

# Supreme Court avoids major ruling in birth control dispute (Update)

May 16 2016, by By Mark Sherman

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In this June 30, 2014 file photo, demonstrators react to hearing the Supreme Court's decision on the Hobby Lobby birth control case outside the Supreme Court in Washington. The Supreme Court rid itself Monday, May 16, 2016, of a knotty dispute between faith-based groups and the Obama administration over birth control. The court asked lower courts to take another look at the issue in a search for a compromise. (AP Photo/Pablo Martinez Monsivais, File)

The Supreme Court failed to resolve a knotty dispute between faith-based groups and the Obama administration over birth control on Monday, the latest indication of the shorthanded court's struggle to find a majority for important cases taken up before Justice Antonin Scalia's death.

The justices asked lower courts to take another look at the issue in a search for a compromise, issuing an unsigned, unanimous opinion. The case concerns the administration's arrangement for sparing faith-based groups from having to pay for birth control for women covered under their health plans.

"The court expresses no view on the merits of the cases," the justices wrote, ending a major confrontation over President Barack Obama's health care law ended with a whimper and no resolution. The matter almost certainly will not return to the Supreme Court before the 2016 presidential election, and perhaps not until a new justice is confirmed to take Scalia's seat, if at all.

The outcome suggested the court lacked a majority for such a significant ruling, underscoring the effect of Scalia's absence. Already two cases have resulted in 4-4 ties since the conservative's death in February.

The lack of a resolution leaves the government able for now to ensure that women covered by faith-based groups' health plans have access to cost-free contraceptives. But the groups, which include not-for-profit colleges and charities, won't face fines for not adhering to administration procedures for objecting to birth control benefits.

By complying, they argued they would be complicit in making contraceptives available in violation of their religious beliefs as their insurers or insurance administrators would then assume responsibility for providing birth control.

The justices appeared evenly divided on the question when they heard arguments in late March. And the court seemed to acknowledge the division shortly after when it ordered the two sides to file a new and unusual round of legal briefs in search of a compromise, perhaps by making contraceptive coverage available without requiring a notice of objection.

Eight appeals courts nationwide have sided with the administration; four of those were challenged in the case before the Supreme Court. One court has ruled for the groups so far.

In 2014, the justices divided 5-4 with Scalia in the majority to allow some "closely held" businesses with religious objections to refuse to pay for contraceptives. That case involved the Hobby Lobby chain of craft stores and other companies that said their rights were being violated under the 1993 Religious Freedom Restoration Act.

Catholic and Protestant colleges, charities and advocacy groups invoked the same law in asking the government to find a way that does not involve them or their insurers in birth control provisions.

The challengers included Bishop David Zubik, head of the Catholic Diocese in Pittsburgh; the Little Sisters of the Poor, nuns who run more than two dozen nursing homes for impoverished seniors; evangelical and Catholic colleges in Oklahoma, Pennsylvania, Texas and Washington, D.C.; and the anti-abortion advocacy group Priests for Life.

Contraception is among a range of preventive services that must be provided at no extra charge under the health care law. The administration pointed to research showing the high cost of some methods of contraception discourages women from using them. One effective means of birth control, the intrauterine device, can cost up to \$1,000.

Houses of worship and other religious institutions whose primary purpose is to spread the faith are exempt from the birth control requirement.

Other faith-affiliated groups have to tell the government or their insurers if they object, and allow their insurer or third-party administrator to handle matters related to birth control.

Some groups, including Little Sisters of the Poor, contract with church-based insurers, which themselves are exempt from having to provide contraceptives.

A ruling for the groups, the administration argues, would disadvantage tens of thousands of women.

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