

Nos. 14-1453 & 14-1505

IN THE
Supreme Court of the United States

PRIESTS FOR LIFE, ET AL., *Petitioners*,

v.

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES,
ET AL., *Respondents*

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, A
CORPORATION SOLE, ET AL., *Petitioners*,

v.

SYLVIA BURWELL, SECRETARY OF THE U.S.
DEPARTMENT OF HEALTH & HUMAN SERVICES, ET
AL., *Respondents*.

**On Petitions for Writs of Certiorari to the
U.S. Court of Appeals for the D.C. Circuit**

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

There can now be no dispute that the circuits are divided on the issues presented in these petitions. On September 17, 2015, the U.S. Court of Appeals for the Eighth Circuit issued two unanimous opinions holding that the plaintiffs in those cases “were substantially likely to succeed on the merits of their claim that the contraceptive mandate and the accommodation process substantially burdens their exercise of religion in violation of [the Religious Freedom Restoration Act (RFRA)] and that the current accommodation process is not the least restrictive means of furthering the government’s interests.” *Sharpe Holdings, Inc. v. U.S. Dep’t of Health & Human Servs.*, No. 14-1507, 2015 WL 5449491, at *13 (8th Cir. Sept. 17, 2015); *Dordt Coll. v. Burwell*, No. 14-2726, 2015 WL 5449504 (8th Cir. Sept. 17, 2015).¹ These holdings conflict with the decision below of the U.S. Court of Appeals for the D.C. Circuit, Pet.App.1a, and with the decisions of the other circuits to uphold the Nonprofit Mandate, e.g., *Mich. Catholic Conference v. Burwell*, Nos. 13-2723, 13-6640, 2015 WL 4979692 (6th Cir. Aug. 21, 2015); *Catholic Health Care Sys. v. Burwell*, No. 14-427, 2015 WL 4665049 (2d Cir. Aug. 7, 2015); *Little Sisters of the Poor v. Burwell*, 794 F.3d 1151 (10th Cir. 2015); *E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015); *Geneva Coll. v. Sec’y U.S. Dep’t of Health & Human Servs.*, 778 F.3d 422 (3d Cir.

¹ These cases involved both insured and self-insured plaintiffs. See *Sharpe Holdings*, 2015 WL 5449491, at *1; *Dordt Coll.*, 2015 WL 5449504, at *1.

2015); *Univ. of Notre Dame v. Burwell*, 786 F.3d 606 (7th Cir. 2015).

With the addition of Judges Wollman, Colloton, and Benton, fifteen circuit judges have now concluded that the Nonprofit Mandate imposes a substantial burden on plaintiffs' religious exercise. See Pet.App.231a (Brown, J., dissenting); Pet.App.252a (Kavanaugh, J., dissenting); see also *Grace Schs. v. Burwell*, Nos. 14-1430, 14-1431, 2015 WL 5167841, at *17 (7th Cir. Sept. 4, 2015) (Manion, J., dissenting); *Little Sisters of the Poor v. Burwell*, Nos. 13-1540, 14-6026, 14-6028, 2015 WL 5166807, at *1 (10th Cir. Sept. 3, 2015) (Hartz, J., dissenting); *Little Sisters of the Poor*, 794 F.3d at 1208 (Baldock, J., dissenting in part); *Notre Dame*, 786 F.3d at 626 (Flaum, J., dissenting); *Eternal Word Television Network, Inc. v. Sec'y, U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339, 1345 (11th Cir. 2014) (Pryor, J., concurring). That question—as well as whether the Government's regulatory scheme can survive strict scrutiny—is now squarely before this Court.

As the Solicitor General has indicated, for a variety of reasons, this case presents the most “suitable vehicle” to address challenges to the Nonprofit Mandate out of all of the pending petitions. Opp. 30-31. Accordingly, this Court should take this opportunity to cleanly resolve the divide in authority on this exceptionally important issue. RCAF Reply Br. at 12-13.

CONCLUSION

For these reasons, the petitions for certiorari should be granted.

Respectfully submitted,

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