IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

ST. LOUIS EFFORT FOR AIDS; PLANNED PARENTHOOD OF THE ST. LOUIS REGION AND SOUTHWEST MISSOURI; CONSUMERS COUNCIL OF MISSOURI; MISSOURI JOBS WITH JUSTICE; JEANETTE MOTT OXFORD; DR. WAYNE LETIZIA; DR. WILLIAM FOGARTY; CHRIS WORTH, Plaintiffs,	)	
vs.	)	Case No: 2:13-cv-4246
JOHN HUFF, IN HIS OFFICIAL CAPACITY, AS THE DIRECTOR OF THE MISSOURI DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION, Defendant.	)	

COMPLAINT AND PRAYER FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs seek to enjoin Defendant John Huff and all other persons acting under his direction on behalf of the Missouri Department of Insurance, Financial Institutions and Professional Registration (Department) from giving effect to provisions of the Health Insurance Marketplace Innovation Act of 2013 (HIMIA) which prohibit some plaintiffs from performing the duties required of them by the Affordable Care Act (ACA), prohibit other plaintiffs from providing information about health insurance altogether, and prevent plaintiffs and the Missouri

public from receiving information about health insurance from the person or source of their choosing. The provisions plaintiffs challenge are contained in HIMIA, enacted during the 2013 legislative session, and are codified at MO. REV. STAT. §§ 376.2000 to 376.2014.

2. Sections 376.2002.3(3), 376.2002.3(5), and 376.2008 of S.B.262 directly conflict with the ACA by making it impossible for consumer assistance organizations authorized by the ACA, including plaintiffs St. Louis Effort for AIDS and Planned Parenthood, to perform the duties the ACA requires them to perform. For example:

- Section 376.2002.3(3) prohibits ACA-authorized consumer assistance organizations from providing advice concerning the benefits, terms, and features of a particular health plan. This provision prevents such organizations, including plaintiffs, from fulfilling their ACA-mandated duty to provide information to individuals about the full range of qualified health plans (QHPs). 42 U.S.C § 18031(i)(3)(B); 45 C.F.R. §§ 155.210(e)(2), 155.225(c)(3).
- Section 376.2002.3(5) prohibits ACA-authorized consumer assistance organizations from providing any information or services related to health benefits plans or other products not offered in the Exchange. This provision prevents such organizations, including plaintiffs, from fulfilling their ACA-mandated duty to provide information to individuals about the full range of QHPs and insurance affordability programs. 45 C.F.R. §§ 155.210(e)(2), 155.215(a)(1)(D)(iii), 155.225(c)(1).
- Section 376.2008 requires ACA-authorized consumer assistance organizations to refer individuals who bought their current health insurance from an insurance agent to advise such individuals to consult with an insurance agent regarding coverage in the private market. This provision prevents such organizations, including plaintiffs, from fulfilling

their ACA-mandated duties to distribute fair and impartial information concerning enrollment in insurance and to act in the best interests of those they assist. 42 U.S.C. § 18031(i)(3)(B); 45 C.F.R. §§ 155.210(e)(2), 155.225(d)(4).

As a result of these direct conflicts, plaintiffs St. Louis Effort for AIDS and Planned Parenthood have been placed in an untenable situation: if they comply with HIMIA they cannot perform the duties the ACA requires them to perform, but if they comply with the ACA and do perform those duties, they violate the Missouri law and are subject to thousands of dollars in penalties for doing so.

3. HIMIA also violates plaintiffs' First Amendment and Due Process rights. Section 376.2002.1 acts as a prior restraint on speech and penalizes individuals for reasons left undefined by the law. Plaintiffs are chilled from engaging in speech because they can be fined under HIMIA for engaging in protected speech, and they can be fined not only for violations of the Missouri insurance laws but also for "other good cause." MO. REV. STAT. §§ 376.2010, 376.2011. Plaintiffs fear providing information about insurance and fear being subject to penalties: plaintiff Dr. Letizia fears that the physicians working in his office cannot explain to their patients that they can now enroll in health plans on the Exchange; plaintiff Dr. Fogarty fears providing this information to patients that he has been consulting with for decades; plaintiff Consumers Council of Missouri has not conducted the public awareness activities about Exchanges it had intended to; plaintiffs Missouri Jobs with Justice and Jeanette Oxford fear answering questions about health insurance after giving presentations; and plaintiff Chris Worth fears seeking help from the experienced healthcare attorneys in his office because they could be penalized for providing him with information about the plans available to him.

4. Congress enacted the ACA to increase the number of Americans covered by health insurance and to decrease costs. *Nat'l Fed'n of Indep. Bus.v. Sebelius*, 132 S.Ct. 2566, 2580 (2012). To help accomplish this goal, the ACA established Exchanges where individuals could shop for health insurance in a transparent manner and also established consumer assistance programs to help individuals navigate through the Exchanges, understand the options available to them, and enroll in coverage. The ACA establishes different types of consumer assisters, including Navigators and Certified Application Counselors (also called Counselor Designated Organizations) who are plaintiffs in this suit. *See* 42 U.S.C. § 18031(i); 45 C.F.R. § 155.225.

5. The ACA expressly preempts state laws that prevent the application of its consumer assistance provisions: "Nothing in this title shall be construed to preempt any State law that *does not prevent the application of the provisions of this title*. 42 U.S.C. § 18041(d). (emphasis supplied).

6. Accordingly, plaintiffs petition this Court to declare invalid and to enjoin the enforcement of the HIMIA provisions described in this Complaint because they are preempted by federal law and therefore violate the Supremacy Clause of the United States Constitution, and because they infringe on plaintiffs' rights to free speech, association, and due process and therefore violate the First and Fourteenth Amendments to the United States Constitution.

PARTIES

7. Plaintiff St. Louis Effort for AIDS is incorporated in Missouri as a non-profit AIDS Service Organization. St. Louis Effort for AIDS is federally certified as a Counselor Designated Organization and is licensed by the State as a Missouri Navigator.

8. Plaintiff Planned Parenthood of the St. Louis Region and Southwest Missouri (Planned Parenthood) is incorporated in Missouri as a non-profit health services and educational

organization. Planned Parenthood is federally certified as a Counselor Designated Organization and is licensed by the State as a Missouri Navigator.

9. Plaintiff Consumers Council of Missouri is incorporated in Missouri as a non-profit consumer advocacy organization.

10. Plaintiff Missouri Jobs with Justice is incorporated in Missouri as a non-profit economic justice advocacy organization.

11. Plaintiff Dr. Wayne Letizia is the owner of Heartland Medical Care PC, a medical practice in Independence, Missouri. Dr. Letizia resides in Jackson County.

12. Plaintiff Dr. William Fogarty is a retired physician who volunteers with CHIPS Health and Wellness Center, a health care clinic that serves indigent persons in St. Louis, Missouri. Dr. Fogarty also volunteers with the Physicians for a National Health Program, a non-profit health advocacy organization. Dr. Fogarty resides in St. Louis County.

13. Plaintiff Jeanette Mott Oxford is the Executive Director of the Missouri Association for Social Welfare. Jeanette Oxford resides in St. Louis County.

14. Plaintiff Chris Worth is a community organizer with Paraquad in St. Louis, Missouri. Chris Worth resides in Jackson County.

15. Defendant John Huff is the state official responsible for enforcing the provisions of HIMIA and the implementing regulations, 20 C.S.R. 400-11.100 and 20 C.S.R. 400-11.120. The relief requested in this action is sought against the Defendant, in addition to his subordinate officers, employees, agents and other persons acting in cooperation with him, under his supervision or control or that of the Department of Insurance (Department). The Defendant is sued in his official capacity.

JURISDICTION AND VENUE

16. This action arises under the Constitution of the United States and the Patient Protection and Affordable Care Act, 42 U.S.C. § 300gg et seq. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and plaintiffs seek remedies under 42 U.S.C. § 1983 and 28 U.S.C. § 2201.

17. Venue lies in the Western District of Missouri pursuant to 28 U.S.C. § 1391(b) because the Defendant resides and performs his official duties in this District.

APPLICABLE LAW

18. The Supremacy Clause of the United States Constitution provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof…shall be the supreme Law of the Land…any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2.

19. The First Amendment to the United States Constitution provides that "Congress shall make no law…abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble." U.S. CONST. amend. I. The First Amendment is applicable to the States through Section 5 of the Fourteenth Amendment to the United States Constitution.

20. The Fourteenth Amendment to the United States Constitution provides that "no person shall be…deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV.

STATEMENT OF FACTS

The Affordable Care Act

21. The ACA was signed into law by the President of the United States on March 23, 2010. The ACA was passed by Congress in order to increase the number of persons insured and to

decrease health care costs. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2571 (2012).

22. The ACA establishes Exchanges, also known as marketplaces, through which individuals and small employers can purchase health insurance coverage. On the Exchange websites, consumers can compare and purchase QHPs offering standardized levels of coverage from multiple insurers. QHPs must be approved by the state regulatory authorities as meeting ACA statutory requirements.

23. Every state must have an Exchange.

24. If a state declines to create an Exchange, the Federal government operates a Federally-facilitated Exchange (FFE) in that state.

25. Missouri declined to create an Exchange; therefore, the United States Department of Health and Human Services (HHS) is administering the Exchange in Missouri.

The ACA Consumer Assister Provisions

26. The ACA requires every Exchange, whether state or federally operated, to establish consumer assister programs. Each state must have a Navigator program. FFEs are also required to have a Certified Application Assistance program. Navigators and Certified Application Counselors are entities and individuals who help inform consumers about health insurance options and enroll individuals in QHPs through the Exchange.

27. Navigators help consumers make informed decisions about health coverage options and help facilitate enrollment in QHPs. The ACA provides that Navigators "shall -- (A) conduct public education activities to raise awareness of the availability of qualified health plans; (B) distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of Title 26 of the Internal Revenue Code of

1986 and cost-sharing reductions under section 1402 [section 18071 of this title]; (C) facilitate enrollment in qualified health plans; (D) provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act [42 U.S.C. 300gg-93], or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and (E) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges." 42 U.S.C. § 18031(i)(3).

28. The implementing regulations provide that a Navigator must carry out the following duties: "(1) Maintain expertise in the eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange; (2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs; (3) Facilitate selection of a QHP; (4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and (5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act." 45 C.F.R. § 155.210(e).

29. Certified Application Counselors also provide consumers with help applying for health insurance coverage on the Exchange. *See* 45 C.F.R. § 155.225(d)(4). The ACA and implementing regulations provide that a Certified Application Counselor's duties are to "(1) Provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible; (2) Assist individuals and employees to apply for coverage in a QHP through the Exchange and for insurance affordability programs; and (3) Help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs." 45 C.F.R. § 155.225(c).

30. In performing the Certified Application Counselor duties, Counselors are required to "act in the best interest of the applicants assisted." 45 C.F.R. § 155.225(d)(4).

31. In order to perform Certified Application Counselor duties, Counselors must complete Exchange-approved training and pass an examination. 45 C.F.R. § 155.225(d)(1).

32. HHS guidance explains that organizations and individuals who are not Navigators or Certified Application Counselors are permitted to provide education and technical assistance to individuals seeking help with understanding their health insurance options and enrolling on the Exchange:

> Individuals and entities providing application and enrollment assistance related to health insurance or insurance affordability programs are not required to be certified application counselors, whether by the Exchange, state Medicaid or CHIP agencies, or to be organizations designated by the Exchange in order to continue providing those services or communicating with consumers. The certified application counselor program is not designed to limit existing or potential application assistance programs.

Standards for Navigators and Non-Navigator Assistance Personnel, 78 Fed. Reg. 42,843 (July 17, 2013).

33. The ACA authorizes Exchanges to regulate Certified Application Counselors. Thus, in states, like Missouri, that have elected to have the federal government operate their Exchange,

the federal government, and not the state, implements the Certified Application Counselor program. HHS has explained that "[n]o Section 1311(a) funding is available for certified application counselor training program costs in Federally-facilitated or State Partnership Exchanges, because the federal government is responsible for and states will not be involved in implementing the certified application counselor training program in those Exchanges." 78 Fed. Reg. 42,845 (July 17, 2013).

34. The ACA expressly preempts state laws that prevent the application of the ACA consumer assistance provisions. *See* 42 U.S.C. § 18041(d).

Missouri's HIMIA

35. On July 12, 2013, the Governor of Missouri signed into law HIMIA. HIMIA contains several provisions that prevent Navigators and Certified Application Counselors from performing the duties the ACA and its implementing regulations require them to perform.

36. The enforcement of HIMIA will result in significant damage to the plaintiffs, as well as to all Missouri Navigators, Certified Application Counselors and citizens, who by the terms of HIMIA cannot assist consumers in enrolling in the Exchange as required by the ACA and its implementing regulations; cannot engage in protected speech activities related to health insurance; and cannot receive the intended help of Navigators or Certified Application Counselors or that of private individuals.

A. HIMIA Conflicts with and Prevents the Application of the Affordable Care Act

Section 376.2000.2(4)

37. Section 376.2000.2(4) of HIMIA defines a Navigator as "a person that, for compensation, provides information or services in connection with eligibility, enrollment, or program specifications of any health benefit exchange operating in this state, including any person that is

selected to perform the activities and duties identified in 42 U.S.C. § 18031(i) in this state, any person who receives funds from the United States Department of Health and Human Services to perform any of the activities and duties identified in 42 U.S.C. § 18031(i), or any other person certified by the United States Department of Health and Human Services, or a health benefit exchange operating in this state, to perform such defined or related duties irrespective of whether such person is identified as a navigator, certified application counselor, in-person assister, or other title."

38. Section 376.2000.2(4) conflicts with and prevents the application of the ACA because it changes the definition of a Navigator as contained in the ACA. It both deems those who are not ACA-defined Navigators to be Navigators in Missouri, and permits those who the ACA prohibits from being Navigators to be Navigators in Missouri. The ACA provides that a Navigator is a person or entity who performs the duties of 42 U.S.C. § 18031(i)(3) and meets the standards of 42 U.S.C. § 18031(i)(4), whereas HIMIA includes persons an entities who neither perform all of the section 18031 duties nor meet all of the section 18031 standards. Therefore, Section 376.2002.2(4) is preempted.

39. HIMIA permits entities and individuals who are not federally certified consumer assisters, and thus need not meet the federal requirements and conflict-of-interest standards, to be Navigators under Missouri law. This results in a direct conflict between the federal law–which prohibits federally-certified Navigators and Certified Application Counselors from providing biased information, charging for their services and being insurance agents—and HIMIA, which allows Missouri-defined Navigators to provide biased information, charge consumers for their services, and be insurance agents. This dual system also misleads consumers about the assistance they will receive from a Missouri-defined Navigator, especially because Missouri-defined

Navigators who have conflicts-of-interest are not required to disclose such conflicts to consumers.

40. Section 376.2000.2(4) conflicts with and prevents the application of the ACA for an additional reason: it purports to regulate Certified Application Counselors even though the federal government has made clear that states may not be involved in the Certified Application Counselor program in states that have elected to have the federal government operate the Exchange in the state. 45 C.F.R. § 155.225; 78 Fed. Reg. 42,825 (July 17, 2013). Therefore, Section 376.2002.2(4) is preempted.

Section 376.2002.3(3)

41. Section 376.2002.3(3) prohibits a Navigator who is not also an insurance broker from "provid[ing] advice concerning the benefits, terms, and features of a particular health plan or offer[ing] advice about which exchange health plan is better or worse for a particular individual or employer."

42. The ACA and implementing regulations require Navigators to distribute fair and impartial information concerning enrollment in QHPs and require both Navigators and Certified Application Counselors to facilitate enrollment in a QHP. *See* 42 U.S.C. § 18031(i)(3)(B), 45 C.F.R. § 155.225(c)(3). Navigators provide impartial information by, among other things, "clarifying distinctions among QHPs." 78 Fed. Reg. 42,825 (July 17, 2013). Certified Application Counselors provide information "about the full range of QHP options" available. 45 C.F.R. § 155.225(c)(1).

43. Section 376.2002.3(3) prevents the application of the ACA because it requires Navigators and Certified Application Counselors to refrain from "provid[ing] advice concerning the benefits, terms, and features of a particular plan" as required by 376.2002.3(3). Navigators can

neither provide fair and impartial information nor clarify the distinctions among QHPs, and Certified Application Counselors cannot provide information about the full range of QHP options, if they cannot explain the benefits, terms and features of particular health plans. Therefore, Section 376.2002.3(3) is preempted.

Section 376.2002.3(5)

44. Section 376.2002.3(5) prohibits Navigators from "provid[ing] any information or services related to health benefits plans or other products not offered in the exchange."

45. The ACA requires Navigators to "provide information and services in a fair, accurate and impartial manner" and this information "must acknowledge other health programs." 45 C.F.R. § 155. 210(e)(2). The ACA and its implementing regulations also require Navigators and Certified Application Counselors to provide "information about the full range of QHP options and insurance affordability programs." 45 C.F.R. §§ 155.215(a)(1)(D)(iii), 155.225(c)(1).

46. Section 376.2002.3(5) conflicts with and prevents the application of the ACA and its implementing regulations because it prohibits consumer assisters from providing information about plans sold off the Exchange, whereas the ACA requires consumer assisters to provide information about plans sold off the Exchange and to acknowledge other health programs. To provide information about the full range of qualified health plans and insurance affordability programs, consumer assisters must provide information about and be free to discuss the QHPs that are sold off the Exchange, including insurance affordability programs such as CHIP and Medicaid which are products not offered on the Exchange. Therefore, Section 276.2002.3(5) is preempted.

Section 376.2008

47. Section 376.2008 provides that a Navigator "upon contact with a person who acknowledges having existing health insurance coverage obtained through an insurance producer… shall advise the person to consult with a licensed insurance producer regarding coverage in the private market."

48. The ACA requires a Navigator to "distribute fair and impartial information concerning enrollment in qualified health plans." 42 U.S.C. § 18031(i)(3)(B). The ACA and its implementing regulations also require Certified Application Counselors to "act in the best interest of the applicant assisted." 45 C.F.R. § 155.225(d)(4).

49. In contrast, the Missouri law compels the Navigator not to provide fair and impartial information but to advise certain people to consult with an insurance agent, who is charged to sell the policies of the company by whom she is employed. Section 376.2008 conflicts with and prevents the application of the ACA and its implementing regulations because, by compelling Certified Application Counselors to advise people to consult with an insurance agent who may have a pecuniary interest inconsistent with the consumer's best interest, it prevents such Counselors from acting in the consumer's best interest, as required by the ACA. Therefore, Section 376.2008 is preempted.

B. HIMIA Violates the First Amendment of the United States Constitution

Section 376.2002.1

50. Section 376.2002.1 provides that "no individual or entity shall perform, offer to perform, or advertise any service as a Navigator in this state, or receive Navigator funding from the State or an Exchange unless licensed as a Navigator by the Department under sections 376.2000 to 376.2014."

51. Section 376.2002.1 requires anyone, including a private individual, who comes within the Missouri definition of a Navigator and who performs any Navigator duty, which includes talking to individuals about insurance, to either obtain a Navigator license or be subject to fines or other penalties. The Navigator duties of conducting outreach and providing information are forms of speech protected by the First Amendment.

52. Section 376.2002.1 operates as a prior restraint on speech by requiring any person to obtain a license before discussing health insurance options with any other person. As such, Section 376.2002.1 has created a chilling effect on anyone who wishes to communicate with others who are interested in learning about their health insurance options or enrolling in a QHP.

53. Section 376.2002.1 is an impermissible prior restraint on speech and is void pursuant to the First Amendment of the United States Constitution.

Section 376.2002.3(3)

54. Section 376.2002.3(3) prohibits a Navigator, as defined in the Missouri law, from "provid[ing] advice concerning the benefits, terms, and features of a particular health plan or offer[ing] advice about which exchange health plan is better or worse for a particular individual or employer."

55. Section 376. 2002.3(3) is a content-based restriction on speech and violates the First Amendment of the United States Constitution. Therefore, Section 376.2002.3(3) is void under the United States Constitution.

Section 376.2002.3(5)

56. Section 376.2002.3(5) prohibits Navigators, as defined in the Missouri law, from "provid[ing] any information or services related to health benefits plans or other products not offered in the exchange."

57. Section 376. 2002.3(5) is a content-based restriction on speech and violates the First Amendment of the United States Constitution. Therefore, Section 376.2002.3(5) is void under the United States Constitution.

Section 376.2008

58. Section 376.2008 provides that a Navigator, as defined in the Missouri law, "upon contact with a person who acknowledges having existing health insurance coverage obtained through an insurance producer… shall advise the person to consult with a licensed insurance producer regarding coverage in the private market."

59. Section 376.2008 is a content-based restriction on speech and violates the First Amendment of the United States Constitution. Therefore, Section 376.2008 is void under the United States Constitution.

Section 376.2004.1(6)

60. Section 376.2004.1(6) provides that "an individual applying for a navigator license shall make application to the department [of insurance] on a form developed by the director and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual: (1) is eighteen years of age or older; (2) resides in this state or maintains his or her principal place of business in the state; (3) is not disqualified for having committed any act that would be grounds for refusal to issue, renew, suspend, or revoke an insurance producer license under section 375.141; (4) has successfully passed the written examination prescribed by the director; (5) when applicable, has the written consent of the director under 18 U.S.C. 1033 or any successor statute regulating crimes by or affecting persons engaged in the business of insurance whose activities

affect interstate commerce; (6) *has identified the entity with which her or she is affiliated and supervised*; and (7) has paid the fees prescribed by the director." (emphasis added).

61. Section 376.2004.1(6) requires any individual performing Navigator duties, as defined in the Missouri law, to affiliate with an entity and thereby compels affiliation in violation of the individual's freedom of association guaranteed by the First Amendment. Therefore, Section 376.2004.1(6) is void under the United States Constitution.

C. HIMIA Violates the Fourteenth Amendment of the United States Constitution

Section 376.2010.1

62. Section 376.2010.1 provides that "the director may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license or may levy a fine not to exceed one thousand dollars for each violation or any combination of actions, for any one or more of the causes listed in section 375.141, 375.936 or for other good cause."

63. Section 376.2010.1 does not give the plaintiffs fair notice of the conduct it prohibits or requires. Section 376.2010.1 does not explain who the Director may levy a fine against and it does not explain what conduct is punishable because of "good cause." Therefore, Section 376.2010.1 does not give adequate notice and thus violates the Fourteenth Amendment Due Process Clause of the United States Constitution.

THE IMPACT OF HIMIA ON THE PLAINTIFFS

1. St. Louis Effort for AIDS

64. The St. Louis Effort for AIDS is an AIDS service organization that was founded in 1985 to provide comprehensive support services to people affected by the disease and to provide education to the public about the prevention of the disease.

65. The St. Louis Effort for AIDS administers two programs that are affected by HIMIA: a Certified Application Counselor Program and a Ryan White Case Management Program.

66. The St. Louis Effort for AIDS has been certified by the Federal Exchange as a Certified Application Counselor, also called a Designated Counselor Organization. St. Louis Effort for AIDS received a grant from the Missouri Foundation for Health to compensate its Certified Application Counselors for providing services to individuals seeking help with enrollment on the Exchange. St. Louis Effort for AIDS employs six Certified Application Counselors.

67. The St. Louis Effort for AIDS holds a Missouri Navigator entity license and the six Certified Application Counselor employees each hold an individual Missouri Navigator license.

68. The St. Louis Effort for AIDS has expended considerable time and resources to comply with the Missouri Navigator licensing requirements. St. Louis Effort for AIDS paid the licensing fees for both the organization and the individual Certified Application Counselors. The individual Certified Application Counselors had to pay for and comply with background checks. Individual Certified Application Counselors were also required to answer invasive questions unrelated to the performance of their jobs.

69. The St. Louis Effort for AIDS has also expended time and resources to determine whether its Certified Application Counselors can comply with both the ACA and HIMIA. Under S.B.262, the St. Louis Effort for AIDS cannot provide information to Missourians about the full range of QHPs and insurance affordability programs and act in Missourians best interest as required by the ACA and also comply with HIMIA.

70. The St. Louis Effort for AIDS has federal statutory duties that it must comply with, is monitored by the Exchange, and can lose its certification for not properly performing its duties. HIMIA makes it impossible for The St. Louis Effort for AIDS to perform its duties without

violating Missouri law. Therefore, St. Louis Effort for Aids must either forego fulfilling its ACA obligations or be subject to penalty under HIMIA.

71. The St. Louis Effort for AIDS has also spent time and resources trying to determine whether its Ryan White case managers are violating HIMIA.

72. The St. Louis Effort for AIDS receives Ryan White Care Act funding through the Health Resources and Services Administration of the federal government which it uses to employ sixteen Ryan White case managers who provide medical case management and support services to those affected by the disease.

73. The Ryan White case managers provide extensive health services and insurance assistance to their clients, including facilitating the selection of QHPs and helping their clients to initiate the enrollment process, and providing information about the costs of coverage to their clients.

74. The St. Louis Effort for AIDS Ryan White clients are often extremely sick individuals who depend on their case managers to help understand their health insurance options and facilitate enrollment into coverage.

75. The St. Louis Effort for AIDS is concerned that if its Ryan White case managers continue to perform their case manager duties without obtaining a Missouri license they could incur penalties of thousands of dollars.

76. The St. Louis Efforts for Aids also fears that it will suffer a loss to its business reputation if it can no longer provide the same service it has been providing its clients for over twenty years.

2. Planned Parenthood of the St. Louis Region and Southwest Missouri

77. Planned Parenthood of St. Louis Region and Southwest Missouri (Planned Parenthood) is a non-profit health services provider and educational organization that was founded in 1932.

78. Planned Parenthood has been certified by the Federal Exchange as a Designated Counselor Organization. Planned Parenthood received a grant from a private foundation in order to compensate its Certified Application Counselors for providing services to individuals seeking help with enrollment on the Exchange. Planned Parenthood employs seven individual Certified Application Counselors.

79. Planned Parenthood holds a Missouri Navigator license and the seven individual Certified Application Counselors hold individual Missouri Navigator licenses.

80. Planned Parenthood has expended considerable time and resources to comply with the Missouri Navigator licensing requirements. Planned Parenthood paid for the licensing fees for both the organization and the individual Certified Application Counselors. The individual Certified Application Counselors were required to answer invasive questions unrelated to the performance of their jobs.

81. Planned Parenthood began working as a Certified Application Counselor on November 1, 2013. As part of its work, Planned Parenthood has sponsored events at its health centers to provide information about enrolling in QHPs on the Exchange. Planned Parenthood has also provided information to the community about the Exchange and has gone door-to-door in St. Louis to raise awareness about the Exchange. In addition, Planned Parenthood receives numerous calls about the Exchange, enrollment, and the health insurance plans from Missourians on a daily basis.

82. In the performance of these activities, Planned Parenthood has received numerous questions from individuals, including: whether there are differences between the plans that are

offered on the Exchange and what the differences are, whether there are any products a person should consider off the Exchange, and whether a person can qualify for either Medicaid or a subsidy through the Exchange, whether a person will be able to keep a particular doctor on a certain plan.

83. Planned Parenthood believes that as a federally Certified Application Counselor it is obligated to answer these questions because the ACA requires that a Certified Application Counselor provide information about the full range of QHP options and insurance affordability programs for which individuals are eligible and act in the best interest of the individual. However, Planned Parenthood believes that it cannot answer these questions because under HIMIA, it is not allowed to discuss the benefits, terms and features of health plans or to talk about products not offered on the Exchange. The Certified Application Counselors fear answering these basic questions because they could be penalized under HIMIA for doing so. As a result of HIMIA, Planned Parenthood's speech is being chilled.

84. Planned Parenthood also receives questions about enrolling in the Exchange and the health plans offered on the Exchange from individuals who are already insured. Many of these individuals obtained their coverage through an insurance broker.

85. Planned Parenthood believes that it cannot fulfill its obligation to act in these individuals best interest under the ACA if it is required to advise them to consult with the broker from whom they originally obtained insurance.

86. Planned Parenthood has federal statutory duties that it must comply with, is monitored by the Exchange, and can lose its certification for not properly performing its duties. HIMIA makes it impossible for Planned Parenthood to perform its duties without violating Missouri law.

Therefore, Planned Parenthood must either forego fulfilling its ACA obligations or be subject to penalty under HIMIA.

3. Consumers Council of Missouri

87. Consumers Council of Missouri is a non-profit consumer advocacy organization that provides information to the general public about consumer issues with insurance.

88. Consumers Council of Missouri is concerned with ensuring all Missourians have access to healthcare. Because of this concern, the Consumers Council of Missouri intended to conduct public education activities about QHPs and provide Missourians with information about enrollment and the availability of subsidies.

89. Consumers Council of Missouri believes that it cannot conduct public education activities and provide Missourians with information about enrollment because performing these duties could be performing "service as a Navigator" and thus the Consumers Council of Missouri could be penalized for doing so without a license.

90. Consumers Council of Missouri has not performed any of the activities related to awareness and providing information that it had intended. As a result of HIMIA, Consumers Council of Missouri's speech is being chilled.

4. Missouri Jobs with Justice

91. Missouri Jobs with Justice is a non-profit economic justice organization that was founded in 1999.

92. Missouri Jobs with Justice has historically provided information about healthcare to its members. Missouri Jobs with Justice is currently advocating to expand Medicaid in Missouri, and its members discuss Medicaid at membership meetings and community forums.

93. During presentations about Medicaid, the Missouri Jobs with Justice is often asked questions by its members, including: what is the relationship between the Exchange and Medicaid, who qualifies for Medicaid, who would qualify for a subsidy, and where do I get information about the Exchanges?

94. Missouri Jobs with Justice would like to answer these questions for its members, particularly because many of its members would qualify for subsidies and because its members trust Missouri Jobs with Justice as a reputable source for information on health insurance. However, because answering these questions could be seen as providing service "as a Navigator" by distributing fair and impartial information concerning enrollment in qualified health plans and the availability of premium tax credits and by providing referrals to health insurance consumer assisters or ombudsman, the Missouri Jobs with Justice is concerned that its educational outreach could be a violation of HIMIA. As a result of HIMIA, Missouri Jobs with Justice's speech is being chilled.

5. Dr. Wayne Letizia

95. Dr. Letizia is a retired physician who owns Heartland Medical Care PC, a primary care physician's office in St. Louis, Missouri.

96. Dr. Letizia employs two physicians to provide care to patients. As part of this service, the physicians often discuss health insurance options with patients.

97. Heartland Medical Care PC is funded in part through the insurance payments of its patients, and therefore, Heartland Medical Care PC has an interest in ensuring that its patients know about all the health insurance options available.

98. The Heartland Medical Care PC physicians regularly talk to their patients about insurance options, including health plans both on and off the Exchange. Written materials are also available

to the patients of Heartland Medical Care PC about the Exchange and various health insurance options.

99. The Heartland Medical Care PC patients prefer obtaining health insurance information from their physicians who intimately understand their needs.

100. Dr. Letizia fears that his practice and employees face financial penalties for providing information about and discussing health insurance with their patients.

101. Dr. Letizia fears that HIMIA will prevent his physicians from providing the best and most comprehensive care possible if they can no longer discuss health insurance options with patients. While HIMIA exempts health care providers from being licensed as Navigators, it nevertheless subjects them to penalties for discussing the benefits, terms and features of health plans and for discussing products not offered on the Exchange. As a result, Dr. Letizia fears that the reputation of his business will suffer. He also fears that this loss in reputation will result in financial loss to his practice.

6. Dr. William Fogarty

102. Dr. William Fogarty is a retired physician who volunteers at CHIPS Health and Wellness Center (CHIPS) and travels with the Physicians for a National Health Program (PNHP). Both as a volunteer at CHIPS and as a speaker for PNHP, Dr. Fogarty regularly discusses health insurance.

103. At the CHIPS clinic, Dr. Fogarty is frequently asked about health coverage by his patients. Because many of the patients are indigent, Dr. Fogarty often discusses health insurance affordability programs, such as Medicaid and the Missouri Gateway Insurance Program, and the subsidies available for purchasing health insurance through the Exchange. Dr. Fogarty sometimes discusses the different health plans in general terms. Dr. Fogarty also informs his

patients that they can seek further assistance and help enrolling in a health insurance program with the CHIPS' social worker.

104. As part of Dr. Fogarty's work with PNHP, he travels throughout Missouri and the country to discuss health insurance, both about expanding Medicaid and the Exchanges.

105. As a physician and advocate, Dr. Fogarty is concerned that HIMIA will prevent him from continuing to make presentations about health insurance through PNHP and from advising and providing information to his patients about their health insurance options. While HIMIA exempts health care providers from being licensed as Navigators, it nevertheless subjects them to penalties for discussing the benefits, terms and features of health plans and for discussing products not offered on the Exchange.

7. Jeanette Mott Oxford

106. Jeanette Oxford is the Executive Director the Missouri Association for Social Welfare (MASW). MASW is a public policy organization concerned with the health and welfare of Missouri citizens.

107. As the Executive Director of MASW, Jeanette Oxford presents on health insurance, especially Medicaid, and is a community resource for information about health insurance.

108. As part of the presentations she makes and based on her reputation, Jeanette Oxford is often asked questions by members of the community about enrolling in the Exchanges, where to seek help and who qualifies for subsidies.

109. Jeanette Oxford has expended time and resources trying to determine whether she could answer these questions and whether other members in her organization could perform outreach related to the Exchange. Jeanette Oxford has scrutinized HIMIA and even provided testimony to the Missouri Department of Insurance on the impact of the bill and rules.

110. Jeanette Oxford does not believe that she can answer the questions she gets from the community about the availability of qualified health plans and subsidies without obtaining a Missouri Navigator license because doing so could be performing service "as a Navigator" and thus she could be subject to penalties. As a result of HIMIA, Jeanette Oxford's speech is being chilled.

8. Chris Worth

111. Chris Worth is a community organizer at Paraquad, a non-profit disability services and advocacy center. Chris Worth has some health coverage with Paraquad but his current plan does not cover all of his needs.

112. Chris Worth has cerebral palsy which has historically made finding a health plan that covers all of his needs difficult. Chris Worth would like to explore the new health options available to him through the Exchange.

113. Chris Worth has tried to use healthcare.gov to explore the health plan options offered on the Exchange but found the website difficult to navigate.

114. Chris Worth would like to make an educated choice about which plan to choose and believes that the healthcare attorneys in Paraquad are best suited to give him advice about the various plans offered on and off the Exchange.

115. Chris Worth has not sought help from his colleagues for fear that they could be penalized under HIMIA for providing him advice about the terms, benefits and features of the plans offered on the Exchange. As a result, Chris Worth is uncertain how he will proceed with obtaining the information he wants about the health plans on the Exchange.

116. Although Chris Worth would prefer talking to the attorneys in his office who are knowledgeable about health insurance, he is unable to seek their advice about the differences

among the qualified health plans because the attorneys are not permitted to discuss the benefits, terms and features of the health plans under HIMIA. While HIMIA exempts attorneys from being licensed as Navigators, it nevertheless subjects them to penalties for discussing the benefits, terms and features of health plans and for discussing products not offered on the Exchange.

CAUSES OF ACTION

FIRST CAUSE OF ACTION-VIOLATION OF THE SUPREMACY CLAUSE

117. Plaintiffs re-allege all of the allegations in the preceding paragraphs.

118. Sections 376.2000.2(4), 376.2002.3(3), 376.2002.3(5), and 376.2008 of HIMIA, taken in whole or in part, prevent the application of title I of the ACA by prohibiting consumer assisters from performing the duties required of them by the ACA and its implementing regulations, conflict with the ACA and implementing regulations, and impede the objectives and purposes of the ACA and implementing regulations, and as a result are preempted by the Supremacy Clause of the United States Constitution, art. VI.

SECOND CAUSE OF ACTION-VIOLATION OF FIRST AMENDMENT RIGHTS TO FREE SPEECH AND ASSOCIATION

119. Plaintiffs re-allege all of the allegations in the preceding paragraphs.

120. Sections 376.2002.1, 376.2002.3(3), 376.2002.3(5), 376.2008, and 376.2004.1(6) violate the Plaintiffs' First Amendment rights by creating an impermissible prior restraint on their speech, by restricting the content of Plaintiffs' speech, and by compelling Plaintiffs to affiliate with an entity before engaging in speech. As a result of HIMIA, the Plaintiffs' ability to exercise their First Amendment rights has been curtailed, and they have significant fear of considerable fines and penalties if they exercise these rights in the future.

121. Defendant has no compelling or legitimate interest in support of HIMIA's restrictions on speech.

122. Sections 376.2002.1, 376.2002.3(3), 376.2002.3(5) 376.2008, and 376.2004.1(6) are not narrowly tailored to achieve any compelling government interest.

123. As a proximate result of the Defendants actions, the Plaintiffs have been deprived of their rights under the First Amendment, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION- VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

124. Plaintiffs re-allege all of the allegations in the preceding paragraphs.

125. Section 376.2010.1 does not provide adequate notice of the conduct that is forbidden or required in violation of the due process rights of Plaintiffs.

126. Persons of ordinary intelligence must guess at the meaning, scope and application of Section 376.2010.1.

127. Section 376.2010.1 lends itself to discriminatory enforcement by the Defendant in an arbitrary manner.

128. The Defendant has unbridled discretion to decide what conduct constitutes "good cause" and to levy fines for "good cause."

129. Section 376.2010.1 violates Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Wherefore, the Plaintiff requests the following relief:

1. A declaratory judgment stating that HIMIA, codified in sections 376.2000 through 376.2014, are invalid, null, and void, because HIMIA cannot be given effect without the provisions which are invalid under the Supremacy Clause and the First and Fourteenth Amendments to the United States Constitution;
2. Preliminary and permanent injunctions prohibiting the Defendant from enforcing Sections 376.2000 through 376.2014 of HIMIA;
3. A waiver of the requirement under Rule 65(c) that Plaintiffs post a bond or otherwise give security should injunctive relief be granted;
4. An order awarding the Plaintiffs their reasonable attorney fees and costs in this action;
5. Any other relief this Court deems just and proper.

Respectfully submitted,

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Attorneys for Plaintiffs

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

ST. LOUIS EFFORT FOR AIDS ET AL. AND ALL OTHERS SIMILARLY SITUATED (See attachment)

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Jay Angoff and Ingrid Babri
Jane Perkins and Abbi Coursolle
(See attachment)

DEFENDANTS

JOHN HUFF, IN HIS OFFICIAL CAPACITY, AS THE DIRECTOR OF THE MISSOURI DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

County of Residence of First Listed Defendant Cole
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. § 300gg and 42 U.S.C. § 1983

Brief description of cause:
Deprivation of freedom of speech, due process, and rights under the Patient Protection and Affordable Care Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
11/25/2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Civil Cover Sheet

I. (a) PLAINTIFFS

St. Louis Effort for Aids;
Planned Parenthood of the St. Louis Region and Southwest Missouri;
Consumer Council of Missouri;
Missouri Jobs with Justice;
Jeanette Mott Oxford;
Dr. Wayne Letizia;
Dr. William Fogarty;
Chris Worth

I. (c) Attorneys for Plaintiffs (Firm Name, Address, and Telephone Number)

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