Order in Pending Case

SUPREME COURT OF THE UNITED STATES

No. 13A1284

WHEATON COLLEGE *v.* SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON APPLICATION FOR INJUNCTION

[July 3, 2014]

The application for an injunction having been submitted to JUSTICE KAGAN and by her referred to the Court, the Court orders: If the applicant informs the Secretary of Health and Human Services in writing that it is a nonprofit organization that holds itself out as religious and has religious objections to providing coverage for contraceptive services, the respondents are enjoined from enforcing against the applicant the challenged provisions of the Patient Protection and Affordable Care Act and related regulations pending final disposition of appellate review. To meet the condition for injunction pending appeal, the applicant need not use the form prescribed by the Government, EBSA Form 700, and need not send copies to health insurance issuers or third-party administrators.

The Circuit Courts have divided on whether to enjoin the requirement that religious nonprofit organizations use EBSA Form 700. Such division is a traditional ground for certiorari. See S. Ct. Rule 10(a).

Nothing in this interim order affects the ability of the applicant's employees and students to obtain, without cost, the full range of FDA approved contraceptives. The Government contends that the applicant's health insurance issuer and third-party administrator are required by federal law to provide full contraceptive coverage regardless whether the applicant completes EBSA Form 700.

The applicant contends, by contrast, that the obligations of its health insurance issuer and third-party administrator are dependent on their receipt of notice that the applicant objects to the contraceptive coverage requirement. But the applicant has already notified the Government—without using EBSA Form 700—that it meets the requirements for exemption from the contraceptive coverage requirement on religious grounds. Nothing in this order precludes the Government from relying on this notice, to the extent it considers it necessary, to facilitate the provision of full contraceptive coverage under the Act.

In light of the foregoing, this order should not be construed as an expression of the Court's views on the merits.

JUSTICE SCALIA concurs in the result.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting.

The Patient Protection and Affordable Care Act, 124 Stat. 119, through its implementing regulations, requires employer group health insurance plans to cover contraceptive services without cost sharing. Recognizing that people of religious faith may sincerely oppose the provision of contraceptives, the Government has created certain exceptions to this requirement. Churches are categorically exempt. Any religious nonprofit is also exempt, as long as it signs a form certifying that it is a religious nonprofit that objects to the provision of contraceptive services, and provides a copy of that form to its insurance issuer or third-party administrator. The form is simple. The front asks the applicant to attest to the foregoing representations; the back notifies third-party administrators of their regulatory obligations.

The matter before us is an application for an emergency injunction filed by Wheaton College, a nonprofit liberal arts college in Illinois. There is no dispute that Wheaton is entitled to the religious-nonprofit exemption from the

contraceptive coverage requirement. Wheaton nonetheless asserts that the exemption itself impermissibly burdens Wheaton's free exercise of its religion in violation of the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U. S. C. §2000bb *et seq*., on the theory that its filing of a self-certification form will make it complicit in the provision of contraceptives by triggering the obligation for someone else to provide the services to which it objects. Wheaton has not stated a viable claim under RFRA. Its claim ignores that the provision of contraceptive coverage is triggered not by its completion of the self-certification form, but by federal law.

Even assuming that the accommodation somehow burdens Wheaton's religious exercise, the accommodation is permissible under RFRA because it is the least restrictive means of furthering the Government's compelling interests in public health and women's well-being. Indeed, just earlier this week in *Burwell* v. *Hobby Lobby Stores, Inc.*, *ante,* at ___, the Court described the accommodation as "a system that seeks to respect the religious liberty of religious nonprofit corporations while ensuring that the employees of these entities have precisely the same access to all [Food and Drug Administration (FDA)]-approved contraceptives as employees of companies whose owners have no religious objections to providing such coverage." *Ante,* at 3. And the Court concluded that the accommodation "constitutes an alternative that achieves all of the Government's aims while providing greater respect for religious liberty." *Ibid.* Those who are bound by our decisions usually believe they can take us at our word. Not so today. After expressly relying on the availability of the religious-nonprofit accommodation to hold that the contraceptive coverage requirement violates RFRA as applied to closely held for-profit corporations, the Court now, as the dissent in *Hobby Lobby* feared it might, see *ante,* at 29–30 (GINSBURG, J., dissenting), retreats from that position.

That action evinces disregard for even the newest of this Court's precedents and undermines confidence in this institution.

Even if one accepts Wheaton's view that the self-certification procedure violates RFRA, that would not justify the Court's action today. The Court grants Wheaton a form of relief as rare as it is extreme: an interlocutory injunction under the All Writs Act, 28 U. S. C. §1651, blocking the operation of a duly enacted law and regulations, in a case in which the courts below have not yet adjudicated the merits of the applicant's claims and in which those courts have declined requests for similar injunctive relief. Injunctions of this nature are proper only where "the legal rights at issue are indisputably clear." *Turner Broadcasting System, Inc.* v. *FCC*, 507 U. S. 1301, 1303 (1993) (Rehnquist, C. J., in chambers) (internal quotation marks omitted). Yet the Court today orders this extraordinary relief even though no one could credibly claim Wheaton's right to relief is indisputably clear.

The sincerity of Wheaton's deeply held religious beliefs is beyond refute. But as a legal matter, Wheaton's application comes nowhere near the high bar necessary to warrant an emergency injunction from this Court. For that reason, I respectfully dissent.

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The Affordable Care Act requires certain employer group health insurance plans to cover a number of preventative-health services without cost sharing. These services include "[a]ll Food and Drug Administration . . . approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed by a provider." 77 Fed. Reg. 8725 (2012) (brackets and internal quotation marks

omitted). As a practical matter, the provision ensures that women have access to contraception at no cost beyond their insurance premiums. Employers that do not comply with the mandate are subject to civil penalties.

Recognizing that some religions disapprove of contraceptives, the Government has sought to implement the mandate in a manner consistent with the freedom of conscience. It has categorically exempted any group health plan of a "religious employer," as defined by reference to the Tax Code provision governing churches. See 45 CFR §147.131(a); http://hrsa.gov/womensguidelines (as visited July 2, 2014, and available in Clerk of Court's case file). And it has extended a further accommodation to religious nonprofits that do not satisfy the categorical exemption. All agree that Wheaton qualifies as a religious nonprofit.

To invoke the accommodation and avoid civil penalties, a religious nonprofit need only file a self-certification form stating (1) that it "opposes providing coverage for some or all of any contraceptive services required to be covered under [the regulation] on account of religious objections," (2) that it "is organized and operates as a nonprofit entity," and (3) that it "holds itself out as a religious organization." §147.131(b). The form is reprinted in an appendix to this opinion. Any organization that completes the form and provides a copy to its insurance issuer or third-party administrator[1] need not "contract, arrange, pay, or refer for contraceptive coverage" to which it objects. 78 Fed. Reg. 39874 (2013); see 29 CFR §2590.715–2713A(b)(1) and (c)(1). Instead, the insurance issuer or third-party admin-

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[1] Typically, an employer contracts to pay a health insurer to provide coverage; the insurer both covers the cost of medical claims and manages the process for administering those claims. Employers who maintain self-insured plans cover the cost of claims for medical treatment directly. Such employers often contract with third-party administrators to administer the claims process.

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