

54000-76231 (JDB)

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE**

UNION UNIVERSITY,

Plaintiff,

vs.

No. 1:14-cv-01079 JDB

**KATHLEEN SEBELIUS, Secretary
of the United States Department of
Health and Human Services, UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, THOMAS PEREZ,
Secretary of the United States Department
Of Labor, UNITED STATES DEPARTMENT
OF LABOR, JACOB J. LEW, Secretary of
the United States Department of
Treasury, and UNITED STATES
DEPARTMENT OF TREASURY,**

Defendants.

**ORDER GRANTING UNION UNIVERSITY'S MOTION FOR A PRELIMINARY
INJUNCTION AND STAYING ALL PROCEEDINGS IN THIS MATTER**

I. Statement of facts

Union University filed a complaint challenging the Affordable Care Act's requirement that it provide coverage for "women's preventive services." Complaint (D.E. No. 3-1, Page ID 46). This coverage includes all FDA-approved "contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity." *Michigan Catholic Conference v. Sebelius*, --- F.Supp.2d ---, 2013 WL 6838707 at * 2 (W.D.Mich.) (quoting 77 Fed.Reg. 8725). Union University bases its challenge to the contraceptive mandate on, among other grounds, the First Amendment and the Religious Freedom Restoration Act. Complaint (D.E. No. 3-1, Page

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ID 46). Because Union University is facing a May 1, 2014, deadline for complying with the mandate or paying penalties, the university filed a motion for a preliminary injunction. Motion for Preliminary Injunction (D.E. No. 1, Page ID 1); Supporting Memorandum (D.E. No. 1-1, Page ID 3).

The Defendants do not oppose Union University's motion for a preliminary injunction. Combined Notice of Non-Opposition to Plaintiff's Motion for Preliminary Injunction and Request for Stay of Proceedings (D.E. No. 13, Page ID 99). The Defendants point out that they do not believe Union University is likely to prevail on the merits. But based on the orders issued by the motions panels of the United States Court of Appeals for the Sixth Circuit in *Michigan Catholic Conference* and *Catholic Diocese of Nashville*, the Defendants believe that the Sixth Circuit would stay this case pending an appeal if this Court were to rule against the university. *Id.* at pp. 1-2 (Page ID 99-101). The Defendants also request that the Court "stay all proceedings in this case pending the resolution of the appeals in *Michigan Catholic Conference* or *Catholic Diocese of Nashville*, whichever occurs first." *Id.* at pp. 2-3 (Page ID 100-101). The Defendants also request that the preliminary injunction remain in place until 30 days after the Sixth Circuit issues the mandate following its decision in the first of the two cases pending in the Sixth Circuit. *Id.* at p. 2 (Page ID 100).

II. Analysis

In deciding whether to issue a preliminary injunction, the Court must balance the following factors: (1) whether Union University has shown a strong or substantial likelihood or probability of success on the merits; (2) whether Union University has shown irreparable injury; (3) whether the issuance of the restraining order would cause

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substantial harm to others; and (4) whether issuing the TRO would serve the public interest. See *Liberty Coins, LLC v. Goodman*, --- F.3d ---, 2014 1357041 (6th Cir.).

Here, it is significant that the Defendants do not oppose Union University's request for a preliminary injunction pending the Sixth Circuit's decision in either *Michigan Catholic Conference* or *Catholic Diocese of Nashville*. Combined Notice of Non-Opposition to Plaintiff's Motion for Preliminary Injunction and Request for Stay of Proceedings (D.E. No. 13, Page ID 99). These cases are set for oral argument on May 8, 2014. *Id.* at p. 2, n. 2 (Page ID 100). The Defendant's agreement leads the Court to conclude that issuing the preliminary injunction will not cause substantial harm to others.

Losing one's First Amendment freedoms, even for a minimal period, constitutes an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Therefore, if Union University shows a likelihood of success, it has shown irreparable injury.

The Supreme Court of the United States has not considered similar Religious Freedom Restoration Act claims. *Michigan Catholic Conference, et al. v. Kathleen Sebelius, et al.*, No. 13-2723 Order Staying Case Pending Appeal at p. 2. (D.E. 11-3, Page ID 91). Because the courts that have addressed similar claims have issued conflicting opinions, the Sixth Circuit held that there is more than the mere possibility of success on the merits. *Id.* at pp. 2-3.

Based on the Sixth Circuit's order in *Michigan Catholic Conference, et al. v. Kathleen Sebelius, et al.*, No. 13-2723, the Court concludes that the factors weigh in favor of granting the preliminary injunction.

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Therefore, the Court grants Union University's motion for preliminary injunction and enjoins the Defendants from enforcing the mandate against Union University. The preliminary injunction will remain in effect until 30 days after the Sixth Circuit issues its mandate in either *Michigan Catholic Conference* or *Catholic Diocese of Nashville*, whichever occurs first. This case is stayed during the time the preliminary injunction is in effect.

IT IS THEREFORE ORDERED.

This 29th day of April, 2014.

s/ J. Daniel Breen
CHIEF UNITED STATES DISTRICT
JUDGE, J. DANIEL BREEN