

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNIVERSITY OF NOTRE DAME,

*Plaintiff,*

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the U.S. Department of the Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF THE TREASURY,

*Defendants.*

Civil Action No.: 3:13-cv-1276

Electronically Filed

**PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER AND REQUEST FOR HEARING**

Pursuant to N.D. Ind. L.R. 65-1 and Federal Rule of Civil Procedure 65(b), the University of Notre Dame (“Notre Dame”) hereby moves for a temporary restraining order, without bond, enjoining the Government from any application or enforcement against Plaintiff, its employee and student health plans, or its third party administrators or insurers of the requirement under 45 C.F.R. § 147.130(a)(1)(iv), corresponding Guidelines, and corresponding press releases that Plaintiff provide coverage for FDA-approved contraceptive methods, abortion-inducing drugs, sterilization procedures, and patient education and counseling, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4) (the “U.S. Government Mandate”). The

Government has received notice of Notre Dame's intention to file this motion for temporary restraining order.

A temporary restraining order is justified—as discussed in Notre Dame's accompanying Memorandum in Support and Affidavit of John Affleck-Graves—because Notre Dame's third party administrator, Meritain Health, Inc. (“Meritain”), and prescription drug insurer, Express Scripts, have informed Notre Dame that, in order to meet the January 1, 2014 enforcement deadline, they would need to begin implementing the requirements of the Mandate starting Wednesday, December 11 or Thursday, December 12, including sending communications to Notre Dame's female employees and any female dependents covered by Notre Dame's healthcare plans informing employees and dependents about the availability of FDA-approved contraceptive methods and enclosing a Contraceptive Prescription ID Card. The self-certification is a condition precedent to these communications, and Notre Dame would thereby be forced to facilitate access to and/or become entangled in the provision of abortion-inducing products, contraception, sterilization, and related education and counseling, in violation of its sincerely held religious beliefs. This would result from Notre Dame's plan sponsorship and self-certification, as required by the Mandate, and would entangle Notre Dame in a manner that causes scandal in violation of Notre Dame's religious beliefs.

Without an order restraining enforcement of The U.S. Government Mandate against Notre Dame, the Mandate requires Notre Dame to do precisely what its sincerely held religious beliefs prohibit—pay for, facilitate access to, and/or become entangled in the provision of objectionable products and services. In addition to objectionable acts that will occur in the next few days, the enforcement date for the U.S. Government Mandate is January 1, 2014, which is rapidly approaching and requires emergency relief. Accordingly, Notre Dame respectfully

moves this Court to issue a temporary restraining order in the form of the Proposed Order that will be sent directly to chambers.

Notre Dame also requests a hearing on this motion, which involves important and complicated issues of constitutional and statutory law.

Dated: December 9, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2013, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of Indiana using the CM/ECF system and mailed the foregoing by first class mail via the United States Postal Service to the following:

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*s/ Matthew A. Kairis*

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One of the Attorneys for Plaintiff