CASE SNAPSHOT
Geneva College v. Burwell

Case Summary

Alliance Defending Freedom attorneys filed a federal lawsuit against the Obama administration on behalf of Geneva College, a private, four-year, comprehensive, Christian college of the arts, sciences, and professional studies located in Beaver Falls, Pennsylvania. The lawsuit challenges the administration's illegal mandate that religious employers provide abortifacients to employees in their health plans regardless of the religious or moral objections of the employer. The Obama administration is currently losing the HHS abortion-pill mandate cases with a 72-16 record in courts.

History of the College

The Reformed Presbyterian Church of North America founded Geneva College in 1848. The college was a station on the Underground Railroad, in which many students were active, assisting slaves to freedom. Geneva College was also among the first schools to admit women to the full degree program.

Today, Geneva College continues its legacy of freedom and community care by requiring freshmen to participate in an eight-week course that focuses on serving the community through soup kitchens, community gardens, after-school programs, community art, building projects, nursing homes, rails to trails, and other similar programs. Geneva's Students Against Modern Slavery Club partners with the Beaver County Anti-Human Trafficking Coalition to raise awareness of the growing problem of human trafficking and to rescue women and others who are being exploited and enslaved.

Geneva College has an undergraduate enrollment of 1,454 students and 250 graduate students. The undergraduate student body is approximately 50 percent men and 50 percent women, with students representing 39 states and nine nations. Geneva College's motto is *Pro Christo et Patria* (For Christ and Country).

Case Status

The U.S. Supreme Court granted Geneva College's petition for certiorari, along with one ADF attorneys filed on behalf of *Southern Nazarene University* and three other Christian universities in Oklahoma. Also before the Supreme Court are five other cases which include nuns and priests. All cases address the same issue: may the government force religious non-profit organizations and institutions to provide access to abortion-inducing drugs, sterilization, and contraception in their employee and student health plans in violation of the foundational religious convictions of their institutions and under the threat of crushing fines? The high court is likely to hear arguments in March 2016, with a decision in June.

What Alliance Defending Freedom Is Arguing

In *Hobby Lobby/Conestoga Wood Specialties*, the Supreme Court affirmed that a for-profit, family business can operate its business in a manner consistent with its beliefs; specifically, the court ruled that the government could not force these family businesses to include life-ending drugs and devices in their employee health coverage. The court did not specifically resolve the same freedom issue for *non-profit* groups, including religious schools, ministries, and pro-life organizations.

As a tactic in the continuing non-profit litigation, the government came up with an alternative method of complying with the mandate, pretending to solve the problem it had created. At the time the Supreme Court decided *Hobby Lobby/Conestoga*, the court noted the existence of this so-called "accommodation" but did not decide whether it eliminates the mandate's burden on religious exercise.

Under the alternative compliance method, the religious groups would be forced to (1) sponsor a health plan through an insurer or third-party administrator (TPA) willing to provide abortifacients to their employees, (2) alter their health plan to ensure the provision of abortifacients, (3) notify or identify for the government their plan's insurer or TPA so that those entities would provide the objectionable abortifacients, and (4) officially authorize those entities as "mules," or carriers, responsible for providing the abortifacients to which the religious groups object.

Geneva believes that it has a religious duty to care for its employees' physical well-being by providing generous health insurance benefits. However, Geneva College objects to Plan B, ella, and two IUDs—drugs and devices that can cause the death of an embryo by preventing it from implanting. Geneva College holds, as a matter of religious conviction, that it would be sinful and immoral for it to intentionally facilitate, assist in, or enable the use of drugs that can and do destroy very young human lives.

But, the Obama administration's alternate compliance mechanism involves far more than Geneva College sending notification of its religious objection. The alternate mechanism legally and practically serves to bring about the provision of those drugs and devices, since the government forces the religious institution to contract for the services in their health plans. The punishment for not signing these permission slips is crippling fines that would likely and quickly drive the college out of existence.

As the cert reply brief explains, "If the Government truly wanted to remove Geneva from the process of providing abortifacient coverage, it would not continue to involve Geneva or its health plan in any of these ways. Out of one side of its mouth the Government claims to exclude abortifacients from Geneva's plan, while out of the other side it ensures that the coverage is inseparable from the plan."

The Legal Effect of *Hobby Lobby*

In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2785 (2014), the Supreme Court held that the application of federal regulations implementing the Patient Protection and Affordable Care Act of 2010 (ACA) to compel certain for-profit religious employers to provide health insurance coverage for all FDA-approved contraceptives violated the Religious Freedom Restoration Act (RFRA). Like the items objected to in *Hobby Lobby*, the college's religious objection to the mandate is limited to facilitating or enabling access to Plan B (the "morning after pill"), ella (the "week after pill"), certain IUDs, and related counseling. *See Hobby Lobby*, 134 S. Ct. at 2766. Applying the Supreme Court's rationale in *Hobby Lobby*, the government can't apply the mandate to force nonprofit religious employers to cover religiously objectionable contraceptives in their health plans. *See* 134 S. Ct. at 2785 ("[U]nder the standard that RFRA prescribes, the HHS contraceptive mandate is unlawful"). Thus, the government's only means of mandate enforcement against religious nonprofits is via the alternative method of compliance outlined above.

Bottom Line

Ultimately, in a free society like the United States, the government's solution to burdening the religious and moral convictions of its charities and universities should not be to force these institutions to violate their consciences in a slightly different way. In September, the U.S. Court of Appeals for the 8th Circuit agreed, and applied the rationale of *Hobby Lobby/Conestoga Wood Specialties* to the *Dordt College* case, ruling that faith-based colleges and universities should be free to operate their institutions in accordance with the faith they espouse and teach. In finding that the government's alternative compliance mechanism substantially burdened the schools' ability to do so, the court caused a circuit split, i.e., disagreement among the federal

appellate courts about the legality of the alternate compliance process. The Supreme Court should resolve this issue consistent with its decision in *Hobby Lobby* and again affirm the bedrock American principle that all people should be able to peacefully live and operate according to their beliefs. Indeed, it is these very beliefs that drive them to engage in the infinite good and life-saving works they do in their communities and beyond.