IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONESTOGA WOOD SPECIALITIES CORPORATION, et al.	:	**CIVIL ACTION**
v.	:	**NO. 12-6744**
KATHLEEN SEBELIUS, et al.	:	

ORDER

AND NOW, this 28th day of December, 2012, following a telephone conference and upon consideration of Plaintiffs' "Motion for Preliminary Injunction" (Doc. No. 7) and Defendants' response in opposition, we find as follows:

1. Plaintiffs, Conestoga Wood Specialities Corp. ("Conestoga"), Norman Hahn, Norman Lemar Hahn and Anthony Hahn ("the Hahns") have brought suit against Kathleen Sebelius, in her official capacity as Secretary of the United States Department of Health and Human Services, and other government officials and agencies, alleging that certain Women's Preventive Healthcare regulations passed pursuant to the Patient Protection and Affordable Care Act ("ACA") violate the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, the Free Exercise, Establishment and Free Speech Clauses of the First Amendment, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act, 5 U.S.C. § 551, et seq.

2. The Women's Preventive Healthcare regulations, which Plaintiffs refer to as "the Mandate," require non-exempt employers to provide health insurance coverage for

all contraception methods approved by the Food and Drug Administration, including contraception that may have an abortifacient effect, such as Plan B, also known as the "morning after pill."[1] The Hahns are practicing Mennonite Christians, who believe "that it would be sinful and immoral for them to intentionally participate in, pay for, facilitate, or otherwise support any contraception with an abortifacient effect through health insurance coverage they offer at Conestoga." (Compl., Doc. No. 1, ¶¶ 3, 4.)

3. Plaintiffs filed their Complaint on December 4, 2012, and subsequently filed a "Motion for Preliminary Injunction" on December 7, 2012. (Doc. No. 7.) Defendants' response to Plaintiffs' motion was submitted December 19, 2012. (Doc. No. 30.)

4. This case, and Plaintiffs' motion for a preliminary injunction, involve complex issues of first impression regarding the ACA, which no other court in this Circuit has decided. Courts from outside of this Circuit who have considered the issues raised here have reached different results. [2]

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[1] See 42 U.S.C. § 300gg-13(a)(4) (stating that a group health plan must provide coverage, without any cost sharing, to women for "preventive care and screenings" as provided for in the guidelines prepared by the Health Resources and Services Administration ("HRSA")); 77 F.R. 8725-01 (Feb. 15, 2012) (adopting the HRSA guidelines, defining women's preventive healthcare to include "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.")

[2] Compare O'Brien v. U.S. Dept. of Health and Human Svcs., Dkt. No. 12-cv-467, Doc. No. 53 (8th Cir., Nov. 28, 2012) (granting "[a]ppellants' motion for stay pending appeal"); Tyndale House Publishers, Inc. v. Sebelius, 2012 WL 5817323 (D.D.C., Nov. 16, 2012) (granting a preliminary injunction); Legatus v. Sebelius, 2012 WL 5359630 (E.D. Mich., Oct. 31, 2012) (same); Newland v. Sebelius, 2012 WL 3069154 (D. Colo, July 27, 2012) (same) with Hobby Lobby Stores, Inc. v. Sebelius, Dkt. No. 12-6294, Doc. No. 25 (10th Cir., Dec. 20, 2012) (denying plaintiffs' motion for injunction pending appeal); Korte v. U.S. Dept. of Health & Human Svcs., 2012 WL 6553996 (S.D. Ill., Dec. 14, 2012) (denying preliminary injunction); Hobby Lobby Stores, Inc. v.

5. Presently, the record before the Court is not complete in that Plaintiffs are in the process of supplementing the record with additional evidence and stipulated facts. Further, neither an evidentiary hearing nor oral argument has been held.

6. The parties agree that Plaintiffs do not meet any exemption under the ACA, and are required to comply with the Women's Preventive Healthcare regulations on or before January 1, 2013. If Plaintiffs do not purchase the required coverage by that date, they face penalties of $100 per employee per day, or $95,000 a day. 26 U.S.C. § 4980D.

7. Given the impending deadline, the incomplete record, the fact that no courtroom proceedings have occurred, and because this case presents complex issues of first impression, we will grant a temporary restraining order pending a hearing and oral argument on Plaintiffs' motion for preliminary injunctive relief.

8. Under Federal Rule of Civil Procedure 65, in order for the Court to enter a temporary restraining order, a plaintiff must demonstrate "(1) a likelihood of success on the merits; (2) the probability of irreparable harm if the relief is not granted; (3) that granting injunctive relief will not result in even greater harm to the other party; and (4) that granting relief will be in the public interest." Pileggi v. Aichele, 843 F. Supp. 2d 584, 592 (E.D. Pa. 2012) (citing Bieros v. Nicola, 857 F. Supp. 445, 446 (E.D. Pa. 1994)).

9. "A likelihood does not mean more likely than not." Singer Management Consultants, Inc. v. Milgram, 650 F.3d 223, 229 (3d Cir. 2011). Instead, a plaintiff need only have

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Sebelius, 2012 WL 5844972 (W.D. Okla. Nov. 19, 2012) (same); O'Brien v. U.S. Dept. of Health & Human Svcs., 2012 WL 4481208 (E.D. Mo., Sept. 28, 2012) (granting motion to dismiss for failure to state a claim).

"shown a reasonable probability of success on the merits." American Exp. Travel Related Svcs., Inc. v. Sidamon-Eristoff, 669 F.3d 359, 366 (3d Cir. 2012). In light of the opinions of several courts favoring Plaintiffs' position in this case, we find that Plaintiffs have demonstrated a reasonable probability of success on the merits of their RFRA claim. While additional evidence is necessary to determine whether Plaintiffs' likelihood of success is sufficient to justify an injunction for the duration of the litigation, we find it to be adequate to warrant temporary relief pending a preliminary injunction hearing.

10. "Irreparable harm is injury that cannot adequately be compensated by monetary relief." Coventry First, LLC v. Ingrassia, 2005 WL 1625042, at *11 (E.D. Pa., July 11, 2005) (citation omitted). The threatened harm must be imminent. Feldman & Pinto, P.C. v. Seithel, 2011 WL 6758460, at *14 (E.D. Pa., Dec. 22, 2011). "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). This principle extends to the RFRA, "which covers the same types of rights as those protected under the Free Exercise Clause of the First Amendment." Tyndale House Publishers, Inc. v. Sebelius, 2012 WL 5817323, at *18 (D.D.C., Nov. 16, 2012). Within a matter of days, Plaintiffs will have to decide between paying substantial fines or committing an act which they have shown to have a likelihood of violating their rights to religious freedom. Therefore, we find that Plaintiffs have shown imminent, irreparable harm.

11. We also find that the risk of harm to Plaintiffs outweighs the risk of harm to

Defendants. Although we recognize that Defendants have a substantial interest in carrying out the mandates of the ACA, a brief stay presents only a minimal burden on that interest.

12. Finally, the public interest favors temporary injunctive relief. "There is undoubtedly [ ] a public interest in ensuring that the rights secured by the First Amendment and, by extension, the RFRA, are protected." Id. at *19. That interest also weighs in favor of preventing the potential infringement of Plaintiffs' religious rights until the Court has had the opportunity to fully consider the evidence and issues raised by Plaintiffs' motion.

13. Although the Court notes Defendants' objection to this temporary stay, we find that the requirements for a temporary restraining order under Rule 65(b) are satisfied, and that the circumstances justify maintaining the status quo by staying enforcement of the requirements identified by Plaintiffs for a period of fourteen days.[3]

[3]We recognize that Rule 65(c) requires a movant to "give[] security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FED. R. CIV. P. 65(c). However, the Third Circuit has held that the security requirement may be excused where "complying with the [TRO] raises no risk of monetary loss to the defendant." Zambelli Fireworks Mfg. Co., Inc. v. Wood, 592 F.3d 412, 426 (3d Cir. 2010) (quotations and citations omitted). Here, maintaining the status quo does not present a risk of monetary loss to the Government. The Government's interest in having Plaintiffs provide this healthcare relates to the public welfare, and not monetary gain.

WHEREFORE, it is hereby **ORDERED** that Defendants are **TEMPORARILY RESTRAINED** from enforcing the Women's Preventive Healthcare regulations regarding abortifacient contraception and counseling, enacted pursuant to 42 U.S.C. § 300gg-13(a)(4) and 77 F.R. 8725-01 (Feb. 15, 2012), against Plaintiffs, their group health plan and the group health insurance coverage provided in connection with that plan, for a period of **fourteen (14) days**. This Order applies only to requirements regarding the provision of insurance coverage for the contraceptive services to which Plaintiffs object on religious grounds. It should not be construed as applying to any other healthcare coverage required by law, including coverage of the other services required by the regulations regarding Women's Preventive Healthcare.

IT IS FURTHER ORDERED that an evidentiary hearing and oral argument on Plaintiffs' "Motion for Preliminary Injunction" (Doc. No. 7) will be held on **January 4, 2013** at **10:00a.m.** in Courtroom 4B.

BY THE COURT:

/s/ Berle M. Schiller

For Mitchell S. Goldberg, J.