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Pittsburgh, Erie dioceses win temporary injunction against HHS mandate

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Pittsburgh

A federal judge Nov. 21 granted the Pittsburgh and Erie dioceses a preliminary injunction against the federal health care law's contraceptive mandate, saying religious employers' right to adhere to their moral objections to it outweighs a government decision to widen access to contraceptives.

Pittsburgh Bishop David Zubik said that "all who recognize the importance of religious liberty should be very pleased" with the ruling by Judge Arthur J. Schwab of the U.S. District Court for Western Pennsylvania.

"Acknowledging that our beliefs are sincerely held, Judge Schwab found that the good works that the church provides in society are both essential and integral to who we are as believers," the bishop said in a statement released the day of the ruling. "Judge Schwab refused to accept that religious freedom is solely the freedom to worship behind closed doors."

In a statement issued in Washington, the president of the U.S. Conference of Catholic Bishops said he was "strongly encouraged by the court's rejection of the government's attempt to reduce freedom of religion to freedom of worship, as well as the court's recognition that service to those in need is at the heart of our faith."

"The court's decision vindicates that approach and we fully expect more decisions like this to follow," said Archbishop Joseph Kurtz of Louisville, Ky.

He pointed to the special message the bishops as a body issued Nov. 13 to reiterate their objections to the Affordable Care Act's requirement that most religious and other employers' health plans include contraceptive coverage. The message also said the bishops remain "united in our resolve to resist this heavy burden and protect our religious freedom."

The message passed unanimously during an executive session held by the bishops during their annual fall general assembly in Baltimore.

In his 65-page opinion, Schwab said the issue he was asked to decide was whether "the government will be permitted to sever the Catholic Church into two parts (i.e., worship and faith, and 'good works') -- in other words, whether the government will be successful in restricting the right to the free exercise of religion as set forth in the First Amendment to a right to worship only."

He wrote that he could not understand why religious employers, such as Catholic Charities of Pittsburgh, also a plaintiff in the case -- "born from the same religious faith, and premised upon the same religious tenets and principles, and operate as extensions and embodiments of the church, but are not subsidiaries of a parent corporation -- would not be treated the same as the church itself with respect to the free exercise of that religion."

Without the preliminary injunction, the government would have begun levying fines Jan. 1 on the dioceses and

related entities for noncompliance with the mandate.

The U.S. Department of Health and Human Services issued the mandate as part of the health care law. It requires most religious and other employers to provide health insurance coverage for contraceptives, sterilization and abortifacient drugs and devices even if the employer is morally opposed to such services.

It includes an exemption for some religious employers that fit its criteria. The mandate does not include a conscience clause for employers who object to such coverage on moral grounds.

There also is an accommodation for some employers to use a third party to pay for coverage they find objectionable, but Catholic entities that have brought the lawsuits say the accommodation still does not solve their problem over being involved in providing coverage they reject for moral reasons.

In his ruling Schwab said the "sanctity of human life from conception to natural death and the dignity of all persons are central tenets of the Catechism of the Catholic Church. ... This belief necessarily prohibits providing, subsidizing, initiating or facilitating insurance coverage for abortion-inducing drugs, sterilization services, contraceptives and related educational and counseling services."

In a Nov. 22 statement, Erie Bishop Lawrence Persico reiterated much of what Zubik and Kurtz stated, emphasizing that Schwab recognized religious freedom is about more than worshipping at Mass on Sunday. "We live out our faith through charitable and educational outreach," he said.

Persico said he was grateful he had the opportunity to exercise his right as a citizen. "We will now continue to pursue our rights as we seek a permanent injunction to avoid being forced to pay for services and procedures which violate the tenets of our faith," he said.

Zubik and Persico thanked the Pittsburgh-based Jones Day law firm for handling the case for all the plaintiffs on a pro bono basis.

The U.S. Catholic church "has always supported access to health care coverage for everyone. The lawsuit does not call into question the Affordable Care Act itself. Our lawsuit brings to the courts our most serious objection to one aspect of the Affordable Care Act as imposed by HHS," Zubik said in his statement.

In other legal action against the HHS mandate, Belmont Abbey College in Belmont, N.C., filed a new lawsuit Nov. 20.

The liberal arts college in Belmont, run by the Benedictine monks of Belmont Abbey, has opposed the contraception mandate since 2011, when it was the first Catholic entity to challenge it in court.

Last December the college scored a momentary victory when a federal appeals court ordered the Obama administration to rewrite the mandate to exempt religious organizations such as Belmont Abbey College. If the government did not satisfy the college's objections, the court said, the college could refile its lawsuit.

Final rules were issued by HHS June 28. The college and other Catholic and religious employers said they still did not go far enough to accommodate their moral objections to complying with the mandate. Belmont Abbey College faces fines of more than $7 million next year if it does not comply with the requirement.

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