

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-431

LITTLE SISTERS OF THE POOR SAINTS PETER AND PAUL HOME,
PETITIONER

v.

PENNSYLVANIA, ET AL.

No. 19-454

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
PETITIONERS

v.

PENNSYLVANIA, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of President Donald J. Trump and the other federal parties, respectfully seeks leave to divide the oral argument for petitioners in the above cases. This Court consolidated the two cases and allocated a total of one hour for oral argument. We move to allocate fifteen minutes of oral argument time to the federal petitioners in No. 19-454 and fifteen minutes to the Little Sisters of the Poor Saints Peter and Paul

Home (Little Sisters), the petitioner in No. 19-431. Counsel for the Little Sisters have authorized us to state that they agree with that allocation and therefore join in this motion. Granting this motion would not require the Court to enlarge the overall time for argument.

1. The Patient Protection and Affordable Care Act (ACA), 42 U.S.C. 18001 et seq., requires many group health plans and health-insurance issuers that offer group or individual health coverage to provide coverage for preventive services, including women's preventive care, without cost-sharing. See 42 U.S.C. 300gg-13(a). Guidelines and regulations implementing that requirement promulgated in 2011 by federal agencies mandated that such entities cover all forms of contraceptives approved by the Food and Drug Administration. See Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 697 (2014). The mandate exempted churches and certain affiliates, and subsequent rulemaking established an accommodation for certain other entities with religious objections to providing contraceptive coverage. See id. at 698-699.

Relying on the ACA and the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb et seq., the agencies in October 2017 promulgated interim final rules expanding the exemption to a broader range of entities with sincere religious or moral objections to providing contraceptive coverage. See 82 Fed. Reg. 47,792 (Oct. 13, 2017); id. at 47,838. In November 2018, after

considering comments solicited on the interim rules, the agencies promulgated final rules expanding the exemption. See 83 Fed. Reg. 57,536 (Nov. 15, 2018); id. at 57,592.

2. Pennsylvania filed this suit after issuance of the interim rules, alleging that those rules were procedurally invalid because they failed to comply with the notice-and-comment requirement of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., 701 et seq., and substantively invalid because they violated the ACA and were not justified by RFRA. The district court granted a nationwide preliminary injunction barring implementation of the interim rules. Pet. App. 47a-103a. The government appealed, as did the Little Sisters, which had successfully intervened to defend the interim rules. See id. at 9a-10a & n.6.

Following issuance of the final rules, New Jersey joined Pennsylvania's suit, and the two States sought an injunction against implementation of the final rules. Pet. App. 11a. The district court again granted a nationwide preliminary injunction. Id. at 104a-187a. The court of appeals affirmed, holding that the ACA does not confer authority to establish exemptions to the contraceptive-coverage mandate, that RFRA did not require or permit the agencies to provide the religious exemption, that the final rules were procedurally invalid, and that the nationwide

injunction was appropriate. Id. at 22a-46a. The court also held that the Little Sisters lacked appellate standing. Id. at 9a n.6.

3. This Court granted certiorari in No. 19-454 to decide whether the final rules are substantively and procedurally valid and, if necessary, whether the district court permissibly imposed a nationwide injunction. The Court also granted certiorari in No. 19-431 to decide the validity of the religious exemption and whether the Little Sisters have appellate standing. We believe that dividing the argument time for petitioners between the federal petitioners and the Little Sisters would be of material assistance to the Court. The United States has a significant interest in this case, because it directly implicates the validity of federal rules adopted by federal agencies. The Little Sisters also have a significant interest in this case and can offer the Court a distinct perspective as a party that would benefit from the religious exemption and has previously litigated adversely to the federal government in an effort to secure an exemption under RFRA. The Little Sisters also have a distinct interest in addressing the question of their appellate standing. The government accordingly requests that the Court grant the motion for divided argument.

Respectfully submitted.

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Solicitor General
Counsel of Record

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