

Judge says employer objections to HHS mandate based on religious rights

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A spokesman for the New York archdiocese said the archdiocese "welcomes and applauds" a Dec. 13 ruling by a federal judge granting Catholic organizations in the archdiocese and the neighboring diocese of Rockville Centre a permanent injunction on having to comply with the federal contraceptive mandate in the health care law.

The 41-page ruling issued by Judge Brian Cogan of the U.S. District Court for the Eastern District of New York in Brooklyn said the Affordable Care Act mandate violates the religious freedom of the four nonprofit plaintiffs -- two Catholic high schools and two health care systems.

Three of the plaintiffs are in the New York archdiocese: Cardinal Spellman High School in the Bronx, Msgr. Farrell High School in Staten Island, and ArchCare, an umbrella group of nonprofits based in New York that provide health care to the poor and disabled. The fourth is Catholic Health Services of Long Island in the diocese of Rockville Centre, which includes six hospitals, three nursing homes and a hospice center.

The mandate, issued by the Department of Health and Human Services and scheduled to take effect Jan. 1, requires nearly all employers to provide free preventative health care coverage specifically for women. That coverage includes services such as mammograms, prenatal care and cervical cancer screenings, but it also mandates free contraceptives, sterilizations and abortion-inducing drugs -- which are contrary to Catholic teaching.

The mandate does not include a conscience clause for employers who object to such coverage on moral grounds.

Under final rules issued in June to implement the mandate, there is an exemption for some religious employers that fit its criteria. For those employers who do not fit the criteria but still object to providing the coverage, the rules cover an accommodation -- using a third party to provide the contraceptive coverage they find objectionable to employees.

But Catholic entities, including those in the New York archdiocese and Rockville Centre diocese, say the exemption is too narrowly drawn and the accommodation still does not solve their problem over being involved in providing coverage they reject for moral reasons.

"The court has correctly cut through the artificial construct which essentially made faith-based organizations other than churches and other houses of worship second-class citizens with second-class First Amendment protections," said Joseph Zwilling, a spokesman for the New York archdiocese, in a statement Monday.

Cogan ruled that the HHS contraceptive violates the Religious Freedom Restoration Act and said even the third-party accommodation to provide the coverage violates the groups' religious rights.

The judge said the plaintiffs consider complying with the mandate "an endorsement of such coverage," which also "compels affirmation of a repugnant belief."

"It is not for this court to say otherwise," he added.

Cogan stressed that the third-party accommodation compels the Catholic plaintiffs "to perform acts that are contrary to their religion. And there can be no doubt that the coercive pressure here is substantial. If plaintiffs do not comply with the mandate, they are subject to fines of \$100 per day per affected beneficiary."

He also pointed out other fees, noting that if religious groups cease providing health insurance, they will face an annual fine of \$2,000 for each full-time employee.

The ruling also stressed that the government has not shown a "compelling interest in uniform enforcement of the mandate, for the simple reason that enforcement of the mandate is currently anything but uniform."

The judge noted that "tens of millions of people are exempt from the mandate, under exemptions for grandfathered health plans, small businesses, and 'religious employers' like the diocesan plaintiffs here. Millions of women thus will not receive contraceptive coverage without cost-sharing through the mandate. Having granted so many exemptions already, the government cannot show a compelling interest in denying one to these plaintiffs," he said.

In late November, a federal judge 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.

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