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NCLA Amicus Brief Defends Religious Exemption to Federal Obamacare Regulations

Little Sisters of the Poor Saints Peter & Paul Home v. Commonwealth of Pennsylvania, et al. (U.S. Sup. Ct.)

Washington, D.C., March 09, 2020 – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed an [amicus brief](#) in the U.S. Supreme Court case of *Little Sisters of the Poor v. Pennsylvania*. The brief asks the Court to reverse the Third Circuit’s decision striking down a 2017 religious exemption rule issued by the U.S. Department of Health and Human Services (HHS). The rule seeks to expand narrow religious exemptions to a “Contraceptive Mandate” ordered by the Obama Administration in regulations implementing the Affordable Care Act (ACA).

In a previous case, the Supreme Court held that the Contraceptive Mandate violated the Religious Freedom Restoration Act (RFRA), because it forced religious groups to act against their beliefs. Specifically, it required the Little Sisters of the Poor to provide employees a health plan with coverage for contraceptives they believe may induce abortions. Nonetheless, in reviewing a subsequent rule with broader exemptions, the Third Circuit held HHS possesses extensive discretion to specify “additional preventive care” for which employers are required to provide coverage, but that the agency lacks discretion to more broadly exempt employers with sincerely held religious objections from any mandate. No principle of administrative or constitutional law—and nothing in the text of the ACA or RFRA—requires that unjust result.

NCLA’s brief points out that interpreting the ACA to authorize the mandate, while simultaneously interpreting it to limit agencies’ authority to provide religious exemptions, would undermine RFRA’s protections for religious Americans. Such a one-sided interpretation of the ACA (and RFRA) also undercuts the Constitution’s protections for religious liberty. These include not only the Free Exercise Clause of the First Amendment but also vesting legislative power in the hands of an elected Congress rather than an unelected Administrative State that is less willing to accommodate religion.

This entire episode points out in concrete terms the problem with Congress unlawfully delegating legislative power. Even though the Supreme Court ruled in favor of the Little Sisters, protecting them from the original Contraceptive Mandate, the Third Circuit’s ruling has forced the Catholic nuns to continue to defend themselves in court six years after they began their battle against a Contraceptive Mandate that Congress itself never ordered.

NCLA released the following statements:

“The Affordable Care Act unconstitutionally delegated unbridled authority to regulators to require employers to cover additional, unspecified health services. Administrators should not be faulted, whether here or in another context, when they reduce the scope of such unauthorized legislative activity.” —**Richard Samp, NCLA Senior Litigation Counsel**

“No accountable branch of government ever voted for the plan created by the Third Circuit. The Affordable Care Act did not contain a Contraceptive Mandate, and the one HHS issued included a significant exemption for groups like the Little Sisters of the Poor. The Supreme Court should intervene to prevent a panel of the Third Circuit from cobbling together a law that no Congress ever passed and no President ever signed.” —**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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