No. 4-24-1282

IN THE ILLINOIS APPELLATE COURT
FOURTH DISTRICT

ILLINOIS BAPTIST STATE ASSOCIATION,
an Illinois not-for-profit corporation,

Plaintiff-Appellant,

v.

ILLINOIS DEPARTMENT OF INSURANCE,

Defendant-Appellee.

Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Case No. 2020-MR-325, Hon. Chistopher Perrin, Presiding Judge

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REPLY BRIEF OF PLAINTIFF-APPELLANT

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Oral Argument Requested

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I. Suggesting that Plaintiff "just use GuideStone" for its insurance needs does not relieve the burden that the State's abortion coverage mandate creates.

The Department of Insurance ("the Department") has one central argument for why the Reproductive Health Act's abortion coverage mandate does not substantially burden Plaintiff's religious beliefs. It argues that Plaintiff Illinois Baptist State Association ("IBSA") can get an abortion-free plan from out-of-state insurer/broker GuideStone. Dept. Brief at 29-30. The circuit court agreed: "[IBSA] could have selected a plan from GuideStone, which is comparable in terms of quality and cost to their current Health Alliance plan but does not include abortion coverage." (C719).

It is not possible to look at GuideStone's history with IBSA and think that this is a reliable option going forward. Nor is there evidence that Guidestone's plan was sufficient at any point since 2017. In 2018, GuideStone's plan cost hundreds of thousands of dollars more than an Illinois-based plan; in 2019 and 2020, GuideStone would not even provide a quote to IBSA because of the health risk of IBSA's employees; and in 2022 through at least the end of 2023, GuideStone's plan did not include the Springfield Clinic, where most of IBSA's employees get their healthcare. (C679 at ¶¶37-39; C523; C525; C714; E460-62).

Consider a hypothetical. The United States bans all cars except for one brand, for which the cars are made in sweatshops by children and the money from purchases of these cars goes to a dangerous warlord. Certain citizens need cars but understandably find that supporting the warlord's regime is unacceptable. Alas, there is a loophole that allows one foreign dealership to lease non-warlord cars for one-year periods. But the dealership

has drawbacks: while some years the cars are perfectly acceptable, some years they cost three times as much as the warlord's cars; some years they come without air-conditioning and heating; and some years, the loophole does not exist at all because the dealership does not have any inventory. And, of course, this dealership has no competitors in the ethical-car marketplace, so bargaining power is on the dealership's side.

In this hypothetical, the government's ban places, at the very least, "substantial pressure" on the car buyers to forgo their moral objections and just accept the warlord cars, which work, are priced right and are readily available. *Korte v. Sebelius*, 735 F.3d 654, 682 (7th Cir. 2013) (citing *Thomas v. Review Bd. of the Ind. Emp't Sec. Div.,* 450 U.S. 707, 718 (1981) (burden on religious exercise arising when the government "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs"). Consumers can honor their beliefs and accept an inferior product (like a car with no heat or an insurance plan that does not include a major provider), or they can forgo their beliefs and take the easy option approved by the government. This is pressure to forgo beliefs. And in the years where there are no cars at the dealership/where GuideStone will not even quote IBSA, the issue is not just pressure, but outright force.

Some years Guidestone *might* have an acceptable plan that is cost-efficient; some years the plan does not cover the Springfield Clinic, where IBSA's employees get their healthcare; some years GuideStone's plan costs way more than Illinois plans; and some years, GuideStone does not even give IBSA a quote. That is the evidence.

The Department ignores most of this, but does address the Springfield Clinic issue:

> To be sure, the GuideStone policy that the Association declined to purchase for its employees did not, at the time, offer in-network care at Springfield Clinic, where

> many employees preferred to obtain care. See E171-72, 323. But that is insufficient to show a substantial burden. The health insurance market is complex, and employers often must make difficult choices between health policies that offer some but not all of the features that they would prefer.

Dept. Brief at 21. So, according to the Department, IBSA should have proceeded with GuideStone and told the majority (60%, E171-72) of IBSA employees that they needed to find new health care providers. This is just trading one burden (coverage with abortion) for another (coverage that does not suit employees). If the government forces either of these things, it is substantially burdening IBSA.[1] And it should go without saying that without the RHA, the full slate of Illinois-regulated insurance plans would have continued to exclude abortion and this case would not exist. The RHA is the problem, not "market [] complex[ity]."

The Ninth Circuit Court of Appeals rejected a similar argument, from the State of California, that a religious claimant was not willing to make enough sacrifices in order to get abortion-free coverage:

> The [California Department of Managed Health Care ("DMHC")] argues that any injury is "self-inflicted" because Skyline chose to continue having a DMHC-regulated plan rather than either purchasing a non-DMHC-regulated plan or refraining from providing employee health insurance coverage at all—in which case Skyline would potentially be required to make a "shared responsibility" payment to the Internal Revenue Service pursuant to the Affordable Care Act. *See* 26 U.S.C. § 4980H(a). But Skyline has offered evidence that resorting to such alternatives would be a worse fit for its needs than having a DMHC-regulated plan. It can hardly be said that Skyline caused its own injury when it has shown that, if it were to pursue any of the alternatives floated by the DMHC, it would remain worse off than it had been

[1] At page 6 in its brief, the Department describes certain other, non-state-regulated insurance options that employers can utilize (like self-funding and level-funding, which is a form of self-funding). The Department does so without suggesting to the Court that these are reasonable options for IBSA, and they are not, for the reasons in IBSA's opening brief at 25-27.

before the DMHC issued the Letters.

Skyline Wesleyan Church v. California Dep't of Managed Health Care, 968 F.3d 738, 748-49 (9th Cir. 2020).

The Department then argues that, regardless of this analysis, *now* IBSA can get a satisfactory abortion-free plan from GuideStone and the Springfield Clinic would be in-network. Dept. Brief at 30 ("The Association thus does not have to wait . . . to purchase healthcare for its employees that meets its needs; it can do so today."). This is not the evidence. The evidence shows that Guidestone offered a cost-effective plan in 2022, but it did not include the Springfield Clinic. E176-78, E324-25, 330. As of December of 2023 there is some evidence that the Springfield Clinic worked out a new deal with the carrier GuideStone uses. Dept. Brief at 22.[2] But the Department has no evidence of what a new plan would cost, or if GuideStone would even quote IBSA in upcoming years.

This highlights the problem with the Department and the circuit court putting all of IBSA's eggs in the GuideStone basket. IBSA, without government interference from the Reproductive Health Act, should have and *did* have a *market* of options of insurance that conformed to its religious beliefs; now, it just has GuideStone, and the indisputable evidence demonstrates that IBSA and GuideStone are often incompatible for reasons other than abortion coverage. Even if there were one year where everything matched up and GuideStone was the solution to IBSA's problem, they would still have to revisit the situation every year. *See People v. McCoy*, 2014 IL App (2d) 130632, ¶ 13, 25 N.E.3d

[2] Even according to the articles cited by the Department, there are exceptions to Springfield Clinic being in-network (for instance, "Choice" and HMO plans still have the clinic as out-of-network—https://www.springfieldclinic.com/insurance#blue-cross-blue-shield-developments).

678, 681 (explaining that issues that are capable of repetition yet evading review are excepted from the mootness doctrine).

No one disputes that IBSA sincerely believes providing coverage for elective abortion in its employee healthcare plan violates its religious beliefs. Yet that is precisely what the Reproductive Health Act coerces IBSA to do. That this qualifies as a burden on IBSA's religious beliefs is unquestionable. *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014) (stating that one's obligation to avoid complicity in another's wrongdoing is a "difficult and important question of religion and moral philosophy" that "courts have no business addressing").

II. The Department's arguments that the Reproductive Health Act passes strict scrutiny are unavailing.

A. The Department is absolutely incorrect in stating that a religious claimant's characteristics are irrelevant to the compelling interest test.

Regarding strict scrutiny's compelling interest test, the Department states as follows:

> And to the extent that the Association is arguing that even if the State has a general interest in providing equitable access to medical treatment, the State has no interest in "forcing a small Baptist organization to pay for its employees' and their dependents' abortions," AT Br. 34, that argument is misplaced. Whether an interest is compelling is defined by the government's needs, not the challenger's individual characteristics.

Dept. Brief at 36.

In RFRA cases,[3] courts are required to "loo[k] beyond broadly formulated interests" and to "scrutiniz[e] the asserted harm of granting specific exemptions to

[3] "[Federal RFRA] case law is instructive" regarding cases brought under the Illinois RFRA statute because "federal RFRA . . . contains identical language to Illinois's statute." *People v. Latin Kings St. Gang*, 2019 IL App (2d) 180610-U, ¶ 95; n.1.

particular religious claimants." *Hobby Lobby*, 573 U.S. at 726-27. "The question, then, is not whether the [defendant] has a compelling interest in enforcing its [challenged] policies generally, but whether it has such an interest in denying an exception to [plaintiff]." *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 541 (2021).

Here, obviously, the State could exempt plans from religious organizations who oppose abortion. Other states have done this (as described in more detail *infra*, and other courts have found religious exemptions to abortion coverage mandates are necessary under strict scrutiny. *See Foothill Church v. Watanabe*, 623 F. Supp. 3d 1079, 1094 (E.D. Cal. 2022) ("the Director has not offered evidence showing that entertaining these religious objections would be so difficult and time-consuming that 'DMHC's operations would grind to a halt ....'").

There is simply no interest, let alone a compelling one, in forcing a small religious organization to pay for an employee's elective abortion. No court has held as much. To the contrary, the Supreme Court often has held that the government does not have a compelling interest in enforcing a law or regulation that would force a religious institution to violate its religious beliefs or prohibit it from following those beliefs. *E.g., Fulton*, 593 U.S. at 542 (no compelling interest in forcing a faith-based foster-care provider to certify same-sex couples in violation of its religious beliefs); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 439 (2006*)* (no compelling interest in barring a religious group's sacramental use of hoasca).

B. The Department wrongly ignores court-approved alternatives to religiously-objectionable insurance coverage.

As for the least-restrictive-means test, IBSA suggests, following the Supreme Court's recommendation regarding contraceptive and abortifacient drug coverage in

Hobby Lobby, that the State take on the cost of providing abortions instead of forcing religious objectors to do so. *See Hobby Lobby*, 573 U.S. at 728. Illinois already takes on this cost in the case of Medicaid enrollees, and it is unclear how many other women avoid abortion because of cost.

The Department says that "such an undertaking by the State would be a hugely costly and burdensome endeavor." Dept. Brief at 40. But the Supreme Court requires data, not conclusions, and the burden is on the government:

> This would certainly be less restrictive of the plaintiffs' religious liberty, and HHS has not shown, see § 2000bb–1(b)(2), that this is not a viable alternative. HHS has not provided any estimate of the average cost per employee of providing access to these contraceptives . . .

Hobby Lobby, 573 U.S. at 728.

In *Hobby Lobby*, the Supreme Court identified another less restrictive alternative that could solve the issues presented here:

> In the end, however, we need not rely on the option of a new, government-funded program in order to conclude that the HHS regulations fail the least-restrictive-means test. . . . HHS has already established an accommodation for nonprofit organizations with religious objections. Under that accommodation, the organization can self-certify that it opposes providing coverage for particular contraceptive services. If the organization makes such a certification, the organization's insurance issuer or third-party administrator must "[e]xpressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan" and "[p]rovide separate payments for any contraceptive services required to be covered" without imposing "any cost-sharing requirements ... on the eligible organization, the group health plan, or plan participants or beneficiaries."

Hobby Lobby, 573 U.S. at 730-31 (internal citations omitted). There is no reason why this "accommodation" would not work with abortion coverage, as opposed to contraceptive coverage. Indeed, Washington's abortion coverage mandate has a built-in accommodation process: "employers with a religious objection need not purchase coverage for abortion services for their employees; employees simply have the right to

obtain such coverage through their insurers when their employers do not provide it." *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler*, 130 F.4th 757, 766 (9th Cir. 2025) (emphasis in original).

III. States that have abortion coverage mandates but also have religious employer exemptions demonstrate the proper path for Illinois.

Illinois should take guidance from other states that (1) have abortion coverage mandates and (2) exempt religious employers from those mandates.

Maine, for instance, has a similar mandate to that of Illinois: "A carrier offering a health plan in this State that provides coverage for maternity services shall provide coverage for abortion services for an enrollee in accordance with this section." Me. Rev. Stat. tit. 24-A, § 4320-M. But Maine provides the following exemption for religious employers:

> **Exclusion for religious employer**. A religious employer may request and a carrier shall grant an exclusion under the policy or contract for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. . . .

Id. (emphasis in original).

Maine is not alone. Most (10 of 12) of the states with abortion coverage mandates have religious employer exemptions. Or. Rev. Stat. § 743A.067(9) (2019); *Foothill Church v. Watanabe,* 623 F. Supp. 3d 1079, 1085 (E.D. Cal. 2022) (finding that California's Knox Keene Act includes several categorical and individualized exemptions including those for "religious employers"); 11 N.Y.C.R.R. § 52.16(o)(2) (religious employer exception); Colo. Rev. Stat. § 10-16-104(26)(d) (same); MD Insurance Code § 15-857 (2023) (same); Mass. General Laws c.175 § 47F (same); N.J. Admin. Code § 11:24-5A.3 (same); Wash. Rev. Code § 48.43.065(3)(a) (same); 2024 Minn Stat.

62Q.679 (same).[4] In its opening brief (at 15), IBSA mistakenly noted that Washington was one of three states without a religious exemption to an abortion coverage mandate; it has one, Wash. Rev. Code § 48.43.065(3)(a). It appears that only Illinois and Vermont have refused to protect religious employers.

Maine and other states should light the way for Illinois, by recognizing (1) that abortion coverage mandates create a substantial burden on religious organizations who oppose abortion; (2) that there is no compelling governmental interest in mandating abortion coverage for religious organizations that oppose abortion; and (3) that the state's interests can still be furthered while respecting religion.

CONCLUSION

For the foregoing reasons and those in its opening brief, IBSA respectfully requests that the Court reverse the circuit court's decision and remand the case with instructions to (1) enter summary judgment in IBSA's favor, (2) enter a declaratory judgment stating that the Reproductive Health Act is in violation of IBSA's Illinois RFRA rights, and (3) enter a permanent injunction barring the enforcement of the abortion insurance requirement of the Reproductive Health Act against IBSA and its insurers or third-party administrators.

[4] Minnesota is, by the undersigned's count, the 12th state to pass an abortion coverage mandate. The mandate became effective January 1, 2025. In its opening brief (at 15), IBSA noted (and knew of) only 11 such states.

Respectfully submitted,

May 29, 2025

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 9 pages.

Executed this 29th day of May, 2025.

/s/ J. Matthew Belz
J. Matthew Belz