UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ANNEX MEDICAL, INC.; **STUART LIND**, and **TOM JANAS** *Plaintiffs*, *v.* **KATHLEEN SEBELIUS**, in her official capacity as Secretary of the United States Department of Health and Human Services; **HILDA SOLIS**, in her official capacity as Secretary of the United States Department of Labor; **TIMOTHY GEITHNER**, in his official capacity as Secretary of the United States Department of the Treasury; **UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR;** and **UNITED STATES DEPARTMENT OF THE TREASURY**, *Defendants*.	Civ. No. 12-cv-02804 (DSD/SER) **MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** Hearing Date: January 4, 2013 Time: 9:00 AM

Memorandum in Support of Motion for Preliminary Injunction

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Introduction

"No liberty is more essential to the continued vitality of the free society which our Constitution guarantees than is the religious liberty protected by the Free Exercise Clause…." *Sherbert v. Verner*, 374 U.S. 398, 413 (1963). (Stewart, J., concurring in result). Yet this "essential" liberty is now under attack by the Defendants, who seek to force Stuart Lind[1] and millions other citizens of faith to violate their sincerely-held religious beliefs solely because they operate a business within this country. Defendants have mandated, under penalty of law, that all employers offering employee group health insurance must pay for coverage for contraception, sterilization, and abortifacient drugs. Defendants' mandate disregards the religious conscience rights of millions of Americans like Lind and imposes a "substantial burden" on their free exercise of religion in violation of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et. seq*.[2]

The burdens imposed on Lind's religious freedom are unjustified under Supreme Court precedent. Defendants' asserted interests in the Mandate are not "compelling," but wholly undermined by the multitude of exemptions, both secular and religious, that

[1] In this memorandum, "Lind" refers to plaintiffs Annex Medical, Inc. and Stuart Lind. Where necessary, they will be referred to individually.

[2] To date, three district courts have enjoined enforcement of the mandate against for-profit businesses who alleged, among other claims, that it violates their rights under RFRA. *See Newland v. Sebelius*, 2012 U.S. Dist. LEXIS 104835 (D. Colo. July 27, 2012); *Legatus v. Sebelius*, 2012 U.S. Dist. LEXIS 156144 (E.D. Mich. Oct. 31, 2012); *Tyndale House Publrs. v. Sebelius*, 2012 U.S. Dist. LEXIS 163965 (D.D.C. Nov. 16, 2012). Two district courts have declined to enter an injunction. *See O'Brien v. United States HHS*, 2012 U.S. Dist. LEXIS 140097 (E.D. Mo. Sept. 28, 2012); *Hobby Lobby Stores v. Sebelius*, 2012 U.S. Dist. LEXIS 164843 (W.D. Ok. Nov. 19, 2012).

permit nearly 200 million individuals to avoid providing the mandated coverage. Defendants have also failed to use means that impose the least restrictions on religious exercise to further any interest they may have in facilitating free access to birth control products and services.

Defendants have made it impossible for Lind to conduct business in accordance with the Catholic faith. If he continues offering health insurance, he must pay for products and services that violate his sincerely-held religious beliefs. If he excludes these items, he must pay substantial monetary fines. The option to eliminate insurance altogether provides Lind no relief because it requires him to neglect his religiously-held duty to provide for the physical needs of Annex Medical's employees. Moreover, discontinuing insurance places Lind at a significant competitive disadvantage vis-à-vis its competitors who may freely offer health coverage without violating their consciences.

The mandate has forced Lind's hand. Absent relief from this court, he will be forced to terminate Annex Medical's health plan, effective January 31, 2013. Annex Medical and Lind have therefore filed this motion for a preliminary injunction, seeking to enjoin enforcement of the Mandate prior to January 31, 2013, to permit them to purchase a group health plan that accords with the Catholic faith. Absent relief, they will be irreparably harmed.

Factual Background

The Mandate

On March 23, 2010, the Patient Protection and Affordable Care Act ("ACA") was signed into law by President Barack Obama. The ACA requires all group health plans to

provide, at no-cost, "preventive care and screenings" for women "as provided for in comprehensive guidelines supported by the Health Resources and Services Administration" ("HRSA").[3] 42 U.S.C. § 300gg-13(a)(4). Defendants issued regulations ordering HRSA to determine which women's "preventive care and screenings" would be required under the ACA. 75 Fed. Reg. 41728 (July 19, 2010). HRSA directed a private organization, the Institute of Medicine ("IOM"), to create guidelines describing which drugs and services should be required as preventive care in all group health plans. IOM recommended that preventive care for women include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling."[4] FDA-approved "contraceptive methods" include birth-control pills, implanted contraceptive devices, and the abortifacient drugs Plan B (the "morning after pill") and Ella (the "week after pill").[5]

Without notice of rulemaking or opportunity for public comment, HRSA adopted IOM's recommendations in full. *See* HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines, http://www.hrsa.gov/womensguidelines (last visited Nov. 21, 2012) ("HRSA Guidelines"). On August 1, 2011, Defendants issued an "interim final rule" adopting the HRSA Guidelines and mandating that all "group health plan[s]

[3] HRSA is an agency of U.S. Department of Health and Human Services ("HHS").

[4] INSTITUTE FOR MEDICINE, CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS (2011) 109-10, *available at* http://cnsnews.com/sites/default/files/documents/PREVENTIVE%20SERVICES-IOM%20REPORT.pdf (last visited Nov. 21, 2012).

[5] FDA Office of Women's Health, Birth Control Guide, *available at* http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf (last visited Nov. 21, 2012).

and … health insurance issuer[s] offering group or individual insurance coverage provide benefits for and prohibit the imposition of cost-sharing with respect to" the women's preventive care and services included in the HRSA Guidelines for plan years beginning on or after August 1, 2012. 76 Fed. Reg. 46622, 46629 (issued on Aug. 1, and published on Aug. 3, 2011); 45 C.F.R. § 147.130(a)(1)(iv). On February 15, 2012, Defendants issued final regulations by adopting the August 1 interim final rule "without change." 77 Fed. Reg. 8725-30 (Feb. 15, 2012) (the "Mandate").

Exemptions

The ACA and the Mandate do not apply equally to all employers and individuals, but contain several exemptions. Employers with fewer than fifty employees are exempted from the ACA's requirement to provide employee health insurance coverage. *See* 26 U.S.C. § 4980H(a) (imposing an "assessable payment" on employers with fifty or more employees who fail to offer ACA-compliant health coverage). However, all employers that offer a group health plan, such as Lind, must comply with the Mandate or face substantial fines and penalties. *See* 26 U.S.C. § 4980D (imposing $100 per-day, per-employee fine on employers that offer group health plans that do not comply with the coverage requirements of the Mandate); 29 U.S.C. § 1132(a) (providing for civil enforcement actions brought by the Department of Labor and insurance plan participants).

Group health plans in existence on or before March 23, 2010 are considered "grandfathered," and exempt from the Mandate indefinitely if they comply with certain

requirements and avoid certain changes in coverage.[6] Annex Medical's group health plan does not qualify for an exemption as a "grandfathered" plan.[7]

Defendants have also exempted from the Mandate certain non-profit employers they define as "religious," 45 C.F.R. § 147.130 (a)(iv)(A) and (B),[8] and individuals of certain religions who object to the acceptance of insurance benefits, 26 U.S.C. §§ 5000A(d)(2)(a)(i); 1402(g)(1).

Defendants' limited exemption for "religious employers" was allegedly based on comments received in response to the various regulations issued by Defendants. These comments presented Defendants with countless objections from religious citizens and business owners who explained that the Mandate was wholly contrary to their religious beliefs. *See* 77 Fed. Reg. at 8726-27. Defendants were warned that "if the definition of

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[6] *See* 42 U.S.C. § 18011(a)(2); 45 C.F.R. § 147.140; 75 Fed. Reg. 34538, 34545 (June 17, 2010); *see also* HealthReform.gov, "Fact Sheet: Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans," http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html (last visited Nov. 15, 2012).

[7] According to Blue Cross and Blue Shield of Minnesota, Annex Medical's group plan provider, all small business plans it offersare non-grandfathered plans. Even if this were not so, Annex Medical's plan could not qualify for grandfather status because Annex Medical did not provide the required notification, *see* 45 C.F.R. § 147.140(a)(2)(i)-(ii), to plan participants that the plan was considered grandfathered (because the plan was not considered grandfathered).

[8] Defendants' exemptions for "religious employers" requires:

> (1) The inculcation of religious values is the purpose of the organization. (2) The organization primarily employs persons who share the religious tenets of the organization. (3) The organization serves primarily persons who share the religious tenets of the organization. (4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

45 C.F.R. § 147.130(a)(iv)(B)(1)-(4).

religious employer is not broadened, [employers] could cease to offer health coverage to their employees in order to avoid having to offer coverage to which they object on religious grounds." *Id*. at 8727. These consequences were presumably acceptable to Defendants, who, in the face of these objections, chose not to expand this exemption beyond an extremely limited subset of religious non-profit entities. *See supra* note 8; 77 Fed. Reg. at 8727. Thus, despite his sincere religious beliefs, the Mandate makes no exemption for Lind and other religiously-motivated business owners.

Stuart Lind and Annex Medical

Plaintiff Annex Medical, Inc. is a Minnesota-based manufacturer of medical devices. (Verified Complaint for Declaratory and Injunctive Relief ("VC") ¶ 36 (Dkt. 1, filed Nov. 2, 2012).) Plaintiff Stuart Lind owns and operates Annex Medical as well as a separate entity, Sacred Heart Medical, Inc., which sells products developed by Annex Medical. (VC ¶¶ 35, 66, 69.) Annex Medical was incorporated in 1988 and has been a family-owned business since 1991. (Declaration of Stuart Lind ("Lind Decl.") ¶¶ 5-6.)[9]

Lind is a devout Catholic who is steadfastly committed to following the religious, ethical and moral teachings of the Catholic Church. (VC ¶ 44.) As a practicing Catholic, Lind believes that "[h]uman life must be respected and protected absolutely from the moment of conception." Catechism of the Catholic Church, ¶ 2270. In accordance with Pope Paul VI's 1968 encyclical *Humanae Vitae*, Lind also believes that "any action which either before, at the moment of, or after sexual intercourse, is specifically intended

[9] Annex Medical's shareholders consist of Stuart Lind, who owns approximately 96.5% of the shares, and the estate of his recently deceased father, Dean Lind, which owns the remaining shares. (Lind Decl. ¶ 6.)

to prevent procreation" is a grave sin. (VC ¶ 48; Declaration of Father John Echert ("Echert Decl.") ¶ 6.) Consistently, the Catholic Church teaches that contraception, sterilization, abortion and use of abortifacient drugs are intrinsically evil and immoral because they are capable of preventing and destroying a human life. (VC ¶ 49.) It is not just use of these things that is sinful, but also "cooperation" with them, meaning that anyone who provides for or facilitates access to contraception is also guilty of a sin. (VC ¶ 51; Echert Decl. ¶ 5.) For this reason, Catholic leaders have explained that Catholic employers cannot do what the Mandate requires—pay for group health insurance that provides coverage for contraception, sterilization and abortifacient drugs—without violating the Catholic faith.[10] (*Id*.) Lind therefore sincerely believes it is immoral and sinful to intentionally participate in, pay for, facilitate access to, or otherwise support contraception, sterilization, abortifacient drugs, and related education and counseling through their inclusion in Annex Medical group health plan, as is required by the Mandate. (VC ¶ 54-55; Echert Decl. ¶ 7.)

For centuries, the Catholic Church has heeded Jesus' command to "Heal the sick." Matthew 10:8 (New International Version). The Church teaches

> Life and physical health are precious gifts entrusted to us by God. We must take reasonable care of them, taking into account the needs of others and the common good.

[10] *Cardinal Burke Says Catholic Employers Cannot Conscientiously Comply with HHS Regulation*, CNS News, http://cnsnews.com/video/national/cardinal-burke-says-catholic-employers-cannot-conscientiously-comply-hhs-regulation (video interview explaining that employers who comply with the mandate are formally cooperating with the sin of contraception).

> *Concern for the health* of its citizens requires that society help in the attainment of living-conditions that allow them to grow and reach maturity: food and clothing, housing, *health care*, basic education, employment, and social assistance.

Catechism of the Catholic Church, ¶ 2288 (emphasis added). (VC ¶ 56.) Consistent with this teaching, Lind sincerely believes he has a duty to provide for the physical needs of his employees. (VC ¶ 58; Echert Decl. ¶ 8 ("Catholic social teaching supports the principle that workers have a right to a just wage and certain social benefits intended to ensure the life and health of workers.")) As part of his commitment to fulfilling this moral and religious duty, Lind has provided a group health insurance plan for his employees and their families. (VC ¶ 59.) Since 1998, Lind has provided insurance through Blue Cross and Blue Shield of Minnesota ("Blue Cross"). (VC ¶ 60.)

As his commitment to offering employee health insurance evinces, Lind does not believe his Catholic faith is to be expressed solely in his private life. He strives, as he believes he must, to adhere to Catholic teachings in all aspects of his life, including his operation of his businesses. (VC ¶¶ 45-46, 70.) Lind has adopted mission statements that commit his companies to "conducting business in a way that is pleasing to God and is faithful to Biblical principles and values."[11] (VC ¶ 71; Lind Decl. ¶ 12.) In 2001, Lind officially consecrated his businesses to the Sacred Heart of Jesus, a public profession of Lind's faith and a formal commitment to operate his businesses in accordance with the teaching of Jesus Christ. (VC ¶ 72; Lind Decl. ¶ 13.)

[11] Mission Statement, Annex Medical Inc., http://www.annexmedical.com/About_Us.html (last visited Nov. 21, 2012)

Consistent with his commitment, Lind's operation of his companies reflects his sincere religious beliefs. (Lind Decl. ¶ 14.) When Lind's businesses engage in or cooperate with activity that violates Catholic teaching, he believes it is a violation of his own religious beliefs. (Lind Decl. ¶ 15.) Consequently, when Lind's businesses have engaged in or cooperated with activities that violate Catholic teaching on the sanctity of life, he has attempted, where possible, to cause them to cease such activity or cooperation with the same. (Lind Decl. ¶ 16.) For example, in 1998, Lind made the difficult and costly decision to discontinue Annex Medical's line of heart biopsy forceps after learning they were being used on transplanted hearts that most likely were removed from donors prematurely, causing the death of the donor. (Lind Decl. ¶ 17.) Lind discontinued this promising product line so as to not be complicit with this morally unacceptable act. (*Id*.) Then in 2001, Lind ended his seven-year relationship with American Express, which he was using to facilitate his employee retirement plans, upon learning that American Express contributes money to Planned Parenthood, a provider of abortion and abortion services. (VC ¶ 76; Exhibit B to Lind Decl.)

Lind has also taken proactive steps to ensure that his businesses do not cooperate with activities he believes are sinful and immoral, including contraception, sterilization and abortion. (Lind Decl. ¶ 19.) For example, distributors and sales representatives that contract with Sacred Heart Medical to purchase and market products manufactured by Annex Medical must represent that they will "at no time distribute or represent products that are labeled with indications for contraception, sterilization, abortion, pregnancy termination, or in vitro fertilization." (VC ¶ 74; Exhibit C to Lind Decl.)

The national controversy surrounding the Mandate caused Lind to verify whether Annex Medical's group health plan accorded with his religious beliefs. (VC ¶¶ 82-83; Lind Decl. ¶ 20.) During the examination of Annex Medical's insurance policy, Lind discovered that his current plan provided coverage for abortions, abortifacient drugs, sterilization and contraception. (VC ¶ 83.)[12] Coverage for these drugs and services was not included knowingly as to do so would be contrary to Lind's sincerely-held religious beliefs. (VC ¶ 84.)

Upon discovering this mistake, Lind immediately contacted Blue Cross and requested that Annex Medical's group plan be modified to exclude coverage for all contraception, sterilization, and abortifacient drugs. (VC ¶ 85.) Blue Cross informed Lind that such a modification could not be made because Blue Cross requires all group health plans issued to employers with fewer than 50 employees to include coverage for contraception, sterilization, and abortifacient drugs. (VC ¶ 65.) Lind then inquired with three other Minnesota insurance providers as to whether he could purchase a group health plan that did not include coverage for these items, but none of the providers could offer such a group plan (VC ¶ 87-88), because the Mandate requires all insurance issuers to include Mandate-compliant coverage in all group health plans purchased after August 1, 2012. *See* 42 U.S.C. § 300gg-13; 77 Fed. Reg. at 8725-26. In other words, Lind is now

[12] Annex Medical's group plan is not currently subject to the Mandate because its plan year began prior to the Mandate's August 1, 2012 effective date. *See* 77 Fed. Reg. at 8725-26. Therefore, these drugs and services are being provided at cost to the employee. Inevitably though, Annex Medical will be required to provide them at no cost when its group plan becomes subject to the Mandate on the date of its next schedule annual renewal. *Id*.

stripped of any choice to select a new group health plan that provides coverage in line with the Catholic faith. Lind cannot provide a group health plan without violating his religious beliefs. (VC ¶ 89.)

The option to discontinue health coverage without incurring monetary penalties provides Lind no relief. As explained, Lind believes he has a moral and religious duty to provide health care for Annex Medical's employees and he does so as an exercise of his religious beliefs. (VC ¶¶ 58-59, 91; Lind Decl. ¶ 10.) The Mandate forces Lind to neglect this duty and prevents him from freely engaging in this religious exercise because to do so would require materially cooperation with the sins of contraception, sterilization and abortifacient drugs. In short, the Mandate imposes a substantial burden on Lind's exercise of religion.

After several consultations with his pastor, Lind determined he must discontinue Annex Medical's group health plan to avoid violating his religious beliefs. (VC ¶¶ 91-93; Lind Decl. ¶¶ 31-32; Echert Decl. ¶ 4.) On October 22, 2012, Lind held a company meeting at which he notified his employees of his decision to discontinue their group health plan effective January 31, 2013. (VC ¶ 94; Lind Decl. ¶ 33; Exhibit D to Lind Decl.) After the announcement, Lind's pastor explained in detail why the Mandate was morally and religiously problematic for Lind. (Lind Decl. ¶ 34; Echer Decl. ¶ 5.)

Coerced to discontinue Annex Medical's group plan, Lind must now suffer additional burdens. Annex Medical will face significant competitive disadvantages in the marketplace, in that it will not be able to offer current and prospective employees the important benefit of health insurance, whereas other employers will be able to do so

without violating their consciences. (VC ¶ 96.) Lind is concerned this may make it more difficult to attract and retain employees who possess the necessary dexterity to produce the delicate wire assemblies in Annex Medical's products. (Lind Decl. ¶ 35.) Annex Medical must also forfeit a tax credit available to small businesses that offer group health insurance plans. 26 U.S.C. § 45R.

Lind simply wishes to operate Annex Medical in accordance with the Catholic faith and his religiously-held duties, and would do so, but for the Mandate. Unless this Court provides immediate relief, Annex Medical's group health plan will terminate and Lind will be irreparably harmed.

Argument

The "issuance of a preliminary injunction depends upon a 'flexible' consideration of (1) the threat of irreparable harm to the moving party; (2) balancing this harm with any injury an injunction would inflict on other interested parties; (3) the probability that the moving party would succeed on the merits; and (4) the effect on the public interest." *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) ("*MCCL*") (internal citations omitted).

"[T]he burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). So under strict scrutiny, the *government*, even at the preliminary-injunction stage, must prove that the Mandate is narrowly tailored to a compelling interest and that less-restrictive means are inadequate to serve the interest. *See id*. at 428-29.

"When a Plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied." *MCCL*, 692 F.3d at 870 (internal citations and quotations omitted).

I. Lind is Likely to Succeed on the Merits.

A. The Mandate Violates the Religious Freedom Restoration Act.

In 1993, Congress passed the Religious Freedom Restoration Act ("RFRA") "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb-(b)(1). Under RFRA, the federal government is strictly prohibited from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability."[13] *Id*. § 2000bb-1(a). RFRA recognizes only one exception, which "requires the Government to satisfy the compelling interest test—'to demonstrate that

[13] To be clear, Lind's argument that RFRA applies to the Mandate is not a concession that the Mandate or its accommodations are neutral laws of general applicability. Rather, the Mandate and its accommodations are facially discriminatory laws that result in discriminatory actions by Defendants. RFRA applies to both facially discriminatory laws and neutral laws of general applicability—"[t]he statutory phrase 'even if' implies application in [instances of facially discriminatory law and action] as well." *Rasul v. Rumsfeld*, 433 F. Supp. 2d 58, 69 n.10 (D.D.C. 2006) (citing *Omar v. Casterline*, 414 F. Supp. 2d 582, 594 (W.D. La. 2006)), *rev'd on other grounds sub nom. Rasul v. Myers*, 512 F.3d 644 (D.C. Cir. 2008) *cert. granted, judgment vacated*, 555 U.S. 1083, 129 S.Ct. 763, 172 L. Ed. 2d 753 (2008) and *rev'd on other grounds sub nom. Rasul v. Myers*, 563 F.3d 527 (D.C. Cir. 2009). *But see Hartmann v. Stone*, 68 F.3d 973, 978 (6th Cir. 1995) (RFRA only overruled *Employment Division v. Smith*, 494 U.S. 872 (1990), and therefore does not apply to laws that are not neutral); *Larsen v. U.S. Navy*, 346 F. Supp. 2d 122, 137 (D.D.C. 2004) (holding the same as *Hartmann*).

application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *O Centro*, 546 U.S. at 424 (*quoting* 42 U.S.C § 2000bb-1(b)). The government may not use a "categorical approach" to satisfy the compelling interest test; rather, RFRA requires the government to satisfy the compelling interest test "through application of the challenged law to … the particular claimant whose sincere exercise of religion is being substantially burdened." *O Centro*, 546 U.S. at 430-31.

1. Lind's Offering and Operation of his Group Health Insurance Plan in Accordance with the Catholic Faith are Exercises of Religion under RFRA.

RFRA defines "exercise of religion" to "include[] any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *See* 42 U.S.C. § 2000cc-5(7)(A) (defining "religious exercise" in 42 U.S.C. § 2000bb-2(4)). *See also United States v. Crystal Evangelical Free Church (In re Young)*, 82 F.3d 1407, 1418 (8th Cir. 1996) (explaining that RFRA protects "religiously motivated as well as religiously compelled conduct"). RFRA's "guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *United States v. Ali*, 682 F.3d 705, 710 (8th Cir. 2012) (citations and quotations omitted). Beliefs need not be purely religious, but "can be both secular and religious." *Love v. Reed*, 216 F.3d 682, 689 (8th Cir. 2000).

"Exercise of religion" is not constrained to "belief and profession" but includes the "performance of (*or* abstention from) physical acts." *Employment Division v. Smith*, 494 U.S. 872, 877 (1990) (emphasis added). Indeed, the very cases which form the basis for

RFRA involved litigants whose religious beliefs required them to refrain from engaging in certain conduct. *Verner*, 374 U.S. 398 (plaintiff's religious beliefs forbade her to work on Saturdays); *Yoder*, 406 U.S. 205 (plaintiffs' religious beliefs forbade them from enrolling their children in public school beyond the eighth grade).

As explained, Lind strives, as he believes he must, to adhere to Catholic teachings in all aspects of his life, including his operation of Annex Medical. As RFRA contemplates, Lind's adherence to his faith in operating Annex Medical is manifested in both the "performance of" and "abstention from" certain conduct. Lind sincerely believes he has a moral and religious duty to provide for the physical needs of his employees. Lind exercises this belief by providing a group health insurance plan to Annex Medical's employees. Thus, the offering of a group health plan to Annex Medical's employees is an exercise of religion within the meaning of RFRA.

However, in accordance with the Catholic faith, Lind also sincerely believes it is sinful and immoral to provide coverage in Annex Medical's group health plan for contraception, sterilization, abortion, abortifacient drugs and related education and counseling. Upon discovering that his current group health plan inadvertently included coverage for some of these forbidden items, Lind immediately sought to conform Annex Medical's plan to his religious beliefs.[14] But Defendants have made it impossible for him

[14] This coverage was not included knowingly in Annex Medical's group health plan. Even if it were intentional, the fact that Lind has not *always* excluded coverage for these items is immaterial. *See Ali*, 682 F.3d at 710 ("[F]ocusing on [an] 'inconsistent' application of [a] belief…is not appropriate in the RFRA context."); *see also Thomas v. Review Bd. of the Indiana Employment Sec. Div.*, 450 U.S. 707, 714 (1981) ("Religious

to do so. The Mandate applies equally to employers and "health insurance issuer[s] offering group…health coverage," 42 U.S.C. § 300gg-13(a), thus, Lind is prevented from selecting a new group health plan that does not contain coverage that violates his religious beliefs. Yet he desires to do so. The operation of Annex Medical's group health plan in accordance with the Catholic religious belief against cooperation with contraception, sterilization and abortifacient drugs is an exercise of religion within the meaning of RFRA.[15]

2. The Mandate Substantially Burdens Lind's Exercise of Religion.

RFRA does not define "substantial burden." Therefore, courts frequently look to free exercise cases predating *Employment Division v. Smith* to evaluate the substantiality of burdens on religious exercise. *See e.g.*, *Goodall by Goodall v. Stafford Cnty. School Bd.*, 60 F.3d 168, 171 (4th Cir. 1995) ("we may look to pre-RFRA cases in order to assess burden on the plaintiffs for their RFRA claim").

The Supreme Court cases that form the basis for RFRA are especially relevant. In *Sherbert v. Verner*, the appellant was denied unemployment benefits due to her refusal to

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beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.")

[15] In the August 1, 2011 regulations in which Defendants explain their decision to permit exemptions from the Mandate for certain religious employers, Defendants note that "it is appropriate that HRSA…takes into account the effect on the religious beliefs of certain religious employers if coverage of contraceptive services were required in the group health plans in which employees in certain religious positions participate." 76 Fed. Reg. at 46623. Defendants have thus implicitly conceded that employers are engaged in an "exercise of religion" when they abstain from providing coverage for contraception, sterilization, and abortifacient drugs.

work on Saturday, the Sabbath Day of her faith. 374 U.S. at 399-401. The Court found this placed an impermissible burden on her free exercise of religion because it "force[d] her to choose between following the precepts of her religion and forfeiting 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 404. Even though the government did not "directly compel" the appellant to work on Saturday in violation of her faith, the Court found the "pressure" on her to do so was "unmistakable." *Id*.

In *Wisconsin v. Yoder*, Amish parents whose religious beliefs required that they educate their children at home after the eighth grade were fined five dollars each for violating Wisconsin's compulsory school-attendance law. 406 U.S. at 208. The Court affirmed the lower court's decision to strike the law, finding that it created a "severe" and "inescapable" impact on the practice of the Amish religion because it "affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." *Id*. at 218.

Also instructive is *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707 (1981). There, a Jehovah's Witness was denied unemployment benefits because he quit his job that required him to produce armaments in violation of his religious beliefs against working on the production of weapons. *Id*. at 710-11. The Court reemphasized that even "indirect" compulsion to violate one's beliefs constitutes a substantial burden on free exercise of religion— "Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent

to modify his behavior and to violate his beliefs, a burden upon religion exists." *Id*. at 717-18.

As in *Yoder*, the Mandate "affirmatively compels" Lind to "perform acts undeniably at odds with fundamental tenets of [his] religious beliefs," *Thomas*, 450 U.S. 707—he must include cost-free coverage for contraception, sterilization, and abortifacient drugs in any group health plan he offers. This is more than a substantial burden; it is essentially a requirement that he conduct business in a way that violates his faith. The consequences for offering a non-compliant group health plan are substantial—(1) a $100 per day, per employee, 26 U.S.C. § 4980D, dwarfing the *five dollar* fine the *Yoder* Court viewed as creating a "severe" and "inescapable" impact on practice of the Amish religion, *Yoder*, 406 U.S. at 218[16]; and (2) civil enforcement actions brought by the Department of Labor and insurance plan participants, 29 U.S.C. § 1132(a).

Lind's "option" to terminate Annex Medical's health care plan without incurring monetary penalties does not eliminate the substantial burden on his religious exercise for the consequences of terminating Annex Medical's plan likewise put "substantial pressure," *Thomas*, 450 U.S. at 718, on him to purchase insurance and provide

[16] Defendants have all but conceded that the Mandate imposes burdens on employers' religious exercise. Not only have Defendants already exempted some "religious employers" who object to providing coverage for contraception services, 45 C.F.R. § 147.130(a)(1)(iv)(A)-(B), but Defendants are currently developing changes to the Mandate that would further "accommodat[e] non-exempt, non-profit religious organizations' religious objections to covering contraception services." 77 Fed. Reg. 16501, 16503 (March 21, 2012).

contraception, sterilization and abortifacient drugs—in other words, to "modify his behavior and to violate his beliefs, *id*.[17]

As explained, Lind sincerely believes he has moral and religious duty to provide for the physical needs of his employees. (Lind Decl. ¶ 10; Echert Decl. ¶¶ 8-9.) If he must terminate their health care plan, he must neglect this duty, and potentially force his employees to secure their own insurance on the more expensive individual market. Annex Medical will also be exposed to significant competitive disadvantages in that it will be unable to offer current and prospective employees an important part of the Annex Medical's benefits package. This may make it more difficult to attract and retain employees who possess the necessary dexterity to produce the delicate wire assemblies in Annex Medical's products.[18] (Lind Decl. ¶ 35.) Moreover, Annex Medical must forfeit a tax credit available to small businesses that offer group health insurance plans. 26 U.S.C. § 45R.

These burdens are far more substantial than those the Supreme Court has previous struck. In *Sherbert*, the appellant's religious observance of her Sabbath rendered her merely ineligible for unemployment benefits, yet the Court found her ineligibility placed

[17] The availability of "exit options" does not alter the "substantial burden" analysis. Of course, the *Yoders* could have moved their family out of Wisconsin and to a state where they would not have not faced penalties for removing their children from public schools. This "option" did not alter the Court's opinion that the $5 fine created a "substantial burden" on the *Yoder*'s free exercise of religion.

[18] The wires in these assemblies are about the same thickness as a human hair, requiring Annex Medical's employees to have very fine finger dexterity. More than half of those Annex Medical has hired for this work have been unable to complete the introduction period because the job was beyond their capability. The dexterity requirement has made obtaining workers difficult. (Lind Decl. ¶ 35.)

"unmistakable" pressure on her to forego that observance. *Id*. at 404. *See also Thomas*, 450 U.S. at 717 (finding the "coercive impact" on free exercise resulting from denial of employment benefits to be "indistinguishable from *Sherbert*").

Lind's inadvertent inclusion of contraception and abortifacient drugs in Annex Medical's current group plan necessitates that he finds a group plan that excludes this coverage *right now*. Yet, the Mandate has made that impossible. Defendants have stripped Lind of any choice to select a group plan that accords with his beliefs because the Mandate requires all insurance issuers to include Mandate-compliant coverage in all group health plans purchased after August 1, 2012. *See* 42 U.S.C. § 300gg-13; 77 Fed. Reg. at 8725-26.

The Mandate has thus forced Lind's hand. He has concluded he must, absent relief from this court, terminate Annex Medical's group health plan, and endure the substantial burdens noted above, to avoid violating his sincerely-held belief against cooperation with contraception, sterilization and abortifacient drugs.

Thus, as in *Sherbert*, the Mandate has put Lind to a choice. But unlike *Sherbert*, Lind must choose between two exercises of religion—fulfill his religiously-held duty to provide employee health care and violate his beliefs with respect to contraception or abstain from cooperation with contraception and violate his religiously-held duty to provide employee health care. Not only does this choice force Lind to "modify his behavior and to violate his beliefs," *Thomas*, 450 U.S. at 718, i.e., impose a substantial burden, it imposes an unconstitutional condition on his free exercise rights. *Simmons v.*

United States, 390 U.S. 377, 394 (1968) (finding it "intolerable that one constitutional right should have to be surrendered in order to assert another").

Because of the Mandate, Lind has determined that he must terminate Annex Medical's group health plan, unless he receives the requested relief from this Court, permitting his to select a new group health plan that conforms to his Catholic faith.

3. The Mandate Fails Strict Scrutiny.

Because the Mandate imposes "substantial burdens" on Lind's religious exercise, it must satisfy strict scrutiny. Defendants must demonstrate that the Mandate "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(b)(1)-(2). The government must satisfy strict scrutiny "through application of the challenged law to…the particular claimant whose sincere exercise of religion is being substantially burdened." *O Centro*, 546 U.S. at 430-31. In other words, this Court must look beyond the government's "broadly formulated interests justifying the general applicability of [the Mandate] and scrutinize[] the asserted harm of granting specific exemptions to [Lind]." *Id*. at 431.[19]

Defendants must "specifically identify an 'actual problem' in need of solving," and show that substantially burdening Lind's free exercise of religion is "actually necessary to the solution." *Brown v. Entm't Merchs. Ass'n*, 131 S.Ct. 2729, 2738 (2011).

[19] As explained, *supra* note 13, Lind's argument that RFRA applies to the Mandate is not a concession that the Mandate or its accommodations are neutral laws of general applicability. But even if Defendants argue the Mandate is neutral and generally applicable, RFRA requires this Court to apply strict scrutiny. *See* 42 U.S.C. § 2000bb-1(a).

i. The Mandate is Not Justified by a Compelling Interest.

In defending the numerous challenges[20] to the Mandate throughout the country, Defendants have advanced two primary justifications for the Mandate—providing and equalizing health care for women. Even assuming the coverage required by the Mandate promotes these abstract interests, the Mandate must fail strict scrutiny because Defendants' interests cannot be considered "compelling" in light of the millions of people Defendants have voluntarily exempted from providing women's preventive care.

By the Defendants' own calculation, approximately 191 million people belong to health care plans that may be "grandfathered" under the ACA. *See Newland*, 2012 U.S. Dist. LEXIS 104835 at 1 (*citing* 75 Fed. Reg. at 34550); *Tyndale House Publrs.*, 2012 U.S. Dist. LEXIS 163965 at 60 (same); *Legatus*, 2012 U.S. Dist. LEXIS 156144 at 29 (estimating 193 million people in grandfathered plans and granting preliminary injunction against Mandate).

The Mandate is also inapplicable to "member[s] of a recognized religious sect or division thereof" who are "conscientiously opposed to acceptance of the benefits of any private or public insurance." 26 U.S.C. §§ 5000A(d)(2)(a)(i), 1402(g)(1). Defendants have also exempted employers, such as Lind, with fewer than fifty employees,[21] 26

[20] To date, 40 challenges have been brought against the Defendants by individuals, businesses and organizations who believe the Mandate violates their right to free exercise of religion. *See* HHS Mandate Information Central, The Beckett Fund, http://www.becketfund.org/hhsinformationcentral/ (last visited Nov. 21, 2012).

[21] Most notably, it is difficult to see how Defendants could argue they have a compelling interest in enforcing the Mandate against Lind given their decision to exempt Annex Medical from the ACA's requirement to provide group health insurance (which functionally exempts him from offering coverage for contraception). The government's

U.S.C. § 4980H(a), and entities they define as "religious employers," i.e. churches, from compliance with the Mandate. 45 C.F.R. § 147.130(a)(iv)(A).

"[T]his massive exemption completely undermines any compelling interest in applying the…mandate to [Lind]."[22] *Newland*, 2012 U.S. Dist. LEXIS 104835 at 22; *see also Tyndale House Publrs.*, 2012 U.S. Dist. LEXIS 163965 at 60 (same). Under strict scrutiny, "a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited."[23] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (quotations and citations omitted). Defendants therefore cannot assert an interest "of the highest order" in forcing Lind to comply with the Mandate and violate his beliefs because Defendants have allowed "appreciable damage" to the over 190 million individuals they have consciously exempted from the Mandate. Defendants' alleged interests are simply not compelling when they have "fail[ed] to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort." *Id*. at 546-47. The Mandate must necessarily give way to Lind's faith, as "[o]nly those interests of the highest order and

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alleged interests in the Mandate seemingly apply to employees regardless of the size of their employer. *See O Centro*, 546 U.S. at 433.

[22] To the extent the government may argue the Mandate should be sustained because granting an exemption for Annex Medical would mean it must grant exemptions for everyone, that "slippery slope" argument has been rejected by *O Centro* as inconsistent with RFRA. 546 U.S. at 435-36.

[23] Notably, Congress did not exempt "grandfathered" plans from *all* provisions of the ACA. *See* 42 U.S.C. § 18011(a)(3-4) (specifying those provisions of the ACA that apply to grandfathered health plans). However, Congress specifically exempted grandfathered health plans from complying with the Mandate. Defendants' position that its interests are "of the highest order" is further undercut by Congress's conclusion that grandfathered plans must comply with other provisions of the ACA, but not the Mandate.

those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Yoder*, 406 U.S. at 216.

O Centro illustrates that Defendants have no compelling interest in denying Lind an exemption. In *O Centro*, a church sought a RFRA exemption to the Controlled Substances Act ("CSA") to permit them to use an illegal hallucinogen ("DMT") in a tea that church members received during communion. 546 U.S. at 423. The government contended that it had a compelling interest in the uniform application of the CSA such that it could make *no* exception to the ban on the hallucinogen to accommodate the church's sincere religious practice. *Id*. Yet for 35 years prior, a regulatory exemption from the CSA had been in place for Native American religious use of peyote, a substance, like DMT, also banned under Schedule I of the Act. *Id*. at 433. While noting that DMT was "exceptionally dangerous," *id*. at 432, the Court nonetheless held the exemption for peyote use "fatally undermines" the government's contention that had a compelling interest in denying an exemption to the church, *id*. at 434-35.[24]

The same is true in this case. The peyote exception exempted "hundreds of thousands" of Native Americans from the CSA. *Id*. at 433. That exemption negated the government's alleged interest in enforcing a ban on an "exceptionally dangerous" drug as applied to approximately 130 church members. *Id*. Here, the government has exempted a much greater number—over 190 million individuals—from complying with the Mandate

[24] Similarly, in *Lukumi Babalu Aye*, the Supreme Court found that the City of Hialeah's failure to enact feasible measures to restrict the slaughter of animals in situations not involving religious sacrifice required it to find that the government's interest was not compelling. 508 U.S. at 546-47.

for both secular and religious reasons, including Lind, as an employer with fewer than fifty employees.[25] This case deals not with curbing dangerous drug use, but with promoting marginally-incremental access to already widely-available women's health services. These exemptions likewise negate the Defendants' alleged interest in enforcing the Mandate against Lind.[26] Defendants cannot meet their burden to demonstrate a compelling interest in forcing Lind to violate his sincerely-held religious beliefs while voluntarily exempting nearly two-thirds of the nation's population, including the very plaintiff here, from the compliance with Mandate. But even if Defendants' interest were considered compelling, the massive exemption they have allowed prevents them from demonstrating that granting an additional exemption to Annex Medical and its 18 employees would result in appreciable harm to those interests. *See O Centro*, 546 U.S. at 431 (In RFRA cases, the court must "look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted

[25] It is immaterial whether these exemptions are to the Mandate specifically or more generally to other provisions of the ACA thereby making the Mandate inapplicable. "If the government has a compelling interest in ensuring no-cost provision of preventative health coverage to women, that interest is compromised by exceptions allowing employers to avoid providing that coverage — whether broadly or narrowly crafted." *Newland*, 2012 U.S. Dist. LEXIS 104835, 22 n.12.

[26] As this case demonstrates, imposing the Mandate on religiously-motivated businesses like Annex Medical can actually frustrate the overall purpose of the ACA, which is to safeguard the public health. Under the pressure of the Mandate, and without the relief it seeks, Lind will terminate his group health plan, thereby leaving its employees without coverage for *any* health services. Of course, Defendants were made aware this might happen, *see* 77 Fed. Reg. at 8727, yet they chose to impose the Mandate on Lind and others with similar sincere religious objections.

harm of granting specific exemptions to particular religious claimants."); *Olsen v. Mukasey*, 541 F.3d 827, 831 (8th Cir. 2008) (same).

As shown, Defendants cannot demonstrate a compelling interest in the Mandate. It thus fails strict scrutiny and violates RFRA.

ii. The Mandate Does Not Use the Least Restrictive Means.

Even assuming Defendants' alleged interests are compelling, the Mandate would still fail strict scrutiny because Defendants cannot demonstrate that forcing Lind to violate his religious beliefs is the least restrictive means to ensure that women have access to preventive care at no cost.

Strict scrutiny requires "[p]recision of regulation." *Anderson v. Celebrezze*, 460 U.S. 780, 806 (1983). "If the [government] has open to it a less drastic way of satisfying its legitimate interests, it may not choose a [regulatory] scheme that broadly stifles the exercise of fundamental personal liberties." *Id*. (citations and quotations omitted). Here, the government cannot demonstrate it has used the least restrictive means because it has several viable, yet far "less drastic" ways of satisfying its alleged interest that do not impose a substantial burden on Lind's free exercise of religion.

First and foremost, the government could subsidize the coverage required by the Mandate itself. This is something the government is already doing on a large scale. In 2010, "[t]he joint federal-state Medicaid program spent $1.8 billion for family planning services." Guttmacher Institute, *Facts on Publicly Funded Contraceptive Services in the United States*, May 2012, (citations omitted), *available at* http://www.guttmacher.org/pubs/fb_contraceptive_serv.html.

The burden on the government to expand its current operations to cover those individuals not qualifying for contraception coverage under Medicaid would be minimal given that "[n]ine in 10 employer-based insurance plans" already cover the "full range of prescription contraceptives." *See* Guttmacher Institute, *Contraceptive Use in the United States*, July 2012, (citations omitted), *available at* http://www.guttmacher.org/pubs/fb_contr_use.html.

The government could also further its interests by directly reimbursing individuals who purchase contraceptives or allow those individuals to claim tax credits or deductions. Or, as the government has done to insurance issuers, the government could impose a mandate on the manufacturers of contraceptive drugs and devices to provide such products free of charge through community health centers, public clinics and hospitals. Defendant HHS Secretary Kathleen Sebelius has recognized that contraception services are already available through these entities for people with income-based support. Press Release, *A statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius*, Jan. 20, 2012, http://www.hhs.gov/news/press/2012pres/01/20120120a.html (last visited Nov. 21, 2012). The government could effectively make them available for all citizens through such a mandate.

Of course, the government may believe it is easiest to force employers to provide contraception services, but "a court should not assume a plausible, less restrictive alternative would be ineffective." *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 824 (2000). All of the above options are far "less drastic," yet effective means of furthering the Defendants' alleged interests without imposing burdens on the religious

exercise rights of Lind and others similarly situated. Thus, even assuming Defendants have demonstrated an "actual problem in need of solving," the Mandate must fail because Defendants cannot demonstrate that substantially burdening Lind's free exercise of religion is "actually necessary to the solution." *Brown*, 131 S.Ct. at 2738.

Lind has shown that the Mandate substantially burdens his free exercise of religion. Defendants cannot demonstrate the Mandate furthers a compelling interest. But even if they could, they cannot show they have used the least restrictive means to further that interest. Lind has thus demonstrated he is likely to succeed on the merits of his RFRA challenge.

II. Lind Will be Irreparably Harmed Absent Injunctive Relief.

Lind has demonstrated likely merits success as to his RFRA challenge. That showing necessitates that this Court find that he is likely to suffer irreparable harm. *See, e.g.*, *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) ("courts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA"); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("although plaintiff's free exercise claim is statutory rather than constitutional, the denial of the plaintiff's right to the free exercise of his religious beliefs is a harm that cannot be adequately compensated monetarily"). The courts who have recently enjoined enforcement of the Mandate have reached similar conclusions. *Newland*, 2012 U.S. Dist. LEXIS 104835 at 11 ("[I]t is well-established that the potential violation of Plaintiffs' constitutional and RFRA rights threatens irreparable harm."); *Legatus*, 2012 U.S. Dist. LEXIS 156144 at 40 ("The potential for harm to

Plaintiffs exists, and with the showing Plaintiffs have made thus far of being able to convincingly prove their case at trial, it is properly characterized as irreparable.").

Moreover, because of his sincerely-held beliefs, Lind will be forced to terminate Annex Medical's plan on January 31, 2013, absent relief from this Court. At that time, he will be stripped of his ability to fulfill his religiously-held duty to provide for the physical needs of his employees. "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).

III. The Balance of Hardships Strongly Favors Lind.

When First Amendment freedoms are infringed, the Eighth Circuit "view[s] the balance clearly in favor of issuing the injunction" because irreparable harm occurs otherwise. *Iowa Right to Life Committee v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999) ("*IRTL*"). The same is true here because a violation of RFRA also constitutes irreparable harm.

Defendants will face no harm from being prevented from enforcing the Mandate against Annex Medical, a business the Defendants chose to exempt from the requirement to provide health insurance altogether. Absent relief, Lind will be forced to discontinue Annex Medical's health insurance plan. So, if anything, injunctive relief will actually benefit Defendants' interests in the ACA, and Annex Medical's employees, because Lind will be able to continue offering his employees the protection of health insurance while this Court considers the merits of his claims.

Defendants have voluntarily exempted health plans covering over 190 million individuals from the Mandate. The minimal harm they may face if unable to enforce the Mandate against Annex Medical and his 18 employees, "pales in comparison to the possible infringement upon Plaintiffs' constitutional and statutory rights." *Newland*, 2012 U.S. Dist. LEXIS 104835 at 14 (finding "[t]his factor strongly favors entry of injunctive relief").

IV. The Public Interest Favors an Injunction

The public interest factor in RFRA cases should also be guided by First Amendment challenges. Viewed in this light, the public interest strongly favors entry of an injunction. In First Amendment challenges, "the determination of where the public interest lies…is dependent on the determination of the likelihood of success on the merits … because it is always in the public interest to protect constitutional rights." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (*citing Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). As Lind has demonstrated likelihood of success, the public interest weighs strongly in his favor.

Conclusion

For the foregoing reasons, Annex Medical and Stuart Lind request this court to enter an injunction in their favor.

Respectfully submitted this 21st day of November, 2012.

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