IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALBERT R. CHAVIES and THOMAS HOLLAND, on behalf of themselves, individually, and on behalf of all others similarly situated, and on behalf of the CHE Plans, Plaintiffs, v. CATHOLIC HEALTH EAST, *et al.*, Defendants.	Case No. 2:13-cv-01645-CDJ

NOTICE OF INTERVENTION

Pursuant to Federal Rules of Civil Procedure 5.1(c) and 24(a)(1), and the authorization of the Solicitor General of the United States, *see* 28 C.F.R. § 0.21, the United States hereby intervenes in this case. Plaintiffs Albert Chavies and Thomas Holland allege that the employee benefits plans of Defendant Catholic Health East ("CHE") do not qualify for the "church plan" exception to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. *See* Compl. ¶¶ 63-80, ECF No. 1; 29 U.S.C. §§ 1002(33), 1003(b)(2). Plaintiffs further allege that, even if the CHE plans could otherwise qualify as church plans under ERISA, they are excluded from that status because "less than substantially all of the plan participants are members of the clergy or employed by an organization controlled by or associated with a church or convention or association of churches." Compl. ¶ 78. Finally, plaintiffs allege that, if their statutory objections fail and the CHE plans do qualify for the "church plan" exception to ERISA, then that exception violates the Establishment Clause of the First Amendment as applied to CHE. *Id.* ¶ 81. Defendants have moved to dismiss the complaint, arguing that their plans qualify for the exemption and that the exemption is constitutional as applied. ECF No. 33.

The United States is entitled to intervene in this case pursuant to the Federal Rules of Civil Procedure and by statute. Federal Rule of Civil Procedure 5.1(c) permits the Attorney General to intervene in an action when, as here, the constitutionality of a federal statute has been challenged. Federal Rule of Civil Procedure 24(a)(1) further permits a non-party to intervene when the non-party "is given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). The United States is specifically authorized by federal statute to intervene in any federal action in which the constitutionality of an Act of Congress is drawn into question. 28 U.S.C. § 2403(a) ("In any action . . . wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court . . . shall permit the United States to intervene . . . for argument on the question of constitutionality.").

As noted above, plaintiffs in this case have asserted only a contingent constitutional challenge. This Court has a duty to resolve plaintiffs' threshold statutory claims before adjudicating their constitutional contention. *See Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) (noting the "well-established principle" that courts normally "will not decide a constitutional question if there is some other ground upon which to dispose of the case") (citation omitted). Moreover, it is possible that, even if the Court rejects plaintiffs' statutory arguments, its reasoning and analysis will inform resolution of the constitutional question. In light of those circumstances and the contingent nature of plaintiffs' constitutional claim, the United States is intervening at this time but will not to file a brief at this time regarding the pending motion to dismiss. The United States will decide when and if to address plaintiffs' as-applied constitutional claim in light of further developments in the case.

Dated: September 30, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2013, I electronically filed the foregoing pleading with the Clerk of the Court by using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Bradley H. Cohen
BRADLEY H. COHEN