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Nationwide Injunction Halts Exemptions and Accommodations to the ACA Contraceptive Coverage Mandate

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On January 14, 2019, a district court in the Eastern District of Pennsylvania granted a nationwide preliminary injunction halting the application of final regulations governing religious and moral-based exemptions from the Affordable Care Act ("ACA") mandate to cover contraceptives without cost sharing. The final regulations would have dramatically expanded the scope of existing exemptions and accommodations rules related to the contraceptive coverage mandate. The case is *Commonwealth of Pennsylvania v. Trump et al.*, No. 2:17-cv-04540 (E.D. Pa. Jan. 14, 2019).

Interestingly, just one day before the *Commonwealth of Pennsylvania* case, a court in the Northern District of California granted a preliminary injunction against application of the final regulations, but limited its order to the thirteen states and Washington, D.C that are parties to that case. *See State of California et al. v. Health and Human Services et al.*, No. 4:17-cv-05783 (N.D. Cal. Jan. 13, 2019).

Below, we briefly review the legal landscape leading up to the *Commonwealth of Pennsylvania* court's nationwide injunction, the decision itself, and the potential implications going forward.

Background

The ACA generally requires group health plans and insurance providers to provide preventive care and screenings, including specified contraceptive methods, with no cost sharing. In 2012, the Department of Health and Human Services, the Department of Labor, and the Department of Treasury (collectively "the Agencies") issued a final rule to exempt qualified "religious employers" from this contraceptive coverage mandate. In 2013, the Agencies issued another final rule that (1) expanded the "religious employers" exemption and (2) created an accommodation for "eligible organizations" with religious objections to providing contraceptive coverage.

The contraceptive coverage mandate has been the subject of numerous lawsuits. For example, the Supreme Court has heard issues related to the mandate on three separate occasions: (1) in 2014,

the Court held that the application of the contraceptive coverage mandate to closely-held corporations violated the Religious Freedom Restoration Act ("RFRA") (*Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751); (2) in 2014, the Court enjoined the government from enforcing the self-certification requirements on an organization eligible for an accommodation, pending final disposition of the litigation (*Wheaton College v. Burwell*, 134 S. Ct. 2806); and (3) in 2016, the Court remanded a case for the parties to consider an alternative approach that can both accommodate religious exercise and ensure that women receive contraceptive coverage (*Zubik v. Burwell*, 136 S. Ct. 1557).

In 2017, the Agencies issued two interim final rules that, generally speaking, would allow many non-profit and for-profit organizations to seek exemptions and accommodations from the ACA contraceptive coverage mandate based on "sincerely held" religious or moral convictions. In December 2017, a preliminary injunction was granted to block enforcement of the rules on the ground that the rules likely violated the Administrative Procedure Act ("APA").

In 2018, the Agencies issued the final religious and moral exemption regulations which are the subject of the dispute in *Commonwealth of Pennsylvania*.

The *Commonwealth of Pennsylvania* Decision

The Commonwealth of Pennsylvania and the State of New Jersey sued the Trump Administration to enjoin implementation of the final regulations arguing that the final regulations violated the APA and various other constitutional requirements.

The court first noted that the final regulations made only minor revisions to the 2017 interim final rules and explained that the issuance of procedurally flawed interim final rules "fatally taint[s] the issuance of the Final Rules." Furthermore, the court stated that the Agencies did not have authority under the ACA or the RFRA to pass the final regulations. Under the ACA, the court explained, Congress directed that *any* "group health plan" or "health insurance issuer offering group or individual insurance coverage" must provide "preventative care and screenings." Because there is no ambiguity over *who* must abide by the Congressional directive, the Agencies did not have the power to establish exceptions. Additionally, RFRA grants the courts, not the Agencies, the power to determine "whether generally applicable laws violate a person's religious exercise." The court noted that although it was unclear whether the contraceptive coverage mandate violates RFRA, it is clear that the RFRA does not require the final regulations.

Proskauer's Perspective

The court granted the injunction the day the final regulations were scheduled to take effect. Thus, as a practical matter, the ruling maintains the status quo for now. A notice of appeal has been filed, which means that this litigation will continue for the foreseeable future. Should the Trump Administration ultimately prevail, non-profit and for-profit organizations will be able to rely on the regulations to seek exemptions from the ACA's contraceptive coverage mandate.

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