

Insights, News & Events

SUPREME COURT UPHOLDS RULES EXPANDING EXEMPTIONS TO ACA'S CONTRACEPTIVE MANDATE

Insights
Jul 13, 2020

The Supreme Court just upheld two Trump-era rules expanding religious and moral exemptions to the Affordable Care Act's (ACA) contraceptive mandate. The July 8 decision in *Little Sisters of the Poor v. Pennsylvania* is just the latest in a long line of challenges relating to the contraceptive mandate and the third time in six years that the Supreme Court has ruled on its scope. In brief, this latest dispute centered on the Trump administration's final rules issued in 2018 granting broader exemptions from the contraceptive mandate to for-profit and nonprofit employers that had sincerely held religious beliefs or moral objections to offering contraception coverage in their group health plans.

DECISION IS LATEST IN LONG-RUNNING CONFLICT

The Obama administration had created narrower exemptions for churches and other houses of worship and offered "accommodations" for religiously affiliated organizations, such as hospitals and universities, and certain closely held businesses with religious objections by which such entities would not contribute to the cost of the coverage, but which would allow covered individuals to obtain the contraceptives indirectly. In the combined cases of *Little Sisters of the Poor v. Pennsylvania* and *Trump v. Pennsylvania*, the states of Pennsylvania and New Jersey challenged the broader Trump exemptions, arguing that they were in violation of the ACA and the Religious Freedom Restoration Act (RFRA).

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The Supreme Court in a 7-2 decision upheld the expanded exemption and reversed an opinion by the 3rd Circuit Court of Appeals affirming a district court ruling that prohibited the rules from going into effect on a nationwide basis. The cases were sent back to the appeals court with instructions to dissolve the nationwide injunction. For additional background on the injunction and litigation, [see our prior analysis](#).

The majority rejected arguments that the regulations were substantively and procedurally invalid. The Court found that the federal agencies tasked with interpreting the ACA preventive care mandate had authority to provide exemptions from the regulatory contraceptive requirements for private and non-profit employers with religious and conscientious objections. The requirement to cover contraceptives is not a specific requirement in the ACA statutory language and is instead incorporated into the ACA's broad preventive care mandate as interpreted by the federal agencies.

Accordingly, the Court found that "no language in the statute itself even hints that Congress intended that contraception should or must be covered." It then concluded that Congress had declined to expressly require contraceptive coverage in the ACA and instead delegated extremely broad authority to the agencies to define the rules for coverage of contraception or not as part of the preventive care mandate.

WHAT IS THE RESULT OF THE RULING?

As a result of the Supreme Court's ruling, the following exemptions to the contraceptive mandate will apply:

1. Any individual or nongovernmental entity that objects to providing coverage of contraceptives and related services based on sincerely held religious beliefs will be exempt from the contraception mandate. The exemption covers churches, nonprofit entities, and for-profit entities, whether or not closely held, including publicly traded entities.
2. An entity or individual that objects to coverage based on sincerely held moral convictions is exempt from the contraception mandate. Publicly traded entities are not eligible for this exemption.

In addition, the Trump rules make the accommodation process in the Obama-era regulations voluntary. Under the accommodations process, an employer was previously required to self-certify that it was eligible for the contraception exemption and access to coverage for the participant or other covered dependent was then provided through the insurer or third-party administrator of the group health plan without cost to the eligible organization.

WHAT'S NEXT?

The attorneys general of Pennsylvania and New Jersey have indicated that they will continue to challenge the rules on the grounds that they are arbitrary and capricious under the Administrative Procedures Act. Accordingly, employers can expect the final status of the rules to remain in question at least for the foreseeable future.

We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Employee Benefits Practice Group](#).

This Legal Alert provides an overview of a specific Supreme Court case. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.