

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

No. 14-5018

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

JACQUELINE HALBIG, ET AL.,

Appellants,

v.

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

Appellees.

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

MOTION TO HOLD IN ABEYANCE

MICHAEL A. CARVIN

Lead Counsel

YAAKOV M. ROTH

JONATHAN BERRY

JONES DAY

51 Louisiana Ave. N.W.

Washington, DC 20001

Telephone: (202) 879-3939

Email: macarvin@jonesday.com

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

MICHAEL A. CARVIN

Lead Counsel

YAAKOV M. ROTH

JONATHAN BERRY

JONES DAY

51 Louisiana Ave. N.W.

Washington, DC 20001

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Email: macarvin@jonesday.com

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