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Internal Government Emails Reveal Intentions for Contraceptive Mandate

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by [CARRIE SEVERINO](#) January 8, 2016 2:02 PM

Next Monday I will file an amicus brief in *Zubik v. Burwell*, the contraceptive mandate case that Ed Whelan has [so thoroughly discussed in this space](#) this week. My brief will criticize the Administration for adopting an irrelevant tax provision that exempts some entities from filing tax returns ([26 U.S.C. § 6033](#)) as the mechanism for determining which religious groups are exempt from the contraceptive mandate and which must beg the Department of Health and

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puzzling, and now we know why. As the brief will explain, internal government emails obtained through the Freedom of Information

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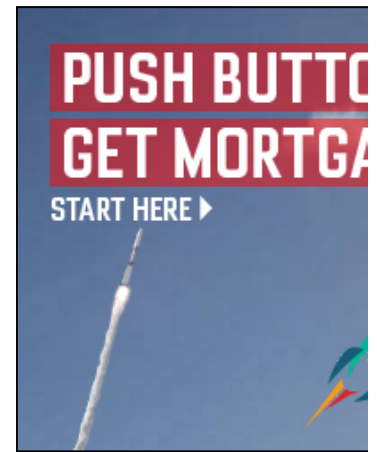
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Act demonstrate precisely what the government was thinking. Spoiler alert: It wasn't because they wanted to accommodate religious interests.

Administration health policy officials were downright obsessed with figuring out which Catholic institutions would fit within the section 6033-based exemption. As early as [October 2011](#), the White House was curiously interested in the student insurance coverage at Catholic universities. [In July 2012](#), emails show officials trying to make sure that the contraceptive mandate would treat the U.S. Conference of Catholic Bishops – the spiritual leaders of Roman Catholic entities in the United States – differently from the colleges, charities, and other groups that they lead. The documents were originally discovered during [congressional inquiries](#) into the sharing of tax information between the IRS and the White House.

As I argue in the forthcoming amicus brief, section 6033 has exactly zero relevance to religious freedom interests. These documents are fatal to the Administration's claim that structuring the contraceptive mandate this way was an effort to respect the religious groups' religious objections. In fact, it was an arbitrary choice that failed to take into account the virtually identical religious freedom interests shared by groups granted and denied an exemption from the mandate.

For a preview of what's being filed next week,



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you can find my cert-stage amicus brief [here](#).

This post has been edited.