



Via CM/ECF

Elisabeth A. Shumaker, Clerk of Court
U.S. Court of Appeals for the Tenth Circuit
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257

January 28, 2015

**Re: *Little Sisters of the Poor, et al. v. Burwell, et al.*, No. 13-1540
Reaching Souls, Int'l, et al. v. Burwell, et al., No. 14-6028
Amended Notice of Supplemental Authority: *Holt v. Hobbs*, No. 13-6827
(Jan. 20, 2015)**

Dear Ms. Shumaker:

The Supreme Court's *Holt* decision demonstrates how to conduct "substantial burden" analysis. The Court simply identified the religious exercise (growing a beard) and determined whether the government forced the claimant "to 'engage in conduct that seriously violates [his] religious beliefs'" or "face serious disciplinary action." Op.7. That test was "easily satisfied" because the government "put[] petitioner to this choice." *Id.* Offering other ways of exercising religion was insufficient. Op.7-8.

That straightforward analysis requires a finding of substantial burden here. The ministries exercise religion by, among other things, refusing to send the government's Form or its functional equivalent. The Mandate "puts [them] to this choice" of either stopping that undisputed religious exercise or paying large penalties. Op.7. Other possible ways of exercising religion are irrelevant, because the ministries are being forced to give up the actual religious exercise at issue here. Op.7-8; *see also Catholic Benefits Ass'n v. Burwell*, No. CIV-14-685-R (W.D. Okl. Dec. 29, 2014) at 9-10 (attached). The claimants thus have demonstrated a

substantial burden on their religious exercise under *Holt*. The government's arguments to the contrary, and decisions such as *Notre Dame*, are irreconcilable with *Holt*'s straightforward test.

Holt also demonstrates why the government fails the "exceptionally demanding" least-restrictive-means test. The government must "not merely...explain" its exemption denial (here, the denial of an exemption awarded to thousands of other religious objectors), but must "*prove* that denying the exemption is the least restrictive means of furthering a compelling governmental interest." Op.10 (emphasis supplied). The Court also found that the government "cannot show" that it passes least-restrictive-means analysis because of the policy's many exemptions. Op.9-11 (exemptions made the government position "hard to take seriously").

Here, the government failed to prove that it could not treat these ministries like other exempt ministries, or that proposed alternatives (like using the same exchanges already used by millions of people) would not work. *Compare* Op.12 (Arkansas "already has a policy" that "could largely solve this problem"). The government has never proven these alternatives could not work, and therefore failed to carry its burden under strict scrutiny. Op.8-16. The injunction should remain in place.

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Respectfully submitted,

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I certify that on January 28, 2015, I caused the foregoing document 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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Dated: January 28, 2015