

CASE NOTE: REQUIRED INSURANCE COVERAGE FOR CONTRACEPTIVES

By Anthony Dougherty



In a recent case, the Catholic Charities of the Diocese of Albany and other faith-based social service organizations opposed to contraception on religious grounds sought declaration that the Women's Health and Wellness Act (the "Act") violated the free exercise provision of state and federal constitutions. The

question raised was whether requiring coverage for prescription contraceptives violated the free exercise provisions of state and federal constitutions.

BACKGROUND

In 2002, the New York State Legislature passed the Act, mandating expanded health insurance coverage for a variety of services needed by women, including mammography, cervical cytology and bone density screening. The issue before the Court was the provision of the Act that required that an employer health insurance contract "which provides coverage for prescription drugs shall include coverage for the cost of contraceptive drugs or devices."

HOLDING

The New York Court of Appeals, the State's highest court, held that the Act did not violate either the Federal or New York constitutions. The Court ruled that the Act was "[d]esigned to advance both women's health and the equal treatment of men and women." Supported by U.S. Supreme Court citations, the Court stressed that this is a "neutral law of general applicability" that aims at no particular religion. To find the Act in violation, religion would have to be shown to be its "target." The Court found that it was not, so the law stands.

The Court did find, however, that, "The burden the [Act] places on plaintiffs' religious practices is a serious one, but the [Act] does not literally compel them to purchase contraceptive coverage for their employees, in violation of their religious beliefs; it only requires that policies that provide prescription drug coverage include coverage for contraceptives."

About Anthony Dougherty, Partner

Anthony Dougherty practices in the areas of education, labor and not-for-profit law including laws pertaining to religious and charitable institutions. His clients include several religious orders, not-for-profit foundations as well as private preparatory and post-secondary institutions, and he serves as general counsel to Iona College, the Congregation of Christian Brothers and the Eastern Economic Association. Anthony can be reached at adougherty@tarterkrinsky.com.