

No. 13-03853

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**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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UNIVERSITY OF NOTRE DAME,  
*Plaintiff-Appellant,*

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services; THOMAS PEREZ, in his official capacity as Secretary of the U.S. Department of Labor; JACOB J. LEW, in his official capacity as Secretary of the U.S. Department of the Treasury; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF LABOR; and U.S. DEPARTMENT OF THE TREASURY,  
*Defendants-Appellees,*

&

JANE DOE 1, JANE DOE 2, and JANE DOE 3,  
*Intervenors-Appellees.*

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Appeal from the United States District Court  
For the Northern District of Indiana  
District Court Case No. 3:13-CV-1276  
The Honorable Philip P. Simon

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**PLAINTIFF-APPELLANT'S RENEWED MOTION FOR  
INJUNCTION PENDING APPEAL**

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Plaintiff-Appellant the University of Notre Dame (“Notre Dame”) respectfully renews its motion for injunction pending appeal in light of a recent Supreme Court order. On December 20, 2013, Notre Dame filed its notice of interlocutory appeal of the district court’s denial of Notre Dame’s motion for preliminary injunction. (Dist. Ct. Doc. 43.) Upon docketing, Notre Dame filed an emergency motion for injunction pending appeal in this Court. (Doc. 3.) A week later, this Court denied without discussion that motion and expedited briefing of this appeal. Notre Dame filed its principal brief on January 13, 2014. (Doc. 19.) Government-Appellees and Intervenor-Appellees filed their briefs on January 27, 2014.<sup>1</sup> (Docs. 33 & 34, respectively.)

On January 24, 2014, the United States Supreme Court granted an injunction pending appeal in a similar case arising out of the United States Court of Appeals for the Tenth Circuit. *Little Sisters of the Poor v. Sebelius*, 13A691, 571 U.S. \_\_ (Jan. 24, 2014). The Court enjoined the Government from enforcing the Affordable Care Act’s contraceptive services mandate against the appellants upon notification of the appellants’ religious objections to providing contraceptive services. *Id.* The appellants “need not use the form prescribed

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<sup>1</sup> Government-Appellees oppose this motion and intend to file a written opposition. Notre Dame requested that Government-Appellees consent immediately after the Supreme Court issued its order, and requested again on Saturday, January 25, and Monday, January 27. Government-Appellees did not respond with their position until Tuesday, January 28. Given the delay, Notre Dame requests that the Government-Appellees be required to file any opposition by January 29th. With respect to Intervenor-Appellees, as was set forth in Notre Dame’s response to intervention, the Mandate, if enforced, would not apply to any Notre Dame student plan until the next academic year, and so Intervenor-Appellees could not possibly be prejudiced by a temporary injunction.

by the Government and need not send copies to third-party administrators.” A copy of that order is attached to this motion.

Like Notre Dame, the Little Sisters of the Poor is a non-profit corporation that has a sincerely held belief that it can neither provide nor facilitate “contraception, sterilization, abortifacients, and related education and counseling.” *Little Sisters of the Poor v. Sebelius*, No. 13-cv-2611, slip op. at \*7 (D. Colo. Dec. 27, 2013). Like Notre Dame, the Little Sisters of the Poor object to contracting “with a third party administrator and provid[ing] that third party administrator with the completed self-certification form.” *Id.* at \*24. And like Notre Dame, the Little Sisters of the Poor received injunctive relief from neither the district nor circuit court. *Id.* at \*34; *Little Sisters of the Poor v. Sebelius*, No. 13-1540 (10th Cir. Dec. 31, 2013) (Doc. 9).

As the facts underlying *Little Sisters of the Poor* are nearly identical to those in the instant case, there is no legitimate basis upon which an injunction could be granted to the Little Sisters of the Poor but denied to Notre Dame. As both cases address similar legal questions, have nearly identical factual predicates, and are in the same procedural posture, Notre Dame respectfully asks that this Court grant its renewed motion for injunction pending appeal.

Respectfully submitted, this the 28th day of January, 2014

By: s/ Matthew A. Kairis

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**CERTIFICATE OF SERVICE**

I hereby certify that, on January 28, 2014, I electronically filed a true and correct copy of the foregoing using the CM/ECF system, which will send notification of such filing to all counsel of record.

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