CASE NO. 13-1144

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CONESTOGA WOOD SPECIALTIES CORPORATION, a PA Corporation; NORMAN HAHN; ELIZABETH HAHN; NORMAN LEMAR HAHN; ANTHONY H. HAHN; KEVIN HAHN,
Plaintiffs-Appellants,

v.

KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services; HILDA SOLIS, in her official capacity as Acting Secretary of the United States Department of Labor; TIMOTHY GEITHNER, in his official capacity as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF LABOR; and UNITED STATES DEPARTMENT OF THE TREASURY,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION; THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA; THE ANTI-DEFAMATION LEAGUE; CATHOLICS FOR CHOICE; HADASSAH, THE WOMEN'S ZIONIST ORGANIZATION OF AMERICA, INC.; THE INTERFAITH ALLIANCE FOUNDATION; THE NATIONAL COALITION OF AMERICAN NUNS; THE NATIONAL COUNCIL OF JEWISH WOMEN; THE RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE; THE RELIGIOUS INSTITUTE; THE UNITARIAN UNIVERSALIST ASSOCIATION; AND THE UNITARIAN UNIVERSALIST WOMEN'S FEDERATION SUPPORTING DEFENDANTS-APPELLEES AND URGING AFFIRMANCE

WITOLD J. WALCZAK
SARA ROSE
American Civil Liberties Union Foundation of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
412-681-7864
vwalczak@aclupa.org
srose@aclupa.org

DANIEL MACH
American Civil Liberties Union Foundation
915 15th Street, 6th Floor
Washington, DC 20005
202-675-2330
dmach@aclu.org

JENNIFER LEE
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2601
jlee@aclu.org

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit L.A.R. 26.1 (b), no *amici* have parent corporations or are publicly held corporations to disclose.

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STATEMENT OF *AMICI*

Amici are organizations that have a strong commitment to defending the fundamental right to religious liberty. *Amici* provide this brief to respectfully request that this Court affirm the District Court's order denying a preliminary injunction because the federal contraceptive coverage rule does not likely violate the Religious Freedom Restoration Act. The District Court correctly held that requiring an employer – particularly a for-profit employer – to provide comprehensive health insurance that includes contraceptive coverage is not likely to substantially burden the company owners' religious exercise.

IDENTITY OF *AMICI*

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan public interest organization of more than 500,000 members dedicated to defending the civil liberties guaranteed by the Constitution. The ACLU of Pennsylvania, the organization's affiliate in Pennsylvania, was founded to protect and advance civil rights and civil liberties in Pennsylvania, and currently has over 17,000 dues-paying members. The ACLU has a long history of defending religious liberty, and believes that the right to practice one's religion, or no religion, is a core component of our civil liberties. For this reason, the ACLU routinely brings

cases designed to protect individuals' right to worship and express their religious beliefs. At the same time, the ACLU vigorously protects reproductive freedom, and has participated in almost every critical case concerning reproductive rights to reach the Supreme Court.

Organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic and religious prejudice in the United States, the Anti-Defamation League ("ADL") is today one of the world's leading organizations fighting hatred, bigotry, discrimination and anti-Semitism. To that end, ADL works to oppose government interference, regulation and entanglement with religion, and strives to advance individual religious liberty. ADL counts among its core beliefs strict adherence to the separation of church and state embodied in the Establishment Clause, and also believes that a zealous defense of the Free Exercise Clause is essential to the health of our religiously diverse society and to the preservation of our Republic. In striving to support a robust, religiously diverse society, ADL believes that efforts to impose one group's religious beliefs on others are antithetical to the notions of religious freedom on which the United States was founded.

Catholics for Choice shapes and advances sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being

and respect and affirm the moral capacity of women and men to make decisions about their lives.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, has over 330,000 Members, Associates and supporters nationwide. While traditionally known for its role in initiating and supporting health care and other initiatives in Israel, Hadassah has longstanding commitments to improving health care access in the United States and supporting the fundamental principle of the free exercise of religion. Hadassah strongly believes that women have the right to make family planning decisions privately, in consultation with medical advice, and in accordance with one's own religious, moral, and ethical values. Consistent with those commitments, Hadassah is a strong supporter of the contraceptive coverage rule and an advocate for the position that the rule's implementation does not violate the Religious Freedom Restoration Act.

The Interfaith Alliance Foundation is a 501(c)(3) non-profit organization, which celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance's members across the country belong to 75 different faith traditions as well as no faith tradition. Interfaith Alliance supports people who believe

their religious freedoms have been violated as a vital part of its work promoting and protecting a pluralistic democracy and advocating for the proper boundaries between religion and government.

The National Coalition of American Nuns ("NCAN") is an organization that began in 1969 to study and speak out on issues of justice in church and society. NCAN works for justice and peacemaking in our personal lives, ministries, congregations, churches, and civil society. NCAN calls on the Vatican to recognize and work for women's equality in civil and ecclesial matters, to support gay and lesbian rights, and to promote the right of every woman to exercise her primacy of conscience in matters of reproductive justice.

The National Council of Jewish Women ("NCJW") is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families, and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "comprehensive, confidential, accessible family planning and reproductive health services, regardless of age or ability to pay." NCJW's Principles state that "[r]eligious liberty and the separation of religion and state are constitutional principles that must be protected and

preserved in order to maintain our democratic society." Consistent with its Principles and Resolutions, NCJW joins this brief.

Founded in 1973, the Religious Coalition for Reproductive Choice ("RCRC") is dedicated to mobilizing the moral power of the faith community for reproductive justice through direct service, education, organizing, and advocacy. For RCRC, reproductive justice means that all people and communities should have the social, spiritual, economic, and political means to experience the sacred gift of sexuality with health and wholeness.

Founded in 2001, and an independent 501(c)(3) since 2012, the Religious Institute is a multi-faith organization dedicated to advocating within faith communities and society for sexual health, education, and justice. The Religious Institute is a national leadership organization working at the intersection of sexuality and religion. The Religious Institute staff provides clergy, congregations, and denominational bodies with technical assistance in addressing sexuality and reproductive health, and assists sexual and reproductive health organizations in their efforts to address religious issues and to develop outreach to faith communities. The Religious Institute is strongly committed to assuring that all women have equal access to

contraception and firmly believes that the contraceptive coverage rule does not create a substantial burden on religious exercise.

The Unitarian Universalist Association ("UUA") comprises more than 1,000 Unitarian Universalist congregations nationwide. The UUA is dedicated to the principle of separation of church and state. The UUA participates in this *amicus curiae* brief because it believes that the decision of the United States District Court holding that the federal contraceptive coverage rule does not create a substantial burden on religious exercise under the Religious Freedom Restoration Act should be affirmed.

The Unitarian Universalist Women's Federation has had an abiding interest in the protection of reproductive rights and access to health services since its formation nearly 50 years ago. As an affiliate organization of the Unitarian Universalist Association of Congregations, its membership of local Unitarian Universalist women's groups, alliances, and individuals has consistently lifted up the right to have children, to not have children, and to parent children in safe and healthy environments as basic human rights, with the affordable availability of birth control being essential and fundamental. The Unitarian Universalist Women's Federation has long recognized and will continue to oppose structural constraints posed when health care

systems and health insurance providers limit or deny access to contraception and other reproductive health care.

AUTHORITY TO FILE *AMICUS* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a), *amici* have obtained consent from all parties to file this brief.

AUTHORSHIP AND FUNDING OF *AMICUS* BRIEF

No party's counsel authored this brief in whole or in part. With the exception of *amici*'s counsel, no one, including any party or party's counsel, contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

The District Court correctly held that the federal contraceptive coverage rule, which requires contraception to be offered in health insurance plans without cost-sharing, *see* 45 C.F.R. § 147.130(a)(1)(iv), likely does not substantially burden Appellants' religious exercise under the Religious Freedom Restoration Act ("RFRA"). *Conestoga Wood Specialties Corp. v. Sebelius*, No. 12-6744, 2013 WL 140110 (E.D. Pa. Jan. 11, 2013). Indeed, this Court also held as much when it denied Appellants' motion for a preliminary injunction pending appeal, and held that they were unlikely to succeed on the merits of their RFRA claim. *Conestoga Wood Specialties*

Corp. v. Sec'y of U.S. Dep't of Health and Human Servs., No. 13-1144 (3d Cir. Jan. 29, 2013); *see also Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir. Dec. 28, 2012) (denying preliminary injunction pending appeal in challenge to federal contraception rule on ground that the rule likely did not create a substantial burden on the plaintiffs' religious beliefs); *Hobby Lobby Stores, Inc. v. Sebelius*, No. 12-6294, 2012 WL 6930302 (10th Cir. Dec. 20, 2012) (same), *application for injunction pending appeal denied*, 133 S. Ct. 641 (2012) (Sotomayor, Circuit Justice).

To prevail under RFRA, Appellants must show that the contraceptive coverage rule places a "substantial burden" on their free exercise of religion. 42 U.S.C. § 2000bb-1 (2013). Appellants have failed to meet that burden in two ways. First, the connection between the contraceptive coverage rule and any impact on Appellants' religious exercise is simply too attenuated to rise to the level of a "substantial burden." The law does not require Appellants to use contraception themselves, to physically provide contraception to their employees, or to endorse the use of contraception. The contraceptive coverage rule creates no more of an infringement on Appellants' religious exercise than many other actions that Appellants readily undertake, such as paying an employee's salary, which that employee could then use to purchase contraception. Second, the employee's independent decision about

whether to obtain contraception breaks the causal chain between the government action and any potential burden on Appellants' free exercise.

Furthermore, RFRA does not permit Appellants to impose their religious beliefs on their approximately 950 employees. As another court correctly held, "RFRA is a shield, not a sword," and "RFRA does not protect against the slight burden on religious exercise that arises when one's money circuitously flows to support the conduct of other free-exercise-wielding individuals who hold religious beliefs that differ from one's own." *O'Brien v. Dep't of Health & Human Servs.*, 894 F. Supp. 2d 1149, 1159 (E.D. Mo. 2012), *stay granted*, No. 12-3357 (8th Cir. Nov. 28, 2012). This Court should affirm the District Court's decision.

ARGUMENT

I. The Federal Contraceptive Coverage Rule Does Not Substantially Burden Appellants' Religious Exercise Under the Religious Freedom Restoration Act.

RFRA was enacted by Congress in response to the Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), to restore the strict scrutiny test for claims alleging the substantial burden of the free exercise of religion. *Adams v. Comm'r of Internal Revenue*, 170 F.3d 173, 176 (3d Cir. 1999). Specifically, RFRA prohibits the federal government from "substantially

burden[ing] a person's exercise of religion" unless the government demonstrates that the burden is justified by a compelling interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1 (2013).

Although RFRA does not define "substantial burden," this Court has held that the term includes situations where "the government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs."[1] *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007). This does not mean, however, that "*any* incidental effect of a government program which may have *some* tendency to coerce individuals into acting contrary to their religious beliefs satisfies the substantial burden standard." *Id*. at 279. "[A] substantial burden must place more than an inconvenience on religious exercise;" it is "akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004); *see also, e.g., Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*,

[1] *Washington* and other cases cited herein were decided under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") cases, but these cases are instructive because that statute also prohibits government-imposed "substantial burdens" on religion. 42 U.S.C. § 2000cc(a)(1) (2013); *see also Norword v. Strada*, 249 F. App'x 269, 271 n.4 (3d Cir. 2007) (noting that the provisions of RLUIPA are nearly identical to the RFRA).

456 F.3d 978, 988 (9th Cir. 2006) ("a substantial burden on religious exercise must impose a significantly great restriction or onus upon such exercise") (internal quotation marks and citations omitted). As this Court has recognized, a broader interpretation of "substantial burden" would read "'substantial' out of the statute." *Washington,* 497 F.3d at 281 (citing *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) (the word "substantial" in the "substantial burden" test cannot be rendered "meaningless," otherwise "the slightest obstacle to religious exercise, . . . however minor the burden it were to impose," could trigger a RLUIPA violation)).

The party claiming a RFRA violation "must demonstrate" that the governmental policy at issue substantially burdens his or her sincerely held religious beliefs. *Adams*, 170 F.3d at 176. Only after the plaintiff establishes a substantial burden does the burden shift to the government to prove that the challenged policy is the least restrictive means of furthering a compelling government interest. *Id*. Appellants here fail to satisfy that first, crucial requirement.

As the District Court properly held, a plaintiff cannot show a "burden to be substantial simply by claiming that it is." *Conestoga Wood Specialties Corp.*, 2013 WL 140110, at * 12. Indeed, no one doubts the sincerity of

Appellants' religious opposition to contraception, *id*. at *10, and as the District Court held, "courts are not the arbiters of scriptural interpretation," *id.* at *12 (citing *Thomas v. Review Board of Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981)). But courts must nevertheless assess whether the contraceptive coverage rule imposes a "substantial burden" on the exercise of that sincerely held religious belief. *Id*.; *see also Kaemmerling v. Lappin*, 553 F.3d 669, 679 (D.C. Cir. 2008) (although, on a motion to dismiss, courts assessing RFRA claims must "[a]ccept[] as true the factual allegations that [plaintiffs'] beliefs are sincere and of a religious nature," whether those beliefs are "substantially burdened" is a question of law properly left to the judgment of the courts); *Goehring v. Brophy*, 94 F.3d 1294, 1299 n.5 (9th Cir. 1996) (holding in a RFRA challenge that although the government conceded that the plaintiffs' beliefs were sincerely held, "it does not logically follow . . . that any governmental action at odds with these beliefs constitutes a substantial burden"), *abrogated on other grounds by, City of Boerne v. Flores*, 521 U.S. 507 (1997).

A. The Connection Between the Contraceptive Coverage Rule and the Impact on Appellants' Religious Exercise Is Too Attenuated to Rise to the Level of "Substantial Burden."

As this Court and the District Court properly held, the connection between the contraceptive coverage rule and Appellants' religious exercise

is simply too attenuated to rise to the level of a substantial burden. *Conestoga Wood Specialties Corp.*, 13-1144, slip op. at 3 (3d Cir. Jan. 29, 2013); *Conestoga Wood Specialties Corp.*, 2013 WL 140110, at *14. Indeed, the contraceptive coverage rule does not require employers to physically provide contraception to their employees, or to endorse the use of contraception, nor does it "prohibit" any religious practice. *See U.S. v. Ali*, 682 F.3d 705, 710-11 (8th Cir. 2012). The rule only requires health insurance plans to be comprehensive and to include contraception. As the District Court held, a "series of events must first occur before the actual use of [contraception] would come into play," including payment for a comprehensive health plan that includes contraception; access to contraception through a pharmacy; and a decision by a Conestoga employee who "may or may not" choose to obtain contraception. *Conestoga Wood Specialties Corp.,* 2013 WL 140110, at *14; *see also Hobby Lobby Stores,* 2012 WL 6930302, at *3 (holding that the plaintiffs were unlikely to succeed on the merits of the RFRA claim because the relationship between the contraceptive rule and the plaintiffs' religious beliefs was "indirect and attenuated").

In *Goehring v. Brophy*, the Ninth Circuit rejected a RFRA claim strikingly similar to Appellants' claim here. 94 F.3d 1294. In that case,

public university students objected to paying a registration fee because the fee was used to subsidize the school's health insurance program, which covered abortion care. *Id*. at 1297. The court rejected the plaintiffs' RFRA and free exercise claims, reasoning that the payments did not impose a substantial burden on the plaintiffs' religious beliefs. *Id*. at 1300. At most it placed a "minimal limitation" on their free exercise rights. *Id*. The court noted that the plaintiffs are not "required [themselves] to accept, participate in, or advocate in any manner for the provision of abortion services." *Id*.

Likewise, in *Seven-Sky v. Holder,* the D.C. Circuit upheld the Affordable Care Act's requirement that individuals have health insurance coverage in the face of a claim that the requirement violated RFRA because it required the plaintiffs to purchase health insurance in contravention of their belief that God would provide for their health. 661 F.3d 1 (D.C. Cir. 2011), *affirming Mead v. Holder*, 766 F. Supp. 2d 16 (D.D.C. 2011), *abrogated on other grounds by, Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012). The appellate court affirmed the district court's holding that the requirement imposed only a *de minimis* burden on the plaintiffs' religious beliefs. *Id.* at 5 n.4. The district court held that slight burdens on religious practice, like the requirement to have health insurance, "do[] not rise to the level of a substantial burden." *Mead*, 766 F. Supp. 2d at 42.

Similarly, the Fourth Circuit in *Dole v. Shenandoah Baptist Church* held that a religiously affiliated school's religious practice was not substantially burdened by compliance with the Fair Labor Standards Act ("FLSA"). 899 F.2d 1389 (4th Cir. 1990), *cert. denied*, 498 U.S. 846 (1990). The school paid married male, but not married female, teachers a "salary supplement" based on the school's religious belief that the husband is the head of the household. *Id.* at 1392. This "head of the household" supplement resulted in a wage disparity between male and female teachers, which violated FLSA. The Fourth Circuit rejected the school's claim that compliance with FLSA burdened its religious beliefs, holding that compliance with the FLSA imposed, "at most, a limited burden" on the school's free exercise rights. *Id.* at 1398. "The fact that [the school] must incur increased payroll expense to conform to FLSA requirements is not the sort of burden that is determinative in a free exercise claim." *Id.*; *see also Donovan v. Tony & Susan Alamo Found.*, 722 F.2d 397, 403 (8th Cir. 1983) (rejecting Free Exercise Clause challenge to FLSA because compliance with those laws cannot "possibly have any direct impact on appellants' freedom to worship and evangelize as they please. The only effect at all on appellants is that they will derive less revenue from their business

enterprises if they are required to pay the standard living wage to the workers."), *aff'd*, 471 U.S. 290, 303 (1985).

There are strong parallels to the cases cited above and the instant action. Just as the plaintiffs in *Goehring* failed to state a claim under RFRA because the burden on religion was too attenuated, the same is true here. The fact that someone might have used the student health insurance in *Goehring* to obtain an abortion, or the fact that Appellants' employees might use their health insurance to obtain contraception, does not impose a "substantial burden" on religious practice. Moreover, just as in *Shenandoah*, a requirement that employers provide comprehensive, equal benefits to their female employees does not substantially burden religious exercise.[2] As the District Court properly held, Appellants "remain free to make their own independent decisions about their use or non-use of different forms of contraception, as that clearly remains a personal matter." *Conestoga Wood Specialties*, 2013 WL 140110, at *14.

Indeed, the burden on Appellants' religious exercise is just as remote as other activities that they subsidize that are also at odds with their religious

[2] The same would be true if, say, a company owned by a Jehovah's Witness insisted on excluding blood transfusions from its employees' health plan because of the owner's religious beliefs, or if a Christian Scientist business owner refused, in violation of the ACA, to provide health insurance coverage based on the owner's religious beliefs.

beliefs. For example, as the District Court recognized, Appellants pay salaries to their employees – money the employees may use to purchase contraceptives.[3] *Id*. at *13. And just as the court recognized in *Mead*, Appellants "routinely contribute to other forms of insurance" via their taxes that include contraceptive coverage such as Medicaid, and they contribute to federally funded family planning programs. 766 F. Supp. 2d at 42. These federal programs "present the same conflict with their [religious] belief[s]." *Id*. But like the federal contraceptive coverage rule, the connection between these programs and Appellants' religious beliefs is too attenuated. In fact, the Eighth Circuit has held that a religious objection to the use of taxes for medical care funded by the government does not even create a cognizable injury. *Tarsney v. O'Keefe*, 225 F.3d 929 (8th Cir. 2000) (holding that plaintiffs lacked standing to challenge under the Free Exercise Clause the expenditure of state funds on abortion care for indigent women).

B. An Employee's Independent Decision to Use Her Health Insurance to Obtain Contraception Breaks the Causal Chain Between the Government's Action and Any Potential Impact on Appellants' Religious Beliefs.

[3] In fact, studies have shown that employees effectively pay for their own insurance premiums in the form of foregone wages and there is a dollar-for-dollar trade-off between wages and health care coverage. Jonathan T. Kolstad & Amanda E. Kowalski, *Mandate-Based Health Reforms and the Labor Market: Evidence From the Massachusetts Reform* (Mar. 2012) (working paper), http://www.nber.org/papers/w17933.pdf?new_window=1.

It is a long road from Appellants' own religious opposition to contraception use, to an independent decision by an employee to use her health insurance coverage for contraceptives. The independent action of an employee breaks the causal chain for any violation of RFRA. In this respect, the Supreme Court's decision in *Zelman v. Simmons-Harris* is instructive. 536 U.S. 639 (2002). In *Zelman*, the Court held that a school voucher program did not violate the Establishment Clause because parents' "genuine and independent private choice" to use the voucher to send their children to religious schools broke "the circuit between government and religion." *Id.* at 652. As in *Zelman*, this scenario involves an employee's independent and "deeply private choice," which breaks the causal chain between the rule and Appellants' exercise of religion. *Conestoga Wood Specialties*, 2013 WL 140110, at *13. Any slight burden on Appellants' religious exercise is far too remote to warrant a finding of a RFRA violation.

II. RFRA Does Not Grant Appellants a Right to Impose Their Religious Beliefs on Their Employees.

"RFRA is a shield, not a sword." *O'Brien*, 894 F. Supp. 2d at 1159. It cannot be used to "force one's religious practices upon others" and to deny them rights and benefits. *Id.* This case, and most of the cases discussed above, implicate the rights of third parties, such as providing employees with

fair pay, *see Shenandoah*, 899 F.2d 1389, or ensuring that health insurance benefits of others are not diminished, *see Goehring*, 94 F.3d 1294. Unlike the seminal cases of *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963), for example, where only the plaintiffs' rights were at issue, Appellants here are attempting to invoke RFRA to deny their female employees, who may have different beliefs about contraception use from their employer, equal health benefits. As another court held, "RFRA does not protect against the slight burden on religious exercise that arises when one's money circuitously flows to support the conduct of other free-exercise-wielding individuals who hold religious beliefs that differ from one's own." *O'Brien*, 894 F. Supp. 2d at 1159.

CONCLUSION

Accordingly, this Court should affirm the District Court's order denying a preliminary injunction.

April 22, 2013

Respectfully submitted,

/s/ Daniel Mach

DANIEL MACH
American Civil Liberties Union Foundation
915 15th Street, 6th Floor
Washington, DC 20005
202-675-2330
dmach@aclu.org

JENNIFER LEE
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2601
jlee@aclu.org

WITOLD J. WALCZAK
SARA ROSE
American Civil Liberties Union Foundation of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
412-681-7864
vwalczak@aclupa.org
srose@aclupa.org

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32 (a)(7)(B) and Fed. R. App. P. 29(d) because:

   This brief contains 3,998 words, excluding the parts of the brief exempted by Fed. R. App. P. (a)(7)(B)(iii), as calculated by the word-counting function of Microsoft Office 2010.

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4. The hardcopies of this brief submitted to the Court are exact copies of the version submitted electronically.

DATED: April 22, 2013

/s/ Daniel Mach
Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2013, I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. Furthermore, I certify that 10 paper copies were delivered to the Court, and one paper copy was delivered to each party.

DATED: April 22, 2013

/s/ Daniel Mach
Counsel for *Amici Curiae*