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High Court: Appeals Court Must Hear Liberty U.'s Challenge to ObamaCare

Today the U.S. Supreme Court ordered the Fourth U.S. Circuit Court of Appeals in Virginia to hear an appeal the lower court had previously rejected in a suit filed by Liberty University of Lynchburg, Virginia, against the health insurance mandate on employers in the Patient Protection and Affordable Care Act of 2010, commonly referred to as ObamaCare. The suit, filed on behalf of the Baptist university founded by the late evangelist Jerry Falwell, claims Congress lacks the authority to require employers to provide healthcare insurance for employees. It also challenges on religious liberty grounds the requirement that the health insurance provided for employees cover contraceptive services, including sterilization and abortion-inducing drugs, free and without deduction or co-pay by the insured.

The Supreme Court at the end of June ruled against legal challenges to the law brought by 26 states and the National Federation of Independent Businesses. In the most controversial feature of its decision, the court upheld the individual mandate, ruling that Congress has the authority under the U.S. Constitution to impose a levy on anyone not otherwise covered who does not purchase health insurance by 2014. The justices, in the 5-4 ruling, held that the payment fell under the taxing power of the Congress, though the legislation itself said the charge is a penalty, not a tax.

But the court also ruled against the government's claim that the suits were invalid under the Tax Anti-Injunction Act, a statute that forbids an injunction against a federal tax that has not yet gone into effect. The circuit court had invoked the statute to dismiss the appeal of Liberty University. The university filed a new appeal after the Supreme Court decision, asking the court to rule on "the limits of federal power to enact a novel and unprecedented law that forces individuals into the stream of commerce and coerces employers to reorder their business to enter into a government-mandated and heavily regulated health insurance program." The Supreme Court order issued today requires the circuit court to consider the appeal and opens the door to the possibility of an eventual Supreme Court ruling on the university's challenge before the major portions of the health care law take effect in 2014.

The law requires companies with more than 50 workers to provide health insurance or pay an annual fine of $2,000 for each worker beyond a total of 30. If the Supreme Court should decide that provision is unconstitutional, it is not clear how great the impact would be, since most employers already provide health insurance even without the mandate. Since the individual mandate has been upheld, employees without health insurance will be able to purchase coverage through an insurance exchange, with

subsidies available to low-income workers.

The Constitution of the United States contains no grant of power to the federal government concerning either healthcare or insurance, though Article I, Section 8, enumerating the powers of Congress, does empower the Congress to "regulate Commerce with foreign nations, and among the several States." While both acts of Congress and Supreme Court decisions over the past several decades have expanded the power of Congress under the Commerce Clause, many legal scholars still hold to the view that the intent of the clause was to ensure the free flow of goods and services and not to empower Congress to prescribe the benefits employers must provide to their workers, or to penalize individuals for not purchasing a product or service.

In challenging the contraception mandate, Liberty University joins a long list of litigants, including the U.S. Conference of Catholic Bishops and a number of religiously affiliated hospitals, schools, and other institutions that lay claim to the right to follow their religious beliefs rather than the federal mandate concerning the services they will supply to their employees. The Catholic Church and some Protestant and Orthodox Jewish congregations consider abortion and/or contraception a sin. Plaintiffs challenging the mandate argue that the First Amendment guarantee of the "free exercise" of religion permits them to refrain from providing services that violate the principles of their respective faiths.