IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE ROMAN CATHOLIC ARCHDIOCESE OF ATLANTA, *et al.*,

***Plaintiffs*,**

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services, *et al.*,

Defendants.

CIVIL ACTION NO.: 1:12-CV-3489-WSD

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

Unless otherwise noted, all emphases herein have been added by Plaintiffs; in addition, Plaintiffs generally have omitted parenthetical notations such as "citing" or "quoting" in order to preserve readability.

INTRODUCTION

In their Brief in Opposition to Defendants' Motion to Dismiss Or, in the Alternative, for Summary Judgment, and in Support of Plaintiffs' Cross-Motion for Summary Judgment ("Plaintiffs' SJ Brief"), Plaintiffs explain why they are entitled to summary judgment on, inter alia, their claims (1) that the Mandate violates RFRA; (2) that the Mandate violates the Free Exercise Clause; (3) that the Mandate compels speech in violation of the Free Speech Clause; (4) that the Mandate imposes a gag order in violation of the First Amendment; and (5) that the Mandate interferes with Plaintiffs' internal church governance, in violation of the First Amendment. *See id.* at 4-47, 49-51. For those same reasons and for the reasons stated in the Memorandum of Law in Support of their Motion for a Preliminary Injunction ("PI Brief"), D.E. 57-1 at 21-46, Plaintiffs are likely to succeed on the merits of their claims, and the Court should reject the Government's arguments to the contrary.[1] For the reasons stated below, the Court should reject the Government's arguments regarding the remainder of the preliminary injunction factors, too.

[1] Plaintiffs hereby incorporate by reference the relevant portions of their SJ Brief pursuant to this Court's order of October 8, 2013.

ARGUMENT

I. PLAINTIFFS ARE SUFFERING A CONTINUING, IRREPARABLE VIOLATION OF THEIR RELIGIOUS FREEDOMS

Because Plaintiffs have a strong likelihood of success on the merits, they are entitled to a preliminary injunction even if their injuries are relatively weak. *See Siff v. State Democratic Exec. Comm.*, 500 F.2d 1307, 1309 (5th Cir. 1974) ("[A] sliding scale must be applied in considering the probability of plaintiffs' winning on the merits and plaintiffs' irreparable injury[.]").[2] Far from imposing only a slight injury, however, the Mandate causes Plaintiffs substantial, irreparable harm because, as the Government acknowledges, "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." D.E. 63 at 54; PI Brief at 38-40. Moreover, the Government does not affirmatively dispute the common-sense conclusion that a violation of the right to exercise religion also constitutes irreparable injury under RFRA. *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp. 2d 106, 129 (D.D.C. 2012). Accordingly, "[t]his factor strongly favors entry of injunctive relief." *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1295 (D. Colo. 2012).

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions made by the former Fifth Circuit prior to the close of business on September 30, 1981.

In response, the Government argues only that here, "the merits and irreparable injury prongs of the preliminary injunction analysis merge together." D.E. 63 at 54. As Plaintiffs have shown a likelihood of success on the merits, they likewise have established irreparable harm. *See* PI Br. at 21-46; Plaintiffs' SJ Br. at 4-47, 49-51. Moreover, the Government simply ignores that the Mandate has immediate effects on Plaintiffs' operations. *See* PI Brief at 39-40. Given those immediate effects—not to mention the religious-liberty interests discussed above—the irreparable harm factor clearly weighs in favor of injunctive relief.

II. THE BALANCE OF EQUITIES FAVORS AN INJUNCTION

As for the balance of equities, the Government argues only that "there is inherent harm to an agency in preventing it from enforcing regulations that Congress found it in the public interest to direct that agency to develop and enforce." D.E. 63 at 54. But the Government has no legitimate interest in enforcing an invalid regulation. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006); *Johnson v. Miller*, 929 F. Supp. 1529, 1560 (S.D. Ga. 1996). Moreover, any harm to the Government's purported goals of improving women's health and gender equality "pales in comparison" to the harms to Plaintiffs' religious freedom that will continue absent preliminary relief. *Newland*, 881 F.Supp.2d at 1295. After all, the Government has not shown that its interest in promoting health and gender

equality through enforcement of the Mandate against Plaintiffs is compelling, nor that the Mandate in fact furthers those interests. *See Tyndale*, 904 F.Supp.2d at 129-30; *Beckwith Elec. Co. v. Sebelius*, -- F.Supp.2d --, 2013 WL 3297498, at *18 (M.D. Fla. 2013); *Monaghan v. Sebelius*, 916 F. Supp. 2d 802, 812 (E.D. Mich. 2012); Plaintiffs' SJ Br. at 19-31. And, an injunction would operate only to preserve the status quo during the pendency of this case, and under that status quo contraception will be freely available both to those who can afford it and also at "community health centers, public clinics, and hospitals."[3]

III. THE PUBLIC INTEREST FAVORS AN INJUNCTION

Preliminary relief also serves the public interest. "[I]t is never in the public interest to enforce unconstitutional laws." *Beckwith Elec.*, 2013 WL 3297498, at *19. The same goes for regulations that burden religious exercise in violation of RFRA. *O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 1010 (10th Cir. 2004) (op. of Seymour, J.); *see also* PI Br. at 41. Nevertheless, the Government claims that the public interest is served by enforcement of the Mandate because of the Government's interest in making the objectionable products and services available to Plaintiffs' employees and their families. *See* D.E. 63 at 55-56.

[3] Statement by U.S. Dep't of Health & Human Servs. Kathleen Sebelius (Jan. 20, 2012) (SJ Supporting Excerpts at Tab 59). Perhaps that fact explains why the Government has consented to injunctions in similar cases. PI Br. at 48-49.

But even putting aside the Mandate's legal invalidity, those interests are "outweighed by the harm to [Plaintiffs'] substantial religious-liberty interests . . . ." *Korte v. Sebelius*, -- Fed. Appx. --, 2012 WL 6757353 (7th Cir. 2012). Because the Mandate already exempts many plans, *Tyndale*, 904 F.Supp.2d at 129; Plaintiffs' SJ Br. at 22-26, the Government cannot seriously contend that maintaining the status quo (by temporarily exempting Plaintiffs' plans) would result in significant public harm.[4]

CONCLUSION

For the forgoing reasons, the Court should grant Plaintiffs' request for a preliminary injunction.

[4] Moreover, the public, including Plaintiffs' employees, have a direct interest in the injunctive relief, as, without such relief, Plaintiffs could be subject to crippling fines. Those fines might force Plaintiffs to reduce the services they provide, or the number of people that they employ to provide those services. Second Declaration of Jo Ann Green, dated October 17, 2013 (filed contemporaneously herewith) ¶¶ 18-19. That result is inequitable and contrary to the public interest. *Cf. Feed the Children, Inc. v. Metro. Gov't of Nashville & Davidson Cnty*, 330 F. Supp. 2d 935, 948 (M.D. Tenn. 2002).

Respectfully submitted, this 21st day of October, 2013.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1D

I hereby certify that the foregoing *Plaintiffs' Reply In Support of Their Motion for Preliminary Injunction* uses Times New Roman 14 point font, as approved by the Northern District of Georgia in Local Rule 5.1B.

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

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