No. 14-6026

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SOUTHERN NAZARENE UNIVERSITY; OKLAHOMA WESLEYAN UNIVERSITY; OKLAHOMA BAPTIST UNIVERSITY; AND MID-AMERICA CHRISTIAN UNIVERSITY,

Plaintiffs-Appellees

v.

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

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Oklahoma
Case No. 5:13-cv-01015-F
(Honorable Stephen P. Friot)

APPELLEES' ADDITIONAL SUPPLEMENTAL BRIEF

DAVID A. CORTMAN
Alliance Defending Freedom
1000 Hurricane Shoals Road NE,
Ste. D-1100
Lawrenceville, GA 30043
(770) 339-0774

GREGORY S. BAYLOR
MATTHEW S. BOWMAN
Alliance Defending Freedom
801 G Street, NW, Ste. 509
Washington, DC 20001
(202) 393-8690

KEVIN H. THERIOT
Alliance Defending Freedom
15100 North 90th Street
Scottsdale, AZ 85260
(480) 444-0020

Attorneys for Plaintiffs-Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

***Cases*:**

***Statutes*:**

***Regulations*:**

***Other Authorities*:**

INTRODUCTION

On August 27, 2014, the Court ordered the parties to submit simultaneous supplemental briefs on several specific questions. Plaintiffs-Appellees Southern Nazarene University, Oklahoma Wesleyan University, Oklahoma Baptist University, and Mid-America Christian University ("the Universities") hereby submit the following:

I. THE IMPACT OF THE INTERIM RULES ON THE UNIVERSITIES' CLAIMS AND REQUESTED REMEDIES.

The interim rules do not diminish the substantiality of the Mandate's burden on the Universities' religious exercise under the Religious Freedom Restoration Act. The district court preliminarily enjoined application of the Mandate under RFRA. The interim rules' creation of an additional mechanism for invoking the so-called "accommodation"—which is itself simply an alternative means of complying with the statutory mandate—in no way affects the propriety and necessity of the preliminary injunction against application of the Mandate to the Universities. In many respects, the interim final rules make the Universities' entitlement to preliminary injunctive relief stronger.

A. The Interim Rules Demonstrate That Less Restrictive Means Remain Available.

First, the interim rules show the government simply cannot be taken seriously when it says no less restrictive means of pursuing its stated goals is available. (The government presumably will argue that the interim rules' new accommodation invocation mechanism is less restrictive of the Universities' religious exercise than is the existing accommodation invocation mechanism.)[1] The government has repeatedly informed the

[1] As discussed below, the new accommodation invocation mechanism is *not* any less restrictive of the Universities' religious exercise. The Mandate's burden on their

Supreme Court and other federal courts throughout the country that no less restrictive means was available to achieve its purposes other than particular previous versions of its rules. This new set of rules is the eighth set to govern this Mandate so far, with at least two more to come when these are finalized. But in the big picture, the new rules reestablish the fact that the government can always create another mechanism through which it may pursue its goals if this Court exempts the Universities from the Mandate under RFRA. When the government told this Court that the mandate on for-profit companies was absolutely necessary, it was wrong. When it told the Court that the "old" accommodation invocation mechanism was absolutely necessary, it was wrong. And if it now tells the Court that this new accommodation invocation mechanism is absolutely necessary, this Court should view that argument with appropriate skepticism.

The government can always enact new rules to achieve its goals in another way after the Universities receive a permanent exemption under RFRA. To take one example, the government could issue regulations declaring that anyone who works for the Universities is eligible to decline the Universities' plan, enter the Oklahoma insurance exchange, and receive the subsidies that others receive to buy a plan there (under the Mandate those plans all cover contraception). And to comply with RFRA it could declare that no penalty accrues to the Universities when the employee makes that election.

B. The Interim Rules Confirm That Direct Government Coverage of Objectionable Items is an Available Less Restrictive Means.

Second, the interim rules again demonstrate that the government cannot argue against the proposal that if it wants this Mandate it should just pay for people's

---

religious exercise remains the same, as it continues to impose the same enormous pressure upon them to take action that violates their religious convictions.

contraceptives itself. The interim rules repeat the promise that if a third party administrator of a self-insured plan provides payments for contraceptive items, the government will reimburse that entity at least 110%. 79 Fed. Reg. at 51,099 (referencing the reimbursement mechanism in 45 C.F.R. § 156.50 & (d)). This money comes out of the government's own pocket. It is true that the Universities which are self-insured object to this mechanism because it still involves hijacking their plans, their third party administrators, and plan contracts. But the rules still illustrate that the government is perfectly willing to achieve the Mandate's goals by means of the government paying for the items. If the government is willing to pay, it has essentially waived any objection to other less restrictive means simply because they involve government payments, such as offering Title X funding, or Medicaid family planning reimbursement, or subsidized coverage through the insurance exchanges.

C. The New Accommodation Invocation Mechanism Does Not Address the Universities' Religious Objection to Facilitating Access to Abortifacients.

Third, and most fundamentally, the interim final rules do not remove or substantively take away the basic requirement to which the Universities object. They must still file a document causing their health plan, insurer, and/or third party administrator (TPA) to be commandeered by the government and used as a mule to deliver certain objectionable items. Under the old accommodation invocation mechanism, they completed and sent a particular form to the insurer or TPA; now it is a letter to the government identifying the insurer or TPA, which causes a letter to be sent to the insurer or TPA. Both methods involve the Universities being involved in delivering objectionable items. The objectionable coverage is still provided "in connection with the plan" the Universities provide. 79 Fed. Reg. at 51,093. The Universities' new letter must provide the name of their insurer or third party administrator so that it can be forced to

provide the coverage in connection with the Universities' plan. This causes their own insurer or administrator to be used as the vehicle to deliver the same objectionable items to their own plan participants. The delivery happens precisely because the Universities otherwise pay that insurer or administrator, and because those persons are enrolled in the Universities' plans. The government is co-opting the Universities' own insurance arrangement and contract in order to deliver the objectionable services to the Universities' own plan participants.

The government *could* use its money—which under the new rule it offers to pay to TPAs—to deliver these items through the government's own channels, without hijacking the Universities' own plan administrator or insurer by means of the Universities' contracts and their letters to the government. But the government stubbornly insists on involving the Universities in the delivery channels anyway. The Universities are therefore still forced to do something to which they religiously object: provide insurance, with *that* insurer or TPA being the channel of objectionable coverage, by means of the Universities' letter to the government identifying that insurer. That compulsion still, therefore, substantially burdens the Universities' religious exercise under RFRA. And as discussed in previous supplemental briefing, the existence of a substantial burden is especially true under *Hobby Lobby*, which emphatically prohibits the government from telling the Universities that they really do not object to the new arrangement, or that the things they must do are too "attenuated" from the evil to which they object. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2777–78 (2014). Under this Court's *en banc* ruling in *Hobby Lobby*, undisturbed by the Supreme Court, the government still has no compelling interest. And as discussed above, the government's least restrictive means

argument is further negated by the new rule. Therefore even under the new rules the Universities are entitled to a preliminary injunction under RFRA.

Consequently, it does not "matter that the [interim rule] differs in certain respects from the [2013] one," because "[t]he gravamen of the [Universities'] complaint" is the same: that they are being coerced to file a form triggering a process that hijacks their plans, insurers, and TPAs. *Northeastern Florida Chapter v. City of Jacksonville*, 508 U.S. 656, 662 (1993). The interim rules do not even change the hijacking process itself—they only tweak the notification component, in ways that are mostly or entirely cosmetic. Even if a new rule could be said to "disadvantage[plaintiffs] to a lesser degree than the old one," if it still "disadvantages them in the same fundamental way," then the appeal status does not change. *Id.*

D. The Coverage of Objectionable Abortifacients Is Not Separate from the Universities and Their Plans.

Fourth, under the ACA the government cannot deny that the payments for objectionable items that the Universities' insurers would offer under the interim rule are part of the Universities' own coverage. Therefore the Universities are substantially burdened because they are being required to provide a plan that covers the items, despite the government's semantic denial of that fact. Or, if the government could deny this, its interim rules would be invalid and illegal under the Administrative Procedure Act as being "in excess of statutory jurisdiction [or] authority" and "not in accordance with law." 5 U.S.C. § 706(2). The statutory mandate under which the rules are being issued declares that "[a] group health plan and *a health insurance issuer offering group or individual health insurance coverage shall*, at a minimum *provide coverage* for" the items in question. 42 U.S.C. § 300gg-13(a). Necessarily then, the mandate is "coverage," and applies to an insurance issuer only in the "group health" plan or

coverage that he is offering. The statute does not, for example, authorize the government to tell an insurance company to go down onto the street and offer contraceptive payments to random passers-by. To the extent the mandate applies to issuers, it applies to them in their own coverage. But under that plain reading, the government cannot use an "attenuation" theory to attack the Universities' substantial burden argument by declaring that when their own insurance issuers provide these payments, they are not really providing coverage in the Universities' own insurance plans. To deny that fact is to engage in a semantic recasting of what is plain on the face of the matter: the Universities' issuers are writing to their plan participants to offer them payments for items the Universities object to covering. That is what is happening. If the Court were to accept the government's self-serving argument that somehow these issuers are offering payments to people in the Universities' plans independent of the coverage that the Universities pay these issuers to provide, then the interim rules would exceed the government's statutory authority under § 300gg-13(a), because that statute does not authorize a mandate of payments "separate" from coverage that the issuer is already providing in the group plan.

E. The Interim Rules Exceed the Government's Statutory Authority With Respect to Self-Insured Plans.

Fifth, the interim rules exceed the government's statutory authority with respect to self-insured plans, or else they change nothing. (Southern Nazarene University and Mid-America Christian University are in self-insured plans.) Under the 2013 rule, self-insured employers must send their TPA an Employee Benefits Security Administration (EBSA) Form 700 which, by its explicit terms, is part of the contract ("instrument") between the employer and the TPA, and which imposes on the TPA the specific "obligation" to cover the objectionable items. The government used this mechanism because it wanted to

coerce TPAs, but it had no statutory authority to do so, since TPAs are neither plans, nor issuers, under 42 U.S.C. § 300gg-13(a). But under ERISA, 29 U.S.C. § 1002(16), if the self-insured plan sponsor employer "designate[s]" the TPA to be obliged to cover the items under the "instrument" (contract) that operates the plan, that does put the TPA on the hook to cover the items, and the government can coerce it—hence the requirement under Form 700 that the employer designate the TPA with instrumental obligations.

Now however, under the interim final rule, a self-insured employer may send the government a letter telling it who its TPA is. Upon receipt of that letter, the Department of Labor will write to the TPA ordering it to provide contraceptive payments. This raises what ought to be a natural question: by what authority is this coercion imposed on the TPA? The interim rule says the government can do so because its own "notification" to the TPA "will be an instrument under which the plan is operated and shall supersede any earlier designation." 79 Fed. Reg. at 51,905.

This interpretation is lawless on its face. Neither ERISA nor the ACA authorize the government to unilaterally create or amend instruments under which the Universities' self-insured plans are operated. Such instruments are by definition contracts between the Universities and the TPA, to which the government is not a party. The Mandate in 42 U.S.C. § 300gg-13(a) lets the government force the Universities' *plans* or *issuers* to provide the coverage in the plan: meaning, the Universities themselves, who are plan trustees and are self-insured. But the statute does not even mention coercion of the plan's TPA. ERISA, in turn, only places obligations on the TPA if the plan instrument—created by the Universities and the TPA—"designates" it to do so. 29 U.S.C. § 1002(16). Search ERISA far and wide, and no language will be found empowering the government to reach into a self-insured plan and amend the instrument to compel a TPA to provide

contraceptive coverage (and to do so against the plan sponsor's express provisions otherwise). Consequently, if the interim rules are to be taken at their word, they too violate the Administrative Procedure Act for being "in excess of statutory jurisdiction [or] authority" and "not in accordance with law." 5 U.S.C. § 706(2).

If, instead, the government were to declare that it can coerce the TPA because it is *really* putting the coverage in the Universities' own *plan* under 42 U.S.C. § 300gg-13(a), then there is no "attenuation" after all between the Universities and the coverage they object to providing. In that case the government's semantic regulatory attempt to claim there is no substantial burden is a smokescreen. Or if the government's legal gymnastics cause it instead to say that the TPA can be coerced because the plan "instrument" in question under 29 U.S.C. § 1002(16) is the Universities' own letter to the government, then we are right back where we started: the interim rules force the self-insured Universities to order their TPA to do what they object to doing themselves, and the burden here is amply "substantial." Indeed this interpretation seems to be the most plausible, since the government itself has admitted it: in its new EBSA Form 700, amended after the interim rules were published, the government declares that "This form *or a notice to the Secretary* is an instrument under which the plan is operated." (emphasis added), *available at* http://www.dol.gov/ebsa/preventiveserviceseligibleorganization certificationform.doc (last accessed Sept. 5, 2014), attached here as Exhibit 1, at 2.

So it turns out that by the government's own admission, the self-insured Universities' letter to the Secretary under the interim rules is indistinguishable from the EBSA Form 700 they objected to sending under the 2013 rule. Both notices force the self-insured Universities to amend their contracts with their TPAs, so as to order the TPAs to provide objectionable coverage. Under any interpretation of the interim rules,

the self-insured Universities created plan instruments that exclude abortifacient coverage from that plan and by that TPA under the plan instrument, "supersed[ing]" the Universities' "earlier designation" to the contrary. 79 Fed. Reg. at 51,905. The government is reaching into the Universities' own plans to provide the objectionable coverage, and making the Universities send a "notice to the Secretary" that is "an instrument" of their own plan so as to oblige the coverage. Exhibit 1 at 2. The Universities object to hiring a third party to do what they are morally unable to do themselves.[2]

F. Fully Insured Plan Sponsors Might Bear Financial Responsibility for Religiously Objectionable Drugs, Devices, and Services.

Sixth, fully insured Universities will foot the bill for these abortifacient "payments" despite the government's occasional assertions to the contrary. Under medical loss ratio rules, if an insurer's gross margin is greater than 15 percent, the premiums must be rebated to the employer until the gross margin is reduced to 15 percent. *See* 42 U.S.C. § 300gg–18. But the interim rules do not change the 2013 rules

[2] Mid-America Christian University's self-insured plan is a "church plan" under ERISA: the Guidestone plan at issue in the *Reaching Souls* case. The interim rule is ambiguous about how and why it may apply to this plan. The preamble notes that ERISA exempts church plans. 79 Fed. Reg. at 51,095 n.8. But the proposed rule itself still declares that Mid-America Christian must submit a notice with the TPA's contact information, that the Department of Labor will write to Mid-America Christian's TPA to declare that it shall provide objectionable coverage, and that such notification shall be an instrument under which the plan is operated. *Id.* at 51,099–51,100. As noted above, the government also suggests in its revised EBSA Form 700 that Mid-America Christian's own notice amends its plan. And the interim rule declares that because of Mid-America Christian's notice, its TPA will be offered reimbursement to cover the objectionable items against Mid-America Christian's direction. If the government believed Mid-America Christian's plan was not going to be used to deliver abortifacients, it would have simply exempted the plan. Instead the mandate applies to Mid-America Christian. It must send a notice identifying its TPA, to help the government co-opt Mid-America Christian's plan to deliver objectionable items. Consequently Mid-America Christian's objection remains.

in all respects. They plug the new notification process right into those 2013 rules. And in those rules, the government says that when an insurer pays for contraceptive items under the accommodation process, it "may treat those payments as an adjustment to claims costs for purposes of medical loss ratio." 78 Fed. Reg. at 39,878. In other words, premiums that *would otherwise* be "rebated" back to the Universities under 42 U.S.C. § 300gg–18 under the medical loss ratio requirement, will *not* be rebated but will be kept by insurers to offset the up-front costs that they incur when they make contraceptive payments under the accommodation—including under the new notification requirement that triggers that accommodation. All of this is despite the generic assurance that insurers cannot "indirectly" pass on costs to accommodated entities. The medical loss ratio offset is a very specific mechanism by which those costs do flow to the Universities, and the government sticks by this mechanism under both the interim and the 2013 rules. There is simply no way to describe the Universities' involvement as separate or cost-free.

II. WHETHER ANY OR ALL OF THE CASES MUST BE REMANDED FOR CONSIDERATION IN THE DISTRICT COURT IN LIGHT OF THE INTERIM RULES.

The Universities do not think remand is needed, for the reasons discussed above: the interim rules still hijack the Universities' own plans, insurers and TPAs, by forcing the Universities to provide those same insurance services and to provide notice triggering the hijacking; and the statutory authority for the interim rules is dubious at best.

III. WHETHER THESE CASES MAY BE APPROPRIATELY HEARD DURING THE 60-DAY WRITTEN COMMENT PERIOD AND BEFORE FINAL REGULATIONS BECOME EFFECTIVE.

These cases may be heard now because even if the interim rules were final they would change nothing in the government's favor, as explained above. Moreover, there is no reason to believe that the government will, in response to any comments, make the

sort of changes that would satisfy the Universities' moral objections. For years, countless commenters have been calling upon the government to expand the extraordinarily narrow religious exemption or provide some alternative means of making objectionable drugs, devices, and counseling available without coercing the participation of objection plan sponsors. All those calls have fallen on deaf ears, and it is unreasonable to expect the government to be receptive now.

IV. WHETHER THE INTERIM RULES MUST SATISFY THE ADMINISTRATIVE PROCECURE ACT'S "GOOD CAUSE" REQUIREMENT OF 5 U.S.C. §553(b)(B) AND §553(d)(3), AND WHETHER THE INTERIM RULES SATISFY THE "GOOD CAUSE" REQUIREMENT.

The interim rules must satisfy the "good cause" requirement, and they fail to do so. Exceptions to the notice and comment requirement, including the good cause exception, must be "narrowly construed." *Sharon Steel Corp. v. EPA*, 597 F.2d 377, 379–80 (3d Cir. 1979). The government claims that they are authorized to implement interim final rules, but none of those authorizations explicitly declare that notice and comment can be done away with absent good cause. Instead, an "'express indication' by Congress to this effect" must exist. *Asiana Airlines v. FAA*, 134 F.3d 393, 396–97 (D.C. Cir. 1998) (quoting *Air Transport Ass'n of Am. v. Dep't of Transp.*, 900 F.2d 369, 378–79 (D.C. Cir. 1990)); *see also Methodist Hosp. of Sacramento v. Shalala*, 38 F.3d 1225 (D.C. Cir. 1994) ("clear intent" of Congress must exist to forego notice and comment absent good cause). In *Methodist Hospital* the court found "clear intent" by Congress to obviate notice and comment procedures where the statute in that case specifically required interim final rules within five months of the statute's effective date, during which notice and comment could not possibly occur. *Id.* at 1237. But in the statute at issue here, there is no specific timetable requiring this Mandate. 42 U.S.C. § 300gg-13. There is no express indication by Congress to forego notice and comment altogether.

Congress did not even require that contraceptives be mandated at all. *Id.* Time constraints do not render notice-and-comment impracticable unless an agency has significantly less time to issue a rule. *Sharon Steel*, 597 F.2d at 380–81; *Am. Iron & Steel Inst. v. EPA*, 568 F.2d 284, 292 (3d Cir. 1977).

Even when "good cause" is met, the APA still requires that notice and comment occur. In *Shell Oil Co. v. EPA*, the D.C Circuit found that the EPA did not provide adequate notice and opportunity to comment, noting that the EPA "may wish to consider reenacting the [rejected] rules, in whole or part, on an interim basis under the 'good cause' exemption of 5 U.S.C. § 33(b)(3)(B) *pending full notice and opportunity for comment*." 950 F.2d 741, 752 (D.C. Cir. 1991) (emphasis added). *See also Coalition for Parity, Inc. v. Sebelius*, 709 F. Supp. 2d 10, 23 (D.D.C. 2010) (upholding an agency rule in part because the agency had fulfilled its comment responsibility after the interim rule issued and before its finalization).

In this case not even the government's own regulation asserts that good cause exists to abandon the APA's notice and comment requirements altogether. The regulation itself calls for notice and comment to occur, though after interim rule issuance. 79 Fed. Reg. at 51,092. The government has done this same "shoot first, ask questions later" process with nearly all its many regulations of this Mandate, and it led to hundreds of thousands of public comments being submitted each time, showing that there is an enormous need for advance notice and comment. *See, e.g.*, 79 Fed. Reg. at 51,094 (referencing 400,000 comments after one of the previous rule iterations). Thus it is not true that the mere interim rule issuance obviates the need to conduct meaningful notice and comment. This is especially true when the government announces a notice and comment period anyway, despite its alleged authority to skip it.

"Good cause" does not exist to trigger the APA exception in this case. The APA allows an agency to proceed without notice-and-comment "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b). But the government claims that notice-and-comment for this interim rule is impracticable for the mere reason that employees of entities sending the government a letter of objection will not have contraceptive coverage until the interim rules are finalized. 79 Fed. Reg. at 51,095. But an agency may not shirk its notice and comment responsibilities just because it "believ[es] that the schedule for promulgation of the rule made it impracticable to engage in the notice and comment process"; even a 'tight statutory schedule' . . . d[oes] not, without more, justify departure from ordinary APA procedures." *Asiana*, 134 F.3d at 396–97 (quoting *New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)).

The government's claim of urgency is undermined by the government's own history dealing with this Mandate and non-profit religious plan sponsors. Twice the government has issued "safe harbor" guidance extending the application of the Mandate against non-profit groups for a cumulative year and a half. *See* 77 Fed. Reg. at 8,728 (March 21, 2012); Updated Guidance, available at http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/preventive-services-guidance-6-28-2013.pdf (last visited Sept. 5, 2014). Any sense of urgency felt by the government is due to nothing other than its own delay in promulgating this Mandate, in the course of eight regulations, with at least two more to come, "finalizing" it over and over during what will soon be a five year period from 2010 to 2015. *See Sharon Steel*, 597 F.2d at 380 (no "good cause" where agency could have published proposed rules earlier to meet the desired implementation timeline). During this process the government has found no

impediment to taking extra time when it deemed it expedient to delay the public outcry against its rules. *See, e.g.*, 77 Fed. Reg. at 16501 (initiating a prolonged regulatory process beginning with an Advance Notice of Proposed Rulemaking).

Far from there being good cause to immediately impose the interim rules, Congress itself and the Defendants have declared this Mandate *must* not be imposed immediately. Under 42 U.S.C. § 300gg-13(b), the preventive services mandate cannot be imposed until a year after the government finalizes it. The Defendants have interpreted and adopted this provision to apply to the entire Mandate including for women's preventive care under § 300gg-13(a)(4). 75 Fed. Reg. at 41729 ("The statute requires the Departments to establish an interval of not less than one year between when recommendations or guidelines under PHS Act section 2713(a) are issued, and the plan year (in the individual market, policy year) for which coverage of the services addressed in such recommendations or guidelines must be in effect.").

Consequently, Defendants are violating their statutory authority by imposing any of these continually changing regulations until at least one year after the real finalization occurs. This one will not finalize until sometime in 2015. The Universities deserve injunctive relief, and vacatur of the government's rules, for that independent reason.

Respectfully submitted this the 8th day of September, 2014.

By:

s/ Gregory S. Baylor

DAVID A. CORTMAN
Alliance Defending Freedom
1000 Hurricane Shoals Road NE
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774

GREGORY S. BAYLOR
MATTHEW S. BOWMAN
Alliance Defending Freedom
801 G Street NW, Ste. 509
Washington, DC 20001
(202) 393-8690

KEVIN H. THERIOT
Alliance Defending Freedom
15100 North 90th Street
Scottsdale, AZ 85260
(480) 444-0020

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the page limit of 15 pages set by court order on August 27, 2014 and has been prepared in a proportionally spaced typeface Times New Roman 13 point font. I further certify that (1) all required privacy redactions have been made; (2) no paper copies were required; and (3) that the electronic submission was scanned for viruses and found to be virus free.

s/ Gregory S. Baylor
Attorney for Appellees

CERTIFICATE OF SERVICE

I herby certify that on September 8, 2014, I electronically filed the foregoing brief with the Clerk of this Court by using the appellate CM/ECF system. Opposing counsel and counsel for amici supporting Appellants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/Gregory S. Baylor
Gregory S. Baylor