

FACT SHEET

## If You Care about Religious Freedom You Should Care about Reproductive Justice!

September 2014

*The Reproductive Justice (RJ) movement places reproductive health and rights within a social justice and human rights framework.<sup>1</sup> The movement supports the right of individuals to have the children they want, raise the children they have, and plan their families through safe, legal access to contraception and abortion. In order to make these rights a reality, the movement recognizes that RJ will only be achieved when all people have the economic, social, and political power to make healthy decisions about their bodies, sexuality, and reproduction.<sup>2</sup>*

*Reproductive Justice demands that women be able to access and make informed decisions about their reproductive health care. Unfortunately, entities ranging from hospitals to businesses have tried to use their religious beliefs to justify denying women access to, health insurance coverage of, and information about reproductive health care, including contraception, abortion, and in vitro fertilization.*

### Health Care Providers Should Not Deny Women Access to Needed Health Care Services

Religiously affiliated hospitals and pharmacies sometimes use their religious beliefs to deny women needed care. These refusals jeopardize women's health and can risk future fertility. Catholic-affiliated hospitals, for example, are governed by the *Ethical and Religious Directives for Catholic Health Care Services (the Directives)*, which prohibit abortion and contraception as well as in vitro fertilization.<sup>3</sup> Therefore, women who go to a Catholic-affiliated hospital may not only be denied basic reproductive care but also may not be informed of the full range of health care options available to them. For example, women seeking treatment for miscarriages and ectopic pregnancies at Catholic-affiliated hospitals have been denied the appropriate standard of care and placed in life- and health-threatening situations.<sup>4</sup> Rape survivors seeking care at hospitals have been refused information about and access to emergency contraception (EC), denying them the ability to prevent pregnancy.<sup>5</sup> In addition, pharmacies have also denied women access to birth control, including EC, in the name of religious beliefs.<sup>6</sup>

Women denied needed services are forced to bear the burden of additional costs, delays, and health risks incurred by seeking needed care elsewhere. Some women could be prohibited from going elsewhere because their insurer prevents them from seeking care outside their network.

Religious refusals are particularly detrimental to women of color, low-income women, and rural women because many already face considerable barriers that impede their access to care.<sup>7</sup> Low-income women and women of color are significantly more likely than other women to have trouble gaining access to medical care because of inflexible work schedules and difficulty arranging childcare or transportation.<sup>8</sup> Rural women and women living

without health care providers in their communities might have to travel long distances to obtain care. Rural residents are four times more likely to live in a medically underserved area.<sup>9</sup> Providers practicing certain specialties, such as obstetrics/gynecology, are particularly lacking in rural areas; this often presents a major barrier for rural women who need reproductive health services. A woman and her family in a rural area, and even some urban areas, may need to travel for hours—sometimes by multiple modes of transportation—in order to reach a pharmacy that stocks contraceptives or an abortion provider. Thus, women of color, low-income women, and rural women may have to marshal considerable resources to see a provider and, in the event of a refusal, may have a harder time getting to another provider to access needed care. Although religious refusals jeopardize all women's health, they have the greatest effect on women with the fewest resources and who face the most barriers in accessing care.

## Reproductive Justice & Religious Freedom

The First Amendment protects religious freedom which is both an individual's right to practice or not practice any religion and an individual's right to be free from religious coercion.<sup>10</sup> First, the Establishment Clause mandates government neutrality in religious matters by stating that the government "shall make no law respecting an establishment of religion."<sup>11</sup> Second, the Free Exercise Clause protects an individual's right to practice his or her faith by stating that the government "shall make no law...prohibiting the free exercise [of religion]."<sup>12</sup> As envisioned by the founders of the Constitution and interpreted by the Supreme Court today, religious freedom also includes the right to be free from religion and does not include a right to impose one's religion on another.<sup>13</sup> Yet hospitals and pharmacies that refuse to provide reproductive healthcare to women do impose their religion on others.

Reproductive health advocates have successfully challenged hospitals that would deny women reproductive care. For example, in 2011, Kentucky Governor Steve Beshear refused to approve a merger among several hospitals, including the University of Louisville Medical Center, which could have required all the hospitals to operate under the Directives, citing Establishment Clause concerns.<sup>14</sup> According to a report about the proposed merger by the state's Attorney General, approval of the transaction would have had "the impermissible effect of advancing religion by authorizing and requiring a public, state-owned hospital to be governed by the Catholic Church's religious directives."<sup>15</sup> Similarly, local residents in Newport, Oregon were able to stop an operating agreement under which the only hospital in their area would have been operated in accordance with the Directives while continuing to receive significant public funding and be overseen by a public corporation.<sup>16</sup>

## Employers Should Not Use their Religious Beliefs to Deny Women Insurance Coverage of Health Care Services

Some employers want to use their own religious beliefs regarding birth control to take away insurance coverage of birth control from the women who work for them. The Affordable Care Act requires health insurance plans to cover all FDA-approved methods of birth control, sterilization, and related education and counseling without cost-sharing – which means without deductibles or co-pays.<sup>17</sup> Hobby Lobby, which is a nationwide crafts store chain with over 13,000 employees, and Conestoga Wood, which is a wood furniture manufacturer with nearly 1,000 employees, are two of over 70 for-profit companies that brought lawsuits against the benefit.<sup>18</sup> These employers claim that providing women insurance coverage of birth control violates their religious exercise rights under the Religious Freedom Restoration Act (RFRA). RFRA says that the federal government may not "substantially burden" a "person's exercise of religion" unless doing so is justified by compelling government interests and is the least restrictive way of furthering those compelling interests.<sup>19</sup>

In June 2014, the Supreme Court ruled on the issue, holding for the first time, that certain closely-held, family-owned, for-profit businesses like Hobby Lobby and Conestoga Wood are "persons" capable of exercising religion under RFRA and can bring religious exercise claims under that law.<sup>20</sup> The majority then concluded – also

for the first time – that owners of a for-profit business can use their religious beliefs to deny the corporation's employees birth control coverage. In an opinion that focused primarily on the interests of employers and corporations, the rights and interests of women were largely absent.

In her dissent, Justice Ginsburg called the majority opinion “a decision of startling breadth.”<sup>21</sup> The dissent focused on the rights and interests of women workers in these cases, noting, “Working for Hobby Lobby or Conestoga, . . . should not deprive employees of the preventive care available to workers at the shop next door.”<sup>22</sup> The dissent also raised an alarm about how the decision could undermine other critical rights and protections, warning that the Court “has ventured into a minefield.”<sup>23</sup>

As a result of the Supreme Court's decision, women workers and female dependents of employees at these companies will not have access to no cost-sharing birth control coverage in their employee health plans as guaranteed by the ACA. By allowing the owners of some companies to withhold health insurance coverage of birth control that is otherwise required by federal law, the majority decision makes it more difficult for women to access the basic health care they need, thus undermining the rights and economic stability of women workers and their families. And in allowing corporations to use religion to discriminate in this case, the majority opens the door for employers to claim rights to other harmful activity, including refusals to cover other health care benefits or discrimination against LGBT individuals.

Moreover, the challenges to the contraceptive coverage benefit continue, as non-profits organizations have sued the government over the regulations.<sup>24</sup> Regulations implementing the ACA provide an accommodation to non-profit organizations with religious objections to birth control by allowing them to opt out of covering contraception in their own health plans. This accommodation still ensures that women get the coverage directly from the insurer. Some non-profit organizations are suing the government over the accommodation, claiming even the accommodation violates RFRA.

## Religious Freedom Should Not Include the Freedom to Discriminate Against Women

The First Amendment's religious freedom principles do not include the right to impose one's religious views on others. In order to make healthy decisions about their bodies, women must have access to all of their options when they seek medical care. Hospitals and pharmacies that refuse women needed reproductive care because of their religious beliefs are using their religion to discriminate against and harm others. This denies women the right to make informed decisions about their care and unnecessarily jeopardizes their health.

Although the Hobby Lobby decision now allows some employers to use religion to discriminate, reproductive health advocates continue to fight to ensure comprehensive contraceptive coverage no matter where a woman works and to restore the benefits provided by the ACA.

## How You Can Support Reproductive Justice and Religious Liberty Values

- Advocate in your community for hospitals that provide the full range of reproductive health services to ensure that pregnant women will be provided all of their medical options and sexual assault survivors will have access to emergency contraception.
- Work with religious organizations in your community that support reproductive justice to advocate for policies that support both reproductive health and religious freedom.
- Urge public officials to oppose the merger of public hospitals and religiously-affiliated healthcare systems by informing them of possible Establishment Clause violations and the threat such mergers pose to women's reproductive health.

- Demand that pharmacies provide contraception and emergency contraception. If you have had trouble getting your prescription for EC or birth control pills filled or getting non-prescription EC, please contact the National Women's Law Center at 1-866-745-5487 or at [coverher.org](http://coverher.org).
- Stay connected with efforts to fix the Hobby Lobby decision, and make your voice heard.

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2. EXPANDING THE MOVEMENT FOR EMPOWERMENT AND REPRODUCTIVE JUSTICE, THE EMERJ REPRODUCTIVE JUSTICE LENS TOOLKIT 1 (2008), *available at* <http://forwardtogether.org/assets/docs/ACRJ-RJ-Lens-Toolkit.pdf> (last visited Nov. 6, 2012).
3. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH CARE SERVICES 24-27 (5th ed. 2009) *available at* <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.
4. Lori R. Freedman et al., When There's a Heartbeat: Miscarriage Management in Catholic-Owned Hospitals, 98 AM. J. PUB. HEALTH 1774 (2008).
5. See, e.g., Sabrina Rubin Erdely, Doctor's Beliefs Can Hinder Patient Care, SELF (June 22, 2007), <http://www.msnbc.msn.com/id/19190916/>.
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9. U.S. DEPT. OF HEALTH & HUMAN SERVICES OFFICE ON WOMEN'S HEALTH, THE HEALTH OF MINORITY WOMEN 4 (July 2003), *available at* <http://www.4woman.gov/owh/pub/minority/minority.pdf>.
10. See U.S. Dep't of Health & Human Serv., Facts about...Rural Physicians, [http://www.shepscenter.unc.edu/rural/pubs/finding\\_brief/phy.html](http://www.shepscenter.unc.edu/rural/pubs/finding_brief/phy.html) (last visited Nov. 6, 2012).
11. Rob Boston, A Delicate Balance: A History of the Separation of Church and State in the US, 33 CONSCIENCE 13, 16 (2012).
12. U.S. Const. amend. I.
13. Id.
14. Boston, *supra* note 18, at 15.
15. Gov. Beshear Rejects Proposed Hospital Merger; Hospitals Plan to Fight Decision, WHAS1, (Dec. 30, 2011, 6:40 PM), <http://www.whas11.com/news/Hospital-merger-details-might-be-announced-136424478.html>. See also JACK CONWAY, PROPOSED CONSOLIDATION OF JEWISH HOSPITAL HEALTHCARE SERVICES, INC., CHI KENTUCKY, INC., CATHOLIC HEALTH INITIATIVES, UNIVERSITY MEDICAL CENTER, INC., JEWISH HOSPITAL & ST MARY'S HEALTHCARE, INC., FLAGET HEALTHCARE, INC., SAINT JOSEPH HEALTH SYSTEM, INC., AND JH PROPERTIES, INC., TO CREATE A STATEWIDE NETWORK HEALTH CARE ENTITY (THE KENTUCKY STATEWIDE NETWORK) SPONSORED BY CATHOLIC HEALTH INITIATIVES (70%), JEWISH HOSPITAL HEALTHCARE SERVICES, INC. (14%) AND THE UNIVERSITY OF LOUISVILLE (16%): REPORT OF THE ATTORNEY GENERAL, 10, (2011), *available at* <http://www.khpi.org/dwnlds/ag-merger-report.pdf>.
16. CONWAY, *supra* note 22, at 10.
17. *Calif. Health System Ends Pursuit of Ore. Hospital Amid Community Concerns*, Kaiser Health News, (Oct. 31, 2012), <http://www.kaiserhealthnews.org/Daily-Reports/2012/October/31/states-mergers-and-acquisitions.aspx>. See also NAT'L WOMEN'S LAW CTR, HOSPITAL MERGERS AND THE THREAT TO WOMEN'S REPRODUCTIVE HEALTH SERVICES: USING THE ESTABLISHMENT CLAUSE OF THE CONSTITUTION TO FIGHT BACK, (2006) *available at* <http://www.nwlc.org/resource/hospital-mergers-and-threat-womens-reproductive-health-services-using-establishment-clause->.
18. 42 U.S.C. § 300gg-13(a)(4) (2012); Health Res. & Servs. Admin., U.S. Dep't of Health & Human Servs., Women's Preventive Services Guidelines, <http://www.hrsa.gov/womensguidelines> ("HRSA Guidelines") (last visited Aug. 4, 2014), implemented by 77 Fed. Reg. 8,725 (Feb. 15, 2012).
19. See Nat'l Women's Law Ctr., Status of the Lawsuits Challenging the Affordable Care Act's Birth Control Coverage Benefit (last visited Aug. 4, 2014), <http://www.nwlc.org/status-lawsuits-challenging-affordable-care-act%E2%80%99s-birth-control-coverage-benefit>.
20. 42 U.S.C. § 2000bb-1.
21. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, Nos. 13-354, 13-356, 2014 WL 2921709 (June 30, 2014).
22. Id. at \*30 (Ginsburg, J., dissenting). The dissent was joined by Justices Sotomayor, Kagan, and Breyer, although Justices Breyer and Kagan did not join Justice Ginsburg's conclusion that RFRA does not extend to for-profit corporations, finding instead that the Court did not need to reach this question. Id. at \*45 (Breyer, J. and Kagan, J., dissenting).
23. Id. at \*43 (Ginsburg, J., dissenting) (footnote omitted).
24. Id. at \*44 (Ginsburg, J., dissenting) (footnote omitted).
25. See Nat'l Women's Law Ctr., *supra* note 11.