

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WHEATON COLLEGE)
)
Plaintiff,)
)
v.)
)
KATHLEEN SEBELIUS, Secretary)
of the United States Department of)
Health and Human Services, UNITED)
STATES DEPARTMENT)
OF HEALTH AND HUMAN)
SERVICES, HILDA SOLIS, Secretary of)
the United States Department of Labor,)
UNITED STATES DEPARTMENT OF)
LABOR, TIMOTHY GEITHNER,)
Secretary of the United States Department)
of the Treasury, and UNITED STATES)
DEPARTMENT OF THE TREASURY,)
)
Defendants.)
_____)

Civ. Action No. 1:12-cv-01169-ESH

DECLARATION OF PHILIP RYKEN

Eric N. Kniffin (DC Bar No. 999473)
S. Kyle Duncan (LA Bar No. 25038)
(*pro hac vice* application to be filed)
Mark Rienzi (DC Bar No. 494336)
Lori Halstead Windham (DC Bar No. 501838)
The Becket Fund for Religious Liberty
3000 K St. NW
Suite 220
Washington, DC 20007
(202) 955-0095
(202) 955-0090
ekniffin@becketfund.org

Counsel for Plaintiff

DECLARATION OF DR. PHILIP G. RYKEN

1. My name is Philip G. Ryken. I am over the age of 18 and have personal knowledge of the contents of this declaration. I am the current President of Wheaton College. I have served as the College's President since July 1, 2010.

2. Like other employees of Wheaton College, my family and I depend upon Wheaton's health insurance. I make this declaration not only as a college president, but as an employee, a husband and father. The loss of Wheaton's insurance plan would not only be a professional crisis, but a deep personal concern for my family.

3. I understand that Wheaton will face \$1.35 million in annual fines—along with potential penalties and lawsuits—if it continues to follow its religious beliefs by refusing to offer health insurance that covers abortion-causing drugs. As a college president, I know the kind of strain that this would place on a small liberal arts college. As the president of a Christian college, I know that our responsibility is to the faith that animates us, the reason Wheaton College exists.

I. Wheaton's history and beliefs

4. Wheaton College is a Christian liberal arts college in Wheaton, Illinois. It was founded at the dawn of the Civil War by abolitionist Jonathan Blanchard. Since its earliest days, it has been self-supported, not tied to any one denomination. Wheaton has always recognized and valued the contributions of women to society and to the church, granting its first degree to a female graduate in 1862.

5. Wheaton's mission is "to help build the church and improve society worldwide by promoting the development of whole and effective Christians through excellence in programs of Christian higher education."

6. Wheaton's motto is "For Christ and His Kingdom."

7. Today, Wheaton College is an institution of higher learning, a rigorous academic community that takes seriously the life of the mind. Wheaton offers 59 undergraduate degree programs and 22 graduate degree programs, including five doctoral programs.

8. Wheaton College is affiliated with the Evangelical Christian tradition. It is not affiliated with any one church or denomination, but draws its students, faculty and staff from a variety of Christian traditions. Wheaton's students include Catholics, Orthodox Christians, and members of at least 55 different Protestant denominations.

9. Faith is central to the educational mission of Wheaton College. The College aspires to live, work, serve, and worship together as an educational community centered around the Lord Jesus Christ.

10. Wheaton's mission as an academic community is not merely the transmission of information; rather, it is the development of whole and effective Christians who will impact the church and society worldwide "[f]or Christ and His Kingdom."

II. Wheaton's Beliefs and Teachings on Abortion

11. Wheaton College affirms that Scripture calls Christians to uphold the God-given worth of human beings, as the unique image-bearers of God, from conception to death.

12. Wheaton College affirms that Scripture condemns the taking of innocent human life.

13. These beliefs are consonant with traditional Christian teachings on the sanctity of life. Wheaton believes and teaches that each human being bears the image and likeness of God, and therefore that all human life is sacred and precious, from the moment of conception. Wheaton College therefore believes and teaches that abortion ends a human life and is a sin.

14. Therefore it is a violation of Wheaton’s teachings and religious beliefs for it to deliberately provide insurance coverage for, fund, sponsor, underwrite, or otherwise facilitate access to abortion-inducing drugs, abortion procedures, and related services.

15. Wheaton has a sincere religious objection to providing coverage for the emergency contraceptive drugs Plan B and Ella, since it believes those drugs could prevent a human embryo—which it understands to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo.

16. Wheaton considers the prevention by artificial means of the implantation of a human embryo to be an abortion.

17. Therefore it is a violation of Wheaton’s teachings and religious beliefs for it to deliberately fund, sponsor, underwrite, or otherwise facilitate access to Plan B and Ella.

18. It is similarly a violation of Wheaton College’s religious beliefs to deliberately provide health insurance that would facilitate access to abortion-causing drugs, abortion procedures, and related services, even if those items were paid for by an insurer or a plan administrator and not by Wheaton College.

19. Consistent with these religious beliefs, Wheaton’s employee health insurance plans do not cover abortions or emergency contraception such as Plan B or Ella.

III. Wheaton’s insurance and practices

20. As part of its religious convictions, Wheaton College promotes the well-being and health of its employees. This includes provision of generous health services and health insurance for its employees.

21. Wheaton has about 709 full-time employees and 161 part-time employees. The overwhelming majority of these full-time employees and their families rely upon Wheaton's health insurance plans.

22. Wheaton provides three health insurance plans to its full-time employees. Those plans include two HMOs offered through BlueCross/BlueShield of Illinois and one PPO plan, which is self-funded and administered by BlueCross/BlueShield of Illinois. As a supplement to the HMO plans, Wheaton now offers two self-funded prescription drug plans. The plan year for each of Wheaton College's employee insurance plans begins on January 1.

23. Several months ago, Wheaton's human resources department began a comprehensive review of the College's insurance policies to confirm that no objectionable coverage was included. No such comprehensive review had yet occurred during my tenure as president.

24. Our human resources department was dismayed to discover that Wheaton's insurance policies did contain objectionable coverage of emergency contraception. That coverage had been provided inadvertently. It had been included in Wheaton's plans without my knowledge, the knowledge of the vice president who oversees that department, or the knowledge of Wheaton's human resources staff. To the best of my knowledge, this objectionable coverage had been included as a routine matter by Blue Cross/Blue Shield of Illinois at some time in the past, and due to an oversight, remained in the policies. I do not know the date that such provisions were included, since those changes predate my tenure and the tenure of Wheaton's current HR director.

25. After our employees discovered the irregularity, they promptly notified the vice president for finance, who promptly notified me. At my direction, they began working with Wheaton's

insurance company and plan administrator to make changes and ensure that the College's insurance policies were consistent with our Christian beliefs.

26. Wheaton's PPO plan administrator promptly modified our self-funded PPO plan to exclude emergency contraception effective January 1, 2012.

27. Wheaton's HMO insurer also promptly notified us that it could not exclude emergency contraceptives from Wheaton's HMO plans. The insurer informed us that Wheaton had the option to maintain high-quality, religiously acceptable insurance if it chose to self-insure its prescription drug coverage. We promptly began the process of carving out prescription drug coverage from our HMO plans and creating self-funded prescription drug plans to complement our existing HMOs.

28. Creating new, self-funded HMO drug plans is not a simple undertaking, but our staff worked diligently and quickly to bring our plans in line with our religious beliefs. They took the necessary steps to initiate the policy, negotiate the administrative services, notify plan participants, and create and distribute plan materials.

29. Until the new HMO plans were implemented, Wheaton's 2012 HMO plans briefly included emergency contraception such as Plan B and Ella. That coverage was in place as of February 10, 2012, but was terminated at the end of March 2012. Wheaton's current prescription drug plans do not cover such emergency contraception.

30. Wheaton's insurance plans have covered, and continue to cover, other types of contraceptives. Wheaton does not have religious objections to non-abortion-causing forms of contraception.

31. Because of these recent changes, Wheaton's HMO plans and the new accompanying prescription drug plans are not eligible for grandfather status in 2013. Wheaton did not include a notice of grandfather status with these plans in 2012.

32. Because of these recent changes, it is unclear whether Wheaton's PPO plan will be eligible for grandfather status in 2013. It is unclear whether eliminating coverage for emergency contraceptives terminates grandfather status. However, even if it does not, we recognize that our PPO plan cannot remain grandfathered over the long term.

33. Our HMO plans have, and continue to be, the most popular insurance option for Wheaton employees and their families. Roughly 390 of our 709 eligible employees use one of our HMO plans. Another 217 use the PPO plan.

34. Wheaton College wishes to continue to provide high-quality, affordable health insurance for its employees. Doing so is consistent with our religious commitment to support our faculty, staff, and their families.

35. If Wheaton had to terminate its health insurance coverage, it would be a serious hardship on most faculty and staff, including myself.

36. If Wheaton had to terminate its health insurance coverage, it would suffer serious competitive disadvantages in recruiting and retaining faculty and staff.

37. If Wheaton had to terminate its health insurance, it is inevitable that, due to the loss of competitive advantage, the quality of its programs and instruction would suffer.

IV. The HHS Mandate and Wheaton's choice

38. Wheaton College has expended significant resources working with its insurer and plan administrator to ensure that its health insurance policies reflect the College's religious beliefs.

Wheaton hopes to maintain those plans, but their future is uncertain due to the new HHS preventive care regulations, or “Mandate.”

39. In September 2011, I first learned of the HHS Mandate through a letter from a fellow Christian college president. I was deeply concerned that this government regulation could force Wheaton to violate its religious beliefs.

40. The Mandate forces Wheaton to provide coverage or access to coverage for abortion-causing drugs, including Plan B and Ella, in violation of Wheaton’s religious beliefs. It also forces Wheaton to provide insurance coverage or access to coverage for education and counseling concerning abortion that directly conflicts with Wheaton’s religious beliefs and teachings. Providing these drugs, counseling, and education is incompatible and irreconcilable with Wheaton’s religious beliefs, express messages, and speech.

41. Wheaton has raised this issue with HHS directly. For example, in September 2011, the College submitted public comments on the Interim Final Rule on Preventative Services published on August 3, 2011 (76 Fed. Reg. 46621). Wheaton’s comments expressed its concern that the interim final rule failed to recognize it as a religious employer and that the rule violates the College’s rights of conscience. Wheaton implored HHS to broaden the existing “religious employer” exemption to cover Wheaton and similar religious organizations.

42. I am aware of the Mandate’s exemption provision for religious employers. Wheaton cannot qualify for this exemption. Like most religious organizations, Wheaton has more than one purpose. Wheaton considers the inculcation of religious values to be only one purpose among others, such as providing a comprehensive liberal arts education. Also, Wheaton is not a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of

the Internal Revenue Code of 1986, as amended. Specifically, it is not a church, an integrated auxiliary of a church, a convention or association of churches, or a religious order.

43. Because Wheaton does not qualify for an exemption to the Mandate, the College sincerely hoped HHS would decide to broaden the exemption to cover religious institutions like Wheaton.

44. But HHS chose not to expand the exemption. Instead, it announced and then implemented a one-year enforcement “Safe Harbor” for religious organizations that could qualify. To qualify for this one-year non-enforcement period, Wheaton would be required to self-certify by January 1, 2013, that it satisfies the Safe Harbor notice requirements outlined in the HHS guidance bulletin.

45. Wheaton’s employee insurance plans, however, are not eligible for the Safe Harbor, because they currently provide coverage for contraceptives, making it impossible for Wheaton to make the required certification. Moreover, as described above, for a short period after February 10, 2012, Wheaton’s insurance plans inadvertently included coverage for emergency contraceptives. Accordingly, Wheaton is not eligible for Defendants’ Safe Harbor because it is not a non-profit organization “whose plans have not covered contraceptive services for religious reasons at any point from [February 10, 2012] onward.”

46. Because Wheaton is not eligible for the Safe Harbor, it will be subject to enforcement under the Mandate—enforcement that includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2013. The only way Wheaton could avoid those harsh consequences would be to publicly abandon its faith commitments and violate its religious

convictions. This is no choice at all, because Wheaton's faith is central to its identity, its mission, and its very existence.

47. Wheaton has continued to attempt to publicly persuade HHS to provide a broad exemption from the Mandate. In June 2012, Wheaton College submitted comments on the Advance Notice of Proposed Rulemaking on Preventative Services published on March 21, 2012 (77 Fed. Reg. 16501). Wheaton's comments reiterated its concerns about the interim final rule, particularly the Defendants' refusal to provide it and similar religious employers with the same exemption afforded to churches.

48. The Mandate exposes Wheaton to substantial fines, other regulatory penalties, and potential lawsuits for refusal to change or violate its religious beliefs.

49. The Mandate imposes a burden on Wheaton's employee recruitment and retention efforts by creating uncertainty as to whether Wheaton will be able to offer health insurance beyond 2012.

50. The Mandate places Wheaton at a competitive disadvantage in its efforts to recruit and retain employees.

51. The Mandate forces Wheaton to choose between, on the one hand, violating its religious beliefs, and, on the other hand, incurring substantial fines and terminating its employee health insurance coverage.

52. Wheaton wants to continue to provide high-quality health care coverage for its employees. It has no objections to providing almost all of the mandated services, including gestational diabetes screenings, well-woman visits, and most prescription contraceptives. It asks

only that it be permitted to follow its beliefs by continuing to refuse to pay for, or provide access to, abortifacients.

V. The Mandate's Impact on Wheaton

53. Because Wheaton is not eligible for the Safe Harbor, it will be subject to enforcement under the Mandate—enforcement which includes fines, other regulatory penalties, and potential lawsuits—starting on January 1, 2013.

54. On January 1, 2013, Wheaton will face an unconscionable choice: either violate the law, or violate its faith.

55. If Wheaton chooses to violate the law—by ceasing to offer employee health insurance altogether, or by offering insurance without the objectionable coverage—then it will be penalized with fines of \$2000 per employee per year, or roughly \$1.35 million per year, every year. It could also face other regulatory penalties and potential lawsuits.

56. A \$1.35 million fine alone would be devastating for most any college, and particularly so for a small liberal arts college like Wheaton.

57. In addition to this per-employee fine, Wheaton could also face tax penalties of \$100 per day per employee, as well as regulatory action and lawsuits, for continuing to offer employees health insurance that reflects its religious convictions.

58. Even if Wheaton College is able to offer its PPO plan again in 2013, forcing all of our employees who have deliberately chosen our HMO plans to switch over to the PPO plans they have previously rejected would be burdensome and costly for Wheaton and its employees. For example, there are currently 198 employees who have chosen family coverage through one of Wheaton's two HMOs. The vast majority of those families (174) are in Wheaton's cheapest HMO

plan. For these families, we would be forcing them to switch to an insurance plan they do not want and possibly forcing them to switch doctors. Although we do not yet know the exact costs for 2013, based on 2012 costs, we would also be asking these employees to pay an additional \$504 per year in premiums. For the remaining 24 families, they would likely see a small decrease in costs (based on 2012 numbers), but would still be forced to change insurance companies and perhaps doctors. For example, many employees choose the premium HMO because it gives them access to Chicago's fine research hospitals.

59. In addition to the costs borne by employees, based on 2012 costs, Wheaton itself would incur about \$200,000 in additional premium costs to switch all 198 families off of their chosen HMO plans and into the PPO plan.

60. Forcing Wheaton to undertake this type of expensive and burdensome restructuring of its insurance offerings, and forcing Wheaton's employees to pay more money, change insurance, and possibly change doctors, is a severe burden on Wheaton, its employees, and their families.

61. Wheaton does not have a real choice in this matter. Its religious beliefs are deep, longstanding, and sincere.

VI. The Need for Immediate Action

62. Wheaton must begin planning now for the 2013 insurance plan year.

63. Every fall, Wheaton works with its insurer and plan administrator to negotiate its plans for the coming year. The process is time consuming: Wheaton's HR department must negotiate and work with its insurer and administrator on plan changes and on the production and distribution of plan materials and employee insurance cards. This process typically takes Wheaton College three to four months.

64. Wheaton plans to begin the insurance negotiation process in September, to give itself adequate of time to make any necessary changes before the January 2013 plan year begins. Therefore any major changes—such as the termination of one or all plans—must be known to Wheaton by September 30, 2012 at the latest.

65. Wheaton needs to implement any major changes prior to November 1, 2012, the first date of the two-week open enrollment period for employees and their families.

66. Wheaton needs immediate relief from the Mandate in order to arrange for and continue providing employee health insurance. Delay could lead to a lapse in coverage. Denial of immediate relief will force Wheaton to choose between its religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

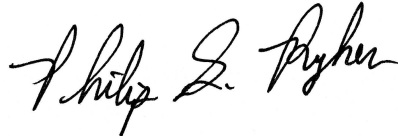
67. The consequences for Wheaton’s employees would be severe. If my family’s insurance plan is cancelled, we will be forced to seek expensive individual policies on the private market. This is particularly troubling for us, because my daughter has a chronic medical condition which requires frequent—and expensive—treatments.

68. I am not alone. As Wheaton confronts the looming deadline, I have been approached by employees who have expressed fears for themselves and their families about what would happen if Wheaton is forced to stop offering health insurance.

69. One employee told me that “if the college stops providing medical insurance, then [he] won’t be able to work here anymore.” He told me that his pregnant wife and young child rely on his coverage through Wheaton, and that his wife “burst into tears” when he told her that the mandate put this coverage in jeopardy.

70. Other employees have asked me how they will afford to continue with expensive medical treatments if Wheaton is forced to cancel coverage. Some have asked whether they should plan for major surgeries or treatments prior to January, to ensure they will be covered.

71. My answer to them is that I hope we will not have to make that choice. I hope that we will have relief from the Mandate prior to January 1.

A handwritten signature in black ink, reading "Philip G. Ryken". The signature is written in a cursive style with a large initial "P" and "R".

Philip G. Ryken

Date: August 1, 2012