

No. 07-36039, 07-36040

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STORMANS, INCORPORATED doing business as RALPH'S
THRIFTWAY, RHONDA MESLER, MARGOT THELEN

Plaintiffs-Appellees

v.

MARY SELECKY, Acting Secretary of the Washington State
Department of Health, LAURIE JINKINS, Assistant Secretary of
Washington Health Systems Quality Assurance, et al.

Defendants-Appellants

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NO. CV-07-5374- RBL
HONORABLE RONALD B. LEIGHTON**

***AMICUS CURIAE* BRIEF OF RELIGIOUS COALITION FOR
EQUALITY; RELIGIOUS COALITION FOR
REPRODUCTIVE CHOICE; AND OTHER 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*

We, the *Amici Curiae* on this brief, are a coalition of religious and religiously-affiliated organizations and religious leaders. As people and entities of faith, we rely on the right to religious freedom protected by the First Amendment of the United States Constitution for our existence and for our ability to express our particular religious beliefs. We hail from many diverse backgrounds, including Baptist, Methodist, Lutheran, Episcopal, Presbyterian, Unitarian Universalist, Catholic, Jewish, and Islamic traditions.¹ Despite the differences in our faiths, we share a common and powerful devotion to freedom of religion—the freedom of people of *all* faiths and religions to choose their beliefs and to exercise those beliefs. From this common ground, we have a strong interest in the case before the Court because the free exercise of religion is nowhere more important than in personal health care, an area that requires people to confront intensely personal beliefs and decisions.

In matters of faith, one person's conscience ends where another's begins. We believe strongly in individual religious liberty; at the same time, we believe

¹ Detailed *Amici* statements of interest are provided in Addendum A; a list identifying all *Amici* to this brief is provided in Addendum B; and corporate disclosure statements for all *Amici* that are nongovernmental corporate organizations are included in Addendum C.

strongly that society has a responsibility to ensure that exercise of this liberty does not harm others. This is a key purpose of government regulation and professional standards in a complex, pluralistic society. The Washington regulations, WAC 246-863-095 and WAC 246-869-010, establish appropriate accommodation of religious and other ideological freedom—protecting such freedom to the greatest extent possible for all people, including patients—while protecting public health and all persons' access to timely, nondiscriminatory health care. We, as diverse religious leaders and groups, therefore urge the Court to reverse the District Court's order and uphold these standards.

We file this brief to provide a faith-based overview that will inform the arguments presented by the parties. Specifically, we file this brief to correct Plaintiffs' implication that only one religious view is at stake in the regulation of health care and the dispensation of medical treatment, and to correct the implication that religion and religious organizations broadly oppose any and all regulations or standards that touch the exercise of religious beliefs. Religious liberty and government regulation cannot always be mutually exclusive in a pluralistic society. Where religious freedom is accommodated to the greatest extent possible while preventing harm to others—which is the case with WAC

246-863-095 and WAC 246-869-010—government regulation and professional standards are appropriate and comply with the First Amendment.

In accordance with Federal Rule of Appellate Procedure 29(a), all parties have consented to the filing of this brief, and we request that the Court receive and consider the brief in its deliberations and decision of this important matter.

II. SUMMARY OF *AMICI* ARGUMENTS

There is no single "religious" view on health-care issues. Between and within the many faiths and people of our nation, there are widely diverse views on questions of birth, death, life, sexuality, reproduction, and many other health-related matters. Emergency contraception (Plan B) is one of the health-care issues on which people's divergent views have led to public controversy.

Plaintiffs aver a Christian objection to emergency contraception, and contest WAC 246-863-095 and WAC 246-869-010 on the allegation that these standards regulate this belief. 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. But this perspective is too narrow.

Plaintiffs' position does not reflect the true scope of religious and personal interests at issue here or the Washington regulations' accommodation of these

diverse interests. Though we respect Plaintiffs' religious convictions – to which they are entitled – Plaintiffs' rights and religious freedoms are not the only rights and freedoms at issue in this case. Patients have rights and are entitled to protection of their religious and ideological freedom too. And, inevitably, some patients will subscribe to beliefs regarding health care and treatment options that are different from Plaintiffs' beliefs.

Indeed, many religions and people of faith (and nonreligious people) 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 this belief, like all patients, have the right and freedom to receive legally prescribed or approved health care consistent with their own beliefs, not as dictated by a health care provider's individual conviction.

Consistent with the First Amendment, WAC 246-863-095 and WAC 246-869-010 reach an appropriate accommodation of our society's diverse religious and personal beliefs and ensure no one's timely access to health care is impaired or impeded by conflicting views. The Washington regulations do not police or proscribe religious beliefs; rather, WAC 246-863-095 and WAC 246-869-010 protect broad religious and ideological freedom. That is, the Washington regulations accommodate pharmacists' personal religious beliefs to the greatest

extent possible while still protecting patients' individual beliefs and protecting the population's timely, equal access to health care. They do this simply by requiring 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, and they ensure prompt and equal access to health care by the people of all religious, moral, spiritual, and secular faiths, inclinations, and beliefs in Washington. *Amici* therefore support these Washington regulations.

III. ARGUMENT

A. **AMICI URGE THE COURT TO UPHOLD REGULATION THAT PROTECTS THE FREE EXERCISE OF ALL RELIGIONS IN ACCORDANCE WITH THE FIRST AMENDMENT.**

The First Amendment's promise to protect every individual's religious beliefs and religious expression is critical to us as people of faith in a pluralistic society. Without the protection of *all* religions and beliefs, our own beliefs and our own ability to exercise those beliefs are in jeopardy. The First Amendment guards us from unwelcome, unwarranted intrusions and insults to our spiritual lives.

The United States Supreme Court has explained the meaning of the First

Amendment's promise:

The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. . . .

But the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation.

Employment Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 877 (1990).

Consequently, the "government may not compel affirmation of religious belief" or "punish the expression of religious doctrines it believes to be false." *Id.*

The First Amendment thus keeps the government from banning or discouraging our individual religious views, and from interfering with our religious activity (or inactivity) because of its religious nature or affiliation. As a result, we are free to believe in Jesus Christ, Buddha, Mohammed, or whomever or whatever we choose. Moreover, we are free to express our belief by, for example, wearing or not wearing a cross, robe, Star of David, beard, or headscarf; consuming or not consuming cow, pork, dairy, fish, bread, or alcohol; engaging or not engaging in prayer, meditation, worship, or chants; or whatever else we choose.

We cherish these freedoms so we may practice our individual faiths. But we cannot protect these freedoms for ourselves without protecting them for all. Consequently, we support regulations, like WAC 246-863-095 and WAC 246-869-010, that appropriately accommodate the many diverse faiths and personal beliefs in our pluralistic society. Such regulations protect—to the greatest extent possible—the rights of all people of all faiths to freely follow and exercise their beliefs without impinging on the rights of others. We believe that such regulation is consistent with the promises and directives of the First Amendment, and we believe that the United States Supreme Court has endorsed this perspective: "[T]he individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority." *Wallace v. Jaffree*, 472 U.S. 38, 52 (1985).

B. PROTECTING HEALTH AND PROMOTING ACCESS TO HEALTH CARE ARE CORE TENETS OF MANY RELIGIONS.

Freedom of religion for all is especially vital in dealing with health care. As communities and individuals of faith, we believe it to be a moral imperative and sacred task to protect the health of our communities, including, in part, by ensuring broad access to timely and dignified care, treatment and medication.² Access to

² For example, the Union for Reform Judaism, in its *Statement of Jewish Values and Health Care*, notes that Jewish tradition includes systems to ensure access to

health care is therefore not just a concern for a patient and his or her doctor or pharmacist; it is a concern for faith communities as well as society as a whole.

Accordingly, despite an expansive diversity of opinions on particular issues, faith communities from a broad range of religious traditions historically have coalesced around efforts to improve access to health care, and access to care continues to be identified as a core tenet of many faiths. 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.³ Faith communities have also been a supportive voice in the call for universal health care coverage.⁴

health care for all citizens. Union for Reform Judaism, *Statement on Jewish Values and Health Care*, available at http://urj.org/Articles/index.cfm?id=16920&pge_prg_id=50599&pge_id=5731 ("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).

³ See, e.g., Letter from PICO National Network to Senators Reid, *et al.* (Mar. 19, 2007) available at <http://www.piconetwork.org/linkedddocuments/national-clergy-letter-on-60-billion-in-budget-to-cover-all-children.pdf> (on behalf of more than 1,000 congregations from fifty different denominations and faith traditions, including some of the same faith communities that are *amici* to this brief).

⁴ See Union for Reform Judaism, *supra* note 2.

Access to health care is therefore a broad moral and religious issue among many faiths. The religious significance of timely and dignified access to health care for faith communities must frame and inform this Court's analysis of the Washington regulations.

C. FREEDOM OF RELIGION IN HEALTH CARE IS VITAL BECAUSE RELIGIOUS BELIEFS REGARDING HEALTH CARE ARE WIDELY DIVERSE.

Protection of religious freedom for all is especially vital in health care because religious and personal beliefs regarding health care matters are widely diverse. Plaintiffs demand protection of their religious convictions, but they do not acknowledge the many faiths, cultures and personal ideologies that believe generally in personal autonomy in health-care decisions or that, as individuals or as a denomination, support access to and use of emergency contraception. Indeed, Plaintiffs argue for their own protection, but not the same protection for the convictions of other members of the population, most notably *patients*. Yet, the tremendous disparity in beliefs belies any implicit or explicit presumption or claim of religious or moral high ground regarding health care. The tremendous disparity in beliefs regarding health care also supports government regulation that accommodates all religious and personal views and practices to the greatest extent possible while preventing harm to others.

Indeed, the diversity of religious beliefs and opinions regarding health-care issues is far-reaching and extreme. For example, differences in opinion—based on personal, cultural, ethnic, moral, ethical, spiritual and other religious and nonreligious beliefs—exist regarding circumcision, immunizations, blood transfusions, organ donations, sexuality, reproduction, end-of-life care, HIV treatment, mental health medications, pain medications, and more. Clash is not merely possible between religious views on health-care issues, it is inevitable and actual.

Here, 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."⁵ These religious organizations criticize health-care providers' imposition of their own views on patients as "a lack of

⁵ 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/ga/pdf/resolutions/0730.pdf>.

respect for the free exercise of conscience by patients and constricting the health services made available to the general public."⁶

This difference arises because, contrary to Plaintiffs' beliefs, a fundamental tenet of many religions and religious groups (Christian and otherwise) is respect for individuals as moral agents, and for individual autonomy to exercise each individual's moral agency and religious freedom regarding personal health care. Pursuant to these views, it is the right and duty of the individual person to make considered health-care decisions, and it is the right and duty of his or her 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 (the "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, and the Unitarian Universalist Association, among others—believes and advocates that "[p]eople should be free

⁶ *Id.* Responding to concern for women denied legally requested contraception, the Disciples of Christ specifically support "the principle that religious dictates should not be used to limit women's access to a full range of reproductive health services." *Id.*

to exercise their moral agency and religious freedom when receiving health care."⁷

To this end, the RCRC published guidelines for the "ethical" provision of health care in our pluralistic society.⁸ 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.⁹ 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 counselor."¹⁰ But the Religious Institute does not

⁷ 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>.

⁸ *Id.*, *passim*. In these guidelines, the RCRC 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. *Id.* at 5. On this premise, the RCRC guidelines recommend the exact same accommodations as the Washington regulations for patients and pharmacists in the dispensation of legally requested contraception. *Id.* at 10.

⁹ Religious Institute on Sexual Morality, Justice, and Healing, *Religious Declaration on Sexual Morality, Justice, and Healing* 1 (2007), available at <http://www.religioustheology.org/declaration.html>.

¹⁰ Religious Institute on Sexual Morality, Justice, and Healing, *An Open Letter to Religious Leaders on Abortion as a Moral Decision* 1 (2005), available at

position religious or spiritual leaders or followers as gatekeepers to women's reproductive health.¹¹

The Episcopal Church has also independently recognized a religious mandate to support individuals' access to health care.¹² 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.¹³ The views of the Presbyterian Church are similar, and acknowledge the diversity of opinions held by Presbyterians regarding health-care issues.¹⁴ The predominant belief of this church is that a patient, a woman in particular, is entitled to autonomy in health-care decisions, and the Presbyterian Church supports "full and equal access" to health care consistent with a woman's decisions.¹⁵ The Evangelical

http://www.religiousthought.org/letters/Abortion_OpenLetter.pdf.

¹¹ *Id.*

¹² 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.

¹³ *Id.* at 323-25.

¹⁴ 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/oga/publications/problem-pregnancies.pdf>.

¹⁵ *Id.* at 13.

Lutheran Church in America similarly opposes laws that prevent couples from making and exercising their own decisions on issues such as contraception.¹⁶

Many Jewish groups also support autonomy in health-care decisions, and specifically resist community interference in women's reproductive health-care decisions.¹⁷ 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.¹⁸

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.¹⁹ Indeed, in the Unitarian and various other faiths,

¹⁶ Churchwide Assembly, Evangelical Lutheran Church in Am., *Social Teaching Statement on Abortion* at 6, 7 (1991), available at <http://www.elca.org/socialstatements/abortion/>.

¹⁷ See *Resolution on Women's Health Care Issues* (103rd Annual Convention of the Central Conference of Am. Rabbis 1992), available at <http://data.ccarnet.org/cgi-bin/resodisp.pl?file=womens&year=1992>; *Resolution on Reproductive Choice*, United Synagogue of Conservative Judaism (2005), available at http://www.uscj.org/Reproductive_Choice6879.html.

¹⁸ See United Synagogue of Conservative Judaism 2005, *supra* at note 17.

¹⁹ See Unitarian Universalist Association of Congregations, *Social Justice Statements Book*, Reproductive Health and Population at 2, available at <http://www.uua.org/documents/uua/socialjusticestements.pdf>. The Unitarian Universalist Association encourages "the use of contraception to prevent unwanted pregnancies," and called for the promotion of "medical research . . . and the commercial development of safe and more effective means of birth control."

contraception is religiously sanctioned as the moral choice, as it enables couples to make responsible choices about pregnancy, its timing, and parenting.²⁰

We fully acknowledge that some religious traditions adhere to Plaintiffs' views that certain health-care decisions may be mandated by the religion rather than directed by individual contemplation and choice. However, even among such faiths, there is a wide diversity of opinions and interpretations of such edicts.

For example, it is the official position of the Roman Catholic Church that the use of contraception is prohibited.²¹ However, among members of the Roman Catholic Church, there are diverse opinions on the morality of contraception and diverse practices regarding contraception. Surveys show that Catholic clergy have "not insist[ed] on acceptance of the official birth-control teaching,"²² and that "the overwhelming majority (more than 80%) of Catholics of childbearing ages do not, in fact, observe the encyclical's teaching."²³ Many theologians and Catholic clergy

Id. at 5.

²⁰ *Id.* at 5.

²¹ Encyclical of Pope Paul VI, *Humanae Vitae, On The Regulation of Birth* (July 25, 1968).

²² 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).

²³ Richard P. McBrien, *Catholicism* 983 (Harper Collins 1994). A 2006 survey also shows that "[s]exually active Catholic women above the age of 18 are just as likely (97%) to have used some form of contraception banned by the Catholic

question the need to follow the ban on contraception based on the Catholic theory of individual conscience, which teaches that members must follow their individual consciences before following Church doctrine.²⁴

This is the complex, diversified environment in which the Washington regulations were developed and will apply. Washington residents—patients and pharmacists alike—may adhere to any of the above, or any of the nearly innumerable other, religious opinions. Government regulation must accommodate all of these views, not just Plaintiffs' convictions, to the greatest extent possible within the confines of an orderly, just society.

D. THE WASHINGTON REGULATIONS APPROPRIATELY ACCOMMODATE RELIGIOUS FREEDOM AND SHOULD BE UPHELD.

In the context of this vast diversity, WAC 246-863-095 and WAC 246-869-010 appropriately accommodate religious freedom and are appropriate regulation.

Plaintiffs and the District Court mistakenly posited the issue in this case as whether

church as women in the general population (97%).” Catholics for Choice, *The Facts Tell the Story: Catholics and Contraception* (2006), available at <http://www.catholicsforchoice.org/topics/reform/documents/2006catholicsandcontraception.pdf>.

²⁴ 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).

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' religious rights; the rights of patients seeking timely, dignified access to health care and medical treatment in accordance with their own beliefs 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 (whatever those beliefs are and whether they 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 often faith-based health-care views on patients seeking their care and to force or influence patients to make health-care decisions pursuant to the health-care providers' personal faith-based beliefs in contradiction to the personal, religious, moral or ethical beliefs of the patient.

The First Amendment's promise of freedom of religion, however, mandates protection of all religious attitudes, including patients' beliefs, not just Plaintiffs'

particular perspective. The Washington regulations, WAC 246-863-095 and WAC 246-869-010, respect these divergent views and allow for accommodation of pharmacy employees' personal beliefs while at the same time ensuring a patient is not denied timely access to lawfully prescribed or approved medication even when a clash of beliefs occurs.

Such regulation 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, diverse, contemporary society, government standards and regulation (and citizens' adherence to government strictures), especially in areas of divergent opinions, are required to avoid chaos and constant conflict. As stated by the Supreme Court:

"Laws . . . are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."

Employment Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 879 (1990) (quoting *Reynolds v. United States*, 98 U.S. (8 Otto) 145, 166-67 (1878)). This has

been the law for over a century; the Supreme Court first recognized this principle of democratic governance in 1878. *See Reynolds*, 98 U.S. at 167-68 (rejecting a claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice).

We accept that to guarantee the free exercise of religion and the diversity that grows from that guarantee—rights that we as people of faith highly value—the law cannot exempt from its mandate every individual whose religious faith opposes it. As explained by the Supreme Court: "Precisely because 'we are a cosmopolitan nation made up of people of almost every conceivable religious preference,' [*Braunfeld v. Brown*, 366 U.S. 599, 606 (1961)], 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. We do not believe that this premise gives the government the right to trammel religious freedoms. However, in a diverse, pluralistic society, government regulation does not offend our or any member of the population's freedom of religion when it strikes a balance that appropriately accommodates our society's diverse religious and personal needs and beliefs. We believe that the Washington regulations strike this balance, and we support them for that reason.

IV. CONCLUSION

As people and organizations of different deeply held faiths, we, *Amici* to this brief, rely on the protections of the First Amendment to preserve and respect our distinct beliefs in a complex society with multitudes of religions and peoples. However, freedom of religion does not put us above the law. It promises that we will be treated equally and fairly under the law, and that our beliefs will be accommodated so far as reasonably possible without causing harm to others.

The Washington regulations apply equally to pharmacists of all religions, backgrounds, persuasions, and beliefs, and ensure that each patient is treated equally and is equally able to receive prompt health care regardless of his or her beliefs and regardless of a pharmacy employee's beliefs. Measured under any constitutional standard, WAC 246-863-095 and WAC 246-869-010, are necessary and appropriate government regulations. They apply to all of us, all of our patients, and all of us as patients, and they appropriately accommodate the diversity of our religious and personal beliefs.

Freedom of religion 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.

DATED: March 14, 2008

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By: _____

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached cross-appeal brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 28.1(e)(2)(C) because it is proportionately spaced, has a typeface of 14 points or more and contains 4,462 words (under the limit of 7,000 words), excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

DATED: March 14, 2008

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