

Nos. 14-10241, 14-20112, 14-40212

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

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UNIVERSITY OF DALLAS, *et al.*  
*Plaintiff-Appellee,*

v.

KATHLEEN SEBELIUS, *et al.*,  
*Defendants-Appellants.*

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

WESTMINSTER THEOLOGICAL SEMINARY,  
*Intervenor-Plaintiff-Appellee,*

v.

SECRETARY KATHLEEN SEBELIUS, *et al.*,  
*Defendants-Appellants.*

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

v.

KATHLEEN SEBELIUS, *et al.*,  
*Defendants-Appellants.*

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**OPPOSITION TO APPELLANTS'  
MOTION FOR EXTENSION OF TIME**

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Appellees East Texas Baptist University and Houston Baptist University oppose the government's motion for an additional extension of time to file its opening brief.

Undersigned counsel is not in the habit of opposing motions to extend time to file briefs and indeed agreed to a previous significant extension of time for the government's opening brief in this appeal. However, there are several reasons unique to this litigation that make it unjust for the government to have an additional 31 days to prepare its opening brief.

First, the government does not need more than a month and a half to read, understand, and react to *Hobby Lobby* and *Wheaton College*. *Hobby Lobby* was long expected, and the *Wheaton* order is just five paragraphs long. Moreover, that the Supreme Court had to rule in *Wheaton* at all is entirely the government's fault, *see infra*. Perhaps in some circumstances intervening precedent would merit a delay of this length, but those circumstances are not present here.

Second, the government's problem is self-inflicted. It will not be news to the Court that this appeal is part of wide-ranging litigation that is

occurring across the Nation.<sup>1</sup> In other cases, the government has repeatedly refused to agree to even temporary injunctions pending appeal to allow religious organizations to litigate their cases without being crushed by fines in the interim. As a result, plaintiffs have repeatedly been forced to seek last minute relief from many different courts of appeals as well as the United States Supreme Court. The government has lost all but one of the resulting motions for injunction pending appeal, including twice at the United States Supreme Court under the All Writs Act. *See, e.g., Little Sisters of the Poor v. Sebelius*, 134 S. Ct. 1022 (Jan. 24, 2014); *Wheaton College v. Burwell*, 573 U.S. ---, 2014 WL 3020426, (July 3, 2014); *Eternal Word Television Network, Inc. v. Secretary*, No. 14–12696–CC, 2014 WL 2931940 (11th Cir. June 30, 2014); *id.*, (Pryor, J., concurring). In particular, had the government simply agreed to a temporary injunction pending appeal in *Wheaton*, the Supreme Court would not have had to address the issue. The government is thus asking for additional time because of an order that results from

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<sup>1</sup> *See* The Becket Fund for Religious Liberty, *HHS Information Central*, <http://www.becketfund.org/hhsinformationcentral/>.

its refusal to give a procedural inch. That stinginess counsels against an extension in this appeal.

Third, the Universities will be prejudiced by the delay. Throughout this litigation, the government has been selective in granting or refusing delays in ways that have affected the order in which cases are heard by the courts. For example, the government repeatedly gave and extended safe harbors to non-profits, ensuring that the for-profit wave of cases reached the courts of appeals and the Supreme Court first. *See* 78 Fed. Reg. 39870, 39874; *Burwell v. Hobby Lobby*, --- S. Ct. ---, 2014 WL 2921709 (June 30, 2014). The better approach is to require all parties to simply litigate their appeals as they come. Several non-profit contraceptive mandate cases are on their way to the Supreme Court and many observers believe the Court will decide one during October Term 2014. But granting the government's motion will make it easier for the government to push this appeal into the Supreme Court's 2015 Term, particularly if the government loses before a panel and then seeks rehearing en banc. That will prejudice the Universities' interests.

Fourth, the government will not be prejudiced by a denial because it has to brief the Tenth Circuit on *Hobby Lobby* and *Wheaton* by July 22.

In an order issued today (attached), the Tenth Circuit denied the government's request for an extension of time to brief *Hobby Lobby* and *Wheaton*. Thus in eleven days the government has to state what it thinks those cases mean, regardless of how the Court resolves this motion.

For these reasons, the Court should, like the Tenth Circuit, deny the motion for an extension of time. And for the reasons stated in the Universities' opposition to the government's pending motion for consolidation and the Universities' Petition for Initial Hearing *En Banc*, the Court should deny further partial consolidation, de-consolidate the already-consolidated appeals, and grant initial hearing *en banc*.

Respectfully submitted,

Dated: July 11, 2014

/s/ Eric C. Rassbach

Eric C. Rassbach

Diana M. Verm

The Becket Fund for Religious Liberty

3000 K Street, N.W., Suite 220

Washington, D.C. 20007

(202) 955-0095

erassbach@becketfund.org

Reagan W. Simpson

James E. Zucker

Yetter Coleman, LLP

909 Fannin Street

Suite 3600

Houston, TX 77010

(713) 632-8075

jzucker@yettercoleman.com

*Attorneys for Plaintiffs-Appellees*

**CERTIFICATE OF SERVICE**

I certify that on July 11, 2014, I caused the foregoing to be served electronically via the Court's electronic filing system.

*/s/ Eric C. Rassbach*  
Eric C. Rassbach

*Attorney for Plaintiffs-Appellees*

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**July 11, 2014**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker**  
**Clerk of Court**

LITTLE SISTERS OF THE POOR HOME  
FOR THE AGED, DENVER,  
COLORADO, a Colorado non-profit  
corporation, et al.,

Plaintiffs - Appellants,

v.

No. 13-1540

SYLVIA MATHEWS BURWELL,  
Secretary of the United States Department  
of Health and Human Services, et al.,

Defendants - Appellees.

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ASSOCIATION OF GOSPEL RESCUE  
MISSIONS, et al.,

Amici Curiae.

SOUTHERN NAZARENE UNIVERSITY,  
et al.,

Plaintiffs - Appellees,

v.

No. 14-6026

SYLVIA MATHEWS BURWELL, in her  
official capacity as Secretary of the United  
States Department of Health and Human  
Services, et al.,

Defendants - Appellants.



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AMERICAN CIVIL LIBERTIES UNION,  
et al.,

Amici Curiae.

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REACHING SOULS INTERNATIONAL,  
INC., an Oklahoma not for profit  
corporation, et al.,

Plaintiffs - Appellees,

v.

No. 14-6028

SYLVIA MATHEWS BURWELL,  
Secretary of the United States Department  
of Health and Human Services, et al.,

Defendants - Appellants.

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**ORDER**

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These appeals are before the court on the government's motion to extend the time for filing the simultaneous supplemental briefs directed in our order dated July 1, 2014. The motion is opposed. Upon consideration, and at the specific direction of the court, the motion is denied. The deadline for filing the briefs shall remain July 22, 2014.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk