

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

DORDT COLLEGE and CORNERSTONE
UNIVERSITY,

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the United States
Department of Health and Human Services, *et*
al.,

Defendants.

No. 5:13-cv-04100-MWB

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65, LCvR7, and LCvR 65, Plaintiffs Dordt College and Cornerstone University, (“the Schools”), by and through counsel, hereby move this Court to enter a preliminary injunction, and state as follows:

1. The Schools request a preliminary injunction against Defendants, ordering them not to apply or enforce their regulatory mandate (“the Mandate”) requiring the Schools to facilitate, contrary to their sincerely held religious beliefs, the provision of and/or payment for abortifacient drugs and devices and related counseling, through their employee and student health insurance plans. The desired injunction would protect the Schools, the plans they offer, and the providers (insurance issuers and third-party administrators) of those plans.

2. The Schools respectfully request a decision on this motion prior to June 1, 2014. The Mandate begins applying to Dordt College on that date, when its next employee health plan year begins. Such a decision would preserve the status quo until after the U.S. Supreme Court and U.S. Court of Appeals for the Eighth Circuit issue decisions in pending cases that will likely dispose of critical legal issues involved in the instant case.

3. Dordt College's employee plan begins on June 1 of every year, and Cornerstone University's plan begins on October 1 of every year. If injunctive relief is not afforded in advance of those dates, the Schools will be forced to choose between (a) following their consciences and suffering crippling financial penalties; and (b) facilitating morally impermissible insurance coverage and the destruction of human life in violation of their sincerely held religious beliefs. Terminating their employee health insurance plans in order to protect their consciences will have a devastating effect on the Schools' employees, faculty and staff recruitment and retention, and operations more generally.

4. Dordt College facilitates a student health insurance plan. The next Dordt student plan year begins on August 1, 2014. If injunctive relief is not afforded in advance of that date, Dordt will likely be forced to drop its student health insurance plan, in violation of its religious duty to provide for the well-being of its students.

5. As this Court acknowledged, "many of the issues involved in this case may be significantly affected by the United States Supreme Court's forthcoming decisions in *Sebelius v. Hobby Lobby Stores, Inc.*, No. 13-354, and *Conestoga Wood Specialties Corp. v. Sebelius*, No. 13-356." (Status Order, docket no. 43). This Court indicated that, in the interest of judicial efficiency, it would wait until after the Supreme Court rules in these cases to address the government's Motion to Dismiss or, in the Alternative, for Summary Judgment. Given the timing of oral argument, the Supreme Court will likely issue its decision near the end of its Term in late June.

6. In the pending case of *Sharpe Holdings v. U.S. Department of Health and Human Services* (No. 14-1507), which, unlike the cases pending in the high Court, involves religious non-profits entitled to the so-called "accommodation," the U.S. Court of Appeals for the Eighth

Circuit will almost certainly resolve legal questions at the heart of the instant case. The government's opening brief in its appeal of the district court's preliminary injunction in that case must be filed no later than May 23. Briefing will likely be complete by mid-July, with oral argument and a decision presumably following later in 2014.

7. Unfortunately, given the plan year start dates listed above, the Schools cannot wait for relief until after the Supreme Court and the Eighth Circuit issue their decisions. Accordingly, the Schools respectfully request an order, in advance of June 1, 2014, preliminarily enjoining application of the abortifacient component of the HHS Mandate to their 2014-15 plans.

8. As discussed in the accompanying memorandum of law, the Schools are likely to succeed on the merits of their claim under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (RFRA). Without injunctive relief, the Schools, many of their students and employees, and the public will be irreparably harmed. Defendants will suffer no measurable injury if the injunction is granted, and thus the balancing of harms plainly favors the Schools.

9. As factual support for this motion, the Schools rest in part upon the Verified Complaint filed October 23, 2013.

10. Per LCvR 7(l), Plaintiffs' counsel has conferred with counsel for the Defendants regarding Plaintiffs' motion for preliminary injunction. Defendants do not consent.

11. In support of this motion, the Schools submit an accompanying memorandum of law and the following employee declarations.

- A. Declaration of Allison Bradshaw
- B. Declaration of Amy R. Bakker
- C. Declaration of Anita M. Faber
- D. Declaration of Brittany E. Carlson

- E. Declaration of Carissa J. Highman
- F. Declaration of Emilee Azkoul
- G. Declaration of Kari M. Salazar
- H. Declaration of Kayleigh L. Boston
- I. Declaration of Kelli Cottrell
- J. Declaration of Kimberly S. Bytwerk
- K. Declaration of Lisa D. Link
- L. Declaration of Lisa J. Culp
- M. Declaration of Sarah E. Enck
- N. Declaration of Shannon L. Pothoven
- O. Declaration of Tacie R. Anderson
- P. Declaration of Abby M. Foreman
- Q. Declaration of Alicia Harald
- R. Declaration of Emily Vande Griend
- S. Declaration of Kailee Adams
- T. Declaration of Laura Eekhoff
- U. Declaration of Luralyn M. Helming
- V. Declaration of Nick Breems
- W. Declaration of Rachel Conway
- X. Declaration of Stacey Zylstra
- Y. Declaration of Ulrike Heldt
- Z. Declaration of Valorie Zonnefeld

Respectfully submitted this 6th day of May, 2014.

s/ Gregory S. Baylor

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2014, a copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record. Per Local Rule 10(c)(3), a hard copy of the motion, supporting memorandum, and declarations has been sent to the Clerk of the Court at the following address:

Clerk of the Court
U.S. District Court for the Northern District of Iowa
320 Sixth Street
Sioux City, IA 51101

Respectfully submitted this 6th day of May, 2014.

s/ Gregory S. Baylor
Gregory S. Baylor