IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ROMAN CATHOLIC DIOCESE OF FORT WORTH, *et al.*, Plaintiffs, v. KATHLEEN SEBELIUS, in her official capacity as Secretary, United States Department of Health and Human Services, *et al.*, Defendants.	Case No. 4:12-cv-314-Y

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Roman Catholic Diocese of Fort Worth, Our Lady of Victory Catholic School, and Catholic Charities, Diocese of Fort Worth, Inc. seek to enjoin regulations that are intended to accommodate religious exercise while helping to ensure that women have access to health coverage, without cost-sharing, for preventive services that medical experts deem necessary for women's health and well-being. To obtain a preliminary injunction, a plaintiff must make "a clear showing" that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 22 (2008). For the reasons set forth in defendants' previous filings in this case, and for the additional reasons explained below, plaintiffs have not satisfied any of the requirements for obtaining preliminary injunctive relief.[1]

[1] Defendants recognize that this Court has already granted a preliminary injunction against enforcement of the accommodations as they apply to another plaintiff in this case, the University of Dallas. *See* Order Granting

First, plaintiffs have not shown that they are likely to succeed on the merits of any of their claims. Defendants have already fully addressed the merits of these claims in defendants' briefing on the previously filed dispositive motion and in other filings defendants have submitted to the Court. *See* Mem. in Supp. of Defs.' Mot. to Dismiss or, in the Alternative, for Summ. J. and in Opp'n to Pls.' Mots. for Prelim. Inj. and Summ. J., ECF No. 76 (Nov. 5, 2013); Defs.' Reply in Supp. of Defs.' Mot. to Dismiss or, in the Alternative, for Summ. J., ECF No. 89 (Dec. 11, 2013); Defs.' Notice of Supplemental Auth., ECF No. 93 (Dec. 22, 2013). Instead of repeating those arguments here, defendants incorporate them by reference and respectfully refer the Court to the filings cited above, which demonstrate that plaintiffs are not likely to succeed on the merits of their claims.

Second, plaintiffs have not established that they are likely to suffer irreparable harm in the absence of preliminary relief because, as explained above and in defendants' previous filings, plaintiffs have not shown a likelihood of success on the merits of their claims. *See Hobby Lobby v. Sebelius*, 723 F.3d 1114, 1146 (10th Cir. 2013) (en banc) (explaining that, in the RFRA and First Amendment context, the merits and irreparable injury prongs of the preliminary injunction analysis merge together, and plaintiff cannot show irreparable injury without also showing a likelihood of success on the merits).

As to the final two preliminary injunction elements—the balance of equities and the public interest—"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." *Cornish v. Dudas*, 540 F. Supp. 2d 61, 65 (D.D.C. 2008); *see also Connection Distrib. Co. v. Reno*, 154 F.3d 281, 296 (6th Cir. 1998) (indicating that granting an injunction against the

---

Preliminary Injunction, ECF No. 99. Defendants respectfully submit that the Court erred in granting the University of Dallas injunctive relief for the reasons set forth in defendants' prior briefing.

enforcement of a likely constitutional statute would harm the government). Enjoining the preventive services coverage regulations as to plaintiffs would undermine the government's ability to achieve Congress's goals of improving the health of women and newborn children and equalizing the coverage of preventive services for women and men. *See* INST. OF MED., CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS 19-20, 102-04 (2011) ("IOM REP."), AR at 317-18, 400-02; 78 Fed. Reg. 39,870, 39,872, 39,887 (July 2, 2013), AR at 4, 19; 155 Cong. Rec. S12106-02, S12114 (daily ed. Dec. 2, 2009); 155 Cong. Rec. S12265-02, S12274 (daily ed. Dec. 3, 2009).

It would also be contrary to the public interest to deny plaintiffs' employees (and their families) the benefits of the preventive services coverage regulations. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-13 (1982) ("[C]ourts . . . should pay particular regard for the public consequences in employing the extraordinary remedy of injunction."). Those employees (and their covered family members) should not be deprived of the benefits of payments provided by a third party that is not their employer for the full range of FDA-approved contraceptive services, as prescribed by a health care provider, on the basis of their employer's religious objection. Prior to the implementation of the preventive services coverage provision, many women did not use contraceptive services because they were not covered by their health plan or required costly copayments, coinsurance, or deductibles. IOM REP. at 19-20, 109, AR at 317-18, 407; 77 Fed. Reg. 8725, 8727 (Feb. 15, 2012), AR at 214; 78 Fed. Reg. at 39,887, AR at 19. As a result, in many cases, both women and developing fetuses suffered negative health consequences. *See* IOM REP. at 20, 102-04, AR at 318, 400-02; 77 Fed. Reg. at 8728, AR at 215. And women were put at a competitive disadvantage due to their lost productivity and the

disproportionate financial burden they bore in regard to preventive health services. 155 Cong. Rec. S12106-02, S12114 (daily ed. Dec. 2, 2009); *see also* IOM REP. at 20, AR at 318.

Enjoining defendants from enforcing, as to plaintiffs, the preventive services coverage regulations—the purpose of which is to eliminate these burdens, 75 Fed. Reg. 41, 726, 41,733 (July 19, 2010), AR at 233; *see also* 77 Fed. Reg. at 8728, AR at 215—would thus inflict a very real harm on the public and, in particular, a readily identifiable group of individuals. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (vacating preliminary injunction entered by district court and noting that "[t]here is a general public interest in ensuring that all citizens have timely access to lawfully prescribed medications"). Plaintiffs' employee health plans cover over 1200 individuals (as well as their covered family members). *See* Pls.' Am. Compl. ¶¶ 46, 57, 65, ECF No. 64. Accordingly, even assuming plaintiffs were likely to succeed on the merits (which they are not for the reasons already explained), plaintiffs' displeasure with a third party providing payment for contraceptive services—at no cost to, and with no administration by, plaintiffs—is outweighed by the significant harm an injunction would cause plaintiffs' employees (and their families) by depriving them of payments for important medical services.

For these reasons, plaintiffs' request for a preliminary injunction should be denied.

Respectfully submitted this 2nd day of May, 2014,

STUART F. DELERY
Assistant Attorney General

SARAH R. SALDANA
United States Attorney

JENNIFER RICKETTS
Director

SHEILA M. LIEBER
Deputy Director

/s/ Bradley P. Humphreys
BRADLEY P. HUMPHREYS (VA Bar No. 83212)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue N.W., Room 7108
Washington, D.C. 20530
Tel: (202) 514-3367
Fax: (202) 616-8470
Email: Bradley.P.Humphreys@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Bradley P. Humphreys
BRADLEY P. HUMPHREYS