

In The  
**Supreme Court of the United States**

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KATHLEEN SEBELIUS, ET AL.,

*Petitioners,*

v.

HOBBY LOBBY STORES, INC., ET AL.,

*Respondents,*

—◆—  
CONESTOGA WOOD SPECIALTIES CORP., ET AL.,

*Petitioners,*

v.

KATHLEEN SEBELIUS, ET AL.,

*Respondents.*

—◆—  
**On Writs Of Certiorari To The United States Courts  
Of Appeals For The Third And Tenth Circuits**

—◆—  
**BRIEF OF REPRODUCTIVE RESEARCH  
AUDIT AS *AMICUS CURIAE* IN SUPPORT OF  
HOBBY LOBBY, ET AL. AND CONESTOGA, ET AL.**

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**STATEMENT OF INTEREST  
OF *AMICUS CURIAE***

*Amicus*, Reproductive Research Audit (“RRA”) educates through peer-review analysis on the methodology of scientific studies, legislative recommendations, and public programs covering reproductive and end-of-life health issues. RRA’s principle expertise includes reviewing and analyzing policies and studies relating to contraception, abortion, fetal and prenatal life, fertility, women’s healthcare access, public funding, and end-of-life considerations. RRA’s scientists are Ph.D.-level experts in social science and other methodologically related fields. Among its alliance of experts, RRA focuses on evidence-based analysis and conclusions in auditing and preparing studies in its mission-field. RRA seeks to create a dialogue of scholars speaking with scholars, in the hopes of elevating public knowledge on these critical scientific issues.<sup>1</sup>

RRA is a project of the Center for Morality in Public Life (“CFMPL”) a 501(c)(3) not-for-profit education center, based in the Commonwealth of Virginia. CFMPL provides a global campus of study, discussion and research to preserve and restore a

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<sup>1</sup> Pursuant to this Court’s Rule 37.6, we note that no part of this brief was authored by counsel for any party, and no person or entity other than *Amicus Curiae* or its counsel made a monetary contribution intended to fund the preparation or submission of the brief. The parties have consented to the filing of this brief.

common language on objective truth, moral goodness and lived beauty. All of CFMPL's sponsored projects place prudence at the service of wisdom and seek to apply "best of" practices in advancing the core-competencies of the related fields. CFMPL is non-partisan and does not engage in any issue-advocacy efforts.

RRA's interests here are to determine whether the federal government's claim that the requirement that employers provide no-cost access to contraception, abortion-causing drugs, and sterilization procedures through employer provided health care plans is the least restrictive means available to accomplish the government's stated goals of promoting public health and general equality. In keeping with its mission, RRA tests the accuracy of such public policy positions in light of available evidence to ensure that basic fundamental liberties are not infringed as a result of the means government chooses to pursue its stated goals.



## **SUMMARY OF ARGUMENT**

When a law or regulation infringes on the free exercise of religion, the government must show that the law or regulation serves a compelling government interest and is narrowly tailored to meet that interest. Religious freedom is at the cornerstone of individual liberty and beyond the control of government except in the most limited of circumstances.

Accordingly, the compelling government interest standard should apply to the government's Mandate that all covered employers provide at no cost to their employees contraception, abortion-causing drugs, and sterilization procedures and related counseling because of its burden on employer's free exercise rights.

Here, RRA focuses on whether the government's Mandate is the least restrictive means available to serve its stated interests of public health and gender equality. This standard is required by the Religious Freedom Restoration Act and this Court's Free Exercise jurisprudence.

The substantial burden on religious objectors' free exercise rights is presumed based on the substantial and crippling fines such businesses and individuals face should they not violate their religious principles and provide the required coverage. RRA leaves to the parties and others to address more fully whether the government's expressed interests satisfy the compelling government interest standard and whether the Mandate actually serves its expressed, albeit generalized interests. Rather, the focus here is on several alternative, less restrictive means that would satisfy the government's stated interests while not violating the religious conscience rights of employers who object to providing the mandated coverage on religious grounds, such as the non-governmental parties in these consolidated cases.

The government has several alternatives to providing women with no cost access to the mandated services. Courts have recognized that the government could have made the mandated coverage available to individuals who work for religious objectors either directly or through the government exchanges by either providing tax breaks to those who sign up for the limited services policy or by paying for the coverage itself. The government could also provide incentives to insurance carriers and manufacturers of contraception to provide the coverage or the medications for no charge.

In addition to the court identified alternatives, the government fails to show that providing an exemption to religious objectors would make the purpose of the Mandate unworkable. First, the government does nothing to cover the millions of women who work for employers already exempted from the Mandate. Second, there is no evidence that the number of businesses that will seek an exemption on religious grounds will create a large number of individuals without contraceptive coverage. Finally, the government already has in place programs such as Title X and Medicaid through which the mandated contraception and sterilization services could be provided at minimal cost to the government.

There is simply no rational basis, let alone a compelling government interest, to require religious objectors to provide the mandated services in violation of their religious beliefs or face substantial fines and penalties. Because other less restrictive means

are available, the government cannot establish a constitutional basis for denying a religious exemption to the Mandate to any religious objector.

