

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ROMAN CATHOLIC DIOCESE OF §
FORT WORTH, et al. §
§
VS. § CIVIL ACTION NO. 4:12-CV-314-Y
§
KATHLEEN SEBELIUS, et al. §

ORDER GRANTING PRELIMINARY INJUNCTION

Before the Court is the motion for a preliminary injunction of plaintiff University of Dallas (doc. 70).¹ After review, the Court GRANTS the motion.

I. BACKGROUND

The University of Dallas ("the University") is a private, co-educational, liberal-arts school affiliated with the Catholic Church and located in Irving, Texas. The University provides health insurance to its benefits-eligible employees through a healthcare consortium called Collegiate Association Resource of the Southwest ("CARES"). Consistent with Catholic doctrine, the CARES plan offered by the University does not cover contraceptives, abortion-inducing products, or sterilization.

Because the CARES plan year begins January 1, 2014, the University must be prepared to comply with the Patient Protection and Affordable Care Act ("the ACA"). Under the ACA, employer group

¹ The remaining plaintiffs in this cause have also sought injunctive relief, but the University is the only plaintiff that will be immediately affected by the challenged provision of the Affordable Care Act. Accordingly, the Court addresses **only** the University's motion for injunctive relief and reserves its ruling on the remaining plaintiffs' motions for a later date.

health plans, such as the one offered by the University, must include insurance coverage for women's "preventative care and screenings." 42 U.S.C. § 300gg-13(a)(4). Congress did not define "preventative care"; instead, it delegated the duty for defining the term to the Department of Health and Human Services ("HHS"). HHS, in turn, tasked the Institute of Medicine ("IOM") with developing guidelines for preventative services for women. IOM recommended that women's preventative care include "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity." HHS adopted the IOM's recommendations.

Under the adopted definition of preventative care, the ACA requires health plans to cover contraception, sterilization, and related counseling services ("the contraceptive mandate" or "the mandate"). Provision of these types of care are contrary to the teachings of the Catholic Church.

Although the ACA exempts certain "religious employers" from the contraceptive mandate, the exemption applies mainly to churches and would not provide the University with any relief. The government has also created an "accommodation" for "eligible organizations" that object to the mandate on religious grounds but do not qualify for an exemption. Under this accommodation, a religious organization submits a form to its insurer, or if it is

self-insured, to its third-party administrator ("TPA"), certifying that it is an eligible organization and that it objects to the contraceptive mandate on religious grounds. The insurer or TPA is then required to provide contraceptive coverage without charging the eligible organization any additional fees or premiums. Coverage of Certain Preventative Services Under the Affordable Care Act, 78 Fed. Reg. 39,870-01, 39,879-80. Accordingly, an objecting religious organization that self-certifies is relieved of its obligation "to contract, arrange, pay, or refer for contraceptive coverage." 78 Fed. Reg. at 39,874.

While the University would qualify for the accommodation, it contends that the self-certification process effectively requires it to facilitate the provision of products and services that are contrary to its sincerely held religious beliefs. Based on this contention, the University asserts claims for violations of the Religious Freedom Restoration Act ("RFRA"), the First Amendment, and the Administrative Procedure Act ("APA"). Because the University will be required to comply with the contraceptive mandate effective January 1, 2014, it seeks a preliminary injunction from this Court, exempting it from compliance with the contraceptive mandate.

II. LEGAL STANDARD

Before this Court may grant the University a preliminary injunction, the University must demonstrate:

(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Janvey v. Alguire, 647 F.3d 585, 595 (5th Cir. 2011). The Fifth Circuit has counseled that "a preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has 'clearly carried the burden of persuasion' on all four requirements." *Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009) (quoting *Lake Charles Diesel, Inc. v. Gen. Motors Corp.*, 328 F.3d 192, 196 (5th Cir. 2003)).

III. ANALYSIS

Several federal courts have considered the issue of whether the contraceptive mandate offends the RFRA, even where the entity claiming a violation of its religious beliefs is eligible for the ACA's accommodation. Based on this Court's review of those decisions, there is no clear consensus. The Fifth Circuit has yet to address the issue.

The Court is persuaded by a recent decision handed down in the Southern District of Texas, which involved plaintiffs similarly situated to the University of Dallas. *E. Texas Baptist Univ. v. Sebelius*, No. H-12-3009, 2013 WL 6838893 (S.D. Tex. Dec. 27, 2013). In that case, the Court granted injunctive relief based, in part,

on its determination that "the accommodation's imposition on the plaintiffs of a required act--self-certification--that they find religiously offensive, coerced or pressured by exposure to punitive fines, meets the substantial burden test." *Id.* at *21.

This Court adopts the thoughtful analysis set out by Judge Rosenthal in her detailed and well-reasoned opinion. Accordingly, the University's motion for injunctive relief is GRANTED. The government is hereby ENJOINED from enforcing, as to the University of Dallas, the requirements set out in 42 U.S.C. § 300gg-13(a)(4), as well as any related fines and penalties, until further order of this Court.

SIGNED December 31, 2013.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE