



Court Rules Against Notre Dame on Contraception Mandate

The United States Court of Appeals for the  Seventh Circuit in Chicago ruled against the University of Notre Dame on February 21 — upholding a U.S. District Court judge’s earlier ruling that denied the university’s request for an injunction temporarily exempting it from complying with the Affordable Care Act’s contraceptive mandate.

Notre Dame had sought the injunction against the contraceptive requirement pending the results of a lawsuit it filed in May 2012 challenging an alternative plan offered by the Obama administration that offers cosmetic cover intended to assuage the consciences of institutions that object to the Affordable Care Act mandate on religious grounds. The compromise plan requires the administrator of Notre Dame’s employee plan, Meritain Health Inc., and the insurer for students, Aetna Inc., to pay for birth control coverage and establishes a method to reimburse those entities.

However, Notre Dame objected to that arrangement because it still forces the university to be complicit in an act that is contrary to Catholic moral teaching.

The Court ruled two-to-one to uphold the judge’s denial of the university’s request for a temporary injunction.

Judge Richard Posner, who wrote the majority opinion, dismissed the university’s moral argument, writing:

If the government is entitled to require that female contraceptives be provided to women free of charge, we have trouble understanding how signing the form that declares Notre Dame’s authorized refusal to pay for contraceptives for its students or staff, and mailing the authorization document to those [insurance] companies, which under federal law are obligated to pick up the tab, could be thought to “trigger” the provision of female contraceptives.

“We are left with the question, what does Notre Dame want us to do?” Judge Posner asked.

Presumably, Notre Dame wants the federal government to do what it always has (or has not) done — mind its own business and not interfere with how private institutions operate.

In his dissent, Judge Joel M. Flaum noted that other religious institutions have been granted injunctions when they have challenged the law, writing:

Notre Dame tells us that Catholic doctrine prohibits the actions that the government requires it to take. So long as that belief is sincerely held, I believe we should defer to Notre Dame’s understanding.

Notre Dame spokesman Paul Brown released a statement to the local *South Bend Tribune* noting that the university’s “concern remains that if government is allowed to entangle a religious institution of higher education like Notre Dame in one area contrary to conscience, it’s given license to do so in



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others.”

“Our lawyers are reviewing the 7th Circuit ruling and contemplating next steps,” Brown said.

A report in the *Wall Street Journal* noted that after Notre Dame failed to receive the injunction, it instructed its insurance plan administrator to inform school employees they are eligible for the separate contraception arrangement while the case continues.

However, noted the *Journal*, the ruling “isn’t the final word on Notre Dame’s case. It only determines that the school to date hasn’t made a strong enough showing to block the requirement while a full legal challenge continues in court.”

Notre Dame is but one of many organizations, both religious and secular, that have fought against compliance with the HHS contraceptive mandate on ethical grounds. Some cases have even been appealed to the Supreme Court.

The most successful win thus far was in favor of a religious order called The Little Sisters of the Poor, who were granted an injunction by the Supreme Court on January 24. In making its decision, the High Court ruled that if the Little Sisters of the Poor assert in writing “that they are non-profit organizations that hold themselves out as religious and have religious objections to providing coverage for contraceptive services,” the administration is barred from enforcing the requirement for contraceptive coverage in employee healthcare plans.

The Supreme Court order noted that the injunction will remain in place until the underlying lawsuit, *Little Sisters of the Poor v. Sebelius*, is resolved.

Another case that the Supreme Court has agreed to hear oral arguments on has been brought by Hobby Lobby, the national chain of arts and crafts stores known for its founders’ strong Christian beliefs. (All of its stores are closed on Sundays.) Hobby Lobby has been scheduled to present oral arguments against the Department of Health and Human Services’ “preventive services” mandate before the Court on Tuesday, March 25.

The *Christian Post* reported on January 13 that Hobby Lobby’s owners, David and Barbara Green, filed a lawsuit against HHS in the U.S. District Court for the Western District of Oklahoma regarding the controversial mandate in September 2012.

A specific point of contention for the Green family was the providing of the “morning after” and “week after” pills, which are considered abortion-inducing and, therefore, contrary to the family’s pro-life views.

Hobby Lobby President Steve Green told the *Christian Post* in an interview last June that “our Founders gave us the religious freedoms that we have today and as a business we have the right to live according to those freedoms.”

“The government is saying we have to provide prescriptions that are abortive and that violate our conscience, because we believe that life begins at conception and it’s something that we have no desire to fully fund, which is what the mandate requires,” said Green.

Other colleges besides Notre Dame are fighting against ObamaCare’s contraceptive mandate, including Dordt College, a Christian Reformed college in Iowa, and Cornerstone University, a non-denominational Christian college in Michigan, which filed suit against HHS last October.

“This filing is first and foremost an effort to preserve and protect our religious freedom as guaranteed



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by the First Amendment,” Joseph Stonewell, president of Cornerstone University, told the media. “Given our conviction that life begins at conception and our commitment to the sanctity of life, we find the mandate to provide our faculty, staff and students with insurance that provides access to abortion-inducing prescriptions unacceptable.”

Another college battling the HHS mandate is Florida’s Ave Maria University, which, after its first lawsuit against the mandate was dismissed in March of last year, filed a second lawsuit in August. The suit read, in part:

The University’s sincere religious beliefs forbid it from facilitating, participating in, paying for, training others to engage in, or otherwise supporting contraception, sterilization, or abortion.

The university’s president, Jim Towey, wrote a guest editorial published by *Investors Business Daily* on February 11, in which he noted the inconsistency between the White House’s grant of reprieve for medium-size businesses’ compliance with the Affordable Care Act for economic reasons, while “the owners of the Hobby Lobby retail chain, David and Barbara Green, get no such relief.”

Wrote Towey:

The Greens are not alone in their beliefs. I serve as president of Ave Maria University, a Catholic university, and our religious beliefs also prevent us from complying with the mandate.

Many institutions fighting against the HHS mandate in court are being represented by the Beckett Fund, which describes itself as “a non-profit, public-interest legal and educational institute with a mission to protect the free expression of all faiths.” Among its clients are the aforementioned Notre Dame, Little Sisters of the Poor, Hobby Lobby, Cornerstone University, and Ave Maria University — as well as Colorado Christian University, Wheaton College, Liberty University, American Family Association, Tyndale Publishers, Seneca Hardwood, and many more.

The Becket Fund has lists of the status of both the non-profit and for-profit organizations it represents on its [website](#), with links providing information related to each case.

Organizations willing to fight the HHS mandate are fortunate to have this resource available to defend their interests and their values.



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