



Written by [Dave Bohon](#) on July 5, 2014

Supreme Court Sides With College Against Contraception Mandate

The U.S. Supreme Court ruled July 3 for a prestigious Christian college in the ongoing battle against the Department of Health and Human Services' (HHS) contraception mandate. The ruling came just days after the decision that Hobby Lobby and Conestoga Wood Specialties are exempt from the HHS mandate requiring companies to provide abortifacient drugs and other contraceptives to their employees. In the July 3 ruling, the High Court gave Wheaton College in Illinois temporary emergency relief from the mandate while the Christian college's suit against the "Affordable Healthcare Act" rule is pending in the courts.



Wheaton College is one of over one hundred Christian non-profits and private companies that have sued to stop the mandate, arguing that it would require them to violate their religious convictions by making available to their employees contraceptives that are known to cause abortion.

Without the last-minute decision by the High Court, the college faced as much as \$35 million in fines per year if it refused to follow the mandate. While the HHS contraceptive mandate allows non-profits such as Wheaton College to opt out of direct coverage for contraceptives by completing a government form that would effectively hand off the duty to a third-party insurance provider, the college has argued that submitting the form would still make it complicit in providing the abortifacient drugs. As in the Hobby Lobby case, Wheaton College is arguing that the mandate represents a violation of the Religious Freedom Restoration Act, which protects entities from following federal laws and mandates that violate their religious liberties guaranteed by the First Amendment.

"Because the government would require Wheaton to sign a form authorizing, directing, obligating, and incentivizing other parties to provide the contraceptives in Wheaton's place, Wheaton can't instruct someone to do things that it cannot do itself," explained attorney Mark Rienzi of the [Becket Fund for Religious Liberty](#), which is representing Wheaton College in the case.

The Supreme Court order states that Wheaton "need not use the form prescribed by the Government" under the HHS Mandate, and it prohibits the government "from enforcing against [Wheaton] the challenged provisions of the Patient Protection and Affordable Care Act and related regulations pending final disposition of appellate review."

In the unsigned decision, the majority justices explained that if Wheaton College "informs the Secretary of Health and Human Services in writing that it is a non-profit organization that holds itself out as religious and has religious objections to providing coverage for contraceptive services, the respondents are enjoined from enforcing. To meet the condition for injunction pending appeal, the applicant need not use the form prescribed by the Government, EBSA Form 700, and need not send copies to health



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insurance issuers or third-party administrators.”

Wheaton specified that it does not object to contraception as a rule, but only to providing products such as Ella, Plan B, and other “morning after” drugs that are known to cause abortion early in conception.

The majority justices wrote that nothing in their emergency ruling “affects the ability of the applicant’s employees and students to obtain, without cost, the full range of FDA approved contraceptives. The Government contends that the applicant’s health insurer and third-party administrator are required by federal law to provide full contraceptive coverage regardless whether the applicant completes EBSA Form 700.”

The order provides Wheaton College with the same protection the Supreme Court gave to the Little Sisters of the Poor, a Catholic charity, in January, and comes on the heels of a similar ruling by the Eleventh Circuit Court of Appeals in favor of the Catholic [Eternal Word Television Network](#).

In a press release, Becket Fund noted that Wheaton College is a “pervasively Christian academic institution, whose motto is ‘For Christ and His Kingdom.’ Its students, faculty, and staff commit to a Community Covenant that affirms ‘the God-given worth of human beings, from conception to death.’”

In celebrating the emergency ruling, Rienzi said that “the Court rightly recognized that Wheaton’s religious community should be allowed to practice its faith free from crushing government fines.”

As they did in the Hobby Lobby case, the High Court’s three female justices dissented on the Wheaton College ruling, with Justice Sonia Sotomayor writing: “Rather than availing itself of this simple accommodation, Wheaton filed suit, asserting that completing the form and submitting it to its third-party administrator would make it complicit in the provision of contraceptive coverage, in violation of its religious beliefs.”

Sotomayor declared that “Wheaton is mistaken” in its assertion, “not as a matter of religious faith, in which it is undoubtedly sincere, but as a matter of law: Not every sincerely felt ‘burden’ is a ‘substantial’ one, and it is for courts, not litigants, to identify which are.”

Added the justice: “Let me be absolutely clear: I do not doubt that Wheaton genuinely believes that signing the self-certification form is contrary to its religious beliefs. But thinking one’s religious beliefs are substantially burdened — no matter how sincere or genuine that belief may be — does not make it so.”

Sotomayor complained that the ruling would make it more difficult for the federal government to compel businesses and non-profit employers to buckle under to the contraception mandate, and would likely prompt other like-minded businesses and organizations to file for a religious exemption from the mandate. “The issuance of an injunction in this case will presumably entitle hundreds or thousands of other objectors to the same remedy,” she wrote. “I disagree strongly with what the court has done.”

In a statement after the ruling, Dr. Philip Ryken, president of Wheaton College, said that “on the eve of Independence Day, we are grateful to God that the Supreme Court has made a wise decision in protecting our religious liberty — at least until we have an opportunity to make our full case in court. We continue to believe that a college community that affirms the sanctity of human life from conception to the grave should not be coerced by the government into facilitating the provision of abortion-inducing drugs.”



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