Congress of the United States
Washington, DC 20515

September 22, 2014

The Honorable Sylvia Burwell
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Burwell:

We are deeply disappointed that the two new rules released by the Administration on August 22 fail to cure the constitutional violations of the free exercise of countless Americans. By not providing a clear exemption from the mandate for those with religious or moral objections, the proposed rules fail to resolve this ongoing legal and regulatory controversy.

The government may not dictate how Americans may exercise their beliefs. The interim final rule and the proposed rule relating to sterilization and contraception services miss the crux of the conscionable objections that Americans have with providing coverage for certain drugs and devices, including potentially life-ending drugs, and the Administration has once again shown its blatant disregard for the basic constitutional rights of those affected. Instead of alleviating these violations, the Administration has merely regurgitated and complicated an "accommodation" process that has already been deemed insufficient.

The interim final rule issued by the Departments of Labor, Health and Human Services and the Treasury provides another version of the existing "accommodation" without offering a fundamentally different approach. Under this process the government has taken it upon itself to determine what is morally acceptable to conscionable objectors. This new paperwork option does not change the outcome. Notifying the administration of their objection so that the Administration can direct their insurance company to provide the coverage anyway is hardly different from the prior process in which notification to the insurance company triggered the coverage.

The proposed accommodation has already been rejected by over 50 nonprofit charities, schools and religious organizations that have brought suit. Despite clear objection to this policy, the proposed rule would expand this inadequate accommodation to "closely-held for-profit companies." This is a problematic proposal. Furthermore, the proposed rule overreaches the Supreme Court's decision in *Burwell v. Hobby Lobby* by seeking to limit who is eligible for protection and who is not. The government is not the arbiter of who qualifies for constitutional protection and who does not. Religious liberty applies to all, and any rule that attempts to limit who may exercise these freedoms is unconstitutional and intolerable.

We find it troubling that the Administration is maintaining this misguided position and needlessly placing American businesses and nonprofits that serve the poorest among us at continued risk. The new proposals are unacceptable and fundamentally flawed, but they also

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leave many unanswered questions as to how they will function. For this reason, we seek greater clarification of these new proposals and ask for responses to the below questions:

1. How will the interim final rule address the conscionable objections of nonprofits that operate as their own third party administrator? Will an alternative solution be provided? If so, please provide an expected timeframe.

2. How will the Administration define a "closely-held for-profit company"? Will HHS adopt the term used by the Internal Revenue Service? If not, please explain the process to create this definition and any efforts that will be taken to ensure transparency.

3. In the 2012 rule proposed by the Administration, it was stated that a letter would also be required to satisfy an exception from the mandate. This stated letter was later finalized as Form 700. Will the interim final rule describing a letter become another government form?

4. The Treasury interim final rule contains an expiration date for 2017. Will this serve as a temporary resolution or was this an oversight?

We remain deeply concerned that the Administration has again failed to simply exempt these nonprofits and businesses from the mandate. This controversial mandate has proven a lengthy legal and regulatory burden that has spanned years and remains unresolved. We suspect there is an inexcusable amount of cost to the taxpayers for the work conducted by the Administration in this matter, but the obvious additional cost to these family businesses and nonprofits that are dedicated to creating jobs and serving in our communities in both time and monetary impact is unconscionable.

Please provide a response to our offices no later than 30 days from the date of this letter. Your prompt responses to these important questions will help lawmakers and the public better understand the expectations from the Department.

Thank you for your attention to this important matter. Should you have any questions pertaining to this request, do not hesitate to contact Ellen Cain in Congressman Diane Black's office at 202-225-4231.

Sincerely,

Diane Black
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Member of Congress

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Member of Congress

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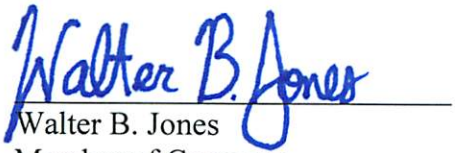

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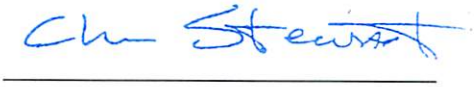

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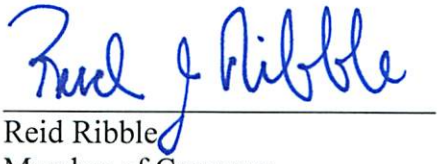

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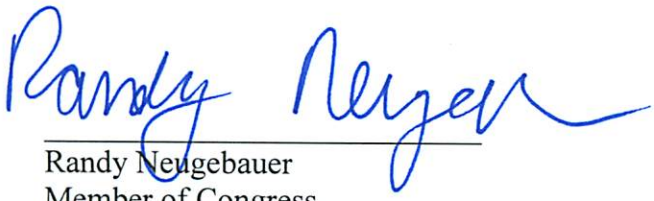

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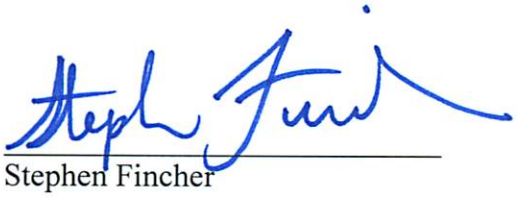

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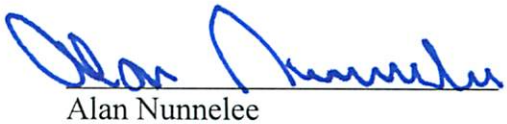

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