

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

GENEVA COLLEGE, <i>et al.</i> ,	)	)	
	)	)	
Plaintiffs,	)	)	
	)	)	
v.	)	)	Case No. 2:12-cv-00207-JFC
	)	)	
KATHLEEN SEBELIUS, <i>et al.</i> ,	)	)	
	)	)	
Defendants.	)	)	
_____	)	)	

**GENEVA COLLEGE’S SECOND MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Geneva College hereby moves this Court for a preliminary injunction protecting it from Defendants’ requirement that it provide its employees a group health plan through which those employees gain access to certain abortifacient drugs and devices beginning January 1, 2014.

As set forth in the accompanying Memorandum of Law, the reasoning behind this Court’s previous orders preliminarily enjoining application of the Mandate to the College’s co-plaintiffs (the Hepler Plaintiffs) and to the College’s student plan dictates granting this motion as well. Requiring the College’s employee plan to facilitate access to abortifacients substantially burdens its ability to exercise its religious beliefs in the sanctity of life. As this Court has already acknowledged, 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 regarding its employee plan.

Without injunctive relief, the College, its 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 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.

Respectfully submitted this 12th day of November, 2013.

s/Gregory S. Baylor

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 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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**[PROPOSED] ORDER**

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

**IT IS ORDERED:**

Findings of Fact

1. The verified factual allegations in the complaint 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 employees and their dependents participating in the employee health insurance plan it provides. 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 employee plan by January 1, 2014, it be unable to continue offering an employee health plan that does not provide access to morally objectionable abortion-inducing drugs and devices. It will be forced to choose between (a) dropping employee health coverage [which contradicts its religiously-based duty to support the physical well-being of its employees] and face crippling financial penalties; and (b) violating its religious convictions and commitments by offering a plan that gives beneficiaries access to abortifacients.

4. Dropping the employee plan will adversely affect the College and the employees and their family members 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 employee 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 and June 18, 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 employee health plan.
3. Defendants' application of the Mandate to the College's employee 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 employees and their families.

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 employee health insurance plan, broker, or insurer provide abortifacients to those participating in the employee 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