

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

LEAGUE OF WOMEN VOTERS OF TENNESSEE;)	
ALLISON CAVOPOL;)	
CAROL COPPINGER, on her own behalf and as)	
next friend of SAMUEL SHIRLEY;)	
REVEREND JERRY CRISP;)	
TOM JOHNS, M.D.;)	
TERRELL McDANIEL, Ph.D.;)	
BRIAN PADDOCK;)	
RANDALL RICE;)	
MERYL RICE; and)	
REVEREND JAMES THOMAS,)	
)	
Plaintiffs)	
)	
vs.)	No. _____
)	
JULIE MIX McPEAK, Tennessee Commissioner of)	Part _____
Commerce and Insurance;)	
TENNESSEE DEPARTMENT OF COMMERCE)	
AND INSURANCE; and)	
ROBERT E. COOPER, JR., Tennessee Attorney General)	
And Reporter,)	
)	
Defendants)	

COMPLAINT

SUMMARY OF ISSUES

1. This complaint seeks a declaratory judgment that emergency rules (“Emergency Rules”) issued by the defendant Tennessee Department of Commerce and Insurance (DCI) are void because they conflict with the Tennessee and United States Constitutions, as well as with federal law and regulations.
2. The Emergency Rules purport to regulate the activities of “navigators” who are designated by federal officials to help implement the Patient Protection and Affordable Care Act (“the Affordable Care Act” or “ACA”), commonly referred to as “Obamacare.”

3. The Emergency Rules regulate a host of private individuals and organizations beyond those who are federally designated as navigators, however. The Emergency Rules also require fingerprinting, criminal background checks, and registration with DCI before anyone can engage in any of a broad array of constitutionally protected activities. Those activities include “facilitating enrollment” in health plans offered under the ACA, “public education” about the insurance coverage and tax credits available under the ACA, and “consumer assistance” to those seeking benefits.
4. The Emergency Rules prohibit the “discuss[ion of] the benefits, terms or features” of any health plan offered under the ACA, or the offering of advice about which plans may be most suitable for an individual—exactly the sort of assistance that federal regulations require navigators to provide and encourage other volunteers to offer.
5. As broad as the Emergency Rules are, their boundaries are unknown and unknowable, moreover, because they also apply to all persons, other than insurance producers, who “*could reasonably be described* or designated as, navigators, ‘non-Navigator assistance personnel’ or ‘in-person assistance personnel,’ application assisters or application counselors including certified application counselors.”
6. Plaintiffs are individuals whose exercise of their professional responsibilities or First Amendment rights subjects them to the Emergency Rules and its penalties. In bringing this action, Plaintiffs invoke this Court’s constitutional authority to grant relief through the writ of certiorari, as well as declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.
7. The Court should grant Plaintiffs relief for three main reasons:
 - First, the Emergency Rules violate state law. The authorizing legislation, Chapter 377, violates the Tennessee Constitution because it is broader than its bill caption, and because it violates the separation of powers by authorizing the Executive Branch to regulate the

practice of law. The Emergency Rules were also promulgated through defective procedures.

- Second, the Emergency Rules are unconstitutionally vague and overbroad. They require myriad individuals who receive no public funds and have no connection to the federal navigator program -- and want no connection to the federal navigator program -- to register with the state and obtain the defendant Commissioner's certification before they can engage in protected First Amendment activities. The Emergency Rules also categorically prohibit some protected speech.
- Third, the Emergency Rules are preempted because they conflict with federal law. They impede implementation of the ACA by preventing individuals from being able to obtain federally funded and authorized consumer assistance and information.

PARTIES

A. Plaintiffs

8. The League of Women Voters of Tennessee is incorporated in Tennessee as a non-profit educational corporation and as a separate non-profit member organization.
9. Allison Cavopol is an adult resident of Nashville, Davidson County, Tennessee. She is the Executive Director of the International English Institute in Nashville.
10. Carol Coppinger is an adult resident of Whitwell, Marion County, Tennessee. She is the mother of Samuel Shirley.
11. Samuel Shirley is a 20-year old resident of Whitwell, Marion County, Tennessee. He brings this action through his mother, Carol Coppinger, acting as his next friend.
12. Reverend Jerry Crisp is an adult resident of Whiteville, Hardeman County, Tennessee. He is the pastor of Union Hill Church in Whiteville.
13. Tom Johns, M.D., is an adult resident of Davidson County. He is a board certified rheumatologist who is retired from full-time medical practice.

14. Terrell McDaniel is an adult resident of Hendersonville, Sumner County, Tennessee. He is a licensed clinical psychologist and maintains his practice in Hendersonville.
15. Brian Paddock is an adult resident of Cookeville, Putnam County, Tennessee. He is a licensed attorney.
16. Randall Rice is an adult resident of Hardeman County, Tennessee. He is a retiree and community volunteer.
17. Meryl Rice is an adult resident of Hardeman County, Tennessee. She is a retired licensed clinical social worker who volunteers her time to assist people with mental disabilities.
18. Reverend James Thomas is an adult resident of Nashville, Davidson County, Tennessee. He is the pastor of Jefferson Street Missionary Baptist Church in Nashville.

B. Defendants

19. Julie Mix McPeak is the Tennessee Commissioner of Commerce and Insurance. Pursuant to T.C.A. §§ 4-5-1302, the Tennessee Department of Commerce and Insurance is under her general charge and direction. She is authorized by T.C.A. § 56-2-301 to promulgate rules and regulations that have the force of law. Chapter 377, Public Acts of 2013 (“Chapter 377”) authorizes the defendant Commissioner to issue rules regulating navigators in the implementation of the Affordable Care Act.
20. The Tennessee Department of Commerce and Insurance is created by T.C.A. § 4-3-1301 as a department of the Executive Branch.
21. Robert E. Cooper, Jr., is the Tennessee Attorney General and Reporter pursuant to Article VI, Section 5 of the Tennessee Constitution. He is named as a defendant in this action pursuant to T.C.A. § 29-14-107(b) and Rule 24.04, Tennessee Rules of Civil Procedure.

JURISDICTION AND VENUE

22. This court has jurisdiction to grant declaratory and injunctive relief pursuant to T.C.A. §§ 29-14-102 and 4-5-225, and 42 U.S.C. § 1983. Venue in this action against defendant state officials lies properly in this court.

FACTS

C. The Affordable Care Act

23. The Affordable Care Act (ACA) was approved by Congress and signed into law in 2010. Pub. L. 111-148. The ACA is a comprehensive law that seeks to reform health care insurance and delivery in the United States by extending health coverage to most uninsured Americans, and by controlling the cost of health care and improving its quality. *National Federation of Business v. Sebelius*, 132 S. Ct. 2566 (2012).
24. Among other things, the ACA calls for the establishment of two online health insurance exchanges in each state, effective October 1, 2013.
25. One of the exchanges is for the sale of individual insurance policies and is known as the Health Insurance Marketplace (Marketplace).
26. The other exchange is for the sale of group employee health insurance to small businesses and is known as the Small Business Health Options Program, or “SHOP” exchange.
27. If a state declines to administer the exchanges, responsibility for their management devolves to the federal Department of Health and Human Services (HHS).
28. Tennessee has notified HHS that it will not administer the exchanges within this state. The Tennessee Marketplace and SHOP exchange will therefore be federally administered.

29. Individuals under age 65 who do not otherwise have access to minimum essential health coverage at an affordable price can apply for coverage in the online Marketplace.
30. The Marketplace will first assess applicants for potential eligibility for the Medicaid program, known as “TennCare” in Tennessee, and for Tennessee’s Children’s Health Insurance Program (“CHIP”), known as CoverKids.
31. If ineligible for those programs, families with incomes between 100% and 400% of the federal poverty level (approximately \$23,000 to \$92,000 for a family of four) can obtain premium tax credits, calculated on a sliding scale, to make the cost of health coverage affordable.
32. Each state’s marketplace will offer an array of commercial health insurance products, known as qualified health plans (“QHPs”) approved by the state insurance regulatory agency. In Tennessee, the agency that approves QHPs to offer coverage in the Marketplace is the defendant Department of Commerce and Insurance.
33. The QHPs are grouped by so-called “metal tiers”, *i.e.*, bronze, silver, gold and platinum, in terms of their ascending value and price.
34. The QHPs within a given tier compete on the basis of quality and by offering different combinations of benefits and cost-sharing. In order to receive the premium tax credit for which she qualifies, an individual must apply through the Marketplace. She must choose a metal tier and then select the specific QHP within that tier that best serves her family’s needs.
35. For those who file successful, timely applications and pay premiums as required, QHP coverage will take effect January 1, 2014.

D. The role and federal regulation of Navigators under the ACA

36. The process of applying for health coverage and premium tax credits, and selecting a QHP that best meets a family’s needs, is complex. The process is especially challenging for individuals with limited prior experience with health insurance.
37. In order to assist the uninsured to understand what health benefits they can qualify for, and to help them enroll in a QHP through the Marketplace, the ACA provides for the selection, training and oversight of so-called “navigators.” Navigators are employed with federal funding granted to local companies and non-profit agencies in each state. 42 U.S.C. § 18031(i). (Please see relevant excerpts of the federal statute compiled in Appendix 1.)
38. Navigators’ duties include outreach and raising public awareness of the availability of health coverage through the Marketplace. 42 U.S.C. § 18031(i)(3); 45 C.F.R. § 155.210(e). (Please see relevant federal regulations compiled in Appendix 2.)
39. Navigators undergo federal training and testing to qualify them to provide one-on-one individual assistance to consumers “about the full range of QHP options and insurance affordability programs for which they are eligible,” and to enable them to “facilitate selection of a QHP.” 45 C.F.R. §§ 155.210(e)(3) and 155.215(a)(1)(iii).
40. Navigators must comply with rigorous federal patient privacy and security laws and regulations. 45 C.F.R. §§ 155.210(b)(2)(iv) and 155.260.
41. Navigators are monitored by the Marketplace to ensure that the assistance they provide is fair, accurate and impartial. 42 U.S.C. § 18031(i)(4); 45 C.F.R. §§ 155.210 and 155.215(b) and (e).
42. The statute prohibits navigators from having any conflicts of interest and from charging for their services. 45 C.F.R. § 155.210.

43. Federal laws and regulations do not preempt “any State law that does not prevent the application of the provisions of Title I of the Affordable Care Act.” 42 U.S.C. § 18031(k); 45 C.F.R. § 155.120.

E. The role and federal regulation of certified application counselors

44. Federal regulations also provide for consumer assistance by another category of trained personnel known as “certified application counselors” (CACs). 45 C.F.R. § 155.225.

45. CACs are supervised by sponsoring organizations approved by HHS. 45 C.F.R. § 155.225(b)

46. Unlike navigators, CACs receive no funding from the Marketplace; they may be employees or volunteers of the sponsoring organization. Like navigators, they must undergo federal training and pass a test in order to gain federal certification. 45 C.F.R. § 155.225(d). CACs must disclose to the Marketplace, to their sponsoring organization and to consumers any potential conflicts of interest, and they must comply with rigorous patient privacy and security requirements. 45 C.F.R. §§ 155.225(d)(1)-(3) and 155.260.

47. CACs’ are certified to:

- a. provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible;
- b. assist individuals and employees to apply for coverage in a QHP through the Marketplace and for insurance affordability programs; and,
- c. help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs.

45 C.F.R. § 155.225(c). In performing all of these duties, CACs must “act in the best interest of the applicants assisted.” 45 C.F.R. § 155.225(d)(4).

F. The Challenged Legislation: P.A. 2013, Chapter 377

48. During the 2013 Session of the Tennessee General Assembly, legislation was introduced that was designated as Senate Bill 1145 and House Bill 881 (SB 1145/HB 881).

49. The title, or caption, described the bill as follows:

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, relative to the regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges.

(Please see Appendix 3)

50. As filed, SB 1145/HB 881's definition of "navigator" fell squarely within the bill's title, defining "navigator" to mean "a person selected to perform the activities and duties identified in Section 1311(i) of the federal Affordable Care Act."

51. During the course of the legislative session, SB 1145/HB 881 was substantially amended, and the definition of "navigator" was revised.

52. As thus amended, the bill was signed into law on May 14, 2013 as Chapter 377 of the Public Acts of 2013. Chapter 377 took effect July 1, 2013. (Please see Appendix 4.)

53. Chapter 377 now defines "navigator" not just as a person who "receives any funding, directly or indirectly, from an exchange, this state or the federal government to perform any of the activities and duties identified in 42 U.S.C. § 18031."

54. Section 1 of Chapter 377 now also defines the term "navigator" to include "any person, other than an insurance producer, who:

(A) . . .

(B) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;

- (C) Conducts public education or consumer assistance activities for, or on behalf of, an exchange; *or*
- (D) Is described or designated by an exchange, this state or the United States department of health and human services, or could reasonably be described or designated as, a navigator, an in-person assister, enrollment assister, application assister or application counselor.

(italics added)

55. Chapter 377 authorizes the defendant Commissioner to “promulgate such rules and regulations as may be necessary or appropriate to regulate the activities of navigators as may be consistent with the Patient Protection and Affordable Care Act.”

G. The Challenged Emergency Rules: Chapter 0780-01-55

1. Individuals and organizations covered by the Emergency Rules

56. On September 18, 2013, the defendant Commissioner promulgated emergency rules (“Emergency Rules”) under the purported authority of T.C.A. § 4-5-208 and Chapter 377.

The Emergency Rules create a new regulatory chapter, Chapter 0780-01-55. (Please see Appendix 5.)

57. The Emergency Rules took effect the day they were promulgated and are to remain in effect for 180 days, until March 17, 2014, pursuant to T.C.A. § 4-5-208(b).

58. The defendant Commissioner declared in the Emergency Rules that “[t]he activities and duties of navigators and certified application counselors shall be deemed to constitute transacting the business of insurance.” Rule 0780-01-55-.09.

59. Nevertheless, the Commissioner issued the Emergency Rules without first holding a public hearing on the rules after having given 30 days’ prior notice. Such notice and hearing are required by T.C.A. § 56-1-701 before the promulgation or amendment of any “rules and regulations relating to the business of ... health insurance.”

60. The Emergency Rules define a “navigator,” in addition to someone who is designated and funded as such by the federal government, as “any individual or entity, other than an insurance producer, who:

(a) ...

(b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;

(c) Conducts public education or consumer assistance activities for, or on behalf of, an exchange; *or*

(d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, “*non-Navigator assistance personnel*” or “in-person assistance personnel”, application assisters or application counselors including certified application counselors.”

Rule 0780-01-55-.02(6)(d)(italics added).

61. The Emergency Rules thus track the definition in Chapter 377, with the important addition of the phrase, “non-Navigator assistance personnel.”

62. The Emergency Rules’ definition of “navigator” includes “certified application counselors” (CACs), who are further defined to mean:

any employee or volunteer of a certified application counselor organization that enters into an agreement with the exchange to have its employees or volunteers:

(a) Provide information to individuals and employees about the full range of qualified health plan options and insurance affordability programs for which they are eligible;

(b) Assist individuals and employees to apply for coverage in a qualified health plan through the exchange and for insurance affordability programs; and

(c) Help to facilitate enrollment.

Rule 0780-01-55-.02(3).

63. The Emergency Rules apply to organizations, as well as to persons. “Person” is defined to include “any natural or artificial person including, but not limited to, an individual, partnership, association trust or corporation.” Rule 0780-01-55-.02(7). A “certified application counselor organization” (“CAC organization”) includes any organization “designated by the exchange to certify its staff members or volunteers to act as certified application counselors.” Rule 0780-01-55-.02(4).
64. The Emergency Rules exempt only insurance producers from the broad definitions quoted above.
65. No distinction is made between individuals or organizations that receive federal funding and unpaid volunteers that are providing outreach and enrollment assistance *gratis*.
66. The Emergency Rules contain no exceptions for:
- family members speaking to or assisting their loved ones;
 - individuals conversing socially with friends;
 - clergy assisting their congregants;
 - charities providing information and referral services;
 - civic organizations or news media informing the public;
 - teachers engaged in educational activities;
 - lawyers or accountants advising their clients;
 - librarians providing public information to library patrons; or
 - clinicians counseling their patients.

2. Requirements and prohibitions established by the Emergency Rules

67. The Emergency Rules provide that no person or organization may take any action that would bring it within the expansive definitions quoted above without first registering with the defendant Commissioner and submitting to her regulatory oversight. Rule 0780-01-55-.03.
68. A person shall not be allowed to register, or to engage any of the acts that require registration, until he satisfies the defendant Commissioner that he, among other things,
- a. is at least eighteen years of age [Rule 0780-01-550-.04(a)];
 - b. maintains his principal place of business in the state [Rule 0780-01-550-.04(b)];
 - c. has successfully passed the applicable federal training program for navigators or certified application counselors [Rule 0780-01-550-.04(e)];
 - d. submits a complete set of fingerprints and undergoes a criminal background check [Rule 0780-01-550-.04(f)];
 - e. “possesses the requisite character and integrity” [Rule 0780-01-550-.04(h)]; and
 - f. identifies “the entity with which [he] is affiliated and supervised.”[Rule 0780-01-550-.04(i)]
69. An organization shall not be allowed to register, or to engage in any of the acts that require registration, until the organization has registered with the defendant Commissioner and reported to the Commissioner the names of all individual “navigators” (as broadly defined by the Emergency Rules) that it employs, supervises or is affiliated with. The organization must update the list of names on a quarterly basis. Rule 0780-01-550-.04(2)-(6).
70. The Emergency Rules provide that the defendant Commissioner:
- may examine and investigate the business affairs and records of any registrant, or any person required to be registered, to determine whether the individual or entity has engaged or is engaging in any violation of this chapter or applicable insurance law.”

Rule 0780-01-550-.07(4).

71. The Emergency Rules prohibit a navigator, as defined by the Rules, or certified application counselor from, among other things:

Discuss[ing] the benefits, terms, and features of a particular health plan over any other health plans and offer[ing] advice about which health plan is better or worse or suitable for a particular individual or employer

Rule 0780-01-550-.06(b).

72. This prohibition directly conflicts with federal regulations that require federally designated navigators and CACs to “provide information to consumers about the full range of [qualified health plan] options and insurance affordability programs for which they are eligible.” 45 C.F.R. §§ 155.215(a)(2)(iv) and 155.225(c)(3).

73. CACs are specifically directed by federal regulations to “act in the best interest of the applicants and enrollees assisted,” which requires them to provide the sort of advice and assistance that the Emergency Rules prohibit. 45 C.F.R. § 155.255(d)(4).

3. Penalties imposed by the Emergency Rules

74. The Emergency Rules authorize the defendant Commissioner to impose a fine of \$1,000 for each violation of the Rules, including the registration requirements. Rule 0780-01-550-.07(b).

4. Post-promulgation actions by the Defendants

75. Since promulgating the Emergency Rules on September 18, 2013, the defendant Commissioner and DCI have attempted to clarify the Emergency Rules and limit their scope. DCI has posted on its website two sets of “frequently asked questions” (“FAQs”).

76. On September 24, 2013, following adverse media coverage of the Emergency Rules, a DCI spokesperson was quoted on WPLN, a Nashville public radio station, as acknowledging that the time required to meet the Emergency Rules' registration requirements would make it impossible for navigators and CACs to be in compliance until after their October 1, 2013 deadline for assisting consumers. The WPLN report quoted the spokesperson as stating that DCI would therefore delay enforcement of the fingerprinting requirements of the Emergency Rules, but would eventually require compliance at an unspecified future date. (Please see copies of the FAQs and media report compiled in Appendix 6.)
77. Neither the FAQs nor DCI's media pronouncements, even if quoted accurately, have any legal effect and cannot alter the Emergency Rules, which remain in effect. However, those pronouncements do attest to the Rules' overbreadth and vagueness. DCI's statements only compound the public's uncertainty about what speech or activities will run afoul of the Emergency Rules, and about who is at risk of being penalized for their violation.
78. DCI has posted on its website an application for organizations to use in order to register as certified application counselor organizations. (Please see Appendix 7.)
79. DCI has posted on its website an application for individuals to use in order to register as certified application counselors. (Please see Appendix 8.)

The Impact of Chapter 377 and the Emergency Rules on the Plaintiffs

1. League of Women Voters of Tennessee

80. The League of Women Voters of Tennessee is an affiliate of the national organization, The League of Women Voters.

81. Rooted in the movement that secured the right to vote for women, the League has worked to foster civic engagement and enhance access to vote since we were founded in 1920. The Tennessee League of Women Voters is a nonpartisan political organization encouraging informed and active participation in government. It influences public policy through education and advocacy.
82. The League of Women Voters of Tennessee has been involved in ongoing public education concerning the ACA and the health affordability programs that will be available through the exchanges. More specifically, the League of Tennessee has volunteers that travel to various parts of the state in order to help residents understand basic information that will help them enroll in the Marketplace. These conversations include information about how to count income, how to register for the Marketplace online, and what plans might best suit a person's needs. Volunteers are concerned that as a result of these conversations and information sessions, they could "reasonably [be] described as ... an enrollment assister or application assister," and thus are already subject to investigation and penalty under the Emergency Rules.
83. Starting October 1, 2013, volunteers with the League of Women Voters of Tennessee had planned to guide uninsured residents who need assistance in enrolling on the Marketplace and to take them step-by-step through the process. Many residents in rural areas do not have home computers, and so they also need help with logging into the system and typing up their information. The Emergency Rules will preclude League and its volunteers from providing this assistance.

2. Allison Cavopol

84. Plaintiff Allison Cavopol manages the International English Institute (“IEI”), a school that provides English language instruction to international students. IEI is a small business with less than 15 full-time employees. IEI currently provides group health coverage for its employees.
85. Ms. Cavopol currently purchases her own coverage outside of IEI’s group policy. She has an individual health insurance policy that she has carried for 20 years
86. With the ACA’s establishment of new health insurance affordability programs, Ms. Cavopol needs to evaluate whether she can obtain coverage for herself through the Marketplace that would better suit her personal needs than the coverage she now buys. As IEI’s executive director, she needs to evaluate whether IEI can obtain coverage on the SHOP exchange that would better suit IEI’s needs and those of its employees. She also needs to evaluate whether IEI employees would be better served if IEI stopped providing group coverage and left each employee to apply for a premium tax credit through the Marketplace, where each could choose a QHP best suited to his or her individual needs.
87. In evaluating these coverage options and advising her employees, Ms. Cavopol prefers to get advice from a person who has no financial interest in selling her, her company, or her employees health insurance. Federal regulations require navigators to be free of financial conflicts and to provide information that is “fair, accurate and impartial.” Federal regulations require CACs to disclose any potential conflicts of interest and to advise consumers about all available health coverage options, acting in the consumers’ best interest. Ms. Cavopol therefore prefers to obtain information and advice from a federally certified navigator or CAC. But, because Emergency Rule 0780-01-55-.06(1)(b) bars everyone else from

discussing with her “the benefits, terms, and features of a particular health plan over any other health plans and [from] offer[ing] advice about which health plan is better or worse or more suitable for a particular individual or employer,” the Emergency Rules prevent her from discussing such matters with anyone other than insurance producers, who have a financial interest in selling insurance. Ms. Cavopol has contacted IEI’s current insurance broker, but the broker did not have the specific information she needs about plan options or how the new law will affect IEI and its employees.

88. Ms. Cavopol is not a navigator or CAC, and she has neither the time nor the interest in becoming one. As an employer, she only wants to ensure that IEI’s employees have accurate information about the health insurance options available to them through the Marketplace or the SHOP exchange. She fears that, though, that if she gives them that information herself or even refers them to another resource, she might thereby “facilitate” their enrollment” or could “reasonably be described” as being “non-Navigator assistance personnel”, an “enrollment assister”, an “application assister,” or an “application assister.” The Emergency Rules therefore restrict her ability to provide even basic information to her employees that they will need in order to obtain health benefits or tax credits for which they qualify under the ACA.

3. Carol Coppinger

89. Plaintiff Carol Coppinger is responsible as the mother of Samuel Shirley for managing his health care and maintaining his health insurance coverage. Although he is an adult, Samuel’s mental disabilities make it impossible for him to apply on his own behalf for insurance affordability programs for which he qualifies. He is incapable of enrolling in such programs or complying with any of the requirements that must be met on an ongoing basis in order to

maintain his coverage. Since he was a small child, Ms. Coppinger has regularly submitted all applications and supporting documents needed to maintain his coverage through Tennessee's Medicaid program, known as TennCare.

90. Beginning on October 1, 2013, TennCare will become one of the state health subsidy programs available through the Marketplace.
91. Ms. Coppinger will no longer be able to facilitate her son's continuing enrollment in TennCare without first identifying a CAC organization that will agree to supervise her, taking a five hour federal CAC course and passing a test to obtain federal certification, submitting a complete set of fingerprints to the state and undergoing a criminal background check, and satisfying the defendant Commissioner that she possesses the requisite character and integrity.
92. Ms. Coppinger cannot take the federal CAC course online at home, because she has no computer and no internet access. It would be very difficult for her to take the course outside of her home, even assuming she could find someone willing to give her internet access for that purpose. Ms. Coppinger was severely injured in a 1995 automobile accident, and the resulting physical disabilities make it impossible for her to sit for the extended period required to take the federal CAC course and the federal qualifying test.
93. Nor can Ms. Coppinger assist anyone else in enrolling her son. She fears that by, for example, providing necessary information or documentation to a registered navigator or CAC, she might be "reasonably described as ... an enrollment assister or application assister."
94. Ms. Coppinger cannot ask a navigator or CAC for information regarding the benefits, terms, and features of a particular health plan or seek their advice about which health plan is better

or worse or suitable for her or her family, as contemplated by the federal law, because the Emergency Rules prohibit navigators and CACs from having such discussions or providing such advice.

4. Samuel Shirley

95. Chapter 377 and the Emergency Rules have the effect of depriving plaintiff Samuel Shirley of the assistance he needs, and to which he is entitled under the ACA. As described above, Chapter 377 and the Emergency Rules restrict his mother's ability to assist him in maintaining his TennCare coverage or obtaining other health benefits for which he may be eligible. The Emergency Rules constrain her from assisting someone else to apply on his behalf, and she is the only person who has the information needed to document and maintain his eligibility.

5. Reverend Jerry Crisp

96. Plaintiff Jerry Crisp is the pastor of the Union Hill Church in Whiteville, Tennessee. Many of the 450 members of his congregation are uninsured, as are some 4,500 residents of Hardeman County, where the church is located. As a minister in his community for 30 years, Reverend Crisp often encounters the devastation to families' health and well-being, as well as to their financial security, that results from a lack of health insurance. For Reverend Crisp and his church, aiding the sick is a moral imperative and religious duty.

97. When Reverend Crisp learned that enrollment in qualified health plans through the Marketplace would begin on October 1, 2013, his church immediately volunteered its resources to assist people with enrolling through the Marketplace. The church offered to lend the use of its computer lab to the community – church members and non-church members alike – for individuals who otherwise lack internet access or computer skills.

98. Church members have volunteered to provide outreach to the community to ensure that people are aware of the health coverage and tax credits that will be available through the Marketplace. Reverend Crisp and his congregants intend to actively assist people to enroll who, due to limited literacy or disabilities, are unable to enroll themselves.

99. These activities are totally voluntary; neither the church nor its members have charged, or will charge, for providing these resources and assistance, which they view as a part of the church's ministry.

100. It is not feasible for the church and many of its members to register as navigators pursuant to the Emergency Rules and Reverend Crisp objects as a matter of religious and constitutional principle to being required to register.

101. Reverend Crisp fears that he, his congregants and the church itself face financial penalties that they can ill afford if they proceed with their planned activities without first registering. Even were they registered, they would be unable to complete the process until well after October 1, since they would first have to go through the federal certification process.

6. Tom Johns, M.D.

102. Tom Johns, M.D., is a physician and Nashville resident. During 32 years of medical practice, he has seen firsthand the importance of health insurance coverage in improving quality and longevity of life. The peace of mind of being insured has made a critical difference in the patients he has seen who have suffered from chronic and debilitating illness.

103. During the course of his medical practice, patients have regularly asked Dr. Johns about health coverage. Due to the complexity of the issue, he would share what he knew and refer

the patients to nurses, social workers, or others who might be more knowledgeable. Dr. Johns found that most of his patients could not navigate the complexities of health insurance without assistance.

104. Dr. Johns now runs an organic farm in the Bells Bend community of Davidson County.

Workers and volunteers on the farm seek his advice on health care decisions, including questions about health insurance coverage. Dr. Johns has gathered information on the implementation of the ACA and has shared his information and insights with those who have sought his advice.

105. As a physician and as an employer, he is concerned that the Emergency Rules will prevent him from sharing information or advising others about the availability of health coverage and how to select and enroll in a QHP. The Emergency Rules' restrictions on his discussing such matters interfere with his professional duty to provide to others the best and most comprehensive care possible.

7. Terrell McDaniel, Ph.D.

106. Dr. Terrell McDaniel is a licensed clinical psychologist and a partner in the mental health practice Hughes, McDaniel & Associates (Hughes McDaniel) in Hendersonville, Tennessee. Dr. McDaniel personally has 25-30 active patients at any time, and his practice sees hundreds of patients per month.

107. Dr. McDaniel's Ph.D. degree is in industrial/organizational psychology as well as clinical psychology, and he works part-time as a business consultant.

108. Many Hughes McDaniel patients have health insurance problems. Some lose coverage during the course of treatment, particularly during the course of divorces and other personal crises that often prompt patients to seek mental health care.
109. Dr. McDaniel knows from his professional experience that helping patients obtain and maintain health coverage is important for their overall well-being. For some patients, it is an essential part of treatment. Helping patients deal with complicated tasks like enrolling in insurance or completing tax-related tasks helps the patients reach their maximum level of functioning. For example, some patients have severe anxiety about computers and need assistance in helping them complete computer tasks as part of treatment.
110. Mr. McDaniel and his colleagues have also treated patients by helping them with their tax records. They do not provide specific tax advice or direction but help reduce their anxiety in engaging the patients and assisting them through these tasks.
111. Dr. McDaniel and his colleagues at Hughes McDaniel have considered completing the federal CAC training, so that they can continue to assist their patients with health insurance and tax matters that involve submitting applications through the Marketplace.
112. As a partner in a small business, Dr. McDaniel also wants and needs to be able to provide his employees information about health benefits available through the Marketplace or the SHOP exchange. He would like to be able to get the advice of an expert other than an insurance producer, because he wants objective information from a financially disinterested source.

113. Emergency Rules deter Dr. McDaniel and his colleagues from seeking CAC certification or assisting their patients because of the administrative burdens that the Emergency Rules impose and because of the fear of potential legal liability arising from the Rules.

8. Brian Paddock

114. Brian Paddock is a licensed attorney whose practice includes the exercise of his professional judgment in advising clients about taxes and state health subsidy programs, including TennCare.

115. Chapter 377 and the Emergency Rules preclude him from counseling clients on premium tax credits or health coverage options available through the Marketplace or SHOP exchange, because he is not registered with the defendant Commissioner as a navigator.

116. Even if he registered as a navigator, he would be barred by Emergency Rule 0780-01-55-.06(1)(b) from applying his legal judgment to the discussion of the benefits, terms, and features of a particular health plan over any other health plans, and he would still be prohibited from offering advice about which health plan is better or worse or suitable for a particular individual or employer.

117. Whether or not he is registered, the records of his legal practice are subject, under Emergency Rule 0780-01-55-.08, to being examined and investigated by the defendant Commissioner to determine whether he is engaging, or has engaged in, that or any other violation of the Emergency Rules.

118. Thus, the Emergency Rules place him in the position of either violating the Rules or withholding advice which his clients need in order to understand their rights and responsibilities.

119. By practicing in an area of the law related to state health subsidy programs available through the Marketplace or SHOP exchange, Mr. Paddock invites an investigation, pursuant to Emergency Rule 0780001-55-.07(4), that would violate the confidentiality of attorney-client communications.

9. Randall & Meryl Rice

120. Randall Rice and his wife, Meryl Rice, are retirees with a lifetime of experience as community volunteers. As a retired licensed clinical social worker who served people with mental illness, Ms. Rice knows from personal experience how important it is for families to have adequate health insurance. Because the community where they live is very poor, Mr. and Ms. Rice have many neighbors who cannot afford insurance. In addition, Ms. Rice has many former clients who, because of their preexisting mental illness, are uninsurable at any price.

121. As a retired employee of the International Association of Machinists and Aerospace workers, for whom bargaining for members' health insurance benefits was of crucial importance, Mr. Rice too, is also mindful of the importance of health insurance for workers and their families.

122. For several months, Mr. and Ms. Rice have studied the provisions of the ACA so that they can be a local resource in their community. They have worked with local ministers and other community leaders to establish computer labs and organize volunteers to help uninsured families enroll as soon as the Marketplace begins operating on October 1, 2013.. This is important because many people in their rural community, especially those who are uninsured, lack access to high speed internet and lack computer skills.

123. Mr. and Ms. Rice have attempted unsuccessfully to become federally certified application counselors. In order to do so, they need to find a local CAC organization to serve as their sponsors. The only local organization with federal certification is a community clinic in Bolivar, Tennessee. When they contacted the clinic to ask if the clinic would sponsor them and other volunteers to obtain federal CAC certification, the clinic declined.
124. The clinic informed Mr. and Ms. Rice that, because of the Emergency Rules, the clinic fears it will incur legal liability if it sponsors volunteers to help with outreach and enrollment activities.
125. There is no practical way for Mr. and Ms. Rice to obtain federal certification, which is a prerequisite for state registration under the Emergency Rules. They fear that if they and the volunteers they have recruited continue with plans to help facilitate the enrollment of their uninsured neighbors, they will incur penalties under the Emergency Rules.

10. Reverend James Thomas

126. Reverend James Thomas is the pastor of Jefferson Street Missionary Baptist Church. During his decades-long ministry, Reverend Thomas has counseled many members of his church and of the larger Nashville community. Many of those whom he counsels have serious health or mental health problems and has seen the important difference that health insurance makes in the health and well-being of families.
127. Reverend Thomas and his congregation have been preparing for months to assist uninsured neighbors to enroll in health coverage and obtain tax credits through the Marketplace when it begins operating on October 1, 2013. Reverend Thomas, through his membership in the

Interdenominational Ministers Fellowship, has worked with the pastors of other Nashville churches to mobilize volunteers to conduct outreach and assist in the enrollment efforts.

128. On October 1, 2013, Reverend Thomas's church is hosting a city-wide kickoff celebration and enrollment drive to mark the opening of the Marketplace. Many members of his church will be present as volunteers and will have computers available. The volunteers will help walk uninsured applicants through the online enrollment process. Nashville Mayor Karl Dean and other elected officials and clergy leaders will participate in the event.

129. Reverend Thomas and his fellow pastors and congregants have already engaged in extensive public education and outreach promoting the October 1st event. They have announced that volunteer assistance will be available at the event to help people enroll.

130. For Reverend Thomas and the volunteers he has recruited to help with outreach and enrollment assistance, it is impossible to register with the state before the October 1st event as required by the Emergency Rules.

131. Reverend Thomas regards his and his church's outreach and enrollment activities, which are provided completely without charge, as part of his religious ministry and the church's mission. He objects as a matter of principle to having to register as required by the Emergency Rules. Reverend Thomas fears that the Emergency Rules subject him and others working with him on the October 1st event to serious legal liability

CAUSES OF ACTION

a. Violation of the Notice Provisions of the Insurance Code & the Tennessee Uniform Administrative Procedures Act

132. The Emergency Rules are void under T.C.A. §56-1-701 of the Insurance Code because the defendant commissioner promulgated the Rules without first giving thirty days' notice and holding a public hearing.

133. The Emergency Rules are void and of no effect under T.C.A. §4-5-216 because they were not adopted in compliance with the Tennessee Uniform Administrative Procedures Act.

134. The Commissioner's attempted reliance on T.C.A. §4-5-208 to promulgate the Emergency Rules is to no avail, because the Emergency Rules failed to comply with that statute. The defendant commissioner attempted to invoke T.C.A. §4-5-208(a)(5) by asserting that Chapter 377 required the defendant Department to implement rules prior to October 1, 2013, and therefore precluded utilization of rulemaking procedures otherwise prescribed by the Uniform Administrative Procedures Act. However, Chapter 377 was signed into law on May 14, 2013, and took effect on July 1, 2013. That afforded the defendant Commissioner sufficient time to provide 45 days' advance notice as required by T.C.A. §4-5-203 and to promulgate final rules before October 1, 2013.

135. The Emergency Rules thus violate T.C.A. §4-5-208(e), which provides that an agency's finding of an emergency justifying the issuance of emergency rules "shall not be based upon the agency's failure to timely process and file rules through the normal rulemaking process.

a. Violation of Article II, Section 17 of the Tennessee Constitution

136. The title of Senate Bill 1145/House Bill 881, which was enacted by the General Assembly as Chapter 377 of the Public Acts of 2013, described the bill as an act "relative to the

regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges.”

137. As enacted, however, Chapter 377 also authorized the regulation of numerous individuals and organizations that are not “navigators in the implementation of the [ACA]”.

138. Chapter 377 is therefore invalid because it violates Article II, Section 17, of the Tennessee Constitution, which provides in relevant part that “no bill shall become a law which embraces more than one subject, that subject to be expressed in the title.”

139. The Emergency Rules are therefore void due to the failure of their authorizing legislation.

a. Violation of Freedom of Speech.

140. Chapter 377 and the Emergency Rules restrict Freedom of Speech by restricting any person, other than an insurance producer, from engaging in protected speech by educating or advising others - including even those with whom the individual has an existing professional, familial or social relationship - on matters regarding any affordability program or premium tax credits available through the Marketplace or SHOP exchange. An individual must first submit to fingerprinting and a criminal background check, and must convince the defendant Commissioner that he “possesses the requisite character and integrity” to engage in such speech. These restrictions violate the First Amendment of the United States Constitution and Article 1, Section 19 of the Tennessee Constitution.

141. Chapter 377 and the Emergency Rules bar anyone other than a licensed insurance producer, and regardless of whether the person or organization is registered with the Defendant Commissioner, from “discuss[ing] the benefits, terms, and features of a particular health plan or any other health plan and offer[ing] advice about which health plan is better or worse or suitable for a particular individual or employer.” These restrictions on Freedom of Speech

violate the First Amendment of the United States Constitution and Article 1, Section 19 of the Tennessee Constitution.

a. Violation of First Amendment Freedom of Association

142. Chapter 377 and the Emergency Rules violate the Freedom of Association guaranteed by the First Amendment to the United States Constitution and Article I, Section 23 of the Tennessee Constitution by compelling individuals to affiliate with particular organizations in or to engage in constitutionally protected conduct.

143. The Emergency Rules do so by limiting the ability of any person or organization, other than an insurance producer, to:

- a. facilitate enrollment in health plans or public insurance programs
- b. conduct public education or provide consumer assistance related to the marketplace,
or
- c. assist individuals or employees in applying for coverage through an exchange or insurance affordability program

until such individual has affiliated with a navigator organization or a certified application counselor organization and submitted to their supervision.

144. While federal rules legitimately require such affiliation by any individual who wishes to qualify as a federally certified navigator or CAC, Chapter 377 and the Emergency rules impermissibly extend the requirement to *anyone* who wishes to engage in such constitutionally protected activities, thereby compelling affiliation with an organization in violation of the individual's freedom to associate with such persons or organizations as he chooses.

a. Violation of the Due Process Void-for-Vagueness Doctrine

145. The Emergency Rules purport to govern everyone who “facilitates enrollment” or who “could reasonably be described or designated as, navigators, ‘non-Navigator assistance personnel’ or ‘in-person assistance personnel’, enrollment assisters, application assisters or application counselors or certified application counselors.”

146. Those terms are so vague, and can be interpreted so broadly, that they are void for failing to afford individuals fair notice of the actions that would bring them within the scope of the rule and its penalties.

147. The Emergency Rules therefore violate the Due Process Clause of the Fourteenth Amendment and Article 1, Section 8 of the Tennessee Constitution.

a. Conflict with federal law

148. The Emergency Rules prohibit anyone, other than an insurance producer, from discussing the benefits, terms and features of a particular health plan over any other health plans and offering advice about which health plan is better or worse or suitable for a particular individual or employer. Rule 0780-01-550-.06(b).

149. This prohibition directly conflicts with federal regulations that require federally designated navigators and CACs to “provide information to consumers about the full range of [qualified health plan] options and insurance affordability programs for which they are eligible.” 45 C.F.R. §§ 155.215(a)(2)(iv) and 155.225(c)(3).

150. CACs are specifically directed by federal regulations to “act in the best interest of the applicants and enrollees assisted,” which requires them to provide the sort of advice and assistance that the Emergency Rules prohibit. 45 C.F.R. § 155.255(d)(4).

151. Because Emergency Rule 0780-01-550-.06(b) thus prevents the application of the provisions of Title I of the ACA, that Emergency Rule is preempted by federal law. 42 U.S.C. § 18031(k); 45 C.F.R. § 155.210. Emergency Rule 0780-01-550-.06(b) is therefore invalid under the Supremacy Clause of the United States Constitution.
152. The Emergency Rules require any person, other than an insurance producer, who wishes to perform the duties of a navigator or certified application counselor to first go through an application process and obtain the approval of the defendant Commissioner. That process was not created until the week before Title I of the ACA is to take effect on October 1, 2013, leaving too little time for most individuals to meet the registration requirements and be able to fulfill their federal duties as of that date.
153. Because the Emergency Rules thus prevent the timely application of the provisions of Title I of the ACA, including the provisions for consumer assistance, the Emergency Rules are preempted by the ACA. 42 U.S.C. § 18031(k); 45 C.F.R. § 155.210.
154. Because the Emergency Rules prevent the timely application of the provisions of Title I of the ACA, including the provisions for consumer assistance, the Emergency Rules exceed the regulatory authority granted by Chapter 377. Chapter 377 only authorizes such regulation of navigators “as may be consistent with the Patient Protection and Affordable Care Act.” The Emergency Rules are therefore void.
155. Because the Emergency Rules prevent the timely application of the provisions of Title I of the ACA, including the provisions for consumer assistance, the Emergency Rules are preempted by the ACA. under the Supremacy Clause of the United States Constitution.

a. Violation of Separation of Powers as applied to the practice of law

156. Chapter 377 and the Emergency Rules confer upon the defendant Commissioner, an officer of the Executive Branch, and the Tennessee Department of Commerce and Insurance, a department of the Executive Branch, the ability to regulate a broad range of communications and actions by any person who is not an insurance producer.

157. The statute and Emergency Rules make no exception for attorneys engaged in the practice of law, and thus restricts attorneys' ability to counsel and assist their clients.

158. By thus regulating the practice of law in this manner, Chapter 377 and the Emergency Rules authorize the Executive Branch to exercise powers properly reserved to the Judiciary Department. Chapter 377 and the Emergency Rules are therefore void under Article II, Section 2 of the Tennessee Constitution as applied to attorneys.

a. Violation of federal rights by persons acting under color of state law

159. By promulgating and enforcing the Emergency Rules, the defendant Commissioner has violated and is continuing to violate the federally protected rights of the Plaintiffs, as described above, while acting under color of state law.

160. These violations therefore give rise to a cause of action under 42 U.S.C. § 1983 and justify the grant of declaratory and injunctive relief, as well as ancillary attorneys' fees, under that statute.

PRAYER FOR RELIEF

161. Paragraphs 1 through 160 are incorporated by reference.

162. As relief for the legal violations described above, Plaintiffs respectfully request that:

- a. process issue and that the Defendants be required to answer;
- b. pursuant to T.C.A. §§ 29-14-102 and 4-5-225 and Rule 57 of the Tennessee Rules of Civil Procedure, the Court declare Chapter 377 and the Emergency Rules void and of no effect because they violate the regulations, statutes and constitutional provisions cited above;
- c. pursuant to Rule 65 of the Tennessee Rules of Civil Procedure, the Court temporarily restrain, and temporarily and permanently enjoin, enforcement of the Chapter 377 and the Emergency Rules; and
- d. that the Court declare that Chapter 377 and the Emergency Rules violate the federal Constitution and the state statutory provisions discussed above; and
- e. that the Court award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- f. that the Court grant the Plaintiffs any other or further relief to which they may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

Respectfully submitted,

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Cost Bond

I am surety for costs in this cause not to exceed 1,000.

Christopher Coleman