

Nos. 12-35221 & 12-35223

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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STORMANS, INC., doing business as RALPH'S THRIFTWAY, *et al.*,

Plaintiffs-Appellees,

v.

MARY SELECKY, *et al.*,

Defendants-Appellants,

and

JUDITH BILLINGS, *et al.*,

Intervenors-Appellants.

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**On Appeal from the United States District Court  
for the Western District of Washington,  
Case No. CV-07-5374-RBL (Hon. Ronald B. Leighton)**

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***AMICUS CURIAE* BRIEF OF RELIGIOUS AND  
RELIGIOUSLY-AFFILIATED ORGANIZATIONS AND  
INDIVIDUAL CLERGY IN SUPPORT OF REVERSAL AND  
OF DEFENDANTS-APPELLANTS**

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## I. INTRODUCTION AND IDENTITY, INTEREST, AND AUTHORITY OF *AMICI*

The *amici curiae* who submit this brief are a coalition of religious and religiously-affiliated organizations and religious leaders. As people and organizations of faith, *amici* rely on the First Amendment's protection of religious freedoms for their existence and for their ability to express their particular religious beliefs. *Amici* hail from diverse backgrounds, including Baptist, Methodist, Lutheran, Episcopal, Presbyterian, Unitarian Universalist, Catholic, Jewish, and Islamic traditions.<sup>1</sup> Despite these differences in faiths, *amici* share a common commitment to ensuring that people of all faiths and religions can choose their beliefs and exercise those beliefs. Based on this commitment, *amici* have a strong interest in the case before the Court because the free exercise of religion is never more important than in the context of health care decisions, an area that requires people to confront intensely personal beliefs and choices.

In matters of faith, one person's conscience ends where another's begins. *Amici* strongly believe in individual religious liberty, but at the same time, strongly believe that society has a responsibility to ensure that exercise of this liberty does not harm others. *Amici* also believe that, in our complex and pluralistic society,

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<sup>1</sup> Detailed statements of interest from *amici* are provided in Addendum A. A list of all *amici* joining in this brief is provided in Addendum B. Corporate disclosure statements for all *amici* that are nongovernmental corporate organizations are included in Addendum C.

government regulation can help protect religious beliefs, while ensuring that others are not harmed by the exercise of those beliefs. The Washington regulations, WAC 246-863-095 and WAC 246-869-010, appropriately accommodate the religious and personal beliefs of both pharmacists and patients, and ensure that no patient is harmed by the denial of timely and dignified access to health care.

*Amici* submit this brief to provide a faith-based overview that will inform the arguments presented by the parties. Specifically, *amici* seek to correct Plaintiffs' implication that only one religious view is at stake in the regulation of health care and the dispensation of medication. *Amici* also seek to correct the suggestion that religion and religious organizations broadly oppose any and all regulations or standards that implicate the exercise of religious beliefs. In fact, *Amici* believe that WAC 246-863-095 and WAC 246-869-010 are necessary to protect the religious beliefs of both pharmacists and patients. Accordingly, *amici* believe the regulations comport with the First Amendment and should be upheld.

In accordance with Federal Rule of Appellate Procedure 29(a), all parties have consented to the filing of this brief.

## **II. SUMMARY OF AMICI'S ARGUMENTS**

The religious freedoms protected by the First Amendment to the United States Constitution include both the freedom of belief and the freedom not to be imposed on by another's beliefs. Plaintiffs aver an objection to emergency

contraception based on their Christian beliefs and contest WAC 246-863-095 and WAC 246-869-010 based on the allegation that these standards regulate their beliefs. Plaintiffs assert that, to protect their religious freedom, the law must allow pharmacy employees to impose their beliefs on patients who seek certain medical care and to burden patients in deference to pharmacy employees' religious views and choices. Though Plaintiffs certainly are entitled to their religious convictions, they fail to take into account how their position affects the rights and beliefs of patients.

Plaintiffs' claim that patients may be denied access to lawfully prescribed or approved medications violates a core tenet of many religions, which is ensuring timely and dignified access to health care. Many religions and people of faith, as well as nonreligious people, also believe in and support an individual's autonomy to make health care decisions in accordance with his or her own religion, spirituality, morality, or personal convictions. Patients who adhere to these beliefs, like all patients, have the right and freedom to receive legally prescribed or approved medications consistent with their own beliefs, not as dictated by a health care provider's individual convictions.

Consistent with the First Amendment, WAC 246-863-095 and WAC 246-869-010 appropriately accommodate the diverse religious and personal beliefs at stake in the provision of health care. The Washington regulations do not police or

proscribe the religious beliefs of pharmacists. Rather, WAC 246-863-095 and WAC 246-869-010 protect the religious and ideological freedoms of pharmacists and patients, while ensuring no one's timely access to health care is impaired or impeded by conflicting views. The Washington regulations simply require all pharmacies to maintain plans and procedures that enable patients to obtain health care and medications in accordance with the patient's needs and individual beliefs even when a pharmacy employee has divergent views. The regulations apply generally, neutrally, and equally to people of all religious, moral, spiritual, and secular faiths, inclinations, and beliefs. Accordingly, the Washington regulations are constitutional and *amici* respectfully request that they be upheld.

### **III. ARGUMENT**

#### **A. The First Amendment Protects All Religious Beliefs, But Not the Right to Impose One's Beliefs on Another Person.**

The "individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all." *Wallace v. Jaffree*, 472 U.S. 38, 53, 105 S. Ct. 2479, 86 L. Ed. 2d 29 (1985). Central to this right is the freedom to refrain from "accepting the creed established by the majority." *Id.* at 52. The "government may not compel affirmation or religious belief" or "punish the expression of religious doctrines it believes to be false." *Employment Div., Dep't of Human Res. of Or. v. Smith* 494 U.S. 872, 877, 110 S. Ct. 1595, 108 L.Ed.2d 876 (1990). Accordingly, the First Amendment protects all religious

beliefs, and likewise protects individuals from having another's beliefs imposed on them. This promise to protect every individual's religious beliefs is critical to people of faith in a pluralistic society.

As this Court previously held, the First Amendment necessarily recognizes the distinction between freedom to believe and freedom to act. While the right to believe is "absolute," "conduct remains subject to regulation for the protection of society." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1128 (9th Cir. 2009) (quoting *Cantwell v. State of Conn.*, 310 U.S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213 (1940)). Neutral and generally applicable regulations of conduct are necessary and consistent with Supreme Court precedent recognizing "that allowing individual exceptions based on religious beliefs from laws governing general practices 'would make the professed doctrines of religious belief superior to the law of the land, and in effect permit every citizen to become a law unto himself.'" *Stormans*, 586 F.3d at 1128 (quoting *Reynolds v. United States*, 98 U.S. 145, 167, 25 L. Ed. 244 (1878) (internal alterations omitted)).

Neutral and generally applicable regulations are essential to protect the beliefs of all people and to prevent the unconstitutional favoring of one religion over another or the imposition of one person's religious convictions on people with differing views. *See Stormans*, 586 F.3d at 1128. As the Supreme Court explained in *Smith*:

[p]recisely because we are a cosmopolitan nation made up of people of almost every conceivable religious preference, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming *presumptively invalid*, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order.

*Smith*, 494 U.S. at 888. Thus, courts will not invalidate regulations because of religious objections based on one set of beliefs where those regulations serve to protect the beliefs, health, and safety of all.

As the Supreme Court has recognized, the great diversity of religious views in our country requires protection of all faiths and views, from the non-believer to the devout. This means that people of all faiths and viewpoints are equal under the First Amendment, and the government may not favor or force the tenets of one religion onto the believers of another. *See Smith*, 494 U.S. at 877. Consistent with this principle, WAC 246-863-095 and WAC 246-869-010 appropriately accommodate the many diverse faiths and personal beliefs in our society. The regulations protect—to the greatest extent possible—the rights of all people of all faiths to freely follow and exercise their beliefs without permitting a believer from one faith to impose his or her beliefs on others and “become a law unto himself.”

Thus, the First Amendment protects all religious beliefs regarding access to health care. As a result, the religious significance of timely and dignified access to health care must inform this Court’s analysis of the constitutionality of the Washington regulations. Plaintiffs demand exemption from these regulations

based on their religious convictions, but they do so at the expense of intruding on the beliefs and rights of others. A pharmacy's refusal to fill a lawful prescription is not solely the concern of the pharmacy or pharmacist: it is also concerns the patient, his or her doctor, and society as a whole, which has a vested interest in ensuring the health and welfare of the citizenry.

While Plaintiffs demand protection of their religious convictions, they do not acknowledge the many faiths, cultures, and personal ideologies that believe in personal autonomy in health care decisions or that, as individuals or as a denomination, support access to and use of emergency contraception. Thus, the wide diversity of beliefs regarding access to health care, including emergency contraception, supports government regulation that accommodates all of these beliefs to the greatest extent possible while preventing persons who subscribe to one viewpoint from imposing those beliefs on others.

**B. Belief in an Individual's Right to Make Health Care Decisions Is a Core Tenet of Many Faiths.**

Many religions believe it to be a moral imperative and sacred task to protect the health of communities, including, in part, by ensuring timely and dignified access to care, treatment, and medication.<sup>2</sup> Despite their diversity of opinions on

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<sup>2</sup> For example, the Union for Reform Judaism, in its *Statement of Jewish Values and Health Care*, notes that Jewish thought and tradition includes the belief in ensuring access to health care for all citizens. Union for Reform Judaism,

particular issues, faith communities from a broad range of religious traditions historically have coalesced around efforts to improve access to health care. For example, in 2007, hundreds of religious organizations and people of faith committed to improving health care for all children supported bipartisan legislation to reauthorize the State Children’s Health Insurance Program (SCHIP), a program for low-income children in working families whose parents earn too much to qualify for Medicaid but too little to purchase private health insurance.<sup>3</sup> Faith communities also have been a supportive voice in the call for universal health care coverage.<sup>4</sup>

Although the belief in access to health care is central to many faiths, specific beliefs regarding the provision of health care are widely diverse. For example, views on circumcision, immunizations, blood transfusions, organ donations,

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*Statement on Jewish Values and Health Care*, available at [http://urj.org//socialaction/issues/healthcare//?syspage=article&item\\_id=1838](http://urj.org//socialaction/issues/healthcare//?syspage=article&item_id=1838) (“Almost all self-governing Jewish communities throughout history set up systems to ensure that all their citizens had access to health care.”) (citing Shulchan Aruch, Yoreh Deah 249:16; Responsa Ramat Rahel of Rabbi Eliezer Waldernberg, sections 24-25).

<sup>3</sup> See, e.g., Faith Leaders Join PICO in Call for Child Health Plan (June 12, 2007), PICO National available at <http://www.piconetwork.org/news-media/news/2007/a-0281> (discussing letter on behalf of more than 20 faith groups, representing more than 50 million Americans, to Senators Baucus and Reid, *et al.*, seeking to ensure funding to cover more than six million uninsured children in the United States).

<sup>4</sup> See, e.g., June 30, 2009, letter to Majority Leader Reid, *et al.*, PICO National Network, available at <http://www.piconetwork.org/news-media/news/2009/0051> (“As faith leaders we believe that fixing the health care system is not only essential to stabilizing families and communities, but also a moral imperative.”).

sexuality, reproduction, end-of-life care, HIV treatment, mental health medications, pain medications, and issues differ widely based on based on personal, cultural, ethnic, moral, ethical, spiritual and other religious and nonreligious beliefs. Clash between religious views on healthcare issues is not merely possible, it is inevitable and ever present.

While Plaintiffs adhere to the view that health care providers should refuse to provide medical care and treatment to patients inconsistent with the provider's religious convictions, that is not the view of all people of faith. Rather, other religious organizations explicitly lament the "increasing trend among health care institutions and individual health care providers not merely to arrive at their own particular decisions and set of values, but further to act in ways which impose these decisions and values upon others."<sup>5</sup> These religious organizations criticize health care providers' imposition of their own views on patients as "a lack of respect for the free exercise of conscience by patients and constricting the health services made available to the general public."<sup>6</sup>

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<sup>5</sup> Gen. Assembly, Christian Church (Disciples of Christ), *Concerning the Ethical Provision of Health Care in a Religiously Pluralistic Society* 1, Resolution No. 0730 (2007) (recommending RCRC's *In Good Conscience: Guidelines for the Ethical Provision of Health Care in a Pluralistic Society* for reflection and research), available at <http://www.disciples.org/Portals/0/PDF/ga/pastassemblies/2007/resolutions/0730.pdf>.

<sup>6</sup> *Id.* Responding to concern for women denied legally requested contraception, the Disciples of Christ specifically support "the principle that religious dictates should

Contrary to Plaintiffs' beliefs, a fundamental tenet of many faiths (Christian and otherwise) is respect for the individual as a moral agent. Specifically, many religious individuals and organizations believe in the autonomy of the individual to exercise his or her moral agency and religious freedom with regard to personal health care decisions. Pursuant to these views, it is the right and duty of the individual's religious, familial, and health care communities to support and contribute to decisions through counsel, prayer, and discussion, not through forceful mandate or prohibition.

For example, the Religious Coalition for Reproductive Choice ("RCRC"), which includes The Episcopal Church, Women's Ministries of the Presbyterian Church (USA), Union for Reform Judaism, General Board of Church and Society of the United Methodist Church, Catholics for Choice and the Unitarian Universalist Association, among others, believes and advocates that "[p]eople should be free to exercise their moral agency and religious freedom when receiving health care."<sup>7</sup> To this end, the RCRC published guidelines for the "ethical" provision of health care in our pluralistic society.<sup>8</sup> In these guidelines, the RCRC

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not be used to limit women's access to a full range of reproductive health services." *Id.*

<sup>7</sup> Religious Coalition for Reproductive Choice, *In Good Conscience: Guidelines for the Ethical Provision of Health Care in a Pluralistic Society* 6 (2007), available at <http://rcrc.org/pdf/InGoodConscience.pdf>.

<sup>8</sup> *Id.*

recognizes that “the quality and availability of health care services for women affect the health and well-being of their children and families,” and has therefore specifically committed to protect a woman’s autonomy in health care decisions.<sup>9</sup> On this premise, the RCRC guidelines recommend the nearly identical accommodations as the Washington regulations for patients and pharmacists in the dispensation of legally requested contraception.<sup>10</sup>

Likewise, the Religious Institute on Sexual Morality, Justice, and Healing (“Religious Institute”) has issued a declaration, endorsed by more than 2,600 religious leaders from more than 40 different religious traditions, that calls for a “faith-based commitment” to critical health care rights, including access to particular health care and treatment.<sup>11</sup> The Religious Institute recognizes “women [as] moral agents who have the capacity, right and responsibility” to make health care choices for themselves informed by “insights from [their] faith and values” and through “consultation with a caring partner, family members, and spiritual

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<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> Religious Institute on Sexual Morality, Justice, and Healing, *Religious Declaration on Sexual Morality, Justice, and Healing* 1 (2007), available at <http://www.religiousinstitute.org/religious-declaration-on-sexual-morality-justice-and-healing> (“More than 3,500 religious leaders from more than 50 religious traditions have endorsed the Religious Declaration, including clergy; professional religious educators and counselors; denominational and interfaith leaders; and seminary presidents, deans and faculty members.”)

counselor.”<sup>12</sup> The Religious Institute does not advocate that religious or spiritual leaders or followers serve as gatekeepers to women’s reproductive health.<sup>13</sup>

The Episcopal Church also has independently recognized a religious mandate to support individuals’ access to health care.<sup>14</sup> On this ground, the Episcopal Church has opposed laws that abridge “the right of a woman to reach an informed decision” or abridge access to health care consistent with her decisions.<sup>15</sup>

The views of the Presbyterian Church are similar, and acknowledge the diversity of opinions held by Presbyterians regarding health care issues.<sup>16</sup> The predominant belief of the Presbyterian Church is that a patient, a woman in particular, is entitled to autonomy in health care decisions, and the Church supports “full and equal access” to health care consistent with a woman’s decisions.<sup>17</sup> The Evangelical Lutheran Church in America similarly opposes laws that prevent

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<sup>12</sup> Religious Institute on Sexual Morality, Justice, and Healing, *An Open Letter to Religious Leaders on Abortion as a Moral Decision* 1 (2005), available at [http://religiousinstitute.org/sites/default/files/open\\_letters/abortionopenletter.pdf](http://religiousinstitute.org/sites/default/files/open_letters/abortionopenletter.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> Gen. Convention, *Reaffirm Family Planning and Control of Global Population Growth*, J. of the Gen. Convention of[...] The Episcopal Church, Indianapolis, 1994, at 281-82, Resolution No. 1994-D009 (New York: General Convention 1995), available at [http://www.episcopalarchives.org/cgi-bin/acts/acts\\_resolution.pl?resolution=1994-D009](http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1994-D009).

<sup>15</sup> *Id.* at 323-25.

<sup>16</sup> *See* Gen. Assembly, Presbyterian Church (U.S.A.), Special Comm. on Problem Pregnancies and Abortion, *Report of the Special Committee on Problem Pregnancies and Abortion* 1 (1992), available at <http://www.pcusa.org/resource/report-special-committee-problem-pregnancies-and-a/>.

<sup>17</sup> *Id.* at 13.

couples from making and exercising their own decisions on issues such as contraception.<sup>18</sup>

Many Jewish groups also support autonomy in health care decisions, and specifically resist community interference in women's reproductive health care decisions.<sup>19</sup> The United Synagogue of Conservative Judaism, for example, believes that reproductive choices should be determined by the woman's religious beliefs alone and opposes any law that negates a woman's access to health care consistent with her beliefs.<sup>20</sup>

The Unitarian Universalist Association's General Assembly and Board of Trustees also has a long history of support for autonomy in health care, particularly regarding reproductive rights.<sup>21</sup> Indeed, in the Unitarian and various other faiths,

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<sup>18</sup> Churchwide Assembly, Evangelical Lutheran Church in Am., *Social Teaching Statement on Abortion* at 6, 7 (1991), available at <http://www.elca.org/socialstatements/abortion/>.

<sup>19</sup> See *Resolution on Women's Health Care Issues* (103rd Annual Convention of the Central Conference of Am. Rabbis 1992), available at <http://ccarnet.org/rabbis-speak/resolutions/all/women-s-health-care-issues-1992/>; *Resolution on Reproductive Choice*, United Synagogue of Conservative Judaism (2005), available at [http://www.uscj.org/Aboutus/Resolutions/ResolutionsbyYear/\\_2005/ReproductiveChoice.aspx](http://www.uscj.org/Aboutus/Resolutions/ResolutionsbyYear/_2005/ReproductiveChoice.aspx).

<sup>20</sup> See United Synagogue of Conservative Judaism 2005, *supra*.

<sup>21</sup> See Unitarian Universalist Association of Congregations, *Social Justice Statements Book*, Reproductive Health and Population at 2, available at <http://www.uua.org/documents/uua/socialjusticestatements.pdf>. The Unitarian Universalist Association encourages "the use of contraception to prevent unwanted pregnancies," and calls for the promotion of "medical research ... and the

contraception is religiously sanctioned as the moral choice, as it enables couples to make responsible choices about pregnancy, its timing, and parenting.<sup>22</sup>

In the Roman Catholic tradition, there is a diversity of opinions on reproductive healthcare decision-making. For example, the hierarchy of the Roman Catholic church teaches that the use of contraception is prohibited.<sup>23</sup> Among individual members of the Roman Catholic Church, however, there are diverse opinions on the morality of contraception and diverse practices regarding contraception. Surveys show that the vast majority of Catholics use contraception themselves and believe that doing so is a moral choice. Indeed, ninety-eight percent of sexually experienced Catholic women have used a form of contraception of which the hierarchy does not approve.<sup>24</sup> Catholic clergy have also “not insist[ed] on acceptance of the official birth-control teaching.”<sup>25</sup> Many theologians and Catholic clergy question the need to follow the ban on contraception based on

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commercial development of safe and more effective means of birth control.”

*Id.* at 5.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> Encyclical of Pope Paul VI, *Humanae Vitae, On the Regulation of Birth* (July 25, 1968).

<sup>24</sup> Centers for Disease Control, National Survey of Family Growth 2008, [www.cdc.gov/nchs/nsfg.htm](http://www.cdc.gov/nchs/nsfg.htm).

<sup>25</sup> Andrew M. Greeley, *The Catholic Myth: The Behavior and Beliefs of American Catholics* 216-17 (Charles Scribner’s Sons 1990) (referring to a 1970 survey finding that more than 80% of Catholic clergy did not insist on acceptance of the official birth-control teaching).

the Catholic doctrine of individual conscience, which teaches that members must follow their individual consciences above all else..<sup>26</sup>

Washington residents, patients and pharmacists alike, may adhere to any of these, or innumerable other, religious opinions regarding access to health care, and specifically to emergency contraception. To comport with the First Amendment, Government regulation must accommodate all of these views, not just Plaintiffs' convictions, to the greatest extent possible.

**C. The Washington Regulations Should Be Upheld Because They Appropriately Accommodate Religious Freedom.**

In the context of this vast diversity of religious beliefs regarding access to health care generally, and access to emergency contraception specifically, WAC 246-863-095 and WAC 246-869- 010 appropriately accommodate religious freedom and are constitutional regulations. Plaintiffs and the district court mistakenly posited the issue in this case as whether Plaintiffs' rights to free exercise of their religious beliefs were unduly burdened. But, as explained above, the rights implicated in this case are far broader than just Plaintiffs' rights. The

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<sup>26</sup> For example, Pope John Paul II stated that “the authority of the Church, when she pronounces on moral questions, in no way undermines the freedom of conscience of Christians.” McBrien, *supra*, at 974-75. The existence of the “Catholics for Choice” organization evidences the breadth of Catholic opinion regarding contraceptive health care issues. *See Catholics for Choice, Contraception in Catholic Doctrine: The Evolution of an Earthly Code* 18 (1994).

rights of patients seeking timely, dignified access to health care and medical treatment in accordance with their own beliefs also are directly impacted.

Patients seeking access to health care under Washington's regulations come from widely diverse backgrounds and hold many diverse religious and spiritual beliefs regarding a multitude of health care issues. Patients' beliefs regarding health care and treatment will sometimes conflict with pharmacy employees' beliefs (whether those beliefs are religious, moral, spiritual, secular, personal, or other), and there have been, and will continue to be, clashes over health care and treatment choices. In the presence of such differences and in the absence of regulation, some health care providers have sought to impose their personal, and sometimes faith-based, health care views on patients seeking their care. Some health care providers also have sought to influence or even force patients to make health care decisions pursuant to the health care providers' personal beliefs in opposition to the personal, religious, moral, or ethical beliefs of the patient.

The First Amendment's promise of freedom of religion mandates protection of all religious beliefs, including both pharmacists' beliefs and patients' beliefs. Thus, the Washington regulations, WAC 246-863-095 and WAC 246-869-010, are appropriate regulation because they strike a balance between accommodating pharmacists' beliefs and ensuring patients can obtain lawfully prescribed or

approved medications according to their own beliefs. Specifically, WAC 246-863-095 provides that it is unprofessional conduct for a pharmacist to:

- (a) Destroy unfilled lawful prescription;
- (b) Refuse to return unfilled lawful prescriptions;
- (c) Violate a patient's privacy;
- (d) Discriminate against patients or their agent in a manner prohibited by state or federal laws; and
- (e) Intimidate or harass a patient.

WAC 246-869-010 provides that it is the responsibility of a pharmacy (*not* a pharmacist) to “deliver lawfully prescribed drugs or devices to patients,” except under certain limited circumstances.

Under these regulations, no individual is compelled to believe in a manner inconsistent with his or her religious or personal convictions. No pharmacist is compelled to fill a prescription<sup>27</sup> and no patient will be turned away from or harassed while filling a valid prescription because someone else is imposing his or her beliefs or prejudices on that patient. As such, the regulations protect the various beliefs held by everyone engaging in the health care system by setting forth neutral and generally applicable limitations on conduct that prevent individual pharmacy employees from imposing their beliefs on patients in need of lawfully prescribed or approved medications. Such regulations are necessary to uphold the First Amendment's guarantee of freedom of belief for all people.

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<sup>27</sup> Even the district court acknowledged that the regulations allow a pharmacist to decline to fill a prescription for religious reasons. *See* ER 14.

Such regulation also is not extraordinary. The government is free to regulate public policy matters, such as access to health care, and does so regularly.

*Medtronic, Inc. v. Lohr*, 518 U.S. 470,475 (1996) (“[t]hroughout our history the several States have exercised their police powers to protect the health and safety of their citizens”). Indeed, in our complex and diverse society, government standards and regulation are necessary to protect against constant conflict and harm to those with opposing beliefs. “Laws ... are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.” *Smith*, 494 U.S. at 879 (quoting *Reynolds*, 98 U.S. at 166-67). The Supreme Court has recognized the constitutionality of these basic principles of democratic governance for more than a century. *See Reynolds*, 98 U.S. at 167-68 (rejecting a claim, in 1878, that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice).

To guarantee the free exercise of religion and protect the full range of diverse beliefs in our society, the law cannot exempt from its mandate every individual whose religious faith opposes a particular law. The Washington regulations appropriately balance protection of pharmacists’ beliefs with protection of plaintiffs’ beliefs. For that reason, they are constitutional and should be upheld.

#### IV. CONCLUSION

The Washington regulations apply equally to pharmacists of all religions, backgrounds, persuasions, and beliefs, and ensure that every patient is treated equally and is able to receive prompt health care in accordance with the patient's beliefs. Measured under any constitutional standard, WAC 246-863-095 and WAC 246-869-010 are necessary and appropriate government regulations. The First Amendment dictates that WAC 246-863-095 and WAC 246-869-010 should be upheld and enforced, not enjoined. *Amici* therefore join in respectfully requesting that this Court reverse the district court's order.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of September, 2012

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WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS,  
AND TYPE STYLE REQUIREMENTS**

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

this brief contains [number] words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using Times New Roman, 14 point, serif font, in Microsoft Word 2010.

DATED September 4, 2012.

By: s/Jessica A. Skelton  
Jessica A. Skelton, WSBA No. 36748

*Attorney for Amici Curiae*

# ADDENDA

## **ADDENDUM A**

### **STATEMENTS OF INTEREST OF THE AMICI CURIAE**

#### **AMERICANS FOR RELIGIOUS LIBERTY**

Founded in 1982, Americans for Religious Liberty (ARL), a nonprofit nongovernmental interfaith organization, was founded as and has continued to be a steadfast supporter of the constitutional principle of separation of church and state that is the indispensable guarantor of religious and intellectual freedom, religiously neutral democratic public education, and individual freedom of conscience. ARL is dedicated to the principle of religious liberty for all people and to quality health care for people of all faiths. ARL participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values. ARL has been an *amicus curiae* in numerous religious liberty cases before the U.S. Supreme Court and U.S. Courts of Appeal.

#### **CATHOLICS FOR CHOICE**

Catholics for Choice was founded in 1973 to serve as a voice for Catholics who believe that the Catholic tradition supports a woman's moral and legal right to follow her conscience in matters of sexuality and reproductive health. It is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. Catholics for Choice participates in this *amicus curiae*

brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and furthers these values.

### **DISCIPLES JUSTICE ACTION NETWORK**

Disciples Justice Action Network (DJAN) is a multi-racial, multi-ethnic grassroots network of individuals, congregations, and organizations within the Christian Church (Disciples of Christ), all working together for greater justice, peace and diversity in our churches, our communities, our nations (Canada and the United States) and the world. It is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. DJAN participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **EPISCOPAL WOMEN'S CAUCUS**

The Episcopal Women's Caucus is a volunteer organization of women and men, clergy and lay, which defines itself as follows: "The Episcopal Women's Caucus is a justice organization dedicated to Gospel values of equality and liberation and committed to incarnation of God's unconditional love." It has on numerous occasions expressed its support for legislative and regulatory measures that promote and protect reproductive health and choice and has opposed legislative and regulatory measures that abridge or undermine such rights.

## **HADASSAH, THE WOMEN'S ZIONIST ORGANIZATION OF AMERICA**

Hadassah, the Women's Zionist Organization of America, was founded in 1912 by Henrietta Szold. Since its inception, Hadassah has remained unwavering in its devotion to Judaism, Zionism, and American ideals. It is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. Hadassah participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 appropriately and constitutionally balance the right to freedom of religion with the right to access to health care.

## **JUSTICE AND WITNESS MINISTRIES, UNITED CHURCH OF CHRIST**

Justice and Witness Ministries, one of the four Covenanted Ministries of the national setting of the United Church of Christ, is guided by the vision of a more just, peaceful, compassionate and sustainable world as envisioned in scriptures as what God desires for humanity. It addresses public policy matters that are supported by the General Synod of the United Church of Christ. It is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. Justice and Witness Ministries participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

## **NATIONAL COUNCIL OF JEWISH WOMEN**

The National Council of Jewish Women (NCJW), Inc., is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy, and community service to improve the quality of life for women, children, and families and strives to ensure individual rights and freedoms for all. NCJW supports the principle of freedom of religion for all people and quality health care for people of all faiths. NCJW participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

## **NATIONAL COUNCIL OF JEWISH WOMEN- SEATTLE SECTION**

The National Council of Jewish Women-Seattle Section (NCJW-SS) is a volunteer organization that has been at the forefront of social change for over a century. Inspired by Jewish values, the women of NCJW-SS have taken progressive stances on issues such as child welfare, women's rights, and reproductive freedom. NCJW-SS is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. The NCJW-SS participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

## **PACIFIC NORTHWEST CONFERENCE OF THE UNITED CHURCH OF CHRIST**

The Pacific Northwest Conference of the United Church of Christ (Conference) is a covenant community of 82 churches in Washington, Northern Idaho, and Alaska. The members of the Conference work together, recognizing that no one in the Conference is either superior or inferior to anyone else. The Conference covenants to maintain the highest standards of ethical conduct among its self, its members, and in all its dealing. To that end, the Conference is dedicated to the balancing of religious beliefs and access to quality health care by people of all faiths. The Conference participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

## **PLANNED PARENTHOOD FEDERATION OF AMERICA CLERGY ADVISORY BOARD**

The Planned Parenthood Federation of America Clergy Advisory Board (CAB) are dedicated pro-choice clergy from different denominations and communities throughout the U.S. who strongly support increasing the availability of affordable birth control and funding for family planning programs. CAB believes that as human beings, created in God's image, women and men are entitled to nothing less than full reproductive justice. The CAB understands that in a democratic pluralistic society, no law should codify the views and teachings of

any one religion. The CAB participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **PRESBYTERIANS AFFIRMING REPRODUCTIVE OPTIONS**

[Insert statement of interest if PARO agrees to join brief.]

### **RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE**

Founded in 1973, the Religious Coalition for Reproductive Choice (Coalition) brings the moral power of religious communities to ensure reproductive choice through education and advocacy. The Coalition seeks to give a clear voice to the reproductive issues of people of color, those living in poverty, and other underserved populations. It is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. The Coalition participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **RELIGIOUS INSTITUTE ON SEXUAL MORALITY, JUSTICE, AND HEALING**

Founded in 2001, the Religious Institute on Sexual Morality, Justice, and Healing is a multi-faith organization dedicated to advocating for sexual health, education, and justice in faith communities and society. It is committed to the principle of freedom of religion for all people and to quality health care for people of all faiths. The Religious Institute on Sexual Morality, Justice, and Healing

participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **ROSEHEDGE/MULTIFAITH WORKS**

Rosehedge/Multifaith Works believes that people who cherish an inclusive community must continually counteract the divisive influences in our society, as well as the natural inclination of people to remain within their own group.

Rosehedge/Multifaith Works is grounded in the continued existence of strong faith and cultural communities and is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths.

Rosehedge/Multifaith Works participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **UNITARIAN UNIVERSALIST WOMEN'S FEDERATION**

Formed in 1963, the Unitarian Universalist Women's Federation (UUWF) is a continental membership organization that advances equity and justice for women through education and advocacy. It is dedicated to the principle of freedom of religion for all people and to quality health care for people of all faiths. The UUWF participates in this *amicus curiae* brief because it believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **REVEREND CLARE AUSTEN**

Reverend Clare Austen is the Senior Minister of the Unity Church in Spokane WA. She supports both the fundamental principles of freedom of religion and quality health care for people of all faiths. Reverend Austen participates in this *amicus curiae* brief because she believes that both WAC 246-863-095 and WAC 246-869-010 are constitutional and further her stated values.

### **REVEREND TOR KRISTIAN BERG**

Reverend Tor Kristian Berg is a pastor of the Evangelical Lutheran Church in America. He believes in the principle of freedom of religion for all people and in providing quality health care for people of all faiths. Reverend Berg participates in this *amicus curiae* brief because he believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **REVEREND CATHERINE FRANSSON**

The Reverend Catherine Fransson is an ordained pastor of the American Baptist Churches USA. She believes in the principle of freedom of religion for all people and in providing quality health care for people of all faiths. Reverend Fransson participates in this *amicus curiae* brief because she believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

### **REVEREND TERRY B. HALL**

Terry B. Hall is an Ordained Elder and congregational pastor of the United Methodist faith. He believes in the principle of freedom of religion for all people

and in providing quality health care for people of all faiths. Reverend Hall participates in this *amicus curiae* brief because he believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

**RABBI JAMES MIREL**

Rabbi James Mirel is a Senior Rabbi of Temple B’Nail Torah and a leader in the Washington State Jewish Community endorses and fully supports WAC 246-863-095 and WAC 246-869-010. Rabbi Mirel joins in this *amicus curiae* brief because, in his view, it is imperative that quality health care be extended to all and that freedom of religious conviction not be abridged.

**REVEREND HOMER TODD**

Reverend Homer Todd is a retired minister of the United Methodist Church. He believes in the principle of freedom of religion for all people and in providing quality health care for people of all faiths. Reverend Homer Todd participates in this *amicus curiae* brief because he believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values.

**REVEREND PHYLLIS TODD**

Reverend Phyllis Todd is a retired minister of the United Methodist Church. She believes in the principle of freedom of religion for all people and in providing quality health care for people of all faiths. Reverend Todd participates in this *amicus curiae* brief because she believes that WAC 246-863-095 and WAC 246-869-010 are constitutional and further these values. Additional individual *amici*

*curiae* participating in this brief are people of faith and leaders in their faith communities. Their interest in this appeal arises from their dedication to freedom of religion for all people in our society and to the health and well-being of all members of our population. These *amici curiae* include:

**REVEREND MIKE DENTON**

**REVEREND DAVID HELSETH**

**RABBI BRUCE KADDEN**

**REVEREND ERIC KAMINETZKY**

**REVEREND VINCENT LACHINA**

**MINISTER JAMAL RAHMAN**

**REVEREND GARY SHOEMAKER**

## **ADDENDUM B: LIST OF AMICI CURIAE**

### **RELIGIOUS AND RELIGIOUSLY-AFFILIATED ORGANIZATIONS:**

Americans for Religious Liberty

Catholics for Choice

Disciples Justice Action Network

Episcopal Women's Caucus

Hadassah, the Women's Zionist Organization of America

Justice and Witness Ministries, United Church of Christ

National Council of Jewish Women

National Council of Jewish Women-Seattle Section

Pacific Northwest Conference of the United Church of Christ

Planned Parenthood Federation of America Clergy Advisory Board

Presbyterians Affirming Reproductive Options

Religious Coalition for Reproductive Choice

Religious Institute on Sexual Morality, Justice, and Healing

Rosehedge/Multifaith Works

Unitarian Universalist Women's Federation

## INDIVIDUAL RELIGIOUS LEADERS:

### **Reverend Clare Austen**

Senior Minister, Unity Church of Truth, Unity Church\*  
Spokane, WA

### **Reverend Tor Kristian Berg**

Pastor, Trinity Lutheran Church, Evangelical Lutheran Church in America\*  
Pullman, WA

### **Reverend Mike Denton**

Minister, Pacific Northwest Conference, United Church of Christ\*  
Seattle, WA

### **Reverend Catherine Fransson**

Pastor, Seattle First Baptist Church, American Baptist Churches USA\*  
Seattle, WA

### **Reverend Terry B. Hall**

Ordained Elder and Congregational Pastor, Wesley United Methodist Church,  
United Methodist Church\*  
Yakima, WA

### **Reverend Dr. David Helseth**

Englewood Christian Church, Disciples of Christ, Christian\*  
Yakima, WA

### **Rabbi Bruce Kadden**

Temple Beth El, Reform Jewish Union\*  
Tacoma, WA

### **Reverend Eric Kaminetzky**

Unitarian Universalist Church\*  
Edmonds, WA

### **Reverend Vincent Lachina**

Chaplain, Planned Parenthood Public Policy Network of Washington, Southern  
Baptist Convention\*  
Seattle, WA

**Rabbi James Mirel**

Senior Rabbi, Temple B'Nail Torah, Reform Jewish Union\*  
Bellevue, WA

**Minister Jamal Rahman**

Muslim Sufi Co-Minister, Interfaith Community Church\*  
Seattle, WA

**Reverend Gary Shoemaker**

First Christian Church, Disciples of Christ, Christian\*  
Bellingham, WA

**Reverend Homer Todd**

Retired Minister, United Methodist Church\*  
Spokane, WA

**Reverend Phyllis Todd**

Retired Minister, United Methodist Church\*  
Spokane, WA

\* Organizational affiliations indicated for identification purposes. These *Amici*  
join the brief in their individual capacity only.

**ADDENDUM C:**

**CORPORATE DISCLOSURE STATEMENTS OF *AMICI CURIAE*  
NONGOVERNMENTAL CORPORATE ENTITIES**

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae* Americans for Religious Liberty makes the following corporate disclosure:

1. Americans for Religious Liberty is a nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. Americans for Religious Liberty understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae*

Catholics for Choice makes the following corporate disclosure:

1. Catholics for Choice is a nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. Catholics for Choice understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae* Disciples Justice Action Network makes the following corporate disclosure:

1. The Disciples Justice Action Network is a nongovernmental corporate party, incorporated in the State of Illinois. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. The Disciples Justice Action Network understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Episcopal Women's Caucus makes the following corporate disclosure:

1. The Episcopal Women's Caucus is a nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. The Episcopal Women's Caucus understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Hadassah, the Women's Zionist Organization of America, makes the following disclosure:

1. Hadassah, the Women's Zionist Organization of America, is a 501(c)(3) nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. Hadassah, the Women's Zionist Organization of America, understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Justice and Witness Ministries, United Church of Christ, makes the following disclosure:

1. The Justice and Witness Ministries, United Church of Christ, is a 501(c)(3) nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. The Justice and Witness Ministries, United Church of Christ, understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae National Council of Jewish Women makes the following corporate disclosure:

1. The National Council of Jewish Women is a nongovernmental 501(c)(3) corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. The National Council of Jewish Women understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae National Council of Jewish Women--Seattle Section makes the following corporate disclosure:

1. The National Council of Jewish Women--Seattle Section is a nongovernmental corporate party and is a local section of the National Council of Jewish Women, Inc., a 501(c)(3) organization. The Seattle Section is registered as an independent charity with Washington State. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. The National Council of Jewish Women--Seattle Section understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Pacific Northwest Conference of the United Church of Christ makes the following corporate disclosure:

1. The Pacific Northwest Conference of the United Church of Christ is a nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. The Pacific Northwest Conference of the United Church of Christ understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Planned Parenthood Federation of America Clergy Advisory Board makes the following corporate disclosure:

1. Planned Parenthood Federation of America Clergy Advisory Board is an advisory board of the Planned Parenthood Federation of America, a nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. Planned Parenthood Federation of America Clergy Advisory Board understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Presbyterians Affirming Reproductive Options makes the following corporate disclosure:

1. Presbyterians Affirming Reproductive Options is a mission network of the Presbyterian Health Education and Welfare Association, a nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. Presbyterians Affirming Reproductive Options understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Religious Coalition for Reproductive Choice makes the following corporate disclosure:

1. The Religious Coalition for Reproductive Choice is a 501(c)(3) and 501(c)(4) nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. The Religious Coalition for Reproductive Choice understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Religious Institute on Sexual Morality, Justice, and Healing makes the following corporate disclosure:

1. The Religious Institute on Sexual Morality, Justice, and Healing is a division of the Christian Community, a 501(c)(3) nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.

2. The Religious Institute on Sexual Morality, Justice, and Healing understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Rosehedge/Multifaith Works makes the following corporate disclosure:

1. Rosehedge/Multifaith Works is a 501(c)(3) nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. Rosehedge/Multifaith Works understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Unitarian Universalist Women's Federation makes the following disclosure:

1. The Unitarian Universalist Women's Federation is a 501(c)(3) nongovernmental corporate party. It has no parent companies. No publicly-held company owns 10 percent or more of its stock.
2. The Universalist Women's Federation understands that it must promptly file a supplemental statement upon any change in the information that this statement requires.

## **CERTIFICATE OF SERVICE**

When All Case Participants Are Registered for the  
Appellate CM/ECF System

U.S. Court of Appeals Docket Number(s): 12-35221 & 12-35223

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 13, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By s/Jessica A. Skelton