

FROM THE PAGE TO THE PILL: WOMEN'S REPRODUCTIVE RIGHTS AND THE LAW*

*Panel 1 – The ACA's Other Mandate:
Contraceptive Coverage,
Conscientious Objection, and
Reproductive Rights*

REMARKS OF TRACEY BROOKS**

I will be talking about is the issue of the compelling state interest regarding requiring insurers to provide coverage for birth control, and issue that New York State's courts have tried to the highest levels, California has moved to the highest levels, and that there are 33 lawsuits that have been filed already. None so far have been successful, several have been dismissed for lack of brightness but certainly we're not done on this issue. Though let me tell you, the Court of Appeals, the Appellate Division, and the trial level here in New York, all of that very sound rationale is being upheld. The compelling state interest has even been upheld recently in a Missouri court by a judge George Bush appointee to the Court.¹

Let's just start talking about what this is. This is birth control.

*On October 11, 2012, the Albany Law Journal of Science and Technology presented a symposium on women's reproductive rights and the law. These remarks have been annotated and edited by the Journal staff. The webcast of the event is available at <http://www.totalwebcasting.com/view/?id=albanylaw>.

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¹ O'Brien v. U.S. Dep't of Health & Human Servs., 894 F.Supp. 2d 1149 (E.D. Mi. 2012).

These are earned benefits that people are getting through their employer. New York State, we've done very well while upholding this requirement. The Catholic Church has not fallen, the Catholic Church which I am a member of and which I attend for mass every single Sunday. I am also a birth control user, for a number of different reasons, not only to prevent unintended pregnancy. There is a broad reason behind why women should be able to gain access to contraception through our health benefits that are provided by our employers. Similarly, we would never expect our employer to be able to tell us how we can and cannot actually spend the dollars that we receive, regardless of whether they are dollars from a church or an entity of family planning advocates. We don't expect that they can tell us what we can and cannot spend our money on because it has been upheld in the courts that we are ending discrimination and promoting public health by allowing for access to contraception through employer-based health insurance. We are not requiring anybody to use it. What we are requiring is that there be access to contraception for those who choose to use it.

Access to contraception helps women in many ways. It helps women plan and space their pregnancies for better birth outcomes. Ending discrimination against women with regard to insurance benefits is important because as it is, women already make less money than men. Our percentage is significantly less, 77 cents on the dollar right now if you are a white woman.² If you are a woman of color, if you are a Latino woman, or an African-American woman, it's even lower.³ So if we're looking at that, then certainly making sure that our access to full range of reproductive health care and family planning is integral into whether or not we can have successful economically stable families as well.

Furthermore, for woman visiting our OB/GYN is our regular source of health care. I would say that the majority of women sitting in this room with me today would agree that we only go to our primary physician when we have strep throat or are otherwise not feeling well. However our annual exam is taking place in our family care family planning provider, our OB/GYN's

² Susan Adams, *Are Women Catching up in Pay?*, FORBES (Apr. 9, 2013), available at <http://www.forbes.com/sites/susanadams/2013/04/09/are-women-catching-up-in-pay>.

³ *Id.*

2013]

REMARKS OF TRACEY BROOKS 1

509

office. That's who's seeing us every single year for the continuity of care. It is there that pre-diabetes, hypertension, and a number of other high-risk conditions are often identified. If we make it more difficult for women to continue to ask for family planning, then we're also not getting the public health benefit of women being able to regularly see a health care provider. By making it more expensive and more difficult to access contraception, it also makes it more difficult for women to access preventative health care.

What we are now seeing is that through the ACA, women who now have private health insurance get their birth control without cost sharing. They aren't getting it for free and our tax dollars certainly aren't paying it for. It is an earned benefit that we get from our employers. Like I said, this money that women pay towards their insurance premiums and the money that their employers pay towards insurance premiums is enough to cover many things including breast health screenings, lactation devices, children's lead poisoning screenings, hearing screenings, hypertension, diabetes, and a number of other things. It isn't just about birth control.

I can tell you anecdotally about what a difference this has made for the women I work with at Family Planning Advocates.⁴ \$25 for your well-woman visit. \$30 a month for your contraception. That's \$55 we just saved. That's a recurring \$30 co-pay that has just been saved. Any woman at any level of socioeconomic status at this time could benefit from having that money in her pocket each month.

To look at the practical application of what we're talking about, we're talking about over 50% of the population gaining access to health care that they use most regularly to track and maintain their health. From basically 18 years old to about 60 years old, that's the medical provider that women see most regularly. The ACA has recognized and supported that women from all backgrounds, regardless of who their employer is, should be able to access that healthcare.

Now to where this issue intersects with religion. We have religious freedom in the United States, but we have freedom from religion as well. I choose to be a practicing Catholic and I choose to make conscious decisions based on my faith. However that

⁴ For more information on Family Planning Advocates please visit their website at <http://www.familyplanningadvocates.org>.

doesn't mean that you have to be held by the same standard because you live in the United States. That choice is up to you. Though Catholics can make decisions based on their conscience, the United States and the State of New York should not be legislating Catholic doctrine. This is the difference between religious freedom and religious liberty. No one is making anyone use contraception. No one is making houses of worship even make it available. No one is making an employer who employs people from within the religion to focus specifically on religious issues provide anything that's beyond what their faith believes in. However if you work for an organization that is religiously affiliated such as a hospital, school, or charity because you believe that that is the work you've been called for, medical health care delivery, higher education, taking care of babies who have AIDS and HIV, is it right that you should not have access to the full range of reproductive health care services? That's certainly not what the United States is about.

The courts have upheld the same and have been very consistent about what they have said. Furthermore, I don't doubt for a minute that this issue will be before the Supreme Court at some point, at some time. There are 33 cases, there are groups that are out there, court shopping to find a decision to get us there. Let me tell you, the United States is built on the foundation that we can all exist together. In our country, out of respect for religion, there have been exemptions. These exceptions take into account those who are among the practicing faithful and also allows those of us who are not to still be able to access the full range of health care benefits that

In conclusion I just want to reiterate that the women in the United States rely on birth control, and we're talking about nothing abstract, we're talking about the everyday lives of every single one of us sitting in this room today, being able to say not only am I going to graduate from law school, but I'm going to be able to choose where I work, how long I'm there before I start my family. It's about being able to choose the time period that I'm going to take out of my legal career to raise my children, because I'm going to be able to space them in the way that's best for me and my family.