

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

JOSEPH B. HOLLAND, JR.; and
JOE HOLLAND CHEVROLET, INC.,
a West Virginia Corporation,

Plaintiffs,

v.

Civil Action No. _____

THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; **THE UNITED STATES DEPARTMENT OF LABOR; SETH D. HARRIS**, in his official capacity as Acting Secretary of the United States Department of Labor; **THE UNITED STATES DEPARTMENT OF THE TREASURY**; and **JACOB J. LEW**, in his official capacity as Secretary of the United States Department of the Treasury,

Defendants.

VERIFIED COMPLAINT

COME NOW the Plaintiffs, Joseph B. Holland, Jr. (“Mr. Holland”) and Joe Holland Chevrolet, Inc. (“Holland Chevrolet”), by and through their undersigned counsel, and state their Complaint against the Defendants as set forth below.

INTRODUCTION

This is an action seeking declaratory and injunctive relief to protect the Plaintiffs from certain unlawful and unconstitutional requirements of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148, 124 Stat. 119 (2010)), the Health Care and Education Reconciliation Act (Pub. L. 111-152, 124 Stat. 1029 (2010)), and certain provisions of the

implementing regulations found in Title 45 of the Code of Federal Regulations (collectively “the ACA”) that force Holland Chevrolet to include in their group health insurance plan coverage for drugs that induce abortion (“abortifacient drugs”) and contraceptive counseling, which includes discussion of the use and availability of abortifacient drugs (referred to hereafter as “abortion-related counseling”) (collectively “the Government Mandate”). This Mandate deprives Plaintiffs of their fundamental right to practice their sincere and deeply held religious beliefs as protected by the First Amendment of the United States Constitution and the Religious Freedom Restoration Act, 42 U.S.C §§ 2000bb *et seq.* (“RFRA”) and violates their First Amendment rights to freedom of speech and freedom of association.

IDENTIFICATION OF PARTIES

1. Mr. Holland is a United States citizen and a resident of Kanawha County, West Virginia.
2. Holland Chevrolet is a West Virginia corporation with its principal place of business located in South Charleston, West Virginia. It is a closely-held corporation engaged primarily in the business of selling and servicing motor vehicles.
3. Holland Chevrolet is a C-Corporation. Mr. Holland owns 91% of Holland Chevrolet’s stock and the remaining stock is held in trust by the Joseph B. Holland, Sr. Trust, of which Mr. Holland is Trustee.
4. Holland Chevrolet provides group medical insurance coverage to approximately 150 full-time employees.
5. Mr. Holland is president of Holland Chevrolet and chairman of its board of directors. Accordingly, Mr. Holland would be responsible for implementing Holland Chevrolet’s compliance with the Government Mandate.

6. The Defendants are Executive Branch agencies of the United States government and appointed officials of those agencies responsible for implementing and enforcing the Government Mandate.

7. Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (“HHS”) and is sued in her official capacity only.

8. Seth D. Harris is the Acting Secretary of the United States Department of Labor (“DOL”) and is sued in his official capacity only.

9. Jacob J. Lew is the Secretary of the Department of the Treasury (“the Treasury”) and is sued in his official capacity only.

10. HHS, DOL, and the Treasury each have responsibilities for promulgating regulations implementing the ACA and for administering and enforcing its provisions, including the Government Mandate.

JURISDICTION AND VENUE

11. This action arises under the Constitution and laws of the United States. The United States District Court for the Southern District of West Virginia has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1346 and 1361, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, and Fed. R. Civ. P. 65, and to award reasonable attorney’s fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

12. Venue is in the United States District Court for the Southern District of West Virginia pursuant to 28 U.S.C. §1391. A substantial part of the events or omissions giving rise to the claim occurred in this district and the Plaintiffs are located in this district.

NATURE OF THE CASE

13. This is an action seeking declaratory and injunctive relief from the Defendants' violations of RFRA and the First Amendment to the United States Constitution (collectively, "the Applicable Laws").

14. The Defendants have violated or will violate the Applicable Laws by implementing the ACA in ways that coerce the Plaintiffs to abandon or act in derogation of their sincere and most deeply held religious beliefs.

15. Mr. Holland is a believing and practicing born-again Christian. He is resolved, as a matter of religious belief, to conduct all aspects of his life, including the management of Holland Chevrolet, in accordance with God's Word. One of Mr. Holland's sincerely held religious beliefs is that all innocent human life is sacred to its Creator and that it is profoundly immoral to procure, facilitate, fund, or endorse any form of abortion.

16. In Mr. Holland's ownership and management of Holland Chevrolet, he regards it as his religious duty to operate the business in conformity with his religious beliefs. Holland Chevrolet, as a cognizable legal person, embraces and conducts itself in accordance with the same religious principles that animate its president, chairman of the board, and principal stockholder. In Mr. Holland's view, his right to free exercise of religion should not be limited by the form in which he elects to do business.

17. The Plaintiffs believe that they would be complicit in violation of the Sixth Commandment of the Bible ("Thou Shalt Not Kill") if they provide the insurance coverage required by the Government Mandate ("the Objectionable Coverage"). Heretofore, the Plaintiffs have not included the Objectionable Coverage in the health insurance coverage that is provided to the employees of Holland Chevrolet. The current term of that health insurance coverage runs

through June 30, 2013; the new plan year for the insurance will commence July 1, 2013 and, absent relief from this Court, the plan will then be subject to the Government Mandate.

18. The Defendants have full knowledge that many individuals and organizations have the same or similar strongly held beliefs as the Plaintiffs. Nonetheless, the Defendants have issued regulations imposing the Government Mandate on such citizens and organizations and requiring them to provide the Objectionable Coverage.

19. In issuing such regulations, the Defendants have knowingly violated the rights of the Plaintiffs and many other individuals and organizations to adhere to their religious convictions and to act in accordance with them.

20. The Government Mandate unlawfully and unconstitutionally coerces the Plaintiffs to violate their sincerely held religious beliefs under the threat of severe penalties.

21. The Government Mandate also forces the Plaintiffs to endorse speech that contravenes their own religious beliefs and values that they strive to promote in their business.

22. The Defendants have granted many exemptions from requirements of the ACA to various entities, including large corporations and labor unions and various entities with “grandfathered” employer group health plans. The Defendants have also granted exemptions to certain religious entities, but have failed to exempt many other religious entities and religiously observant individuals and entities. The Defendants’ exemption of some religious entities, and entities without any distinctive religious beliefs, and failure to accommodate the religious beliefs of individuals and entities such as the Plaintiffs, is highly selective and discriminatory.

23. The Defendants’ actions violate the Plaintiffs’ rights to exercise freely their religion as protected by RFRA and the First Amendment to the United States Constitution.

24. The Defendants’ actions violate the Plaintiffs’ rights to freedom of speech and freedom of association, as secured by the First Amendment to the United States Constitution.

25. The Plaintiffs are imminently faced with irreparable harm due to the Government Mandate, which requires them to provide the Objectionable Coverage for the group medical insurance plan year beginning July 1, 2013. The Plaintiffs must now coordinate and arrange for the details of that plan. Plaintiffs therefore will suffer irreparable harm, unless the Court grants declaratory and injunctive relief to prevent the Defendants' deliberate infringement of their right to enter into a contract of insurance which does not include the Objectionable Coverage.

FACTUAL ALLEGATIONS

I. The Plaintiffs' Religious Beliefs and Actions.

26. Mr. Holland experienced a religious conversion in 1996 and became a believing and practicing born-again Christian.

27. In addition to weekly attendance at Maranatha Fellowship Church, Mr. Holland participates in many religious activities as part of his day-to-day life, including the following: he attends a weekly men's group Bible study, which was started in 1996; he supports youth ministries such as the Silver Ring Ministry, which promotes pre-marital sexual abstinence; he participates in Life Chain, a pro-life religious ministry; and he delivers religious readings on Christian radio.

28. The Plaintiffs believe that the Bible is the inspired, infallible, and authoritative Word of God. The Plaintiffs believe that the Bible reveals the principles by which God expects human beings to conduct themselves in all aspects of their lives, including their jobs and business dealings.

29. The Plaintiffs believe that Holland Chevrolet should serve as a form of religious ministry and witness to the truth of God's Word. In observation of the commandment to "Remember the Sabbath day and keep it holy," Holland Chevrolet is closed on Sundays. Holland Chevrolet's website emphasizes as part of the corporation's mission statement the duty

“to glorify and honor God by being faithful stewards for all that is entrusted to us.” Holland Chevrolet’s signage and other business imagery feature in their design the *ichthus* (the ancient symbol of the Christian faith). Holland Chevrolet includes among the beneficiaries of its corporate giving various Christian causes such as the Fellowship of Christian Athletes. Holland Chevrolet employs a chaplain.

30. Based upon the teachings of the Bible generally, and the Sixth Commandment in particular, the Plaintiffs believe that God abhors and condemns the intentional destruction of innocent human life.

31. The Plaintiffs believe that God commands respect for the sanctity of all innocent human life, including the lives of the unborn.

32. The Plaintiffs believe that, according to God’s Word, human life begins at conception and that it must be treated with dignity, respect, and protection from the moment of conception onward.

33. The Plaintiffs believe the category of FDA approved contraceptive methods and procedures in the Government Mandate include abortifacient drugs that cause and/or potentially cause the destruction of human embryos.

34. The Plaintiffs believe that it would violate the Sixth Commandment for them to engage in any manner in the facilitation or endorsement of abortion. Consequently, it would be sinful and contrary to their religious principles to provide the Objectionable Coverage to the employees of Holland Chevrolet. The Plaintiffs believe that running Holland Chevrolet in accordance with the teachings of the Bible is a ministry to its employees, its customers, and the community of which it is a part. They believe that this ministry would be undermined by compliance with the Government Mandate and that providing the Objectionable Coverage would violate God’s Word and would contravene the message of their ministry.

Holland Chevrolet's Health Insurance Plan

35. Consistent with their religious beliefs and duties as faithful stewards, the Plaintiffs have provided and wish to continue to provide a generous health care plan ("the Plan") to the employees of Holland Chevrolet.

36. Since Holland Chevrolet employs approximately 150 full-time employees, it is subject to the Government Mandate.

37. Consistent with the Plaintiffs' religious beliefs, the Plan has never included the Objectionable Coverage.

38. In implementing the Plan for a new plan year beginning July 1, 2013, the Plaintiffs must either comply with the Government Mandate and provide the Objectionable Coverage in violation of their religious convictions or face the imposition of severe penalties for failure to do so.

39. In order to avoid both of those unacceptable alternatives, the Plaintiffs apply to the Court for vindication of their right to offer the employees of Holland Chevrolet a generous Plan that does not violate the Plaintiffs' religious principles.

The ACA and the Government Mandate

40. In March 2010, the Patient Protection and Affordable Care Act was enacted. Shortly thereafter it was amended by the Health Care and Education Reconciliation Act.

41. Under the ACA, employers with over 50 full-time employees are required to provide a certain minimum level of health insurance to their employees.

42. Nearly all such plans must include the Objectionable Coverage as part of the "preventive services" which must be offered with no cost-sharing by the employee. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §2713, 124 Stat. 119-1025 (2010).

43. The ACA specifically requires that health plans “provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration” and directs the Secretary of the Department of Health and Human Services to determine what would constitute preventive care under the ACA mandates. *Id.* at §2713(a)(4).

44. On July 19, 2010, HHS, along with the Treasury and DOL, published an interim final rule under the ACA. The interim final rule required providers of group health insurance to provide certain preventive care as specified in guidelines to be published by the Health Resources and Services Administration (“HRSA”) at a later date. 75 Fed. Reg. 41759 (2010)

45. On August 1, 2011, HHS, along with the Treasury and DOL, promulgated an interim final rule that includes the Government Mandate, which requires that all “group health plan[s] and . . . health insurance issuer[s] offering group or individual health insurance coverage” provide all FDA-approved contraceptive methods and procedures. 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. §147.130.

46. On February 10, 2012, HHS promulgated a final rule (“the Final Rule”), which included the Government Mandate. *See* 45 CFR §147.130 (a)(1)(iv), as confirmed at 77 Fed. Register 8725 (Feb. 15, 2012), adopting and quoting HRSA Guidelines, (<http://www.hrsa.gov/womensguidelines>, last visited June 7, 2013).

47. The category of “Food and Drug Administration (“FDA”) approved contraceptive methods and procedures” in the Government Mandate includes several abortifacient drugs that may cause the demise of an already-conceived but not-yet implanted human embryo, such as “emergency contraception” or “Plan B” drugs (the so-called “morning after pill”). HRSA Guidelines, (<http://www.hrsa.gov/womensguidelines>, last visited June 7, 2013).

48. The FDA approved in this same category a drug called “*ella*” (the so-called “week after pill”), which can function to kill embryos even after they have implanted in the uterus, by a mechanism similar to the abortion drug RU-486.

49. The manufacturers of some such drugs in the category of “FDA-approved contraceptive methods and procedures” indicate that they can function to cause the demise of an early human embryo.

50. The Government Mandate also requires group health care plans to pay for the provision (to all female beneficiaries who are capable of bearing children) of counseling, education, and other information concerning contraception (including abortifacient drugs and abortion-related counseling).

51. The Government Mandate applies to the first health insurance plan year beginning after August 1, 2012.

52. Absent relief from this Court, the Plaintiffs will be subject to the Government Mandate’s requirement to provide the Objectionable Coverage starting in their July 1, 2013 Plan.

53. The Government Mandate makes only an arbitrary, selective, and discriminatory allowance for certain aspects of the religious freedom of certain entities and individuals, and no allowance at all for the religious freedom of the Plaintiffs, who object to providing the Objectionable Coverage.

54. The ACA imposes severe penalties if the Plaintiffs continue to offer their Plan without inclusion of the Objectionable Coverage.

55. The exact magnitude of these penalties may vary according to the complex provisions of the ACA, but the basic monetary penalty is approximately \$100 per day, per employee, with minimum amounts applying under certain circumstances.

56. If the Plaintiffs do not comply with the Government Mandate they also trigger a range of enforcement mechanisms that exist under ERISA, including civil actions by the Secretary of Labor or by plan participants and beneficiaries, which could entail additional penalties.

57. The Final Rule 45 C.F.R. § 147.130(a)(1)(iv)(B)(2010); 76 Fed. Reg. 46626 (Aug. 3, 2011) offers the possibility of a narrow exemption to certain religious employers, but only if they meet all of the following requirements:

- a) “The inculcation of religious values is the purpose of the organization”;
- b) “The organization primarily employs persons who share the religious tenets of the organization”;
- c) “The organization serves primarily persons who share the religious tenets of the organization”; and
- d) The organization is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A).

58. Due to the narrowness of the exemption, it is unavailable to the Plaintiffs. The Final Rule imposes no constraint on the government’s discretion to grant exemptions to some, all, or none of the organizations meeting the definition of “religious employers.”

59. The Final Rule fails to protect the statutory and constitutional religious freedom rights of employers such as the Plaintiffs even though those rights were repeatedly raised in the public comments submitted before the February 10, 2012 promulgation of the Final Rule.

60. The Government Mandate requires the Plaintiffs to provide the Objectionable Coverage in violation of their religious beliefs, in a manner that is contrary to law. The Government Mandate coerces the Plaintiffs to abandon or act in derogation of their sincerely held religious beliefs.

61. The Government Mandate exposes the Plaintiffs to severe penalties for refusal to abandon or act in derogation of their religious beliefs.

62. Any alleged interest the Defendants have in insisting on making the Objectionable Coverage available to employees could be advanced through other, more narrowly tailored measures that do not burden the Plaintiffs' exercise of their right to religious freedom.

63. Without injunctive and declaratory relief as requested herein, including preliminary injunctive relief issued before July 1, 2013 the Plaintiffs will suffer irreparable harm.

64. The Plaintiffs have no adequate remedy at law.

COUNT I

Violation of the Religious Freedom Restoration Act 42 U.S.C. § 2000bb

65. The Plaintiffs restate all allegations set forth in the preceding paragraphs of this Complaint.

66. The Plaintiffs' sincerely held religious beliefs do not allow them to provide the Objectionable Coverage in the Plan.

67. The Plaintiffs engage in the exercise of religion within the meaning of RFRA.

68. The Government Mandate imposes substantial burdens on the Plaintiffs' exercise of religion and coerces them to violate their sincerely held religious beliefs.

69. The Government Mandate exposes the Plaintiffs to severe penalties for their religious exercise, including penalizing them for providing a Plan that does not include the Objectionable Coverage.

70. The Government Mandate chills and deters the Plaintiffs' religious exercise within the meaning of RFRA.

71. The Government Mandate furthers no compelling governmental interest and is not narrowly tailored to further any such interest.

72. The Government Mandate is not the least restrictive means of furthering the Defendants' interests.

73. The Government Mandate violates RFRA.

COUNT II

Violation of the Free Exercise Clause of the First Amendment to the United States Constitution

74. The Plaintiffs restate all allegations set forth in the preceding paragraphs of this Complaint.

75. The Plaintiffs' sincerely held religious beliefs prohibit them from providing the Objectionable Coverage as part of the Plan.

76. The Plaintiffs engage in the exercise of religion within the meaning of the Free Exercise Clause of the First Amendment.

77. The Government Mandate imposes substantial burdens on the Plaintiffs' religious exercise and coerces them to abandon or act in derogation of their sincerely held religious beliefs.

78. The Government Mandate exposes the Plaintiffs to severe penalties for their religious exercise.

79. The Government Mandate chills and deters the Plaintiffs' religious exercise within the meaning of the Free Exercise Clause.

80. The Final Rule is not neutral and is not generally applicable.

81. The Defendants have created categorical exemptions and individualized exemptions to the Final Rule.

82. The Government Mandate furthers no compelling governmental interest and is not narrowly tailored to further any such interest.

83. The Government Mandate is not the least restrictive means of furthering the Defendants' interest.

84. The Government Mandate violates Plaintiffs' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

COUNT III

Violation of the Free Speech Clause of the First Amendment to the United States Constitution

85. The Plaintiffs restate all allegations set forth in the preceding paragraphs of this Complaint.

86. The Plaintiffs wish to exercise their free speech rights to express a consistent religious-based pro-life message to their employees, their business associates and contacts, and the community in which they do business.

87. The Government Mandate unconstitutionally burdens the Plaintiffs' rights to speak or not to speak in accordance with their own religious beliefs and to advance the truth as they see it.

88. The Government Mandate violates the Plaintiffs' First Amendment free speech rights by requiring them to provide the Objectionable Coverage, thus coercing and enlisting them into affirmatively communicating the Government's message in contradiction of their own beliefs. The Government Mandate forces the Plaintiffs to support the Government's viewpoint about the morality of abortion-related activities.

89. The Government Mandate imposes a requirement on the Plaintiffs to support conduct that substantially burdens and undermines the Plaintiffs' ability to express and advocate effectively their own contrary views.

90. The Defendants are requiring the Plaintiffs to convey one message when they comply with the Government Mandate, while the Plaintiffs are conveying another when they speak out against abortion, to the detriment of the credibility of their own speech. Such fractured messaging would make the Plaintiffs appear inconsistent, equivocal, or hypocritical and would impair the Plaintiffs' message.

91. The Government Mandate's compelled speech requirement furthers no compelling governmental interest and is not narrowly tailored to further any such interest.

92. The Government Mandate is not the least restrictive means of furthering the Defendants' interests.

93. The Government Mandate violates the Plaintiffs' rights to speak freely and to refrain from compelled speech secured to them by the Free Speech Clause of the First Amendment to the United States Constitution.

COUNT IV

Violation of the Right to Freedom of Association under the First Amendment to the United States Constitution

94. The Plaintiffs restate all allegations set forth in the preceding paragraphs of this Complaint.

95. The First Amendment to the United States Constitution safeguards the right of persons to associate by joining together to engage in expressive association.

96. The Plaintiffs and various of their employees engage in such expressive association in advancing and communicating their shared religious beliefs.

97. The Government Mandate imposes an unconstitutional burden on the Plaintiffs' right to expressive association by restricting the shared ability of the Plaintiffs and their like-minded employees to express their views on abortion-related activities free of an obligation to endorse contrary views promoted by the Government Mandate.

98. The Government Mandate's restriction of the right of the Plaintiffs and their like-minded employees to expressive association furthers no compelling governmental interest and is not narrowly tailored to further any such interest.

99. The Government Mandate is not the least restrictive means of furthering the Defendants' interests.

100. The Government Mandate violates the Plaintiffs' right of expressive association secured to them by the First Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Joseph B. Holland, Jr. and Joe Holland Chevrolet, Inc. pray for the following relief:

A. That this Court enter a judgment pursuant to 28 U.S.C. §2201, 2202 declaring the Government Mandate and its application to the Plaintiffs to be an violation of their rights protected by RFRA and the Free Exercise, Free Speech, and Free Association Clauses of the First Amendment to the United States Constitution;

B. That this Court enter a temporary restraining order and a preliminary injunction prohibiting the Defendants during the course of this litigation from continuing to apply the Government Mandate in a way that substantially burdens the religious belief of the Plaintiffs in violation of RFRA and the Constitution, and prohibiting the Defendants from continuing to discriminate illegally against the Plaintiffs by requiring them to provide health insurance that includes the Objectionable Coverage;

C. That this Court enter a permanent injunction prohibiting the Defendants from continuing to apply the Government Mandate in a way that substantially burdens the religious beliefs of the Plaintiffs in violation of RFRA and the Constitution, and prohibiting the Defendants from continuing to discriminate illegally against the Plaintiffs by requiring them to provide health insurance providing the Objectionable Coverage;

D. That this Court award the Plaintiffs costs and reasonable attorneys' fees, as provided by the Equal Access to Justice Act and RFRA (as provided in 42 U.S.C. §1988); and

E. That this Court grant all such other and further relief as maybe proper and just.

Respectfully submitted this 24th day of June, 2013.

JOSEPH B. HOLLAND, JR.
JOE HOLLAND CHEVROLET, INC.

By Counsel

/s/ Allen R. Prunty
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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

Joseph B. Holland, Jr.; and Joe Holland Chevrolet, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
See attachment

DEFENDANTS

The U.S. Department of Health and Human Services; Kathleen Sebelius, Sec.; The U.S. Department of Labor; Seth D. Harris, acting Sec.; The U.S. Department of the Treasury; Jacob J. Lew, Sec.

County of Residence of First Listed Defendant _____
(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
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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. § 2000bb and the United States Constitution

Brief description of cause:
 Violation of rights under the U.S. Constitution and RFRA

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 06/24/2013 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

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

Attachment to Civil Cover Sheet: Question I(c)

Kent J. George (WV Bar No. 4842)
William C. Porth (WV Bar No. 2943)
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EXHIBIT 1

Plaintiffs' Motion for a Temporary Restraining Order
and a Preliminary Injunction

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

JOSEPH B. HOLLAND, JR.; and
JOE HOLLAND CHEVROLET, INC.,
a West Virginia Corporation,

Plaintiffs,

v.

Civil Action No. _____

**THE UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;**
KATHLEEN SEBELIUS, in her official capacity
as Secretary of the United States Department of
Health and Human Services; **THE UNITED
STATES DEPARTMENT OF LABOR; SETH
D. HARRIS**, in his official capacity as Acting
Secretary of the United States Department of Labor;
**THE UNITED STATES DEPARTMENT OF
THE TREASURY;** and **JACOB J. LEW**, in his
official capacity as Secretary of the United States
Department of the Treasury,

Defendants.

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

The Plaintiffs, Joseph B. Holland, Jr., and Joe Holland Chevrolet, Inc., by and through their undersigned counsel, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and for the reasons set forth in the accompanying Memorandum of Law, hereby move this Court for a temporary restraining order and preliminary injunction prohibiting Defendants, their agents, officers and employees from applying and enforcing against the Plaintiffs the requirements that the Plaintiffs include in their employee health benefit plan coverage for FDA-approved abortifacient contraceptives and patient education and counseling for such services, including the substantive requirement imposed in 42 U.S.C. §300gg-13(a)(4), the application of the penalties

found in 26 U.S.C. §§ 4980D and 4980H and 29 U.S.C. §1132, and any determination that the requirements are applicable to the Plaintiffs (collectively “the Government Mandate”).

Entry of a temporary restraining order and preliminary injunction is appropriate in this case because there is a threat of irreparable harm to the Plaintiffs, they are likely to succeed on the merits, the balance of harms favors the Plaintiffs, and granting both the temporary restraining order and preliminary injunction would be in the public interest.

The issues presented in this litigation have been litigated in federal courts throughout the United States. Of particular note is the case of *Liberty University v. Lew*, Docket No.10-2347, which is pending before the 4th Circuit Court of Appeals on remand from the United States Supreme Court. The *Liberty* case presents many challenges to the ACA, including the challenges raised by the Plaintiffs in this civil action. Oral argument was heard in the *Liberty* case on May 16, 2013. Resolution of the issues in that case will likely have a substantial affect on the resolution of this civil action.

The Plaintiffs are in need of immediate relief from the Government Mandate because they are subject to the Government Mandate beginning July 1, 2013. Absent relief from this Court, they will not be able to provide to their employees insurance coverage for a new plan year commencing July 1, 2013 that is consistent with the Plaintiffs’ religious beliefs against providing abortifacient drugs and related education and counseling without being exposed to the risk of the severe penalties imposed by the Patient Protection and Affordable Care Act of 2010, the Health Care and Education Reconciliation Act, and the regulations promulgated thereunder. In order that such relief may be timely granted, the Plaintiffs respectfully request that a hearing be scheduled in this matter no later than June 28, 2013.

Bond should be waived since there will be no demonstrable harm to the Defendants if the

unconstitutional acts complained of herein are enjoined.

Plaintiffs have provided to Defendants by overnight mail a copy of the Complaint, this Motion, and the supporting Memorandum. Additionally, Plaintiffs' counsel previously advised the Office of the United States Attorney for the Southern District of West Virginia of their intention to file this lawsuit, and Plaintiffs' counsel provided an Assistant U.S. Attorney with an early draft of a portion of the Complaint.

Respectfully submitted this 24 day of June 2013.

**JOSEPH B. HOLLAND, JR.
JOE HOLLAND CHEVROLET, INC.**

By Counsel

/s/ Allen R. Prunty

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EXHIBIT 2

Plaintiffs' Memorandum in Support of Plaintiffs' Motion for a
Temporary Restraining Order and a Preliminary Injunction

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

JOSEPH B. HOLLAND, JR.; and
JOE HOLLAND CHEVROLET, INC.,
a West Virginia Corporation,

Plaintiffs,

v.

Civil Action No. _____

THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; **THE UNITED STATES DEPARTMENT OF LABOR; SETH D. HARRIS**, in his official capacity as Acting Secretary of the United States Department of Labor; **THE UNITED STATES DEPARTMENT OF THE TREASURY;** and **JACOB J. LEW**, in his official capacity as Secretary of the United States Department of the Treasury,

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

INTRODUCTION

Plaintiffs Joseph B. Holland, Jr., (“Mr. Holland”) and Joe Holland Chevrolet, Inc. (“Holland Chevrolet”) (collectively, the “Plaintiffs”), seek a temporary restraining order (“TRO”) and preliminary injunction enjoining the Defendants from applying the Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered titles of U.S. Code), the Health Care and Education Reconciliation Act, Pub. L. 111-52, 124 Stat. 1029 (2010) (codified as amended in

scattered titles of U.S. Code), and certain provisions of Title 45 of the Code of Federal Regulations (jointly the “ACA”) to require the Plaintiffs to violate and abandon their sincere and deeply held religious beliefs regarding the sanctity of all human life and the immorality of abortion. Plaintiffs are seeking protection of their First Amendment rights to the free exercise of their religious beliefs, free speech, and freedom to assemble.

Mr. Holland is a believing and practicing born-again Christian. He is the President and Chairman of the Board of Directors of Holland Chevrolet, a closely held C-corporation primarily engaged in the sales and servicing of automobiles. Mr. Holland owns 91% of the Holland Chevrolet stock. The remaining stock is held in trust by the Joe B. Holland, Sr. Trust, of which Mr. Holland is the Trustee. (*See* EXHIBIT 1 to Verified Complaint (Affidavit of Joe B. Holland, Jr.).)

Holland Chevrolet has approximately 150 full-time employees, all of whom are provided, as partial compensation for their labor, group medical coverage. Mr. Holland operates Holland Chevrolet so as to glorify and honor God by being a faithful steward of all that is entrusted to him by God. *Id.*

The Plaintiffs believe that Holland Chevrolet should serve as a form of religious ministry of the truth of God’s word to its employees, customers, and community. In furtherance of this ministry, Holland Chevrolet is closed on Sundays in observance of the commandment to “Remember the Sabbath day and keep it holy.” Additionally, Holland Chevrolet has a chaplain in its employ; the Holland Chevrolet website emphasizes as part of the corporation’s mission statement the duty “to glorify and honor God by being faithful stewards for all that is entrusted to us,” *see* <http://joeholland.com/mission.shtml> (last visited June 21, 2013); Holland Chevrolet’s signage and other business imagery

feature in their design the *ichthus* (the ancient symbol of the Christian faith); and Holland Chevrolet includes among the beneficiaries of its corporate giving various Christian causes such as the Fellowship of Christian Athletes. *Id.*

Mr. Holland believes that he must follow and adhere to the teachings of the Bible, and that part of his calling as a Christian is to ensure that his business follows and adheres to the teachings of the Bible. Central among the teachings of the Bible is the Sixth Commandment's injunction that one "shall not kill." Following and adhering to this Commandment, the Plaintiffs believe that all innocent human life is sacred to its Creator and that it is profoundly immoral to procure, facilitate, fund, or endorse any form of abortion. *Id.*

Pursuant to the Patient Protection and Affordable Care Act of 2010, the United States Department of Health and Human Services ("HHS") issued regulations that order certain employers to provide health insurance coverage for (i) FDA-approved contraceptives that destroy the human embryo after conception, such as the Plan B drug (the so-called "morning-after pill") and *ella* (the so-called "week-after pill") (sometimes referred to herein as "abortifacient drugs"), and (ii) counseling and education services regarding contraception methods including the availability of abortifacient drugs (collectively, the "Objectionable Coverage"). (The requirement to provide the Objectionable Coverage is sometimes referred to herein as the "Government Mandate.")

Employers that refuse to provide the Objectionable Coverage in their group health plans are subject to severe penalties. *See* 42 U.S. Code § 300gg-22. Refusal to provide the Objectionable Coverage may also trigger a range of enforcement mechanisms under

ERISA, including civil actions by the Secretary of Labor or plan participants and beneficiaries, which could entail additional penalties. *See* 29 U.S. Code § 1132.

Plaintiffs are fundamentally opposed to abortion, its performance, procurement, facilitation, funding, and endorsement in any form. Therefore, Plaintiffs sincerely believe that the destruction of a human embryo after conception as the result of the use of abortifacient drugs is as objectionable under the Sixth Commandment as any other form of abortion. The Plaintiffs believe that funding or providing coverage for such destruction of human embryos after conception is no different from funding or providing coverage for any other form of abortion. Accordingly, the Plaintiffs believe that funding and providing the Objectionable Coverage violates the Sixth Commandment's condemnation of killing innocent life.

The ACA and its enabling regulations provide exemptions from the Objectionable Coverage for large corporations, labor unions and various entities with "grandfathered" employer group health plans, employers with less than 50 employees, and religious employers; and the Defendants have provided safe harbor from the Objectionable Coverage for certain non-profit entities. *See* 45 CFR §§ 147.130(a)(iv) & 147.140 and 26 U.S.C. § 4980H(c)(2). None of these exemptions are not available to the Plaintiffs.

Without a TRO and preliminary injunction enjoining enforcement of the ACA against Plaintiffs, they will be forced to choose between violating their deeply held and committed religious convictions or defying the ACA and subjecting themselves to severe penalties. This is a choice that the government, being bound by the Religious Freedom Restoration Act and the First Amendment to the United States Constitution, cannot rightly impose on the Plaintiffs.

The issues presented in this litigation are being litigated in federal courts throughout the United States.¹ Of particular note is the case of *Liberty University v. Lew*, Docket No.10-2347, which is pending before the 4th Circuit Court of Appeals on remand from the United States Supreme Court. This case presents many challenges to the ACA, including the challenges raised by the Plaintiffs in this civil action. Oral argument was heard in the *Liberty* case on May 16, 2013. Resolution of the issues in that case will likely have a substantial affect on the resolution of this civil action.

¹ Plaintiffs are aware of at least two dozen cases where preliminary injunctions have been granted plaintiffs challenging the ACA's application on religious grounds. See *Annex Med., Inc. v. Sebelius*, No. 13-118 (8th Cir. 2013); *Grote v. Sebelius*, 708 F.3d 850 (7th Cir. 2013); *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. 2012); *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357 (8th Cir. 2012); *Geneva Coll. v. Sebelius*, No. 2:12-cv-00207, 2013 WL 1703871 (W.D. Pa. Apr. 19, 2013); *Sioux Chief Mfg. Co., Inc. v. Sebelius*, No. 13-0036-CV-W-ODS (W.D. Mo. Feb. 28, 2013); *Triune Health Grp., Inc. v. U.S. Dep't of Health & Human Servs.*, No. 1:12-cv-06756, (N.D. Ill. Jan. 3, 2013); *Sharpe Holdings, Inc. v. U.S. Dep't of Health & Human Servs.*, No. 2:12-CV-DDN, 2012 WL 6738489 (E.D. Mo. Dec. 31, 2012); *Monaghan v. Sebelius*, No. 12-15488, 2012 WL 6738476 (E.D. Mich. Dec. 30, 2012); *Am. Pulverizer Co. v. U.S. Dept. of Health & Human Servs.*, No. 12-3459-CV-S-RED, 2012 WL 6951316 (W.D. Mo. Dec. 20, 2012); *Tyndale House Publishers v. Sebelius*, 904 F. Supp. 2d 106 (D.D.C. Nov. 6, 2012); *Legatus v. Sebelius*, 901 F. Supp. 2d 980 (E.D. Mich. Oct. 31, 2012); *Newland v. Sebelius*, 881 F. Supp. 2d 1287 (D. Colo. July 27, 2012)..

Preliminary injunctions were granted unopposed in the following cases: *Johnson Welded Prods., Inc. v. Sebelius*, No. 1:13-cv-00609-ESH (D.D.C. May 24, 2013); *Gilardi v. U.S. Dep't of Health & Human Servs.*, No. 13-5069 (D.C. Cir. 2013)(granting injunction after court's *sua sponte* reconsideration of prior denial); *Hall v. Sebelius*, No. 13-0295 (D. Minn. Apr. 2, 2013); *Bick Holding, Inc. v. Sebelius*, No. 4:13-cv-00462-AGF (E.D. Mo. Apr. 1, 2013); *Tonn & Blank Construction, LLC, v. Sebelius*, No. 1:12-CV-325 (N.D. Ind. Apr. 1, 2013); *Lindsay v. U.S. Dep't of Health & Human Servs.*, No. 1:13-cv-01210 (N.D. Ill. Mar. 20, 2013); *Hartenbower v. U.S. Dep't of Health & Human Servs.*, No. 1:13-DV-02253 (N.D. Ill. Apr. 18, 2012).

The Plaintiffs are only aware of seven such cases where a motion for temporary restraining order or preliminary injunction has been denied. See *Conestoga Wood Specialties Corp. v. U.S. Dept. of Health & Human Servs.*, No. 13-1144, 2013 WL 1277419 (3d Cir. 2013); *Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir. 2012)(granting motion to expedite appeal and denying motion for injunction pending appeal); *Hobby Lobby Stores Inc. v. Sebelius*, No. 12-6294, 2012 WL 6930302 (10th Cir. 2012); *Armstrong v. Sebelius*, No. 13-CV-00563 (D. Colo. May 10, 2013); *M.K. Chambers Co. v. U.S. Dept. of Health & Human Servs.*, No. 13-11379, 2013 WL 1340719 (E.D. Mich. Apr. 3, 2013)(denying motion for *ex parte* temporary restraining order); *Eden Foods Inc. v. Sebelius*, No. 13-11229, 2013 WL 1190001 (E.D. Mich. Mar. 22, 2013)(denying motion for temporary restraining order with motion for preliminary injunction pending); *Briscoe v. Sebelius*, No. 13-CV-00285-WYD-BNB, 2013 WL 755413 (D. Colo. Feb. 27, 2013).

A TRO and preliminary injunction should issue in this matter resolution of *Liberty University v. Lew*. Moreover, Plaintiffs submit that based on the statutory and factual basis of this case, they are entitled to a TRO and preliminary injunctive relief from the irreparable harm that would be inflicted against them by the enforcement of the Government Mandate. See *U.S. Dep't of Labor v. Wolf Run Mining Co.*, 452 F.3d 275, 281 n.1, 283 (4th Cir. 2006).

ARGUMENT

To obtain a TRO and preliminary injunction, the Plaintiffs must demonstrate by a clear showing: (1) that they are likely to succeed on the merits; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that the injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 19-20 (2008); *Real Truth About Obama, Inc. v. Federal Election Com'n*, 575 F.3d 342, 346 (4th Cir. 2009), *vacated by* 130 S. Ct. 2371 (2010), *reinstated in relevant part by* 607 F.3d 355 (4th Cir. 2010). As demonstrated herein, the Plaintiffs satisfy each of these requirements and are therefore entitled to the requested TRO and preliminary injunctive relief.

I. The Plaintiffs Are Likely to Succeed on The Merits.

The Plaintiffs make a clear showing that they are likely to succeed on the merits. The Government Mandate violates, *inter alia*, their rights under RFRA, the Free Exercise Clause of the First Amendment; and the Free Speech Clause of the First Amendment.

A. The Government Mandate violates the Plaintiffs' rights under RFRA.

RFRA forbids the government from "substantially burden[ing] a person's exercise of religion." 42 U.S.C. § 2000bb-1(a). The government can overcome this prohibition if

it can demonstrate that the burden “(1) is in furtherance of a compelling governmental interest[] and (2) is the least restrictive means of furthering that compelling government interest.” 42 U.S.C. § 2000bb-1(b). Courts look to pre-*Smith* jurisprudence to examine free exercise claims made under RFRA. See *Goodall by Goodall v. Stafford County School Bd.*, 60 F.3d 168, 171 (4th Cir. 1995).

As the Plaintiffs demonstrate, the Government Mandate substantially burdens Plaintiffs’ exercise of religion. The Government Mandate does not further a compelling governmental interest and does not adopt the least restrictive means of furthering any such interest. The Plaintiffs, therefore, are far more than likely to succeed on the merits of their RFRA claim.

1. The Government Mandate substantially burdens the Plaintiffs’ religious exercise.

RFRA broadly defines religious exercise as “any exercise of religion, whether or not controlled by, or central to, a system of religious belief.” 42 USCS § 2000bb-2 (citing 42 U.S.C. § 2000cc-5). The Supreme Court has required a similarly broad view of religious exercise and conviction, warning that “[c]ourts should not undertake to dissect religious beliefs.” *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715 (1981). As the Court explained, when someone “dr[aws] a line” respecting what does and does not violate the tenets of his religion “it is not for [courts] to say that the line he drew was an unreasonable one.” *Id.* at 715.

The Plaintiffs assert sincerely held religious beliefs that all innocent human life is sacred, that it is profoundly immoral to procure, facilitate, endorse, or fund any form of abortion, and that providing the insurance coverage required by the Government Mandate thus would be a direct violation of a central tenet of their faith. The Plaintiffs’ acting in

accordance with their beliefs by not providing the Objectionable Coverage, therefore, is clearly religious exercise protected by RFRA.

The Government has substantially burdened the Plaintiffs' exercise of religion. A "substantial burden" imposes "substantial pressure on an adherent to modify his behavior and to violate his beliefs," or coerces an individual into choosing "between following the precepts of her religion and forfeiting [governmental] benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." *Id.* at 718; *Sherbert v. Verner*, 374 U.S. 398, 404 (1960); *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006); *see also, Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972) (noting that it is a substantial burden for the government to compel someone "to perform acts undeniably at odds with fundamental tenets of their religious beliefs.").

Yoder, *Sherbert*, and *Thomas* are dispositive here. In *Yoder*, at issue was enforcement of a compulsory education law against the Old Order Amish that required school attendance to a certain age and imposed criminal fines. The Court found that enforcement of the law against the Amish was an unconstitutional burden on their free exercise rights. *Id.* at 234-35. *Sherbert* involved a worker who refused to work on Saturdays due to a religious conviction and was then denied unemployment benefits because of it. The Court held this was a "clear" burden on the worker's religious exercise that imposed "the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." 374 U.S. at 399-401, 403-404. In *Thomas*, a Jehovah's Witness quit his job because his religious beliefs prohibited him from producing war materials. Like the worker in *Sherbert*, he was subsequently denied unemployment benefits. The Court found the "coercive impact" of having to choose

“between fidelity to religious belief or cessation of work” was “indistinguishable from *Sherbert*” as a burden upon religious exercise. 450 U.S. at 709, 717-18.

The choice presented to Plaintiffs by the Government Mandate is the same as that presented to the injured parties in *Yoder*, *Sherbert*, and *Thomas*. As in *Yoder*, the Government Mandate requires Plaintiffs to violate their religious beliefs to comply with the law and avoid sanctions for noncompliance. Like *Sherbert*, the Government Mandate works like a fine that penalizes the Plaintiffs for their religious convictions and that causes the Plaintiffs to choose between their religious convictions and their livelihood. Like in *Thomas*, the Government Mandate coerces Plaintiffs to decide between faithfulness to their religious convictions or the continued well-being of their business. Without question, “[i]n the context of a small, closely-held corporation . . . these choices and the attendant consequences can have a significant impact on the health of [the] business[] and [its] owners.” *Geneva Coll. v. Sebelius*, No. 2:12-CV-00207, 2013 WL 1703871, at *7 (W.D. Pa. Apr. 19, 2013).

The Government Mandate would penalize Plaintiffs for adhering to their religious convictions. See *Lovelace*, 472 F.3d at 184, 187 (holding that a prisoner’s free exercise rights were substantially burdened, within the meaning of the term as applied by the Supreme Court, when he was prevented from fasting and participating in Nation of Islam congregational prayers and thereby from fulfilling his religious obligations). The Government Mandate coerces the Plaintiffs to violate their religious beliefs by requiring them to provide the Objectionable Coverage or face severe penalties. This is the quintessential example of Plaintiffs being “compel[led], under threat of [] sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs.”

Yoder, 406 U.S. at 218. Indeed, the Supreme Court has clarified that “onerous” financial expenses could qualify as a substantial burden on religious exercise. See *Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 392 (1990); see also, *Tyndale House Publishers v. Sebelius*, 904 F. Supp. 2d 106, 121 (D.D.C. Nov. 16, 2012) (“Government action can substantially burden a plaintiff’s religious exercise even if the law only results in the plaintiff being forced to forego a government benefit.”). But see *Goodall*, 60 F.3d at 171 (concluding that a county school board’s not providing a cued speech transliterator to a student at a religious school did not constitute a substantial burden on religious exercise).

Here, the Mandate not only threatens Plaintiffs with severe financial penalties but it also seeks to compel them to provide health insurance coverage that violates their deeply held religious beliefs. Since the Government Mandate coerces the Plaintiffs to violate their religious beliefs by requiring them to provide the Objectionable Coverage, it is a substantial burden on their free exercise of religion.

2. The Government Mandate serves no compelling governmental interest.

The Government cannot show that coercing the Plaintiffs to comply with the Government Mandate by threat of substantial penalties furthers a compelling governmental interest. A compelling governmental interest is one that is “paramount,” *Yoder*, 406 U.S. at 213, or “of the highest order.” *Id.* at 215; see also *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993) (describing the Free Exercise Clause’s requirement that a compelling governmental interest be “of the highest order”). At the preliminary injunction stage, no less than at trial, the government bears

the burden of demonstrating a compelling interest. *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 429-30 (2006).

In assessing RFRA claims, courts must “look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* at 541. That is, “RFRA requires the [g]overnment to demonstrate that the compelling interest test is satisfied through application of the challenged law ‘to the person’ – the particular claimant whose sincere exercise of religion is being substantially burdened.” *Id.* at 430.

The government cannot simply assert that excluding the Plaintiffs from the reach of the Government Mandate would undermine or harm its legislative scheme. It must instead “address the particular practice at issue” and show how granting the Plaintiffs an exemption would “seriously compromise [the government’s] ability to administer the program.” *Id.* at 435, 439. *See also Brown v. Entm’t Merchs. Ass’n*, 131 S. Ct. 2729, 2738 (2011) (“The State must specifically identify an ‘actual problem’ in need of solving, and the curtailment of [the constitutionally protected right] must be actually necessary to the solution.” (internal citations omitted)). “That is, the [government] must show that requiring the [P]laintiffs to provide the [Objectionable Coverage] will further the government’s compelling interest.” *Tyndale House*, 904 F. Supp. 2d at 125.

O Centro is precisely on point. It involved the application of RFRA to government enforcement of the Controlled Substances Act, 21 U.S.C. § 801 (2006), against a religious sect that used a sacramental tea containing a substance regulated by the Act. Under the Act, a criminal sentence was imposed for mere possession of the substance. 546 U.S. at 425-26. The Act, however, also granted a religious exemption for the use of another regulated drug – peyote – to hundreds of thousands of Native

Americans. *Id.* at 433. The Court found that this broad exemption undercut the government's attempt to show a compelling interest for denying an exemption to the religious group for its sacramental tea. *Id.*

As the *Tyndale House* court noted, the government has already voluntarily exempted millions of people from the Government Mandate through grandfathered plans alone² and many more people through other exemptions or exclusions.³ Clearly, "[t]he very purpose of a law is undermined where it is so woefully underinclusive as to render belief in [its] purpose a challenge to the credulous." *Tyndale House*, 904 F. Supp. 2d at 128. Thus, any assertion of a compelling government interest for denying an exemption to the Plaintiffs and their approximately 150 employees is without merit.

The Government, therefore, cannot demonstrate a compelling interest for enforcing the Government Mandate against the Plaintiffs. As the Supreme Court has explained, "a law cannot be regarded as protecting an interest of the highest order when it [already] leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547.

3. The Government Mandate is not the least restrictive means of advancing government goals

Even if the Government could show a compelling governmental interest, enforcing the Government Mandate against the Plaintiffs is not the least restrictive means of advancing its interest. Since the government "has open to it [] less drastic way[s] of

² *Tyndale House*, 904 F. Supp. 2d at 128; *Geneva Coll.*, 2013 WL 1703871 at *10; *Newland*, 881 F. Supp. 2d at 1298.

³ *Geneva Coll.*, 2013 WL 1703871 at *10 (citing as exemptions, *inter alia*, 26 U.S.C. 5000A(d)(2)(A) ("members of a recognized religious sect or division thereof" with religious objections to health insurance); 42 U.S.C. 300gg-13(a), 76 Fed. Reg. at 466-01 n.1 (employers with fewer than 50 employees)).

satisfying its legitimate interests, it may not choose a [regulatory] scheme that broadly stifles the exercise of fundamental personal liberties.” *Anderson v. Celebrezze*, 460 U.S. 780, 806 (1983).

Rather than coerce the Plaintiffs to violate their sincerely held religious beliefs or incur substantial penalties, the government could implement less drastic measures to achieve its goals. For example, the government could offer tax credits, deductions, or other similar tax incentives to encourage achievement of its goals. *Cf. Newland*, 881 F. Supp. 2d at 1298–99. Thus, even if the Government could demonstrate a compelling governmental interest, which it cannot, the Government Mandate is not the least restrictive means for advancing its goals. Since the Government Mandate substantially burdens the exercise of the Plaintiffs’ religious beliefs and fails strict scrutiny, the Government Mandate clearly violates RFRA, and the Plaintiffs are likely to succeed on the merits of that claim.

B. The Government Mandate violates the Plaintiffs’ rights under the Free Exercise Clause

The Plaintiffs are likely to succeed on the merits because the Government Mandate violates the Plaintiffs’ rights under the Free Exercise Clause of the First Amendment. The Free Exercise Clause requires that any governmental action that burdens a particular religious practice be subject to strict scrutiny if the law is either not neutral towards religion or is not generally applicable. *Lukumi*, 508 U.S. at 531. The Government Mandate is not neutral toward religion and is not generally applicable.

In order for a law or regulation to be neutral, the law or regulation must “not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.” *Id.* at 533. The

Government Mandate discriminates on its face and thus is not neutral because it grants religious exemptions to churches and houses of worship while denying the same religious exemption to other individuals and organizations that adhere to religious beliefs and practices no less than the churches to which exemptions are granted. 78 Fed. Reg. 8456, 8474. Drawing explicit distinction between types of organizations is equivalent to discrimination based on the “intensity” of the organization’s religious beliefs and requires strict scrutiny. *See Spencer v. World Vision, Inc.*, 619 F.3d 1109, 1114 (9th Cir. 2010) (granting an exemption to churches but not other religious organizations “would also raise the specter of constitutionally impermissible discrimination between institutions on the basis of the ‘pervasiveness or intensity’ of their religious beliefs.” (quoting *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1259 (10th Cir. 2008))); *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1342 (2002) (the inquiry necessary to discriminate between different types of religious organizations is impermissible).

The Government Mandate is also subject to strict scrutiny because it is not generally applicable. A law or regulation is not generally applicable when it regulates religiously motivated conduct while leaving non-religiously motivated conduct unregulated. *See, e.g., Lukumi*, 508 U.S. at 544–45 (striking down an ordinance that permitting killing animals for secular purposes but not for religious purposes); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999) (holding that a police department must permit a religious exemption to a no-facial-hair rule if it permits a medical exemption to the rule); *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1035 (9th Cir. 2009) (Noonan, J., concurring) (campaign finance requirements are not generally applicable if they permit

secular exemptions for newspapers and media but do not permit religious exemptions for churches).

The Government Mandate subjects religious organizations like Holland Chevrolet to its requirements, but, because of the “grandfathering” exemption, exempts the health insurance plans of some 191 million persons from the same requirements. *Newland*, 881 F. Supp. 2d at 1291. Accordingly, the Government Mandate is not generally applicable.

Since it is neither neutral nor generally applicable, the Government Mandate is subject to strict scrutiny. As the Plaintiffs have clearly demonstrated in the context of RFRA, the government cannot state a compelling governmental interest or show that it has implemented the least restrictive means for furthering any such interest. Therefore, the Government Mandate clearly violates their rights under the Free Exercise Clause, and the Plaintiffs are clearly likely to succeed on the merits.

C. The Government Mandate violates the Plaintiffs’ rights under the Free Speech Clause

The Plaintiffs are likely to succeed on the merits because the Government Mandate violates the Plaintiffs’ rights under the Free Speech Clause of the First Amendment. The Government Mandate is subject to strict scrutiny because it violates Plaintiffs’ right not to speak and because it discriminates against the Plaintiffs’ speech based on the Plaintiffs’ viewpoint and the content of their speech.

According to the Supreme Court, “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). “Viewpoint discrimination is an egregious form of content discrimination. The government must abstain from regulating speech

when the specific motivating ideology or the opinion or perspective of the speaker is the rationale of the speaker.” *Rosenberger*, 515 U.S. at 829; *see also*, *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 46 (1983); *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992)(“When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”). *See Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) (“In the realm of private speech or expression, government regulation may not favor one speaker over another.”); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105 (“The government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.”).

The Government Mandate severely penalizes the Plaintiffs for refusing to participate in the expressive act of providing the Objectionable Coverage. The specific motivating ideology of the government in mandating the Objectionable Coverage is to circumvent and suppress Plaintiffs’ rights to withhold such coverage conscientiously. The government’s threat to punish Plaintiffs’ expressive conduct with severe penalties constitutes viewpoint and content based discrimination. “The right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley*, 430 U.S. at 714. *West Va. Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943); *see also*, *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995) (“a speaker has the autonomy to choose the content of his own message.”).

The Government Mandate coerces the Plaintiffs into providing the Objectionable Coverage and effectively making a public assertion that the Objectionable Coverage is

morally permissible. Plaintiffs are being forced to communicate the government's message in a manner that can be readily observed and scrutinized by the public. The Plaintiffs here cannot simply disassociate themselves from the government's ideological position by publicly voicing their opposition outside of the context of their employee health plan. The Government substantially burdens and undermines the Plaintiffs' ability to express and advocate their contrary views and makes the Plaintiffs appear inconsistent, equivocal, or hypocritical. Since the Plaintiffs are being forced to adopt and communicate a message that they find morally repugnant through the required actions and activities imposed upon them by the Government Mandate they are likely to prevail on the merits of their Free Speech claim.

II. Enforcement of the Government Mandate against the Plaintiffs will Inflict Irreparable Harm on the Plaintiffs.

The Plaintiffs will suffer irreparable harm in the absence of a TRO and preliminary injunctive relief. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011) (quoting *Elrod*, 427 U.S. at 373). Courts treat the violation of rights protected by RFRA no differently. *Opulent Life Church v. City of Holly Springs Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) ("Most basically, Opulent Life has satisfied the irreparable-harm requirement because it has alleged violations of its First Amendment and RLUIPA rights. ... In the closely related RFRA context ..., courts have recognized that this same principle applies." (internal cites and quotes omitted)).

The Government Mandate's violations of the Plaintiffs' rights under the First Amendment and RFRA show that the Plaintiffs will suffer irreparable harm unless the court issues a TRO and preliminary injunction.

III. The Balance of Harms Favors the Issuance of A Temporary Restraining Order and Preliminary Injunctive Relief.

The balance of equities clearly tips in the Plaintiffs' favor. The Government Mandate will violate the Plaintiffs' core constitutional and statutory rights and subject them to substantial penalties. The Plaintiffs would be forced to provide the Objectionable Coverage in violation of their fundamental religious beliefs.

By contrast, a preliminary injunction and TRO would not cause any inequitable harm for the government. Any administrative inconvenience of revising regulations and exemptions under the Mandate to secure the Plaintiffs' RFRA and constitutional rights does not constitute a significant burden. *Cf. Doe v. Wood County Bd. of Educ.*, 888 F. Supp. 2d 771 (S.D.W.Va. Aug. 29, 2012). Indeed, the Government has already exempted the employers of approximately 191 million persons from the Government Mandate. Clearly, granting an additional exemption for a single employer and its approximately 150 employees hardly imposes an administrative burden. *See Newland*, 881 F. Supp. 2d at 1298. An order requiring the Defendants to refrain from applying the Government Mandate to the Plaintiffs while this case is pending would not inflict any further harm on the Defendants.

In addition, "[t]he harm in delaying the implementation of a statute that may later be deemed constitutional must yield to the risk presented here of substantially infringing the sincere exercise of religious beliefs." *Legatus*, 2012 U.S. Dist. LEXIS 156144 at *44; *see also Opuient Life Church*, 697 F.3d at 297 ("We have just concluded that Opuient

Life's harm is irreparable; hence, Holly Springs would need to present powerful evidence of harm to its interests to prevent Opulent Life from meeting this requirement.”).

IV. Public Interest Favors Granting The Temporary Restraining Order and Preliminary Injunctive Relief.

The public interest clearly favors granting a TRO and preliminary injunctive relief. “[I]njunctions protecting First Amendment freedoms are always in the public interest.” *Opulent Life Church*, 697 F.3d at 298 (quoting *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)); *cf. Elrod*, 427 U.S. 347; *see also Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (“[I]t is always in the public interest to protect constitutional rights.”); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (same). The protection of the Plaintiffs’ constitutional and statutory rights inures to the benefit of all citizens, guaranteeing their rights to free exercise of religion, speech, and assembly. The public consequences of denying a TRO and preliminary injunction would chill free speech and free exercise of religion. The general public has an interest in access to speech and the continual growth and development of a robust marketplace of ideas, including the communication of religious speech. Withholding a TRO and preliminary injunction would contravene the overwhelming weight of Supreme Court jurisprudence which stands for the vigorous protection of Americans’ First Amendment rights.

Additionally, a TRO and preliminary injunction cannot possibly harm the public interest for the Plaintiffs do not seek to enjoin preliminarily the Government Mandate as to all employers, but only as to itself. Any claim by the government that a TRO and preliminary injunction should not issue because of some broad public interest is fatally

undermined by the fact that the government has already made over 190 million exemptions and allowances. Marginal exemptions and allowances are of no detriment.

CONCLUSION

Application of the ACA and the Government Mandate to the Plaintiffs violates their rights under the First Amendment to the United States Constitution and under the Religious Freedom Restoration Act. Since the Plaintiffs have clearly shown that they are likely to succeed on the merits, that they are about to suffer irreparable harm, and that no harm to the public interest would result from the issuance of a preliminary injunction and TRO, this Court should grant Plaintiffs' Motion for Preliminary Injunction and TRO.

Respectfully submitted this 24th day of June, 2013.

**Joseph B. Holland, Jr. and Joseph B.
Holland Chevrolet, Inc.**
By counsel,

/s/ Allen R. Prunty

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EXHIBIT 3

Affidavit of Joseph B. Holland, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JOSEPH B. HOLLAND, JR.; and
JOE HOLLAND CHEVROLET, INC.,
a West Virginia Corporation;

Plaintiffs,

v.

Civil Action No. _____

THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; **THE UNITED STATES DEPARTMENT OF LABOR; SETH D. HARRIS**, in his official capacity as Acting Secretary of the United States Department of Labor; **THE UNITED STATES DEPARTMENT OF THE TREASURY;** and **JACOB LEW**, in his official capacity as Secretary of the United States Department of the Treasury.

Defendants.

AFFIDAVIT OF JOSEPH B. HOLLAND, JR.

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA

Before me, the undersigned authority, on this day personally appeared Joseph B. Holland, Jr., known to me, who being by me duly sworn, upon his oath deposed and stated as follows:

1. My name is Joseph B. Holland, Jr. I am over the age of eighteen years old and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and

all such facts are true and correct.

2. I am the President and Chairman of the Board of Directors of Joe Holland Chevrolet, Inc. ("Holland Chevrolet"). I will be responsible for determining Holland Chevrolet's actions with respect to the requirements of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148 [March 23, 2010]) and the Health Care and Education Reconciliation Act (Pub. L. 111-152 [March 30, 2010]) (collectively, the "Government Mandate").

3. Holland Chevrolet is a West Virginia corporation with its principal place of business located in South Charleston, West Virginia. It is a closely-held corporation engaged primarily in the business of selling and servicing motor vehicles. Holland Chevrolet is a C-Corporation. I own 91% of Holland Chevrolet's stock and the remaining stock is held in trust by the Joseph B. Holland, Sr. Trust, of which I am Trustee. Holland Chevrolet provides group medical insurance to approximately 150 full-time employees.

4. I am a believing and practicing born-again Christian. I am resolved, as a matter of religious belief, to conduct all aspects of my life, including the management of Holland Chevrolet, in accordance with God's Word. One of my sincerely held religious beliefs is that all innocent human life is sacred to its Creator and that it is profoundly immoral to procure, facilitate, fund, or endorse any form of abortion.

5. Holland Chevrolet, as a cognizable legal person, embraces and conducts itself in accordance with the same religious principles that animate its president, chairman of the board, and principal stockholder. In my view, my right to free exercise of religion should not be limited by the form in which I elect to do business.

6. In my ownership and management of Holland Chevrolet, I regard it as my religious duty to operate the business in conformity with my religious beliefs. I believe that

running Holland Chevrolet in accordance with the teachings of the Bible is a ministry to its employees, its customers, and the community of which it is a part. In observation of the commandment to “Remember the Sabbath day and keep it holy,” Holland Chevrolet is closed on Sundays. Holland Chevrolet’s website emphasizes as part of the corporation’s mission statement the duty “to glorify and honor God by being faithful stewards for all that is entrusted to us.” Holland Chevrolet’s signage and other business imagery feature in their design the *ichthus* (the ancient symbol of the Christian faith). Holland Chevrolet includes, among the beneficiaries of its corporate giving, various Christian causes such as the Fellowship of Christian Athletes. Holland Chevrolet employs a chaplain.

7. Holland Chevrolet and I believe that we would be complicit in violation of the Sixth Commandment of the Bible (“Thou Shalt Not Kill”) if we provided the insurance coverage required by the Government Mandate (“the Objectionable Coverage”). Holland Chevrolet and I believe that it would violate the Sixth Commandment for us to engage, in any manner, in the facilitation or endorsement of abortion. Consequently, it would be sinful and contrary to our religious principles to provide the Objectionable Coverage to the employees of Holland Chevrolet.

8. Based upon the teachings of the Bible generally, and the Sixth Commandment in particular, Holland Chevrolet and I believe that God abhors and condemns the intentional destruction of innocent human life. We believe that God commands respect for the sanctity of all innocent human life, including the lives of the unborn. We believe that, according to God’s Word, human life begins at conception and that it must be treated with dignity, respect, and protection from the moment of conception onward.

9. Holland Chevrolet and I firmly believe that payment for and/or facilitation of the use of procedures, devices, and drugs that destroy human beings in the womb, including human embryos after conception, would violate the Sixth Commandment. Based upon this sincerely-held religious conviction, we believe it would be sinful for Holland Chevrolet to participate in, arrange, pay for, facilitate, counsel, or otherwise support any form of abortion, including the use of abortion-inducing drugs like Plan B and *ella*.

10. Consistent with my belief that Holland Chevrolet should serve as a form of religious ministry and witness to the truth of God's Word, Holland Chevrolet and I believe that this ministry would be undermined by compliance with the Government Mandate and that the Objectionable Coverage would violate God's Word and would contravene the message of our ministry.

11. Consistent with our religious beliefs and duties as faithful stewards, Holland Chevrolet and I have provided, and wish to continue to provide, a generous health care plan ("the Plan") to the employees of Holland Chevrolet. In supplying health insurance for its employees, Holland Chevrolet has typically covered a wide range of services and drugs for its employees so as to adequately address their health needs. But Holland Chevrolet has never included abortion, abortifacient drugs, or related education and counseling, in the health insurance coverage that is provided to its employees.

12. At Holland Chevrolet, we want to continue to offer and facilitate health insurance coverage for our employees consistent with our religious beliefs and without suffering penalties or burdens resulting from the Government Mandate.

13. Holland Chevrolet secured a group health plan with Mountain State Blue Cross and Blue Shield in 2006. On July 1, 2012 Holland Chevrolet renewed its insurance coverage

with Mountain State Blue Cross and Blue Shield. We evaluate Holland Chevrolet's health insurance coverage and costs on an annual basis, and solicit competitive bids each year for insurance coverage. Holland Chevrolet operates on a fiscal year, from July 1 to June 30. We are presently budgeting insurance costs for the next fiscal year, running from July 1, 2013 through June 30, 2014.

14. The current term of that health insurance coverage runs through June 30, 2013; the new plan year for the insurance will commence July 1, 2013 and, absent relief from this Court, the plan will then be subject to the Government Mandate.

15. We face an impossible dilemma. Holland Chevrolet will be forced either (1) to violate its religious beliefs; or (2) to incur severe penalties.

16. The severity of the penalties is such that it could threaten the financial viability of Holland Chevrolet.

17. The Government Mandate requires Holland Chevrolet and me to provide the Objectionable Coverage in violation of our religious beliefs, in a manner we believe that is contrary to law. The Government Mandate coerces us to abandon or act in derogation of our sincerely held religious beliefs.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


JOSEPH B. HOLLAND, JR.

SUBSCRIBED AND SWORN TO before me on this 21 day of June, 2013, to certify which witness my hand and official seal.


NOTARY PUBLIC IN AND FOR
THE STATE OF WEST VIRGINIA

My commission expires: 5/20/2022

