Written by **Michael Tennant** on March 19, 2013

Federal Judge Overturns Missouri Law Nullifying Contraception Mandate

Claiming that in a conflict between state and federal law, federal law always prevails, a federal judge overturned a Missouri law that exempted employers who object to birth control from the ObamaCare contraception mandate.

According to the Associated Press, the law, passed by the state legislature last year over the veto of Gov. Jay Nixon, "requires insurers to issue policies without contraception coverage if individuals or employers assert that the use of birth control violates their 'moral, ethical or religious beliefs.'" It was a clear attempt to counter the Obama administration's rule that all health insurers cover contraception at no cost even where employers offering the insurance to their employees object to such coverage. The administration made exceptions for churches but not for other employers, thus demanding that those employers check their convictions at the office door.

The law was challenged by insurance providers seeking to keep themselves out of legal jeopardy. If they were to abide by the state law and write policies that did not include contraceptive coverage, they could find themselves in hot water with the federal government. On the other hand, if they were to follow the ObamaCare mandate, they would then run afoul of state law. Two insurers, in fact, had already found themselves in the latter situation, with the state insurance department seeking civil penalties against them for failing to offer plans excluding contraceptive coverage.

U.S. District Judge Audrey Fleissig, who had issued a temporary restraining order against the law in December, struck it down on March 14 on the basis that the state law "is in conflict with, and pre-empted by, existing federal law" and "could force health insurers to risk fines and penalties by choosing between compliance with state or federal law." Fleissig, who was appointed to the bench by President Barack Obama, "emphasized that she was taking no position on the merits of the Obama administration policy," the AP reports.

She was, however, taking a position on the supremacy clause of the U.S. Constitution, which states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Fleissig's opinion, which is shared by the majority of judges and legal scholars, seems to be that any federal law trumps any conflicting state law. But the supremacy clause is more nuanced than that. "That clause says that laws made by the United States 'in pursuance' of the Constitution are the supreme law of the land which means that acts not in 'pursuance' of the Constitution are not laws at all," as Emory University professor Dr. Donald Livingston explained to the South Carolina House Judiciary Subcommittee in February.

Now Fleissig and others might argue that since the Supreme Court has declared ObamaCare constitutional, the matter is therefore decided, and states must simply accede to the wishes of the federal government. Livingston disagrees:

> But who is to decide whether an act is or is not in "pursuance" of the Constitution? Some would say the Supreme Court. The Court may, indeed, express an opinion, but it cannot have the final say. That can only be vested in the supreme authority that ratified the Constitution and gave it the force of law, namely the people of the several states….

Only the states themselves have the final say over what their … powers are. And Madison said that if the central government should intrude into the state's [sic] reserved powers, the states would have a "duty" to "interpose" and protect their citizens from harm.

In other words, the Show Me State has every right — a duty, in fact — to refuse to cooperate with the contraception mandate and, indeed, with the whole of ObamaCare since neither falls within the federal government's constitutionally enumerated powers. (Missouri voters took a step in that direction just months after ObamaCare became law, overwhelmingly approving a ballot initiative nullifying the individual mandate.) Fleissig was wrong to rule otherwise.

The state insurance department has said it will no longer enforce the law and will drop its complaints against the two insurance companies. As a result, Fleissig felt no need to issue a permanent injunction against the law.

Insurers were, of course, pleased with her decision. It "clears up what law they have to write the policies under," Brent Butler, government affairs director of the Missouri Insurance Coalition, told the AP, adding that "that's all we were asking."

Peter Brownlie, president and CEO of Planned Parenthood of Kansas and Mid-Missouri, was possibly even happier with the outcome. The AP writes that Brownlie "praised the ruling for ensuring 'that all Missouri women — no matter who their boss is — have access to basic preventive health care without a co-pay, including birth control.'"

Those with objections to contraception and those forms of it that can cause abortions were displeased.

Our Lady's Inn, a nonprofit that provides homes and counseling for pregnant women in the St. Louis area, had filed a court document declaring that it planned to opt out of contraceptive coverage for its employees, which it will not be able to do given Fleissig's ruling.

"The point of the law was to tell health insurance companies that they're supposed to honor the wishes — pro or con — of people who have religious or ethical objections to what's in the policy," Timothy Belz, attorney for Our Lady's Inn, told the AP.

Campaign Life Missouri, in an e-mail, was more forceful in its denunciation of the decision, calling it "a radical departure from America's tradition of religious freedom." Spokesman Sam Lee told LifeNews.com that the state attorney general's office had "ably defended" the law and urged people to

contact the office in support of an appeal.

Attorney General Chris Koster has not yet stated whether he will appeal the ruling. If he does, he will surely meet fierce resistance from opponents of federalism and believers in forcing some people to violate their consciences so that others can obtain something they desire for (seemingly) nothing. Therefore, Koster will need all the backup he can get.