

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

LOUISIANA COLLEGE,)
)
 Plaintiff,)
)
 v.)
)
 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.)
 _____)

Case No. 12-cv-463

COMPLAINT

1. Comes now the plaintiff, LOUISIANA COLLEGE (“LC”) and sues the DEFENDANTS, and states as follows:

I. NATURE OF THE ACTION

2. In this action, the Plaintiff seeks judicial review of the Defendants’ violations of the Religious Freedom Restoration Act 42 U.S.C. § 2000(bb) (“RFRA”), the First and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq* (“APA”).

3. LC is a Christian school that is subject to the 2010 Patient Protection and Affordable Care Act (“PPACA”). Final regulations applying PPACA mandate that LC

provide health insurance for its employees that covers abortion-inducing drugs and counseling regarding such drugs (“Mandate”). This violates LC’s sincerely held religious beliefs regarding abortion.

4. As a result of this discriminatory, arbitrary and capricious Mandate, LC is being deprived of its constitutional and statutory rights, including the free exercise of religion, free speech, and due process.

5. LC seeks an order declaring this unconstitutional law to be in violation of RFRA, the First and Fifth Amendments to the United States Constitution, and the APA. In addition, the Plaintiff seeks an order enjoining the Defendants from enforcing the Mandate.

II. IDENTIFICATION OF THE PARTIES AND JURISDICTIONAL ALLEGATIONS

6. Plaintiff is a Christian university located in Pineville, Louisiana.

7. Established in 1906, the mission of LC is to provide liberal arts, professional, and graduate programs characterized by dedication to academic excellence for the glory of God.

8. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (“HHS”). In this capacity, she has responsibility for the operation and management of HHS and enforcement of the Mandate. Defendant Sebelius is sued in her official capacity only.

9. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor and enforcement of the Mandate. Defendant Solis is sued in her official capacity only.

10. Defendant Timothy Geithner is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department and enforcement of the Mandate. Defendant Geithner is sued in his official capacity only.

11. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

12. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

13. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

14. Jurisdiction and venue in this Court are predicated on Title 28 U.S.C. § 1331, Title 28 U.S.C. § 1343, Title 28 U.S.C. § 2201, and 5 U.S.C. § 702.

III. FACTUAL ALLEGATIONS

LC's Religious Beliefs and Provision of Educational Services

15. Faith is central to the mission and identity of LC. LC describes itself as a “private Baptist co-educational college of liberal arts” and commits, in its mission, to provide educational programs with a “dedication to academic excellence for the glory of God.”

16. Consistent with its mission, LC works to manifest its Christian faith in all aspects of its administration.

17. LC adheres to, as its doctrinal statement, the Baptist Faith and Message 2000 of the Southern Baptist Convention.

18. LC's religious beliefs include traditional Christian teachings on the sanctity of life. The College's doctrinal statement states, "We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death."

19. LC is affiliated with the Southern Baptist Convention which has passed Resolutions from as early as 1984 condemning the use of the abortion drug RU-486 as a violation of its sincerely held religious beliefs and urging SBC members to oppose the usage and proliferation of RU-486.

20. LC therefore believes and teaches that abortion, or methods that harm an embryo from the moment of conception/fertilization, ends a human life and is a sin.

21. LC has more than 1,450 graduate and undergraduate students.

22. LC has approximately 180 full-time and 80 part-time employees.

23. As part of fulfilling its commitment and duty in Christian education, LC also promotes the well-being and health of its employees, spiritual and physical. This includes provision of generous health services and health insurance for its employees.

24. As part of its religious commitment, LC has ensured that its insurance policies do not cover drugs, devices, services or procedures inconsistent with its faith.

25. In particular, its insurance plans do not cover abortion.

26. As part of that same commitment, LC has ensured that its insurance policies do not cover drugs, devices, services or procedures that it believes may cause the death of an early human embryo, such as Plan B or "ella."

27. LC cannot provide health care insurance covering abortion, abortifacient or embryo-endangering methods, or related education and counseling without violating its deeply held religious beliefs and its Christian witness.

28. The plan year for LC's insurance begins on January 1 of each year.

Applicable Provisions of the PPACA

29. Under PPACA, employers with over 50 full-time employees are required to provide a certain level of health insurance to their employees.

30. Nearly all such plans must include "preventive services," which must be offered with no cost-sharing by the employee.

31. On February 10, 2012, the Department of Health and Human Services finalized a rule (previously referred to in this Complaint as the Mandate) that imposes a definition of preventive services to include all FDA-approved "contraceptive" drugs, surgical sterilization, and education and counseling for such services.

32. This final rule was adopted without giving due consideration to the hundreds of thousands of public comments submitted to HHS in opposition to the Mandate.

33. In the category of "FDA approved contraceptives" included in this Mandate are several drugs or devices that may cause the demise of an already-conceived but not-yet-implanted human embryo.

34. Likewise in that category are "emergency contraception" or "Plan B" (the "morning after" pill), and variations of oral contraceptives ("birth control pills" or "the Pill") taken regularly through a cycle.

35. The FDA approved in this same category a drug called "ella" (the "week after" pill), which studies show can function to kill embryos even after they have implanted in the uterus, by a mechanism similar to the abortion drug RU-486.

36. The Mandate also requires group health care plans to pay for the provision of counseling, education, and other information concerning contraception (including

contraceptive devices and drugs such as Plan B and *ella* that cause early abortions or harm to embryos) for all women beneficiaries who are capable of bearing children.

37. The Mandate applies to the first health insurance plan-year beginning after August 1, 2012.

38. The Mandate makes little or no allowance for the religious freedom of entities and individuals, including Christian ministries and educational institutions like LC, who object to paying for or providing insurance coverage for such items.

39. An entity cannot freely avoid the Mandate by simply refusing to provide health insurance to its employees, because PPACA imposes monetary penalties on entities that would so refuse.

40. The exact value of these penalties seems to vary according to the complicated provisions of PPACA, but it is estimated the fine is approximately \$2,000 per employee per year.

41. Switching to self-insurance does not avoid the Mandate.

42. The Mandate offers a narrow exemption to religious employers, but only if they meet all of the following requirements:

- (1) “The inculcation of religious values is the purpose of the organization”;
- (2) “The organization primarily employs persons who share the religious tenets of the organization”;
- (3) “The organization serves primarily persons who share the religious tenets of the organization”; and

(4) The organization is a church, an integrated auxiliary of a church, a convention or association of churches, or is an exclusively religious activity of a religious order, under Internal Revenue Code 6033(a)(1) and (a)(3)(A).

43. LC is not “religious” enough under this definition in several respects, most notably that its purpose is other than the “inculcation of religious values” and it does not primarily serve persons who share the religious tenets of the organization.

44. There are no clear guidelines restricting the discretion of Defendants when applying the Mandate and its many exceptions.

45. The Mandate does not apply equally to all members of religious groups.

46. For instance, the Mandate does not apply to members of a “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds. *See* 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii).

47. In addition, as described above, the Mandate exempts certain churches narrowly considered to be religious employers, it exempts grandfathered plans, and it does not apply through the employer mandate to employers having less than 50 full-time employees.

48. Furthermore, PPACA generally has offered discretionary exemptions to a variety of businesses for purely secular reasons.

49. President Obama held a press conference on February 10, 2012 claiming to offer a compromise under which some religious non-profit organizations not meeting the above definition would still have to comply with the Mandate, but by means of the employer’s insurer offering the employer’s employees the same coverage for “free.”

50. This compromise is not helpful to LC because, among other reasons, it is entirely fictitious. It does not exist in the rule or guidance President Obama enacted on February 10, and it need never be formally proposed or adopted.

51. Even if it did exist and had coherent boundaries, LC would still be consider it a requirement that violates its religious beliefs by forcing the organization to directly facilitate objectionable coverage by providing and paying for a plan that is itself necessary for the employee to obtain the coverage in question, and which coverage is not apparently separate from the employer's plan, nor is it apparently "free" since a variety of costs contained in the massive scope of the Mandate would necessarily be passed onto the employer through premiums.

52. The Mandate does not apply to employers with preexisting plans that are "grandfathered."

53. LC does not qualify for the Mandate's grandfathering of preexisting plans because, since March 23, 2010, it has made, and plans to make in the near future, substantial changes to its health plan, including increasing the amount of coinsurance, deductibles, or copays paid by employees, eliminating coverage for certain conditions, and the overall limit on dollar value of benefits.

54. Moreover, LC's insurance carrier has elected not to have its plans grandfathered in order to allow more flexibility in plan design, cost sharing, and premium equality.

55. Consequently, LC is subject to the Mandate's requirement of coverage of the above-described items starting in its January 2013 plan.

56. The Mandate makes it unclear whether LC will be able to offer health insurance as a benefit to its employees, and if so, the terms upon which it will be offered.

57. LC must take the Mandate into account now as it is planning compensation and benefits packages for the next several years. It will have to negotiate contracts for new and existing employees and these contracts will extend into the time frame when the Mandate begins to be enforced.

58. The Mandate is currently having a profound and adverse effect on LC and how it negotiates contracts and compensates its employees even though Defendants have informally stated it may not be enforced till January, 2014.

59. Any delay in enforcement till January, 2014 is not helpful to LC because, among other reasons, LC may not qualify under its vague requirements, the promise to delay enforcement can be revoked at any time, at the end of the delay the Mandate still applies in violation of LC's rights as described herein, and even during the delay its effect would leave LC in actual violation of the Mandate, thereby subjecting LC to a vast array of legal and contractual liabilities due to being in knowing violation of federal law.

60. The Mandate makes it difficult for LC to attract quality employees because of uncertainty about health insurance benefits.

61. Any alleged interest Defendants have in providing free FDA-approved contraceptives can be more narrowly achieved by providing them directly from the federal government without any connection to LC or its insurance plan.

62. LC has, and will continue to, expend a great deal of time and money ascertaining the requirements of the Mandate and how it applies to LC's health insurance benefits.

63. Without injunctive and declaratory relief as requested herein, LC is suffering and will continue to suffer irreparable harm.

64. LC has no adequate remedy at law.

IV. LEGAL ALLEGATIONS

FIRST CLAIM FOR RELIEF
Violation of Religious Freedom Restoration Act
42 U.S.C. § 2000(bb)

65. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-64 and incorporates them herein.

66. LC's sincerely held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming mechanisms, and related education and counseling, or providing a plan that causes access to the same through its insurance company.

67. LC's compliance with these beliefs is a religious exercise.

68. The Mandate imposes a substantial burden on LC's religious exercise and coerces it to change or violate its religious beliefs.

69. The Mandate chills LC's religious exercise.

70. The Mandate exposes LC to substantial fines for its religious exercise.

71. The Mandate exposes LC to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

72. The Mandate furthers no compelling governmental interest and is not narrowly tailored to any compelling governmental interest.

73. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

74. The Mandate violates RFRA.

SECOND CLAIM FOR RELIEF
Violation of Free Exercise Clause of the First Amendment to the United States
Constitution

75. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-64 and incorporates them herein.

76. LC's sincerely held religious beliefs prohibit it from providing coverage for abortion, abortifacients, embryo-harming mechanisms, and related education and counseling, or providing a plan that causes access to the same through its insurance company.

77. The Mandate is not neutral and is not generally applicable.

78. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

79. The Mandate furthers no compelling governmental interest.

80. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

81. The Mandate coerces LC to change or violate its religious beliefs.

82. The Mandate chills LC's religious exercise.

83. The Mandate exposes LC to substantial fines for its religious exercise.

84. The Mandate exposes LC to substantial competitive disadvantages, in that it makes it unclear what health benefits it can offer to its employees.

85. The Mandate imposes a substantial burden on LC's religious exercise.

86. The Mandate is not narrowly tailored to any compelling governmental interest.

87. Defendants designed the Mandate and the religious exemption thereto in a way that make it impossible for LC and other similar religious organizations to comply with their religious beliefs.

88. Defendants promulgated both the Mandate and the religious exemption in order to suppress the religious exercise of LC and others.

89. By design, Defendants framed the Mandate to apply to some religious organizations but not on others, resulting in discrimination among religions.

90. The Mandate as applied to LC violates LC's rights secured to it by the Free Exercise Clause of the First Amendment of the United States Constitution.

THIRD CLAIM FOR RELIEF
Violation of the Establishment Clause of the
First Amendment to the United States Constitution

91. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-64 and incorporates them herein.

92. The First Amendment's Establishment Clause prohibits the establishment of any religion and/or excessive government entanglement with religion.

93. To determine whether a religious organization like LC is required to comply with the Mandate, continues to comply with the Mandate, is eligible for an exemption, or continues to be eligible for an exemption, Defendants must examine the organization's religious beliefs and doctrinal teachings.

94. Obtaining sufficient information for the Defendants to analyze the content the LC's religious beliefs requires ongoing, comprehensive government surveillance that impermissibly entangles Defendants with religion.

95. The Mandate distinguishes among religions and among denominations, favoring some over others.

96. The Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient coverage and imposes it upon all religionists who must either conform their consciences or suffer penalty.

97. The Mandate as applied to LC violates LC's rights secured to it by the Establishment Clause of the First Amendment of the United States Constitution.

FOURTH CLAIM FOR RELIEF
Violation of the Free Speech Clause of the First Amendment
to the United States Constitution

98. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-64 and incorporates them herein.

99. Defendants' requirement of provision of insurance coverage for education and counseling regarding contraception causing abortion forces LC to speak in a manner contrary to its religious beliefs.

100. Defendants have no narrowly tailored compelling interest to justify this compelled speech.

101. The Mandate as applied to LC violates LC's rights secured to it by the Free Speech Clause of the First Amendment of the United States Constitution.

FIFTH CLAIM FOR RELIEF
Violation of the Due Process Clause of the
Fifth Amendment to the United States Constitution

102. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-64 and incorporates them herein.

103. Because the Mandate sweepingly infringes upon religious exercise and speech which are constitutionally protected, it is unconstitutionally overbroad in violation of the due process rights of LC and other parties not before the Court.

104. Persons of common intelligence must necessarily guess at the meaning, scope, and application of the Mandate and its exemptions.

105. This Mandate lends itself to discriminatory enforcement by government officials in an arbitrary and capricious manner.

106. The Mandate vests Defendants with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of “religious employers.”

107. This Mandate, on its face and as applied to LC is an unconstitutional violation of the Plaintiff’s due process rights under the Fifth Amendment to the United States Constitution.

SIXTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

108. Plaintiff realleges all matters set forth in the preceding paragraphs numbered 1-64 and incorporates them herein.

109. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a meaningful consideration of the relevant matter presented.

110. Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

111. Therefore, Defendants have taken agency action not in observance with procedures required by law, and LC is entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

112. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on LC and similar organizations.

113. Defendants' explanation (and lack thereof) for its decision not to exempt LC and similar religious organizations from the Mandate runs counter to the evidence submitted by religious organizations during the comment period.

114. Thus, Defendants' issuance of the Mandate was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the Mandate fails to consider the full extent of its implications and it does not take into consideration the evidence against it.

115. As set forth above, the Mandate violates RFRA and the First and Fifth Amendments.

116. The Mandate is also contrary to the provisions of the PPACA which states that "nothing in this title"—i.e., title I of the Act, which includes the provision dealing with "preventive services"—"shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year." Section 1303(b)(1)(A).

117. The Mandate is also contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), which provides that "[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on

the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”

118. The Mandate also violates the provisions of the Church Amendment, 42 U.S.C. § 300a-7(d), which provides that “No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.”

119. The Mandate is contrary to existing law and is in violation of the APA under 5 U.S.C. § 706(2)(A).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That this Court enter a judgment declaring the Mandate and its application to LC and others not before the Court to be an unconstitutional violation of their rights as protected by RFRA, the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Administrative Procedures Act;

B. That this Court enter a permanent injunction prohibiting Defendants from continuing to apply the Mandate in a way that substantially burdens the religious belief of any person in violation of RFRA and the Constitution, and prohibiting Defendants from continuing to illegally discriminate against LC and others not before the Court by requiring them to provide health insurance coverage for abortifacients and abortion/abortifacient counseling to their employees.

C. That this Court award Plaintiffs court costs and reasonable attorney's fees, as provided by the Equal Access to Justice Act and RFRA (as provided in 42 U.S.C. § 1988).

D. That this Court grant such other and further relief as to which the Plaintiff may be entitled.

Respectfully submitted this 18th day of February, 2012.

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*Motions *pro hac vice* to be submitted