Written by **Warren Mass** on May 23, 2014

Court Delays ObamaCare Mandate for Two Christian Colleges

Federal Judge Mark W. Bennett (of the U.S. District Court for the Northern District of Iowa) issued an order on May 21 that halts enforcement of the Obama administration's HHS mandate against two Christian colleges — Dordt College in Iowa and Cornerstone University in Michigan.

In his ruling, Judge Bennett noted that the plaintiffs (i.e., the two universities) had asked that he enjoin enforcement of "'the Mandate' — the provision of the Patient Protection and Affordable Care Act of 2010 (ACA) requiring that group health plans and health insurance issuers provide coverage, without cost sharing, for certain female contraceptives."

Bennett noted that the "plaintiffs are religiously oriented colleges that must offer their employees ACA-compliant health insurance, or face severe penalties. Plaintiffs claim that the Mandate violates the Religious Freedom Restoration Act.… For the reasons discussed below, Plaintiffs' motion is granted."

The case pitted the plaintiffs versus "Kathleen Sebelius, in her official capacity as Secretary, United States Department of Health and Human Services, et al." (Bennett noted the fact that Sebelius announced her resignation as Secretary on April 10 in his ruling: "I recognize that defendant Kathleen Sebelius has resigned as Secretary of the Department of Health and Human Services. Her successor, however, has not yet been confirmed. When the next Secretary is confirmed, I will substitute the successor as a defendant.")

Expanding on his interpretation of the Religious Freedom Restoration Act (RFRA), Bennett cited the case *Harrell v. Donahue*: "RFRA … provides that the Government cannot impose a law that substantially burdens a person's free exercise of religion *unless* the Government demonstrates that the law (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." (Emphasis added.)

As much as religious conservatives may welcome this ruling, the qualifier noted above — "unless" — is troubling to the strict constructionist's view of the First Amendment. The amendment in no way qualifies the restriction that Congress may not prohibit the free exercise of religion. It contains no ifs, ands, buts, or *unlesses*.

Unlike the U.S. Constitution, the constitution of the old communist Soviet Union did provide exceptions to freedom of speech. Article 52 of that constitution read: "Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda."

However, the Soviet Constitution took away with one hand what it granted with the other: Article 39: "Enjoyment by citizens of their rights and freedoms must not be to the detriment of the interest of society or the state."

Article 59: "Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations."

The major difference, of course, is that in an officially atheistic society, the government presumes to grant rights, and what it grants it presumes the right to take away. The Founders who authored our Constitution (including the Bill of Rights) believed in the principles outlined in the Declaration of Independence, with six men signing both documents. They believed, therefore, that our rights are endowed by our creator, that is, they come from God, not government. The purpose of government, they stated, was to secure these rights, not grant them.

Keeping those principles in mind, it is difficult to understand how Bennett or the authors of the Religious Freedom Restoration Act could justify making exceptions to religious freedom. And yet, the RFRA does contain such language. It reads:

> IN GENERAL. — Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, *except* as provided in subsection (b).
>
> (b) *EXCEPTION*. — Government may burden a person's exercise of religion only if it demonstrates that application of the burden to the person —
>
> (1) furthers a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest. [Emphasis added.]

Recognizing that it is a judge's responsibility to interpret the law, not make law, Bennett did cite the RFRA correctly, indicating that the flaw lies mainly with the law itself. Considering that the legislation was introduced in the House by then-Rep. Chuck Schumer (D-N.Y.), passed by voice vote in the House, passed by a vote of 97-3 in the Senate, and signed into law by President Bill Clinton, it is not surprising that the bill is not something our Founding Fathers would have been proud of. The three senators voting against the bill were Robert Byrd (D-W.V.), Jesse Helms (R-N.C.), and Harlan Mathews (D-Tenn.).

Bennett's language did indicate a willingness to consider the religious principles of the two Christian colleges, as well as to weigh the relative harmful effects of granting or denying their requested injunction:

> First, Plaintiffs may suffer irreparable harm without an injunction in that they would be forced to comply with the Mandate to the detriment of their religious exercise. Even if I were to later grant Plaintiffs relief on their underlying claims, that would not remedy the harm caused by forcing the Plaintiffs to do something they deem religiously objectionable. Second, the balance of the equities favors granting a preliminary injunction. The only harm Defendants may suffer if I grant a preliminary injunction is that the Mandate may apply to Plaintiffs a few months later than expected. Third, Plaintiffs have shown that they are sufficiently likely to succeed on the merits. I base this finding on the fact that the Eighth Circuit Court of Appeals has twice granted injunctions pending appeal to similarly situated plaintiffs challenging the Mandate under RFRA."

Bennett also indicated that his ruling is not final, but depends, in part, on how the Supreme Court rules in *Sebelius v. Hobby Lobby*, in June. He wrote:

> I informed the parties that I would wait to resolve the Plaintiffs' underlying claims until after the United States Supreme Court decided *Sebelius v. Hobby Lobby Stores, Inc.*, No. 13-354, and *Conestoga Wood Specialties Corp. v. Sebelius*, No. 13- 356, because those decisions will likely impact, and may even resolve, part of this case.

Both cases were discussed in an article posted by *The New American* last December.

The writer, Dave Bohon, noted:

> The most high-profile of the cases is the one filed by the Green family, owners of Hobby Lobby and its sister company Mardel. The other case involves the pro-life Mennonite owners of the Pennsylvania-based Conestoga Wood Specialties. In both cases the companies face millions of dollars in fines for refusing to make available abortion-inducing contraceptive drugs to their employees — one of the requirements of the "Affordable Care Act" now being imposed by the Obama administration.

The Becket Fund for Religious Liberty, which is representing the Green family and Hobby Lobby/Mardel, noted that "there are currently 84 lawsuits challenging the unconstitutional [contraception] mandate," and how the Supreme Court rules on the Hobby Lobby case will no doubt impact many of the other cases.

Among these cases, as Judge Bennett makes plainly clear, is *Dordt College and Cornerstone University v. Sebelius*.

Shown is the logo for Dordt College

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