



Written by [Warren Mass](#) on April 21, 2016

Poll: Most Americans Side With Little Sisters of the Poor in Supreme Court Case

A new Marist poll conducted on April 8-12 indicated that more than half of those surveyed think that the Obama administration's federal contraception mandate is unfair to the Little Sisters of the Poor and other religious groups defending themselves before the U.S. Supreme Court. Those polled indicated by a 53- to 32-percent margin that the process demanded by the government's "accommodation" is "unfair."



The "mandate" in question is a regulation adopted by the Department of Health and Human Services (HHS) under the Affordable Care Act (ACA) — popularly called ObamaCare — that requires non-church employers to cover certain contraceptives for their female employees. While churches are exempt from the mandate, faith-based organizations such as the Little Sisters of the Poor, a Roman Catholic religious order engaged in caring for impoverished elderly people, did not automatically qualify for such an exemption.

In order to be exempted, the order would have had to file an EBSA Form 700, but the sisters objected to filing the form because they believed that doing so would make the order complicit in providing medical contraception, a practice regarded as sinful by Catholic doctrine.

On December 31, 2013, the day before the filing requirement was to come into effect, Supreme Court Justice Sonya Sotomayor granted them a temporary injunction, allowing them to simply inform the Secretary of Health and Human Services of their objections, pending resolution of the legal case they are party to.

The case currently before the Supreme Court is *Zubik v. Burwell*. (The full name of the case is *David A. Zubik et al. v. Sylvia Burwell, Secretary of Health and Human Services, et al.* Zubik is the bishop of the Catholic Diocese of Pittsburgh.) Last November, the Supreme Court decided it would review the case combined with six other similar challenges to the contraceptive mandate. Along with *Zubik v. Burwell*, the six other cases include *Priests for Life v. Burwell*, *Southern Nazarene University v. Burwell*, *Geneva College v. Burwell*, *Roman Catholic Archbishop of Washington v. Burwell*, *East Texas Baptist University v. Burwell*, and *Little Sisters of the Poor Home for the Aged v. Burwell*.

On March 29, the Supreme Court directed the parties to the case "to file supplemental briefs that address whether and how contraceptive coverage may be obtained by petitioners' employees through petitioners' insurance companies, but in a way that does not require any involvement of petitioners beyond their own decision to provide health insurance without contraceptive coverage to their employees."

The Court suggested a possible scheme where petitioners would obtain insurance without contraceptive coverage and "petitioners' insurance company, aware that petitioners are not providing certain contraceptive coverage on religious grounds, would separately notify petitioners' employees that the



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insurance company will provide cost-free contraceptive coverage, and that such coverage is not paid for by petitioners and is not provided through petitioners' health plan."

Carl Anderson, Supreme Knight of the Knights of Columbus, which sponsored the Marist poll, made the following statement about the case on April 18:

It is not reasonable for the government to demand that some — and only some — religious employers engage in activity that is totally unnecessary to the government's stated purpose of providing elective and morally problematic drugs to employees.

Such action doesn't just violate the rights of employers like the Little Sisters, it is also at odds with the American people's understanding of basic fairness, and our long-standing commitment to protecting the deeply-held beliefs of every American — especially when those beliefs are the minority view.

Back in 2014, in a 5-4 decision the Court ruled in *Burwell v. Hobby Lobby* that some for-profit companies are exempt from the contraceptive mandate, if they object on religious grounds, because the accommodation offered to objecting non-profits would be a less restrictive way to achieve the ACA's interest.

As was noted in an [article posted here in March](#), however:

Though the Hobby Lobby ruling last year determined that family-owned businesses run on religious principles should be permitted to opt out of the contraceptive mandate for religious reasons, the case currently before the court [*Zubik v. Burwell*] concerns whether religious nonprofits should be granted exemptions from the controversial mandate.

That article continued:

The court ruled 5-4 in favor of the religious companies in the Hobby Lobby ruling. But without Justice Scalia, the count in this case is very likely to be 4-4. A split decision on the court would allow the lower court rulings to stand.

Eight appeals courts have upheld the ACA mandate for non-church religious institutions, but the U.S. Court of Appeals for the Eighth Circuit ruled the other way, supporting the challenge by religious non-profit institutions.

It is very likely, therefore, that this matter will not be settled until a ninth justice is added to the Supreme Court and the new court decides a follow-up case by a majority vote.

Photo of Little Sisters of the Poor protesting the HHS mandate outside the U.S. Supreme Court: AP Images

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