

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MILTON FRED HARTENBOWER,
CATHERINE A. HARTENBOWER,
HART ELECTRIC LLC, and H.I.
CABLE LLC d/b/a H.I. HART LLC,

Plaintiffs,

v.

CASE NO. 1:13-CV-02253

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
KATHLEEN SEBELIUS, in her official
capacity as Secretary of the United States
Department of Health and Human Services;
UNITED STATES DEPARTMENT OF
THE TREASURY; JACK LEW, in his
official capacity as Secretary of the
United States Department of the Treasury;
UNITED STATES DEPARTMENT OF
LABOR; and SETH HARRIS, in his
official capacity as Acting Secretary of the
United States Department of Labor,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY INJUNCTION AND
STAY OF PROCEEDINGS**

Plaintiffs, Milton Fred Hartenbower and Catherine Hartenbower, and their businesses, Hart Electric, LLC and H.I. Hart, LLC, by and through their undersigned counsel, hereby submit this unopposed motion for a preliminary injunction and a stay of all proceedings in this case pending the resolution of two cases before the Seventh Circuit Court of Appeals involving claims substantially similar to the legal claims Plaintiffs bring here against the same federal regulations

Plaintiffs challenge here. *Korte v. Sebelius*, No. 12-3841 (7th Cir.); *Grote Indus. LLC v. Sebelius*, No. 13-077 (7th Cir.).¹

Plaintiffs wish to run their businesses in a manner consistent with their religious values and beliefs, including in the choice of a health plan for themselves and their employees. Regulations imposed by Defendants, however, requiring that group health plans include FDA-approved contraceptive methods and sterilization procedures as well as patient education and counseling about those services do not allow Plaintiffs to do so. Plaintiffs' religious principles and beliefs not only provide that abortion, contraception, and sterilization are immoral, but that directly paying for the use of such products and services through a group health plan is immoral as well. Plaintiffs are thus confronted with a Hobson's choice: violate their religious beliefs in the management of their businesses, or pay the federal government in order to act consistently with their faith.

In order for Plaintiffs to act consistently with their religious beliefs until the resolution of the *Korte* and *Grote* appeals, Plaintiffs request a preliminary injunction enjoining defendants, until 30 days after the mandate issues from the Seventh Circuit in *Korte* and *Grote*, from enforcing against Hart Electric LLC, H.I. Cable LLC, their employee health plan(s), or their insurer(s) the statute and regulations that require Plaintiffs to provide employees insurance coverage for "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," 77 Fed. Reg. 8725, as well as any penalties, fines, assessments, or enforcement actions for non-compliance, including those found in 26 U.S.C. §§ 4980D, 4980H, and 29 U.S.C. §§ 1132, 1185d.

¹ These two cases have been consolidated on appeal and are now fully briefed. Oral argument is currently scheduled for May 22, 2013.

The United States Court of Appeals for the Seventh Circuit has twice granted preliminary injunctive relief in cases that are substantially similar to this case. *See Korte v. Sebelius*, No. 12-3841, 2012 WL 6757353 (7th Cir. Dec. 28, 2012); *Grote Indus. LLC v. Sebelius*, No. 13-077, 708 F.3d 850 (7th Cir. 2013). A district court within this judicial district has done likewise. *See Triune Health Group, Inc. v. U.S. Dep't of Health & Human Servs.*, No. 1:12-cv-06756 (N.D. Ill. Jan. 3, 2013) (finding that *Korte* was “binding precedent” entitling Plaintiffs to injunctive relief under circumstances similar to those present here) (attached hereto as Exhibit A). More recently, based on the *Korte* and *Grote* decisions, Defendants did not oppose a motion for a preliminary injunction filed by another for-profit employer within this district. *Lindsay v. U.S. Dep't of Health & Human Servs.*, No. 1:13-cv-01210 (N.D. Ill. Mar. 20, 2013) (order granting plaintiffs’ unopposed motion for preliminary injunction) (attached hereto as Exhibit B).

Based on the orders of the motions panel in *Korte* and *Grote*, counsel for Defendants have indicated to undersigned counsel that they do not oppose Plaintiffs’ motion for a preliminary injunction based on Plaintiffs’ claim under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, until such time as the appeals in *Grote* and *Korte* are resolved. For the reasons stated in defendants’ oppositions to plaintiffs’ motions for preliminary injunction in *Grote* and *Korte*, *see* Defs.’ Brief in Opp’n to Pls.’ Mot. for Prelim. Inj. and in Supp. of Mot. to Dismiss, *Grote Industries, LLC v. Sebelius*, No. 4:12-cv-00134-SEB-DML (S.D. Ind. Nov. 19, 2012), ECF No. 15; Defs.’ Mem. in Opp’n to Pls.’ Mot. for a Prelim. Inj., *Korte v. HHS*, No. 3:12-CV-01072-MJR (S.D. Ill. Nov. 6, 2012), ECF No. 22, as well as the district courts’ decisions denying preliminary relief in those cases, *see Grote Industries, LLC v. Sebelius*, ___ F. Supp. 2d ___, 2012 WL 6725905 (S.D. Ind. 2012); *Korte v. HHS*, ___ F. Supp. 2d ___, 2012 WL 6553996 (S.D. Ill. 2012), defendants do not believe that plaintiffs are likely to succeed on the

merits of any of their claims, and believe that the decisions of the motions panel in *Grote* and *Korte* were incorrect. Furthermore, it is defendants' position that those decisions are not binding on this Court. See *United States v. Henderson*, 536 F.3d 776, 778 (7th Cir. 2008); *In re Rodriquez*, 258 F.3d 757, 759 (8th Cir. 2001); *Lambert v. Blackwell*, 134 F.3d 506, 513 n.17 (3d Cir. 1997). Nonetheless, defendants acknowledge that, even if this Court were to agree with defendants and deny plaintiffs' request for a preliminary injunction, plaintiffs would likely then seek an injunction pending appeal, which would likely be assigned to the same motions panel that decided *Grote* and *Korte* and would thus likely be granted for the reasons already articulated by the panel. Therefore, defendants do not oppose the entry of preliminary injunctive relief in favor of plaintiffs based on their RFRA claim at this time, to last until 30 days after the mandate issues from the Seventh Circuit in *Grote* and *Korte*.

Should this Court grant Plaintiffs' Unopposed Motion for a Preliminary Injunction, Plaintiffs further ask this Court to stay all proceedings in this case until thirty days after the mandate issues from the United States Court of Appeals in the consolidated *Korte* and *Grote* cases.

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). In the *Grote* and *Korte* appeals, the Seventh Circuit will be addressing legal issues that are substantially similar to those presented in this case, involving facts that are analogous in many respects to those in this case, challenging the same regulations that are challenged in this case, and raising claims that are also largely indistinguishable from those in

this case brought against the same Defendants as those in this case. Even if the Seventh Circuit's ruling does not entirely dispose of this case, the outcome of the appeals is likely to substantially affect the outcome of this litigation, and the Court and the parties will undoubtedly benefit from the Seventh Circuit's views. Defendants do not oppose Plaintiffs' request for a stay.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant their unopposed motion for a preliminary injunction, enjoining Defendants, until 30 days after the mandate issues from the Seventh Circuit in *Korte* and *Grote*, from enforcing against Hart Electric LLC, H.I. Cable LLC, their employee health plan(s), or their insurer(s) the statute and regulations that require Plaintiffs to provide employees insurance coverage for “[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,” 77 Fed. Reg. 8725, as well as any penalties, fines, assessments, or enforcement actions for non-compliance, including those found in 26 U.S.C. §§ 4980D, 4980H, and 29 U.S.C. §§ 1132, 1185d.

Plaintiffs further respectfully ask this Court to stay all proceedings in this case until thirty days after the mandate issues from the United States Court of Appeals in the consolidated cases of *Korte v. Sebelius*, No. 12-3841 (7th Cir.) and *Grote Indus. LLC v. Sebelius*, 13-077 (7th Cir.).

Counsel for defendants have indicated to undersigned counsel that they do not seek a bond.

Respectfully submitted, April 16, 2013.

Edward L. White III (MI Bar No. P62485)
American Center for Law & Justice
5068 Plymouth Road
Ann Arbor, Michigan 48105
Tel. 734-662-2984; Fax. 734-302-1758
ewhite@aclj.org

Carly F. Gammill (TN Bar No. 28217)
American Center for Law & Justice
188 Front St., Ste. 116-19
Franklin, Tennessee 37064
Tel. 615-415-4822; Fax: (615) 599-5189
cgammill@aclj-dc.org

/s/ Geoffrey R. Surtees
Geoffrey R. Surtees (KY Bar No. 89063)
Francis J. Manion (KY Bar No. 85594)
American Center for Law & Justice
PO Box 60
6375 New Hope Road
New Hope, Kentucky 40052
Tel. 502-549-7020; Fax. 502-549-5252
fmanion@aclj.org
gsurtees@aclj.org

Erik M. Zimmerman (VA Bar No. 71586)
American Center for Law & Justice
1000 Regent University Drive
Virginia Beach, Virginia 23464
Tel. 757-226-2489; Fax. 757-226-2836
ezimmerman@aclj.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Geoffrey R. Surtees, counsel for Plaintiffs, hereby certify that on April 16, 2013 a true and correct copy of the foregoing and attachments were caused to be filed electronically with this Court through the CM/ECF filing system. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's CM/ECF system. Parties may access this filing through the Court's CM/ECF system. I also certify that a true and correct copy of the foregoing were caused to be sent on April 16, 2013 to each of the following defendants and the U.S. Attorney for the Northern District of Illinois by U.S. Mail:

Eric H. Holder, Jr.
U.S. Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Neal Wolin, Acting Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Kathleen Sebelius
U.S. Depart. of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Gary S. Shapiro, U.S. Attorney
N.D. of Illinois
219 S. Dearborn Street, 5th Floor
Chicago, IL 60604

Seth D. Harris, Acting Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

/s/ Geoffrey Surtees
Geoffrey R. Surtees
American Center for Law & Justice
PO Box 60
6375 New Hope Road
New Hope, Kentucky 40052