

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-00563-RBJ-BNB

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

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services;
THOMAS E. PEREZ, in his official capacity as Secretary of the United States Department of Labor;
JACOB 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.

UNOPPOSED MOTION TO EXTEND STAY OF DISTRICT COURT PROCEEDINGS

Defendants hereby move to continue the stay currently in place in the above-captioned case. On October 1, 2013, this Court issued an Order granting the government's motion to stay case in light of lapse of appropriations (ECF No. 60). Congress has now restored appropriations to the Department of Justice, and thus, a stay in light of lapse of appropriations is no longer necessary. Defendants, however, move to continue the stay for the alternative reason discussed below.

Courts of appeals in the Tenth, Third, and Sixth circuits have issued decisions in cases involving legal issues that are substantially similar to those presented in this case; and, in each case, the non-prevailing party has filed a petition for writ of certiorari seeking Supreme Court

review. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) (en banc), *petition for cert. pending*, No. 13-354 (filed Sept. 19, 2013); *Conestoga Wood Specialties Corp. v. Secretary of HHS*, 724 F.3d 377 (3d Cir. 2013), *petition for cert. pending*, No. 13-356 (filed Sept. 19, 2013); *Autocam Corp. v. Sebelius*, 2013 WL 5182544 (6th Cir. Sept. 17, 2013), *petition for cert. pending*, No. 13-482 (filed Oct. 15, 2013). If the Supreme Court grants one or more of these petitions, its decision on the merits of the appeal will no doubt affect future proceedings in this case.

Additionally, the district court in *Hobby Lobby* has stayed district court proceedings in that case “pending the Supreme Court’s disposition of the government’s petition for a writ of certiorari [in *Hobby Lobby*], and if the petition is granted, the Supreme Court’s decision.” *Hobby Lobby v. Sebelius*, No. CIV-12-1000-HE, ECF No. 84 (W.D. Okla. Sept. 24, 2013). And, in another case in this District that is substantially similar to the instant case, after affirming the district court’s grant of a preliminary injunction to plaintiffs, the Tenth Circuit remanded to the district court with instructions to “abate further proceedings until the Supreme Court completes its consideration of the *Hobby Lobby* case.” *Newland v. Sebelius*, No. 12-1380, Order and Judgment (10th Cir. Oct. 3, 2013).

For these reasons, defendants respectfully request that this Court stay district court proceedings in this case pending the Supreme Court’s disposition of the petitions for writ of certiorari that have been filed in *Hobby Lobby*, *Conestoga*, and *Autocam* and, if one or more of those petitions is granted, until the Supreme Court issues its decision.

Opposing counsel has authorized counsel for the government to state that plaintiffs do not oppose this motion.

Respectfully submitted this 17th day of October, 2013,

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JENNIFER

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/s/ Michelle R. Bennett
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Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Michelle R. Bennett
MICHELLE R. BENNETT
Trial Attorney