

# Texas Baptist universities win round against Obamacare

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HOUSTON (ABP)—A federal judge in Texas ruled Dec. 27 in favor of two Baptist universities who claimed in a lawsuit the Affordable Care Act's required coverage of birth control violates their religious liberty.

U.S. District Judge Lee Rosenthal in Houston [said](#) forcing [East Texas Baptist University](#) and [Houston Baptist University](#) to provide health insurance coverage for employees to obtain all FDA-approved emergency contraceptive devices, products or services without cost would violate the Religious Freedom Restoration Act, a federal law passed in 1993 to make it harder for government to infringe on a person's free exercise of religion.

## One of 90 lawsuits

The case is one of about 90 lawsuits challenging rules by the Department of Health and Human Services requiring preventive services, including contraception and sterilization in group health plans. Lower courts have ruled inconsistently, prompting the U.S. Supreme Court to accept a case involving the Southern Baptist owners of Hobby Lobby, who claim the contraceptive mandate unconstitutionally violates their sincerely held religious beliefs.

Final regulations include an accommodation for eligible organizations like the two schools affiliated with the [Baptist General Convention of Texas](#). They are not required to contract, arrange, pay or refer for contraceptive coverage they oppose for religious reasons. But their employees still would benefit from separate payments for contraceptive services without cost sharing from their group health-plan issuer or a third-party administrator.

Lawyers for the two Baptist schools and a third plaintiff, Presbyterian-affiliated [Westminster Theological Seminary](#), contended the “self-certification” process facilitates access to free emergency contraceptives, and participating in it “requires them to take an action that triggers and facilitates their employees’ free access to abortion-causing drugs, making the plaintiffs complicit in the taking of innocent life and causing them to violate their belief that they must protect the innocent human life that is a fertilized egg.”

### **Guidestone challenge**

In mid-December, a federal judge in Oklahoma City said 187 religious organizations, including the Southern Baptist Convention’s [GuideStone Financial Resources](#), can proceed with their similar challenge to the Affordable Care Act. The judge issued a preliminary injunction barring the government from enforcing the law through penalties or fines until the case is finalized.

The ETBU/HBU ruling goes a step further, granting a motion for summary judgment, a procedural device used during civil litigation to dispose of a case without a trial if “no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.”

Judge Rosenthal enjoined the government “from applying or enforcing the regulations” that require the plaintiffs to provide health insurance coverage for FDA-approved emergency contraceptive devices, products or services under the Health and Human Services guidelines.

### **Government argument used Kaemmerling precedent**

The government’s argument relied in part on precedent established by a case involving Russell Kaemmerling, a one-time leader in the so-called “conservative resurgence” in the Southern Baptist Convention in federal prison after being indicted for fraud.

Kaemmerling, who from 1980 to 1985 edited the Southern Baptist Advocate, an independent magazine that aided the conservative resurgence cause, lost his case. He claimed a law authorizing the Bureau of Prisons to collect body-tissue samples to create a bank of DNA identifiers for felons was "tantamount to laying the foundation for the rise of the anti-Christ."

Rosenthal said the universities' case is different, because they object on religious grounds to something the government requires them to do, not merely to actions by a third party.