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Ralph's loses appeal to deny women birth control

Where will the case go from here? Back to the 9th or to the Supreme Court?

Janet Blanding

Washington State's regulations protecting patients from the judgmental whims of pharmacists and pharmacy owners, the first such regulations in the nation, have been upheld. On July 23, the 9th Circuit Court of Appeals reversed the opinion of the lower court, which had found in favor of Ralph's. This reversal is a great victory for women, the state of Washington, and all pharmacy customers, and may well pave the way for similar patient protection regulations in other states. But the fight isn't over. The likelihood of an appeal is looming, and it is uncertain whether the Pharmacy Board will take steps to enforce the regulations.

The lawsuit began in 2007 as *Stormans v. Selecky*, then changed to *Stormans v. Wiesman* when a new Secretary of Health, John Wiesman, was appointed. The owners of Ralph's joined two pharmacists in a lawsuit challenging new Washington State regulations which required pharmacies to deliver lawful medications without regard to "moral, philosophical or personal objections." Significantly, the regulations allowed individual pharmacists to step aside and allow other pharmacy personnel to dispense drugs they found objectionable. This accommodation was written into the rules with the hope it would deflect legal challenges claiming an individual pharmacist's "right to conscience." However, the new regulations required good faith stocking of medications needed by the population served by the pharmacy. Kevin Stormans, the owner of Ralph's pharmacy, is not a pharmacist himself, but the lawsuit claimed that requiring the pharmacy to stock emergency contraception infringed on Stormans, Inc.'s First Amendment right to the free exercise of its religion.

The extreme right wing legal advocacy groups who have been representing Ralph's owners are not willing to accept defeat. The day the appellate court's decision was published, the Stormans' lead counsel, Kristen Waggoner of the Alliance Defending Freedom, announced "We will appeal this ruling."

The plaintiffs have two options for an appeal: They can request an en banc hearing at the 9th Circuit, or appeal for review by the Supreme Court. The state's appeal was originally heard by a panel of three judges at the appellate court; an en banc review at the 9th

circuit would be heard by a panel of 11 judges. En banc reviews are reserved for cases which involve a question of exceptional importance, or situations where the panel's decision conflicts with Supreme Court decisions or prior decisions of the appellate court. Requests for en banc review must be filed within two weeks after the entry of judgment by the three court panel, so the Stormans' deadline for this request is August 6. Although Washington Attorney General Robert Ferguson has asserted he believes the plaintiffs will request an en banc review, it seems unlikely that a full panel at the 9th circuit, which has a reputation as being the most liberal of the appellate courts, would reverse the three judge panel's unanimous decision.

The Supreme Court of the United States has recently proven to be

friendlier to claims of religious freedom for Christian business owners. The decision in the Hobby Lobby case is one example of this trend. However, SCOTUS denies the vast majority of requests for review it receives. According to the Supreme Court's rules, review on a writ of certiorari is not a matter of right, but of judicial discretion. (A writ of certiorari

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is a request for a case review.) According to the SCOTUS website, the Supreme Court receives approximately 10,000 petitions for a writ of certiorari each year. The Court grants and hears oral argument in about 75-80 cases. However, SCOTUS is more likely to review cases involving matters of constitutional

law, and the Stormans case is based on a First Amendment claim. Although it would be exciting to see a case that began as a boycott of a local Olympia store make it to the Supreme Court, having the case fail to advance to the Supreme Court would be better for pharmacy patients in Washington (and elsewhere, if other states adopt rules similar to Washington's). If an en banc review at the 9th circuit finds as the three judge panel did, and the Supreme Court refuses to review the case, the appellate court's decision would prevail, and the regulations would remain in force.

The regulations will be meaningless, however, if they are not enforced by the state. Historically, the Board of Pharmacy has not been inclined to take punitive action against pharmacies that are out of compliance with its regulations for stocking medications. One reason for this is that their enforcement process is complaint-driven, meaning that

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Will the third attempt be a charm?

One more planning process will convene to improve water quality of Capitol Lake

Dani Madrone

Another Lakefair has come and gone, and this year a few more eyebrows have been raised over the condition of Capitol Lake. With the unusual weather we have experienced this summer, the blooms of algae and invasive plants have made an early arrival. Soon the salmon will be swimming through, and many people will gather at the dam to watch them arrive. At this point, we must ask ourselves: how can we best welcome the salmon home?

For those new to this issue, the mouth of the Deschutes River was dammed in 1951 to create a reflection pond and build a road. With no consideration of the environmental impacts or a long-term management strategy, we are now left with an untouchable body of water that is overtaken by invasive species.

The dam severs the connection of the river to Puget Sound and is the source of a Clean Water Act violation. All legitimate science points to removing the dam. However, due to competing interests and the controversial nature of this issue, it remains.

The 2015 Ruckleshaus report, commissioned by Department of

I no longer want to focus on the stagnancy of the lake, the process, or the issue. I want to think about the future...Perhaps this time we can work through the impasse between environmental and economic interests.

Enterprise Services, gave us a 'to do' list for moving forward: improve water quality and habitat, figure out a plan to manage sediment, abate the invasive species, create a beautiful place with recreational access, and figure out an

equitable funding mechanism while improving the local economy. Sound like a tall order? Perhaps. But Olympia Councilmember Jim Cooper stated it beautifully while updating the city's Comprehensive Plan. "Capitol Lake does not exist in a vacuum," he said. "It is influenced by the Deschutes River upstream, and influences Budd Inlet downstream... We can think about it as one system that needs to work together."

That statement serves as a metaphor for the many governments involved in this issue, including the state, the county, two cities, a port, and a tribe. We need all of these agencies to work together as one system. We now have an interesting opportunity for such collaboration. The capital budget includes \$250,000 to move forward on defining the future of the lake. The goals are: summarize the best available science, explore hybrid options that restore habitat and retain the reflection pool, update cost estimates, assess the community, develop cost sharing scenarios and

► CAPITOL LAKE, continued on page 9.

The Equality Act banning discrimination against women and LGBTQ Americans is introduced in Congress

(July 23) -- U.S. Senators Jeff Merkley, Tammy Baldwin, and Cory Booker and U.S. Representative David Cicilline introduced the Equality Act, a comprehensive federal bill that will prohibit discrimination against women and lesbian, gay, bisexual and transgender Americans. This legislation fills gaps in America's civil rights laws, and is fully in keeping with a commitment to equal treatment under the law for all.

The Equality Act would expand the existing Civil Rights Act passed more than 50 years ago to include sexual orientation and gender identity as explicitly protected classes and adds sex to prohibitions against discrimination in public accommodations and with federal funding — much-needed protections that will guarantee women and LGBT people are treated equally in a number of important areas. The bill's introduction comes on the heels of several momentous victories for LGBT equality. Less than a month ago, the Supreme Court ruled that the Constitution prohibits states from denying same-sex couples the freedom to marry.

James Esseks, Director of the LGBT Project of the American Civil Liberties Union, said:

"Today is a historic day that has been decades in the making. The Equality Act would transform the lives of countless women and LGBT people. Our country's most basic promise of equal treatment under the law will never be real if you fear losing your job, being kicked out of your home, denied access to healthcare or turned away from a business because of who you are. Both the lack of clear and explicit federal protections for LGBT people and the lack of protections for women in core areas of American life are unacceptable. We urge Congress to take up this landmark bill and make our country a more just nation for all."

—ACLU

Bosses receive mandated guidance on for-profit exemptions on Hobby Lobby rule sanctioning discrimination

(July 10) -- The Obama administration issued a final rule that defines a "for-profit corporation" to clarify those companies allowed to deny their employees birth control coverage now required by law under the Affordable Care Act.

Said Sasha Bruce, senior vice president at NARAL Pro-Choice America:

"The Supreme Court's Hobby Lobby decision sanctions discrimination. No bosses should have control over what family-planning services their employees use.

"This loophole for bosses to impose their personal views on women in the workplace is a sad consequence of the decision issued by anti-choice Supreme Court justices.

"Just when women think they are moving into the 21st century, they are being told that their rights have discriminatory exceptions. Lawmakers in Congress should pass the Not My Bosses Business Act to stop any employer that tries to bully their staff by deciding when employees can start or grow their families."

—NARAL



Photo: Robert Whitlock

► Ralph's, cont. from page 1.

unless the Department of Health receives complaints from consumers regarding a pharmacy's unwillingness to stock and dispense the medications they need, no enforcement action is triggered. Another consideration is that the Board of Pharmacy has few punitive options for pharmacies that are out of compliance. It cannot fine a pharmacy for failing to stock medications needed by the patients it served; it can only pull the pharmacy's license, a relatively drastic step the Board may be reluctant to take. Previous complaints against Ralph's for violating state pharmacy stocking regulations have been dismissed although there was strong evidence that infractions of the policy had been repeatedly committed.

At the time Ralph's filed their lawsuit in 2007, 21 complaints against them had been dismissed and three were still pending. Investigations into the three open complaints were suspended during the course of the trial. Reached four days after the Stormans' decision was published, Board of Pharmacy Executive Director Chris Humberson acknowledged that he would be meeting with a state Assistant Attorney General to discuss how to proceed with complaints against Ralph's, as well as other issues arising from the 9th circuit's decision in the state's favor. (At press time, no information regarding the resolution of pending and future complaints against pharmacies that violate the regulations was available from the Department of Health.)

It is entirely possible that in the absence of new complaints, despite the eight year long legal battle and the considerable expense by the state to defend its regulations, Ralph's will continue to operate as a rogue pharmacy, refusing to deliver contraception to women, without suffering any consequences. The only path to ensuring patient's needs are consistently met, at Ralph's and in pharmacies throughout the nation that are watching to see what happens in this precedent case, lies in Olympia women or men walking into Ralph's, requesting Plan B or ella, then filing a complaint with the Department of Health if they are refused. Any customer who is denied service at a pharmacy for "moral, philosophical or personal" reasons is free to file a complaint; complaint forms are available on the Department of Health website.

Janet Blanding has been writing about the Ralph's boycott and subsequent lawsuit since 2006, when her Plan B prescription could not be filled there. After a year-long investigation, the Board of Pharmacy dismissed her complaint without action against Ralph's.

Lawsuit challenges loopholes in new EPA rule exempting wetlands and streams from Clean Water Act protections

July 22 -- Conservation groups filed a lawsuit challenging last-minute exemptions for industries in the new "waters of the United States" rule that could open the door to more pollution of wetlands, streams and other waterways. The rule, finalized in May by the Environmental Protection Agency and U.S. Army Corps of Engineers, defines which waterways can be protected against being destroyed, degraded, or polluted without a permit under the Clean Water Act.

The new rule reaffirms longstanding federal protections for some types of waters, but largely as a result of industry pressure, arbitrarily exempts and removes safeguards for critically important streams, wetlands and other waterways, many of which had been protected since the 1970s. These unprecedented exemptions are contrary to clear scientific evidence demonstrating the importance of these waterways for drinking water, recreation, fisheries and wildlife.

—Center for Food Safety