

January 2013 HHS MANDATE UPDATE

Last month, on December 18, a federal circuit court ruled that the Department of Health and Human Services (HHS) may not enforce the HHS mandate in its current form against two private religious colleges. As I have shared with you in prior issues, the mandate will force most employers—including Wheaton College and Belmont Abbey College—to provide employee health plans that cover contraception, sterilization, and abortion-inducing drugs, despite the fact that these services may directly violate their religious beliefs.

In its order, the U.S. Court of Appeals for the District of Columbia instructed the government to report back every 60 days until it issues a modified rule that provides protection for the colleges' religious freedom. The court could then move forward in analyzing whether the mandate in its new form violates the religious freedom of the private colleges. According to the Becket Fund, the religious liberty law firm representing the colleges, "The court based its decision on two concessions that government lawyers made in open court. First, the government promised 'it would never enforce [the mandate] in its current form' against Wheaton, Belmont Abbey or other similarly situated religious groups. Second, the government promised it would publish a proposed new rule 'in the first quarter of 2013' and would finalize it by next August." The court's order explicitly stated, "We take the government at its word and will hold it to it." The court concluded by declining to issue a ruling in the case "pending the rule that the government has promised will be issued soon."

A different outcome resulted for Hobby Lobby—a private retail chain owned and operated by a Christian family that also filed a religious liberty lawsuit challenging the mandate. The Green family has explained that if they refuse to comply with the mandate and instead operate in accordance with their faith, they could face fines of up to \$1.3 million per day. Yet the U.S. Court of Appeals for the Tenth Circuit this week refused to temporarily halt the mandate for Hobby Lobby while their case moves forward, calling burden on the Greens' religious freedom "indirect and attenuated." Hobby Lobby is now expected to ask the Supreme Court for relief from the mandate. I will continue to keep you updated on the pending court cases surrounding this important issue.