In a 7-2 decision in *Little Sisters of the Poor v. Pennsylvania* the Supreme Court held that religious employers and employers with moral objections may be exempted from the Affordable Care Act’s (ACA) contraceptive mandate.

The State and Local Legal Center (SLLC) filed an *amicus* brief in this case defending the lower court’s issuance of a nationwide injunction—which benefits nonparties. Because the Court upheld the regulations (meaning the lower court shouldn’t have issued any injunction in this case), the Court had no reason to discuss the merits of nationwide injunctions. Nevertheless, Justice Ginsburg’s dissenting opinion contains a footnote stating that “the District Court did not abuse its discretion in issuing a nationwide injunction.”

Understanding the other legal issues in this case requires some background.

Regulations long exempted churches from the contraceptive mandate. Regulations also allowed religious non-profits to participate in a “self-certification accommodation” process where employees could still receive contraceptive coverage from their health plan. In *Zubik v. Burwell* (2016), the Little Sisters, Catholic women who operate homes for the elderly poor, objected to the accommodation process. The Supreme Court didn’t decide that case because it appeared the parties reached a compromise. In *Burwell v. Hobby Lobby* (2014), the Court held that the contraceptive mandate violated a privately held company’s rights under the Religious Freedom Restoration Act.

In 2017 a number of federal agencies issued regulations exempting all objecting religious employers (not just churches) and morally objecting non-profits and private for-profits from the contraceptive mandate.

Pennsylvania and New Jersey sued arguing that these exemptions are “substantively and procedurally” invalid. The Supreme Court disagreed in an opinion written by Justice Thomas.

The ACA states that health insurance plans must provide “additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by Health Resources and Services Administration [HRSA].” The states argued that this language allows the HRSA to only list the preventive care and screenings that health plans must provide and “not to exempt entities from covering those identified services.”

According to the majority, “that asserted limitation is found nowhere in the statute.” “HRSA has virtually unbridled discretion to decide what counts as preventive care and screenings. But the same capacious grant of authority that empowers HRSA to make these determinations leaves its discretion equally unchecked in other areas, including the ability to identify and create exemptions from its own Guidelines.”

The states raised two objections to how the final rules in this case were developed. The Administrative Procedures Act (APA) requires agencies to publish a notice of proposed rulemaking in the Federal
Register before promulgating a rule that has legal force.

The states argued the federal government violated the APA in this case because before issuing final rules it issued “Interim Final Rules with Request for Comments,” instead of a “General Notice of Proposed Rulemaking.” The Court disagreed concluding that the interim final rule contained the elements required in a notice of proposed rulemaking (“reference to the legal authority under which the rule is proposed” and “either the terms or substance of the proposed rule or a description of the subjects and issues involved”).

The Court also declined the states’ request to consider whether the federal agencies acted with an “open mind” because they “made only minor alterations to the [interim final rules], leaving their substance unchanged.” The Court noted the agencies followed APA requirements related to providing notice and receiving comments.

Justice Ginsburg’s dissent, joined by Justice Sotomayor, points out that “as the Government estimates, between 70,500 and 126,400 women would immediately lose access to no-cost contraceptive services” as a result of the regulations.

By:
Wednesday, July 8, 2020 at 02:26 PM
Tags: