Nos. 19-431, 19-454

IN THE

Supreme Court of the United States

LITTLE SISTERS OF THE POOR
SAINTS PETER AND PAUL HOME,

Petitioner,

v.

PENNSYLVANIA, ET AL.,

Respondents.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,

Petitioners,

v.

PENNSYLVANIA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF *AMICI CURIAE* 92 MEMBERS OF CONGRESS IN SUPPORT OF PETITIONERS

TRAVIS ANDREWS
JOHN S. EHRETT
ANDREW FERGUSON*
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500

BLAINE H. EVANSON
Counsel of Record
DANIEL NOWICKI
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612
(949) 451-3800
bevanson@gibsondunn.com

Counsel for Amici Curiae

*Admitted only in Tennessee; practicing under the supervision of principals of the firm.

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Amici are 92 Members of Congress devoted to maintaining Congress's centuries-old bipartisan tradition of protecting religious liberty. To this end, *amici* coalesce to defend the Religious Freedom Restoration Act (RFRA) and its application to the Affordable Care Act (ACA). *Amici* legislate regularly against RFRA's backdrop, and are thus uniquely positioned to explain RFRA's purpose of protecting religious liberty, its role as a shield to those who seek to practice their sincerely held religious beliefs, and the breadth of the protections it provides.

Amici are:

United States Senators

James Lankford (R-OK)	Michael Enzi (R-WY)
Marsha Blackburn (R-TN)	Deb Fischer (R-NE)
John Boozman (R-AR)	Lindsey Graham (R-SC)
Mike Braun (R-IN)	James M. Inhofe (R-OK)
John Cornyn (R-TX)	James E. Risch (R-ID)
Tom Cotton (R-AR)	Marco Rubio (R-FL)
Steve Daines (R-MT)	Patrick Toomey (R-PA)

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution to this brief's preparation. All parties received timely notice and consented to the filing of this brief.

Members of the House of Representatives

Vicky Hartzler (R-MO)
Ralph Abraham, M.D. (R-LA)
Robert B. Aderholt (R-AL)
Rick W. Allen (R-GA)
Kelly Armstrong (R-ND)
Brian Babin, D.D.S. (R-TX)
Andy Barr (R-KY)
Andy Biggs (R-AZ)
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Alexander X. Mooney (R-WV)
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Pete Olson (R-TX)
John Ratcliffe (R-TX)
Guy Reschenthaler (R-PA)

Charles J. "Chuck" Fleischmann (R-TN)	David P. Roe, M.D. (R-TN)
Bill Flores (R-TX)	David Rouzer (R-NC)
Jeff Fortenberry (R-NE)	Steve Scalise (R-LA)
Russ Fulcher (R-ID)	John Shimkus (R-IL)
Bob Gibbs (R-OH)	Christopher H. Smith (R-NJ)
Louie Gohmert (R-TX)	Jason Smith (R-MO)
Paul A. Gosar, D.D.S. (R-AZ)	Ross Spano (R-FL)
Sam Graves (R-MO)	William R. Timmons IV (R-SC)
Glenn Grothman (R-WI)	Ann Wagner (R-MO)
Michael Guest (R-MS)	Tim Walberg (R-MI)
Brett Guthrie (R-KY)	Jackie Walorski (R-IN)
Andy Harris, M.D. (R-MD)	Randy K. Weber, Sr. (R-TX)
Kevin Hern (R-OK)	Brad R. Wenstrup (R-OH)
Jody B. Hice (R-GA)	Bruce Westerman (R-AR)
J. French Hill (R-AR)	Roger Williams (R-TX)
Richard Hudson (R-NC)	Ron Wright (R-TX)

SUMMARY OF ARGUMENT

The Little Sisters' petition correctly shows that the contraceptive mandate promulgated by the Health Resources and Services Administration (HRSA) presents a fundamental question of religious liberty that warrants this Court's review. For that reason alone, the Court should grant certiorari and consider whether the federal government lawfully exempted religious objectors from the contraceptive mandate. Of particular concern to *amici* is the need for this Court to reaffirm the scope and role of RFRA, which Congress enacted "to provide very broad protection for religious liberty." *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014).

RFRA was passed by a nearly unanimous, bipartisan coalition, and it expressly directs federal agencies to avoid substantially burdening religious exercise without a compelling justification. 42 U.S.C. § 2000bb(a)(3). The Third Circuit's decision below is a direct assault on RFRA and imposes a drastic and unprecedented restriction on federal agencies' ability to protect religious liberty. It must be reviewed and reversed.

The one-two punch delivered by the Third Circuit both permits an agency to implement regulations that burden religious exercise, and also restricts the Executive from providing sufficient religious accommodations to temper that burden. That pair of rulings runs roughshod over RFRA's requirement that all laws—including all regulations promulgated to "implement[]" statutory law—be interpreted and construed to provide the greatest possible protection to freedom of conscience and religious exercise. 42 U.S.C. § 2000bb-3(a); *see also Hobby Lobby*, 573 U.S. at 696 (Congress mandated that RFRA be "construed

in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution") (internal quotation marks omitted).

The Women's Health Amendment did not "explicitly exclude[]" RFRA's application (42 U.S.C. § 2000bb-3(b)), and therefore the implementing agency had not only the authority, but the *affirmative obligation* to promulgate the exemption to the contraceptive mandate that protected the religious liberty of sincere objectors. *See id.* § 2000bb-3(a)–(b) (RFRA "applies to all Federal law," absent an explicit statutory statement excluding its application). But the Third Circuit ignored this clear operation of RFRA, and in doing so essentially excluded RFRA from the agency rulemaking process. That ruling was erroneous, and *amici* oppose the severe limitation the ruling imposes on RFRA's ongoing vitality.

This Court should review the standing question presented in the petition as well. Pet. i-ii.[2] RFRA provides a robust private cause of action for those Americans whose religious liberty is threatened by government action. But that right of action is meaningless if religious objectors are denied standing to invoke it. The Third Circuit's ruling that petitioners suffer no harm from being forced to choose between their insurance plan and exercising their religious beliefs directly contradicts this Court's repeated holding that "to condition the availability of benefits upon [an objector's] willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties." *Sherbert* v. *Verner*, 374 U.S. 398, 406

[2] All "Pet." and "App." citations refer to the petition and appendix in Case No. 19-431.

(1963); *see* 42 U.S.C. § 2000bb(b)(1) (codifying *Sherbert*).

"Congress had a reason for enacting RFRA." *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 439 (2006). It "legislated 'the compelling interest test' as the means for the courts to 'strik[e] sensible balances between religious liberty and competing prior government interests.'" *Ibid.* (alteration in original) (quoting 42 U.S.C. § 2000bb(a)(2), (5)). Although this task is not "an easy one," Congress mandated that courts undertake it. *Ibid.* The Third Circuit's failure to do so gutted RFRA as it applies to federal agencies, and warrants this Court's review.

STATEMENT

Religious liberty has been one of our country's bedrock principles since the Founding. Indeed, "[o]f the motives which influenced the first settlers to a voluntary exile, ... and to seek asylum in this then unexplored wilderness, the first and principal, no doubt, were connected with religion." Daniel Webster, Oration before the Pilgrim Society at Plymouth, Massachusetts (Dec. 22, 1820), The Speeches of Daniel Webster (B.F. Tefft ed., 1907). As Senator Edward Kennedy—one of RFRA's sponsors—explained during the Act's legislative hearings, "[t]he brave pioneers who founded America came here in large part to escape religious tyranny and to practice their faiths free from government interference." *The Religious Freedom Restoration Act: Hearing on S. 2969 Before the S. Comm. on the Judiciary*, 102d Cong., 2d Sess., at 1 (1992) (statement of Sen. Kennedy). "The persecution they had suffered in the old world convinced them of the need to assure for all Americans for all time the right to practice their

religion unencumbered by the yoke of religious tyranny." *Ibid.* Thus, when tasked with forming their own system of government, the American people gave religious liberty special prominence as the first right protected in the Bill of Rights. *See* U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ....").

For many years, this Court interpreted the First Amendment as requiring courts to carve out exemptions from laws burdening the free exercise of religion unless they were "justified by a 'compelling state interest.'" *Sherbert*, 374 U.S. at 403 (quoting *NAACP* v. *Button*, 371 U.S. 415, 438 (1963)). The Court, however, changed course in *Employment Division, Department of Human Resources of Oregon* v. *Smith*, 494 U.S. 872 (1990), abandoning the compelling interest test for free exercise claims in favor of one akin to rational basis review. *See id.* at 882–89. The Court held that "the political process," rather than the judiciary, must protect the freedom of conscience and religion. *Id.* at 890.

RFRA was a swift and direct response to *Smith*. Congress expressly and specifically sought to protect through legislation the religious expression that the Court had determined was not protected by the First Amendment.

Congress recognized that, as a result of *Smith*, "governments throughout the U.S. [could] run roughshod over religious conviction." S. Rep. No. 103-11, at 8 (1993) (quoting S. Comm. on the Judiciary Hearing at 44); *see also* 139 Cong. Rec. H2356-03, H2361 (1993) (statement of Rep. Hoyer) ("Orthodox Jews have been subjected to unnecessary autopsies in violation of their family's religious faith and one

Catholic teaching hospital lost its accreditation for refusing to provide abortion services. Evangelical churches have been zoned out of commercial districts in some cities prompting a Minnesota trial judge to remark that churches have no more constitutional rights than adult movies theaters."). More importantly, Congress understood that the political process could not protect religious liberty in piecemeal fashion: "It is not feasible to combat the burdens of generally applicable laws on religion by relying upon the political process for the enactment of separate religious exemptions in every Federal, State, and local statute." H.R. Rep. No. 103-88, at 6 (1993). RFRA addressed these concerns by requiring that "[a]ll governmental actions" provide "proof of a compelling justification in order to burden religious exercise." *Ibid.*

Congressional support for RFRA was nearly unanimous and overwhelmingly bipartisan. Then-Representative and now-Senate Minority Leader Charles Schumer introduced RFRA in the House of Representatives, where the bill passed unanimously after amassing 170 co-sponsors representing both political parties. H.R. Rep. No. 103-88. In turn, Republican Senator Orrin Hatch and Democratic Senator Edward Kennedy jointly introduced RFRA to the Senate, where the bill garnered 58 co-sponsors and passed with a vote of 97 to 3. S. Rep. No. 103-111, at 2.

The congressional coalition supporting RFRA's passage cut across traditional political and ideological boundaries and included "liberals and conservatives, Republicans and Democrats, Northerners and Southerners." *Religious Freedom Restoration Act of 1990*: *Hearing Before the Subcomm. on Civil &*

Constitutional Rights of the H. Comm. on the Judiciary, 101st Cong., 2d Sess., at 13 (1990) (statement of Rep. Solarz). As President Clinton observed when he signed RFRA into law, this alliance across political, ideological, and religious lines was (and is) extraordinary—but "[t]he power of God is such that even in the legislative process miracles can happen." Remarks on Signing the Religious Freedom Restoration Act of 1993, 2 Pub. Papers 2000 (Nov. 16, 1993).

Congress's nearly unanimous approval of RFRA reflected the shared sentiment of the public at large. Secular and religious groups alike supported RFRA, including the American Civil Liberties Union, the American Humanist Association, the American Muslim Council, the United States Catholic Conference, and the National Council of Churches. 139 Cong. Rec. 4992 (1993) (statement of Sen. Kennedy). These organizations composed "one of the broadest coalitions in recent political history." Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 Tex. L. Rev. 209, 210 (1994).

RFRA includes a private right of action, but it is far more than a backward-facing statute intended to address prior wrongs. RFRA sets forth an *affirmative mandate* that, when carrying out their duties, every member of the federal government (including federal administrative agencies) "*shall not* substantially burden a person's exercise of religion," absent a compelling interest and use of the least restrictive means. 42 U.S.C. § 2000bb-1(a)–(b) (emphasis added); *see also id.* § 2000bb-2(1) (defining the "government" under the Act as every "branch, department, agency, instrumentality, and official" of the United States).

And RFRA makes clear that it applies to "all Federal law, *and the implementation of that law*," unless a particular statute "explicitly excludes ... application" of RFRA. *Id.* § 2000bb-3(a)–(b) (emphasis added).

Congress further expanded the RFRA mandate in the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). RLUIPA amended the definition of "religious exercise" protected under RFRA to include "*any* exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A) (emphasis added); *see id.* § 2000bb-2(4) (incorporating RLUIPA's definition of "religious exercise" into RFRA). And Congress mandated that the law's already significant protections be construed "in favor of a broad protection of religious exercise" to the "maximum extent" possible. *Id.* § 2000cc-3(g); *see also Hobby Lobby*, 573 U.S. at 696 & n.5 (acknowledging that RLUIPA's "broad" construction rule applies to RFRA).

Simply put, RFRA "is both a rule of interpretation for future federal legislation and an exercise of general legislative supervision over federal agencies." Laycock & Thomas, 73 Tex. L. Rev. at 211. It "operates as a sweeping 'super-statute,' cutting across all other federal statutes ... and modifying their reach." Michael S. Paulsen, *A RFRA Runs Through It: Religious Freedom and the U.S. Code*, 56 Mont. L. Rev. 249, 253 (1995). Since RFRA's adoption, Congress has maintained RFRA's protections in every law it has passed—no statute, including the ACA, has "explicitly exclude[d]" RFRA's application.

ARGUMENT

I. RFRA PERMITS FEDERAL AGENCIES TO PROMULGATE A FULL EXEMPTION FROM THE CONTRACEPTIVE MANDATE FOR RELIGIOUS NON-PROFITS.

The Third Circuit's decision guts RFRA's protections of religious liberty and inappropriately restricts agencies from circumscribing regulation to avoid infringing on religious expression.

In RFRA, Congress explicitly recognized that the free exercise of religion is "an unalienable right" and that "governments should not substantially burden religious exercise without compelling justification" and in the least restrictive means. 42 U.S.C. § 2000bb(a)(1)–(3). Where a statute, like the ACA, does not "explicitly exclude[]" application of RFRA, the agency is empowered—indeed *required*—in "implement[ing]" the statute to afford strong protection to religious freedom, including through the creation of broad religious accommodations. *Id.* § 2000bb-3(a)–(b).

As the Department of Health and Human Services (HHS) recognized following this Court's remand in *Zubik* v. *Burwell*, 136 S. Ct. 1557 (2016), the previous "accommodation" of self-certification did not satisfy RFRA's demanding requirements. Namely, the "accommodation" imposed a substantial burden on those who believe self-certifying violates their religion, failed to serve a compelling governmental interest, and employed mechanisms that were not the least restrictive means available. 83 Fed. Reg. 57,536, 57,547–48 (Nov. 15, 2018). The Third Circuit's decision striking down the religious exemption rule and reinstating the prior (insufficient)

"accommodation" fundamentally misapplies this Court's precedent, misunderstands RFRA, and conflicts with the holdings of other federal courts. The Court therefore should grant the Little Sisters' petition to rectify the Third Circuit's error and provide clarity to other courts and religious Americans.

A. The Previous HHS "Accommodation" Violated RFRA.

The initial HHS "accommodation" for the contraceptive mandate required religious objectors to certify affirmatively their opposition to contraception. The Third Circuit's decision upholding that insufficient accommodation is contrary to RFRA, this Court's precedents, and the holdings of other courts.

The "contraceptive mandate" at the center of this case was not enacted by Congress, but was created by the HRSA when it promulgated its "Women's Preventive Service Guidelines" as part of its implementation of the ACA. *See Hobby Lobby*, 573 U.S. at 697 (recounting the history of the mandate). In order to circumscribe the impact of this requirement on those holding sincere religious beliefs that contraception violates the sanctity of human life, HHS created an "accommodation," under which an objecting organization could self-certify to its insurance provider or the federal government that it is opposed to providing contraceptives for religious reasons. *See Zubik*, 136 S. Ct. at 1559. After receiving the non-profit's self-certification, the insurance provider then could offer the contraceptives directly to the non-profit's employees. *See* 80 Fed. Reg. 41318-01 (July 14, 2015).

Yet, as the petition explains, for many religious believers—including the Little Sisters—participating

in the "accommodation" process requires actively facilitating a life-degrading and immoral act. Pet. 33; *see also Little Sisters of the Poor Home for the Aged* v. *Burwell*, 799 F.3d 1315, 1317 (10th Cir. 2015) (Hartz, J., dissenting from denial of rehearing en banc) ("All the plaintiffs in this case sincerely believe that they will be violating God's law if they execute the documents required by the government."). In fact, the so-called accommodation "still requires petitioners to do the very thing that they find religiously objectionable: They must affirmatively assist HHS in its efforts to get contraceptive coverage to their own employees." Br. for Petitioners at 42–43, *Zubik* v. *Burwell*, Nos. 15-35, 15-105, 15-119, & 15-191 (Jan. 4, 2016). "It is thus no mystery why those with sincere religious objections to facilitating such coverage object to this regulatory mechanism for compliance and are not satisfied with the government's misleading labels." *Id*. at 45.

The Third Circuit dismissed this burden on religious exercise as "not substantial." Pet. App. 46a. But as five judges of the Tenth Circuit recognized before *Zubik*, this claim "that it is the court's prerogative to determine whether requiring the plaintiffs to execute the documents substantially burdens their core religious belief ... is a dangerous approach to religious liberty." *Little Sisters*, 799 F.3d at 1317. There is "no precedent holding that a person's free exercise was not substantially burdened when a significant penalty was imposed for refusing to do something prohibited by the person's sincere religious beliefs (however strange, or even silly, the court may consider those beliefs)." *Id*. at 1318. And "the federal courts have no business addressing ... whether the religious belief asserted in a RFRA case is reasonable." *Hobby Lobby*, 573 U.S. at 724.

The Third Circuit erred; the prior regulation's "accommodation" substantially and unjustifiably burdened religion. *See*, *e.g.*, *Little Sisters of the Poor* v. *Azar*, No. 1:13-cv-02611, Dkt. 82 (D. Colo. May 29, 2018) (finding that petitioners' members demonstrated that "the accommodation" and "other regulatory means that require [petitioners] to facilitate the provision of coverage for contraceptive and sterilization services and related education and counseling, to which they hold sincere religious objections, violated and would violate the Religious Freedom Restoration Act"). Indeed, as the petition points out, numerous courts have concluded that the prior "accommodation" violated RFRA. *See* Pet. 14–15 & nn.6–7. It is impossible to square the Third Circuit's reasoning with these courts' decisions.

Indeed, the Third Circuit's decision reanimated the fundamental disagreement among the circuits that led this Court to grant certiorari—and vacate the lower courts' decisions—in *Zubik*. Pet. 22. Notwithstanding this Court's order vacating *Geneva College* v. *Secretary of United States Department of Health and Human Services*, 778 F.3d 422 (3d Cir. 2015), *vacated*, 136 S. Ct. 1557 (2016), in this case the Third Circuit reaffirmed the *Geneva College* decision—and readopted *Geneva College*'s unfounded assertion that self-certifying would not make religious objectors "complicit in the provision of objected-to services." *Id.* at 437–39; Pet. App. 45a–46a. This position is directly at odds with the decision of the Eighth Circuit. *See Sharpe Holdings, Inc.* v. *U.S. Dep't of Health & Human Servs.*, 801 F.3d 927, 937–41 (8th Cir. 2015) (noting disagreement with *Geneva College*), *vacated*, 2016 WL 2842448 (U.S. May 16, 2016). By insisting that the Little Sisters' beliefs are not valid for purposes of RFRA, the Third Circuit

resurrects this circuit disagreement and the need for this Court to intervene.

B. The Court Should Reiterate RFRA's Vital Background Role in Legislation and Regulation.

Not only was the Third Circuit derelict in its duty to protect the religious liberty of the Little Sisters, the court of appeals also affirmatively (and erroneously) *prevented* the Executive from tailoring its regulation in a way that avoided burdening petitioners' religious expression. This feature of the Third Circuit's decision is especially troubling to *amici*, who urge the Court to reiterate that "RFRA is a congressional mandate that federal agencies make the effort, and bear the cost, of accommodating sincere religious exercise, with all the difficulties that that may entail for government." Paulsen, *A RFRA Runs Through It*, 56 Mont. L. Rev. at 274.

The Women's Health Amendment—like every statute since RFRA's passage—incorporated RFRA's protections, and the "implementation" of the Amendment by federal agencies thus requires adherence to RFRA's commands. But the Third Circuit implied that agencies lack authority to issue preemptive rules designed to ensure religious beliefs are accommodated—suggesting instead that the Act *only* "authorizes a cause of action" and "a judicial remedy via individualized adjudication." Pet. App. 43a. In effect, the Third Circuit held that because "the Supreme Court has not held that the Accommodation" violates RFRA, HHS could do nothing to further accommodate religious belief. Pet. App. 46a–47a.

The Third Circuit's extraordinarily cramped view of RFRA's mandate should be reversed—and courts

and agencies alike reminded that RFRA demands "broad protection of religious exercise" to the "maximum extent" possible. 42 U.S.C. § 2000cc-3(g). *Amici* expect that regulators will implement the statutes they pass in a way that will afford ample accommodation of their constituents' freedom of conscience. Congress cannot anticipate every way in which an implementing regulation may intrude upon religious liberty, nor can it preemptively provide explicit directions as to each and every kind of accommodation that should be afforded believers. The contraceptive mandate is a case in point—the Women's Health Amendment does not even contain the word "contraception," and Congress could not have spelled out an accommodation to a mandate that did not exist when the statute was passed.

RFRA, by its terms, solves this problem by providing an ongoing directive to agencies to affirmatively undertake to avoid substantial burdens on religion when implementing statutes—there is no need for an explicit accommodation in an enabling statute, or for agencies to wait for a private litigant to prove that a law violates her beliefs. *See*, *e.g.*, Paulsen, *A RFRA Runs Through It*, 56 Mont. L. Rev. at 253 (RFRA "operates as a sweeping 'super-statute,' cutting across all other federal statutes."). The Third Circuit's treatment of RFRA as meaningless unless endorsed by a court decision is directly contrary to the words of the unified Congress that passed the Act. *See* 42 U.S.C. §§ 2000bb-1(a), 2000bb-3(a) (emphasis added) ("Government *shall not* substantially burden a person's exercise of religion" during the implementation of "all Federal law").

To be sure, RFRA's broad mandate and "super-statute" status is unique and extraordinary. But that

is by design. "Governments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms—economic, political, and sometimes harshly oppressive." *Walz* v. *Tax Comm'n of City of New York*, 397 U.S. 664, 673 (1970). Congress, in an extraordinary act of bipartisanship and political agreement, passed RFRA to provide a critical bulwark against this hostility, and its important protections for freedom of religion and conscience—and the power of agencies to effect those protections—should be re-affirmed.

II. RFRA WAS DESIGNED TO EMPOWER LITIGANTS TO DEFEND THEIR RIGHT TO FREE EXERCISE.

The Third Circuit, in a throwaway footnote, held that the Little Sisters lacked standing because they had secured a district court injunction against the accommodation. Pet. App. 15a n.6. But that injunction allows the Little Sisters to avoid intrusion on their religious beliefs *only if* they remain on their current insurance plan. The Third Circuit thus did not recognize the injury from being forced to choose between the right to pick one's insurer and one's religious freedom.

The Third Circuit's cramped view of standing is directly contrary to RFRA's express protection against "condition[ing] the availability of benefits upon [an objector's] willingness to violate a cardinal principle of her religious faith." *Sherbert*, 374 U.S. at 406; *see* 42 U.S.C. § 2000bb(b) (adopting *Sherbert*). Forcing this choice "effectively penalizes the free exercise of [one's] constitutional liberties." *Sherbert*, 374 U.S. at 406. The Little Sisters are clearly subject to the harm identified in *Sherbert*, and assuredly still have standing under Article III.

To help achieve its goal of "provid[ing] very broad protection for religious liberty" (*Hobby Lobby*, 573 U.S. at 693) and to promote development of a comprehensive jurisprudence of religious freedom, Congress in RFRA allows courts to entertain a wide range of RFRA-based religious exercise claims. *See*, *e.g.*, *Religious Freedom Restoration Act of 1991: Hearings on H.R. 2797 Before the Subcomm. on Civil & Constitutional Rights of the House Comm. on the Judiciary*, 102d Cong., 2d Sess., at 138 (1992) (statement of Rep. Solarz) ("I don't think it should be the job of the Congress to pick and choose among which religious rights are legitimately a subject of presentation to the courts."); *id.* at 106 (statement of Rep. Washington) ("We contemplate what is likely to be the tugs and balances and pulls and pushes on judicial interpretation and we direct the Court's attention, and rightfully so, to how we wish to have it interpreted."). This includes the claim that the government has infringed on "the liberties of religion and expression ... by the denial of or placing of conditions upon a benefit or privilege." *Sherbert*, 374 U.S. at 404; *see* 42 U.S.C. § 2000bb(b).

There can be no doubt that this claim is legally cognizable, given that *this Court* historically recognized it—and continues to recognize it—as a basis for legal redress. *Sherbert*, 374 U.S. at 404; *see also Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 137 S. Ct. 2012, 2024 (2017) (reaffirming that the government "imposes a penalty on the free exercise of religion" that is cognizable in the courts if it forces an organization to "renounce its religious character in order to participate in an otherwise generally available public benefit program"); *Spokeo, Inc.* v. *Robins*, 136 S. Ct. 1540, 1549 (2016) (noting that both "history and the judgment of Congress play

important roles" in determining whether a harm constitutes an injury in fact and a basis for standing).

This case presents the exact kind of injury that *Sherbert* sought to eliminate. Denying the Little Sisters standing shackles them to the Colorado District Court's tentative compromise, barring them from choosing a different insurer going forward or adapting to any unforeseen circumstances. If, for any reason, the Little Sisters leave their current insurance plan—or if their insurer changes its own policies—the Little Sisters would then face exactly the same unacceptable choice that triggered this litigation in the first place: Comply with the mandate, regardless of their convictions, or face punishment. The existing Colorado injunction is a stopgap, not a genuine remedy.

This watered-down religious accommodation is not what Congress intended in RFRA, and the Little Sisters' resulting injury satisfies Article III. RFRA was passed to allow Americans to practice their faith *freely*, without needing to depend on the largesse of courts or the good graces of their present insurer. "[V]ery broad protection for religious liberty" was the goal. *Hobby Lobby*, 573 U.S. at 693. And where court decisions betray that promise by requiring the Little Sisters to exercise their beliefs only under a narrow set of circumstances, the Little Sisters have the right to vindicate their freedom.

In passing RFRA and acknowledging the weightiness of claims of conscience by parties like the Little Sisters, Congress recognized this type of harm for what it is: an impediment to the free exercise of religion, which can be justified only if it furthers a compelling government interest in the least restrictive means. The nationwide injunction against

the religious exemption—upheld by the Third Circuit—inflicts such a harm on the Little Sisters, and thereby confers standing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TRAVIS ANDREWS
JOHN S. EHRETT
ANDREW FERGUSON*
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500

BLAINE H. EVANSON
Counsel of Record
DANIEL NOWICKI
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612
(949) 451-3800
bevanson@gibsondunn.com

Counsel for Amici Curiae

November 1, 2019

* Admitted only in Tennessee; practicing under the supervision of principals of the firm.