate discriminates among religious organizations, favoring some over others, and exhibits hostility to religious beliefs.

202. The HHS Mandate establishes which individuals and entities are sufficiently religious to warrant exemption from the requirements of the ACA and the HHS Mandate.

203. Owners of for-profit companies, no matter how religious, are not included in the exemption from the requirements of the ACA and the HHS Mandate.

204. The exemptions from the HHS Mandate do exclude Bishops and their church organizations, but do not exclude lay people who own for-profit businesses and have the same religious objections to the HHS Mandate.

205. Thus, the exemption from the HHS Mandate unconstitutionally discriminates in favor of the Bishop (the Shepherd) and against the lay people (the Flock).

206. The government's use of the political tactic of dividing the Shepherd from the Flock is a violation of the Fifth Amendment's due process, equal protection and neutrality requirements. The HHS Mandate's exemption does not treat each similarly-situated religious objector equally under the law. In using this political tactic, the government is unconstitutionally favoring religious objectors who are Bishops or organized as church organizations over religious objectors who are individuals who own for-profit businesses.

207. As a result of the HHS violations under the Fifth Amendment as described above, the HHS Mandate is facially invalid.

208. As a result of the HHS violations under the Fifth Amendment as described above, the HHS Mandate is invalid as applied.

209. The HHS Mandate violates the Feltls' rights secured to them by the Fifth Amendment of the United States Constitution. Because of the direct harm the HHS Mandate imposes upon the Feltls' and the Company in violation of their constitutional right of due process and equal protection, immediate injunctive relief is necessary to prevent governmental intrusion of the Plaintiffs protected constitutional rights under the Fourteenth Amendment.

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

210. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

211. A business' conduct and speech relating to the provision of employee health insurance is "speech" protected by the Free Speech Clause.

212. The HHS Mandate's requirement that all group health plans provide coverage for education and counsel related to contraceptives, sterilization, and abortifacient drugs forces the Feltls, through the Company, to subsidize speech and expressive conduct that is directly contrary to the Feltls' religious beliefs.

213. The HHS Mandate furthers no compelling governmental interest.

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

215. As a result of the HHS violations under the First Amendment's protection of free speech as described above, the HHS Mandate is facially invalid.

216. As a result of the HHS violations under the First Amendment's protection of free speech as described above, the HHS Mandate is invalid as applied.

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

Because of the direct harm the HHS Mandate imposes upon the Felts and the Company in violation of their constitutional right of free speech, immediate injunctive relief is necessary to prevent governmental intrusion of the Plaintiffs protected constitutional rights under the First Amendment.

COUNT VI
Violation of the Administrative Procedures Act

218. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as though fully set forth herein.

219. Because HHS did not give proper notice and an opportunity for public comment when they promulgated the “preventive care” guidelines, HHS did not take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

220. HHS did not consider or respond to the voluminous comments they received in opposition to the August 1, 2012 interim final rule.

221. HHS did not consider or respond to the voluminous comments they received in opposition to the proposed final regulations adopted on July 2, 2013.

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

223. In promulgating the HHS Mandate, HHS failed to consider the constitutional and statutory implications of the HHS Mandate on the Feltls and the Company and similar persons.

224. HHS's decision to not exempt the Company and similar organizations is contrary to the evidence submitted during the comment period.

225. HHS's issuance of the HHS Mandate was thus arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because HHS failed to consider the full extent of the HHS Mandate's implications and they did not take into consideration the evidence against it.

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

227. As a result of the HHS violations under the APA as described above, the HHS Mandate is facially invalid.

228. As a result of the HHS violations under the APA as described above, the HHS Mandate is invalid as applied.

229. As a result of HHS violating the APA, the Plaintiffs have been directly harmed with the government's intrusive efforts to violate protections afforded to the Feltls and the Company under the federal Constitution and under RFRA.

Jury Trial Demanded

230. Plaintiffs demand on any issue triable of right by a jury, a jury trial as protected under the United States Constitution, amend. VII, and as provided under Rule 38 of the Federal Rules of Civil Procedure.

Prayer for Relief

WHEREFORE, the above-named Plaintiffs respectfully request the following relief:

1. Enter a declaratory judgment that the HHS Mandate, which requires employee health insurance coverage for, “[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity” in plan years beginning on or after August 1, 2012 (“the HHS Mandate”), *see* 45 CFR § 147.130 (a)(1)(iv), and its application to the Company and the Felts violates the Religious Freedom Restoration Act (RFRA);
2. Enter a declaratory judgment that the HHS Mandate and its application to the Company and the Felts violate the Free Exercise Clause of the First Amendment of the United States Constitution;

3. Enter a declaratory judgment that the HHS Mandate and its application to the Company and the Feltls violate the Establishment Clause of the First Amendment of the United States Constitution;
4. Enter a declaratory judgment that the HHS Mandate and its application to the Company and the Feltls violate the Free Speech Clause of the First Amendment of the United States Constitution;
5. Enter a declaratory judgment that the HHS Mandate and its application to the Company and the Feltls violate the Fifth Amendment of the United States Constitution;
6. Enter a declaratory judgment that the HHS Mandate and its application to the Company and the Feltls violate the Administrative Procedures Act;
7. Enter a declaratory judgment that the HHS Mandate is facially invalid because it violates the United States Constitution, the Religious Freedom Restoration Act and the Administrative Procedures Act;
8. Enter a declaratory judgment that the HHS Mandate is invalid as applied because it violates the United States Constitution, the Religious Freedom Restoration Act and the Administrative Procedures Act;
9. Enter a preliminary and permanent injunction prohibiting the Defendants Kathleen Sebelius as U.S. Secretary of Health and Human Services and the United States Department of Health and Human Services; Jacob Lew as U.S.

Secretary of the Treasury and the United States Department of the Treasury;
and Daniel I. Werfel as Acting Commissioner of Internal Revenue and the
Internal Revenue Service from enforcing the HHS Mandate against the
Company and the Feltls;

10. Enter a preliminary and permanent injunction prohibiting the Internal
Revenue Service from the application and/or enforcement of IRS rules or
regulations that would result in imposing tax penalties against the Company
and the Feltls, including but not limited to, the requiring filing of Form 8980
regarding the return of certain excise taxes under Chapter 43 of the Internal
Revenue Code (or similar form) *and* the payment of any excise tax or
interest penalty;
11. Enter a preliminary and permanent injunction prohibiting the Internal
Revenue Service from the application and/or enforcement of IRS rules or
regulations that would result in any other type of tax penalty, including
interest, against the Company and the Feltls;
12. Enter a preliminary and permanent injunction prohibiting the Internal
Revenue Service from the application and/or enforcement of IRS rules or
regulations that would result in imposing penalties against any of the
Company's and the Feltls' employees;

13. Enter a declaratory judgment that an insurance issuer or administrator that offers a group health plan to Company excluding the coverage required by the HHS Mandate does not violate the Patient Protection and Affordable Care Act or the HHS Mandate;

14. Award the Company and the Felts costs and reasonable attorney fees under 42 U.S.C. § 1988; and

15. Award such other relief as the court deems just.

Dated: September 25, 2013.

MOHRMAN & KAARDAL, P.A.

/s/Erick G. Kaardal

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Counsel for Plaintiffs

**VERIFICATION OF COMPLAINT
PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 9/25, 2013



John Feltl

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 9/25, 2013



Mary Jo Feltl

I declare on behalf of Feltl and Company, Inc. under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 9/25, 2013

Feltl and Company, Inc.



By: JOHN C. FELTL
Its Chief Executive Officer