

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

(1) SOUTHERN NAZARENE)
UNIVERSITY; (2) OKLAHOMA)
WESLEYAN UNIVERSITY; (3))
OKLAHOMA BAPTIST UNIVERSITY; and)
(4) MID-AMERICA CHRISTIAN)
UNIVERSITY,)

Plaintiffs,)

v.)

(1) KATHLEEN SEBELIUS, in her official)
capacity as Secretary of the United States)
Department of Health and Human Services;)
(2) THOMAS E. PEREZ, in his official)
capacity as Secretary of the United States)
Department of Labor; (3) JACOB J. LEW, in)
his official capacity as Secretary of the United)
States Department of the Treasury; (4))
UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES; (5))
UNITED STATES DEPARTMENT OF)
LABOR; and (6) UNITED STATES)
DEPARTMENT OF THE TREASURY,)

Defendants.)

Case No. 5:13-cv-01015-F

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65 and LCvR7.1, Plaintiffs Southern Nazarene University, Oklahoma Wesleyan University, Oklahoma Baptist University, and Mid-America Christian University, (“the Universities”), by and through counsel, hereby move this Court to enter a preliminary injunction, and state as follows:

1. The Universities request a preliminary injunction against Defendants, ordering them not to apply or enforce their regulatory mandate (“the Mandate”) requiring the Universities 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 Universities submit an accompanying memorandum of law.

3. The Universities respectfully request a decision on this motion prior to December 23, 2013. The Mandate begins applying to two of the Universities – Oklahoma Baptist University and Mid-America Christian University – on January 1, 2014 (when their next employee health plan years begin). A ruling several days in advance of that date would give these schools sufficient time to implement the injunction.

4. Southern Nazarene University’s and Oklahoma Wesleyan University’s employee plans begins on July 1 of every year, and Oklahoma Baptist University’s and Mid-America Christian University’s employee plans each begin on January 1 of every year. If injunctive relief is not afforded in advance of those dates, the Universities 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 Universities’ employees, faculty and staff recruitment and retention, and operations more generally.

5. Two of the Universities (Southern Nazarene and Oklahoma Baptist) facilitate student health insurance plans. The next Southern Nazarene student plan year begins on August 21, 2014. The next Oklahoma Baptist student plan begins on January 1, 2014. If injunctive relief is not afforded in advance of those dates, the Universities 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.

6. As set forth in the accompanying memorandum of law, the Universities 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 Tenth Circuit has ruled that forcing an employer to provide coverage for abortifacient drugs and devices violates RFRA. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) (en banc). Just this month, the Seventh and D.C. Circuit Courts of Appeals came to the same conclusion. *Korte v. Sebelius*, 2013 WL 5960692 (7th Cir. Nov. 8, 2013); *Gilardi v. U.S. Dep't of Health & Human Servs.*, 2013 WL 2013 5854246 (D.C. Cir. Nov. 1, 2013). Requiring the Universities 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 Universities' religious exercise, and other, less restrictive means of pursuing the Government's stated objectives are available to Defendants.

7. Without injunctive relief, the Universities, 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 Universities.

8. As factual support for this motion, the Universities rest upon the Verified Complaint filed September 20, 2013.

Respectfully submitted this 27th day of November, 2013.

s/ Gregory S. Baylor

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*Motions for pro hac vice admission to be filed.

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 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