

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WHEATON COLLEGE,

Plaintiff-Appellant,

v.

KATHLEEN SEBELIUS, SECRETARY OF THE  
UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, et al.,

Defendants-Appellees.

BELMONT ABBEY COLLEGE,

Plaintiff-Appellant,

v.

KATHLEEN SEBELIUS, SECRETARY OF THE  
UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, et al.,

Defendants-Appellees.

Nos. 12-5273, 12-5291

**JOINT MOTION TO ISSUE MANDATE**

1. These consolidated appeals concern challenges to the August 2011 and February 2012 final rules requiring that non-grandfathered group health plans “cover all ‘FDA approved contraceptive[s]’” and providing certain exemptions for “religious employer[s].” *Wheaton College v. Sebelius*, 703 F.3d 551, 551-52 (D.C. Cir. 2012). The

district courts dismissed these challenges holding, *inter alia*, that they are unripe. *Id.* at 552.

By order dated December 18, 2012, this Court noted the government's representation that it was amending the rules to address objections like those raised by the appellants and that "it would *never* enforce the rules" in their "current form against appellants or those similarly situated as regards contraceptive services." *Ibid.* The Court held the consolidated appeals in abeyance in light of the ongoing rulemaking and directed the government to file status reports every 60 days from the date of the order. *Id.* at 553.

2. The government has issued new final rules. The new rules were published in the Federal Register on July 2, 2013. *See* 78 Fed. Reg. 39,870.

3. In light of the issuance of the final rules, there is no longer any need to hold the cases in abeyance. *See Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012). Accordingly, the parties respectfully request that the Court terminate the abeyance status and issue the mandate.

## CONCLUSION

For the foregoing reasons, we respectfully request that the Court terminate the abeyance status and issue the mandate.

Respectfully submitted,

S. KYLE DUNCAN

*/s/ Mark L. Rienzi*

---

MARK L. RIENZI

ERIC S. BAXTER

ERIC N. KNIFFEN

LORI H. WINDHAM

ADELE AUXIER KEIM

(202) 349-7209

Counsel for Plaintiffs-Appellants

*The Becket Fund for Religious Liberty*

*300 K Street, N.W., Suite 220*

*Washington, D.C. 20007*

MARK B. STERN

ALISA B. KLEIN

*/s/ Adam Jed*

---

ADAM C. JED

(202) 514-8280

Counsel for Defendants-Appellees

*Attorneys, Appellate Staff*

*Civil Division*

*U.S. Department of Justice*

*950 Pennsylvania Ave., N.W.*

*Room 7240*

*Washington, D.C. 20530*

JULY 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2013, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Adam Jed*  
\_\_\_\_\_  
ADAM C. JED