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

GENEVA COLLEGE; WAYNE L. HEPLER; THE SENECA HARDWOOD LUMBER COMPANY, INC., a Pennsylvania Corporation; WLH ENTERPRISES, a Pennsylvania Sole Proprietorship of Wayne L. Hepler; and CARRIE E. KOLESAR;	)	
Plaintiffs,	)	
v.	)	Case No. 2:12-cv-00207-JFC
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.	)	

FIRST AMENDED COMPLAINT

Plaintiffs, by their attorneys, state as follows:

NATURE OF THE ACTION

1. In this action, Plaintiffs seek judicial review of 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 one of the prohibitions of the Ten Commandments ("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. Plaintiffs Wayne L. Hepler and Carrie E. Kolesar (hereinafter "the Heplers") are a father and daughter who, with several of Mr. Hepler's other children own, The Seneca Hardwood Lumber Company, Inc. Located in Cranberry, Pennsylvania, Seneca Hardwood is a lumber business that Mr. Hepler runs in conjunction with a sawmill that he operates as WLH Enterprises. The Hepler family owners and operators of these businesses are practicing Catholic Christians who in their personal lives and their operation of Seneca and WLH adhere to Catholic Church teachings on sexuality and the sanctity of innocent human life. Following these beliefs, the Hepler family has for multiple years omitted abortifacients, contraception, sterilization, and related education and counseling from their health insurance plan covering themselves and their employees and family members. (The Heplers, Seneca Hardwood Lumber Company, and WLH Enterprises collectively are referred to in this First Amended Complaint as "the Hepler Plaintiffs.")

4. With full knowledge that many religious organizations and individuals hold the same or similar beliefs, the government Defendants issued regulations that, by forcing them to pay for and otherwise facilitate the use of morally objectionable drugs, devices, and related education and counseling, trample on the freedom of Geneva College, the Heplers, 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.

5. The regulation—the HHS Preventive Services Mandate[1]—illegally and unconstitutionally coerces Plaintiffs to violate their religious beliefs under threat of heavy fines and penalties. The Mandate also forces Plaintiffs to fund government-dictated speech that is directly at odds with their religious beliefs.

6. Defendants' refusal to accommodate conscience in this matter is highly selective. Upon information and belief, the government has provided categorical exemptions for plans that include millions of employees, and has granted thousands of exemptions from the PPACA for

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

various groups, such as large corporations, but has refused to exempt most religious groups from this unprecedented Mandate.

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

8. Defendants' actions also violate Plaintiffs' 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.

9. 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.

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

IDENTIFICATION OF PARTIES AND JURISDICTION

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

12. Plaintiff Wayne L. Hepler lives in Cranberry, Pennsylvania. He is 58% owner, President, and Secretary of The Seneca Hardwood Lumber Company, Inc., and sole owner of WLH Enterprises. As an employee, Mr. Hepler is a participant in the health insurance plan of Seneca Hardwood, and beneficiaries of his plan include his wife, three of their high-school aged children, and two of their college-aged children.

13. Plaintiff The Seneca Hardwood Lumber Company, Inc., is a Pennsylvania Corporation located at 212 Seneca Hardwood Road, Cranberry, Pennsylvania.

14. Plaintiff WLH Enterprises is a sawmill and sole proprietorship owned by Wayne L. Hepler. It is located at 5939 Route 38, Emlenton, Pennsylvania. WLH Enterprises employees participate in the health insurance plan of Seneca Hardwood.

15. Plaintiff Carrie E. Kolesar lives in Cranberry, Pennsylvania. She is 6% owner of Seneca Hardwood, and her husband is an employee of Seneca Hardwood. Mrs. Kolesar's husband is an employee of Seneca and participant in its health insurance plan, making her and her eight children beneficiaries of the same plan.

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

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 and 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 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.

24. 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 Plaintiffs are located in this district.

FACTUAL ALLEGATIONS

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

25. 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.

26. 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.

27. 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."

28. 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."

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

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

37. 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

38. 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."

39. In support of this declaration, the Testimony cites Exodus 20:13 ("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.

40. The Westminster Larger Catechism, another articulation of the Church's beliefs, sets forth the duties required by the Commandment against murder (which the Catechism numbers as 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.

41. 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.

42. 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."

43. 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 Commandment against murder and is inconsistent with the dignity conferred by God on creatures made in His image.

44. 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.

45. 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*.

46. 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?"

47. 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.

48. 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*.

49. 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."

50. Consistent with its religious beliefs about the sanctity of life, Geneva College's contract for employee health coverage states that it excludes "[a]ny drugs used to abort a pregnancy."

III. Geneva College's Group Health Insurance Plans

51. To fulfill its religious commitments and duties in the Christ-centered educational context, Geneva College promotes the spiritual and physical well-being and health of its employees and students. This includes the provision of generous health insurance to employees and their dependants and the facilitation of a student health .

52. The plan year for the current employee health plan began on January 1, 2012.

53. The College and the insurer of its employee health plan believe that the current plan, running from January 1, 2012 through December 31, 2012, at the present time possesses "grandfathered" status as that term is defined in 45 C.F.R. § 147.140; 26 C.F.R. § 54.9815-1251T; and 29 C.F.R. § 2590.7151251. The statutory requirement that group health plans provide coverage without cost sharing of "preventive health services" (42 U.S.C. § 300gg-13), which Defendants interpreted to include "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," does not apply to grandfathered health plans.

54. In response to financial circumstances, the College examined increasing each employee's share of the cost of health insurance during the budgeting process for its 2012–13 fiscal year. Implementing such an increase would have deprived the employee health plan of grandfathered status, thereby subjecting the College to the requirement that it include abortifacients like ella, Plan B, and IUDs in the employee health plan, without cost sharing, in violation of its religious convictions. The College decided not to increase each employee's share of the cost of health insurance. It instead froze employee wages and salaries for fiscal year 2012-13.

55. The desire to maintain the grandfathered status of its employee health plan in order to avoid the Mandate thus has inflicted and will continue to inflict financial pressures and penalties on the College and its employees, thereby pressuring the College to violate its conscience.

56. The College's financial ability to maintain the grandfathered status of its employee health plan in calendar year 2013 and thereby avoid the Mandate depends heavily upon favorable student enrollment numbers for the 2012-13 school year and upon the avoidance of other negative financial developments.

57. The College's financial prognosis for fiscal year 2013-14 is increasingly negative. Accordingly, it is likely that the College will need to make changes to its 2014 employee health plan that will deprive the plan of any grandfathered status it might still enjoy, thereby subjecting the College to the Mandate. Specifically, it likely will need to increase employee contributions to the cost of insurance in excess of what the applicable regulations permit. *See* 45 C.F.R. § 147.140(g)(1)(ii)-(v).

58. The grandfathered status of the College's 2012 and 2013 employee health plans will be jeopardized when its insurer executes the contractual exclusion of "[a]ny drugs used to abort a pregnancy." Despite this contractual language, and for a time without the College's knowledge, the insurer included coverage of ella, Plan B, and IUDs in the College's employee health plan. Upon learning that the insurer had been covering these drugs and devices, the College informed the insurer that those drugs and devices can abort the pregnancy of an embryo after fertilization and therefore instructed the insurer to eliminate coverage of those items. In response, the insurer has indicated that it will remove that coverage during the current calendar and plan year.

59. Rules promulgated by Defendants attempt to describe the changes to group health plans that will cause the cessation of grandfathered status. *See* 45 C.F.R. § 147.140(g)(1) (Department of Health and Human Services rule); 26 C.F.R. § 54.9815-1251T(g)(1) (Internal Revenue Service rule); and 29 C.F.R. § 2590.715-1251(g)(1) (Department of Labor rule). The rules state in pertinent part as follows:

> Elimination of benefits. The elimination of all or substantially all benefits to diagnose or treat a particular condition causes a group health plan or health insurance coverage to cease to be a grandfathered health plan. For this purpose, the elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.

45 C.F.R. § 147.140(g)(1)(i); 26 C.F.R. § 54.9815-1251T(g)(1)(i); and 29 C.F.R. § 2590.715-1251(g)(1)(i).

60. It is unclear whether the elimination of coverage of emergency contraception and IUDs constitutes "[t]he elimination of all or substantially all benefits to . . . treat a particular condition" and/or "the elimination of benefits for any necessary element to diagnose or treat a condition."

61. If unwanted pregnancy is deemed "a particular condition," then the elimination of emergency contraception and IUDs to "treat" that "particular condition" will deprive the College's employee plan of grandfathered status.

62. If unwanted pregnancy after sexual intercourse is deemed "a particular condition," then the elimination of emergency contraception and IUDs to "treat" that "particular condition" will deprive the College's employee plan of grandfathered status.

63. Defendants' standards for when grandfathered status is lost are sufficiently imprecise to permit them to conclude that the College's elimination of coverage of all emergency contraception and IUDs would cause a loss of grandfathered status of the employee plan.

64. Defendants' standards for when grandfathered status is lost are vague and do not give the College fair warning regarding whether elimination of coverage of all emergency contraception and IUDs would cause a loss of grandfathered status of the employee plan.

65. Defendants' standards for when grandfathered status is lost give them excessive discretion to determine based on discriminatory motives that the College's plan has lost its grandfathered status based on elimination of coverage of all emergency contraception and IUDs.

66. Defendants' rules provide no mechanism for the College to obtain a binding declaration from defendants regarding whether the elimination of ella, Plan B, and IUDs from the employee plan would cause the plan to lose grandfathered status.

67. The College's own guess regarding whether its plan has lost grandfathered status is not binding on Defendants or on others. It does not prevent Defendants from fining or suing the College or prevent the College's plan participants or beneficiaries from suing the College, if

the College were to assume it retained grandfathered status despite the elimination of emergency contraception and IUDs from the employee group health plan.

68. Upon information and belief, Defendants will take the position that the elimination of emergency contraception and IUDs from the College's employee group health plan will cause a loss of grandfathered status.

69. Upon information and belief, Defendants will refuse to enter into an interpretation, binding on all parties that could proceed against the College, that the elimination of emergency contraception and IUDs from the College's plan will not cause a loss of grandfathered status.

70. 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.

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

72. The College believes that its religious convictions prevent it from facilitating student health insurance coverage that includes ella, Plan B, or IUDs.

73. The student plan does not possess grandfathered status.

74. The next plan year for the student plan begins on August 1, 2012.

IV. The Heplers and Their Religious Beliefs in Business Practice

75. Wayne L. Hepler, his wife, and their adult children and families including Carrie E. Kolesar (collectively, "the Heplers") are practicing and believing Catholic Christians.

76. They strive to follow Catholic ethical beliefs and religious and moral teachings in all areas of their lives, including in the operation of their businesses.

77. The Heplers sincerely believe that the Catholic faith does not allow them to violate Catholic religious and moral teachings in their decisions about the operation of their businesses. They believe that according to the Catholic faith their operation of their businesses must be guided by ethical social principles and Catholic religious and moral teachings, that the adherence of their business practice according to such Catholic ethics and religious and moral teachings is a genuine calling from God, that their Catholic faith prohibits them to sever their religious beliefs from their daily business practice, and that their Catholic faith requires them to integrate the gifts of the spiritual life, the virtues, morals, and ethical social principles of Catholic teaching, into their life and work.

78. The Catholic Church teaches that abortifacient drugs, contraception and sterilization are intrinsic evils.

79. As a matter of religious faith the Heplers believe that those Catholic teachings are among the religious ethical teachings they must follow throughout their lives including in their business practice.

80. Consequently, the Heplers believe that it would be immoral and sinful for them to intentionally participate in, pay for, facilitate, or otherwise support abortifacient drugs, contraception, sterilization, and related education and counseling, through the inclusion of such

items in health insurance coverage they offer at their businesses or participate in for their own individual families.

81. Mr. Hepler and Mrs. Kolesar, as well as their family members who also own and/or are employed at Seneca Hardwood or WLH Enterprises, also have strongly held religious beliefs against their own personal family contribution, as employees or beneficiaries of a health insurance plan, to a health insurance plan that covers abortifacient drugs, contraception, sterilization, and related education and counseling. Moreover, they oppose participation in such a plan in a way by which it would cover their minor or college-aged children for such items, and/or to the extent their children could access such items through their own plan, even without their knowledge or consent.

82. The Heplers likewise have religious beliefs in favor of providing health insurance coverage to their family members and other Catholic employees in a form that is consistent with those employees' religious beliefs against participating in a plan that covers abortifacient drugs, contraception, sterilization, and related education and counseling.

83. The Heplers have, for a substantial period of time to the present, striven to operate their businesses in promotion of Catholic ethical and religious principles in a variety of ways including but not limited to the structuring of their health insurance plan.

84. Heplers have displayed religious imagery at the offices of Seneca Hardwood, and are building a Catholic chapel in Seneca Hardwood's retail store.

85. The Heplers have directed their businesses to engage in charitable donations towards Catholic efforts.

86. Mr. Hepler has built and runs the St. Thomas More House of Prayer in Cranberry, Pennsylvania, a Catholic retreat house that promotes devotion to God and family prayer centered around the Psalms of the Bible.

87. For many years Mr. Hepler was a member of the board of the Couple to Couple League, a national Catholic organization dedicated to the promotion of "natural family planning," and an organization that for religious, moral and scientific reasons opposes all abortifacients, contraceptives, sterilization, and education and counseling in favor of the same.

88. Mr. Hepler and his thirteen children including Mrs. Kolesar are dedicated to the Catholic Church's teachings on the sanctity of human life and sexuality. Mrs. Kolesar and her siblings and their children have participated in many national and local pro-life activities such as public marches. Mrs. Kolesar and some of her siblings have taught marriage preparation for Catholic couples including teaching about the Church's position in favor of God's plan for sexuality and against abortifacients, contraceptives, and sterilization.

89. Mr. Hepler owns 58% share in The Seneca Hardwood Lumber Company, Inc. ("Seneca Hardwood" or "Seneca"). Mrs. Kolesar and six of her adult siblings each own a 6% share. Together they constitute the owners and the Board of Directors of Seneca Hardwood.

90. Seneca Hardwood is a lumber company with 22 full-time employees. Nineteen of the 22 employees, including Mr. Hepler as well as Mrs. Kolesar's husband, are covered by Seneca Hardwood's health insurance plan.

91. In conjunction with Seneca Hardwood, Mr. Hepler owns and operates a sawmill under the sole proprietorship of WLH Enterprises. WLH Enterprises has 6 full-time employees. Five of those six employees are covered under Seneca Hardwood's health insurance plan, in which WLH Enterprises participates.

92. As part of fulfilling their organizational mission and Catholic beliefs and commitments, the Heplers, Seneca Hardwood, and WLH Enterprises ("the Hepler Plaintiffs") provide generous health insurance for their employees.

93. The Hepler Plaintiffs have religious beliefs against dropping health insurance for their employees who need it.

94. The Hepler Plaintiffs have religious beliefs against requiring themselves and their families and their employees who share their beliefs and who are participants and beneficiaries in Seneca's health plan to lose a health plan that omits coverage of abortifacients, contraceptives and sterilization. This would require them to enter a health insurance market where they would need to buy health insurance for themselves. In that market, because of the Mandate, all such plans would include the coverage of abortifacients, contraceptives and sterilization. This would cause participation in morally unacceptable plans in violation of the beliefs of the Heplers, Kolesars, covered family members and employees who share their beliefs.

95. The Hepler Plaintiffs have religious beliefs against participating in a health plan, either through Seneca or through one they would buy in the open market, that would cover abortifacients, contraceptives and sterilization for their minor children or college-aged children as beneficiaries in the plan.

96. The Hepler Plaintiffs purchase their business health insurance plan from a company in the health insurance market.

97. For many reasons, including significant plan changes made in the past several years, as well as a lack of the insurer providing the required notices, the Hepler Plaintiffs' plan is not grandfathered under PPACA.

98. The next plan year for the Hepler Plaintiffs' plan will begin on July 1, 2012, and the next plan year after that will begin on July 1, 2013.

99. Consistent with the Hepler Plaintiffs' religious commitments, their health insurance plan does not cover abortifacient drugs, contraception, sterilization, or education or counseling in favor of the same. It has not done so for the present plan year and for multiple years previous, and it will not do so for the July 2012–June 2013 plan year.

100. However, the Mandate will force the Hepler Plaintiffs' July 2013 health insurance plan to provide abortifacient drugs, contraception, sterilization, and related education and counseling against their religious beliefs.

V. The PPACA and Defendants' Mandate Thereunder

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

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

103. On February 10, 2012, the Department of Health and Human Services finalized a rule (previously referred to in this First Amended 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.

104. 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.

105. 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).

106. 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 uterine wall, by a mechanism similar to the abortion drug RU-486.

107. 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.

108. 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.

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

110. 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.

111. The Mandate makes no allowance at all for the religious freedom of persons such as the Hepler Plaintiffs to run businesses and receive health insurance without violating their religious beliefs.

112. Any employer providing a health insurance plan that omits any abortifacients, contraception, sterilization, or education and counseling for the same, is subject (because of the

Mandate) to heavy fines approximating $100 per employee per day. Such employers are also vulnerable to lawsuits by the Secretary of Labor and by plan participants.

113. A large employer 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.

114. 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.

115. 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.

116. Small employers such as the Hepler Plaintiffs suffer substantial burdens under the Mandate if they are forced to choose between providing health insurance consistent with their religious beliefs or providing no health insurance at all.

117. The "option" of the Hepler Plaintiffs to drop their employee health insurance would take health insurance away from their needy employees in violation of the Heplers' religious beliefs.

118. The "option" of the Hepler Plaintiffs to drop their employee health insurance would take health insurance away from themselves, their sibling co-owners and their families as employees and beneficiaries of the same plans, harming their families' well-being.

119. The "option" of the Hepler Plaintiffs to drop their employee health insurance would cause Mr. Hepler, Mrs. Kolesar, their sibling co-owners and their families, and other Catholics who work for them, to have to obtain their own health insurance (for health reasons, and because PPACA compels them to do so) in a market where the Mandate forces all plans they

could purchase to cover abortifacients, contraception, sterilization and related education and counseling for themselves and their minor children and college-aged children.

120. Losing the moral acceptability of their plan through Seneca and needing to obtain plans from the open market that the Mandate renders morally unacceptable violates the religious beliefs of Mr. Hepler, Mrs. Kolesar, their sibling co-owners and their families, and other Catholics who work for them. Similarly, it violates the religious beliefs of the Hepler Plaintiffs to force them to abandon their own family members and friends into a market of mandatorily immoral health insurance plans.

121. The Hepler Plaintiffs need to retain health insurance for their families and children, but object to being forced to participate in a plan, either through Seneca or the open market, wherein their minor children and college-aged children would as beneficiaries of the plan receive coverage of abortifacients, contraception, sterilization and related education and counseling, possibly even receiving such items without their knowledge or consent.

122. The "option" of the Hepler Plaintiffs to drop their employee health insurance would impose a competitive disadvantage on the Hepler Plaintiffs' businesses since they would be far less able to attract and keep good employees if they do not offer health insurance to their employees.

123. If the Hepler Plaintiffs tried to compensate their employees for the loss of health insurance benefits so the employees could purchase their own equivalent plans, it would cost the Hepler Plaintiffs significantly more to do so than those the Hepler Plaintiffs presently contribute to their employees' plans. This cost difference represents a financial penalty imposed on the Hepler Plaintiffs by the Mandate as a cost of complying with their religious beliefs. And, as

asserted above, would force the Heplers and their employees to participate in morally objectionable plans obtained in the open market by operation of the Mandate.

124. The Mandate therefore imposes a variety of substantial burdens on the religious beliefs of each of the Plaintiffs.

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

126. The Mandate applies not only to sponsors of group health plans like the Plaintiffs, 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.

127. The Mandate includes a narrow religious exemption, but it is potentially available only to those organizations that 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).

128. 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."

129. 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.

130. The Hepler Plaintiffs are also not "religious" enough under this definition, for similar reasons, because Seneca Hardwood and WLH Enterprises are business entities, and because Mr. Hepler and Mrs. Kolesar as individuals receive zero protection under the exemption.

131. 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.

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

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

134. It is unclear how Defendants define or will interpret religious "purpose."

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

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

137. It is unclear how much overlap Defendants will require for religious tenets to be "share[d]."

138. The limited and ill-defined religious employer exemption provided in the

Mandate conflicts with the Constitution.

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

140. By basing the exemption on shared religious tenets, the Mandate compels Geneva College to restructure its religious affiliation, admissions, employment, and service programs in order to fall within the scope of the Mandate's religious exemption.

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

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

143. The Mandate requires that the Hepler Plaintiffs provide coverage for abortifacient drugs, contraception, sterilization, or education or counseling in favor of the same, or suffer penalties due to their conscientious exercise, in a manner that is contrary to law.

144. The Mandate constitutes government-imposed coercion on the Plaintiffs to change or suffer penalties for exercising their religious beliefs.

145. The Mandate exposes Plaintiffs to substantial fines for refusal to change or violate their religious beliefs.

146. 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 or facilitate health insurance beyond the Mandate's effect or will suffer penalties therefrom.

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

148. 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.

149. The Mandate coerces the Hepler Plaintiffs to provide coverage for and otherwise facilitate the provision of abortifacients, contraception, sterilization and related education and counseling in violation of their religious beliefs.

150. Geneva College has a sincere religious objection to providing or facilitating coverage for Plan B because it believes the drug would 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.

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

152. The Hepler Plaintiffs have sincere religious objections to providing coverage for abortifacients, contraception, sterilization and related education and counseling because they believe such drugs could prevent a human embryo from implanting, and because they believe

contraception and sterilization do not comport with God's plan for sexuality and are harmful to their users and to society.

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

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

155. 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).

156. 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.

157. 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.

158. 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 "religious employer" 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."

159. 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.

160. This compromise is not helpful to the Hepler Plaintiffs because they are not non-profit organizations.

161. 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.

162. 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 charges.

163. Upon information and belief, Geneva College is subject to the Mandate's requirement of coverage of the above-described abortifacient items starting in its January 2013 plan.

164. Geneva College is subject to Defendants' vague standard regarding whether removal of abortifacients from their plan's coverage during this plan year will cause loss of grandfathered status.

165. Even if all parties that could penalize or sue the College were to be bound to a determination that the College's plan will remain grandfathered upon its insurer's removal of abortifacients from coverage during the present plan year, the College is nevertheless injured now by the Mandate. The College is being forced to choose between protecting its conscience and making financially necessary changes to the plan. The College can no longer alter its plan in the best interests of its employees or because of changing economic circumstances, because

many such alterations would cause the College's plan to lose grandfathered status, thereby forcing it to choose between complying with the law or abiding by its religious beliefs.

166. Other entities without conscientious objections to the Mandate are not being forced in this way to suffer financially by foregoing changes that would cause their plans to lose grandfathered status, in order to protect their religious consciences.

167. For example, if the College's plan remains grandfathered it cannot increase its deductible or consider cost-shifting options beyond very restrictive limits without jeopardizing its grandfathered status.

168. The College has already faced and will continue to face in 2013 and each subsequent year face the choice of changing its employee health plan in ways that would lose grandfathered status, or making up for that financial loss by means of significant changes in other parts of the College's budget. This imposes on the College a pressure to suffer financial loss in order to retain grandfathered status to protect its conscience from the Mandate.

169. Similar grandfathered-status-depriving changes to the College's plan due to financial pressures (such as reductions in benefits and increases in employee contributions) are inevitable and impending. These changes will result in the College's employee plan losing grandfathered status and thus being forced to comply with the Mandate, if the plan even possesses or retains grandfathered status throughout the remainder of 2012.

170. 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.

171. 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 must 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.

172. On February 10, 2012 a document was issued by the Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare & Medicaid Services (CMS), of HHS, 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."

173. Under this "Guidance," an organization that truthfully declares "I certify that the organization is organized and operated as a non-profit entity; and that, at any point from February 10, 2012 onward, contraceptive coverage has not been provided by the plan, consistent with any applicable State law, because of the religious beliefs of the organization," and that provides a specified notice to plan participants, will not "be subject to any enforcement action by the Departments for failing to cover recommended contraceptive services without cost sharing in non-exempted, non-grandfathered group health plans established or maintained by an organization, including a group or association of employers within the meaning of section 3(5) of ERISA, (and any group health insurance coverage provided in connection with such plans)," until "the first plan year that begins on or after August 1, 2013."

174. The "Guidance" categorically disqualifies Geneva College from making use of this "extra year" because, among other reasons, it did offer non-abortifacient contraception and sterilization after February 10, 2012, and therefore it cannot execute the required certification.

Likewise, the College's insurer, contrary to the College's attempts to prevent it, offered coverage of abortifacients and will be removing those on a date after February 10, 2012.

175. Even if the College was not categorically disqualified for the "extra year" under the "Guidance," it would still not alleviate the harm done to the College by the Mandate because, among other reasons: its other terms are vague such that the College may not qualify; it can be revoked at any time; at the end of the extension the Mandate still applies in violation of the College's rights as described herein; and even if the extension applied to the College, its effect would leave the College in violation of the Mandate despite Defendants' promise not to enforce it, thereby subjecting the College to a vast array of legal, contractual and litigation liabilities.

176. The Hepler Plaintiffs are disqualified from this "extra year" because they are not a non-profit entity.

177. The Mandate, regardless of the Administration's proposed compromises or promises of delayed enforcement, has a profound and adverse effect on the Plaintiffs and how they negotiate contracts and compensate their employees.

178. The Mandate makes it virtually impossible for the Plaintiffs to attract quality employees because of uncertainty about health insurance benefits.

179. 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 Plaintiffs.

180. 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.

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

182. Without injunctive and declaratory relief as requested herein, Plaintiffs are suffering and will continue to suffer irreparable harm.

183. Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF
By Geneva College against All Defendants
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

184. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

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

186. When the College complies with the Ten Commandments' prohibition on murder and with other sincerely held religious beliefs, it exercises religion within the meaning of the Religious Freedom Restoration Act.

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

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

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

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

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

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

193. The Mandate violates RFRA.

SECOND CLAIM FOR RELIEF
By Geneva College against All Defendants
Violation of Free Exercise Clause of the First Amendment
to the United States Constitution

194. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

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

196. When the College complies with the Ten Commandments' prohibition on murder and with other sincerely held religious beliefs, it exercises religion within the meaning of the Free Exercise Clause.

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

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

199. The Mandate furthers no compelling governmental interest.

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

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

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

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

204. The Mandate exposes Geneva College to substantial competitive disadvantages, in that it makes it unclear what health benefits it can offer to its employees and what health insurance coverage it can facilitate for its students.

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

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

207. 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.

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

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

210. 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
By Geneva College against All Defendants
Violation of the Establishment Clause of the
First Amendment to the United States Constitution

211. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

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

213. 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, and that of its employees and persons it serves.

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

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

216. 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.

217. 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
By Geneva College against All Defendants
Violation of the Free Speech Clause of the First Amendment
to the United States Constitution

218. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

219. 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.

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

221. 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
By Geneva College against All Defendants
Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution

222. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

223. 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.

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

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

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

227. The Mandate imposes a vague standard affording unbridled discretion to Defendants regarding what changes (such as Geneva College's insurer's removal of abortifacients this plan year) cause a loss of grandfathered status.

228. 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
By Geneva College against All Defendants
Violation of the Administrative Procedure Act

229. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

230. 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.

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

232. 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).

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

234. 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.

235. 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.

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

237. 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).

238. 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."

239. 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."

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

SEVENTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

241. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

242. The Hepler Plaintiffs' sincerely held religious beliefs prohibit them from providing or participating in coverage for abortion, abortifacients, embryo-harming pharmaceuticals, contraception, sterilization and related education and counseling, or providing a plan that causes access to the same through their insurance company.

243. When the Hepler Plaintiffs comply with their sincerely held religious beliefs, they exercise religion within the meaning of the Religious Freedom Restoration Act.

244. The Mandate imposes a substantial burden on the Hepler Plaintiffs' religious exercise and coerces them to change or violate their religious beliefs.

245. The Mandate chills the Hepler Plaintiffs' religious exercise within the meaning of RFRA.

246. The Mandate exposes the Hepler Plaintiffs to substantial fines and/or financial burdens for their religious exercise.

247. The Mandate exposes the Hepler Plaintiffs to substantial competitive disadvantages because of uncertainties about their health insurance benefits caused by the Mandate.

248. The Mandate not only compels the violation of the Hepler Plaintiffs' religious beliefs by operation against Seneca Hardwood's and WLH Enterprises' health plans, but also violates Mr. Hepler's and Mrs. Kolesar's religious beliefs to the extent they, their employees and family members are forced by practical need and/or by operation of law into an open market of health insurance wherein all plans they could participate in, by operation of the Mandate, will cover these religiously objectionable items not only for themselves and for others but also for their minor and college-aged children, possibly even leading their children to obtain such items through their parents' own health plan without their knowledge or consent.

249. The Mandate exposes the individual Hepler Plaintiffs to harm to their own health insurance coverage as well as a violation of their religious beliefs not to participate in a plan that covers objectionable items for themselves or their children.

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

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

252. The Mandate violates RFRA.

EIGHTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of Free Exercise Clause of the First Amendment
to the United States Constitution

253. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporate them herein.

254. The Hepler Plaintiffs' sincerely held religious beliefs prohibit them from providing or participating in coverage for abortion, abortifacients, embryo-harming pharmaceuticals, contraception, sterilization and related education and counseling, or providing a plan that causes access to the same through their insurance company.

255. When the Hepler Plaintiffs comply with their sincerely held religious beliefs, they exercise religion within the meaning of the Free Exercise Clause.

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

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

258. The Mandate furthers no compelling governmental interest.

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

260. The Mandate coerces the Hepler Plaintiffs to change or violate their religious beliefs or suffer penalties and burdens if they wish not to.

261. The Mandate chills the Hepler Plaintiffs' religious exercise.

262. The Mandate exposes the Hepler Plaintiffs to substantial fines and/or financial and other burdens for their religious exercise.

263. The Mandate exposes the Hepler Plaintiffs to substantial competitive disadvantages for complying with their conscientious religious beliefs.

264. The Mandate not only compels the violation of the Hepler Plaintiffs' religious beliefs by operation against Seneca Hardwood's and WLH Enterprises' health plans, but also violates Mr. Hepler's and Mrs. Kolesar's religious beliefs to the extent they, their employees and family members are forced by practical need and/or by operation of law into an open market of health insurance wherein all plans they could participate in, by operation of the Mandate, will cover these religiously objectionable items not only for themselves and for others but also for their minor and college-aged children, possibly even leading their children to obtain such items through parents' their own health plan without their knowledge or consent.

265. The Mandate imposes a substantial burden on the Hepler Plaintiffs' religious exercise.

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

267. Defendants designed the Mandate and the religious exemption thereto in a way that make it impossible for the Hepler Plaintiffs and other similar individuals and entities to comply with their religious beliefs.

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

269. By design, Defendants framed the Mandate to apply to some religious entities and individuals but not on others, resulting in discrimination among religions.

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

NINTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Establishment Clause of the
First Amendment to the United States Constitution

271. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporates them herein.

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

273. To determine whether religious adherents such as the Hepler Plaintiffs are required to comply with the Mandate, must continue to comply with the Mandate, or are eligible for an exemption, or continue to be eligible for an exemption, Defendants must examine the adherents' religious beliefs and doctrinal teachings.

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

275. The Mandate discriminates among religions and religious exercise and among denominations, favoring some over others.

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

277. The Mandate violates the Hepler Plaintiffs' rights secured to them by the Establishment Clause of the First Amendment of the United States Constitution.

TENTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Free Speech Clause of the First Amendment
to the United States Constitution

278. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporates them herein.

279. Defendants' requirement of provision of insurance coverage for education and counseling regarding abortifacients, contraception, and sterilization forces the Hepler Plaintiffs to speak in a manner contrary to their religious beliefs.

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

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

ELEVENTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution

282. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporates them herein.

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

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

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

286. The Mandate vests Defendants with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations that possess religious beliefs.

287. This Mandate is an unconstitutional violation of the Hepler Plaintiffs due process rights under the Fifth Amendment to the United States Constitution.

TWELFTH CLAIM FOR RELIEF
By the Hepler Plaintiffs against All Defendants
Violation of the Administrative Procedure Act

288. Plaintiffs reallege all matters set forth in paragraphs 1-183 and incorporates them herein.

289. 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.

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

291. 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).

292. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on the Hepler Plaintiffs and similar religionists.

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

294. 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.

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

296. 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).

297. 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."

298. 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."

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to Plaintiffs 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 Plaintiffs 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 Plaintiffs may be entitled.

Respectfully submitted this 31th day of May, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Eric R. Womack, Bradley P. Humphreys, and Albert W. Schollaert, Counsel for Defendants.

s/ Gregory S. Baylor