

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

GRACE SCHOOLS and BIOLA UNIVERSITY,)
INC.)

Plaintiffs,)

v.)

KATHLEEN SEBELIUS, in her official capacity)
as Secretary of the United States Department of)
Health and Human Services; THOMAS E.)
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;)
UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES; UNITED)
STATES DEPARTMENT OF LABOR; and)
UNITED STATES DEPARTMENT OF THE)
TREASURY,)

Case No. 3:12-cv-459

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65 and L.R. 7.1, Plaintiffs Grace Schools and Biola 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 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.

2. In support of this motion, the Schools submit an accompanying memorandum of law.

3. The Schools respectfully request a decision on this motion prior to December 1, 2013, especially if the Court has not by that time ruled on the cross-motions for summary judgment that the parties will likely file. A ruling by that date would provide Grace Schools sufficient time to plan and prepare in advance of the January 1, 2014 beginning of its next employee health plan year.

4. The beginning of Grace's next employee plan year is January 1, 2014. The beginning of Biola's next employee plan year is April 1, 2014. 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 the destruction of human life in violation of the Sixth Commandment, thereby transgressing 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. The next Grace student plan year begins on July 25, 2014. The next Biola student plan year begins on August 1, 2014. If injunctive relief is not afforded in advance of those dates, the Schools will likely be forced to drop their student health insurance plans, in violation of their religious duty to provide for the well-being of their students.

5. As set forth in the accompanying memorandum of law, the Schools are likely to succeed on the merits of their claims, particularly under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (RFRA). The U.S. Court of Appeals for the Seventh Circuit has twice enjoined application of the HHS Mandate, in both cases relying upon RFRA. *See Grote v. Sebelius*, 708 F.3d 850 (7th Cir. 2013); *Korte v. Sebelius*, 2012 WL 6757353 (7th Cir. 2013). Requiring the Schools to facilitate the provision of abortifacients substantially burdens their

ability to exercise their religious beliefs in the sanctity, dignity, and value of human life and their religious obligation to avoid violating the Ten Commandments. No compelling interest justifies the Mandate's burden on the Schools' religious exercise, and other, less restrictive means of pursuing its stated objectives are available to Defendants.

6. 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.

7. As factual support for this motion, the Schools rest upon the Verified First Amended Complaint filed September 6, 2013.

8. Plaintiffs' counsel has conferred with Defendants' counsel concerning this motion, and the motion is opposed.

9. The Schools request oral argument on this motion.

Respectfully submitted this 6th day of September, 2013.

s/ Gregory S. Baylor

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Gregory S. Baylor