

No. 12-6294

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**In the United States Court of Appeals for the Tenth Circuit**

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HOBBY LOBBY STORES, INC., MARDEL, INC., DAVID GREEN, BARBARA GREEN,  
STEVE GREEN, MART GREEN, AND DARSEE LETT,

*Movants-Appellants,*

v.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and  
Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES  
DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States  
Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY,

*Respondents-Appellees.*

**On Appeal from the United States District Court  
for the Western District of Oklahoma, No. 5:12-cv-01000  
Judge Joe Heaton, Presiding**

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**UNOPPOSED MOTION TO EXPEDITE ORAL ARGUMENT**

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Dated: March 7, 2013

Pursuant to Federal Rule of Appellate Procedure 27 and Tenth Circuit Rule 27.3, the Green family, Hobby Lobby Stores, and Mardel (collectively “the Greens”) ask the Court to set their appeal for expedited oral argument as soon as possible after **April 4, 2013**. Expedited argument is necessary to allow the Court time to rule before July 1, 2013, when the Greens will be exposed to severe fines unless they abandon their religious exercise. The government Appellees do not oppose the relief requested in this motion.

In support of this motion, the Greens state:

1. The Greens filed suit in September 2012 challenging the HHS regulation (the “Mandate”) that forces them to provide health insurance coverage for drugs and devices which they believe cause early abortions. Joint Appendix (“JA”) 1a, 41-51a. They simultaneously moved for a preliminary injunction.

2. The preliminary injunction was denied on November 19, 2012. The Greens appealed the denial that same day. JA 228-30a.

3. On November 20, 2012, the Greens moved for an injunction pending appeal in this Court, which a motions panel denied on December 20, 2012. *Hobby Lobby Stores, Inc. v. Sebelius*, No. 12-6294, 2012 WL 6930302 (10th Cir. Dec. 20, 2012). The motions panel noted that, because it lacked “full merits briefing and oral argument,” its conclusions were “necessarily tentative.” *Id.* at \*1. Justice Sotomayor denied the Greens’ subsequent application to the Supreme Court for

emergency relief on December 26, 2012. *Hobby Lobby Stores, Inc. v. Sebelius*, 133 S. Ct. 641, 643 (2012) (Sotomayor, J., in chambers).

4. Merits briefing is now underway. The Greens filed their opening brief in this Court on February 11, 2013; the government's answering brief is due March 18; and the Greens' reply brief is due April 4.

5. The parties have also filed separate motions regarding oral argument, both of which are opposed. On January 7, 2013, the government asked the Court to hear this appeal with *Newland v. Sebelius*, No. 12-1380 (10th Cir.), and on January 10, the Greens asked for initial hearing *en banc*. Both motions remain pending.

6. When the Greens sought injunctive relief from this Court and the Supreme Court, the Mandate was scheduled to take effect on January 1, 2013. JA 37a (Mandate applies to first plan year starting after August 1, 2012); 39a (Hobby Lobby plan renews January 1). In consultation with their ERISA attorneys, the Greens subsequently learned they could modify Hobby Lobby's plan to run on a July-to-July schedule. Accordingly, the Mandate will now take effect on July 1, 2013. *See* Br. of Appellants at 11 (No. 12-6294).

7. Without expediting argument, it is unlikely that this Court will be able to decide this appeal before July 1, 2013. *See* 10 CIR. PRAC. GUIDE at 50 (noting "median time from filing appellee's brief until oral argument is 2.3 months" and "[f]rom hearing to disposition . . . is 3.7 months").

8. The Greens therefore ask this Court to set oral argument as soon as practicable after **April 4, 2013**, when the appeal will be fully briefed. Specifically, the Greens request oral argument during April, *see id.* at 49 (noting that “[s]horter [argument] calendars are often set in the off months”), or at the latest during the May 6-10 session.

9. This motion is not intended to supersede the Greens’ pending petition for *en banc* review. Regardless of how the Court disposes of that petition, the Greens move for expedited argument as soon as practicable after **April 4, 2013**.

Respectfully submitted,

s/ S. Kyle Duncan

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Dated: March 7, 2013

## CERTIFICATE OF SERVICE

I certify that on March 7, 2013, I caused the foregoing *Unopposed Motion to Expedite Oral Argument* to be served electronically via the Court's electronic filing system on the following parties who are registered in the system:

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All other case participants will be served via the Court's electronic filing system as well.

s/ Adèle Auxier Keim  
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Dated: March 7, 2013