



Written by [Raven Clabough](#) on July 18, 2012

## Judge Dismisses Lawsuit Against Contraception Mandate

In February, the attorneys general of seven states — Florida, Michigan, Nebraska, Ohio, Oklahoma, South Carolina, and Texas — along with three employers affiliated with the Catholic church, a nun, and a missionary, filed suit against the federal healthcare law's contraception mandate. But on July 17, a federal judge [dismissed](#) the case, declaring that the groups behind the suit had no standing.



According to Fox News,

The lawsuit was challenging a rule in the law that requires contraception coverage in health care plans — including for employees of church-affiliated hospitals, schools and outreach programs. The suit argued that the rule violated the rights of employers that object to the use of contraceptives, sterilization and abortion-inducing drugs.

However, U.S. District Court Judge Warren Urbom of Nebraska claimed that the plaintiffs had failed to prove that they would suffer harm if the law was enacted.

The plaintiffs claimed that the contraception mandate found within the healthcare law violates religious rights under the First Amendment because it provides exemptions only for those organizations that serve and employ people of their own faith.

As the online Huffington Post explains,

A Catholic charity, the attorney generals contended, would have to stop serving people of other religions in order to avoid having to pay for its employees' birth control, and then those unserved people would have to turn to the state for assistance.

But according to the U.S. Justice Department, the states would not undergo any harm by implementing the law, particularly since the administration has given the states until August 2013 to work out how they would accommodate religious organizations.

Likewise, the Obama administration amended the law so that the cost of the mandate is shifted from religious employers to insurance companies, but critics of the mandate said the compromise did not go far enough.

Apparently the judge agreed with the Justice Department. He stated:

Although the rule that lies at the heart of the plaintiffs' complaint establishes a definitive, final definition of "religious employer," the ACA's [Affordable Care Act's] contraceptive coverage requirements are not being enforced against non-exempted religious organizations, and the rule is currently undergoing a process of amendment to accommodate these organizations.

The plaintiffs face no direct and immediate harm, and one can only speculate whether the plaintiffs will ever feel any effects from the rule when the temporary enforcement safe harbor terminates. This case clearly involves "contingent future events that may not occur as anticipated, or indeed may not occur at all" ... and therefore it is not ripe for review.



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None of the plaintiffs have established that they have standing to challenge the rule, and even if I were to assume that they did have standing, their claims are not ripe.

Urbom said the plaintiffs “speculate that religious organization employers who do continue to provide health coverage to their employees will attempt to qualify for the rule’s religious employer exemption by ceasing to provide charitable services to persons who do not share the organizations’ religious views, and this in turn will cause those unserved persons to rely on state resources.”

He continued, “Both alternatives allege hypothetical injuries to the states based on conjecture about the reactions of third parties, and the complaint simply does not allege facts showing that it is plausible — and not merely possible — that those reactions ‘have been or will be made’ in the manner that the plaintiffs suggest.”

Attorney General Jon Bruning of Nebraska, who was leading the case, declared of the judge’s ruling:

Today’s decision completely disregards the federal government’s continued shell game when it comes to this rule. Essentially, this decision asks millions of Americans to watch and wait for their religious liberties to be violated.

This violation of the [First] Amendment is a threat to every American, regardless of religious faith. We will not stand idly by while our constitutionally guaranteed liberties are discarded by an administration that has sworn to uphold them.

Oklahoma’s Attorney General Scott Pruitt, who is in correspondence with the other attorneys general to discuss an appeal, said in a statement,

This was not a ruling on whether the religious mandate is a violation of the First Amendment, but merely a decision on whether the plaintiffs can file a lawsuit at this time. The violations need to be heard and the federal government held accountable.

Similarly, Texas Attorney General Greg Abbott said that the ruling did not bother to address the constitutionality of the president’s “misguided attempt to impose its contraceptives mandate on private citizens and faith-based organizations.” He added,

Obamacare’s latest mandate tramples the First Amendment’s freedom of religion and compels people of faith to act contrary to their convictions. The very first amendment to our Constitution was intended to protect against this sort of government intrusion into our religious convictions.

[The] so-called “accommodation” was nothing but a shell game: the mandate still requires religious organizations to subsidize and authorize conduct that conflicts with their religious beliefs.

Judge Urbom contended that case presented by the attorneys general is “based on layers of conjecture,” but failed to show how the implementation of the law would affect the states’ budgets. He also stated that the Catholic groups that joined the lawsuit are unaffected by the law and therefore do not have grounds for suit.

“In short, the individual plaintiffs have not shown that their current health plans will be required to cover contraception-related services under the Rule, and therefore their claims must be dismissed,” Urbom asserted.

The decision to dismiss the case came as a surprise, as legal experts had predicted that the lawsuit stood a decent chance despite the Supreme Court’s recent ruling on ObamaCare, because the state lawsuit on the contraception mandate focused on a specific item in the healthcare law.



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Meanwhile, a recent Rasmussen Report poll [finds](#) that a majority of the American people are opposed to the contraception mandate. The question asked was, “The requirement to provide contraceptives for women violates deeply held beliefs of some churches and religious organizations. If providing such coverage violates the beliefs of a church or religious organization, should the government still require them to provide coverage for contraceptives?” Fifty percent of respondents opposed the requirement, while only 38 percent supported it.



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