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Lawyer says judge's order affects religious liberty of all Missourians

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A federal judge's decision to strike down portions of a Missouri law protecting conscience rights of those who object to coverage of contraceptives and abortifacients in their health plans attacks the conscience rights and religious liberty of all Missouri citizens, said the state's Catholic conference.

Judge Audrey Fleissig of the U.S. District Court for the Eastern District of Missouri in St. Louis issued her order March 14.

The Missouri Catholic Conference, public policy arm of the state's bishops, expressed dismay over her decision. Tyler McClay, the conference's general counsel, said no one should be forced to pay for contraceptives, abortion drugs or sterilization procedures in their health plans.

Fleissig's order effectively amended a state law, McClay said, "thereby requiring churches and houses of worship to provide the offending coverage to their employees under Missouri law. She did this despite the fact that the Obama administration recently amended the rules to clearly allow churches and their affiliates to be exempt from the mandate."

He was referring to new proposed rules issued Feb. 1 by the U.S. Department of Health and Human Services that would widen the exemption for religious organizations under the federal requirement that all employers provide employees with free coverage contraception, sterilization and abortion-inducing drugs.

HHS removed three conditions that defined religious employers -- as groups whose purpose is the inculcation of religious values, who primarily employ persons of the same faith and who serve those of the same faith. The fourth criterion remains: what is a nonprofit organization under specific sections of the Internal Revenue Code.

No exemption, however, will be given to "for-profit, secular employers" whose owners have moral objections to providing the coverage.

A number of religious entities, including the U.S. Conference of Catholic Bishops, say the new proposed rules do not go far enough to exempt all those who object on moral and religious grounds to such coverage, such as individual employees and for-profit employers.

A number of federal judges, including even the 8th Circuit Court of Appeals, have granted injunctive relief to several Missouri for-profit employers that have sued, claiming that the HHS contraceptive mandate violates their religious liberty, McClay said. Her order specifically mentions these cases, but claims they are irrelevant to her decision.

"Attorney General Chris Koster vigorously defended the law before the court, but Judge Fleissig dismissed his arguments. Now the attorney general needs to appeal this overreaching decision and stand up for the religious liberties of all Missouri citizens," he said.

The Catholic conference has asked all Missourians to contact Koster and urge him to appeal Fleissig's "overreaching judicial order."

The judge's March order followed a temporary restraining order she issued in December that blocked enforcement of the Missouri law, which was passed last year to ensure that no one is forced to pay for abortion drugs and similar items in their health insurance when it violates their religious beliefs.

Gov. Jay Nixon vetoed the bill, but in a special legislative session in September both houses of the Missouri Legislature voted by wide margins to override the veto.

In an interview in January with the *St. Louis Review*, newspaper of the St. Louis archdiocese, McClay said he wasn't surprised by the restraining order, but nevertheless "we're disappointed, because it doesn't address the real issue -- which is whether the (HHS) mandate is constitutional or not.

"(Fleissig) presupposes that the mandate is all good law and doesn't consider the fact that it's being challenged in the courts," he said.

In her December order, Fleissig wrote that "insurers are placed in an untenable position as they cannot comply with both statutes at the same time." She also noted that the Constitution states that federal laws trump state laws.

But McClay told the *St. Louis Review*, "It's still our position that the mandate is unconstitutional and violates the Religious Freedom Restoration Act."

[Jennifer Brinker, a reporter at the *St. Louis Review*, newspaper of the St. Louis archdiocese, contributed to this story.]

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