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Supreme Court to decide if companies must provide birth control over owners' religious objections

By Sabrina Eaton
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WASHINGTON, D.C. - Two companies whose owners object to providing contraception in their employees' health insurance will argue Tuesday before the U.S. Supreme Court that religious freedom should exempt them from that obligation.

The high-profile case to be decided later this year could affect a host of issues ranging from Obamacare to religious liberty to corporate freedom to gay rights.

The Southern Baptist owners of the Oklahoma-based Hobby Lobby craft store chain and the Mennonite owners of a Pennsylvania cabinet maker called Conestoga Wood Specialties Corp. equate some forms of contraception, such as the morning-after-pill, with abortion.

Hobby Lobby, run by the Green family, has more than 500 stores nationwide and around 13,000 full-time employees, while Conestoga, run by Norman Hahn and his sons, has around 1,000 workers.

Because of their religious beliefs, the families that own the companies say they shouldn't have to comply with Affordable Care Act regulations that require for-profit corporations to provide contraception coverage in their employees' health insurance plans. They claim the 1993 Religious Freedom Restoration Act (RFRA) and the First Amendment's protection of religious exercise should relieve them from the mandate because of their objections.

“Ultimately, whether it is the individuals, the corporations, or both who are exercising religion, the government cannot simply wish away the reality that its policies substantially burden Respondents’ religious exercise in a wholly unjustified manner,” says a brief filed on behalf of Hobby Lobby.

The government argues the religious freedom statute -- adopted after a 1990 Supreme Court decision that denied unemployment benefits to a man who used peyote in a religious ritual -- applies to individuals rather than corporations and says the law wasn’t meant to let company owners deny particular health care services to employees who may not share their beliefs.

It also contends medical decisions made by workers and their health care providers “are not attributable to the employer that finances the plan, or to the individuals who own the company,” and that providing women access to contraceptives has been proven by numerous studies to provide significant health benefits for them and their children.

“To achieve the unprecedented result they seek, respondents must stretch every operative provision of RFRA well beyond what Congress could reasonably have intended,” says a brief filed by U.S. Solicitor General Donald B. Verrilli, Jr. “Respondents’ approach would even allow a for-profit corporation to discriminate in employment, such as by refusing to hire a devout member of a religion other than that of the corporation’s owner.”

The libertarian Cato Institute think tank, which filed a legal brief in the case, said the court will determine whether individuals who wish to conduct their lives in accordance with their religious beliefs forfeit that right if they engage in corporate business activities.

“This is an important case because the corporate form is an essential tool for operating successfully in the complex modern economy and the right to exercise one’s religion — even through one’s business — is an essential right in a free nation,” said a statement from the group. “Nobody should have to choose between the two.”

Gay-rights organizations contend that upholding the companies’ arguments would open the floodgates of religion-based discrimination targeting lesbian, gay, bisexual and transgender individuals and other vulnerable groups.

“The Supreme Court has never before allowed commercial businesses to ignore regulations that protect workers based on the religious beliefs of a corporation’s owners,” says Jennifer C. Pizer, Director of Lambda Legal’s Law and Policy Project. “In our multicultural society, respect for religious pluralism is essential. We have laws and regulations to ensure fairness and safety for owners, workers, and consumers, without allowing some to impose their religious views on others.”

Feminist groups say allowing companies to deny birth control coverage to workers amounts to health care discrimination against women because preventive care for men would be covered.

“This could allow private, for-profit employers to discriminate based on their personal religious perspectives,” said Stephanie Kight, president and CEO of Planned Parenthood Advocates of

Ohio, who plans to participate in a demonstration outside the Supreme Court as the case is being argued. “This year it could be birth control, next year your daughter might not be able to get an HPV vaccine because your employer doesn’t think it’s the right thing to do for a teen.”

The decision issued by the Supreme Court will determine the outcome of a similar Ohio case, in which a Dayton-area produce company with Roman Catholic owners sought a religious exemption from providing birth control coverage for its 400 employees.

The District of Columbia Circuit Court of Appeals granted the request of Sidney, Ohio-based Freshway Foods and Freshway Logistics, but the company’s attorney, Francis Manion of the American Center for Law and Justice, appealed the case to the U.S. Supreme Court “so there will be no ambiguity about the protection” the November 2013 decision afforded.

The appeals court determined Freshway’s owners had the right to object to the contraceptive coverage mandate without addressing whether the corporation they own had that right.

Manion anticipates the Supreme Court will sit on Freshway’s appeal until after its decision on the Conestoga and Hobby Lobby matters, given the cases’ similarity. According to Manion, there are 47 lawsuits around the country in which for-profit companies have asked not to provide contraception insurance for workers. Freshway is operating under a court injunction that exempts it from providing workers with contraceptive coverage while the matter is pending in court.

Manion said he does not think a large number of U.S. companies would decline to provide birth control coverage for employees on religious grounds if the Supreme Court upholds their ability to do so. Many companies whose owners have objections to birth control -- such as Freshway’s Frank and Phil Gilardi -- never provided that coverage for workers.

“If you go work there, you know your health plan won’t cover it so if it is important to you, you consider going elsewhere or making other arrangements,” Manion said. “I don’t think widespread societal impact would be caused by this.”

Eighty-four organizations and parties interested in the case have filed legal briefs at the court, including Ohio Republican Sen. Rob Portman, who signed onto a legal brief that argued the Affordable Care Act’s birth control coverage mandate violates the Religious Freedom Restoration Act.

Ohio Attorney General Mike DeWine filed a brief on behalf of 20 states that argues the government “lacks a compelling interest” in forcing businesses to violate their owners’ religious beliefs by providing contraceptive coverage to workers.

“Americans may form a corporation for profit and at the same time, adhere to religious principles in their business operation,” DeWine’s brief said. “This is true whether it is the Hahns or Greens operating their businesses based on Christian principles, a Jewish-owned deli that does not sell non-kosher foods, or a Muslim-owned financial brokerage that will not lend money for interest. The idea is as American as apple pie.”

When asked about the kosher foods analogy, National Women's Law Center co-president Marcia Greenberger said that the law allows religion to be used as a shield rather than a sword. She said kosher food vendors would use the law as a shield if anyone challenged their decision to avoid selling non-kosher food, but employers in this case are "trying to use religion as a sword, to remove benefits and supports that are available under the law to women."

Ohio Democrats hoping to make an election issue out of DeWine's participation in the case have criticized him for arguing that "employers can interfere with women's health care choices," and say the points he made could be used to support businesses that cite their religious beliefs as a reason to deny service to gay people.

Democrats in Ohio have also weighed in. House of Representatives members Marcia Fudge of Warrensville Heights and Marcy Kaptur of Toledo signed onto a brief that said the contraceptive coverage mandate doesn't violate a corporation's religious rights because it doesn't force companies to administer or use particular contraceptives, or force them to uphold or give up any particular religious stance.

"It merely requires the Corporation, like other for-profit employers to provide comprehensive insurance coverage under which their employees may make their own personal decisions whether to use whatever form of contraception, if any, best suits their individualized health and wellness needs," said the brief the pair filed with dozens of other Democrats.