

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-01249-REB-KLM

JANEEN MEDINA,  
on behalf of herself, individually, and on behalf of all others similarly situated, and on behalf of  
CHI Plans,

Plaintiff,

v.

CATHOLIC HEALTH INITIATIVES, a Colorado Non-profit Corporation,  
PATRICIA G. WEBB, an individual,  
CAROL KEENAN, an individual, and  
JOHN AND JANE DOES, each an individual, 1-20,

Defendants.

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**NOTICE OF INTERVENTION**

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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. Plaintiff Janeen Medina alleges that the employee benefits plans of Defendant Catholic Health Initiatives (“CHI”) 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. ¶¶ 67-81, ECF No. 1; 29 U.S.C. §§ 1002(33), 1003(b)(2). Plaintiff further alleges that, even if the CHI 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. ¶ 82. Finally, plaintiff alleges that, if her statutory

objections fail and the CHI plans do qualify for the “church plan” exception to ERISA, then that exception violates the Establishment Clause of the First Amendment as applied to CHI. *Id.* ¶ 85. Defendant moved to dismiss the complaint, arguing that their plans qualify for the exemption and that the exemption is constitutional as applied. ECF No. 23. This court concluded that Defendants’ argument for dismissal for lack of jurisdiction was intertwined with the merits of the case and converted Defendants’ pending motion to dismiss into a motion for summary judgment. Minute Order, Aug. 5, 2013, ECF No. 45. On September 23, 2013, the Court held a Rule 16(b) scheduling conference and status conference in which Defendants moved to withdraw their converted motion, and this Court granted Defendants’ oral motion to withdraw without prejudice their first amended motion to dismiss. Minute Order, Sept. 23, 2013, ECF No. 62. Thus, there is currently no pending dispositive motion before the Court; instead, discovery cut-off has been set for June 30, 2014 and the deadline for dispositive motions has been set for July 31, 2014. *Id.*; *see also* ECF No. 63 (withdrawing defendants’ motion to dismiss per the Court’s oral ruling).

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, plaintiff in this case has asserted only a contingent constitutional challenge. This Court has a duty to resolve plaintiff's threshold statutory claims before adjudicating her 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). At this point, there is no dispositive motion pending before the Court. In light of these circumstances and the contingent nature of plaintiff's constitutional claim, the United States is intervening at this time but will not to file a brief at this time. The United States will decide when and if to address plaintiff's as-applied constitutional claim in light of further developments in the case.

September 30, 2013

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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 Court using the ECF system, which will send notification of such filing to counsel of record.

/s/ Bradley H. Cohen  
BRADLEY H. COHEN