

Supreme Court will take up new health law dispute (Update)

November 26 2013, by Mark Sherman



This May 22, 2013 file photo shows customer at a Hobby Lobby store in Denver. The Supreme Court has agreed to referee another dispute over President Barack Obama's health care law, whether businesses can use religious objections to escape a requirement to cover birth control for employees. The justices said Tuesday they will take up an issue that has divided the lower courts in the face of roughly 40 lawsuits from for-profit companies asking to be spared from having to cover some or all forms of contraception. The court will consider two cases. One involves Hobby Lobby Inc., an Oklahoma City-based arts and crafts chain with 13,000 full-time employees. Hobby Lobby won in the lower courts. (AP Photo/Ed Andrieski, File)

The Supreme Court agreed Tuesday to referee another dispute over President Barack Obama's trouble-plagued health care law, whether businesses can use religious objections to escape a requirement to cover birth control for employees.

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Obama's health care law has had a rocky start, with computer glitches causing difficulties for Americans who want to sign up for medical insurance using one of the sites run by the federal government.

There has also been a political cost with opposition Republicans, who would like to repeal the law, hoping they can use it to hammer away at Democrats in next year's congressional elections and Obama's Democratic allies pressing him to get the program functioning smoothly so they can confront Republicans on other issues.

The court will consider two cases. One involves Hobby Lobby Inc., an arts and crafts chain with 13,000 full-time employees. Hobby Lobby won in the lower courts.

The other case is an appeal from Conestoga Wood Specialties Corp., a company that employs 950 people in making wood cabinets. Lower courts rejected the company's claims.

The court said the cases will be combined for arguments, probably in late March. A decision should come by late June.

The cases center on a provision of the health care law that requires most employers that offer health insurance to their workers to provide a range of preventive health benefits, including contraception.

In both instances, the Christian families that own the companies say that insuring some forms of contraception violates their religious beliefs.

The key issue is whether profit-making corporations can assert religious beliefs under the 1993 Religious Freedom Restoration Act or the First Amendment provision guaranteeing Americans the right to believe and worship as they choose. Nearly four years ago, the justices expanded the concept of corporate "personhood," saying in the Citizens United case that corporations have the right to participate in the political process the same way that individuals do.

Hobby Lobby calls itself a "biblically founded business" and is closed on Sundays. Founded in 1972, the company now operates more than 500 stores in 41 states. The Green family, Hobby Lobby's owners, also owns the Mardel Christian bookstore chain.

The 10th U.S. Circuit Court of Appeals said corporations can be protected by the 1993 law in the same manner as individuals, and "that the contraceptive-coverage requirement substantially burdens Hobby Lobby and Mardel's rights under" the law.

In its Supreme Court brief, the administration said the appeals court ruling was wrong and, if allowed to stand would make the law "a sword used to deny employees of for-profit commercial enterprises the benefits and protections of generally applicable laws."

Conestoga Wood is owned by a Mennonite family who "object as a matter of conscience to facilitating contraception that may prevent the implantation of a human embryo in the womb."

The 3rd U.S. Circuit Court of Appeals ruled against the company on its claims under the 1993 law and the Constitution, saying "for profit, secular corporations cannot engage in religious exercise."

The Supreme Court will have to confront several questions—can these businesses hold religious beliefs, does the health care provision significantly infringe on those beliefs and, even if the answer to the first two questions is "yes," does the government still have a sufficient interest in guaranteeing women who work for the companies access to contraception.

The companies that have sued over the mandate have objections to different forms of birth control. Conestoga Wood objects to the coverage of Plan B and Ella, two emergency contraceptives that work mostly by preventing ovulation. The FDA says on its website that Plan B "may also work by preventing fertilization of an egg ... or by preventing attachment (implantation) to the womb (uterus)," while Ella also may work by changing of the lining of the uterus so as to prevent implantation.

Hobby Lobby objects to those two forms of contraception as well as two types of intrauterine devices (IUDs). Its owners say they believe life begins at conception, and they oppose only birth control methods that can prevent implantation of a fertilized egg in the uterus, but not other forms of contraception.

In a third case in which the court took no action Tuesday, Autocam Corp. doesn't want to pay for any contraception for its employees because of its owners' Roman Catholic beliefs.

Physicians for Reproductive Health, the American College of Obstetricians and Gynecologists and other medical groups tell the court that the scientific and legal definition of a pregnancy begins with

implantation, not fertilization. Contraceptives that prevent fertilization from occurring, or even prevent implantation, do not cause abortion "regardless of an individual's personal or religious beliefs or mores," the groups said.

But another brief from the American Association of Pro-Life Obstetricians and Gynecologists, the Catholic Medical Association and others say in a separate filing that "it is scientifically undisputed that a new human organism begins at fertilization." Emergency contraception that works after fertilization "can end the life of an already developing human organism," regardless of the definition of pregnancy, they said.

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