Zubik v. Burwell [2], involving religious nonprofit objections to providing notice objecting to the Affordable Care Act’s (ACA) birth control mandate, does not directly affect state and local government. But it is one piece of a litigation puzzle over this law; most of the puzzle pieces do affect state and local government. In a three-page unauthored opinion the Court did not rule on the merits of the case leaving the lower courts to “resolve any outstanding issues.”

The ACA regulations requires employers offering health insurance to cover certain contraceptives unless employers object on religious grounds. Religious nonprofits claim that submitting a form to their insurer or the federal government saying they object to providing contraception coverage on religious grounds violates the Religious Freedom Restoration Act.

After oral argument the Court asked the religious nonprofits and the federal government to brief whether contraceptive coverage could be provided to the nonprofits’ employees, through the nonprofits’ insurance companies, without any notice from the nonprofits. Both parties agree this is possible.

Specifically, according to the Court, the religious nonprofits “have clarified that their religious exercise is not infringed where they ‘need to do nothing more than contract for a plan that does not include coverage for some or all forms of contraception,’ even if their employees receive cost-free contraceptive coverage from the same insurance company.”

Likewise, the federal government “has confirmed that the challenged procedures... ‘could be modified to operate in the manner posited in the Court’s order while still ensuring that the affected women receive contraceptive coverage seamlessly.’”

In light of this agreement the Court didn’t decide the merits of the case (whether the nonprofits’ religious exercise has been substantially burdened, whether the federal government has a compelling interest, or whether the current regulations are the least restrictive means of serving that interest).

While back in front of the lower courts, the parties “should be afforded an opportunity to arrive at an approach going forward that accommodates [the nonprofits’] religious exercise while at the same time ensuring that women covered by [the nonprofits’] health plans ‘receive full and equal health coverage, including contraceptive coverage.’”

So this is what the Court holds but what does it mean right now? Lyle Denniston [3] sums it up on SCOTUSblog: “With this approach, the Court both achieved the practical results of letting the government go forward to provide the contraceptive benefits and freeing the non-profits of any risk of penalties, even though neither side has any idea — at present — what the ultimate legal outcome will be and, therefore, what their legal rights actually are under the mandate.”

By: