

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Richard W. DeOtte, et al.,

Plaintiffs,

v.

Alex M. Azar II, et al.,

Defendants.

Case No. 4:18-cv-825-O

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND
PERMANENT INJUNCTION**

The plaintiffs respectfully move for summary judgment and seek a permanent injunction against the enforcement of the Contraceptive Mandate. The plaintiffs respectfully ask the Court to convert the papers filed in support of the plaintiffs' motion for preliminary injunction—including the brief in support (ECF No. 21-1), the proposed order (ECF No. 21-2), and the supporting appendix (ECF No. 22)—into supporting documents for this motion.

SUMMARY

The plaintiffs seek summary judgment on each element of their federal RFRA claims: (1) That the Contraceptive Mandate substantially burdens the religious freedom of the members of the certified classes—both the class of “objecting employers” and the class of “objecting individuals”; (2) That there is no compelling governmental interest in ensuring that every woman can obtain contraception free of charge; (3) That even if there were a compelling governmental interest in ensuring that every woman can obtain contraception at zero marginal cost, there are other ways for the government to achieve this goal without burdening the class members' religious freedom. *See* Local Rule 56.3.

Entry of judgment is appropriate because each of the defendants concedes that the Contraceptive Mandate violates the Religious Freedom Restoration Act as applied to the plaintiffs and their fellow class members. *See* Brief in Support of Motion for Preliminary Injunction (ECF No. 21-1), at 1–2 & n.1; *see also* Order Granting Motion for Class Certification (ECF No. 33), at 3 (“[T]he Government Defendants involved in promulgating the rules expressly noted these exceptions were compelled by the Religious Freedom Restoration Act.”). The requested classwide relief is precisely what the defendants claim is compelled by the Religious Freedom Restoration Act. The defendants have also acquiesced to entry of judgment and permanent injunctions in other lawsuits challenging the Contraceptive Mandate, *see, e.g., Catholic Benefits Ass’n v. Azar*, No. 5:14-cv-00240 (W.D. Okla.); *Reaching Souls Int’l v. Azar*, No. 5:13-cv-01092 (W.D. Okla.); *Little Sisters of the Poor Home for the Aged v. Azar*, No. 1:13-cv-02611 (D. Colo.), ECF No. 82,¹ so there is no basis for resisting entry of judgment or prolonging the proceedings any further.

Finally, the absent class members need prompt and permanent injunctive relief in the wake of *Pennsylvania v. Trump*, 351 F. Supp. 3d 791 (E.D. Pa. 2019), which enjoined the defendants from implementing the rules that would have established the exemptions that RFRA requires. Although Braidwood Management Inc. has secured a TRO that shields it from statutory penalties in the aftermath of that nationwide injunction, *see* ECF No. 29, there are countless other objecting employers and individuals who are awaiting long-overdue relief from a regime that infringes their rights under the Religious Freedom Restoration Act.

The plaintiffs respectfully ask the Court to allow the brief and appendix filed in support of our motion for preliminary injunction (ECF Nos. 21-1 and 22) to serve as

1. These documents appear in Tabs 11–13 of the Appendix filed in support of the plaintiffs’ reply brief in support of their motion for class certification. *See* ECF No. 32.

the brief and appendix in support of this motion for summary judgment, as required by Local Rule 56.5(a). The plaintiffs have also conferred with the defendants about this motion, and the parties have agreed to provide any proposed briefing schedule to the Court by April 8, 2019.

CONCLUSION

The Court should enter judgment for the plaintiffs and permanently enjoin the defendants from enforcing the Contraceptive Mandate against the plaintiffs and their fellow class members.

Respectfully submitted.

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*Counsel for Plaintiffs and
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Dated: April 1, 2019

CERTIFICATE OF CONFERENCE

I certify that on March 31, 2019, and April 1, 2019, I conferred with Daniel Riess, counsel for the defendants. We agreed that the parties will provide a proposed briefing schedule to the Court by April 8, 2019.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
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CERTIFICATE OF SERVICE

I certify that on April 1, 2019, I served this document through CM/ECF upon:

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