

No. 13-1092

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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WEINGARTZ SUPPLY COMPANY, and DANIEL WEINGARTZ,  
President of Weingartz Supply Company,

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.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN (No. 2:12-cv-11061) (Hon. Robert H. Cleland)

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**SUPPLEMENTAL BRIEF FOR THE APPELLANTS**

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Pursuant to this Court’s order of October 1, 2013, the government respectfully submits this supplemental brief addressing the effect of this Court’s decision in *Autocam Corp. v. Sebelius*, \_\_\_ F.3d \_\_\_, 2013 WL 5182544 (6th Cir. Sept. 17, 2013), on this appeal. For the reasons discussed below, the *Autocam* decision requires that the preliminary injunction be reversed.<sup>1</sup>

### STATEMENT

Weingartz Supply Company is a for-profit Michigan corporation that sells outdoor power equipment. *See* R.13-3, Page ID #217, ¶ 2 (Weingartz decl.). The corporation has 170 employees, 110 of whom are full-time employees. *See id.* ¶ 4. “Weingartz Supply Company and its subsidiaries are for-profit, secular companies.” R.1, Page ID #13, ¶ 75 (complaint).

Daniel Weingartz is the president and controlling shareholder of Weingartz Supply Company. *See* R.13-3, Page ID #217, ¶¶ 3, 8 (Weingartz decl.). Mr. Weingartz follows the Catholic Church doctrine that all forms of contraception are sinful. *See id.*, Page ID #217 ¶ 7, 218 ¶ 16. The corporation, however, does not hire employees on the basis of their religion, and the employees are not required to share the religious beliefs of Mr. Weingartz.

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<sup>1</sup> On October 15, the *Autocam* plaintiffs filed a petition for a writ of certiorari in the Supreme Court. Petitions are also pending in other cases that present the same issue. *See Sebelius v. Hobby Lobby Stores, Inc.*, No. 13-354 (S. Ct.) (petition filed Sept. 19, 2013); *Conestoga Wood Specialties Corp. v. Sebelius*, No. 13-356 (S. Ct.) (petition filed Sept. 19, 2013).

People employed by Weingartz Supply Company receive health coverage for themselves and their family members through the Weingartz Supply Company group health plan, as part of their compensation packages that include wages and non-wage benefits. In this action, Weingartz Supply Company and Mr. Weingartz contend that, under RFRA, the Weingartz Supply Company group health plan is entitled to an exemption from the federal requirement to cover Food and Drug Administration (“FDA”)-approved contraceptives, as prescribed by a health care provider, for Weingartz Supply Company employees and their family members. Plaintiffs contend that this exemption is required by RFRA because Mr. Weingartz has asserted a religious objection to the plan’s coverage of contraceptives. The district court granted plaintiffs’ motion for a preliminary injunction on the basis of their RFRA claims. R.39, Page ID #564 (opinion); R.42, Page ID #577 (order).<sup>2</sup>

## **ARGUMENT**

1. 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): whether RFRA allows a for-profit, secular corporation to deny its employees the health coverage of contraceptives to which they are entitled by

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<sup>2</sup> Plaintiffs also alleged claims under the First Amendment, but the district court did not rely on those claims in issuing the preliminary injunction. The district court denied a preliminary injunction with respect to the non-profit organization Legatus, which voluntarily dismissed its cross-appeal (No. 13-1093) by order dated August 14, 2013.

federal law, based on a religious objection asserted by the corporation's controlling shareholders. In *Autocam*, this Court rejected RFRA claims that are materially indistinguishable from the claims that plaintiffs assert here. The *Autocam* decision is controlling circuit precedent that requires the Court to reverse the preliminary injunction in this case.<sup>3</sup>

The *Autocam* plaintiffs are two affiliated for-profit corporations engaged in high-volume manufacturing for the automotive and medical industries, and the controlling shareholders of those closely held corporations. *See id.* at \*1. The controlling shareholders are five family members collectively referred to as the Kennedys. The Kennedys follow the Catholic Church doctrine that all forms of contraception are sinful. *See id.* at \*1, \*2.

The plaintiffs in *Autocam* claimed that, under RFRA, the corporations' group health plan must be exempted from the federal requirement to cover FDA-approved contraceptives, as prescribed by a health care provider, for Autocam employees and their family members. *See id.* at \*2. The plaintiffs argued that

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<sup>3</sup> The same issue is also pending before this Court in three other cases: *Eden Foods, Inc. v. Sebelius*, No. 13-1677 (6th Cir.); *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.). Plaintiffs' counsel here also represents the plaintiffs in these other cases. In *Eden Foods*, this Court canceled the oral argument that was scheduled for October 2 and ordered the parties to file supplemental briefs addressing the precedential impact of the *Autocam* decision. Those supplemental briefs were filed on September 23.

such an exemption is required by RFRA because the Kennedys asserted a religious objection to the plan's coverage of contraceptives. *See ibid.*

This Court rejected the RFRA claims. In a unanimous decision, this Court held that corporations primarily organized for secular, profit-seeking purposes are not "persons" capable of "religious exercise" in the sense that RFRA intended. *See id.* at \*7-9. This 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 and to treat the corporate regulation as if it were the regulation of the Kennedys as individuals. This Court emphasized 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 claims in this case. "Weingartz Supply Company and its subsidiaries are for-profit, secular companies" that sell outdoor power equipment. R.1, Page ID #13, ¶ 75 (complaint); R.13-3, Page ID #217, ¶ 2 (Weingartz decl.). Accordingly, under the holding of *Autocam*, Weingartz Supply Company is not a "person" engaged in "religious exercise"

within the meaning of RFRA. Likewise, under the holding of *Autocam*, Mr. Weingartz lacks standing to challenge the contraceptive-coverage requirement because the obligation to provide contraceptive coverage lies with the corporation, not with Mr. Weingartz in his individual capacity. Thus, the *Autocam* decision requires that his claim be dismissed.

It is irrelevant that Weingartz Supply Company 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. The *Cedric Kushner* decision "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 this individual 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.

2. As noted above (p.3, n.3, *supra*), plaintiffs' counsel here also represents the plaintiffs in three other pending cases that present the same RFRA claims that were rejected in *Autocam*. In all of these cases, plaintiffs have asserted that there are "*important factual differences* that appropriately would have implications on the panel's legal analysis." Weingartz Plaintiffs' Response To Government's Motion To Vacate And Summarily Reverse The Lower Court, at 2 (filed Sept. 27,



2013) (plaintiffs' emphasis).<sup>4</sup> Plaintiffs have failed to identify any relevant factual distinctions between *Autocam* and the other pending cases, however.

For example, plaintiffs assert that, "unlike the plaintiffs in *Autocam*, the Weingartz's employee health benefits plan is self-insured." *Ibid.* But, as this Court's *Autocam* decision explained, the *Autocam* plan is also self-insured. *See Autocam*, \_\_\_ F.3d \_\_\_, 2013 WL 5182544, \*1 ("Autocam is self-insured") (quotation marks omitted). More fundamentally, the *Autocam* Court's reasoning applies regardless of whether a corporation has made the economic decision to self-insure rather than to obtain third-party insurance.

Plaintiffs also have argued that *Autocam* was wrongly decided and should not be followed here. *See Weingartz Plaintiffs' Response To Government's Motion To Vacate And Summarily Reverse The Lower Court*, at 5-6. The *Autocam* decision is binding circuit precedent, however, that controls the disposition of this appeal. *See Sixth Circuit Rule 32.1(b)*.

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<sup>4</sup> *See also* No. 13-1677, *Eden Foods Plaintiffs' Response To Government's Motion To Vacate Oral Argument And Summarily Affirm Lower Court*, at 2 (filed Sept. 19, 2013); No. 13-1654, *Domino's Farms Plaintiffs' Response To Government's Motion To Summarily Reverse District Court*, at 2 (filed Sept. 27, 2013); No. 13-1944, *Mersino Management Plaintiffs' Response To Government's Motion To Summarily Affirm Lower Court*, at 2 (filed Sept. 27, 2013).

## 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. Weingartz's claim should be dismissed for lack of standing.

Respectfully submitted,

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OCTOBER 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.

/s/ Alisa B. Klein  
Alisa B. Klein

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 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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