

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
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ALAN LYLE HOWE, JR.

*Plaintiff*

v.

SYLVIA BURWELL, in her official  
capacity as Secretary of the United States  
Department of Health and Human Services;  
THOMAS PEREZ, in his official capacity  
as Secretary of the United States  
Department of Labor; JACOB J. LEW, in  
his official capacity as Secretary of the  
United States Department of the Treasury;  
KATHERINE ARCHULETA, in her official  
capacity as Director of the Office of  
Personnel Management; UNITED STATES  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; UNITED STATES  
DEPARTMENT OF LABOR; UNITED  
STATES DEPARTMENT OF THE  
TREASURY; and OFFICE OF  
PERSONNEL MANAGEMENT;  
VERMONT HEALTH CONNECT;  
DEPARTMENT OF VERMONT HEALTH  
ACCESS; and MARK LARSON, in his  
official capacity as Commissioner of  
Vermont Health Access,

*Defendants*

VERIFIED COMPLAINT

Civil Action No. 2:15-cv-6

**VERIFIED COMPLAINT**

COMES NOW Plaintiff, Alan Lyle Howe, Jr. and by and through his attorneys alleges as follows:

**I. Introduction**

1. Mr. Howe simply seeks to provide for his own healthcare without paying for the elective abortions of others in violation of his religious exercise and conscience. But in Vermont the Defendants deny him this freedom. The Defendants interpret, apply, and enforce the Affordable Care Act to impose substantial penalties on Mr. Howe because of his sincere religious objection to paying a special surcharge to be used specifically and exclusively to pay for others' elective abortions. Indeed, for almost one year Mr. Howe was coerced by Defendants into paying for others' elective abortions through Vermont Health Connect, the state's health insurance exchange.

2. Through the Affordable Care Act of 2010, Pub. L. 111-148 (March 23, 2010), and Pub. L. 111-152 (March 30, 2010), the government has required Mr. Howe to purchase a certain type of government-approved health insurance or pay burdensome fines for his refusal. The government also entitles Howe to substantial subsidies to purchase certain of these insurance plans, an entitlement made necessary because requirements of the Affordable Care Act have terminated his health insurance plan and driven up the cost of any alternatives so that they are unaffordable. However, in order to avail himself of any of those subsidies and avoid the draconian penalties Defendants would impose, Mr. Howe must also pay a separate fee to be used solely to pay for elective abortions for others. Mr. Howe is a Christian and a pro-life activist. He is deeply pro-life and objects to being forced to pay for procedures that kill innocent human beings.

3. Defendants exacerbate these constitutional violations by prohibiting insurers on the exchanges and exchange officials from providing Howe or any other Americans, prior to enrollment, with truthful information about abortion coverage in the plans they offer or the amount of the premiums that the issuers will collect from enrollees to be expressly and

exclusively used to pay for elective abortions. Defendants prohibit this important information from being disclosed to the public, including Mr. Howe, when it is critical to their attempts to discern which healthcare plans are most appropriate for them. Indeed, the consequence of Defendants' secrecy is that Mr. Howe was deceived into enrolling in a plan that covered elective abortion and thus caused him to unwittingly pay an unknown amount of his premiums for almost one year into a fund required by Defendants to be used solely to pay for elective abortions. Both the requirement that individuals pay for abortions in violation of their conscience or face government-imposed penalties and the prohibition on the exchange of truthful and important information about abortion coverage in these plans violate the Plaintiff's rights guaranteed under the United States Constitution and federal and state law.

## **II. Identification of the Parties**

4. Plaintiff Alan Lyle Howe resides in Guilford, Vermont.

5. Defendants include appointed officials of the United States government and United States executive branch agencies responsible for administering the Affordable Care Act, including promulgation, administration, and enforcement of the individual mandate, health insurance exchanges, taxpayer subsidies for approved health insurance plans, and prohibitions on disclosure of information concerning abortion coverage and premiums.

6. Defendant Sylvia Burwell is the Secretary of the United States Department of Health and Human Services (HHS). In this capacity, she is responsible for the operation and management of HHS. Burwell is sued in her official capacity only.

7. Defendant HHS is an executive agency of the United States government and is responsible for administering the Affordable Care Act, including promulgation, administration, and enforcement of the individual mandate, health insurance exchanges, subsidies for approved

health insurance plans, and prohibitions on disclosure of information concerning abortion coverage and premiums.

8. Defendant Thomas Perez is the Secretary of the United States Department of Labor. In this capacity, he has responsibility for the operation and management of the Department of Labor. Perez is sued in his official capacity only.

9. Defendant Department of Labor is an executive agency of the United States government and is responsible for administering the Affordable Care Act, including promulgation, administration, and enforcement of the individual mandate, health insurance exchanges, taxpayer subsidies for approved health insurance plans, and prohibitions on disclosure of information concerning abortion coverage and premiums.

10. Defendant Jacob J. Lew is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Lew is sued in his official capacity only.

11. Defendant Department of the Treasury is an executive agency of the United States government and is responsible for administering the Affordable Care Act, including promulgation, administration, and enforcement of the individual mandate, health insurance exchanges, taxpayer subsidies for approved health insurance plans, and prohibitions on disclosure of information concerning abortion coverage and premiums.

12. Defendant Katherine Archuleta is the Director of the Office of Personnel Management. In this capacity, she has responsibility for the operation and management of the Department. Archuleta is sued in her official capacity only.

13. Defendant Office of Personnel Management is an executive agency of the United States government and is responsible for administering the Affordable Care Act, including contracts for multi-state health insurance plans on state exchanges.

14. Defendant Vermont Health Connect is the Vermont state healthcare exchange created pursuant to the Affordable Care Act. Pursuant to the Affordable Care Act and state law Vermont Health Connect is responsible for making available qualified health plans to Vermont residents and certifying the individuals who are exempt from the requirements of the individual mandate.

15. Defendant Department of Vermont Health Access is part of the Vermont Agency of Human Services. Vermont Health Access is responsible for the administration of Vermont Health Connect including, *inter alia*, making available qualified health plans to Vermont residents and certifying the individuals who are exempt from the requirements of the individual mandate pursuant to the Affordable Care Act.

16. Defendant Mark Larson is the Commissioner of the Department of Vermont Health Access. He is responsible for all aspects of the administration of Vermont Health Access and Vermont Health Connect. Mr. Larson is sued in his official capacity only.

### **III. Jurisdiction and Venue**

17. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1361 and 1367, jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, 42 U.S.C. § 2000bb-1, 5 U.S.C. § 702, 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.

18. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). No real property is involved in this action, and the plaintiff resides in this district.

#### **IV. Factual Allegations**

19. Alan Lyle Howe lives in Guilford, Vermont. He is a Christian and believes in the sanctity of human life from the point of conception. Mr. Howe has no dependents and has no possibility of ever using insurance coverage for abortion himself. He is strongly opposed to paying for the destruction of human life by others through insurance coverage for elective abortion.

20. Mr. Howe speaks out in defense of the sanctity of human life in his community and via social media.

21. Mr. Howe holds a sincere religious belief that he should responsibly steward his resources to provide for his own healthcare. Further, going without health insurance could have devastating consequences for his own physical and financial health. Thus, it is essential that he continue to have health insurance.

22. Mr. Howe works part-time and thus is not eligible for employer-provided healthcare. Nor is he eligible for any public assistance that would meet his health insurance needs.

23. Mr. Howe was notified in the fall of 2013 that due to the Affordable Care Act his insurance plan was being cancelled and he would need to enroll in a plan through Vermont Health Connect.

24. For the 2014 plan year Mr. Howe selected the Blue Cross and Blue Shield of Vermont Blue Rewards Non-Standard Silver plan through Vermont Health Connect. In choosing this plan he examined it for evidence that it covered abortions, but found no information

indicating that the plan included abortion coverage. A copy of the Summary of Benefits and Exclusions for this plan is attached as Exhibit A. The document does not use the terms “abortion,” “termination of pregnancy,” or even “reproductive health.” Rather, it simply states that “if you are pregnant” there are “no exclusions.” Nor did any information from his insurer, on the Vermont Health Connect website, or his bill notify him that he would be paying a “separate charge” for abortions that his insurer is required to segregate into a separate account and use solely to pay for others’ abortions that could not be paid for with federal taxpayer subsidies.

25. Mr. Howe’s plan would have cost him approximately \$395 per month. However, because of his income, Mr. Howe is entitled to subsidies from both the federal and state governments, covering over \$376 of this sum monthly.

26. In late November 2014 Mr. Howe read about *Bracy v. Burwell*, No. 14-00593-cv (D. Conn., 2014), a case similar to this one but concerning the Connecticut health insurance exchange. He was grieved to learn that his own health insurance plan and every insurance plan on Vermont Health Connect includes coverage of elective abortions and that, without disclosure to him, a portion of his premium was being segregated into an account that was required by Defendants to be used only to pay for the abortions of others on his plan. He then reviewed information online from legal and public policy organizations investigating abortion coverage in plans under the Affordable Care Act and confirmed that this was the case.

27. The U.S. Government Accountability Office has also confirmed that every plan available via Vermont Health Connect includes elective abortion coverage.

<http://gao.gov/assets/670/665800.pdf> (Page 3) (last visited January 7, 2015).

28. After Vermont Health Connect’s website became available for the 2015 plan year, Mr. Howe reviewed the available plans, but could not confirm that any excluded abortion

coverage such that he would not be compelled to pay a separate charge for others' elective abortions if he chose to enroll in any exchange plan.

29. After confirming that his own plan included abortion and that, unbeknownst to him, he had been paying a fee for elective abortion every month and would be compelled to do so with every future payment Mr. Howe has notified both Vermont Health Connect and his insurer that he can no longer continue to pay these premiums.

30. On December 8, 2014, realizing that the first December 15 deadline for renewing his plan or switching to another plan was upcoming, Mr. Howe sent an email to the address provided by the Vermont Health Connect website to those seeking assistance. The email stated:

To whom it concerns:

I am currently enrolled in the Blue Cross and Blue Shield of Vermont Blue Rewards Non-Standard Silver plan . I have recently learned that this plan includes coverage of abortion and requires me to pay into an account that is solely used to pay for others' abortions. This was not disclosed to me in plan documents before I enrolled. I strongly object to being forced into any plan that requires me to pay for the destruction of innocent human life. Please let me know what plans, if any, I might enroll in that would not include coverage of elective abortions and would not require me to pay for others' abortions. I await your reply, Sincerely, Alan L. Howe Jr.

31. Mr. Howe received no response prior to the December 15 deadline. The first response came fourteen days later, on December 22, 2014. The response confirmed that every plan available through Vermont Health Connect would include elective abortion coverage (and hence require a separate payment specifically for elective abortions). The email stated as follows:

Thank you for writing and I apologize for the delay in my response.

Under the Affordable Care Act, no federal funds may be used to pay for abortions except in cases of rape, incest, or where the life of the mother would be endangered by carrying the child to term. In Vermont, however, it is legal to cover abortions that don't fall into these categories, so Vermont QHP insurers are required to estimate the cost of providing such services and to keep a separate account that ensures premium tax credits and cost-sharing reduction payments are not used to pay for abortion services.



The Affordable Care Act also requires the Office of Personnel Management to ensure that at least one multi-state plan does not provide coverage of abortion services. At this time, there is not a multi-state plan in Vermont, but the Affordable Care Act requires that any multistate plan expand to all 50 states by its fourth year of operation.

Please let us know if we can help with anything else.

Sincerely,

Mary

Vermont Health Connect

32. Under the heading, “Voluntary choice of coverage of abortion services,” 42 U.S.C. § 18023(b)(1)(A)(2), the Affordable Care Act requires insurers to determine whether the plans they offer include coverage for abortions other than those for which taxpayer dollars may be used. Federal law prohibits taxpayer funds from paying for abortions other than those as a result of rape, incest, or necessary to protect the life of the mother or for “health benefits coverage that includes coverage of abortion.” Consolidated Appropriations Act, 2010, Pub. L. No. 111-117 §§ 507-508, 123 Stat 3034 (2011).

33. The Affordable Care Act, as administered and enforced by Defendants, prohibits an insurer from disclosing to individuals seeking to enroll in a health insurance plan whether a plan covers elective abortions or the amount of the separate abortion premium until the point of enrollment. Specifically, it states:

(3) Rules relating to notice.

(A) Notice. A qualified health plan that provides for coverage of the services described in paragraph (1)(B)(i) [elective abortion] shall provide a notice to enrollees, only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage.

(B) Rules relating to payments. The notice described in subparagraph (A), any advertising used by the issuer with respect to the plan, any information provided by the Exchange, and any other information specified by the Secretary shall provide

information *only* with respect to the total amount of the combined payments for services described in paragraph (1)(B)(i) and other services covered by the plan.

(emphasis added).

34. The Affordable Care Act requires insurers to collect a “separate payment” for abortions only for plans that include elective abortions. 42 U.S.C.A. § 18023(b)(2). This premium is to be used to pay for elective abortions for the enrollees and others covered by that plan.

35. The Act requires that insurers “shall estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage under a qualified health plan of the services described in paragraph (1)(B)(i) [i.e., elective abortions].” The Act specifies that this separate abortion surcharge must be at least \$1 per month. Affordable Care Act § 1303(b)(2)(D)(ii)(III).

36. The Act also mandates that this separate abortion surcharge must be paid entirely from the insured individual’s private funds by requiring that “the issuer of the plan shall not use any amount attributable to” either tax credits or “cost-sharing reductions” for “the purposes of paying for [elective abortion] services.” Affordable Care Act, § 1303(b)(2)(A).

37. The Affordable Care Act, as interpreted and applied by Defendants, requires that this surcharge for elective abortion coverage be collected from all individuals insured under any plan that includes elective abortion.

38. Defendants have also enacted regulations concerning these requirements, which are codified at 45 C.F.R. §156.280. Defendants have specifically required that for those plans that include elective abortion, a policy issuer must collect a payment from each enrollee: a fee specifically for the purpose of paying for elective abortions. Policy issuers must collect this

separate fee in an “allocation account” that is to be “used exclusively to pay for [elective abortions].” 45 C.F.R. § 156.280(e)(ii)(3).

39. Defendants have also issued regulations directing issuers to estimate the amount of this separate payment for abortion that must be collected from each enrollee every month, which are codified at 45 C.F.R. § 156.280(e)(ii)(4). At least \$1 per month, but likely more, must be collected from the insured individuals and allocated to this separate abortion payment. Defendants have also required the issuers to carefully account for the separate abortion payments to ensure that these separate payments are being used to pay for abortions.

40. However, Defendants’ current regulations prohibit disclosure to enrollees or prospective enrollees by either the exchanges or the plan issuers of the existence or amount of the separate abortion payment they must make in order to receive and maintain their coverage. Defendants also prohibit including this information in any advertising about the plans. Instead, the issuers and exchanges may provide “information only with respect to the total amount of the combined payments [for both elective abortion and all other insured services].” 45 C.F.R. § 156.280(f).

41. The Affordable Care Act, as administered by regulations promulgated by Defendants, requires Mr. Howe to obtain “minimum essential coverage.”

42. On information and belief, Mr. Howe does not qualify for any hardship or other exemption from this requirement.

43. On information and belief, no health insurance plan satisfying the ACA requirement of “minimum essential coverage” is offered to Vermont residents outside Vermont Health Connect that he could afford. Due in large part to requirements of the Affordable Care Act, premiums for health insurance plans off of the exchanges have dramatically increased and

subsidies and tax credits to which Mr. Howe would be entitled under the ACA are unavailable for plans off of Vermont Health Connect.

44. On information and belief, any health insurance plan Mr. Howe might obtain off of Vermont Health Connect would be entirely unaffordable, costing him well in excess of 9.5% of his income. See <http://info.healthconnect.vermont.gov/IF/faq> (last visited January 7, 2015) (Vermont Defendants deeming employer provided insurance “unaffordable” if it would cost the insured more than 9.5% of his or her income). See also 26 U.S.C. 36(B)(c)(2)(C)(i)(II) (plans requiring enrollee to pay more than 9.5% of income are not “affordable”); 79 Fed. Reg. 29, 8546 (Feb. 12, 2014) (“Coverage ... is affordable if the employee’s required contribution ... for self-only coverage does not exceed 9.5 percent of the taxpayer’s household income for the taxable year.”)

45. Mr. Howe does not qualify for any exemption from the mandate, would be subject to the individual mandate, and must obtain a qualified health plan for himself.

46. If he does not comply with this mandate and obtain a qualified health plan prior to February 15, 2015, Mr. Howe would be subject to a fine of at least 2% of his income in 2015. In 2016 this penalty would increase to 2.5% of his income and would thereafter increase with inflation. These penalties would be substantial for Mr. Howe.

47. Mr. Howe is presently facing cancellation of his existing plan because of his refusal to continue paying his premium after he discovered that it included the previously undisclosed “separate payment” for abortions. This would leave him uninsured and potentially subject to substantial penalties from Defendants.

48. Even if Mr. Howe were eligible for any hardship exemption from the individual mandate, an exemption would only permit him to avoid these fines for failure to obtain a

qualifying health plan. He would still remain without health insurance. The consequences of going without health insurance could be catastrophic. Howe would also have to forego the substantial subsidies to which he would be entitled for plans available via Vermont Health Connect because he refuses to abandon his religious convictions and pay the separate abortion payment.

49. Mr. Howe is thus faced with an untenable choice. He must either (1) forego health insurance in violation of his sincerely held religious belief that he should responsibly steward his resources to provide for his own healthcare and forego substantial subsidies to which they are entitled by law, and pay substantial fines; or (2) violate his sincerely held religious beliefs concerning the sanctity of human life by enrolling in a plan covering elective abortion and paying a separate abortion payment designed specifically to pay for others' abortions.

50. As Mr. Howe is outspoken about his pro-life views, enrolling in a plan covering elective abortion and paying this separate payment for others' abortions would undermine his public opposition to abortion.

51. With no option for a health insurance plan available on Vermont Health Connect that would not require him to pay a separate payment for others' abortions, Mr. Howe would be forced to forego health insurance.

52. The Affordable Care Act requires the Director of the Office of Personnel Management to enter into contracts for the placement of at least two "multistate" health plans on each exchange by the 2017 plan year. 42 U.S.C. § 18054(a)(1).

53. At least one of these plans contracted by the Director of OPM must not include elective abortion. 42 U.S.C. § 18054(a)(6); 42 U.S.C. § 18053 (b)(1)(B)(i) and would thus not include any separate payment for abortions.

54. However, while the penalties for noncompliance with the minimum essential coverage requirement are presently in effect and Mr. Howe would be subject to them, and while subsidies for plans are currently available on the exchanges, the Director has not ensured that a multistate plan excluding abortion and the separate abortion payment is available on Vermont Health Connect.

55. As a result, while citizens of other states may be able to comply with the minimum essential coverage requirement and obtain the subsidies to which they are entitled, Mr. Howe cannot. He must choose to violate his religious convictions or to be subject to substantial penalties and to the denial of valuable benefits to which he is otherwise entitled under the law.

56. If he is to avoid violating his conscience and make informed decisions about which insurance plan best suits his needs, Mr. Howe needs to know which plans on Vermont Health Connect cover abortion, requiring a separate abortion payment to be used to pay for others' abortions, and if future plans do not include abortion, which ones do not. He also needs to know how much of his premium has been and would be allocated to the separate payment for abortion that would be required of plans that include elective abortion and may vary from insurer to insurer and plan to plan. This information would empower him to make informed decisions about his health insurance options that are consistent with his deeply held beliefs.

57. On information and belief, at least some plan issuers and exchange employees would include this information in advertising and pre-enrollment information about their plans and would provide the above information when asked by prospective enrollees, if they were not prohibited from doing so by Defendants' interpretation and enforcement of the Affordable Care Act.

58. Insurers that do not include elective abortion in their plans have an economic incentive to advertise that their plans do not include elective abortion in order to attract consumers like Mr. Howe that are seeking such products.

59. Other insurers that do include elective abortion in their plans have an economic incentive to advertise that their plans do include elective abortion in order to attract those customers who are seeking that coverage.

60. Insurers also have an incentive to fully disclose the separate abortion payment amount so that customers considering their plans can evaluate the amount of the allocation of the abortion surcharge and determine how much of their total payments are being allocated for premiums for abortion and how much for all other services.

61. Health insurance exchanges and their customer service employees have an incentive to inform customers about which plans include elective abortion, which do not, and how much of the total premium is allocated to the abortion surcharge because they are interested in increasing enrollment and customer satisfaction with their plans. Providing accurate and complete information to customers in order to help them find the most appropriate plan for them assists in accomplishing these goals.

62. The Defendants' actions and enforcement of the Affordable Care Act are imposing substantial burdens on Mr. Howe and causing him serious, ongoing hardship.

63. In many other states, federal Defendants and exchange officials have ensured that health insurance exchanges include plans that do not include elective abortion so that those who object to paying for others' elective abortions do not have to pay a separate abortion fee for that purpose, and can avoid penalties and receive the subsidies for health care plans on the exchange.

64. The Affordable Care Act, as enforced by Defendants, exempts some individuals from the individual mandate entirely and for a variety of reasons, including some persons who object to obtaining insurance coverage for certain sectarian religious reasons. However, because Mr. Howe is Protestant, but not a member of a denomination that is exempted from the individual mandate, he does not qualify for the religious exemption from the individual mandate and, on information and belief, does not qualify for any other exemption from the individual mandate.

65. Defendants have provided numerous hardship exceptions to the individual mandate for reasons other than religious conscience, but provide no exception to the abortion surcharge mandate even though Mr. Howe and others like him in Vermont have no voluntary choice to enroll in a plan that does not require him to pay for others' abortions through a separate payment for that purpose other than being uninsured.

66. Defendants' requirement that Mr. Howe pay a separate abortion payment in violation of his sincerely held religious beliefs in order to avoid substantial penalties and to be eligible for subsidies to which he is entitled, and their promulgation and enforcement of rules that prevent disclosure of the fact and amount of that payment to him has violated Mr. Howe's conscience and deprived him of the free exercise of his religious beliefs by causing him to pay for others' elective abortions.

67. Mr. Howe's injury will now continue every day until Defendants permit him to enroll in a plan that prevents him from being subject to the individual mandate penalty, affords him the subsidies to which he is entitled under the ACA, and that does not force him to pay for others' elective abortions in violation of his conscience.



68. If Mr. Howe is not permitted to enroll in such a plan or to enroll in or renew his plan and withhold the separate abortion payment prior to the February 15, 2015 deadline for Open Enrollment he will thereafter be injured by being subject to the individual mandate penalty and denied access to health insurance and the subsidies to which he is entitled for at least calendar year 2015. Mr. Howe may be forced to forego health insurance altogether, paying his medical bills entirely out of pocket.

69. The government-imposed blackout on information concerning Plaintiff' future health insurance options, a result of Defendants' administration of the Affordable Care Act, impairs their ability to make present and future decisions for their health care.

**COUNT I**  
**Religious Freedom Restoration Act**

70. Plaintiff repeats and realleges the allegations in paragraphs 1-69.

71. RFRA prohibits the federal government from substantially burdening any individual's exercise of religion, even if that that burden results from a rule of general applicability, unless the government can demonstrate that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

72. RFRA applies to all federal law and to the implementation of all federal laws by any branch, department, agency, instrumentality, or official of the United States.

73. The Federal Defendants interpret and apply the Affordable Care Act to require Plaintiff to pay a separate fee specifically for others' abortions in violation of his religious beliefs.

74. The Federal Defendants interpret and apply the Affordable Care Act to withhold from Plaintiff valuable government benefits to which they are entitled because Plaintiff refuses

to pay a separate fee to be used exclusively for others' abortions in violation of Plaintiff's religious beliefs.

75. The Federal Defendants' enforcement of the Affordable Care Act to require Plaintiff to pay for others' abortions in order to avoid penalties and obtain available valuable government benefits to which they are entitled substantially burdens Plaintiff's exercise of religion.

76. The Federal Defendants have no compelling governmental interest to require Plaintiff to pay a separate abortion fee for abortions in violation of his religious conscience in order to avoid substantial penalties and obtain valuable government benefits.

77. The Federal Defendants' application of the Affordable Care Act to require Plaintiff to pay a separate abortion fee is not the least restrictive means of furthering a compelling governmental interest.

78. By enacting and threatening to enforce this mandate against Plaintiff, the Federal Defendants have violated RFRA.

79. Plaintiff has no adequate remedy at law.

80. The Federal Defendants have imposed and are imposing ongoing and immediate harm on Plaintiff.

## **II. Vermont Constitution – Chapter 1, Article 3**

81. Plaintiff repeats and realleges the allegations in paragraphs 1-69.

82. The Vermont Constitution prohibits the state government or any instrumentality thereof from substantially burdening any individual's exercise of religion, even if that that burden results from a rule of general applicability, unless the government can demonstrate that

the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

83. The Vermont Constitution likewise prohibits government from placing unreasonable burdens on religious exercise.

84. The Vermont Defendants interpret and apply the Affordable Care Act to require Plaintiff to pay a separate fee specifically for others' abortions in violation of his religious beliefs.

85. The Vermont Defendants interpret and apply the Affordable Care Act to withhold from Plaintiff valuable government benefits to which he is entitled because Plaintiff refuses to pay a separate fee to be used exclusively for others' abortions in violation of Plaintiff's religious beliefs.

86. The Vermont Defendants' enforcement of the Affordable Care Act to require Plaintiff to pay for others' abortions in order to avoid penalties and obtain available valuable government benefits to which he is entitled substantially burdens Plaintiff's exercise of religion.

87. The Vermont Defendants have no compelling governmental interest to require Plaintiff to pay a separate abortion fee for abortions in violation of his religious conscience in order to avoid substantial penalties and obtain valuable government benefits.

88. The Vermont Defendants' application of the Affordable Care Act to require Plaintiff to pay a separate abortion fee in order to obtain health insurance, avoid substantial penalties and receive the subsidies to which he is entitled is not the least restrictive means of furthering a compelling governmental interest.

89. By failing to disclose to Plaintiff that he was being compelled to pay for elective abortions in violation of his conscience, Defendants have violated Plaintiff's rights under Chapter 1, Article 3 of the Vermont Constitution.

90. By causing this mandate to be enforced against Plaintiff, the Vermont Defendants have and will continue to violate Chapter 1, Article 3 of the Vermont Constitution.

91. Plaintiff has no adequate remedy at law.

92. The Vermont Defendants have imposed and are imposing ongoing and immediate harm on Plaintiff.

**COUNT III**  
**Free Exercise Clause of the First Amendment**

93. Plaintiff repeats and realleges the allegations in paragraphs 1-69.

94. The Free Exercise Clause of the First Amendment prohibits the federal and state governments from substantially burdening any individual's exercise of religion.

95. Defendants interpret and apply the Affordable Care Act to require Plaintiff to pay for others' abortions in violation of his religious beliefs.

96. Defendants interpret and apply the Affordable Care Act to withhold from Plaintiff valuable government benefits to which they are entitled because Plaintiff refuse to pay a separate fee to be used exclusively for others' abortions in violation of Plaintiff's religious beliefs.

97. Defendants have interpreted and applied the Affordable Care Act to prevent disclosure to Plaintiff of the fact that with his insurance premium he was compelled to pay a sum to be used solely to pay for others' elective abortions in violation of his religious beliefs.

98. Defendants' enforcement of the Affordable Care Act to require Plaintiff to pay for others' abortions in order to avoid penalties and obtain available valuable government benefits substantially burdens Plaintiff's exercise of religion.

99. The individual mandate is not a neutral law of general applicability, because it has myriad exemptions for financial or other reasons while denying any religious conscience exception even in the circumstance where an individual does not have the choice of a plan that does not require a separate additional fee to be exclusively used to pay for others' abortions in violation of his religious beliefs.

100. The Defendants have no compelling governmental interest to require Plaintiff to pay a separate abortion fee for abortions in violation of his religious conscience in order to avoid substantial penalties and obtain valuable government benefits.

101. Defendants' enforcement of the Affordable Care Act to require Plaintiff to pay a separate abortion fee in violation of his religious beliefs in order to avoid government fines and to receive valuable benefits implicates constitutional rights in addition to the free exercise of religion, including the right of free speech and to receive information.

102. Defendants' enforcement of the Affordable Care Act against Plaintiff is not narrowly tailored to further a compelling governmental interest.

103. By enacting and threatening to enforce this mandate against Plaintiff, Defendants have violated Plaintiff's rights under the Free Exercise Clause of the First Amendment.

104. Plaintiff has no adequate remedy at law.

105. Defendants have imposed and are imposing ongoing and immediate harm on Plaintiff.

#### **COUNT IV**

#### **Free Speech Clause of the First Amendment – Right to Receive Information**

106. Plaintiff repeats and realleges the allegations in paragraphs 1-69.

107. The First Amendment protects citizens' right to receive information and prohibits the government from denying citizens the opportunity to hear information they desire from willing speakers.

108. Defendants expressly forbid plan issuers or health insurance exchanges from advertising whether plans include abortion or informing prospective enrollees or enrollees of this important information prior to actual enrollment in the plan, and forbid any issuer from informing enrollees how much of their monthly payment is allocated to a separate abortion premium and used exclusively to pay for others' abortions.

109. On information and belief, at least some issuers and/or Vermont Health Connect employees would provide this information to enrollees in advertising and other pre-enrollment information and would inform enrollees of the amount of their monthly premium allocated to pay for others' abortions if they were permitted to do so.

110. The Defendants' prohibition of advertising or pre-enrollment information about abortion coverage by issuers and exchanges and their prohibition on disclosing the portion of the premiums specifically allocated to pay for abortions furthers no compelling or even legitimate governmental interest.

111. The Defendants' prohibition on disclosure of truthful information about abortion coverage and fees in exchange plans is not narrowly tailored to further a compelling governmental interest, nor is it reasonably related to any legitimate government interest.

112. Plaintiff has no adequate remedy at law.

113. Defendants have imposed and are imposing immediate and ongoing harm on Plaintiff.

**WHEREFORE**, Plaintiff respectfully prays that this Court:

1. Enter a declaratory judgment that the application of the individual mandate and the abortion premium requirement to Plaintiff violates Plaintiff's rights under RFRA.
2. Enter a declaratory judgment that the application of the individual mandate and the abortion premium requirement to Plaintiff violates Plaintiff's rights under Chapter 1, Article 3 of the Vermont Constitution.
3. Enter a declaratory judgment that the application of the individual mandate and the abortion premium requirement to Plaintiff violates Plaintiff's rights under the First Amendment.
4. Enter a declaratory judgment that the Defendants' prohibition on the disclosure of truthful information about abortion coverage and the amount of the separate abortion fees collected and allocated to pay for abortions violates the First Amendment.
5. Enter preliminary and permanent injunctive relief prohibiting Federal Defendants from imposing the individual mandate to penalize Plaintiff for his failure to obtain a qualified health plan.
6. Enter preliminary and permanent injunctive relief prohibiting Federal Defendants from withholding subsidies for health plans otherwise available to Plaintiff on the basis that Plaintiff will not pay the separate abortion fee.
7. Enter preliminary and permanent injunctive relief prohibiting Defendants from enforcing any requirements forbidding issuers and exchange employees from providing truthful and accurate information concerning abortion coverage and the amount of any abortion premium allocated to pay for abortions.
8. Award Plaintiff attorneys and experts fees and costs under 42 U.S.C. § 1988 and 28 U.S.C. § 2412; and
9. Award all other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demand a trial by jury for all issues so triable.

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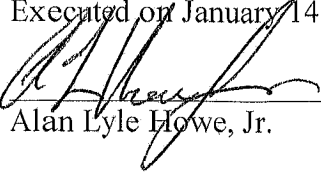
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**VERIFICATION OF VERIFIED COMPLAINT  
PURSUANT TO 28 U.S.C. § 1746**

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

Executed on January 14, 2015



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Alan Lyle Howe, Jr.