

One court OKs stay for Little Sisters; another says no to religious agencies

By Patricia Zapor

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WASHINGTON – Two federal appeals courts acted Aug. 21 in cases related to the contraceptive mandate for employee health insurance.

One court said the Little Sisters of the Poor and fellow plaintiffs need not comply with its July ruling against them while the sisters appeal to the Supreme Court. The second court ruled against Michigan and Tennessee Catholic Charities agencies, Aquinas College and other church-run institutions, saying that their religious rights are not substantially burdened by a process created by the federal government for opting out of providing contraceptive coverage due to religious objections.

The 10th U.S. Circuit Court of Appeals said that while the Little Sisters of the Poor and fellow plaintiffs appeal its July ruling against them, they need not comply with the mandate to provide contraceptive coverage or follow procedures to hand off that responsibility to others.

The 10th Circuit had ruled July 14 that the Little Sisters are not substantially burdened by the process set out by the Department of Health and Human Services by which they can avoid requirements to provide contraceptive coverage to employees as mandated by the Affordable Care Act.

The Cincinnati-based 6th Circuit Aug. 21 became the seventh federal appeals court to rule against nonprofit religious organizations that argued that the contraceptive mandate and the opt-out system violate their religious rights. No appeals courts have ruled otherwise.

All of the circuit court decisions have come since the Supreme Court's June 2014 ruling that the owners of the Hobby Lobby craft store chain and similarly situated, closely held, for-profit companies are entitled to be exempt from the contraceptive requirement. The appeals courts ruled in light of the Hobby Lobby decision, finding that unlike the for-profit organizations, the nonprofits had a viable alternative in what HHS calls an accommodation for them and that it does not infringe on their religious rights.

The 6th Circuit consolidated challenges to the law by the Michigan Catholic Conference; Catholic Charities of the Diocese of Kalamazoo, Michigan; the Diocese of Nashville, Catholic Charities of Tennessee; Camp Marymount of Fairview, Tennessee; Mary, Queen of Angels, an assisted living center in Nashville; St. Mary Villa, a Nashville child development center; and the Dominican Sisters of St. Cecilia and Aquinas College, both of Nashville.

The court had previously declined to grant the organizations injunctions to block enforcement of the contraceptive provision. In its 24-page opinion reconsidering the cases in light of Hobby Lobby, the 6th Circuit said the two dioceses and the Sisters of St. Cecilia are exempt from the requirement under HHS rules. The other organizations' religious objections can be accommodated within the HHS accommodation process, it said.

The 100-word order of the 10th Circuit granted the stay requested by the Little Sisters, Southern Nazarene University and Reaching Souls International, pending the Supreme Court's consideration of their petitions for appeal. The Supreme Court is not expected to announce the outcome of petitions for certiorari, as requests for the court to accept cases on appeal are called, until close to the start of its new term in early October.

The religious nonprofit organizations in the cases do not meet the HHS requirements for an exemption granted to institutions such as churches and dioceses that are primarily involved in inculcating the faith and primarily serve and employ people of the same faith.

Under the accommodation, such organizations can file a form with HHS or send a letter simply saying they intend not to provide the coverage. At that point, other systems kick in for providing employees with contraceptive insurance, with no further effort or cost to the religious employers.

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