

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

THE CATHOLIC BENEFITS)	
ASSOCIATION LCA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Case No. 14-CV-00240-R
)	
KATHLEEN SEBELIUS, Secretary of)	
the United States Department of Health)	
and Human Services, <i>et al.</i> ,)	
)	
Defendants.)	

**CATHOLIC BENEFITS ASSOCIATION’S
MOTION TO AMEND PRELIMINARY INJUNCTION**

Plaintiff, Catholic Benefits Association, respectfully requests that the Court amend its June 4, 2014 Preliminary Injunction Order to include those Catholic employers who joined the Association after June 4, 2014 and are now “current members.”¹

After the Court issued its order, three Catholic employers joined the Association. These employers satisfy the Association’s strict membership criteria and are identically situated to the Association’s pre-June 4 members in all relevant aspects—except they are not protected by the Court’s injunction.

Based on these new facts, and in the interests of fairness and judicial economy, the Catholic Benefits Association requests that the Court use its discretionary authority to

¹ The undersigned spoke with Defendants’ counsel today. Defendants’ counsel stated that the government opposes this motion.

amend its June 4 Order and extend preliminary injunctive relief to the Association's new current members.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Association seeks preliminary injunctive relief during a period of membership growth.

The Catholic Benefits Association and its co-Plaintiffs filed a motion for preliminary injunction on March 12, 2014, requesting relief for Association members. Mot. For Prelim. Inj., ¶ 6 [Dkt. 4]. At the time, the Association's members numbered less than 200. Verified Compl. ("VC") [Dkt. 1] ¶ 90. Five weeks later, the Association had grown to 223 members. Aff. of Archbishop Paul S. Coakley [Dkt. 53-1] ¶ 3. On May 8, Plaintiffs' counsel testified that the Association had about 365 members. Ex. A, Transcript of May 8, 2014, Oral Argument ("Tr.") at 24:10-11]. On June 4, when the Court issued its Order, membership stood at 459 (plus almost 2,000 parishes), including five Catholic employers the Association accepted two days earlier. *See* Ex. B, Decla. of Nancy Matthews ¶ 5.

B. The Court grants preliminary injunctive relief to current Association members.

On June 4, the Court ruled on Plaintiffs' Motion for Preliminary Injunction. The Court found that the Association "possesses associational standing to pursue its members' claims." Order at 9. The Court also held that "[b]ecause the CBA's members are so uniform in their beliefs—particularly their beliefs that contraceptives are objectionable—the . . . CBA can properly represent its members' claims in this case such that the participation of the individual members of the CBA is not required." *Id.*

On the merits, the Court found that the Defendants' Mandate likely violates the Religious Freedom Restoration Act as applied to the Association's Group II (non-exempt non-profit) and Group III (for-profit) members. *Id.* at 18. Accordingly, the Court found that these Catholic employers were facing the threat of "irreparable harm [and] "absent relief . . . they will either face severe monetary penalties or be required to violate their religious beliefs." *Id.* The Court found that this threatened harm outweighed the government's interest in enforcing the Mandate and that the public interest "lies in preserving the status quo, meaning that Defendants should not be allowed to enforce the challenged regulations against these Plaintiffs until their claims are resolved." *Id.* at 19.

The end of the Court's opinion addressed the scope of the preliminary injunction. The Court denied Defendants' request to limit relief to only some Group III members because it was "satisfied that [the Association's membership requirements] have ensured the uniformity of belief among [] current Group II and Group III members. . . ." *Id.* at 20 n.16. The Court denied Plaintiffs' request to extend relief to future Association members because "[g]ranted relief to all future members of the CBA that fit within Group II and 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 20.

C. The Association adds new current members.

After the Court issued its order, the Association has received a number of inquiries from additional Catholic employers that share the Association's Catholic values. Ex. B, Decla. of Nancy Matthews ¶ 7. The Association has accepted three new members. *Id.*

¶ 8. It anticipates that it will receive more applications and accept more members before the end of June and in the months ahead. *Id.* ¶ 10.

The three new current members satisfy the same membership tests that have been in place since Plaintiffs filed their complaint. *See* Order at 20 n.16 (citing Verified Complaint at 24-25 & Exs. A & B), Ex. B, Decla. of Nancy Matthews ¶ 8. As the Association noted at the outset of this litigation, the Mandate “will take effect against [members] at various times in 2014, on the anniversary of their plan years.” VC ¶ 13. All three new current members are in acute need of relief, as they will be subject to the Mandate as of July 1. Ex. B, Decla. of Nancy Matthews ¶ 9.

II. STANDARD OF REVIEW

District courts retain “plenary power to revisit and amend interlocutory orders as justice requires.” *Sherman v. Klenke*, 2014 WL 675417 at *1 (D. Colo. Feb. 20, 2014). Although courts are “not bound by the strict standards for altering or amending a judgment encompassed in Fed. R.Civ.P. 59(e) and 60(b) when considering a motion to reconsider an interlocutory order,” this Court has nonetheless found it appropriate to review such motions under the Rule 59(e) standard. *Naylor Farms, Inc. v. Anadarko OGC Co.*, 2011 WL 7053794 at *1 (W.D. Okla. Oct. 14, 2011) (Russell, J.) (quotation omitted). Under the Rule 59(e) standard, a court may amend its order based on new evidence previously unavailable, *id.*, but not “if the movant only wants to present new arguments or supporting facts that could have been offered initially,” *In re Sun Healthcare Grp., Inc.*, 214 F.R.D. 671, 673-74 (D.N.M. 2003). In another context, the Tenth Circuit has held that a district court should exercise its discretionary authority to

promote “judicial economy, convenience, and fairness.” *Heil v. Wells Fargo Bank, N.A.*, 298 F. App’x 703, 707 (10th Cir. 2008).

III. ARGUMENT

The Court should grant the Catholic Benefits Association’s motion and amend its June 4 Order because extending relief to the Association’s new current members would prevent manifest injustice and promote judicial economy, and because this motion merely asks the Court to apply its existing Order to new facts.

A. Fairness includes treating similar employers similarly.

Leaving aside their admission date, these new current members are factually indistinguishable from the Association members that were before the Court on June 4. Thus, if the Court had merely held onto its opinion a few weeks longer, these members would be now protected by the Mandate as well. Basic notions of fairness suggest that the Association’s new current members should not be exposed to “irreparable harm” merely based on the date of the Court’s Order. The unfairness of the present order is manifest not only because of its disparate treatment of identically situated employers that became members before June 4 and those that became members thereafter and because of the government’s stipulation that relief should extend to future members in the other two class action, CASC Mandate cases.²

² As regards the latter, *see* the discussion in Plaintiff’s Motion for Expedited Briefing and Oral Argument filed contemporaneously herewith at pp. 6-7.

B. Judicial economy includes avoiding unnecessary briefing and litigation.

The Association agrees with Defendants that extending injunctive relief beyond the named parties furthers “the purposes of judicial economy” and “facilitate[s] the efficient administration of this case.” Tr. at 70:4; Defs.’ Resp. to Mot. for Class Cert. [Dkt. 58] at 2. Judicial economy includes “avoiding multiple suits on the same subject matter.” *Armstrong v. Powell*, 230 F.R.D. 661, 682 (W.D. Okla. 2005). There are already eleven lawsuits against the Mandate in the Tenth Circuit alone; it would be regrettable if these new Association member had to file the twelfth because they could not secure prompt relief here. These concerns are particularly strong because the Associations’ new members *are already represented in this case*. See Order at 9 (“the Court finds that the CBA can properly present its members’ claims in this case”).

C. The Association’s motion merely requires the Court to apply its Order to new facts.

Finally, this motion presents a textbook case for relief under Rule 59(e). Granting the Association’s motion would merely involve the Court applying its Order to the new facts contained in Nancy Matthew’s attached affidavit. In brief, those facts are as follows: the Association has gained new members since the Court issued its Order on June 4; these Catholic employers have satisfied the same rigorous membership criteria the Court cited with approval in its Order; and just like the members before the Court on June 4, the Association’s new current members ask the Court to preserve the status quo³

³ “An injunction disrupts the status quo when it changes the last peaceable uncontested status existing between the parties before the dispute developed.” *Beltronics USA, Inc. v.*

by preventing “Defendants [from] enforc[ing] the challenged regulations against [them] until their claims are resolved.” Order at 19.

CONCLUSION

For these reasons, the Catholic Benefits Association respectfully requests that the Court grant this motion and amend its June 4 Order to extend preliminary injunctive relief to the Association’s new current members through the date of the new order.

Alternatively, the Catholic Benefits Association requests that the Court extend its order to all current and future Association members contingent upon the fact that those members accepted by the Association after the date of the preliminary injunction must satisfy the identical membership criteria, with regard to their Catholic identity, character, and values, as the first wave of members receiving preliminary injunctive relief.

Respectfully submitted,

s/ L. Martin Nussbaum

L. Martin Nussbaum (Colo. Bar #15370)

Ian S. Speir (Colo. Bar #45777)

Eric Kniffin (D.C. Bar #999473)

LEWIS ROCA ROTHGERBER LLP

90 S. Cascade Ave., Suite 1100

Colorado Springs, CO 80920

o:719-386-3000; f:719-386-3070

mnussbaum@lrrlaw.com

ispeir@lrrlaw.com

ekniffin@lrrlaw.com

Admitted pro hac vice

Midwest Inventory Distribution, LLC, 562 F.3d 1067, 1070-71 (10th Cir. 2009) (citation omitted); *see also Hobby Lobby Stores, Inc. v. Sebelius*, 12-6294, 2012 WL 6930302, at *1 n.2 (10th Cir. Dec. 20, 2012) (same).

J. Angela Ables (Okla. Bar #0112)
Johnny R. Blassingame (Okla. Bar #21110)
KERR, IRVINE, RHODES & ABLES, P.C.
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, Oklahoma 73102
o:405-272-9221; f:405-236-3121
aables@kiralaw.com
jblassingame@kiralaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

On June 18, 2014, I electronically transmitted this 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.

Eric N. Kniffin

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