



Via CM/ECF

Ms. Patricia S. Dodszuweit
Clerk
Office of the Clerk
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

April 27, 2018

RE: *Commonwealth of Pennsylvania v. President United States, et al.*, No. 17-3752.

Dear Ms. Dodszuweit,

Pursuant to the Court's December 21 Order in the above-captioned appeal, appellants submit this update. On Tuesday the Court issued a ruling in *Commonwealth of Pennsylvania v. President United States*, No. 17-3679, — F.3d —, 2018 WL 1916034 (3d Cir. Apr. 24, 2018). The Court "reverse[d] the District Court's order denying the Little Sisters' motion to intervene under Rule 24(a)." The mandate in that appeal issued the same day.

An important feature of the ruling was the fact that the Little Sisters' interests could be impaired by the outcome of Pennsylvania's APA challenge. The Court held that intervention was justified in part because:

The Commonwealth's APA challenge calls into question whether the new religious exemption is required by RFRA and therefore justifies bypassing notice-and-comment rulemaking to issue the IFRs quickly. If this Court were to reach the RFRA issue, we would be answering the very question the Supreme Court chose not to address in *Zubik*, i.e., whether the self-certification process imposes a substantial burden on the Little Sisters' sincerely held religious beliefs.

No. 17-3679, slip op. at 12.

The merits of the Commonwealth's APA challenge are at issue in this appeal and in appeal No. 18-1253, both of which are appeals from the same



injunction order. Therefore the stay in this appeal, No. 17-3752, should be lifted and the two appeals should be consolidated. *See* Fed. R. App. P. 3(b)(2). The appellants in No. 18-1253 consent to consolidation.

Respectfully submitted,

/s/ Mark Rienzi
Counsel for Appellants

cc: All counsel of record (by ECF notification)



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: April 27, 2018

/s/ Mark Rienzi

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