

Nos. 19-431 and 19-454

IN THE

Supreme Court of the United States

LITTLE SISTERS OF THE POOR SAINTS
PETER AND PAUL HOME,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

DONALD J. TRUMP, PRESIDENT OF
THE UNITED STATES, *et al.*,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF *AMICI CURIAE* CATHOLICS FOR CHOICE,
NATIONAL COUNCIL OF JEWISH WOMEN, THE CENTRAL
CONFERENCE OF AMERICAN RABBIS, WOMEN OF
REFORM JUDAISM, JEWISH WOMEN INTERNATIONAL,
KESHET, MUSLIMS FOR PROGRESSIVE VALUES,
RABBINICAL ASSEMBLY, RECONSTRUCTING JUDAISM,
SOCIETY FOR HUMANISTIC JUDAISM, T'RUAH:
THE RABBINIC CALL FOR HUMAN RIGHTS, AND
UNITARIAN UNIVERSALIST ASSOCIATION
IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

Amici curiae are religious organizations that support equal access to contraception.¹

***Amicus Curiae* Catholics for Choice (“CFC”)** represents the majority of Catholics on issues at the intersection of sexual and reproductive rights and religious liberty. Founded in 1973, CFC seeks to shape and advance sexual and reproductive ethics that are based on justice, reflect a commitment to women’s wellbeing, and respect and affirm the capacity of women and men to make moral decisions about their lives, including the use of contraception. CFC’s work promotes respect for the moral autonomy of every person, based on the foundational Catholic teaching that each individual must follow his or her own conscience and respect others’ right to do the same.

***Amicus Curiae* National Council of Jewish Women (“NCJW”)** is a grassroots organization of over 90,000 volunteers and advocates who strive for social justice by improving the quality of life for women, children, and by safeguarding individual rights and freedoms. For over 125 years, NCJW has engaged in communities nationwide to protect access to

¹ Pursuant to Supreme Court Rules 37.3 and 37.6, all parties have provided written consent to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

contraception and to eliminate all obstacles limiting reproductive freedom. Consistent with our mission, our Jewish values, and our Resolution to work for comprehensive, equitable, and accessible family planning and reproductive health services, NCJW joins this brief.

Amici Curiae the **Central Conference of American Rabbis**, whose membership includes more than 2,000 Reform rabbis and is the Reform Rabbinic leadership organization, and **Women of Reform Judaism**, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, come to this issue out of our deep commitment to every individual's right to access the full range of reproductive health services. We are inspired by Jewish tradition, which teaches that health care is the most important communal service, and therefore should be available to all. Every person is entitled to access contraception as a matter of basic rights and fundamental dignity.

Amicus Curiae **Jewish Women International** ("JWI") is the leading Jewish organization working to empower women and girls and is an unwavering Jewish voice for comprehensive reproductive health services.

Amicus Curiae **Keshet** is a national grassroots organization that works for the full equality and inclusion of lesbian, gay, bisexual and transgender Jews in Jewish life.

Amicus Curiae Muslims for Progressive Values (“MPV”) promotes theologically-sound frameworks for Islamic liberalism in advancing a culture of human rights and social justice in Muslim societies in the United States and around the world.

Amicus Curiae Rabbinical Assembly is the international association of Conservative Jewish rabbis. We have a long history of standing firmly for reproductive freedom for all women. We believe that this is part of the Biblical and Rabbinic mandate to maintain our health, physical and spiritual. We want to make sure that this freedom, which is increasingly under attack today, is protected for all.

Amicus Curiae Reconstructing Judaism works to bring about a more just and compassionate world where creative Jewish living and learning guide us toward lives of holiness, meaning, and purpose. We believe that the reproductive rights of all people must be preserved and protected.

Amicus Curiae Society for Humanistic Judaism is the North American congregational umbrella for a denomination that celebrates Judaism as a culture and history while promoting a humanistic philosophy that embraces progressive ideals such as full LGBTQ equality and reproductive justice.

Amicus Curiae T’ruah: The Rabbinic Call for Human Rights is an organization representing more than 2000 rabbis and cantors. T’ruah supports the religious freedom and human rights of all people—including the freedom for women to make choices about reproduction in accordance with Jewish law. As

a human rights organization, we support the right of women to access necessary medical care, per United Nations standards guaranteeing women and others the right to the enjoyment of the highest attainable standard of physical and mental health.

Amicus Curiae **Unitarian Universalist Association** is the central organization for the Unitarian Universalist religious movement in the United States. It is our belief that decisions about children and families are some of life's most profound. We advocate for the freedom of those choices in each person's life journey and for the ability of all families and communities to realize a sense of wholeness with regard to their sexual and reproductive lives. We are advocates for just and compassionate laws supporting family planning and reproductive health.

SUMMARY OF ARGUMENT

People across numerous religious traditions recognize and support the right of each woman to make her own decisions concerning contraception. The regulations at issue in this case threaten to impose irreparable harm to employees and students, and their dependents, whose religious and moral views about contraception differ from those of their employer or university.

The Patient Protection and Affordable Care Act (the "ACA") guarantees all individuals insured by a "group health plan" or "health insurance issuer"

no-cost access to a range of preventive care.² Pursuant to the Women’s Health Amendment to the ACA, this benefit includes all FDA-approved methods of contraception (the “contraceptive benefit”).³ Eliminating cost “has a dramatic impact on women’s ability to choose and use the most effective forms of contraception.”⁴

The contraceptive benefit is vital to women’s health, well-being, and equality. Women historically have borne higher medical costs than men and before the ACA, contraception consumed 30-44% of women’s out-of-pocket health care expenditures.⁵ The benefits of contraception are commonly accepted and compelling.

The regulations at issue (the “Regulations”)⁶ upend a prior regime that granted an accommodation to certain religious employers and universities that this Court found did no harm to the government’s interests. Specifically, the Regulations allow a wide

² 42 U.S.C. § 300gg-13(a).

³ 42 U.S.C. § 300gg-13(a)(4); Group Health Plans and Health Issuers Relating to Coverage of Preventive Services Under the Insurance Patient Protection and Affordable Care Act, 77 Fed. Reg. 8,725 (Feb. 15, 2012).

⁴ C.A.App. 248.

⁵ C.A.App. 249.

⁶ Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,592 (Nov. 15, 2018).

range of entities to refuse to provide contraceptive insurance on religious or moral grounds without the previous safeguards for women.⁷

Women who work for a company whose owners object to birth control will face tough choices—like balancing paying for contraception with feeding their family; or working at their chosen job, which denies them coverage, or seeking employment elsewhere. Students will be forced to sacrifice either the university of their choice or protection from unintended pregnancy that could derail their education. The reduction in contraception access will irreparably harm many women, especially the poor and less privileged.

The United States is religiously diverse but the vast majority of women treat use of contraception as a moral choice. This is true of Catholic women as well, despite opposition to this choice by the hierarchy of the Catholic Church and many Catholic employers and universities. Whether a woman is affiliated with the Catholic Church, or instead affiliated with one of the many religious organizations that supports the use of contraception, or affiliated with no religion at all,

⁷ The Regulations provide an exemption based on a religious objection to any employer and to any university. The Regulations provide an exemption based on a moral objection to any non-publicly traded company and to any university. These exemptions dispense with the notice requirement this Court relied on for its finding that the accommodation provided to employers and universities under prior regulations would not harm women. Pet.App. 16a-17a.

decisions about contraception and contraception insurance should be personal.

When a woman determines, consistent with her faith and conscience, that contraception is an appropriate choice, her choice should be respected. The Regulations prioritize an employer or university's views over the religious or moral beliefs of the woman, increasing the cost of, and reducing her access to, contraception.

The Regulations compromise not just women's dignity and personal religious liberty, but also women's health, well-being, and equality. The irreparable harms the Regulations threaten supported the preliminary injunction below and avoiding these harms is a compelling government interest.

For these and the reasons set forth below, *amici* urge this Court to affirm the decision of the Court of Appeals.

ARGUMENT

I. People of Diverse Faiths Support Access to Contraception

Amici are religious organizations that recognize each woman's moral authority to make her own choice whether to use or decline to use contraception. Although the United States is religiously diverse, there is substantial agreement with *amici's* view that women have a moral right to make their own decisions on the issue.

The experience of Catholics in the United States illustrates the range of views that can exist even within a faith. Notwithstanding the current institutional position of the Catholic hierarchy opposing contraception, 98% of sexually active Catholic women in the U.S. have used a form of contraception that is prohibited by Catholic teaching.⁸

This disagreement between the Catholic hierarchy and U.S. laity has persisted for decades. The appearance of the contraceptive pill in the 1950s caused the Catholic Church to pay new attention to the topic of birth control. In 1967, a papal commission, including cardinals, bishops, theologians, physicians, and lay people from five continents produced a report on the subject. By a vote of fifty-four to twelve, the papal commission recommended that Catholics be able to use artificial birth control.⁹

The Pope's release of the encyclical *Humanae Vitae* in 1968, which took the opposite position, produced surprise and disagreement, including among theologians and clergy.¹⁰ The exercise of conscience, derived from free will, has long been a central

⁸ See Rachel K. Jones & Joerg Dreweke, Guttmacher Institute, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use* 4 (2011), https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf (last visited Apr. 7, 2020).

⁹ See Catholics for Choice, *Humanae Vitae and the Damage Done* 2-3 (2018), <http://www.catholicsforchoice.org/wp-content/uploads/2018/07/CFC-HumanVitae-13.pdf> (last visited Apr. 7, 2020).

¹⁰ See *id.* at 3-5; Thomas P. Rausch & Catherine E. Clifford, *Catholicism in the Third Millenia* 148 (2009).

component of Catholic teaching and the overwhelming majority of Catholics in the United States have not followed the Church's position on the use of contraception. The percentage of Catholic women in the United States who have used a contraceptive method other than natural family planning is virtually identical to the figure for all U.S. women.¹¹

Mainline Protestant women and Evangelical Protestant women also use a contraceptive method other than family planning at about the same rate as all American women.¹² "Protestants have long affirmed the use of contraception as a responsible exercise of stewardship of life."¹³ Protestant denominations generally recognize that women are moral agents who have the capacity and right to choose to use modern contraception to plan whether and when to have children.

For example, the Episcopal Church of America supports "the right of individuals to use any natural or safe artificial means of conception control."¹⁴ In 2018, the Church reiterated that "equitable access to women's health care, including women's reproductive

¹¹ See Jones & Dreweke, *supra* note 8, at 5-6.

¹² *Id.*

¹³ Office of the General Assembly, The Presbyterian Church (U.S.A), *The Covenant of Life and the Caring Community* 17 (1983).

¹⁴ Resolution 1982-D016, To Reaffirm the Right to the Use of Artificial Conception Control, General Convention, *Journal of the General Convention of The Episcopal Church*, New Orleans, 1982 (New York: General Convention, 1983), p. C-154.

health care, is an integral part of a woman's struggle to assert her dignity and worth as a human being."¹⁵

The Presbyterian Church (U.S.A.) respects "the integrity of individual conscience by affirming the ability of woman and men to make good moral decisions in matters of reproductive health."¹⁶ The Church seeks to protect "access to comprehensive health care, including access to health services that enable responsible family planning."¹⁷ It opposes "all measures that would serve to restrict full and equal access to contraception,"¹⁸ including in private insurance plans.¹⁹ The Church believes that personally choosing to use contraception is an exercise of "religious freedom" but that denying contraceptive coverage in a private insurance plan and "economically imposing one's religious convictions on others" is the opposite of religious freedom.²⁰

¹⁵ Resolution 2018-D32, To Advocate for Gender Equity, Including Reproductive Rights, in Healthcare, General Convention, Journal of the General Convention of The Episcopal Church, Austin, 2018 (New York: General Convention, 2018), p. 442.

¹⁶ Resolution 21-03, On Providing Just Access to Reproductive Health Care at 1, Presbyterian Church (U.S.A.), 220th General Assembly (2012).

¹⁷ *Id.*

¹⁸ Policy Statement, Presbyterian Church (USA), 195th General Assembly (1983).

¹⁹ Resolution 21-03, *supra* note 16, at 3.

²⁰ Religious Freedom Without Discrimination, Approved by the 223rd General Assembly (2018) of the Presbyterian Church (U.S.A.).

The United Church of Christ affirms “the right of women to determine when, if and how many children she should have.”²¹ The Church supports “legislation which assures women a full range of health care choices and services” so she can “make decisions about her own reproductive health.”²²

According to the Evangelical Lutheran Church of America, “the responsible use of safe, effective contraceptives” is appropriate for couples “who do not feel called to conceive and/or rear children” or “prepared to provide for a child.”²³

The Alliance of Baptists fellowship calls for a “faith-based commitment to sexual and reproductive rights, including access to voluntary contraception” as a part of spiritual wholeness.²⁴ It joins this with its call to “[s]lide with those who are poor.”²⁵

²¹ United Church of Christ, *Reproductive Health and Justice*, http://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872 (last visited Apr. 7, 2020).

²² General Synod of the United Church of Christ, *Resisting Actions Seeking To Undermine the Status of Women in Society* (2013).

²³ Evangelical Church in America, *Journey Together Faithfully 7* (2002).

²⁴ Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Injustice and Violence* (2012).

²⁵ *Id.*

The Disciples of Christ has a “historic commitment to reproductive freedom for women.”²⁶ The Church “has repeatedly proclaimed the equality of all people—emphasizing women’s rights to . . . full participation in church and society including decision-making, economic justice, access to health care, and reproductive freedom.”²⁷

The United Methodist Church has resolved: “Each couple has the right and the duty prayerfully and responsibly to control conception according to their circumstances. They are, in our view, free to use those means of birth control considered medically safe.”²⁸ The Church believes that parenthood has “sacred dimensions” and that “the decision whether or not to give birth to children must include acceptance of the responsibility to provide for their mental, physical, and spiritual growth, as well as consideration of the possible effect on quality of life for family and society.”²⁹ Accordingly, the Church has expressed the aspiration that “all can exercise responsible choice in the area of conception controls.”³⁰

The Unitarian Universalist Association believes in principles of reproductive justice, including “the

²⁶ Resolution No. 8954, General Assembly of the Christian Church (Disciples of Christ) (1989).

²⁷ Report No. 1930, General Assembly of the Christian Church (Disciples of Christ) (2019).

²⁸ United Methodist Church, *Responsible Parenthood* (2008).

²⁹ *Id.*

³⁰ *Id.*

personal right to choose in regard to contraception.”³¹ This is rooted in the belief that “Unitarian Universalism calls us to advocate for the positive expression of sexuality, including choices about reproduction and nurturing, and for a culture of respect and empowerment.”³²

Within Judaism, there is a strong consensus among Conservative, Reform, and Reconstructionist rabbis supporting “full access for all women to the entire spectrum of reproductive healthcare and oppos[ition to] all efforts by government, private entities, or individuals to limit such access.”³³ Views

³¹ Unitarian Universalist Association, General Resolution on the Right to Choose (1987).

³² Unitarian Universalist Association, Reproductive Justice: Statement of Conscience (2015); *see also id.* (stating that “[t]he world we envision includes social, political, legal, and economic systems that support everyone’s freedom of reproductive choice”).

³³ Rabbinical Assembly of Conservative Judaism, Statement on Reproductive Freedom (2019); *see also* Central Conference of American Rabbis, Resolution on State Restrictions on Access to Reproductive Health Services (2010) (“For decades, the Reform Jewish Movement has supported and defended a woman’s right to control her own reproductive health decisions. . . . We believe that both American law and Jewish tradition entrust patients with autonomy in making health care decisions, free from government interference, and we assert that in a diverse democracy each person has the liberty to draw upon his or her own faith for guidance, and not be subject to the religious views of others.”); Letter from Religious Organizations, including Reconstructionist Rabbinical Organization, to U.S. Sen. Comm. on Appropriations re: Title X at 1 (Nov. 20, 2019) (“Respecting each person’s dignity and autonomy is an essential principle of

within Orthodox Judaism vary, with some also supporting women's choice to use contraception to space out or limit the number of children.³⁴

In addition, birth control has “long been common in the Muslim World.”³⁵ For most Islamic jurists, “there is no objection” to the woman's use of any safe method of birth control to time pregnancy and a consensus has emerged among Muslim legal scholars that contraception can help to improve living standards.³⁶

People of many religions in the United States thus view contraception as a moral choice. Regardless of a woman's religious affiliation, however, her views on how to manage the risk of unintended pregnancy should not be replaced with the views of her employer or university.

II. The Contraceptive Benefit Serves Compelling Government Interests and the Regulations Threaten Irreparable Harm

Amici support every woman's equal right to access contraception insurance, because of rather than

our faiths. Impeding one's ability to make decisions about reproduction according to her own values is an assault on her human dignity.”).

³⁴ See BBC, *Judaism and Contraception*, <https://www.bbc.co.uk/religion/religions/judaism/jewishethics/contraception.shtml> (last visited Apr. 7, 2020).

³⁵ Abdulaziz Sachadenia, *Islamic Biomedical Ethics: Principles and Applications* 127 (2009)

³⁶ See *id.*

despite *amici's* religious views. The Regulations compromise women's dignity, health, well-being, equality, and religious freedom. They will have a negative impact on insured people's partners and dependents. Millions will suffer harm, especially the poor and marginalized. The contraceptive benefit of the ACA serves compelling interests, which the Regulations threaten to irreparably harm.

This Court has recognized that religious exemption claims cannot be given "unyielding weighting . . . over all other interests."³⁷ Put another way, "accommodation is not a principle without limits."³⁸ Those limits "begin to operate whenever activities begin to affect or collide with liberties of others or of the public."³⁹ A claim of religious exemption or accommodation "must be measured so that it does not override other significant interests."⁴⁰

"The Constitution serves human values" including "matters so fundamentally affecting a person as the decision whether to bear or beget a child."⁴¹ This Court previously has upheld religious accommodations to the ACA's contraceptive benefit

³⁷ *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985).

³⁸ *Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 706 (1994).

³⁹ *Prince v. Mass.*, 321 U.S. 158, 177 (1944) (Jackson, J., dissenting).

⁴⁰ *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005).

⁴¹ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851, 856 (1992) (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972)).

only after finding that the accommodation in question would have no detrimental effect on women.⁴²

A just society should not limit women’s ability to manage the risk of unintended pregnancy as the Regulations do. Allowing an employer or university to veto a woman’s access to the contraceptive benefit is an affront to a woman’s dignity and autonomy. Decisions around contraception are deeply personal. The Regulations compromise each woman’s equal moral right to decide how to approach pregnancy and parenthood, in accordance with her faith and values.⁴³

Access to contraception also promotes a woman’s health.⁴⁴ An unwanted pregnancy imposes more risks to a woman’s physical and emotional well-being than other pregnancies.⁴⁵ Women in the United

⁴² See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014) (“The effect of the HHS-created accommodation on the women employed by hobby Lobby and the other companies involved in these cases would be precisely zero. Under that accommodation, these women would still be entitled to all FDA-approved contraceptives without cost-sharing.”).

⁴³ Rev. Debra W. Haffner, Religious Institute, *A Time to Embrace* 28-29 (2015) (“In a just world, all people would have equal access to contraception The denial of these services effectively translates into coercive childbearing and is an insult to human dignity.”).

⁴⁴ See, e.g., Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* 102-03 (2011) (“IOM Report”).

⁴⁵ See, e.g., Brief for American College of Obstetricians and Gynecologists et al. as *Amici Curiae* in Support of Respondents 10-11, *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, Nos. 19-431, 19-454 (U.S. 2020) (“ACOG Br.”);

States who become pregnant face rates of maternal mortality and morbidity that are distressingly high and have been increasing.⁴⁶ These maternal health risks are especially high for African-American women.⁴⁷ There are particular health risks during pregnancy for women with underlying physical or psychological conditions, including diabetes, heart disease, cancer, and depression.⁴⁸

Further, contraception is used by many women for medical reasons unrelated to birth control. For example, oral contraceptives can reduce the risks of certain cancers; treat polycystic ovary syndrome, a leading cause of infertility; are prescribed for endometriosis; and alleviate dysmenorrhea, which involves painful menstruation.⁴⁹

Contraception also has other positive impacts on the well-being of women. Improved access to contraception enables women to achieve their educational and professional goals, earn more income,

Brief for National Women’s Law Center et al. as *Amici Curiae* in Support of Respondents 21-22, *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, Nos. 19-431, 19-454 (U.S. 2020) (“NWLC Br.”).

⁴⁶ *See, e.g.*, NWLC Br. at 21-22.

⁴⁷ *See, e.g., id.*

⁴⁸ *See, e.g.*, ACOG Br. at 12-13; NWLC Br. at 10-11; IOM Report at 103.

⁴⁹ *See, e.g.*, ACOG Br. at 13; NWLC Br. at 22-23.

and enjoy more stable marriages.⁵⁰ Full and equal access to contraception is of critical importance to women who are in abusive relationships or experience sexual violence.⁵¹ Moreover, attending a religiously affiliated college does not reduce a woman's risk of being sexually assaulted.⁵²

These multiple benefits, individually and in combination, have a profound impact on women's equality. As this Court has recognized, "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."⁵³ Women's equality is furthered by access to contraception.

Contraceptive insurance has benefits not only for women employees, but also for insured person's partners and dependents. Contraception allows women to space their children, which has benefits for the health and well-being of children as well as women and allows a child to be born when a parent or both parents are best able to provide caretaking.⁵⁴ Access to

⁵⁰ See, e.g., NWLC Br. at 26-30; Adam Sonfield et al., Guttmacher Inst., *The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children* (2013).

⁵¹ See, e.g., NWLC Br. at 23-25.

⁵² See Nick Anderson & Scott Clement, *1 in 5 College Women Say They Were Violated*, Wash. Post (June 12, 2015).

⁵³ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992).

⁵⁴ See, e.g., ACOG Br. at 10-12; NWLC Br. at 21.

contraception is a moral good that supports human well-being.

The Regulations' decrease in contraception access will harm the poor and marginalized. Those who most need insurance for contraception will be especially affected by the Regulations. *Amici* are committed to helping all people thrive and to access to contraception for all persons, including those with fewer resources.

Amici also are dedicated to the religious liberty of each woman to make thoughtful, personal decisions about contraception. These matters “involve[e] the most intimate and personal choices a person may make.”⁵⁵ In a religiously pluralistic society, a woman's contraception coverage should not depend on the religious or moral beliefs of her employer or university. Her choice has a “deep, personal character.”⁵⁶

Religiously affiliated workplaces and universities generally are not comprised of persons sharing the same religion or beliefs. “Religious diversity is a fact of the American workplace.”⁵⁷ Nonetheless, most people with health insurance

⁵⁵ *Casey*, 505 U.S. at 851.

⁵⁶ *Id.* at 853.

⁵⁷ Tanenbaum Center for Inter-religious Understanding, *What American Workers Really Think About Religion: Tanenbaum's 2013 Survey of American Workers and Religion* 6 (2013).

receive it from an employer.⁵⁸ A refusal to provide contraceptive coverage will affect employees and students of the same faith as the one identified by the institution; those of different faiths; and those who do not identify with a religion. It will affect partners and dependents of the insured person as well. It is unconscionable for these institutions to override the dignity, health, well-being, and liberty of each of these types of persons.

When employers and universities serve, employ, enroll, and obtain funding from the general public, the religious or moral views of the institution should not reduce employees' access to generally available public benefits. Employers with the religious or moral view that men should head the household could not silently opt out of legal requirements to provide notice forms and information for unemployment insurance to departing employees and the government if the employee is a woman. Yet the Regulations allow a similarly misguided outcome.

The Regulations inappropriately afford blanket treatment to workplaces and universities as if they were close, voluntary associations of religious insiders who have submitted to a religious hierarchy. The decision to join a workplace is based on numerous variables, however. That choice may be constrained by economic, geographic, and a host of other circumstances. Employees and students' religious and

⁵⁸ See Edward Berchick, Jessica Barnett & Rachel Upton, U.S. Census Bureau, *Health Insurance Coverage in the United States: 2018* (2019).

moral choices to receive the contraceptive benefit of the ACA should not be hostage to these contingencies.

Yet many persons' choices would be held hostage to these contingencies under the Regulations. The 260 members of the Association of Catholic Colleges and Universities oppose the contraceptive benefit and serve more than 891,000 students and provide insurance coverage to hundreds of thousands of workers.⁵⁹ The Council for Christian Colleges and Universities, representing 118 colleges and universities, is likewise opposed to the contraceptive benefit.⁶⁰

In the workplace, in the health care field alone, Catholic hospitals employ more than 536,000 full-time and 214,000 part-time employees.⁶¹ One in six hospital beds in the United States is in a Catholic hospital, and in many regions the only hospital is a Catholic hospital.⁶² The Regulations therefore threaten irreparable harm to a vast number of individuals who

⁵⁹ See Association of Catholic Colleges and Universities, *Catholic Higher Education FAQs*, <http://www.accunet.org/Catholic-Higher-Ed-FAQs> (last visited Apr. 7, 2020); P.J. Kenedy & Sons, *The Official Catholic Directory Anno Domini 2047-87* (2015).

⁶⁰ See Brief for Council for Christian Colleges and Universities as *Amici Curiae* in Support of Petitioners, *Zubik v. Burwell* at 2-3, Nos. 14-1418 et al. (U.S. Jan. 11, 2016).

⁶¹ See U.S. Catholic Health Care (2020), https://www.chausa.org/docs/default-source/default-document-library/the-strategic-profile-of-catholic-health-care-in-the-united-states_2020.pdf?sfvrsn=0 (last visited Apr. 7, 2020).

⁶² See Julia Kaye et al., ACLU, *Health Care Denied* (2016).

are employed by or attend institutions that object to the contraceptive benefit.

The lower courts have recognized that implementation of the Regulations would have incommensurable human impacts. The Regulations would deny countless individuals equal access to a guaranteed form of basic health care, contrary to justice and religious freedom.

CONCLUSION

This Court should affirm the decision of the Court of Appeals.

Respectfully submitted,

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