Whether lower courts may issue nationwide injunctions is one of a number of legal issues the Supreme Court will decide in *Trump v. Pennsylvania* [2] and *Little Sister of the Poor Saints Peter and Paul Home v. Pennsylvania* [3]. Nationwide injunctions are controversial because they benefit non-parties. For example, while only Pennsylvania and New Jersey sued, the nationwide injunction issued in this case prevented the federal government from applying the rules at issue anywhere in the United States.

The SLLC *amicus brief* [4] argues in favor of nationwide injunctions.

The most prominent legal issue in this case is whether the Trump administration has the statutory authority to expand the Affordable Care Act (ACA) contraceptive mandate’s conscience exemption.

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 issues litigated in this case in the Third Circuit.

Most relevant to the SLLC *amicus brief* [4], the third Circuit agreed with the district court’s decision to issue a nationwide injunction. The Third Circuit 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.”

The SLLC *amicus brief* [4] notes that injunctions routinely benefit non-parties. For example, an injunction requiring a government to take down an unconstitutional religious display would benefit everyone who might see the display not just the party who brought the lawsuit. The brief also points out that every court of appeals to consider the question has approved the use of nationwide injunctions. Finally, the brief argues that nationwide injunctions are particularly important to small local governments who lack the resources to sue the federal government and have to “rely on one of the big cities to get the injunction that forces the federal government to stop.”

Lisa Soronen, SLLC, wrote the SLLC *amicus brief* [4] which the following organizations joined: National League of Cities, US Conference of Mayors, International City/County Management

By:
Wednesday, April 8, 2020 at 03:09 PM
Tags: