

October 27, 2014

Submitted Electronically

Secretary Thomas Perez
U.S. Department of Labor
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
200 Constitution Avenue NW.
Washington, DC 20210

Attention: Preventive Services

Dear Secretary Perez:

I write to express concern about the August 27, 2014 Interim Final Rule entitled Coverage of Certain Preventive Services Under the Affordable Care Act (79 Fed. Reg. 51092). The Interim Final Rule continues to improperly distinguish between houses of worship (as narrowly defined for income tax reporting purposes) and deeply religious institutions like Wheaton College that exist to serve the church and society as a whole.

The only reason the Departments have ever given to justify this distinction is that churches are “more likely” to hire employees that share the same faith. 78 Fed. Reg. 39869, 39874 (July 2, 2013). But this logic applies with equal force to Wheaton College, whose faculty and staff all share Wheaton College’s evangelical Christian beliefs, including its beliefs about the obligation to protect innocent human life from conception until natural death.¹ In fact, all of Wheaton College’s employees and students sign a community covenant in which they promise to live in a way that reflects Wheaton College’s commitment to the sanctity of human life.² The Departments have never given any reasoned explanation for failing to exempt a religious institution like Wheaton College to the same extent that they exempt churches and other houses of worship, many of which in fact do not have such belief and conduct requirements for their employees.

The Departments’ decision to exempt churches but not other religious institutions also dramatically disadvantages evangelical Christian institutions like Wheaton College. For religious and historical reasons, although they remain closely associated with the many churches that share their evangelical Protestant beliefs, evangelical colleges like Wheaton are

¹ Wheaton College, Statement of Faith and Educational Purpose, <http://www.wheaton.edu/About-Wheaton/Statement-of-Faith-and-Educational-Purpose>.

² Wheaton College, Community Covenant, <http://www.wheaton.edu/about-wheaton/community-covenant>.

less likely to have the kinds of financial and administrative ties to a particular church that are required by the IRS reporting rules on which the narrow exemption is based.³ The IRS's strict rules may be justified in the income reporting context, but they are completely unjustified as a limitation on the exercise of religious liberty. By structuring the exemption in this way, the Mandate engages in "discrimination . . . expressly based on the degree of religiosity of the institution and the extent to which that religiosity affects its operations." *Colorado Christian University v. Weaver*, 534 F.3d 1245, 1259 (10th Cir. 2008) (applying *Larson v. Valente*, 456 U.S. 228 (1982), to invalidate distinction between "sectarian" and "pervasively sectarian" organizations). Such discrimination is forbidden by the First Amendment's Religion Clauses.

The Departments' continued insistence that it may treat Wheaton College differently from churches and other houses of worship is inconsistent with longstanding civil rights laws like Title VII, which exempts all "religious corporation[s], association[s], educational institution[s], [and] societ[ies]" without regard to their status under the Tax Code. 42 U.S.C. § 2000e-1(a). This approach is time-tested and successful, and the Departments have not offered any reason why it would be inadequate here.

Nor does the latest proposal do anything to cure the infringement on Wheaton's religious liberty. First, I note that the regulations insist on requiring more and different information from what the Supreme Court required of Wheaton in its July 3 order. *See Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014). Second, the new proposal—just like the Departments' prior versions of the rule—continues to use Wheaton's actions and Wheaton's insurance policies as the vehicle to deliver products to which we object. The government has many ways to deliver drugs to people, and it uses those methods to deliver drugs to millions of people each year. There is no reason the government cannot use existing programs—or cannot use its own health insurance exchanges—to provide whatever medical coverage, drugs, or devices the government thinks is justified. There is no valid reason to threaten to impose crippling fines on a religious institution like Wheaton.

Because the Departments have not changed their objective, Wheaton College has not changed its request: we ask the Departments to expand the scope of the exemption to include all religious individuals and institutions who cannot comply with the mandate without violating their religious beliefs.

I appreciate your attention to this crucially important matter and am happy to speak with you or your Department's representatives if that would be helpful.



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³ Since at least the nineteenth century, evangelicals in America have favored non-denominational organizations because of their ability to foster cooperation between members of different churches that share common religious convictions. *See, e.g.,* Michael S. Hamilton, *Evangelical Entrepreneurs: the Parachurch Phenomenon*, CHRISTIAN HISTORY (Oct. 1, 2006), available at <http://www.christianitytoday.com/ch/2006/issue92/6.33.html>; MARK NOLL, A HISTORY OF CHRISTIANITY IN THE UNITED STATES AND CANADA 307 (1992). Consistent with this tradition, Wheaton is not financially or administratively controlled by a particular church, although it shares common religious convictions with many evangelical Protestant churches.