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***Little Sisters* Supreme Court Decision Preserves Religious Liberty but Does Not Reach Delegation Issue**

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania

Washington, DC (July 8, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, commends today’s U.S. Supreme Court [decision](#) upholding the religious liberty of Catholic nuns in the *Little Sisters of the Poor v. Pennsylvania* case. The Court ruled 7-2 in favor of the Little Sisters, holding that the religious exemption rule issued by the U.S. Department of Health and Human Services did not violate the Affordable Care Act (ACA) or the Administrative Procedure Act when it broadened the religious exemption to ACA’s “contraceptive mandate.” The mandate (deliberately left out of the ACA itself) was ordered by the Obama Administration in implementing regulations.

Much of NCLA’s *amicus* brief focused on the problem created by the ACA’s extremely broad delegation of legislative power. When Congress unlawfully delegates legislative power to the Executive Branch. Justice Clarence Thomas’s [opinion](#) for the Court explained that “[n]o party has pressed a constitutional challenge to the breadth of the delegation involved here.” But he noted the “extraordinarily ‘broad general directiv[e]’” Congress granted to HHS by the ACA, and he cited to *Gundy*, the Court’s recent (but ultimately inconclusive) consideration of the nondelegation doctrine.

The Court agreed with NCLA that the lower court improperly overturned the Trump Administration’s expansion of the religious exemption first created by the Obama Administration. NCLA is also the only *amicus curiae* that alerted the Court to the extremely broad delegation of authority to the agency found in the ACA. Under our Constitution, the President and the agencies he directs cannot legislate. NCLA’s brief was the only one before the Court to raise this nondelegation concern.

NCLA also argued that where, as here, an administrative agency had fashioned a rule to lessen the burden on religious liberty, such an action should not be disfavored by the Courts but welcomed. Today’s decision clearly ruled in favor of that proposition stating: “...the plain language of the statute clearly allows the Departments to create the preventive care standards as well as the religious and moral exemptions.”

NCLA released the following statements:

“The Court is clearly aware of the extremely broad delegation issues ACA presents, and also alive to the need to accommodate religious liberty. We are pleased both with the outcome for the Little Sisters whose work the Court went out of its way to praise, and the firm foundation this case provides for further judicial protection of religious liberty and the structure of our Constitution.”

—**Richard Samp, NCLA Senior Litigation Counsel**

“Today’s positive outcome is being misreported. The Affordable Care Act did not create a religious exemption; the Obama Administration did that in the ACA’s implementing regulations. The question in the *Little Sisters* case was simply whether the Trump Administration could expand that exemption, and the answer is a resounding yes.”

—**Mark Chenoweth, NCLA Executive Director and General Counsel**

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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