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Legal Challenges to the Contraception Mandate of the Patient Protection and Affordable Care Act: An Overview

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A number of lawsuits have been commenced which challenge the legality of the Patient Protection and Affordable Care Act ("PPACA"). These lawsuits are primarily aimed at the government's ability to enact the law and enforce its provisions—however, many of them focus on the Act's requirement that employers provide insurance plans that cover a number of contraceptive methods, or face a monetary penalty.

One of the most noteworthy of these cases is *Hobby Lobby Stores, Inc. v. Sebelius*, 12-cv-01000 (W.D. Okla. 2012). Hobby Lobby is a chain of retail arts-and-crafts stores owned by the Green family of Oklahoma. These stores operate on a basis reflecting the Greens' deeply held Christian beliefs, which include remaining closed on Sundays. While Hobby Lobby's suit challenges the contraception mandate of the PPACA, Hobby Lobby is specifically opposed to only certain types of contraceptive methods/devices, namely Plan B and Ella (pills which prevent the implantation of a fertilized egg in the uterus) and certain intrauterine devices ("IUDs"), which they believe to be "abortion causing." Hobby Lobby argues that the PPACA's contraception mandate violates, among other things, the Religious Freedom Restoration Act and the First Amendment of the Constitution, by preventing the free exercise of religion. Hobby Lobby argues that it will face some $26 million in annual fines if it does not comply with the contraception mandate.

On the same day it heard argument on the *Hobby Lobby* case, the Supreme Court also heard argument on a nearly identical case, *Conestoga Wood Specialties v. Sebelius*, 12-cv-06744 (D. Pa. 2012). The plaintiff in *Conestoga* is a for-profit Pennsylvania cabinet manufacturer owned by the Hahn family, who are devout Mennonites. They argue that they should not be forced to cover Plan B and Ella as they believe such drugs induce abortions, and thus the mandate is a violation of the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act. The *Conestoga* plaintiffs lost their request for a preliminary injunction against the mandate in the District Court, a decision that was affirmed by the Third Circuit, and ultimately appealed to the Supreme Court.

Exemptions to the mandate are available to certain religious employers, these religious employers must be not-for-profit organizations to qualify for an exception under the PPACA. As for-profit companies, Hobby Lobby and Conestoga Wood Specialties cannot use this provision to claim an exemption. The Supreme Court heard oral arguments in the *Hobby Lobby* and *Conestoga* cases in late March, and decisions are not expected until sometime in June.

While there is an exemption to the mandate for religious non-profit groups, these groups must file a form (called an EBSA Form 700) with their insurance company stating that they are a non-profit religious organization opposed to providing coverage for "some or all of the contraceptive services that would otherwise be required to be covered." The insurance company itself will then arrange for the coverage of these services. In *Little Sisters of the Poor Home for the Aged v. Seblius*, 13-cv-2611 (D. Colo. 2013), a group of Colorado nuns, filed suit arguing that even filing this form was in violation of their religious beliefs. The District Court of Colorado denied the nuns' request for a preliminary injunction against the form requirement of the PPACA. However, on January 24, 2014, Supreme Court Justice Sonia Sotomayor granted a temporary injunction in favor of the Little Sisters pending their appeal to the Tenth Circuit.

The ultimate decisions in these cases will have a profound effect on the PPACA in general, and will determine the legality of one of the most controversial provisions of the Act. The implications of the decisions may also be far reaching, as other companies may claim certain beliefs prohibit their compliance with the Act.

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