

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RIGHT TO LIFE OF MICHIGAN,

Plaintiff,

CASE NO. 1:13-CV-1202

v.

HON. ROBERT J. JONKER

SYLVIA BURWELL, *et al.*,

Defendants.

_____ /

OPINION AND ORDER

This matter is before the Court on Plaintiff’s Motion for Declaratory Judgment (docket # 42) and Defendants’ Motion to Dismiss (docket # 44). Plaintiff challenges an accommodation under the Patient Protection and Affordable Care Act (the “ACA”) that insulates eligible non-profit organizations, including Plaintiff, from the ACA’s general requirement that health insurance plans provide coverage for contraception. Plaintiff asserts that the accommodation violates the Establishment Clause of the First Amendment; Plaintiff’s rights to free exercise and freedom of speech under the First Amendment; the Religious Freedom and Restoration Act (“RFRA”); and the Administrative Procedures Act (“APA”). In its Motion for Declaratory Judgment, Plaintiff seeks a declaratory judgment on its RFRA and Free Exercise Clause claims. (docket # 42.) Defendants seek dismissal or summary judgment on all of Plaintiff’s claims (docket # 44).

Plaintiff’s claims are legally indistinguishable from those the Sixth Circuit already decided in *Michigan Catholic Conference and Catholic Family Services v. Burwell*, — F.3d —, 2015 WL 4979692 (Sixth Cir. August 21, 2015) (“*Mich. Cath. Conf. II*”) and its predecessor case, *Michigan*

Catholic Conference and Family Services v. Burwell, 755 F.3d 372 (6th Cir. 2014) (*Mich. Cath. Conf. I*), which *Mich. Cath. Conf. II* explicitly re-issued and reaffirmed. In *Mich. Cath. Conf. I* and *II*, the Sixth Circuit rejected precisely the kinds of challenges to the accommodation under the First Amendment and RFRA Plaintiff makes in this case.¹ This Court gave the parties an opportunity to file briefs regarding the effect of the *Mich. Cath. Conf. I* and *II* on this case (docket # 70). Even Plaintiff does not dispute that *Mich. Cath. Conf. I* and *II* forecloses the claims in this case (docket # 72).² The Sixth Circuit precedent is controlling and binding on this Court, and the government's motion must therefore be granted.³

ACCORDINGLY, IT IS ORDERED:

1. Plaintiff's Motion for Declaratory Judgment (docket # 42) is **DENIED**.
2. Defendants' Motion to Dismiss or for Summary Judgment (docket # 44) is **GRANTED**.

¹*Mich. Cath. Conf. I* and *II* foreclose all but Plaintiff's APA claim. Plaintiff neither mentioned its APA claim in its Motion for Declaratory Judgment nor responded to the portion of Defendants' motion seeking dismissal or summary judgment on Plaintiff's APA claim. Plaintiff has waived the APA claim.

²Instead, Plaintiff urges the Court to disregard the holdings of *Mich. Cath. Conf. I* and *II* and adopt the logic of an out-of-Circuit district court decision obviously not binding on the Court.

³The Court notes that all but one of the Circuits to consider challenges to the accommodation under RFRA have reached the same conclusion as the Sixth Circuit. See *Geneva College v. Secretary of the U.S. Dep't of Health and Human Servs.*, 778 F. 3d 422 (3d Cir. 2015); *Priests for Life v. U.S. Dep't of Health & Human Servs.*, 772 F.3d 229 (D.C. Cir. 2014); *E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015); *Catholic Health Care Sys. v. Burwell*, 796 F.3d 207 (2d Cir. 2015); *Wheaton College v. Burwell*, 791 F.3d 792 (7th Cir. July 1, 2015); *Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell*, 794 F.3d 1151 (10th Cir. 2015); *contra. Sharpe Holdings, Inc. v. U.S. Dep't of Health and Human Servs.*, — F.3d —, 2015 WL 5449491 (8th Cir. September 17, 2015); *Dordt College v. Burwell*, — F.3d —, 2015 WL 5449504 (8th Cir. Sept. 17, 2015).

3. The motion hearing scheduled for November 16, 2015 at 699 Federal Building before the undersigned is **CANCELLED**.

Dated: October 27, 2015

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE