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In God We Trust: A Case Study Analysis of the United States Supreme Court Ruling from the Wheaton v. Burwell Lawsuit Against the Health and Human Services Preventative Services Mandate and the Directions for Private Institutions

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IN GOD WE TRUST: A CASE STUDY ANALYSIS OF THE UNITED STATES SUPREME COURT RULING FROM THE *Wheaton v. Burwell* LAWSUIT AGAINST THE HEALTH AND HUMAN SERVICES PREVENTATIVE SERVICES MANDATE AND THE DIRECTIONS FOR PRIVATE INSTITUTIONS

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CERTIFICATE OF APPROVAL

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Abstract

The division between private non-profit organizations and the federal government continues to grow as an emerging topic. The difficulties resulting from religious objections against federal mandates stand as integral parts of higher education history. The current disagreement is represented in the 2010 Patient Protection and Affordable Care Act and the Health and Human Services Preventative Services Mandate. According to both legislative documents, the HHS mandate requires non-profit institutions to provide contraceptive coverage to all employees. As a result, many faith-based institutions sued for exemption claiming religious violations from the federal government. This case study focused on the original Supreme Court injunction granted to Wheaton College and the subsequent aftermath of the review. A wide range of legal cases and historical documents provided the foundation for the research. Several themes emerged from the content including the narrowness of the exemption status and the options for other non-profit institutions. The results and findings offer a possible solution for institutions currently engaged in a lawsuit or considering other alternative measures. The sections for limitations and further research provide directions for improvement and considerations when analyzing federal legislation and potential directions for religious educational institutions.

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Chapter 1

Introduction

The clash between old and new remains one of the longstanding disagreements in history. Emerging cultural and moral values continue to shift, often colliding with traditional values. Thomas Friedman (1989), in *The Lexus and the Olive Tree*, identified several challenges when dealing with cultural change. The book focuses on globalization and the potential lasting effects on the international system. Friedman posited a community with technological advances and an interconnected or smaller world. To Friedman (1989), "Globalization is not just a trend, not just a phenomenon, not just an economic fad . . . . globalization has its own rules, logic, structures, and characteristics" (p. 42). He cautions the fast-paced lifestyle of the new age as conflicting for many cultures rooted in traditional values. Friendman offered a portrait of a world continually facing the challenge of balancing between the Lexus (the aspiration towards material possession and prosperity) and the Olive Tree (the traditional, cultural, and community driven world). The rise of globalization redefined the political, social, and cultural landscapes of many civilizations. In addition, *The Lexus and the Olive Tree* contains many parallels to the scope of higher education today.

The expansion of higher education faces unprecedented growth. Technological advances, predominantly spearheaded by the Internet and its various applications, allow higher education to reach farther and faster than ever before. Growth of state institutions,

community colleges, online degrees, and even college-focused high school courses increase access to higher education for populations previously unreached. The Pew Research Center found "a record total of 21.6 million Millennials . . . are college students . . . [with] 39% of 18-to-24-year-olds were enrolled in a college" (Fry, 2013, para. 2, 5). With an economic boom and the need for further education in the job market, attending college increasingly appeals to young adults.

Although, at the turn of the century, the economy continued to grow, in 2008, the Great Recession created chaos and sizable setbacks across the globe. World markets dropped around 20%, and stock markets fell approximately 50% (Almunia, Benetrix, Eichengreen, O'Rourke, & Rua, 2009). In addition, income dropped roughly 8% during the 2009 fiscal year. With the instable economic output following the recession, tuition rates began to increase exponentially with the current student debt resting at just above $1 trillion (Epple, Romano, Sarpca, & Sieg, 2013). With rising debt, the traditional model of 4-year college students almost became obsolete. Michael Crow (2002), President of Arizona State University, in his inaugural address, highlighted fifteen institutions representing the gold standard for higher education, yet existing in an environment that needs change. New economic concerns and a growing population of older degree seekers have caused institutions to transition with the changing culture. However, in the midst of the fast-paced changes, private education attempts to remain steadfast in the foundational roots of teaching, academic excellence, and, in many cases, religion.

Wheaton College

Located in Wheaton, Illinois, Wheaton College, founded in 1860, is a private coeducation four-year institution with a non-denominationally affiliated Christian

background. Despite exhibiting characteristics of the evangelical denomination, Wheaton holds no affiliation with any denomination or church. Wheaton College (2015a) currently enrolls 2,444 students drawing from 50 nations and all 50 States.

Wheaton structures its mission and purposes from a Christian perspective and specific biblical guidelines. The institution's code of conduct, the Community Covenant, outlines a rigorous combination of academic excellence and Christian expectations for students (see Appendix B). "The goal of campus life at Wheaton College is to live, work, serve, and worship together as an educational community centered around the Lord Jesus Christ" (Wheaton College, 2015b, para. 4). Wheaton requires all students, faculty, and staff to sign the Community Covenant and uphold the Christian values throughout the community: "We, the Wheaton College community, desire to be a covenant community of Christians marked by integrity, responsible freedom, and dynamic, Christ-like love, a place where the name of Jesus Christ is honored in all we do" (para. 16). In a constantly shifting world, Wheaton firmly resolves to stand by Christian, faith-based ideals while striving for academic integrity and excellence.

The Problem

In public institutions, higher educational changes often originate from federal government mandates and new requirements for institutions. For example, on March 23, 2010, President Barack Obama signed into law the Patient Protection and Affordable Care Act (PPACA), or Obamacare, with the intention of providing affordable or free healthcare to all individuals in the United States. With his signature and the upholding support of the Supreme Court of the United States (SCOTUS) in 2012, the Act created numerous challenges for most employers, especially in the world of higher education.

A main resistance to the Act arose from religious organizations and educational institutions. When the PPACA passed, the Department of Health and Human Services passed a mandate requiring employers to provide all forms of contraceptives to employees (including abortifacients) or face severe fines. Religious organizations viewed the Health and Human Services Preventative Services Mandate (HHS mandate) as a substantial burden on religious rights. Although many religious groups hold no objection to most contraceptives, specific elements including abortifacients and sterilization remain an issue. Some institutions immediately withdrew from government financial aid altogether, choosing to handle any and all financial assistance and coverage independently. However, for institutions continuing to receive federal financial aid, the mandate presented a challenge to religious values. Several institutions began to unite in an attempt to petition the federal government for permanent relief from the mandate.

The role and function of religion in higher education continues to shift in the United States today. While religious values and traditions often remain vibrant at many faith-based institutions, higher education as a whole continues to drift away from its foundation on Christian principles. Wheaton College offers insights into the emerging debate over the value of religious private institutions in light of a higher education culture boasting of pluralism, diversity, and tolerance.

Chapter 2

Literature Review

The history of higher education portrays many disagreements between the federal government and higher education institutions. The institutions represent a broad spectrum of diverse practices and thought. Wheaton College opposes the HHS Mandate with a strong conviction for the exemptions of private higher education. Such institutions offer a religious narrative, something most public institutions do not. Although the current trajectory of higher education continues to shift from religious values, the roots of higher education originated from a religious conviction.

Origins of Higher Education

The earliest college—Harvard, William and Mary, and Yale, among many others—grew from Christian principles and biblical truths. American higher education began when Christians observed a need for formal training before dispersing to spread the gospel: "The Puritan worldview provided the first relatively stable period of American Christian higher education" (Noll, 2006, p. 18; Rudolph, 1990). Since then, most higher education institutions have left the original mission. The first colleges represented a standard of both philosophical thinking and Christian doctrine. Advancements in science, the emergence of Darwinism, the concept of academic freedom, and the transition to reading holy texts as creative literature all contributed to the secularization and eventual separation of religious education (Ringenberg, 2006).

In the early eighteenth century, the Great Awakening led to a period of intense revival in American history. The Pietist impact on American higher education contributed the Great Awakening, as several leaders influenced the establishment of the collegiate institutions (Bunnell, 1991). As society began to view Christian ideals as outdated and antithetical to prevailing forms of academic thought, scholars began to view the Bible as nothing more than creative literature. Albrecht and Heaton (1984) observed the difficulty of "simultaneously hold[ing] both a religious and scholarly orientation to the world" (p. 45). As institutes associated with religious entities began to dictate the direction of academic thought, the ties between church and state began to unravel (Rudolph, 1990). With the transition, the federal government slowly became involved with regulations, many originating from the Supreme Court.

Higher Education and the United States Supreme Court

As the Federal Government steadily increased its interest in higher education, a major rift between the government and religious institutions emerged over rights and liberties. The majority of the current conflict centers on the Supreme Court of the United States (SCOTUS) interpretations of the First Amendment of the Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const. art. I)

With the First Amendment, the Founding Fathers and framers of the Constitution permitted religion as part of society, while refusing to establish or support a single religion. The Establishment Clause restricted the government from creating a religion

but not from withdrawing religion from politics or public life (First Amendment Center, 2015; Legal Information Institute, 2015). According to the First Amendment Center (2015), "Thomas Jefferson and James Madison believed without separating church from state, there could be no real religious freedom" (para. 3). Religion plays an integral role in society, but the rising disagreements between private and public entities created decades of significant debate over religion's social appropriateness.

Historical Supreme Court Rulings on K-12 Private Institutions

Many former Supreme Court of the United States (SCOTUS) rulings dismissed religious freedom requests as conservative or "outdated." For example, *Lemon v. Kurtzman* (1971) ruled the provision of state aid to private institutions as unconstitutional. In *Engel v. Vitale* (1962), the court ruled against state-sponsored school prayers and recitation. *Abington School District v. Schempp* (1963) identified reading the Bible in schools as unconstitutional. Despite several instances of opposition against private institutional rights, a few illustrations exist in which the SCOTUS upheld the rights of religious organizations. In *Walz v. Tax Commission* (1970), the SCOTUS stated tax exemptions do not violate the Establishment Clause. In *Everson v. Board of Education* (1947), the court ruled public transportation reimbursement for private schools using public busses as legal and not a violation of the Establishment Clause. *Wisconsin v. Yoder* (1972) afforded parents the right to choose the method of education for children, including selecting private religious education.

Historical Rulings on Faith-Based Higher Education Institutions

Rulings regarding faith-based higher education proceedings also appear on the rise from the Supreme Court. One such example, *Locke* v. *Davey* (2004) forbade state

programs from funding ministry degrees through scholarship programs. Despite a rising level of cases against religion in higher education, several also exist on behalf of the right to exercise religion in these settings (Lowery, 2005). *Widmar* v. *Vincent* (1981) affirmed the religious organization Cornerstone and their request to utilize the University of Missouri's facilities for religious meetings. *Hunt* v. *McNair* (1973) confirmed the constitutionality of South Carolina providing support for religious institutions while maintaining neutrality and without violating the Establishment Clause. *Tilton* v. *Richardson* (1971) upheld the constitutionality of federal grants for construction purposes on private institution.

The Lemon Test

To address issues with private institutions, the Supreme Court developed a three-pronged test to determine if religious institutions merited exemption from governmental regulations (Lowery, 2004). Sponsored by Chief Justice Warren Burger, the Lemon Test ensured court neutrality and the prohibition of laws supporting the establishment of religion (Esbeck, 1989; Lowery, 2004). The Supreme Court created the test from two cases: *Lemon v. Kurtzman* (1971) and *Tilton v. Richardson* (1971). The first prong obligates statutes to include secular legislative purposes. The second prong stipulates the principle effect must not advance nor inhibit religion. The final prong provides cautionary parameters for no "excessive government entanglement with religion" (*Lemon*, 403 U.S. at 612-13). The *Tilton* case added, "Candor compels the acknowledgment that we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication" (Lowery, 2004, p. 147). The Lemon Test merits some recognition, yet many question its usefulness due

to different interpretations from courts over the years. A current concern stems from the "meaning of an establishment of religion asking also what it might mean to make laws 'respecting an establishment of religion'" (Berry, 2007, p.7). Despite variations, the Lemon Test represents the reigning interpretation of the use of public funds for religious organizations.

Examples of Political Separation of Church and State

One significant misconception about religion and the state emerges from the phrase "separation of Church and State." Contrary to popular assumption, the expression does not exist in the Constitution or the Bill of Rights (History Channel, 2009). In 1833, Justice Joseph Story penned ". . . the whole power over the subject of religion is left exclusively to the State governments. . . . according to their own sense of justice and the State Constitutions" (Berman, 1986, p. 778). Although legislation surrounding religion transitioned from individual state laws to federal law, the application remains the same. Each religious case is unique, and a singular law should not permit or inhibit religion.

A main misconception about the phrase stems from a difference in wording. Many interpret the expression as separating Church *from* State instead of the original inscription of Church *and* State. Undeniably, many founders held some form of a religious background. When the Constitution of the United States was ratified on March 4, 1789, the official document did not contain anything regarding freedoms of religion and speech (History Channel, 2009). However, in 1791, the Bill of Rights, or the first ten Amendments, became part of the Constitution. The Establishment Clause restricted Congress from creating a federal religion and prohibited the government from funding or promoting one religion above others but did not remove religion from the State (First

Amendment Center, 2015; History Channel, 2009). Strong evidence suggested the Founding Fathers intended to permit religion in both public and private sectors:

> It must be concluded that the establishment clause of the first amendment, drafted not by the Deist Jefferson, but by the Protestant Christian James Madison, was not intended to prevent any government aid to religion but was intended rather to prevent the establishment of a national religion. (Berman, 1986, p. 785)

The establishment of a national religion did not appeal to the Founding Fathers, but the acceptance of religion in public and private settings promoted equality and tolerance. Initially, the founders wanted to prevent a nationalized religion similar to Anglicanism and the Church of England (The Episcopal Church, 2015).

Furthermore, no dissention existed regarding federal government support for religious institutions or groups. John Adams, the second President of the United States, once noted, ". . . it is religion and morality alone, which can establish the principles upon which freedom can securely stand" (Adams, 1854, p. 401). Years later, in 1824, the Pennsylvania Supreme Court noted no free governments existed that did not acknowledge Christianity as the religion of the country (Kurland & Lerner, 1987). Even Thomas Jefferson stated, "the doctrines of Jesus are simple, and tend all to the happiness of mankind" (Bergh, 1904, p. 383). The founders feared a Church run state as in England, but with religion commonplace in society, a complete removal seemed unethical. The origins of the statement separation of church and state appear in Jefferson's letter to the Danbury Baptists.

> Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. (Library of Congress, 1998, para. 4)

Arguably, SCOTUS and other courts have tended to interpret the "separation of Church and State" in several ways. The courts first considered how rulings might affect the public sphere. If noting an observable or direct link between the public's dissatisfaction and the private sector, the legislation often ruled in favor of the public. However, with no major disturbance, many courts ruled in favor of certain religious groups.

Modern Day Cases

The disagreement over providing healthcare stands among the myriad of struggles between religious organizations and the federal government. With the passage of the Affordable Care Act (ACA), many religious organizations felt the government placed a substantial burden on their religious rights. The ACA and the HHS Mandate required employers to provide access to emergency contraceptives including abortifacients. Most religious organizations objected to the mandate, and some institutions filed early lawsuits against the government and the mandate. For example, the Catholic Church was among the first to sue over the ACA. In response, the Obama Administration quickly granted several exemptions to organizations and educational institutions directly associated with a denomination or church. In 2012, after a new court ruling, most Catholic or Catholic-

affiliated higher education institutions received exemption status from the HHS mandate. The exemption meant the institution could provide full health coverage while excluding contraceptives from their healthcare plans (Capps, 2012).

However, the qualifications for exemption began to become increasingly narrow. Many schools not directly associated with a religious church were denied such privileges. The Ave Maria School of Law, represented by Alliance Defending Freedom (2013), filed for an injunction because they did not qualify as a Catholic-affiliated institution (*Ave Maria School of Law v. Sebelius,* 2014). In 2014, the Middle District of Florida ruled in favor of the Ave Maria School of Law, noting faith-based institutions cannot be forced to pay for abortion-causing drugs contradictory to the Christian faith (Alliance Defending Freedom, 2014). The Becket Fund (2015a), another religious legal firm, currently represents 37 higher education institutions awaiting verdicts regarding exemption status. Of the 56 religious objection cases The Becket Fund represented against the SCOTUS, 23 injunctions were granted regarding the contraceptives mandate (The Becket Fund 2015c).

Cases Similar to Wheaton College

In light of the HHS mandate, two additional cases—*University of Notre Dame v. Sebelius* (2014) and *Burwell v. Hobby Lobby Stores, Inc*. (2014)—played varying roles in the Wheaton decision. Earlier, Notre Dame lost its case after a Seventh Circuit Court of Appeals review, for failing to show a substantial burden on religious values.

The Hobby Lobby case also contributed to Wheaton's plea for an expanded definition of religious exemption. Hobby Lobby—a for-profit, family owned, and Christian-run business—filed complaints under the Religious Freedoms Reformation Act (RFRA) of 1993, claiming a substantial burden on religious rights from the ACA. The

Court ruled in a 5:4 majority vote in favor of Hobby Lobby, describing the corporation as substantially burdened and the ACA in violation of religious freedoms (Carter, 2013; *Burwell v. Hobby Lobby Stores, Inc.*, 2014). Each case provided a precedent from which Wheaton built several arguments.

The Wheaton Case

Emerging trepidations concerning the freedom of speech, tolerance, and a new form of forced integration caused the Supreme Court to reevaluate the liberties of religious institutions. The *Wheaton v. Burwell* SCOTUS case, tried on July 3, 2014, offered one of the most relevant cases for religious private higher education today (*Wheaton College v. Burwell*, 2014). Wheaton College stood at the front of a large number of non-denominationally affiliated institutions suing for exemption. The Wheaton decision provided a preliminary glance at the federal government's stance on religious higher education institutions.

Background on the case. In 2010, the passage of the ACA required all institutions, including Wheaton College, to provide healthcare to employees (*Wheaton College v. Burwell*, 2014). In addition, the HHS mandate required all institutions with 50 or more employees to provide easy access to all forms of contraceptives (Patient Protection and Affordable Care Act, 2010). Many religious organizations immediately objected to providing contraceptives to employees, with a large amount defining several of the countermeasures as abortifacients.

In particular, most religious organizations objected to four contraceptive abortifacient approaches: Mirena, Paragard, Plan B, and Ella. The most common abortifacient, Plan B One-Step—commonly referred to as the morning after pill—

qualified as a type of emergency contraception. The pill blocks the hormone progesterone, breaking the lining of the uterus and preventing pregnancy with a 97% success rate (United States Food and Drug Administration [FDA], 2015).

On June 28, 2012, when the SCOTUS upheld the Act as constitutionally sound, the decision to opt out of the mandate became an immediate concern for most faith-based higher education institutions. Wheaton College, along with many other religious institutes, believed the requirement to offer Plan B One-Step and the other drugs violated the right to self-determine religious values. Wheaton developed its religious code of conduct, the Community Covenant, from Christian doctrine (see Appendix B). The document outlined the expectations for a Christian lifestyle for students and staff. According to Wheaton, abortifacients contradict the "biblical standards . . . a distinctly Christian way of life, an approach to living we expect of ourselves and of one another" (Wheaton College, 2015b, para. 8).

Due to Wheaton's religious environment, the Board of Trustees determined the mandate infringed on Wheaton's religious convictions. According to the Becket Fund (2015b), if Wheaton refused to comply with the Act, the Department of Health and Human Services could find Wheaton in contempt, and the school would face nearly $34 million in fines to avoid covering the cost of contraceptive coverage. The Wheaton College lawsuit represented one of the first non-denominational or church-affiliated higher education institutions to sue the federal government over the contraceptive debate.

The conflict. When the Affordable Care Act passed, exemption status based on religious grounds became uncertain for many faith-based higher education institutions. When the Supreme Court upheld the ACA decision, Wheaton College immediately

became liable for millions of dollars in annual fines starting the following year, January 1, 2013. Therefore, on July 18, 2012, Wheaton College filed a lawsuit alongside the Catholic University of America to oppose the Health and Human Services Preventative Services mandate. Wheaton's President, Dr. Philip Ryken, noted, "[O]ur first president . . . believed it was imperative to act in defense of freedom. In bringing this suit, we act in defense of freedom again" (Wheaton College Media Center, 2015b, para. 51).

From January 2013 to June 2014, Wheaton and the federal government exchanged rulings and appeals, respectively, with no conclusive outcome. However, after a year and a half of intense deliberation, the case went to the Supreme Court: "On June 30, 2014, the Supreme Court entered a temporary injunction protecting Wheaton from enforcement of the mandate…pending appeal" (Wheaton College Media Center, 2015b, para. 5).

On July 3, 2014, the Supreme Court voted 6:3 in favor of Wheaton College and permitted a one-year injunction for the purpose of determining permanent exemption status. The provision granted Wheaton freedom from any fines or fear of regulation. The ruling drew from the Religious Freedom and Restoration Act (1993), a document intended to lessen the burden of federal legislature on personal religious freedoms. The Act states, "The government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" (sec. 3, para. a). Although the three dissenting Judges claimed the lawsuit a waste of time, the Supreme Court's one-year injunction provided time for Wheaton to reevaluate the necessary steps to proceed.

Moving forward. Throughout the entire ordeal, the Obama Administration continually sought to renew the selection process for coverage by making coverage more accessible to women and less burdensome to religious objectors. Originally, the method

of choosing involved four qualifications, but after the barrage of lawsuits, the Administration and the HHS removed the first three qualifications. The last qualification referenced an institution's IRS classification. Thus, the college's Board of Trustees "voted to continue the college's lawsuit because the revision did not resolve the moral and Constitutional problems created by the mandate" (Wheaton College Media Center, 2015b, para. 1). Wheaton's understanding of contraceptives necessitates clarification:

> Wheaton supports nine out of the 10 preventative services required by the HHS mandate and provides comprehensive health coverage to all of its employees, including contraception…[however we] oppose one specific provision…namely the requirement that we provide certain contraceptives which…may terminate human life after conception. (Wheaton College Media Center, 2015a, para. 4)

Providing contraceptives known to end life created major problems for religious institutions. Many viewed federal regulations on healthcare as infringement of religious liberties and an institution's right for self-determined religious governance.

Conclusion

Change does not always benefit society. Higher education grew from Christian principles despite a non-religious government (Ringenberg, 2006). Still, shifting values now view religious doctrine as outdated and thus antithetical to the prevailing ethos of higher education. Wheaton College stands as the first of many evangelical institutions to challenge the federal government over religious and cultural differences. While evidence suggests the majority of education holds little regard for religious association, faith-based institutions contribute valuably to a diverse educational world. A unified education system would only dilute the diversity of knowledge available to incoming students.

Chapter 3

Methodology

Introduction

The researcher considered several approaches to examining Wheaton's case, but after exploring various options, a qualitative case study methodology seemed most appropriate. Qualitative research expands the field of knowledge from the what, where, when and who, to the how and why of a situation (Creswell, 2007). The case study analysis approach explores a phenomenon within its context while drawing from a variety of sources (Yin, 2003). Ultimately, qualitative case study analysis seeks to provide the "opportunity for a holistic view of a process" (Patton & Appelbaum, 2003, p. 63).

First Approach

Initially, the researcher considered conducting a qualitative, phenomenological study with semi-structured interviews. However, after receiving participation declinations from Wheaton's Executive Administration; the Becket Fund; Dr. Robert George, Director for Princeton's McCormick Chair in Jurisprudence; Dr. Michael McConnell, Director of Stanford's Constitutional Law Center; and Dr. John Witte Jr., Director of the Center for the Study of Law and Religion at Emory University, the researcher chose to the conduct the research through a different methodology.

Case Study

Case studies offer an assortment of benefits when conducting research. Yin (2003) encouraged researchers to choose a case study method when focusing on answering the how and why questions. One specific method of case study research, exploratory case study analysis, analyzes a situation with no clear outcome (Baxter & Jack, 2008; Yin, 2003). Wheaton College embodies the narrow set of parameters set forth by the HHS. This research included a single case study with embedded units. According to Baxter and Jack (2008),

> . . . a holistic case study . . . enables the researcher to explore the case while considering the influences . . . [and] data can be analyzed within the subunits separately (within case analysis), between the different subunits (between case analysis), or across all of the subunits (cross-case analysis). (p. 550).

By focusing on a specific issue, case studies offer new insights from previous research. Dooley (2002) stated, "Case study research has the ability to embrace multiple cases, to embrace quantitative and qualitative data, and to embrace multiple research paradigms" (p. 336). Understanding the single case with contributing data only better clarifies the situation non-profit, religious institutions face in light of the HHS mandate.

Document Analysis

Case studies allow the reader to understand the unique relationship between the research and the participant (Baxter & Jack, 2008). Unlike other qualitative approaches, the research related to the Wheaton case utilized existing documents and data to create a narrative. Gerring (2004) confirmed the value by defining case study research "as an

intensive study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomenon" (p. 341).

Document analysis often pairs with case study research as another strong approach. Document analysis focuses on "replicable and valid inferences from data to their context" (Krippendorff, 1989, p. 403). More simply, document analysis refers to a variety of ways to analyze texts and involves a difficult process of ascertaining information while limiting inferences from researchers.

Within document analysis, three research methods emerge: no theory, deductive, and inductive. No theory designs treat the information collected for data purposes only while deductive research uses an already existing theory to develop a coding scheme. Inductive researchers code and scheme without existing theories from which to build. The researcher either redefines terms or codes the documents for themes and develops general statements about the materials (Potter & Levine-Donnerstein, 1999). Despite a lacking theory, the inductive researcher strives to observe general context.

The documents collected include a variety of materials, including speeches, articles, published letters, journals, online publications, dossiers, and other case studies (Krippendorff, 1989; Rose, Spinks, & Canhoto, 2015). By analyzing, coding, and searching for repeated data, a researcher's understanding of a specific phenomenon illuminates the event's importance. This method tests hypotheses rather than creates them, allowing for generalizability (Marsh & White, 2006). Many collected documents represent verbal dialogue, written documents, past legislation, or presentations.

Many strengths emerge when utilizing document analysis. In almost any setting or position, recording or documenting developments proves important for a historical

reference or understanding. For example, in higher education and other social aspects, documents are a way of life (Love, 2003). Meetings, courses, agendas, strategic planning, and other elements are catalogued for understanding a certain perspective. Media outlets also play significant roles as the digital world becomes increasingly important for publications. Another positive strength of document analysis is the information's stability. A document's physical appearance and the materials collected remain unchanged and almost always available for review (Lincoln & Guba, 1985). The content nearly always contains facts and details instead of emotions or feelings.

Stages of Research

Document analysis contains many general characteristics of qualitative research. Each stage of document analysis relies heavily on texts, literature, and materials already published (Elo & Kyngäs, 2008). Often, researchers develop new questions based on emerging literature and information. Merriam (1998) also encouraged the researcher to confirm legitimacy by understanding the context in which the documents developed.

The first stage of this research into the Wheaton case addressed two questions: should Wheaton College receive exemption from the federal government for their stance on abortifacients and contraceptives? And what are the implications and possible directions for non-profit higher education institutions in light of the HHS mandate?

The second stage incorporated data collection. With Wheaton's case, the researcher collected several documents from the dossier, including *Wheaton v. Burwell,* the Emergency Supreme Court Application, the Seventh Circuit Emergency Motion for Injunction Pending Appeal, the Seventh Circuit Opinion, and several briefs submitted by the Becket Fund. The researcher also analyzed a copy of the Patient Protection and

Affordable Care Act, the Health and Human Services Preventative Services mandate, and selective audio recordings from the court hearings for themes.

The third stage involved coding all materials for themes and emerging ideas. Poole and Folger (1981) defined coding as "essentially a translation device that allows investigators to place utterances into theoretical categories" (p. 477; Strauss & Corbin, 1998). When developing a coding scheme, data trustworthiness also proves vital. One method to discern the validity of information involves categorizing documents into primary or secondary sources. Holosko and Thyer (2011) defined primary documents as "firsthand information such as the testimony of an eyewitness, an original document, a relic, or a description of a study written by the person who conducted it" (p. 92; Fraenkel, Wallen, & Hyun, 1993). In contrast, secondary documents involve "secondhand information, such as a description of historical events by someone not present when the event occurred" (Holosko & Thyler, 2011, p. 113; Fraenkel et al., 1993). A systematic classification process for identifying common ideas submitted by both Wheaton and the Federal government provided the necessary measures for identifying patterns.

The fourth stage involved the gathering of all materials needed for analysis and interpretation. A process of summarizing the coded data, discovering patterns or relationships between the data, and relating the data to other scenarios or situations assisted in validating the research (General Accounting Office, 1996).

The final stage presented all findings and conclusions. With large amounts of data, the saturation with data should occur before presenting findings. As one obstacle in document analysis, all content categories must be empirically and conceptually sound and grounded (Dey, 1993). Categories must find roots in relevant grounded materials.

Sources of Information

The data collected included sources from government websites, legal documents available publicly, past court cases, and a specific audio recording from the appeals process to the seventh court. To understand Wheaton College's situation, a succinct overview of the U.S. healthcare system provided the description for the current healthcare mandates and the issues many non-profit institutions face with the ACA and the HHS mandate. Specific audio recordings from court proceedings provided a detailed description of Wheaton's definition of abortifacient and the objections from the religious institution. The final piece of information collected and analyzed included the Patient Protection and Affordable Care Act and specific sections of the United States Internal Revenue Code and the United States Code. Each document contained a plethora of information crucial in developing Wheaton's argument against the HHS mandate.

Summary

Document analysis provides a flexible, applicable approach to previously published literature. A case study approach befits large volumes of textual information with deduced themes bearing relevancy to an assortment of situations. Many religious private higher education institutions share a similar belief system to Wheaton College. In using document analysis to describe the events or scenarios, other institutions facing the same predicament can find an unbiased, analytical approach to gathering evidence. The methodology also limits the researcher from imposing personal interpretations. As the federal government continues to expand its jurisdiction over higher education, Wheaton College's lawsuit signifies a shift between the Lexus and the Olive Tree.

Chapter Four

Findings

The case of *Wheaton v. Burwell* constitutes an interesting intersection in the history of the United States. Not only does the case represent a challenge to the healthcare system, but also the lawsuit raises questions concerning the competing priorities of religious freedom and federal regulation.

History

Heath care in the modern era entails a wide range of approaches from different developed civilizations. Many Western nations and developed countries implement established governmental universal healthcare coverage for all citizens. In addition, many of those nations also include free higher education as a universal right. Despite many developed nations offering universal education and healthcare, the United States remains one of the few nations choosing a different approach.

First appearance. The debate over healthcare in the United States originated in the mid-1800s. One of the founding documents for healthcare reform came from Dorothea Dix, an advocate for reform and change. Dix proposed the "'Bill for the Benefit of the Indigent Insane' to the U.S. Congress, which would grant the proceeds of ten million acres of federal land to states in order to fund public mental asylums" (Graziani, 2014, p. 3). While the bill seemed well represented in the House and Senate, President Pierce ultimately vetoed the proposal, arguing healthcare as a state

responsibility and not a federal matter (Graziani, 2014; Physicians for a National Health Program [PNHP], 2015). The early notion for healthcare reform initiated a wave of decrees that ultimately divided America for generations to follow.

First legislation to the 20th century. The first proposed legislation for healthcare reform came with the introduction of the Bureau of Refugees, Freedmen, and Abandoned Lands after the Civil War. The Bureau, simplified to Freedmen's Bureau, "was tasked with providing a pathway for former slaves to achieve equality and coexist in the United States with their former owners" (Johnson, 2011, p. 78; Smedley, Stith, & Nelson, 2003). In addition to assisting slaves, the Bureau also established approximately 100 hospitals for freed slaves despite segregation in both the North and South.

With the rise of Progressivism in Europe and the United States, healthcare and social welfare became a major platform. Many European nations gradually began to adopt socialist philosophies with the state providing welfare systems. The United States, however, remained adamantly opposed to the new changes and continued to provide healthcare through the individual states. Although the motion to provide universal health coverage surfaced multiple times, most movements failed to gain traction and support. In 1906, the American Association of Labor Legislation (AALL) created the movement to initiate reform for healthcare (Gee, 2012). One of the first proposed modern bills came in 1915, offering coverage to individuals earning $1,200.00 a year or less. The American Medical Association (AMA) also supported the motion at the time. However, as the discussions progressed, disagreements surfaced over the funding methods of physicians, creating a rift between the AALL and the AMA, the latter soon denying involvement.

One major setback to nationalized healthcare came during World War I and the rise of Germany. Through government-sanctioned propaganda, anti-German sentiments quickly arose: "Articles denouncing 'German socialist insurance' and opponents of health insurance assailed it as a 'Prussian menace' inconsistent with American values" (PNHP, 2015, para. 11). Regardless of different attempts to create a universal healthcare system, the nation remained locked in a standstill between the different political parties and the debate over healthcare implementation and funding.

Despite the American outcry against socialism, the vision for universal health coverage continued to grow among left-wing Democrats. To assess the need for healthcare in the United States properly, the Committee on the Costs of Medical Care (CCMC) arose to analyze and research the potential benefits or determents of universal healthcare. The study identified and described the nature and extent of the problem in order to propose a solution. Members included "physicians, public health officials, hospital administrators, dentists, economists, and others. By the time the final report of the CCMC was issued in 1932, the CCMC had 48 members" (Ross, 2002, p. 132).

When the Great Depression struck the United States in 1929, more and more Americans struggled to find healthcare. The CCMC's focus shifted from researching and reporting to finding quick and easily attainable solutions for the growing concern of American healthcare during the Depression. In response, President Franklin D. Roosevelt attempted to add healthcare reform in the Social Security Bill of 1935. Although the motion for federal healthcare crumbled, states quickly received federal grants for public health programs and services (Ross, 2002).

During World War II, President Roosevelt afforded little time to address healthcare for the nation. Yet, as World War II ended, President Truman championed Roosevelt's idea for nationalized healthcare by campaigning with a critique of the Republican held Congress. Through the "Do Nothing" campaign,

> Democrats retook both chambers of Congress, but this was insufficient to overcome a massive public relations campaign by the American Medical Association to turn the American public against what they called "socialized medicine"—a moniker that very effectively played on Cold War fears. (Conover, as cited in Sabato, 2011, p. 9).

The rising fear of communism challenged Democrats to chart a new course of action for healthcare: Medicare. The platform President Lyndon Johnson enacted, landing the Democratic Party a landslide win in 1964, provided universal health coverage for the elderly (Sabato, 2011). With Medicare locked up, other ideas for reform emerged, including Medicaid. However, despite valiant efforts from Democratic candidates, the failure of subsequent Presidents Nixon, Carter, and Clinton left universal health coverage in the United States as a distant aspiration.

The Modern Debate

The 2008 election divided the nation as debates revealed differences on social, economic, political, and cultural levels. One heated topic of debate dominated the public conversations: healthcare. With widespread support, the Democratic Party endorsed Senator Obama and the newly proposed agenda of universal healthcare. At the time, Senator Obama's National Health Insurance Exchange called for both private and public insurance plans to cast a wider net for health coverage through a singular government

program. Although the Republicans and Senator McCain fielded a plan to make health coverage more affordable through private insurers, ultimately, Senator Obama's health insurance proved more effective.

The journey. The journey to the Patient Protection and Affordable Care Act (PPACA), more commonly known as the Affordable Care Act (ACA) or Obamacare, nearly crippled the Obama Administration as deadlines passed unmet and Republicans across America spoke out against the proposal. Yet, despite heavy opposition, on March 21, 2010, by a 219-212 vote with zero Republican support, the PPACA passed and created the first nationalized healthcare structure in the United States. On March 30, 2010, President Obama signed the Act into law the, "completing the most significant social legislation in the United States since the enactment of Medicare and Medicaid in 1965" (Harrington, 2010, p. 703). Still, for many, the new legislation created other challenges, in particular, challenges to religious freedom.

The Patient Protection and Affordable Care Act. The PPACA increased the quality and affordability of health insurance for both the private and public sectors at a large monetary cost. According to the Congressional Budget Office (CBO), the Act, when fully paid for, "will provide coverage to more than 94% of Americans while staying under the $900 billion limit that President Obama established, bending the healthcare cost curve, and reducing the deficit over the next ten years and beyond" (Democratic Policy and Communications Committee, 2015, para. 1). On June 28, 2012, the Supreme Court upheld the Act through the decision from the *National Federation of Independent Business v. Sebelius*, mandating the coverage of most Americans with health insurance by 2014. In a 5-4 vote, the Supreme Court deemed the law within the rights of

Congress's taxing power under Article 1, Section 8, Clause 1 of the U.S. Constitution (U.S. Const. art. I, § 8, cl. 1*).* The court defined Obamacare as a common welfare for the United States, and Chief Justice Roberts noted,

> Sustaining the mandate as a tax depends only on whether Congress has properly exercised its taxing power to encourage purchasing health insurance, not whether it can. Upholding the individual mandate under the Taxing Clause thus does not recognize any new federal power. It determines that Congress has used an existing one. (*National Federation of Independent Business v. Sebelius*, 2011, p. 42)

The ACA generated many changes to the healthcare system, often mandating reform to the chagrin of the Republican Party. Though the ACA contained many components to the health coverage reformation, the main healthcare objectives included the following:

1. A mandate for individuals and businesses requiring as a matter of law that nearly every American have an approved level of health insurance or pay a penalty;
2. A system of federal subsidies to completely or partially pay for the now required health insurance for about 34 million Americans who are currently uninsured – subsidized through Medicaid and exchanges;
3. Extensive new requirements on the health insurance industry;
4. Numerous regulations on the practice of medicine. (Huntington, Covington, Center, Covington, & Manchikanti, 2011, p. 35)

The ACA afforded millions with healthcare and also forced institutions and organizations to provide full coverage to all full-time employees (Democratic Policy and

Communications Committee, 2015; PPACA, 2010). The law required every American citizen to obtain health insurance or pay penalties. Although the number of individuals previously without healthcare diminished, "the mandate will inevitably create a large group of Americans who are obligated to buy health insurance but who can't afford it" (Huntington et al., 2011, p. 38).

PPACA exists as one of the most expansive legislative efforts in United States history due to the cost. The Act attempts to expand health insurance through mandates and transform the private market, making government regulation and prescription more consistent and present in the coverage process (Tenenbaum, 2013). Despite federal attempts to mandate healthcare, many state legislators remain skeptical, with many more challenging or implementing state laws to deter the Act (Cauchi, 2016). While seeking to reform healthcare and lower the deficit, the Act also created numerous issues for religious objectors and, in particular, higher education institutions.

The Health and Human Services Preventative Services Mandate. On July 19, 2010, the Department of Health and Human Services (HHS) passed additional guidelines for women and the preventative services available (Shingledecker, 2014; Tenenbaum, 2013). Alongside the Institute of Medicine (2011)—often called upon to consult for Congress—a new recommendation surfaced stating, "full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity" (p. 109-110). On August 1, 2011, despite existing as solely a department and not a legislative or executive branch with government authority, the HHS enacted the new mandate.

A whirlwind of opposition arose immediately as religious institutions contended the narrow specifications for exempting employers. The idea of expanding coverage stemmed from the Obama Administration's awareness "that this exemption was tantamount to a denial of contraceptive benefits for those women employed by houses of worship, including lay employees such as administrative staff, custodians, and organists, who may not have any religious affiliation with a church" (Tenenbaum, 2013, p. 550). The mandate itself did not originate in Congress, nor did the President sign it into law. According to Milhizer (2013), "the HHS mandate is an executive edict, not legislation, that requires religious organizations to cover the costs of contraception, abortion-inducing drugs, and sterilization for their employees" (p. 214). Differing from the ACA, the mandate forces institutions to adhere despite the lack of governing authority.

The religious exemption rule. Immediately after passing the new requirements, the HHS posted a narrow margin for exemption mainly for objections under religious reasons. The mandate itself presented strict qualifications for any parties applying for exemption; such exempted parties include organizations or institutions that

1. have the inculcation of religious values as its purpose;
2. primarily employ persons who share its religious tenets;
3. primarily serve persons who share its religious tenets; and
4. are non-profit organizations under section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Code. (45 C.F.R. §§ 147.130(a)(1)(iv)(B)(1)-(4) (2012))

Section 6033(a)(3)(A)(i) and (iii) of the Code of Federal Regulations refer to churches or any associated organizations directly linked to churches (26 U.S.C. § 4980H(a)). The

dispute many institutions and organizations raised with the rule came from the limited description of religiously affiliated. Many organizations, though religious in nature, did not qualify for exemption (Tenenbaum, 2013). The result forced any institution, organization, or non-profit to comply with all mandates set forth by the ACA and the HHS mandate by providing all forms of contraceptives, including abortifacients.

When the law originally passed, several institutions and organizations immediately sued for religious exemption. To avoid an even heavier influx of lawsuits, the government quickly provided an alternative avenue for religious institutions. As a result, institutions received a one-year injunction with no penalties while the government determined a method for offering exemption while also offering contraceptives to individuals not directly associated with the institutions (i.e. custodians, administrative staff, lay employees) (Milhizer, 2013; Tenenbaum, 2013). While proposing several safe harbor provisions to assist in the transition, ultimately, the government forced religious organizations into a corner by giving them only one year to finalize all details.

The Religious Freedom Restoration Act of 1993. An important aspect of the Wheaton case involves the interpretation of the Religious Freedom Restoration Act (RFRA) (see Appendix C). After the HHS disposed of the first three requirements, the margin for disqualifying institutions from adhering to the HHS mandate narrowed incredibly. If an institution or organization identified as separate from a church (or church affiliate), the mandate applied. The result set forth thousands of lawsuits. The suing organizations claimed the process of outsourcing health coverage to Third Party Administrators (TPA) still violated religious rights under RFRA.

According to Wheaton and many other institutions, signing the Employee Benefits Security Administration (EBSA) 700 Form, which relieves the plaintiffs from providing coverage in their own plans, arguably remains a substantial burden on religious rights. However, according to government regulations, signing EBSA 700 transfers the responsibilities of the plan administrator under ERISA to the TPA to cover the contraceptive services (29 U.S.C. § 1002(33)). The form also authorizes the TPA to provide separate notices regarding the services to beneficiaries enrolled through religious organizations' health plans (29 C.F.R. § 2590.715-2713A(b)(2)). The signing of the form effectively transfers and facilitates a scheme to the TPAs to provide the abortifacients, a moral objection from nearly all institutions or organizations that filed lawsuits.

The battle rages. In 2012, and after over 200,000 organizations responded to the HHS mandate, the Department attempted to reconcile the conflict by proposing a new strategy for religious organizations. The change included shifting the cost of contraceptive coverage from the employer or non-profit objector to the insurance company (Shingledecker, 2014; Tenenbaum, 2013). The following year, the HHS proposed dropping the first three requirements, leaving the fourth as the only standing rule regarding the HHS mandate. Despite lowering the number of objectors, the change still excluded institutions with non-profit status such as hospitals and colleges. As another issue, the proposed changes insisted employers paying for premiums to facilitate the same services for others. Under the PPACA, employers abstaining from providing coverage face fines up to $167 per employee per day (26 U.S.C. § 4980H(a)). Many institutions found themselves caught in a disagreement with the ACA mandating the7

provide healthcare and the HHS mandate requiring all organizations or institutions to pay for services in contradiction of moral or religious beliefs.

Wheaton College. Due to the denial from Seventh Circuit Court of Appeals Judge Posner and the review of the preliminary injunction, Wheaton College's future healthcare provision remains unknown. Despite the initial injunction received from the SCOTUS, Wheaton chose to pursue the lawsuit because of the alternative process. According to the provisions given by the Obama Administration, Wheaton College was required either to provide free access to all forms of emergency contraceptives or to fill out the Employee Benefits Security Administration (EBSA) Form 700, authorizing a Third Party Administrator (TPA) to take Wheaton's place (see Appendix A). However, Wheaton claimed either choice violated its religious beliefs. According to Wheaton's President Phillip Ryken, "Wheaton believes that authorizing its TPA to provide these drugs in Wheaton's place makes it complicit in grave moral evil" (Emergency Application for Injunction Pending Appellate Review, *Wheaton College v. Burwell*, 2014, p. 11). Although the SCOTUS provided a one-year injunction, the Court also ordered a review from the Appellate Court to evaluate Wheaton's case.

The United States Court of Appeals for the Seventh Circuit. During the Court of Appeals review, Judges Richard Posner, Ann Williams, and David Hamilton presided over the hearing and determined the injunction request did not constitute an overwhelming burden to Wheaton's plea. The claim Wheaton put forth simply stated, "Wheaton's religious beliefs prohibit it from providing coverage for emergency contraceptives or executing EBSA Form 700, and it is undisputed that the government will impose massive fines on Wheaton if it does not" (Emergency Application for

Injunction Pending Appellate Review, *Wheaton College v. Burwell*, 2014, p. 30). Several arguments and points of disagreement led to the verdict.

One issue with the request came from the judges' refusal to separate issues between Wheaton's requests. Wheaton never intended to challenge the federal government's authority over providing healthcare to all women. Rather, Wheaton challenged the mandate to notify insurers or the government of the insurers' names so the government could require the insurers to provide emergency contraception coverage.

Another major dispute resulted from differing definitions of conception. The government defines pregnancy as "the period of time from implantation until delivery. . . . if [the woman] exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery" (45 C.F.R. § 46.202(f)). Wheaton, in contrast, defines conception as a fertilized ovum. The judges also challenged Wheaton's claim, stating, "There is no evidence to suggest that either of the FDA-approved emergency contraceptive options, levonorgestrel (LNG, such as Plan B One-Step . . .) or ulipristal acetate (UPA, such as ella) works after an egg is fertilized" (Opinions, *Wheaton College v. Burwell*, 2015, p. 5; Trussell, Raymond & Cleland, 2014). Despite the disagreement, Wheaton retained the right to self-determine whether contraceptives violate the institution's religious beliefs. Yet, according to Judge Posner, providing health coverage does not imply a burdensome requirement when referring to coverage of preventative health services.

Another major setback came from Judge Posner and his statements regarding Wheaton's Community Covenant. According to audio transcripts from the case, Posner communicated his disdain for Wheaton's case due to its Community Covenant lack of

wording regarding abortion and the institution's view on contraceptives. Despite Wheaton's religious identity, the absence of specific wording created difficulty for Wheaton's lawyers throughout the case.

Another third argument brought against the Wheaton prosecution arose with the disagreements over the actions of third-party actors in participation and facilitation of acts deemed impermissible by Wheaton. The Court sought to replace Wheaton's religious beliefs with the government's theory and moral conduct. Yet, by holding to the Court's view, the government refused to acknowledge Wheaton College's rights under the First Amendment and the RFRA. One disagreement between the prosecuting attorneys and the judges over RFRA's interpretations also created controversy. According to the Becket Fund, the RFRA protects any exercise of religion, not just church-sponsored (42 U.S.C. 2000cc-5).

Another issue came with the plaintiff's claims of an Employee Retirement Income Security Act (ERISA) violation. ERISA places funds in retirement plans throughout employees' careers in the private industry (Department of Labor, 2015). The Court further agreed the plaintiff's claims of an ERISA violation as inconsequential since the government provided health coverage in place of the institution-designated TPA. Institutions with ERISA retirement plans required the plan to name one or more fiduciaries to administer the plan. Wheaton objected to the government as the college's TPA. Yet, according to the judges, when Wheaton refused to comply, the power to designate a planned administrator transferred to the government under the ACA.

Verdict. While presenting a compelling argument to the Seventh Circuit Court, ultimately, the Becket Fund and Wheaton College lost their case against the federal

government. The court denied the continuation of the preliminary injunction afforded by the Supreme Court on the grounds Wheaton did not comply with two basic requirements.

Judge Posner stated, "This is hardly a burdensome requirement; nor does it leave the provider—the opt out—with any residual involvement in the coverage of drugs or devices of which it sincerely disapproves on religious grounds" (Seventh Circuit Opinion, *Wheaton College v. Burwell,* 2014, p. 10). Posner also affirmed the Court's opinion:

> It has failed to show that delaying a judgment in its favor to the conclusion of proceedings in the district court would do the college any harm. In the absence of any evidence or even allegation that any member of the college community is violating or is expected to violate or believed likely to violate the college's prohibition of emergency contraception, there is no reason to think that even if the college's merely notifying the government of its objection to emergency contraception could "trigger" emergency-contraception coverage it would do so while this case was pending. The college has also failed to match the relief it seeks to the illegalities it alleges. Almost the entire weight of its case falls on attempting to show that the government is trying to "use" the college's health plans, and it is this alleged use that it primarily asks us to enjoin. But the government isn't using the college's health plans, as we have explained at perhaps excessive length. And the relief sought has no connection to Wheaton's complaints about allegedly forced speech and the alleged violation of ERISA and the APA; nor has Wheaton offered support for its claim to be treated as if it were a church. (p. 17-18)

Therefore, on June 30, 2014, the Seventh Circuit of the Court of Appeals denied Wheaton's emergency motion for a permanent injunction from the HHS mandate. Shortly thereafter, Wheaton College discontinued their student health plans:

> The government's continued insistence that Wheaton must provide insurance products and service that contradict our religious beliefs has forced us to make the difficult choice to end our student healthcare insurance plan…Our new benevolence fund is designed to support students who may face financial challenges through this transition. Wheaton will continue to explore future student health insurance options that serve our student body and operate in accordance with our mission. (Ryken, 2015, para. 1)

The cost of covering student health insurance in light of the government's fines proved substantial, and Wheaton became coerced into complying with the demands of the HHS.

Conclusion

Despite a failed motion for permanent relief, Wheaton College and the Becket Fund continued the appeals process. Although Wheaton lost in the Court of Appeals, hope for a Supreme Court ruling remains on the horizon. Later the same year, federal judges from another appeals court ruled in favor of Dordt College in its case against Burwell (*Dordt College v. Burwell*, 2015), forcing a showdown in the SCOTUS over non-profit religious institutions and the ACA. As institutions await a federal response, the *Wheaton v. Burwell* case stands poised as a pivotal moment in the historical conflict over religious rights and the encroaching federal government.

Chapter 5

Discussion

Introduction

The struggle over the right to determine religious values for private institutions stands at a crucial intersection between the public and private spheres. Despite education's changing culture and increasing governmental control, the First Amendment protects religious organizations and institutions under the freedom of expression.

In many ways, Wheaton College's case represents the challenge many institutions currently face in light of the new rules and regulations set forth by the Department of Health and Human Services. Wheaton's determination to take a stand based upon its faith commitments offers interesting insights. Not only does the government lack control of the higher education system, but also the value of a diverse educational system reflects in Wheaton's status as a private, non-profit, educational institution. Without Wheaton's lawsuit, along with hundreds of other lawsuits across the country, institutions maintaining religious values and not directly associated with the Internal Revenue Services' definition of a church would face harsh repercussions from the federal government.

Applications for Today

One resulting implication of *Wheaton v. Burwell* is the need to state explicit religious values. Judge Posner's comment about Wheaton's lack of clarity in its Community Covenant confirmed the necessity of clearly articulating institutional values.

Defining an organization's position on abortion, abortifacients, and religious views for all students, faculty, and staff proves incredibly important. Though students and faculty must sign the document, and the covenant itself includes references concerning a religious life according to Christian doctrine, Posner noted,

> Remember, however, that the covenant does not mention emergency contraception, or for that matter "traditional" contraception (which Wheaton does not disapprove); it states merely that the covenant's signers must "uphold the God-given worth of human beings, from conception to death." Wheaton as we know interprets this to prohibit the use of emergency contraceptives, but do all its students and employees interpret this broad statement in the same way? Must they? And what about the dependents of members of the college community? They don't have to sign the Community Covenant and may not share Wheaton's religious beliefs. We haven't been told what happens to their coverage of emergency contraception if the college prevails in its suit. (Seventh Circuit Court Opinion, *Wheaton College v. Burwell*, 2015, p.14)

Religious institutions, regardless of denomination, should identify values and convictions in written form when requiring individuals to adhere to a certain set of beliefs. By providing access to specific, institutionally identified standards, colleges and universities secure protection and establish legal precedent when dealing with similar situations.

Another interesting aspect of the case involves the definition of Wheaton College. The IRS defines Wheaton as a 501(c)(3) institution, yet if Wheaton were defined as a 6033 church, the issue of contraception coverage would not even be challenged. The

definitions employed by the government qualities religious organizations or entities obstruct many institutions from functioning properly. By switching the filing status of the college, Wheaton could, in theory, remove itself from any future legal disagreements because of the redefined status. For example, another case similar to Wheaton's involved the *Little Sisters of the Poor v. Burwell* (2015). Not a church but rather a shelter, the organization provides refuge for the elderly poor and adheres to Catholic Church teachings. Yet if the Little Sisters of the Poor refiled as a 6033 church or church-affiliate, the government would not consider applying the HHS mandate to the organization.

Interestingly, the Supreme Court provided relief (the same requested by Wheaton College, the Little Sisters of the Poor, and others) for all religious and closely owned for-profit organizations. In *Burwell v. Hobby Lobby Stores, Inc.* (2014), the courts, in a narrow margin of 5:4, allowed for-profit organizations to exclude the contraception mandate from their health plans; yet for non-profit organizations, many of which identify as closely held religious organizations, freedom from the HHS mandate remains elusive.

Limitations

The minimization of limitations proves critical to developing quality research. Throughout the thesis process, several limitations arose causing a change in direction for the research. The first limitation involved the changing nature of the lawsuit and the parties available for comment. Originally, the case study sought to analyze the response of Wheaton's Senior Level Administrative Cabinet for the intent behind Wheaton choice to sue and the reasoning behind the continued lawsuit. As the participants at Wheaton declined for comment, the search expanded to include several prominent law professors. However, the lack of responses inevitably forced further change on the thesis process.

A second study limitation included the continued evolution of religious organizations in light of the HHS mandate. As more institutions finalized existing lawsuits, others continued to draw from the published results. For instance, parallels were noted between Wheaton's case and *Notre Dame v. Burwell* (2015). Some comparisons included the hiring and firing policies and the statements of faith. Though similarities exist between the two institutions, one stark difference is Notre Dame's relationship with the Congregation of the Holy Cross and the Catholic faith. Wheaton stands as non-denominational, that is, unaffiliated with a church or formal denomination. Still, to the Seventh Circuit, no distinctive traits separated the two institutions.

A third limitation involved the collection of possible biased research and cases. Although document analysis allows for little personal interpretation, the research focused mostly on religious institutions that won cases against the federal government. The research drew little from failed or pending cases. In addition, the credibility given to the HHS as a governing body provided a major bias for the research. In reviewing several documents, a disagreement over the legitimacy of the HHS created some tension in analyzing the broader selection of materials. Several authors described the HHS as a government sanctioned entity with the power to pass laws. Many others described the HHS as a department underneath the government without power to create and enforce federal law while forcing organizations to abide by those laws. While no consensus to the argument exists, much of the collected research resulted from the previous view.

Further Research

Wheaton College's argument does not apply to all institutions suing the federal government. Unlike many Catholic institutions fighting for religious rights, Wheaton

does not object to all forms of contraception, only those that neutralize a fertilized ovum. The Wheaton case addresses a broad perspective of the dilemma: can private, faith-based institutions maintain religious autonomy and independence under current legislative mandates? Carlson (2012) described many Christians as unwilling to adhere to the mandates without a struggle.

When the ACA passed, other social and cultural arguments also arose and demanded attention. One of the largest conflicts in culture today lies in the dispute between the LGBTQ community and religious organizations. The petition for sexual identity equality fosters an environment of intense disagreement. In its situation regarding a transgendered student and the university's housing department, George Fox University exemplified the issue of identity equality or difference. According to Hunt and Perez-Pena (2014), "Jaycen . . . who identifies as a male wants to live next year with a group of male friends; however, the college considers him a woman and turned down his request" (para. 1). When the Senate authorized the Employment Non-Discrimination Act (ENDA) of 2013, a modern version of the 1964 Civil Rights Act including sexual orientation identity, the authorization created a new wave of issues for private higher education, especially in light of emerging issues surrounding federal funding.

The main concern accompanying ENDA refers to an institution's inability to hire or fire faculty or staff due to religious differences. According to the United States Conference of Catholic Bishops (USCCB) (2014), "There is greater doubt and concern today about which religious employers would be exempted from ENDA under the Title VII exemption" (p. 2). Yet under the Higher Education Amendment of 1972, "the Education Department [is required to] . . . exempt colleges from rules that violate their

religious beliefs" (Jaschik, 2014, para. 1). If religious organizations cannot self-determine hiring and firing policies, creating an internal community with closely held religious values might present future difficulties.

Another element to the discussion came when President Obama (2013) compared the LGBTQ PLUS society to the Civil Rights Movement. Many failed to see the connection between a racial issue and a sexual identity issue; when President Obama connected the two topics, a wave of opposition criticized the comparison. Judge Thomas, a strong conservative advocate, in particular condemned the equation of slavery and oppression to the equality of LGBTQ PLUS rights (Williams, 2015).

As an additional and related issue, private higher education wrestles with how to finance students without federal funding. The largest source of monetary support comes through student aid. The Federal Student Aid Office estimates both state and federal expenditures supporting colleges total over $200 billion per year (Epple et al., 2013). Shane Windmeyer, executive director of the national organization Campus Pride, "found it 'extremely problematic' for colleges that receive federal funding to be receiving exemptions that allow them to punish transgender . . . for simply being who they are" (Jaschik, 2014, para. 10). Thus, federal funding for private higher education institutions continues to contribute to the debate between the government and religious groups. Further research could determine whether institutions could produce self-governing documents regarding the LGBTQ PLUS movement and still receive federal financial aid.

The current administration continues to petition for more control over higher educational rules and regulations. The American Council on Education (2008) expected, with the reauthorization of the Higher Education Act (originally of 1965), an increasing

amount of rules and regulations for all higher education institutions would become commonplace. For instance, Judith Eaton (2008), the President of the Council for Higher Education Accreditation, began to impose 110 new rules for reporting obligations for higher education institutions and the accreditation process. The new rules began to create major problems for religious institutions and only furthered the debate over private institutional rights. A possible avenue for further research could focus on whether the rules and regulations would allow for institutional diversity and variety, or whether institutions unable to comply with the regulations would close.

Conclusion

The *Wheaton v. Burwell* case represents an interesting intersection between the federal government and higher education legislation today. The college's objection to the HHS mandate and the inclusion of contraception coverage in insurance plans represents the current struggle of many religious non-profit organizations. Wheaton also objected to outsourcing health coverage plans to a Third Party Administrator (TPA) when offered the option to sign the Employee Benefits Security Administration 700 Form. The college and the Becket Fund additionally chose to sue over the Religious Freedom Restoration Act (RFRA) and First Amendment violations. Essentially, the government forced Wheaton to choose: they could sign the form or pay up to $34 million to cover the cost of contraceptive coverage. According to Wheaton, the right to self-determine if an institution is religious belongs to the institution, not the federal government. Wheaton argued the definitions provided by the HHS mandate were incredibly narrow, limiting exempt organizations to churches and church affiliates. Wheaton identifies as a religious Christian college, with closely held beliefs similar to the evangelical tradition. Therefore,

Wheaton's belief of outsourcing health coverage as enabling to TPAs and morally wrong compelled Wheaton to continue their lawsuit.

Although all appeared lost when the Seventh Circuit denied the continuation of the preliminary injunction handed down by the Supreme Court, hope for Wheaton arose when, on September 17, 2015, the Northern District of Iowa Eight Circuit upheld Dordt College and Cornerstone University in their lawsuit against Obamacare. The court ruled that coercing Dordt College and Cornerstone University into participating in the alternative option for the HHS mandate substantially burdened the institutions' rights to exercise religion. Therefore, with two federally appointed judges delivering two opposing rulings, the Supreme Court decided to review the *Little Sisters of the Poor v. Burwell* (2015) case to provide final judgments over all non-profit institutions not associated with a church.

The struggle over health coverage—and more specifically contraceptive coverage—remains a sensitive topic of the Obama Administration. Although the decision to proceed with a ruling might be delayed with the recent passing of Supreme Court Judge Antonin Scalia, the plea raised by *Wheaton v. Burwell* continues to stand as a prominent case in defense of faith-based private institutions. As the rights and freedoms of private higher education remain contrasted with the Obama Administration, and as the gap between the Lexus and the Olive Tree continues to widen, non-profit organizations and institutions feverishly await a decision from the Supreme Court—a decision that may determine the trajectory of private faith-based higher education in the years to come.

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Appendix A

EBSA Form 700

EBSA FORM 700-- CERTIFICATION
(revised August 2014)

This form may be used to certify that the health coverage established or maintained or arranged by the organization listed below qualifies for an accommodation with respect to the federal requirement to cover certain contraceptive services without cost sharing, pursuant to 26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131. Alternatively, an eligible organization may also provide notice to the Secretary of Health and Human Services.

Please fill out this form completely. This form should be made available for examination upon request and maintained on file for at least 6 years following the end of the last applicable plan year.

Name of the objecting organization	
Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization	
Mailing and email addresses and phone number for the individual listed above	

I certify the organization is an eligible organization (as described in 26 CFR 54.9815-2713A(a), 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)) that has a religious objection to providing coverage for some or all of any contraceptive services that would otherwise be required to be covered.

Note: An organization that offers coverage through the same group health plan as a religious employer (as defined in 45 CFR 147.131(a)) and/or an eligible organization (as defined in 26 CFR 54.9815-2713A(a); 29 CFR 2590.715-2713A(a); 45 CFR 147.131(b)), and that is part of the same controlled group of corporations as, or under common control with, such employer and/or organization (within the meaning of section 52(a) or (b) of the Internal Revenue Code), is considered to meet the requirements of 26 CFR 54.9815-2713A(a)(3), 29 CFR

2590.715-2713A(a)(3), and 45 CFR 147.131(b)(3).

I declare that I have made this certification, and that, to the best of my knowledge and belief, it is true and correct. I also declare that this certification is complete.

_____

Signature of the individual listed above

_____

Date

The organization or its plan using this form must provide a copy of this certification to the plan's health insurance issuer (for insured health plans) or a third party administrator (for self-insured health plans) in order for the plan to be accommodated with respect to the contraceptive coverage requirement.

Notice to Third Party Administrators of Self-Insured Health Plans

In the case of a group health plan that provides benefits on a self-insured basis, the provision of this certification to a third party administrator for the plan that will process claims for contraceptive coverage required under 26 CFR 54.9815-2713(a)(1)(iv) or 29 CFR 2590.715-2713(a)(1)(iv) constitutes notice to the third party administrator that the eligible organization:

(1) Will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and

(2) The obligations of the third party administrator are set forth in 26 CFR 54.9815-2713A, 29 CFR 2510.3-16, and 29 CFR 2590.715-2713A.

As an alternative to using this form, an eligible organization may provide notice to the Secretary of Health and Human Services that the eligible organization has a religious objection to providing coverage for all or a subset of contraceptive services, pursuant to 26 CFR 54.9815-2713A(b)(1)(ii)(B) and (c)(1)(ii), 29 CFR 2590.715-2713A(b)(1)(ii)(B) and (c)(1)(ii), and 45 CFR 147.131(c)(1)(ii). A model notice is available at: http://www.cms.gov/cciio/resources/Regulations-and-Guidance/index.html#Prevention.

This form or a notice to the Secretary is an instrument under which the plan is operated.

Appendix B

Wheaton Community Covenant

Preface

Wheaton College is an institution of higher learning, a rigorous academic community that takes seriously the life of the mind. But this description does not exhaust the College's understanding of itself. Wheaton College is also a largely residential community made up of Christians who, according to the College motto, are dedicated to the service of "Christ and His Kingdom."

These features in combination mean that Wheaton College is a complex Christian community of living, learning, and serving that cannot be reduced to a simple model. For example, while the College is not a church, it is yet a community of Christians who seek to live according to biblical standards laid down by Jesus Christ for his body, the church. Or again, while the College is not a religious order, it yet demonstrates some features that are similar to religious orders, communities wherein, for the sake of fulfilling the community's purposes, its members voluntarily enter into a social compact. At Wheaton we call this social compact our community covenant.

For Wheaton's community covenant to serve its stated purpose, it is crucial that each member of the College family understand it clearly and embrace it sincerely. In joining this covenant we are, before the Lord, joining in a compact with other members of the Wheaton College community. If we do not wish to live under the provisions of this compact, we should not agree to it. But if we do agree to it, it should be with the full intention of living with integrity under its provisions.

Our Community Covenant

The goal of campus life at Wheaton College is to live, work, serve, and worship together as an educational community centered around the Lord Jesus Christ. Our mission as an academic community is not merely the transmission of information; it is the development of whole persons who will build the church and benefit society worldwide "For Christ and His Kingdom." Along with the privileges and blessings of membership in such a community come responsibilities. The members of the Wheaton College campus community take these responsibilities seriously.

> "All Scripture is God-breathed and is useful for teaching, rebuking, correcting and training in righteousness."
> — 2 Timothy 3:16

The biblical foundation of Christian community is expressed in Jesus' two great

commandments: “Love the Lord your God with all your heart and with all your soul and with all your mind," and, "Love your neighbor as yourself" (Matt. 22:37-40). Jesus himself perfectly demonstrated the pattern: love for God, acted out in love for others, in obedience to God's Word. Acknowledging our dependence on the power and grace of God, the members of the Wheaton College campus community humbly covenant to live according to this ideal.

The purposes of this community covenant are as follows:

- to cultivate a campus atmosphere that encourages spiritual, moral and intellectual growth.
- to integrate our lives around Christian principles and devotion to Jesus Christ.
- to remove whatever may hinder us from our calling as a Christ-centered academic community.
- to encourage one another to see that living for Christ involves dependence on God's Spirit and obedience to his Word, rather than a passive acceptance of prevailing practices.

Affirming Biblical Standards

We desire to build this covenant on basic biblical standards for godly Christian character and behavior. We understand that our calling includes the following:

- The call to acknowledge the Lordship of Christ over all of life and thought. This involves a wholehearted obedience to Jesus and careful stewardship in all dimensions of life: our time, our possessions, our God-given capacities, our opportunities (Deut. 6:5-6;1 Cor. 10:31; Col. 1:18; 3:17);
- The call to love God with our whole being, including our minds, and to love our neighbor as ourselves. Christ-like love should be the motive in all decisions, actions, and relationships (Matt. 22:37-40; Rom. 13:8-10; 1 John 4:7- 12);
- The call to pursue holiness in every aspect of our thought and behavior (2 Cor. 7:1; 1 Thess. 4:7; Heb. 12:14; 1 Pet. 1:15-16);
- The call to exercise our Christian freedom responsibly within the framework of God's Word, humbly submitting ourselves to one another (1 Pet. 5:5; Eph. 5:21) with loving regard for the needs of others (Phil. 2:3-11; Rom. 14:1- 23; 1 Thess. 4:9);
- The call to treat our own bodies, and those of others, with the honor due the very temple of the Holy Spirit (1 Cor. 6:17-20);
- The call to participate in the worship and activities of the local church, which forms the basic biblically-mandated context for Christian living (Acts 2:42-47; Heb. 10:25; 1 Tim. 3:14-15).

Living the Christian Life

We believe these biblical standards will show themselves in a distinctly Christian way of life, an approach to living we expect of ourselves and of one another. This lifestyle involves practicing those attitudes and actions the Bible portrays as virtues and avoiding those the Bible portrays as sinful.

According to the Scriptures, followers of Jesus Christ will:

- show evidence of the Holy Spirit who lives within them, such as "love, joy, peace, patience, kindness, goodness, faithfulness, gentleness and self-control" (Gal. 5:22-23);
- "put on" compassion, kindness, humility, gentleness, patience, forgiveness, and supremely, love (Col. 3:12-14); seek righteousness, mercy and justice, particularly for the helpless and oppressed (Prov. 21:3; 31:8-9; Micah 6:8; Matt. 23:23; Gal. 6:10);
- love and side with what is good in God's eyes, and abhor what is evil in God's eyes (Amos 5:15; Rom. 12:9, 16:19); uphold the God-given worth of human beings, from conception to death, as the unique image-bearers of God (Gen. 1:27; Psalm 8:3-8; 139:13-16);
- pursue unity and embrace ethnic diversity as part of God's design for humanity and practice racial reconciliation as one of his redemptive purposes in Christ (Isa. 56:6-7; John 17:20-23; Acts 17:26; Eph. 2:11-18; Col. 3:11; Rev. 7:9-10);
- uphold chastity among the unmarried (1 Cor. 6:18) and the sanctity of marriage between a man and woman (Heb. 13:4);
- be people of integrity whose word can be fully trusted (Psalm 15:4; Matt. 5:33-37);
- give faithful witness to the Gospel (Acts 1:8; 1 Pet. 3:15), practice good works toward all (Gal. 6:10; Eph. 2:10; Heb. 10:24; 1 Pet. 2:11), and live lives of prayer and thanksgiving (1 Thess. 5:17-18; James 5:16; Titus 2:7-8).

By contrast, Scripture condemns the following:

- pride, dishonesty (such as stealing and lying, of which plagiarism is one form), injustice, prejudice, immodesty in dress or behavior, slander, gossip, vulgar or obscene language, blasphemy, greed and materialism (which may manifest themselves in gambling), covetousness, the taking of innocent life, and illegal activities (Prov. 16:18; 1 Cor. 6:10; Exod. 20:7; Rom. 13:9; Col. 3:8-9; James 2:1-13; Gal. 3:26-29; Rom. 13:1-2; 1 Tim. 2:8-10; Heb. 13:5- 6);
- hypocrisy, self-righteousness, and legalism, understood as the imposition of extra-biblical standards of godliness by one person or group upon another (Acts 15:5-11; Matt. 16:6; 23:13-36);
- sinful attitudes and behaviors such as "impurity and debauchery; idolatry and witchcraft; hatred, discord, jealousy, fits of rage, selfish ambition, dissensions, factions and envy; drunkenness, orgies, and the like" (Gal. 5:19-21);
- sexual immorality, such as the use of pornography (Matt. 5:27-28), pre-marital sex, adultery, homosexual behavior and all other sexual relations outside the bounds of marriage between a man and woman (Rom. 1:21-27; 1 Cor. 6:9-10; Gen. 2:24; Eph. 5:31).

Exercising Responsible Freedom

Beyond these explicit biblical issues, the Wheaton College community seeks to foster the practice of responsible Christian freedom (Gal. 5:13-14; 1 Pet. 2:16-17). This requires a wise stewardship of mind, body, time, abilities and resources on the part of every member of the community. Responsible freedom also requires thoughtful, biblically-guided choices in matters of behavior, entertainment, interpersonal relationships, and

observance of the Lord's Day.

> "You are not your own. You were bought at a price. Therefore honor God with your body."
> — I Corinthians 6:20

Of particular concern in a collegiate environment are those issues related to alcohol, illegal drugs, and tobacco. While the use of illegal drugs or the abuse of legal drugs is by definition illicit, and the use of tobacco in any form has been shown to be injurious to health, the situation regarding beverage alcohol is more complex. The Bible requires moderation in the use of alcohol, not abstinence. Yet the fact that alcohol is addictive to many, coupled with the biblical warnings against its dangers, also suggests the need for caution. The abuse of alcohol constitutes by far our society's greatest substance abuse problem, not to mention the fact that many Christians avoid it as a matter of conscience. Thus the question of alcohol consumption represents a prime opportunity for Christians to exercise their freedom responsibly, carefully, and in Christ-like love. The Wheaton College community also encourages responsible freedom in matters of entertainment, including the places where members of the College community may seek it, such as television, movies, video, theater, concerts, dances and the Internet. The College assumes its members will be guided in their entertainment choices by the godly wisdom of Philippians 4:8: "Whatever is true, whatever is noble, whatever is right, whatever is pure, whatever is lovely, whatever is admirable, if anything is excellent or praiseworthy, think about such things."

Embracing College Standards

To foster the kind of campus atmosphere most conducive to becoming the Christian community of living, learning, and serving that Wheaton College aspires to be, the College has adopted the following institutional standards. These standards embody such foundational principles as self-control, avoidance of harmful practices, the responsible use of freedom, sensitivity to the heritage and practices of other Christians, and honoring the name of Jesus Christ in all we do.

> Wheaton College and all Wheaton College-related functions will be alcohol-free and tobacco-free. This means that the possession or consumption of alcohol or the use of tobacco in any form will be prohibited in, on, or around all campus properties, owned or leased. The same prohibition applies to all Wheaton College vehicles, whether on or off campus, and to all Wheaton College events or programs, wherever they may be held.
>
> > While enrolled in Wheaton College, undergraduate members of the community will refrain from the consumption of alcohol or the use of tobacco in all settings.
> >
> > Other adult members of the College community will use careful and loving discretion in any use of alcohol. They will avoid the serving or consumption of alcohol in any situation in which undergraduate members of the Wheaton College family are or are likely to be present.

> On-campus dances will take place only with official College sponsorship. All members of the Wheaton College community will take care to avoid any entertainment or behavior, on or off campus, which may be immodest, sinfully erotic, or harmfully violent (Eph. 4:1-2, 17-24; I Tim. 5:1-2; Gal. 5:22-23).

Conclusion

We, the Wheaton College community, desire to be a covenant community of Christians marked by integrity, responsible freedom, and dynamic, Christ-like love, a place where the name of Jesus Christ is honored in all we do. This requires that each of us keeps his or her word by taking the commitment to this covenant seriously as covenant keepers, whatever pressures we may face to do otherwise.

The issue of keeping one's word is for a Christian an important one. Being faithful to one's word is a matter of simple integrity and godliness. "Lord, who may live on your holy hill?" asks the Psalmist. "He who keeps his oath, even when it hurts" (15:4), comes the reply. Christian integrity dictates that if we have voluntarily placed ourselves under Wheaton's community covenant, we must make every effort to fulfill our commitment by living accordingly.

Keeping our covenant may also on occasion require that we take steps to hold one another accountable, confronting one another in love as we work together to live in faithfulness both to God's Word and to our own word. Such loving acts of confrontation are at times difficult, but when performed in the right spirit (Gal. 6:1), they serve to build godly character for both the individuals involved and the community as a whole (Matt. 18:15-17). Only in this way, as we are willing to speak the truth in love, will we "grow up into him who is the Head, that is, Christ" (Eph. 4:15).

> Let the word of Christ dwell in you richly as you teach and admonish one another with all wisdom, . . . And whatever you do, whether in word or deed, do it all in the name of the Lord Jesus, giving thanks to God the Father through Him.
> — Colossians 3:16-17

Scripture quotations are taken from the New International Version.

Appendix C

Excerpts from the Religious Freedoms Reformation Act

(a) **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) of this section.

(b) **Exception**: Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) **Judicial relief**: A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.