No. 13-354

In The
Supreme Court of the United States

KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,
Petitioners,

v.

HOBBY LOBBY STORES, INC., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

DOUGLAS T. KENDALL
ELIZABETH B. WYDRA*
**Counsel of Record*
DAVID H. GANS
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th St., NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org
Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees.

CAC has published scholarship and filed *amicus* briefs demonstrating the ways in which corporations and living, breathing persons have been treated differently throughout our nation's history when it comes to constitutional rights and liberties. The Center has an interest in ensuring that these rights are protected for "We the People," while preserving the government's legitimate interest in regulating corporations.

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[1] Counsel for all parties received timely notice of *amicus*'s intention to file this brief; all parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

Hobby Lobby Stores, Inc., a for-profit, secular corporation that operates more than 500 arts-and-crafts stores nationwide, succeeded in persuading the court of appeals to accept a remarkable contention: that it, the corporate entity itself, is a person exercising religion. Obviously not a "person" in the usual sense of the word, Hobby Lobby is also not a religious organization; it does not hire employees on the basis of their religion, and its employees are not required to share the religious beliefs personally held by the corporation's owners. Nonetheless, a majority of the en banc court below found that Hobby Lobby was likely to succeed on its claim that the Patient Protection and Affordable Care Act's contraception coverage and screening requirement for group health plans violates the Religious Freedom Restoration Act of 1993 (RFRA), which provides that the government "shall not substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(a), (b). The en banc Tenth Circuit's unprecedented ruling allows Hobby Lobby to deny thousands of full-time employees and their families important health benefits to which they are legally entitled.

Two other federal courts of appeals have rejected similar arguments. *Conestoga Wood Specialties Corp. v. Sec'y of the U.S. Dep't of Health & Human Servs.*, 724 F.3d 377 (3d Cir. 2013); *Autocam Corp. v. Sebelius*, No. 12-2673, 2013 WL 5182544 (6th Cir. Sept. 17, 2013). These courts observed that neither this Court nor any other

court prior to the ruling below has ever recognized religious free exercise rights for secular, for-profit corporations. The First Amendment's explicit protection of "the free exercise"[2] of religion was intended to protect a basic right of human dignity and conscience, one of the "characteristic rights of freemen," as George Washington put it. WASHINGTON: WRITINGS 733 (John Rhodehamel ed., 1997) (First Inaugural Address, April 30, 1789). From the Founding until today, the Constitution's protection of religious liberty has been seen as a personal right, inextricably linked to the human capacity to express devotion to a god and act on the basis of reason and conscience. Business corporations, quite properly, have never shared in this fundamental aspect of our constitutional tradition for the obvious reason that a business corporation lacks the basic human capacities—reason, dignity, and conscience—at the core of the free exercise right.

Because Congress enacted RFRA to restore and codify the Court's free-exercise jurisprudence as it stood before *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), the question of what RFRA means when it refers to a "person's exercise of religion" must be answered by reference to the pre-*Smith* body of free-exercise law. This brief focuses on that question, and demonstrates that at no time in the more than 200-year span between the ratification of the First Amendment and the passage of RFRA were secular, for-profit corporations understood to

[2] U.S. CONST. amend. I.

have the fundamental right to the free exercise of religion.

While Hobby Lobby's owners obviously have their own personal free exercise rights, those rights are not implicated by the contraception coverage and health screening requirement because federal law does not require the individuals who own the company to *personally* provide health care coverage or to satisfy any other legal obligation of the corporation. The law places requirements only on the corporate entity, Hobby Lobby Stores, Inc. As the Court has held in the Fifth Amendment context, when individuals act in their official capacity as corporate agents, they "cannot be said to be exercising their personal rights and duties, nor to be entitled to their purely personal privileges." *Braswell v. United States*, 487 U.S. 99, 110 (1988). Instead, "they assume the rights, duties, and privileges of the artificial entity." *Id*. Hobby Lobby's owners should not be permitted to "move freely between corporate and individual status to gain the advantages and avoid the disadvantages of the respective forms." *Conestoga*, 724 F.3d at 389.

Finally, the fact that the Free Exercise Clause has been recognized to protect the rights of churches and other explicitly religious organizations does not help Hobby Lobby here. Since the Founding, churches and business corporations have been treated as fundamentally different. Churches, created for the purpose of ensuring the flourishing of religious exercise, have received protection under our constitutional

tradition, in federal statutes, and Court precedent. These protections have never been extended to secular, for-profit corporations like Hobby Lobby.

Amicus urges the Court to grant the Petition for a Writ of Certiorari to resolve the split among the circuits on this question of exceptional importance, and reject the lower court's unprecedented extension of what it means to engage in the free exercise of religion.

ARGUMENT

THE COURT SHOULD GRANT REVIEW TO CLARIFY THAT SECULAR, FOR-PROFIT CORPORATIONS DO NOT HAVE RELIGIOUS FREE EXERCISE RIGHTS.

The Religious Freedom Restoration Act, which was enacted in 1993 to restore and enforce the First Amendment's Free Exercise guarantee, provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a). Under the Dictionary Act, for purposes of interpreting federal law, the word "person" "include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals" unless "the context indicates otherwise." 1 U.S.C. § 1. This brief supports the government's position that, because of "the context" of RFRA—that is, the history, nature, and purpose of the free exercise guarantee—secular, for-profit corporations, including Hobby Lobby, should not be allowed to

invoke the statute's protections for the free exercise of religion.[3]

A. Throughout Our Nation's History, Corporations Have Been Treated Differently Than Individuals When It Comes To Fundamental, Personal Rights.

The Constitution does not give corporations the same protection of rights and liberties as it gives to individual persons.[4] As its opening words reflect, the Constitution was written for the benefit of "We the People of the United States." U.S. CONST. pmbl. Shortly after the Constitution's ratification, the Framers added the Bill of Rights to the Constitution to protect the fundamental rights

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[3] Respondents are two for-profit companies, Hobby Lobby Stores, Inc., and Mardel, Inc., which is a secular, for-profit bookstore that specializes in carrying Christian products (collectively referred to in this brief as "Hobby Lobby"). They are owned and operated by a management trust; five members of the Green family are the trustees of this management trust. Pet. at 9 & n.4. As the Court of Appeals explained, "the Greens believe that human life begins at conception"—"when sperm fertilizes an egg"—and they oppose certain forms of Food and Drug Administration-approved contraception that they believe prevent implantation of a fertilized egg. App. 9a, 14a; Pet. at 10. Pursuant to the Patient Protection and Affordable Care Act, all FDA-approved contraception must be provided in employer group health plans, subject to important exemptions, in order to promote women's health and gender equity. Pet. at 5-9.

[4] *See generally* David H. Gans & Douglas T. Kendall, *A Capitalist Joker: The Strange Origins, Disturbing Past, and Uncertain Future of Corporate Personhood in American Law*, 44 J. MARSHALL L. REV. 643 (2011).

of the citizens of the new nation, which reflected the promise of the Declaration of Independence that all Americans "are endowed by their Creator with certain unalienable rights, [and] that among these are life, liberty, and the pursuit of happiness." President George Washington described the amendments as exhibiting "a reverence for the characteristic rights of freemen." WASHINGTON: WRITINGS 733 (John Rhodehamel ed., 1997) (First Inaugural Address, April 30, 1789). At its core, the Bill of Rights "declare[d] the great rights of mankind." 1 ANNALS OF CONG. 449 (1789).

At the Founding, corporations stood on an entirely different footing than living persons. A corporation, in the words of Chief Justice John Marshall, "is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created." *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819). As early as the First Congress, James Madison summed up the Founding-era vision of corporations: "[A] charter of incorporation . . . creates an artificial person not existing in law. It confers important civil rights and attributes, which could not otherwise be claimed." 2 ANNALS OF CONG. 1949 (1791). In short, corporations, unlike the individual citizens that made up the nation, did not have fundamental and inalienable rights by virtue of their inherent dignity.

To be sure, corporate entities can assert certain constitutional rights, chiefly related to their right to enter into contracts, own and possess property, and manage their affairs, but they have never been accorded all the rights that individuals possess. *Compare Dartmouth College*, 17 U.S. (4 Wheat.) at 518 (protection under Contracts Clause); *Louisville, Cincinnati & Charleston R.R. Co. v. Letson*, 43 U.S. (2 How.) 497 (1844) (right to sue under Article III); *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196 (1885) (protection under Dormant Commerce Clause); *Gulf, C. & S.F. Ry. Co. v. Ellis*, 165 U.S. 150 (1897) (protection under Equal Protection Clause); *Hale v. Henkel*, 201 U.S. 43 (1906) (protection under Fourth Amendment) *with Bank of Augusta v. Earle,* 38 U.S. (13 Pet.) 519 (1839) (no protection under Article IV's Privileges and Immunities Clause); *Hale*, 201 U.S. 43 (no protection under Fifth Amendment's Self-Incrimination Clause); *Western Turf Ass'n v. Greenberg*, 204 U.S. 359 (1907) (no protection under Fourteenth Amendment's Privileges or Immunities Clause). Many of the constitutional rights possessed by business corporations are grounded in matters of property and commerce, because, as this Court has explained, "[c]orporations are a necessary feature of modern business activity" and, "[i]n organizing itself as a collective body, it waives no constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the 14th Amendment, against unlawful discrimination." *Hale*, 201 U.S. at

76. Business corporations possess other constitutional rights, such as rights under the Free Speech Clause, but these rights do not vindicate a corporation's own claim to autonomy or dignity. *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 349 (2010) (applying protections of the Free Speech Clause to political advertisements financed by corporations because "[p]olitical speech is 'indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation'") (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978)).

It is well settled that "[c]ertain 'purely personal' guarantees, such as the privilege against compulsory self-incrimination are unavailable to corporations . . . because the 'historic function' of the particular guarantee has been limited to the protection of individuals." *Bellotti*, 435 U.S. at 778 n.14. For example, for more than a century, this Court has affirmed that the constitutional privilege against self-incrimination "grows out of the high sentiment and regard of our jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality. It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him." *United States v. White*, 322 U.S. 694, 698 (1944). The Fifth Amendment right "is an explicit right of a natural person, protecting the realm of human thought and expression." *Braswell v. United States*, 487 U.S. 99, 119 (1988) (Kennedy,

J., dissenting). Accordingly, "there is a clear distinction . . . between an individual and a corporation . . . . While an individual may lawfully refuse to answer incriminating questions . . . , it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges." *Hale*, 201 U.S. at 74, 75.

The *Braswell* case illustrates the different way fundamental rights apply to corporations as opposed to individual persons. Randy Braswell, the president and sole shareholder of a corporation, argued that he was entitled to resist a subpoena for corporate records because the act of producing those records would tend to incriminate him. In rejecting his contention, the Court found dispositive the fact that the subpoena was directed to corporate records: "[P]etitioner has operated his business through the corporate form, and we have long recognized that, for purposes of the Fifth Amendment, corporations and other collective entities are treated differently from individuals." *Braswell*, 487 U.S. at 104. Proceeding from this basic principle, the Court held that "the custodian of corporate records may not interpose a Fifth Amendment objection to the compelled production of corporate records, even though the act of production may prove personally incriminating." *Id.* at 111-12.

Obviously, Mr. Braswell retained his personal right against compelled self-incrimination. However, because he was acting for the corporation, he could not "be said to be exercising

[his] personal rights and duties nor to be entitled to [his] purely personal privileges." *Braswell*, 487 U.S. at 110. Instead, he "assume[d] the rights, duties, privileges of the artificial entity." *Id.* And in that official capacity, he had no "personal privilege against self-incrimination" to assert. *Id.*[5] Importantly, the Court did not, as the lower court did here, conflate the rights of the individual corporation owner with the rights of the corporation itself. Nor was the individual owner of the company permitted to "move freely between corporate and individual status to gain the advantages and avoid the disadvantages of the respective forms." *Conestoga Wood Specialties Corp. v. Sec'y of the U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 389 (3d Cir. 2013). *See* Pet. at 23-26.

B. The Free Exercise Of Religion Is A Fundamentally Personal Liberty That Does Not Apply To For-Profit, Secular Corporations.

"Whether or not a particular guarantee is 'purely personal' or is unavailable to corporations

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[5] A similar logic underlies the Court's holding that business corporations cannot invoke the protections of citizens secured by the Privileges and Immunities Clause. "If . . . members of a corporation were to be regarded as individuals carrying on business in their corporate name, and therefore entitled to the privileges of citizens . . . they must at the same time take upon themselves the liabilities of citizens, and be bound by their contracts in like manner. . . . Whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter; and not the contract of the individual members." *Bank of Augusta*, 38 U.S. at 586-87.

for some other reason depends on the nature, history, and purpose of the particular constitutional provision." *Bellotti*, 435 U.S. at 778 n.14. The history of the free exercise guarantee demonstrates that this right is not applicable to secular, for-profit corporations. Much like the Self-Incrimination Clause, which protects a purely personal "realm of human thought and expression," *Braswell*, 487 U.S. at 119 (Kennedy, J., dissenting), and guarantees "dignity, humanity, and impartiality," *White*, 322 U.S. at 698, by preventing the government from compelling an individual's own testimony, the right to freely exercise religion simply cannot be exercised by a business corporation. A secular, for-profit business corporation cannot, in any meaningful sense, pray, express pious devotion, or act on the basis of a religious conscience. The fundamental values behind the Free Exercise Clause, like those that underlie the Fifth Amendment's constitutional privilege against self-incrimination, simply make no sense as applied to a secular, for-profit business corporation.

The Founding generation well understood that the First Amendment's guarantee of free exercise was an inalienable individual right, inextricably linked to the human capacity to express devotion to a god and act on the basis of reason and conscience. Indeed, the proposed amendment that would eventually become our First Amendment started out in the Select Committee as a proposal to ensure that "the equal rights of conscience" shall not be infringed. 1 ANNALS OF CONG. 766 (1789). While debates in the First Congress over what ultimately became the

Free Exercise Clause were sparse, the protections for religious liberty contained in Founding-era state constitutions provide powerful evidence that the free exercise guarantee was understood to be a purely personal right. "These state constitutions provide the most direct evidence of the original understanding, for it is reasonable to infer that those who drafted and adopted the first amendment assumed the term 'free exercise of religion' meant what it had meant in their states." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1456 (1990); *see also City of Boerne v. Flores*, 521 U.S. 507, 553 (1997) (O'Connor, J., dissenting) ("These state provisions . . . are perhaps the best evidence of the original understanding of the Constitution's protection of religious liberty.").

New York's 1777 Constitution, for example, provided that "the free exercise of religion and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this State to all mankind." N.Y. CONST. of 1777, art. XXXVIII. Likewise, New Hampshire's Free Exercise Clause described religious liberty specifically as a right of individuals: "Every individual has a natural and inalienable right to worship GOD according to the dictates of his own conscience, and reason . . . ." N.H. CONST. of 1784, pt. I, art. V. The Virginia Declaration of Rights of 1776 provided that "religion . . . can be directed only by reason and conviction . . . ; therefore, all men are equally entitled to the free exercise of religion, according to

the dictates of conscience . . . ." Va. Declaration of Rights of 1776, § 16. Many other state constitutions used similar language, confirming that the right to the free exercise of religion was understood to be a purely personal, inalienable human right. *See* McConnell, 103 HARV. L. REV. at 1456-58 & nn. 239-42. These provisions "defined the scope of the free exercise right in terms of the conscience of the individual believer and the actions that flow from that conscience," an affirmative understanding of free exercise "based on the scope of duties to God perceived by the believer." *Id.* at 1458-59.

Likewise, the Memorial and Remonstrance Against Religious Assessments, authored by James Madison, "'the leading architect of the religion clauses of the First Amendment,'" *Arizona Christian School Tuition Org. v. Winn*, 131 S. Ct. 1436, 1446 (2011) (quoting *Flast v. Cohen*, 392 U.S. 83, 103 (1968)), viewed the guarantee of the free exercise of religion in similar, wholly personal terms. Invoking the "fundamental and undeniable truth" that "'Religion . . . can be directed only by reason and conviction,'" Madison explained that "[t]he Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate." James Madison, *Memorial and Remonstrance Against Religious Assessments*, in 2 THE WRITINGS OF JAMES MADISON 183, 184 (G. Hunt ed., 1901) (quoting Va. Declaration of Rights of 1776, § 16). Noting that "equality . . . ought to be the basis of every law," Madison argued that "[w]hilst we assert for ourselves a freedom to

embrace, to profess, or to observe the Religion which we believe to be divine in origin, we cannot deny an equal freedom to those whose minds have not yielded to the evidence which has convinced us." *Id.* at 186.

For Madison, the free exercise of religion was fundamentally a personal right, closely linked to the human capacity of reason, conviction, and conscience. As with the right against self-incrimination, a business corporation simply lacks these basic human capacities. Indeed, the Founding-era protection for religious conscience overlaps with the concern for compelled testimony. The most common "free exercise controversies in the preconstitutional period" related to oaths. Michael W. McConnell, "Free Exercise As The Framers Understood It," *in* THE BILL OF RIGHTS: ORIGINAL MEANING AND CURRENT UNDERSTANDING 59 (Eugene Hickok, Jr., ed., 1991). Article VI ensured that conscientious objectors could "Affirm[]," rather than swear their support for the Constitution, in addition to forbidding the use of religious tests for officeholders. U.S. CONST. art. VI. The origins of the right against compelled self-incrimination and the right to religious free exercise are closely linked. AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 82-83 (1998). With this backdrop, the Founding generation would never have imagined that a business corporation could claim for itself such quintessentially personal rights.

In line with this historical understanding, in the more than 225 years since the ratification of

the First Amendment, this Court has never held that secular, for-profit business corporations are capable of exercising religion and has never held that the Free Exercise Clause applies to such corporations. As the Petition explains, "no pre-*Smith* case held—or even suggested—that a for-profit corporation could obtain exemptions from corporate regulation on the basis of religion." Pet. at 18.

Given the dearth of any supporting precedent and the absence of any constitutional tradition, the court of appeals was plainly wrong to hold that secular, for-profit corporations could be "person[s] exercise[ing] religion" within the meaning of RFRA, 42 U.S.C. § 2000bb-1(a).

C. While Explicitly Religious Organizations, Such As Churches, Have Been Protected Under The First Amendment, They Have Historically Been Distinguished From Secular, For-Profit Corporations Like Hobby Lobby.

The fact that "the Free Exercise Clause at least extends to associations like churches—including those that incorporate," Pet. App. 35a, does not help Hobby Lobby here. The text and history of the First Amendment show a "special solicitude to the rights of religious organizations," *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694, 706 (2012), that does not extend to secular, for-profit corporations. The protections long given to churches, synagogues and other religious entities reflect the basic fact

that "[r]eligion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected by the [Free Exercise] Clause." Douglas Laycock, *Toward a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1389 (1981); *see also* McConnell, 103 HARV. L. REV. at 1490 ("'Religion' . . . connotes a community of believers."). Going back to the writings of John Locke, a church was considered "a voluntary society of men, joining together of their own accord to the public worshipping of God in such manner as they judge acceptable to him and effectual to the salvation of their souls." JOHN LOCKE, A LETTER CONCERNING TOLERATION 28 (1689) (James H. Tully ed., 1983).

The legal traditions that the Founders brought from England included a sharp distinction between religious and other private corporations. Blackstone observed the "division of corporations . . . into ecclesiastical and lay. Ecclesiastical corporations are where the members that compose it are entirely spiritual persons . . . These are erected for the furtherance of religion, and perpetuating the rights of the church." 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND *470 (1768). Founding-era treatises on corporate law, following Blackstone, explained that "[t]here is one *general* division of corporations into *ecclesiastical*, and *lay*. Ecclesiastical corporations are those of which not only the members are spiritual persons, but of which the object of the

institution is also spiritual . . . ." STEWART KYD, A TREATISE ON THE LAW OF CORPORATIONS 22 (1793).

Consistent with this history, the Court has recognized special constitutional protection for the free exercise of religion that applies to religious, but not other, corporations. For example, the Court has held that "[f]reedom to select the clergy" has "federal constitutional protection as a part of the free exercise of religion against state interference," observing that the First Amendment specifically ensures "freedom for religious organizations, and independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 154-55 (1952); *see also Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728-29 (1872). Recently, in *Hosanna-Tabor*, the Court reaffirmed these principles, holding that a religious employer could not be sued under Title VII of the Civil Rights Act of 1964 for firing a minister. "Requiring a church to accept or retain an unwanted minister . . . interferes with the internal governance of the church . . . . By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments." *Hosanna-Tabor*, 132 S. Ct. at 706; *see also id.* at 712 (Alito, J., concurring) ("[T]he Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs."). Under *Hosanna-Tabor*, incorporated churches and

other religious employers are free from the strictures of federal anti-discrimination law in choosing their ministers, an exemption that does not extend to business corporations. No secular, for-profit business corporation can claim a similar right to make employment decisions free from Title VII's mandate of equality of opportunity. *See also* Pet. at 22-23 (emphasizing that Title VII's religious-employer exemption has been applied only to the non-profit activities of religious employers).

Far from treating business and religious corporations as one and the same, constitutional text and history, as well as settled law, give a special status to churches and other religious institutions in recognition of the fact that individuals often exercise religion as part of a community of believers. At the Founding, churches and business corporations were seen as fundamentally different, the former created for the purpose of ensuring the flourishing of communal religious exercise, the latter to make running a business more profitable. Consistent with this history, religious institutions receive many types of legal protections for religious exercise rightly considered inapplicable to business corporations like Hobby Lobby.

* * *

Our constitutional tradition recognizes a basic, common-sense difference between living, breathing individuals—who think, possess a conscience, and hold a claim to human dignity—and artificial corporate entities, which are created

by the law for a specific purpose, such as to make running a business more efficient and lucrative by limiting the liability of their individual owners. This is especially true in contexts related to matters of conscience, individual autonomy, and basic human dignity. Corporations are accountable to their shareholders for their business operations; spiritual individuals, in Washington's words, are "accountable to God alone for his religious opinions." WASHINGTON 739 (Letter to the United Baptist Churches of Virginia, May 1789). The ruling below is both unprecedented and wrong.

CONCLUSION

For the foregoing reasons, *amicus* urges the Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

DOUGLAS T. KENDALL
ELIZABETH B. WYDRA*
**Counsel of Record*
DAVID H. GANS
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org
Counsel for Amicus Curiae

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