

NATIONAL REVIEW

More Amicus Briefs Supporting the Little Sisters of the Poor-Part 1

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Dozens of amicus briefs have been filed in support of the Little Sisters of the Poor and the other religious nonprofits who are challenging the legality of the Obama administration's so-called "accommodation" on its HHS contraceptive mandate. I've already highlighted the Ethics and Public Policy Center's brief on RFRA's strict-scrutiny standard. In this post and one or two others, I'll call attention to some other noteworthy amicus briefs. (Of course, given time constraints, no one should infer from my failure to cite a brief that I have formed a judgment that it's not noteworthy.)

Brief of Carmelite Sisters (and two other orders of nuns): Authored by Supreme Court advocate Thomas G. Hungar and his team at Gibson, Dunn & Crutcher, this brief argues that HHS's facial discrimination among religious organizations creates significant Free Exercise and Establishment Clause problems and that the canon of constitutional avoidance therefore militates strongly in favor of petitioners' interpretation of RFRA. The brief also argues that the accommodation's attack on Catholic religious expression can't survive strict scrutiny.

Brief of former DOJ officials: Law professor Michael McConnell and his Kirkland & Ellis team submitted this brief on behalf of former senior DOJ officials, including three former U.S. Attorneys General, three former Deputy U.S. Attorneys General, a former FBI head, and ten former U.S. Attorneys. The brief argues that petitioners' concept of moral complicity, far from being exotic, resembles the legal concept of criminal complicity and that the right to avoid moral complicity is an essential part of religious liberty.

Brief of Christian and Missionary Alliance denomination entities: This brief by O'Melveny & Myers lawyers (led by Brian D. Boyle) and the Liberty Institute argues that HHS violate RFRA by refusing to protect all religious objectors on equal terms and instead creating a bifurcated system that gave full protection only to those entities that HHS somehow deemed sufficiently religious.

Members of Congress: On behalf of 207 members of Congress, Robert K. Kelner and his colleagues at Covington & Burling explain that RFRA embodies the basic principle that government officials have no business second-guessing the *validity* of sincerely held religious beliefs.

Cato Institute/Independent Women's Forum: This brief argues that the Obamacare legislation did not empower the bureaucracy to concoct the accommodation.