

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOMINO'S FARMS CORPORATION
and THOMAS MONAGHAN,

No. 13-1654

Plaintiffs-Appellees,

v.

KATHLEEN SEBELIUS, in her official
capacity as Secretary of Health and Human
Services, et al.,

Defendants-Appellants

**Motion To Hold Appeal In Abeyance Pending This Court's Decision In
Autocam Corp. v. Sebelius, No. 12-2673 (6th Cir.)**

For the following reasons, the government respectfully moves to hold this appeal in abeyance pending this Court's decision in *Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir.), which was heard by this Court on June 11, 2013. Plaintiffs oppose this motion.

1. Domino's Farms Corporation a for-profit property management corporation. *See* R.1 ¶¶ 21-26, 70 at Page ID ##5-6, 12 (complaint). People employed by the corporation receive health coverage for themselves and their family members through the Domino's Farms group health plan, which is issued by Blue Cross/Blue Shield of Michigan. *See id.* ¶ 72 at Page ID #13.

In this suit, plaintiffs claim that the Domino's Farms group health plan must be exempted from the federal requirement that the plan cover Food and Drug Administration ("FDA")-approved contraceptives, as prescribed by a health care provider. Plaintiffs contend that this exemption is required by the Religious Freedom Restoration Act ("RFRA") and the First Amendment because the corporation's controlling shareholder has asserted a religious objection to the plan's coverage of contraceptives. The district court issued a preliminary injunction, *see* R.39 at Page ID ##825-844, and the government filed a notice of interlocutory appeal, *see* R.41 at Page ID #848.

2. The same issues are presented in *Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir.), which was heard on June 11 before Judges Gibbons, Stranch, and Hood. Here and in *Autocam*, the government's arguments are the same. Congress, in enacting RFRA, did not grant for-profit, secular corporations the right to deny employee benefits on the basis of religion. To the contrary, RFRA carried forward the pre-existing distinction between religious organizations, which may obtain religious exemptions from federal employment regulations, and secular companies, which may not. This distinction is grounded in the text of the First Amendment, and it avoids the Establishment Clause concerns that would arise if religion-based exemptions were extended to entities operating in the commercial, profit-making world. Plaintiffs cannot evade this distinction by declaring that a corporate

regulation should be regarded as a substantial burden on the personal religious beliefs of a corporation's controlling shareholder, a contention that disregards settled principles of corporate law. Moreover, the particular burden of which plaintiffs complain here and in *Autocam* is too attenuated to be regarded as substantial. And the contraceptive-coverage requirement would survive strict scrutiny even if the Court were to conclude (incorrectly) that RFRA made corporate regulations subject to strict scrutiny at the behest of a company's controlling shareholder.

3. If this Court accepts the government's contentions in *Autocam*, the claims in this case will fail for the same reasons. Accordingly, the Court should hold this appeal in abeyance pending this Court's decision in *Autocam*.¹

4. Plaintiffs oppose this motion.

¹ The same issues are also pending before this Court in *Eden Foods, Inc. v. Sebelius*, No. 13-1677 (6th Cir.). The government moved to hold the *Eden Foods* appeal in abeyance pending this Court's decision in *Autocam*. This Court has not yet acted on that motion.

Respectfully submitted,

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/s Alisa B. Klein

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June 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2013, I filed and served the foregoing motion on counsel of record through this Court's CM/ECF system.

/s Alisa B. Klein

Alisa B. Klein