

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 Writs of Certiorari to the United States
Court of Appeals for the Third Circuit**

**Brief of The Catholic Association Foundation,
Eternal Word Television Network, Inc., and
Religious Sisters of Mercy in Alma, Michigan
as *Amici Curiae* in Support of Petitioners**

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INTERESTS OF *AMICI CURIAE*¹

The Catholic Association Foundation (“TCA”), is a lay organization dedicated to being a faithful voice for Catholics in the public square. TCA frequently promotes the work of the Church and her faithful in the media. TCA is also a strong defender of religious freedom. In pursuit of this mission, TCA has filed *amicus* briefs in federal courts and this Court, including *amicus* briefs in support of petitioners in *NIFLA v. Becerra*, 585 U.S. __ (2018), *Espinoza v. Montana Dept. of Revenue*, No. 18-1195, and *Fulton v. City of Philadelphia*, No. 19-123 (petition granted).

Eternal Word Television Network, Inc. (“EWTN”), is a nonprofit public charity located in Irondale, Alabama. Founded in 1980 by Mother M. Angelica, EWTN has since become the world’s largest Catholic media network. EWTN produces and distributes religious programming on English and Spanish language channels in all media including television, radio, and the internet twenty-four hours a day to more than 300 million homes in 145 countries and territories. The programming is free, earns no revenue on distribution, and contains no commercial advertising. EWTN is an independent charitable organization, meaning that it is not a formal part or project of the Catholic Church or any Catholic diocese. It therefore subsists on its own donations and not on Church or media distribution revenue. EWTN’s mission

¹ *Amici* state that 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. All parties have consented to the filing of this brief.

includes a devotion to proclaiming authentic Catholic teaching, including the Church's unchanging teaching on human sexuality and the dignity of human life.

Religious Sisters of Mercy in Alma, Michigan is a Roman Catholic community of religious women. The Religious Sisters were established as a distinct Institute of Pontifical Rite in 1973, but their legacy traces back to 1827 when now-Venerable Mother Catherine McAuley opened the first Home of Mercy for poor girls in Ireland. Today, the Religious Sisters' commitment to bring the Mercy of God to the vulnerable includes comprehensive health care, understood as the care of the entire person – spiritual, intellectual, physical, and emotional. To advance its mission, the Religious Sisters established Sacred Heart Mercy Health Care, which operates a health care clinic in Alma, Michigan. The sisters work in this clinic and also teach and work for various dioceses around the country.

SUMMARY OF ARGUMENT

Amici write to highlight the historic and current contributions of the Catholic Church and Catholic-run organizations to the public good in the United States and to impress upon this Court that they be allowed to remain a vital part of our nation's social safety net without being coerced by the government to violate their religious beliefs. The story of Catholic charitable work and community uplift is the American story. From our founding to the present, American Catholics have consistently served the poor and vulnerable at home and abroad. Today, Catholic-run organizations are the largest non-governmental providers of

healthcare, education, and charitable services in our country. Much as the Little Sisters of the Poor insist on the right to serve their neighbors consistent with the teaching of the Church, other Catholic groups serving the poor and marginalized do so as well. To force them to do otherwise – to give license to a new kind of official anti-Catholic bigotry – would make these organizations Catholic in name only.

This Court can protect these faithful groups' contribution to the common good by confirming that the federal government's recent rules exempting the Little Sisters of the Poor and other religious nonprofit organizations that object to the Affordable Care Act's ("ACA") contraception-coverage mandate heed this Court's directive in *Zubik v. Burwell*. 136 S. Ct. 1557 (2016). The new rules are a proper exercise of the government's authority under the Religious Freedom and Restoration Act ("RFRA"), 42 U.S.C. 2000bb *et seq*, and consistent with the American tradition of religious liberty and service to our nation's needy and vulnerable.

ARGUMENT

I. CATHOLICS HISTORICALLY HAVE CONTRIBUTED TO THE WELFARE OF THE NEEDY AND VULNERABLE

In the beginning were the works. In the beginning of the Catholic presence in America – and, indeed, the beginning of the American experiment – were the corporal works of mercy undertaken by American Catholics to respond to their brothers and sisters in need. “Is it not to share your bread with the hungry,

and bring the homeless poor into your house; when you see the naked, to cover him, and not to hide yourself from your own flesh?," said the Lord in the Old Testament Book of Isaiah.² The teachings of Christ found in the Gospel of St. Matthew set forth the corporal works of mercy – feed the hungry, give drink to the thirsty, shelter the homeless, visit the sick, visit the prisoners, bury the dead and give alms to the poor – by which Catholics are to respond to the basic needs of humanity (“Christ in disguise”) in our passage together through this life.³

From the beginning right up to today, American Catholics have ministered to the sick and the hungry, the deprived and downtrodden, the lost and forgotten of all creeds and colors. It’s not too much to say that the story of Catholic charitable work and community uplift is the American story.

a. Pre-Colonial and Colonial America

Catholic good works predate the nation of the United States. In at least 1606, the Franciscans opened a school where the city of St. Augustine now stands.⁴ To the west in New Orleans, the same order opened a

² Isaiah 58:7, *The Didache Bible*, Ignatius Press (2d ed., 1994).

³ Matthew 25:31-46, *The Didache Bible*, Ignatius Press (2d ed., 1994); *see also* *Catechism of the Catholic Church* (“CCC”), ¶ 2447 (2d ed., 1997).

⁴ United States Conference of Catholic Bishops (“USCCB”), *History of the Catholic Church in the United States*, <http://www.usccb.org/about/public-affairs/backgrounders/history-catholic-church-united-states.cfm> (last visited Mar. 5, 2020).

school for boys in 1718.⁵ Nine years later, the religious Ursuline sisters from France established an orphanage, health facility, and school for street girls there.⁶ This was the first formal Catholic charitable organization in what would become the United States.

Up north in the original colonies, the Jesuits founded a preparatory school in Newtown, Maryland in 1677. Catholics opened St. Mary's School in Philadelphia in 1782, considered to be the first parochial school in the original United States.⁷

Any short history of Catholic charitable work must linger for a moment on Maryland. The colony was founded by Catholics and was the first colony established on the principle of religious toleration. Native-born John Carroll became the first Catholic bishop in the United States. He worked until his death in 1815 to establish the Church as a vital member of the American community and as an active, unapologetic participant in our public square. As the first Archbishop of Baltimore, Carroll required in 1782 a portion of all parish revenues be set aside "for the relief of the poor."⁸ In this, he initiated the work of what would become today's Catholic Charities USA.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Catholic Charities of Baltimore, *Our History*, <https://www.catholiccharities-md.org/about-us/our-history/> (last visited Mar. 5, 2020).

Under Carroll, Catholic colleges for men were launched at Georgetown (now Georgetown University), St. Mary's in Baltimore, and Mount St. Mary's in Emmitsburg. Academies for girls were established at Visitation in Georgetown, St. Joseph's at Emmitsburg, and Nazareth in Bardstown, Kentucky. An active participant in community affairs, Carroll helped establish Catholic and non-Catholic schools and, among other activities, served as the president of Baltimore's Female Humane Charity.⁹

Even President George Washington recognized the work of Carroll and American Catholics in establishing *their* new nation. As Washington wrote in a March 1790 letter to the Catholics of the United States, "I presume that your fellow-citizens will not forget the patriotic part which you took in the accomplishment of their Revolution, and the establishment of your Government..."¹⁰

Carroll was especially supportive of religious women, but his support of the Sisters of Charity of St. Joseph and their founder started the work of St. Elizabeth Ann Seton, America's first saint.

b. Elizabeth Ann Seton

A New York widow, mother of five, and Catholic convert, Elizabeth Ann Seton received the sacrament

⁹ New Advent Catholic Encyclopedia, *John Carroll*, <http://www.newadvent.org/cathen/03381b.htm> (last visited Mar. 5, 2020).

¹⁰ *Id.*

of confirmation from John Carroll in 1806.¹¹ Three years later she took her vows of poverty, chastity, and obedience. With Carroll's encouragement, Seton proceeded to establish the American Sisters of Charity of St. Joseph's. Their initial focus was the education of young girls. Moving to Emmitsburg, Maryland, Mother Seton established the Saint Joseph's Academy and Free School in 1809. This was the first free Catholic school in the United States, and the creation of parochial schools became her calling. Mother Seton and her Sisters of Charity were just getting started. It was the young nation's first congregation of religious sisters.

In 1814, Mother Seton was sent to Philadelphia and established Saint Joseph's Asylum, the first Catholic orphanage in the United States. From there it was on to New York City, where Seton's sisters cared for the growing population of orphaned children.

Becoming a vital part of the young nation's social safety net was part of Seton's Catholic calling. The charitable work of Mother Seton and her Sisters of Charity and the teachings of the Catholic Church were indistinguishable and indivisible. As Mother Seton said of her order's mission, "The first end I propose in our daily work is to do the will of God; secondly, to do it in the manner he wills it; and thirdly to do it because it is his will."¹²

¹¹ Seton Shrine, *Full Biography of St. Elizabeth Ann Seton*, <https://setonshrine.org/wp-content/uploads/2016/03/Full-Biography-of-St-Elizabeth-Ann-Seton.pdf> (last visited Mar. 5, 2020).

¹² AZ Quotes, *Elizabeth Ann Seton Quotes*, https://www.azquotes.com/author/25114-Elizabeth_Ann_Seton (last visited Mar. 5, 2020).

By the time of her death in 1821, the Sisters of Charity were in 20 communities. Less than nine years later they were running orphanages and schools as far south as New Orleans and as far west as Cincinnati. They had even opened the first hospital west of the Mississippi in St. Louis.

Mother Seton's order either opened or staffed 185 schools, 28 hospitals, and 23 childcare charities to care for the downtrodden. Today, six congregations of sisters trace their beginnings to Mother Seton's original order.

In 1975, Pope John Paul VI celebrated Mother Seton's canonization as a saint. Four years later, recognition of a different kind came when Saint Elizabeth was inducted into the National Women's Hall of Fame in the United States. Her life was clear testimony that serving God, Church and country in the public square need not be mutually exclusive.

c. Society of St. Vincent de Paul

In 1845, a decade after French college student Frederic Ozanam founded the Society of St. Vincent de Paul when a classmate challenged him to prove his faith through action, Father John Timon set about bringing this "apostleship of the laity" to St. Louis.¹³ Named after the 17th century servant of the poor, the Society encouraged lay members in parishes to minister to the less fortunate in their own communities. Parish chapters (conferences) quickly

¹³ Dr. Maria Mazzenga, The Catholic University of America, University Libraries, *The Archivist's Nook: An Apostleship of the Laity – The St. Vincent de Paul Society* (Jan. 14, 2020), <https://www.lib.cua.edu/wordpress/newsevents/12295/>

spread up, down, and across the United States to other cities and dioceses.

What began as visiting the poor in their dwellings and handing out religious literature quickly turned into projects to meet the concrete needs of downtrodden – emergency food and clothing deliveries, youth clubs and camps, residential children’s centers, bureaus to find homes for foster kids, thrift shops, nursing home visits and disaster relief.

Still headquartered in St. Louis, the Society of St. Vincent de Paul has almost 100,000 lay members in the United States.¹⁴ Over their 175-year history of charitable work, countless Americans in need have been touched by the lives of these lay people living out their faith through action.

d. Katharine Drexel

The story of Katharine Drexel, the second American-born woman to be canonized by the Catholic Church, begins before she took her vows and set out on her life’s mission. Her beginnings speak to the unorganized, uncounted, and unchronicled works of Catholic charity that have sustained our nation and its citizens from its founding.

Katharine’s parents were materially and spiritually wealthy. Each week, her stepmother opened their Philadelphia home to care for the needy. Her parents handed out food, clothing, and rental assistance to the less fortunate. In fact, they regularly sought out women

¹⁴ *Id.*

too proud or fearful to approach their home.¹⁵ The Drexel parents' private charitable work provided a model for their daughter's very public work.

Katharine had been touched by the plight of the Native Americans while visiting the American West in 1884. She wanted to help. After her father's death, Katharine contributed funds to help the St. Francis Mission on South Dakota's Rosebud Reservation. While touring Europe in 1887 after her father's death, Katharine had a private audience with Pope Leo XIII. Her goal was to secure missionaries for the Indian missions that she and her sisters were funding with their inheritance. The pope told her to consider becoming a missionary herself.¹⁶

In February 1891, Katharine made her first vows as a religious, and dedicated herself to working for American Indians and African-Americans. At the same time, she founded the Sisters of the Blessed Sacrament. In addition to their regular vows, Drexel's nuns took a special vow to work solely for the spiritual and temporal welfare of Native Americans and blacks.

Mother Drexel and her nuns began by opening a boarding school in Santa Fe, New Mexico for the Pueblo Indians. Some 50 missions benefitting Native American in 16 states, including Tennessee, Arizona, and Pennsylvania, followed. By 1942, she had also established a system of black Catholic schools in

¹⁵ Catholic Online, Saints and Angels, *Katharine Drexel*, https://www.catholic.org/saints/saint.php?saint_id=193 (last visited Mar. 5, 2020).

¹⁶ *Id.*

13 states.¹⁷ Outreach to black Americans was met with harassment at the hands of segregationists, including the burning of one of her schools.

By the time of her death in 1955, Katharine Drexel's Sisters of the Blessed Sacrament had opened 145 missions, 49 elementary schools, and 12 high schools. Along the way, Mother Drexel had also founded Xavier University in New Orleans, the nation's first Catholic University for African-Americans.¹⁸ The work of Katherine Drexel, now a saint, through the Sisters of the Blessed Sacrament, continues to this day.

e. Frances Cabrini

Katharine Drexel was not the only woman, or future saint, whom Pope Leo told to go west. Frances Cabrini was from a small Italian village near Milan. In her private audience with the pope, she expressed her wish for the order of nuns she had founded, the Missionary Sisters of the Sacred Heart of Jesus, to work in China. "Not to the East," the Holy Father told her, "but to the West."¹⁹

In 1889, Mother Cabrini and her sisters landed in New York City. Turmoil and poverty marked the city

¹⁷ Franciscan Media, *Saint Katharine Drexel*, <https://www.franciscanmedia.org/saint-katharine-drexel/> (last visited Mar. 5, 2020).

¹⁸ Biography, *Saint Katharine Drexel*, <https://www.biography.com/religious-figure/saint-katharine-drexel> (last visited Mar. 5, 2020).

¹⁹ Missionary Sisters of the Sacred Heart of Jesus, *Mother Cabrini*, <https://www.mothercabrini.org/who-we-are/mother-cabrini/> (last visited Mar. 5, 2020).

teeming with Italian immigrants navigating a nation in the throes of industrialization. The first thing the women did was establish an orphanage, where they also lived. Next came education classes for the Italian immigrants, and then a school for the children.

“As I see it,” Cabrini told her sisters, “the mission is simply this, loving other human beings – wherever in the world I am – and letting them know that there is a God who loves them unconditionally, now, as they are.”²⁰

Soon came a hospital and an upstate home for orphans, and more schools. Cabrini eventually set up in Chicago, where she died in 1917, but the work took her and her Missionary Sisters to wherever Italian immigrants settled to work – in factories and mines, and near railroads, fields, and vineyards. “In our small sphere we are helping to solve important social problems, in every state and every city where our houses are opened,” she wrote.²¹

It is fitting that in a nation of immigrants, Mother Cabrini, an immigrant herself, became the first U.S. citizen to be canonized a saint by the Catholic Church. Her work, and that of the Missionary Sisters of the Sacred Heart of Jesus, continues today in 15 countries on six continents through education, childcare,

²⁰ Missionary Sisters of the Sacred Heart of Jesus, *What We Do*, <https://www.mothercabrini.org/what-we-do/> (last visited Mar. 5, 2020).

²¹ Missionary Sisters of the Sacred Heart of Jesus, *Mother Cabrini*, <https://www.mothercabrini.org/who-we-are/mother-cabrini/> (last visited Mar. 5, 2020).

eldercare, social work, outreach to women and children, as well as anti-human trafficking campaigns.²²

f. Knights of Columbus

What is today the world's largest Catholic fraternal service organization was born in the United States, started by an Irish-American Catholic priest, and named in honor of an Italian who became an American hero. Only in America.

Father Michael J. McGivney wanted to do something to ensure widows and orphans in his immigrant community would be cared for when a family's breadwinner died. In October 1881, he convened a group of men from St. Mary's parish in New Haven, Connecticut. Six months later came the incorporation of the Knight of Columbus, named after the great Italian Catholic explorer in part as a mild rebuke to that era's virulent anti-Catholicism.²³

What began as an organization to care for widows and orphans quickly became much more – an organization dedicated to the principles of charity, unity, fraternity, and patriotism, a lay organization whose members engaged in educational, charitable, religious, social welfare, war relief, and public relief works.

Parish by parish, diocese by diocese, the organization had a nation-wide profile within a few decades. In 1912, the large assembly of Knights at the

²² *Id.*

²³ Andrew T. Walther & Maureen Walther, *The Knights of Columbus: An Illustrated History 2* (2020).

dedication of the Christopher Columbus Memorial Fountain in Washington, D.C. “marked anew the important position of the Knights of Columbus as an order in the social fabric of the United States,” according to a *Washington Star* reporter.²⁴

What a lay Catholic organization built on serving Church, family, and community meant to the American social fabric became clear as the nation met the challenges of each decade of the 20th century. World War I saw the Knights providing rest and recreational facilities (“K of C Huts”) for soldiers of all faiths.²⁵ Inclusiveness extended to color. “[U]nlike the other social welfare organizations operating in the war,” noted African-American author and historian Emmet J. Scott, “[the Knights] never drew the color line.”²⁶

The work of the Knights took a different form after the Great War. The order offered employment services like vocational training, night schools, and job search programs, and placed more than 100,000 returning soldiers in jobs.²⁷ The Great Depression led to a renewed commitment to members’ involvement in the life of their parishes and communities. As the Great Depression gave way to World War II, the Knights reached out to soldiers through the National Catholic Community Service organization, which patterned its

²⁴ *Id.* at 55.

²⁵ *Id.*

²⁶ *Id.* at 63.

²⁷ *Id.* at 93.

program on the Knights' earlier war relief efforts.²⁸ In 1944, the Knights established a \$1 million educational trust fund to help the children of members killed or disabled in the war.²⁹

The Knights were committed to inclusiveness from their founding. Initially, it was a commitment to the inclusion of Catholics in our nation's public life, but that commitment quickly came to include others. In the 1920s, the Knight's Historical Commission published works on the contributions of Jewish-, African-, and German-Americans.³⁰ After World War II and into the 1960s, the Knights of Columbus worked to end racial discrimination in their own ranks and American society at large. This took the form of reviewing the organization's own admission policies, attending White House meetings on civil rights, funding conferences on social justice, and undertaking various initiatives to combat racial injustice and poverty.³¹

g. Catholic Charities

The 20th century brought more immigration, industrialization, and urbanization. Catholic lay organizations and religious orders did their best to meet the resulting challenges of poverty, over-crowded and unsanitary housing, disease, and unsafe working conditions and minister to those in need. But problems continued to grow exponentially. Half of the nation's

²⁸ *Id.* at 116.

²⁹ *Id.* at 118.

³⁰ *Id.* at 81.

³¹ *Id.* at 162-65.

15 million Catholics lived in poverty in 1910, and Catholic charitable work was done largely by volunteers working in isolation.³²

That year, some 400 men and women involved in Catholic charitable works across the country gathered at Catholic University in Washington, D.C. They founded the National Conference of Catholic Charities, known today as Catholic Charities USA, to work together to meet the needs of the poor. Not only would the organization promote better training of volunteers and professional social workers, but would also act as the “attorney for the poor” in advocating for just and compassionate public policies.

Over the next decade, Catholic Charities worked to replace volunteers with professionals and organize charitable work within dioceses. The national organization also pushed bishops and clergy to actively support the charitable work done in their parish or diocese. By 1931, 58 separate Catholic Charities bureaus were operating in dioceses. By 1938, there were 68.³³

As the “attorney for the poor,” Catholic Charities and its national leadership (most notably executive director Monsignor John O’Grady) encouraged lawmakers to pass pension, public housing, and worker-rights laws. Private charity and public action

³² Jack Hansan, “Catholic Charities USA,” *Virginia Commonwealth University Libraries Social Welfare History Project*, <https://socialwelfare.library.vcu.edu/religious/catholic-charities-usa/>

³³ *Id.*

on behalf of the less fortunate were never an either/or proposition for Catholic Charities. They went hand-in-hand.

h. Father Flanagan's Boys Town

What may be, thanks to Hollywood, the best-known Catholic charity in the United States began on the streets of Omaha in the first decades of the 20th century. There, a young priest named Father Edward J. Flanagan was ministering to the city's homeless men and growing discouraged. He developed a life-long interest in learning what young men needed to avoid a life on the streets and become responsible, productive members of society. And so, Father Flanagan's Boys Town was born.

In 1917, Flanagan borrowed \$90 to rent a boarding house named Father Flanagan's Home for Boys that took in all boys, regardless of race or religion. Four years later, Father Flanagan purchased a nearby farm and, over the next decades, built a town with dormitories, schools, churches, and administrative buildings. The year after the farm's purchase, one hundred boys found a home. Within ten years, that number grew by the hundreds, and grew to include girls too. Some one hundred years later, tens of thousands of lives have been transformed and saved by what has become one of the nation's largest nonprofit childcare agencies.³⁴

³⁴ Boys Town, *What We Do: One Mission One Hundred Years*, <https://www.boystown.org/what-we-do/Pages/default.aspx> (last visited Mar. 5, 2020).

Indeed, Boys Town became such a vital part of America's social safety net that President Harry Truman asked Father Flanagan to travel the globe after World War II to visit war orphans and advise foreign leaders how to care for displaced children.³⁵

i. Dorothy Day and the Catholic Worker Movement

American Catholics are, of course, just as diverse in their politics as other Americans, and the ideological flavor of their charitable work can span the political spectrum. Such was certainly the case of the Catholic Worker Movement that journalist Dorothy Day helped launch amid the Great Depression, making her, in the eyes of Pope Francis, “the most significant, interesting and influential person in the history of American Catholicism.”³⁶

Her movement began as a newspaper, *The Catholic Worker*, which spotlighted conditions of the poor and working class through the lens of Catholic social teaching. The movement quickly became known for its “houses of hospitality” which welcomed the stranger, the hungry, and the homeless in both cities and rural areas.

Day's simple goal was to change the world and “make it a little simpler for people to feed, clothe and

³⁵ Boys Town, *History*, <https://www.boystown.org/Pages/default.aspx> (last visited Mar. 5, 2020).

³⁶ The Christian Century, *Stubborn Love and Inflexible Mercy*, <https://www.christiancentury.org/review/books/stubborn-love-and-inflexible-mercy-dorothy-day> (last visited Mar. 5, 2020).

shelter themselves as God intended them to do.”³⁷ She famously said, “Everything a baptized person does every day should be directly or indirectly related to the Corporal and Spiritual Works of Mercy.”³⁸ No doubt her words ring just as true for Catholics today as they once did.

II. CATHOLICS IN AMERICA CONTINUE TO LIVE OUT THEIR FAITH BY CARING FOR THE WELL-BEING OF OTHERS

The past, it turns out, is prologue. Today, Catholic-run organizations are the largest non-governmental providers of healthcare, education, and charitable services to the poor and vulnerable in America. The Catholic Church and Catholic-run entities continue to play an essential role in American society, meeting the needs of the most marginalized members of society when the government cannot and for-profit entities will not. Pope Francis has repeatedly exhorted that the Church be a “poor church for the poor.” This Catholic mission is to serve people regardless of their race, sex, or creed. The meaning of the word “catholic” is “universal.” And Catholics’ response to the needs of the poor and vulnerable reflect this.

³⁷ Sojourners, *11 Dorothy Day Quotes in Remembrance of the Radical, Pacifist Servant of God* (Nov. 8, 2017), <https://sojo.net/articles/11-dorothy-day-quotes-remembrance-radical-pacifist-servant-god>

³⁸ The Famous People, *83 Notable Quotes by Dorothy Day, the Founder of Catholic Worker Movement*, <https://quotes.thefamouspeople.com/dorothy-day-1255.php> (last visited Mar. 5, 2020).

a. Healthcare

The Catholic Church pioneered our modern-day hospital system, and Catholic hospitals remain an integral part of the U.S. healthcare system, especially in poor and rural communities. The mission of Catholic healthcare is particularly oriented towards helping the poor.

In its “Ethical and Religious Directives for Catholic Healthcare Services,” the United States Conference of Catholic Bishops places the prioritization of the poor among the core principles “that guide the Church’s vision of healthcare.”³⁹ This document, a directive to Catholic health institutions, states: “In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured, and the underinsured.”⁴⁰

Lack of access to basic healthcare is one of the most pressing concerns for the poor, and Catholic health systems are unparalleled in their response, especially in rural communities. One in six Americans admitted to a hospital are admitted to a Catholic hospital.⁴¹

³⁹ USCCB, *Ethical and Religious Directives for Catholic Health Care Services* (6th ed.), <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf>

⁴⁰ *Id.*

⁴¹ Lilly Folwer, “Can Catholic Hospitals Continue to Serve the Poor? One Program Tries,” *Wash. Post* (Mar. 16, 2016), https://www.washingtonpost.com/national/religion/can-catholic-hospitals-continue-to-serve-the-poor-one-program-tries/2015/03/16/3404e964-cbfe-11e4-8730-4f473416e759_story.html

Likewise, one of every six acute-care hospital beds are located at Catholic-owned or affiliated hospitals.⁴² All of these systems operate as nonprofits. Their revenues are used solely for operations and community benefit. According to a report of audited health systems by Modern Healthcare, larger Catholic health systems invest significantly in charity care for the poor – eight percent of overall budget on average, and as high as nineteen percent in some systems.⁴³ By contrast, data from one study the same year found that non-Catholic hospitals spent around one percent on charity care.⁴⁴

Many parts of rural America would have no access to health care were it not for Catholic health systems. According to one report, as of 2016, 45 communities relied entirely on one Catholic hospital for their care.⁴⁵

⁴² Sandhya Somashekhar & Julie Zauzmer, “Report: 1 in 6 Hospital Beds in U.S. is in a Catholic Institution, Restricting Reproductive Care,” *Wash. Post* (May 5, 2016), <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/05/05/report-1-in-6-hospital-beds-in-u-s-is-in-a-catholic-hospital-restricting-reproductive-care/>

⁴³ Melanie Evans, “Catholic Hospitals Hear Pope Francis’ Call to Help the Poor,” *Modern Healthcare* (September 24, 2015), <https://www.modernhealthcare.com/article/20150924/NEWS/150929924/catholic-hospitals-hear-pope-francis-call-to-help-the-poor>

⁴⁴ Sean D. Hamill, “For-Profit Hospitals Provide Less Charity Care,” *Pittsburgh Post-Gazette* (Sept. 4, 2016), <https://www.post-gazette.com/news/health/2016/09/04/For-profit-hospitals-provide-less-charity-care-counting-charity-care-series/stories/20160505020>

⁴⁵ Anna Maria Barry-Jester & Amelia Thomson-DeVeaux, “How Catholic Bishops Are Shaping Health Care in Rural America,” *Fivethirtyeight* (Jul. 25, 2018), <https://fivethirtyeight.com/features/how-catholic-bishops-are-shaping-health-care-in-rural-america/>

Further, while the number of hospitals in the United States has declined in recent years, exacerbating the access crisis, the number of Catholic hospitals has increased by 22 percent.⁴⁶ Catholic health systems have played an essential role in mitigating a growing crisis of access to healthcare for poor and rural Americans.

Catholic hospitals assist nearly 90 million Americans every year. That's a full quarter of the U.S. population.⁴⁷ Yet the work of Catholics in the domain of healthcare reaches far beyond the hospital bed. The Catholic healthcare network, for example, includes 438 health centers that care for nearly five million patients a year.

Catholic Charities devotes an extensive portion of its resources towards meeting the healthcare needs of the poorest and most vulnerable Americans. Each year, Catholic Charities assists 875,000 low-income Americans – 25 percent of them children⁴⁸ – with individual health-related services such as mental health counseling, dental clinics, or emergency mobile psychiatric care for poor children.⁴⁹ Each year, Catholic Charities helps more than ten thousand adults and ten

⁴⁶ *Id.*

⁴⁷ USCCB, *Catholic Health Care, Social Services and Humanitarian Aid*, <http://www.usccb.org/about/public-affairs/backgrounders/health-care-social-service-humanitarian-aid.cfm> (last visited Mar. 5, 2020).

⁴⁸ *Id.*

⁴⁹ Catholic Charities of the Archdiocese of Washington, D.C., *Health Care*, <https://www.catholiccharitiesdc.org/healthcare/> (last visited Mar. 5, 2020).

thousand children enroll in health insurance and assists tens of thousands of low-income Americans secure needed prescriptions. Further, this organization offers addiction counseling to more than 100,000 individuals annually and mental health counseling to hundreds of thousands more. While lawmakers have struggled to contain the current addiction crisis, the Church and its affiliates work tirelessly to help addicts heal and get back on their feet.

Catholic-affiliated healthcare institutions and healthcare workers meet a growing need, especially in poor and rural communities, at a time when access to care is declining. Oriented around the dignity of the human person, Catholic hospitals and healthcare workers daily commit their labors towards the social good and meeting the healthcare needs of the most vulnerable members of our nation.

b. Education

Historically, the Catholic Church was at the forefront of the fight for educational equality in the United States, a role it continues to play by operating the largest network of private schools in the nation. Many of these schools are concentrated in the inner city or found in rural areas where public schools are failing. According to recent data, nearly two million American children attend Catholic schools.⁵⁰ Many are not Catholic, but are simply seeking a path out of poverty that their local schools fail to provide.

⁵⁰ USCCB, *Catholic Education*, <http://www.usccb.org/about/public-affairs/backgrounders/catholic-education.cfm> (last visited Mar. 5, 2020).

The Catholic Church focuses explicitly on using its vast system of schools to help underserved children. As the United States Conference of Catholic Bishops recently stated,

Catholic schools are often the Church's most effective contribution to those families who are poor and disadvantaged, especially in poor inner-city neighborhoods and rural areas. Catholic schools cultivate healthy interaction among the increasingly diverse populations of our society. In cities and rural areas, Catholic schools are often the only opportunity for economically disadvantaged young people to receive an education of quality that speaks to the development of the whole person. As we continue to address the many and varied needs of our nation's new immigrant population, the Church and its schools are often among the few institutions providing immigrants and newcomers with a sense of welcome, dignity, community, and connection with their spiritual roots.⁵¹

Schools across any diocese, according to the 2015 statement, should remain "available and accessible" to poor and middle-class families facing major economic challenges.⁵² Further, "Catholic schools should be

⁵¹ USCCB, *Renewing Our Commitment to Catholic Elementary and Secondary Schools in the Third Millennium* (2015), <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catholic-education/upload/renewing-our-commitment-2005.pdf>

⁵² *Id.*

available to students who are not Catholic and who wish to attend them.”⁵³

Catholic schools are ethnically and socio-economically diverse and disproportionately benefit low-income and middle-class children. Minority students make up approximately 20 percent of the student population. Of that, 16.1 percent are Hispanic, 7.7 percent are African American, 5.5 are Asian American, and 5.9 percent are multiracial.⁵⁴ While Catholic schools have gotten more diverse, private schools in general have seen a decline in diversity.⁵⁵ In documenting “the overwhelming whiteness of private schools,” *The Washington Post* noted that 43 percent of private school students attend schools that are almost completely devoid of any minority students.⁵⁶

The UCLA Civil Rights Project found that white students are the most isolated group in terms of intergroup contact, and white students at non-Catholic

⁵³ *Id.*

⁵⁴ USCCB, *Catholic Schools FACT Sheet* (2016), <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catholic-education/upload/Catholic-Schools-FACT-Sheet-2016.pdf>

⁵⁵ Jongyeon Ee, Gary Orfield & Jennifer Teitell, “Private Schools in American Education A Small Sector Still Lagging in Diversity (Working Paper)” University of California at Los Angeles, Civil Rights Project (March 5, 2018), <https://files.eric.ed.gov/fulltext/ED581441.pdf>

⁵⁶ Emma Brown, “The Overwhelming Whiteness of U.S. Private Schools, In Six Maps and Charts,” Wash. Post (March 29, 2016), <https://www.washingtonpost.com/news/education/wp/2016/03/29/the-overwhelming-whiteness-of-u-s-private-schools-in-six-maps-and-charts/>

private schools have “the most limited intergroup experiences.”⁵⁷ The project also found that white students are the most likely to attend private school, and Hispanic students the least likely. Hispanics are most likely, however, to get a private education at a Catholic school.⁵⁸ The diversity of Catholic schools is important, not because they seek to meet some racial quotas, but because they strive to fulfill their expressly-stated calling to be places “of inculturation, of apprenticeship in a lively dialogue between young people of different religions and social backgrounds.”⁵⁹ Diverse learning spaces can help form Americans who are tolerant and broadminded.

Catholic schools are also oriented towards serving students from middle- and low-income families. The tuition at the average Catholic school is less than half that of the average non-sectarian private school.⁶⁰ Nearly all Catholic schools offer tuition assistance, despite operating at a loss. And because the average per-student cost at public schools is estimated at more than \$11,000 a year, Catholic schools save the nation an estimated \$21 billion dollars annually.⁶¹

⁵⁷ “Private Schools in American Education,” *supra* note 55.

⁵⁸ *Id.*

⁵⁹ USCCB, *Renewing our Commitment*, *supra* note 51.

⁶⁰ Jed Kolko, “Where Private School Enrollment Is Highest and Lowest Across the U.S.,” CityLab (Aug. 13, 2014), <https://www.citylab.com/equity/2014/08/where-private-school-enrollment-is-highest-and-lowest-across-the-us/375993/>

⁶¹ National Catholic Education Association, *Schools and Tuition*, https://www.ncea.org/NCEA/Proclaim/Catholic_School_Data/Schools_and_Tuition.aspx (last visited Mar. 5, 2020).

Further, Catholic schools are concentrated in poor, urban areas; approximately 40 percent of Catholic schools are in the inner city. This in the face of “population losses and great financial difficulties in maintaining them.”⁶² These schools also go to great lengths to meet the non-academic needs of their students. Forty-five percent of Catholic schools, for example, participate in Federal Nutrition Programs and serve over 270,000 free meals to students daily.⁶³

Through all this, Catholic schools achieve significantly better educational outcomes than the public schools many of these students would be otherwise forced to attend. According to one study: “[S]tudents who attended Catholic high schools had the highest college GPAs, total college graduation rate, and four-year college graduation rate, and they were more likely than students who attended other high school types to have graduated with a STEM degree.”⁶⁴

Additionally, studies have found that Catholic schools are also effective at inculcating virtue. As *The Wall Street Journal* recently editorialized, not only did black and Hispanic students who attend urban Catholic schools show higher achievement and graduation rates as well as higher college enrollment than those at nearby public schools, students also

⁶² *Id.*

⁶³ USCCB, *Catholic Schools FACT Sheet*, *supra* note 54.

⁶⁴ Fleming, D. J., Lavertu, S., & Crawford, W. (2018) *High School Options and Post-Secondary Student Success: The Catholic School Advantage*, *Journal of Cath. Educ.*, 21 (2), <https://files.eric.ed.gov/fulltext/EJ1182406.pdf>

exhibit “less disruptive behavior” and “more self-discipline.”⁶⁵ These schools stand out for their success in “channeling youthful energy into productive self-control.”⁶⁶

Over the last several decades, racial segregation in public schools has increased⁶⁷ while the diversity rate in Catholic schools has doubled.⁶⁸ This is because the mission of Catholic education is to provide an equal opportunity to all of America’s children to learn and to thrive. It’s a goal Catholic schools have persisted in working towards despite great financial headwinds. Catholic schools have a strong, proven, and unmatched record of filling the void in the places in society where education is failing children the most.

c. Charitable services

Catholics continue to respond to the material needs of the poor and vulnerable both in America and abroad. Today, Catholic-run charitable groups partner with local and state governments to address the growing

⁶⁵ Editorial Board, “The Catholic School Difference,” *Wall Street Journal* (June 1, 2018), <https://www.wsj.com/articles/the-catholic-school-difference-1527894168>

⁶⁶ *Id.*

⁶⁷ Will Stancil, “School Segregation Is Not a Myth,” *The Atlantic* (Mar. 14, 2018), <https://www.theatlantic.com/education/archive/2018/03/school-segregation-is-not-a-myth/555614/>

⁶⁸ National Catholic Education Association, *Student Race and Ethnicity*, https://www.ncea.org/NCEA/Proclaim/Catholic_School_Data/Student_Race_and_Ethnicity/NCEA/Proclaim/Catholic_School_Data/Student_Race_and_Ethnicity.aspx?hkey=91e960c7-5147-4706-841b-2f5de71c7030 (last visited Mar. 5, 2020).

foster care crisis and find “forever homes” for children in need of adoption. They also minister to the needs of immigrants at our border, run food banks and soup kitchens, provide needed accompaniment to women facing pregnancies without sufficient supports, stand against human trafficking, and respond to the humanitarian crises that follow natural disasters, armed conflict, and religious persecution. The charitable work of two Catholic organizations reflect how American Catholics today continue to respond to those in need.

(i) Sisters of Life

In the same tradition of the religious orders founded by American women saints like Elizabeth Ann Seton, Katharine Drexel, and Frances Cabrini, new religious orders have begun to respond to the great social needs of our country. One such order is the Sisters of Life. The Sisters of Life are a Catholic community of women who profess the three traditional vows of poverty, chastity, and obedience, but also take on a fourth – a vow to protect and enhance the sacredness of human life. Cardinal John O’Connor founded the order in New York in 1991. The order received formal approbation as a religious institute in 2004, under Cardinal Edward Egan.

“This is the charism of the Sisters of Life,” explained Cardinal O’Connor, “to mother the mothers of the unborn; to mother the unborn; to mother all those who are frail, all of those who are vulnerable, all those who are ill, all of those who are in danger of being put to death, all those whose lives the world considers

useless.”⁶⁹ The Sisters of Life currently serve in New York, Bridgeport, Philadelphia, Denver, Washington, D.C., and Toronto, Canada.⁷⁰ Their missions include accompanying women who are vulnerable to abortion, giving them the support and resources to be able to choose life for themselves and their children; hosting weekend retreats; evangelization; outreach to college students; and helping women who have suffered after abortion to encounter the mercy and healing of Christ.

(ii) The Knights of Columbus

The Knights of Columbus, mentioned in Section I, are similarly bold and unafraid in their commitment to promoting a “Culture of Life.” Turning word into deed, the group funds an “Ultrasound Initiative” which has placed more than 1,000 ultrasound machines at pregnancy centers across the U.S. and Canada.⁷¹ This is just one thread in the immense tapestry of charitable actions the world’s largest Catholic fraternal organization has undertaken around the world.⁷²

“Faith in action” best describes the impressive nature of the work done by the Knights today. From 2000 to 2018, the Knights donated “\$2.9 billion toward charitable efforts, and provided nearly 1.3 billion hours

⁶⁹ Sisters of Life, *Why We Exist*, <http://sistersoflife.flywheelsites.com/who-we-are/why-we-exist/> (last visited Mar. 5, 2020).

⁷⁰ *Id.*

⁷¹ *Knights of Columbus: An Illustrated History*, *supra* note 23 at 225.

⁷² Knights of Columbus, *Who We Are*, <https://www.kofc.org/en/who-we-are/our-story/index.html> (last visited Mar. 5, 2020).

of voluntary service in support of outreach initiatives.”⁷³ The group’s “Neighbors Helping Neighbors” program, for example, promotes local, parish-based initiatives, encouraging members to direct their generosity toward their neighbors in need. Their “Food for Families” program helps ensure families have adequate access to nutritious food.⁷⁴ Similarly, the Knights’ “Coats for Kids” program, launched in 2009, has already provided almost 500,000 coats to needy children in the United States and Canada.⁷⁵ Distribution events here have occurred at military bases, in Native-American communities, in inner-city neighborhoods, and through partnerships with local police and fire departments.

The Knights of Columbus has a unique partnership with the Special Olympics and helps disabled athletes train and compete in games around the world.⁷⁶ Councils assist with all aspects of the program, from fundraising to feeding the athletes, organizing and judging events, and providing equipment and awards. Without the Knights’ support, participants would be unable to train for the events they love.

The Knights’ impact reaches far beyond America’s borders. Consistent with their tradition of defending religious liberty and diversity, the Knights are widely regarded for their recent work on behalf of persecuted

⁷³ *Knights of Columbus: An Illustrated History*, *supra* note 23 at 258.

⁷⁴ *Id.* at 246.

⁷⁵ *Id.* at 244.

⁷⁶ *Id.* at 171, 189.

Christians in the Middle East. In 2016, the Knights led a major advocacy and awareness campaign shedding light on the atrocities committed by ISIS.⁷⁷ The Knights produced a 300-page report on the persecution of Middle Eastern Christians detailing the execution of thousands of Christians by ISIS via crucifixions and beheadings and the mass deportations of Christians from their ancestral homelands.⁷⁸ Over 140,000 signatures supported the Knights' petition to the U.S. Department of State calling for a formal declaration of genocide based on the findings of the report.⁷⁹ These efforts were decisive in the State Department's decision to declare as genocide the treatment of Christians and other religious minorities in the region and ultimately helped pass legislation specifically directing U.S. government relief funds to communities targeted by ISIS.

For their part, the Knights have distributed more than \$25 million in food, clothing, shelter, education, and medical care to the persecuted in Iraq, Syria, and the surrounding region.⁸⁰ Not one penny was spent on operating and administration costs. In Iraq alone, their efforts have supported food programs, new housing construction, and rental assistance for those displaced,

⁷⁷ *Id.* at 252-53.

⁷⁸ Knights of Columbus and In Defense of Christians, "Genocide of Christians in the Middle East" (March 9, 2016), <http://www.stopthechristiangenocide.org/en/resources/Genocide-report.pdf>

⁷⁹ *Knights of Columbus: An Illustrated History*, *supra* note 23 at 253.

⁸⁰ *Id.* at 256.

as well as the resettlement of the entire town of Karamles.⁸¹

The valuable work of the Knights of Columbus shores up the needy within our borders in addition to reinforcing America's role in defending the vulnerable overseas.

III. THE NEW REGULATIONS RESPECT CATHOLIC OBJECTIONS TO THE CONTRACEPTION-COVERAGE MANDATE AND SHOULD BE UPHELD

Before the ACA's contraception mandate, a Catholic employer could follow Catholic teaching by offering health insurance without coverage for contraceptives, abortifacients, or sterilization. The mandate, however, meant that some Catholic employers could not do this without violating federal regulations and incurring significant fines. An initial "accommodation"⁸² continued to burden religious exercise for many employers like the Little Sisters of the Poor.

This Court in *Zubik* signaled that such an "accommodation" failed to satisfactorily address religious objections.⁸³ Eventually, the government revised its rules.⁸⁴ The new rules allow religious objectors to separate themselves completely from the mandate. As the Department of Health and Human

⁸¹ *Id.* at 257.

⁸² *See* 78 Reg. 39,870 (July 2, 2013).

⁸³ *See* 136 S.Ct. at 1560.

⁸⁴ *See* 83 Fed. Reg. 57,536, 57,540 (Nov. 15, 2018).

Services concluded, these new rules “ensure that proper respect is afforded to sincerely held religious objections in rules governing this area of health insurance and coverage, with minimal impact on [the agency’s] decision to otherwise require contraceptive coverage.”⁸⁵

The Third Circuit’s affirmation of a nation-wide injunction against this sensible accommodation is grave error. It disregards RFRA’s substantive mandate in a way similar to that which this Court found problematic in *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014).

In *Hobby Lobby*, closely-held, for-profit corporations objected to the ACA’s contraception-coverage mandate based on their belief that providing the mandated coverage involves the destruction of an embryo in a way that makes it immoral for them to provide coverage. This Court held that the mandate as applied to such entities ran afoul of RFRA since compliance substantially burdened their exercise of religion and was not the least restrictive method of implementing the government’s interest.

In so doing, this Court refused to second-guess the sincerity of the petitioners’ objection, observing that “[t]his belief implicates a difficult and important question of religion and moral philosophy, namely, the circumstances under which it is wrong for a person to

⁸⁵ U.S. Dep’t of Health and Human Servs., *Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act*, 83 Fed. Reg. 57536, 57537 (Jan. 14, 2019).

perform an act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another.”⁸⁶ This Court also warned against the government “[a]rrogating the authority to provide a binding national answer to this religious and philosophical question.”⁸⁷ “[I]t is not for us to say that their religious beliefs are mistaken or unreasonable.... The Court’s ‘narrow function ... is to determine’ whether plaintiffs’ asserted religious belief reflects ‘an honest conviction,’ and there is no dispute that it does.”⁸⁸

The Catholic Church teaches that “[h]uman life must be respected and protected absolutely from the moment of conception.”⁸⁹ The intentional destruction of innocent life, including the unborn, violates the Fifth Commandment that “Thou shall not kill,” and therefore constitutes a grave sin.⁹⁰ Contraception and elective sterilization are also considered “intrinsically evil.”⁹¹ Consistent with Catholic teaching, the country’s bishops have categorically and consistently counseled against complying with the ACA’s mandate.⁹² The

⁸⁶ *Id.* at 686.

⁸⁷ *Id.* at 724.

⁸⁸ *Id.* at 686 (quoting *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 716 (1981)).

⁸⁹ CCC, ¶ 2270 (2d ed. 1997).

⁹⁰ *Id.* ¶ 1858.

⁹¹ *Id.* ¶ 2370; see also Pope Paul VI, Encyclical *Humana Vitae* ¶ 14 (1968).

⁹² USCCB, *Six Things Everyone Should Know about the HHS Mandate*,

USCCB endorses the new government rules allowing religious-based exemptions from the mandate.

Based on principles of Catholic moral theology and confirmed by the teaching authority vested in the bishops on matters of faith and morals, many Catholic organizations conclude that complying with the contraception-coverage mandate involves formal cooperation in wrongdoing. Not only that, but many believe compliance amounts to unjustifiable material cooperation in the same, or would cause scandal in creating the appearance of complicity in such wrongdoing.⁹³

The Little Sisters of the Poor, like numerous Catholic nonprofit organizations, provide valuable care and assistance to the needy and vulnerable. Their work continues the long-standing Catholic tradition of service to others. Much as the Little Sisters of the Poor respond to the needs of others as an expression of their faith, they do so consistent with Catholic teaching on human sexuality and the respect for life. Violating the teaching of the Church would make them Catholic in name only.

[affairs/backgrounders/six-things-everyone-should-know-about-the-hhs-mandate.cfm](#) (last visited Mar. 5, 2020).

⁹³ For a discussion of these concepts, see Briefs of Amicus Curiae 50 Catholic Theologians and Ethicists, <https://www.scotusblog.com/wp-content/uploads/2016/01/50-Catholic-Theologians-and-Ethicists1.pdf> and Eternal World Television Network, <https://www.scotusblog.com/wp-content/uploads/2016/01/EWTN-LSP-Amicus.pdf> in *Zubik v. Burwell*, *et al.*

The new rules respect the honest religious objections of the Little Sisters of the Poor to comply with the contraception mandate. The rules are consistent with this Court's directive in *Zubik*.⁹⁴ They also model the aspirations of RFRA to protect religious groups from significant burdens on their religious exercise by the government.

Respondent states and the lower court advance the extreme and erroneous view that the federal government cannot act to secure and protect the religious freedom of the Little Sisters and nonprofits with similar convictions. This flawed interpretation sets up the federal government for a future of contentious battles with churches and religious groups. Worse still, it forces religious organizations into controversies unrelated to the needs of those they aim to serve. This in turn jeopardizes their invaluable work helping the most needy members of our society. It's time to leave the Little Sisters of the Poor and other religious organizations in freedom and peace.

CONCLUSION

Amici respectfully submit that the judgment below be reversed.

⁹⁴ See 136 S. Ct. at 1560.

Respectfully Submitted,

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