

The Supreme Court divided 4-4 in Obamacare case

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Conservative Chief Justice John Roberts said the challengers' contention that the government was seeking to "hijack" their insurance plans in order to provide contraception coverage appeared to be an "accurate description of what the government wants to do".

But while writing rules for Obamacare in 2012, the administration chose to compel religiously affiliated groups to assist in offering health care *plans* that violate a central tenet of their faiths.

But the potential fifth vote for the administration, Justice Anthony Kennedy, aimed skeptical questions at a government lawyer, opening the possibility of a 4-4 deadlock that would leave the law in an uncertain state.

He and fellow conservative Justice Samuel Alito raised the question of whether there are other ways the coverage could be provided.

Justice Sonia Sotomayor was representative of the liberal justices. Arguing for the religious groups, Noel Francisco claimed that his clients should get the same accommodation that actual churches received: to be completely *exempted* from the contraceptive mandate.

Kagan *also* said that the United States likely could never "have a government that functions" if religious exemptions were provided to every group that said it had a honest objection to various laws.

It was the Supreme Court's third consideration of the mandates placed on employers under the 2010 Affordable Care Act, and three justices had joined Justice Ruth Bader Ginsburg's scorching dissent. Even if it does, the administration still could show that it has a "compelling interest" in the provision of contraception and that its *plan* is the most reasonable way. And if religious organizations can veto this medical benefit, what other civil rights might be infringed by playing the "church card?"

The solution Kennedy suggested - an accommodation that would insulate employers from providing the contraceptive coverage but still ensure that their employees receive it - will be at the heart of the discussion Wednesday when the Supreme Court undertakes its fourth consideration of what is popularly called Obamacare.

In the new case, "*all eyes will be on Justice Kennedy*", according to Elizabeth Wydra, president of the Constitutional Accountability Center, who spoke at a Cato Institute discussion of the case covered by the Post. Employers who object must make their religious objections clear by signing a form or sending a letter and let insurance companies and the government take over from there.

The employers before the court now insist even that is too sinful for them to comply with and is an affront to their beliefs, reports the Washington Post.

Churches and other houses of worship themselves are already separately *exempt* outright under rules established by the Obama administration. On Wednesday, however, the Supreme Court heard a challenge to the law from unlikely quarters: an order of nuns called the Little Sisters of the Poor. The Little Sisters then went before the Tenth Circuit Court of Appeals in Denver to extend that protection, but a panel of the appeals court ruled against them.

The contraceptive case comes only weeks after the court heard a case from Texas that could limit *women's* access to abortion.

A tie would *also* mean a loss for the Little Sisters and most of the other challengers, who lost in the lower courts.

A deadlocked court could *also* schedule a rehearing when the court has a ninth member, but no one knows when that might be.

Solicitor General Donald Verrilli told the court the law provides "a sensible balance, respecting both the employer's religious views and the interests of their employees".

Those groups were instead given a way to opt out by notifying the government or their insurer of their refusal to provide coverage.

"If accepted, that claim would deny tens of thousands of *women* the health coverage to which they are entitled under federal law, and subject them to the harm the law is created to eliminate". The contraction mandate requires these organizations to "facilitate" the provision of insurance coverage for contraceptive services that they oppose on religious grounds.

That's because when Congress passed Obamacare, it established that preventative services for *women* were an essential element of public health.

Does the law "substantially burden" a person's exercise of religion?

It's been almost two years since the Supreme Court's Hobby Lobby ruling, but for many conservatives, the legal questions surrounding the Affordable Care Act and contraception access still need adjudication.

"The Supreme Court has the opportunity to stand up for this fundamental right of *all* human beings, a right that's guaranteed to us here in the Constitution", he added.

The Little Sisters of the Poor, a charity that cares for the elderly, and other Roman Catholic groups were among plaintiffs. They say the religious accommodation the Obama administration put together still makes them complicit in covering the abortion-causing drugs.