

5 States Sue Trump Administration Over Contraception Mandate Rollback

Last month the Trump administration announced it was rolling back the Affordable Care Act (ACA) mandate requiring employer health plans to cover birth control without a co-pay. (Some private companies and places of worship were exempted from this mandate.)

The rollback means any employer or insurer (for-profit or not-for-profit, including publicly traded businesses) can decide to ignore the contraception mandate on the basis of moral objections or “based on sincerely held religious beliefs.” This also includes “institutions of higher education in their arrangement of student health plans.”

The second part of the reversal rule allows an exemption from the contraception mandate for non-profit organizations and for-profit entities that are not publicly traded in cases where providing birth control would be at odds with the organizations’ “sincerely held moral convictions.”

In response, five states have brought their objections to a federal judge.

California one of five states fighting the rollback

Attorneys general in California, Delaware, Maryland, New York, and Virginia initiated a lawsuit against the Trump administration in October that says the rollback is not only unconstitutional, but also discriminatory. Those same states recently filed a motion for a preliminary injunction with the U.S. District Court for the Northern District of California.

From his Twitter platform, New York Attorney General Eric Schneiderman (D) said: “If a woman can’t control her own body, she isn’t really free.”

He added: “Health care decisions should be made by a woman — not her boss. These retrograde rules seek to deny basic healthcare to millions of women in New York and across the country. We’ll continue to fight back and protect New Yorkers.”

ACLU has lawsuit pending, too

Attorneys general aren’t the only ones challenging the new mandate exemptions in court. The American Civil Liberties Union (ACLU) filed a suit against the Trump administration in a federal district court in San Francisco on behalf of itself and the SEIU-UHW, a labor organization that represents healthcare workers.

The ACLU’s complaint against Trump’s new exemptions highlights four main objections: (1) the claim that the Administrative Procedure Act (APA) was breached when the new rules were released (the APA includes notice and public comment stipulations); (2) because the ACA does not provide for moral or religious exceptions to the contraception mandate, the ACLU says that Trump’s rollback is invalid; (3) the accusation that the Trump administration is violating the Establishment Clause of the Constitution by advancing religion (through the religious exemption); and (4) the claim that the new rules “violate [women’s] right to equal protection” guaranteed by the Constitution.

ACLU’s complaint says: “The contraception coverage requirement is authorized by the Women’s Health Amendment to the ACA, which Congress adopted to address discrimination in health care against women. Without access to contraception, women are unable to plan the number and spacing of their children, which is crucial to their health and well-being. Moreover, access to contraception plays a critical role in women’s equal participation in

society and the workforce.”

And the ACLU isn’t alone in objecting to the mandate rollback

Richard B. Katskee is the legal director of Americans United for Separation of Church and State. He told the *New York Times* that the mandate rollback “imposed an impermissible burden on female employees who want cost-free contraceptive coverage and may be unable to get it.”

And Dr. Haywood L. Brown, president of the American College of Obstetricians and Gynecologists said, “Affordable contraception for women saves lives.”

On the other hand, proponents of the new exemption rule say that this doesn’t deny women the right to obtain birth control, nor does it cut off their access to contraception; rather, it removes the requirement for employer-based health plans to provide it at no cost.

According to the new contraception mandate rollback rule:

“[T]here are multiple Federal, State, and local programs that provide free or subsidized contraceptives for low-income women. Such Federal programs include, among others, Medicaid (with a 90 percent Federal match for family planning services), Title X, community health center grants, and Temporary Assistance for Needy Families.”

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