

# The Daily Tar Heel

## 8th Circuit Court contradicts contraception

Audrey Wells

September 28, 2015

The Affordable Care Act's birth control mandate might be taken up by the U.S. Supreme Court following contradictory rulings in several circuit courts nationwide.

The 8th U.S. Circuit Court of Appeals, which holds jurisdiction over midwestern states, ruled last week that the mandate interferes with the Religious Freedom Restoration Act and requires an easier religious exemption.

But the ruling contradicts that of several other circuit courts, necessitating action from the U.S. Supreme Court.

Rebecca Kreitzer, an assistant professor of public policy at UNC, said while it's not unexpected for different courts to have different rulings, the move was still a surprise. She said the 8th Circuit court ruled against every other district court, much like it did with gay marriage.

"It depends on which justices are selected for the panel, and what may happen now is that they may rehear the case en banc," she said.

En banc means the whole circuit would rehear the case, she said, though this is unlikely.

Religious entities argued in the 8th Circuit case that providing contraceptives was equivalent to providing abortions to their employees and students and, therefore, it violated their religious faith. They also contended the exemption process was too difficult and required them to work to violate their own faith.

The 8th U.S. Circuit Court of Appeals agreed and declared that the government must listen to religious entities when they say what violates their faith, and provide a less strenuous exemption process. <http://www.scotusblog.com/2015/09/appeals-courts-now-split-on-birth-control-mandate/>

Kreitzer said the interpretation of the Religious Freedom Restoration Act will be key moving forward. The act mandates courts use strict scrutiny for cases involving the federal government violating an individual's or group's free exercise of religion.

Under strict scrutiny, a court must decide if a law will cause a substantial burden on the free exercise of religion. The government can only impose this burden if it has a compelling interest to do so and it is using the least restrictive means possible.

Kreitzer said since circuits have ruled differently, the case will almost definitely go to the U.S. Supreme Court.

"It's pretty much Hobby Lobby all over again, and the result is likely to again be a 5-4 for the challengers," said Ilya Shapiro, the editor-in-chief of the Cato Supreme Court Review at the Cato Institute.

He also said the U.S. Supreme Court is likely to take up the case, adding that of the possible cases, they would most likely hear *Little Sisters of the Poor v. Burwell*. He said he supported the 8th Circuit's decision.

"Under (Religious Freedom Restoration Act's) terms, the government hasn't shown that it has no other way to achieve a compelling interest that would be less burdensome to the plaintiffs' religious exercise," he said in an email.

But some students think religion is based on individual beliefs and shouldn't play a role in decisions about contraception.

"You can't project your own beliefs on to the bodies of others," said Stephanie Tepper, a UNC senior. "It's not a religious issue, it's an issue of reproductive rights."