

EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

FAQs: Becket Fund's Lawsuits Against HHS

(1) How did the government mandate arise?

As part of universal health insurance reform passed in 2010, all group health plans must now provide—at no cost to the recipient—certain “preventative services.” In September 2010, the government announced a general list of “preventative services,” but asked the Institute of Medicine (IOM) to recommend a list of “preventative services for women.” Religious groups urged the IOM to not include sterilization and contraceptive services in the mandate. Undeterred, the IOM made recommendations that included the two services, and the government adopted them in the summer of 2011.

(2) What does the government mandate require?

The government mandate requires group health plans to pay for several preventative services for women: annual well-woman visits; *screening* for gestational diabetes, HPV, HIV, and domestic violence; and *counseling* for sexually transmitted infections, HIV and domestic violence, as well as breastfeeding support and supplies. None of these nine services are morally troublesome for EWTN, Belmont Abbey, CCU.

It is the tenth government-mandated service that puts EWTN, Belmont Abbey, and CCU in a moral bind. It requires: “[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.”

(3) What's so troubling about FDA-approved contraceptives?

Two problems. First, and most serious, is the fact that at least one of the approved contraceptives can cause an abortion. Abortions are a serious violation of EWTN's, Belmont Abbey's, and CCU's faiths. Although the government has publicly stated that the mandate does “not include abortifacient drugs,” the text of the regulation itself contains no such guarantee. The “FDA-approved contraceptives”

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

covered by the mandate include “emergency contraception” drugs. One of them is “ella” (ulipristal)—which is a close analogue to the abortion drug RU-486 (mifepristone)—and can cause an abortion when taken to avoid pregnancy. Thus, EWTN, Belmont Abbey, and CCU believe that providing coverage for ella would be a serious violation of their faiths. The government should not trample on sincere religious convictions, even if—especially if—they are unpopular.

(4) How is the Becket Fund fighting this mandate?

The Becket Fund for Religious Liberty has brought the only three legal challenges to this mandate. The Becket Fund currently represents EWTN, a global Catholic media network headquartered in Irondale, Alabama, Belmont Abbey College, a small Catholic liberal arts college located in Belmont, North Carolina, and Colorado Christian University, an interdenominational Christian liberal arts university located near Denver, Colorado. The Becket Fund is a non-profit, public-interest law firm dedicated to protecting the free expression of all religious traditions.

EWTN, Belmont Abbey College, and CCU strongly oppose abortion, including abortion drugs. So when the government recently mandated that all private group health plans cover certain abortion drugs (namely Plan B and *ella*), as well as related education and counseling, they knew that they could not obey both the government’s mandate and their own religious convictions. Faced with this dilemma, they joined with the Becket Fund in asking federal courts to remove this substantial burden to their religious freedom. What is at issue in this case, then, is the protection of the right of conscience.

(5) What is the right of conscience?

It is the same fundamental protection that has been afforded in this country to 18th century Quakers from bearing arms and 20th century Jehovah’s Witnesses from pledging allegiance to the American flag against their deeply held religious convictions. Simply put, the right of conscience is the freedom from governmental coercion to violate one’s religion. In this case, conscience protections ensure that both Belmont Abbey and CCU are not coerced into violating their teachings.

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

(6) Isn't this just a Catholic issue?

No. Many religious organizations are opposed to the government-mandated drugs, devices, and procedures aimed at forcing them to provide sterilization, contraception, abortion and related education and counseling to their employees and/or students. Although EWTN and Belmont Abbey are Catholic institutions, Colorado Christian is an evangelical university, which shows that this is not just a Catholic issue. And the mandate has been sharply criticized from across the political spectrum, and from religious leaders of a variety of faiths.

(7) Is there precedent for the government requiring a broad mandate for contraception and sterilization?

No. The government mandate is unprecedented in federal law, and broader than any state contraception mandate to date. Never has federal law required private health plans to cover sterilization or contraception. And as compared to State mandates, the government mandate is the most expansive ever enacted. At least 22 States have no contraception mandate at all. Of the 28 States that have some mandate, none require contraception coverage in self-insured and ERISA plans, only two States include contraception in plans that have no prescription drug coverage, and only one State specifies sterilization.

(8) Is there a religious exemption from the mandate, and who qualifies under the exemption?

The government, apparently recognizing the tension between the mandate and the right of conscience, included an exemption from the mandate for a “religious employer.” But the exemption is extremely narrow and will, in practice, cover very few religious employers. The exemption defines a “religious employer” as a church (defined under certain tax provisions) that inculcates religious values “as its purpose” and which *primarily employs and serves* those who share its faith. And it only applies to those entities that file their tax returns as churches or religious orders.

Many religious organizations—including hospitals, charitable service organizations, and colleges and universities—cannot meet this definition. Those organizations would be forced to choose between covering drugs, devices, and

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

procedures contrary to their religious beliefs or cease to offer health plans to their employees. Without employer health plans, many religious institutions would find themselves at a serious competitive disadvantage vis-à-vis other employers. Some religious institutions could find that without a group health plan, they could not attract sufficient staff and would be forced to close their operations altogether.

(9) Is there precedent for such a narrow exemption?

Again, the answer is no. Until now, federal policy has generally protected the conscience rights of religious institutions and individuals in the health care sector. For example, for 25 years, Congress has protected religious institutions from discrimination (based on their adherence to natural family planning) in foreign aid grant applications. For 12 years, Congress has both exempted religious health plans from the contraception mandate in the Federal Employees' Health Benefit Program and protected individuals covered under other health plans from discrimination based on their refusal to dispense contraception due to religious belief.

On the State level, almost half the States do not have a state contraception mandate at all, so there is no need for an exemption. Of the States that have some sort of state contraception mandate (all less sweeping than the federal one here), 19 provide an exemption. Of those 19 States with an exemption, only three define the exemption as narrowly as the federal government. And even those three states have other ways for religious institutions to avoid covering these drugs.

(10) Why is this particular exemption so troubling?

Not even Jesus' ministry would qualify for this exemption, because He fed, healed, served, and taught non-Christians. The government should not punish religious organizations today that likewise serve the general public. Churches and other religious organizations have a long history of feeding the hungry, educating children, and providing much-needed social services to those who need them most. Under the government's mandate, religious organizations can follow their beliefs as long as they only serve their own members. But when they start to do the good work of serving the community, the government can restrict them. This is extremely troubling, for without these religious organizations, many of the poor and needy would go without services altogether.

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

(11) Why won't any exception from the government mandate harm women and women's health?

Including a robust exception protecting the deeply held religious beliefs of EWTN, Belmont Abbey, and CCU and others like them would not harm women or women's health. The evidence is clear. Nine out of ten employer-based insurance plans in the United States already cover contraception. Some have defended the mandate on those grounds—that it merely requires what most employers already cover. Therefore, the issue is not really about access to contraception but rather about who pays for it. The government's answer is to force religious organizations to pay for services against their deeply held religious beliefs. Of course, if the government really believed free provision of these drugs and services was crucially important for women's health, it would open up clinics itself and dispense them itself. Instead, it is trying to force a small group of religious objectors into submission with huge fines and penalties to make them pay for the drugs.

(12) If the exemption covers only religious *employers*, then are religious colleges and universities required to provide free contraception to their students?

Yes. Student health plans are indeed included within the government mandate (with some narrow exceptions that don't apply to Belmont Abbey or CCU). And there is no exemption from the mandate for religious colleges and universities that offer health care plans to their students. Even if Belmont Abbey and CCU were to qualify for the "religious employer" exemption, they would still be required by law to pay for sterilization, contraception, and abortion drugs for students through their student health care plans.

There is something quite unsettling about the government mandating that—while a university pastor may preach to his student congregants on Sunday that pre-marital sexual intercourse, contraception, and abortion are all immoral—on Monday, the university has to pay for those students to be educated, counseled, and provided with drugs, devices and procedures in direct violation of those teachings.

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

(13) What are the penalties if employers don't comply?

If EWTN, Belmont Abbey, and CCU do not violate their consciences and refuse to furnish free sterilization, contraception, abortion drugs, and related education and counseling against their teachings, they will be forced to stop providing health insurance altogether and will be issued a penalty. Without a change in the rules, EWTN could be forced to pay more than \$600,000, Belmont Abbey could be forced to pay more than \$300,000, and CCU more than \$500,000 (with penalties increasing in future years) for the “privilege” of not underwriting medical services they believe are immoral.

(14) What was the Obama Administration's announcement on Friday, January 20, 2012 about?

The Obama administration announced last month that they were taking religious principles very seriously—by giving religious institutions an extra year to get over them. The Obama administration refused to change a controversial rule that would require religious institutions, in violation of their conscience, to pay for contraceptive drugs—including those that could cause an abortion. Instead, the administration merely delayed the effective date of the rule by one year.

(15) Did the Administration change the exemption in January 2012?

Yes and no. The Administration announced on January 20th that it would not expand the exemption from its abortion-drug mandate to include religious schools, colleges, hospitals, and charitable service organizations. Instead, the Administration merely extended the deadline for religious groups who do not already fall within the existing narrow exemption so that they will have one more year to comply or drop health care insurance coverage for their employees altogether and incur a hefty fine.

Merely giving religious groups another year to comply with the mandate misses the point entirely. There is no expiration date for the right of conscience. In its statement, the Administration explained: “This additional year will allow these organizations more time and flexibility to *adapt* to this new rule”—as if religious convictions can be adapted to bend around governmental policy choices.

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

The same statement also “reassured” religious groups that the Administration “will continue to work closely with religious groups during this transitional period to discuss their concerns.” But paying for abortion drugs violates the religious beliefs of many religious schools, colleges, hospitals, and charitable service organizations—and that won’t change next year, or any time soon.

Finally, although the Administration said that it “remains fully committed to its partnerships with faith-based organizations, which promote healthy communities and serve the common good,” it’s clear that this abortion-drug mandate will force many of these organizations out of providing services to the general public. In our current economy, it’s amazing that the government would rather force abortion drugs on religious groups than protect their right to exist and provide jobs for hundreds of employees.

(16) Are the legal claims different between three parties?

The three lawsuits challenge the government mandate as a violation of the First Amendment of the U.S. Constitution, the Religious Freedom Restoration Act, and the Administrative Procedures Act. The three plaintiffs are represented by The Becket Fund.

(17) What is the relationship between these lawsuits challenging the contraception mandate and the Supreme Court case involving the individual healthcare mandate?

The Supreme Court agreed to review a challenge to the individual mandate, a separate provision of the universal health insurance reform law that requires individuals to obtain healthcare by 2014. The Becket Fund lawsuits involve another mandate under that law that requires all group health plans to provide contraception and sterilization.

Even though these lawsuits involve two different mandates, they stem from a similar problem with the healthcare reform law—Congress over-reaching to impose a conformist one-size-fits-all solution to a perceived societal problem. It should come as no surprise that when Congress imposes mandates like these, it threatens individual liberty, generally, and religious liberty, specifically. The Founders knew this and structured our nation’s government such that Congress would have limited

FREQUENTLY ASKED QUESTIONS

UPDATED February 9, 2012



EWTN v. Sebelius

Belmont Abbey College v. Sebelius

Colorado Christian University v. Sebelius

powers for this very reason, so that Congress could not restrict liberty in these ways.

(18) What happens to the rest of the healthcare law (including the contraception mandate) if the Supreme Court strikes down the individual mandate as unconstitutional?

It depends. If the Supreme Court strikes down the individual mandate as unconstitutional, the Court would still need to decide a second question: whether the rest of the healthcare reform law is sufficiently separate from the individual mandate that it can remain good law. The Court could decide that the rest of the healthcare reform law can remain in effect because it can function without the individual mandate. Or the Court could decide that the rest of the law must also be struck down because it is so closely tied to the individual mandate that the rest of the law cannot work absent the unconstitutional individual mandate.

(19) Don't religious employers have to comply with this mandate if they receive federal funds?

It is simply a red herring to say that religious groups must provide these services against their religious convictions because they receive federal funding. Every group health plan in America is covered by this federal mandate, whether or not a particular group receives any federal funding for any purpose at all. Forcing religious groups to choose between offering these services to keep their doors open and closing shop because they can't afford the enormous financial penalties if they don't offer these services, should drive home what a terrible consequence this mandate risks: eliminating vital religious charitable organizations from our country's social safety net.