

## Supreme Court Allows Religious Employer Exemptions from Contraceptive Coverage

Written by Emily Nash, Christopher Feudo, Michael L. Rosen

July 13, 2020

On Wednesday, July 8, 2020, the Supreme Court weighed in on whether religious employers are required to offer their employees health plans that include contraceptive coverage. In its opinion in *Little Sisters of the Poor v. Pennsylvania*, the Court upheld federal regulations that provide exemptions for certain employers from the Affordable Care Act's (ACA) mandate that all health plans include contraceptive coverage based on the employer's "sincerely held" religious or moral beliefs.

Religious employers had successfully challenged the ACA's contraceptive coverage mandate six years ago, in [Burwell v. Hobby Lobby Stores](#). In that case, the Court held that closely-held for-profit corporations may be exempt from the contraceptive coverage requirement on the basis of "sincerely held" religious beliefs. In 2017, the Departments of Health and Human Services, Labor, and the Treasury promulgated regulations both expanding the religious employer exemption, which had previously included only churches, to include employers that object on the basis of "sincerely held religious beliefs," and creating a new "moral exemption" for nonprofit and closely-held for-profit organizations with "sincerely held moral convictions" against providing contraceptive coverage. A federal court in Pennsylvania enjoined the regulatory exemptions (which were issued as interim rules) on the basis that they violated both the ACA and the Administrative Procedure Act (APA), and the Third Circuit Court of Appeals affirmed the injunction. The Supreme Court reversed the Third Circuit ruling, holding that the federal agencies at issue had the authority under the ACA to issue these regulations, and that the rules were free from any procedural defects.

The Supreme Court's ruling does not seem likely to end this legal battle, however. As the concurring opinions note, the Supreme Court did not rule on the substantive validity of the exemptions under the APA, which had not been addressed by the courts below. The Court remanded the case to the lower courts, which will likely address whether the rules reflect the "reasoned decisionmaking" required in passing such a regulation or whether, instead, the regulatory exemptions are arbitrary and capricious, in violation of the APA. Justice Kagan's concurrence (joined by Justice Breyer) suggests that these rules would substantively violate the APA; Justice Alito's concurrence (joined by Justice Gorsuch) comes out the other way. This fight will likely play out in the lower courts in the coming months. In the meantime, however, the regulations exempting religious employers from the ACA's contraceptive coverage mandate shall remain in effect.

### RELATED PRACTICES

■ [Labor & Employment](#)

---

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.