

Supreme Court to hear religious challenge to Obamacare contraceptive provision

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The United States Supreme Court on Tuesday granted review to two challenges, both filed by religious fundamentalists, to a provision of the Obama administration's Affordable Care Act (ACA) that requires employers to provide workers with health plans that include access to birth control.

The challenges, which will be heard by the Supreme Court as a single case in the 2013-14 term, represent an attempt to strip workers of the right to basic forms of birth control that have been legally available for over four decades. Under the guise of "religious freedom," the plaintiffs are requesting that the government grant them the "right" to be exempt from federal law, in clear violation of the principle of separation of church and state that is spelled out in the First Amendment to the US Constitution.

The court will hear the case under conditions where the Christian right and the Catholic Church have been strengthened by the cowardice and capitulation of the Obama administration to their anti-democratic demands. In February of last year, President Obama agreed that under his health care overhaul, religious organizations, schools and charities would not be compelled to provide their employees with contraceptive care. Such coverage would instead be provided by insurance companies, Obama said.

At the time, he declared that "we've been mindful that there's another principle at stake here—and that's the principle of religious liberty, an inalienable right that is enshrined in our Constitution. As a citizen and as a Christian, I cherish this right."

Obama's claim that "under [the ACA], women will still have access to free preventive care that includes contraceptive services, no matter where they work," has turned out—like his oft-repeated claim that "if you like your health plan, you can keep your health

plan"—to be a lie. Thousands of employees have already been cut off of access to contraceptives. If the Supreme Court rules in favor of the religious challengers, that number will increase precipitously.

The two cases taken up by the Supreme Court have similar factual backgrounds and pose the same legal issues, but have taken different paths to the high court.

The consortium of plaintiffs includes the religious owners of the corporations involved in the suit as well as the corporations themselves.

In *Hobby Lobby Stores, Inc. v. Sebelius*, the individual plaintiffs are members of an Oklahoma City-based family of fundamentalist evangelical Christians who own and operate Hobby Lobby Stores, Inc. and Mardel, Inc. The two companies are co-plaintiffs. They employ over 13,000 people and are run on a for-profit basis. Hobby Lobby founder and CEO David Green is a multi-billionaire who boasts of having printed and distributed 1.4 billion copies of the bible in Africa and Asia.

The Green family requires that business trustees sign a "Trust Commitment" that requires them to "regularly seek to maintain a close intimate walk with the Lord Jesus Christ by regularly investing in His Word and prayer." The family invites customers to "know Jesus as Lord and Savior."

The individual plaintiffs in *Conestoga Wood Specialties Corporation v. Sebelius* belong to a sect of Mennonite Christians and operate Conestoga Corporation, a for-profit furniture company based in East Earl, Pennsylvania. (Kathleen Sebelius is the secretary of health and human services in the Obama administration.)

The plaintiffs in both cases claim that their individual First Amendment right to freely exercise religion and their right under the Religious Freedom Restoration Act

of 1993 (RFRA) to practice their religion without being substantially burdened by the government have been violated by the birth control provision. The plaintiffs brought their claims both as individuals and as corporations, asserting that a for-profit corporation has the right to deny its workers contraceptive coverage, provided it can show it is operated on a sufficiently religious basis.

In the federal appeals courts, the two suits produced divergent rulings. In *Hobby Lobby*, a special full panel of the Tenth Circuit Court of Appeals reversed a lower court's decision denying the plaintiffs' motion for a preliminary injunction—a legal procedure that, when granted, provides the moving party with immediate relief from the harms alleged. In *Conestoga Wood Specialties Corporation v. Sebelius*, the Third Circuit Court of Appeals affirmed the lower court's denial of the plaintiffs' motion for a preliminary injunction.

In its ruling in favor of the plaintiffs in *Hobby Lobby*, the Tenth Circuit asserted that the plaintiffs and the for-profit corporation they operate have the right to deny their employees access to birth control coverage on the grounds that they would suffer irreparable harm as a result of the birth control provision of the ACA.

Although the Third Circuit ruled against the plaintiffs in *Conestoga*, the court's majority made no attempt to point out the dangerous implications that granting a preliminary injunction would have for the Establishment Clause of the First Amendment, which states that “Congress shall make no law respecting an establishment of religion.”

The principle that government must abstain from granting special privileges to religious groups was fundamental to the framers of the US Constitution, who had deep intellectual roots in the secular principles of the Enlightenment period.

In an 1802 letter to a group of Baptists, Thomas Jefferson wrote: “I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church and State.”

James Madison was adamantly opposed to any effort that might require a citizen to “contribute three pence only of his property for the support of any one” religion.

The attack on the right of workers to contraceptive health benefits, waged under the pretense that the US Constitution protects the right of religious zealots to impose their views on their workforce, poses a direct threat to the secularist foundations of the United States and all of the civil liberties enumerated in the Bill of Rights of the US Constitution.



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