
Health Law Daily Wrap Up

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By David Yucht, J.D.

Finding that the federal government was rigorously defending health care regulations exempting employers with religious objections from providing coverage for birth control, a federal judge in Pennsylvania denied a nonprofit religious organization’s motion to intervene as of right. The court also denied permissive intervention finding that the organization’s participation in the suit would cause delay and complications (Commonwealth of Pennsylvania v. Trump, December 8, 2017, Beetlestone, W.).

Contraception mandate. The Little Sisters of the Poor Saints Peter and Paul Home (Little Sisters) is a nonprofit corporation operated by an order of Catholic nuns who care for the sick and elderly poor. Based on Catholic doctrine, Little Sisters oppose contraception, sterilization, and abortion. The Health Resources and Services Administration determined that health plans covered by the Affordable Care Act (ACA) (P.L. 111-148) must provide contraceptive services. This mandate included a narrow exemption for certain religious organizations. Little Sisters did not qualify for the exemption but HHS offered to allow Little Sisters to opt-out of coverage.

Prior lawsuit. Little Sisters sued the HHS in federal court in Colorado seeking to enjoin enforcement of the contraception requirement asserting it imposed a substantial burden on religious freedom in violation of the Religious Freedom Restoration Act (RFRA). This matter eventually was heard before the U.S. Supreme Court. The Supreme Court remanded the case to the appellate court to have the parties agree to an approach accommodating religious exercise while ensuring that women receive contraceptive coverage (see Supreme Court kicks contraception challenge back down the road, orders compromise, May 18, 2016). The appellate court stayed the litigation while the government reconsidered the exemptions to its contraception requirement.

Executive order. Subsequently in 2017, President Trump issued an executive order directing the relevant agencies to consider amending regulations to address conscience-based objections to the contraception mandate. These agencies promulgated two rules which expanded the religious exemptions authorizing employers with religious objections to limit employees access to health insurance coverage for contraception (see Contraception coverage exemptions extended for objecting employers on religious, moral grounds, October 11, 2017).

Intervention. Shortly thereafter, Pennsylvania sued seeking to enjoin enforcement of these two new rules. Although invited to by the district court, the Little Sisters failed to file an amicus brief, but rather, sought to intervene to defend these new rules.

As such, the district court denied the Little Sisters’ motion to intervene as a party to the suit. The court determined that Little Sisters failed to demonstrate that the federal government’s representation of its interest was inadequate and accordingly intervention as of right was inappropriate. The court also found that permissive intervention was also inappropriate because it was likely that Little Sisters’ participation would delay the litigation and prejudice the interest of the parties in securing a resolution. Moreover, the court found that given that Little Sisters’ interests match those of the federal government, its intervention would be superfluous and complicate the proceedings.

The case is No. 17-4540.


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