

## JONES DAY

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May 4, 2015

Mark Langer, Clerk  
United States Court of Appeals for the  
District of Columbia Circuit  
333 Constitution Ave., NW  
Washington, DC 20001

Filed via CM/ECF

Re: No. 13-5368, *Priests for Life v. U.S. Dep't of Health & Human Servs.*  
No. 13-5371, *Roman Catholic Archbishop of Washington v. Sebelius*  
Rule 28(j) letter

Dear Mr. Langer:

Plaintiffs-Appellants write to call attention to the Supreme Court's recent order in *Michigan Catholic Conference, et al., v. Burwell*, No. 14-701, 2015 WL 1879768 (April 27, 2015), which granted certiorari, vacated, and remanded the decision in *Michigan Catholic Conference v. Burwell*, 755 F.3d 372 (6th Cir. 2014), ("*MCC*"), for reconsideration in light of *Burwell v. Hobby Lobby Stores*, 134 S.Ct. 2751 (2014).

The Sixth Circuit's now-vacated decision in *MCC* erroneously held that the regulations at issue here do not "substantially burden" religious exercise under RFRA despite the fact that they force non-profit religious groups to act in violation of their sincere religious beliefs on pain of substantial penalties. The Supreme Court's vacatur of that decision once again indicates a "reasonable probability that the decision . . . rests upon a premise" that should be "reject[ed]" in light of *Hobby Lobby*. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). On top of the recent similar GVR in *Notre Dame v. Sebelius*, 743 F.3d 547 (7th Cir. 2014), the GVR of *MCC* eliminates another pillar of the panel's reasoning in the present case. See *Priests for Life v. HHS*, 772 F.3d 229, 239, 246-47, 251-53, 255, 257 (D.C. Cir. 2014) (invoking the reasoning of *MCC* and *Notre Dame* multiple times).

The panel's decision here is wrong for the same reason *MCC* and *Notre Dame* were: *Hobby Lobby* made clear that the Government substantially burdens religious exercise whenever it imposes substantial pressure on plaintiffs to engage in *any* "conduct that seriously violates their religious beliefs," including conduct that *they sincerely believe* would "enabl[e] or facilitat[e] the commission of an immoral act by another." 134 S.Ct. at 2775-76, 2778. The regulations here do precisely that by forcing Plaintiffs to maintain an objectionable contractual

relationship and to submit objectionable documentation, which Plaintiffs believe makes them complicit in sin.

The *MCC* vacatur once again underscores the error of the panel's substantial-burden analysis. And for the reasons explained in Plaintiffs' petition for rehearing, the regulations here cannot satisfy strict scrutiny. This Court should thus grant rehearing and enter injunctive relief for Plaintiffs.

Sincerely,

/s/ Noel J. Francisco

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 4, 2015, I filed the foregoing Rule 28(j) Letter with this Court through the CM/ECF system, which then served it upon all counsel of record:

*/s/ Noel J. Francisco*

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(ORDER LIST: 575 U.S.)

MONDAY, APRIL 27, 2015

**CERTIORARI -- SUMMARY DISPOSITIONS**

14-209 ILLINOIS V. CUMMINGS, DERRICK

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the Supreme Court of Illinois for further consideration in light of *Rodriguez v. United States*, 575 U. S. \_\_\_\_ (2015).

14-701 MI CATHOLIC CONF., ET AL. V. BURWELL, SEC. OF H&HS, ET AL.

The motion of Association of American Physicians and Surgeons, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Burwell v. Hobby Lobby Stores, Inc.*, 573 U. S. \_\_\_\_ (2014).

**ORDERS IN PENDING CASES**

14M108 SCHULTZ, GERALD L. V. OBAMA, PRESIDENT OF U.S., ET AL.

14M109 PATTERSON, WAYNE V. IL DEPT. OF HUMAN SERV., ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

141, ORIG. TEXAS V. NEW MEXICO, ET AL.

The motion of Elephant Butte Irrigation District for leave to intervene is referred to the Special Master.

14-6629 D'ANTUONO, FRANK V. NEW YORK