

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FAULK COMPANY, INC.,

Plaintiff,

v.

No. 4:24-cv-00609-P

XAVIER BECERRA, ET AL.,

Defendants.

ORDER

Before the Court is the Defendants' ("Government") Motion to Dismiss for Failure to State a Claim ("Motion"). ECF No. 15.

Defendants' challenges to Plaintiff's three claims¹ involve questions of statutory interpretation and standing. For Count 1, Defendants argue that 42 U.S.C. § 18031 ("ACA") and 26 U.S.C. 4980H ("I.R.C.") permit the Internal Revenue Service to certify and assess the excise tax challenged by Plaintiff. For Counts 3 and 4, Defendants argue that, based on the same interpretation above, 45 C.F.R. § 155.310(i) ("HHS Certification Regulation") does not conflict with the ACA or I.R.C. Defendants also argue that Plaintiff lacks standing to challenge the HHS Certification Regulation.

Because the Parties' disputes appear to be purely legal in nature, the Court anticipates that its decision will be dispositive in determining Plaintiff's claims and will likely be appealed to the Fifth Circuit regardless of the outcome. Therefore, in the interest of judicial efficiency, the Court proposes that the Parties' briefing on Defendants' Motion to Dismiss be converted to a motion for summary judgment.²

¹Plaintiff originally brought four claims (*see* ECF No. 1), but in response to Defendants' Motion to Dismiss, Plaintiff voluntarily withdrew Count 2.

²If the Parties so desire, they may also submit an additional 10 pages as cross-motions for summary judgment to supplement their current briefing. Given the limited number of pages, the Parties need not include a background or legal standard section in their cross-motions.

Accordingly, the Court **ORDERS** that the Parties meet and confer regarding this proposal and submit any objections to transitioning to summary judgment by **February 11, 2025**. If there are no objections, the Court further **ORDERS** the Parties to include a joint proposal for a briefing schedule by **February 11, 2025**.

SO ORDERED on this **4th day of February 2025**.

A handwritten signature in black ink that reads "Mark T. Pittman". The signature is written in a cursive style with a horizontal line underneath it.

Mark T. Pittman
UNITED STATES DISTRICT JUDGE