

No. 13-1677

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDEN FOODS, INC., and MICHAEL POTTER,
Owner and Sole Shareholder of Eden Foods, Inc.

Plaintiffs-Appellants,

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-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN (No. 2:13-cv-11229) (Hon. Denise P. Hood)

SUPPLEMENTAL BRIEF FOR THE APPELLEES

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Pursuant to this Court's order of September 23, 2013, the government respectfully submits this supplemental brief addressing the precedential impact of this Court's decision in *Autocam Corp. v. Sebelius*, ___ F.3d ___, 2013 WL 5182544 (6th Cir. Sept. 17, 2013). For the reasons discussed below, the *Autocam* decision requires that the denial of a preliminary injunction be affirmed.

STATEMENT

Eden Foods, Inc., is a for-profit corporation that packages and distributes natural foods. *See* R.1 ¶ 76 at Page ID #14 (complaint). The corporation has 128 full-time employees. *See id.* ¶ 16 at Page ID #5. People employed by Eden Foods receive health coverage through the Eden Foods group health plan, as part of their compensation packages. *See id.* ¶ 78 at Page ID #14. The plan currently covers contraceptives. *See id.* ¶ 93 at Page ID #16.

Mr. Potter is the chairman, president, and sole shareholder of Eden Foods. *See id.* ¶ 25 at Page ID #6. Mr. Potter alleges that all forms of contraception are contrary to his religious beliefs. *See id.* ¶ 71 at Page ID ##12-13. The corporation, however, does not hire employees on the basis of their religion, and the employees are not required to share Mr. Potter's religious beliefs.

In this action, Eden Foods and Mr. Potter contend that, under RFRA, the Eden Foods group health plan is entitled to an exemption from the federal regulatory 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 RFRA because Mr. Potter has asserted a religious objection to the plan’s coverage of contraceptives. The district court denied a preliminary injunction because plaintiffs failed to establish a likelihood of success on the merits of their RFRA claim. *See* R.22 at Page ID ##606-615.¹

ARGUMENT

This appeal presents the same issue that was decided by this Court in *Autocam Corp. v. Sebelius*, __ F.3d __, 2013 WL 5182544 (6th Cir. Sept. 17, 2013). The *Autocam* decision is controlling precedent that requires that the Court affirm the denial of a preliminary injunction in this case.²

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 RFRA, the corporations’ group health plan must be exempted

¹ The district court also rejected plaintiffs’ First Amendment claim. *See* R.22 at Page ID ##615-617. Plaintiffs did not challenge that ruling on appeal.

² The same issue is also pending before this Court in *Legatus, et al. v. Sebelius*, No. 13-1092 (6th Cir.) (argument scheduled for October 9); *Domino’s Farms Corp., et al. v. Sebelius*, No. 13-1654 (6th Cir.); and *Mersino Management Co., et al. v. Sebelius*, No. 13-1944 (6th Cir.). We have moved to vacate the oral argument in *Legatus* and to submit the case on the briefs. That motion is pending.

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” engaged 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. Eden Foods, Inc., is a for-profit corporation that packages and distributes natural foods. *See* R.1 ¶ 76 at Page ID #14 (complaint). As such, it is not a “person” engaged in “religious exercise” within the meaning of RFRA. Mr. Potter, who is the

president, chairman, and sole shareholder of Eden Foods, lacks standing to challenge the contraceptive-coverage requirement because the obligation to provide contraceptive coverage lies with the corporation, not with Mr. Potter in his individual capacity. Accordingly, his claim should be dismissed.

It is irrelevant that Eden Foods 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, 163.³

³ In light of *Autocam*, this Court need not determine whether Mr. Potter's public statements undermine his assertion of irreparable harm. *See* Gov. Br. 14.

CONCLUSION

In light of this Court's decision in *Autocam Corp. v. Sebelius*, ___ F.3d ___, 2013 WL 5182544 (6th Cir. Sept. 17, 2013), the denial of a preliminary injunction should be affirmed and Mr. Potter'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 Court's supplemental briefing order because it does not exceed 7 pages.

/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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