

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ROMAN CATHOLIC DIOCESE OF
FORT WORTH, et al.,
Plaintiffs-Appellees,

v.

No. 14-10661

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the U.S. Department
of Health and Human Services, et al.
Defendants-Appellants.

UNIVERSITY OF DALLAS,
Plaintiff-Appellee,

v.

No. 14-10241

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the U.S. Department
of Health and Human Services, et al.
Defendants-Appellants.

EAST TEXAS BAPTIST UNIVERSITY, et al.,
Plaintiffs-Appellees,

WESTMINSTER THEOLOGICAL SEMINARY,
Intervenor Plaintiff-Appellee,

v.

No. 14-20112

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the U.S. Department
of Health and Human Services, et al.
Defendants-Appellants.

CATHOLIC DIOCESE OF BEAUMONT, et al.
Plaintiffs-Appellees,

v.

No. 14-40212

KATHLEEN SEBELIUS, in her official
capacity as Secretary of the U.S. Department
of Health and Human Services, et al.
Defendants-Appellants.

MOTION TO CONSOLIDATE APPEALS IN PART

The government respectfully requests leave to file a single opening brief in the four above-captioned appeals and asks that those appeals be argued before the same panel on the same day. This Court has already consolidated in part three of the above-captioned appeals, and the government's opening brief in those appeals currently is due to be filed on July 18, 2014. The fourth appeal involves the same issues as the three already-consolidated appeals and arises from the same case and complaint as one of those appeals. **Therefore, to conserve government resources, we respectfully request that the Court act on this motion to consolidate the fourth appeal before July 9, 2014.**

A. The four above-captioned appeals present substantially the same questions of law regarding the regulatory accommodations for non-profit employers with religious objections to providing contraceptive coverage.

The plaintiffs in these cases challenge regulations that establish minimum health coverage requirements under the Patient Protection and Affordable Care Act insofar as they include contraceptive coverage as part of women's preventive health coverage. The plaintiffs acknowledge, however, that they may opt out of the contraceptive-coverage requirement by informing their insurance issuer or third-party administrator that they are eligible for the religious accommodations set out in the regulations and therefore are not required "to contract, arrange, pay, or refer for contraceptive coverage." 78 Fed. Reg. 39,870-01, 39,874 (July 2, 2013). Plaintiffs object to opting out on the ground that, once they have opted out, federal regulations will either require third parties (the insurance issuer or third-party administrator) to make separate payments for contraceptive services, or, for the third-party administrator of a "church plan," will permit the third-party administrator to make such separate payments and seek reimbursement from the federal government.

This Court has already consolidated the appeals in *University of Dallas v. Sebelius*, 14-10241; *East Texas Baptist University v. Sebelius*, No. 14-20112; and *Catholic Diocese of Beaumont v. Sebelius*, No. 14-40212. On April 28, 2014, this Court granted leave for the government to file a single opening brief and a single reply brief in those three appeals, ordered that appellees may each file separate briefs and record excerpts in response to the government's single opening brief,

and ordered that the three cases be argued before the same panel on the same day. The government's opening brief in those three consolidated appeals currently is due on July 18, 2014.

In *Roman Catholic Diocese of Fort Worth*, No. 14-10661, as in the three appeals this Court already consolidated, the district court granted the plaintiffs injunctive relief under the Religious Freedom Restoration Act ("RFRA"). The district court's order at issue in *Roman Catholic Diocese of Fort Worth*, No. 14-10661, arises from the same case and complaint as the order at issue in *University of Dallas*, No. 14-10241. In *University of Dallas*, No. 14-10241, the district court issued a preliminary injunction to one plaintiff on RFRA grounds. In *Roman Catholic Diocese of Fort Worth*, No. 14-10661, the district court granted a preliminary injunction to the remaining plaintiffs on the same grounds.

B. 1. The government respectfully requests leave to file a single opening brief and a single reply brief in *Roman Catholic Diocese of Fort Worth*, No. 14-10661, and the three appeals that have already been consolidated, *University of Dallas*, 14-10241; *East Texas Baptist University*, No. 14-20112; and *Catholic Diocese of Beaumont*, No. 14-40212. The government's appeals in these cases present substantially the same legal issues. Accordingly, this Court already consolidated in part three of the appeals. Similarly, the D.C. Circuit, Sixth Circuit, and Seventh Circuit have ordered consolidation in comparable appeals in which the

plaintiffs challenge the same religious accommodations that are at issue here.

Consolidation of this fourth appeal is likewise appropriate here. Consolidation is particularly appropriate because the latest appeal arises from the same case and complaint as one of the already-consolidated appeals.

2. The government also respectfully requests that the Court schedule *Roman Catholic Diocese of Fort Worth*, No. 14-10661, along with the three already-consolidated appeals for argument before the same panel on the same day.

Hearing these appeals together will conserve judicial resources and allow the Court to consider the full range of factual scenarios in which the challenges to these regulatory accommodations arise. Hearing the cases together would cause minimal delay and would not prejudice the plaintiffs, which have all obtained injunctive relief. Three of the appeals have already been consolidated for purposes of argument. The fourth appeal involves the same issues as the three already-consolidate appeals and arises from the same case and complaint as one of the already-consolidated appeals.

C. We have contacted the appellees in these four appeals. In *Roman Catholic Diocese of Fort Worth*, No. 14-10661; *University of Dallas*, No. 14-10241; and *Catholic Diocese of Beaumont*, No. 14-40212, the plaintiffs-appellees do not oppose this motion. In *East Texas Baptist University*, No. 14-20112, the plaintiffs-appellees and the intervenor plaintiff appellee oppose this motion.

Respectfully submitted,

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JUNE 2014

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2014, I filed and served the foregoing motion through this Court's CM/ECF system.

/s/ Patrick G. Nemeroff

Patrick G. Nemeroff