Overview

- How Contraceptive Coverage Works
  - Exemptions and Accommodations
- Round 1: *Hobby Lobby v. Burwell*
- Round 2: *Zubik v. Burwell*
  - Who are the plaintiffs?
  - What are the arguments on both sides?
  - Why does the type of employer health plan matter?
- How have the lower courts ruled?
- What is at stake for contraceptive coverage?
How Does Where You Work Affect Your Contraception Coverage?

Does your employer have religious objections to contraceptive coverage?

- **YES**
  - Is your employer a house of worship?
    - **YES**
      - EXEMPTION
      - Your employer is not required to include contraceptives in plan.
    - **NO**
      - Is your employer a religiously affiliated nonprofit or a closely held corporation?
        - **NO**
          - **NO**
            - Your employer must cover the full range of FDA-approved contraceptives for women.
        - **YES**
          - Your employer may elect an accommodation.
            - ACCOMMODATION
            - • Your employer must notify their insurer, plan administrator, or HHS of their objection.
            - • Employer released from paying for contraceptive coverage.
            - • Insurer or administrator pays for contraceptive coverage.
  - **NO**
    - Is your employer a house of worship?
      - **YES**
        - EXEMPTION
        - Your employer is not required to include contraceptives in plan.
      - **NO**
        - Is your employer a religiously affiliated nonprofit or a closely held corporation?
          - **NO**
            - **NO**
              - Your employer must cover the full range of FDA-approved contraceptives for women.
          - **YES**
            - **NO**
              - **NO**
                - Your employer must cover the full range of FDA-approved contraceptives for women.
              - **YES**
                - Your employer may elect an accommodation.
                  - ACCOMMODATION
                  - • Your employer must notify their insurer, plan administrator, or HHS of their objection.
                  - • Employer released from paying for contraceptive coverage.
                  - • Insurer or administrator pays for contraceptive coverage.
                  - MANDATORY
                  - Women workers and dependents have coverage of the full range of FDA approved contraceptives.
ROUND 1: *Hobby Lobby v. Burwell* (For-profit)

- **Case:** For-profit companies with religious objections to contraception challenged the requirement on the basis that it violated their religious rights under the Religious Freedom Restoration Act.

- **Decision:** Certain *closely held* for-profit firms with sincerely held religious beliefs cannot be compelled to pay for contraceptive coverage in employer health plan.

- **Outcome:** Obama Administration issued new regulations that offer the accommodation to both religiously affiliated nonprofits and closely held for-profit corporations.

SOURCE: http://www.law.cornell.edu/uscode/text/42/chapter-21B
ROUND 2: Zubik v. Burwell (Nonprofit Employers)

• **Case:** Religiously-affiliated nonprofits with religious objections to contraception claiming that the *accommodation* offered by HHS still results in a violation of their religious rights under the Religious Freedom Restoration Act

• **Petitioners:** represent 37 different entities and individuals including:
  - Universities
  - Nonprofit advocacy organizations
  - Nursing homes
  - “Exempt” Diocese (sponsoring health insurance for non exempt nonprofits)
  - Two Bishops
  - Employee church plans and third party administrators for a church plan

• Employers have selected different types of health insurance plans – fully-funded, self-funded, secular plans and church plans – and have claimed different types of burdens depending on the plan.
What is the disagreement about the *accommodation*?

**Religious nonprofits contend:**
- Their religious rights are being violated
- Notice will “facilitate” or “trigger” the provision of insurance coverage for contraception.
- Health plans used as a vehicle to bring about a “morally objectionable wrong.”
- When the insurer separately contracts with an employer’s workers to cover contraception at no cost, it remains part of the employer’s plan and is financed by the employer.

**Government contends:**
- It is not the *notification* that triggers the coverage.
- It is federal law that requires the insurance issuer or the third party administrator to provide this coverage.
The Religious Freedom Restoration Act of 1993 (RFRA) provides that the government “shall not substantially burden a person’s exercise of religion” unless that burden is the least restrictive means to further a compelling governmental interest.

SOURCE: http://www.law.cornell.edu/uscode/text/42/chapter-21B
Legal Analysis of the Religious Freedom Restoration Act as It Applies to Religiously-Affiliated Nonprofits

- Is the employer a “person” capable of religious belief?
  - Yes: Does the requirement to notify HHS or self-certify substantially burden the employer?
    - Yes: Does the government have a compelling interest to provide health insurance coverage for preventive care include contraceptives?
      - Yes: Is the government “accommodation” meeting the compelling interest in the least restrictive way?
        - Yes: Does not violate RFRA and the “accommodation” is valid
        - No: Violates RFRA and employers will qualify for an “exemption”
      - No: No
    - No: No
  - No: No

The government is not contesting that religiously affiliated nonprofits can exercise religion.
How Health Insurance Arrangement Used by Religious Nonprofits Affects Contraceptive Coverage for Workers

House of Worship

- Exempt from the ACA’s Contraceptive Coverage Requirement
- Women workers and dependents may not have coverage of all FDA-approved contraceptives

Religiously Affiliated Nonprofit

- Accommodation: Employer must notify, insurer, or third party administrator or government

Church Health Plans

- Self-Insured: Government cannot enforce the requirement for third party administrators for self-insured church plans
- Fully-Insured: Insurer is required to provide contraceptives at no cost to employee

Secular Health Plans

- Fully-Insured or Self-Insured: Insurer or third party administrator must provide contraceptives at no cost to employee
US Appeals Court Rulings on Lawsuits by Nonprofits Objecting to Contraception

5th Circuit Ruling in Favor of Government
East Texas Baptist University v. Burwell

8th Circuit Ruling in Favor of the Plaintiff
Sharpe Holdings, Inc et al. v. Burwell
Dordt College et al. v. Burwell

7th Circuit Ruling in Favor of Government
Wheaton College v. Burwell
Grace Schools et al., and Diocese of Fort Wayne-South Bend, Inc et al. v. Burwell
University of Notre Dame v. Sebelius

2nd Circuit Ruling in Favor of Government
Catholic Health Care System v. Burwell

3rd Circuit Ruling in Favor of Government
Geneva College v. Burwell
Zubik v. Burwell

DC Circuit Ruling in Favor of Government
Priests for Life v. HHS
Roman Catholic Archbishop of Washington v. Burwell

6th Circuit Ruling in Favor of Government
Michigan Catholic Conference v. Burwell
Catholic Diocese of Nashville v. Burwell

11th Circuit Ruling in Favor of Government
Eternal World Television Network v. Burwell
Catholic Archdiocese of Atlanta v. Burwell
Roman Catholic Archdiocese of Savannah v. Burwell

Note: As of February 18, 2016. No Nonprofit cases have been filed in the 1st, 4th, and 9th Circuit Courts of Appeals.
What is at stake for contraceptive coverage?

Share of Nonprofits Offering Health Insurance Notifying Insurer of Objection to Contraceptive Coverage, by Size, 2015

- Court’s ruling could affect contraceptive coverage for women workers & dependents beyond those employed by nonprofit litigants.
- Difference between exemption and accommodation is the difference between coverage and no coverage for workers & dependents.
- Ruling may set the stage for a next round of litigation by religious for-profit firms and determine whether an accommodation is a valid option for them.

Note: 76% of all nonprofits and 98% of nonprofits with 199 or more workers offered health insurance.