

CATHOLICS FOR CHOICE

To: Reporters

From: Catholics for Choice

Date: 17 March 2016

Re: *Zubik v. Burwell* and the Business of Catholic Nonprofits

Zubik v. Burwell is the latest Supreme Court case to challenge the implementation of the no-cost birth control benefit in the Affordable Care Act. Contrary to what the Catholic hierarchy would have you believe, this case is not just about access to contraception or religious freedom. Catholic healthcare and nonprofits are big businesses both domestically and abroad, and the bishops are trying to protect their multi-million dollar interests.

In this memo, Catholics for Choice highlights a few facts you may not know about the upcoming Supreme Court case.

Who is the plaintiff?

Zubik v. Burwell was consolidated with six other cases brought by nonprofit religious organizations. The Catholic parties in these cases include Bishop David Zubik of Pittsburgh, Priests for Life, the Roman Catholic Archbishop of Washington and the Little Sisters of the Poor. They argue that the current accommodation provided by the Obama administration for religious employers imposes on their religious freedom rights under the Religious Freedom Restoration Act (RFRA). Bishop Zubik, the lead petitioner, is a somewhat unlikely headliner. While he toes the party line on abortion and contraception, he is far from the most vocal member of the US Catholic hierarchy.

What is the basic argument?

The plaintiffs in these cases claim that filing a form or another declaration with the government indicating their objection to the contraceptive coverage violates their religious freedom under RFRA. Boiled down, they want a complete exemption, which means leaving their employees without access to critical health services entirely. It is clear that this litigation is actually about controlling the behavior of people who work for these employers—about imposing one set of moral views on others, even if it disregards the will of individuals who work for those institutions.

What is really at stake?

If decided in favor of the bishops and their allies, *Zubik* will rewrite what religious freedom means in this country. While this case is about the birth control benefits specifically, a ruling in favor of the plaintiffs could pave the way for institutions to use one set of religious beliefs to harm others in a wide variety of situations. It will open the possibility for government-sponsored discrimination: the subjugation of women, workers and others without a voice to multi-million dollar industries run by Catholic nonprofits.

How did we get here?

In 2011, the United States Conference of Catholic Bishops (USCCB) published its playbook for “religious liberty” when it created the Ad Hoc Committee for Religious Liberty. At that time, one of the six concessions the bishops wanted from the government was for any employer to be able to deny contraception coverage to employees by citing “religious freedom.” As Anthony Picarello, general counsel for the USCCB, put it, that included everything from a religious organization to a “Taco Bell.”

The Obama administration misjudged the USCCB’s intentions and attempted to negotiate. Instead, the bishops’ aggressive lobbying pressured the administration to cave on the Affordable Care Act’s contraceptive coverage rules, creating a loophole exploited by organizations—religious or not—to claim exemptions from the law. The *Hobby Lobby* decision in June 2014 meant some for-profit companies were eligible as well. Still, it was not enough for the bishops and their allies, and it opened up the door for other challenges like *Zubik v. Burwell*.

How big is the business interest of Catholic nonprofits?

If *Zubik et al.*, win, 5,800 Catholic nonprofit organizations could subject their employees to this exclusion. It could be disastrous for the hundreds of thousands of employees at Catholic nonprofit organizations and the Catholic elementary and high schools that together employ 163,431 lay teachers. For the 233 Catholic colleges and universities in the United States, the loss of benefits could be tremendous for employees and students.

This doesn’t include the 17,755 Catholic parishes across the US that employ thousands of workers, and the 639 Catholic hospitals that employ more than 516,410 full-time employees and 220,795 part-time workers. Nor does it take into account the tens of thousands of workers employed at the 438 Catholic ancillary care systems, medical centers, sanatoriums and hospices.

The CFC Amicus Brief

Catholics for Choice and nine other Catholic organizations asked the court to consider both the reproductive rights and religious freedom of the individuals at religious institutions: workers, employees, and their dependents. If the court decides in favor of the plaintiffs, these are the individuals who will be harmed. They will be left out of the critical benefit of no-cost contraception access if the decision is against the government, much like those workers at dioceses, parishes, synagogues and other entities that fall under the exemption.

The brief also argues that the bishops and their allies have no right to impose their religious beliefs on their employees and dependents, Catholic or non-Catholic. This will cause harm to the vast majority of Catholics who disagree with the bishops on matters of reproductive health, specifically on the moral use of contraception and the fairness of providing access to insurance coverage to all who need it as a matter of social justice. [Read the full brief.](#)

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Catholics for Choice shapes and advances sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being and respect and affirm the capacity of women and men to make moral decisions about their lives.