

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Chief Judge Marcia S. Krieger

Civil Action No. 13-cv-03263-MSK-KMT

**FELLOWSHIP OF CATHOLIC UNIVERSITY STUDENTS, a Colorado non-profit corporation;**  
**CURTIS A. MARTIN;**  
**CRAIG MILLER;**  
**BRENDA CANNELLA; and**  
**CINDY O'BOYLE,**

**Plaintiffs,**

v.

**KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services;**  
**UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;**  
**THOMAS 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.**

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**ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO DISMISS AND DIRECTING THE FILING OF AN AMENDED COMPLAINT**

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**THIS MATTER** comes before the Court on the Plaintiffs' Motion for Partial Summary Judgment (#12), the Defendants' response (#18), the Plaintiffs' Reply (#31).<sup>1</sup>

The Plaintiffs are the Fellowship of Catholic University Students ("FOCUS") and four FOCUS employees. According to the Amended Complaint (#10), FOCUS is a non-profit organization headquartered in Colorado. Its mission is to equip and enable qualified FOCUS-

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<sup>1</sup> Also before the Court is the Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (#19). However, the parties agree that consideration of the Motion to Dismiss is premature.

trained missionaries to serve as the hands and feet of the Catholic Church and its auxiliaries by meeting college students where they live. The Amended Complaint asserts that a relationship with Jesus Christ and a commitment to the teachings of the Catholic Faith are central to FOCUS's mission. The Amended Complaint also asserts that the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 1029 (2010), forces the Plaintiffs to violate their deeply held religious beliefs. Specifically, FOCUS complains that the ACA requires it to provide, fund, facilitate, cause, or participate in health insurance which covers or provides payments for artificial contraception, sterilization, and/or abortion-inducing drugs and devices and related education and counseling. Despite the accommodation offered in 78 Fed. Reg. 39,875-79, FOCUS complains that the ACA violates the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.*, and the First and Fifth Amendments of the U.S. Constitution.

Consonant with the Tenth Circuit's ruling in *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013), the Court granted (#39) the Plaintiffs' Motion for a Preliminary Injunction, and in expectation of the appeal of such matter to the United States Supreme Court, deferred ruling on the Plaintiffs' Motion for Summary Judgment (#12).

The United States Supreme Court has now issued a decision in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). It now appears that Defendants' Motion to Dismiss (#19) is now moot.

Plaintiffs filed a supplemental brief in favor of the Motion for Summary Judgment (#44), the Defendants also filed a supplemental brief (#46), and the Plaintiffs responded (#48). Both Defendants' supplemental brief and Plaintiffs' response reflect a significant shift in the nature of

this controversy. Both now focus not on the ACA, but instead on the interim final rules promulgated since *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

Neither the Amended Complaint nor the Motion for Partial Summary Judgment contemplates these rules. In order to refocus the controversy to reflect the parties' current dispute, the Court finds that a new Amended Complaint (and if appropriate, dispositive motions) must be filed.

**IT IS THEREFORE ORDERED** that

- (1) The Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment (#19) is **DENIED** as moot.
- (2) Plaintiffs' Motion for Summary Judgment (#12) is **DENIED** without prejudice.
- (3) Within 30 days of the date of this Order, Plaintiffs shall file a Second Amended Complaint, failing which the case will be dismissed for failure to prosecute.

Dated this 30th day of September, 2014.

**BY THE COURT:**



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Marcia S. Krieger  
Chief United States District Judge