Missouri lawmaker, wife ask court for contraception insurance exclusion

by Jennifer S. Mann

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ST. LOUIS (RNS) A family should have the same right as a small business to opt out of birth control coverage in its health care plan, the lawyer for a Missouri legislator argued Monday (September 8) before a federal appeals court.

Representative Paul Wieland (R., Imperial, Missouri), and his wife, Teresa, say the contraceptive benefit required by the Affordable Care Act violates their religious beliefs as Catholics and parents of three daughters.

In what may be the first court challenge of its type, they want to opt out of that coverage without giving up their state health insurance altogether and incurring a penalty under the federal law, commonly called Obamacare.

Their attorney, from the Thomas More Society, a public interest law firm based in Chicago, insisted to the 8th U.S. Circuit Court of Appeals that a family is no different from a small business whose owners have religious objections to subsidizing contraception for employees.

Last spring, the U.S. Supreme Court ruled 5-4 in favor of such business owners in *Burwell v. Hobby Lobby*.

“If the corporations don’t have to do this for their employees, certainly Mom and Dad don’t have to do it for their daughters,” Timothy Belz, a Clayton attorney serving as special counsel with the Thomas More Society, said after court Monday.

Belz equated it to sending children to a college where the only available cable TV package includes pornography.

The Affordable Care Act requires most employers with more than 50 full-time workers to provide insurance coverage that includes access to contraception.

The Wielands qualify for the Missouri Consolidated Health Care Plan through his legislative service. They are seeking an injunction to release them and their insurer from adhering to the mandate, after suing unsuccessfully last year in the U.S. district court in St. Louis.

Gretchen Borchelt, senior counsel at the National Women's Law Center, which has tracked legal issues involving the contraception requirement, said she knows of no other claims of this type. She said there are other challenges by employers, as in the Hobby Lobby case.

Alisa Klein, representing the federal government, said in court that the Wielands did not, in their initial claim, argue the case based on the financial penalties they would incur if they decide to go uninsured—the issue that gives them standing to sue.

She noted that the Wielands still belong to the state health plan and are asking for coverage tailored to their specific beliefs. There is no case law, she said, that provides for that type of exception.

She also said it would be impractical. "Here we have 100,000 beneficiaries in the Missouri group health care plan and there is no precedent for having the employer design the plan 100,000 ways," she said.

She referred repeatedly to an earlier federal court decision in St. Louis in which U.S. District Judge Audrey Fleissig ruled that federal law pre-empts what was then state law allowing employers or employees to opt out for reasons of conscience.

The three-judge appellate panel that heard the arguments Monday took the Wielands' case under advisement. There is no set timetable for a decision.

After filing the suit against the U.S. Department of Health and Human Services and the Labor and Treasury departments in August 2013, Paul Wieland told the *St. Louis Post-Dispatch*, "I see abortion-inducing drugs as intrinsically evil, and I cannot in good conscience preach one thing to my kids and then just go with the flow on our insurance."

U.S. District Judge Jean Hamilton granted defense motions to dismiss the case October 16, based on issues of standing. On October 29, she rejected an emergency injunction that would have prohibited enforcement of the contraceptive mandate while Wieland appealed.

Under the Religious Freedom Restoration Act, the plaintiffs' standing is clearer here than in the Hobby Lobby case, said Malcolm Harkins, a professor at St. Louis University Law School.

"The statute turns on infringement quote, unquote, of a person's exercise of religion," he said. "The question before the court (in Hobby Lobby) was more complicated: Does it apply to a corporate person?"

The key questions in both, he said, are basic: Does the contraceptive mandate infringe on their ability to exercise their religion, is it the least compelling restriction, and is there a compelling government interest?

What complicates things though, is the role of personal choice. For example, he said, "If I have a plan that provides for euthanasia, if I don't engage in it, then it's still my choice."