UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TABLE OF AUTHORITIES

Cases

in public accommodations; and universities claiming a religious liberty right to discriminate against African-American students. Fortunately, in each of these cases, courts squarely rejected the claims, recognizing that the right to religious liberty does not encompass the right to discriminate against others. This Court should come to the same conclusion here. Indeed, acceptance of Plaintiffs' claims would not only contravene this clear and consistent precedent, but would also open the door for arguments that countless anti-discrimination and other important laws should be unenforceable in the face of a claim that the discrimination is mandated by a religious belief.

FACTUAL BACKGROUND

The Patient Protection and Affordable Care Act ("ACA") provides that certain preventive services must be provided in health insurance plans without cost-sharing. Pub. L. No. 111-148, sec. 1001, § 2713(a), 124 Stat. 131 (2010). In an effort to help eliminate some forms of gender inequality by equalizing men and women's health care coverage, Congress added the Women's Health Amendment ("WHA") to the ACA, which requires health insurance plans to cover additional preventive services for women. Pub. L. No. 111-148, sec. 1001, § 2713(a)(4), 124 Stat. 131 (2010).

The WHA was crucial to ensuring that women receive coverage for preventative services. Indeed, prior to its introduction, coverage for these se

included in health care reform. Today we guarantee it and we assure it and we make it affordable by dealing with copayments and deductibles . . . ." 155 Cong. Rec. at S11988 (daily ed. Nov. 30, 2009) (statement of Sen. Mikulski) (emphasis added). In particular, Congress intended to address gender disparities in out-of-pocket health care costs, much of which stem from reproductive health care:

> Not only do [women] pay more for the coverage we seek for the same age and the same coverage as men do, but in general women of childbearing age spend 68 percent more in out-of-pocket health care costs than men. This fundamental inequity in the current system is dangerous and discriminatory and we must act. The prevention section of the bill before us must be amended so coverage of preventive services takes into account the unique health care needs of women throughout their lifespan.

achieving health and well-being for themselves and their families." Id. at 20. The federal contraception rule, if undisturbed, will ensure that millions of women have access to

right to an exemption from equal pay laws because its "head-of-household" practice was based on a sincerely-held belief derived from the Bible. Id. at 1397.

" In 1966, three African-American residents of South Carolina brought a suit against Piggie Park restaurants and their owner, Maurice Bessinger, for refusal to serve them. Bessinger argued that enforcement of the Civil Rights Act of 1964's public accommodations provision violated his religious freedom "since his religious beliefs compel[ed] him to oppose any integration of the races whatever." Newman v. Piggie Park Enter., Inc., 256 F. Supp. 941, 944 (D.S.C. 1966), aff'd in relevant part and rev'd in part on other grounds, 377 F.2d 433 (4th Cir. 1967), aff'd and modified on other grounds, 390 U.S. 400 (1968).

" In the 1980s, Bob Jones University, a religiously affiliated school in South Carolina, wanted an exemption from a rule revoking tax-exempt status to schools that practice racial discrimination. The "sponsors of the University genuinely believe[d] that the Bible forbids interracial dating and marriage," and it was school policy that students engaged in interracial relationships, or advocacy thereof, would be expelled. Bob Jones Univ. v. U.S., 461 U.S. 574, 580 (1983). Bob Jones's lesser known co-plaintiff, Goldsboro Christian Schools, even opposed integration of the classroom. According to their interpretation of the Bible, "[c]ultural or biological mixing of the races is regarded

Court in South Carolina explained in rejecting the free exercise claim of a restaurant owner who refused to serve African-American customers:

> Undoubtedly defendant . . . has a constitutional right to espouse the religious beliefs of his own choosing; however, he does not have the absolute right to exercise and practice such beliefs in utter disregard of the clear constitutional rights of other citizens. This court refuses to lend credence or support to his position that he has a constitutional right to refuse to serve members of the Negro race in his business establishments upon the ground that to do so would violate his sacred religious beliefs.

Newman, 256 F. Supp. at 945.

As these cases make clear, because religious liberty is not absolute, religious liberty must yield to laws that were passed to further a compelling government interest. This includes laws designed to promote equality and eradicate discrimination. See, e.g., Shenandoah Baptist Church, 899 F.2d at 1398 (religious school must comply with the Equal Pay Act, which was passed to address "serious and endemic problem of employment [gender] discrimination," which is a compelling government interest); Bob Jones Univ., 461 U.S. at 604 (religious school could not be exempt from IRS policy that required such schools to have nondiscriminatory policies, because eradication of racial discrimination in education is a compelling government interest). The same is true here. As discussed above, and as the government points out in its brief, in passing the Women's Health Amendment, Congress sought to eradicate gender discrimination in the context of the provision of health care. See Defs.' Opp. to Pls.' Mot. for Prelim. Inj. ("Defs.' Br.") at 25-26. In passing the ACA, Congress recognized that women of childbearing age pay substantially more for out-of-pocket health care than men, in part because of the costs of contraception. See supra at 3-4. These costs are not insignificant and are a true barrier to women's access to effective birth control; and these financial barriers are aggravated by the fact that women typically earn less than men. Id. As Congress found, ensuring women receive the

976 (2007); see also id. at 975 (recognizing the importance of accessing contraception on the ability to participate in the work force, and without "the means to control and limit reproduction, the average woman would bear two to fifteen children in her lifetime"). The Supreme Court has also recognized the direct relationship between women's reproductive health decisions and their equal participation in society: "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 856 (1992).

The federal government is not the only one to recognize and act on these gender disparities and the importance of access to contraception to women's equality. Indeed, 28 states have passed laws requiring employers to cover contraception. 77 Fed. Reg. at 8728. Two of those states, California and New York, faced legal challenges similar to the one at issue here. The high courts of both states rejected those challenges in part because the laws were designed to eradicate gender discrimination in the workplace. See Catholic Charities of Sacramento, Inc. v. Superior Court, 85 P.3d 67, 92 (Cal. 2004) (recognizing that the statue was passed to equalize health insurance costs between men and women); Catholic Charities of Diocese of Albany v. Serio, 859 N.E.2d 459, 461, 468 (N.Y. 2006) (noting that purpose of the statute was to advance equal treatment of women). Those states acknowledged legislative history similar to that here: women pay much more than men in out-of-pocket health care costs, due in part to the cost of prescription contraception. See Catholic Charities of Sacramento, Inc., 85 P.3d at 92; Catholic Charities of Diocese of Albany, 859 N.E.2d at 468. Eradicating gender discrimination

recognized by the line of cases discussed above.[2]

21-24. The contraceptive coverage requirements do not require Plaintiffs to physically provide contraception to their employees nor does it require them to endorse the use of contraception. It merely requires Plaintiffs – like the employers in Conestoga and Sharonah – to provide a nondiscriminatory benefit to its employees.[4]

Furthermore, another line of cases makes clear that Plaintiffs' claimed injury – an

of Univ. of Cal., 137 Cal. App. 3d 389, 393 (Cal. Ct. App. 1982) ("[T]he fact [that] plaintiffs may object on religious grounds to some of the services the University provides is not a basis upon which plaintiffs can claim a constitutional right not to pay a part of the fees."). Accordingly, just like those who have objected to paying insurance premiums for an insurance plan that others may use to access abortion or to taxes that pay for Medicaid, which may be used to cover another's abortion, Plaintiffs here cannot claim any cognizable injury by providing their employees with a health plan that covers contraception, which some employees may use.

CONCLUSION

History has a way of repeating