

No. 13-1654

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOMINO'S FARMS CORPORATION and THOMAS MONAGHAN,

Plaintiffs-Appellees,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of Health and Human Services;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; THOMAS E.
PEREZ, in his official capacity as Secretary of Labor; UNITED STATES DEPARTMENT OF
LABOR; JACOB J. LEW, in his official capacity as Secretary of the Treasury; UNITED
STATES DEPARTMENT OF THE TREASURY,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN (No. 12-15488) (Hon. Lawrence P. Zatkoff)

REPLY BRIEF FOR THE APPELLANTS

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ARGUMENT

This appeal presents the same issue that was recently decided by this Court in *Autocam Corp. v. Sebelius*, ___ F.3d ___, 2013 WL 5182544 (6th Cir. Sept. 17, 2013). The *Autocam* decision requires that the preliminary injunction in this case be reversed.

The *Autocam* plaintiffs are two affiliated for-profit corporations engaged in manufacturing for the automotive and medical industries, and the controlling shareholders of those closely held corporations. The controlling shareholders are family members collectively known as the Kennedys. The plaintiffs in *Autocam* claimed that, under the Religious Freedom Restoration Act (“RFRA”), the corporations’ group health plan must be exempted from the federal requirement to cover contraceptives as prescribed by a health care provider for Autocam employees and their family members. The plaintiffs argued that such an exemption is required by RFRA because the Kennedys, who are practicing Roman Catholics, asserted a religious objection to the plan’s coverage of contraceptives.

This Court rejected the RFRA claim. The Court held that corporations primarily organized for secular, profit-seeking purposes are not “persons” that engage in “religious exercise” in the sense intended by RFRA. *See id.* at *7-9. The Court held that the Kennedys lack standing to challenge the contraceptive-coverage requirement because the obligation to cover contraceptives lies with the

corporations, not with the Kennedys in their individual capacities. *See id.* at *3-5. The Court rejected plaintiffs' invitation to disregard the corporate form, explaining that "[i]ncorporation's basic purpose is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom it employs." *Id.* at *5 (quoting *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001)).

The *Autocam* decision forecloses the RFRA claim in this case. Domino's Farms is a for-profit corporation that manages property for an office park. *See* Pl. Br. 6. As such, it is not a "person" engaged in "religious exercise" within the meaning of RFRA. Thomas Monaghan, who is the sole shareholder and director of Domino's Farms, lacks standing to challenge the contraceptive-coverage requirement because the obligation to provide contraceptive coverage lies with the corporation, not with Mr. Monaghan in his individual capacity.

It is irrelevant that Domino's Farms has only one shareholder whereas the *Autocam* corporations have several. As the Supreme Court's *Cedric Kushner* decision illustrates, the tenet that a corporation is distinct from its shareholders applies even when the corporation has only a single shareholder. That case "focuse[d] upon a person who [was] the president and sole shareholder of a closely held corporation," and the Supreme Court's holding rested on the fact that he was "distinct from the corporation itself, a legally different entity with different rights

and responsibilities due to its different legal status.” *Cedric Kushner*, 533 U.S. at 160, 163.

CONCLUSION

In light of this Court’s decision in *Autocam Corp. v. Sebelius*, ___ F.3d ___, 2013 WL 5182544 (6th Cir. Sept. 17, 2013), the preliminary injunction should be reversed and Mr. Monaghan’s claim should be dismissed for lack of standing.

Respectfully submitted,

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SEPTEMBER 2013

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)**

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 504 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

/s/ Alisa B. Klein
Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2013, I electronically filed the foregoing brief with the Clerk of this Court by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Alisa B. Klein
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