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# Supreme Court Ruling on Religious Objection to Contraceptive Coverage

The U.S. Supreme Court has ruled that “closely-held” employers with religious objections do not have to cover certain contraceptives under their benefit plans. It appears the decision does not apply to publicly-traded organizations or to privately-held companies that do not have a religious objections. There continues to be a complete exemption from the contraceptive coverage requirement for qualifying nonprofit religious organizations such as churches and houses of worship, and there also continues to be an accommodation for certain other non-exempt, non-profit religious organizations - such as hospitals and schools - that have religious objections to contraceptive coverage. The Court ruling and the available exemptions and accommodations are further explained below.

The Supreme Court decision considered two cases brought by Conestoga Wood Specialties Corp. and Hobby Lobby Stores challenging the federal government's authority to enforce preventive care provisions in the Patient Protection and Affordable Care Act (PPACA) that require certain employers to provide their group health plan members with cost-free coverage for contraceptive prescriptions and services. In both cases, the for-profit company owners, as health plan sponsors, hold religious objections to providing access to some forms of birth control. The companies argued that private employers with religious objections should be exempt from the provision on the grounds that the requirement violates their rights to free expression of religion under the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act (RFRA). The Court agreed and ruled that the preventive care provisions implementing PPACA do not require comprehensive coverage of contraceptive services where a “closely-held” employer holds religious objections to such coverage.

**What PPACA Requires.** PPACA itself does not require coverage for contraception services and Congress never mandated health plan coverage for contraceptive services. Rather, it is the U.S. Health and Human Services (HHS) implementation of PPACA’s preventive care provisions which requires that coverage. When PPACA was enacted, the law required all new non-grandfathered health plans to provide in-network coverage, without cost sharing, of preventive services that fall into certain categories. With respect to women’s health, PPACA identified “preventive care” as provided for in comprehensive guidelines to be supported by HHS. HHS commissioned the Institute of Medicine (IOM) to publish guidelines on this issue, and HHS subsequently adopted the IOM recommendations, including coverage of contraceptive drugs, devices, and related counseling, without imposing any cost sharing. Final regulations provided some exemptions from this requirement for qualifying nonprofit religious organizations (see 1 below), as well as an

accommodation for certain other nonprofit entities (see 2 below). However, the rules did not offer any relief to for-profit secular employers or for-profit corporations with objections to providing contraceptive services.

1. *Complete Exemption for Religious Employers.* In July 2013, final regulations were issued providing a complete exemption from the contraceptive coverage requirement for qualifying nonprofit religious organizations. Therefore, under PPACA, religious employers (i.e., churches and houses of worship) are exempt from this contraceptive coverage mandate.
2. *Accommodation for Other Non-Profit Religious Organizations.* The final regulations also included an accommodation for certain other non-exempt, non-profit religious organizations - such as hospitals and schools - that have religious objections to contraceptive coverage. These entities are provided an “accommodation” if they self-certify that they meet certain criteria. These non-exempt, non-profit religious organizations that object to contraceptive coverage on religious grounds do not have to contract, arrange, pay for, or refer contraceptive coverage, but such coverage must be separately provided to women enrolled in their health plans at no cost. This accommodation relief is not available for nonprofit secular employers or for-profit corporations with religious objections. Controversy over this contraceptive coverage mandate “accommodation” has continued based on religious liberty concerns. See our January 2014 Update for more information.

**The Many Challenges.** There have been many court cases challenging the contraceptive coverage mandate since HHS adopted the guidelines. The challenges have come from both non-profit religiously affiliated hospitals, colleges, and charities who believe the accommodation provided (see 2 above) does not go far enough, and from certain for-profit organizations who have no relief from the contraceptive mandate. Some employers, like those involved in the Supreme Court case, are willing to cover most methods of contraception, as long as they can exclude drugs or devices that work after an egg has been fertilized. Other employers object to paying for any form of birth control.

**Approved Contraceptive Methods At Issue.** Under the HHS approved guidelines, employers are required to provide coverage for 20 contraceptive methods approved by the Food and Drug Administration (FDA, including four specific methods that work after conception and, therefore, may have the effect of preventing an already fertilized egg from attaching to the uterus. The owners of Hobby Lobby and Conestoga objected to the coverage requirement for these four specific contraceptive methods (emergency contraceptives Plan B and ella, and two intrauterine devices or “IUDs”), saying that their use ran against their religious beliefs about abortion.

**Supreme Court Holding.** The Court held that the religious objections cited were legally legitimate and that the contraceptive coverage mandate “substantially burdens” the companies’ exercise of religion by requiring them either to violate their sincere religious beliefs or face “severe economic consequences” in the form of PPACA employer mandate “pay or play” penalties for failing to comply with the contraceptive coverage mandate. The Court noted that those assessments would be costly and that the companies “have religious reasons for providing health-insurance coverage to their employees.” According to the Court, the pay or play fines for one company could total $475 million per year if they stopped offering health coverage because of the contraceptive coverage rule.

- Court Exempts Closely Held Employers with Religious Objections. The Court ruling applies only to “closely-held” employers, and then only to those employers with religious objections. According to the IRS, a “closely-held corporation” (1) has more than 50 percent of the

value of its outstanding stock owned (directly or indirectly) by five or fewer individuals at any time during the last half of the tax year, and (2) is not a personal service corporation. According to the Court, these closely-held employers with religious objections do not have to cover the four noted contraceptive methods. The opinion notes that the ruling is "very specific" and should not be construed as permitting for-profit corporations or commercial enterprises to "opt out of any law they judge incompatible with their sincerely held religious beliefs."

- No Exemption or Accommodation for Publicly Traded Organizations or Closely-Held Employers Without Religious Objections. The Court ruling applies only to corporations that are under the control of just a few people in which there is no essential difference between the business and its owners. It appears the decision does not apply to publicly-traded organizations or to closely/privately-held companies that do not have a religious objection. The Court expressed doubt about the likelihood of religious freedom claims on the part of any public companies, which in contrast to many family-owned companies, typically have unrelated shareholders who do not share uniform religious beliefs.

**The Administration Response.** The question now before the Obama administration is how it might try to accommodate for-profit businesses that claim religious objections while also extending contraceptive coverage to female workers. The Court suggested two ways the Administration could ensure women get full contraceptive coverage. The government could, for example, simply pay for pregnancy prevention. Alternatively, the government could extend to closely held, for-profit corporations the accommodation it has already devised for objecting religious nonprofit organization (see 2 above), by letting the groups' insurers or a third-party administrator take on the responsibility of paying for the birth control. However, even this accommodation approach remains controversial, with several new and ongoing court challenges from religious groups seeking relief from the mandate and the accompanying fines.

**In Closing.** Although nearly 80 percent of American companies are closely held, this decision will not directly affect most employers subject to PPACA, such as employers that are publicly-traded companies or closely-held corporations without religious objections to providing contraceptive coverage services. The decision will likely have important implications for pending lawsuits brought by non-profit religious organizations. Only time will tell just how far this decision will go in paving the way for other religious belief-based challenges to different aspects of the PPACA's coverage mandates.

Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.

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