Recently, the Supreme Court’s already interesting docket got even more high profile. First, it agreed to decide whether the Affordable Care Act (ACA) birth control mandate violates religious nonprofits rights. Then, it agreed to decide whether a Texas abortion law is unconstitutional.

Abortion

In *Planned Parenthood v. Casey* [2] (1992) the Court held that a state law may not impose an “undue burden” on a woman seeking an abortion and that abortion restrictions must reasonably relate to a legitimate state interest.

The issue in *Whole Women’s Health v. Cole* [3] is whether Texas’s admitting privileges and ambulatory surgical center requirements create an undue burden on women seeking abortions and are reasonably related to advancing women’s health.

Texas claims, and the Fifth Circuit agreed, that women’s health is advanced if doctors performing abortions have admitting privileges at a nearby hospital and if abortion clinics must comply with standards set for ambulatory surgical centers. Whole Women’s Health argues that the Fifth Circuit erred in refusing to consider “whether and to what extent” Texas law actually serves its purported interest in achieving safer abortions.

Whole Women’s Health also argues that these requirements create an undue burden on those seeking abortions. Fewer than 10 of Texas’s over 40 abortion clinics will remain open, those that do will be inaccessible to many and will be unable keep up with demand for abortions. The Fifth Circuit found no undue burden even though 17 percent of women of reproductive age would face travel distances of 150 miles or more to receive abortions.

*NPR* [4] reports two dozen states have adopted similar laws. Even more significant than possibly overturning some of these statutes is the Court weighing in on what an “undue burden” means.

Birth Control Mandate

While these ACA cases do not affect states directly the ACA and religious liberty are timely topics of general interest.

Per the so-called “birth control mandate,” the ACA has been interpreted to require employers to offer contraception coverage to women at no cost.

The federal government has accommodated religious nonprofits that object to providing contraception by allowing them to complete a form objecting to the coverage. Their health insurance plan must then provide free access to contraception without the nonprofits’ involvement.

The Religious Freedom Restoration Act (RFRA) prohibits the federal government from substantially burdening a person’s exercise of religion except to further a compelling interest in the least restrictive way.
Religious nonprofits claim that this accommodation process makes them complicit in providing coverage they object to and therefore substantially burdens their exercise of religion in violation of RFRA. They suggest the federal government could rely on a variety of less restrictive options to providing birth control that would not involve them at all. For example, the government could directly provide contraception or female employees could obtain it through exchanges.

The Court accepted seven cases involving the question of whether the birth control mandate violates RFRA. All the lower courts deciding this issue, except the Eighth Circuit, ruled in favor of the federal government.

The most widely known of the cases (due to its name) Little Sisters of the Poor v. Burwell [5] raises an additional question: whether the Little Sisters must go through the accommodation process where their insurer would not be required to provide contraception coverage because it is exempt from the birth control mandate as a “church” plan.


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