

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GENEVA COLLEGE; WAYNE L. HEPLER; )  
THE SENECA HARDWOOD LUMBER )  
COMPANY, INC., a Pennsylvania Corporation; )  
and CARRIE E. KOLESAR; )

Plaintiffs, )

v. )

KATHLEEN SEBELIUS, in her official capacity )  
as Secretary of the United States Department of )  
Health and Human Services; HILDA SOLIS, in )  
her official capacity as Secretary of the United )  
States Department of Labor; TIMOTHY )  
GEITHNER, in his official capacity as Secretary )  
of the United States Department of the Treasury; )  
UNITED STATES DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES; UNITED )  
STATES DEPARTMENT OF LABOR; and )  
UNITED STATES DEPARTMENT OF THE )  
TREASURY, )

Defendants. )

Case No. 2:12-cv-00207-JFC

Electronically Filed

**HEPLER PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Wayne L. Hepler (including his actions through WLH Enterprises), Carrie E. Kolesar, and The Seneca Hardwood Lumber Company, Inc., (hereinafter, collectively, “the Hepler Plaintiffs”) file this Motion for a Preliminary Injunction, seeking an order protecting them from Defendants’ Mandate of abortifacient, contraceptive, sterilization and related education and counseling coverage in their health plan beginning on July 1, 2013. The Hepler Plaintiffs need to arrange and contract for their health plan in May 2013, and therefore need injunctive relief by the beginning of May.

This motion relies primarily on the Court's recent order rejecting the government's arguments against the Hepler Plaintiffs' claims for relief under the Religious Freedom Restoration Act and the Free Exercise Clause of the First Amendment of the United States Constitution. All of these issues are legal in character, and therefore are essentially identical with respect to the Hepler Plaintiffs' entitlement to injunctive relief due to their likelihood of success on the merits of those claims. As this Court knows, 12 other federal courts have issued such injunctive relief. Despite the Court's thorough resolution of these issues, however, the government Defendants have indicated to counsel that they refuse to consent to this motion.

The Court's recent order concluded that the Hepler Plaintiffs are capable of exercising religion with respect to this issue, that the Mandate substantially burdens that religious exercise, that the Mandate is not supported by a compelling interest and therefore fails strict scrutiny, and that it is not neutral or generally applicable. This motion also relies on the short memorandum of law simultaneously filed herein. The government indicated that it does not object to Plaintiffs incorporating by reference their previous briefs, arguments on supplemental authority, and oral argument, on these previously litigated legal issues. It is counsel's understanding that the government will seek to file a responsive brief. Unless the Court finds it necessary, the Hepler Plaintiffs do not request additional oral argument, since these same issues were briefed extensively and argued in this case in previous months. As factual support for this motion, the Hepler Plaintiffs rely on affidavits attached to the memorandum of law in which Mr. Hepler and Mrs. Kolesar affirm under penalty of perjury the truthfulness of the allegations contained in the First Amended Complaint. Finally, this motion relies on the attached Proposed Order, which includes proposed findings of fact and conclusions of law.

Respectfully submitted this 11th day of March, 2013.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel for Defendants.

s/ Matthew S. Bowman

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**[PROPOSED] ORDER**

Upon the motion for preliminary injunction by Plaintiffs Wayne L. Hepler (including his actions through WLH Enterprises) Carrie E. Kolesar, and The Seneca Hardwood Lumber Company, Inc., (hereinafter collectively “the Hepler Plaintiffs”) their memorandum and affidavits in support, all parties’ briefing and oral argument on Defendants’ motion to dismiss, this Court’s March 6, 2013 Memorandum Opinion and Order, and for good cause shown:

**IT IS ORDERED:**

Findings of Fact

1. Wayne L. Hepler and Carrie E. Kolesar are family members who own and operate Plaintiff The Seneca Hardwood Lumber Company, Inc., and Mr. Hepler's sole proprietorship WLH Enterprises, with other members of their family.

2. The Hepler Plaintiffs' affidavit provides factual affirmation of the allegations in their First Amended Complaint. Those factual allegations with respect to the identity of the Hepler Plaintiffs, their religious beliefs, and the operation and character of their business and their health insurance plan, are adopted as facts supporting their request for injunctive relief.

3. The Hepler Plaintiffs have a religious objection, based on their Catholic beliefs, to the Mandate by the government Defendants that their employee insurance plan, which includes many of the Hepler family members themselves, cover all methods approved by the FDA as contraception (including what Plaintiffs view as abortifacients) and sterilization, and related education and counseling. That Mandate is contained in, *inter alia*, 42 U.S.C. § 300gg-13(a)(4), guidelines available at <http://www.hrsa.gov/womensguidelines/>, 77 Fed. Reg. 8725-30 (Feb. 15, 2012), 26 U.S.C. § 4980D, 29 U.S.C. § 1132, and is affected by other provisions of the Patient Protection and Affordable Care Act of 2010 or its implementing regulations.

4. The Hepler Plaintiffs' provision of the Mandated coverage violates their sincerely held Catholic religious beliefs, and will adversely impact them starting in May 2013 when they must arrange and contract for their employee health insurance plan that begins on July 1, 2013.

5. Defendants have voluntarily exempted tens of millions of women from the Mandate through exclusions such as for "grandfathered" plans under PPACA and various kinds

of religious exemptions and accommodations for various entities that do not include the Hepler Plaintiffs.

6. Through other programs, Defendants provide extensive funding and provision of the Mandated items to which the Hepler Plaintiffs object, as do state governments, including free provision of these items for women who cannot afford them.

7. There is no risk of monetary loss to Defendants due to an injunction in this non-commercial context, and a bond would cause financial hardship to the small business and large families of the Hepler Plaintiffs.

8. The Hepler Plaintiffs filed a motion for a preliminary injunction [Doc. # \_\_\_\_ ] seeking to halt the applicability of Defendants' requirements on them and their health plan. Plaintiffs' motion argues that Defendants' requirements violate the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.*, and the Free Exercise Clause of the First Amendment.

#### Legal Conclusions

1. The background, summary of alleged facts, and resolution of legal issues contained in this Court's March 6, 2013 Memorandum Opinion and Order, with respect to the Hepler Plaintiffs and their RFRA and the Free Exercise Clause claims, are adopted with respect to this preliminary injunction order *mutatis mutandis*.

9. The Hepler Plaintiffs exercise religion within the meaning of RFRA and the Free Exercise Clause when they object to the Mandate of abortifacients, contraception, sterilization and related education and counseling in their employee health plan.

10. Defendants' Mandate on the Hepler Plaintiffs substantially burdens the exercise of their religious beliefs.

11. Defendants' Mandate on the Hepler Plaintiffs is not justified by a compelling interest.

12. Defendants have voluntarily left unprohibited massive and varying levels of appreciable damage to their supposedly vital interests behind the Mandate.

13. Defendants' Mandate on Plaintiffs is not the least restrictive means to achieve a compelling government interest.

14. Defendants' Mandate is not religiously neutral or generally applicable, and is subject to but fails strict scrutiny under the Free Exercise Clause of the First Amendment.

15. The Hepler Plaintiffs have shown a high probability of success on the merits of their claims under RFRA and the Free Exercise Clause of the First Amendment.

16. The Hepler Plaintiffs will suffer irreparable harm in the absence of the preliminary injunctive relief specified herein.

17. Preliminary injunctive relief as specified herein will not result in harm to the Defendants.

18. Preliminary injunctive relief as specified herein is in the public interest.

Therefore, **IT IS FURTHER ORDERED** that:

1. The Hepler Plaintiffs' motion for preliminary injunction [Doc. # \_\_\_\_ ] should be and hereby is **GRANTED**;

2. Defendants, their agents, officers, and employees, and their requirements that the Hepler Plaintiffs or their health insurance plan or insurer provide contraception, abortifacients, sterilization, or related education and counseling in the Hepler Plaintiffs employee health plan contrary to their religious objections, are **ENJOINED** from any application or enforcement of

such requirements, including the substantive requirement imposed to this extent in 42 U.S.C. § 300gg-13(a)(4), Pub. L. 111-148, §1563(e)-(f), the application of the penalties found in 26 U.S.C. §§ 4980D and 29 U.S.C. § 1132, and any determination that the requirements are so applicable.

3. A bond in the amount of zero dollars appropriate and is ordered.

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Dated

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The Honorable Joy Flowers Conti  
United States District Judge