

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BEFORE: THE HONORABLE GERALD A. MCHUGH, JUDGE

:  
UNITED STATES OF AMERICA, :

:  
Plaintiff, :

:  
v. : Civ. Action No. 19-0519 :  
SAFEHOUSE and JOSE BENITEZ, :

:  
Defendants. :

-.  
:  
SAFEHOUSE, :

:  
Counterclaim Plaintiff, :

:  
v. :

:  
UNITED STATES OF AMERICA, :

:  
Counterclaim Defendants, :

:  
and :

:  
U.S. DEPARTMENT OF JUSTICE; :  
MERRICK B. GARLAND, ATTORNEY GENERAL :  
OF THE UNITED STATES; and JACQUELINE C. :  
ROMERO, U.S. ATTORNEY FOR THE EASTERN :  
DISTRICT OF PENNSYLVANIA, :

:  
Third-Party Defendants. :

-.  
:

**BRIEF OF FAITH LEADERS IN PHILADELPHIA AND BEYOND AS *AMICI CURIAE* IN  
SUPPORT OF DEFENDANT/COUNTERCLAIM PLAINTIFF SAFEHOUSE**

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## I. INTRODUCTION

“The City of Philadelphia is in the midst of an unprecedented public health emergency due to the opioid epidemic and the opioid overdose crisis.” Second Am. Countercl. 17, ECF 207-1. “On average, Philadelphia [loses] three of its citizens each day to opioid overdoses.” *Id.* 18. A disproportionate number of the victims of these crises lack access to health services. *See id.* ¶¶ 24, 26.

Safehouse seeks to fill that inhumane lack of access by providing a range of overdose prevention and harm reduction services in Philadelphia. *Id.* ¶¶ 11, 29–38. If allowed to open, Safehouse’s facility “could reduce overdose deaths annually by 30% in the site’s immediate vicinity.” *Id.* 38 (footnote omitted).

Safehouse’s mission is driven by its Board of Directors, who “are adherents of religions in the Judeo-Christian tradition.” *Id.* 124. “At the core [of their] faith is the principle that the preservation of human life is paramount and overrides any other considerations.” *Id.* 126.

In the initial phase of this dispute, the Government prevailed on its argument that the Controlled Substance Act (“CSA”) prohibits Safehouse from opening a facility that provides the life-saving services described above. *See United States v. Safehouse*, 985 F.3d 225 (3d Cir. 2021). But the Third Circuit did not resolve whether applying the CSA to Safehouse would infringe the sincerely held religious beliefs of certain members of

Safehouse's Board of Directors, thereby violating the Religious Freedom Restoration Act ("RFRA"). *Id.* at 243.

Amici Curiae submit this brief in support of Safehouse. Amici are thirty-five faith leaders from Philadelphia, eighteen states, and the Commonwealth of Puerto Rico whose sincerely held religious beliefs compel them to adhere to the overriding principle of

preserving human life. Amici provide important context to corroborate Safehouse's RFRA counterclaim. The addendum to this brief includes a complete list of Amici, including their names, titles, and affiliations. For the reasons provided below, the Court should bar the Government from infringing the sincerely held religious beliefs of certain members of Safehouse's Board of Directors and allow Safehouse to provide the life-saving treatment that countless Philadelphians deserve.

## II. LEGAL FRAMEWORK

"Congress enacted RFRA in 1993 in order to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). Indeed, RFRA "provide[s] greater protection for religious exercise than is available under the First Amendment." *Holt v. Hobbs*, 574 U.S. 352, 357 (2015) (citing *Hobby Lobby*, 573 U.S. at 694–95).

RFRA straight-forwardly provides that the 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). RFRA protects all sincerely held religious beliefs, regardless of whether those beliefs are central to (or mandated by) a particular religious tradition. *See Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 171 (3d Cir. 2002)

(rejecting a contention that courts should determine whether the religious practices at issue are “mandatory” or “optional”).

Congress created a limited exception to this command: the “Government may substantially burden a person’s exercise of religion *only if* it demonstrates that application of the burden to the person . . . (1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b) (emphasis added).

In assessing whether government action meets this limited exception, a reviewing court must assess that action against a three-part test. *See Real Alts., Inc. v. Sec’y Dep’t of Health & Hum. Servs.*, 867 F.3d 338, 355 (3d Cir. 2017). First, the court must inquire whether the Government has imposed a substantial burden on an individual’s exercise of religion. *Id.* at 356. The burden imposed by government action rises to a “substantial” level if that action “coerce[s] the individuals to violate their religious beliefs or den[ies] them the rights, benefits, and privileges enjoyed by other citizens.” *Id.* at 357 (quoting *Lyng v. N.W. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 449 (1988)) (internal quotation marks omitted); accord *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007). In assessing whether a substantial burden exists, the court “should defer to the reasonableness of the [claimant’s] religious beliefs,” though the court may undertake an “objective evaluation of the nature of the claimed burden and the substantiality of that burden on the [claimant’s] religious exercise.” *Geneva Coll. v. Sec’y U.S. Dep’t of Health & Hum. Servs.*, 778 F.3d 422, 436

(3d Cir. 2015), *vacated on other grounds* *Zubik v. Burwell*, 578 U.S. 403 (2016). Nevertheless, the Government has no license to second-guess the adherent's assessment that the action in question substantially burdens her sincerely held religious beliefs. *See, e.g., Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989) (citing *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981)) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.").

If the government action substantially burdens the individual's exercise of religion, the court must next determine whether the Government has a compelling interest in

imposing that burden. *See Real Alts.*, 867 F.3d at 355. "[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Congress's mere placement of a drug under Schedule I of the CSA "simply does not provide a categorical answer that relieves the Government of the obligation to shoulder its burden under RFRA." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 432 (2006); *see id.* at 432–33 (internal citation and quotation marks omitted) (explaining that the text of the CSA itself "contemplates that exempting certain people from its requirements would be consistent with the public health and safety").

If the Government overcomes the heavy burden of demonstrating that it has a compelling interest, it must show that it has adopted the least restrictive means to further that interest. *See Real Alts.*, 867 F.3d at 355. "The least-restrictive means standard is exceptionally demanding." *Hobby Lobby*, 537 U.S. at 728 (citation omitted). Under this



standard, the Government must “show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.” *Holt*, 574 U.S. at 364 (citation omitted).

Finally, in reviewing suspect government action under the framework discussed above, courts must apply strict scrutiny, which “is the most demanding test known to constitutional law[,]” because “[c]laims that a law substantially burdens someone’s exercise of religion will often be difficult to contest.” *City of Boerne v. Flores*, 521 U.S. 507, 533–34 (1997) (citation omitted), *superseded by statute*, Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, Pub. L. No. 106-274, 114 Stat. 803 (codified at 42 U.S.C. §§ 2000cc to 2000cc-5 (2006)), *as recognized in Ramirez v. Collier*, 142 S. Ct. 1264 (2022). The burden to prove that the Government has not done so—or even that it is justified in doing

so—rests with the Government. *See id.*; *see also Holt*, 574 U.S. at 362. The strict scrutiny, burden-shifting review under the RFRA places a relatively low bar on claimants asserting statutory violations so long as they can allege a substantial burden to the exercise of their sincerely held religious beliefs. *See Hobby Lobby*, 573 U.S. at 724–25.

### **III. SAFEHOUSE BOARD MEMBERS LEGITIMATELY CLAIM A SUBSTANTIAL BURDEN ON THEIR CLOSELY HELD RELIGIOUS BELIEFS**

In its Memorandum of Law in Support of Motion to Dismiss, the Government “does not challenge the sincerity of Safehouse’s board members’ asserted religious beliefs in the value of human life.” Gov’t’s Mem. In Supp. of Mot. to Dismiss 21, ECF No. 211. With that concession in hand, the Court must determine whether the Government meets the limited exception under the RFRA. *See Real Alts.*, 867 F.3d at 355.

To meet that limited exception, the Government must demonstrate that it has not

imposed a substantial burden on members of Safehouse’s Board of Directors to exercise their religion. *See id.* at 356. Although the Government has no license to second-guess the impact of its action on members of Safehouse’s Board of directors, *see Hernandez*, 490 U.S. at 699, Amici Curiae nevertheless confirm below that the Government’s efforts to apply the CSA to Safehouse would substantially impair the ability of its Jewish and Christian Board Members to practice at least three key tenets that they sincerely hold: (1) saving lives generally; (2) providing life-saving treatment; and (3) caring for individuals who engage in illicit activities. We discuss each of these principles in turn, as well as describe how these religious beliefs have borne out over history.

### **A. Saving Lives Generally**

Judeo-Christian traditions unite around a core message—humans are created in God’s image (i.e., *Imago Dei*). *See United States v. Colon-de-Jesus*, No. 10-251, 2012 WL

2710877, at \*6 (D.P.R. July 6, 2012) (“It is a basic tenet of Judeo-Christian religions that human beings were created by God in its image and likeness.”). This sentiment is illustrated in Genesis, the very first book of the Hebrew Bible, otherwise known as the Old Testament in Christianity:

Then God said, “Let Us make man in Our image, according to Our likeness; let them have dominion over the fish of the sea, over the birds of the air, and over the cattle, over all the earth and over every creeping thing that creeps on the earth.” So God created man in His own image; in the image of God He created him; male and female He created them.

*Genesis* 1:26–27. This core principle provides human beings with a unique status in creation—if all human beings are created in God’s image, then all are worthy of love, understanding, and advocacy.

Christianity draws from Judaism in affirming the inherent dignity of every human based on

the *Imago Dei*.<sup>1</sup> In the Bible, Jesus has taught Amici to “‘Love the Lord your God with all your heart and with all your soul and with all your mind.’ This is the first and greatest commandment. And the second is like it: ‘Love your neighbor as yourself.’ All the Law and the Prophets hang on these two commandments.” *Matthew* 22:37–40.

The belief that human beings are made in the image of God is the basis for loving your neighbor as yourself and treating human life as sacred. The Old and New Testaments contain many examples of these principles:

- The Gospel of John teaches Christians that, “[i]f someone who has worldly means sees a brother in need and refuses him compassion, how can the love of God remain in him? Children, let us love not in word or speech but in deed and truth.” *John* 3:16–18.

<sup>1</sup> See, e.g., *Franciscan All, Inc. v. Burwell*, 227 F. Supp. 3d 660, 674 (N.D. Tex. 2016) (explaining that a Roman Catholic faith-based hospital system founded by a Roman Catholic order “believes that part of the image of God is an organic part of every man and woman, and that woman and men reflect God’s image in unique, and uniquely dignified, ways”).

- *Matthew* 25:34–40 directs Amici to take in and care for the sick: Jesus “will say to those on his right, ‘Come, you who are blessed by my Father. Inherit the kingdom prepared for you from the foundation of the world. For I was . . . ill and you cared for me . . . . Amen, I say to you, whatever you did for one of the least brothers of mine, you did for me.’”
- Paul the Apostle instructed Amici to “[b]ear one another’s burdens, and so fulfill the law of Christ.” *Galatians* 6:2.
- The Book of Leviticus contains the clear commandment that Amici “shall not go up and down as a talebearer among [our] people; neither shall [we] stand idly by the blood of [our] neighbor: I am the Lord.” *Leviticus* 19:16.
- In Deuteronomy, Moses conveyed God’s commandment to us: “You shall open wide your hand to your brother, to the needy and to the poor, in your land.” *Deuteronomy* 15:11.
- And the Talmud teaches Amici that “anyone who destroys a life is considered by Scripture to have destroyed an entire world; and anyone

who saves a life is as if he saved an entire world.” *Mishnah Sanhedrin* 4:5.

Those communities following the Judeo-Christian tradition have historically affirmed the sacredness of human life through action. In the Greco-Roman world of the First Century, it was culturally acceptable to leave infants—particularly females who were culturally devalued—to die of exposure. The same was true for malformed infant males. First Century Christians defied cultural norms and rescued the discarded infants because of their convictions that all humans are made in the image of God and that God created even the discarded child for a purpose. See RODNEY STARK, *THE RISE OF CHRISTIANITY: HOW THE OBSCURE, MARGINAL JESUS MOVEMENT BECAME THE DOMINANT RELIGIOUS FORCE IN THE WESTERN WORLD IN A FEW CENTURIES* 124–25, 161 (HarperSanFrancisco 1997).

This is the moral logic of *Imago Dei* in action—if humans love God, they must love, protect, and aid other humans whom God has created. See *John* 13:35 (“By this everyone will know that you are my disciples, if you love on another.”). Helping humans through difficulty

and saving lives when able is the natural product of Judeo-Christian beliefs. Cf *Jude* 1:23; *Proverbs* 24:11; *Jeremiah* 22:3; *Psalms* 82:4. Indeed, Jesus left humanity with clear instructions: “My command is this: Love each other as I have loved you.” *John* 15:12. **B.**

### **Providing Life-Saving Treatment**

The Judeo-Christian calling to save lives has significant implications for providing treatment to those who are ill or suffering. The Bible contains no shortage of passages depicting Jesus providing life-saving treatment:

- “When Jesus came down from the mountainside, large crowds followed him. A man with leprosy came and knelt before him and said, ‘Lord, if you are willing, you can make me clean.’ Jesus reached out his hand and touched the man. ‘I am willing,’ he said. ‘Be clean!’ Immediately he was

cleansed of his leprosy.” *Matthew* 8:1–3.

- “When Jesus came into Peter’s house, he saw Peter’s mother-in-law lying in bed with a fever. He touched her hand and the fever left her, and she got up and began to wait on him. When evening came, many who were demon-possessed were brought to him, and he drove out the spirits with a word and healed all the sick.” *Matthew* 8:14–16.
- “[Jesus] withdrew by boat privately to a solitary place. Hearing of this, the crowds followed him on foot from the towns. When Jesus landed and saw a large crowd, he had compassion on them and healed their sick.” *Matthew* 14:13–14.

Jewish scripture similarly commands its followers to provide life-saving treatment to the ill. See Rabbi Dov Linzer, *Treatment of Terminally Ill Patients According to Jewish Law*, 15 AM. MED. ASS’N J. OF ETHICS 1081, 1081 (“Jewish law recognizes a Biblically derived duty to heal the sick and to preserve life. When a life is at risk, even when the risk is small, this duty is so great that it overrides religious prohibitions.”).

### **C. Caring for Individuals Who Engage in Illicit Activities**

The Judeo-Christian tradition has a long history of strongly supporting and treating individuals who are sick, even if they engage in activities outside the norm. For example, in

the Gospel of John, Jesus refused to condemn to death a woman who had sinned, cautioning his followers “[l]et any one of you who is without sin be the first to cast a stone.” *John* 8:7–11.

Individuals struggling with addiction are no exception to this calling. Addiction has historically been stigmatized as a personal choice and moral failing; this stigmatization has led to a public health failure depriving drug and alcohol addicts of advocacy and care. See TENEILLE R. BROWN, ADDICTION AS DISEASE 22 (2019) (footnote omitted) (“The stigma from incarceration itself can lead to a ‘why try?’ effect, where people anticipate stigma and thus

see no point in trying to integrate back into their communities.”). Indeed, it is well established that addiction is a disease that requires compassion and treatment:

[T]here is a large and growing body of evidence about the neurobiologic basis for addiction behaviors, the role of genetic, environmental and epidemiologic factors, and the effectiveness of biologically based interventions for addiction (including harm reduction strategies). This evidence demonstrates that substance use is not a simple matter of choice . . . . Many genetic polymorphisms have been identified that enhance addictive responses by altering receptor sensitivity or drug metabolism. Over time, continued substance use causes permanent anatomic and chemical changes in the brain. Addiction is a chronic relapsing disease that we must treat as we do other such diseases. We do not expect the hearts of patients with heart failure to behave normally—we understand that their function has been altered by disease. Why, then, do we expect the brains of substances abusers to behave normally, since we know that their function has also been altered by disease? We understand how genetic polymorphisms can make cancers resistant to treatment; we are quick to show compassion to patients with such cancers. Why, then, can we not show the same understanding and compassion toward people whose genetic polymorphisms make them resistant to stopping smoking, abusing alcohol or injecting narcotics?

Matthew B. Stanbrook, *Addiction is a disease: We must change our attitudes toward addicts*, 184(2) CAN. MED. ASS’N J., 155, 155 (2012). It is equally well-established that addiction—

especially opioid addiction—significantly increases an individual’s risk of mortality.<sup>2</sup> Addicts are deserving of advocacy, and Judeo-Christian beliefs call on humanity to provide them with love, treatment, and care, even when social customs (or even the law) regard them as outsiders.

#### **D. How These Religious Beliefs Have Borne Out Over History** The

Judeo-Christian beliefs that compel Amici to act consistent with the tenets described above are not unique to the context of the modern-day opioid epidemic. Faith leaders throughout

history have been compelled by their religious beliefs to save lives, provide life-saving treatment, and care for individuals who engage in illicit activity and are otherwise marginalized from mainstream society.

The advent of hospitals that provide life-saving treatment can be traced to the Judeo-Christian tradition. See Louise Cilliers & Francois Pieter Retief, *The evolution of the hospital from antiquity to the end of the middle ages* 63, CURATIONIS (Nov. 2002) (“Christians’ typical attitude towards the sick was based on Christ’s parable of the Good Samaritan – mercy and compassion for anyone in need.”). The foundation of the first hospital in A.D. 379 is widely credited to Basil of Caesarea, a Christian monk and later bishop whose faith-based service to the community centered on providing care to the sickest and “abject and hated class.”<sup>3</sup> In the context of the U.S. healthcare system, the hospital system was “initiated in the late eighteenth and early nineteenth centuries as a welfare institution framed motivated by the

<sup>2</sup> See NAT’L INST. ON DRUG ABUSE, *Drug Overdose Death Rates* (June 30, 2023), <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates> (showing that opioid-related deaths rose from 2019–2021, with 70,601 overdose deaths reported in 2021).

<sup>3</sup> Timothy S. Miller, *Basil’s House of Healing*, CHRISTIAN HIST. INST. (2011), <https://christianhistoryinstitute.org/magazine/article/basils-house-of-healing> (noting that Basil’s medical philosophy included care of individuals with leprosy, who were considered amongst the most marginalized in society).

responsibilities of Christian stewardship.” Charles E. Rosenberg, *THE CARE OF STRANGERS: THE RISE OF AMERICA’S HOSPITAL SYSTEM* 8 (1987). Faith-based health organizations continue to make significant contributions to public health in hospitals in the United States and around the world today. See Cristiane Schumann et al., *The contribution of faith-based health organisations to public health*, 8 J. OF INT’L PSYCHIATRY 3 (2011).

These same Judeo-Christian principles have animated responses from faith leaders and

adherents during epidemics and pandemics throughout the centuries. During periods of widespread illness and suffering, the general tenets of faith have mandated providing life saving treatment—even at the expense of personal safety:

We die at our posts. Christian doctors cannot abandon their hospitals, Christian governors cannot flee their districts, Christian pastors cannot abandon their congregations. The plague does not dissolve our duties: It turns them to crosses, on which we must be prepared to die.<sup>4</sup>

This commitment to saving lives is guided by the sacredness of human life and the inherent dignity of every human being, irrespective of health status. These tenets have held even amongst the most marginalized communities and individuals in need of treatment. For example, faith leaders and faith-based organizations were instrumental in responding to the HIV epidemic and in providing treatment to individuals living with HIV. The Government itself has recognized the instrumental role that faith leaders played by providing funding to these organizations to administer HIV control and prevention programs around the world.<sup>5</sup>

\* \* \*

<sup>4</sup> See Lyman Stone, *Christianity Has Been Handling Epidemics for 2000 Years*, FOREIGN POL'Y (Mar. 13, 2020), <https://foreignpolicy.com/2020/03/13/christianity-epidemics-2000-years-should-i-still-go-to-church-coronavirus/> (reviewing the role of Christian adherents in epidemic response throughout the centuries). <sup>5</sup> U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, Engaging Faith-Based Organizations for HIV Epidemic Control, available at <https://www.cdc.gov/globalhivtb/who-we-are/resources/keyareafactsheets/faith-based-organizations.pdf> (last accessed Aug. 22, 2023).

#### IV. CONCLUSION

RFRA protects the right of adherents to follow their sincerely held beliefs. We provide this brief to the Court to confirm, in concrete terms, that the application of the CSA against Safehouse conflicts with sincere religious beliefs held by Jews and Christians. The Government's efforts, if successful, will substantially impair the ability of Jewish and



Respectfully Submitted,

/s/ Devin S. Sikes

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Dated: August 25, 2023

**CERTIFICATE OF SERVICE**

I certify that on this 25th day of August, 2023, a copy of the foregoing was filed via the Court's electronic filing system and served upon counsel of record via electronic

/s/ Devin S. Sikes

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