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Mr. Paul Ryan  
Chairman  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Mr. Sander M. Levin  
Ranking Member  
Committee on Ways and Means  
1106 Longworth House Office Building  
Washington, DC 20515

Re: Opposition to H.R. 2061, the “Equitable Access to Care and Health Act”

Dear Chairman Ryan and Ranking Member Levin:

We write to oppose H.R. 2061, the “Equitable Access to Care and Health Act” (EACH Act), which exempts individuals with a religious objection to the acceptance of most, but not all, medical health services from the Affordable Care Act’s (ACA) individual coverage mandate.

Freedom of religion and belief is a fundamental American value, but it is not without limits. Americans United has advocated for religious freedom for almost 70 years. We support the use of reasonable and appropriately tailored accommodations to ease substantial burdens on the practice of religion in certain circumstances. Unfortunately, the exemption provided by the EACH Act has several fatal flaws.

First, the exemption in H.R. 2061 does not actually alleviate a burden on the practice of religion. It differs significantly from the ACA’s existing religious exemptions because it allows certain individuals to escape the requirement that they purchase insurance even though they do not have a religious objection to purchasing insurance. In addition, the exemption lacks sufficient enforcement mechanisms to ensure that the exemption is not abused. Finally, this exemption—even if seemingly narrow and targeted—could be used to justify broader religious exemptions to the ACA. Accordingly, we urge the Committee to reject the bill.

### **The ACA’s Individual Mandate Does Not Burden Proponents’ Religion**

When legislatures create religious accommodations, like the one proposed in this bill, they must lift an actual burden on religious exercise.<sup>1</sup> But, the individual mandate does not burden the religious practice of members of Christian Science who believe in healing through prayer. It does not ban or interfere with members’ ability to rely on prayer, get spiritual treatments from Christian Science prayer practitioners, or seek physical care from Christian Science nurses or

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<sup>1</sup> *E.g.*, *County of Allegheny v. ACLU*, 492 U.S. 573, 613 n.59 (quoting *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 348 (1987) (O’Connor, J., concurring)).

nursing facilities. In fact, a federal court concluded that the individual mandate did not substantially burden the religious exercise of those who “believe[] in trusting in God to protect [them] from illness or injury” and did not “want to be forced to buy . . . health insurance coverage.”<sup>2</sup> Moreover, as the Church of Christ, Scientist explains, “[v]arious U.S. federal, state, and private health insurance plans provide for the reimbursement of Christian Science nursing care and practitioner treatment” and the Church is working to make even more insurance options available.<sup>3</sup> In addition, “Christian Science nursing care at 17 Christian Science nursing facilities throughout the U.S. are reimbursed under Medicare Part A.”<sup>4</sup>

It is also important to note that the bill’s proponents often do not even oppose all forms of medical care. That is why the bill would permit individuals who are exempted from having health insurance coverage to still receive certain kinds of medical care, including routine dental, vision, and hearing services, midwifery services, vaccinations, necessary medical services provided to children, and services required by law or by a third party.<sup>5</sup> Yet, there is no requirement for these individuals to have in place a means to cover the costs of those healthcare services.<sup>6</sup> This runs counter to purpose of the ACA: requiring health insurance coverage for nearly everyone so that costs of uncompensated care for the uninsured are not passed onto private insurers and, ultimately, families.<sup>7</sup>

### **This Proposed Exemption Is Unlike the ACA’s Existing Religious Exemptions from the Individual Mandate**

The ACA has two very limited religious exemptions to the individual mandate for people who object to **insurance** but have other means to cover their health care costs. First, it exempts members and adherents of religions that are “conscientiously opposed to acceptance of the

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<sup>2</sup> *Mead v. Holder*, 766 F. Supp. 2d 16, 42 (D.D.C. 2011), *aff’d*, *Seven-Sky v. Holder*, 661 F.3d 1, 5 n.4 (D.C. Cir. 2011), *cert. denied*, 133 S.Ct. 63 (2012). Indeed, “[d]emocratic government . . . cannot survive if every political or personal objection to a government-imposed obligation must be accommodated.” *Cutler v. Dep’t of Health & Human Servs.*, No. 14-5183, 2015 WL 4772705, at \*7 (D.C. Cir. Aug. 14, 2015). The Supreme Court held that the ACA imposes a tax on those who choose to go without health insurance. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2608 (2012). Conscientious objections to paying taxes are generally not permitted. *See, e.g., United States v. Lee*, 455 U.S. 252, 260 (1982).

<sup>3</sup> *Insurance*, Christian Science, <http://christianscience.com/member-resources/for-churches/committee-on-publication/us-federal-office/health-care-reform/insurance>.

<sup>4</sup> *Affordable Care Act FAQs*, Christian Science, <http://christianscience.com/member-resources/for-churches/committee-on-publication/us-federal-office/health-care-reform/frequently-asked-questions>.

<sup>5</sup> Christian Science leaders also “have been encouraging members to see a physician if they feel it is necessary.” Paul Vitello, *Christian Science Church Seeks Truce with Modern Medicine*, N.Y. TIMES (Mar. 23, 2010), [http://www.nytimes.com/2010/03/24/nyregion/24heal.html?\\_r=0](http://www.nytimes.com/2010/03/24/nyregion/24heal.html?_r=0). It is quite likely that individuals who take this exemption and refuse to carry health insurance may also need emergency medical care.

<sup>6</sup> This, then, risks that “those without religious objections . . . bear the financial risk and price of care for those who exempt themselves from the” individual mandate. *Cutler*, 2015 WL 4772705 at \*7. The existing exemptions, on the other hand, are “carefully calibrated to protect the government—and thus taxpayers who do not share the religious sensibilities of those covered by the exemption—from later having to pick up the tab from which the adherent has been exempted,” which accounts for constitutional concerns. *See id.*

<sup>7</sup> *See* 42 U.S.C. § 18091; *Mead*, 766 F. Supp. 2d at 43, (citing *Olsen v. Drug Enforcement Admin.*, 878 F.2d 1458, 1462 (D.C. Cir. 1989)).

benefits of any private or public insurance.”<sup>8</sup> This exemption is generally limited to some members of the Amish and Mennonite faiths, which “provide[] an established, alternative support network that ensures individuals will not later seek to avail themselves of the federal benefits for which they did not contribute.”<sup>9</sup> Second, it exempts members of health care sharing ministries, which function similarly to insurance by enabling members who have similar religious beliefs and practices to share health care costs.

This bill’s proposed exemption, however, is quite dissimilar. It would allow individuals, such as Christian Scientists, who have religious objections to some or all of the **healthcare services covered by the insurance**—rather than to insurance itself—to get out of the ACA’s individual mandate.

The significant difference between the existing exemptions and the one that would be created by this bill further demonstrates that the proposed exemption does not lift an actual burden on religious practice.

### **The Exemption Is Ripe for Abuse**

The bill attempts to limit the exemption to individuals who do not accept certain forms of medical care by nullifying the exemption once a person accepts such care. It does not, however, state how the federal government will be able to enforce this limitation. The bill merely requires that the individual seeking the exemption attest that he or she has not received medical care. It is unclear how the government will discern whether or not this is true. With nothing more regarding enforcement, the exemption invites abuse.

Indeed, this bill is modeled on a similar Massachusetts law<sup>10</sup> that has, in fact, been abused. The Massachusetts law, which also exempts individuals with religious objections to certain kinds of medical care from the requirement that they obtain health insurance, has a more robust attestation requirement: “An individual shall be exempt . . . if he files a sworn affidavit with his income tax return stating that he did not have creditable coverage and that his sincerely held religious beliefs are the basis for his refusal to obtain and maintain creditable coverage during the 12 months of the taxable year for which the return was filed.”<sup>11</sup> Yet, a report conducted by the Massachusetts Office of the Inspector General found that, in 2012, 5.6% of those claiming the religious exemption to the requirement to have individual health insurance actually received healthcare paid for by the state’s network.<sup>12</sup> The EACH Act invites a similar outcome.

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<sup>8</sup> 26 U.S.C. § 1402(g)(1).

<sup>9</sup> *Cutler*, 2015 WL 4772705 at \*6.

<sup>10</sup> 830 CMR 111M.2.1(6)(b)(2).

<sup>11</sup> *Id.*

<sup>12</sup> ONGOING ANALYSIS OF THE HEALTH SAFETY NET TRUST FUND: THE RELIGIOUS EXEMPTION FROM MANDATED HEALTH INSURANCE COVERAGE, COMMONWEALTH OF MASS. OFFICE OF THE INSPECTOR GENERAL (Feb. 28, 2014), <http://www.mass.gov/ig/publications/reports-and-recommendations/2014/ongoing-analysis-of-the-health-safety-net-trust-fund-the-religious-exemption-from-mandated-health-insurance-coverage.pdf>.

We agree with the Massachusetts report when it states that the government “should not be in the position of paying for health care if individuals should be purchasing health insurance. This is also unfair to the [taxpayers] who have obtained and maintained health insurance coverage, as well as those who have paid the penalty for not having such coverage.”<sup>13</sup>

### **Carving Out this Exemption Could Lead to More Expansive Exemptions**

Although Members of Congress may support this bill because they believe it is narrow and targeted to address the concerns of certain religious adherents,<sup>14</sup> this exemption could invite courts to carve out even more expansive religious exemptions for those who refuse to purchase insurance in accordance with the ACA.

In *Burwell v. Hobby Lobby Stores*,<sup>15</sup> the Supreme Court ruled that for-profit corporations could invoke the Religious Freedom Restoration Act (RFRA) to refuse to provide insurance coverage for contraception based on the religious beliefs of the corporations’ owners. Key to the Court’s decision was that “HHS has already established an accommodation for nonprofit organizations with religious objections,” which “demonstrated that it has at its disposal an approach” to accommodate for-profit corporations whose owners have religious objections.<sup>16</sup> The lesson of *Hobby Lobby* is that the creation of a narrow religious exemption in and of itself can be used to justify expansive religious exemptions. One risk of passing the EACH Act, therefore, is that it would invite more RFRA claims that may result in more religious exemptions to the ACA, threatening the integrity of the law itself. This seems especially true when the bill’s exemption is not “carefully confined to ‘alleviat[ing] exceptional government-created burdens on private religious exercise.’”<sup>17</sup>

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For the reasons listed above, we oppose H.R. 2061.

Sincerely,



Maggie Garrett  
Legislative Director

cc: Members of the Committee

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<sup>13</sup> *Id. See Cutler*, 2015 WL 4772705 at \*7.

<sup>14</sup> This proposed exemption would not be limited to members of the Christian Science church. It would also exempt members of other faith-healing sects that shun medical treatment, such as the Church of the Firstborn (Jack Moran, “Couple charged in son’s death: The two face manslaughter counts accusing them of failing to get a teen medical help for a treatable illness,” *Eugene Register-Guard*, Feb. 11, 2012.), the Followers of Christ (Steve Mayes, “Another faith-healing death of a child puts Oregon City parents on trial,” *Portland Oregonian*, Sept. 11, 2011.), and the Unleavened Bread Ministries (Deena Guzder, “When Parents Call God Instead of the Doctor,” *Time*, Feb. 5, 2009.).

<sup>15</sup> 134 S. Ct. 2751 (2014).

<sup>16</sup> *Id.* at 2781.

<sup>17</sup> *See Cutler*, 2015 WL 4772705 at \*7 (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)).