February 9, 2012

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

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretaries Sebelius, Geithner, and Solis:

As Attorneys General of our respective states, we are writing to express our strong opposition to the U.S. Department of Health and Human Services' mandate requiring religious employers that provide health insurance coverage to their employees to include coverage for contraceptives, sterilization, and related services. Should this unconstitutional mandate be promulgated, we are prepared to vigorously oppose it in court.

The proposed regulations would compel religious affiliated organizations, hospitals, universities, and social service entities to subsidize contraceptive products and services which clearly violate their religious beliefs. We are deeply troubled by the unprecedented coercion of organizations and individuals to act contrary to their religious beliefs. The only viable alternative for these employers is to penalize their employees by ceasing the provision of health insurance altogether. The choice for such organizations essentially becomes: provide and subsidize activity in contravention with core religious beliefs, eliminate employer-provided health coverage, or withdraw from public ministry.

The proposed mandate provides an insufficiently narrow exemption which would fail to include religious affiliated organizations who do not "primarily employ persons who share their

religious tenets" and do not have "the inculcation of religious values" as their primary operational purpose. Such an exemption ignores the fact that many such organizations only exist and provide public ministry pursuant to a duty and sense of purpose *derived from their religious beliefs*. To obtain the exemption, a religious organization would have to subject itself to the equivalent of a government "religious audit" to determine whether the organization's activities are sufficiently religious to be excluded from the regulation's requirements. Even then, a great number of entities previously exempt from government regulations that run contrary to their religious beliefs would fail to qualify.

Not only is the proposed contraceptive coverage mandate for religious employers bad policy, it is unconstitutional. It conflicts with the most basic elements of the freedoms of religion, speech, and association, as provided under the First Amendment. It would compel religious organizations to act, subsidize products, and affirmatively promote a message in contravention with their religious principles, with the sole alternative being to cease activities of incalculable value to their employees, constituents, and, indeed, society as a whole.

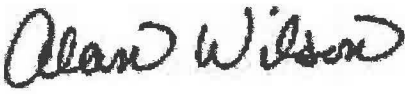
We strongly oppose the unconstitutional approach taken by the proposed contraceptive coverage mandate. We believe it represents an impermissible violation of the Constitution's First Amendment virtually unparalleled in American history.

Accordingly, we urge you in the strongest way possible to refrain from promulgating the proposed regulations.

Sincerely,

Jon Bruning
Attorney General of Nebraska

Greg Abbott
Attorney General of Texas



Alan Wilson
Attorney General of South Carolina