

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

TONN AND BLANK CONSTRUCTION, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:12-CV-325 JD
)	
KATHLEEN SEBELIUS, in her official capacity)	
as Secretary of the U.S. Department of Health and)	
Human Services, et al.,)	
)	
Defendants.)	

ORDER AND PRELIMINARY INJUNCTION

Plaintiff Tonn and Blank Construction, LLC (“T&B”), moved for a preliminary injunction pending the outcome of the trial [DE 4]. T&B requested the Court to enjoin Defendants from applying and enforcing 45 C.F.R. § 147.130(a)(1)(iv) to the extent that provision requires T&B or its employee health plan to cover, provide, or subsidize contraceptives, abortion-inducing drugs, sterilization, and related patient education and counseling. Defendants Kathleen Sebelius, Hilda Solis, Timothy Geithner, and the United States Departments of Health and Human Services, Labor, and Treasury responded to the motion and T&B filed its reply [DE 26, 34], and there was an amici curiae brief filed in support of Plaintiff [DE 32].

However, since the filing of the request for a preliminary injunction, the Seventh Circuit has twice granted similar relief pending appeal to other similarly situated parties, *see Grote v. Sebelius*, No. 13-1077, 2013 WL 362725, at *4 (7th Cir. Jan. 30, 2013); *Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353, at *4-5 (7th Cir. Dec. 28, 2012). Thereafter, Defendants filed a motion indicating that they no longer opposed T&B’s request for a preliminary injunction, but

they requested a stay of the case pending the outcome of the interlocutory appeals in *Korte* and *Grote* [DE 38]. T&B, while wanting the preliminary injunction to issue, opposed the stay [DE 41].

Since the request for a stay was filed, counsel have jointly communicated with the Court that T&B would prefer that the Court issue the uncontested preliminary injunction now, while the Court considers the stay issue, and that defense counsel takes no position on the request.

Thus, the Court having been fully advised on the premises of the motion, and given Defendants' non-opposition to the motion [DE 38], it is hereby ORDERED, ADJUDGED, and DECREED that Defendants, their agents, servants, employees, representatives, and all persons in active concert or participation with them are hereby ENJOINED, until thirty (30) days from resolution of the appeals in *Korte v. Sebelius*, No. 12-3841 (7th Cir.) and *Grote v. Sebelius*, No. 13-1077 (7th Cir.), from:

1. Applying or enforcing against T&B or its employee health plan or its insurer the requirements set out in 42 U.S.C. § 300gg-13(a)(4) and 45 C.F.R. § 147.130(a)(1)(iv), corresponding Guidelines, and corresponding press releases to provide coverage for FDA-approved contraceptive methods, abortion-inducing drugs, sterilization procedures, and related patient education and counseling.

2. Applying to T&B or its employee health plan the definition or process under 45 C.F.R. § 147.130(a)(1)(iv)(B) for defining a "religious employer" and determining whether an employer is an exempt "religious employer."

The Court **FURTHER ORDERS** as follows:

3. T&B shall not be required to post bond.

With the granting of the preliminary injunction by way of agreement [DE 4], the unopposed motion for oral argument on the request for preliminary injunctive relief is DENIED AS MOOT [DE 35]. The Court will rule separately on the contested request for a stay [DE 38].

SO ORDERED.

ENTERED: April 1, 2013

 /s/ JON E. DEGUILIO
Judge
United States District Court