

## Divided Court Seems To Hint At 4-4 Decision In Obamacare Case

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Although the Obama administration has offered them an accommodation meant to respect their religious objections, the groups said it is not good enough because it still makes them complicit in providing the coverage. Justice Anthony Kennedy, whose vote could be key to deciding the case, seemed to agree with Kagan that some of the religiously-affiliated universities involved in the case should not be treated the same way as churches.

Their pleas for relief won vigorous backing from some justices, including Roberts and Samuel Alito, who dominated the questioning in the voluble Scalia's noticeable absence.

Chief Justice Roberts returned to that point later by noting that the Catholic Charities of Pittsburgh had to comply with the contraceptive mandate, while the Catholic Charities of Erie was *exempt*.

Everyone says "my soul will be damned" due to any number of objections countered Sotomayor, so "how will we ever have a government that functions?" *All* but one of the nine federal appeals courts to have ruled on the issue have sided with President Barack Obama's administration by holding that an accommodation offered to religious employers does not violate their religious-freedom rights. The government says it does not, because once the organizations sign the form, they are totally removed from the contraception equation.

Among the law's challengers is an organization of Catholic nuns called The Little Sisters of the Poor, which operates 27 homes for the low-income elderly.

Lawyers for the Becket Fund for Religious Liberty and Alliance Defending Freedom told Baptist Press outside the courtroom, however, even some of the liberal justices seemed to struggle with the government's position and might vote in support of the nonprofits. But a deadlock would assure contraceptive coverage only in regions where lower courts have already decided in favor of employees' right to equal access to health-care coverage.

"As usual, all eyes will be on Justice Kennedy", Elizabeth B. Wydra, president of the left-leaning Constitutional Accountability Center, said during a discussion of the case last week at the Cato Institute.

The government then simply makes sure that employees or, in the case of religiously-affiliated schools, students can freely access contraception without involving the non-profit. The Obama administration says it has provided the organizations with just that easy way out. 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. Ruling the other way, the St. Louis-based 8th U.S. Circuit Court of Appeals said a residential-care facility operated by CNS International Ministries was likely to succeed on the merits of its RFRA claim.

With Justice Antonin Scalia's death, only eight justices will hear the case. "It can't be *all my way*", Justice Ruth Bader Ginsburg said.

However, health plans of large corporations such as Visa and PepsiCo are exempt from the mandate as they were "grandfathered" into the law's requirements. Unlike before Hobby Lobby, the government has now established an accommodation exempting religious nonprofit organizations from the contraception mandate; however, the Court in *Zubik v. Burwell* will need to decide if the contraception mandate furthers a compelling governmental interest and, if so, if the existing accommodations are the least restrictive means.

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

Legal scholars and reproductive health advocates alike have argued that a lack of access to contraception undermines women's ability to equally and fully participate in the economy.

Those groups were instead given a workaround by notifying the government or their insurer in writing 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".

"They think that complicity is sinful", explained Roberts, reasoning that women could easily obtain coverage through a government-run contraceptives service. He added that even though the religious employers do not have to pay for or directly arrange for the coverage, the employers' insurance plans are being used by the government to provide these services.

Gloria Purvis, chairperson of Black Catholics for Life and radio host for the EWTN radio show, Morning Glory, also spoke at the rally.

Verrilli pointed out that those sort of contraceptive-only policies don't even exist on the exchanges, and in a hypothetical world where they did, that extra effort undercuts the reason Congress passed a mandate for preventive care in the first place.

In the current litigation, most appeals courts have ruled that the government work-around suffices.

The outcome in the case of a tie would be further complicated because federal appeals courts disagreed when they heard the cases.