

[ORAL ARGUMENT NOT YET SCHEDULED]

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

TYNDALE HOUSE PUBLISHERS, INC., and
MARK D. TAYLOR,

Plaintiffs-Appellees,

v.

KATHLEEN SEBELIUS, Secretary of the U.S.
Department of Health and Human Services,
et al.,

Defendants-Appellants.

No. 13-5018

**MOTION FOR VOLUNTARY DISMISSAL OF INTERLOCUTORY
APPEAL PURSUANT TO RULE 42(b)**

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, the government respectfully moves to dismiss its interlocutory appeal from the preliminary injunction issued in this case. This Court on its own motion ordered that the government's appeal in this case and the plaintiffs' appeal in *Gilardi v. Sebelius*, No. 13-5069 (D.C. Cir.), be heard by the same panel. Oral argument has not yet been scheduled.

This case and *Gilardi* present distinct issues. The district court in this case relied on the “unique corporate structure” of Tyndale House Publishers, Inc., *see Tyndale House Publishers, Inc. v. Sebelius*, ___ F. Supp. 2d ___, 2012 WL 5817323, *7 n.10 (Nov. 16, 2012), and the district court in *Gilardi* distinguished this case on that basis. *See Gilardi v. Sebelius*, No. 1:13-cv-00104, at 15-16 (D.D.C. March 3, 2013). The district court in this case also suggested that Tyndale House Publishers, Inc., might qualify for the religious exemption in Title VII of the Civil Rights Act of 1964, but the court did not resolve that question. *See Tyndale*, ___ F. Supp. 2d ___, 2012 WL 5817323, *9 n.13. We believe that this issue should be addressed in the first instance by the district court. However, we do not intend to oppose a continuation of the stay of district court proceedings in this case pending this Court’s decision in *Gilardi*, if the district court concludes that a continuation of the stay is appropriate.

Respectfully submitted,

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/s/ Alisa B. Klein

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April 25, 2013

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2013, I filed and served the foregoing motion on counsel of record through this Court's CM/ECF system.

/s/ Alisa B. Klein

Alisa B. Klein