

UNITED STATES COURT OF APPEALS

September 5, 2013

FOR THE TENTH CIRCUIT

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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