

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

STATE OF OKLAHOMA, ex rel. E. Scott Pruitt,  
in his official capacity as Attorney General of  
Oklahoma,

Plaintiff-Appellee,

v.

No. 14-7080

SYLVIA M. BURWELL, in her official capacity as  
Secretary of Health and Human Services; and  
JACOB J. LEW, in his official capacity as Secretary  
of the Treasury,

Defendants-Appellants.

**MOTION TO HOLD APPEAL IN ABEYANCE PENDING  
THE SUPREME COURT'S DECISION IN *KING V. BURWELL*, NO. 14-114**

This case is calendared for January 21, 2015. For the following reasons, the federal government respectfully requests that the Court hold this appeal in abeyance pending the Supreme Court's decision in *King v. Burwell*, No. 14-114. We ask the Court to act on this motion by **Friday, November 21**, because our opening brief is due on Tuesday, November 25.

1. On November 7, 2014, the Supreme Court granted certiorari in *King v. Burwell*, No. 14-114, which presents the same legal issue as this case. The Supreme Court is expected to hear argument within several months and to resolve the matter this Term. The Supreme Court's resolution of *King* will directly control this case.

In light of that development, the federal government respectfully requests that the Court hold this appeal in abeyance pending the Supreme Court's decision. The en banc D.C. Circuit recently issued an analogous order holding proceedings in abeyance in *Halbig v. Burwell*, No. 14-5018, which presents the same issue that is presented in *King* and this case. The D.C. Circuit canceled the oral argument that had been scheduled for December 17. (Copies of the *Halbig* abeyance order and the underlying motion are attached.)

For the same reasons, the federal government's appeal in this case should be held in abeyance pending the Supreme Court's decision in *King*. This is no reason to expend resources on this appeal when the Supreme Court will decide the same issue on essentially the same timeline. Moreover, the federal government's appeal in this case presents threshold jurisdictional issues regarding standing and the Anti-Injunction Act that are not presented in *King* and that would, in our judgment, prevent this Court from reaching the merits.

2. We contacted plaintiff's counsel on November 12 for its position on this abeyance motion. However, plaintiff indicated today that it is not yet able to state a position on this motion. Accordingly, we are filing this motion now because our opening brief is due Tuesday, November 25—a deadline that will be obviated if the Court grants this abeyance motion. We respectfully request that the Court act on this motion by Friday, November 21.

Respectfully submitted,

MARK B. STERN

s/ Alisa B. Klein

ALISA B. KLEIN

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*Civil Division*

*U.S. Department of Justice*

*950 Pennsylvania Ave., NW, Rm. 7235*

*Washington, DC 20530*

NOVEMBER 2014

## CERTIFICATIONS

I hereby certify that on November 17, 2014, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify (1) that all required privacy redactions have been made; (2) that any paper copies of this motion are exact versions of the document filed electronically; (3) that the electronic submission was scanned for viruses and found to be virus-free.

*/s/ Alisa B. Klein*  
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Alisa B. Klein

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 14-5018**

**September Term, 2014**

**1:13-cv-00623-PLF**

**Filed On:** November 12, 2014

Jacqueline Halbig, et al.,

Appellants

v.

Sylvia Mathews Burwell, in her official  
capacity as U.S. Secretary of Health and  
Human Services, et al.,

Appellees

**BEFORE:** Garland, Chief Judge; Henderson, Rogers, Tatel, Brown, Griffith,  
Kavanaugh, Srinivasan, Millett, Pillard, and, Wilkins, Circuit  
Judges; Edwards and Randolph, Senior Circuit Judges

## **ORDER**

It is **ORDERED** that this case be removed from the oral argument calendar of December 17, 2014, and held in abeyance pending disposition by the Supreme Court of *King v. Burwell*, No. 14-114 (*cert. granted* Nov. 7, 2014).

The parties are directed to file motions to govern future proceedings within 30 days of the date of the Supreme Court's decision in *King v. Burwell*.

## **Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk

**[EN BANC ORAL ARGUMENT SCHEDULED FOR DECEMBER 17, 2014]**

**No. 14-5018**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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JACQUELINE HALBIG, ET AL.,

*Appellants,*

v.

SYLVIA M. BURWELL,  
SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,

*Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA (No. 13-623 (PLF))

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**MOTION TO HOLD IN ABEYANCE**

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*Counsel for Appellants*

On November 7, 2014, the Supreme Court granted certiorari in *King v. Burwell*, No. 14-114, which presents the identical legal issue as this case. The Court is expected to hear oral arguments within 3-4 months and resolve the matter this Term. The Supreme Court's resolution of *King* will directly control this case.

In light of that development, Appellants respectfully request that this Court hold its en banc proceedings in abeyance pending the Supreme Court's decision. Simply put, there is no reason to consume the substantial resources associated with en banc rehearing when the Supreme Court is poised to decide the same issue on virtually the same timeline. Holding the case in abeyance would thus be consistent with how this Court has handled analogous situations in the past. *See Dep't of Def. Dependents Schs. v. FLRA*, 911 F.2d 743 (D.C. Cir. 1990) (per curiam) (at en banc stage, court "ordered that all proceedings be held in abeyance pending the decision of the Supreme Court" in related case); *Trahan v. Regan*, 866 F.2d 1424 (D.C. Cir. 1988) (per curiam) (after granting en banc rehearing, court "held our proceedings in abeyance . . . pending the Supreme Court's decision" in related case).

Appellants inquired this morning regarding the Government's position on this motion, but were advised that the Government will not determine its position until Wednesday at earliest. Appellants are nonetheless filing this motion today, because their merits reply brief is due next Monday, November 17—a deadline that would be obviated by the Court's granting of this motion.

## CONCLUSION

For these reasons, this Court should hold its proceedings in abeyance pending the Supreme Court's decision in *King v. Burwell*, No. 14-114.

November 10, 2014

Respectfully submitted,

/s/ Michael A. Carvin

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 10th day of November 2014, I electronically filed the original of the foregoing document with the clerk of this Court by using the CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. Pursuant to the Court's briefing order in this case, I will also file thirty copies of the foregoing document, by hand delivery, with the clerk of this Court.

November 10, 2014

/s/ Michael A. Carvin  
MICHAEL A. CARVIN  
*Counsel for Appellants*