

It's Round Two for ACA's Contraceptive Coverage Mandate

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By Marcia Coyle

Two private religious universities and a seminary launched the next wave of Affordable Care Act cases in the U.S. Supreme Court on Wednesday, in a challenge stemming from the law's contraceptive insurance requirement.

In *Houston Baptist University v. Burwell*, the three challengers contend that the U.S. Court of Appeals for the Fifth Circuit was wrong when it found that the government's option for accommodating their religious objections to the contraceptive coverage did not substantially burden their exercise of religion in violation of the Religious Freedom Restoration Act (RFRA).

Houston Baptist University, East Texas Baptist University and Pennsylvania-based Westminster Theological Seminary filed the petition for review, represented by Paul Clement of Bancroft and the Becket Fund for Religious Liberty. Clement successfully argued *Burwell v. Hobby Lobby* in 2014, in which a 5-4 high court held that the contraceptive insurance requirement violated the exercise of religion by closely held corporations and their religious owners.

The universities and seminary object to four of 14 kinds of covered contraceptives because they believe they cause abortions. They object to filling out the government forms that would hold them in compliance with the law because, they contend, signing the forms makes them complicit in providing the contraceptives.

"Especially after *Hobby Lobby*, there should be no doubt that the contraceptive mandate imposes a substantial burden on petitioners' religious exercise," writes Clement (left) in the petition. "The contraceptive mandate and the penalties for non-compliance are identical, and petitioners sincerely believe that the regulatory option for complying with the mandate violates their religion. That should be the end of the substantial-burden inquiry."

The petition states that "hundreds of religious institutions representing a wide cross-section of organizations and faiths have brought lawsuits, some on behalf of entire classes of affected religious employers," seeking relief. Many were successful in the district courts but the Third, Fifth, Seventh and D.C. circuits found that compliance with the regulatory option did not violate RFRA.

"The Supreme Court should step in and tell the federal government that separation of church and state is a two-way street," said Diana Verm, legal counsel at the Becket Fund. "The state should not be able to take over parts of the church—including these religious ministries—just so it has an easier way of distributing life-terminating drugs."