Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 591 U.S. ___ (2020)*

JUSTICE THOMAS delivered the opinion of the Court.

In these consolidated cases, we decide whether the Government created lawful exemptions from a regulatory requirement implementing the Patient Protection and Affordable Care Act of 2010 (ACA) [, also known as Obamacare]. The requirement at issue obligates certain employers to provide contraceptive coverage to their employees through their group health plans. Though contraceptive coverage is not required by (or even mentioned in) the ACA provision at issue, the Government mandated such coverage by promulgating interim final rules (IFRs) shortly after the ACA's passage. This requirement is known as the contraceptive mandate.

After six years of protracted litigation, the Departments of Health and Human Services, Labor, and the Treasury (Departments)—which jointly administer the relevant ACA provision—exempted certain employers who have religious and conscientious objections from this agency-created mandate. The Third Circuit concluded that the Departments lacked statutory authority to promulgate these exemptions and affirmed the District Court's nationwide preliminary injunction. This decision was erroneous. We hold that the Departments had the authority to provide exemptions from the regulatory contraceptive requirements for employers with religious and conscientious objections. We accordingly reverse the Third Circuit's judgment and remand with instructions to dissolve the nationwide preliminary injunction.

I

The ACA's contraceptive mandate—a product of agency regulation—has existed for approximately nine years. Litigation surrounding that requirement has lasted nearly as long. In light of this extensive history, we begin by summarizing the relevant background.

A

The ACA requires covered employers to offer "a group health plan or group health insurance coverage" that provides certain "minimum essential coverage." [...] Employers who do not comply face hefty penalties, including potential fines of $100 per day for each affected employee[,] see also *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 696–697 (2014). These cases concern regulations promulgated under a provision of the ACA that requires covered employers to provide women with "preventive care and screenings" without "any cost sharing requirements." [...]

The statute does not define "preventive care and screenings," nor does it include an exhaustive or illustrative list of such services. Thus, the statute itself does not explicitly require coverage for any specific form of "preventive care." *Hobby Lobby*, 573 U. S., at 697. Instead, Congress stated that coverage must include "such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration" (HRSA), an agency of the Department of Health and Human Services (HHS). §300gg–13(a)(4) [, also known as the preventative care and screening requirements]. At the time of the ACA's enactment, these guidelines were not yet written. As a result, no specific forms of preventive care or screenings were (or could be) referred to or incorporated by reference.

*Note: This majority opinion has been edited from the original text by Dr. Travis Braidwood for classroom use. The full case text can be found here: < https://supreme.justia.com/cases/federal/us/591/19-431/ >

Soon after the ACA's passage, the Departments began promulgating rules related to [the preventative care and screening requirements]. But in doing so, the Departments did not proceed through the notice and comment rulemaking process, which the Administrative Procedure Act (APA) often requires before an agency's regulation can "have the force and effect of law." *Perez v. Mortgage Bankers Assn.*, 575 U.S. 92, 96 (2015)[.] Instead, the Departments invoked the APA's good cause exception, which permits an agency to dispense with notice and comment and promulgate an IFR that carries immediate legal force. [...]

The first relevant IFR, promulgated in July 2010, primarily focused on implementing other aspects of [the rule]. The IFR indicated that HRSA planned to develop its Preventive Care Guidelines (Guidelines) by August 2011. *Ibid.* However, it did not mention religious exemptions or accommodations of any kind.

As anticipated, HRSA released its first set of Guidelines in August 2011. [...] The Guidelines included the contraceptive mandate, which required health plans to provide coverage for all contraceptive methods and sterilization procedures approved by the Food and Drug Administration as well as related education and counseling. [...]

As just stated, the Guidelines ultimately did contain contraceptive coverage, thus making the potential impact on religious freedom a reality. In the amended IFR, the Departments determined that "it [was] appropriate that HRSA . . . tak[e] into account the [mandate's] effect on certain religious employers" and concluded that HRSA had the discretion to do so through the creation of an exemption. The Departments then determined that the exemption should cover religious employers, and they set out a four-part test to identify which employers qualified. The last criterion required the entity to be a church, an integrated auxiliary, a convention or association of churches, or "the exclusively religious activities of any religious order." HRSA created an exemption for these employers the same day. [...] Because of the narrow focus on churches, this first exemption is known as the church exemption.

[I]n February 2012, before the Guidelines took effect, the Departments promulgated a final rule that temporarily prevented the Guidelines from applying to certain religious nonprofits. [...] The ["safe harbor"] covered nonprofits "whose plans have consistently not covered all or the same subset of contraceptive services for religious reasons." [...] First, [...] the Departments "simplif[ied]" and "clarif[ied]" the definition of a religious employer. [...] Second[,] the Departments provided the anticipated accommodation for eligible religious organizations, which the regulation defined as organizations that "(1) [o]ppos[e] providing coverage for some or all of the contraceptive services . . . on account of religious objections; (2) [are] organized and operat[e] as . . . nonprofit entit[ies]; (3) hol[d] [themselves] out as . . . religious organization[s]; and (4) self-certif[y] that [they] satisf[y] the first three criteria." [...]The accommodation required an eligible organization to provide a copy of the self-certification form to its health insurance issuer, which in turn would exclude contraceptive coverage from the group health plan and provide payments to beneficiaries for contraceptive services separate from the health plan. [...] The Departments stated that the accommodation aimed to "protec[t]" religious organizations "from having to contract, arrange, pay, or refer for [contraceptive] coverage" in a way that was consistent with and did not violate the Religious Freedom Restoration Act of 1993 (RFRA)[.] This accommodation is referred to as the self-certification accommodation.

B

Shortly after the Departments promulgated the 2013 final rule, two religious nonprofits run by the Little Sisters of the Poor (Little Sisters) challenged the self-certification accommodation. [...]

Consistent with their Catholic faith, the Little Sisters hold the religious conviction "that deliberately avoiding reproduction through medical means is immoral." [...] They challenged the self-certification accommodation, claiming that completing the certification form would force them to violate their religious beliefs by "tak[ing] actions that directly cause others to provide contraception or appear to participate in the Departments' delivery scheme." As a result, they alleged that the self-certification accommodation violated RFRA. Under RFRA, a law that substantially burdens the exercise of religion must serve "a compelling governmental interest" and be "the least restrictive means of furthering that compelling governmental interest." [...] The Court of Appeals disagreed that the self-certification accommodation substantially burdened the Little Sisters' free exercise rights and thus rejected their RFRA claim. *Little Sisters,* 794 F. 3d, at 1160. [...]

We granted certiorari in cases from four Courts of Appeals to decide the RFRA question. *Zubik v. Burwell*, 578 U. S. ___, ___ (2016) (per curiam). Ultimately, however, we opted to remand the cases without deciding that question. In supplemental briefing, the Government had "confirm[ed]" that " 'contraceptive coverage could be provided to petitioners' employees, through petitioners' insurance companies, without any . . . notice from petitioners.' " [...] Petitioners, for their part, had agreed that such an approach would not violate their free exercise rights. *Ibid*. Accordingly, because all parties had accepted that an alternative approach was "feasible," we directed the Government to "accommodat[e] petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans receive full and equal health coverage, including contraceptive coverage[.]"

C

Zubik was not the only relevant ruling from this Court about the contraceptive mandate. [A] host of other entities challenged the contraceptive mandate itself as a violation of RFRA. [...] This Court granted certiorari in two cases involving three closely held corporations to decide whether the mandate violated RFRA. *Hobby Lobby*, 573 U.S. 682.

The individual respondents in *Hobby Lobby* opposed four methods of contraception covered by the mandate. [...] We held that the mandate substantially burdened respondents' free exercise, explaining that "[if] the owners comply with the HHS mandate, they believe they will be facilitating abortions, and if they do not comply, they will pay a very heavy price." Id., at 691. "If these consequences do not amount to a substantial burden," we stated, "it is hard to see what would." *Ibid*. We also held that the mandate did not utilize the least restrictive means, citing the self-certification accommodation as a less burdensome alternative. Id., at 730–731.

Thus, as the Departments began the task of reformulating rules related to the contraceptive mandate, they did so not only under Zubik's direction to accommodate religious exercise, but also against the backdrop of Hobby Lobby's pronouncement that the mandate, standing alone, violated RFRA as applied to religious entities with complicity-based objections.

D

[...] In 2017, the Departments tried yet again to comply with *Zubik*, this time by promulgating the two IFRs that served as the impetus for this litigation. The first IFR significantly broadened the definition of an exempt religious employer to encompass an employer that "objects . . . based on its sincerely held religious beliefs," "to its establishing, maintaining, providing, offering, or arranging [for] coverage or payments for some or all contraceptive services." Among other things, this definition included for-profit and publicly traded entities. Because they were exempt, these

employers did not need to participate in the accommodation process, which nevertheless remained available under the IFR.

[...] Additionally, the Departments announced for the first time that RFRA compelled the creation of, or at least provided the discretion to create, the religious exemption. As the Departments explained: "We know from Hobby Lobby that, in the absence of any accommodation, the contraceptive-coverage requirement imposes a substantial burden on certain objecting employers. We know from other lawsuits and public comments that many religious entities have objections to complying with the [self-certification] accommodation based on their sincerely held religious beliefs." [...] The Departments "believe[d] that the Court's analysis in Hobby Lobby extends, for the purposes of analyzing a substantial burden, to the burdens that an entity faces when it religiously opposes participating in the [self-certification] accommodation process." [...] They thus "conclude[d] that it [was] appropriate to expand the exemption to other . . . organizations with sincerely held religious beliefs opposed to contraceptive coverage." [...]

The second IFR created a similar "moral exemption" for employers—including nonprofits and for-profits with no publicly traded components—with "sincerely held moral" objections to providing some or all forms of contraceptive coverage. [...] Citing congressional enactments, precedents from this Court, agency practice, and state laws that provided for conscience protections[,] the Departments invoked their authority under the ACA to create this exemption[.] The Departments requested post-promulgation comments on both IFRs[.]

E

Within a week of the 2017 IFRs' promulgation, the Commonwealth of Pennsylvania filed an action seeking declaratory and injunctive relief. Among other claims, it alleged that the IFRs were procedurally and substantively invalid under the APA. The District Court held that the Commonwealth was likely to succeed on both claims and granted a preliminary nationwide injunction against the IFRs. The Federal Government appealed.

While that appeal was pending, the Departments issued rules finalizing the 2017 IFRs. [...]

After the final rules were promulgated, the State of New Jersey joined Pennsylvania's suit and, together, they filed an amended complaint. As relevant, the States—respondents here—once again challenged the rules as substantively and procedurally invalid under the APA [Administrative Procedures Act]. They alleged that the rules were substantively unlawful because the Departments lacked statutory authority under either the ACA or RFRA to promulgate the exemptions. Respondents also asserted that the IFRs were not adequately justified by good cause, meaning that the Departments impermissibly used the IFR procedure to bypass the APA's notice and comment procedures. Finally, respondents argued that the purported procedural defects of the IFRs likewise infected the final rules.

The District Court issued a nationwide preliminary injunction against the implementation of the final rules the same day the rules were scheduled to take effect. [...]

The Third Circuit [held] the Departments lacked authority to craft the exemptions under either statute. The Third Circuit read [the preventative care and screening requirements] as empowering HRSA to determine which services should be included as preventive care and screenings, but not to carve out exemptions from those requirements. It also concluded that RFRA did not compel or permit the religious exemption[.] Though it rebuked the Departments for their purported attitudinal deficiencies, the Third Circuit did not identify any specific public comments to which the agency did not appropriately respond. We granted certiorari. 589 U. S. ___ (2020).

II

Respondents contend that the 2018 final rules providing religious and moral exemptions to the contraceptive mandate are both substantively and procedurally invalid. We begin with their substantive argument that the Departments lacked statutory authority to promulgate the rules.

A

The Departments invoke [the ACA]as legal authority for both exemptions. [...] The Departments maintain [...] that the phrase "as provided for" allows HRSA both to identify what preventive care and screenings must be covered and to exempt or accommodate certain employers' religious objections. [...] They also argue that, as with the church exemption, their role as the administering agencies permits them to guide HRSA in its discretion by "defining the scope of permissible exemptions and accommodations for such guidelines." 82 Fed. Reg. 47794. Respondents, on the other hand, contend that [the preventative care and screening requirements] permits HRSA to only list the preventive care and screenings that health plans "shall . . . provide," not to exempt entities from covering those identified services. Because that asserted limitation is found nowhere in the statute, we agree with the Departments.

"Our analysis begins and ends with the text." [...]

On its face, then, the provision grants sweeping authority to HRSA to craft a set of standards defining the preventive care that applicable health plans must cover. But the statute is completely silent as to what those "comprehensive guidelines" must contain, or how HRSA must go about creating them. [...] This means that HRSA has virtually unbridled discretion to decide what counts as preventive care and screenings. But the same capacious grant of authority that empowers HRSA to make these determinations leaves its discretion equally unchecked in other areas, including the ability to identify and create exemptions from its own Guidelines. Congress could have limited HRSA's discretion in any number of ways, but it chose not to do so. [...]

No party has pressed a constitutional challenge to the breadth of the delegation involved here. Cf. *Gundy v. United States*, 588 U. S. ___ (2019). The only question we face today is what the plain language of the statute authorizes. And the plain language of the statute clearly allows the Departments to create the preventive care standards as well as the religious and moral exemptions.

B

[...] As we have explained, RFRA "provide[s] very broad protection for religious liberty." *Hobby Lobby*, 573 U. S., at 693. In RFRA's congressional findings, Congress stated that "governments should not substantially burden religious exercise," a right described by RFRA as "unalienable." 42 U. S. C. §§2000bb(a)(1), (3). To protect this right, Congress provided that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." [...] Placing Congress' intent beyond dispute, RFRA specifies that it "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." RFRA also permits Congress to exclude statutes from RFRA's protections.

It is clear from the face of the statute that the contraceptive mandate is capable of violating RFRA. The ACA does not explicitly exempt RFRA, and the regulations implementing the contraceptive mandate qualify as "Federal law" or "the implementation of [Federal] law." §2000bb–3(a); cf. *Chrysler Corp. v. Brown,* 441 U.S. 281, 297–298 (1979). Additionally, we expressly stated in

Hobby Lobby that the contraceptive mandate violated RFRA as applied to entities with complicity-based objections. 573 U. S., at 736. Thus, the potential for conflict between the contraceptive mandate and RFRA is well settled. Against this backdrop, it is unsurprising that RFRA would feature prominently in the Departments' discussion of exemptions that would not pose similar legal problems.

Moreover, our decisions all but instructed the Departments to consider RFRA going forward. For instance, though we held that the mandate violated RFRA in *Hobby Lobby*, we left it to the Federal Government to develop and implement a solution. At the same time, we made it abundantly clear that, under RFRA, the Departments must accept the sincerely held complicity-based objections of religious entities. That is, they could not "tell the plaintiffs that their beliefs are flawed" because, in the Departments' view, "the connection between what the objecting parties must do . . . and the end that they find to be morally wrong . . . is simply too attenuated." *Hobby Lobby*, 573 U. S., at 723–724. Likewise, though we did not decide whether the self-certification accommodation ran afoul of RFRA in *Zubik*, we directed the parties on remand to "accommodat[e]" the free exercise rights of those with complicity-based objections to the self-certification accommodation. 578 U. S., at ___ (slip op., at 4). It is hard to see how the Departments could promulgate rules consistent with these decisions if they did not overtly consider these entities' rights under RFRA. [...]

III

Because we hold that the Departments had authority to promulgate the exemptions, we must next decide whether the 2018 final rules are procedurally invalid. Respondents present two arguments on this score. Neither is persuasive. [The court then investigate and reject two arguments that the rule changes were no in compliance with the APA (Administrative Procedures Act).]

* * *

[...] We hold today that the Departments had the statutory authority to craft that exemption, as well as the contemporaneously issued moral exemption. We further hold that the rules promulgating these exemptions are free from procedural defects. Therefore, we reverse the judgment of the Court of Appeals and remand the cases for further proceedings consistent with this opinion.

It is so ordered.