

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CYRIL B. KORTE,)
JANE E. KORTE, and)
KORTE & LUITJOHAN)
CONTRACTORS, INC.,)

Plaintiffs,)

vs.)

Case No. 3:12-CV-01072-MJR

UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
KATHLEEN SEBELIUS,)
UNITED STATES DEPARTMENT OF)
THE TREASURY,)
TIMOTHY F. GEITHNER¹,)
UNITED STATES DEPARTMENT OF)
LABOR, and)
HILDA L. SOLIS²,)

Defendants.)

MEMORANDUM AND ORDER

REAGAN, District Judge:

On October 9, 2012, Plaintiffs Cyril B. Korte and Jane E. Korte, equal shareholders who together own a controlling interest in Plaintiff Korte & Luitjohan Contractors, Inc., a secular, for-profit construction business, filed a complaint for declaratory judgment and injunctive relief regarding whether they have to comply with the Preventive Health Services coverage provision in the Women’s Health Amendment (42 U.S.C. § 300gg–13(a)(4) (Mar. 23, 2010)) to the Patient Protection and Affordable Care Act of 2010, (“the ACA”), Pub. L. No. 111–148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Heath Care and Education

¹On February 27, 2013, Jacob J. Lew was confirmed as Secretary of the Treasury, replacing Timothy F. Geithner.

² On July 23, 2013, Thomas E. Perez was sworn in as Secretary of Labor, replacing Hilda L. Solis.

Reconciliation Act, Publ. L. No. 111–152, 124 Stat. 1029 (Mar. 30, 2010). Named as defendants are the three agencies charged with implementing and administering the mandate—the Department of Health and Human Services, the Department of the Treasury, and the Department of Labor—and their respective Secretaries.³

More specifically, Plaintiffs challenge the aspects of the Preventive Health Services coverage provision mandating that employee health benefit plans include coverage, without cost sharing, for “all Food and Drug Administration-approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity” in plan years beginning on or after August 1, 2012. *See* 45 CFR § 147.130(a)(1)(iv).

After the issues were briefed and an evidentiary hearing was conducted, Plaintiff’s motion for a preliminary injunction was denied by Order dated December 14, 2012 (Doc. 54). However, an interlocutory appeal was taken and on November 8, 2013, the Court of Appeals for the Seventh Circuit reversed and remanded the matter, instructing that a preliminary injunction be entered barring enforcement of the contraception mandate. *Korte v. Sebelius*, No. 12-3841 (7th Cir. Nov. 8, 2013). The Seventh Circuit’s mandate was issued December 31, 2013, and received by the Clerk of Court on January 2, 2014 (Doc. 73).

IT IS HEREBY ORDERED that, pursuant to the order of the Court of Appeals for the Seventh Circuit, the Court’s Order dated December 14, 2012, denying Plaintiffs’ motion for preliminary injunction (Doc. 54) is **VACATED**.

³ As already noted, two of the three agency Secretaries have been succeeded in office. Rather than substitute parties at this juncture (while the case is stayed), when the parties move to lift the stay they will be expected to move to substitute parties as necessary.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, successors in office, attorneys, and those acting in active concert or participation with them, are **ENJOINED** and **RESTRAINED** from any effort to apply or enforce, as to Plaintiffs, the requirements imposed under the provisions of 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations at issue in this case (*see* 45 C.F.R. § 147.130; 77 Fed. Reg. 8725), or the penalties related thereto, until further order of the Court.

The December 28, 2012 Order (Doc. 63) granting the parties' joint motion to stay this action in the district court pending resolution of the interlocutory appeal remains in effect. The parties shall promptly notify this Court of any material change in the status of the appellate case. When this action is in a posture to proceed, a new briefing schedule will be entered or other appropriate action will be taken.

IT IS SO ORDERED.

DATED: January 13, 2014

s/ Michael J. Reagan

MICHAEL J. REAGAN
UNITED STATES DISTRICT JUDGE