UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

MARTIN OZINGA III, MARTIN OZINGA IV, KARL OZINGA, JUSTIN OZINGA, AARON OZINGA, PAUL OZINGA, TIMOTHY OZINGA, JEFFREY OZINGA, and OZINGA BROS., INC, An Illinois corporation, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health & Human Services; UNITED STATES DEPARTMENT OF THE TREASURY; JACOB J. LEW, in his official capacity as the Secretary of the U.S. Department of the Treasury; UNITED STATES DEPARTMENT OF LABOR; and SETH D. HARRIS, Deputy Secretary of Labor, in his official capacity as Acting Secretary of the U.S. Department of Labor, Defendants.	)	No. 13 C 3292 Judge Thomas M. Durkin

ORDER

Before the Court are two proposed competing permanent injunction orders differing in scope. Plaintiffs propose enjoining Defendants from enforcing "any

regulation promulgated or amended" pursuant to the Affordable Care Act that would require them to provide health insurance coverage for "abortifacients, contraception, sterilization, and related education and counseling to the employees of Ozinga Bros., Inc." R. 45-2 at 6. Defendants propose an injunction limited to those regulations at issue in *Hobby Lobby v. Burwell* and the Plaintiffs' complaint in this case. *See* R. 42-1.

For the reasons stated below, the Court grants Defendants' motion for entry of permanent injunction and final judgment and enters their proposed injunction.

BACKGROUND

The Affordable Care Act requires for-profit corporations to provide health insurance to their employees that includes coverage for contraception (the "contraceptive mandate"). Plaintiffs claim that the mandate substantially burdens their exercise of religion in violation of the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq*. (the "RFRA"). On July 17, 2013, the Court entered an unopposed preliminary injunction barring the Defendants from enforcing the mandate against Plaintiffs pending the outcome of similar cases then on appeal. *See* R. 25.

On June 30, 2014, the Supreme Court struck down the contraceptive mandate as applied to for-profit corporations objecting on religious grounds. *Hobby Lobby v. Burwell*, 134 S. Ct. 2751, 2775-85 (2014) (finding that the contraceptive mandate substantially burdens the exercise of religion and is not the least restrictive means to further a presumptively compelling governmental interest). In

the wake of the Supreme Court's ruling, Defendants moved the Court to enter a permanent injunction that bars them from enforcing against Plaintiffs the regulations that the Supreme Court struck down in *Hobby Lobby*. *See* R. 42. The Plaintiffs have attached to their response to the Defendants' motion a broader proposed order that would enjoin the Defendants from enforcing against Plaintiffs *any* regulations implementing the Affordable Care Act's provisions regarding contraception. *See* R. 45-2.

ANALYSIS

The scope of an injunction should match, but not exceed, the specific relief requested and permitted by law. *See Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (Injunctions "must be narrowly tailored to remedy the specific harm shown."); C*alifano v. Yamasaki*, 422 U.S. 682, 702 (1979) ("[I]njunctive relief should be no more more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.").

Plaintiffs seek to enjoin regulations, adopted after the Plaintiffs filed their complaint in this case, intended to accommodate the religious beliefs of objecting for-profit corporations. *See* R. 45 at 12-13; *see also* Final Rules, Coverage of Certain Preventive Services Under the Affordable Care Act, 80 Fed. Reg. 41,318 (July 14, 2015). Whether those regulations are valid is beyond the scope of Plaintiffs' current complaint, and they have not sought to amend it.[1] The overwhelming majority of

[1] The Seventh Circuit has recently issued decisions rejecting arguments similar to the arguments the Plaintiffs make in this case regarding the new regulations. *See*

judges who have dealt with this issue have entered permanent injunctions consistent with the Defendants' proposed order, in some cases over objection. *See* R. 42 at 9 (42 of the 43 cases addressing the issue have entered injunctions similar to the one the Defendants have proposed);[2] *see also* R. 42-2. The Court believes that Judge Reggie Walton's statement in one of those cases is apt here: "the breadth of the plaintiffs' proposed injunction would conceivably enjoin regulations that could pass muster under the RFRA." *Tyndale House Publishers v. Burwell*, No. 12-1635 (RBW) (D.D.C. July 15, 2015), R. 53.

In sum, the Plaintiffs seek an improperly broad injunction. They are entitled to an injunction limited to the specific statutory provisions decided in *Hobby Lobby* and at issue in this case, and no more.

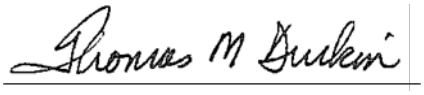
CONCLUSION

For the foregoing reasons, the Court grants the Defendants' motion for entry of a permanent injunction and final judgment, R. 42, and grants the Plaintiffs' motion for leave to file supplemental authority, R. 52.

University of Notre Dame v. Burwell, 786 F.3d 606 (7th Cir. 2015); *Wheaton College v. Burwell*, 791 F.3d 792 (7th Cir. 2015); *Grace Schools v. Burwell*, — F.3d —, Nos. 14-1430 & 14-1431, 2015 WL 5167841 (7th Cir. Sept. 4, 2015).

[2] On September 18, 2015, Plaintiffs filed, but did not notice for hearing, a motion to file supplemental authority. R. 52. The Court grants that motion. The judge in the case that the Plaintiffs cite in their motion—*March for Life v. Burwell*, Case No. 14-cv-1149 (RJL) (D.D.C. Aug. 31, 2015)—granted an injunction similar to the injunction that the Plaintiffs have requested in this case. So, it appears that the current tally is 42 of 44.

ENTERED:



Honorable Thomas M. Durkin
United States District Judge

Dated: September 30, 2015