

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

W. L. (BILL) ARMSTRONG, et al.,

Plaintiffs-Appellants,

v.

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the United States
Department of Health and Human Services, et
al.,

Defendants-Appellees.

No. 13-1218

(D.C. No. 1:13-CV-00563-RBJ)

**PLAINTIFFS-APPELLANTS' REPLY TO DEFENDANTS-APPELLEES'
OPPOSITION TO PLAINTIFFS' MOTION FOR INJUNCTION PENDING
APPEAL; and DEFENDANTS' MOTION TO REMAND THIS CASE TO
DISTRICT COURT**

On August 23, 2013, Defendants-Appellants responded to Plaintiffs-Appellants' Motion for Injunction Pending Appeal and requested that this Court remand this case to the district court "to allow the district court to address the [two] remaining preliminary injunction factors," i.e., "balance of equities and public interest" as this Court had done *en banc* in *Hobby Lobby Stores, Inc. v. Sebelius*, __ F.3d __, 2013 WL 3216103 (10th Cir. June 27, 2013). Defendants-Appellees' Opposition at 2. In seeking remand for these purposes, Defendants-Appellees state that this Court may either: (1) "summarily reverse the denial of a preliminary injunction and remand to allow the district court to address the remaining

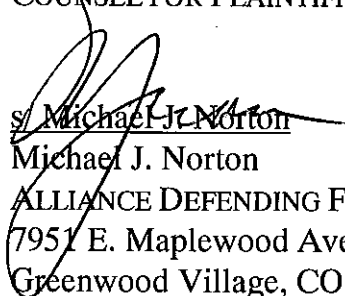
preliminary injunction factors;” or, (2) “suspend this appeal and remand to district court pursuant to Rule 12.1 of the Federal Rules of Appellate Procedure . . . when, as here, the district court indicates that it is prepared to reconsider a matter over which it lacks jurisdiction because it is the subject of a pending appeal.” Defendants-Appellees’ Opposition at 2-3.

Although counsel for Defendants-Appellees did not propose option #1 above when counsel for Plaintiffs-Appellants conferred with counsel prior to filing Plaintiffs-Appellants’ Motion for Injunction Pending Appeal, it is an acceptable option to Plaintiffs-Appellants and consent to option # 1 and Plaintiffs-Appellants consent to option #1 and join in the Defendants-Appellees’ request that this Court summarily reverse the district court’s denial of a preliminary injunction and remand this case to the district court for the limited purposes of addressing the balance of equities and public interest factors.

Plaintiffs-Appellants do not consent to option #2 proposed by Defendants-Appellees as such a suspension would be neither efficient nor in the interests of justice. Briefing has already begun in the present appeal and should continue. Summary reversal by this Court of the district court’s denial of a preliminary injunction and remand to the district court for the limited purposes of addressing the balance of equities and public interest factors may lead to a new order that offers a different context than exists in the present appeal. This makes the option of suspending the appeal less helpful and Defendants-Appellees’ option #1, to which Plaintiffs-Appellants consent, the appropriate action at this time.

Respectfully submitted this 28th day of August, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2013, I caused the foregoing pleading to be electronically filed with the Clerk of the Court by using the court's ECF system which will send a notice of electronic filing to all ECF participants of record.

By:  Michael J. Norton

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