Public Health Outweighs Religion

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Your editorial “Contraceptive Rule Steps on Freedom of Religion” misses the point when it asks how we should analyze the federal rule that extends all preventive services, including contraceptive services, to women who are insured through their employers. The rule, which explicitly exempts churches, requires those employers with more than 50 employees who offer health insurance to their employees to cover all preventive care without charge to the insured.

The rule is based on research findings of the Institute of Medicine that contraceptive services are preventive services because contraception prevents so much maternal, infant and fetal illness and death. Around the world more than a quarter of a million mothers’ lives are saved each year by the availability of modern contraception. Unintended pregnancies produce babies more likely to be low birth weight, more likely to be abused, and more likely to be exposed — in utero and out — to harmful substances. Some contraceptives also provide a particularly effective way to limit the spread of serious infectious diseases.

Some church-based institutions do not want to provide their nonreligious employees with insurance that allows them access to contraception because of church doctrine that prohibits the use of all forms of contraception except abstinence. Even when their employees are paid by taxpayer funding, as many are, and even when the church-run enterprises get a hefty government subsidy through their tax-exempt status, as almost all do, some religious employers insist that they have a First Amendment right to control the morality of the medical and sexual decision-making their employees do after work.

The preventive services rule does not require that anyone use contraception contrary to religious beliefs, nor does it require that anyone provide any medical service contrary to religious beliefs. It simply provides that employers, like hospitals and day care centers, who hire people of all faiths to provide service to people of all faiths, must provide health insurance to their employees without regard to the employer’s own religious doctrine. Just as Jehovah’s Witness employers cannot provide insurance that denies their employees blood transfusions when they are medically appropriate, other church-based employers cannot provide insurance that denies contraception when that is medically appropriate.

This controversy pits protection of public health against protection of religious doctrine, and it requires weighing the value of each in the context of a health care system where many people can afford treatment only if it is provided through their insurance. The goal of the Department of Health and Human Services was to find a way to ensure that all women have genuine access to all of the preventive services they need, while ensuring that no woman is obliged to get medical care that offends her own religious beliefs. The department recognized that this requires a balance.
Some national interests are more important than others – more important, even, than religious doctrine. For over a century, since it first addressed the constitutionality of the government-mandated smallpox vaccine which eventually eradicated that disease, the Supreme Court has recognized that religious beliefs are outweighed by the health of the public when such a balance is undertaken.

In the lawsuit, already filed, challenging the application of the preventive services rule to contraception, the courts will be called upon again to balance the importance of public health, and the health risks unwanted pregnancies put on women and their children, on the one hand, and the right of an employer to choose a health insurance policy for its employees that is consistent with the employer’s religious beliefs, not the employees, on the other. In issuing the preventive services rule, the federal government decided to follow the approach the Supreme Court has used in smallpox and race discrimination cases. It did the balancing and found that the immediate public health interests of women outweighed the religious interests of employers to control the health care decisions of its employees.