No. 14-701

In the Supreme Court of the United States

MICHIGAN CATHOLIC CONFERENCE, CATHOLIC FAMILY SERVICES, THE CATHOLIC DIOCESE OF NASHVILLE, CATHOLIC CHARITIES OF TENNESSEE, INC., AQUINAS COLLEGE, DOMINICAN SISTERS OF CECILIA CONGREGATION, MARY QUEEN OF ANGELS, INC., CAMP MARYMOUNT, INC., AND ST. MARY VILLA, INC.,

Petitioners,

v.

SYLVIA MATTHEWS BURWELL, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the petition should be granted so that the judgment below can be reversed, or vacated and remanded, in light of *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), and *Wheaton College* v. *Burwell*, 134 S. Ct. 2806 (2014).

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The Becket Fund for Religious Liberty is a non-profit, public-interest legal and educational institute that protects the free expression of all faiths. The Becket Fund has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country and around the world.

The Becket Fund has substantial experience litigating religious liberty cases before this Court, including several cases involving the mandate at issue here. For example, the Becket Fund represents the religious claimants in *Little Sisters of the Poor* v. *Sebelius*, 134 S. Ct. 1022 (2014); *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); and *Wheaton College* v. *Burwell*, 134 S. Ct. 2806 (2014). We have also recently represented the petitioners in *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, 132 S. Ct. 694 (2012), and *Holt* v. *Hobbs*, No. 13-6827 (U.S. argued Oct. 7, 2014).

The Becket Fund also has substantial knowledge and experience concerning the current status of HHS Mandate litigation in the lower courts. The Becket Fund has represented 13 clients in 9 cases (including two class actions which together involve more than 650 religious ministries and two benefits providers), and maintains the HHS Information Central website

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[1] No party's counsel authored any part of this brief. No person other than the *Amicus Curiae* contributed money intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief, and letters indicating consent are on file with the Clerk.

tracking all of the cases currently proceeding through the federal courts.[2]

The Becket Fund submits this brief to provide the Court with information about the mandate litigation proceeding through the lower courts and to explain how the Sixth Circuit decision below is out of step with both this Court's precedent and the views of most of the lower courts to consider the issue. The continued vitality of the Sixth Circuit's decision in this case risks leading other lower courts astray on an issue of national importance.

ARGUMENT

I. The petition should be granted because the decision below continues to create confusion and conflict in the lower courts.

This case arises from the ongoing controversy surrounding the federal government's mandate that certain employers provide their employees with cost-free access to contraceptives, sterilizations, and abortion-inducing drugs and devices.[3] That controversy has generated more than 50 lawsuits involving religious ministries seeking judicial protection against the mandate.[4]

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[2] See http://www.becketfund.org/hhsinformationcentral/ (last visited Jan. 14, 2015).

[3] See 42 U.S.C. 300gg-13(a)(4); HRSA, Women's Preventive Services, http://www.hrsa.gov/womensguidelines (last visited Jan. 14, 2015); see also 26 C.F.R. 54.9815-2713(a)(1)(iv); 29 C.F.R. 2590.715-2713(a)(1)(iv); 45 C.F.R. 147.130(a)(1)(iv).

[4] The controversy also generated 49 lawsuits by closely-held businesses objecting to the mandate. After this Court's decision in *Hobby Lobby*, the government has been agreeing to judg-

The vast majority of plaintiffs have already received an injunction to protect them from the mandate while their litigation proceeds. Indeed, of the 40 non-profit religious ministry cases in which the question of preliminary relief has been decided, 34 have granted such relief and only six denied it.[5] Including class actions, this means that more than 850 religious ministries have received preliminary or permanent injunctions against the mandate, and only 16 did not.[6] The decision below is thus on the extremely short end of a split in the lower courts.

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ments against the mandate in those cases. See, *e.g.*, Order, *Conestoga Wood Specialties Corp.* v. *Burwell*, No. 5:12-cv-6744 (E.D. Pa. Oct. 2, 2014) (granting injunction).

[5] See Addendum. Furthermore, of the six denials, every plaintiff but two has at least received the protection of an injunction pending appeal. See, *e.g.*, Order, *Mich. Catholic Conference* v. *Sebelius*, No. 13-2723 (6th Cir. Dec. 31, 2013) (granting injunction pending appeal); Order, *Catholic Diocese of Nashville* v. *Sebelius*, No. 13-6640 (6th Cir. Dec. 31, 2013) (same). To date, only the University of Notre Dame and the School of the Ozarks have been completely denied protection and forced to violate their religion. See n.6, infra. Summary judgment was granted against the School of the Ozarks after the college had already complied with the accommodation under duress.

Relief was also denied in *Media Research Ctr.* v. *Burwell*, No. 1:14-cv-379 (E.D. Va. July 3, 2014). But there, the plaintiff was not seeking protection from the accommodation scheme; rather, it sought to *participate* in the scheme.

[6] Compare C.A. App. 172a, *Little Sisters of the Poor* v. *Burwell*, No. 13-1540 (10th Cir. Feb. 24, 2014) (estimating 473 potential class members); C.A. App. A165, *Reaching Souls Int'l* v. *Burwell*, No. 14-6028 (10th Cir. Apr. 14, 2014) (estimating 187 potential class members); see also Docket entry No. 1 at ¶ 42, *Catholic Benefits Association LCA* v. *Burwell*, No. 5:14-cv-00685 (W.D. Okla. July 1, 2014) (estimating 570 for-profit and non-profit

A. The decision below cannot be reconciled with this Court's precedents.

The Sixth Circuit panel decision cannot be reconciled with this Court's RFRA analysis in *Hobby Lobby* and its action in *Wheaton College*.

1. The Sixth Circuit panel acknowledged that forcing Petitioners to sign EBSA Form 700 would make them violate their sincere religious beliefs. *MCC*, 755 F.3d at 385. That is a quintessential substantial burden under RFRA. Yet the panel found no substantial burden on religion based on the government's argument that signing Form 700 did nothing of substance since federal law, rather than Form 700, is what triggers contraceptive coverage. *Id.* at 387. In this respect, the Sixth Circuit panel embraced a version of the argument this Court had previously rejected in *Little Sisters of the Poor*: religious objectors must sign Form 700, because the form does not really matter. See, *e.g.*, *Mich. Catholic Conference* v. *Burwell*, 755 F.3d 372, 390 (6th Cir. 2014) ("*MCC*"); Gov't Resp. Br. at 4, *Little Sisters of the Poor* v. *Sebelius*, No. 13A691 (Jan. 3, 2013).

Catholic organizations); with *Univ. of Notre Dame* v. *Sebelius*, 743 F.3d 547 (7th Cir. 2014); *Mich. Catholic Conference* v. *Burwell*, 755 F.3d 372, 378-79 (6th Cir. 2014) (four nonexempt religious ministries); *Priests for Life* v. *U.S. Dep't of Health & Human Servs.*, 772 F.3d 229 (D.C. Cir. 2014) (ten nonexempt religious ministries); *The Sch. of the Ozarks, Inc.* v. *U.S. Dep't of Health & Human Servs.*, No. 6:13-03157-CV (W.D. Mo. Jan. 13, 2015).

The decision below sought to justify this startling ruling by treating Petitioner's complicity concern as a mere "objection to the later independent action[s] of a third party [i.e., the insurer or third-party administrator]." *Id.* at 389. Just weeks later, however, this Court directly rejected that justification in *Hobby Lobby*. There, the government had argued that Hobby Lobby's objection to covering certain contraceptives was really an objection about "[d]ecisions whether to claim such benefits * * * made by independent third parties: plan participants and beneficiaries." Gov't Br. at 33, *Sebelius* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (No. 13-354). That argument, just like the Sixth Circuit's ruling, turns on the idea that "the connection between what the objecting parties must do * * * and the end that they find to be morally wrong * * * is simply too attenuated." *Hobby Lobby*, 134 S. Ct. at 2777. But accepting that argument is tantamount to "tell[ing] the [believers] that their beliefs" about complicity are "flawed," "mistaken," or "insubstantial"—which "is not for [courts] to say." *Id.* at 2778-79. Rather, a court's "'narrow function * * * in this context is to determine' whether the line drawn reflects 'an honest conviction.'" *Id.* (quoting *Thomas* v. *Review Bd.*, 450 U.S. 707, 716 (1981)). Since there was no question of the honesty of Petitioners' convictions—indeed, the panel had already acknowledged them—the panel below erred. When provided with the opportunity to correct this error by considering the case *en banc* after *Hobby Lobby* and *Wheaton College,* the Sixth Circuit refused, requiring Petitioners to seek relief in this Court.

2. The passage of time has also disproven the core assumption of the decision below. The panel incorrectly believed that "independent obligations under

federal law"—rather than the forced action of the religious employer—triggered contraceptive coverage. *MCC*, 755 F.3d at 387-388. Not so. As the dissent in *Wheaton College* recognized, a religious objector's "third-party administrator bears the legal obligation to provide contraceptive coverage only upon receipt of a valid self-certification." 134 S. Ct. at 2814 (Sotomayor, J., dissenting).

For the reasons set out above, *Hobby Lobby* makes either arrangement a substantial burden where, as here, the ministry is compelled to violate sincere and undisputed religious beliefs. Nevertheless, it is important to note that courts now have a year of experience under the non-profit mandate against which to test the "independent obligations of law" argument. Three observations prove that argument false.

First, the obligations simply are not "independent" of the religious employer. If the religious employer does not provide a policy and trigger the obligations, then the obligations of the insurer and/or third party administrator do not attach. For instance, in *Reaching Souls International* v. *Sebelius*, the ministries' third-party administrator, Highmark, stated it would provide contraceptive coverage "upon receipt of the self-certification form." No. CIV-13-1092, 2013 WL 6804259, at *7 n.8 (W.D. Okla. Dec. 20, 2013). Because the ministries received an injunction protecting them from being compelled to self-certify, Highmark is not providing the contraceptive coverage. See Oral Arg. at 26:05-29:03, *Reaching Souls Int'l* v. *Burwell*, No. 14-6028 (10th Cir. Dec. 8, 2014), available at https://www.ca10.uscourts.gov/sites/default/files/clerk

/14-6028.mp3 (last visited Jan. 14, 2015).[7] While the *Reaching Souls* case concerns a church plan, Form 700 acts as a trigger for both church plans and non-church-plans. See, *e.g.*, Gov't C.A. Br. at 24, *Eternal Word Television Network* v. *Sec'y, U.S. Dep't of Health & Human Servs.*, No. 14-12696-CC (11th Cir. June 18, 2014) (admitting that, without an executed self-certification, contraceptives are not provided on an objecting ministry's non-church plan).

That is why the *only* cases that have reached this Court are cases in which the lower courts denied injunctions. Where the lower courts *did* grant injunctions protecting ministries from forced execution of the government's forms, no one needed additional relief because the ministries were *no longer threatened* with having to "seamlessly provide contraceptive services" through their "employer-sponsored private health insurance." *Priests for Life* v. *U.S. Dep't of*

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[7] See also Oral Argument at 18:01-18:33:

> **Judge Matheson**: Let's do a little before and after. All right? So we have the religious nonprofit. Let's say the religious nonprofit says, "You know, I am going to file the form." All right? But before the religious nonprofit does that, the TPA is not the plan administrator, correct?
>
> **The Government**: That is correct.
>
> **Judge Matheson**: Okay. Then the form is filed. And the TPA then is the plan administrator.
>
> **The Government**: Much the same as any time someone opts out and someone else steps in, yes.

Health & Human Servs., 772 F.3d 229, 235-36 (D.C. Cir. 2014). As the regulations make clear, the contraceptive coverage is designed to function solely as a forced add-on to the plan, to be provided only to beneficiaries of the plan, and "only [for] so long as they [are] enrolled" on the plan. See, *e.g.*, 26 C.F.R. 54.9815–2713A(d), 29 C.F.R. 2590.715-2713A(d). When the ministries are left alone to control their own plans—and not forced to trigger the flow of the contraceptives—they have had no further need to seek this Court's protection.

Second, the government's litigation behavior (as distinguished from its legal arguments) is a powerful telltale. If the government actually believed that "independent obligations of law" required other parties to provide the coverage, it is hard to understand why the government fought the Little Sisters of the Poor and Wheaton College all the way to this Court to force their participation, refusing even to allow for short delays. See, *e.g.*, Gov't Opp. to Prelim. Inj. at 3, Docket entry No. 59, *Wheaton Coll.* v. *Burwell*, No. 1:13-cv-08910 (N.D. Ill. June 13, 2014) (opposing a delay of even a few days pending this Court's decision in *Burwell* v. *Hobby Lobby*). The government's unyielding litigation position indicates that, under the system it has adopted, the government needs the forced participation of religious ministries and their plans.

Third, the government's more recent legal arguments confirm that it is the forced participation of ministries and their plans—and not the mere "independent operation of law"—that triggers coverage. A year ago the government told this Court that the Little Sisters of the Poor should be forced to execute the

government's form because it would have no effect, but instead would merely provide an "orderly means of permitting eligible individuals or entities to declare that they intend to take advantage of [the accommodation]." Gov't Br. at 32, *Little Sisters of the Poor* v. *Sebelius*, 134 S. Ct. 1022 (2014) (No. 13A691) (noting that this is "what the self-certification under the regulations accomplishes"). The terms of this Court's ensuing injunction provided the government with precisely such notice, which should have satisfied the government. But rather than stand down, the government vigorously kept litigating, telling the Tenth Circuit that injunctions protecting religious ministries from making forced certifications interfere with its contraceptive delivery system. See Gov't C.A. Br. at 1, *Little Sisters of the Poor* v. *Burwell*, No. 13-1540 (10th Cir. Sept. 8, 2014) ("Because of the injunctions issued in these cases, the women employed by plaintiffs have been and continue to be denied access to contraceptive coverage."). Thus even where the government had previously said self-certification would not matter, it is now acknowledging that such certification really is the trigger after all. Simply put, the coverage depends on the religious ministry's certification and plan.

None of these developments is consistent with the assumption of the Sixth Circuit panel that the notice does not matter and the mere "operation of law" is what causes the coverage. Without the ministries' coerced participation by providing a policy and trig-

gering the accommodation, the government's particular contraceptive delivery scheme does not work.[8]

B. The decision below has led and continues to lead other courts astray.

The decision below has had important negative consequences in other cases. A grant in this case, or at least a GVR to permit the Sixth Circuit to consider this case in light of *Hobby Lobby* and *Wheaton College*, would cabin those negative consequences.

1. Last term, the decision below and its predecessor resulted in several emergency petitions to this Court and the courts of appeal.

At the end of last Term, several lower courts relied on the decision below, and/or the *Notre Dame* decision on which it is based, in ways that generated at least three emergency applications lodged with this Court. In *Diocese of Cheyenne* v. *Sebelius*, for example, the trial court relied on *Notre Dame* extensively in denying relief. 21 F. Supp. 3d 1215, 1222-27 (D. Wyo. 2014). The court also relied on the trial court opinion in this case, which, like the Sixth Circuit, had

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[8] Of course, the government did not have to set up a system that uses religious ministries' plans and actions to distribute contraceptives. For example, the government has never explained why it cannot simply use its own existing exchanges to offer employees whatever insurance it wants to (and to subsidize that insurance if the government believes it too expensive). That logical solution is surely less restrictive of religious liberty, would completely meet the government's claimed interests, and would end the many lawsuits by religious ministries seeking protection from the mandate in this and other courts.

itself relied on *Notre Dame*. *Id.* at *8 (citing *Michigan Catholic Conference* v. *Sebelius,* 989 F. Supp. 2d 577, 587 (W.D. Mich. 2013)). On an emergency motion, the Tenth Circuit ultimately entered an injunction pending appeal on the basis of this Court's *Little Sisters* order, but not before the diocese was forced to lodge an emergency application with Justice Sotomayor.[9] Although the Tenth Circuit entered its injunction before this Court acted on the application, the resources of Court staff were still called upon, largely because of the arguments embraced in the decision below.

In similar fashion, the trial court in *Eternal Word Television Network* v. *Burwell* relied on the decision below and *Notre Dame* to deny relief, forcing EWTN to seek emergency relief from the Eleventh Circuit. 26 F. Supp. 3d 1228 (S.D. Ala. 2014). On an emergency motion, the Eleventh Circuit entered an injunction protecting EWTN, but not before the ministry was forced to lodge an emergency application with Justice Thomas.[10]

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[9] See *Diocese of Cheyenne* v. *Burwell,* No. 14-8040 (10th Cir. June 30, 2014) (entering injunction pending appeal "[i]n light of the Supreme Court's ruling" in *Little Sisters*). The lodging of the emergency application was reported on scotusblog.com. See http://www.scotusblog.com/2014/06/round-2-on-birth-control-developing/ (last visited Jan. 14, 2015).

[10] See *Eternal Word Television Network* v. *Sec'y, U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339, 1340 (11th Cir. 2014) (entering injunction pending appeal "[i]n light of the Supreme Court's decision" in *Hobby Lobby*); see also *id.* at 1347 (Pryor, J., concurring) (dismissing *Notre Dame* and *MCC* as "wholly unpersuasive"). *Amicus* represents the plaintiff in *EWTN*.

And it was also lower court reliance on the decision below and *Notre Dame* that generated the emergency application by Wheaton College that this Court granted on July 3, 2014. *Wheaton Coll.* v. *Burwell*, No. 1:13-cv-08910, 2014 WL 2826336 (N.D. Ill. June 23, 2014) (relying on the decision below and *Notre Dame* more than ten times each). The trial court found that the mandate imposed a "Hobson's choice" and subjected Wheaton College to "steep financial penalties" while the costs to the government of a short injunction would be "minimal." *Id.* at *9. Nevertheless, the trial court would not grant even a short injunction to allow for briefing about the impact of *Hobby Lobby* because "nothing in the Supreme Court's ruling expressly overrules or abrogates *Notre Dame*, which thus remains binding on this Court." Order at 3, Docket entry No. 72, *Wheaton Coll.* v. *Burwell*, No. 1:13-cv-08910 (N.D. Ill., June 30, 2014).[11] And although the Third, Tenth, and Eleventh Circuits had granted emergency relief in similar circumstances, the Seventh Circuit denied relief later that day "on the basis of [its own] decision in *Notre Dame*." Order at 1, *Wheaton Coll.* v. *Burwell*, No. 14-2396 (7th Cir. June 30, 2014). The lower courts' reliance on the decision below and *Notre Dame* in refusing to grant Wheaton even temporary relief thus forced Wheaton to seek emergency relief from this Court immediately after *Hobby Lobby*.[12]

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[11] *Amicus* represents the plaintiff in *Wheaton College*.

[12] Although we have no knowledge whether they filed an emergency application to this Court, the plaintiffs in *Catholic Charities of the Archdiocese of Philadelphia* v. *Burwell* were likewise forced to seek emergency relief from the Third Circuit

2. Recent emergency proceedings in the Tenth Circuit and the recent *Priests for Life* decision in the D.C. Circuit illustrate the continuing danger in leaving the Sixth Circuit's decision undisturbed.

The continued vitality of the decision below and *Notre Dame*—both pre-*Hobby Lobby* decisions—risk leading other courts astray. Two recent decisions illustrate the ongoing harm.

In *Association of Christian Schools International* v. *Burwell*, the trial court initially denied an injunction based on the substantial burden analysis in the decision below and related cases. No. 14-CV-02966, 2014 WL 6704310, at *5 (D. Colo. Nov. 26, 2014) (*ACSI*). Notably, the trial court's decision contained no consideration at all of this Court's substantial burden analysis in *Hobby Lobby*.[13] Following the now-familiar pattern, the decision resulted in emergency briefing for the religious ministries and the federal government at the Tenth Circuit Court of Ap-

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after their trial court had relied heavily on *Notre Dame* and *MCC*. No. 14-3096, 2014 WL 2892502, at *6-*7 (E.D. Pa. June 26, 2014). The Third Circuit granted the plaintiffs' emergency motion for injunction pending appeal on June 28, 2014, thus obviating the need for an emergency application to this Court. See Order, *Catholic Charities of the Archdiocese of Phila.* v. *Burwell*, No. 14-3126 (3d Cir. June 28, 2014).

[13] The recent decision in *The School of the Ozarks* follows the same pattern: heavy reliance on the decision below and *Notre Dame*, and no reliance on *Hobby Lobby*, to analyze substantial burden. See Order at 6-9, Docket entry No. 64, *The Sch. of the Ozarks, Inc.* v. *U.S. Dep't of Health & Human Servs.*, No. 6:13-cv-03157 (W.D. Mo. Jan. 13, 2015).

peals, and an emergency order granting an injunction pending appeal. *Ass'n of Christian Sch. Int'l* v. *Burwell*, No. 14-1492 (10th Cir. Dec. 19, 2014).

Like the trial court in *ACSI*, the D.C. Circuit's recent decision in *Priests for Life* relies heavily on the decision below and *Notre Dame*, resulting in only superficial engagement with this Court's substantial burden analysis from *Hobby Lobby*. See *Priests for Life*, 772 F.3d at 244-256. In particular, the D.C. Circuit found that there was no substantial burden because the accommodation requires the plaintiffs to execute a "minimal" "bit of paperwork," that the court believed would "wash[] their hands of any involvement" in the distribution of contraceptives. *Id.* at 237, 247. Like the Sixth Circuit, and in reliance on the decision below, the D.C. Circuit believed it could decide that the forced actions by religious ministries were sufficiently removed from the coverage to permit the government to force them to violate their religion without creating a substantial burden. Compare *id*. at 246-256 with *MCC*, 755 F.3d at 390.

That approach cannot be squared with *Hobby Lobby*. These errant decisions embrace the precise attenuation argument this Court considered and rejected just a few months ago. *Hobby Lobby*, 134 S. Ct. at 2778. Had the D.C. Circuit followed *Hobby Lobby* instead of the decision below, it would (or at least should) have found that where the objector deems the required conduct to "lie[] on the forbidden side of the line, * * * it is not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* at 2779; see also *id.* at 2778 (beliefs about moral complicity "implicate[ ] a difficult and important question of religion and moral philosophy, namely, the circum-

stances under which it is wrong for a person to perform an act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another.").[14]

C. A grant here would clarify the law for at least six circuits currently considering the mandate.

A grant in this case would help ensure that the six other courts of appeal currently considering mandate cases do not mistakenly follow the decision below rather than following this Court's precedent. In particular:

- The Third Circuit heard oral arguments in three cases on November 21, 2014. *Geneva Coll.* v. *Sec'y, U.S. Dep't of Health & Human*

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[14] The D.C. Circuit compounded its error by ignoring this Court's least-restrictive-means analysis, which is "exceptionally demanding" and requires the government to come forward with actual evidence to prove alternative means would not suffice. *Hobby Lobby*, 134 S. Ct. at 2780-2781. In particular, although the D.C. Circuit suggested that use of the government's own existing exchanges satisfies the government's interests because "all listed plans [on the exchanges] are required to cover contraceptive services without cost sharing," *Priests for Life*, 772 F.3d at 267, the government offered no evidence that it could not use those same existing exchanges to directly offer insurance with contraceptive coverage to any employee who wants it. See *Hobby Lobby*, 134 S. Ct. at 2780-81 (noting HHS's failure to provide evidence to rebut the "most straightforward way" of meeting its professed goals; "If, as HHS tells us, providing all women with cost-free access to all FDA-approved methods of contraception is a Government interest of the highest order, it is hard to understand HHS's argument that it cannot be required under RFRA to pay *anything* in order to achieve this important goal.").

Servs., No. 14-1374 (3d Cir.); *Zubik* v. *Sec'y, U.S. Dep't of Health & Human Servs.*, No. 14-1377 (3d Cir.); *Persico* v. *Sec'y, U.S. Dep't of Health & Human Servs.*, No. 14-1376 (3d Cir.). Portions of the oral argument focused extensively on the *Notre Dame* line of cases.

- The Seventh Circuit heard oral argument in two cases on December 3, 2014. *Diocese of Fort Wayne-S. Bend, Inc.* v. *Burwell*, No. 14-1430 (7th Cir.); *Grace Sch.* v. *Burwell*, No. 14-1431 (7th Cir.).
- The Eighth Circuit heard oral arguments in two appeals on December 10, 2014. *Dordt Coll.* v. *Burwell*, No. 14-2726 (8th Cir.); *Sharpe Holdings* v. *U.S. Dep't of Health & Human Servs.,* No. 14-1507 (8th Cir.).
- The Tenth Circuit heard oral arguments on December 8, 2014 in three cases—*Little Sisters of the Poor* v. *Burwell*, No. 13-1540 (10th Cir.); *Southern Nazarene University* v. *Burwell*, No. 14-6026 (10th Cir.); and *Reaching Souls* v. *Burwell*, No. 14-6028 (10th Cir.). *Little Sisters* and *Reaching Souls* are class actions involving hundreds of religious ministries and their benefits providers. The government has asked the Tenth Circuit to proceed quickly.[15]
- In the Eleventh Circuit, briefing is complete in *Eternal Word Television Network* v. *Secretary, United States Department of Health & Human*

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[15] *Amicus* represents the plaintiffs in *Little Sisters* and *Reaching Souls*.

Services, No. 14-12696-CC (11th Cir.), and in two consolidated appeals, *Roman Catholic Archdiocese of Atlanta* v. *Secretary, United States Department of Health & Human Services*, No. 14-12890 (11th Cir.), and *Roman Catholic Archdiocese of Savannah* v. *Secretary, United States Department of Health & Human Services*, No. 14-13239 (11th Cir.). Oral argument for the cases is scheduled for Feb. 4, 2015.

- In the Fifth Circuit, briefing is complete in four consolidated appeals. *E. Tex. Baptist Univ.* v. *Burwell*, No. 14-20112 (5th Cir.); *Univ. of Dallas* v. *Burwell*, No. 14-10241 (5th Cir.); *Diocese of Beaumont* v. *Burwell*, No. 14-40212 (5th Cir.); *Catholic Charities, Diocese of Fort Worth, Inc.* v. *Burwell*, No. 14-10661 (5th Cir.). An argument date has not yet been set.[16]

In addition to these appeals, there are presently 23 other cases either going through the district courts or in the early stages of appeal. See Addendum. *Amicus* keeps a running update of developments in these cases at www.becketfund.org/hhsinformationcentral/.

[16] *Amicus* represents the plaintiffs in *East Texas Baptist University*.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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JANUARY 2015

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2. *Catholic Charities, Archdiocese of Phila.* v. *Sec'y, Dep't of Health & Human Servs.*, No. 14-3126 (3d Cir. Sept. 2, 2014) (granting temporary injunction).
3. *Diocese of Cheyenne* v. *Burwell*, No. 14-8040 (10th Cir. June 30, 2014) (granting injunction pending appeal).
4. *Eternal Word Television Network, Inc.* v. *Sec'y, Dep't of Health & Human Servs.*, 756 F.3d 1339 (11th Cir. 2014) (granting injunction pending appeal).

District Courts

1. *The Catholic Benefits Ass'n LCA* v. *Burwell*, No. 5:14-cv-00685-R, 2014 WL 7399195 (W.D. Okla. Dec. 29, 2014) (granting preliminary injunction).

2. *Insight for Living Ministries* v. *Burwell*, No. 4:14-cv-675, 2014 WL 6706921 (E.D. Tex. Nov. 25, 2014).

3. *Ave Maria Sch. of Law* v. *Burwell*, No. 2:13-cv-00795, 2014 WL 5471054 (M.D. Fla. Oct. 28, 2014) (granting preliminary injunction).

4. *Ave Maria Univ.* v. *Burwell*, No. 2:13-cv-00630, 2014 WL 5471048 (M.D. Fla. Oct. 28. 2014) (granting preliminary injunction).

5. *Brandt* v. *Burwell*, No. 2:14-cv-00681, 2014 WL 4170671 (W.D. Pa. Aug. 20, 2014) (granting permanent injunction).

6. *La. Coll.* v. *Burwell*, No. 1:12-cv-00463, 2014 WL 3970038 (W.D. La. Aug. 13, 2014) (granting permanent injunction).

7. *Archdiocese of St. Louis* v. *Burwell*, No. 4:13-cv-02300, 2014 WL 2945859 (E.D. Mo. June 30, 2014) (granting preliminary injunction).

8. *Colo. Christian Univ.* v. *Burwell*, No. 1:13-cv-02105 (D. Colo. June 20, 2014) (granting preliminary injunction).

9. *Catholic Benefits Ass'n LCA* v. *Sebelius*, 24 F. Supp. 3d 1094 (W.D. Okla. 2014) (granting preliminary injunction).

10. *Dordt Coll.* v. *Sebelius*, 22 F. Supp. 3d 934 (N.D. Iowa 2014) (granting preliminary injunction).

11. *Union Univ.* v. *Sebelius*, No. 1:14-cv-01079 (W.D. Tenn. Apr. 29, 2014) (granting preliminary injunction until 30 days after the mandate issues in *Mich. Catholic Conference et al.* v. *Burwell*, 755 F.3d 372 (6th Cir. 2014)).

12. *Fellowship of Catholic Univ. Students* v. *Sebelius*, No. 1:13-cv-03263 (D. Colo. Apr. 23, 2014) (granting preliminary injunction).

13. *Dobson* v. *Sebelius*, No. 1:13-cv-03326, 2014 WL 1571967 (D. Colo. Apr. 17, 2014) (granting preliminary injunction).

14. *Roman Catholic Archdiocese of Atlanta* v. *Sebelius*, No. 1:12-cv-3489, 2014 WL 1256373 (N.D. Ga. Mar. 26, 2014) (granting permanent injunction).

15. *Ave Maria Found.* v. *Sebelius*, 991 F. Supp. 2d 957 (E.D. Mich. 2014) (granting preliminary injunction).

16. *Catholic Diocese of Beaumont* v. *Sebelius*, 10 F. Supp. 3d 725 (E.D. Tex. 2014) (granting permanent injunction).

17. *Roman Catholic Diocese of Fort Worth* v. *Sebelius*, No. 4:12-cv-00314 (N.D. Tex. Dec. 31, 2013) (granting preliminary injunction to the University of Dallas).

18. *Sharpe Holdings, Inc.* v. *U.S. Dep't of Health & Human Servs.*, No. 2:12-cv-92, 2013 WL 6858588 (E.D. Mo. Dec. 30, 2013) (granting preliminary injunction to religious non-profit

parties CNS International Ministries and Heartland Christian College).

19. *E. Tex. Baptist Univ.* v. *Sebelius*, 988 F. Supp. 2d 743 (S.D. Tex. 2013) (granting preliminary injunction).

20. *Grace Sch.* v. *Sebelius,* 988 F. Supp. 2d 935 (N.D. Ind. 2013) (granting preliminary injunction).

21. *Diocese of Fort Wayne-S. Bend, Inc.* v. *Sebelius*, 988 F. Supp. 2d 958 (N.D. Ind. 2013) (granting preliminary injunction).

22. *Geneva Coll.* v. *Burwell*, 988 F. Supp. 2d 511 (W.D. Pen. 2013) (granting preliminary injunction).

23. *S. Nazarene Univ.* v. *Sebelius,* No. 5:13-cv-1015, 2013 WL 6804265 (W.D. Okla. Dec. 23, 2013) (granting preliminary injunction).

24. *Reaching Souls Int'l, Inc.* v. *Sebelius,* No. 5:13-cv-1092, 2013 WL 6804259 (W.D. Okla. Dec. 20, 2013) (granting preliminary injunction).

25. *Legatus* v. *Sebelius,* 988 F. Supp. 2d 794 (E.D. Mich. 2013) (granting preliminary injunction).

26. *Persico* v. *Sebelius*, No. 1:13-cv-303, 2013 WL 6922024 (W.D. Pa. Dec. 20, 2013) (granting permanent injunction).

27. *Zubik* v. *Sebelius*, No. 2:13-cv-1459, 2013 WL 6922024 (W.D. Pa. Dec. 20, 2013) (granting permanent injunction).

28. *Roman Catholic Archdiocese of N.Y.* v. *Sebelius*, 987 F. Supp. 2d 232 (E.D.N.Y. 2013) (granting permanent injunction).

CASES DENYING INJUNCTIVE RELIEF

Courts of Appeals

1. *Univ. of Notre Dame* v. *Sebelius,* 743 F.3d 547 (7th Cir. 2014).
2. *Mich. Catholic Conference* v. *Burwell*, 755 F.3d 372 (6th Cir. 2014) (denying preliminary injunction in two consolidated appeals), but see *Mich. Catholic Conf.* v. *Sebelius*, No. 13-2713 (6th Cir. Dec. 31, 2013) (granting injunction protecting parties during the prosecution of the appeal); *Catholic Diocese of Nashville* v. *Sebelius*, No. 13-6640 (6th Cir. Dec. 31, 2013) (same).
3. *Priests for Life* v. *U.S. Dep't of Health & Human Servs*., 772 F.3d 229 (D.C. Cir. 2014) (denying preliminary injunction in two consolidated appeals), but see *Roman Catholic Archbishop of Wash.* v. *Sebelius*, No. 13-5371 (D.C. Cir. Dec. 31, 2013) (granting injunction pending appeal); *Priests for Life* v. *U.S. Dep't of Health & Human Servs.*, No. 13-5371 (D.C. Cir. Dec. 31, 2013) (granting injunction pending appeal).

District Courts

1. *The School of the Ozarks* v. *U.S. Dep't of Health & Human Servs.*, No. 6:13-3157-cv (W.D. Mo. Jan. 13, 2015) (granting summary judgment to the government.