

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENEVA COLLEGE; WAYNE L. HEPLER;)
THE SENECA HARDWOOD LUMBER)
COMPANY, INC., a Pennsylvania Corporation;)
WLH ENTERPRISES, a Pennsylvania Sole)
Proprietorship of Wayne L. Hepler; and CARRIE)
E. KOLESAR;)

Plaintiffs,)

v.)

Case No. 2:12-cv-00207-JFC

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.)
_____)

GENEVA COLLEGE’S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Geneva College hereby moves this Court for a preliminary injunction protecting it from Defendants’ requirement that certain abortifacient drugs and devices be included in the student health insurance plan scheduled to begin on August 1, 2013.

The College respectfully requests that the Court issue an order on this motion by June 15, 2013, but no later than June 20, 2013. That is the very last date on which the College can include a charge for health insurance on the invoices sent to students for the fall 2013 semester.

If the Court denies the motion or does not rule by June 20, the College, in order to avoid a serious violation of its conscience, will be forced to drop its student health insurance plan. As explained in the accompanying Memorandum of Law and Affidavit of Timothy R. Baird, dropping the student health plan would impose significant burdens upon the Geneva students who would otherwise have participated in the plan.

As set forth in the Memorandum of Law, the reasoning behind this Court's recent order preliminarily enjoining application of the Mandate to the College's co-plaintiffs (the Hepler Plaintiffs) dictates granting the College's motion as well. Requiring the College's student plan to include abortifacients substantially burdens its ability to exercise its religious beliefs in the sanctity of life. As with the Hepler Plaintiffs, no compelling governmental interest justifies that burden. Accordingly, there is a substantial likelihood that Geneva will prevail on its claim under the Religious Freedom Restoration Act.

Without injunctive relief, the College, many of its students, 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 Geneva.

Unless the Court deems it necessary, the College does not request oral argument on this motion, given the extensive briefing and oral argument on the issues presented by this motion in previous months. As factual support for this motion, Geneva relies upon the accompanying Affidavit of Timothy R. Baird, Associate Vice President of Operations and Human Resources, and the allegations contained in the First Amended Complaint, which Mr. Baird has sworn are truthful.

Respectfully submitted this 22nd day of May, 2013.

s/ Gregory S. Baylor

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel for Defendants.

s/ Gregory S. Baylor

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 UNITED STATES DEPARTMENT OF)
 HEALTH AND HUMAN SERVICES; UNITED)
 STATES DEPARTMENT OF LABOR; and)
 UNITED STATES DEPARTMENT OF THE)
 TREASURY,)

Defendants.)

Case No. 2:12-cv-00207-JFC

[PROPOSED] ORDER

Upon the motion for preliminary injunction by Plaintiff Geneva College, its memorandum and affidavit in support, and all parties' briefing, and for good cause shown:

IT IS ORDERED:

Findings of Fact

1. Timothy R. Baird's affidavit affirms the allegations regarding Geneva College in the First Amended Complaint. Those factual allegations with respect to the identity of the

College, its religious beliefs, and its health insurance plans, are adopted as facts supporting its request for injunctive relief.

2. The College has a religious objection, based on its Christian beliefs, to the Defendants' requirement that abortifacients be made available cost-free to students participating in the student health insurance plan it facilitates. The Mandate is contained in, *inter alia*, 42 U.S.C. § 300gg-13(a)(4), guidelines available at <http://www.hrsa.gov/womensguidelines/>, 77 Fed. Reg. 8725-30 (Feb. 15, 2012), 26 U.S.C. § 4980D, 29 U.S.C. § 1132, and is affected by other provisions of the Patient Protection and Affordable Care Act of 2010 or its implementing regulations.

3. If the College does not obtain relief from the application of the Mandate to its student plan by June 20, 2013, it will be forced to drop the student plan, frustrating its religious desire to support the physical well-being of its students.

4. Dropping the student plan will adversely affect the College and the students who would otherwise have participated in the plan.

5. Defendants have voluntarily excluded tens of millions of women from the Mandate's alleged benefits through exclusions such as for "grandfathered" plans under the Affordable Care Act and various kinds of religious exemptions and accommodations for various entities that do not include the College.

6. Through other programs, Defendants provide extensive funding and provision of the Mandated items to which the College objects, as do state governments, including free provision of these items for women who cannot afford them.

7. There is no risk of monetary loss to Defendants due to an injunction in this non-commercial context.

8. The College filed a motion for a preliminary injunction (ECF No. ___) seeking to halt the applicability of the Mandate to the student plan it facilitates. Geneva's motion argues that Defendants' requirements violate the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.*

Legal Conclusions

1. The background, summary of alleged facts, and resolution of legal issues contained in this Court's March 6, 2013 Memorandum Opinion and Order, with respect to the RFRA claim, and in this Court's April 19, 2013 Findings of Fact and Conclusions of Law, are adopted with respect to this preliminary injunction order *mutatis mutandis*.

2. The College exercises religion within the meaning of RFRA when it objects to the requirement that abortifacients be included in its student health plan.

3. Defendants' application of the Mandate to the College's student health plan substantially burdens the exercise of its religious beliefs.

4. Defendants' imposition of this burden on the College is not justified by a compelling interest.

5. Defendants have voluntarily left unprohibited massive and varying levels of appreciable damage to their supposedly vital interests allegedly underlying the Mandate.

6. Defendants' Mandate on the College is not the least restrictive means of achieving a compelling government interest.

7. The College has shown a high probability of success on the merits of its RFRA claim.

8. The College will suffer irreparable harm in the absence of the preliminary injunctive relief specified herein.

9. Preliminary injunctive relief as specified herein will not result in harm to the Defendants.

10. Preliminary injunctive relief as specified herein is in the public interest and in the interest of Geneva students.

Therefore, **IT IS FURTHER ORDERED** that:

1. Geneva College's motion for preliminary injunction (ECF No. ___) should be and hereby is **GRANTED**;

2. Defendants, their agents, officers, and employees, and their requirements that the Geneva College student health insurance plan, broker, or insurer provide abortifacients to students participating in the student health plan contrary to the College's religious objections, are **ENJOINED** from any application or enforcement of such requirements, including the substantive requirement imposed to this extent in 42 U.S.C. § 300gg-13(a)(4), Pub. L. 111-148, §1563(e)-(f), the application of otherwise applicable penalties, and any determination that the requirements are so applicable.

3. A bond in the amount of zero dollars appropriate and is ordered.

SO ORDERED.

BY THE COURT:

Dated

The Honorable Joy Flowers Conti
United States District Judge