Victories on the Coasts:

Courts Uphold Balance Between Reproductive Rights and Religious Freedom

ACLU Reproductive Freedom Project
ACLU Program on Freedom of Religion and Belief

VICTORIES ON THE COASTS

California and New York are among the more than 20 states requiring health insurance policies that include prescription drug benefits to include coverage for prescription contraceptives.[1] These laws are known as contraceptive equity mandates and help end gender discrimination in health insurance coverage.

The California and New York laws both contain refusal clauses permitting a narrow class of religious employers to opt out of covering contraceptives in their employee health benefit plans. Both statutes define "religious employers" as those for which:

- The entity's purpose is to inculcate religious values;
- The entity employs primarily persons who share its religious tenets;
- The entity serves primarily persons who share its religious tenets; and
- The entity is a nonprofit organization under provisions of the federal tax code that grant exemptions from tax filings to churches and certain affiliated entities.[2]

Immediately upon passage, religiously affiliated social service agencies in both states challenged the laws, arguing that the statutes violated their religious rights. In both cases, courts soundly rejected the challenges and upheld the laws.

CALIFORNIA: *Catholic Charities of Sacramento v. Superior Court*

On March 1, 2004, the California Supreme Court upheld the Women's Contraception Equity Act (the "Act"), squarely rejecting Catholic Charities' claim that the Act violated the religious liberty protections contained in the state and federal constitutions.[3]

The court rejected Catholic Charities' claim that, by requiring contraceptive coverage of its diverse workforce, California violated the charities' state and federal constitutional right to free exercise of religion.[4]

The court held that the Act is a neutral, generally applicable law that does not discriminate against the Catholic Church and thus satisfies federal constitutional standards.[5] The court further ruled that even if the state constitution demanded more rigorous scrutiny, the Act could satisfy the highest constitutional standards because it serves a compelling interest in redressing gender discrimination in the workplace.[6] As the court emphasized, women workers paid 68 percent more for health care because of the exclusion of birth control coverage.[7]

The California Supreme Court also rejected Catholic Charities' claim that the law intrudes into the autonomy of a religious organization in violation of the Federal Constitution.[8] The court reasoned that although the state may not dictate the tenets of the faith or control the relationship of a church and its ministers, the state may enact labor laws to protect the employees of religiously affiliated organizations, even if those laws conflict with church doctrine. As the court stated, "[o]nly those who join a church impliedly consent to its religious governance on matters of faith and discipline."[9]

The court also rejected Catholic Charities' argument that the narrow statutory exemption impermissibly distinguishes between the secular and religious activities of the Church

in violation of the Establishment Clause of the Federal Constitution. Noting that state and federal governments frequently make such distinctions in crafting exemptions from laws, the court observed that "legislative accommodations would be impossible as a practical matter if the government were . . . forbidden to distinguish between the religious entities and activities that are entitled to accommodations and the secular entities and activities that are not."[10]

In October 2004, the United States Supreme Court denied Catholic Charities' request for review, drawing the litigation to a close.[11]

NEW YORK: *Catholic Charities of the Diocese of Albany v. Serio*

The New York Court of Appeals, the highest court in New York, rejected a challenge to that state's contraceptive equity law as well.[12] Like the California court, the New York court held that the law was a neutral law of general applicability and thus satisfied federal constitutional standards protecting free exercise of religion.[13]

> Religious beliefs were not the 'target' of the [law], and it was plainly not that law's 'object' to interfere with plaintiffs' or anyone's exercise of religion. Its object was to make broader health insurance coverage available to women and, by that means, both to improve women's health and to eliminate disparities between men and women in the cost of health care.[14]

Moreover, the court emphasized, inclusion of an exemption for a narrow class of religious employers did not compromise the law's neutrality. "To hold that any religious exemption that is not all-inclusive renders a statute non-neutral would be to discourage the enactment of any such exemptions – and thus to restrict, rather than promote, freedom of religion."[15] Nor did inclusion of the narrow exemption violate the Establishment Clause as the law did not privilege or disadvantage particular religious denominations.[16] Finally, the court also rejected claims that the law violated the free exercise clause of the New York Constitution. In particular, the court held that the law, as applied to the plaintiffs, did not constitute an "unreasonable interference with religious freedom."[17] As the court emphasized, several factors weighed against the "plaintiffs' interest in adhering to the tenets of their faith," including "the [s]tate's substantial interest in fostering equality between the sexes and in providing women with better health care."[18] In addition, the court noted, "when a religious organization chooses to hire nonbelievers it must, at least to some degree, be prepared to accept neutral regulations imposed to protect those employees' legitimate interests in doing what their own beliefs permit."[19]

The New York Court of Appeals has denied the religiously affiliated social service agencies' request for reargument of the case.[20]

NOTES

[1] Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Vermont, Washington, and West Virginia have laws or regulations that mandate insurance coverage for prescription contraceptives and related services when an insurance plan covers other prescription drugs and devices.

[2] CAL. HEALTH & SAFETY CODE § 1367.25(b)(1); CAL. INS. CODE § 10123.196(d)(1); N.Y. INS. LAW §§ 3221(l)(16), 4303(cc).

[3] *Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67 (Cal. 2004).

[4] *Id.* at 81-94.

[5] *Id.* at 82-87.

[6] *Id.* at 91-94.

[7] *Id.* at 92.

[8] *Id.* at 76-81.

[9] *Id.* at 77.

[10] *Id.* at 79.

[11] *Catholic Charities of Sacramento, Inc. v. California*, 543 U.S. 816 (2004).

[12] *Catholic Charities of the Diocese of Albany v. Serio*, 859 N.E.2d 459 (N.Y. 2006).

[13] *Id.* at 463-65.

[14] *Id.* at 464.

[15] *Id.*

[16] *Id.* at 468-69.

[17] *Id.* at 466-68.

[18] *Id.* at 468.

[19] *Id.*

[20] 2007 WL 509565 (N.Y. Feb. 20, 2007).

Nadine Strossen
President

Anthony D. Romero
Executive Director

American Civil Liberties Union Foundation
125 Broad Street, 18th Fl.
New York, NY 10004

Phone: (212) 549-2600
Fax: (212) 549-2652
e-mail: rfp@aclu.org
aclu.org