

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENEVA COLLEGE,)
)
 Plaintiff,)
)
 v.) Case No.
)
 KATHLEEN SEBELIUS, in her official capacity)
 as Secretary of the United States Department of)
 Health and Human Services; HILDA SOLIS,)
 in her official capacity as Secretary of the United)
 States Department of Labor; TIMOTHY)
 GEITHNER, in his official capacity as Secretary)
 of the United States Department of the Treasury;)
 UNITED STATES DEPARTMENT OF HEALTH)
 AND HUMAN SERVICES; UNITED STATES)
 DEPARTMENT OF LABOR; and UNITED)
 STATES DEPARTMENT OF THE)
 TREASURY,)
)
 Defendants.)
 _____)

COMPLAINT

Plaintiff Geneva College, by its attorneys, states as follows:

NATURE OF THE ACTION

1. In this action, the Plaintiff seeks judicial review of the Defendants' violations of the Religious Freedom Restoration Act 42 U.S.C. § 2000bb *et seq.* (RFRA), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* (APA), by their actions implementing the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148 (March 23, 2010), and Pub. L. 111-152 (March 30, 2010); hereinafter PPACA), in ways that coerce thousands of religious institutions and individuals to

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

2. Plaintiff Geneva College is a Christ-centered institution of higher learning. As such, it believes that God, in His Word, has condemned the intentional destruction of innocent human life. The College's leaders believe, as a matter of religious faith, that it would be sinful and immoral for Geneva intentionally to participate in, pay for, facilitate, or otherwise support abortion, which destroys human life. They believe that the Sixth Commandment ("thou shalt not murder") proscribes payment for and facilitation of the use of drugs that can and do destroy very young human beings in the womb.

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

4. The regulation—the HHS Preventive Services Mandate—illegally and unconstitutionally coerces Geneva College to violate the Sixth Commandment under threat of heavy fines and penalties. The Mandate also forces the College to fund government-dictated speech that is directly at odds with the religious message it wishes to convey to its students and to the broader culture.

5. Defendants' refusal to accommodate conscience in this matter is highly selective. Upon information and belief, the government has provided thousands of exemptions from the PPACA for various groups, such as large corporations, but the government refuses to exempt most religious groups from this unprecedented Mandate.

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

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

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

9. Defendants knew, in imposing their Mandate, that it would coerce thousands of individuals and organizations like Geneva College to violate their religious convictions. The College seeks declaratory and injunctive relief to protect against this deliberate attack.

IDENTIFICATION OF PARTIES AND JURISDICTION

10. Plaintiff Geneva College is a Christ-centered institution of higher learning located in Beaver Falls, Pennsylvania. It is a Pennsylvania not-for-profit corporation.

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

12. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (HHS). In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only.

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

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

15. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

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

17. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

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

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

FACTUAL ALLEGATIONS

I. Geneva College's Religious Beliefs and Provision of Educational Services in General

20. Geneva College was established in 1848 by the Reformed Presbyterian Church of North America (RPCNA). The College's mission is to glorify God by educating and ministering to a diverse community of students in order to develop servant-leaders who will transform society for the kingdom of Christ.

21. The College pursues this mission through biblically-based programs and services anchored in the historic, evangelical, and Reformed Christian faith. The vocationally-focused curriculum is rooted in the liberal arts and sciences and is delivered through traditional and specialized programs.

22. Central to the mission of Geneva College is its desire to glorify God. The College believes that the Bible teaches that the lives of all people (especially followers of Jesus Christ) should glorify God. The College embraces the oft-quoted statement of the Westminster Shorter Catechism: “Man’s chief end is to glorify God and enjoy Him forever.”

23. Geneva College believes that one of its central purposes is “to see the glory of God in all the aspects of His Word and world. This is furthered by having students, faculty and, ultimately, the whole of academe see the glory that is God’s in His creation, deeds, disciples and, above all, in His son, the Lord of Glory.”

24. Geneva College follows the creedal commitment in the application to many of its policies and practices that flow from the Reformed Presbyterian Church of North America. That commitment is derived from the Holy Bible and is articulated in the Westminster Confession of Faith, the Westminster Larger and Shorter Catechisms, and the Testimony of the RPCNA.

25. Members of Geneva’s Board of Corporators, which governs the College, must be members in good standing of the Reformed Presbyterian Church of North America. The Synod of the RPCNA elects all members of the Board of Corporators. The Board of Corporators exercises control for the RPCNA over the purpose, policies, and property of the College.

26. A Board of Trustees operates Geneva College under authority delegated by the Board of Corporators. Trustees must be members of either the RPCNA or other Reformed and Evangelical Christian congregations.

27. Geneva College draws its faculty, staff, and administration from among those who profess faith in Christ and otherwise agree with the College's Christian convictions.

28. Although the College does not require a profession of faith as a prerequisite for student admission, it does give priority in its recruitment to the evangelical Christian community and seeks to create a Christian peer influence among students. All students are expected to live by the standards of historic Christian morality, including those expressed in the Ten Commandments.

29. Geneva College has a long history of providing education to individuals from segments of society that have been disenfranchised. In the years following the Emancipation Proclamation of 1863, a significant percentage of the students were freed black slaves. Geneva was among the earliest schools to matriculate women to a full degree program. The College is building on that history through special efforts to recruit and retain African-American, Latino, other minority, and international students, believing that its student body should reflect the diversity of our world.

30. At certain points in its history, Geneva has found it necessary to engage in civil disobedience of unjust laws. In the 1860s, Geneva College was a station on the Underground Railroad, which sought, against the law of the land, to hide and transport escaped slaves. The College believed that the institution of slavery was inimical to biblical faith.

31. The College's current enrollment is approximately 1,850.

32. The College has approximately 350 employees, and about 280 of them are full-time. There are approximately 95 full-time faculty members.

II. The Religious Beliefs of Geneva College and of the Reformed Presbyterian Church of North America Regarding Abortion

33. The RPCNA Testimony, one articulation of the Church's religious beliefs, declares as follows: "Unborn children are living creatures in the image of God. From the

moment of conception to birth they are objects of God's providence as they are being prepared by Him for the responsibilities and privileges of postnatal life. Unborn children are to be treated as human persons in all decisions and actions involving them. Deliberately induced abortion, except possibly to save the mother's life, is murder."

34. In support of this declaration, the Testimony cites Exodus 20:13 (the Sixth Commandment, "thou shalt not murder"), Exodus 21:22-23, and Psalm 139:13-16, all of which the College believes are part of the inerrant and infallible Word of God.

35. The Westminster Larger Catechism, another articulation of the Church's beliefs, sets forth the duties required by the Sixth Commandment. These include "all careful studies, and lawful endeavors, to preserve the life of ourselves and others by resisting all thoughts and purposes, subduing all passions, and avoiding all occasions, temptations, and practices, which tend to the unjust taking away the life of any . . . and protecting and defending the innocent."

In support of this statement, the Larger Catechism cites the following Scripture verses: Eph. 5:28-29; 1 Kings 18:4; Jer. 26:15-16; Acts 23:12, 16-17, 21, 27; Eph. 4:26-27; 2 Sam. 2:22; Deut. 22:8; Matt. 4:6-7; Prov. 1:10-11, 15-16; 1 Sam. 24:12; 1 Sam. 26:9-11; Gen. 37:21-22; Ps. 82:4; Prov. 24:11-12; 1 Sam. 14:45; Jas. 5:7-11; Heb. 12:9; 1 Thess. 4:11; 1 Pet. 3:3-4; Ps. 37:8-11; Prov. 17:22; Prov. 25:16, 27; 1 Tim. 5:23; Isa. 38:21; Ps. 127:2; Eccl. 5:12; 2 Thess. 3:10, 12; Prov. 16:26; Eccl. 3:4, 11; 1 Sam. 19:4-5; 1 Sam. 22:13-14; Rom. 13:10; Luke 10:33-34; Col. 3:12-13; Jas. 3:17; 1 Pet. 3:8-11; Prov. 15:1; Judg. 8:1-3; Matt. 5:24; Eph. 4:2, 32; Rom. 12:17, 20-21; 1 Thess. 5:14; Job 31:19-20; Matt. 25:35-36; and Prov. 31:8-9.

36. The Westminster Larger Catechism also identifies "the sins forbidden in the sixth commandment." Among these are "all taking away the life of ourselves, or of others, except in case of public justice, lawful war, or necessary defence; the neglecting or withdrawing the lawful and necessary means of preservation of life; . . . and whatsoever else tends to the

destruction of the life of any.” In support of this statement, the Larger Catechism cites the following Scripture verses: Acts 16:28; Gen. 9:6; Num. 35:31, 33; Jer. 48:10; Deut. 20:1-20; Ex. 22:2-3; Matt. 25:42-43; Jas. 2:15-16; Eccl. 6:1-2; Matt. 5:22; 1 John 3:15; Lev. 19:17; Prov. 14:30; Rom. 12:19; Eph. 4:31; Matt. 6:31, 34; Luke 21:34; Rom. 13:13; Eccl. 12:12; Eccl. 2:22-23; Isa. 5:12; Prov. 15:1; Prov. 12:18; Ezek. 18:18; Ex. 1:14; Gal. 5:15; Prov. 23:29; Num. 35:16-18, 21; and Ex. 21:18-36.

37. The Foreword to a recent re-issue of the 1888 *History of the Reformed Presbyterian Church in America* observes that the Testimony “has been updated to keep pace.” As an example, the Foreword states that “[t]he Church of 1888 did not make reference to willful abortion, as that was not an issue. Today, however, abortion is one of the most dynamic social controversies, and we should praise God that he has enabled this church to maintain a testimony against such murder.”

38. Geneva College unreservedly shares the RPCNA’s religious views regarding abortion, believing that the procurement, participation in, facilitation of, or payment for abortion (including abortion-causing drugs like Plan B and ella) violates the Sixth Commandment and is inconsistent with the dignity conferred by God on creatures made in His image.

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

40. The College has participated in Life Ring, a community-wide pro-life awareness campaign that encourages churches with bell towers to ring their bells in mourning on the anniversary of the U.S. Supreme Court’s 1973 decision in *Roe v. Wade*.

41. Geneva has sponsored public events in which it has explored the religious dimensions of the abortion issue. These include an October 18, 2011, panel discussion entitled, “Abortion: Is it an Issue of Justice for the Mother or Unborn Child?”

42. Geneva’s publications frequently highlight the pro-life activities of students, alumni, and staff. For example, the March 2005 issue of a College newsletter reported on a letter sent by the College’s student-led pro-life group to President George W. Bush, supporting the “culture of life” discussed in the President’s 2005 state of the union address. The February/March 2009 issue of the newsletter reported on the volunteer work of three Geneva staff members at a local pro-life pregnancy resource center. On January 21, 2009, Brenda Schaeffer delivered a message at the College chapel service regarding the value of human life and the heartache she experienced after having an abortion.

43. In January 2012, a group of Geneva College students and a staff member went to Washington, DC, to participate in the annual March for Life, at which they expressed their support for the sanctity of human life and their opposition to the Supreme Court’s decision in *Roe v. Wade*.

44. Geneva College does not permit members of its community to participate in abortion. The Student Handbook states that “[m]orally unacceptable practices according to Biblical teaching are not acceptable for members of the Geneva College community. Specific acts such as . . . sexual sins (i.e. premarital sex, cohabitation with a member of the opposite sex, rape, adultery, homosexual behavior, abortion, etc.) . . . will not be tolerated.”

III. Geneva College’s Group Health Insurance Plans

45. As part of fulfilling its commitment and duty in Christian education, Geneva College promotes the spiritual and physical well-being and health of its employees. This includes provision of generous health insurance for its employees.

46. Consistent with its religious commitments, Geneva College's current contract for employee health coverage states that it excludes "[a]ny drugs used to abort a pregnancy."

47. The plan year for the College's employee health insurance coverage begins on January 1 of each year. The plan that will start on January 1, 2013, will not be grandfathered.

48. The College requires that all full-time undergraduate students carry health insurance. If a student does not provide the College information about his or her health insurance coverage, the student will be enrolled in the College's Consolidated Health Plan, which provides coverage of treatment of illnesses, as well as injuries incurred as a result of accidents. Full-time graduate students may enroll in the College's Consolidated Health Plan on a voluntary basis.

49. The student plan specifically excludes "[e]lective termination of pregnancy including the morning after pill, plan B."

IV. The PPACA and Defendants' Mandate Thereunder

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

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

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

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

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

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

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

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

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

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

60. An entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because the PPACA imposes monetary penalties on entities that would so refuse.

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

62. Switching to self-insurance does not avoid the Mandate.

63. The Mandate applies not only to sponsors of group health plans like Geneva College, but also to issuers of insurance. Accordingly, the pressure to include morally problematic drugs, devices, and counseling in group health plans comes not only from Defendants, but also through the insurers who must comply with the rule.

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

- (1) “The inculcation of religious values is the purpose of the organization”;
- (2) “The organization primarily employs persons who share the religious tenets of the organization”;
- (3) “The organization serves primarily persons who share the religious tenets of the organization”; and
- (4) The organization is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A).

65. The Mandate imposes no constraint on HRSA’s discretion to grant exemptions to some, all, or none of the organizations meeting the Mandate’s definition of “religious employers.”

66. Geneva College is not “religious” enough under this definition in several respects, including but not limited to because it has purposes other than the “inculcation of religious values,” and it does not primarily serve persons who share the Reformed Presbyterian tenets of the organization (nor does it even require faith in Christ for student admission), and because it is

not itself a church, integrated auxiliary of a particular church, convention or association of a church, or the exclusively religious activities of a religious order.

67. Even if an entity were granted exempted status by HRSA under this exemption, it would only be exempt from offering coverage in its employee plan. The Mandate would require coverage of all FDA-approved contraceptive methods (including ella and Plan B), and counseling and education, in the health plan offered to its students.

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

69. The Mandate fails to protect the statutory and constitutional conscience rights of religious organizations like Geneva College even though those rights were repeatedly raised in the public comments.

70. The Mandate requires that Geneva College provide coverage for abortifacient methods, and education and counseling related to abortifacients, against its conscience in a manner that is contrary to law.

71. The Mandate constitutes government-imposed coercion on Geneva College to change or violate its religious beliefs.

72. The Mandate exposes Geneva College to substantial fines for refusal to change or violate its religious beliefs.

73. If Geneva College dropped its employee health insurance plan in order to avoid the Mandate, it would face annual fines of at least \$500,000.

74. The Mandate will impose a burden on the College's employee and student recruitment efforts by creating uncertainty as to whether or on what terms it will be able to offer health insurance beyond the Mandate's effect or will suffer penalties therefrom.

75. The Mandate will place the College at a competitive disadvantage in its efforts to recruit and retain employees and students.

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

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

78. Geneva College has a sincere religious objection to providing coverage for ella because it believes the drug could either prevent a human embryo from implanting, or could cause the death of a recently implanted embryo.

79. The Mandate does not apply equally to all members of religious groups.

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

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

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

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

84. The Mandate does not apply to employers with preexisting plans that are “grandfathered.”

85. President Obama held a press conference on February 10, 2012, claiming to offer a compromise under which some religious non-profit organizations not meeting the above definition would still have to comply with the Mandate, but by means of the employer’s insurer offering the employer’s employees the same coverage for “free.”

86. This compromise is not helpful to Geneva College because, among other reasons, it is entirely fictitious. It does not exist in the rule or guidance the Administration made final on February 10, and it need never be formally proposed or adopted, much less adopted unchanged.

87. The PPACA and the preventive services requirement do not authorize Defendants to compel insurers or any other third-party source to offer free and allegedly independent coverage of items not covered by the employer's plan; it only encompasses requirements of the employer’s plan itself.

88. Even if the president’s “compromise” did exist in binding law, was statutorily authorized and had coherent boundaries, the College would deem it to violate its religious beliefs by forcing it directly to facilitate objectionable coverage by providing and paying for a plan that is itself necessary for the employee to obtain the coverage in question, and which coverage is not separate from the employer’s plan, nor is it apparently “free” since a variety of costs contained in the Mandate would necessarily be passed onto the employer through premiums and/or administrative changes.

89. Geneva College’s employee plan that starts on January 13 will not have grandfathered status.

90. Geneva College is subject to the Mandate’s requirement of coverage of the above-described items starting in its January 2013 plan.

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

92. Geneva College must take the Mandate into account now and in the near future as it plans expenditures, including employee compensation and benefits packages, for the next several years. It will have to negotiate contracts for new and existing employees and these contracts will extend into the time frame when the Mandate begins to apply to its health insurance plans.

93. HHS provided guidelines under which some entities might be able to take advantage of a promise to delay enforcement of the Mandate by Defendants until their plan year beginning after August 2013.

94. But any delay in enforcement until its January 2014 plan year is not helpful to Geneva College because, among other reasons, the College may not qualify under its vague requirements, because the promise to delay enforcement can be revoked at any time, because at the end of the delay the Mandate still applies in violation of the College's rights as described herein, and because even during the delay its effect would be limited to mere non-enforcement by Defendants, still leaving the College in actual violation of the Mandate and thereby subjecting the College to a vast array of legal and contractual liabilities due to being in knowing violation of federal law.

95. The Mandate, regardless of the president's proposed compromises or allegations of delayed enforcement, will have a profound and adverse effect on the College and how it negotiates contracts and compensates its employees.

96. The Mandate makes it difficult for the College to attract quality employees because of uncertainty about health insurance benefits.

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

98. Geneva College has expended and will continue to expend a great deal of time and money ascertaining the requirements of the Mandate and how it applies to the College's health insurance benefits.

99. Without injunctive and declaratory relief as requested herein, the College is suffering and will continue to suffer irreparable harm.

100. Geneva College has no adequate remedy at law.

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

101. Plaintiff realleges all matters set forth in paragraphs 1-100 and incorporates them herein.

102. Geneva College's sincerely held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing a plan that causes access to the same through its insurance company.

103. When the College complies with the Sixth Commandment and other sincerely held religious beliefs, it exercises religion within the meaning of the Religious Freedom Restoration Act.

104. The Mandate imposes a substantial burden on Geneva College's religious exercise and coerces it to change or violate its religious beliefs.

105. The Mandate chills Geneva College's religious exercise within the meaning of RFRA.

106. The Mandate exposes Geneva College to substantial fines and/or financial burdens for its religious exercise.

107. The Mandate exposes Geneva College to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

108. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

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

110. The Mandate violates RFRA.

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

111. Plaintiff realleges all matters set forth in paragraphs 1-110 and incorporates them herein.

112. Geneva College's sincerely held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming pharmaceuticals, and related education and counseling, or providing a plan that causes access to the same through its insurance company.

113. When the College complies with the Sixth Commandment and other sincerely held religious beliefs, it exercises religion within the meaning of the Free Exercise Clause.

114. The Mandate is not neutral and is not generally applicable.

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

116. The Mandate furthers no compelling governmental interest.

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

118. The Mandate coerces Geneva College to change or violate its religious beliefs.

119. The Mandate chills Geneva College's religious exercise.

120. The Mandate exposes Geneva College to substantial fines and/or financial burdens for its religious exercise.

121. The Mandate exposes Geneva College to substantial competitive disadvantages, in that it makes it unclear what health benefits it can offer to its employees.

122. The Mandate imposes a substantial burden on Geneva College's religious exercise.

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

124. Defendants designed the Mandate and the religious exemption thereto in a way that make it impossible for Geneva College and other similar religious organizations to comply with their religious beliefs.

125. Defendants promulgated both the Mandate and the religious exemption in order to suppress the religious exercise of Geneva College and others.

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

127. The Mandate violates Geneva College's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

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

128. Plaintiff realleges all matters set forth in paragraphs 1-127 and incorporates them herein.

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

130. To determine whether a religious organization like Geneva College is required to comply with the Mandate, continues to comply with the Mandate, is eligible for an exemption, or continues to be eligible for an exemption, Defendants must examine the organization's religious beliefs and doctrinal teachings.

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

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

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

134. The Mandate violates Geneva College's rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

FOURTH CLAIM FOR RELIEF
**Violation of the Free Speech Clause of the First Amendment
to the United States Constitution**

135. Plaintiff realleges all matters set forth in paragraphs 1-134 and incorporates them herein.

136. Defendants' requirement of provision of insurance coverage for education and counseling regarding contraception causing abortion forces Geneva College to speak in a manner contrary to its religious beliefs.

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

138. The Mandate violates Geneva College's rights secured to it by the Free Speech Clause of the First Amendment of the United States Constitution.

FIFTH CLAIM FOR RELIEF
**Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution**

139. Plaintiff realleges all matters set forth in paragraphs 1-138 and incorporates them herein.

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

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

142. This Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner.

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

144. This Mandate is an unconstitutional violation of Geneva College's due process rights under the Fifth Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

145. Plaintiff realleges all matters set forth in paragraphs 1-144 and incorporates them herein.

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

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

148. Therefore, Defendants have taken agency action not in accordance with procedures required by law, and Geneva College is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

149. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Geneva College and similar organizations.

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

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

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

153. The Mandate is also contrary to the provisions of the PPACA which states that “nothing in this title”—i.e., title I of the Act, which includes the provision dealing with “preventive services”—“shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.” Section 1303(b)(1)(A).

154. The Mandate is also contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), which provides that “[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

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

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

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

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

Respectfully submitted this 21st day of February, 2012.

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