

11. Contraception Controversy

With the passage of the Affordable Care Act, employers with moral objections to various forms of birth control became unable to direct their insurance companies to omit this coverage. Since the law's passage, over a hundred business owners and organizations have filed lawsuits against the United States Department of Health and Human Services.¹ Opponents see the birth control mandate as a violation of their religious liberty, whereas supporters see it as a necessary component of full and equal healthcare coverage.

Those suing for exemption from the birth control mandate believe that life begins at conception and object to birth control in part because all forms of chemical contraception can act as abortifacients.² Respect for life is a fundamental tenet of many religions, including Roman Catholicism. For example, Pope Francis recently said that all life has inestimable value, and "even the weakest and most vulnerable, the sick, the old, the unborn and the poor, are masterpieces of God's creation."³ Thus, plaintiffs believe that the birth control mandate requires them to formally cooperate with grave evil and substantially burdens the free exercise of their religion.⁴ Under federal law, the government can only substantially burden religious practice if doing so ensures a compelling government interest through the least restrictive means. This mandate arguably fails both tests because many women can easily obtain birth control coverage through other means, and the Obama administration exempted many larger companies for trivial reasons like administrative ease.

Those on the other side of the issue characterize the mandate as an issue of health, and seek to provide "free access to birth-control drugs and techniques [to] millions of women...no matter for whom they work or where they go to school or where they get served by a charity."⁵ They either hold that life begins later than conception, or that the issue of when life begins is subordinate to the issue of what is necessary to protect women's health and bodily autonomy. They argue that 99% of sexually active women have used some form of birth control, and that it is one of the top ten public health achievements of the century.⁶ Defendants object to allowing business owners' religious beliefs to supersede those of their employees, many of whom do not share their employers' religious identities. They also argue that the accommodations provided by the Obama administration – which offer a degree of separation between organizations and objectionable coverage – sufficiently protect religious employers' consciences.

Study Questions:

1. If a business owner opposes a certain practice on religious grounds, and they provide employees with benefits that make it easier to engage in that practice, does that make the business owner complicit when employees choose to engage in that practice? Why or why not?
2. When it comes to public policy that affects everybody, how should the state balance the goal of protecting religious liberty with the goal of promoting public health?
3. Should some perspectives carry more weight than others in this debate? If so, which perspectives – for example, those of women, doctors, judges, religious authorities, or unborn children – should carry more weight, and why?

1. <http://www.scotusblog.com/2015/07/the-aca-birth-control-controversy-made-simple/>
2. https://www.washingtonpost.com/national/religion/whats-abortifacient-disputes-over-birth-control-fuel-obamacare-fight/2014/01/28/61f080be-886a-11e3-a760-a86415d0944d_story.html
3. <https://cnsblog.wordpress.com/2014/01/21/top-13-quotable-quotes-by-pope-francis-on-sanctity-of-life/>
4. <http://www.nationalreview.com/article/433051/little-sisters-poor-supreme-court>
5. <http://www.scotusblog.com/2015/07/the-aca-birth-control-controversy-made-simple/>
6. <https://www.minnpost.com/community-voices/2014/03/birth-control-not-religious-issue-it-basic-health-care-issue>