

Contraception opponents hail DC court ruling

by [Lauren Markoe](#) in the [January 23, 2013](#) issue

Foes of the federal contraception mandate are cheering an appeals court decision requiring the Obama administration to devise exemptions to the new rule for two Christian colleges.

They were also buoyed the same day, December 18, by the District of Columbia Circuit Court's reversal of lower court decisions to throw out their cases. The administration had argued that because it was crafting an exemption to the contraception rule, the cases should not go forward.

Now the cases continue, and every 60 days the administration must report on its plan to ensure that the colleges do not have to comply with the new rule, which mandates that employers cover contraception in their health plans.

"This is a win not just for Belmont Abbey and Wheaton, but for all religious nonprofits challenging the mandate," said Kyle Duncan, general counsel of the Becket Fund for Religious Liberty, who argued the case.

The two colleges, Catholic Belmont Abbey College in North Carolina and evangelical Wheaton College in Illinois, filed suit against the Obama administration before the new rule went into effect on August 1, arguing that the mandate is a violation of the schools' religious freedom.

The Catholic Church opposes all forms of artificial birth control, while most evangelicals do not. But many evangelicals consider the Plan B method of birth control—which is covered under the new Obama administration rule—to be an abortion agent, even though studies have shown that it does not act as an abortifacient.

"The government has now been forced to promise that it will never enforce the current mandate against religious employers like Wheaton and Belmont Abbey, and a federal appellate court will hold the government to its word," Duncan said.

Opponents of the mandate may not like the exemption that the administration eventually crafts, but the ruling is still heartening, said Richard Garnett, a law and political science professor at the University of Notre Dame.

“It’s holding the administration’s feet to the fire a little more,” Garnett said. “The court said to the administration, ‘Fine, you’re working on writing an exemption, but we’re still going to keep the cases alive.’”

The administration could write a rule for religious institutions that’s only cosmetically different from what’s now on the books, Garnett said. But at the moment, the plaintiffs’ arguments about their religious rights are still before the court. “That is definitely a victory for the challengers,” Garnett said.

A spokesman for the U.S. Department of Health and Human Services said he could not comment on pending litigation. —RNS

This article was edited Jan. 7, 2013.