

Family-owned businesses challenge HHS contraceptive mandate in court

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Lawsuits filed by family-owned businesses against the U.S. Department of Health and Human Services' contraceptive mandate on moral grounds continue to make their way through the courts.

The businesses offer a range of services -- including making wooden cabinets, selling car supplies, and running a chain of arts and crafts stores -- and the owners include Catholics, evangelical Christians and Mennonites.

What they have in common is the belief that their for-profit businesses should be allowed to seek an exemption from that part of the health law they say violates their religious beliefs.

On May 22, a panel of judges for the U.S. Court of Appeals for the 7th Circuit in Chicago heard oral arguments in two of those cases.

The judges previously overturned the decision of a lower-court judge and gave the Kortes and the Grote families a temporary injunction in complying with the HHS contraceptive mandate that requires most employers, including religious employers, provide coverage of contraceptives, sterilization and some abortion-inducing drugs free of charge, even if the employer is morally opposed to such services.

Both the Korte and Grote families seek permanent relief from the mandate.

Cyril and Jane Korte, a Catholic couple who own the Illinois-based construction company Korte & Luitjohan Contractors, were granted an emergency motion in December by the 7th Circuit while it considered an appeal of a lower court's denial of the preliminary injunction motion.

The Grote family, also Catholic, runs Grote Industries in Madison, Ind., which manufactures vehicle safety products. They filed suit in October against the HHS for the contraception mandate and were granted a preliminary injunction in January.

According to the Becket Fund for Religious Liberty, a nonprofit, public-interest law firm, 60 cases have been filed, most by religious entities, objecting to the HHS contraceptive mandate.

On Feb. 1, the federal government issued new proposed rules that exempt organizations that are considered nonprofits under specific sections of the Internal Revenue Code. The proposed rules are to become effective Aug. 1.

No exemption, however, will be given to "for-profit, secular employers" who, on moral grounds, object to providing the coverage.

On May 23, a panel of eight judges of the U.S. Court of Appeals for the 10th Circuit in Denver heard the appeal

of the Greens, owners of Hobby Lobby, an Oklahoma-based craft store chain. The owners filed suit against the U.S. government in September over the contraceptive mandate's requirement for employers to cover emergency contraceptives such as the morning-after pill.

The Greens said they specifically objected to paying for the morning-after pill, saying it violated their belief that life begins at fertilization, but they do not have any moral objection to the HHS requirement to cover "preventive contraceptives."

In December, Supreme Court Justice Sonia Sotomayor denied Hobby Lobby's request for an injunction while it challenged part of the mandate in court, leaving the company subject to fines of more than \$1 million per day since Jan. 1.

Oral arguments before the 10th Circuit panel of judges focused on whether the contraceptive mandate put an undue burden on the Greens' religious beliefs.

Kyle Duncan, an attorney for Hobby Lobby, said the Greens should not have to pay fines for failing to comply with the mandatory contraceptive coverage simply because their business makes a profit.

An attorney representing the U.S. Department of Justice argued that allowing businesses to be exempt from requirements that violate their religious beliefs would essentially allow them to impose their religious beliefs on employees.

Hobby Lobby describes itself as a "biblically founded business." The chain of 500 arts and crafts stores in 41 states was founded in 1972 by David Green. The stores pipe in Christian music through their sound systems and are closed on Sundays.

Other court hearings of businesses challenging the HHS mandate include Conestoga Wood Specialties, a Mennonite-owned company based in Lancaster County, Pa., before the 3rd Circuit May 30; and Autocam, a manufacturing company based in Grand Rapids, Mich., which will be argued before the 6th Circuit June 11.

The current appeals for exemption from the HHS contraceptive mandate focus on the First Amendment guarantee of free exercise of religion and on the Religious Freedom Restoration Act of 1993, which prohibits the federal government from imposing a "substantial burden" on a person's exercise of religion unless there is a "compelling governmental interest" and the measure is the least restrictive method of achieving the interest.

In recent cases involving family-owned businesses and the HHS regulations, the courts have been divided. Some courts have denied business owners' requests for temporary injunctions while others have granted temporary injunctions. Those on both sides of the issue say the U.S. Supreme Court may have to ultimately settle the cases.

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