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Making the Case for Contraception over Religious Views

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It sounds awful when the government makes people violate their faiths. It evokes memories of Romans forcing Jews to eat pork or making Christians worship the emperor.

But what if people's religious practices include human sacrifice, female genital mutilation or handling venomous snakes? Surely the government can stop individuals from committing these acts of murder, child abuse or reckless endangerment regardless of what their religions command.

Even religious practices that don't risk life or limb may need to succumb to societal interests. Our society would be courting anarchy if it had to accommodate people who claimed, no matter how sincerely, that their religion forbid them to pay income taxes, wear clothes in public or mow their lawns.

These examples might make you wonder if the government should ever be required to accommodate religion. Yet other examples suggest that, sometimes, the government should.

Imagine the country reinstituted

Prohibition but didn't provide an exemption for sacramental wine. Wouldn't we be inclined to say that the government was required to give Catholics access to wine so they could have communion? And if a religious Jew was jailed, wouldn't we say the government should provide him with kosher food?

Yet if religious accommodations should sometimes, but not always, be required, how will we know the difference?

This is an appropriate question to ask the day before the Supreme Court hears oral argument in two contraception mandate cases. Religious employers are objecting to the Affordable Care Act's requirement that they provide employee health insurance that includes coverage for FDA-approved contraceptives.

The employers say their religion forbids them to do anything that facilitates the destruction of a fertilized egg. And they contend that some of the FDA-approved contraceptives (ella, Plan B and IUDs) do just that.

Should we accommodate these employers and exempt them from the law? Or should we make them follow the law like other employers?

It certainly feels troubling to make

these employers perform an act which they believe facilitates the termination of a human life. But isn't their argument attenuated?

After all, the government is not requiring the employers to use contraceptives. It is merely requiring them to provide their employees with health insurance. The employees will make the decision whether to purchase and use contraceptives.

And the mandate doesn't even apply to the individual objectors; it applies to their corporations. The individuals may own the corporations' stock, but the corporations are separate legal entities.

If a corporate truck injured someone, the owners would insist that the injured person could sue only the corporation and not them. So how can they insist that we ignore the corporation's separate legal existence when it comes to the application of the contraception mandate?

By contrast, women employees who are denied contraceptive coverage will be immediately and directly harmed. Contraceptives can cost women \$1,000 a year, a sum that many lower-wage earning women might not be able to afford. Without insurance these women may have unintended pregnancies and face the unsettling prospect of termi-

nating a pregnancy at a later stage than occurs with an IUD or morning after pill. These women will also be at a competitive disadvantage with their male counterparts who have lower health care costs.

Doesn't it make more sense to protect women employees from these direct and immediate harms than to accommodate the abstract and attenuated interests of the corporate owners?

This is not meant to diminish the religious beliefs of the company owners. But these individuals live in a society in which women have the right to choose, and it may not be possible to accommodate the owners' desire for absolute purity. Even if their companies don't provide contraceptive coverage, the employees could still use wages from the companies to buy contraceptives. And if the government provided women with contraceptive coverage, the funding could come from the companies' taxes.

In our religiously diverse society, religion often has to abide by the law. Otherwise, as Justice Antonin Scalia warned, every conscience would become "a law unto itself."

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