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IN THE  
**United States Court of Appeals**  
FOR THE FOURTH CIRCUIT

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LIBERTY UNIVERSITY, INCORPORATED, a Virginia Nonprofit Corporation;  
MICHELE G WADDELL; JOANNE V. MERRILL

*Plaintiffs-Appellants*

v.

TIMOTHY GEITHNER, Secretary of the Treasury of the United States, in his  
official capacity; KATHLEEN SEBELIUS, Secretary of the United States  
Department of Health and Human Services, in her official capacity; HILDA L.  
SOLIS, Secretary of the United States Department of Labor; ERIC H. HOLDER,  
JR., Attorney General of the United States, in his official capacity

*Defendants-Appellees.*

**On Appeal from the U.S. District Court for the Western District of Virginia;  
On Remand from the  
Supreme Court of the United States, No. 11-438**

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**BRIEF OF 281 MEMBERS OF LEGATUS, AND  
CATHOLIC MEDICAL ASSOCIATION  
AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS AND REVERSAL**

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## STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE<sup>1</sup>

*Amici curiae* are Catholic business executives and medical professionals who each have a moral duty<sup>2</sup> to oppose the egregious violations of conscience and free exercise rights imposed by the abortion-related mandates of the Affordable Care Act.<sup>3</sup>

**281 Members of Legatus**, whose names are listed in the Appendix, file in their individual capacity. With over 70 chapters across the United States, Legatus is an organization of Catholic business leaders. *Amici* Legatus members joining this brief are CEOs, Presidents, Managing Partners, Business Owners, and spouses who participate as separate members. *Amici* Legatus members present a closer look at the surgical “Abortion Premium Mandate” that applies in *certain* Exchange

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<sup>1</sup> Pursuant to Cir. Rule 29, counsel certifies that all parties have consented to the filing of this brief, and further certifies that no counsel for any party authored this brief in whole or in part, nor made a monetary contribution intended to fund the preparation or submission of the brief.

<sup>2</sup> As practicing Catholics, *Amici* assent to the teaching of Blessed Pope John Paul II: “Abortion [is a] crime[] which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a grave and clear obligation to oppose them by conscientious objection.” *Evangelium Vitae*, 73 (1995).

<sup>3</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), *as amended* by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010)(hereinafter “ACA”).

plans; and, more importantly, *Amici* bring this Court’s attention to the fact that the HHS Preventive Mandate applies to *all* group and *individual* health plans, thus making it impossible for *Amici* or Plaintiffs to find *any* health plan, whether from their employer or in the individual market, that does not include drugs and devices capable of terminating the life of a human being at the embryonic stage of development. Once bootstrapped into the individual mandate with its “minimum essential coverages requirement,” *Amici* will be unable to comply with their consciences without undergoing the substantial burden of placing themselves in the ranks of the uninsured *and* paying the individual mandate tax of 26 U.S.C. § 5000A.

**Catholic Medical Association (“CMA”)** seeks to assist the Court by presenting the pharmacology of certain abortifacient drugs included in the HHS Preventive Mandate. CMA is a nonprofit national organization founded in 1932 to assist Catholic physicians in upholding and witnessing to the principles of their faith in the science and the practice of medicine. Comprised of over 1,500 members covering over 75 medical specialties, CMA helps to educate the medical profession and society at large about issues in medical ethics, including abortion and public health and rights of conscience issues, through its annual conferences and quarterly journal, *The Linacre Quarterly*. CMA supports Catholic hospitals in faithfully applying Catholic moral principles in health care delivery.

## SUMMARY OF THE ARGUMENT

Like a Russian nesting doll, the individual mandate provision of 26 U.S.C. § 5000A has nestled within it two abortion-related mandates: one mandate relates to surgical abortion premiums that are inescapable in *certain* Exchange health plans; and the other relates to abortifacient drugs and devices imposed as essential “preventive” benefits in *all* health plans, both group *and individual*, each without an exemption for individuals with religious objections.

This amicus brief more fully addresses the individual mandate tax as impacted and triggered by the inner workings of these two internal mandates. Each mandate is being implemented under the guidance of two sets of federal regulations that were finalized by the Department of Health and Human Services (HHS) after this Court’s prior consideration of the pending matter, and even after final briefing was submitted to the U.S. Supreme Court by the parties in the case of *United States Dep’t. of Health and Human Services v. State of Florida*, decided *sub nom. NFIB v. Sebelius*, 132 S.Ct. 2566 (2012) (No. 11-398).

The “Abortion Premium Mandate” regulations issued on March 27, 2012 implement Section 1303 of the ACA.<sup>4</sup> These regulations would burden the free exercise rights of *Amici* and millions of pro-life Americans who find themselves in

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<sup>4</sup> *Segregation of funds for abortion services*, 45 C.F.R. § 156.280, 77 Fed. Reg 18472 (March 27, 2012)(implementing ACA, Section 1303 as codified at 42 U.S.C. § 18023)(hereinafter “Abortion Premium Mandate”).

Exchange plans that cover elective abortion after January 1, 2014. Pro-life individuals may find themselves in such a plan because it was the choice of their employer, or because they were entrapped via the “secrecy clause” that effectively instructs issuers to conceal abortion coverage and abortion premiums when advertising in the Exchanges. 45 CFR § 156.280(f). With no ability to decline the abortion coverage, each enrollee is mandated to make “a separate payment” *from their own personal funds or payroll deduction* directly into an allocation account to be “used exclusively to pay for” other people’s elective surgical abortion. 45 CFR § 156.280(e). This abortion premium mandate applies “without regard to the enrollee’s age, sex, or family status,” and with no exemption for enrollees who consider the practice and direct funding of surgical abortion to be a grave moral evil.

While the the “Abortion Premium Mandate” applies only to enrollees in *certain* Exchange plans, the equally immoral abortifacient drugs imposed as a “minimum essential coverage” by the “HHS Preventive Mandate” regulations<sup>5</sup> apply to *all* health plans, both group *and individual*, including plans that do not cover elective abortion.

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<sup>5</sup> *Certain Preventive Services under the Affordable Care Act*, 77 Fed. Reg. 8725 (February 15, 2012)(hereinafter “HHS Preventive Mandate”). This mandate applies not only to plans purchased in the subsidized Exchanges, but also to all group and individual plans by virtue of the mandate being on all “issuers.” *Id.*

In Section I (B), *Amici* bring this Court’s attention to the lesser known, but determinative provision showing that the coercive HHS Preventive Mandate is applicable not only to group health plans (via the employer mandate), but also to every *individual* health plan purchased pursuant to the individual mandate. *See* 77 Fed. Reg. 8725 (“requires that non-grandfathered group health plans and health insurance issuers offering group **or individual health insurance coverage** provide benefits for certain preventive health services without imposition of cost sharing . . . .that include . . . . ‘[a]ll FDA approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity. . . .’”)(emphasis added).

The HHS Preventive Mandate thus twists the individual mandate tax into a weapon that inflicts a crisis of conscience not only on *Amici* and Plaintiffs, but on every American who objects to collaborating in the payment and no-cost provision of abortifacient drugs (even to their minor dependents who have reached “reproductive capacity”).

Section II demonstrates that *Amici*’s religious objections to the abortifacient capabilities of the mandated “emergency contraceptives” are reinforced by science. This Section sets forth the uncontroverted evidence that the life of a unique human individual begins at fertilization, not implantation. It then presents a brief survey on the pharmacology of two of the many abortifacient drugs included in the HHS

Preventive Mandate, Plan B and *ella*, which are capable of terminating the life of a human being at the embryonic stage of development by either preventing implanantion, or by causing an already implanted human embryo to lose sustenance from the uterine lining.

The bottom line in light of the law and the science is that it will be impossible for *Amici* and Plaintiffs to avoid the individual mandate tax of § 5000A. The internal mandates operate such that all qualified health plans, both group and individual, will cover either surgical abortion or abortifacient drugs, or both, with no exception for individuals like *Amici* whose religious beliefs prohibit their collaboration with either of these grave moral evils.

The Affordable Care Act thus coerces *Amici* and the individual Plaintiffs to either violate their conscience with the purchase of morally unacceptable qualified health plans, or place themselves in the ranks of the uninsured. Because the conscience protecting option of dropping all coverage subjects *Amici* and the individual Plaintiffs to the individual mandate tax imposed via 26 U.S.C. § 5000A, it is – in effect – an unconstitutional tax on pro-life conscience.<sup>6</sup>

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<sup>6</sup> Legatus members undertake a mission “to study, live and spread the Catholic faith in their business, professional and personal lives.” While this brief addresses objections to abortion and abortifacient drugs, *Amici* note that the inclusion of surgical sterilization and contraceptive drugs and devices are also in conflict with Catholic teaching. See *Catechism of the Catholic Church*, ¶¶ 2366-2372.

## CONCLUSION

The individual mandate of 26 U.S.C. § 5000A and its internal mandates coercively impose an ideology that normalizes elective abortion and abortifacient drugs as “healthcare.” *Amici* join Plaintiffs in the belief that the killing of vulnerable human beings at the beginning of their lives is far from healthcare; rather, it is a crime against the dignity of the human person and a grave moral evil.

Multiple mandates compel Plaintiffs and *Amici* to purchase health plans that inescapably include abortion and/or abortifacient drugs, with the only conscience-protecting option being to drop all health insurance *and* pay a tax for practicing their religious beliefs. The government has no legitimate power to compel such a choice. The First Amendment and RFRA do not sanction a tax on pro-life conscience.

*Amici* urge reversal.

Respectfully submitted this 6<sup>th</sup> day of March, 2013,

/s/ Dorinda C. Bordlee

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**APPENDIX OF *AMICI CURIAE***  
**281 MEMBERS OF LEGATUS**

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