

Supreme Court justice stays contraceptive mandate for some church-run institutions

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The Supreme Court stepped into another dispute over the contraceptive mandate in the Obama health care law, with Justice Sonia Sotomayor issuing a stay late New Year's Eve halting application of the mandate to homes for the aged run by the Little Sisters of the Poor, and requiring the Justice Department to file a brief on the issue by 10 am on January 3.

The Obama administration has not sought to impose the contraceptive mandate on the Little Sisters of the Poor, a small order of nuns based in Colorado, or on the 30 homes for the elderly where the order employs several hundred workers. The issue here is the effort of a far-right Catholic group, the Becket Fund for Religious Liberty, to provoke further court intervention eroding the separation of church and state.

The Supreme Court has already agreed to hear one religion-based challenge to the contraceptive mandate, consolidating two lawsuits brought by corporations whose owners claim religious exemption. The issue in that challenge, to be heard by the high court in March, is whether a for-profit corporation has First Amendment rights to religious freedom.

The suit brought by the Little Sisters of the Poor deals with a separate issue—the rules for hospitals and other public institutions that are affiliated with churches but employ many workers who are not members of religious orders themselves.

The Obama administration exempted religious groups from the contraception mandate in its original formulation of the law, and last year carried out a further climbdown in the face of opposition from Catholic and fundamentalist Protestant groups, exempting church-affiliated institutions from paying the cost of contraceptive coverage for their employees and requiring insurance companies to cover the cost themselves.

As the Justice Department argued before an appeals court panel in Denver on December 30, “To opt out of providing contraceptive coverage, Little Sisters need only certify that they are nonprofit organizations that hold themselves out as religious and that, because of religious objections, they are opposed to providing coverage for some or all contraceptive services.”

Such concessions have only emboldened the right-wing elements that seek to eradicate the separation of church and state, a core democratic precept embodied in the First Amendment to the US Constitution. These groups seek to elevate the religious prejudices of the Catholic Church and evangelical Protestants to the status of legal mandates on the entire US population.

Some Catholic-run institutions have accepted the Obama administration cave-in, but others, including the Little Sisters of the Poor, argue that even the act of filling out the form to claim the exemption from the mandate violates their religious freedom, since it would result in authorizing their insurance company to provide contraceptive coverage to employees.

This argument rests on a grossly distorted conception of liberty, in which the church group insists on its “right” to impose standards of behavior on its employees, even those who are not of the same religious affiliation or not religious at all. In the guise of defending their own “freedom,” the church groups seek to abolish the freedom of their employees to obtain medical treatment, including contraception.

The case of the Little Sisters of the Poor is a particularly flagrant example of an artificially concocted legal challenge, because the insurance broker used by the order, the Christian Brothers Employee Benefit Trust, is a Catholic group that has already been exempted from the contraceptive mandate by the Obama administration. In other words, the lawsuit

seeks to “protect” the group of nuns from a non-existent threat in an effort to obtain a further right-wing ruling from the Supreme Court.

This legal challenge was so patently flimsy that the 10th Circuit Court of Appeals, which covers the Rocky Mountain states, refused to grant an injunction to the Little Sisters of the Poor.

The order then appealed directly to Justice Sotomayor, Obama’s first appointment to the Supreme Court, who handles cases originating in the 10th Circuit.

Sotomayor’s order applies not only to the Little Sisters of the Poor, but to more than 200 other faith-based groups that contract with the Christian Brothers Employee Benefit Trust. But the order has no practical effect because the Obama administration had already conceded that neither these groups nor their insurer would be compelled to provide contraceptive coverage.

The Justice Department declared, in an earlier brief filed with the 10th Circuit Court of Appeals: “There is no statutory authority to regulate the third-party administrator of a self-insured church plan and no legal compulsion for that administrator to provide contraceptive coverage where an eligible organization with a self-insured church plan invokes the accommodation.”

In other words, the Obama administration agreed that employees of the Little Sisters of the Poor and the other 200 groups insured through the benefit trust should be denied contraceptive coverage. The Justice Department only wants the religious order to fill out the paperwork to claim its exemption.

Meanwhile, in two similar legal challenges to the contraceptive mandate, appeals courts granted temporary injunctions to religious plaintiffs. The US Court of Appeals for Washington, DC, in a 2-1 ruling, issued a temporary order sought by the Roman Catholic Archbishop of Washington and the Catholic University of America. The Sixth Circuit Court of Appeals did the same for another religious-run nonprofit in Tennessee.



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