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Second Circuit holds that the Affordable Care Act does not violate the Religious Freedom Restoration Act

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On August 7, 2015, in *Catholic Health Care System v. Burwell*, the Second Circuit Court of Appeals held that the Religious Freedom Restoration Act ("RFRA") is not violated by certain regulations promulgated under the Affordable Care Act ("ACA") that permit religious not-for-profit employers to opt-out of providing contraception coverage while enabling their employees to receive such benefits through their insurance plans.

Under the ACA, employers with fifty or more full-time employees must provide health insurance to employees that meet certain minimum requirements, including "preventative care and screenings" to female employees. "Preventative care and screenings" includes coverage for certain contraceptive methods.

While "religious employers" such as churches are exempt from such requirements under the ACA, religiously affiliated organizations such as the Plaintiffs in the action—Catholic Health Care System, Catholic Health Care Services of Long Island, Cardinal Spellman High School, and Monsignor Farrell High School—do not fall within the "religious employer" exemption and can opt-out of providing coverage for contraceptive service through what is called an "accommodation".

Specifically, religiously affiliated not-for-profit organizations that meet certain criteria can complete a notification form issued by the Department of Labor, indicating a religious objection to contraceptive coverage, and send a copy to its insurance company, which then will handle coverage through funding from the federal government. The form requires only the name of the organization and contact information for the individual signing the form. Alternatively, organizations can send a letter to the U.S. Department of Health and Human Services ("HHS") indicating their objection to providing coverage, which will then be responsible for contacting the organization's insurance administrator to begin to arrange for coverage. Employees of the organization are notified that their employer is not taking any part in providing contraceptive coverage.

Plaintiffs argued that the notification system violates the RFRA, which prohibits the government from "substantially burdening" an individual's exercise of religion unless it is in furtherance of "compelling" government interest and is accomplished through the least restrictive means of furthering that interest.

In reversing the decision of Judge Brian Cogan of the Eastern District of New York to grant Plaintiffs' motion for summary judgment, the Second Circuit held that the accommodation provided through the ACA for religiously

affiliated organizations did not substantially burden the plaintiffs' exercise of religion. The notification process, the Court held, is a relatively simple one, requiring the organization to send only a "single sheet of paper" to its insurance company or HHS. No further action is required from the organization, as third parties then handle the procurement of contraceptive coverage for the organization's employees.

The Court noted that "substantially burdening" the exercise of religion typically involved "much more significant burdens" than the notification requirement of the ACA—for example, violations of the RFRA have included requiring a Rastafarian prison inmate to undergo a physically invasive, religiously objectionable medical screening, and forcing a Muslim prisoner to cut his beard in violation of his religious beliefs. In light of such decisions, the Court stated that the notification procedure was "de minimis."

The Second Circuit was also not persuaded by the Plaintiffs' "trigger" argument, that the notification "triggered" third parties to provide contraceptive coverage in violation of Plaintiffs' religious beliefs, citing to case law which established that a "substantial burden" cannot be demonstrated through imposing duties on third parties such as the government.

This case is one of several similar cases moving through the federal courts. It is likely that the issues raised in this matter will find their way to the Supreme Court in the near future.

If your institution has questions or concerns about this topic and you would like further information, please email Ariel E. Ronneburger at aronneburger@cullenanddykman.com.

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