

Syllabus

ZUBIK ET AL. *v.* BURWELL, SECRETARY OF
HEALTH AND HUMAN SERVICES, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 14–1418. Argued March 23, 2016—Decided May 16, 2016*

Federal regulations require petitioners, primarily nonprofit organizations, to cover certain contraceptives as part of the health plans they provide to their employees unless they submit a form to their insurer or the Federal Government stating that they object to such coverage on religious grounds. Petitioners allege that the notice requirement substantially burdens the exercise of their religion in violation of the Religious Freedom Restoration Act of 1993. Following oral argument, this Court requested supplemental briefing addressing “whether contraceptive coverage could be provided to petitioners’ employees, through petitioners’ insurance companies, without any such notice from petitioners.” Both petitioners and the Government confirmed the feasibility of such an option.

Held: The judgments below are vacated, and the cases are remanded to their respective Courts of Appeals. On remand, the parties should be afforded an opportunity to arrive at an approach that accommodates petitioners’ religious exercise while at the same time ensuring that women covered by petitioners’ health plans receive full and equal coverage that includes contraceptive coverage. The Court expresses no view

*Together with No. 14–1453, *Priests for Life et al. v. Department of Health and Human Services et al.*, and No. 14–1505, *Roman Catholic Archbishop of Washington et al. v. Burwell, Secretary of Health and Human Services, et al.*, on certiorari to the United States Court of Appeals for the District of Columbia Circuit; No. 15–35, *East Texas Baptist University et al. v. Burwell, Secretary of Health and Human Services, et al.*, on certiorari to the United States Court of Appeals for the Fifth Circuit; No. 15–105, *Little Sisters of the Poor Home for the Aged, Denver, Colorado, et al. v. Burwell, Secretary of Health and Human Services, et al.*, and No. 15–119, *Southern Nazarene University et al. v. Burwell, Secretary of Health and Human Services, et al.*, on certiorari to the United States Court of Appeals for the Tenth Circuit; and No. 15–191, *Geneva College v. Burwell, Secretary of Health and Human Services, et al.*, also on certiorari to the United States Court of Appeals for the Third Circuit.

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on the merits of the cases. In particular, the Court does not decide whether petitioners' religious exercise has been substantially burdened, whether the Government has a compelling interest, or whether the current regulations are the least restrictive means of serving that interest.

Nos. 14–1418 and 15–191, 778 F. 3d 422; Nos. 14–1453 and 14–1505, 772 F. 3d 229; No. 15–35, 793 F. 3d 449; Nos. 15–105 and 15–119, 794 F. 3d 1151, vacated and remanded.

Paul D. Clement argued the cause for petitioners in Nos. 15–35, 15–105, 15–119, and 15–191. With him on the briefs were *Erin E. Murphy*, *Mark Rienzi*, *Eric C. Rassbach*, *Hannah C. Smith*, *Diana M. Verm*, *Adèle Auxier Keim*, *Daniel H. Blomberg*, *Kenneth R. Wynne*, *David A. Cortman*, *Gregory S. Baylor*, *Jordan W. Lorence*, *Kevin H. Theriot*, *Matthew S. Bowman*, *Rory T. Gray*, *Bradley S. Tupi*, *Carl C. Scherz*, and *Laurence A. Hansen*. *Noel J. Francisco* argued the cause for petitioners in Nos. 14–1418, 14–1453, and 14–1505. With him on the briefs were *David T. Raimer*, *Anthony J. Dick*, *Paul M. Pohl*, *John D. Goetz*, *Leon F. DeJulius, Jr.*, *Ira M. Karoll*, *Robert J. Muise*, and *David Yerushalmi*.

Solicitor General Verrilli argued the cause for respondents in all cases. With him on the brief were *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitors General Gershengorn and Kneedler*, *Brian H. Fletcher*, *Mark B. Stern*, *Alisa B. Klein*, *Megan Barbero*, and *Joshua Salzman*.[†]

[†]Briefs of *amici curiae* urging reversal in all cases were filed for the State of Texas et al. by *Ken Paxton*, Attorney General of Texas, *Scott A. Keller*, Solicitor General, *Charles E. Roy*, First Assistant Attorney General, *J. Campbell Barker*, Deputy Solicitor General, *Michael P. Murphy*, Assistant Solicitor General, and *Michael DeWine*, Attorney General of Ohio, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Derek Schmidt* of Kansas, *Bill Schuette* of Michigan, *Timothy C. Fox* of Montana, *Douglas J. Peterson* of Nebraska, *Adam Paul Laxalt* of Nevada, *E. Scott Pruitt* of

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PER CURIAM.

Petitioners are primarily nonprofit organizations that provide health insurance to their employees. Federal regulations require petitioners to cover certain contraceptives as

Oklahoma, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Sean D. Reyes* of Utah, *Patrick Morrissey* of West Virginia, and *Brad D. Schimel* of Wisconsin; for the American Center for Law and Justice by *Jay Alan Sekulow*, *Stuart J. Roth*, *Walter M. Weber*, *Francis J. Manion*, and *Geoffrey R. Surtees*; for the Anglican Church in North America Jurisdiction of the Armed Forces and Chaplaincy et al. by *Scott W. Gaylord*; for the Association of American Physicians & Surgeons et al. by *Denise M. Burke* and *Mailee R. Smith*; for the Breast Cancer Prevention Institute by *Nikolas T. Nikas*, *Dorinda C. Bordlee*, and *Catherine W. Short*; for CNS International Ministries, Inc., by *Timothy Belz*; for the Carmelite Sisters of the Most Sacred Heart of Los Angeles et al. by *Thomas G. Hungar*; for The Catholic Benefits Association et al. by *L. Martin Nussbaum*, *Eric N. Kniffin*, and *Ian S. Speir*; for the Cato Institute et al. by *Ilya Shapiro*, *Josh Blackman*, *Erin Morrow Hawley*, and *Joshua Hawley*; for the Christian and Missionary Alliance Foundation, Inc., et al. by *Brian D. Boyle*, *Kelly J. Shackelford*, *Jeffrey C. Mateer*, and *Hiram S. Sasser III*; for the Christian Legal Society et al. by *Matthew T. Martens* and *Kimberlee Wood Colby*; for the Church of the Lukumi Babalu Aye, Inc., et al. by *Aaron M. Streett*; for Concerned Women for America by *Steven W. Fitschen*; for Constitutional Law Scholars by *Ryan A. Shores*; for the Council for Christian Colleges and Universities by *Matthew T. Nelson*, *John J. Bursch*, and *Conor B. Dugan*; for the Dominican Sisters of Mary, Mother of the Eucharist, et al. by *Eileen J. O'Connor*, *Carrie Severino*, and *Jonathan Keim*; for the Eagle Forum Education & Legal Defense Fund, Inc., by *Lawrence J. Joseph*; for Eternal Word Television Network by *S. Kyle Duncan*; for the Ethics and Public Policy Center by *Daniel P. Collins*; for Former Justice Department Officials by *Jay P. Lefkowitz*, *Steven J. Menashi*, and *Michael W. McConnell*; for the International Conference of Evangelical Chaplain Endorsers by *Arthur A. Schulcz, Sr.*; for the Justice and Freedom Fund by *James L. Hirszen* and *Deborah J. Dewart*; for the Knights of Columbus by *Messrs. Nussbaum*, *Kniffin*, *Speir*, *John A. Marrella*, and *Beth M. Elfrey*; for Liberty Counsel by *Mathew D. Staver*, *Anita L. Staver*, *Horatio G. Mihet*, and *Mary E. McAlister*; for the National Association of Evangelicals et al. by *Alexander Dushku* and *R. Shawn Gunnarson*; for the National Jewish Commission on Law and Public Affairs by *Nathan Lewin*, *Alyza D. Lewin*, and *Dennis Rapps*; for Orthodox Jewish Rabbis by *Howard N. Slugh*; for Religious Institutions

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part of their health plans, unless petitioners submit a form either to their insurer or to the Federal Government, stating that they object on religious grounds to providing contraceptive coverage. Petitioners allege that submitting this notice

by *Gene C. Schaerr*, *Todd R. McFarland*, and *Dwayne Leslie*; for Residents and Families of Residents at Homes of the Little Sisters of the Poor by *Dwight G. Duncan*; for the School of the Ozarks, Inc., dba College of the Ozarks by *Mark G. Arnold* and *Virginia L. Fry*; for the Southern Baptist Theological Seminary et al. by *Miles E. Coleman*, *Jay T. Thompson*, and *Derek Gaubatz*; for Thirteen Law Professors by *John D. Adams* and *Matthew A. Fitzgerald*; for the Thomas More Law Center by *Erin Elizabeth Mersino*; for the United States Conference of Catholic Bishops et al. by *Anthony R. Picarello, Jr.*, *Jeffrey Hunter Moon*, *Michael F. Moses*, and *Hillary E. Byrnes*; for Women Speak for Themselves by *Helen M. Alvaré*; for David Boyle by *Mr. Boyle, pro se*; for Michael J. New by *David R. Langdon*; for Bart Stupak et al. by *John C. Eastman* and *Anthony T. Caso*; for 50 Catholic Theologians et al. by *D. John Sauer*; and for 207 Members of Congress by *Robert K. Kelner*.

Briefs of *amici curiae* urging affirmance in all cases were filed for the State of California et al. by *Kamala D. Harris*, Attorney General of California, *Edward C. DuMont*, Solicitor General, *Mark Breckler*, Chief Assistant Attorney General, *Angela Sierra*, Senior Assistant Attorney General, *Janill L. Richards*, Principal Deputy Solicitor General, *Nancy A. Beninati*, Supervising Deputy Attorney General, *Gregory D. Brown*, Deputy Solicitor General, *Samuel P. Siegel*, Associate Deputy Solicitor General, and *Lisa C. Ehrlich*, Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *George Jepsen* of Connecticut, *Matthew P. Denn* of Delaware, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Lori Swanson* of Minnesota, *Joseph A. Foster* of New Hampshire, *Hector Balderas* of New Mexico, *Eric T. Schneiderman* of New York, *Ellen F. Rosenblum* of Oregon, *Peter F. Kilmartin* of Rhode Island, *William H. Sorrell* of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for the American Academy of Pediatrics by *Thomas E. Gorman*, *Asim M. Bhansali*, *Philip J. Tassin*, and *Julie Duncan Garcia*; for the American Civil Liberties Union et al. by *Brigitte Amiri*, *Louise Melling*, *Jennifer Lee*, *Steven R. Shapiro*, *Daniel Mach*, and *Heather L. Weaver*; for the American College of Obstetricians and Gynecologists et al. by *Bruce H. Schneider*, *Sara Needleman Kline*, and *Jennifer L. A. Blasdel*; for the American Jewish Committee et al. by *Marc D. Stern*; for the Anti-Defamation League et al. by *Derek L. Shaffer*,

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substantially burdens the exercise of their religion, in violation of the Religious Freedom Restoration Act of 1993, 107 Stat. 1488, 42 U. S. C. § 2000bb *et seq.*

Following oral argument, the Court requested supplemental briefing from the parties addressing “whether contraceptive coverage could be provided to petitioners’ employees, through petitioners’ insurance companies, without any such notice from petitioners.” *Post*, at 901–902. Both petitioners and the Government now confirm that such an option is feasible. Petitioners have clarified that their religious

Steven M. Freeman, and *Michael Lieberman*; for Baptist Joint Committee for Religious Liberty by *Douglas Laycock*, *K. Hollyn Hollman*, and *Jennifer Hawks*; for the Black Women’s Health Imperative by *Mark A. Packman* and *Jenna A. Hudson*; for Catholics for Choice et al. by *Leslie C. Griffin*; for the Center for Inquiry et al. by *Edward Tabash* and *Ronald A. Lindsay*; for Church-State Scholars by *Catherine Weiss* and *Natalie J. Kraner*; for Foreign and International Law Experts by *Marjorie E. Sheldon* and *Aram A. Schvey*; for Former State Attorneys General et al. by *Wesley R. Powell* and *Mary J. Eaton*; for Guttmacher Institute et al. by *Anna-Rose Mathieson*, *Walter Dellinger*, and *Dawn Johnsen*; for the Harvard Law School Center for Health Law and Policy Innovation et al. by *Carmel Shachar* and *Robert Greenwald*; for Health Policy Experts by *Marcy Wilder* and *Sheree Kanner*; for Lambda Legal Defense and Education Fund, Inc., et al. by *Jennifer C. Pizer*, *Jon W. Davidson*, *Camilla B. Taylor*, *Kyle A. Palazzolo*, *Hayley Gorenberg*, and *Omar Gonzalez-Pagan*; for Military Historians by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; for the National Health Law Program et al. by *Jane Perkins*; for the National Latina Institute for Reproductive Health et al. by *Sarah E. Burns*; for the National Women’s Law Center et al. by *Charles E. Davidow*, *Marcia D. Greenberger*, *Gretchen Borchelt*, and *Leila Abolfazli*; for the Ovarian Cancer Research Fund Alliance et al. by *Jessica L. Ellsworth*; for Scholars of Religious Liberty by *Martin S. Lederman*, *pro se*, and *Tejinder Singh*; for Norman Dorsen et al. by *Burt Neuborne* and *Mr. Dorsen*, both *pro se*; for Congressman Robert C. “Bobby” Scott by *Marci A. Hamilton*; for 123 Members of the United States Congress by *David A. O’Neil*; and for 240 Students, Faculty, and Staff at Religiously Affiliated Universities by *Richard B. Katskee* and *Gregory M. Lipper*.

Briefs of *amici curiae* were filed in all cases for the American Humanist Association by *Gordon Gamm*; for Compassion & Choices by *Jon B. Eisenberg*, *Lisa Perrochet*, and *Kevin Díaz*; and for the U. S. Justice Foundation et al. by *Herbert W. Titus*.

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exercise is not infringed where they “need to do nothing more than contract for a plan that does not include coverage for some or all forms of contraception,” even if their employees receive cost-free contraceptive coverage from the same insurance company. Supplemental Brief for Petitioners 4. The Government has confirmed that the challenged procedures “for employers with insured plans could be modified to operate in the manner posited in the Court’s order while still ensuring that the affected women receive contraceptive coverage seamlessly, together with the rest of their health coverage.” Supplemental Brief for Respondents 14–15.

In light of the positions asserted by the parties in their supplemental briefs, the Court vacates the judgments below and remands to the respective United States Courts of Appeals for the Third, Fifth, Tenth, and D. C. Circuits. Given the gravity of the dispute and the substantial clarification and refinement in the positions of the parties, the parties on remand should be afforded an opportunity to arrive at an approach going forward that accommodates petitioners’ religious exercise while at the same time ensuring that women covered by petitioners’ health plans “receive full and equal health coverage, including contraceptive coverage.” *Id.*, at 1. We anticipate that the Courts of Appeals will allow the parties sufficient time to resolve any outstanding issues between them.

The Court finds the foregoing approach more suitable than addressing the significantly clarified views of the parties in the first instance. Although there may still be areas of disagreement between the parties on issues of implementation, the importance of those areas of potential concern is uncertain, as is the necessity of this Court’s involvement at this point to resolve them. This Court has taken similar action in other cases in the past. See, *e. g.*, *Madison County v. Oneida Indian Nation of N. Y.*, 562 U. S. 42, 43 (2011) (*per curiam*) (vacating and remanding for the Second Circuit to

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“address, in the first instance, whether to revisit its ruling on sovereign immunity in light of [a] new factual development, and—if necessary—proceed to address other questions in the case consistent with its sovereign immunity ruling”); *Kiyemba v. Obama*, 559 U. S. 131, 132 (2010) (*per curiam*) (vacating and remanding for the D. C. Circuit to “determine, in the first instance, what further proceedings in that court or in the District Court are necessary and appropriate for the full and prompt disposition of the case in light of the new developments”); *Villarreal v. United States*, 572 U. S. 1084, 1085 (2014) (vacating and remanding to the Fifth Circuit “for further consideration in light of the position asserted by the Solicitor General in his brief for the United States”).

The Court expresses no view on the merits of the cases. In particular, the Court does not decide whether petitioners’ religious exercise has been substantially burdened, whether the Government has a compelling interest, or whether the current regulations are the least restrictive means of serving that interest.

Nothing in this opinion, or in the opinions or orders of the courts below, is to affect the ability of the Government to ensure that women covered by petitioners’ health plans “obtain, without cost, the full range of Food and Drug Administration approved contraceptives.” *Wheaton College v. Burwell*, 573 U. S. 958, 959 (2014). Through this litigation, petitioners have made the Government aware of their view that they meet “the requirements for exemption from the contraceptive coverage requirement on religious grounds.” *Ibid.* Nothing in this opinion, or in the opinions or orders of the courts below, “precludes the Government from relying on this notice, to the extent it considers it necessary, to facilitate the provision of full contraceptive coverage” going forward. *Ibid.* Because the Government may rely on this notice, the Government may not impose taxes or penalties on petitioners for failure to provide the relevant notice.

SOTOMAYOR, J., concurring

The judgments of the Courts of Appeals are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, concurring.

I join the Court’s *per curiam* opinion because it expresses no view on “the merits of the cases,” “whether petitioners’ religious exercise has been substantially burdened,” or “whether the current regulations are the least restrictive means of serving” a compelling governmental interest. *Ante*, at 409. Lower courts, therefore, should not construe either today’s *per curiam* or our order of March 29, 2016, as signals of where this Court stands. We have included similarly explicit disclaimers in previous orders. See, *e. g.*, *Wheaton College v. Burwell*, 573 U. S. 958, 959 (2014) (“[T]his order should not be construed as an expression of the Court’s views on the merits”). Yet some lower courts have ignored those instructions. See, *e. g.*, *Sharpe Holdings, Inc. v. Department of Health and Human Servs.*, 801 F. 3d 927, 944 (CA8 2015) (“[I]n *Wheaton College*, *Little Sisters of the Poor*, and *Zubik*, the Supreme Court approved a method of notice to [Health and Human Services] that is arguably less onerous than [existing regulations] yet permits the government to further its interests. Although the Court’s orders were not final rulings on the merits, they at the very least collectively constitute a signal that less restrictive means exist by which the government may further its interests”). On remand in these cases, the Courts of Appeals should not make the same mistake.

I also join the Court’s opinion because it allows the lower courts to consider only whether existing or modified regulations could provide seamless contraceptive coverage “‘to petitioners’ employees, through petitioners’ insurance companies, without any . . . notice from petitioners.’” *Ante*,

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at 407. The opinion does not, by contrast, endorse the petitioners' position that the existing regulations substantially burden their religious exercise or that contraceptive coverage must be provided through a "separate policy, with a separate enrollment process." Supp. Brief for Petitioners 1; Supp. Reply Brief for Petitioners 5. Such separate contraceptive-only policies do not currently exist, and the Government has laid out a number of legal and practical obstacles to their creation. See Supp. Reply Brief for Respondents 3–4. Requiring standalone contraceptive-only coverage would leave in limbo all of the women now guaranteed seamless preventive-care coverage under the Affordable Care Act. And requiring that women affirmatively opt into such coverage would "impose precisely the kind of barrier to the delivery of preventive services that Congress sought to eliminate." *Id.*, at 6.

Today's opinion does only what it says it does: "afford[s] an opportunity" for the parties and Courts of Appeals to reconsider the parties' arguments in light of petitioners' new articulation of their religious objection and the Government's clarification about what the existing regulations accomplish, how they might be amended, and what such an amendment would sacrifice. *Ante*, at 408. As enlightened by the parties' new submissions, the Courts of Appeals remain free to reach the same conclusion or a different one on each of the questions presented by these cases.