

# Baptist brief supports contraceptive mandate accommodation, RFRA

February 29, 2016

WASHINGTON—Far-reaching arguments made by some religious nonprofits against an accommodation procedure can endanger religious liberty, according to a brief filed at the U.S. Supreme Court by the [Baptist Joint Committee for Religious Liberty](#) and law professor Douglas Laycock of the University of Virginia School of Law.

The BJC worked with Laycock, a leading religious liberty scholar and advocate, on a friend-of-the-court brief in the cases consolidated as *Zubik v. Burwell*. The brief supports the government's effort to accommodate religion.

In *Zubik*, religiously affiliated nonprofits challenge the government's accommodation procedure designed to allow them to avoid paying or contracting for contraception. The brief explains how, under the Religious Freedom Restoration Act, the far-reaching claims of the nonprofits can cause harm to religious liberty.

"The government has provided a careful system of exemptions that responds to religious objections about contraception without depriving thousands of employees important health care benefits," said Holly Hollman, general counsel of the Baptist Joint Committee. "This is the win-win solution the Court pointed to in the *Hobby Lobby* case."

The brief argues the procedure—which requires written notification of a religious objection—does not amount to a substantial burden on the exercise of religion. The organizations have been wholly exempted from

providing contraception themselves, and the objection is to the government's efforts to deliver contraception separately through secular insurers, with segregated funds and segregated communications.

The BJC and Laycock have worked for more than 25 years—often together—to enact, implement and defend the 1993 Religious Freedom Restoration Act. RFRA provides legal protection against government actions that substantially burden the exercise of religion.

The BJC chaired the diverse coalition of organizations that pushed for the legislation, providing a high legal standard for all free-exercise claims without regard to any particular religious practice. The statute was intended to restore the “compelling interest” standard, which the Supreme Court used prior to its 1990 decision in *Employment Division v. Smith*. The law creates a unique balancing test between substantial burdens on religion and the compelling interests of the government.

The brief responds to the claim that courts must give absolute deference to the religious objectors. While deference should be given to religious understandings, too much deference produces its own set of problems, the brief asserts.

“Absolute deference to claimants would produce absurd results that would discredit the cause of religious liberty,” the brief says. It notes a standard of absolute deference would go beyond this case and apply to any religious claim.

Additionally, the brief highlights the importance of specific legislative and administrative exemptions for the protection of religious liberty. The government must be able to draw reasonable lines when it creates religious exemptions, which exist in local, state and federal law.

“If legislatures and administrative agencies cannot enact a narrow religious exemption without it being turned into a much broader religious

exemption, many of them will not enact any religious exemptions at all, and many existing religious exemptions will be repealed,” the brief says.

“Legislative and administrative exemptions designed to protect religious liberty without harming other important interests should be encouraged,” Hollman said. “The religious organizations have been relieved of paying or contracting for services. Their RFRA claims, however, cannot extend to the government’s regulation of secular insurers.”

The Supreme Court will hear *Zubik v. Burwell* March 23. The BJC’s brief and additional information—including frequently asked questions and a video—on the case are available by [clicking here](#).

*Cherilyn Crowe is director of communications for the Baptist Joint Committee in Washington.*