Nos. 13-829 & 13-891

In the Supreme Court of the United States

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, ET AL., PETITIONERS

v.

KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

PRIESTS FOR LIFE, ET AL., PETITIONERS

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether regulations that allow petitioners to opt out of providing contraceptive coverage to their employees and students violate petitioners' rights under the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq*.

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OPINIONS BELOW

The order of the court of appeals consolidating these cases and granting an injunction pending appeal (13-829 Pet. App. 127a-132a; 13-891 Pet. App. 42-47) is unreported. The opinion of the district court in No. 13-829 (Pet. App. 1a-119a) is not yet reported but is available at 2013 WL 6729515. The opinion of the

district court in No. 13-891 (Pet. App. 1-40) is not yet reported but is available at 2013 WL 6672400.

JURISDICTION

The judgment of the district court in No. 13-829 was entered on December 20, 2013. Petitioners in No. 13-829 filed a notice of appeal on December 21, 2013. The judgment of the district court in No. 13-891 was entered on December 19, 2013. Petitioner in No. 13-891 filed a notice of appeal on December 19, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The petition for a writ of certiorari before judgment in No. 13-829 was filed on January 8, 2014. The petition for a writ of certiorari before judgment in No. 13-891 was filed on January 23, 2014. Petitioners invoke this Court's jurisdiction under 28 U.S.C. 1251(1) and 2101(e).

STATEMENT

1. a. Congress has long regulated employer-sponsored group health plans, and, in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (Affordable Care Act or Act),[1] Congress provided for additional minimum standards for group health plans and health-insurance issuers offering coverage in both the group and the individual markets.

The Act requires non-grandfathered group health plans and health-insurance issuers offering non-grandfathered health-insurance coverage to cover four categories of recommended preventive-health services without cost sharing, that is, without requiring plan participants and beneficiaries to make copayments or

[1] Amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

pay deductibles or coinsurance. 42 U.S.C. 300gg-13 (Supp. V 2011). As relevant here, these services include preventive care and screenings for women as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services (HHS). 42 U.S.C. 300gg-13(a)(4) (Supp. V 2011).

HHS requested the assistance of the Institute of Medicine in developing such comprehensive guidelines for preventive services for women. 77 Fed. Reg. 8725, 8726 (Feb. 15, 2012). Experts, "including specialists in disease prevention, women's health issues, adolescent health issues, and evidence-based guidelines," developed a list of services "shown to improve well-being, and/or decrease the likelihood or delay the onset of a targeted disease or condition." Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* 2-3 (2011). These included the "full range" of "contraceptive methods" approved by the Food and Drug Administration (FDA), *id.* at 10; see *id.* at 102-110, which the Institute found can greatly decrease the risk of unwanted pregnancies, adverse pregnancy outcomes, and other adverse health consequences, and vastly reduce medical expenses for women. See *id.* at 102-107.

Consistent with those recommendations, the HRSA guidelines include "'[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,' as prescribed" by a health-care provider. 77 Fed. Reg. at 8725 (quoting the guidelines). The relevant regulations adopted by the three Departments implementing this portion of

the Act (HHS, Labor, and Treasury) require coverage of, among other preventive services, the contraceptive services recommended in the HRSA guidelines. 45 C.F.R. 147.130(a)(1)(iv) (HHS); 29 C.F.R. 2590.715-2713(a)(1)(iv) (Labor); 26 C.F.R. 54.9815-2713(a)(1)(iv) (Treasury) (collectively referred to in this brief as the contraceptive-coverage provision).

b. The implementing regulations authorize an exemption from the contraceptive-coverage provision for the group health plan of a "religious employer." 45 C.F.R. 147.131(a). A religious employer is defined as a non-profit organization described in the Internal Revenue Code provision that refers to churches, their integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order. *Ibid.* (cross-referencing 26 U.S.C. 6033(a)(3)(A)(i) and (iii)).

When the initial final regulations were issued, the Departments announced that they would develop "'changes to these final regulations that would meet two goals'—providing contraceptive coverage without cost-sharing to covered individuals and accommodating the religious objections of [additional] non-profit organizations." *Wheaton Coll.* v. *Sebelius*, 703 F.3d 551, 552 (D.C. Cir. 2012) (per curiam) (quoting 77 Fed. Reg. at 8727).

After notice and comment rulemaking, the Departments in July 2013 published the current regulations, which are at issue here. See 78 Fed. Reg. 39,874-39,886 (July 2, 2013); 45 C.F.R. 147.131(b) (HHS); 29 C.F.R. 2590.715-2713A(a) (Labor); 26 C.F.R. 54.9815-2713A(a) (Treasury). The regulations provide religion-related accommodations for group health plans established or maintained by "eligible organiza-

tions" (and group health-insurance coverage provided in connection with such plans). An "eligible organization" is an organization that satisfies the following criteria:

> (1) The organization opposes providing coverage for some or all of any contraceptive services required to be covered * * * on account of religious objections.
>
> (2) The organization is organized and operates as a nonprofit entity.
>
> (3) The organization holds itself out as a religious organization.
>
> (4) The organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the criteria in * * * this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in * * * this section applies.

E.g., 45 C.F.R. 147.131(b); see also 78 Fed. Reg. at 39,874-39,875.

Under these regulations, an eligible organization is not required "to contract, arrange, pay, or refer for contraceptive coverage" to which it has religious objections. 78 Fed. Reg. at 39,874. To be relieved of any such obligations, it need only complete a form stating that it is an eligible organization and provide a copy to its insurance issuer or third-party administrator. See *id.* at 39,874-39,875; see, *e.g.*, 29 C.F.R. 2590.715-2713A(a)(4), (b)(1) and (c)(1).

If an eligible organization chooses not to provide contraceptive coverage, the plan's participants and beneficiaries will generally have access to contracep-

tive coverage without cost sharing though an alternative mechanism established by the regulations.[2]

If an eligible organization with an insured plan chooses not to provide contraceptive coverage, the regulations require the health-insurance company that issues the policy for that organization to provide separate payments for contraceptive services to plan participants and beneficiaries. See 45 C.F.R. 147.131(c)(2). The insurance issuer may not impose any premium, fee, or other charge, directly or indirectly, on the eligible organization or the plan with respect to the issuer's payments for contraceptive services. See 45 C.F.R. 147.131(c)(2)(ii) and (f). The insurance issuer must "[e]xpressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the * * * plan," 45 C.F.R. 147.131(c)(2)(i)(A), and "segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services," 45 C.F.R. 147.131(c)(2)(ii).

If an eligible organization with a self-insured group health plan chooses not to provide contraceptive coverage, the regulations generally require the plan's third-party administrator to provide or arrange separate payments for contraceptive services for plan par-

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[2] The accommodations apply to student health-insurance coverage arranged by an eligible organization that is an institution of higher education, in a manner comparable to that in which they apply to group health-insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer. See 45 C.F.R. 147.131(f). In applying the regulations in the case of student health-insurance coverage, a reference to "plan participants and beneficiaries" is a reference to student enrollees and their covered dependents. See *ibid.*

ticipants and beneficiaries. 29 C.F.R. 2590.715-2713A(b)(2). "The eligible organization will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services." 29 C.F.R. 2590.715-2713A(b)(1)(ii)(A). The regulations bar the third-party administrator from imposing any premium, fee, or other charge, directly or indirectly, on the eligible organization or the group health plan with respect to payments for contraceptive services. 29 C.F.R. 2590.715-2713A(b)(2). The third-party administrator may seek reimbursement for payments for contraceptive services from the federal government through an adjustment to Federally-facilitated Exchange user fees. 29 C.F.R. 2590.715-2713A(b)(3); see 45 C.F.R. 156.50(d).

If an eligible organization with a self-insured "church plan" chooses not to provide contraceptive coverage, the women who participate in the plan will not receive separate payments for contraceptive services unless the third-party administrator chooses to provide or arrange such payments voluntarily. The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, provides the authority for the requirement that a third-party administrator provide or arrange separate payments for contraceptives under the accommodation regulations, but a "church plan" is exempt from regulation under ERISA (unless it elects to be covered). See 29 U.S.C. 1003(b)(2); see also 29 U.S.C. 1002(33) (definition of church plan); 26 U.S.C. 410(d) (election provision). Thus, absent such an election, there is no authority for the Departments to regulate the third-party administrator of a church plan, and the third-party adminis-

trator of a church plan therefore has no legal obligation to provide or arrange separate payments for contraceptive services under the regulations. If a third-party administrator chooses to do so voluntarily, it may seek reimbursement from the federal government through an adjustment to Federally-facilitated Exchange user fees. See 45 C.F.R. 156.50(d); p. 7, *supra*.

Regardless of the type of plan, if an eligible organization opts out of providing contraceptive coverage, it has no obligation to inform plan participants and beneficiaries of the availability of separate payments for contraceptive services. Instead, the health-insurance issuer or third-party administrator itself will provide this notice, and it will do so "separate[ly] from" materials that are distributed in connection with the eligible organization's group health coverage. 45 C.F.R. 147.131(d); 29 C.F.R. 2590.715-2713A(d). That notice must make clear that the eligible organization is neither administering nor funding the contraceptive benefits. *Ibid.*

2. a. *No. 13-829*. Petitioners in No. 13-829 are (1) the Roman Catholic Archbishop of Washington (the Archdiocese), which is a religious employer that is exempt from the contraceptive-coverage provision; (2) seven Catholic organizations that offer health coverage under the Archdiocese's self-insured church plan; and (3) Catholic University, which offers health coverage to students and employees under insured plans. Thomas Aquinas College, which offers health coverage to employees under a self-insured plan, is a plaintiff in this case but is not a petitioner here. Petitioners' principal contention is that the religious accommodations set out above violate their rights under

the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, which provides that the government shall not substantially burden a person's exercise of religion unless the application of that burden is the least restrictive means to advance a compelling governmental interest, 42 U.S.C. 2000bb-1(a) and (b).[3]

On cross-motions for summary judgment, the district court ruled in part for the government and in part for petitioners. Pet. App. 1a-119a.

The district court rejected the RFRA claim asserted by Catholic University, which offers health coverage to its employees and students through insured plans issued by United Healthcare and Aetna, respectively. The court reasoned that, by certifying that it meets the criteria for an accommodation, Catholic University can relieve itself of the obligation to provide contraceptive coverage for its employees and students (and their covered dependents). Pet. App. 37a-49a. The court rejected the University's contention that the federal requirement that the insurance issuers provide separate contraceptive coverage after the University opts out burdens the University's religious exercise. The court reasoned that this objection to "'the provision of' the objectionable services by a third party to another third party" does not state a claim under RFRA. *Id.* at 31a (citation and emphasis omitted).

The district court accepted the RFRA claim asserted by Thomas Aquinas College (College), which offers health coverage to its employees through a self-

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[3] Petitioners in No. 13-829 also raise claims under the First Amendment and Administrative Procedure Act (APA), but those claims are not presented in their certiorari petition.

insured plan. Pet. App. 49a-59a. The court acknowledged that the College's argument is "difficult to distinguish" from the argument made by Catholic University. Pet. App. 55a. In particular, the court recognized that, by certifying that it meets the criteria for the accommodation, the College can relieve itself of the obligation to pay claims for contraceptive services. See *id.* at 56a (explaining that this "action eliminates any obligation to provide or pay for contraceptive services"). The court also acknowledged that the regulations "assign the obligation to someone else"—the third-party administrator—that is barred from charging the College for the cost of these separate payments and that may instead seek reimbursement from the federal government. *Ibid.* Additionally, the court noted that "any actions the third-party administrator takes with respect to contraceptive coverage must be completely independent from the eligible organization" and the "payments are totally separate from and cannot be imposed upon the religious organization, and the third-party administrator can even arrange for an entirely separate insurance issuer to provide the payments." *Id.* at 55a. Accordingly, the court concluded that, "[i]f the third-party administrator accepts the obligation" to make or arrange separate payments for contraceptives, the accommodation does not burden the College's exercise of religion. See *id.* at 57a.

The district court declared, however, that the "operative word * * * is 'if,'" Pet. App. 58a, and it invalidated the accommodation on the basis of its understanding of what would happen in the hypothetical situation in which the third-party administrator of the College's plan (Benefit Allocation Systems) were to

terminate its contract with the plan sponsor. The court opined that, if the third-party administrator were to decline to remain in a contractual relationship with the plan sponsor, the College would be required to "either shop around to find a new third-party administrator that will assume responsibility for the coverage or proceed without a third-party administrator and await instructions from the government on how it can otherwise satisfy its obligations." *Id.* at 52a. The court stated that, in its view, "the obligation to take affirmative steps to identify and contract with a willing third-party administrator if the existing third-party administrator declines forces the religious organization to *do* something to accomplish an end that is inimical to its beliefs." *Id.* at 54a. The court reasoned that "[t]his involves the organization in facilitating access to contraceptive services, which the College has averred it cannot do, and it entails the critical element of modifying one's behavior." *Ibid.* "Therefore," the court held, "the College has met its burden to identify a burden on religious exercise imposed by the regulations governing self-insured plans." *Ibid.*

Having found a substantial burden on the College's religious exercise, the district court found that "the application of the burden" did not satisfy RFRA's compelling-interest test for purposes of the requested preliminary injunction, based on binding circuit precedent involving a RFRA challenge to the contraceptive-coverage provision by for-profit employers. Pet. App. 58a-59a & n.21 (citing *Gilardi* v. *United States Dep't of Health & Human Servs.*, 733 F.3d 1208 (D.C. Cir. 2013), petitions for cert. pending, Nos. 13-567, 13-915 (filed Nov. 5, 2013, and Jan. 30, 2014)). At the same time, the court stated that it did not believe that

the compelling-interest test in this non-profit case would ultimately "be governed by the analysis in *Gilardi* since that Court was not assessing the provisions in the accommodation," which is not available to for-profit employers. *Id.* at 59a n.21.

The district court rejected the RFRA claims of the seven organizations that provide coverage through the Archdiocese's church plan. The court reasoned that a church plan is not subject to regulation under ERISA, and the court noted the government's concession that it has no authority to require the third-party administrator of a church plan to provide or arrange separate payments for contraceptive services. Pet. App. 59a-60a. The court held that the organizations that provide coverage through the Archdiocese's church plan lack standing because they did not offer any evidence to show that the third-party administrator of their church plan will provide or arrange separate payments for contraceptives. *Id.* at 59a-66a.

b. *No. 13-891.* Petitioners in No. 13-891 are the non-profit organization Priests for Life (PFL) and three of its managers. PFL offers health coverage to employees under an insured plan. Petitioners claim (as relevant to their certiorari petition) that the religious accommodation as to the contraceptive-coverage provision set out above violates their rights under RFRA.[4]

The district court granted the government's motion to dismiss, holding that petitioners fail to state a claim under RFRA. Pet. App. 27. The court reasoned that PFL, after certifying that it is eligible for the accommodation, "is not required to provide contraceptive

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[4] Petitioners in No. 13-891 also assert claims under the First Amendment, but those claims are not presented in the petition.

services to its employees." *Id.* at 15. The court noted that "[t]he accommodation specifically ensures that provision of contraceptive services is entirely the activity of a third party—namely, the issuer—and Priests for Life plays no role in that activity." *Id.* at 22-23; see also *id.* at 15 (noting that PFL need only certify that it meets the relevant criteria—"that it is a religious, non-profit organization which opposes providing coverage for some or all of any contraceptive services required to be covered" by the contraceptive-coverage provision) (citing 78 Fed. Reg. at 39,874, 39,892).

The district court noted that petitioners "here do not allege that the self-certification itself violates their religious beliefs" and that petitioners conceded during oral argument that "they have no religious objection to filling out the self-certification." Pet. App. 3. The court rejected, as without foundation, PFL's

> claims that it will be required to 'identify its employees to its insurer for the distinct purpose of enabling and facilitating the government's objective of promoting the use of contraceptive services;' and 'coordinate with its insurer when adding or removing employees and beneficiaries from its health care plan to ensure that these individuals receive coverage for contraceptive services.'

Id. at 15a n.3 (citations omitted). The court explained that petitioners "provide[d] no support for their claim that the challenged regulations require either of these things." *Ibid.*

The district court also rejected PFL's assertion that it "will ultimately have to bear the costs" of insurance companies' paying for contraception "because

the insurance companies will somehow find a way" to pass those costs on to the eligible organizations. Pet. App. 16 n.3. The court found that this claim, too, was "without support" and that the regulations "prohibit[] insurers from passing along any costs of contraceptive coverage to eligible organizations * * * whether through cost-sharing, premiums, fees, or other charges." *Ibid.* (citing 78 Fed. Reg. at 39,875-39,877).

The district court rejected PFL's contention that the insurance issuer's responsibilities under the regulations establish a substantial burden on PFL's exercise of religion. The court explained that a "substantial burden exists when government action puts 'substantial pressure on an adherent to modify his behavior and violate his beliefs.'" Pet. App. 17 (citations omitted). By contrast, "an adherent is not substantially burdened by laws requiring third parties to conduct their internal affairs in ways that violate his beliefs." *Id.* at 18.

2. Plaintiffs in both cases (with the exception of Thomas Aquinas College) appealed and moved for an injunction pending appeal. In a single order, the court of appeals consolidated the appeals and issued the requested injunctions. See No. 13-829 Pet. App. 127a-132a.

Subsequently, the government filed a cross-appeal, which the court of appeals consolidated with petitioners' pending appeals. On the parties' joint motion, the court of appeals adopted the expedited briefing schedule proposed by the parties. Petitioners' consolidated opening brief is due February 28; the government's responsive brief is due March 28; and petitioners' consolidated reply brief is due April 11. See Order, Nos. 13-5368, 13-5371 & 14-5021 (Jan. 29, 2014). That

schedule will permit the court of appeals to hear oral argument before the court of appeals breaks for its summer recess. See *ibid.*

ARGUMENT

The court of appeals granted petitioners' motions for injunctions pending appeal and issued an expedited briefing schedule that will allow the court of appeals to hear oral argument before it breaks for its summer recess. There is no basis for short-circuiting the normal course of appellate review by taking the extraordinary step of granting certiorari before judgment.

1. Petitioners urge the Court to grant certiorari before judgment in these cases so that the Court can decide these cases "at the same time" that the Court decides *Sebelius* v. *Hobby Lobby Stores, Inc.*, No. 13-354 (*Hobby Lobby*) (oral argument scheduled for Mar. 25, 2014), and *Conestoga Wood Specialties Corp.* v. *Sebelius*, No. 13-356 (*Conestoga*) (oral argument scheduled for Mar. 25, 2014), which involve claims by for-profit corporations that RFRA entitles them to exemptions from the contraceptive-coverage provision. 13-829 Pet. 8; see 13-891 Pet. 1-2. This rationale furnishes no basis for granting the petitions.

The Court will hear oral argument in *Hobby Lobby* and *Conestoga* on March 25. These instant cases, by contrast, would not be heard until next Term even if the petitions were granted. Moreover, given the pendency of numerous cases in the courts of appeals involving RFRA challenges to the accommodations, it is not clear that taking the extraordinary step of granting writs of certiorari before judgment would expedite the Court's resolution of this question in the event it wanted to consider it.

In any event, *Hobby Lobby* and *Conestoga* do not present "the same question presented here." 13-829 Pet. 8. The for-profit corporations in *Hobby Lobby* and *Conestoga* are subject to the contraceptive-coverage provision. By contrast, petitioners here are either exempt from the provision or eligible for religious accommodations. Under the regulations, an eligible organization that accepts a religious accommodation is not required "to contract, arrange, pay, or refer for contraceptive coverage" to which it has religious objections. 78 Fed. Reg. at 39,874. To be relieved of any such obligations, an eligible organization need only complete a form stating that it meets the criteria for an accommodation—*i.e.*, that it is a non-profit organization that holds itself out as a religious organization and that has a religious objection to providing coverage for contraceptive services—and provide a copy to its insurance issuer or third-party administrator. See *id.* at 39,874-39,875; 45 C.F.R. 147.131(b); 29 C.F.R. 2590.715-2713A(b).

Petitioners do not contend that their religious exercise is burdened by completing a form that states that they are religious non-profit organizations with religious objections to providing contraceptive coverage. Their objection is instead that federal law requires insurers and third-party administrators to provide coverage after petitioners declare that they will not provide coverage themselves. See 13-829 Pet. App. at 31a (objecting to "'the provision of' the objectionable services by a third party to another third party") (citation and emphasis omitted); 13-891 Pet. App. 24 ("[I]t is only the subsequent actions of third parties—the government's and the issuer's provision

of contraceptive services, in which Priests for Life plays no role—that animate its religious objections.").

In the government's view, that objection does not state a valid RFRA claim. Petitioners are "free to opt out of providing the coverage itself, but [they] can't stop anyone else from providing it." *University of Notre Dame* v. *Sebelius*, No. 13-cv-01276, 2013 WL 6804773, at *1 (N.D. Ind. Dec. 20, 2013), aff'd, No. 13-3853, 2014 WL 687134 (7th Cir. Feb. 21, 2014). If petitioners "opt[] out of providing contraceptive coverage, as [they] always ha[ve] and likely would going forward, it is *the government* who will authorize the third party to pay for contraception." *Ibid.* "The government isn't violating [petitioners'] right to free exercise of religion by letting [them] opt out, or by arranging for third party contraception coverage." *Ibid.* Petitioners obviously disagree with that conclusion, but they cannot credibly dispute that their challenge to the religious accommodations presents a different question from the one presented in *Hobby Lobby* and *Conestoga*.

2. The petitions do not meet the criteria for writs of certiorari, much less for certiorari before judgment. The Archdiocese petitioners contend (13-829 Pet. 12-15) that the issue presented here has divided the lower courts. But the only court of appeals to have issued a merits decision on the RFRA question presented in these cases affirmed the denial of a preliminary injunction. See *University of Notre Dame*, No. 13-3853, 2014 WL 687134, at *4-*15 (7th Cir. Feb. 21, 2014); see also *id.* at *4 (noting that court's view on the merits, expressed in context of interlocutory appeal, was "necessarily tentative, and should not be considered a forecast of the ultimate resolution of this still so young

litigation"). The other decisions on which the Archdiocese petitioners rely (13-829 Pet. 13-14 & nn.7-10) are district court decisions or unpublished court of appeals orders that granted or denied injunctions pending appeal. The disagreement among those district court and non-precedential court of appeals decisions does not merit this Court's review.

These are not the rare cases that justify "deviation from normal appellate practice" and "require immediate determination in this Court." Sup. Ct. R. 11. The appeals in these cases are proceeding on an expedited basis in the court of appeals (and petitioners have injunctions pending that appeal). As noted, the Seventh Circuit has already issued a decision affirming denial of a preliminary injunction. See *University of Notre Dame*, *supra*. Moreover, appeals that present RFRA challenges to the accommodations are also pending before the Second, Third, Fifth, Sixth, and Tenth Circuits. See, *e.g.*, *Roman Catholic Archdiocese* v. *Sebelius*, No. 14-427 (2d Cir.); *Geneva Coll.* v. *Secretary United States Dep't of Health & Human Servs.*, No. 14-1374 (3d Cir.); *Sebelius* v. *East Tex. Baptist Univ.* (docket number pending) (5th Cir.); *Michigan Catholic Conference* v. *Sebelius*, No. 13-2723, *Catholic Diocese* v. *Sebelius*, No. 13-6640 (6th Cir.) (consol.); *Little Sisters of the Poor* v. *Sebelius*, No. 13-1540 (10th Cir.); *Southern Nazarene Univ.* v. *Sebelius*, No. 14-6026 (10th Cir.); *Reaching Souls Int'l* v. *Sebelius*, No. 14-6028 (10th Cir.). Petitioners do not identify any persuasive reason for this Court to proceed without the benefit of review by the courts of appeals. See *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 529 (2009) ("This Court * * * is one of final

review, 'not of first view.'") (quoting *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005)).[5]

CONCLUSION

The petitions for writs of certiorari before judgment should be denied.

Respectfully submitted.

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FEBRUARY 2014

[5] Finding that Thomas Aquinas College provides health coverage to its employees through a self-insured plan that is not a church plan, the district court accepted the College's RFRA claim, and the government has appealed that ruling. The merits of the College's claim thus will be considered by the court of appeals, but the College is not a petitioner here. The absence of a RFRA claim here involving a self-insured (non-church) plan—a common fact pattern in the pending cases, see, *e.g.*, *University of Notre Dame*, *supra*—is a further reason counseling against granting certiorari before judgment in these cases.