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Order Sending HHS Mandate Case Back to Lower Courts

U.S. Supreme Court

The U.S. Supreme Court May 16 sent the *Zubik v. Burwell* case, which challenges the Affordable Care Act's contraceptive requirement for employers, back to the lower courts. The justices' unanimous decision, explained in an unsigned opinion, was based on information that both sides submitted a week after oral arguments were heard in the case about how and if contraceptive insurance coverage could be obtained by employees through their insurance companies without directly involving religious employers who object to this coverage. The court made clear that it was not expressing an opinion on the merits of the cases that are challenging

"The court expresses no view on the merits of the cases."

aspects of the federal government's health law and it also was not ruling on the issue of a potential violation of religious freedom. Because of the "gravity of the dispute and the substantial clarification and refinement in the positions of the parties," the court stated that religious employers and the government should be "afforded an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans 'receive full and equal health coverage, including contraceptive coverage.'" The court stressed that this approach is "more suitable" than addressing the refined positions submitted by both sides and added that "although there may still be areas of disagreement between the parties on issues of implementation, the importance of those areas of potential concern is uncertain, as is the necessity of this court's involvement at this point to resolve them." The order follows.

petitioners are primarily non-profit organizations that provide health insurance to their employees. Federal regulations require petitioners to cover certain contraceptives as part of their health plans unless petitioners submit a form either to their insurer or to the federal government stating that they object on religious grounds to providing contraceptive coverage. Petitioners allege that submitting this notice substantially burdens the exercise of their reli-

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June 2, 2016
Volume 46
Number 5

