Written by **Michael Tennant** on August 30, 2022

California Can't Force Churches to Buy Abortion Coverage, Federal Judge Rules

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A federal judge ruled Thursday that California may not force churches to provide their employees with health-insurance plans that cover elective abortions.

The California Department of Managed Health Care's (DMHC) policy imposed a "substantial burden on the exercise of religion by" the plaintiffs and "was not narrowly tailored to serve a compelling [state] interest," wrote U.S. District Chief Judge Kimberly Mueller of the Eastern District of California, Sacramento Division.

The case in question, *Foothill Church v. Watanabe*, was occasioned by the DMHC's 2014 decision to inform California health insurers that, under the Knox Keene Health Care Service Plan Act of 1975, they are required to cover all "basic health care services" as defined by the state. Thus, "all health plans must treat maternity services and legal abortion neutrally." The agency further suggested that insurers keep this a secret from their customers, saying it was unnecessary to mention abortion coverage since it falls under "basic health care services."

The DMHC issued this guidance after two Catholic universities in the Golden State announced they would be dropping abortion coverage from their employee health plans. The abortion lobby immediately swung into action, emailing and meeting with DMHC officials to convince them not to let anyone escape their preferred regime of abortion on demand at someone else's expense.

Ultimately the DMHC decided that religious employers could not be forced to offer abortion coverage, but "did not issue guidance or a public statement to that effect," noted Mueller.

When the three plaintiffs — Foothill Church in Glendora, Calvary Chapel Chino Hills in Chino, and The Shepherd of the Hills Church in Porter Ranch — discovered that they were paying for abortion coverage, they consulted their insurance companies only to be told that, yes, the state really was mandating such coverage for all employers with no religious exemptions. Then, represented by attorneys from the Alliance Defending Freedom (ADF), they filed suit.

In 2018, while the suit was wending its way through the courts, the churches finally asked the DMHC for exemptions from the coverage mandate. The agency replied that it "has no regulatory authority or

jurisdiction over plan customers" but would "consider granting" an exemption if a plan requested one, though to date no plan had done so — at least not to the extent that would comport with the churches' strict pro-life stances.

The district court dismissed the case in 2019, but the Ninth Circuit Court of Appeals later remanded it to the district court in light of the Supreme Court's decision in *Fulton v. City of Philadelphia* (2021), which requires courts to subject policies that allow exemptions (as the Knox Keene Act does) to "strict scrutiny" to ensure that the policy is "narrowly tailored" to achieve a "compelling interest" and does not unfairly deny legal exemptions to religious entities.

The DMHC's policy failed this test, asserted Mueller. "Nothing in the statutory text explicitly precludes [DMHC Director Mary Watanabe] from fielding requests for exemptions from religious claimants," nor does it prevent her from considering plan revisions submitted by insurers at their customers' requests, penned the judge. "The director's authority to give orders to a plan does not foreclose the authority to consider requests for those orders from others. In the end, the director is still regulating the plan."

"In sum, the director has not shown '[she] lacks other means of achieving [her] desired goal without imposing a substantial burden on the exercise of religion by [plaintiffs],'" Mueller continued. "The director's denial of the churches' request for exceptions to accommodate their religious beliefs, based solely on the fact that those requests did not originate with a plan, was not narrowly tailored to serve a compelling interest."

Mueller therefore declared the DMHC policy unconstitutional.

"The government can't force a church or any other religious employer to violate their faith and conscience by participating in funding abortion," ADF Senior Counsel Jeremiah Galus said in a statement. "For years, California has unconstitutionally targeted faith-based organizations, so we're pleased the court has found this mandate unconstitutional and will allow the churches we represent to operate freely according to their religious beliefs."

Mueller gave the parties to the lawsuit 30 days to file supplemental briefings "on the remedies and scope of injunctive relief sought."