

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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|--|---|----------------------------|
| |) | |
| THE CATHOLIC BENEFITS |) | |
| ASSOCIATION LCA; THE |) | |
| CATHOLIC INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Case No. 14-CV-685-M |
| |) | |
| SYLVIA M. BURWELL, Secretary of |) | |
| the United States Department of Health |) | |
| and Human Services; UNITED STATES |) | |
| DEPARTMENT OF HEALTH AND |) | |
| HUMAN SERVICES; THOMAS E. |) | |
| PEREZ, Secretary of the United States |) | |
| Department of Labor; UNITED |) | |
| STATES DEPARTMENT OF LABOR; |) | |
| JACOB J. LEW, Secretary of the United |) | |
| States Department of the Treasury; |) | |
| UNITED STATES DEPARTMENT OF |) | |
| THE TREASURY |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFFS' EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER**

PLEASE TAKE NOTICE that at the earliest possible time for the Court to hear this motion, Plaintiffs move the Court for a Temporary Restraining Order pursuant to Fed. R. Civ. P. 65(b) in order to prevent immediate irreparable injury to Catholic employers that have become members of Plaintiff Catholic Benefits Association after June 4, 2014. Many of these Catholic employers, including the Roman Catholic Diocese

of Norwich and Catholic Charities and Family Services, Diocese of Norwich, are facing ruinous fines imposed by Defendants beginning on Tuesday, July 1, 2014.

BACKGROUND

Plaintiffs—The Catholic Benefits Association LCA (“CBA”) and The Catholic Insurance Company (“Insurance Company”)—are Oklahoma-based entities established to help Catholic employers around the country provide health benefits to their employees that reflects these employers’ religious convictions. *See* Pls.’ Opening Br. in Support of Emerg. Mot. for Temp. Restraining Order (“O.B.”) at 2. But rules promulgated by Defendants under the Affordable Care Act (collectively, the “Mandate”) burden the Plaintiffs’ and the CBA’s members’ religious practice by coercing employers to violate their sincerely held religious beliefs.

Plaintiffs, along with some of the CBA’s members, filed suit against the Mandate earlier this year, in *Catholic Benefits Association LCA v. Burwell*, No. 5:13-CV-240-R (W.D. Okla. 2014) (“*CBA I*”), a case involving all of the parties named here and the same subject matter.¹ On June 4, 2014, the Court granted preliminary injunctive relief to the CBA’s then-current members, and held that the CBA “possesses associational standing to pursue its members’ claims.” *CBA I*, CIV-14-240-R, 2014 WL 2522357, at *8-10, 4 (W.D. Okla. June 4, 2014). But it declined to extend this relief to future CBA members because “[g]ranted relief to *all* future members of the CBA that fit within Group II and

¹ The relationship of this case to *CBA I* is spelled out in greater detail in Plaintiffs’ Verified Complaint (“VC”) ¶¶ 15-26.

III would upset the status quo, and it is too difficult for the Court to *presently* determine whether these future members are entitled to relief.” *Id.* at *10 (emphases added).

Shortly after the Court issued its preliminary injunction, the CBA added three new members (“Post-Injunction Members”), some of whom will begin facing ruinous fines under the Mandate beginning **today, July 1, 2014**. The CBA promptly filed a motion to amend, asking the Court to exercise its discretion and extend relief to these new members. But on June 26, 2014, the Court declined. Order, *CBA I*, No. 5:14-cv-00240-R (W.D. Okla. June 26, 2014).

In denying the CBA’s motion to amend, the Court stressed that the new CBA members “are free to seek their own relief,” *Id.* at 3, agreeing with Defendants’ argument that “nothing prevent[s]” members unprotected by the June 4 Order “from filing their own lawsuit,” Defs.’ Opp. to Mot. to Amend at 4, *CBA I*, No. 5:14-cv-00240-R (Dkt. #72).

In response to the Court’s invitation, Plaintiffs have filed this new lawsuit and this motion seeking an emergency temporary restraining order on behalf of all CBA members who joined the CBA after June 4, 2014—the Post-Injunction Members—especially those who will otherwise face ruinous fines beginning on July 1, 2014.² The CBA seeks a temporary restraining order for itself and its Post-Injunction Members. The Insurance Company seeks a temporary restraining order for itself, its insureds, and its contracting parties.

² The CBA has accepted over 150 new member-employers plus over 950 additional parish employers since June 4, 2014.

GROUNDS FOR PLAINTIFFS' MOTION

In support of their Emergency Motion for Temporary Restraining Order, Plaintiffs offer the following:

1. As explained in Plaintiffs' Opening Brief in Support of Emergency Motion for Temporary Restraining Order, the Mandate violates Plaintiffs' and the Post-Injunction Members' rights under the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4, and the Establishment Clause of the First Amendment, and will cause Plaintiffs and the Post-Injunction Members irreparable harm if not enjoined. Plaintiffs merely ask the Court to preserve the status quo for the Post-Injunction Members. The balance of harms favors Plaintiffs, and a temporary restraining order is in the public interest. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1146 (10th Cir. 2013); *Awad v. Ziriax*, 670 F.3d 1111, 1131-32 (10th Cir. 2012).

2. The CBA seeks a temporary restraining order on behalf of its Post-Injunction Members. The CBA's Post-Injunction Members are operated in accordance with Catholic principles and religious teachings and are committed, as part of their religious witness and exercise, to providing health care benefits consistent with Catholic values. All CBA members are eligible to purchase stop-loss coverage through the Insurance Company as part of an arrangement to provide health care coverage to their employees and former employees and to such employees' dependents.

3. The facts and legal arguments presented in the attached memorandum are substantially similar—in fact, nearly identical—to those presented in *CBA I*, with the

exception that they are strengthened by the June 30, 2014, United States Supreme Court decision, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ___, 2014 WL 2921709 (2014).

Accordingly, Plaintiffs believe that this case should be consolidated with *CBA I*. If this motion is folded into *CBA I*, Plaintiffs' emergency motion can be easily resolved under the law of the case doctrine. *See* O.B. at 10-11.

4. Even if this case is not consolidated with *CBA I*, Plaintiffs' case for an emergency TRO is extremely strong. These issues have been well-litigated around the country and in the Tenth Circuit. Six of seven district courts in the Tenth Circuit, and 29 of 33 courts nationwide have found that similarly situated parties (non-exempt, nonprofit employers) are entitled to the relief Plaintiffs seek here. *See* O.B. at 12-13 & n.9.

5. Plaintiffs have made attempts to resolve this matter prior to seeking this temporary restraining order ("TRO"). On Thursday, June 26, 2014, soon after the Court denied the CBA's motion to amend, Plaintiffs' counsel Martin Nussbaum made contact with the Department of Justice, specifically Bradley Humphreys, to let Defendants know of Plaintiffs' plans to file this suit and seek a temporary restraining order. Mr. Humphreys responded that the Defendants oppose the relief Plaintiffs are seeking, continue to believe a separate lawsuit is necessary for the Post-Injunction Members, and cannot accept service on behalf of Defendants but that service should be made in the normal fashion as if it were a new case.

6. Given the limited amount of time before the Post-Injunction Members' fines begin to accrue on July 1, 2014, and given Plaintiffs' inability to reach concurrence

with the Defendants prior to this date, Plaintiffs have no choice but to seek this emergency relief from the Court.

7. Plaintiffs' counsel will provide notice of this TRO request by sending a copy of this motion and brief to the Department of Justice via facsimile at (202) 616-8470, and to Bradley Humphreys via email. The phone number for the Department of Justice is (202) 514-3367.

8. Plaintiff The Catholic Benefits Association LCA seeks a temporary restraining order on behalf of itself and its Post-Injunction Members.

9. Plaintiff The Catholic Insurance Company seeks a temporary restraining order on behalf of itself and all of its insureds.

RELIEF REQUESTED

In light of the above, Plaintiffs request that the Court enter a temporary restraining order prohibiting Defendants, during the course of this litigation, from:

- a. Enforcing the Mandate against Plaintiffs and the CBA's Post-Injunction Members;
- b. Charging or assessing taxes, penalties, or other burdens against the CBA's Post-Injunction Members for failure to pay for, provide, or directly or indirectly facilitate access to CASC services; and
- c. Interfering with the CBA's Post-Injunction Members' relationships with their insurers or third party administrators and with these members' attempts to arrange or contract for morally compliant

health or stop-loss coverage or related services for their employees and members.

For the reasons set forth herein and in Plaintiffs' Opening Brief in Support of Motion for Temporary Restraining Order filed contemporaneously herewith, Plaintiffs respectfully request that the Court enter a temporary restraining order as described above.

DATED: July 1, 2014.

Respectfully submitted,

/s/ J. Angela Ables

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2014, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants.

I further certify that on July 1, 2014, a copy of the attached document was served on the following by certified mail, restricted delivery, return receipt requested:

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s/ J. Angela Ables _____

J. Angela Ables