Trump v. Pennsylvania and Little Sister of the Poor Saints Peter and Paul Home v. Pennsylvania are complicated cases. The most prominent legal issue in them is whether the Trump administration has the statutory authority to expand the Affordable Care Act (ACA) contraceptive mandate’s conscience exemption.

Of particular interest to state and local governments is whether the lower courts had the authority to issue a nationwide injunction prohibiting the expansion and whether the federal government could avoid issuing rules in this case without notice-and-comment.

A 2013 final rule exempted churches and similar entities from the ACA’s so-called contraceptive mandate. The rule included an accommodations process which allowed women covered by exempted plans to still receive covered contraception.

In 2017 a number of federal agencies, in response to an executive order from President Trump, issued, without notice and a public comment period, two interim final rules that “expanded the existing exemption and Accommodation framework, made the Accommodation process voluntary, and offered similar protections to organizations with moral objections to contraceptives.”

Pennsylvania and New Jersey sued the agencies noting that thousands of women would be without birth-control coverage due to these rules and may turn to state-funded programs to receive contraception.

The Trump administration lost on all the issue litigated in this case in the Third Circuit.

On the question of whether there is statutory authority to expand the conscience exemption the court concluded that “neither of the statutes upon which the Agencies rely, the ACA and RFRA [Religious Freedom Restoration Act], authorize or require the Final Rules.”

The Administrative Procedures Act (APA) requires agencies to engage in notice-and-comment rulemaking unless the statute authorizes no notice-and-comment or the agency has good cause.

The Trump administration argued that the Health Insurance Portability and Accountability Act (HIPAA) allowed it to avoid notice-and-comment. The Third Circuit disagreed noting that HIPAA “contains no express language supplanting APA procedures, and the sole reference to ‘interim final rules’ does not confer a license to ignore APA requirements.”

The Trump administration also argued it had good cause to waive notice and comment based on “(1) the urgent need to alleviate harm to those with religious objections to the current regulations; (2) the need to address ‘continued uncertainty, inconsistency, and cost’ arising from ‘litigation challenging the previous rules’; and (3) the fact that the Agencies had already collected comments on prior Mandate-related regulations.” The Third Circuit concluded “[n]one of these assertions meet the standard for good cause.”
The Third Circuit agreed with the district court’s decision to issue a nationwide injunction. The court opined, “[m]any individuals work in a state that is different from the one in which they reside. An injunction geographically limited to the States alone will not protect them from financial harm, as some share of their residents who work out-of-state will lose contraceptive coverage originally provided through employers in non-enjoined states who will exempt themselves.”

Recently numerous courts have issued nationwide injunctions against the federal government. The State and Local Legal Center filed in an amicus brief [4] in the so-called travel ban case supporting their use.