NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

# Appeals court denies University of Notre Dame injunction on HHS mandate

Catholic News Service | Feb. 24, 2014
Chicago

The University of Notre Dame must provide free coverage of contraceptives as required by the federal health care law despite its moral objections to doing so, said a panel of the 7th U.S Circuit Court of Appeals in a late Friday ruling that denied the university an injunction against enforcement of the mandate.

The decision was handed down in the university's appeal of a Dec. 20 ruling by the U.S. District Court for the Northern District of Indiana denying it a preliminary injunction. Notre Dame then sought to obtain emergency relief from the 7th Circuit before the Jan. 1 deadline for the mandate to take effect and was denied.

In its lawsuit, Notre Dame argued that the mandate's purpose "is to discriminate against religious institutions and organizations that oppose abortion and contraception."

Judge Richard Posner, joined by Judge David Hamilton, wrote the majority opinion in the 2-1 ruling, saying the university has the option of following a so-called accommodation in the mandate that says employers who object to the coverage on moral grounds can fill out a form and direct a third party to provide the coverage to their employees.

In a brief statement Monday, Notre Dame spokesman Paul J. Browne said: "Our concern remains that if government is allowed to entangle a religious institution of higher education like Notre Dame in one area contrary to conscience, it's given license to do so in others."

Notre Dame and other Catholic entities that have brought dozens of lawsuits challenging the mandate on moral grounds say this third-party accommodation still does not solve their problem over being involved in providing coverage they reject for moral reasons.

In his ruling, Posner wrote: "If the government is entitled to require that female contraceptives be provided to women free of charge, we have trouble understanding how signing the form that declares Notre Dame's authorized refusal to pay for contraceptives for its students or staff, and mailing the authorization document to those companies, which under federal law are obligated to pick up the tab, could be thought to 'trigger' the provision of female contraceptives."

The mandate -- under rules issued by the U.S. Department of Health and Human Services -- requires nearly all employers to cover contraceptives, sterilizations and some abortion-inducing drugs to their employees in their company health plan. It includes a narrow exemption for some religious employers that fit certain criteria.

Religious employers who are not exempt can comply with the third-party accommodation.

In his dissent, Judge Joel Flaum said it was "clear that if Notre Dame were forced to pay for contraceptive coverage against its religious beliefs or else incur significant monetary penalties, this would be a substantial

burden. In the university's eyes, this form's 'purpose and effect' -- evident from the face of the regulations -- is to accomplish what the organization finds religiously forbidden and protests."

The deadline for employers to comply with the mandate was Jan. 1 or they would face thousands of dollars in daily fines.

On Jan. 2, according to the *National Catholic Register*, Notre Dame told faculty and staff that while its appeal of the mandate worked its way through the courts, a third-party administrator would notify them about access to contraceptives and other mandated non-objectionable services such as mammograms, prenatal care and cervical cancer screenings.

Flaum in his dissent noted that the form a nonexempt employer must uses to direct a third-party administrator to provide the coverage "flatly states that it is 'an instrument under which the plan is operated.' Having to submit the (form), Notre Dame maintains, makes it 'complicit in a grave moral wrong' by involving it with a system that delivers contraceptive products and services to its employees and students."

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**Source URL (retrieved on *2016-05-27 05:28*):** http://ncronline.org/news/politics/appeals-court-denies-university-notre-dame-injunction-hhs-mandate