

October 22, 2012

**Via Certified Mail, RRR**

The Honorable Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

RE: Family Research Council

Dear Madame Secretary:

This letter is being submitted by Liberty Institute on behalf of our client, Family Research Council (FRC), to request your formal determination on the urgent question of whether or not FRC must comply with the “employer mandate” under the Patient Protection and Affordable Care Act of 2010 [Pub. L. No. 111-148 (March 23, 2010), and Pub. L. No. 111-152 (March 30, 2010), and related provisions and regulations].

As you may know, FRC is a 501(c)(3) religious non-profit corporation, organized under the laws of the District of Columbia. FRC was organized for the express purpose of spreading and propagating the Gospel of Jesus Christ, and to produce and dispense educational materials to the general public concerning traditional Judeo-Christian family values. Its vision is a culture in which human life is valued, families flourish and religious liberty thrives.

Founded in 1983, and strategically located in Washington, D.C., FRC is the leading voice for the family in our nation's halls of power, and works to advance its purpose of spreading the Gospel of Jesus Christ and to strengthen and protect faith, family and freedom in public policy and the culture from a Christian worldview. FRC's team of seasoned experts promotes its Christian purpose and these core values through policy research, public education on Capitol Hill and in the media, and grassroots mobilization. FRC staff members review legislation, meet with policymakers, publish books and pamphlets, build coalitions, testify before Congress, and maintain a powerful presence online and in the print and broadcast media. In the realization of its religious purpose, FRC also engages in outreach to pastors to equip churches to transform the culture. Employees of FRC represent a variety of Christian denominations and churches, but they all share a Christian worldview. FRC provides the opportunity for its approximately 75 full-time employees to participate in a number of health insurance plans. These plans include both self insured and fully insured options for employees.

FRC advocates for the sanctity of human life and believes that all human life is worthy of protection and respect at all stages from the time of conception. In accordance with this foundational belief, FRC's health insurance plan does not cover abortion-inducing drugs or related services. FRC would have a vehement religious objection to any requirement that it or its insurer provide such drugs and services as part of its health plan.

The unprecedented “employer mandate” (derived from a series of statutes, new regulations and guidelines developed to implement the PPACA) currently requires that, beginning in 2014, large employers provide their employees with health insurance plans that cover, among other things, early-abortion pills, sterilizations, and “education and counseling” about such drugs and services. Substantial monetary fines will be assessed against non-compliant employers.

While some limited exception ostensibly has been created in the PPACA regulations to exempt religious employers from the mandate, the qualifications for such exemption are very narrow, and, apparently, are still being modified. [*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).]

In this interim period, dozens of lawsuits have been filed by many religious organizations, such as universities, charities, hospitals and various businesses, to challenge the mandate as an unconstitutional and unlawful violation of the challengers’ religious freedom and fundamental rights of conscience. Liberty Institute serves as counsel on some of that pending litigation, and we are prepared to file a similar lawsuit on behalf of FRC if such becomes necessary to protect its interests.

FRC believes it should qualify as an exempt religious employer, but under the strict definition provided in the amended interim final regulations issued and made effective in August 2011, [45 CFR Sect. 147.130(a)(1)(iv)(B)], it may not. Because the precise application and final scope of the religious employer exemption remains ambiguous, **we are hereby requesting a formal determination by the Department of Health and Human Services on whether or not FRC will be made to comply with the mandate.** If you determine the religious exemption *does* apply to FRC, a legal challenge may be avoided.

Please give us your written response to this inquiry **by November 5, 2012**, so that FRC can avoid the necessity of filing a lawsuit challenging the enforcement of the employer mandate.

If additional information is needed to make the requested determination, please do not hesitate to contact me so we can gather and submit the necessary documentation quickly. We thank you in advance for your prompt reply.

Very sincerely,



J. Michael Johnson  
Senior Counsel

JMJ/pg

cc: Tony Perkins  
President, Family Research Council