UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, BENTON COMMUNITY SCHOOL CORPORATION, COMMUNITY SCHOOL CORPORATION OF EASTERN HANCOCK COUNTY, JOHN GLENN SCHOOL CORPORATION, MADISON CONSOLIDATED SCHOOLS, METROPOLITAN SCHOOL DISTRICT OF MARTINSVILLE, MONROE-GREGG SCHOOL DISTRICT, MOORESVILLE CONSOLIDATED SCHOOL CORPORATION, NORTH LAWRENCE COMMUNITY SCHOOLS, NORTHWESTERN CONSOLIDATED SCHOOL DISTRICT OF SHELBY COUNTY, PERRY CENTRAL COMMUNITY SCHOOLS, SHELBYVILLE CENTRAL SCHOOLS, SOUTH HENRY SCHOOL CORPORATION, SOUTHWEST PARKE COMMUNITY SCHOOL CORPORATION, SOUTHWESTERN JEFFERSON COUNTY CONSOLIDATED SCHOOL CORPORATION , and VINCENNES COMMUNITY SCHOOL CORPORATION, Plaintiffs, v. INTERNAL REVENUE SERVICE, 1111 Constitution Avenue NW Washington, District of Columbia 20004; DANIEL I. WERFEL, in his official capacity as Acting Commissioner of the Internal Revenue	)	CASE NO. 1:13-cv-1612

Service; UNITED STATES DEPARTMENT OF THE TREASURY, 1500 Pennsylvania Avenue NW Washington, District of Columbia 20220; JACOB LEW, in his official capacity as U.S. Secretary of the Treasury; and

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, 200 Independence Avenue SW Washington, District of Columbia 20201; KATHLEEN SEBELIUS, in her official capacity as U.S. Secretary of Health and Human Services;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND JUDICIAL ESTOPPEL

Introduction and Summary

1. This is an Administrative Procedure Act challenge to a new IRS regulation implementing the Patient Protection and Affordable Care Act (ACA). It is also a Tenth Amendment challenge to two aspects of the ACA: (1) the Federal Government's attempt to apply to the States and their political subdivisions the ACA's "Employer Mandate," which requires *all* large employers to pay a tax penalty for failure to afford "minimum essential coverage" to all employees who work at least 30 hours per week; and (2) a separate ACA provision seeking to tax or regulate States in the same manner

as private employers. These claims arise based not only on the ACA itself, but also based on factual and legal developments that have occurred since the Supreme Court's June 28, 2012, decision in *NFIB v. Sebelius*, 132 S.Ct. 2566 (2012).

2. In *NFIB*, where Indiana and twenty-five other States were plaintiffs, the Supreme Court used principles of structural federalism, statutory interpretation, and constitutional avoidance to uphold the provision of the ACA known as the "Individual Mandate," but also to invalidate the provision known as the mandatory Medicaid Expansion. The result was an Affordable Care Act very different from the one Congress enacted, and very different from the one the States litigated in that case. No longer is there a federal mandate that individuals buy health insurance, but instead merely a tax on the failure to do so; no longer is there a massive new condition on Medicaid participation, but merely a new program States may eschew with no consequences for their current ones. The Supreme Court's construction of those ACA provisions in *NFIB*, however, has raised new questions about how other provisions of the ACA—and in particular those regulating employers—should be understood and implemented.

3. The facts on the ground in Indiana have also changed since the *NFIB* decision in June 2012. The State litigated that case on the assumption that Indiana would establish an Insurance Exchange under Section 1311 of the ACA. Indeed, on January 3, 2011, then-Governor Mitch Daniels issued

an Executive Order instructing State agencies to conditionally establish an Exchange while officials studied the matter further. Based on the Daniels administration's further deliberations and the results of the 2012 gubernatorial election, however, Governor Daniels informed the Department of Health and Human Services that Indiana would not be establishing an Exchange.

4. Meanwhile, also in the wake of the *NFIB* decision, the United States has made yet more changes to the ACA in the form of federal regulations, presidential pronouncements, and even bureaucratic blog posts. Through such decrees, it has, among many other changes, expanded the class of individuals who may claim federal insurance subsidies. It has also purported to delay implementation of tax reporting requirements and penalties on large employers that do not afford all employees "minimum essential" health insurance.

5. As explained in more detail below, the United States has expanded the class of beneficiaries entitled to federal insurance subsidies by redefining the term "exchange" in Section 1401(a) of the ACA to include both state-run insurance exchanges and federally-run exchanges. This redefinition causes injuries to States and their political subdivisions as sovereign policymakers and employers.

6. The idea behind creating the health insurance Exchanges is to facilitate market competition that will drive down prices for health

insurance. Creating and operating such Exchanges, however, costs substantial amounts of money, so Congress sought to assign those tasks to States.

7. In light of the Tenth Amendment, Congress could not *require* states to set up their own Exchanges, so instead it created a system designed to convince states to do so voluntarily. In addition to providing funds for start-up costs, Congress wrote into the ACA subsidies for citizens who purchased health insurance on *state-established* Exchanges, but provided no similar benefits for citizens who purchase insurance using *federally-established* Exchanges. Theoretically, the availability of *exclusive* federal subsidies to customers of state exchanges would prompt citizens to pressure state officials to establish (and ultimately absorb the expense of operating) Insurance Exchanges.

8. Exchange-user subsidies also cost money, however, so Congress also sought to minimize state Exchange utilization by requiring large employers to provide full-time employees with minimum essential coverage on pain of a financial penalty—an "assessable payment"—payable to the Internal Revenue Service. An employer that is required to, but does not, provide minimum essential health insurance coverage to full-time employees will incur a financial penalty if at least one full-time employee purchases insurance from a state Exchange *and* receives a federal subsidy to do so. But by the terms of the ACA, if no full-time employee receives a federal subsidy,

the employer need not pay the assessable payment, even if the employer does not offer minimum essential coverage to employees. In that way large employers are deterred from steering employees toward federally funded Exchange subsidies—deterrence that is unnecessary where the employees cannot receive such subsidies.

9. Given (1) the costs of running an Exchange, (2) the impact Employer Mandate penalties (triggered by federally funded exchange subsidies) would have on States, their political subdivisions and their largest companies as employers, and (3) the ACA's proviso that the Federal Government would create an Exchange for a State's citizens if a State does not, Indiana has made a policy decision not to establish a State Exchange. The result *should* be that, commencing in 2014, Indiana citizens purchasing coverage from a Federal Exchange would not receive subsidies for doing so, with the consequence that Indiana employers (including the State and its political subdivisions) who do not afford minimum essential coverage to all employees working 30 hours or more per week would not have to pay Employer Mandate penalties.

10. Instead, the IRS, which administers the Exchange subsidies, has promulgated a rule stating that citizens who purchase coverage on a Federal Exchange are entitled to the same subsidies as citizens who purchase from a State Exchange ("IRS Rule"). This decision contravenes the text of the ACA, thwarts Indiana's ability to execute State policy sparing employers

from Employer Mandate penalties, induces Plaintiffs to reduce the hours of certain employees, including part-time and intermittent employees, to avoid having to provide all such employees with minimum essential coverage, and requires Plaintiffs to file onerous reports with the IRS detailing insurance coverage decisions. It thereby violates both the Administrative Procedure Act and the Tenth Amendment, and the Court should permanently enjoin Defendants from putting it into effect.

JURISDICTION AND VENUE

11. Because this action arises under the federal Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, and seeks judicial review under 5 U.S.C. § 702, this Court has federal question jurisdiction under 28 U.S.C. § 1331.

12. The Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

13. Plaintiffs seek declaratory and injunctive relief under 28 U.S.C. §§ 2201-02, Federal Rule of Civil Procedure 57, and Federal Rule of Civil Procedure 65.

14. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(C), because the Defendants are officers and agencies of the United States, several of the Plaintiffs reside in this district, and there is no real property involved in this action.

PARTIES

Plaintiffs

15. Plaintiff the State of Indiana is both an employer and a sovereign State that has chosen not to establish its own insurance Exchange.

16. The State has more than 28,000 executive branch employees and already provides to the vast majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. The State does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to part-time or intermittent employees working between 29 and 37.5 or more hours per week who would be classified as "full-time" by the ACA.

17. In light of the IRS Rule, the State will be forced to reduce the hours of several part-time or intermittent employees in order to avoid the "assessable payment" or employer penalty of the ACA.

18. Furthermore, the IRS Rule injures the State by interfering with its statutorily and constitutionally protected policy choice not to create an Exchange. The State's policy decision not to create an Exchange—a policy option implicit in the ACA—has real-world consequences. In short, by *not* creating an Exchange, the use of which may trigger financial penalties for employers, a State can create a more hospitable business environment for large employers. The IRS Rule neutralizes the State's ability to carry out a

policy decision that would create that hospitable business environment. The IRS Rule thereby injures the State as a sovereign.

19. Plaintiff Benton Community School Corporation ("BCSC") is an Indiana school corporation located in Benton County, and is a political subdivision of the State of Indiana.

20. BCSC has 383 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. BCSC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

21. In light of the IRS Rule, BCSC has reduced the hours of several positions, including cafeteria staff and instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. BCSC cannot otherwise afford to provide health insurance for these employees. Substitute teachers are also limited to fewer than 30 hours per week for the same reason. These changes directly impact the delivery of educational services to the students of BCSC, including students with learning disabilities. BCSC has also been forced to limit which individuals can coach or serve in extracurricular activities, because it cannot afford to allow part-time employees to be classified as full-time for ACA purposes as a result of the additional hours incurred in the extracurricular events.

22. Plaintiff Community School Corporation of Eastern Hancock County ("EHC") is an Indiana school corporation located in Hancock County, and is a political subdivision of the State of Indiana.

23. EHC has 193 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. EHC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

24. In light of the IRS Rule, EHC has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. EHC cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of EHC, including students with learning disabilities.

25. Plaintiff John Glenn School Corporation ("JGSC") is an Indiana school corporation located in St. Joseph County, and is a political subdivision of the State of Indiana.

26. JGSC has 283 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. JGSC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential

coverage to other, part-time employees who may be classified as "full-time" by the ACA.

27. In light of the IRS Rule, JGSC has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. JGSC cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of JGSC, including students with learning disabilities.

28. Plaintiff Madison Consolidated Schools ("MCS") is an Indiana school corporation located in Jefferson County, and is a political subdivision of the State of Indiana.

29. MCS has 411 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. MCS does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to the other, part-time employees who may be classified as "full-time" by the ACA.

30. In light of the IRS rule, MCS has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. MCS cannot otherwise afford to provide health insurance for these employees. The change

directly impacts the delivery of educational services to the students of MCS, including students with learning disabilities.

31. Plaintiff the Metropolitan School District of Martinsville ("MSD of Martinsville") is an Indiana school corporation located in Morgan County, and is a political subdivision of the State of Indiana.

32. MSD of Martinsville has 689 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. MSD of Martinsville does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

33. In light of the IRS Rule, MSD of Martinsville has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. MSD of Martinsville cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of MSD Martinsville, including students with learning disabilities.

34. Plaintiff Monroe-Gregg School District ("Monroe-Gregg") is an Indiana school corporation located in Morgan County, and is a political subdivision of the State of Indiana.

35. Monroe-Gregg has 226 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. Monroe-Gregg does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

36. In light of the IRS Rule, Monroe-Gregg has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. Monroe-Gregg cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of Monroe-Gregg, including students with learning disabilities. Monroe-Gregg has also budgeted for certain costs of compliance with the ACA, which limits the amount of money available to spend on staff and programs.

37. Plaintiff Mooresville Consolidated School Corporation ("MCSC") is an Indiana school corporation located in Morgan County, and is a political subdivision of the State of Indiana.

38. MCSC has 491 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. MCSC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum

essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

39. In light of the IRS Rule, MCSC has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. MCSC cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of MCSC, including students with learning disabilities.

40. Plaintiff North Lawrence Community Schools ("NLCS") is an Indiana school corporation located in Lawrence County, and is a political subdivision of the State of Indiana.

41. NLCS has 982 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. NLCS does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

42. In light of the IRS Rule, NLCS has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. NLCS cannot otherwise afford to provide health insurance for these employees. This

change directly impacts the delivery of educational services to the students of NLCS, including students with learning disabilities.

43. Northwestern Consolidated School District of Shelby County ("NW-SC") is an Indiana school corporation located in Shelby County, and is a political subdivision of the State of Indiana.

44. NW-SC has 185 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. NW-SC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

45. In light of the IRS Rule, NW-SC eliminated three positions, revised the job classifications of 14 other positions to allow for participation in open enrollment during the fall of 2014, and reduced the hours of 21 employees to fewer than 30 hours per week. By converting positions from part-time to full-time as defined under the ACA, NW-SC's insurance costs will increase by approximately $89,000 per year. NW-SC was not able to increase the wages of the employees whose hours were reduced because of the need to offset the increased benefits costs imposed by the ACA.

46. Plaintiff Perry Central Community Schools ("PCCS") is an Indiana school corporation located in Perry County, and is a political subdivision of the State of Indiana.

47. PCCS has 208 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. PCCS does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

48. In light of the IRS Rule, PCCS has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. PCCS cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of MCSC, including students with learning disabilities. For three positions for which PCCS was not able to split or reduce responsibilities, PCCS converted these positions to full-time status and began providing health insurance benefits at the cost of approximately $10,000 per employee.

49. Plaintiff Shelbyville Central Schools ("SCS") is an Indiana school corporation located in Shelby County, and is a political subdivision of the State of Indiana.

50. SCS has 428 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. SCS does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential

coverage to other, part-time employees who may be classified as "full-time" by the ACA.

51. In light of the IRS Rule, SCS has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. SCS cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of SCS, including students with learning disabilities. SCS has also been forced to limit which individuals can coach or serve in extracurricular activities, because it cannot afford to allow part-time employees to be classified as full-time for ACA purposes as a result of the additional hours incurred in the extracurricular events.

52. Plaintiff South Henry School Corporation ("SHSC") is an Indiana school corporation located in Henry County, and is a political subdivision of the State of Indiana.

53. SHSC has 131 employees and already provides to the majority of them health insurance coverage the meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. SHSC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

54. In light of the IRS rule, SHSC has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. SHSC cannot otherwise afford to provide health insurance coverage for these employees. This change directly impacts the delivery of educational services to the students of SHSC, including students with learning disabilities. SHSC is also limiting all substitute teachers, lay coaches and bus drivers to 29 or fewer hours per week.

55. Plaintiff Southwest Parke Community School Corporation ("SWP") is an Indiana school corporation located in Parke County, and is a political subdivision of the State of Indiana.

56. SWP has 120 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. SWP does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

57. In light of the IRS Rule, SWP has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. SWP cannot otherwise afford to provide health insurance for these employees. This

change directly impacts the delivery of educational services to the students of SWP, including students with learning disabilities.

58. Plaintiff Southwestern Jefferson Consolidated School Corporation ("SWJ") is an Indiana school corporation located in Jefferson County, and is a political subdivision of the State of Indiana.

59. SWJ has 150 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed by the ACA for minimum essential coverage. SWJ does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

60. In light of the IRS rule, SWJ has reduced the hours of several positions, including instructional aides, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. SWJ cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of SWJ, including students with learning disabilities.

61. Plaintiff Vincennes Community School Corporation ("VCSC") is an Indiana school corporation located in Knox County, and is a political subdivision of the State of Indiana.

62. VCSC has 430 employees and already provides to the majority of them health insurance coverage that meets or exceeds the benefits prescribed

by the ACA for minimum essential coverage. VCSC does not, however, provide—and wishes not to provide in 2014 and beyond—minimum essential coverage to other, part-time employees who may be classified as "full-time" by the ACA.

63. In light of the IRS Rule, VCSC has reduced the hours of several positions, including instructional aides and non-certified employees, to fewer than 30 hours per week so that those employees are considered part-time under the ACA. Further, beginning in November 2013, substitute teachers (including long-term substitutes filling in for maternity or other long-term leaves) will be limited to no more than four days of substitute teaching per week. VCSC cannot otherwise afford to provide health insurance for these employees. This change directly impacts the delivery of educational services to the students of VCSC, including students with learning disabilities. VCSC has also been forced to limit which individuals can coach or serve in extracurricular activities, because it cannot afford to allow part-time employees to be classified as full-time for ACA purposes as a result of the additional hours incurred in the extracurricular events.

64. Hereafter, references to the "Public Schools" shall refer collectively to all of the school corporations that are Plaintiffs in this action.

65. In sum, absent a declaration resolving the validity of the IRS Rule, all Plaintiffs will be forced to reduce the hours of some employees, sponsor specific insurance that they otherwise would not sponsor, or expose

themselves to financial penalties. Some of Plaintiffs' injuries have already occurred, and others are impending.

Defendants

66. Defendant Internal Revenue Service ("IRS") is an executive agency of the United States within the meaning of the APA.

67. Defendant Daniel I. Werfel is the Acting Commissioner of the IRS. In that role he is responsible for the IRS's implementation of several ACA requirements and programs, including the IRS Rule and other ACA provisions being challenged in this lawsuit. He is sued in his official capacity.

68. Defendant U.S. Department of the Treasury is an executive agency of the United States within the meaning of the APA.

69. Defendant Jacob Lew is the Secretary of the U.S. Department of the Treasury. In that role he is responsible for the implementation of several ACA requirements and programs, including the IRS Rule and other ACA provisions being challenged in this lawsuit. He is sued in his official capacity.

70. Defendant U.S. Department of Health and Human Services ("HHS") is an executive agency of the United States within the meaning of the APA.

71. Defendant Kathleen Sebelius is the Secretary of the HHS. In that role she is responsible for implementation of several ACA requirements

and programs, including ACA provisions being challenged in this lawsuit. She is sued in her official capacity.

DETAILED STATUTORY AND REGULATORY BACKGROUND

A. The ACA Offers Subsidies Through State-Run Insurance Exchanges

72. President Obama signed the Patient Protection and Affordable Care Act on March 23, 2010. Pub. L. No. 111-148, 124 Stat. 119 (2010). It was amended on March 30, 2010, by the Health Care and Education Reconciliation Act of 2010. Pub. L. No. 111-152, 124 Stat. 1029 (2010), and is hereinafter referred to collectively as the Act or the ACA.

73. The primary goal of the ACA is to create a health insurance system that provides nearly universal coverage while reducing health care costs. The ACA employs four principal means to achieve that goal. *First*, beginning in 2014, it requires nearly everyone living in the United States to subscribe to or purchase health insurance, or else pay a penalty (the "Individual Mandate"). *Second*, it encourages States to expand their Medicaid programs to afford coverage to all households with income up to 138% of the Federal Poverty Level. *Third*, also beginning in 2014, it requires large employers to provide employees who work more than 30 hours per week with health care insurance featuring "minimum essential coverage" (the "Employer Mandate"). *Fourth*, it requires either States or the Federal Government to establish Internet-based "Insurance Exchanges" where health care insurance providers can market minimum essential coverage to

individuals who do not qualify for Medicaid or have access to such coverage through their employers.

74. In particular, the ACA requires that "[e]ach State shall, no later than January 1, 2014, establish an American Health Benefit Exchange." ACA § 1311(b)(1); 42 U.S.C. § 18031(b)(1). Such Exchanges will "facilitate[] the purchase of qualified health plans[.]" *Id.*

75. The ACA also provides, however, that States may choose not to establish such Exchanges. Specifically, each State may "elect[] . . . to apply the requirements" for the State Exchanges, *or* if "a State is not an electing State . . . or the [Health and Human Services] Secretary determines" that the State will fail to set up an exchange before the statutory deadline, "the Secretary shall (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State." ACA § 1321(b)-(c); 42 U.S.C. § 18041(b)-(c).

76. The ACA encourages States to establish Exchanges with a variety of incentives, chiefly the premium-assistance subsidy for state residents purchasing individual health insurance through State-established Exchanges. The subsidy takes the form of a refundable tax credit paid directly by the Federal Treasury to the taxpayer's insurer as an offset against his premiums. *See* 26 U.S.C. § 36B; 42 U.S.C. § 18082(c). Targeted at low- and moderate-income individuals and families, the subsidy is available to

households with incomes between 100 percent and 400 percent of the federal poverty line. *See* ACA § 1401(a); 26 U.S.C. § 36B(c)(1)(A).

77. The payment of the subsidy is conditioned on individuals purchasing insurance through an exchange established by the State. The ACA provides that a tax credit "shall be allowed" in a particular "amount," 26 U.S.C. § 36B(a), with that amount based on the monthly premiums for a "qualified health plan[] offered in the individual market within a State which cover[s] the taxpayer, the taxpayer's spouse, or any dependent . . . of the taxpayer and which were enrolled in through an Exchange *established by the State under [§] 1311* of the Patient Protection and Affordable Care Act," *id.* § 36B(b)(2)(A) (emphasis added).

78. Therefore there is no premium assistance subsidy under the ACA unless the citizen pays for insurance obtained through a State Exchange. Confirming the point, the statute calculates the subsidy by looking to "coverage months," defined as months in which the taxpayer "is covered by a qualified health plan described in subsection (b)(2)(A) that was enrolled in through an Exchange *established by the State under section 1311* of the Patient Protection and Affordable Care Act[.]" 26 U.S.C. § 36B(c)(2)(A)(i) (emphasis added). Again, unless the citizen has enrolled in a plan through an Exchange that was created by a *State*, specifically established under Section *1311* of the ACA, he gets no subsidy.

79. The ACA contains no severability clause.

B. Federal Subsidies Trigger the Individual and Employer Mandate Payments

80. The availability of the subsidy also effectively triggers the assessable payments under the Employer Mandate. Specifically, the ACA provides that any employer with 50 or more full-time employees will be subject to an "assessable payment" if it does not offer its full-time employees an opportunity to enroll in affordable, employer-sponsored coverage. But the payment is triggered only if at least one full-time employee enrolls in a plan, offered through an Exchange, for which "an applicable premium tax credit . . . is allowed or paid." 26 U.S.C. § 4980H(a)-(b).

81. Thus, if no federal subsidies are available in a State because the State has not established its own Exchange, then employers in that State may offer their employees non-compliant insurance, or no insurance at all, without being exposed to any assessable payments under the ACA.

C. Indiana Declines to Establish Its Own Exchange

82. The incentives provided by Congress to encourage States to set up their own Exchanges have not been universally effective. Exercising the option granted by the ACA (and required by the Constitution), thirty-four States have decided not to establish Exchanges. *See Kaiser Family Foundation, State Decisions For Creating Health Insurance Exchanges*, http://www.statehealthfacts.org/comparemaptable.jsp?ind=962&cat=17 (last visited Oct. 6, 2013). Twenty-seven States—including Indiana—have opted not to create or operate Exchanges for large employers at all, *see id.*, while

another seven have opted only to assist the Federal Government with its operation of Federally-established Exchanges, *see id.*; *see also* Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 Fed. Reg. 18,310, 18,325 (Mar. 27, 2012) (categorizing "partnership" Exchanges as Federally-established).

83. Those States that have decided to operate their own Exchanges have passed laws establishing such Exchanges and defining the powers and duties of their boards. *See, e.g.*, Colorado Health Benefit Exchange Act, S.B. 11-200 (2011) (codified at Colo. Rev. Stat. § 10-22-101 *et seq.*); Maryland Health Benefit Exchange Act of 2011, S.B. 182 (codified at Md. Code Ann., Ins. § 31-101 *et seq.*). These states have received assistance from the Federal Government in establishing these Exchanges in the form of grants. *See Centers for Medicaid Services, Health Insurance Exchange Establishment Grants,* http://www.cms.gov/cciio/resources/marketplace-grants/index.html. Some States, such as California, have appropriated their own funds in order to establish and operate Exchanges. *See* Health Insurance—Patient Protection and Affordable Care Act, A.B. 1602 (codified at Cal. Gov't Code § 15438(s)(1)) (authorizing a working capital loan of $5,000,000 to assist in the establishment and operation of the California Health Benefit Exchange); *see also* Health Insurance—Exchanges—Powers and Duties, S.B. 440 (codified at Neb. Rev. Stat. § 695I.510) (authorizing the executive director of the

Exchange to request an advance from the State General Fund in case of a delay in the receipt of federal funds).

84. Indiana considered whether it would establish and operate its own Exchange and decided against it. In 2011, then-Governor Daniels issued an Executive Order directing the Indiana Family and Social Services Administration and other State agencies to conditionally establish a state-run Exchange in Indiana. Exec. Order No. 11-01 (Ind. Jan. 3, 2011). However, the agencies tasked with planning the establishment of the Exchange did not propose any legislation to that effect during the 2012 legislative session and Governor Daniels elected to leave the decision to his successor. *See* Kaiser Family Foundation, *State Exchange Profiles: Indiana*, http://kff.org/health-reform/state-profile/state-exchange-profiles-indiana.

85. During Indiana's 2012 gubernatorial race, Governor Daniels requested input from the three major candidates regarding whether Indiana should establish its own Exchange. *Daniels Seeks Candidate Input on Health Exchange*, IBJ.com, Aug. 2, 2012, http://www.ibj.com/daniels-seeks-candidate-input-on-health-exchange/PARAMS/art icle/35920. Democrat John Gregg supported a state-federal hybrid Exchange while Republican Mike Pence did not think the State should participate in establishing an Exchange at all. *Gregg Blasts Pence for Wanting Feds to Run State's Health Exchange*, NWI.com, Aug. 27, 2012, http://www.nwitimes.com/news/local/govt-and-politics/elections/gregg-blasts-pence-for-wanting-feds-to-run-state-

s/article_a182a9ae-8b58-5de6-9ada-45a8858107a2.html. Indiana voters chose to elect Mike Pence.

86. In November of 2012, then Governor-elect Pence, in a letter to Governor Daniels, explained in more detail that in his view a state-run Exchange would not be in the best interest of the people of Indiana. Letter from Mike Pence to Mitch Daniels (Nov. 15, 2012), *available at* http://www.in.gov/aca/files/November_15_Pence_Letter.pdf. Governor-Elect Pence cited legal uncertainty over whether the employer tax penalty would apply to businesses in the absence of a state-run Exchange as a basis for his position. *Id.*

87. In light of Governor-Elect Pence's views, in late 2012 Governor Daniels informed Federal officials in writing that Indiana would not establish an Exchange.

88. In sum, Indiana has chosen not to establish an Exchange. It has not passed any statutes or adopted any regulations that would provide for, or allow, such an Exchange.

D. IRS Promulgates a Regulation Ignoring the ACA's Limitations on Subsidies

89. On August 17, 2011, in the midst of widespread multi-state resistance to establishing an Exchange, the IRS issued a Notice of Proposed Rulemaking relating to the health insurance premium tax credit enacted by the ACA. Health Insurance Premium Tax Credit, 76 Fed. Reg. 50931-01 (Aug. 17, 2011). Buried within the definitions section of the proposed

rulemaking, the IRS proposed a new definition of "Exchange." The proposed rule simply stated that "Exchange has the same meaning as in 45 CFR 155.20." *Id.* at 50,940. 45 C.F.R. § 155.20 defines "Exchange" as "a governmental agency or non-profit entity that meets the applicable standards of this part and makes QHPs [Qualified Health Plans] available to qualified individuals and qualified employers. Unless otherwise identified, *this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange*." *Id.* (emphasis added).

90. The public comment period for the IRS's proposed rulemaking lasted until October 31, 2011, during which 212 comments were submitted. Most of these comments addressed other parts of the proposed rule, but at least two public comments specifically addressed the proposed definition of "Exchange." One noted that the proposed definition would make subsidies "available from an Exchange whether the Exchange is state-sponsored or federally sponsored." Public Comment from Mark Regan, Disability Law Center of Alaska (received Oct. 31, 2011), available at http://www.regulations.gov/#!documentDetail;D=IRS-2011-0024-0088. The definition of "Exchange" has this effect on the availability of subsidies because the rule makes subsidies available to taxpayers who are "enrolled in one or more qualified health plans through an Exchange[.]" 76 Fed. Reg. 50,940.

91. Another comment sharply criticized the IRS's decision to define "Exchange" so broadly, noting the consequences of the proposed definition and arguing that "[n]owhere within the statue [sic] is an Exchange created under Section 1321 mentioned regarding eligibility of the premium tax credit." Public Comment from Nicole Kaeding, (received Sept. 30, 2011) , available at http://www.regulations.gov/#!documentDetail;D=IRS-2011-0024-0005. This comment pointed out that the IRS's proposed rulemaking authorized subsidies even in States with only federally-established Exchanges, directly contravening express statutory language to the contrary. *See* 26 U.S.C. § 36B(b)(2)(A) (Subsidies may be provided to taxpayers who "were enrolled in through an Exchange established by the State under 1311 of the Patient Protection and Affordable Care Act[.]").

92. On May 23, 2012, following the notice and comment period, the IRS promulgated a final regulation in which it reiterated its definition of "Exchange," disregarding Kaeding's public comment and the clear directives of the statute. Health Insurance Premium Tax Credit, 77 Fed. Reg. 30377-01 (May 23, 2012).

93. Like the proposed rule, the final IRS rule defines "Exchange" as "a State Exchange, regional Exchange, subsidiary Exchange, and Federally-facilitated Exchange." *Id*. at 30,378. The IRS rule notes that "[c]ommentators disagreed on whether the language in section 36B(b)(2)(A) limits the availability of the premium tax credit only to taxpayers who enroll

in qualified health plans on State Exchanges." *Id.* The IRS rule's justification for defining "Exchange" in this way resides entirely in the following paragraph:

> The statutory language of section 36B and other provisions of the Affordable Care Act support the interpretation that credits are available to taxpayers who obtain coverage through a State Exchange, regional Exchange, subsidiary Exchange, and the Federally-facilitated Exchange. Moreover, the relevant legislative history does not demonstrate that Congress intended to limit the premium tax credit to State Exchanges. Accordingly, the final regulations maintain the rule in the proposed regulations because it is consistent with the language, purpose, and structure of section 36B and the Affordable Care Act as a whole.

Id.

94. During the comment period following the promulgation of the *final* rule, the IRS received 30 comments. Among these commenters was the National Federation of Independent Business (NFIB), which criticized the IRS's definition of "Exchange." Public Comment from Christopher Whitcomb, National Federation of Independent Business (received Aug. 21, 2012), available at http://www.regulations.gov/#!documentDetail;D=IRS-2011-0024-0218. Like Kaeding, the NFIB noted that the IRS's definition authorized Federally-facilitated Exchanges to distribute subsidies, and explained its concern "that the agency's interpretation will be invoked by regulators to justify the imposition of potentially crippling penalties on employers who do not provide qualifying health insurance coverage to employees, or for offering

coverage that is otherwise deemed inadequate, in states that have opted against creating their own Exchanges." *Id.*

95. In short, notwithstanding express statutory language limiting premium-assistance subsidies to Exchanges established by States, the IRS has promulgated a regulation purporting to authorize subsidies even in States with only Federally-established Exchanges, thereby disbursing monies from the Federal Treasury in excess of the authority granted by the ACA. The IRS Rule squarely contravenes the express text of the ACA, ignoring the clear limitations that Congress imposed on the availability of the federal subsidies. And the IRS promulgated the regulation without any reasoned effort to reconcile it with the contrary provisions of the statute.

E. The IRS Rule Causes the ACA to Impinge State Sovereignty, as Exercised Through State Government as Well as Indiana's Public Schools

96. The ACA requires all employers that have at least 50 employees to provide minimum essential coverage to any employee who works at least 30 hours per week on average. All Plaintiffs employ over 50 employees, and while they already provide ACA-compliant insurance to many full-time employees, they do not provide insurance to all employees who work over 30 hours of service per week.

97. More specifically, Plaintiffs provide generous health care benefits meeting or exceeding the standard of "minimum essential coverage" under the ACA for most full-time permanent employees, both salaried and

hourly. But the Plaintiffs also employ some workers who are not eligible for benefits, many of whom are deemed "part-time" or "intermittent" who work for hourly wages up to 75 hours bi-weekly. Part-time employees are often younger workers who continue to pursue higher education or who are breaking into government as entry-level employees. With intermittent employees, the expectation is that the employment relationship will last a short time or will be seasonal.

98. Similarly, for the Public Schools, certain positions, *e.g.*, instructional aides, play a vital role in the delivery of educational services to the students. The Public Schools have limited budgets and simply cannot afford to provide health insurance coverage to these very important employees.

99. Under the ACA, however, *all* employees who work at least 30 hours of service per week (calculated pursuant to regulations promulgated by the IRS), are deemed full-time employees entitled to minimum essential coverage provided by their employers, or else the employers must pay to the IRS an assessable payment. 26 U.S.C. 4980H; 78 Fed. Reg. 218-01 (Jan. 2, 2013). The currently-proposed regulations make only limited exceptions for intermittent employees. 78 Fed. Reg. 230.

100. Absent the IRS Rule, Plaintiffs' respective decisions not to offer health insurance to part-time or intermittent employees who work 30 or more hours per week would not be threatened by the Employer Mandate because

no Indiana employees would be eligible for federal subsidies. But under the IRS Rule, that decision would expose each Plaintiff to assessable payments under the Employer Mandate.

101. Many of the Public Schools have already reduced the hours of certain employees in an effort to minimize potential penalties under the ACA. In many ways, the IRS Rule has created a Morton's Fork for the Public Schools—reduce hours of certain employees and diminish the quality of education provided to children, or incur additional financial liabilities (either through assessable payments or expansion of health insurance) that necessarily will result in reduced dollars for education, including the potential for teacher layoffs.

102. The IRS Rule also impairs the ability of the Public Schools to comply with federal educational mandates, including the No Child Left Behind Act of 2001 and the Individuals with Disabilities Education Act. For example, many of the Public Schools employ instructional aides who assist children with learning disabilities. In some instances, the Public Schools have been effectively forced to reduce the hours of instructional aides who assist children with learning disabilities to avoid assessable payments.

103. The State is injured by the IRS Rule because it has the effect of either subjecting the State to monetary sanctions or requiring the State to alter its behavior to avoid those sanctions. Under the IRS rule, the State must either extend minimum essential coverage to intermittent employees

who work at least 30 hours per week or reduce the hours of part-time and intermittent employees so that they work fewer than 30 hours per week and do not qualify as full time under the ACA.

104. The State has addressed this problem by reducing the hours of all part-time and intermittent employees below 30 hours per week so that they do not qualify for minimum essential coverage.

105. The State's financial strength, workforce, and fiscal planning capabilities are immediately and directly affected by its exposure to the costs and liabilities created by the IRS rule.

106. The Employer Mandate provision imposes an assessable payment on certain employers that do not offer those employees who work 30 or more hours of service per week the chance to enroll in employer-sponsored coverage that satisfies various statutory requisites. Critically, that payment is triggered only if such employees receive federal subsidies by purchasing coverage on an exchange. Thus, the IRS Rule has the effect of triggering the Employer Mandate payment for the State of Indiana because, as an employer, it chooses not to provide compliant insurance to every employee who works at least 30 hours a week.

107. The IRS Rule's unauthorized subsidies would trigger these mandates and payments against Plaintiffs as employers because the State of Indiana has not established an Exchange. The IRS Rule would expose Plaintiffs to payments under the Employer Mandate, thereby requiring them

to offer comprehensive, ACA-compliant insurance that they have chosen not to fund, or to require that certain employees work fewer hours. The IRS Rule thus injures Plaintiffs.

108. The unauthorized subsidies would also subject the Plaintiffs to certain reporting requirements under ACA § 1514; 26 U.S.C. § 6056. Under the IRS Rule, the Federal Exchange triggers 26 U.S.C. § 4980H, which then in turn separately triggers the reporting requirements of 26 U.S.C. § 6056. Under 26 U.S.C. § 6056(a)-(b), Plaintiffs will be required to file an annual return with the IRS that reports the terms and conditions of the health care coverage provided to the employers' full-time employees for the year. This return will force Plaintiffs to gather and report a large amount of information about each of their employees. Plaintiffs will also be required to provide a certification as to whether Plaintiffs offer their full-time employees the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. 26 U.S.C. § 6056(b). These reporting and certification requirements are together a separate and independent exertion of federal power in the ACA.

109. Additionally, since Plaintiffs *do* offer their full-time employees the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, under this separate mandate imposed by ACA § 1514, Plaintiffs will also have to report the following: (1) the duration of any waiting period with respect to such coverage; (2) the months during the

calendar year when coverage under the plan was available; (3) the monthly premium for the lowest cost option in each enrollment category under the plan; and (4) the employer's share of the total allowed costs of benefits provided under the plan. 26 U.S.C. § 6056(b). Furthermore, Plaintiffs will be required under 26 U.S.C. § 6056(c) to furnish to each full-time employee whose information is required to be reported to the IRS under 26 U.S.C. § 6056(b) an individualized, written statement that includes all the information relating to the coverage provided to that employee that is required to be reported on the IRS return. These onerous reporting requirements would place a substantial additional burden on Plaintiffs.

110. The Employer Mandate, if applied to Plaintiffs in their capacity as employers, creates a compulsory regulatory scheme in which sovereign discretion is removed, in derogation of the core constitutional principle of federalism upon which this Nation was founded. In so doing, the ACA exceeds the powers of the United States and violates the Tenth Amendment to the Constitution. The ability to define the terms of employment for those providing governmental services is essential if Plaintiffs are to exercise their sovereign rights to choose what services to provide and to what extent they will fund those services. Plaintiffs have a legitimate sovereign interest in retaining a certain measure of control over the type and amount of compensation they offer their employees. This Court has a constitutional

responsibility to see to it that the Federal Government respects those legitimate interests that are central to Plaintiffs' sovereign functions.

111. To the extent that *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), and its progeny suggest that Congress has authority under the Commerce Clause to impose assessable payments on Plaintiffs, those precedents have been overtaken by subsequent decisions of the U.S. Supreme Court and should be explicitly abandoned.

112. The IRS Rule also deprives Indiana of its sovereign ability to regulate relationships between private employers and employees. Decisions regarding how best to regulate these relationships are questions of economic policy. The State has not only made a policy determination about itself as an employer, but also about the regulatory environment it wishes to provide for all employers in the State. Indiana has made a conscious public policy decision to alleviate regulatory burdens on employers. Indiana should remain free to adopt whatever economic policy it believes best promotes the welfare of its citizens and to enforce that policy through appropriate legislation. By interfering with that prerogative, the IRS Rule exceeds the powers bestowed by the ACA.

113. The certification and reporting requirements of ACA § 1514 impose onerous mandates on Plaintiffs. These requirements are either an exertion of federal power taxing Plaintiffs as one would a private employer, or commercially regulating Plaintiffs as one would a private employer. Either of

these explanations would be in derogation of the status of the State of Indiana (along with its agencies and political subdivisions) as a sovereign coequal in dignity to the Federal Government, in violation of the principles of federalism enshrined in the U.S. Constitution. Accordingly, this tax or regulatory regime violates the Tenth Amendment of the Constitution, as it otherwise subordinates Plaintiffs to the Federal Government.

114. To the extent that controlling Supreme Court precedent suggests that Congress can tax the State of Indiana, its agencies and political subdivisions as it would a private employer, such precedent should be construed otherwise, or should be overruled.

115. Plaintiffs accordingly seek declaratory and injunctive relief against the ACA's operation to preserve their sovereignty and solvency.

116. Plaintiffs also seek a declaratory judgment that the IRS Rule is illegal under the Administrative Procedure Act, and injunctive relief barring its enforcement.

117. For the same reasons, the Plaintiffs seek a declaratory judgment that the Employer Mandate violates the Tenth Amendment as applied to States, their agencies, political subdivisions, and injunctive relief permanently barring its enforcement.

118. Additionally, again for the same reasons, Plaintiffs seek a declaratory judgment that the certification and reporting requirements of the

ACA violate the Tenth Amendment as applied to States and their agencies and political subdivisions, and injunctive relief barring their enforcement.

F. The Federal Government Declares in Violation of the ACA's Text that for 2014 It Will Not Enforce ACA Sections 1513 and 1514

119. On July 2, 2013, Mark J. Mazur, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, posted a blog entry in which he stated that neither 26 U.S.C. § 6055 (not at issue in this litigation), nor 26 U.S.C. § 6056, will be in effect for 2014. Mark J. Mazur, U.S. Dep't. of the Treasury, Treasury Notes: Continuing to Implement the ACA in a Careful, Thoughtful Manner, http://www.treasury.gov/connect/ blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx. The blog post also says the Treasury recognizes it would be "impractical" to assess "shared responsibility payments (under section 4980H) for 2014," and therefore that those payments "will not apply for 2014." *Id.* The blog post does not specify that 26 U.S.C. § 4980H does not apply in 2014, only that "payments" will not be assessed, leaving the possibility that all large employers are still under the Employer Mandate as a matter of law, but no enforcement action will be taken against them for their illegal noncompliance.

120. This statement appears to have no legal force. There is nothing in the text of ACA § 1513 or § 1514 authorizing any officer of the Federal Government to suspend, extend, or modify the taxes/mandates under those provisions of the ACA. Even if the ACA did delegate such power, and if such

a delegation of authority were constitutional, it would more likely be vested in the Secretary of the Treasury or the Commissioner of Internal Revenue, not an Assistant Secretary.

121. Moreover, there is no record in the Federal Register of any Notice of Proposed Rulemaking or any other entry associated with establishing federal policy carrying the force of law. The Federal Government has issued nothing more than a blog post from a Treasury employee who claims without citing any legal authority to absolve every large employer in the Nation from compliance with mandatory provisions of an Act of Congress.

122. On August 9, 2013, President Obama elaborated on his rationale for unilaterally modifying this legal requirement, claiming that he could "tweak" provisions in a law so long as the modification "doesn't go to the essence of the law." President Barack Obama, Remarks by the President in a Press Conference, Aug. 9, 2013, http://www.whitehouse.gov/the-press-office/2013/08/09/remarks-president-press-conference.

123. As a result of the confusion generated by this online announcement and the President's press conference, Plaintiffs have no assurance that they are not currently still fully liable under 26 U.S.C. §§ 4980H, 6056, and as such have a reasonable apprehension that they may be sanctioned in 2015 or thereafter for noncompliance during 2014.

124. Even if the threat of sanctions for noncompliance were entirely eliminated, the government officers leading the State of Indiana and other subdivisions or units of the State of Indiana are duty-bound to faithfully adhere to the laws of the United States, and as such must at minimum expeditiously resolve the uncertainty regarding the Plaintiffs' legal obligations.

CLAIMS

COUNT I

Rulemaking in Violation of the Administrative Procedure Act

125. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

126. The APA forbids agency action "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right[.]" 5 U.S.C. § 706(2)(C). It further forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" *Id.* § 706(2)(A).

127. By its own terms, the ACA allows premium-assistance subsidies only for qualified purchasers through State-established Exchanges. The plain text of the statute makes subsidies available only to individuals who enroll in insurance plans "through an Exchange established by the State under [§] 1311 of the [Act]." 26 U.S.C. § 36B(b)(2)(A). But an exchange established by the Federal Government under the authority of § *1321* of the

ACA is not "an Exchange established by the State under [§] *1311* of the [Act]." The IRS's reading is contrary to the ACA's plain language.

128. By authorizing federal premium-assistance subsidies to individuals who do not qualify under the statute, the IRS Rule exceeds the agency's statutory authority and is arbitrary, capricious, and contrary to law.

129. Even assuming that the ACA grants the IRS discretion to authorize federal subsidies for individuals enrolled in plans from Exchanges not established by a State, the statutory interpretation offered by the IRS in support of the Rule is arbitrary, capricious, unsupported by a reasoned basis, and contrary to law.

130. Plaintiffs have no adequate or available administrative remedy; in the alternative, any effort to obtain an administrative remedy would be futile.

131. Plaintiffs have no adequate remedy at law.

132. Defendants' action in promulgating the IRS Rule imposes impending harm on Plaintiffs that warrants relief.

COUNT II

Unconstitutional Exercise of Federal Power and Violation of the Tenth Amendment for Employer Mandate

133. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

134. If the IRS Rule is upheld and applied to employees or officers of Plaintiffs, the Plaintiffs would be subject to the ACA § 1513 Employer Mandate without the State of Indiana having given its consent.

135. In *NFIB v. Sebelius*, 132 S. Ct. 2566, 2594-96 (2012), the Supreme Court declared that the Individual Mandate is in fact a tax. The same features that rendered that component of the ACA a tax are also present in the Employer Mandate, namely that the Employer Mandate produces at least some revenue for the Government; contains no scienter requirement; is found in the Internal Revenue Code; is enforced by the IRS; and allows regulated parties to choose to make a payment in lieu of purchasing or providing health insurance. In essence, just as the Individual Mandate is a tax on the failure of citizens to purchase health insurance, *id.*, so too the Employer Mandate is a tax on the failure of employers to carry out federal policy of providing minimum essential coverage.

136. The Employer Mandate, like the Individual Mandate, is a tax. The Federal Government, however, is barred by the Tenth Amendment doctrine of intergovernmental tax immunity from imposing taxes on States. This illegal tax injures Plaintiffs.

137. Furthermore, while the Supreme Court held in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), that Congress may impose employment obligations on States notwithstanding the Tenth

Amendment, it has never held that Congress may levy a *tax* on States that refuse to carry out federal policy.

138. Alternatively, even if the Employer Mandate is construed as asserting authority under the Commerce Clause of the Constitution, it would still be in violation of the Tenth Amendment of the Constitution.

139. Subjecting Plaintiffs as employers to the Employer Mandate would cause the ACA to exceed Congress's legislative authority; violate the Tenth Amendment; impermissibly interfere with the residual sovereignty of the State of Indiana, its agencies and political subdivisions; and violate Constitutional norms relating to the relationship between the States, including the State of Indiana (and its agencies and political subdivisions) and the Federal Government.

140. Therefore, Plaintiffs are entitled to a judgment that the IRS Rule as applied to their employees is unconstitutional and void.

COUNT III

Unconstitutional Exercise of Federal Power and Violation of the Tenth Amendment for Reporting Requirements

141. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

142. The ACA's reporting and certification requirements subjects Plaintiffs to ACA § 1514 without the consent of the State of Indiana.

143. ACA § 1514 was not in any way considered by any federal court in the *NFIB* litigation. Both the natural reading of the text of ACA § 1514

and the Supreme Court's decision in *NFIB* show ACA § 1514 to be a tax on Plaintiffs. Such a tax exceeds Congress's enumerated powers as applied to the sovereign States and their agencies and political subdivisions, and therefore violates the Tenth Amendment under the Intergovernmental Tax Immunity Doctrine.

144. If ACA § 1514 were alternatively construed as an exercise of federal authority under the Commerce Clause of the Constitution as a saving construction of the provision, it would still exceed Congress's enumerated powers as applied to the sovereign States and their agencies and political subdivisions, and thus would still violate the Tenth Amendment.

145. Therefore, Plaintiffs are entitled to a judgment that 26 U.S.C. § 6056, as applied to the State of Indiana and its agencies and political subdivisions, is unconstitutional and void.

COUNT IV

Partial Severability

146. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

147. Alternatively, if the Court rejects Plaintiff's challenge under Count II but agrees with Plaintiffs on Count III, Plaintiffs allege that by the Federal Government's own admission, ACA § 1513 cannot be severed from ACA § 1514, therefore if 26 U.S.C. § 6056 is invalid as applied to Plaintiffs and their agencies, political subdivisions, and affiliates, then 26 U.S.C. §

4980H is likewise invalid as applied to Plaintiffs and their agencies, political subdivisions, and affiliates.

148. Additionally, ACA § 1514 cannot be severed from the other provisions of Part II of Subtitle F of Title I of the ACA, therefore ACA §§ 1511-1515 are invalid as applied to Plaintiffs and their agencies, political subdivisions, and affiliates.

COUNT V

Judicial Estoppel Against
Federal Enforcement of Employer Mandate in 2014

149. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

150. The text of ACA § 1514 is mandatory, and does not empower any Treasury official to grant relief from this legal obligation.

151. The text of ACA § 1513 pertaining to noncompliance with 26 U.S.C. § 4980H is mandatory, and does not empower either the President, or any Treasury official to waive these payments.

152. It violates the Bicameralism and Presentment Clause, U.S. Const. art. I, § 7, cl. 2, for any President to unilaterally modify a provision in an Act of Congress that either that President or any previous President has already signed into law.

153. Although neither a blog post nor a presidential speech purporting to grant relief from legal obligations carries any force of law, it would be manifest injustice for the Federal Government to impose any

sanctions against Plaintiffs or take any other action adverse to Plaintiffs for acting in reliance upon the contents of the July 2, 2013 blog post on the Treasury's website, or the President's subsequent speech.

154. Therefore, Plaintiffs are entitled to a declaratory judgment that Plaintiffs have relief from complying with these provisions or making relevant assessable payments for noncompliance in 2014, and that the Federal Government is estopped from taking any such adverse action.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that the IRS Rule violates the APA;

2. Enter a permanent injunction prohibiting the application or enforcement of the IRS Rule;

3. Declare 26 U.S.C. § 4980H (Employer Mandate), 42 U.S.C. § 18041 (Exchange), 26 U.S.C. § 36B (subsidy), 42 U.S.C. § 18082 (subsidy), and 26 U.S.C. § 6056 (reporting requirements), as applied to the Plaintiffs and their agencies, political subdivisions, and affiliates, to be in violation of the Tenth Amendment to the Constitution of the United States, and that in any event Plaintiffs are not liable for these requirements in 2014;

4. Declare that ACA §§ 1511-1513, 1515, are nonseverable from ACA § 1514 as applied to Plaintiffs and their agencies, political subdivisions, and affiliates.

5. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the ACA against the Plaintiffs, any of their agencies, political subdivisions, affiliates, officials or employees, and the citizens and residents of the State of Indiana, and to take such actions as are necessary and proper to remedy the violations deriving from any such actual or attempted enforcement;

6. Estop Defendants from taking any adverse action against the Plaintiffs, any of their agencies, political subdivisions, affiliates, officials or employees, and the citizens and residents of the State of Indiana for noncompliance with 26 U.S.C. §§ 4980H, 6056, in 2014; and

7. Award all other relief as the Court may deem just and proper, including any costs or fees to which the Plaintiff may be entitled by law.

Respectfully submitted,

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