

# Protecting Birth Control Coverage for Young People

*One of the most contested provisions of the Affordable Care Act (ACA) has been coverage of contraception. Since the passage of the ACA opponents have filed over 100 federal lawsuits challenging the law's birth control coverage benefit. These lawsuits included challenges from for-profit corporations objecting to the coverage benefit, and non-profit corporations objecting to the "accommodation" created by the Obama Administration that allowed employees of certain non-profits to receive their birth control coverage from insurance companies if the non-profit objects to providing it. In June 2014, the Supreme Court issued its decision in the cases brought by for-profit corporations Hobby Lobby and Conestoga Wood Specialties under the Religious Freedom Restoration Act (RFRA), holding that certain parts of the health care reform law limited certain companies' religious exercise. Just before key parts of the ACA were to go into effect on January 1, 2014, Supreme Court Justice Sotomayor issued a stay for several Catholic organizations not to cover birth control for their employees. And in July 2014, the Supreme Court issued a stay for Wheaton College, a religiously affiliated non-profit, allowing it not to cover birth control for its employees either. For young Americans, the fallout out from these Supreme Court cases and other challenges to birth control coverage is crucial. Young people are disproportionately affected by the high cost of contraception and stand to lose the most if access to basic preventive services is denied and the newly created 'religious-right-of-corporations' is applied expansively.*

## YOUNG WOMEN ARE DISPROPORTIONATELY IMPACTED BY THE HIGH COST OF CONTRACEPTION.

- Nearly half of women ages 18–34 with household incomes of less than \$75,000 report they need to delay childbearing because of economic hardship they've experienced in recent years.<sup>1</sup>
- Before the ACA, women often paid high out-of-pocket healthcare costs. In many cases, oral contraceptives made up close to 29 percent of out-of-pocket health care costs for women with private insurance.<sup>1</sup>
- Before the ACA, more than half of young women (55 percent) said they had experienced a time when they could not afford to use birth control consistently.<sup>2</sup>
- And extremely small numbers of women opted to use the most effective form of contraception — the intrauterine device, or IUD — because it could cost several hundred dollars out of pocket.<sup>3</sup>
- Since August 1, 2012, more than 48.5 million women have been covered by this benefit and are now able to get their birth control with no out-of-pocket costs.<sup>4</sup>

## FOR YOUNG WOMEN, BIRTH CONTROL IS BASIC HEALTH CARE.

- Birth control is such a core part of women's health that 99 percent of sexually active women have used birth control at some point in their lives.<sup>5</sup>
- The decline in teen pregnancy rates in the United States is primarily due to young peoples' improved contraceptive use.<sup>6</sup>
- Overwhelming majorities support birth control coverage.<sup>2</sup>
- More than 70 percent of Americans believe insurance companies should cover the full cost of birth control, just as they do for other preventive services.<sup>2</sup>
- More than eight in ten (86 percent) Millennials of color believe birth control is part of basic health care and should be covered by insurance, and half (53 percent) holds this view strongly.<sup>7</sup>
- Large majorities of young adults of color (84 percent) also believe that contraception needs to be available and affordable to help young people stay healthy.<sup>7</sup>

## Conestoga Wood Specialties Corp. v. Burwell and Burwell v. Hobby Lobby Stores, Inc.: Some Basic Facts

The owners of Hobby Lobby, a privately owned for-profit corporation with more than 13,000 employees, and Conestoga Wood Specialties, a Pennsylvania for-profit manufacturer of specialty wood products with close to 1,000 employees, have argued that the companies should not be required to provide insurance coverage that includes birth control to their employees based solely on the owners' personal religious beliefs.

- In June 2013, the Tenth Circuit Court of Appeals in Oklahoma concluded in *Hobby Lobby v. Sebelius* that, under the Religious Freedom Restoration Act (RFRA), the birth control coverage requirement substantially burdened the company's religious exercise.<sup>8</sup>
- In July 2013, the Third Circuit Court of Appeals decided in *Conestoga Wood Specialties v. Sebelius* that a for-profit corporation couldn't exercise religious belief within the meaning of RFRA or the First Amendment. The court also concluded that because the requirement applies to the company, not the owners, it does not implicate the owners' religious exercise.<sup>9</sup>
- Three federal appeals courts around the country struck down the birth control coverage rule, while two other appeals courts upheld it. This led the Supreme Court to agree to hear the two cases involving for-profit corporations.<sup>10</sup>
- In June 2014 the Court decided that certain corporations have the right to deny insurance coverage of contraception to their employees based on the religious beliefs of a corporation's owners. However, the court did not clearly outline which corporations have this right.<sup>12</sup>

To limit the harm of the Supreme Court's decision, the Department of Health and Human Services has issued proposed rules allowing employees of certain for-profit corporations to have birth control coverage directly from their insurance companies if their corporations object to providing it. However, it is still unknown how these rules will be implemented and whether birth control will still be easily accessible for all women.<sup>13</sup>

### **EXPANSIVE RELIGIOUS EXEMPTIONS AND ACCOMMODATIONS ALREADY EXIST FOR HOUSES OF WORSHIP AND NON-PROFITS.**

- In June 2013, the Obama administration provided a set of wide-reaching rules exempting more than 350,000 religious institutions—specifically houses of worship—from the birth control benefit based on the First Amendment.<sup>11</sup>

### **OWNERS OF CORPORATIONS ARE NOT REQUIRED TO USE BIRTH CONTROL.**

- Like any other preventative service, the rules state that a company's plan must include coverage for birth control. No one is forcing the owners of a company to take contraception or purchase contraception.

### **THE BIRTH CONTROL COVERAGE REQUIREMENT APPLIES TO THE COMPANY, NOT THE INDIVIDUALS WHO OWN IT.**

- Longstanding corporate law says that companies and corporations are separate legal entities from the people who own them. The requirement to cover birth control applies to the company, not the individuals who own it.<sup>11</sup> In its *Conestoga* decision, the Third Circuit Court of Appeals concluded that a "for-profit, secular corporation" does not "exercise such an inherently 'human' right" of religious freedom.<sup>9</sup>

- In *Hobby Lobby v. Sebelius*, the Supreme Court contradicted longstanding corporate law, and instead decided that there is no distinction from certain companies and the individuals who own them when it comes to their free exercise rights under the Religious Freedom Restoration Act.<sup>12</sup>

### **GRANTING CORPORATIONS THE RIGHT TO FREE EXERCISE OF RELIGION SET A RADICAL NEW PRECEDENT.**

- Now that Supreme Court has ruled that some private companies can refuse to provide insurance coverage for birth control, it may open up the possibility for any for-profit employer to deny coverage for any medical treatment otherwise entitled by federal law, based on the religious objections of the individuals who own that corporation.
- For example, a corporation could put in place policies denying coverage for immunizations, HIV screening, counseling for sexually transmitted infections, maternity care or, to any medical care, denying employees access to critical health services. Creating a 'religious-right-of-corporations' could be used to override young people's basic rights to health care
- The Supreme Court's unfortunate decision in *Burwell v. Hobby Lobby* is matched a trend of including clauses in more and more laws allowing health providers, corporations, and other entities to refuse to comply on the basis of "religious belief." Efforts must be taken to return the notion of American religious liberty so that it is once again seen as a way to protect individuals exercising their beliefs and ensure that religion can never be used to burden or impose beliefs on others.

*Zenen Jaimes, Policy Advocate, Generation Progress*

*Jeryl Hayes, Domestic Policy Analyst, Advocates for Youth*

*Abbey Marr, Law Students for Reproductive Justice Fellow, Advocates for Youth*



**GENERATION  
PROGRESS**

Generation Progress and Advocates for Youth © 2015

## RESOURCES

1. Center for American Progress. "The High Costs of Birth Control." Accessed 12/13/2013 from <http://www.americanprogress.org/issues/women/news/2012/02/15/11054/the-high-costs-of-birth-control/>
2. Planned Parenthood Federation of American. "Survey: Nearly Three in Four Voters in America Support Fully Covering Prescription Birth Control." Accessed 12/13/2013 from <http://www.plannedparenthood.org/about-us/newsroom/press-releases/survey-nearly-three-four-voters-america-support-fully-covering-prescription-birth-control-33863.htm>
3. Winner B et al. "Effectiveness of Long-Acting Reversible Contraception." *New England Journal of Medicine* 2012; 366:1998-2007
4. Department of Health and Human Services. Increased Coverage of Preventive Services with Zero Cost Sharing Under the Affordable Care Act. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation. [http://aspe.hhs.gov/health/reports/2014/preventiveservices/ib\\_preventiveservices.pdf](http://aspe.hhs.gov/health/reports/2014/preventiveservices/ib_preventiveservices.pdf)
5. Daniels K, Mosher WD, Jones J. Contraceptive methods women have ever used: United States, 1982–2010. *National health statistics reports*; no 62. Hyattsville, MD: National Center for Health Statistics. 2013.
6. Santelli, J. Explaining Recent Declines in Adolescent Pregnancy in the United States: The Contribution of Abstinence and Improved Contraceptive Use. *American Journal of Public Health*, January 2007: 97:1.
7. Advocates for Youth. "Millennial Thinking." Accessed 12/13/2013 from <http://www.advocatesforyouth.org/press-room/millennials>.
8. United States Court of Appeals, Tenth Circuit. June 27, 2013. Accessed 12/13/2013 from <http://www.ca10.uscourts.gov/opinions/12/12-6294.pdf>
9. United States Court of Appeals, Third Circuit. July 26, 2013. Accessed 12/13/2013 from <http://blog.c2essentials.com/file.axd?file=%2F2013%2F11%2FConnes-toga+Wood+Specialties+.pdf>
10. Hattel, J. "Court strikes down birth control mandate." November 1, 2013. Accessed 12/13/13 from <http://thehill.com/blogs/regwatch/court-battles/188983-appeals-court-rules-against-birth-control-mandate>
11. HHS Press Office. "Administration issues final rules on contraception coverage and religious organizations." June 28, 2013. Accessed 12/13/2013 from
12. U.S. Supreme Court. June 30, 2014. Accessed 10/23/2014 from [http://www.oyez.org/cases/2010-2019/2013/2013\\_13\\_354](http://www.oyez.org/cases/2010-2019/2013/2013_13_354)
13. HHS Press Office. "Administration takes steps to ensure women's continued access to contraception coverage, while respecting religious-based objections." Accessed 10/23/2014 from <http://www.hhs.gov/news/press/2014pres/08/20140822a.html>