

Parenting guide to the presidential election: Part II – Contraception

US District Court rules government can't enforce contraception coverage mandate

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Daniel Weingartz, Catholic owner of Weingartz Supply

Late yesterday, U.S. District Judge Robert Cleland, (Eastern District of Michigan) issued a temporary injunction ruling that the federal government can't force one Catholic business owner to include contraception in the health insurance coverage it provides to its 170 employees.

Cleland's 29 page decision concluded that, "The harm in delaying the implementation of a statute that may later be deemed constitutional must yield to the risk presented here of substantially infringing the sincere exercise of religious beliefs."

The statute referred to is the federal [Affordable Care Act](#) (ACA) that was passed in 2010 and upheld by the Supreme Court in June 2012. The Affordable Care Act requires health plans and insurers that offer group or individual health insurance policies to provide [coverage for women's preventive services](#), including contraception, without cost sharing. There is an exception that permits religious organizations or church-run organizations to avoid directly paying for contraception coverage. In these cases, the insurance company is responsible for the costs.

However, the exception is not intended to apply to the private religious convictions of business owners. This ruling applies only to the Weingartz Supply Company and the owner Daniel Weingartz who is a practicing Catholic. Although Weingartz was joined by [Legatus](#), who describes itself as "an international organization of practicing Catholic laymen and laywomen...from the business community and professional enterprises," the organization is excluded from the ruling because they probably already qualify under the exception for religious organizations.

While there have been many lawsuits filed challenging the contraception section of the mandated health care coverage, most have been dismissed. This is only the second time a federal judge has permitted an injunction. The first time occurred on July 27, 2012, when a Colorado federal district judge, John L. Kane, Jr., issued a preliminary injunction against enforcing the contraceptive coverage mandate against one small private company with Catholic owners, Hercules Industries.

Judge Robert Cleland was appointed by President George W. Bush. Judge John L. Kane, Jr. was appointed by President Jimmy Carter.

Presidential politics and contraception: A guide for parents

This news impacts what parents need to know about the presidential candidates and their stand on key family issues, of which contraception is one of the most contentious, lately. It's difficult to imagine how to resolve the gap between Republicans and Democrats when they can't even agree on how to characterize them. The Republicans view them as Values issues, the Democrats consider them Healthcare issues. The perceptual gap is one of the reasons positions have hardened on both sides. The winning candidate will determine what happens with legislation, funding and regulation of all three.

Most importantly, whoever is elected may have an opportunity to nominate as many as four justices to the Supreme Court. Given that votes on many recent decisions have been 5-4, the next president can impact these issues, and many more, for generations with just one appointment. Finally, life appointments to federal appellate and district courts can also greatly affect the outcomes of these issues as they become cases in federal courts. Each of the last three presidents have nominated over two hundred federal court judges, representing almost a quarter of the 874 federal judges.

Contraception.

Where we stand now: Contraception became a national political issue with the passage of the federal [Affordable Care Act](#) (ACA) in 2010 and the Supreme Court's decision to uphold most of it as constitutional in June 2012. If the Supreme Court had rejected the central requirement that most Americans obtain insurance or pay a penalty, then the mandate that all employers cover the costs of contraception would have been rejected as well.

The [United States Conference of Catholic Bishops](#) objected to the section that "requires health plans and insurers that offer group or individual health insurance policies to provide coverage for [women's preventive services](#) without cost sharing", according to the National Conference of State Legislatures. The Catholic Church prohibits its followers from practicing any form of contraception, with the exceptions of abstinence and what is colloquially known as "the rhythm method" or "natural family timing." They didn't want to be forced into paying for their employees' access to birth control when they considered the action a sin. Prior to passage of the ACA, most states already required any health insurance plan that provided prescription drug coverage to include "[the full range of FDA approved contraceptive drugs and devices](#)," the same mandate included in the federal ACA. However, twenty states had provisions that permitted specific categories of employers or insurers – primarily religious organizations – to refuse the mandates. Meanwhile, back in December 2000, the U.S. Equal Employment Opportunity Commission had announced that it considered any employer's failure to provide contraception coverage along with its regular prescription drug coverage as a violation of Title VII of the Civil Rights Act, which protects against sexual discrimination. They provided no exemption for religious groups who provide insurance for their employees. (Click to read [The Guttmacher Institutes' report "Insurance Coverage of Contraceptives."](#))

Contraception and American attitudes.

Most sexually active American women use some form of contraception and 99 percent of American women have used at least one method of contraception at least one time. Interestingly, according to the [Guttmacher Institute's 2011 study](#), 98 percent of Catholic women “have used a contraceptive method other than natural family planning.”

A Gallup Poll conducted in May 2012 reported that 82 percent of U.S. Catholics say birth control is morally acceptable, not far behind the 89% of all Americans and 90% of non-Catholics who agree. According to Gallup, “The level of acceptability on this issue is far greater than that of the other 17 issues Gallup asked about this year.”

In early June 2012, Fox News sponsored a poll asking registered voters nationwide, who they believe is right in the fight over the requirement that “employer health plans provide birth control coverage as part of preventive services for women”, the Catholic Church or the Government? It was close to a tie, with 41 percent choosing the Catholic Church’s position and 47 percent choosing the mandate. (12 percent were unsure).

Neither American women’s [access to contraception](#) nor the [rate of unintended births](#) have changed much in the past decade although there are several new contraceptive methods available according to [the CDC and the National Center for Health Statistics](#), including “the levonorgestrel-releasing intrauterine system, the hormonal contraceptive patch, the hormonal contraceptive ring, the hormonal implant, a 91-day regimen of oral contraceptives, two new barrier methods, and a new form of female sterilization.”

Pres. Obama’s stance on Contraception and the Affordable Care Act.

For President Obama and the Democrats, birth control is an economic issue, a women’s rights issue and a healthcare issue.



Economic issue refers to both the costs of birth control and the logical result of no birth control. According to an infographic available on [Obama’s campaign website](#), over half of women ages 18 to 34 say they struggle to pay for birth control, Planned Parenthood estimates that the clause in the ACA saves insured women up to \$18,000 each year for birth control and the National Women’s Law Center

estimates that not providing free birth control would increase businesses healthcare costs approximately 15 to 17 percent, presumably due to the medical costs of pregnancy and the resulting child’s healthcare costs.

Women's rights issue is the clause in the ACA that prevents insurance companies from charging more for women's healthcare than for men's.

The *healthcare* issue is comes from the National Cancer Institute who says that using birth control methods for five years can reduce a woman's odds of getting ovarian cancer by 50 percent.

The Affordable Care Act is a partial fulfillment of a promise Obama made on the last campaign trail to reduce healthcare costs and to provide insurance coverage to all Americans. The final version of the law attempts to provide coverage for an additional 30 million uninsured Americans.

There was a huge uproar from religious groups (and Republican politicians) in February 2012, when Obama announced that employers must provide free contraception coverage, including access to the morning after pill, as part of the ACA's mandatory insurance coverage for employees. In response to the furor, Obama revised the rules slightly for religious organizations making their insurance companies responsible for the costs so religious employers did not have to use their money. The campaign refers to this in the same infographic as "Protecting Religious Freedom" because no doctors are forced to prescribe contraception and no churches are forced to pay for it.

Gov. Romney's stance on Contraception and the Affordable Care Act.

From the beginning of the debate over the Affordable Care Act (ACA), Governor Romney has disagreed with the mandatory clauses and has cast the issue as an infringement on the Freedom of Religion. He has consistently supported the religious leaders, in general, and the [United States Conference of Catholic Bishops](#), specifically, and their objections.

In February 2012, Romney said, "You've got a president who has launched an assault on religious conviction. I find it extraordinary that he feels he can tell the Catholic Church what they have to provide for their employees, including devices and instruments they find contrary to their conscience..."



He is not alone. Most of the churches impacted by the mandatory contraception coverage clause have issued statements rejecting the compromise and they have had vocal support from Republicans at the state and federal levels. However, according to Gallup and Fox News, among other polls (see Contraception and American attitudes above) most Americans have accepted the compromise.

Although the ACA went into effect on August 1, 2012, religious organizations, individual businesses and several states filed lawsuits to stop the contraception clause in the months leading up to it and in the months since its application.

On July 18, 2012, U.S. District Court Judge Warren K. Urbom rejected lawsuits by seven Republican states' attorneys general – from Florida, Michigan, Nebraska, Ohio, Oklahoma, South Carolina and Texas – filed to bar the mandatory clause.

Most of the suits that have been decided have been dismissed but that has not stopped the line of lawsuits that have followed, filed by Bible publishers, Baptist schools and colleges, Catholic colleges, a Catholic-family owned medical components manufacturer. As recently as October 19, 2012, another lawsuit was filed in US District Court, this one on behalf of two Missouri-based Evangelical Christians, who own a controlling interest in four industrial companies.

Yesterday's decision in Michigan and July's decision in Colorado are the two notable exceptions. Romney issued a [statement](#) in July 2012, calling the Colorado decision a "First Amendment issue" and an "important victory" for "freedom of conscience."