

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**
Judge John L. Kane

Civil Action No. 1:12-cv-1123

WILLIAM NEWLAND,
PAUL NEWLAND,
JAMES NEWLAND,
CHRISTINE KETTERHAGEN,
ANDREW NEWLAND, and
HERCULES INDUSTRIES, INC.

Plaintiffs,

v.

SYLVIA M. BURWELL, in her official capacity as
Secretary of the United States Department of Health and Human Services;
THOMAS E. PEREZ, in his official capacity as
Secretary of the United States Department of Labor;
JACOB LEW, 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.

PERMANENT INJUNCTION

Kane, J.

The Tenth Circuit Court of Appeals affirmed my decision granting Plaintiffs a preliminary injunction barring enforcement of an HHS regulation requiring employer-provided group health plans to cover certain contraceptive drugs and services. Order and Judgment (Doc. 58). The parties agree that a permanent injunction should be entered in favor of Plaintiffs on their RFRA claim, but they disagree as to its scope.

Based on the inherent jurisdictional authority of this court and upon consideration of my July 27, 2012, Order granting Plaintiff's Motion for Preliminary Junction (Doc. 30), the rulings of the Tenth Circuit and the Supreme Court, the parties' reliance on the same factual record in existence on July 27, 2012, the parties' Joint Status Report (Doc. 69), the attached Memorandum Opinion, and the entirety of the pleadings and arguments offered in this case, and for good cause shown,

IT IS ORDERED that judgment is entered in favor of Plaintiffs and against Defendants on Plaintiffs' claim under the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb et seq.

IT IS FURTHER ORDERED that Defendants, their employees, agents, and successors in office are permanently ENJOINED from, directly or indirectly, (1) enforcing against Hercules Industries, Inc. ("Hercules") any regulation promulgated or amended pursuant to 42 U.S.C. §§ 300gg-13(a)(4), or otherwise, requiring Hercules to provide health insurance coverage for abortifacients, contraception, sterilization, and related education and counseling to its employees; (2) from applying any penalties, fines, or assessments for noncompliance with any regulation promulgated or amended pursuant to 42 U.S.C. §§ 300gg-13(a)(4), or otherwise, requiring Hercules to provide health insurance coverage for abortifacients, contraception, sterilization and related education and counseling to its employees, including those found in 26 U.S.C. § 4980D and 29 U.S.C. §§ 1132 and 1185d; and (3) from taking any other actions based on noncompliance with any regulation promulgated or amended pursuant to 42 U.S.C. §§ 300gg-13(a)(4), or otherwise, requiring Hercules to provide health insurance coverage for abortifacients, contraception, sterilization and related education and counseling to its employees;

IT IS FURTHER ORDERED that in the event Defendants seek relief or modification of this Permanent Injunction, Defendants must first move this Court to modify or dissolve this

injunction by showing that a significant change either in factual conditions or in law renders continued enforcement of the injunction detrimental to the public interest; and

IT IS FURTHER ORDERED that any petition by Plaintiffs for attorney fees or costs shall be submitted on or before 45 days (or the next business day if that day falls on a weekend or a court holiday) from the date this judgment is issued.

Dated: March 16, 2015

BY THE COURT:

s/ John L. Kane
Senior U.S. District Court Judge

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UNITED STATES DEPARTMENT OF LABOR; and
UNITED STATES DEPARTMENT OF THE TREASURY;

Defendants.

MEMORANDUM OPINION

Kane, J.

William Newland, Paul Newland, James Newland, Christine Ketterhagen, and Andrew Newland (the “Newlands”) and Hercules Industries, Inc., their closely-held family corporation (collectively the “Plaintiffs”), filed this suit seeking relief from the Defendants’ actions in implementing the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (March 23, 2010) and Pub. L. No. 111-152 (March 30, 2010) (“ACA”). Specifically, the

Plaintiffs objected to the regulations enforcing a portion of the statutory Preventive Services Mandate, 42 U.S.C. §§ 300gg-13(a)(4), which would have required them to pay for or otherwise facilitate insurance coverage for abortifacient drugs, contraception, sterilization, and related education and counseling. *See* 26 C.F.R. § 54.9815-2713(a)(1)(iv); 29 C.F.R. § 2590.715-2713(a)(1)(iv); 45 C.F.R. § 147.130(a)(iv) (collectively, along with the HRSA guidelines requiring no-cost sharing coverage of FDA-approved contraception methods and the statutory penalties for non-compliance, the “Contraception Mandate”).

On July 27, 2012, I ordered a preliminary injunction temporarily prohibiting Defendants from enforcing the Preventive Services Mandate against Plaintiffs, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4), the application of the penalties found in 26 U.S.C. §§ 4980D & 4980H and 29 U.S.C. § 1132, and any determination that the requirements were applicable to Plaintiffs. Preliminary Injunction Order (Doc. 30) at 17-18.

Defendants appealed the entry of the preliminary injunction to the Tenth Circuit, which affirmed my decision. Relying on its en banc decision in *Hobby Lobby Stores, Inc. v. Sebelius*, the court found that Hercules was likely to succeed on the merits of its RFRA claim. Order and Judgment (Doc. 58) at 6-7. The Tenth Circuit also found that my determinations that Hercules would suffer irreparable harm, that the balance of harms tipped in favor of Hercules, and that the public interest supported the preliminary injunction were not an abuse of discretion. *Id.* at 7-9. The Tenth Circuit remanded the case with instructions to abate further proceedings pending the

Supreme Court's resolution of *Burwell v. Hobby Lobby Stores, Inc.*, another challenge to the Contraception Mandate.¹ *Id.* at 9-10.

On June 30, 2014, the Supreme Court issued its decision in *Hobby Lobby*, concluding that the Contraceptive Mandate, as applied to closely held corporations, violates the Religious Freedom Restoration Act ("RFRA"). Accordingly, I reinitiated proceedings to resolve Plaintiffs' challenge to the Contraceptive Mandate.

On remand, the parties agree that a permanent injunction should be entered in favor of Plaintiffs on their RFRA claim, but they disagree as to the precise nature of that judgment. Specifically, the parties dispute the scope of the permanent injunction to which Plaintiffs are entitled.

Plaintiffs suggest that I should simply convert the preliminary injunction into a permanent injunction. Defendants contend that the language of the preliminary injunction is unnecessarily broad and should be more closely tethered to the holding in the Supreme Court's *Hobby Lobby* decision. Although the permanent injunction order accompanying this memorandum resolves these issues, I write separately to address more thoroughly the parties' disputes and the basis for the permanent injunction entered.

I begin with a brief discussion of the law of injunctions before summarizing the pertinent portions of the Tenth Circuit's and the Supreme Court's *Hobby Lobby* decisions. I then summarize the parties' specific disagreements regarding the permanent injunction and resolve each point of contention *seriatim*.

¹ After the Tenth Circuit issued its decision in *Hobby Lobby Stores, Inc. v. Sebelius*, Sylvia Burwell replaced Kathleen Sebelius as the Secretary of Health and Human Services, and she was substituted as the Petitioner on appeal to the Supreme Court.

LEGAL BACKGROUND

Law of Injunctions

It is well established that an injunction is a form of equitable relief. *See Signature Prop. Int'l Ltd. P'ship v. City of Edmond*, 310 F.3d 1258, 1268 (10th Cir. 2002) (citing *Roe v. Cheyenne Mountain Conference Resort, Inc.*, 124 F.3d 1221, 1231 (10th Cir.1997)). Consequently, my discretion in formulating an injunction is informed by equitable principles. *ClearOne Commc'ns, Inc. v. Bowers*, 643 F.3d 735, 752 (10th Cir. 2011) (citing *Garrison v. Baker Hughes Oilfield Operations, Inc.*, 287 F.3d 955, 962 (10th Cir.2002)). My authority to provide injunctive relief survives the discontinuance of the illegal conduct giving rise to the need for an injunction, *F.T.C. v. Accusearch Inc.*, 570 F.3d 1187, 1201 (10th Cir. 2009) (citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)). Furthermore, the prevailing party “has a right to expect that prospective relief will be maintained unless the injunction is vacated or modified by the court.” *Dowell by Dowell v. Bd. of Educ. of Okla. City Pub. Sch., Indep. Dist. No. 89*, 795 F.2d 1516, 1521 (10th Cir. 1986) (citations omitted).

Discretion is not, however, without limits. The injunction “must be narrowly tailored to remedy the harm shown.” *ClearOne Commc'ns, Inc.*, 643 F.3d at 752. The order entering the injunction must state the reasons why the injunction is issued, specifically state the terms of the injunction, and describe in reasonable detail the act or acts restrained or required. Fed. R. Civ. P. 65(d). Furthermore, where an injunction implicates an act of Congress, I cannot “ignore the judgment of Congress, deliberately expressed in legislation.” *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001). Even where I have cause to issue an injunction regarding a congressional act, Congress is free to change the terms of the underlying substantive law, and “it is those amended laws—not the terms of past injunctions—that must be given

prospective legal effect.” *Biodiversity Assoc. v. Cables*, 357 F.3d 1152, 1165 (10th Cir. 2004).

The same is not true with respect to changes in administrative regulations, which are evaluated in the exercise of discretion.

Finally, an injunction “must be obeyed until it is reversed, even if it is erroneously issued, and in some instances even if the court that issued the injunction lacked jurisdiction of the subject matter.” Dan B. Dobbs, *Law of Remedies: Damages – Equity – Restitution* 105 (2007). Nevertheless, a party may seek to modify or dissolve an injunction in the court where the injunction was entered if “a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest.” *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quotation omitted). In such an event, “the party seeking relief bears the burden of establishing that changed circumstances warrant relief.” *Id.* A district court will modify or dissolve an injunction on the basis of a change in underlying statutes, but it is the court, not the parties, that is charged with the authority to do so. *See Miller v. French*, 530 U.S. 327, 341-42 (2000). The authority to modify or dissolve an injunction is one of the pivotal reasons why courts retain jurisdiction over such equitable proceedings.

With these principles in mind, I turn to the pertinent portions of the Tenth Circuit’s and the Supreme Court’s *Hobby Lobby* decisions.

Hobby Lobby

The owners of Hobby Lobby Stores, Inc. and Mardel, Inc. filed suit challenging the regulations imposing the Contraceptive Mandate under RFRA, the Free Exercise Clause of the First Amendment, and the Administrative Procedure Act. Like Hercules, both Hobby Lobby and Mardel are closely-held corporations whose owners run them according to Christian principles. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1120 (10th Cir. 2013). Like the Newlands,

the Greens (the owners of Hobby Lobby and Mardel) objected to the Contraceptive Mandate because it violated their religious beliefs. *Id.* at 1120-21. After the district court denied their motion for a preliminary injunction, Hobby Lobby, Mardel, and the Greens appealed to the Tenth Circuit. *Id.* at 1125. They sought, and were granted, initial en banc consideration of their appeal. *Id.*

The Tenth Circuit overturned the district court's decision, finding that Hobby Lobby and Mardel had established a strong likelihood of success on the merits of their RFRA claim.² *Id.* at 1121. As an initial matter, the Tenth Circuit concluded that the corporations had standing to challenge the Contraceptive Mandate, but it did not reach a decision regarding the owners' individual standing to challenge the Mandate. *Id.* at 1126.

Turning to the merits of Hobby Lobby's and Mardel's RFRA claim, the Tenth Circuit concluded that a closely-held corporation can exercise religion, within the scope of RFRA, *Id.* at 1132. The Tenth Circuit then concluded that the Contraceptive Mandate substantially burdens a corporation's exercise of religion where the corporation is closely-held, the corporation's owners unanimously share religious beliefs by which they govern the corporation, and the Contraceptive Mandate is contrary to the owners' sincerely held religious beliefs. *Id.* at 1138-43.

Having determined that Hobby Lobby and Mardel met their burden of establishing a substantial burden, the Tenth Circuit next considered whether the government had met its burden of showing that the Contraceptive Mandate serves a compelling government interest and that the challenged regulation constitutes the least restrictive means of serving that interest. As a threshold matter, the Tenth Circuit held that the Contraceptive Mandate did not serve a

² The Tenth Circuit declined to reach the Plaintiffs' First Amendment claim. *Hobby Lobby*, 723 F.3d at 1121 n. 2.

compelling government interest, because the government's asserted interest in enforcing the Contraceptive Mandate against Hobby Lobby and Mardel was too broadly formulated. *Id.* at 1143. The court also held that the existence of numerous exemptions from the Contraceptive Mandate undermined the government's argument that it had a compelling interest in enforcing the Contraceptive Mandate against Hobby Lobby. *Id.* at 1143-44. Furthermore, the Tenth Circuit held that, even if there was a compelling interest, the Contraceptive Mandate was not the least restrictive means of serving that interest. *Id.* at 1144. Accordingly, the Tenth Circuit remanded the case to the district court for further consideration of the remaining preliminary injunction factors.

The Supreme Court upheld the Tenth Circuit's en banc decision, holding that the regulations imposing the Contraceptive Mandate, as applied to closely-held corporations with sincerely held religious beliefs contrary to the Mandate's requirements, violated RFRA. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014). The basis for the Supreme Court's decision was not, however, identical to that of the Tenth Circuit.

Similar to the Tenth Circuit, the Supreme Court held that a closely-held corporation can exercise religion under RFRA, *id.* at 2775, and that the Contraceptive Mandate violated Hobby Lobby's sincerely-held religious beliefs. *Id.* at 2779. Unlike the Tenth Circuit, the Supreme Court did not determine whether the Contraceptive Mandate furthered a compelling governmental interest. *Id.* at 2780. Instead, the Supreme Court assumed the Mandate advanced a compelling interest, but it held that the Mandate was not the least restrictive means of furthering that interest. *Id.* In making this finding, the Court relied heavily on the existing accommodation for non-profit organizations with religious objections, finding that such an accommodation "does not impinge on [Hobby Lobby's] religious belief that providing insurance

coverage for the contraceptives at issue here violates [its] religion, and it serves HHS's state interests equally well." *Id.* at 2782.

With these principles in mind, I turn to this case and the parties' arguments regarding the scope of and the authority for the injunction.

DISCUSSION

Defendants raise three primary objections to Plaintiffs' proposed permanent injunction. First, they argue that because the Supreme Court's *Hobby Lobby* decision was limited to the application of the 2013 contraceptive mandate regulations to closely-held corporations, the injunction should only preclude the government from enforcing the 2013 contraceptive mandate regulations against Hercules Industries, Inc. In other words, Defendants suggest that the government should be able to revise its Contraceptive Mandate regulations and impose them on all of the Plaintiffs without violating the terms of the permanent injunction. Second, Defendants argue that because the *Hobby Lobby* decision was limited to the rights of the closely-held corporation and not the rights of the closely-held corporation's ownership, the injunction should be limited to Hercules. Finally, Defendants argue that the injunction should be premised on the Supreme Court's decision in *Hobby Lobby* and Defendants' consent.

I discuss each issue *seriatim*.

1. *Scope of the Injunction*

The parties misapprehend the appropriate scope of a permanent injunction. Plaintiffs contend Defendants should be permanently enjoined from enforcing the Contraceptive Mandate against them, without making any specific allowance for the possibility that the government could re-formulate the Contraceptive Mandate in compliance with the Supreme Court's decision in *Hobby Lobby*. Defendants argue that the injunction should be limited to the Contraceptive

Mandate as it was struck down by the Supreme Court in *Hobby Lobby*, effectively allowing the government to unilaterally circumvent the permanent injunction without first seeking an order modifying or dissolving the injunction. These arguments fail to recognize the binding decisions of the Tenth Circuit and Supreme Court and the fundamental principles of injunctive relief.

Plaintiffs' proposed injunction fails to account for the limited nature of the Tenth Circuit's and Supreme Court's *Hobby Lobby* decisions. The Tenth Circuit and the Supreme Court limited their decisions regarding the validity of the Contraceptive Mandate to the regulations enforcing that mandate. Neither court determined that the statute underlying the Mandate violated the RFRA rights of the corporate plaintiffs or, *a fortiori*, the RFRA rights of the individual owners. Moreover, Plaintiffs in this case primarily sought relief from the regulations enforcing the Contraceptive Mandate. They sought relief from the Preventive Services provision of the ACA only "to the extent Defendants have used [the statute] to mandate coverage to which Plaintiffs and other employers have religious objections." Accordingly, the injunction is limited to the Contraceptive Mandate regulations, and does not extend to the statutory Preventive Services Mandate.

Additionally, although the Tenth Circuit based its decision on its determination that the government lacked a compelling interest in enforcing the Contraceptive Mandate, the Supreme Court's decision was based on its determination that the Contraceptive Mandate was not the least restrictive means of accomplishing the government's interest. The Supreme Court assumed without deciding that the Contraceptive Mandate furthered a compelling interest. This distinction is significant. If there were no compelling interest, then regardless of whether the government provided an accommodation for closely-held corporations, the Contraceptive Mandate would still violate RFRA. Because, however, the Supreme Court's decision focused

on the least restrictive means determination, it expressly held that the government could provide accommodations that would bring the Contraception Mandate into compliance with RFRA.

Defendants' proposed injunction fails to account for the fundamental principles of injunctive relief. If the injunction is to fulfill its equitable purpose, it must provide meaningful relief to Plaintiffs. The government's proposed injunction would, in effect, allow the government to unilaterally modify or dissolve the injunction without first demonstrating a change in circumstances justifying such modification or dissolution. That cannot be.

As with any other injunction, the government may seek to modify or dissolve the injunction entered in this case if "a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest." *Horne*, 557 U.S. at 447 (quotation omitted). The government, however, bears the burden of justifying modification or dissolution (i.e., that a regulation enforcing the Contraceptive Mandate does not violate Hercules' RFRA rights).

As the Supreme Court held, the government may revise its Contraceptive Mandate regulations to bring them into compliance with RFRA. It is not, however, the government's right to unilaterally determine that it is entitled to enforce any such regulations against Plaintiffs. The injunction makes clear that it will remain in full force and effect until I order otherwise, and the injunction is neither dissolved nor modified by the unilateral action of either party.

Finally, the issues not decided by the Supreme Court and the Court of Appeals did not vanish. Namely, questions remain concerning, *inter alia*, the individual owners' standing and whether the First Amendment claims of Plaintiffs are enforceable. Should the government seek to dissolve the injunction, Plaintiffs may seek to re-assert these claims as an additional defense to any prospective enforcement of revised regulations enforcing the Contraceptive Mandate.

2. *Parties Bound by and Benefiting from the Injunction*

Both the Tenth Circuit and the Supreme Court declined to determine whether the owners of a closely-held corporation have standing in their own right to assert a RFRA claim. Plaintiffs argue that the injunction should extend to both Hercules and the Newlands, while Defendants argue that the injunction should be limited to Hercules only.

As both parties acknowledge, there is no practical difference at this time in terms of the result: whether or not the injunction applies to the Newlands, the government will be enjoined from violating Hercules' RFRA rights, and the very essence of Hercules' RFRA rights are the rights of the Newlands. Accordingly, and in following the Tenth Circuit and the Supreme Court, the injunction is "limited" to Hercules; the claims of the individual owners remain unresolved.

3. *Authority for the Injunction*

Without justification, Defendants argue that the injunction should be premised on the Supreme Court's *Hobby Lobby* decision and "the defendants' consent." This proposed arrogation of authority offends the very structure of our government, and ignores the exclusive jurisdictional authority of the United States District Court to provide such relief. Notwithstanding Defendants' suggestion to the contrary, the injunction is entered under the jurisdictional authority of the United States District Court and it remains in full force and effect unless and until modified or dissolved by the District Court upon a showing of just cause or by order entered by the Court of Appeals following review.

CONCLUSION

The permanent injunction against Defendants shall issue in favor of Hercules Industries, Inc. The claims of William Newland, Paul Newland, James Newland, Andrew Newland, and Christina Ketterhagen are abated pending further action by the Court.

Dated: March 16, 2015

BY THE COURT:

s/ John L. Kane
Senior U.S. District Court Judge

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UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
UNITED STATES DEPARTMENT OF LABOR;
UNITED STATES DEPARTMENT OF THE TREASURY;

Defendants.

ORDER

Kane, J.

This matter is currently before me on Plaintiffs' Motion for Preliminary Injunction (doc. 5). Based on the forthcoming discussion, Plaintiffs' motion is GRANTED.

BACKGROUND

The Patient Protection and Affordable Care Act

Signed into law on March 23, 2010, the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), instituted a variety of healthcare reforms.

Among its many provisions, it requires most U.S. citizens and legal residents to have health insurance, creates state-based health insurance exchanges, and requires employers with fifty or more full-time employees to offer health insurance.¹ *Id.* The ACA also implemented a series of provisions aimed at insuring minimum levels of health care coverage.² Most relevant to the instant suit, the ACA requires group health plans to provide no-cost coverage for preventive care and screening for women. 42 U.S.C. § 300gg-13(a)(4).³

Unlike some other provisions of the ACA, however, the preventive care coverage mandate does not apply to certain healthcare plans existing on March 23, 2010.⁴ *See* Interim

¹ In a recent decision, the Supreme Court upheld the constitutionality of the so-called individual mandate, but invalidated the portion of the Affordable Care Act threatening loss of existing Medicaid funding if a state declines to expand its Medicaid programs. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, ___ U.S. ___, 133 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012).

² Termed the “Patient’s Bill of Rights” these provisions require health plans to: provide coverage to persons with pre-existing conditions, protect a patient’s choice of doctors, allow adults under the age of twenty-six to maintain coverage under their parent’s health plan, prohibit annual and lifetime limits on most healthcare benefits, and end pre-existing condition exclusions for children under the age of nineteen. *See* Patient’s Bill of Rights *available at* <http://www.healthcare.gov/law/features/rights/bill-of-rights/index.html> (last viewed on July 27, 2012). As discussed *infra* at n.4, not all health plans are required to meet these conditions.

³ The ACA did not, however, specifically delimit the contours of preventive care. Instead, it delegated that responsibility to the Health Resources and Services Administration (“HRSA”). On August 1, 2011, HRSA adopted Required Health Plan Coverage Guidelines that defined the scope of women’s preventive services for purposes of the ACA coverage mandate. *See* HRSA, Women’s Preventive Services: Required Health Plan Coverage Guidelines *available at* <http://www.hrsa.gov/womensguidelines/> (last visited July 27, 2012). The HRSA guidelines include, among other things, “the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.” *Id.*

⁴ Numerous provisions of the ACA apply to grandfathered health plans: the prohibition on pre-existing condition exclusions (group health plans only), the prohibition on excessive waiting periods (both group and individual health plans), the prohibition on lifetime (both) and annual (group only) benefit limits, the prohibition on rescissions (both), and the extension of dependent care coverage (both) to name a few. 75 Fed. Reg. at 34542. For a comprehensive

Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538,34540 (June 17, 2010). This gap in the preventive care coverage mandate is significant. According to government estimates, 191 million Americans belong to plans which may be grandfathered under the ACA. *Id.* at 34550. Although there are many requirements for maintaining grandfathered status, *see* 26 C.F.R. § 54.9815-1251T(g), if those requirements are met a plan may be grandfathered for an indefinite period of time.

In addition to grandfathering under the ACA, the preventive care guidelines exempt certain religious employers from any requirement to cover contraceptive services.⁵ *See* Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46621 (Aug. 3, 2011). The guidelines also contain a temporary enforcement “safe-harbor” for plans sponsored by certain non-profit organizations with religious objections to contraceptive coverage

summary of the applicability of ACA provisions to grandfathered health plans, see Application of the New Health Reform Provisions of Part A of Title XXVII of the PHS Act to Grandfathered Plans, *available at* <http://www.dol.gov/ebsa/pdf/grandfatherregtable.pdf>. (last visited July 26, 2012).

⁵ In order to qualify as a “religious employer” eligible for this exemption, an employer must meet the following criteria:

- (1) The inculcation of religious values is the purpose of the organization.
- (2) The organization primarily employs persons who share the religious tenets of the organization.
- (3) The organization serves primarily persons who share the religious tenets of the organization.
- (4) The organization is a non-profit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

76 Fed. Reg. 46621, 46626 (Aug. 3, 2011); *See* 77 Fed. Reg. 8725 (Feb. 15, 2012).

that do not qualify for the religious employer exemption. *See* Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act 77 Fed. Reg. 8725, 8726-8727 (Feb. 15, 2012). The preventive care guidelines take effect on August 1, 2012.

Hercules Industries, Inc.

Plaintiff Hercules Industries, Inc. is a Colorado s-corp engaged in the manufacture and distribution of heating, ventilation, and air conditioning (“HVAC”) products and equipment. Hercules is owned by siblings William, Paul and James Newland and Christine Ketterhagen, who also comprise the company’s Board of Directors. Additionally, William Newland serves as President of the company and his son, Andrew Newland serves as Vice President.⁶

Although Hercules is a for-profit, secular employer, the Newlands adhere to the Catholic denomination of the Christian faith. According to the Newlands, “they seek to run Hercules in a manner that reflects their sincerely held religious beliefs” Amended Complaint (doc. 19) at ¶ 2. Thus, for the past year and a half the Newlands have implemented within Hercules a program designed to build their corporate culture based on Catholic principles. *Id.* at ¶ 36. Hercules recently made two amendments to its articles of incorporation, which reflect the role of religion in its corporate governance: (1) it added a provision specifying that its primary purposes are to be achieved by “following appropriate religious, ethical or moral standards,” and (2) it added a provision allowing members of its board of directors to prioritize those “religious, ethical or moral standards” at the expense of profitability. *Id.* at ¶ 112. Furthermore, Hercules has donated

⁶ Throughout this opinion, I will refer to William Newland, Paul Newland, James Newland, Christine Ketterhagen, and Andrew Newland as the “Newlands.”

significant amounts of money to Catholic organizations and causes. *Id.* at ¶ 35.

According to Plaintiffs, Hercules maintains a self-insured group plan for its employees “[a]s part of fulfilling their organizational mission and Catholic beliefs and commitments.” *Id.* at ¶¶ 37. Significantly, because the Catholic church condemns the use of contraception, Hercules self-insured plan does not cover abortifacient drugs, contraception, or sterilization. *Id.* at ¶ 41.

Hercules’ health insurance plan is not “grandfathered” under the ACA. Furthermore, notwithstanding the Newlands’ religious beliefs, as a secular, for-profit corporation, Hercules does not qualify as a “religious employer” within the meaning of the preventive care regulations. Nor may it seek refuge in the enforcement “safe harbor.” Accordingly, Hercules will be required to either include no-cost coverage for contraception in its group health plan or face monetary penalties. Faced with a choice between complying with the ACA or complying with their religious beliefs, Plaintiffs filed the instant suit challenging the women’s preventive care coverage mandate as violative of RFRA, the First Amendment, the Fifth Amendment, and the Administrative Procedure Act.

Believing the alleged injury to their constitutional and statutory rights to be imminent, Plaintiffs filed the instant Motion for Preliminary Injunction.

DISCUSSION

A preliminary injunction is an extraordinary remedy; accordingly, the right to relief must be clear and unequivocal. *See, e.g., Flood v. ClearOne Commc’ns, Inc.*, 618 F.3d 1110, 1117 (10th Cir. 2010). To meet this burden, a party seeking a preliminary injunction must show: (1) a likelihood of success on the merits, (2) a threat of irreparable harm, which (3) outweighs any harm to the non-moving party, and that (4) the injunction would not adversely affect the public

interest. *See, e.g., Awad v. Ziriya*, 670 F.3d 1111, 1125 (10th Cir. 2012). Although this inquiry is, on its face, relatively straightforward, there are a variety of exceptions. If the injunction will (1) alter the status quo, (2) mandate action by the defendant, or (3) afford the movant all the relief that it could recover at the conclusion of a full trial on the merits, the movant must meet a heightened burden. *See O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) (en banc), *aff'd and remanded, Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

In determining whether an injunction falls into one of these “disfavored” categories, courts often focus on whether the requested injunctive relief will alter the status quo. The “status quo” is “the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing.” *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001). In making this determination, however, I must look beyond the parties’ legal rights, focusing instead on the reality of the existing status and relationship between the parties. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1260 (10th Cir. 2005). If the requested relief would either preserve or restore the relationship and status existing ante bellum, the injunction does not alter the status quo.

This determination is not, however, necessarily dispositive. An injunction restoring the status quo ante bellum may require action on behalf of the nonmovant. Such an injunction, one which “affirmatively require[s] the nonmovant to act in a particular way,” is mandatory and disfavored. *Id.* at 1261.

Although I follow the Tenth Circuit’s guidance in determining whether Plaintiffs seek to disturb the status quo or require affirmative action by Defendants, I am careful to avoid

uncritical adherence to the “status quo-formula” and the “mandatory/prohibitory formulation.” In making this determination, I must be mindful of “the fundamental purpose of preliminary injunctive relief under our Rules of Civil Procedure, which is ‘to preserve the relative positions of the parties until a trial on the merits can be held.’” *Bray v. QFA Royalties, LLC*, 486 F. Supp. 2d 1237, 1243-44 (D. Colo. 2007) (citing *O Centro*, 389 F.3d at 999-1001 (Seymour, C.J., concurring)).

Before the instigation of this lawsuit, Plaintiffs maintained an employee insurance plan that excluded contraceptive coverage. Although Defendants have passed a regulation requiring Plaintiffs to include such coverage in their coverage for the plan-year beginning on November 1, 2012, that regulation, as it applies to Plaintiffs, has not yet taken effect. Should the requested injunction enter, Defendants will be enjoined from enforcing the preventive care coverage mandate against Plaintiffs pending the outcome of this suit. The status quo will be preserved, and Defendants will not be required to take any affirmative action.

Because Plaintiffs do not seek a “disfavored” injunction, I must consider whether Plaintiffs are entitled to rely on an altered burden of proof. *Cf. O Centro*, 389 F.3d at 976. If the equities tip strongly in their favor, Plaintiffs “may meet the requirement for showing success on the merits by showing that questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.”⁷

⁷ Although some courts in this district have questioned the continued validity of this relaxed likelihood-of-success-on-the-merits standard in light of the Supreme Court’s decision in *Winter v. Natural Resource Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (holding that a plaintiff seeking a preliminary injunction “must establish that he is likely to succeed on the merits”), because the Tenth Circuit has continued to refer to this relaxed standard I assume it still governs the issuance of preliminary injunctions in this circuit. *See RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1209 n.3 (10th Cir. 2009).

Okla. ex rel. Okla. Tax Comm'n v. Int'l Registration Plan, Inc., 455 F.3d 1107, 1113 (10th Cir. 2006).

Accordingly, I begin by considering the equities before turning to Plaintiffs' likelihood of success on the merits.

1. Irreparable Harm

Although it is well-established that the potential violation of Plaintiffs' constitutional and RFRA rights threatens irreparable harm, *see Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001), Plaintiffs must also establish that "the injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (emphasis in original). Imminence does not, however, require immediacy. Plaintiffs need only demonstrate that absent a preliminary injunction, "[they] are likely to suffer irreparable harm before a decision on the merits can be rendered." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (quoting 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948.1, p. 139 (2d ed. 1995)).

Absent injunctive relief, Plaintiffs will be required to provide FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity as part of their employee insurance plan. Per the terms of the preventive care coverage mandate, that coverage must begin on the start date of the first plan year following the effective date of the regulations, November 1, 2012. Defendants argue this harm, three months in the future, is not sufficiently imminent to justify injunctive relief. In light of the extensive planning involved in preparing and providing its employee insurance plan, and

the uncertainty that this matter will be resolved before the coverage effective date, Plaintiffs have adequately established that they will suffer imminent irreparable harm absent injunctive relief. This factor strongly favors entry of injunctive relief.

2. Balancing of Harms

I must next weigh the irreparable harm faced by Plaintiffs against the harm to Defendants should an injunction enter. Should an injunction enter, Defendants will be prevented 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, 61 (D.D.C. 2008).

This harm pales in comparison to the possible infringement upon Plaintiffs’ constitutional and statutory rights. This factor strongly favors entry of injunctive relief.

3. Public Interest

Defendants argue that entry of the requested injunction is contrary to the public interest, because it would “undermine [their] ability to effectuate Congress’s goals of improving the health of women and children and equalizing the coverage of preventive services for women and men so that women who choose to do so can be part of the workforce on an equal playing field with men.” Defendants’ Response (doc. 26) at 73. This asserted interest is, however, undermined by the creation of exemptions for certain religious organizations and employers with grandfathered health insurance plans and a temporary enforcement safe harbor for non-profit organizations.

These interests are countered, and indeed outweighed, by the public interest in the free exercise of religion. As the Tenth Circuit has noted, “there is a strong public interest in the free

exercise of religion even where that interest may conflict with [another statutory scheme].” *O Centro*, 389 F.3d at 1010. Accordingly, the public interest favors entry of an injunction in this case.

On balance, the threatened harm to Plaintiffs, impingement of their right to freely exercise their religious beliefs, and the concomittant public interest in that right strongly favor the entry of injunctive relief. Although the less rigorous standard for preliminary injunctions is not applied when “a preliminary injunction seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme,” *Aid for Women v. Foulston*, 441 F.3d 1101, 1115 (10th Cir. 2006), the government’s creation of numerous exceptions to the preventive care coverage mandate has undermined its alleged public interest.⁸ Accordingly, I find the general rule disfavoring the relaxed standard inapplicable. Plaintiffs need only establish that their challenge presents “questions going to the merits . . . so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.” *Okla. Tax Comm’n*, 455 F.3d at 1113.

4. Likelihood of Success on the Merits

Plaintiffs raise a variety of constitutional and statutory challenges. Because Plaintiffs’ RFRA challenge provides adequate grounds for the requested injunctive relief, I decline to address their challenges under the Free Exercise, Establishment and Freedom of Speech Clauses of the First Amendment. *See, e.g., United States v. Hardeman*, 297 F.3d 1116, 1135-36 (10th Cir. 2002) (en banc).

⁸ *See* discussion *supra* at pp. 2-4 and *infra* at p. 14-15.

Passed in 1993, the Religious Freedom Restoration Act (“RFRA”) sought to “restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened.” 42 U.S.C. § 2000bb(b). Although unconstitutional as applied to the states, *see City of Boerne v. Flores*, 521 U.S. 507 (1997), it remains constitutional as applied to the federal government. *See United States v. Wilgus*, 638 F.3d 1274, 1279 (10th Cir. 2011).

Under RFRA, the government may not “substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.” 42 U.S.C. § 2000bb-1(a). This general prohibition is not, however, without exception. The government may justify a substantial burden on the free exercise of religion if the challenged law: “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.* at § 2000bb-1(b). The initial burden is borne by the party challenging the law. Once that party establishes that the challenged law substantially burdens her free exercise of religion, the burden shifts to the government to justify that burden. The nature of this preliminary injunction proceeding does not alter these burdens. *Gonzales*, 546 U.S. at 429. Thus, I must first consider whether Plaintiffs have demonstrated that the preventive care coverage mandate substantially burdens their free exercise of religion. If so, I must then consider whether the government has demonstrated that the preventive care coverage mandate is the least restrictive means to achieve a compelling interest.

Substantial Burden of Free Exercise

Plaintiffs argue that providing contraception coverage violates their sincerely held

religious beliefs. Although the government does not challenge the sincerity of the Newlands' religious beliefs, it argues that Plaintiffs have failed to demonstrate a substantial burden on their free exercise of religion. This argument relies upon two key premises. First, the government asserts that the burden of providing insurance coverage is borne by Hercules. Second, the government argues that as a for-profit, secular employer, Hercules cannot engage in an exercise of religion. Accordingly, the argument concludes, the preventive care coverage mandate cannot burden Hercules' free exercise of religion.⁹ Plaintiffs counter, arguing that there exists no law forbidding a corporation from operating according to religious principles.

These arguments pose difficult questions of first impression. Can a corporation exercise religion? Should a closely-held subchapter-s corporation owned and operated by a small group of individuals professing adherence to uniform religious beliefs be treated differently than a publicly held corporation owned and operated by a group of stakeholders with diverse religious beliefs? Is it possible to "pierce the veil" and disregard the corporate form in this context? What is the significance of the pass-through taxation applicable to subchapter-s corporations as it pertains to this analysis? These questions merit more deliberate investigation.

Even if, upon further examination, Plaintiffs are able to demonstrate a substantial burden on their free exercise of religion, however, the government may justify its application of the preventive care coverage mandate by demonstrating that application of that mandate to Plaintiffs

⁹ In the alternative, the government argues that because Plaintiffs routinely contribute to other schemes that violate the religious beliefs alleged here, the preventive care coverage mandate does not substantially burden Plaintiffs' free exercise of religion. This argument requires impermissible line drawing, and I reject it out of hand. *See Thomas v. Review Bd. of Ind. Emp't Sec.*, 450 U.S. 707, 715 (1981).

is the least restrictive means of furthering a compelling interest.

Compelling Interest

In order to justify a substantial burden on Plaintiffs' free exercise of religion, the government must show that its application of the preventive care coverage mandate to Plaintiffs furthers "interests of the highest order." *Hardeman*, 297 F.3d at 1127. It is well-settled that the interest asserted in this case, the promotion of public health, is a compelling government interest. *See Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 498 (10th Cir. 1998). The government argues that the preventive care coverage mandate, as applied to Plaintiffs and all similarly situated parties, furthers this compelling interest.

Assuming, *arguendo*, that application of the preventive care coverage mandate to Plaintiffs and all similarly situated parties furthers a compelling government interest,¹⁰ that argument does not justify a substantial burden on Plaintiffs' free exercise of religion: "RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person – the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales*, 546 U.S. at 430-31.

I do not mean to suggest that the government may not establish a compelling interest in the uniform application of a particular program. To make such a showing, however, the government must "offer[] evidence that granting the requested religious accommodations would seriously compromise its ability to administer this program." *Id.* at 435. Any such argument is

¹⁰ Plaintiffs strenuously challenge whether the preventive care coverage mandate actually furthers the promotion of public health. I need not address that argument to resolve the instant motion, and I decline to do so.

undermined by the existence of numerous exemptions to the preventive care coverage mandate. In promulgating the preventive care coverage mandate, Congress created significant exemptions for small employers and grandfathered health plans.^{11 12} 26 U.S.C. § 4980H(c)(2) (exempting from health care provision requirement employers of less than fifty full-time employees); 42 U.S.C. § 18011 (grandfathering of existing health care plans). Even Defendants created a regulatory exemption to the contraception mandate. 76 Fed. Reg. 46621, 46626 (Aug. 3, 2011) (exempting certain religious employers from the contraception requirement of the preventive care coverage mandate).

“[A] law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993); *see also United States v. Friday*, 525 F.3d 938, 958 (10th Cir. 2008). The government has exempted over 190 million health plan

¹¹ The government’s attempt to characterize grandfathering as “phased implementation” is unavailing. As noted above, health plans may retain their grandfathered status indefinitely. Most damaging to the government’s alleged compelling interest, even though Congress required grandfathered health plans to comply with certain provisions of the ACA, it specifically exempted grandfathered health plans from complying with the preventive care coverage mandate. *See* 42 U.S.C. § 18011(a)(3-4) (specifying those provisions of the ACA that apply to grandfathered health plans).

¹² The government argues that because these provisions are generally applicable, and not specifically limited to the preventive services coverage regulations, they are not exemptions from the preventive care coverage mandate. This is a distinction without substance. By exempting employers from providing health care coverage, these provisions exempt those employers from providing preventative health care coverage to women. If the government has a compelling interest in ensuring no-cost provision of preventative health coverage to women, that interest is compromised by exceptions allowing employers to avoid providing that coverage – whether broadly or narrowly crafted.

participants and beneficiaries from the preventive care coverage mandate;¹³ this massive exemption completely undermines any compelling interest in applying the preventive care coverage mandate to Plaintiffs.¹⁴

Least Restrictive Means

Even if the government were able to establish a compelling interest in applying the preventive care coverage mandate to Plaintiffs, it must also demonstrate that there are no feasible less-restrictive alternatives. *Wilgus*, 638 F.3d at 1289. The government need not tilt at windmills; it need only refute alternatives proposed by Plaintiffs. *Id.*

Plaintiffs propose one alternative, government provision of free birth control, that could be achieved by a variety of methods: creation of a contraception insurance plan with free enrollment, direct compensation of contraception and sterilization providers, creation of a tax credit or deduction for contraceptive purchases, or imposition of a mandate on the contraception manufacturing industry to give its items away for free. Defendants argue Plaintiffs’ “misunderstand the nature of the ‘least restrictive means’ inquiry.” Brief in Opposition (doc. 26) at 43. According to Defendants, this inquiry should be limited to whether Plaintiffs and other similarly situated parties could be exempted without damaging Defendants’ compelling interest.

¹³ Even if, as is estimated under the government’s high-end estimate, 69% of health plans lose their grandfathered status by the end of 2013, millions health plan participants and beneficiaries will continue to be exempted from the preventive care coverage mandate. *See* 75 Fed. Reg. 34538, 34553.

¹⁴ To the extent the government argues creating an exemption for Plaintiffs threatens to undermine the preventive care coverage mandate, that argument is inconsistent with RFRA and irrelevant in this context. *See Gonzales*, 546 U.S. at 436 (rejecting “slippery slope” argument as inconsistent with RFRA).

It is, however, not Plaintiffs but Defendants who misunderstand the least restrictive means inquiry. Defendants need not refute every conceivable alternative, but they “must refute the alternative schemes offered by the challenger.”¹⁵ *Wilgus*, 638 F.3d at 1289.

Despite their categorical argument, Defendants attempt to refute Plaintiffs’ proposed alternative. First, Defendants argue that because Plaintiffs’ alternative “would impose considerable new costs and other burdens on the Government and are otherwise impractical,” they should be rejected as not “feasible” or “plausible.” Brief in Opposition (doc. 26) at 44. Although a showing of impracticality is sufficient to refute the adequacy of a proposed alternative, Defendants have failed to make such a showing in this case. As Plaintiffs note, “the government already provides free contraception to women.” Reply Brief in Support (doc. 27) at 38.

Defendants also argue Plaintiffs’ alternative would not adequately advance the government’s compelling interests. They acknowledge that Plaintiffs’ alternative would achieve the purpose of providing contraceptive services to women with no cost sharing, but argue that Plaintiffs’ alternative will not “ensur[e] that women will face minimal logistical and administrative obstacles to receiving coverage of their care.” Brief in Opposition (doc. 26) at 45. Although Plaintiffs argue that this amounts to a redefinition of Defendants’ compelling interest,

¹⁵ Furthermore, both parties impermissibly expand the scope of this determination. As noted above, my inquiry is limited to the parties before me; I do not consider all other “similarly situated parties.” To the extent Plaintiffs’ alternative would apply to other parties, it is overinclusive. Because the parties frame this discussion, however, I analyze the alternative as presented by Plaintiffs and responded to by Defendants.

it is instead a logical corollary thereto.¹⁶ Nonetheless, Defendants have failed to adduce facts establishing that government provision of contraception services will necessarily entail logistical and administrative obstacles defeating the ultimate purpose of providing no-cost preventive health care coverage to women. Once again, the current existence of analogous programs heavily weighs against such an argument.

Defendants bear the burden of demonstrating that refusing to exempt Plaintiffs from the preventive care coverage mandate is the least restrictive means of furthering their compelling interest. Given the existence of government programs similar to Plaintiffs' proposed alternative, the government has failed to meet this burden.

Conclusion

The balance of the equities tip strongly in favor of injunctive relief in this case. Because this case presents "questions going to the merits . . . so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation," I find it appropriate to enjoin the implementation of the preventive care coverage mandate as applied to Plaintiffs. Accordingly,

Defendants, their agents, officers, and employees, and their requirements that Plaintiffs provide FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, are ENJOINED from any application or enforcement thereof against Plaintiffs, including the substantive requirement imposed in 42

¹⁶ To be clear, I do not believe Defendants have sufficiently demonstrated a compelling interest in enforcing the preventive care coverage mandate against Plaintiffs. For purposes of my analysis under "least restrictive means" prong of RFRA, however, I assume the existence of such an interest.

U.S.C. § 300gg-13(a)(4), the application of the penalties found in 26 U.S.C. §§ 4980D & 4980H and 29 U.S.C. § 1132, and any determination that the requirements are applicable to Plaintiffs.

Pursuant to Fed. R. Civ. P. Rule 65(c), Plaintiffs shall post a \$100.00 bond as security for any costs and damages that may be sustained by Defendants in the event they have been wrongfully enjoined or restrained.

Such injunction shall expire three months from entry of an order on the merits of Plaintiffs' challenge. In order to expedite the resolution of this case, the parties shall file a Joint Case Management Plan on or before August 27, 2012.

And, finally, I take this opportunity to emphasize the *ad hoc* nature of this injunction. The government's arguments are largely premised upon a fear that granting an exemption to Plaintiffs will necessarily require granting similar injunction to all other for-profit, secular corporations voicing religious objections to the preventive care coverage mandate. This injunction is, however, premised upon the alleged substantial burden on Plaintiffs' free exercise of religion – not to any alleged burden on any other party's free exercise of religion. It does not enjoin enforcement of the preventive care coverage mandate against any other party.

Dated: July 27, 2012

BY THE COURT:

/s/ John L. Kane

Senior U.S. District Court Judge