

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

March 29, 2013

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

HOBBY LOBBY STORES, INC., et al.,

Plaintiffs – Appellants,

v.

No. 12-6294

KATHLEEN SEBELIUS, in her official  
capacity as Secretary of the United States  
Department of Health and Human Services,  
et al.,

Defendants – Appellees.

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EMERITUS PROFESSOR OF LAW  
CHARLES E. RICE, et al.,

Amici Curiae.

ORDER

Before **BRISCOE**, Chief Judge, **KELLY, LUCERO, HARTZ, O'BRIEN,**  
**TYMKOVICH, GORSUCH, MATHESON,** and **BACHARACH**, Circuit Judges.\*

This matter is before the court on several requests. First, we have the appellants' petition for initial en banc hearing. *See* Fed. R. App. P. 35(a). We also have a response in

\* The Honorable Jerome A. Holmes is recused in this appeal and did not participate in consideration of the request for initial en banc review or the other motions addressed in this order. The Honorable Robert E. Bacharach took the oath of office on March 1, 2013 and did not vote on the initial en banc petition. Judge Bacharach will, however, participate in the court's en banc consideration of the case. *See* 28 U.S.C. § 46(c).

opposition. Second, we have appellants' unopposed motion to expedite oral argument. Finally, we have a motion filed by the government parties asking the court to set this matter and number 12-1380, *Newland, et al. v. Sebelius, et al.*, before the same panel for hearing and disposition. We also have a response and reply related to that request.

Upon consideration, a poll was called and a majority of the available active judges in regular service have voted to grant initial en banc hearing. As such, appellants' petition is granted. In addition, we grant the pending request to expedite oral argument, and will set that argument hearing expeditiously. The parties will be advised promptly of the hearing date. Oral argument acknowledgment forms will be forwarded via a separate communication. Finally, in light of our decision to hear this matter en banc, and considering our decision to expedite, the request to set this appeal and the *Newland* matter before the same panel is denied.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk