Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, AND 15-191

IN THE

Supreme Court of the United States

DAVID A. ZUBIK, ET AL., *Petitioners*,

v.

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

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL., *Respondents.*

ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, ET AL., *Petitioners*,

v.

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

EAST TEXAS BAPTIST UNIVERSITY, ET AL., *Petitioners*,

v.

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

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, ET AL., *Petitioners*,

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INTERESTS OF *AMICI CURIAE*

Amici Curiae Lambda Legal Defense and Education Fund, Inc., the Human Rights Campaign, and the Transgender Law Center (together, "*Amici*") are among the nation's leading nonprofit advocacy organizations working to protect and advance the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") people and people living with HIV. *Amici* submit this brief in support of Respondents.[1]

Amici have participated as party counsel or *amicus curiae* in many cases involving assertions that statutes, rules, or policies regulating relationships, employment, education, or professional services infringed on religious freedom. *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) ("*Hobby Lobby*"); *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir. 2011) (rejecting claim that counseling student's religious exercise and speech rights warranted exemption from university's requirement that she counsel lesbian and gay clients per usual standards); *North Coast Women's Care Med. Grp., Inc. v. San Diego Cty. Superior Court (Benitez)*, 189 P.3d 959 (Cal. 2008) ("*Benitez*") (rejecting claim that nondiscrimination statute infringed physicians' religious exercise and speech rights).

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[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

Amici serve constituencies that with disturbing regularity suffer religiously based refusals of health insurance, medical care, and other services in various contexts. Based on this and on their prior legal work, *Amici* have developed expertise concerning the legal infirmities and harmful implications of Petitioners' claim that even the multiple ways by which they may opt out of the Affordable Care Act's contraception coverage rule are insufficient to accommodate their religious needs. *Amici* submit this brief to provide fuller explanation of the harmful consequences for their constituencies and for society as a whole were the Court to accept Petitioners' proposed mutation of religious free exercise doctrine. *Amici* urge the Court instead to reaffirm core principles that have been essential to maintaining religious coexistence, secular public health programs, and equal opportunity in our pluralistic nation.

SUMMARY OF THE ARGUMENT

In challenging the accommodation for employers who object on religious grounds to providing the contraceptive coverage guaranteed by the Patient Protection and Affordable Care Act, 42 U.S.C. § 300gg-13(a)(4) ("ACA"), Petitioners aggressively recast the reach of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq*. ("RFRA"). RFRA does not protect market participants from incidental burdens on religious exercise. Regardless of sincere religious motivation, those who engage in market activity may be required to comply with various rules that apply equally to all; RFRA requires government to show that such rules serve compelling interests in the least

restrictive manner only when they are shown to impose a *substantial* burden on religious exercise.

The ACA's contraceptive coverage benefit, as modified by the accommodation, burdens the Petitioners' religious practices incidentally at most, and not substantially. The accommodation respects Petitioners' objection to contraception, separates them from contraceptive coverage, and makes that separation explicit—just as in the analogous freedom of expression context, *see Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006) (*"FAIR"*)—while meeting the employees' needs with services provided and paid for by independent parties. It is "a system that seeks to respect the religious liberty" of nonprofit employers "while ensuring that the[ir] employees . . . have precisely the same access to all FDA-approved contraceptives" as others do. *Hobby Lobby*, 134 S. Ct. at 2759.

Petitioners' objection to even the easy opt-out offered to them so they can avoid providing contraception coverage, if sustained, would impair their employees' access to that insurance. Because the religious free exercise doctrine does not include a right to insist that either the government or third parties conform to one's own beliefs and practices, there is no legally cognizable burden on Petitioners' religious rights, and the RFRA analysis can end on this point. *See Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988); *Bowen v. Roy*, 476 U.S. 693 (1986); *United States v. Lee*, 455 U.S. 252 (1982); *see also Hobby Lobby*, 134 S. Ct. at 2787 (Kennedy, J., concurring) (noting that "no person may be restricted or demeaned by government in

exercising his or her religion. Yet neither may that same exercise unduly restrict other persons, such as employees, in protecting their own interests, interests the law deems compelling.").

Like the case law it codified, RFRA does not make religion a trump card as against the needs of government and third parties. Instead, the statute requires courts to consider asserted religious exercise needs in context with other interests. Here, even if the Court were to find that the alternate insurance process imposes a substantial burden on Petitioners' own exercise of religion, the accommodation should be sustained because it furthers the government's compelling interest in "ensuring that women receive the full and equal benefits of preventative health coverage guaranteed by the Affordable Care Act" without overbreadth. Respondents' Br., Case No. 14-1418, pp. 54-61, 72-88.

While *Amici* agree with Respondents' arguments on these points, *Amici* provide this brief to assist the Court with respect to a related consideration—namely, the extensive precedent confirming that religious liberty always finds a limit when it causes harm to others. The relief Petitioners' seek would impede the ability of insurers and third party administrators ("TPAs") to provide access to basic services that Congress has recognized are essential both for public health and for gender equality. Petitioners thus defy precedent when they seek to extend their free exercise rights to the detriment of the health, financial, and liberty rights of others.

That the care at issue concerns reproductive health and family planning only magnifies the

potential consequences of Petitioners' attempt to inflate the scope of their religious rights. These government-guaranteed health services affect the "most intimate and personal choices a person may make in a lifetime." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992); *see also Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (explaining that *Casey* confirmed that decisions concerning intimate adult relationships are a form of protected liberty for both married and unmarried persons, and are protected regardless of gender or sexual orientation).

If Petitioners were to prevail, it would invite employers to make similar objections whenever their employees need them to complete routine paperwork or to take other incidental steps related to government programs, benefits, or laws concerning family or personal needs of which the employer disapproves on religious grounds. While these cases concern employer efforts to impede Congress's program to equalize health insurance costs and coverage as between women and men, and to improve public health, Petitioners' expanded conception of institutional religious freedom as a right that is allowed to override others' freedom also could undermine other public benefit programs and laws designed to improve health and to equalize opportunity for, among others, LGBT persons and those living with HIV. The constituencies that *Amici* serve already encounter discriminatory, religion-based denials of medical care, as well as refusals to recognize their legal familial relationships. Their health and wellbeing require that these denials become less frequent, not more so.

Courts consistently in the past have rejected religious exercise claims that entail harm to others. The Court should do so here as well. The health and equality interests at stake are compellingly important. And they are only the beginning of the interests likely to be at risk if the Court negates the reasonable limits that Congress wrote into RFRA.

ARGUMENT

I. THE CONTRACEPTIVE COVERAGE ACCOMMODATION FOR RELIGIOUS NONPROFITS IMPOSES AT MOST AN INCIDENTAL BURDEN ON THOSE EMPLOYERS' EXERCISE OF RELIGION, AND NOT A SUBSTANTIAL BURDEN.

Petitioners' conception of what constitutes a burden on religious exercise far exceeds what prior case law has recognized. Under RFRA, the federal government "shall not substantially burden a person's exercise of religion" unless that burden is the least restrictive means to further a compelling government interest. 42 U.S.C. §§ 2000bb-1(a), (b). By its explicit terms, the statute offers protection only against *substantial* burdens on religious exercise, not against merely incidental burdens. Consequently, notwithstanding sincere religious beliefs, those who engage in regulated public activities must comply with generally applicable laws, and government need only show that a challenged law is the least restrictive way to advance a compelling state interest when that law imposes a *substantial* burden on religious exercise.

Everyone in our society is free to identify with a particular religious tradition and to hold whatever

beliefs inspire them; it is not for the courts to judge the reasonableness or logic of their beliefs. *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981). Courts *are* charged, however, to assess as a legal matter, based on the record presented, whether a challenged law burdens a religious practice substantially or only incidentally. *See, e.g.*, *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989), *cited in Little Sisters of the Poor Home for the Aged v. Burwell*, 794 F.3d 1151, 1177 n.23 (10th Cir. 2015); *Priests for Life v. United States HHS*, 772 F.3d 229, 247 (D.C. Cir. 2014); *Mahoney v. Doe*, 642 F.3d 1112, 1121 (D.C. Cir. 2011).

This must remain a legal question for courts or else any individual or organization could require that a law or rule undergo and survive strict scrutiny review due to sincere but subjective feelings of burden, even when the burden would be deemed minuscule if assessed objectively. If courts were to defer to RFRA claimants' subjective assertion of burden, that essentially would eliminate a key aspect of legal review, and the burden assessment would be subsumed into the separate determination of the claimant's sincerity. Congress's requirement that only "substantial" burdens on religious exercise give rise to a RFRA claim should not be ignored or leached of meaning. *See Little Sisters*, 794 F.3d at 1177 (citing 139 CONG. REC. S14352 (daily ed. Oct. 26, 1993), statement of Sen. Kennedy noting that RFRA would not impose strict scrutiny for "governmental actions that have an incidental effect on religious institutions").

The Court considered very similar objections to contraception in *Burwell v. Hobby Lobby* and

concluded that the employers' religious needs could be accommodated using the opt-out process at issue here. Specifically, like Petitioners here, the *Hobby Lobby* plaintiffs held the religious belief that they may not "'*be involved in* the termination of human life' after conception, which they believe is a 'sin against God to which they are held accountable.'" 134 S. Ct. at 2765 (emphasis added). Like Petitioners here, they also averred that "'it is immoral and sinful for [them] to intentionally *participate in, pay for, facilitate, or otherwise support* these drugs.'" *Id.* (emphasis added).

The Court accepted that those beliefs were sincerely held and found that "arrang[ing] for such coverage . . . demands that they engage in conduct that seriously violates their religious beliefs." *Id.* at 2775. Importantly, however, the Court determined that "arranging" did not include the minimal paperwork the government uses to implement the accommodation. And both the majority opinion and the concurrence concluded that the accommodation would respect the *Hobby Lobby* plaintiffs' religious beliefs, which closely resemble Petitioners' stated beliefs in these cases: that they may not directly provide insurance, nor "be involved in . . . participate in, pay for, facilitate, or otherwise support" the challenged medications. *Id.* at 2765.

The majority opinion concluded that, "The less restrictive approach we describe *accommodates the religious beliefs* asserted in these cases," *id.* at 2783 n.40 (emphasis added), and "does not impinge on the plaintiffs' religious belief that providing insurance coverage for the contraceptives at issue here violates their religion. . . ." *Id.* at 2782. The concurrence

agreed that the "accommodation equally furthers the Government's interest but *does not impinge on the plaintiffs' religious beliefs*" and "*the means to reconcile those two priorities are at hand in the existing accommodation* the Government has designed, identified, and used for circumstances closely parallel to those presented here," *id*. at 2786-87 (Kennedy, J., concurring) (emphasis added)—referring to the very accommodation Petitioners complain of in the instant cases.

In addition to being consistent with most of the circuit decisions below, this conclusion also is consistent with numerous prior cases addressing religious liberty claims that examined the extent of the burden claimed to be imposed by government regulations and rejected claims that having to take steps to obtain a religious accommodation itself creates a substantial burden. For example, in a case applying RFRA's strict scrutiny test, a religious school's complaint about having to complete paperwork to request a zoning variance was rejected as not imposing a substantial burden on its religious exercise. *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004). Likewise, in *Walden v. CDC & Prevention*, 669 F.3d 1277, 1292 (11th Cir. 2012), the Eleventh Circuit applied RFRA and determined that there was no burden at all on plaintiff counselor's religious beliefs in being removed from an employee assistance contract for telling patients she was referring them elsewhere due to her religious objections to their relationships, because she claimed no religious duty to tell patients the reasons for those referrals. *Accord Smith v. Fair Emp't and Hous. Comm'n,* 913 P.2d 909 (Cal. 1996), *cert. denied*, 521 U.S. 1129 (1997) (under strict

scrutiny, burden of fair housing law on landlord with religious objection to unmarried tenants was not substantial because landlord had chosen to enter the rental market and was best positioned to avoid the conflict).

Similarly, in *Donovan v. Tony and Susan Alamo Found.*, 722 F.2d 397, 403 (8th Cir. 1983), *aff'd* 471 U.S. 290 (1985), the court rejected as "clearly without merit" a religious exercise defense to compliance with wage and hour regulations that had been asserted by a religious non-profit that employed formerly incarcerated people and individuals dealing with substance abuse as a way of furthering their rehabilitation. Recognizing that a line must be drawn between direct and incidental burdens on religious exercise, the court concluded that ensuring fair compensation and working conditions of employees engaged in secular work "cannot possibly have any direct impact on [the employers'] freedom to worship and evangelize as they please." 722 F.2d at 403; *see also id.* at 400 ("there comes a time when secular endeavor must be recognized as such, and passes over the line separating it from the sacred functions of religious worship").

The court in *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990), also rejected a religious school's free exercise claim seeking exemption from minimum wage and equal pay requirements. The school argued that these requirements impaired its ability to determine matters of internal church governance "as well as those of faith and doctrine," including "its head-of-household practice," which "was based on a sincerely-held belief derived from the Bible," and

which required payment of a salary supplement to male but not female teachers. *Id.* at 1397. The school's employees intervened to support the school, arguing that having their wages set by the government, rather than by church governors, would deprive them of blessings they would receive by allowing their Lord to supply their needs. *Id.* Nevertheless, the court concluded that "any burden [imposed by fair pay requirements] would be limited." *Id.* The "increased payroll expenses to conform to FLSA requirements is not the sort of burden that is determinative in a free exercise claim." *Id.* at 1397-98; *see also EEOC v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986) (school violated antidiscrimination law by offering unequal health benefits to female employees); *cf. United States v. Lee*, 455 U.S. at 261 (applying statute that accommodated religious beliefs of employer by allowing him exemption from duty to pay into Social Security system, but not to withhold payments with respect to his employees). In sum, courts for generations have been weighing how substantially, or not, a challenged regulation burdens the religious exercise of religiously motivated employers. The decisions in past cases requiring those employers to comply with neutral governmental rules further confirm that the opt-out paperwork at issue here, and the insurance disconnect it accomplishes, impose at most a negligible burden on Petitioners that falls far short of what RFRA requires to trigger strict scrutiny review.

Moreover, these cases upholding regulation of employers—including religious non-profits—are consistent with precedent in other contexts finding

that generally applicable rules governing professional or other marketplace conduct impose only minimal burdens, if any cognizable burden at all, on market participants' religious exercise. For example, courts repeatedly have rejected individuals' assertions that generally applicable constraints on conduct of health professionals impose improper burdens on their religious exercise. *See, e.g.*, *Knight v. Conn. Dep't. of Pub. Health*, 275 F.3d 156, 164-65 (2d Cir. 2001) (denying free exercise claims of two public employees whose religious speech at work was inconsistent with professional standards that protect patients); *Berry v. Dep't of Social Servs.*, 447 F.3d 642 (9th Cir. 2006) (county agency entitled to prohibit employee from discussing religion with clients); *Bruff v. North Miss. Health Servs., Inc.*, 244 F.3d 495, 497-98 (5th Cir. 2001) (statutory duty to accommodate counselor-employee's religious needs did not entitle her to refuse to counsel patients about non-marital relationships); *Moore v. Metro. Human Serv. Dist.*, No. 09-6470, 2010 WL 3982312 (E.D. La. Oct. 8, 2010) (publicly employed social worker not entitled to religious accommodation allowing her to impose religious views on others).

In a range of other contexts, courts likewise have held that decisions of religious believers to engage in market activity necessarily entails a duty to accept certain regulatory constraints. *See, e.g.*, *Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 389-91 (1990) (under strict scrutiny test comparable to RFRA standard, generally applicable sales tax did not impose "constitutionally significant" burden on ministry's sale of religious material because such a tax is "no different from

other generally applicable laws and regulations—such as health and safety regulations—to which [the ministry] must adhere"); *Henderson v. Kennedy*, 253 F.3d 12 (D.C. Cir. 2001) (under RFRA, regulation banning T-shirt sales on National Mall did not substantially burden claimants' religious exercise); *Smith v. Fair Emp't and Hous. Comm'n*, 913 P.2d at 927-29 (under strict scrutiny, burden fair housing law imposed on landlord with religious objection to unmarried tenants was not substantial).

The supposed burden alleged by Petitioners from needing to inform the government of their objection to providing contraceptive coverage to their employees is vastly more attenuated than the requirement to purchase employee health insurance challenged in *Hobby Lobby*, the pay equity requirement upheld in *Shenandoah Baptist Church*, or the requirement to counsel patients concerning relationships considered sinful upheld in *Bruff*. Those requirements were held to demand that complainants directly engage in conduct inconsistent with their religious beliefs. Here, the accommodation does not force Petitioners to provide contraception, to pay for contraception insurance, or to have any direct contact with contraception at all. Instead, the accommodation completely separates Petitioners from their employees' independent decisions about contraceptive use. Accordingly, Petitioners' claimed burden is simply their desire to separate employer and employee information, which, if acceded to, would restrict, or at least seriously burden, their employees' medical options and decision-making (which, for some employees, may involve their own

religious decisions as well). The supposed burden on these employers is incidental, if any burden at all.

Petitioners do press the new argument that having to inform the government of their desire for an accommodation makes them complicit in and causes them tacitly to endorse contraceptive use because their stepping out of the way allows the insurers and TPAs to proceed with seamless contraception coverage. But Petitioners' endorsement argument fails as a matter of law. In the analogous free speech context, courts repeatedly have rejected assertions that compliance with generally applicable rules or regulations constitutes any form of expression, let alone endorsement of regulated conduct. For example, in *FAIR*, the Court rejected a claim by law schools that the schools' compliance with a statutory mandate to facilitate military recruitment on campus would send a message of agreement with the military's policies. 547 U.S. at 65-67. Compliance with that mandate sent no message at all, let alone a message "that law schools agree with any speech by recruiters." *Id.* at 65 (citing *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 88 (1980), which explained that the views of those engaging in expressive activities in a privately owned shopping center were unlikely to be identified with the property owner, who remained free to disassociate himself from those views and was "not . . . being compelled to affirm [a] belief in any governmentally prescribed position or view"); *see also Pickup v. Brown*, 740 F.3d 1208, 1230 (9th Cir. 2014) (applying *FAIR* and rejecting challenge to state law banning "sexual orientation change efforts" as mental health treatment for minors); *Catholic Charities of Sacramento v. Superior Court*

(Sacramento), 85 P.3d 67, 89 (2004) ("[C]ompliance with a law regulating health care benefits is not speech. The law leaves Catholic Charities free to express its disapproval of prescription contraceptives and to encourage its employees not to use them. . . . [S]imple obedience to a law . . . cannot reasonably be seen as a statement of support for the law or its purpose").

The accommodation here actually takes the step posited in *FAIR* and *Pruneyard* because, when an institution submits its opt-out paperwork, the government's alternate coverage system communicates to employee-insureds the separateness of the coverage and makes explicit that the employer has no involvement. There cannot be any mistaken impression that the employer is complicit, condoning, or causing the provision of contraception. Rather, the insurer or TPA confirms that the coverage is provided solely by that entity, as required by federal law within a secular, public program.

The improper expansion of religious "freedom" at others' expense is even clearer if one considers potential consequences in other contexts of Petitioners' claim. Imagine if a religious school could block its students' access to a mobile public clinic for vaccines, dental care, or a blood drive. Employers or schools with religious dietary restrictions may contend that it would violate that institution's exercise of religion to have to notify workers or students of the schedule for an off-site public nutrition or subsidized meal program. Given publicly

stated positions,[2] *Amici* already anticipate religious employer refusals to making Social Security payments that would protect a same-sex spouse, and to providing confirming documentation to enable Social Security disability payments for a dependent child of a married same-sex couple. Some religiously affiliated hospitals likewise may argue that they are burdened by patients and employees whose same-sex spouses are entitled to bedside visits, decision-making, or spousal employment benefits.[3]

As in *Lyng* and *Bowen v. Roy*, religious freedom may warrant accommodation but does not entitle individuals to block or impose individual beliefs on government programs that aim to meet broad public needs, especially those involving compliance with a complex regulatory scheme. Just as "[t]here is surely no constitutional right, under the religion clauses of the First Amendment, to pay substandard wages"

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[2] *See, e.g.*, Brief *Amicus Curiae* of United States Conference of Catholic Bishops, *et al.*, at 10-11 ("*USCCB Amicus Brief*"); U.S. Conference of Catholic Bishops, *Nondiscrimination in Health Programs and Activities*, RIN 0945-AA02, 2, 12-13, 17-18 (Nov. 6, 2015) (criticizing HHS's proposed rules to implement ACA Section 1557, which prohibits discrimination on various grounds including sex in federally funded health services and programs, which HHS proposes to interpret to cover forms of discrimination against LGBT people), http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf ("*USCCB Section 1557 Comments*").

[3] In addition to objecting to same-sex relationships, the USCCB objects to recognition of nonbinary gender identity and gender-transition-related medical care. *See, e.g.*, *USCCB Amicus Brief* at 8, 26, n. 69; *USCCB Section 1557 Comments* at 2, 4-11, 16, 18.

due to an employer's religious beliefs about employee compensation, *see Donovan*, 722 F.2d at 403, there is no religious liberty right under RFRA to block or burden employees' access to government-mandated, independently provided insurance for medically warranted health care.

In sum, it cannot be a cognizable burden on a nonprofit's religious exercise to be allowed the option simply to inform the government of its objection to an aspect of a government program in order to exclude that aspect from the institution. One's religious freedom does not include a right to restrict others' freedoms. Petitioners' protest thus exceeds the scope of a valid religious free exercise claim because it seeks to deny others' freedom.

II. DEEMING THE ACCOMMODATION INSUFFICIENT WOULD NEGATE SOUND, SETTLED PRECEDENTS THAT LIMIT EVERYONE'S RIGHT TO IMPOSE RELIGIOUS VIEWS ON THIRD PARTIES TO THEIR DETRIMENT.

Petitioners' argument, if accepted, would transform our society into one in which religiously affiliated nonprofits generally could insist that government yield to their religious doctrine. But it is long settled that religiously motivated employers cannot exempt themselves from laws protecting others from harm by asserting a religious motive for their conduct. *See, e.g.*, *Lee*, 455 U.S. at 261; *cf. Estate of Thornton v. Caldor*, 472 U.S. 703, 709 (1985) (under Establishment Clause, striking down law providing unqualified right of Sabbath observers not to work on their Sabbath). Thus, even when

courts have found that a challenged regulation *does* burden an employer's religious exercise to an extent, they nevertheless generally have upheld such regulations as serving adequately compelling state interests, including protection of others (whose religious beliefs may differ from the employer's) who would be harmed were the employer exempted from the law. *See, e.g.*, *Lee*, 455 U.S. at 261.

The Court affirmed this principle in *Hobby Lobby*, stressing that the same accommodation at issue here should be available to for-profit employers with religious beliefs like the ones Petitioners profess because the "effect . . . on the women employed by Hobby Lobby . . . would be precisely zero." 134 S. Ct. at 2760.

Hobby Lobby thus honors the analysis provided in *Lee*, in which a small business owner objected to paying Social Security taxes for his employees because of his—and his employees'—religious beliefs that accepting Social Security benefits and paying Social Security taxes are sinful. This Court acknowledged a conflict between Mr. Lee's religious beliefs and his tax obligations, and that a statutory provision exempted him from the duty to pay such taxes for his own self-employment. *Lee*, 455 U.S. at 257. The Court also determined, however, that he nonetheless was required to pay these taxes for his employees because "[g]ranting an exemption from social security taxes to an employer operates to impose the employer's religious faith on the employees." *Id.* at 261. In other words, while it may be proper to accommodate an employer's religious objection to direct participation in a secular, public welfare program, the free exercise right does not

extend to hindering employees' access to benefits guaranteed by law for the public.

This remains the governing rule, resting on an extensive body of precedent in which courts have considered religious exercise claims in diverse contexts and consistently have rejected such claims where accommodating the asserted religious belief could harm others. For example, applying the *Sherbert* test codified by RFRA, the Second Circuit has emphasized that courts frequently "have held that the state's interest outweighs any First Amendment rights" where there is a "clear interest, either on the part of society as a whole or at least in relation to a third party, which would be substantially affected by permitting the individual to assert what he claimed to be his 'free exercise' rights." *Winters v. Miller*, 446 F.2d 65, 70 (2d Cir. 1971), *cert. denied*, 404 U.S. 985 (1971), citing *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory vaccination); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (violation of child labor laws); *Reynolds v. United States*, 98 U.S. 145 (1878) (polygamy); *People v. Handzik*, 102 N.E.2d 340 (Ill. 1951) (criminal prosecution of faith healers who practice medicine without a license); *People v. Pierson*, 68 N.E. 243 (N.Y. 1903) (serious illness of a child); *see also, e.g.*, *Keeton v. Anderson-Wiley*, 664 F.3d at 880 (college not required to allow counseling student religious accommodation that would "evade the curricular requirement that she not impose her moral values on clients"); *Walden v. CDC*, 669 F.3d at 1277; *Spratt v. Kent Cty.*, 621 F. Supp. 594, 600-02 (W.D. Mich. 1985) (employer justified in firing social worker for inclusion of religious practices while counseling inmates); *Benitez*, 189 P.3d at 967

(under strict scrutiny, no religious exemption from nondiscrimination law for physicians objecting to treating lesbian patients).

Petitioners' insistence on a religious right to impair their employees' access to medical insurance concerns *Amici* because it flouts the "respect for third parties" principle, and threatens to unsettle that rule. In the United States, differing religious beliefs about family life often have generated disputes not only in employment, but also in medical and other arenas. Disputes have arisen when religious convictions prompted some to believe that others have sinned or should be kept apart, leading to discrimination in regulated, public settings. Although some forms of religiously motivated discrimination doubtless have receded, our history tells a recurring saga of successive generations asking anew whether the laws that shield religious liberty can be made into a sword against others' liberty and right to participate equally in civic life. Our courts properly and consistently have recognized that the answer to that question must remain the same: religious beliefs do not entitle any of us to harm others in defiance of generally applicable laws protecting all of us.

Thus, for example, during the past century's struggles over racial integration, some Christian schools restricted admission of African American applicants based on beliefs that "mixing of the races" would violate God's commands. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 580, 583 n.6 (1983). Some restaurant owners refused to serve African American customers citing religious objections to "integration of the races." *Newman v. Piggie Park*

Enters., Inc., 256 F. Supp. 941, 944-45 (D.S.C. 1966), *rev'd* 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds*, 390 U.S. 400 (1968). Religious tenets also were used to support laws and policies against interracial relationships and marriage. *See, e.g.*, *Loving v. Virginia*, 388 U.S. 1, 3 (1967) (in decision invalidating state interracial marriage ban, quoting trial judge's admonition that "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. . . . The fact that he separated the races shows that he did not intend for the races to mix."); *Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists*, 401 F. Supp. 1363 (S.D.N.Y. 1975) (firing of white clerk typist for friendship with black person was not protected exercise of religion despite church's religious objection to interracial friendships).

As our society began coming to grips with the desire and need of women for equal treatment in the workplace, some who objected on religious grounds likewise sought exemptions from employment non-discrimination laws as a free exercise right. Notwithstanding the religious traditions on which such claims often were premised, courts recognized that these religious views could not be accommodated in the workplace without vitiating the sex discrimination protections on which workers are entitled to depend. *See, e.g.*, *EEOC v. Fremont Christian Sch.*, 781 F.2d at 1362 (holding it was sex discrimination for school to offer unequal employment benefits to female employees, despite employer's religious motives); *Bollenbach v. Bd. of Educ.*, 659 F. Supp. 1450, 1473 (S.D.N.Y. 1987) (rejecting as improper employer's refusal to hire

women bus drivers in deference to religious objections of Hasidic male student bus riders).

Similarly, after state and local governments enacted fair housing laws that protected unmarried couples, landlords unsuccessfully sought exemptions based on their belief that they would sin by providing residences in which tenants might commit what they considered to be the sin of fornication. *See, e.g.*, *Smith*, 913 P.2d at 925 (rejecting religious exercise claim of landlord because housing law did not substantially burden religious exercise); *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994) (same).

Across generations, then, these questions have been asked and answered, echoing with reassuring consistency as courts have recognized the public's abiding interests in securing fairness and peaceful co-existence in the marketplace, in professional services, and in public programs. Today, these common interests are tested once again as LGBT people seek full participation in American life. There is growing understanding that sexual orientation and gender identity are personal characteristics bearing no relevance to one's ability to contribute to society, including one's ability to form a loving relationship and build a family together. *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *United States v. Windsor*, 133 S. Ct. 2675, 2694-96 (2013); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

Yet there remain pervasive and fervent objections on the part of some major religious denominations to the existence and right to inclusion and equal

treatment of LGBT people. For example, the United States Conference of Catholic Bishops ("USCCB") has been firm in claiming a religious right of medical programs and facilities operated under the Ethical Religious Directives for Catholic Health Care Services ("ERDs") to disregard the marriages of same-sex couples and the medical consensus about treatment of gender dysphoria.[4] Accordingly, the USCCB asserts a religious need to forbid gender-transition care at Catholic facilities, and to deny family benefits and spousal recognition to both patients and employees with a same-sex spouse at such facilities.[5] Catholic hospitals and health programs may harbor similar objections when medical professionals with a same-sex spouse request leave pursuant to the Family and Medical Leave Act, or when patients and nursing home residents want a same-sex spouse respected for visitation and medical decision-making purposes.

The stakes are high for LGBT people because many of the institutions to which Respondents offer the religious opt-out accommodation are large nonprofit agencies engaged in providing licensed professional services to the general public, often with substantial public funding. For example, Catholic

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[4] *USCCB Section 1557 Comments*, *supra* note 2, at 2, 4-13, 16-18.

[5] *Id.* at 9, n.17; *see also* U.S. Conference of Catholic Bishops, *Discrimination on the Basis Sex*, RIN 1250-AA05 (Mar. 30, 2015) (addressing proposed OFCCP rules governing federal contractors and employers covered by Title VII, the federal employment nondiscrimination law), http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Discrimination-Basis-of-Sex-March-2015.pdf.

Charities agencies of Pittsburgh and of Washington are among the petitioners. They are affiliated with Catholic Charities USA, a national network, which is the fifteenth largest charity in the United States according to *Forbes*.[6] It had revenues of $4.5 billion in 2014, of which $2.8 billion, or 62 percent, was taxpayer funded.[7] With those funds, Catholic Charities agencies serve many of the most vulnerable members of our society, including those who are homeless, new immigrants, elderly, very low-income, or disabled, "*regardless of religious affiliation*."[8] These services include a broad range of *secular* programs that assist close to nine million individuals annually[9]—including diverse health care services,[10] housing supports,[11] and disaster relief efforts.[12]

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[6] Forbes, The 50 Largest U.S. Charities, #15 Catholic Charities USA, http://www.forbes.com/companies/catholic-charities-usa/ (last visited Feb. 12, 2016).

[7] *Id.*

[8] Catholic Charities USA, *About*, https://catholiccharitiesusa.org/about (last visited Feb. 12, 2016) (emphasis added).

[9] Catholic Charities USA, *The Catholic Charities Network*, https://catholiccharitiesusa.org/network (last visited Feb. 12, 2016).

[10] These include medical and dental care, hospice care, prescription drug support, prenatal care, screenings, addiction recovery, adult day services, nutrition, and infant and child care. *See* Catholic Charities USA, *Supporting Healthy Lives*, https://catholiccharitiesusa.org/efforts/supporting-healthy-lives (last visited Feb. 12, 2016).

[11] These include services to prevent homelessness by providing financial assistance, emergency shelter, and supportive housing

These large nonprofits have come to occupy a significant portion of the medical, nursing home, and rehabilitative marketplace. *Amici curiae* USCCB, *et al.*, confirm this. *USCCB Amici Curiae* Br. at 8-18. While the USCCB *amici* assert that the nonprofits for whom they speak could not continue to provide their social services to the public if required either to use one of the "opt out" processes or to cease providing health insurance to their workers, *id.*, that is simply not credible.

Even assuming the sincere religious inspiration of many employed by these agencies, their workforces as a whole are diverse, many of their workers do not share the same faith, and the services provided are not inherently religious. Courts—both factually and legally—can and do distinguish between *religious* services and religiously inspired *secular* services. For example, in *Catholic Charities of Sacramento*, 85 P.3d at 89, the California Supreme Court enforced a state law requiring inclusion of contraceptive coverage in health plans of religiously affiliated social service agencies as a sex equality measure, notwithstanding RFRA and state free exercise claims, distinguishing such agencies from houses of worship and other

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for seniors, families, and people who are disabled or mentally ill. *See* Catholic Charities USA, *Sheltering Those In Need*, https://catholiccharitiesusa.org/efforts/sheltering-those-in-need (last visited Feb. 12, 2016).

[12] These include providing cash assistance, food, water, personal care supplies, and cleaning materials. *See* Catholic Charities USA, *Providing Disaster Relief*, https://catholic charitiesusa.org/efforts/providing-disaster-relief (last visited Feb. 12, 2016).

inherently religious organizations. Yet, notwithstanding that ruling requiring its compliance with California's contraceptive coverage law, Catholic Charities of Sacramento continues to operate in the state.[13]

Amici emphasize the distinction between organizations that exist to perform religious functions for a congregation and those that serve the public and thus are subject to government regulation. Today, increasing amounts of medical and social services are delivered to the general public by faith-based or religiously affiliated providers that assert a religious right to discriminate based on sexual orientation or gender identity, or to refuse basic services needed by LGBT people, people living with HIV, women, people of other faiths, and others. A significant contributor to this problem is mergers of secular hospitals with Catholic hospitals, during which the ERDs are applied to the entire merged hospital system as a requirement of the merger.[14] A 2013 report by

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[13] *See* Catholic Charities of Sacramento, http://www.catholic charitiessacramento.org/ (last visited Feb. 12, 2016); *see also* Catholic Charities of California, Inc., http://catholic charities.org/ (last visited Feb. 12, 2016). *But see*, *e.g.*, Manya A. Brachear, *Agency takes over foster care in Rockford*, Chicago Tribune (June 16, 2011) (describing transfer of all caseworkers and other staff from Catholic Charities to independent agency with no disruption of services for children in state care when state law required equal treatment of same-sex couples), http://www.chicagotribune.com/news/local/breaking/chibrknews -agency-replaces-catholic-charities-in-rockford-for-foster-care-20110616-story.html (last visited Feb. 15, 2016).

[14] Comprehensive information about these mergers is available from MergerWatch, Protecting Patients' Rights When Hospitals

MergerWatch compiled data about these mergers during the 2001 to 2011 decade and yielded the following findings:

- Between 2001 and 2011, the number of Catholic-sponsored or -affiliated acute-care hospitals increased by 16%, while all other types of nonprofit hospitals declined in numbers.
- In 2011, 10 of the 25 largest health systems in the nation were Catholic sponsored.
- In 2011, these systems had combined gross patient revenues of $213.7 billion, $115 billion of which came from the publicly funded Medicare and Medicaid programs.[15]

The MergerWatch report concludes, based on the financial data and other data, that "Catholic hospitals have left far behind their humble beginnings as facilities established by orders of nuns and brothers to serve the faithful and the poor. They have organized into large systems that behave like businesses—aggressively expanding to capture greater market share. . . ."[16]

Merge, http://www.mergerwatch.org/ (last visited Feb. 15, 2016).

[15] Lois Uttley, *et al.*, *Miscarriage of Medicine: The Growth of Catholic Hospitals and the Threat to Reproductive Health Care* (Dec. 18, 2013), *available at* http://www.mergerwatch.org/storage/pdf-files/Growth-of-Catholic-Hospitals-2013.pdf.

[16] *Id.* at 1.

Among Petitioners also are numerous religiously affiliated schools credentialed by government to issue diplomas certifying satisfaction of secular standards. Like most religiously affiliated health care providers, many of these schools employ vast numbers of people of diverse faiths (and no faith) to perform the institutions' work. Without doubt, the decision in these cases will affect a large swath of our society.

Amici anticipate these problems not just due to formal statements by religious bodies such as the USCCB and some of the *amici* supporting Petitioners. Unfortunately, religiously based disapproval of same-sex relationships and objections to interacting with LGBT people and people living with HIV remain common in many contexts. *See, e.g.*, *Bodett v. Coxcom, Inc.*, 366 F.3d 736 (9th Cir. 2004); *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004) (anti-gay proselytizing intended to provoke coworkers); *Knight*, 275 F.3d at 156 (visiting nurse proselytizing to home-bound patient diagnosed with AIDS); *Erdmann v. Tranquility, Inc.*, 155 F. Supp. 2d 1152 (N.D. Cal. 2001) (supervisor harassment of gay subordinate with warnings he would "go to hell" and pressure to join workplace prayer services); *Hyman v. City of Louisville*, 132 F. Supp. 2d 528, 539-540 (W.D. Ky. 2001) (physician refusal to employ gay people), *vacated on other grounds by* 53 Fed. Appx. 740 (6th Cir. 2002).

As laws and company policies have begun to offer more protections against this discrimination, some who object have been asking courts to change course and allow religious exemptions where they have not done so in past cases. For the most part,

longstanding principles have held true and the needs of third parties have remained a constraint on religion-based conduct in commercial contexts. *See, e.g.*, *Bodett*, 366 F.3d at 736 (rejecting religious accommodation claim); *Peterson*, 358 F.3d at 599 (same); *Knight*, 275 F.3d at 156 (same); *Erdmann*, 155 F. Supp. 2d at 1152 (antigay harassment was unlawful discrimination); *Hyman*, 132 F. Supp. 2d at 539-540 (rejecting physician's claim of religious exemption from nondiscrimination law); *Benitez*, 189 P.3d at 970 (same).

The inflated religious rights that Petitioners seek here would mark a sea change—not only in allowing employers' religious views about family planning to burden employees' access to a public program designed for society at large, but also in opening the door to similar denials of equal compensation, health care access, and other equitable treatment for LGBT people, persons living with HIV, and anyone else whose family life or health need diverges from their employers' religious convictions. As the Court has recognized, our federal laws and traditions have "afford[ed] constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." *Lawrence*, 539 U.S. at 574, citing *Casey*, 505 U.S. at 851. The Court's explanation of the "respect the Constitution demands for the autonomy of the person in making these choices," *id.*, spotlights that the "person" whose autonomy is to be protected is the person herself—not the nonprofit institution that employs her.

Many employees, like many business owners, hold religious and other beliefs that guide their lives.

Those beliefs remain with them when they enter their shared workplaces. As recognized in the decisions discussed above, permitting employers to burden employees' decisions concerning fertility, birth control, and childbearing not only would encourage others to do the same, but would subvert compelling interests in autonomy, public health, and gender equity served by the accommodation and the Affordable Care Act as a whole. Petitioners offer no limiting principle, and indeed, there is none.

Stepping back from the reproductive health context of these cases, imagine how our nation's workplace standards would be transformed were the Court to embrace Petitioners' approach. Employers with religious objections to blood transfusion could object to coverage for that life-saving service in their employees' health plan, and then could seek to block employees' access to alternate sources of care. Employers could selectively block access to medications that they consider "sinful" because those drugs control pain, alleviate depression, or manage HIV. Those who believe that all modern medical treatments interfere with divine will could hinder coverage for all but faith healing.

Amici sound alarm bells here because discriminatory denials of family health insurance and biased attitudes of health professionals—often rooted in religious views—already contribute to persistent health disparities affecting the constituencies they represent. The Institute of Medicine of the National Academies has published an authoritative overview of the public health research addressing these disparities, which repeatedly notes the adverse health consequences of

anti-LGBT attitudes. *See* Inst. of Med., *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011) ("IOM Report") (undertaken at the request of the National Institutes of Health), http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx. For example, the IOM Report observes:

- Although LGBT people share with the rest of society the full range of health risks, they also face a profound and poorly understood set of additional health risks due largely to social stigma. *Id.* at 14.
- [I]t is clear that stigma has exerted an enormous and continuing influence on the life and consequently the health status of LGBT individuals. *Id.* at 74-75.
- LGBT individuals face financial barriers, limitations on access to health insurance, insufficient provider knowledge, and negative provider attitudes that can be expected to have an effect on their access to health care. *Id.*[17]

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[17] *See also* Dep't Health & Hum. Svcs., *Lesbian, Gay, Bisexual, and Transgender Health* (2010), http://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health; Substance Abuse and Mental Health Svcs. Admin., *Top Health Issues for LGBT Populations* (2012), http://store.samhsa.gov/product/Top-Health-Issues-for-LGBT-Populations/SMA12-4684; Agency for Healthcare Research and Quality, *National Healthcare Disparities Report*, 241-256 (2012), http://archive.ahrq.gov/research/findings/nhqrdr/nhdr12/2012nhdr.pdf; *see generally* Gay and Lesbian Medical Association, *Healthy People 2010 Companion Document for Lesbian, Gay,*

In addition to its adverse effects for all who need access to contraception coverage—and on women's equality generally—Petitioners' proposed elevation of religious rights to the detriment of others' needs would worsen circumstances for LGBT people and people living with HIV that already are challenging. Responding to proposed regulations to implement the nondiscrimination provisions of the ACA, *Amicus* Lambda Legal provided examples of the urgent health needs of LGBT people and those living with HIV based on its litigation and the results of the first national survey to examine barriers to care for this vulnerable population.[18] The survey results were shocking. Of nearly 5,000 respondents, more than half reported that they had experienced at least one of the following types of discrimination at the hands of health care providers:

- Refusals to touch them or use of excessive precautions;
- Harsh or abusive language;
- Physical roughness or abuse;

Bisexual, and Transgender (LGBT) Health (2001), http://glma.org/_data/n_0001/resources/live/HealthyCompanion Doc3.pdf.

[18] Lambda Legal, *Comments on HHS 1557 NPRM (RIN 0945-AA02) Regarding Nondiscrimination in Health Programs and Activities*, 19-23 (Nov. 9, 2015), http://www.lambdalegal.org/in-court/legal-docs/hhs_dc_20151117_letter-re-1557, citing survey results published in Lambda Legal, *When Health Care Isn't Caring: Survey on Discrimination Against LGBT People and People Living with HIV* (2010), http://data.lambdalegal.org/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf ("*When Health Care Isn't Caring*").

- Blame for their health status.[19]

Numerous respondents reported their reluctance to seek medical care after interacting with health professionals who freely had expressed religiously grounded bias against them.

The stress deriving from social exclusion and stigma can lead to serious mental health problems, including depression, anxiety, substance abuse disorders, and suicide attempts. *See* Jennifer Kates, *et al.*, *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S.*, Henry K. Kaiser Family Foundation Issue Brief (Oct. 2014), *available at* http://kff.org/report-section/health-access-to-care-and-coverage-for-lesbian-gay-bisexual-and-transgender--the-lgbt-community/ (last visited Feb. 12, 2016); Ilan Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, Psychological Bulletin, Vol. 129, No. 5, 674-97 (2003); Vickie Mays & Susan Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 19 Am. J. Pub. Health 1869-76 (2001).

Anti-LGBT bias often takes a physical toll as well. *See, e.g.*, David J. Lick, *et al.*, *Minority Stress and Physical Health Among Sexual Minorities*, 8

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[19] *See When Health Care Isn't Caring*, at 5, 9-10. Almost 56 percent of lesbian, gay, or bisexual respondents had at least one of these experiences; 70 percent of transgender and gender-nonconforming respondents had one or more of these experiences; and almost 63 percent of respondents with HIV experienced one or more of these types of discrimination. *Id*.

Perspectives on Psych. Science 521 (2013) (physical and mental health disparities are related to minority stress that follows exposure to stigma); Centers for Disease Control and Prevention, *HIV Among African Americans*, http://www.cdc.gov/hiv/group/racialethnic/africanamericans/ (last visited Feb. 12, 2016); Laura M. Bogart, *et al.*, *Perceived Discrimination and Physical Health Among HIV-Positive Black and Latino Men Who Have Sex With Men*, 17[4] AIDS & Behavior 1431 (May 2013) (stress of discrimination affects health of racial and sexual minorities, especially people living with HIV; chronic stressors increase vulnerability to illness), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3631464/; Susan Cochran, *et al.*, *Cancer-Related Risk Indicators and Preventive Screening Behaviors Among Lesbians and Bisexual Women*, 91 Am. J. Pub. Hlth., No. 4, 592, 596 (April 2001).

The cases before this Court concern access to medical care, but the principle Petitioners ask the Court to endorse would be hard to confine to employer-provided health insurance. The notion that a nonprofit employer sins when it complies with laws or rules that accept the "sinful" independent conduct of its employees could apply just as well to other administrative matters that allow employee access to public programs or legal rights. Petitioners' quest to thwart public health programs with which they disagree thus poses a potentially devastating threat with disturbing historical echoes. *See generally* Douglas NeJaime & Reva B. Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 Yale L.J. 2516, 2517 (2015) ("The distinctive features of complicity-based conscience claims matter . . . because accommodating

claims of this kind has the potential to inflict material and dignitary harms on other citizens."); David B. Cruz, Note, *Piety and Prejudice: Free Exercise Exemption from Laws Prohibiting Sexual Orientation Discrimination*, 69 N.Y.U. L. Rev. 1176, 1221 (1994) (desired exemptions "would undermine the egalitarian public order that such laws seek to establish, creating precisely the access and dignitary harms that the Supreme Court held to be the legitimate concern of anti-discrimination laws.").

CONCLUSION

Petitioners insist upon honoring a logical and legal paradox—that proclaiming their disagreement and explicit separation from birth control coverage actually makes them complicit in the government's offering of that health benefit. But George Orwell did not draft RFRA. By opting out, Petitioners are not causing delivery of the insurance. Although they may disagree strongly with its availability, there is no substantial burden on their own exercise of religion.

Petitioners' arguments defy sensible doctrine that was developed over time and adopted by Congress. That much-tested framework has permitted harmonious coexistence of the diverse belief systems that animate our nation. Petitioners' proposed inflation of religious rights, conversely, would make public health and other public programs subordinate to sectarian commitments, with many adverse consequences for government and society as a whole. Among them, Petitioners' approach would deprive others of important benefits everyone is entitled to receive.

Given the lack of substantial, if any, burden on Petitioners' religious practices and the compelling interests served by the Affordable Care Act's equal insurance rules, *Amici* join Respondents in urging rejection of Petitioners' claims.

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