

**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.

**REPLY IN SUPPORT OF MOTION TO
CONSOLIDATE APPEALS IN PART**

1. This Court has already consolidated in part three of the above-captioned appeals. The fourth appeal (*Roman Catholic Diocese of Fort Worth*) involves the same issues as the already-consolidated appeals and arises from the same case and complaint as one of those appeals (*University of Dallas*). Just as this Court already consolidated three of the above-captioned appeals, the D.C. Circuit, Third Circuit, Sixth Circuit, and Seventh Circuit have also issued orders consolidating appeals involving the same questions of law.

2. The plaintiffs in *Roman Catholic Diocese of Fort Worth*, No. 14-10661; *University of Dallas*, No. 14-10241; and *Catholic Diocese of Beaumont*, No. 14-40212, do not oppose the government's request to consolidate *Roman Catholic Diocese of Fort Worth* with the three already-consolidated appeals.

3. The plaintiffs-appellees and the intervenor plaintiff-appellee in *East Texas Baptist University (ETBU)*, No. 14-20112 oppose the government’s motion. The *ETBU* intervenor urges that the “newly proposed appeal presents significantly different fact patterns” from the already-consolidate appeal. Opp. 2. But while the *ETBU* intervenor focuses on allegedly meaningful differences between the facts in *ETBU* and the other two already-consolidated appeals, Opp. 4-5, it does not claim to identify any meaningful differences between *Roman Catholic Diocese of Fort Worth* and the already-consolidated appeals. To the contrary, the appeal in *Roman Catholic Diocese of Fort Worth* arises from the same case and complaint as the appeal in *University of Dallas*. In any event, while the government seeks consolidation of its opening brief and reply brief, it does not seek consolidation of appellees’ briefs. Therefore, to the extent that the *ETBU* intervenor believes that factual differences between the appeals bear on its legal arguments, it may explain its position in its brief.

The *ETBU* intervenor’s additional arguments regarding “logistical difficulties” (Opp. 5) offer no reason to deny consolidation. The *ETBU* intervenor expresses concern that consolidating *Roman Catholic Diocese of Fort Worth* with the three already-consolidated appeals will “make the factual record far more difficult for the Court to handle.” Opp. 5. This Court has already consolidated three of the above-captioned appeals, and consolidating one more appeal arising

from the same case and complaint as an already-consolidating appeal will not make the record meaningfully more complicated. The *ETBU* intervenor also worries that consolidating this fourth appeal “will only confuse and unnecessarily delay the program this Court has already set.” Opp. 5. Any delay resulting from preparation of the record in *Roman Catholic Diocese of Fort Worth* will be minimal and will not harm the *ETBU* intervenor-appellee. The district court in *ETBU* granted summary judgment for plaintiffs on their RFRA claims and entered a permanent injunction, which remains in place during the pendency of these appeals. In any event, any such delay is more than justified by the administrative efficiency provided by consolidating two appeals (*Roman Catholic Diocese of Fort Worth* and *University of Dallas*) that not only involve identical legal questions but arise from the same case and complaint.

Respectfully submitted,

MARK B. STERN

(202) 514-5089

ALISA B. KLEIN

(202) 514-1597

ADAM C. JED

(202) 514-8280

/s/ Patrick G. Nemeroff

PATRICK G. NEMEROFF

(202) 305-8727

patrick.g.nemeroff@usdoj.gov

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave., N.W., Room 7217

Washington, D.C. 20530

JUNE 2014

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2014, I filed and served the foregoing motion through this Court's CM/ECF system.

/s/ Patrick G. Nemeroff
Patrick G. Nemeroff