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24
25 **IN THE UNITED STATES DISTRICT COURT**
26 **EASTERN DISTRICT OF CALIFORNIA**
27 **SACRAMENTO DIVISION**

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FOOTHILL CHURCH, CALVARY
CHAPEL CHINO HILLS, and
SHEPHERD OF THE HILLS CHURCH,

Plaintiffs,

vs.

MICHELLE ROUILLARD, in her official
capacity as Director of the California
Department of Managed Health Care.

Defendant.

Case No. 2:15-CV-02165-KJM-EFB

**SECOND AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Plaintiffs Foothill Church, Calvary Chapel Chino Hills, and Shepherd of the Hills Church (collectively, “the Churches”), by and through their attorneys, hereby submit their Second Amended Complaint for Injunctive and Declaratory Relief and allege as follows:

INTRODUCTION

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2 1. This legal action challenges the constitutionality of California’s Knox-
3 Keene Health Care Service Plan Act of 1975 (“Knox-Keene Act”), as applied to the
4 Churches to require their employee group health plans to provide coverage for
5 elective abortions in violation of the Churches’ religious beliefs.

6 2. Defendant Michelle Rouillard, director of the California Department of
7 Managed Health Care (“DMHC”), has interpreted the requirement in the Knox-
8 Keene Act that health care service plans provide coverage for medically necessary
9 “basic health care services”—specifically, California Health & Safety Code §§
10 1345(b) & 1367(i)—to mandate coverage for elective abortions in the group health
11 plans of the Churches and other religious organizations.

12 3. For years, DMHC allowed health plans operating in California to offer
13 group health insurance coverage to churches and other religious organizations that
14 excluded or limited abortion coverage consistent with the employer’s religious
15 beliefs. But that respect for religious belief, which is constitutionally required, was
16 discarded after Planned Parenthood and other abortion advocates demanded that
17 the newly appointed director of DMHC, Defendant Rouillard, prevent two Catholic
18 universities in California from restricting abortion coverage consistent with their
19 religious beliefs.

20 4. After numerous off-the-record conversations and closed-door meetings
21 with Planned Parenthood and the other abortion advocates, Defendant Rouillard
22 issued letters to health plans on August 22, 2014, directing them to provide
23 coverage for *all* legal abortions—including elective ones—and claiming that such
24 unrestricted abortion coverage was required under the Knox-Keene Act. Defendant
25 Rouillard instructed the health plans to begin providing that coverage immediately
26 and to remove any abortion limitations or exclusions from their plan documents.
27 *See Exhibit 1.*

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1 5. This new interpretation and application of the Knox-Keene Act was
2 specifically intended to stop religious employers from obtaining coverage consistent
3 with their religious beliefs. As noted, the change in interpretation was prompted by
4 two Catholic universities deciding to remove elective abortion coverage from their
5 group health plans. And DMHC and Defendant Rouillard had no information
6 showing that secular, nonreligious employers had purchased coverage restricting
7 abortion coverage. In fact, the documents and information provided to them by the
8 health plans showed the opposite: DMHC and Defendant Rouillard knew or should
9 have known that the new interpretation and application of the Knox-Keene Act
10 would only affect plans that had been purchased by churches and religious
11 organizations.

12 6. This unprecedented requirement is both unconstitutional and
13 unnecessary—a fact that DMHC and Defendant Rouillard realized, but ignored.
14 Indeed, in response to the situations concerning the two Catholic universities,
15 DMHC conducted a legal analysis and concluded that “religious employers,” as
16 defined by California Health & Safety Code § 1367.25(c), could legally restrict
17 abortion coverage consistent with their religious beliefs. Yet DMHC and Defendant
18 Rouillard intentionally ignored this legal conclusion and required health plans to
19 amend plan contracts that they knew were offered exclusively to “religious
20 employers.”

21 7. Moreover, the Knox-Keene Act exempts entire categories of health plans
22 from its requirements, and gives the director of DMHC unfettered discretion to
23 grant exemptions from and waivers to the Act’s “basic health care services”
24 requirement. This discretionary exemption authority has since been exercised in a
25 way that prefers some religious beliefs to others. After issuing the August 22, 2014
26 letters, DMHC and Defendant Rouillard exempted one group health plan from the
27 abortion coverage requirement set forth in those letters, allowing that plan to
28 exclude coverage for abortion except in the cases of rape, incest, and to save the life

1 of the mother. In contrast, DMHC and Defendant Rouillard have rejected and
2 refused to grant an exemption for plan language that would offer coverage
3 consistent with the Churches' religious beliefs, which forbids elective abortions
4 under any circumstance.

5 8. The Churches now seek declaratory and injunctive relief to remedy this
6 unnecessary infringement of religious belief and impairment of conscience. Without
7 injunctive and declaratory relief as requested herein, the Churches are suffering
8 and will continue to suffer irreparable harm.

9 **JURISDICTION AND VENUE**

10 9. This action raises questions under the Constitution of the United States,
11 specifically the First and Fourteenth Amendments, and under federal law,
12 particularly 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

13 10. This Court has subject matter jurisdiction over the Churches' claims
14 pursuant to 28 U.S.C. §§ 1331 and 1343.

15 11. This Court has authority to grant the requested declaratory and
16 injunctive relief under 28 U.S.C. §§ 2201 and 2202 and under Federal Rule of Civil
17 Procedure 57.

18 12. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a
19 substantial part of the events or omissions giving rise to the claims occurred in this
20 district and Defendant resides in this district.

21 **PARTIES**

22 13. Plaintiff Foothill Church is a non-profit, Christian church organized
23 exclusively for religious purposes within the meaning of Section 501(c)(3) of the
24 Internal Revenue Code. Foothill Church is located in Glendora, California, and
25 offers health insurance coverage to its employees through Kaiser Permanente.

26 14. Plaintiff Calvary Chapel Chino Hills is a non-profit, Christian church
27 organized exclusively for religious purposes within the meaning of Section 501(c)(3)
28 of the Internal Revenue Code. Calvary Chapel Chino Hills is located in Chino,

1 California, and offers health insurance coverage to its employees through Kaiser
2 Permanente, Aetna, and Anthem Blue Cross.

3 15. Plaintiff Shepherd of the Hills Church is a non-profit, Christian church
4 organized exclusively for religious purposes within the meaning of Section 501(c)(3)
5 of the Internal Revenue Code. Shepherd of the Hills Church is located in Porter
6 Ranch, California, and offers health insurance coverage to its employees through
7 Anthem Blue Cross and Kaiser Permanente.

8 16. Defendant Michelle Rouillard is the director of DMHC, an executive
9 agency of the State of California responsible for enforcing the Knox-Keene Act.
10 Rouillard assumed her position as director on December 1, 2013. In her official
11 capacity, Rouillard is responsible for interpreting the Knox-Keene Act to require
12 coverage for all legal abortions and issuing the August 22, 2014 letters requiring
13 the Churches' group health plans to cover elective abortion.

14 **FACTS**

15 **The Churches' religious beliefs**

16 17. The Churches believe that the Bible is the inspired Word of God and the
17 authoritative guide for all Christian life, practice, and doctrine.

18 18. The Churches hold and actively profess historic and orthodox Christian
19 teachings on the sanctity of human life, including the belief that each human life is
20 formed by and bears the image of God.

21 19. The Churches believe and teach that all human life is sacred from the
22 moment of conception to natural death and that God has condemned the
23 intentional destruction of innocent human life.

24 20. The Churches believe and teach that abortion destroys an innocent
25 human life and therefore violates biblical teachings about the sanctity of human
26 life.

1 21. The Churches believe and teach that knowing participation in,
2 facilitation of, or payment for an abortion that violates their religious beliefs is
3 itself sin.

4 22. Accordingly, the Churches' religious beliefs prohibit them from
5 purchasing or offering health insurance coverage to their employees that provides
6 coverage for abortions that violate the Churches' religious beliefs and teachings
7 about the sanctity of human life.

8 23. Because of these religious beliefs, and their desire to honor God in both
9 word and deed, the Churches seek to recognize and preserve the sanctity of human
10 life through their outreach and ministries.

11 24. For example, Foothill Church supports local schools, organizations, and
12 ministries through various outreach events throughout the year. Among other
13 things, Foothill Church:

- 14 a. Partners with a faith-based organization dedicated to providing
15 housing and services to victims of sex-trafficking in the San Gabriel
16 Valley;
- 17 b. Partners with an organization that exists to bring freedom and justice
18 to victims and survivors of sexual exploitation and trafficking by
19 raising awareness and providing financial support to frontline
20 organizations working to end these forms of modern day slavery;
- 21 c. Supports an organization that seeks to establish and sustain
22 neighborhood-based learning centers that serve at-risk children and
23 their families, equipping them to thrive academically, socially, and
24 spiritually;
- 25 d. Partners with a local elementary school through a yearly backpack
26 drive and "Affordable Christmas" event each December; and
- 27 e. Supports a local pregnancy resource center that provides a safe place
28 where individuals and families are empowered to make healthy life

1 choices and that offers pregnancy tests, ultrasound, material
2 assistance, counseling, and post-abortion help to those in need.

3 25. Calvary Chapel Chino Hills likewise engages in outreach and ministry
4 that reflects its commitment to honoring and preserving the sanctity of all human
5 life. Among other things, Calvary Chapel Chino Hills:

- 6 a. Helps provide clothing, haircuts, and hot meals to the homeless;
- 7 b. Has a prison ministry designed to reach those in prison with the
8 Gospel, encouragement, and the love of Jesus Christ;
- 9 c. Has a special needs ministry for children ages 2–17, which includes
10 Bible study, worship, crafts, motor skill activities, and sensory play;
- 11 d. Provides and assembles care packages to send to members of the
12 military who are currently deployed overseas; and
- 13 e. Supports local medical centers and clinics that provide free, life-
14 affirming counseling and medical services to women facing unexpected
15 pregnancies.

16 26. Shepherd of the Hills Church also strives to respect and honor the
17 sanctity of all human life through its various outreaches and ministries: Among
18 other things, Shepherd of the Hills Church:

- 19 a. Serves local schools and various community organizations through
20 clean up, painting, and landscaping projects;
- 21 b. Provides a support and recovery program for men and women who
22 have been affected by alcohol, drug, or sexual addictions, as well as
23 the families who have also been affected;
- 24 c. Participates in a prison ministry that equips prisoners, ex-prisoners,
25 and their families to live a Christ-centered life after they are released
26 back into society by offering biblically-based life-skills seminars and
27 workshops;
- 28 d. Offers a six-week support class for hurting moms and dads who have

1 lost a baby through miscarriage; and

- 2 e. Hosts a confidential 12-week ministry designed to assist women who
3 have had abortions and who are seeking healing and forgiveness in
4 Jesus Christ.

5 27. The Churches' religious beliefs also compel them to promote the physical,
6 emotional, mental, and spiritual well-being of their employees, and they exercise
7 those beliefs, in part, by providing health insurance coverage as a benefit of
8 employment.

9 28. In deciding to offer health insurance to their employees, the Churches
10 determined that purchasing a group health plan was the only viable option for
11 providing health care coverage consistent with their religious duty to care for their
12 employees and their legal obligations under the Patient Protection and Affordable
13 Care Act.

14 29. The Churches seek to offer health insurance coverage to their employees
15 in a way that does not also cause them to pay for and facilitate abortions in
16 violation of their religious beliefs.

17 30. To that end, the Churches consulted with their insurance brokers and/or
18 health plans to avoid offering abortion coverage in a way that conflicts with their
19 religious beliefs.

20 31. The Churches subsequently learned, however, that DMHC's and
21 Defendant Rouillard's new interpretation and application of the Knox-Keene Act,
22 as set forth in the August 22, 2014 letters, prohibits them from excluding or
23 limiting abortion coverage in their group health plans.

24 **The new interpretation of the Knox-Keene Act (the 8/22/14 letters)**

25 32. On August 22, 2014, Defendant Rouillard sent letters to seven health
26 plans informing them that the Knox-Keene Act—specifically its requirement that
27 health care service plans cover medically necessary “basic health care services”—
28 required the plans to provide coverage for all legal abortion. *See Exhibit 1*

1 33. Although Defendant Rouillard addressed the letters to health plans, this
2 new interpretation and application of the Knox-Keene Act directly and immediately
3 affected the Churches and other religious employers that had purchased or desire
4 to purchase group health plans that limit or exclude abortion coverage consistent
5 with their religious beliefs.

6 34. In issuing the letters, Defendant Rouillard claimed that DMHC surveyed
7 evidence of coverage (EOC) filings and determined that language limiting or
8 excluding coverage for abortion was present in the health plans' EOC filings for
9 products "covering a very small fraction of California health plan enrollees." *Id.*

10 35. Defendant Rouillard directed the health plans to immediately begin
11 providing coverage for all legal abortions in those plan contracts that did not
12 already provide unrestricted abortion coverage. *Id.*

13 36. Defendant Rouillard also instructed the health plans to amend their plan
14 documents and remove any limitations on coverage for abortions, such as excluding
15 coverage for "voluntary" or "elective" abortions or limiting coverage to "therapeutic"
16 or "medically necessary" abortions. *Id.*

17 37. Defendant Rouillard asserted that any limitations placed on abortion
18 coverage violated the requirement in the Knox-Keene Act that group health plans
19 include coverage for "basic health care services." *Id.*

20 38. Defendant Rouillard did not allow for the possibility of any religious
21 exemption in the August 22, 2014 letters.

22 39. Facing the possibility of fines and penalties for noncompliance, the health
23 plans made the changes requested by Defendant Rouillard.

24 **The way things used to be: abortion coverage before 8/22/14**

25 40. The Knox-Keene Act is a decades-old law that, among other things,
26 requires health care service plans to provide coverage for "basic health care
27 services." Cal. Health & Safety Code § 1367(i).

1 41. The Knox-Keene Act defines “basic health care services” to include
2 physician services; hospital inpatient services and ambulatory care services;
3 diagnostic laboratory and diagnostic and therapeutic radiologic services; home
4 health services; preventive health services; emergency health care services; and
5 hospice care. Cal. Health & Safety Code § 1345(b).

6 42. The implementing regulations adopted by DMHC clarify that “basic
7 health care services” include only “medically necessary” services. *See* Cal. Code
8 Regs. tit. 28, § 1300.67.

9 43. Before August 22, 2014, for purposes of abortion coverage, DMHC
10 interpreted the Knox-Keene Act and its related regulations as only requiring
11 coverage for “medically necessary” abortions.

12 44. Health plans nevertheless provided coverage for both “medically
13 necessary” and “elective” abortions in plan contracts that were offered to secular,
14 nonreligious employers.

15 45. For religious organizations, however, the health plans sought (and
16 received) DMHC approval for optional contract language that would allow religious
17 organizations to exclude or limit abortion coverage consistent with their religious
18 beliefs.

19 46. The optional language that was offered to religious organizations varied
20 by plan and thus excluded or limited abortion coverage in different ways.

21 47. As just a few examples, DMHC previously approved or did not object to
22 health plan filings that:

- 23 a. Allowed religious employers to exclude coverage for “elective
24 abortion”;
- 25 b. Allowed religious organizations to exclude coverage for “voluntary
26 termination of pregnancy”; and
- 27 c. Only required religious organizations to provide coverage for
28 “medically necessary abortion,” which was defined as an abortion

1 performed to save the life of the mother.

2 48. As a result, the Churches and other religious organizations could
3 purchase group health plans that cared for the medical needs of their employees
4 and families while at the same time excluding or limiting abortion coverage
5 consistent with their religious beliefs.

6 **The new interpretation's effect on the Churches**

7 49. The new interpretation and application of the Knox-Keene Act set forth
8 in the August 22, 2014 letters caused coverage for all elective abortions to be
9 injected into the group health plans of religious organizations without their
10 knowledge or approval and in violation of their religious beliefs.

11 50. It also has prevented the Churches and other religious organizations
12 from obtaining a group health plan that limits or excludes abortion coverage
13 consistent with their religious beliefs.

14 51. Were it not for this new interpretation and application of the Knox-Keene
15 Act, the Churches would and could obtain group health insurance for their
16 employees that limits or excludes coverage for abortion consistent with their
17 religious beliefs.

18 52. As noted, health plans operating in California previously offered group
19 health insurance coverage to churches and other religious organizations that
20 limited or excluded abortion coverage consistent with the employer's religious
21 beliefs and would continue to offer such coverage were it not for this
22 unconstitutional interpretation and application of the Knox-Keene Act.

23 53. The Churches cannot avoid the harmful effects of the new interpretation
24 and application of the Knox-Keene Act because federal law requires them to offer
25 their employees affordable health insurance.

26 54. Under the Patient Protection and Affordable Care Act ("ACA"), employers
27 with more than fifty "full-time equivalent" employees must provide a certain level
28 of health insurance to their employees.

1 55. The Churches each have more than fifty full-time equivalent employees
2 and must comply with the ACA's mandate to provide health insurance to their
3 employees.

4 56. The new interpretation and application of the Knox-Keene Act thus forces
5 the Churches to choose between violating federal law and violating their deeply
6 held religious beliefs by offering coverage for elective abortions.

7 57. Dropping health insurance coverage for their employees would subject
8 the Churches to crippling monetary penalties under the ACA.

9 58. In any event, being forced to stop providing employee health insurance
10 coverage would interfere with the Churches' religious beliefs about promoting the
11 physical, emotional, mental, and spiritual well-being of their employees.

12 59. The new interpretation and application of the Knox-Keene Act also
13 imposes a burden on the Churches' ability to recruit and retain employees because
14 it creates uncertainty as to whether the Churches will be able to offer group health
15 insurance in the future, placing them in a competitive disadvantage.

16 60. Moreover, the Churches rely on tithes and donations from members to
17 fulfill their Christian mission.

18 61. On information and belief, members who give to the Churches do so with
19 an understanding of the Churches' Christian mission and with the assurance that
20 they will continue to adhere to and transmit authentic Christian teachings on
21 morality and the sanctity of human life.

22 62. Because of this new interpretation and application of the Knox-Keene
23 Act, the Churches have been forced to use donated funds for purposes known to be
24 morally repugnant to their members and in ways that violate the implicit trust of
25 the purpose of their tithes and donations.

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The new interpretation targets religious organizations

The road to an unconstitutional interpretation: Catholic universities, Planned Parenthood, and a new director

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63. The new interpretation and application of the Knox-Keene Act was a direct response to religious organizations purchasing group health insurance coverage consistent with their religious beliefs.

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64. In October 2013, news articles reported that two Catholic universities in California—Loyola Marymount University (“LMU”) and Santa Clara University (“SCU”)—had recently decided to remove elective abortion coverage from their employee health care plans.

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65. After learning about this, abortion advocates—namely, Planned Parenthood Affiliates of California (“Planned Parenthood”), the American Civil Liberties Union of California (“ACLU”), and the National Health Law Program (“NHHeLP”)—began lobbying DMHC to stop LMU, SCU, and other religious organizations from being able to limit or exclude abortion coverage consistent with their religious beliefs.

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66. On or about November 22, 2013, representatives of DMHC, including Defendant Rouillard, held an in-person meeting with representatives of Planned Parenthood, the ACLU, and NHHeLP.

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67. The purpose of that meeting was to discuss the decisions of LMU and SCU to eliminate elective abortion coverage from their group health plans, as well DMHC’s prior approvals of health plan filings that permitted religious organizations to purchase coverage consistent with their religious beliefs.

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68. Shortly after the November 2013 meeting, and after Defendant Rouillard officially assumed her role as director on December 1, 2013, DMHC issued a “data call” to health plans requesting information related to their abortion coverage.

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69. Specifically, DMHC asked the health plans to provide the language they were using for abortion or termination of pregnancy coverage and to define the

1 relevant terms used in their plan documents (e.g., “medically necessary abortion,”
2 “therapeutic abortion,” “elective abortion,” “voluntary termination of pregnancy”).

3 70. While DMHC was reviewing the requested information, Planned
4 Parenthood, the ACLU, and NHeLP continued to advocate for DMHC and
5 Defendant Rouillard to interpret the Knox-Keene Act in such a way as to prohibit
6 religious organizations like LMU and SCU from restricting abortion coverage
7 consistent with their religious beliefs.

8 71. On February 3, 2014, Planned Parenthood once again requested a
9 meeting with DMHC and Defendant Rouillard to discuss “plans that are excluding
10 abortion from their coverage,” as well as the ongoing situations at LMU and SCU.

11 Exhibit 2.

12 72. On or about February 19, 2014, representatives of DMHC, including
13 Defendant Rouillard, held another in-person meeting with representatives of
14 Planned Parenthood, the ACLU, and NHeLP to discuss the abortion coverage issue.

15 73. The following day, on February 20, 2014, Planned Parenthood provided
16 Defendant Rouillard with written arguments for how DMHC could interpret the
17 Knox-Keene Act to require all group health plans, including those offered
18 exclusively to religious organizations, to cover elective abortions.

19 74. Around the same time, Planned Parenthood began lobbying the
20 California Governor’s Office and California Health and Human Services (“CHHS”)
21 to require religious organizations to cover elective abortions in their group health
22 plans.

23 75. On March 11, 2014, Planned Parenthood contacted the Governor’s Office
24 to set up a meeting to discuss Planned Parenthood’s priority legislation for the
25 year, explaining that, because “a couple of Catholic Universities [] are excluding
26 certain types of services from their health plans,” Planned Parenthood was
27 promoting legislation that would prevent employers from excluding abortion from
28 their employee health plans. Exhibit 3.

1 76. Two days later, on March 13, 2014, representatives of CHHS—the
2 executive agency that oversees DMHC—held an in-person meeting with
3 representatives of Planned Parenthood and the ACLU to discuss the abortion
4 coverage issue concerning religious organizations.

5 77. The next day, on March 14, 2014, Planned Parenthood again contacted
6 the Governor’s Office to set up a time to discuss legislation that would “address the
7 issue that DMHC has approved, and Catholic Universities have been purchasing,
8 large group employee health plans that exclude certain types of abortions.” Exhibit
9 3.

10 78. On March 17, 2014, Planned Parenthood thanked CHHS for the meeting
11 on March 13, 2014, but nevertheless cautioned that, while it “would prefer to see
12 this resolved without legislation, [it was] concerned with DMHC’s ability to find a
13 solution.” Exhibit 4.

14 79. Planned Parenthood then provided an ultimatum, stating that it “would
15 feel positive” about an administrative solution, and would not pursue legislation, if
16 DMHC and the Administration agreed to the following three things:

- 17 a. DMHC would not approve any further plans that exclude coverage for
18 abortion or other reproductive health care service;
- 19 b. DMHC would rescind their approval of any plans that include an
20 abortion exclusion so that health plans cannot offer plans to
21 employers in the future that exclude abortion; and
- 22 c. DMHC would find a solution to fix the already approved plans being
23 offered to employees of LMU and SCU.

24 *Id.*

25 80. On or about April 14, 2014, representatives of CHHS had a second in-
26 person meeting with representatives of Planned Parenthood, the ACLU, and
27 NHeLP to further discuss an administrative “solution” to the abortion coverage
28 issue concerning religious organizations.

1 81. Shortly thereafter, on April 29, 2014, CHHS told Planned Parenthood
2 that it was “working with DMHC on the legal and practical issues relating to the
3 ‘updated’ interpretation” and that a “6-8 week estimate is still good.” Exhibit 5.

4 82. On or about May 14, 2014, representatives of CHHS and DMHC,
5 including Secretary of CHHS Diana Dooley and Defendant Rouillard, met to
6 discuss an administrative “solution” to the abortion coverage issue concerning
7 religious organizations.

8 83. Approximately two days later, on May 16, 2014, CHHS informed Planned
9 Parenthood that “DMHC would like to request Planned Parenthood’s assistance on
10 some additional information” and thus asked Planned Parenthood to contact
11 DMHC’s deputy director for plan and provider relations. *Id.*

12 84. After receiving additional “assistance” from Planned Parenthood, DMHC
13 issued another “data call” to the health plans—this time requesting general
14 information about the types of employer groups that had purchased plans
15 excluding or limiting abortion coverage.

16 85. Specifically, DMHC asked the health plans to: (1) identify the number of
17 employer groups that purchased coverage limiting or excluding coverage for
18 abortion; and (2) indicate the number of those employer groups that qualified as a
19 “religious employer” under California Health & Safety Code § 1367.25(c) (i.e.,
20 California’s contraceptive mandate).

21 86. To meet the definition of “religious employer” under California Health &
22 Safety Code § 1367.25(c), an employer must meet each of the following criteria:

- 23 a. The inculcation of religious values is the purpose of the entity;
- 24 b. The entity primarily employs persons who share the religious tenets of
25 the entity;
- 26 c. The entity serves primarily persons who share the religious tenets of
27 the entity; and
- 28 d. The entity is a nonprofit organization as described in Section

1 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as
2 amended.

3 87. Under that narrow definition, non-profit religious organizations like
4 LMU and SCU with sincerely held religious beliefs against abortion were
5 misleadingly classified as “nonreligious” employers.

6 88. By requiring health plans to use that narrow definition of “religious
7 employer,” DMHC and Defendant Rouillard intentionally ignored that the
8 employers purchasing coverage limiting or excluding coverage for abortion did so
9 for religious reasons.

10 ***Religious organizations uniquely affected by new interpretation***

11 89. DMHC and Defendant Rouillard issued this new interpretation and
12 application of the Knox-Keene Act even though they knew or should have known
13 that only plans purchased by religious organizations would be affected.

14 90. As noted above, the new interpretation and application of the Knox-
15 Keene Act was crafted in direct response to two Catholic universities—LMU and
16 SCU—deciding to remove elective abortion coverage from their group health plans
17 in light of their religious beliefs.

18 91. Additionally, both before and after issuing the August 22, 2014 letters,
19 DMHC received information from health plans indicating that only “religious
20 employers,” as defined by California Health & Safety Code § 1367.25(c), and
21 “religiously-affiliated employers” had purchased coverage limiting or excluding
22 coverage for abortion.

23 92. At least one health plan informed DMHC that all of the employer groups
24 that chose to limit or exclude abortion coverage qualified as “religious employers”
25 under even the narrow definition used in California Health & Safety Code §
26 1367.25(c).

27 93. And at least one health plan informed DMHC that it provided coverage
28 for both “medically necessary” and “elective” abortions in all of its plan contracts,

1 and that only some religious groups had opted to purchase alternative abortion
2 coverage.

3 94. In contrast, DMHC and Defendant Rouillard received no information
4 from the health plans—and had no independent knowledge—demonstrating that
5 secular, nonreligious employers had purchased plan contracts limiting or excluding
6 abortion coverage.

7 ***Disregarding existing law and DMHC’s own legal analysis***

8 95. Furthermore, by applying the new interpretation of the Knox-Keene Act
9 to plan contracts offered exclusively to “religious employers,” as defined in
10 California Health & Safety Code § 1367.25(c), DMHC and Defendant Rouillard
11 intentionally ignored their own legal analysis.

12 96. Indeed, in 2013, after news articles reported on the situations at LMU
13 and SCU (but before DMHC and Defendant Rouillard met with the abortion
14 advocates), SCU sought clarification from DMHC about whether it could restrict
15 abortion coverage consistent with its religious beliefs.

16 97. DMHC subsequently researched the issue and concluded that “religious
17 employers”—as narrowly defined in California Health & Safety Code § 1367.25(c)—
18 could limit or exclude abortion coverage in their employee health plans.

19 98. Despite concluding that “religious employers,” as defined in California
20 Health & Safety Code § 1367.25(c), could restrict abortion coverage consistent with
21 their religious beliefs, Defendant Rouillard intentionally applied the abortion
22 coverage requirement to all group health plans, including those offered exclusively
23 to “religious employers.”

24 99. The new interpretation and application of the Knox-Keene Act conflicts
25 with existing state and federal law and how the Knox-Keene generally treats
26 religious organizations.

27 100. Indeed, the Knox-Keene Act specifically exempts “religious employers”
28 from being forced to provide coverage for contraceptive methods “that are contrary

1 to [their] religious tenets” and requires they be provided with a plan contract
2 excluding contraceptive coverage if so requested. Cal. Health & Safety Code §
3 1367.25(c).

4 101. The Knox-Keene Act also exempts religious organizations from being
5 required to offer coverage for infertility treatments “in a manner inconsistent with
6 [their] religious and ethical principles.” Cal. Health & Safety Code § 1374.55(e).

7 102. The new interpretation and application of the Knox-Keene Act has thus
8 created an untenable situation where the Churches and other religious
9 organizations do not have to provide health insurance coverage for contraceptives
10 and infertility treatments but must provide coverage for elective abortions.

11 103. The new interpretation and application of the Knox-Keene Act also
12 constitutes unlawful discrimination against a health insurance plan under the
13 federal Weldon Amendment, which prohibits states receiving funding under the
14 federal Labor, Health and Human Services, and Education Appropriations Act,
15 from discriminating against health insurance plans based on whether they cover
16 abortion. *See Consolidated Appropriations Act of 2017, Pub. L. No. 115-31, Division*
17 *H, Title V, § 507(d) (May 5, 2017).*

18 104. Under the Weldon Amendment, none of the funds received for programs
19 under the Labor, Health and Human Services, and Education Appropriations Act
20 may be available to a State that “subjects any individual or institutional health
21 care entity to discrimination on the basis that the health care entity does not
22 provide for, pay for, provide coverage of, or refer for abortions.” *Id.*

23 105. The Weldon Amendment defines “health care entity” to include “a health
24 maintenance organization, a health insurance plan, or any other kind of health
25 care facility, organization, or plan.” *Id.*

26 106. On information and belief, California receives approximately \$70 billion
27 in federal funds for programs under the Labor, Health and Human Services, and
28 Education Appropriations Act.

1 ***Intentionally keeping religious employers in the dark***

2 107. DMHC and Defendant Rouillard did nothing to specifically notify the
3 Churches or other religious organizations about the new interpretation and
4 application of the Knox-Keene Act.

5 108. Defendant Rouillard instead told the health plans that they no longer had
6 to mention abortion coverage in their plan documents. *See* Ex. 1.

7 109. By instructing health plans that they could omit references to abortion
8 coverage entirely, Defendant Rouillard discouraged them from notifying the
9 Churches and other religious organizations about this significant change to their
10 group health insurance.

11 110. In direct response to this guidance, some health plans opted to remove
12 any reference to abortion coverage in their health plan documents, making it
13 difficult for religious organizations to know whether and to what extent their group
14 health plan provides coverage for abortion.

15 111. As a result, many religious organizations, including the Churches, did not
16 learn until much later that the Knox-Keene Act had been reinterpreted to mandate
17 coverage for elective abortions.

18 112. On information and belief, other churches and religious organizations in
19 California remain unaware that their group health plans are now required to
20 provide coverage for elective abortions in violation of their religious beliefs.

21 **Exemptions abound, but not for the Churches**

22 ***Enumerated exemptions***

23 113. The Knox-Keene Act exempts entire categories of health plans from its
24 requirements, including the “basic health care services” requirement.

25 114. For example, health plans “directly operated by a bona fide public or
26 private institution of higher learning” are exempt from the Knox-Keene Act and its
27 “basic health care services” requirement. *See* Cal. Health & Safety Code § 1343(e).

1 115. So too are plans directly operated by the California Small Group
2 Reinsurance Fund, *see id.*, and “small plans” administered solely by an employer
3 that “does not have more than five subscribers,” *see* Cal. Code Regs. tit. 28, §
4 1300.43.

5 116. In exempting entire categories of plans, including those identified above,
6 the State of California found persuasive certain secular reasons for not requiring
7 group health plans to cover “basic health care services,” and, by extension, all legal
8 abortions.

9 *Individualized exemption authority*

10 117. Defendant Rouillard has required the Churches’ and other religious
11 organizations’ group health plans to cover all legal abortions even though the very
12 law she is applying, the Knox-Keene Act, gives her virtually unlimited power to
13 exempt anyone (and any plan) from its requirements.

14 118. Under the Knox-Keene Act, the director of DMHC—in this case,
15 Defendant Rouillard—has unfettered discretion to grant individualized exemptions
16 from and waivers to the requirements of the Knox-Keene Act, including its “basic
17 health care services” requirement.

18 119. For example, the Knox-Keene Act states that “the director may, for good
19 cause, by rule or order exempt a plan contract or any class of plan contracts from
20 [the basic health care services] requirement.” Cal. Health & Safety Code § 1367(i).

21 120. The Knox-Keene Act further provides that the Director may “waive any
22 requirement of any rule or form in situations where in the director’s discretion that
23 requirement is not necessary in the public interest” *Id.* § 1344(a).

24 121. Similarly, the Director may “unconditionally” exempt from the Knox-
25 Keene Act “any class of persons or plan contracts if the director finds the action to
26 be in the public interest” *Id.* § 1343(b).

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1 122. Defendant Rouillard has delegated this statutory exemption authority to
2 DMHC's Office of Plan Licensing and has authorized licensing staff to approve or
3 deny exemptions on her behalf, with or without consulting with her.

4 123. But there are no written rules, policies, or procedures governing the
5 exercise of this individualized exemption authority.

6 124. The Office of Plan Licensing is the division of DMHC that receives filings
7 from licensed health plans and thus is the primary source of communication with
8 the health plans.

9 125. Licensing staff is responsible for reviewing the health plan's filings and
10 ensuring that they comply with the Knox-Keene Act, including the "basic health
11 care services" requirement.

12 126. DMHC generally assigns one staff member within the Office of Plan
13 Licensing to be responsible for communications with a specific health plan.

14 127. Although the deputy director of the Office of Plan Licensing has the
15 authority to approve or disapprove a plan filing, not every filing is provided to the
16 deputy director for approval.

17 128. Specifically, an amendment filed by a health plan does not need to be
18 presented to the deputy director for approval and may be approved or not objected
19 to by the individual licensing staff member assigned to that specific health plan.

20 129. There is no deadline by which DMHC licensing staff must resolve an
21 amendment filing.

22 130. Accordingly, it can (and does) take months or years for licensing staff to
23 issue a final decision as to whether an amendment filing is approved or denied.

24 131. A change in a health plan's abortion coverage, and a request for an
25 exemption from the abortion coverage requirement, would be submitted as an
26 amendment to DMHC's Office of Plan Licensing.

27 132. Numerous individuals within the Office of Plan Licensing thus may
28 exercise the director's statutory individualized-exemption authority and decide

1 whether to grant or deny exemptions to the abortion coverage requirement set out
2 in the August 22, 2014 letters.

3 133. There are not, however, any written rules, policies, or procedures
4 governing when a health plan may or may not be granted an exemption from the
5 abortion coverage requirement.

6 *The post hoc exemption*

7 134. Since issuing the August 22, 2014 letters, the director's individualized
8 exemption authority has been improperly exercised in a way that prefers some
9 religious beliefs to others.

10 135. In September and October 2014, religious entities and individuals
11 affected by the new interpretation and application of the Knox-Keene Act filed
12 administrative complaints with the U.S. Department of Health & Human Services,
13 alleging that the actions of DMHC and Defendant Rouillard violated the federal
14 Weldon Amendment.

15 136. To better defend against these federal administrative complaints, DMHC
16 decided that it would grant an exemption allowing a health plan to offer coverage
17 to "religious employers," as defined by California law, so long as the relevant
18 abortion language was consistent with the Weldon Amendment (i.e., still providing
19 coverage for abortion in the cases of rape, incest, and to save the life of the mother).

20 137. Officials within DMHC's Office of Plan Licensing had off-the-record
21 communications with a few (but not all) of the health plans operating in California,
22 informing them of DMHC's willingness to exempt plan filings with language that
23 allowed "religious employers," as defined by California law, to restrict coverage for
24 abortion to the cases of rape, incest, and to save the life of the mother.

25 138. The only abortion language that DMHC officials suggested to the health
26 plans as being acceptable continued to cover abortion in the cases of rape, incest,
27 and to save the life of the mother.

28

1 139. DMHC has not notified all health plans operating in California about the
2 possibility of obtaining even this limited exemption.

3 140. Nor has DMHC taken any steps to notify the general public or interested
4 religious employers about the possibility of this limited exemption.

5 141. One of the health plans that had off-the-record communications with
6 DMHC's Office of Plan Licensing later sought an exemption for plan language that
7 would be offered exclusively to "religious employers," as defined by California law,
8 and restrict abortion coverage to the cases of rape, incest, and to save the life of the
9 mother.

10 142. DMHC eventually approved that language and granted an exemption to
11 the abortion coverage requirement in October 2015—the same month the Churches
12 filed the initial complaint in this case.

13 143. By exercising the director's discretionary exemption authority in this
14 way, DMHC and Defendant Rouillard have effectively permitted some (but not all)
15 "religious employers" to obtain a health plan limiting or excluding abortion
16 coverage consistent with their religious beliefs.

17 144. Indeed, some "religious employers" have religious beliefs prohibiting
18 elective abortions generally but make exceptions in the cases of rape and incest.

19 145. As just one example, the Church of Jesus Christ of Latter-Day Saints
20 teaches that "[e]lective abortion for personal or social convenience is contrary to the
21 will and the commandments of God," but has nevertheless concluded that elective
22 abortion may be justified "when pregnancy is the result of incest or rape."¹

23 146. Although the exempted plan language is available for purchase by
24 "religious employers," as defined by California law, it does not meet the needs of
25 the Churches and other religious employers that object to paying for or providing
26 insurance coverage for elective abortions under any circumstance.

27 _____
28 ¹ The Church of Jesus Christ of Latter-Day Saints, Abortion, <https://www.lds.org/topics/abortion?lang=eng>
(last visited Oct. 27, 2017).

1 ***Refusing exemptions for plans that meet the Churches' religious beliefs***

2 147. As non-profit, Christian churches that primarily employ and serve
3 members of its own faith, the Churches qualify as “religious employers” under the
4 narrow definition set forth in California Health & Safety Code § 1367.25(c).

5 148. When Defendant Rouillard issued the August 22, 2014 letters, health
6 plans were already offering DMHC-approved plan contracts that limited or
7 excluded abortion coverage consistent with the Churches' religious beliefs.

8 149. But Defendant Rouillard required the health plans to immediately
9 provide coverage for all legal abortions in those plan contracts, even those that
10 were offered exclusively to “religious employers” as defined by California law.

11 150. Similarly, at the time the letters were issued, health plans had “open”
12 filings with DMHC that, if approved, would have permitted only “religious
13 employers” like the Churches to offer coverage consistent with their religious
14 beliefs about abortion.

15 151. Defendant Rouillard rejected those “open” filings and required the health
16 plans to amend them so that they provided coverage for all legal abortions,
17 including elective abortions.

18 152. When asked, DMHC and Defendant Rouillard refused to change the
19 interpretation and application of the Knox-Keene Act that resulted in the Churches
20 being unable to obtain group coverage consistent with their religious beliefs.

21 153. Indeed, on the same day Defendant Rouillard issued the August 22, 2014
22 letters, DMHC and Defendant Rouillard received a request to reconsider the new
23 interpretation and application of the Knox-Keene Act articulated in those letters.

24 154. Defendant Rouillard responded by stating that DMHC “will not reverse
25 its position on the scope of required abortion coverage.” Exhibit 6.

26 155. A complaint made by a Commissioner for the U.S. Commission on Civil
27 Rights was met with a similar response: Defendant Rouillard stated that DMHC
28

1 “carefully considered both state and federal law before reaching [the] position” set
2 forth in the August 22, 2014 letters. Exhibit 7.

3 **FIRST CAUSE OF ACTION**

4 **Violation of the Free Exercise Clause of the
5 First Amendment to the United States Constitution**

6 156. The Churches reallege all matters set forth in paragraphs 1–155 and
7 incorporate them herein.

8 157. The Churches’ sincerely held religious beliefs prohibit them from
9 purchasing or offering health insurance coverage for elective abortion in their
10 employee group health plans.

11 158. The Churches also have a sincere religious belief to care for the physical,
12 emotional, mental, and spiritual well-being of their employees, which they do, in
13 part, by providing health insurance coverage as a benefit of employment.

14 159. The Churches have a sincere religious objection to providing insurance
15 coverage for elective abortion because they believe that abortion ends an innocent
16 human life.

17 160. When the Churches comply with their sincerely held religious beliefs on
18 the sanctity of human life, they exercise religion within the meaning of the Free
19 Exercise Clause.

20 161. The new interpretation and application of the Knox-Keene Act imposes a
21 substantial burden on the Churches’ religious exercise and coerces them to change
22 or violate their religious beliefs.

23 162. The new interpretation and application of the Knox-Keene Act
24 substantially burdens the Churches’ religious exercise by forcing them to choose
25 between following their religious beliefs and suffering debilitating penalties under
26 federal law or violating their consciences in order to avoid those penalties.
27
28

1 163. The new interpretation and application of the Knox-Keene Act exposes
2 the Churches to substantial monetary penalties and/or financial burdens for their
3 religious exercise.

4 164. The new interpretation and application of the Knox-Keene Act exposes
5 the Churches to substantial competitive disadvantages because it has created
6 uncertainties about their health insurance benefits.

7 165. The new interpretation and application of the Knox-Keene Act imposes a
8 burden on the Churches' employee recruitment efforts by creating uncertainty as to
9 whether or on what terms they will be able to offer health insurance in the future
10 or will suffer penalties therefrom.

11 166. The new interpretation and application of the Knox-Keene Act interferes
12 with the internal affairs of the Churches.

13 167. The Knox-Keene Act, as interpreted and applied by Defendant Rouillard,
14 is neither neutral nor generally applicable.

15 168. The Knox-Keene Act creates categorical and individualized exemptions to
16 its requirements, including the "basic health care services" requirement on which
17 the abortion coverage requirement is based.

18 169. The Knox-Keene Act exempts entire categories of health plans from its
19 requirements for secular reasons.

20 170. The Knox-Keene Act gives Defendant Rouillard broad, unfettered
21 discretion to granted individualized exemptions from and waivers to the Act's
22 requirements, including its "basic health care services" requirement.

23 171. There are no rules, policies, or procedures governing the exercise of this
24 individualized exemption authority.

25 172. Defendant Rouillard has allowed DMHC's Office of Plan Licensing to
26 exercise her discretionary exemption authority in a way that prefers some religious
27 beliefs to others.

28

1 173. Defendant Rouillard has allowed a categorical exemption to be granted to
2 religious employer plans that do not provide coverage for abortion except in the
3 cases of rape, incest, and to save the life of the mother.

4 174. Defendant Rouillard has interpreted and applied the Knox-Keene Act in
5 such a way as to make it impossible for the Churches to comply with their religious
6 beliefs, while at the same time exempting at least one health plan from the Knox-
7 Keene Act's "basic health care services" requirement so that religious employers
8 with preferred beliefs about abortion may be accommodated.

9 175. Defendant Rouillard has interpreted and selectively applied the Knox-
10 Keene Act and its "basic health care services" requirement against the Churches to
11 suppress specific religious beliefs about when it is morally permissible to provide
12 health insurance coverage for elective abortions.

13 176. The new interpretation and application of the Knox-Keene Act, which
14 forces churches and religious organizations to violate their religious beliefs,
15 furthers no compelling governmental interest.

16 177. The Knox-Keene Act already exempts entire categories of health plans
17 from its "basic health care services" requirement.

18 178. The Knox-Keene Act also exempts religious employers and organizations
19 from being forced to provide health insurance coverage for contraceptives and
20 infertility treatments in their group health plans.

21 179. And Director Rouillard has exercised her discretionary exemption
22 authority in such a way so as to categorically exempt religious employer plans that
23 do not provide coverage for abortion except in the cases of rape, incest, and to save
24 the life of the mother.

25 180. Guaranteeing unfettered access to elective abortions through the
26 employee health insurance plans of churches and religious organizations is not a
27 significant problem in California.

28

1 181. Compelling the Churches and other religious organizations to pay for
2 abortions is hardly the least restrictive means of advancing any interest that the
3 government might have.

4 182. The new interpretation and application of the Knox-Keene Act
5 constitutes government-imposed coercion on the Churches to change or violate
6 their sincerely held religious beliefs.

7 183. The new interpretation and application of the Knox-Keene Act chills the
8 Churches' religious exercise.

9 184. The new interpretation and selective application of the Knox-Keene Act
10 and its "basic health care services" requirement violates the Free Exercise Clause
11 of the First Amendment to the United States Constitution, as applied to the
12 Churches.

13 **SECOND CAUSE OF ACTION**

14 **Violation of the Equal Protection Clause of the
Fifteenth Amendment to the United States Constitution**

15 185. The Churches reallege all matters set forth in paragraphs 1–184 and
16 incorporate them herein.

17 186. The Fourteenth Amendment to the United States Constitution
18 guarantees the Churches equal protection of the laws, which prohibits Defendant
19 Rouillard from treating the Churches differently than similarly situated persons
20 and businesses.

21 187. The government may not treat some employers disparately as compared
22 to similarly situated employers.

23 188. The new interpretation and application of the Knox-Keene Act treats the
24 Churches differently than similarly situated persons and businesses in that there
25 are categorical and individualized exemptions to the Knox-Keene Act and its "basic
26 health care services" requirement.

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1 189. The Knox-Keene Act gives Defendant Rouillard broad, unfettered
2 discretion to granted individualized exemptions and waivers to the Act’s
3 requirements, including its “basic health care services” requirement.

4 190. There are no rules, policies, or procedures governing the exercise of this
5 individualized exemption authority.

6 191. Defendant Rouillard has allowed DMHC’s Office of Plan Licensing to
7 exercise her discretionary exemption authority in a way that prefers some religious
8 beliefs to others.

9 192. Defendant Rouillard has interpreted and applied the Knox-Keene Act in
10 such a way as to make it impossible for the Churches to comply with their religious
11 beliefs, while at the same time exempting at least one health plan from the Knox-
12 Keene Act’s “basic health care services” requirement so that religious employers
13 with preferred beliefs about abortion may be accommodated.

14 193. Defendant Rouillard has interpreted and selectively applied the Knox-
15 Keene Act and its “basic health care services” requirement against the Churches to
16 target and suppress specific religious beliefs about when it is morally permissible
17 to provide health insurance coverage for elective abortions.

18 194. Defendant Rouillard lacks a legitimate or compelling state interest for
19 requiring the employee health care plans of the Churches to cover elective
20 abortions.

21 195. Nor is Defendant Rouillard’s disparate treatment of the Churches
22 narrowly tailored because compelling coverage for all elective abortions in the
23 health plans of the Churches—while at the same time exempting another plan
24 from that requirement—is hardly the least restrictive means of advancing any
25 interest that the government might have.

26 196. Defendant Rouillard’s interpretation and application of the Knox-Keene
27 Act to the Churches does not satisfy rational basis review.

28

1 197. Other religious employers that are similarly situated to the Churches are
2 able to purchase coverage consistent with their religious beliefs because Defendant
3 Rouillard has selectively exercised her exemption authority.

4 198. There is no rational basis for accommodating the religious beliefs of some
5 religious employers, but not the religious beliefs of the Churches.

6 199. The new interpretation and selective application of the Knox-Keene Act
7 and its “basic health care services” requirement violates the Equal Protection
8 Clause of the Fourteenth Amendment to the United States Constitution, as applied
9 to the Churches.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request that the Court:

12 a. Enter a judgment declaring that Defendant Rouillard’s interpretation
13 and application of the Knox-Keene Act—specifically, California Health & Safety
14 Code §§ 1345(b) & 1367(i)—requiring the Churches and other religious
15 organizations to cover elective abortions in their employee health care plans, to be
16 a violation of the First and Fourteenth Amendments to the United States
17 Constitution.

18 b. Enter a permanent injunction prohibiting Defendant Rouillard from
19 enforcing the new interpretation of the Knox-Keene Act’s “basic health care
20 services” requirement (i.e., California Health & Safety Code §§ 1345(b) & 1367(i))
21 against the Churches and other religious organizations in a way that substantially
22 burdens the religious belief of any person in violation of the United States
23 Constitution, and prohibiting Defendant Rouillard from illegally discriminating
24 against the Churches and other religious organizations not before the Court by
25 preventing them from obtaining a group health plan that limits or excludes
26 coverage for abortion consistent with their religious beliefs;

27 c. Award the Churches court costs and reasonable attorney’s fees; and
28

1 d. Award such other and further relief as to which the Churches may be
2 entitled.

3
4 Respectfully submitted this 23rd day of October 2017.

5 /s/ Jeremiah Galus

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