

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

AMERICAN PULVERIZER CO., et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, et al.,

Defendants-Appellants

No. 13-1395

**UNOPPOSED MOTION TO HOLD APPEAL IN ABEYANCE PENDING
THIS COURT'S DECISION IN A RELATED APPEAL**

For the following reasons, the government respectfully moves to hold this appeal in abeyance pending the Court's decision in *O'Brien v. HHS*, No. 12-3357 (8th Cir.), which presents the same legal issue. This motion is unopposed.

1. The government's appeal in this case and the plaintiffs' appeal in *O'Brien v. HHS*, No. 12-3357, present the same legal issue: whether, under the Religious Freedom Restoration Act ("RFRA"), a group health plan sponsored by a for-profit corporation is entitled to an exemption from the federal regulatory requirement that the plan cover Food and Drug Administration-approved

contraceptives, as prescribed by a health care provider, if the corporation's controlling shareholders assert a religious objection to the plan's coverage of contraceptives.

In *O'Brien*, the district court held that the plaintiffs fail to state a claim under RFRA. The court also rejected the plaintiffs' other claims and dismissed the complaint. The plaintiffs appealed, and a divided motions panel of this Court issued an injunction pending appeal. The case is fully briefed.

In this case, the district court issued a preliminary injunction in light of the injunction pending appeal that this Court issued in *O'Brien*. The Court docketed the government's appeal on February 25, 2013. The government's opening brief is due April 16, 2013.

2. The government respectfully moves to hold this appeal in abeyance pending the Court's decision in *O'Brien*, which we expect to control the disposition of our appeal in this case. Plaintiffs have authorized us to state that they consent to this motion.¹

¹ The government has also moved to consolidate the *O'Brien* appeal with another contraceptive-coverage appeal, *Annex Medical, Inc. v. Sebelius*, No. 13-1118 (8th Cir.). That motion is pending with this Court.

Respectfully submitted,

MARK B. STERN
(202) 514-1597

/s Alisa B. Klein

ALISA B. KLEIN
(202) 514-1597
Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W., Room 7235
Washington, D.C. 20530

February 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2013, I filed and served the foregoing motion on counsel of record through this Court's CM/ECF system.

/s Alisa B. Klein

Alisa B. Klein