

United States Court of Appeals
For the Eighth Circuit

No. 12-3357

Frank R. O'Brien, Jr.; O'Brien Industrial Holdings, LLC

Plaintiffs - Appellants

v.

U.S. Department of Health and Human Services; Sylvia Mathews Burwell, in her official capacity as the Secretary of the United States Department of Health and Human Services; United States Department of the Treasury; Jacob J. Lew, in his official capacity as the Secretary of the United States Department of the Treasury; United States Department of Labor; Thomas E. Perez, in his official capacity as Secretary of the United States Department of Labor

*Defendants - Appellees*¹

Catholic Medical Association; Christian Medical Association; Liberty, Life, and Law Foundation; Archdiocese of St. Louis; Ethics and Religious Liberty Commission of the Southern Baptist Convention; Women Speak for Themselves; Bioethics Defense Fund; Life Legal Defense Foundation; Association of American Physicians & Surgeons; National Catholic Bioethics Center; Institutional Religious Freedom Alliance; American Association of Pro-life Obstetricians & Gynecologists; Physicians for Life; National Association of Pro Life Nurses; Association of Gospel Rescue Missions; Prison Fellowship Ministries; Association of Christian Schools International; National Association of Evangelicals; Patrick Henry College; Christian Legal Society; David M. Wagner;

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), the following automatic substitutions of public officers occur: Secretary Burwell for Kathleen Sebelius, Secretary Lew for Timothy Geithner, and Secretary Perez for Hilda Solis.

Bradley P. Jacob; Charles E. Rice; Common Good Foundation; Catholic Online, LLC; Common Good Alliance; Council for Christian Colleges & Universities

Amici on Behalf of Appellants

National Health Law Program; Americans United For Separation of Church and State; The Center for Reproductive Rights; American Public Health Association; Guttmacher Institute; National Family Planning & Reproductive Health Association; National Latina Institute for Reproductive Health; National Women's Health Network; Physicians For Reproductive Choice and Health; Professor James Trussell; Professor R. Alta Charo; Professor Susan F. Wood; Reproductive Health Technologies Project; American Civil Liberties Union; American Civil Liberties Union of Eastern Missouri; Anti-Defamation League; Interfaith Alliance Foundation; Unitarian Universalist Association; Unitarian Universalist Women's Federation; National Council of Jewish Women; Religious Coalition for Reproductive Choice; Union for Reform Judaism; Hadassah, the Women's Zionist Organization of America, Inc.; Central Conference of American Rabbis; Women of Reform Judaism; National Women's Law Center

Amici on Behalf of Appellees

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: October 24, 2013
Filed: September 8, 2014
[Published]

Before RILEY, Chief Judge, COLLOTON and KELLY, Circuit Judges.

PER CURIAM.

In light of Burwell v. Hobby Lobby Stores, Inc., 573 U.S. ___, ___, 134 S. Ct. 2751, 2785 (2014), the appellants' complaint submits a facially plausible claim for relief under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1(a) to (c). See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). It thus appears unnecessary to address the appellants' remaining claims, see Hobby Lobby, 573 U.S. at ___, 134 S. Ct. at 2785, and the doctrine of constitutional avoidance particularly counsels us not to give unnecessary answers to constitutional questions, see, e.g., Ashwander v. TVA, 297 U.S. 288, 345-48 (1936) (Brandeis, J., concurring).

We reverse the Federal Rule of Civil Procedure 12(b)(6) dismissal of the appellants' RFRA claim, vacate the dismissal of the appellants' remaining claims without expressing any view on the merits, and remand for further proceedings consistent with Hobby Lobby.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

September 08, 2014

Mr. Francis J. Manion
AMERICAN CENTER FOR LAW & JUSTICE
Midwest Division
6375 New Hope Road
New Hope, KY 40052-0000

RE: 12-3357 Frank O'Brien, Jr., et al v. Department of HHS, et al

Dear Counsel:

The court today issued an opinion in this case. Judgment in accordance with the opinion was also entered today. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 45 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant, for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 45 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

MDS

Enclosure(s)

cc: Ms. Michelle R. Bennett
Ms. Lisa Schiavo Blatt
Ms. Gretchen Borchelt
Mr. Dorinda Bordlee
Ms. Kimberlee Wood Colby
Mr. Charles E. Davidow
Ms. Deborah Jane Dewart
Mr. Steven W. Fitschen
Mr. Noel Francisco
Mr. Patrick T. Gillen

Ms. Andree J. Goldsmith
Ms. Marcia D. Greenberger
Benjamin N. Hazelwood
Mr. Adam C. Jed
Ms. Ayesha N. Khan
Ms. Alisa Beth Klein
Mr. Gregory J. Linhares
Mr. Gregory M. Lipper
Ms. Emily J. Martin
Ms. Martha Jane Perkins
Mr. Anthony E. Rothert
Ms. Mailee R. Smith
Mr. Mark B. Stern
Mr. Geoffrey R. Surtees
Mr. Ilana D Waxman
Ms. Judith G. Waxman
Mr. Edward Lawrence White

District Court/Agency Case Number(s): 4:12-cv-00476-CEJ

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September 08, 2014

West Publishing
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Building D D4-40
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RE: 12-3357 Frank O'Brien, Jr., et al v. Department of HHS, et al

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant was Francis J. Manion, of New Hope, KY. The following attorney(s) appeared on the appellant brief; Edward Lawrence White, of Ann Arbor, MI., Geoffrey R. Surtees, of New Hope, KY., Patrick T. Gilllen, of Naples, FL.

Counsel who presented argument on behalf of the appellee was Adam C. Jed, of Washington, DC. The following attorney(s) appeared on the appellee brief; Mark B. Stern, of Washington, DC., Alisa Beth Klein, of Washington, DC.

The following attorney appeared on the amicus brief of Liberty, Life, and Law Foundation: Deborah J. Dewart of Swansboro, NC.

The following attorney appeared on the amicus brief of American Association of Pro-life Obstetricians & Gynecologists, Association of American Physicians & Surgeons, Catholic Medical Association, Christian Medical Association, National Association of Pro Life Nurses, National Catholic Bioethics Center and Physicians for Life: Mailee R. Smith of Washington, D.C.

The following attorneys appeared on the amicus brief of Catholic Online, LLC, Common Good Alliance, Common Good Foundation, Mr. Bradley P. Jacob, Charles E. Rice and David M. Wagner: Steven W. Fitschen of Virginia Beach, VA and John P. Tuskey of Mishawaka, IN.

The following attorneys appeared on the amicus brief of the Archdiocese of St. Louis: Noel J. Francisco of Washington, DC; Rayan D. Newman of Washington, DC; David T. Raimer of Washington, DC; and Jennifer Bradley Lichter of Washington, DC.

The following attorney appeared on the amicus brief of Association of Christian Schools International, Association of Gospel Rescue Missions, Christian Legal Society, Council for

Christian Colleges & Universities, Institutional Religious Freedom Alliance, National Association of Evangelicals, Patrick Henry College, Prison Fellowship Ministries and Ethics and Religious Liberty Commission of the Southern Baptist Convention: Kimberlee Wood Colby of Springfield, VA.

The following attorneys appeared on the amicus brief of Bioethics Defense Fund, Life Legal Defense Foundation and Women Speak for Themselves: Nikolas T. Mikas of Scottsdale, AZ; Dorinda C. Bordlee of Scottsdale, AZ; and Catherine W. Short of Ojai, CA.

The following attorney appeared on the amicus brief of National Health Law program: Martha Jane Perkins, of Carrboro, NC.

The following attorneys appeared on the amicus brief of American Public Health Association, Ms. R. Alta Charo, Guttmacher Institute, National Family Planning & Reproductive Health Association, National Latina Institute for Reproductive Health, National Women's Health Network, Physicians For Reproductive Choice and Health, Reproductive Health Technologies Project, The Center for Reproductive Rights, Mr. James Trussell and Ms. Susan F. Wood: Julianna S. Gonen of Washington, DC; Lisa S. Blatt of Washington, DC; Robert J. Katerberg of Washington, DC; Isaac B. Rosenberg of Washington, DC; and Andrew S. Macurdy of Washington, DC.

The following attorneys appeared on the amicus brief of Americans United for Separation of Church and State, Central Conference of American Rabbis, Union for Reform Judaism and Women of Reform Judaism: Ayesha N. Khan of Washington, DC; Gregory M. Lipper of Washington, DC; and Benjamin N. Hazelwood of Washington, DC.

The following attorneys appeared on the amicus brief of American Civil Liberties Union, American Civil Liberties Union of Eastern Missouri, Anti-Defamation League, Hadassah, the Women's Zionist Organization of America, Inc., Interfaith Alliance Foundation, National Council of Jewish Women, Religious Coalition for Reproductive Choice, Unitarian Universalist Association and Unitarian Universalist Women's Federation: Anthony Rothert of St. Louis, MO; Grant R. Doty of St. Louis, MO; Brigitte Amiri of New York, NY; and Daniel Mach of Washington, DC.

The following attorneys appeared on the amicus brief of the National Women's Law Center: Charles E. Davidow of Washington, DC; Ilana D. Waxman of Washington, DC; Andree J. Goldsmith of Washington, DC; Marcia D. Greenberger of Washington, DC; Judith G. Waxman of Washington, DC; Emily J. Martin of Washington, DC; and Gretchen Borchelt of Washington, DC.

The judge who heard the case in the district court was Honorable Carol E. Jackson. The judgment of the district court was entered on September 28, 2012.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

MDS

Enclosure(s)

cc: Lois Law
MO Lawyers Weekly

District Court/Agency Case Number(s): 4:12-cv-00476-CEJ