



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

December 3, 2013

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Sebelius v. Hobby Lobby Stores, Inc., No. 13-354;
Conestoga Wood Specialties Corp. v. Sebelius, No. 13-356

Dear Mr. Harris:

We are writing to respond to your Office's request for proposals regarding briefing in these cases, which have been consolidated for oral argument.

We have discussed this matter with counsel for petitioners in No. 13-356 and respondents in No. 13-354. All parties agree that the best course is not to realign any of the parties and instead to allow party briefing to proceed in the ordinary course in the two cases. In analogous circumstances, where the government was petitioner in one granted case and respondent in another, the Court has allowed briefing to proceed in the ordinary course in the two cases notwithstanding their consolidation for argument. See Zadvydas v. Davis, 533 U.S. 678 (2001); Kleppe v. Delta Mining, Inc., 423 U.S. 403 (1976) & National Independent Coal Operators' Ass'n v. Kleppe, 423 U.S. 388 (1976). In order to minimize duplicative amicus filings and to allow sufficient time for all parties to respond to those briefs, however, the parties jointly propose that all amicus briefs (no matter which party the amicus is supporting) be filed by January 28, 2014.

In the event the Court wishes to realign briefing in one of the cases to achieve a three-tier briefing schedule, the government proposes that the briefing of petitioners in Conestoga Wood Specialties be realigned. Under this approach, the schedule would be as follows:

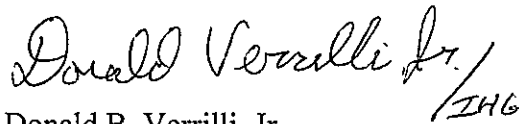
1. The government files a combined opening brief in both cases on January 10, 2013. The government's opening brief would address all issues relevant to both cases, including the RFRA claims of the corporations and the individual owners, as well as the free-exercise claim of petitioners in Conestoga Wood Specialties.
2. Respondents in Hobby Lobby Stores and petitioners in Conestoga Wood Specialties file separate briefs on February 10, 2013.
3. The government files a consolidated reply brief in both cases on March 12, 2013.

Because the government's consolidated briefs under this proposal would be addressing two separate cases, we would propose modest increases in their word limits: 18,000 words for the combined opening brief and 9,000 words for the combined reply brief. Under this proposal, there would be no need to adjust the dates for amicus filings.

Petitioners in No. 13-356 and respondents in No. 13-354 oppose the government's back-up proposal. Although, as noted above, those parties agree with the government that the preferable option is not to realign any of the parties' briefing, we understand that they will propose as their own back-up that the government file bottomside in both cases, while respondents in No. 13-354 would file both an opening brief and a reply (as would petitioners in No. 13-356). The government opposes that proposal as unbalanced, given that it would leave the government—which alone is a party to both cases and is responsible for administering the relevant statutory and regulatory provisions on a nationwide basis—with only one presentation while its opponents have four.

If the Court nevertheless adopts the private parties' proposal for realignment, the government would be responding to two full-length topside briefs in different cases. Under those circumstances, the government would propose that it file one consolidated bottomside brief of 22,500 words in lieu of filing a separate full-length brief in each case. Petitioners in No. 13-356 and respondents in No. 13-354 consent to that word-limit request in the event the Court adopts their back-up proposal.

Sincerely,

A handwritten signature in cursive script that reads "Donald Verrilli Jr." followed by a stylized flourish or initials.

Donald B. Verrilli, Jr.
Solicitor General

cc: See Attached Service List