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

REAL ALTERNATIVES, INC.; KEVIN I. BAGATTA, ESQ.; THOMAS A. LANG, ESQ.; CLIFFORD W. MCKEOWN, ESQ.;	)	
Plaintiffs,	)	
v.	)	Case No.
SYLVIA BURWELL, in her official capacity as Secretary of the United States Department of Health and Human Services; **THOMAS E. PEREZ,** in his official capacity as Secretary of the United States Department of Labor; **JACOB J. LEW,** 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.	)	

VERIFIED COMPLAINT

Plaintiffs Real Alternatives, Kevin I. Bagatta, Thomas A. Lang, and Clifford W. McKeown (hereinafter "Plaintiffs") by their attorneys, state as follows:

INTRODUCTION

1. The federal government is requiring a pro-life organization dedicated to providing alternatives to abortion and abstinence education, and its pro-life employees, to pay for health insurance coverage for items that they believe can destroy human embryos early in their development. Real Alternatives exists, and its employees work there, precisely to associate around and express their support of life-affirming alternatives to abortion and abortifacient contraceptives, as well as to promote their opposition to the destruction of innocent human beings from the moment of conception. For this reason, Real Alternatives and its employees object to the requirement that their health insurance plan cover hormonal birth control items or intrauterine devices, which they believe may prevent or dislodge the implantation of a human embryo after fertilization. But Defendants have created rules under the Patient Protection and Affordable Care Act ("ACA") that force Real Alternatives to buy abortifacient coverage that contradicts their shared purpose for associating. Defendants created exemptions from their rules for other groups whose employees "likely" oppose contraception, but refused to extend those exemptions to the Plaintiffs who definitively oppose it.

2. This requirement (hereinafter "the Mandate")[1] is illegal, unconstitutional and irrational. It is arbitrary and capricious for the government to force a pro-life organization and its pro-life employees to pay for coverage that none of them want. Thus the Mandate violates the Administrative Procedure Act, 5 U.S.C. § 500 et seq. (APA), via 5 U.S.C. § 700 *et seq*. (allowing for judicial review of APA violations). Defendants violate the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*. ("RFRA"), when they force Real Alternatives' employees, who work there in exercise of their religious beliefs, to obtain health insurance including abortificient drugs and devices that violate their religious beliefs. And the rule violates Real Alternatives' right to Equal Protection under the Fifth

[1] The Mandate consists of a conglomerate of authorities, including: the statutory authority found in 42 U.S.C. § 300gg-13(a)(4) requiring women's preventive care as specified by Defendant HHS's Health Resources and Services Administration (HRSA), to the extent Defendants have used it to mandate coverage to which Plaintiffs object; HRSA's guidelines, http://www.hrsa.gov/womensguidelines/, mandating pursuant to 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," and refusing to exempt Real Alternatives from that requirement while it exempts other groups; a variety of regulations implementing the mandate and creating exemptions and "accommodations" under it, *see*, *e.g.*, "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), 76 Fed. Reg. 46621–26 (Aug. 3, 2011), 75 Fed. Reg. 41726 (July 19, 2010); penalties existing throughout the United States Code for noncompliance with these requirements, such as in 26 U.S.C. § 4980D and 29 U.S.C. § 1132; and other provisions of ACA or its implementing regulations that affect exemptions or other aspects of the Mandate.

Amendment of the United States Constitution by refusing them an exemption that similarly situated groups receive.

3. Plaintiffs seek declaratory and injunctive relief for the Defendants' violations. The Mandate deprives Real Alternatives' employees of the ability to choose a health insurance plan excluding objectionable coverage and it prohibits Real Alternatives from offering such a plan.

JURISDICTION AND VENUE

4. 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 pursuant to 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.

5. 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 Plaintiffs are located in this district.

IDENTIFICATION OF PARTIES

6. Plaintiff Real Alternatives in a non-profit, non-religious pro-life organization organized under the laws of the Commonwealth of Pennsylvania. It is located in Harrisburg, PA.

7. Plaintiff Kevin I. Bagatta, Esq. is the President and CEO of Real Alternatives. He is a participant in Real Alternatives' health insurance plan, and contributes a portion monetarily to its monthly premium. He resides in Hummelstown, PA.

8. Plaintiff Thomas A. Lang, Esq. is the Vice President of Operations of Real Alternatives and is a participant in Real Alternatives' health insurance plan, and contributes a portion monetarily to its monthly premium. He resides in Hummelstown, PA.

9. Plaintiff Clifford W. McKeown, Esq. is the Vice President of Administration of Real Alternatives and is a participant in Real Alternatives' health insurance plan, and contributes a portion monetarily to its monthly premium. He resides in Lititz, PA.

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

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

12. Defendant Thomas E. Perez is the Secretary of the United States Department of Labor. In this capacity, he has responsibility for the operation and management of the Department of Labor. Perez is sued in his official capacity only.

13. 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.

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

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

FACTUAL ALLEGATIONS

I. Real Alternatives' Beliefs

16. Real Alternatives exists to provide life-affirming alternatives to abortion services throughout the nation.

17. Real Alternatives is not incorporated as a religious entity, does not hold itself out as religious, and has not adopted any religious views or positions.

18. Real Alternatives is a pro-life non-profit entity whose views on human life are based on science, reason, and non-religious philosophical principles.

19. Real Alternatives is a non-profit organization that administers Pregnancy and Parenting Support Services Programs in Pennsylvania, Michigan and Indiana, to provide alternative to abortion services, including abstinence education services, to women and families in those states.

20. These programs are made up of statewide networks of social service agencies, pregnancy support centers, maternity residences, and adoption agencies that offer comprehensive, life-affirming alternatives to women dealing with unplanned pregnancies.

21. Real Alternatives requires that the entities which participate in its Alternatives to Abortion Services Program contracts share its opposition to abortion and items used for a contraceptive purpose when they may be abortifacients (including, as indicated above, all IUDs and hormonal birth control methods) (hereinafter, “abortifacients”).

22. In all three state programs, by contract, the services provided by Real Alternatives through its subcontractor service providers must promote childbirth rather than abortion.

23. In all three state programs, the service provider organizations and their counselors all contractually agree to refrain from performing abortions and/or

providing abortifacients, counseling women to have abortions and/or to use abortifacients, and referring women for abortions and/or abortifacients.

24. Real Alternatives, through its board of directors, and from its very beginning as an administrator of a statewide government funded program to support those seeking alternatives to abortion, has viewed abortifacient contraceptive use as morally wrong because 1) the possibility their use can cause an abortion of an unborn child and 2) the negative health consequences inflicted on the user.

25. Real Alternatives in 1997 first negotiated a multimillion-dollar alternative to abortion contract with the Commonwealth of Pennsylvania Department of Public Welfare that did not fund contraception counseling but abstinence-only counseling to prevent teen pregnancy for at risk youth (teenage clients with negative pregnancy tests and those with new infants).

26. One of the criteria Real Alternatives uses to approve service providers under the alternative to abortion services program is whether they agree to not promote, refer or counsel for abortion. This restriction includes items Real Alternatives considers abortifacient (e.g., birth control pills, implants, RU-486, Morning After Pills, etc.).

27. Real Alternatives in 1997 adopted as policy the 8 criteria used by the Federal Government to define "Abstinence-Only Education": An eligible

abstinence education program is one that:

> A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;
>
> B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;
>
> C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
>
> D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;
>
> E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;
>
> F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;
>
> G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and
>
> H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

42 U.S.C. § 710(b)(2).

28. In October 2007, Real Alternatives started publishing Concerned Parents Report, see http://www.ConcernedParents.com. Concerned Parents Report is "dedicated to reporting information and imparting knowledge to parents so they can empower their children to make the healthiest choice for their reproductive health—living a chaste lifestyle." One of the six sections that website that keeps

parents up to date on the health consequences of a risky lifestyle is a section of the "negative health consequences of contraceptive use."

29. In January 2011, Real Alternatives started publishing Love Facts, see http://www.LoveFacts.org. Love Facts is dedicated to reporting information and imparting knowledge so young adults can be empowered to make the healthiest choice for their reproductive health—living a chaste lifestyle. One of the six sections that website that keeps college students up to date on the health consequences of a risky lifestyle is a section of the "negative health consequences of contraceptive use."

30. On September 25, 2011, the Real Alternatives Board of Directors unanimously revised and adopted the following Mission Statement: "Real Alternatives exists to provide life-affirming alternatives to abortion services throughout the nation. These compassionate support services empower women to protect their reproductive health, avoid crisis pregnancies, choose Childbirth rather than abortion, receive adoption education, and improve parenting skills."

31. Real Alternatives' commitment to opposing all abortion includes opposing coverage for abortion or abortifacients in its health insurance plan.

32. Real Alternatives has excluded abortion from its health insurance plan, including having excluded abortifacient coverage from its health insurance plan since 2008, through the passage of the ACA, and thereafter.

33. Because of its pro-life commitment, Real Alternatives also only hires those who share the company's beliefs about abortion and abortifacient contraceptives.

34. Real Alternatives has three full-time employees who are eligible to be covered under its health insurance plan. All object to participating in a plan that covers abortion-inducing and abortifacient drugs and devices for plan participants. These employees are Plaintiffs Kevin I. Bagatta, Thomas A. Lang, and Clifford W. McKeown.

35. Real Alternatives' health insurance plan does not qualify for grandfathered status under the Affordable Care Act because the plan Real Alternatives had at the time of the passage of the ACA was cancelled by the insurance issuer and a new plan was entered. As a result, Real Alternatives has not provided its employees with the mandatory disclosure indicating that the plan is grandfathered, since the plan is not.

36. Real Alternatives' health insurer has until sometime in 2014 provided Real Alternatives with an insurance plan that omits abortifacients and contraceptives from coverage. The Mandate caused the insurer to no longer be willing to omit those items from coverage.

37. That morally acceptable coverage would still be available to Real Alternatives from its insurer if doing so were legally permissible, including if plaintiffs receive a court order permitting such coverage.

38. Real Alternatives believes it should provide all of its full-time employees with health insurance as a responsible business practice, as an essential benefit for employees, and so employees will have a pro-life health insurance option.

II. Real Alternatives' Employees' Religious Beliefs

39. Plaintiffs Kevin I. Bagatta, Thomas A. Lang, and Clifford W. McKeown (hereinafter "employees") are full-time employees of Real Alternatives. Each employee receives health insurance coverage through Real Alternatives. Their coverage also includes each of their wives and a total of seven minor children, three of whom are female.

40. Mr. Bagatta and Mr. Lang are Catholic Christians, and Mr. McKeown is an Evangelical Christian. Mr. Lang is also an ordained Deacon and member of the clergy in the Roman Catholic Church for the Diocese of Harrisburg.

41. Each of the employees strives to follow their ethical and religious beliefs and the moral teachings of their faith throughout their lives, including within their employment.

42. Each of the employees and their families believe that all human lives have full human dignity from the moment of conception/fertilization, because at that moment a new and complete organism comes into existence (although at an immature stage) and is a whole, living, distinct, individual member of the human species; in other words, it is an individual human being and person. They also hold that the destruction of an innocent human life at any stage in development is a grave injustice. They see abortion as a violation of human rights.

43. The employees believe that in order to be true to their religious and ethical conscience, they are called to live out those beliefs in their work and how they live their lives. Furthermore, Real Alternatives employees believe that to sever their beliefs from practice is to disobey their faith.

44. As a matter of religious faith and belief, the Real Alternatives employees believe that they are prohibited from using, supporting, or otherwise advocating abortifacient drugs and devices, including IUDs and any hormonal birth control method, which they believe may act to end very early human life.

45. The employees have sincere and deeply held religious and moral beliefs against abortion and abortifacients, and they oppose having insurance coverage for the same for themselves and their families.

46. Consequently, the Real Alternatives employees and their families object, on the basis of their sincerely held ethical and religious beliefs, to participating in,

and/or paying a portion of the premium for, a health insurance plan which provides coverage for objectionable items for themselves and their family members.

47. The employees, as a matter of religious belief, further believe that part of God's command to take care of one's health includes maintaining health insurance.

48. Forcing the Real Alternatives employees to participate in a health insurance plan which provides coverage for objectionable items places numerous substantial burdens on the religious beliefs and exercise of each individual employee.

III. The Affordable Care Act

49. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Publ. L. 111-148 (March 23, 2010), and the Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the "Affordable Care Act" ("ACA").

50. The ACA regulates the national health insurance market by directly regulating "group health plans" and "health insurance issuers."

51. One ACA provision mandates that any "group health plan" (including employers offering the plan) or "health insurance issuer offering group or individual health insurance coverage" must provide coverage for certain preventive care services. 42 U.S.C. § 300gg-13(a).

52. These services include medications, screenings, and counseling given an "A" or "B" rating by the United States Preventive Services Task Force; immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and "preventive care and screenings" specific to infants, children, adolescents, and women, as to be "provided for in comprehensive guidelines supported by the Health Resources and Services Administration." 42 U.S.C. § 300gg-13(a)(1)-(4).

53. These services must be covered without "any cost sharing." 42 U.S.C. § 300gg-13(a).

IV. The Contraceptive Mandate

54. On July 19, 2010, HHS published an interim final rule imposing regulations concerning the Affordable Care Act's requirement for coverage of preventive services without cost sharing. 75 Fed. Reg. 41726, 41728 (2010).

55. After the Interim Final Rule was issued, numerous commenters warned against the potential conscience implications of requiring objecting individuals and organizations to include certain kinds of services—specifically contraception, sterilization, and abortion services—in their health care plans.

56. HHS directed a private health policy organization, the Institute of Medicine (IOM), to make recommendations regarding which drugs, procedures, and services all health plans should cover as preventive care for women.

57. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. These were the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists (ACOG), John Santelli, the National Women's Law Center, National Women's Health Network, Planned Parenthood Federation of America, and Sara Rosenbaum. All of these groups advocate for access to contraception and abortion.

58. No groups that opposed government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters.

59. On July 19, 2011, the IOM published its preventive care guidelines for women, including a recommendation that preventive services include "[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures" and related "patient education and counseling for women with reproductive capacity." Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, at 102-10 and Recommendation 5.5 (July 19, 2011).

60. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices such as IUDs; Plan B (also known as the "morning-after pill"); ulipristal (also known as "ella" or the "week-after pill"); and other drugs, devices, and procedures.

61. In the category of "FDA-approved contraceptives" included in the Mandate are all hormonal contraceptives, IUDs, and emergency contraception, which Real Alternatives and its employees believe carry the risk of preventing (or in some cases dislodging) the implantation of a human embryo after fertilization.

62. The manufacturers of many hormonal contraceptives, IUDs, and emergency contraception methods indicate in the labeling of those items that they can function to cause the prevention of implantation of an early embryo.

63. The FDA approved in this same "contraception" category a drug called "ella" (the so-called "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.

64. The Defendants admit that at least Plan B, ella, and IUDs can function in part to cause the demise of the embryo after its fertilization and before its implantation.

65. The requirement for related "education and counseling" accompanying abortifacients, sterilization, and contraception necessarily covers education and counseling given in favor of covered drugs and devices, even though it might also include other education and counseling. Moreover, it is inherent in a medical provider's decision to prescribe one of these items that she is taking the position

that use of the item is in the patient's best interests, and therefore her education and counseling related to the item will be in favor of its proper usage.

66. On August 1, 2011, a mere 13 days after IOM issued its recommendations, HRSA issued guidelines adopting them in full. *See* http://www.hrsa.gov/womensguidelines (last visited April 8, 2014).

67. Non-exempt insurance plans starting after August 1, 2012 were subject to the Mandate.

68. Any non-exempt 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.

69. Dropping health insurance coverage for employees would harm an entity's ability to attract and keep good employees, cause the entity to have to increase employee compensation so that they could purchase health insurance themselves (but without the tax benefits of employer-provided coverage), and cause the entity's employees to have no option for obtaining health insurance that omits abortifacients.

70. The Mandate applies to all plans that Real Alternatives' employees have the option of enrolling in, whether at Real Alternatives, on insurance exchanges, or in the individual market.

V. Defendants Refuse to Exempt Real Alternatives while Exempting Similar Groups

71. On the very same day HRSA rubber-stamped the IOM's recommendations, HHS promulgated an additional Interim Final Rule regarding the preventive services mandate. 76 Fed. Reg. 46621 (published Aug. 3, 2011).

72. This Second Interim Final Rule granted HRSA "*discretion* to exempt certain religious employers from the Guidelines where contraceptive services are concerned." 76 Fed. Reg. 46621, 46623 (emphasis added). The term "religious employer" was restrictively defined as one that (1) has as its purpose the "inculcation of religious values"; (2) "primarily employs persons who share the religious tenets of the organization"; (3) "serves primarily persons who share the religious tenets of the organization"; and (4) "is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended." 76 Fed. Reg. at 46626 (emphasis added).

73. The statutory citations in the fourth prong of this test refers to "churches, their integrated auxiliaries, and conventions or associations of churches" and the "exclusively religious activities of any religious order." 26 U.S.C.A. § 6033.

74. HRSA exercised its discretion to grant an exemption for religious employers via a footnote on its website listing the Women's Preventive Services Guidelines. The footnote states that "guidelines concerning contraceptive methods and counseling described above do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers." *See* http://www.hrsa.gov/womensguidelines (last visited April 8, 2014).

75. Defendants excluded Real Alternatives from this exemption because it is not religious and is not a church, even though it does in fact employ only people who share its views against abortion and abortifacients.

76. Like the original Interim Final Rule, the Second Interim Final Rule was made effective immediately, without prior notice or opportunity for public comment.

77. Defendants acknowledged that "while a general notice of proposed rulemaking and an opportunity for public comment is generally required before promulgation of regulations," they had "good cause" to conclude that public comment was "impracticable, unnecessary, or contrary to the public interest" in this instance. 76 Fed. Reg. at 46624.

78. Upon information and belief, after the Second Interim Final Rule was put into effect, over 100,000 comments were submitted opposing the narrow scope

of the "religious employer" exemption and protesting the contraception mandate's gross infringement on the rights of religious individuals and organizations.

79. The public outcry for a broader religious employer exemption continued for many months. On January 20, 2012, HHS issued a press release acknowledging "the important concerns some have raised about religious liberty" and stating that religious objectors would be "provided an additional year . . . to comply with the new law." *See* Jan. 20, 2012 Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius, *available at* http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited April 8, 2014).

80. In February 2012, Defendants explained that the Mandate is inherently a benefit for women "who want it," to prevent pregnancies that are "unintended." 77 Fed. Reg. 8,725, 8,727 (Feb. 15, 2012).

81. Defendants similarly declared that they were choosing to exempt church-related organizations from the Mandate because "the employees of employers availing themselves of the exemption would be less likely to use contraceptives even if contraceptives were covered under their health plans." *Id.* at 8,728.

82. On February 10, 2012, HHS also formally announced a "safe harbor." To be eligible, an organization had to be a non-exempt nonprofit religious

organization that objected to covering free contraceptive and abortifacient services on religious grounds.

83. Under the safe harbor, HHS agreed it would not take any enforcement action against an eligible organization during the safe harbor, which would remain in effect until the first plan year beginning after August 1, 2013. This deadline was then extended to January 1, 2014.

84. Despite the safe harbor and HHS's accompanying promises, on February 10, 2012, HHS announced a final rule "finalizing, without change," the contraception and abortifacient mandate and narrow religious employer exemption. 77 Fed. Reg. 8725-01 (published Feb. 15, 2012).

85. On March 21, 2012, HHS issued an Advance Notice of Proposed Rulemaking (ANPRM), presenting "questions and ideas" to "help shape" a discussion of how to "maintain the provision of contraceptive coverage without cost sharing," while accommodating the religious beliefs of non-exempt religious organizations. 77 Fed. Reg. 16501, 16503 (2012).

86. The ANPRM conceded that forcing religious organizations to "contract, arrange, or pay for" the objectionable contraceptive and abortifacient services would infringe their "religious liberty interests." *Id.*

87. "[A]pproximately 200,000 comments" were submitted in response to the ANPRM, 78 Fed. Reg. 8456, 8459, largely reiterating previous comments that

the government's proposals would not resolve conscientious objections, because the objecting religious organizations, by providing a health care plan in the first instance, would still be coerced to arrange for and facilitate access to morally objectionable services.

88. On February 1, 2013, HHS issued a Notice of Proposed Rulemaking (NPRM) purportedly addressing the comments submitted in response to the ANPRM. 78 Fed. Reg. 8456 (published Feb. 6, 2013).

89. The NPRM proposed two changes to the then-existing regulations. 78 Fed. Reg. 8456, 8458-59.

90. First, it proposed revising the religious employer exemption by eliminating the requirements that religious employers have the purpose of inculcating religious values and primarily employ and serve only persons of their same faith. 78 Fed. Reg. at 8461.

91. Under this proposal a "religious employer" would still be required to be a religious entity "that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 8461.

92. Defendants reiterated that they were proposing to exempt these entities, but not others, because even though Defendants were no longer being required to primarily employ people who share their religious beliefs, Defendants still believe

that "participants and beneficiaries in group health plans" of other entities "may be less likely than participants and beneficiaries in group health plans established or maintained" by churches "to share such religious objections" against contraception and its coverage. *Id.* at 8,459.

93. Defendants gave no citation or rationale for this belief in the relative likelihood of exempt and non-exempt entities to oppose contraception.

94. The new religious exemption would not actually require exempt entities to hold beliefs against contraception or sterilization. They would be exempt from the Mandate even if they omitted contraception or sterilization from their plans for non-religious reasons.

95. Second, the NPRM reiterated HHS's intention to "accommodate" non-exempt, nonprofit religious organizations by making them "designate" their insurers and third party administrators to provide plan participants and beneficiaries with free access to contraceptive and abortifacient drugs and services.

96. Defendants did not include Real Alternatives in its expanded religious employer definition because it is not religious and is not a church or related entity under section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

97. Defendants did not include Real Alternatives in its proposed accommodation, because Real Alternatives is not religious.

98. In issuing the NPRM, HHS requested comments from the public by April 8, 2013. 78 Fed. Reg. 8457.

99. "[O]ver 400,000 comments" were submitted in response to the NPRM, 78 Fed. Reg. 39870, 39871, with religious organizations again overwhelmingly decrying the proposed accommodation as a gross violation of their religious liberty because it would conscript their health care plans as the main cog in the government's scheme for expanding access to contraceptive and abortifacient services.

100. Comments were also submitted in multiple stages of the regulatory process asserting that entities with non-religious moral beliefs should also receive conscience protections.

101. On April 8, 2013, the same day the notice-and-comment period ended, then HHS Secretary Sebelius answered questions about the contraceptive and abortifacient services requirement in a presentation at Harvard University.

102. In her remarks, then HHS Secretary Sebelius stated:

> We have just completed the open comment period for the so-called accommodation, and by August 1st of this year, every employer will be covered by the law with one exception. Churches and church dioceses as employers are exempted from this benefit. But Catholic hospitals, Catholic universities, other religious entities *will be providing coverage* to their employees starting August 1st. . . . [A]s of August 1st, 2013, every employee who doesn't work directly for a church or a diocese *will be included* in the benefit package.

See The Forum at Harvard School of Public Health, A Conversation with Kathleen Sebelius, U.S. Secretary of Health and Human Services, Apr. 8, 2013, *available at* http://theforum.sph .harvard.edu/events/conversation-kathleen-sebelius (Episode 9 at 2:25) (last visited Aug. 8, 2014) (emphases added).

VI. The Final Mandate Excludes Real Alternatives from the Exemption

103. On June 28, 2013, Defendants issued a final rule (the "Mandate"), which ignores the objections repeatedly raised by conscientious objectors and continues to co-opt employers into the government's scheme of coercing free access to contraceptive and abortifacient services. 78 Fed. Reg. 39870.

104. The final rule contains the discretionary "religious employer" exemption, which exempts formal churches and their integrated auxiliaries and religious orders "organized and operate[d]" as nonprofit entities and "referred to in section 6033(a)(3)(A)(i) or (iii) of the [Internal Revenue] Code." 78 Fed. Reg. at 39874.

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

106. Defendants excluded Real Alternatives from this definition even though it in fact employs only people sharing its opposition to abortifacients.

107. The Mandate also creates a separate "accommodation" for certain non-exempt religious organizations. 78 Fed. Reg. at 39874. eligible for the "accommodation" if it: (1) "[o]pposes providing coverage for some or all of the contraceptive services required"; (2) "is organized and operates as a nonprofit entity"; (3) "holds itself out as a religious organization"; and (4) "self-certifies that it satisfies the first three criteria." *Id*. The self-certification serves to trigger an organization's insurer or third-party administrator's duties to provide the required items under the Mandate without cost-sharing to the employees of eligible organizations.

108. In August 2014, Defendants issued another interim final rule concerning the "accommodation" above. *See* 79 Fed. Reg. 51,091 (Aug. 27, 2014). This rule allows qualifying organizations to file a notice with HHS certifying its religious objection to contraceptive coverage in lieu of filing the "self certification." *Id*.

109. Real Alternatives does not qualify for the new interim final accommodation because it is not religious.

110. Amidst the various comment periods and hundreds of thousands of comments between 2011 and the final Mandate, several comments were submitted

suggesting that the Mandate should exempt pro-life groups such as Real Alternatives alongside churches, but Defendants did not exempt such pro-life groups, and did not offer adequate reasons for declining to do so.

VII. The Mandate's Impact on Plaintiffs

111. Under the Mandate, Real Alternatives faces the untenable choices of (1) transgressing its pro-life commitment and its commitment to its pro-life employees by offering abortifacients in its health plan, (2) violating the law and suffering under the Mandate's penalties, or (3) revoking its employees' health plan, suffering disadvantages in the ability to keep and adequately compensate good employees, and sending them into a market where all plans offer abortifacients.

112. Real Alternatives' employees, under the Mandate, face similarly untenable choices: they must either (1) participate in a health plan that provides objectionable coverage for themselves and their families against their religious and moral beliefs, (2) buy such a plan from the open market which will include all contraceptives, including abortifacients, and might also include surgical abortion, or (3) drop health coverage for themselves and their families and face penalties under the ACA's individual mandate.

113. Dropping its insurance plan would place Real Alternatives at a severe competitive disadvantage in its efforts to recruit and retain employees.

114. The Mandate pressures Real Alternatives to deliberately provide health insurance that provides cost-free access to abortifacient drugs.

115. The Mandate and the ACA require the employees of Real Alternatives to accept health insurance coverage for abortifacients, regardless of the fact that none of the employees desire the coverage for the objectionable items for themselves or their families.

116. In plans required to provide coverage for contraceptives under the Mandate, the Mandate allows no employee to opt out of receiving that coverage even if they do not want the coverage, and even if the employer, plan, and insurer would be willing to allow the employees to opt out.

117. The Mandate forces Real Alternatives to facilitate government-dictated education and counseling concerning abortion that directly conflicts with its organizational views regarding the inherent dignity of human life.

118. Facilitating this government-dictated speech directly undermines the express speech and messages concerning the inherent dignity of life that Real Alternatives seeks to convey.

119. Under the Mandate, Real Alternatives' health plan must cover what Real Alternatives prohibits its contracting entities to support when they offer abortion alternatives.

120. Coercing Real Alternatives to provide abortifacient coverage in its health insurance plan advances no compelling or even rational interest, because not only Real Alternatives but its employees oppose the coverage.

121. The Mandate is not rationally advanced by imposing it on Real Alternatives, because Defendants admit the Mandate is inherently a mechanism for providing contraceptive coverage to women who want it, and that the Mandate need not be imposed on groups whose employees "likely" do not want it.

122. There are numerous alternative mechanisms through which the government could provide access to abortifacients, and Real Alternatives' employees do not even want that access.

123. The government provides exemptions for religious employers on the explicit rationale that they are "likely" to employ people who do not want abortifacient coverage, but it denies that same exemption to Real Alternatives when it in fact and as a matter of policy definitely only employs people who do not want abortifacient coverage.

124. The government also exempts grandfathered plans from the Mandate, encompassing tens of millions of women, 42 U.S.C. § 18011; 75 Fed. Reg. 41,726, 41,731 (2010). Employers who follow HHS guidelines have a "right" to use grandfathered plans indefinitely. *Id.*

125. In the ACA, Congress chose to impose a variety of requirements on grandfathered health plans, but decided that this Mandate was not important enough to impose to the purported benefit of tens of millions of women.

126. The Mandate was promulgated by government officials, and supported by nongovernmental organizations, who strongly oppose religious and moral beliefs such as those held by Real Alternatives and its employees regarding marriage, family, and life.

127. On October 5, 2011, six days after the comment period for the original interim final rule ended, former Secretary Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that "we are in a war."

128. She further criticized individuals and entities whose beliefs differed from those held by her and others at the fundraiser, stating: "Wouldn't you think that people who want to reduce the number of abortions would champion the cause of widely available, widely affordable contraceptive services? Not so much."

129. On July 16, 2013, Secretary Sebelius further compared opponents of the Affordable Care Act generally to "people who opposed civil rights legislation in the 1960s,"stating that upholding the Act requires the same action as was shown "in the fight against lynching and the fight for desegregation." *See*

http://www.hhs.gov/secretary/about/speeches/sp20130716.html (last visited Aug. 8, 2014).

130. Consequently, upon information and belief, the political purpose of the Mandate is to suppress organizations and individuals that oppose contraception and abortion, even if imposing the Mandate on them does not advance any government interest in contraceptive access.

131. The Mandate subject Plaintiffs to irreparable harm to their statutory and constitutional rights, and Plaintiffs will continue to suffer such harm absent injunctive and declaratory relief.

132. Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF
Violation of the Fifth Amendment to the United States Constitution
Equal Protection

133. Plaintiffs reallege all matters set forth in paragraphs 1–132 and incorporate them herein.

134. The Due Process Clause of the Fifth Amendment requires that government actors treat equally all persons similarly-situated.

135. This requirement of equal treatment applies to organizations as well as to individuals.

136. Through the Mandate's "religious employer" exemption, Defendants have exempted certain religious organizations that object to complying with the contraceptive mandate based on the dictates of their conscience.

137. Defendants limited that religious employer exemption to churches, religious orders and integrated auxiliaries thereof on the explicit rationale that such entities "are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan." 78 Fed. Reg. at 39874

138. Defendants refused to exempt non-religious organizations such as Real Alternatives.

139. As a matter of policy, Real Alternatives in fact only hires employees who share Real Alternatives' opposition to abortion, abortifacients, and coverage of the same in their health insurance plans.

140. By extending exemptions to churches etc. but failing to extend it to Real Alternatives, Defendants have treated Real Alternatives differently than similarly-situated groups.

141. The Mandate inherently only advances governmental interests when provided to women who "want it" so they may avoid "unintended" pregnancy.

142. The Mandate as imposed on Real Alternatives and its employees furthers no governmental interest and is not tailored to advance any governmental interest.

143. The Mandate thus violates Real Alternatives' rights secured to it by the Fifth Amendment to the United States Constitution.

144. Absent injunctive and declaratory relief against application and enforcement of the Mandate, Real Alternatives will suffer irreparable harm.

SECOND CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

145. Plaintiffs reallege all matters set forth in paragraphs 1–132 and incorporate them herein.

146. The Administrative Procedure Act ("APA") requires a reviewing court to "hold unlawful and set aside agency action" that is "not in accordance with law" or "contrary to [a] constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A) & (B).

147. As set for above, the Mandate violates RFRA and the Fifth Amendment to the U.S. Constitution.

148. Defendants did not adequately consider or respond to comments they received indicating that groups like Real Alternatives should be exempt from the Mandate.

149. The Mandate is arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because it exempts churches which are merely "likely" to have employees who oppose contraception, but refuses to exempt Real Alternatives that is explicitly an anti-abortion organization only hiring anti-abortifacient employees.

150. The Mandate inherently only advances governmental interests when provided to women who "want it" so they may avoid "unintended" pregnancy.

151. The Mandate as imposed on Real Alternatives and its employees furthers no governmental interest and is not tailored to advance any governmental interest.

152. The Mandate is arbitrary and capricious under the APA because no rational government interest is served by forcing people to accept abortifacient coverage as a condition of having health insurance when those people morally or religiously oppose abortifacient coverage, and are associated within an organization to oppose abortifacients.

153. The Mandate is also contrary to the provision of the ACA that 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).

THIRD CLAIM FOR RELIEF
By the Real Alternatives employee plaintiffs
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb

157. Plaintiffs reallege all matters set forth in paragraphs 1–132 and incorporate them herein.

158. The Real Alternatives employees' and their families' sincerely held religious beliefs prohibit them from using, supporting, or otherwise advocating the use of abortifacients, or participating in a health insurance plan that covers such items for themselves or their families.

159. The Real Alternatives employees' compliance with those beliefs is a religious exercise within the meaning of the Religious Freedom Restoration Act.

160. The Mandate imposes a substantial burden on the Real Alternatives employees' religious exercise and coerces them to change or violate their religious beliefs.

161. The Mandate substantially burdens the religious exercise of the Real Alternatives employees by fundamentally changing the compensation package that can be offered to the individuals employees, or that they can purchase as health insurance for their families. The Mandate requires that, if the employees accept Real Alternatives' insurance plan, or buy one for their families, it must provide coverage for abortifacients. Effectively, this pressures the employees to decline health insurance as compensation, and to deprive themselves and their families of

health insurance coverage. At the same time, the individual mandate imposes penalties on the employees and their family members if they do not have insurance.

162. The Mandate substantially burdens the Real Alternatives employees' religious exercise concerning their beliefs that they must maintain health insurance in order to obey God's command to take care of their health and the health of their dependents. The Mandate exerts pressure to change the employees' behavior of maintaining health insurance in accordance with their religious beliefs and not have health insurance, since all plans they could buy must include coverage for abortifacients. The Mandate makes it impossible for the Real Alternatives employees to find a health insurance plan that would comport with their sincerely held religious beliefs.

163. The Mandate substantially burdens the Real Alternatives employees' religious exercise by conditioning a significant benefit, namely health insurance, on accepting health insurance that covers abortifacients. The Mandate therefore pressures the employees to forfeit benefits otherwise available, or to violate their sincerely held religious beliefs.

164. The Mandate chills the Real Alternatives employees' religious exercise within the meaning of RFRA.

165. The Mandate serves no compelling governmental interest and is not narrowly tailored to further any compelling government interest.

166. The Mandate or other significant provisions of the ACA do not apply to, inter alia, (1) the enormous number of health insurance plans that enjoy "grandfathered" status, (2) and churches and their integrated auxiliaries, on the explicit rationale that their employees are "likely" to oppose contraception. Both exceptions conclusively demonstrating the lack of a compelling interest in imposing the Mandate on Real Alternatives and its employees.

167. The government cannot serve any legitimate government interest by forcing people to accept insurance with abortifacient coverage when they do not want abortifacient coverage.

168. Compelling the Real Alternatives plan and employees to carry health insurance which provides access to such drugs and services is not the least restrictive means of advancing any interest the Defendants might have.

169. The Mandate violates RFRA as applied to Real Alternatives and its employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief

A. That this Court enter a judgment declaring the Mandate and its application to Real Alternatives and its employees is a violation of their rights

protected by the Fifth Amendment to the United States Constitution, the APA, and RFRA;

B. That this Court enter a permanent injunction ordering Defendants to offer the "religious employer" exemption to organizations such as Real Alternatives, that are non-profit pro-life organizations that hire employees who share their beliefs on certain contraceptives;

C. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate to Plaintiffs and their insurers with respect to their plan in a way that requires Real Alternatives or its employees to provide or participate in health insurance that contains coverage for abortifacients, or that penalizes Real Alternatives or its employees or their insurers for not offering abortifacient coverage in Plaintiffs' health insurance plan; and enter injunctive relief protecting other pro-life groups similarly situated but not before the Court;

D. That this court award Plaintiffs nominal damages, as well as 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);

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

Plaintiffs demand a jury trial on all issues to triable.

Respectfully submitted this 16th day of January, 2014.

***Attorneys for Plaintiffs*:**

s/ Matthew S. Bowman

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VERIFICATION OF COMPLAINT

PURSUANT TO 28 U.S.C. § 1746

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

Executed on January 12, 2015.

KEVIN I. BAGATTA, ESQ.

THOMAS A. LANG, ESQ.

CLIFFORD W. MCKEOWN, ESQ.

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Real Alternatives, Inc., Kevin I. Bagatta, Thomas A. Lang, and Clifford W. McKeown

(b) County of Residence of First Listed Plaintiff Dauphin County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Matthew S. Bowman - Alliance Defending Freedom
801 G Street NW, Suite 509, Washington, DC 20001
202-888-7620

DEFENDANTS

SYLVIA M. BURWELL, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACOB J. LEW, 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,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. Sec. 2000bb, 5 U.S.C. Sec. 706; 1st & 5th Amendments to the U.S. Constitution

Brief description of cause:
Challenge to the Affordable Care Act

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
01/16/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Matthew S. Bowman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

Real Alternatives, Inc., Kevin I. Bagatta, Thomas A. Lang, and Clifford W. McKeown,

Plaintiff(s),

v.

SYLVIA M. BURWELL, in her official capacity as Secretary of the United States Department of Health and Human Services; THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor; JACOB J. LEW, 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,

Defendant(s)/
Third-Party Plaintiff(s),

v.

Third-Party Defendant(s).

Civil Action No. _____

DISCLOSURE STATEMENT PURSUANT TO Fed. R. Civ. P. 7.1
(Civil Action)

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff (type of party), who is Real Alternatives, INC. (name of party), makes the following disclosure:

1. Is the party a non-governmental corporate party?

☑ YES ☐ NO

2. If the answer to Number 1 is "yes," list below any parent corporation or state that there is no such corporation:

There is no parent corporation.

3. If the answer to Number 1 is "yes," list below any publicly-held corporation that owns 10% or more of the party's stock or state that there is no such corporation:

There is no such corporation.

The undersigned party understands that under Rule 7.1 of the Federal Rules of Civil Procedure, it must promptly file a supplemental statement upon any change in the information that this statement requires.

/s/ Matthew S. Bowman
Signature of Counsel for Party

Date: 01/16/2015