

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 5, 2013

Elisabeth A. Shumaker
Clerk of Court

W.L. (BILL) ARMSTRONG; JEFFREY
S. MAY; WILLIAM L. (WIL)
ARMSTRONG, III; JOHN A. MAY;
DOROTHY A. SHANAHAN; CHERRY
CREEK MORTGAGE CO., INC.,
a Colorado corporation,

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

No. 13-1218
(D.C. No. 1:13-CV-00563-RBJ)
(D. Colo.)

ASSOCIATION OF AMERICAN
PHYSICIANS & SURGEONS;
AMERICAN ASSOCIATION OF PRO-
LIFE OBSTETRICIANS &
GYNECOLOGISTS; CHRISTIAN
MEDICAL ASSOCIATION;
CATHOLIC MEDICAL
ASSOCIATION; NATIONAL
CATHOLIC BIOETHICS CENTER;

PHYSICIANS FOR LIFE; NATIONAL
ASSOCIATION OF PRO LIFE
NURSES,

Amici Curiae.

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **TYMKOVICH** and **HOLMES**, Circuit Judges.

Cherry Creek Mortgage Co., Inc. (Cherry Creek) and its owners, managers and voting shareholders filed an interlocutory appeal from the district court's denial of their request for a preliminary injunction to enjoin enforcement of the preventive services coverage mandate of the Patient Protection and Affordable Care Act and its related regulations. The district court denied the request after concluding that plaintiffs were not likely to succeed on the merits of their underlying complaint, which alleged that this portion of the Act violated their rights under the Religious Freedom Restoration Act (RFRA) and the First Amendment. The district court did not address the other preliminary injunction factors.

* This panel has determined that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Defendants and plaintiffs now jointly move this court to summarily reverse the denial order and remand to the district court to consider the remaining preliminary injunction factors in light of our recent en banc decision in *Hobby Lobby Stores, Inc. v. Sebelius*, ___ F.3d ___, 2013 WL 3216103 (10th Cir. June 27, 2013). Upon consideration, we agree that plaintiff Cherry Creek has established a substantial likelihood of success on the merits of its RFRA claim, and that the district court erred in concluding otherwise. Consequently, we grant the motion for remand, vacate the district court's order, and remand for further proceedings consistent with the *Hobby Lobby* decision.

We deny as moot plaintiffs' request for a motion for injunction pending appeal.

Entered for the Court
Per Curiam

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

September 05, 2013

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RE: 13-1218, Armstrong, et al v. Sebelius, et al
District docket: 1:13-CV-00563-RBJ

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40, any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal

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Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. If requesting rehearing en banc, the requesting party must file 12 paper copies with the clerk, in addition to satisfying all Electronic Case Filing requirements. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

Elisabeth A. Shumaker
Clerk of the Court

cc: Michelle Renee Bennett
Alisa Beth Klein
Ovide Marc Lamontagne
Mark B. Stern

EAS/ad