

# THE HEALTH AND HUMAN SERVICES MANDATE ON “CONTRACEPTION”: DOES IT VIOLATE FREEDOM OF CONSCIENCE AND RELIGION?

## **A. THE HHS MANDATE ON CONTRACEPTION**<sup>1</sup>

Pursuant to the provisions of the Patient Protection and Affordable Care Act (ObamaCare or the ACA) the U.S. Department of Health and Human Services, under Secretary Kathleen Sebelius, adopted guidelines which require most health plans and health insurers to offer group or individual health insurance coverage to women “without cost-sharing for all Food and Drug Administration(FDA) approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.” These guidelines were issued on August 1, 2011and published in their final form on February 15, 2012.

The FDA-approved “contraceptive methods” include abortifacient drugs such as Plan B (which sometimes thins the lining of the uterus, so that a developing embryo cannot implant), the drug ella (similar in action to RU 486) which can also attack already implanted embryos, and various IUDs, which also can act as abortifacients.<sup>2</sup>

HHS said their guidelines “were based on the recommendations of the independent Institute of Medicine, which undertook a review of the evidence on women’s preventive services.”

Recognizing that some religious organizations that provide health insurance coverage to their employees have moral objections to contraceptives, abortifacients and sterilization, HHS decided to exempt certain religious employers from this rule. They narrowly defined an exempt religious employer as “one that: (1) Has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization.” This definition was seen as applying to “churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order.” It would not apply to religiously affiliated hospitals, universities, or social service agencies which typically do not meet the first three criteria. HHS stated that “These final regulations generally apply to group health plans and group health insurance issuers on April 16, 2012.”

Following considerable controversy generated after these guidelines became known, the Obama administration granted a one year “temporary enforcement safe harbor” (i.e. until April 1, 2013) for those religious employers who did not qualify for an exemption. HHS stated that it would “work with stakeholders to develop alternative ways of providing contraceptive coverage without cost sharing” [by individual women] for non-exempt organizations with religious objections to coverage. Further, on February 10, 2012, President Obama held a press conference to offer a “compromise” or “accommodation” to the latter organizations by saying that they would not have to pay for the objectionable preventive services, but that insurance companies would have to provide them to women free of charge.<sup>3</sup>

In its closing paragraphs, the HHS mandate maintains, “These final regulations do not undermine the important protections that exist under conscience clauses and other religious exemptions in other areas of Federal law. Conscience protections will continue to be respected and strongly enforced. This approach is consistent with the First Amendment and Religious Freedom Restoration Act.”

## **B. HOW DID WE GET TO THIS POINT?**

**Malthus** Historically, we could go back to the work of Thomas Robert Malthus, an English scholar, who first published *An Essay on the Principle of Population* in 1798. As popularly interpreted, Malthus’ idea

was that population growth would exceed the growth of food supplies, resulting in over-population, and famine. Concerns about world population growth reached a peak in the 1950s and 1960s, although Malthus' theories had not been borne out by history. The over-population scare also peaked in the U.S. about the same time, and several of the dire predictions about what would happen as a result also failed to materialize.

Currently, many still talk about overpopulation, although based on current data and projections; the world is more likely to face a crisis of rapid population decrease in the coming decades. In the United States, we have been below population replacement levels, which call for a total fertility rate of 2,110, since 1972.<sup>4</sup>

**Redefining Pregnancy**<sup>5</sup> Science indicates that the life of an individual human being begins at fertilization, when sperm joins egg. Conception was generally understood as commencing at fertilization. However, in 1959, Dr. Bent Boving suggested that pregnancy or conception should be understood as commencing at implantation, rather than at fertilization.

Influenced by the overpopulation scare, perhaps, Boving stated, "the social advantage of being considered to prevent conception rather than to destroy an established pregnancy could depend on something so simple as a prudent habit of speech."

Adopting Boving's suggestion, in 1965 the American College of Obstetricians and Gynecologists (ACOG) defined conception as "the implantation of a fertilized ovum." In 1972, recognizing that by the time of implantation, the developing human being consists of some 100 cells, and is technically called a blastocyst, they changed the definition to "Conception is the implantation of the blastocyst."

As a result of this new definition, drugs and devices which prevent implantation are now called "contraceptives" or "emergency contraceptives" although their action causes the early death of a developing human being. Thus, at its 2004 Annual Meeting, the American Medical Association termed Plan B an "emergency contraceptive" which, although it could affect implantation, "could not terminate an established pregnancy."

**President Barack Obama** President Barack Obama is the most pro-abortion President in our history.<sup>6</sup>

- 2001-2003. As a state senator in Illinois, Obama voted four times against a bill that would have protected children born alive after an attempted abortion, and would have required them to receive life-saving treatment if feasible. In his 2002 senate floor debate, he argued that while babies might be born alive, it would be a "burden" to a mother's "original decision" to assess and treat them.
- January 23, 2009. President Obama's Executive Order overturning the Mexico City Policy sends millions of tax dollars to overseas organizations that promote or perform abortions.
- March 11, 2009. The Obama administration promotes an unlimited right to abortion at the United Nations and denies the negative effects of abortion on women.
- March 26, 2009. President Obama announces a \$50 million grant for the UNFPA, the UN agency which works closely with the Chinese government in enforcing their "one child" policy which involves forced abortion and sterilization.
- April 23, 2009. The Obama administration refused to appeal a ruling requiring the FDA to allow 17-year-old girls to purchase the morning after pill without a doctor's prescription or parental involvement beforehand.

- May 8, 2009. The President releases a new budget that allows the Legal Services Corporation to use tax dollars to pay for pro-abortion litigation, and calls for taxpayer funded abortions in Washington, D.C. On December 17, 2009, he signed into law the bill that overturned the 13-year long ban on tax-funding of abortion in the nation's capital.
- February 2, 2010. The President submits a new budget calling for taxpayer funding of abortions and more money for Planned Parenthood.
- February 5, 2010. The Obama administration issues a new order requiring all military hospitals and health centers to stock the morning after pill.
- April 7, 2010. The Obama administration pressures Kenya to adopt a new constitution that would legalize unlimited abortions.
- October 12, 2011. The Obama administration threatens to veto a bill that prohibits federal tax funding for abortions under Obamacare.
- October 12, 2011. Obama administration officials deny a grant to the U.S. Conference of Catholic Bishops to help victims of sex trafficking since their program would not refer victims to abortion clinics. The bishops had previously received a \$19 million dollar grant and had helped 3,012 victims. Professional grant reviewers gave the bishop's proposal the second highest score (89) among applicants, but were overruled by the administration, which awarded the grants to two lower-scoring (74 and 69) organizations. The two lower scorers did refer for abortions.
- November 14, 2011. The Government Accounting Office (GAO) reported that the Obama administration's U.S. Agency for International Development (USAID) apparently broke the law when it gave a \$400,000 grant to the International Development Law Organization which used the money to lobby for a permissive abortion clause in the constitution of Kenya. A 2010 poll of Kenyans found that 69% were against legalizing abortion, and only 9% were for it.
- Between January 20, 2009 and April 5, 2012, President Obama nominated or appointed at least 51 pro-abortion persons to various policy, administrative, and court positions.

**President Obama's Administration Targets Pro-Life Activists** On August 25, 2010, The FBI and the Department of Justice (DOJ) co-sponsored a training seminar with Planned Parenthood, the National Abortion Federation, and the Feminist Majority Foundation aimed at combating pro-life "violence" against the abortion industry. Pro-lifers were not invited, but after hearing about the seminar, they were permitted to attend, and were given an 84-page document entitled, "Resource Guide: Violence Against Reproductive Health Care Providers."<sup>7</sup>

While misguided persons have engaged in violence against abortion providers and facilities in the past, the situation has been relatively calm recently. What struck the pro-lifers in attendance at the seminar, however, was the fact that the printed material seemed to adopt the language and perspective of pro-choice advocates wholesale. Included under the heading of pro-life violence were examples of constitutionally protected free speech, including praying, providing women outside the abortion centers with alternatives information, and peaceful picketing. "Intimidation" included large graphic signs and pamphlets targeting staff, which could include documents warning women of an abortionist's record of injuring or killing patients.

The seminar manual urged trainees to "build a good working relationship with providers."

Speakers included both FBI and DOJ officials, as well as representatives from Planned Parenthood and the National Abortion Federation, an association of abortion providers. Pro-life attorney Matt Bowan stated, "The resource guide is not only completely one-sided, it adopts the bias against free speech that the abortion movement has been trying to promote for years." Wendy Wright of Concerned Women for America concluded, "the Department of Justice has become an arm of the abortion movement."

The Department of Justice, under Attorney General Eric Holder, has attempted to prosecute four apparently peaceful pro-life "sidewalk counselors" or picketers under the Freedom of Access to Clinic Act (FACE). Because of the First Amendment Freedom of Speech, FACE allows: protesting outside of clinics, distributing literature, carrying signs, shouting (as long as no personal threats are made), and singing hymns. However, the following cases have been pursued:

- David Hamilton was peacefully handing literature to women entering a clinic in Louisville, KY. A clinic escort attempted to forcibly block Hamilton to prevent him from sharing literature with the women. Over a year after the incident, the DOJ served Hamilton with a legal complaint, alleging he violated FACE. Filing the complaint just months after the training seminar mentioned above, the DOJ sought a \$15,000 penalty and \$5,000 in damages. Vince Heuser, one of Hamilton's attorneys, said the suit was "absolutely ridiculous," and that Hamilton's guilt was "seriously doubtful."
- Susan Pine has counseled women entering an abortion clinic in West Palm Beach, FL for some 20 years. The DOJ sought to prosecute her for violating the FACE Act, and sought thousands of dollars in fines, and a permanent injunction barring her from the clinic. U.S. District Judge Kenneth L. Ryskamp dismissed the case, saying the Justice Department had no evidence supporting the claim that Pine had violated any of the three elements of the FACE Act. Judge Ryskamp stated: "The evidence could not lead a rational jury to find that Ms. Pine's conduct constituted a physical obstruction within the meaning of FACE. ... Stretching the terms of FACE to apply to this case ... would unjustifiably impinge on Ms. Pine's First Amendment rights." Indeed, the case led the judge to suspect a conspiracy, saying, "The Court is at a loss as to why the government chose to prosecute this case in the first place. The Court can only wonder if this action was the result of a concerted effort between the Government and the [clinic], which began well before the date of the incident at issue, to quell Ms. Pine's activities." The DOJ finally decided to drop the case, and paid Ms. Pine \$120,000 for her legal fees.
- Seventy-nine year old Richard Retta has been sidewalk counseling outside a Washington, D.C. abortion clinic for over 10 years. The DOJ accused him of violating the FACE Act, claiming that he was one of "the most vocal and aggressive anti-abortion protestors." Indeed, they said, "On one occasion, defendant walked so closely to a patient that he stepped on the patient's shoe and broke the shoe strap." The DOJ is seeking a fine of \$10,000 and compensatory damages of \$5,000 each to three "victims" to whom he handed literature and told not to have an abortion.
- Kenneth Scott is a sidewalk counselor who offers pro-life literature and advice about nearby pregnancy resource centers to women going into the Planned Parenthood abortion clinic in Denver, CO. Attorney General Holder asserted ten separate violations of the FACE Act and sought a \$10,000 fine and an injunction to keep him 25 feet away from the facility. After a full-day hearing, U.S. District Judge Philip A. Brimmer ruled the government failed to prove it was reasonably likely to prevail at trial. After issuing a one-page appeal, the DOJ dropped the case.

**President Obama's Relationship With Planned Parenthood** President Obama has had a special relationship with the Planned Parenthood Federation of America, currently the nation's largest abortion provider, accounting for 27% of the nation's abortions, even before his election. Speaking at a Planned Parenthood fund-raising event in July, 2007, Obama said, "In my mind, reproductive care is essential care, basic care, so it is at the center, the heart of the [health care] plan that I will propose. ... What we're doing is to say that we're going to set up a public plan that all persons and all women can access if they don't have health insurance. It'll be a plan that will provide all essential services, including reproductive services."<sup>8</sup> In the same speech, Obama said, "The first thing I'd do as President is sign the Freedom of Choice Act."<sup>9</sup> Fortunately the Freedom of Choice Act did not pass in Congress. It would effectively have overturned hundreds of state laws which had put reasonable restrictions on abortion, and would have guaranteed direct public funding of abortion.

Although not cited by name, Planned Parenthood is eligible for millions of dollars under ObamaCare (ACA). Just recently (3/30/12), President Obama ran an official government ad for Planned Parenthood from the White House, defending it from those seeking to end its public funding.<sup>10</sup> The Obama Administration's loyalty to Planned Parenthood is demonstrated by its recent maneuvers to restore funding when three states – Indiana, New Hampshire, and Texas, decided to defund the organization. The Texas case suggests that President Obama is more concerned about funding Planned Parenthood than he is about the health needs of poor women.

After 70% of the Texas Senate and 66% of its House members voted to remove Planned Parenthood from the state's Medicaid Women's Health Program (WHP), the Obama administration notified Texas that it would cut off all funding for the program if Planned Parenthood was not reinstated. Texas refused, and the federal funds were cut off. The program serves between 100,000 and 130,000 women. Planned Parenthood clinics comprised just 1.7% of the agencies which provided care to these women.<sup>11</sup>

In Indiana, the Obama administration threatened to cut off billions in Medicaid funds if the state denied \$1.3 million to Planned Parenthood. The state was willing to fund Planned Parenthood if it separated its abortion operations from its other activities but Planned Parenthood declined. Planned Parenthood sued the state to have the funds restored, and the Obama administration filed legal papers supporting the suit.<sup>12</sup> No decision has been reached in this case as yet.

When the Executive Council of New Hampshire voted to cancel a \$1.8 million contract with Planned Parenthood, the Obama administration awarded a non-competitive \$1 million contract to Planned Parenthood of Northern New England. The Executive Council filed a formal protest with HHS and the Government Accountability Office, saying the grant was "improper, irregular, unnecessary, in contravention of the authority of the Executive Council and its duly elected members, and in disregard for the sovereignty of the State of New Hampshire." A federal judge has ordered HHS to release all public records pertaining to the grant. New Hampshire Right to Life (NHRTL) sought judicial help after the Obama administration failed to provide this information under the Freedom of Information Act. NHRTL attorney Michael Tierney said, "NHRTL has an interest in analyzing these communications and other documents to insure that HHS did not inappropriately or unlawfully award a grant to Planned Parenthood that should or could have been competitively bid and/or granted to some of the hospitals or community health centers that serve the cities where Planned Parenthood abortion clinics are located. NHRTL believes that with the recent cuts in subsidies to hospitals, the full-service hospitals located in each of the communities where Planned Parenthood operates an abortion clinic, would be better able to provide a variety of health care services to people in need."<sup>13</sup>

For its part, Planned Parenthood has long supported Barack Obama and the Democrat Party, which has chosen to be the party of abortion.<sup>14</sup> At the Planned Parenthood meeting where he promised to pass the Freedom of Choice Act if elected president, Cecile Richards, Planned Parenthood's president, called Obama a "passionate advocate" with a "long and consistent record of standing up for" legal abortion. (See reference note #9).

On January 22, 2008, the 35<sup>th</sup> anniversary of the Supreme Court's *Roe v. Wade* decision, Planned Parenthood unveiled a campaign to raise \$10 million to promote pro-abortion candidates for the White House and Congress in 2008.<sup>15</sup> In 2010, Planned Parenthood spent more than \$1 million on pro-abortion candidates. According to the Center for Responsive Politics, its political action committee (PAC) donated more than \$148,000 to federal candidates—almost all Democrats-- during the 2010 election cycle. The PAC spent more than \$443,000 overall, and Planned Parenthood also recorded \$905,796 in "independent" expenditures during that election cycle. The top beneficiaries of that money were Barbara Boxer (D,CA) and Patty Murray (D,WA) both staunch pro-abortionists. The Center for Responsive Politics noted that Planned Parenthood is the nation's chief pro-abortion lobbying organization. It stated, "In 2010, Planned Parenthood and a California affiliate together spent more than \$700,000 on federal lobbying efforts. By comparison, all other organizations that primarily advocate for abortion rights collectively spent \$247,280 on federal lobbying efforts during the same period."<sup>16</sup>

In October, 2010, Planned Parenthood initiated its "Birth Control Matters" campaign in conjunction with the American College of Obstetricians and Gynecologists. The plan was intended to exploit the Mikulski amendment to the Affordable Care Act (ObamaCare) to include birth control as a preventative service which must be funded. (See below).

**The Mikulski Amendment** When the Affordable Care Act was being debated in the U.S. Senate, Senator Barbara Mikulski (D,MD) introduced an amendment which "requires health plans to cover comprehensive women's preventive care and screenings at no cost to women." When questioned by her colleagues whether this amendment might be interpreted as covering abortion, Senator Mikulski responded:

"This amendment does not cover abortion. Abortion has never been defined as a preventive service. This amendment is strictly concerned with ensuring that women get the kind of preventive screenings and treatments they may need to prevent diseases particular to women such as breast cancer and cervical cancer. There is neither legislative intent nor legislative language that would cover abortion under this amendment, nor would abortion coverage be mandated in any way by the Secretary of Health and Human Services."<sup>17</sup>

However, when at least two Senators asked Senator Mikulski if she would insert a clause in her amendment to make sure abortion would not be included at some future point, she declined.

Senator Sam Brownback (R,KS), for example, asked her if she would include the language: "Nothing in this Act shall be construed to authorize the Secretary, or any other governmental or quasi-governmental entity, to define or classify abortion or abortion services as 'preventive care' or as a 'preventive service.'"<sup>18</sup>

Senator Orrin Hatch (R,UT) asked Senator Mikulski, "... would you be willing to put some language in [about] not including abortion services? Then I think you would have more support." She replied, "No, I would not be willing to do that at this time."<sup>19</sup>

A fact sheet published by Senator Mikulski's office also states: "Abortion is not included: Never has abortion been defined as a preventive service. This amendment clearly only covers preventive services."<sup>20</sup>

**The Institute of Medicine** The final determination of what constituted "preventive care" or "preventive services" for women under ObamaCare was delegated to the Health Resources and Service Administration (HRSA), an office under Kathleen Sebelius, Secretary of Health and Human Services. The HRSA in turn commissioned the Institute of Medicine to recommend what these preventive services might include. The IOM's recommendations were accepted, and, as noted above, included "all Food and Drug Administration approved contraceptive methods [including abortifacient drugs and devices], sterilization procedures, and patient education and counseling for all women with reproductive capacity."

Media reports about the IOM typically characterize it as an "independent" body of doctors and experts. The IOM panel issuing these recommendations did consist of 17 medical professionals, academicians and experts, but they hardly appear to be "independent." Included in their number are a member of the Board of Directors of the NARAL Pro-Choice America Foundation, a former board member of Physicians for Reproductive Choice and Health, a Chairwoman of Planned Parenthood League of Massachusetts, who is also affiliated with NOW, a former member and chair of the Board of Directors of Planned Parenthood of Nebraska and Council Bluffs, and a Vice President and Director of Women's Health Policy at the Kaiser Family Foundation (a major proponent of abortion and contraception on demand). Two of these persons have also contributed to pro-choice political individuals or campaigns, as have six of the other members. Together, these eight individuals have contributed at least \$124,400 to pro-abortion political causes. In summary, while 11 of the 17 IOM panel members have actively supported the pro-choice movement, none of the committee members were known to have supported the pro-life movement.<sup>21</sup>

During its deliberations, the IOM committee held what it called three "open information-gathering sessions." The most prevalent speakers at these sessions were representatives of the Guttmacher Institute, ACOG, Planned Parenthood, the Kaiser Family Foundation, the National Women's Law Center, and other advocates of contraception and abortion on demand. Pro-life groups were not permitted to make official comments but only allowed to speak during the public comment portion of their meeting. When questioned in a House Judiciary Committee hearing in February 2012, Dr. Linda Rosenstock, Chair of the IOM committee, admitted that some of the committee's meetings were held behind closed doors, and that the committee never considered any conscience clause or religious exemptions during their deliberations.<sup>22</sup>

There was one dissenting report submitted with the IOM's recommendations, written by committee member Anthony Lo Sasso. Lo Sasso wrote that there was an "unacceptable short time frame for the Preventive Services for Women Committee to conduct or solicit meaningful reviews of the evidence. ... As the report acknowledges, the lack of time prevented a serious and systematic review of evidence for preventive services. ...The committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy."<sup>23</sup>

**HHS Secretary Kathleen Sebelius** One of President Obama's most significant appointments was that of Kathleen Sebelius as Secretary of Health and Human Services. In this capacity, she is responsible, among many other things, for supervising the development and administration of ObamaCare. As a legislator and then governor of Kansas, Sebelius demonstrated herself to be a staunch pro-abortion activist. For example, as Kansas governor, Sebelius:

- In 2003 and 2005 vetoed bills that would have enhanced the medical safety of patients in Kansas abortion facilities, which inspections had shown were operating under dangerous conditions;
- In 2008 vetoed a measure to enforce the state’s parental notice law when minors were seeking abortions;
- In 2008 vetoed a bill that would have strengthened the state’s limits on late-term abortion;
- Vetoed a bill that would have required those doing later-term abortions to provide an explicit medical reason, and
- Vetoed a bill that required those doing post-viability abortions to report the diagnosis that led to the abortion.
- Appointed a former abortion facility escort, John Carmichael, to the state Human Rights Commission. His name was quietly withdrawn ten months later.
- Appointed political supporter and abortion practitioner Howard Ellis to serve on the Kansas State Board of Healing Arts after he surrendered his medical license in Missouri rather than face disciplinary action. He resigned two months later and was charged with attempting to persuade a physician to falsify records.

At her confirmation hearing before the U.S. Senate, Sebelius admitted that she had received almost \$40,000 from notorious late-term abortionist George Tiller, rather than the \$12,450 she originally reported. A 2002 letter from Tiller claimed he had donated more than \$200,000 to ProKanDo, a political action committee dedicated to defeating Sebelius’ gubernatorial opponent in the 2002 campaign. Tiller and his staff were guests at the Governor’s Mansion in 2007 at a party hosted by Sebelius. She claimed the affair was a prize won by Tiller at an auction sponsored by the Greater Kansas City Women’s Political Caucus, a group that promotes pro-abortion candidates.<sup>24</sup>

Under President Obama and Secretary Sebelius, in spite of assurances that they are eager to work out differences with pro-lifers, pro-life voices have largely been shut out of deliberations regarding relevant policy. While White House logs show Planned Parenthood CEO Cecile Richards and NARAL President Nancy Keenan to be frequent visitors, pro-lifers, including the Catholic Bishops, appear to generally be persona non grata. During a hearing before a U.S. Senate panel on February 2, 2012, Secretary Sebelius admitted she did not contact the nation’s Catholic bishops before issuing a revised ObamaCare mandate they strongly opposed. Senator Orrin Hatch (R,UT) noted that when he sent Sebelius a letter in July indicating the proposed contraceptive mandate would be “an affront to the natural rights to life, religious liberty and personal conscience,” her response completely ignored the issue. In October, he and 27 other Senators wrote her again, asking if HHS had any analysis of these religious liberty issues. He stated, “The response from your department completely ignored that request.” Although “the President’s Chief of Staff and Press Secretary have claimed that this mandate is consistent with the First Amendment, and the final rule you issued last Friday states that it is consistent with the First Amendment and the Religious Freedom Restoration Act,” Sebelius admitted that she had not asked the Justice Department for any analysis of the constitutional or statutory religious freedom issues raised by the mandate.<sup>25</sup>

### **C. THE CATHOLIC CHURCH RESPONDS**

**The Pope Speaks** I don’t know whether Pope Benedict XVI was aware of the contraception mandate when he wrote his “Brother Bishops” in the United States on January 19, 2012, but his letter set our current problems in a larger context, and I would like to quote certain passages from that letter.



“One of the most memorable aspects of my Pastoral Visit to the United States was the opportunity it afforded me to reflect on America’s historical experience of religious freedom, and specifically the relationship between religion and culture. At the heart of every culture, whether perceived or not, is a consensus about the nature of reality and the moral good. ... Today that consensus has eroded significantly in the face of powerful new cultural currents which are not only directly opposed to core moral teachings of the Judeo-Christian tradition, but increasingly hostile to Christianity as such.

- ... the Church in the United States is called ... to proclaim a Gospel which not only proposes unchanging moral truths but proposes them precisely as the key to human happiness and social prospering. ... When a culture attempts to suppress the dimension of ultimate mystery, and to close the doors to transcendent truth, it inevitably becomes impoverished and falls prey ... to reductionist and totalitarian readings of the human person and the nature of society.
- ... the Church [i.e., all of us] has a critical role to play in countering cultural currents which, on the basis of an extreme individualism, seek to promote notions of freedom detached from moral truth.
- ...The legitimate separation of Church and State cannot be taken to mean that the Church must be silent on certain issues.
- ... it is imperative that the entire Catholic community in the United States come to realize the grave threats to the Church’s public moral witness presented by a radical secularism which finds increasing expression in the political and cultural spheres. ...Of particular concern are certain attempts being made to limit that most cherished of American freedoms, the freedom of religion. Many of you have pointed out that concerted efforts have been made to deny the right of conscientious objection on the part of Catholic individuals and institutions with regard to cooperation in intrinsically evil practices. Others have spoken to me of a worrying tendency to reduce religious freedom to mere freedom of worship...

Here once more we see the need for an engaged, articulate and well-formed Catholic laity endowed with a strong critical sense vis-à-vis the dominant culture and with the courage to counter a reductive secularism which would delegitimize the Church’s participation in public debate about the issues which are determining the future of American society.”<sup>26</sup>

So the Pope himself has thrown down the gauntlet. How shall we respond?

**The Bishops Respond** Cardinal Timothy M. Dolan, Archbishop of New York and President of the U.S. Conference of Catholic Bishops (USCCB), emphasizes the fact that the Obama administration’s “contraception” mandate is primarily an attack on religious liberty and conscience.

By attempting to define which religious organizations (e.g. churches) are religious enough to merit exemption from the mandate, and which (e.g. hospitals, schools, social service agencies) are not, the federal government is radically overstepping the boundary between the Church and State, and violating that part of the First Amendment which says “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” It is for the Church, and not the State to determine what constitutes a religion’s belief system, and how its religion is to be exercised.

The Rev. Larry Snyder, President of Catholic Charities USA notes that the government’s exemption criteria are so narrow that even Jesus and His disciples would not qualify, since they served people of other faiths. The New Testament makes it clear that we are to love God (in worship) and neighbor (in service), (Matthew 22:37-40) and that our neighbors are those in need, regardless of their belief systems (the parable of the Good Samaritan, Luke 10:29-37), and that whatever we do for our neighbor, we do for Christ (Matthew 25:31-46). Indeed, serving all others who are in need (not just co-religionists) was a

major mission for Jesus Himself, Whom we are to emulate. Quoting from Isaiah in the synagogue in Nazareth, Jesus read:

“The Spirit of the Lord is upon me, because he has anointed me to bring glad tidings to the poor. He has sent me to proclaim liberty to captives and recovery of sight to the blind, to let the oppressed go free, and to proclaim a year acceptable to the Lord.” He then said, “Today this scripture passage is fulfilled in your hearing.” Luke 4:18-19, 21.

Clearly, the “contraception” mandate also violates the consciences of Catholics, and of anyone who, whether religious or not, are forced to pay for drugs, devices and procedures which they consider to be morally wrong, and even intrinsically evil.<sup>27</sup> These persons are forced by the government to choose between the following: 1) violating one’s conscience by cooperating in the provision of illicit practices and substances, 2) dropping health care coverage for one’s employees, or serving only one’s co-religionists, thus violating the religious norm to help all in need, or 3) suffering severe penalties for not complying with the law, thereby going out of business, and again, not serving others. In an op-ed piece in *The Wall Street Journal*, Cardinal Dolan said: “Religious freedom is the lifeblood of the American people, the cornerstone of American government. ... the Founding Fathers fiercely defended the right to conscience.”

- “George Washington himself declared: ‘The conscientious scruples of all men and women should be enshrined in our Constitution; they so esteemed religious liberty that they made it the first freedom in the Bill of Rights.’”
- “James Madison, a key defender of religious freedom and author of the First Amendment, said: ‘Conscience is the most sacred of all property.’”
- And we may also add Thomas Jefferson, who said: “No provision in our Constitution ought to be dearer to man than that which protects the Rights of Conscience against the enterprises of civil authority.”

Commenting on the Obama administration’s “compromise,” (religious employers would not have to pay for the objectionable services directly, but their insurance providers whom they hire would) Cardinal Dolan said:

- “The rule forces insurance companies to provide these services without co-pay, suggesting they are ‘free’ – but it is naïve to believe that. There is no free lunch, and you can be sure there’s no free abortion, sterilization or contraception. There will be a source of funding: you.”
- “Coercing religious ministries and citizens to pay directly [or indirectly] for actions that violate their teaching is an unprecedented incursion into freedom of conscience.”
- “The Catholic Church defends religious liberty, including freedom of conscience, for everyone. The Amish do not carry health insurance. The government respects their principles.

Christian Scientists want to heal by prayer alone, and the new health-care reform law respects that. Quakers and others object to killing even in wartime, and the government respects that principle for conscientious objectors. By its decision, the Obama administration has failed to show the same respect for the consciences of Catholics and others who object to treating pregnancy as a disease.”<sup>28</sup>

Agreeing that it is the church, not Caesar, that defines ministry, and that the Obama mandate is a radical departure from the past, a USCC Blog entry states, “In the past, numerous health care laws have refrained from defining how religious the objecting entity was – they simply said, for example, in the federal employees’ health plan, that an insurer was exempt from the mandate if it had ‘a religious objection’ or in that program and others, that health care providers, whether individual or institutional,

didn't have to take part if that would violate their 'religious beliefs or moral convictions.' The emphasis was on the nature of the objections, rather than on what kind of other ministries the entity engages in to make it 'religious.'"<sup>29</sup>

Within one week of President Obama's February 10, 2012 announcement that he had "compromised" and switched the responsibility for paying for contraceptives, abortifacients and sterilization from non-exempt religious employers to their insurance companies, all 181 bishops who lead dioceses in the U.S. responded with individual comments, statements or opinion columns condemning the new mandate. The United States Conference of Catholic Bishops (USCCB) issued two fact sheets (see Appendices A and B) to be distributed in parishes, and our own Bishop Murray had a letter read at all the Masses throughout the Diocese of Youngstown (see Appendix C).

In a March 2, 2012 letter to the nation's bishops, Archbishop Dolan, President of the USCCB, noted that after the "compromise" President Obama invited the Church to meet to "work out the wrinkles" and supposedly settle the Church's remaining objections. However, he was not optimistic that this could be accomplished. He noted, "At a recent meeting between staff of the bishops' conference and the White House staff, our staff members asked directly whether the

broader concerns of *religious freedom* ... are all off the table. They were informed that they are. So much for 'working out the wrinkles.' Instead, they advised the bishops' conference that we should listen to the 'enlightened' voices of accommodation, such as the recent, hardly surprising yet terribly unfortunate editorial in *America*.<sup>30</sup> The White House seems to think we bishops simply do not know or understand Catholic teaching and so, taking a cue from its own definition of *religious freedom*, now has nominated its own handpicked official Catholic teachers."<sup>31</sup>

How did the White House respond to this meeting? An anonymous administration official close to the negotiations told the press on March 4, 2012: "The White House has put nearly every issue requested by the bishops on the table for discussion and has sought the views of bishops on resolving difficult policy problems, only to be rebuffed. Unfortunately, it appears that some bishops and staff are more interested in the politics of this issue than resolving any underlying challenges faced by Catholic social service providers. Nonetheless, the administration is still hopeful we can find a solution to the most pressing issues."<sup>32</sup>

**Summary of the Bishops' Position and Plans for Redress**<sup>33</sup> In a statement of the Administrative Committee of the USCCB entitled, "United for Religious Freedom," the bishops of the United States first clarified what the debate concerning the HHS mandate is not about.

1. "This is not about access to contraception, which is ubiquitous and inexpensive."
2. "This is not about the religious freedom of Catholics only..."
3. "This is not about the Bishops' somehow 'banning contraception,' when the U.S. Supreme Court took that issue off the table two generations ago."
4. "This is not about the Church wanting to force anybody to do anything; it is instead about the federal government forcing the Church—consisting of its faithful and all but a few of its institutions—to act against Church teaching."
5. "This is not a matter of opposition to universal health care..."
6. "This is not a fight we want or asked for, but one forced upon us by government..."
7. "This is not a Republican or Democratic, a conservative or liberal issue; it is an American issue."

The bishops then outlined what the issue is about. They state the mandate is:

1. “An unwarranted government definition of religion. ... We are deeply concerned about this new definition of who we are as people of faith and what constitutes our ministry... Government has no place defining religion and religious ministry. HHS thus creates and enforces a new distinction—alien to our Catholic tradition and to federal law—between our houses of worship and our great ministries of service to our neighbors, namely, the poor, the homeless, the sick, the students in our schools and universities, and others in need, of any faith community or none.... We are commanded both to love and to serve the Lord; laws that protect our freedom to comply with one of these commands but not the other are nothing to celebrate.”
2. “A mandate to act against our teachings. ... Those deemed by HHS not to be “religious employers” will be forced by government to violate their own teachings within their very own institutions. This is not only an injustice in itself, but it also undermines the effective proclamation of those teachings to the faithful and to the world.”
3. “A violation of personal civil rights.” The mandate also affects all “individuals who, in their daily lives, strive constantly to act in accordance with their faith and moral values. They too, face a government mandate to aid in providing ‘services’ contrary to those values—whether in their sponsoring of, and payment for, insurance as employers; their payment of insurance premiums as employees; or as insurers themselves—without even the semblance of an exemption. This too is unprecedented in federal law, which has long been generous in protecting the rights of individuals not to act against their religious beliefs or moral convictions....”

Finally, the bishops indicate their next steps.

1. “We will continue our vigorous efforts at education and public advocacy on the principles of religious liberty and their application in this case (and others).”
2. “We will continue to accept any invitation to dialogue with the Executive Branch to protect the religious freedom that is rightly ours.”
3. “We will continue to pursue legislation to restore the same level of religious freedom we have enjoyed until just recently.”
4. “We will continue to explore our options for relief from the courts, under the U.S. Constitution and other federal laws that protect religious freedom.”
5. “All of these efforts will proceed concurrently, and in a manner that is mutually reinforcing.”
6. “Most importantly of all, we call upon the Catholic faithful, and all people of faith, throughout our country to join us in prayer and penance for our leaders and for the complete protection of our First Freedom—religious liberty—which is not only protected in the laws and customs of our great nations, but rooted in the teachings of our great Tradition. Prayer is the ultimate source of our strength—for without God, we can do nothing; but with God, all things are possible.”

#### **D. ARGUMENTS FOR AND AGAINST THE MANDATE**

**Initial Arguments for the Mandate and Their Refutation** We shall begin with a consideration of the original arguments for the “contraceptive” mandate outlined in the *Federal Register* where the final rules of the mandate were published on February 15, 2012. After stating each argument, we will present the case against that argument.

Prior to doing that, however, we might consider the language being used. As the abortion issue illustrates, if you use the right words (choice), you can get away with murder. Considering

contraception, abortifacients and sterilization as medical “preventive” services implies that pregnancy is a disease. But these products and procedures “take a perfectly healthy reproductive system and render it dysfunctional and sterile. ... These are purely elective treatments that prevent the natural and healthy consequences of a certain lifestyle choice.”<sup>34</sup> Since they are voluntary and discretionary, should anyone other than the individuals who choose them be asked to pay for them? If some people like to go to bars and drink, should we be expected to pay their cab fare home if they drink too much? Furthermore, saying insurance must pay for this voluntary activity is contrary to its purpose. Insurance is supposed to share the burdens of unforeseen illnesses and calamities, not pay for elective services, which are normally specifically excluded. Paying for “free” contraceptives, abortifacients and sterilization is really a government tax funneled through the insurance system.

**Women’s Health** The Institute of Medicine’s report maintained that the mandated “contraceptive” services are necessary to ensure women’s health and well-being. Supporters of the mandate seek to define it as primarily as a women’s health issue. The HHS mandate states: “Congress by amending the Affordable Care Act ...recognized that women have unique health care needs and burdens. Such needs include contraceptive services. ... Studies show a greater risk of preterm birth and low birth weight among unintended pregnancies compared with pregnancies that were planned. Contraceptives also have medical benefits for women who are contraindicated for pregnancy, and there are demonstrated preventive health benefits from contraceptives relating to conditions other than pregnancy (e.g., treatment of menstrual disorders, acne, and pelvic pain).”<sup>35</sup>

Taking the latter points first, we note that the healthiest sexual lifestyle is to confine sexual activity to one life-time partner. Pregnancy can be avoided by natural and non-contraceptive means and behavior. Although unintended pregnancies are not coterminous with births out of wedlock, we note that the “wait until marriage” norm was much more successful in preventing the latter than is today’s norm of “do what feels good, but be protected.” According to government data, the percent of births out of wedlock in 1940 was 3.8%. This, of course, was before the pill and other modern contraceptives. Today, (latest data is for 2009) with modern contraceptives, 41.0% of births occur out of wedlock. For women under 30, the percentage jumps to 53%.<sup>36</sup>

The use of hormonal contraceptives for purposes of treating maladies and diseases, as opposed to contraceptive purposes, is permitted and would provide no moral problems for Catholic or other employers opposed to contraception.

The IOM recommendations and the mandate virtually ignore the fact that hormonal contraceptives are not an unmixed blessing, and indeed, are injurious to women’s health. Some of the mandated contraceptives are associated with an increased risk of AIDS. Use of hormonal contraceptives increases a woman’s risk of breast, cervical and liver cancer. The International Agency for Research of Cancer of the World Health Organization states, “artificial contraceptives are carcinogenic on a par with cigarettes and asbestos.”<sup>37</sup> A review of 34 studies from various countries found that use of oral contraceptives increased the risk of pre-menopausal breast cancer by 19% overall, and by 44% for women who used them before a first full-term pregnancy.<sup>38</sup>

Hormonal contraceptive use is also related to increased risk of circulatory disorders. Nichols notes that “the Physician’s Desk Reference (PDR) states that users of birth control are three times more likely to develop superficial venous thrombosis [blood clots], and have a four to eleven times greater risk for deep vein thrombosis or pulmonary embolism than non-users. The risk goes up by a factor of 1.5 to 6 for those women who are genetically predisposed to clots.”<sup>39</sup>

On top of this “well-established” risk, two recent studies indicate that hormonal contraceptives containing drospirenone (a type of progestin) increase the risk 2-3 times more. The FDA did its own

study and found an increased risk of 1.5 times compared to hormonal contraceptives not containing this substance. It issued a safety warning on October 27, 2011 after reviewing these studies. Contraceptives containing drospirenone include Yaz, Gianvi, Loryna, Yasmin, Ocella, Syeda, Zarah, Beyaz and Safyral.<sup>40</sup> High blood pressure is also a fairly common effect of oral contraceptive use, which increases one's risk of strokes and heart attacks.

Besides these serious health consequences of hormonal contraceptives, there is considerable scientific evidence to suggest that the contraceptive culture is not accomplishing what it was supposed to accomplish, as is suggested by the data on out-of-wedlock births above.

A recent study noted, "Despite continued efforts to improve access to effective methods of contraception, the United States has one of the highest rates of unintended pregnancy among industrialized nations." The researchers studied the responses of a representative sample of 7,356 U.S. women aged 15-44 from the 2006-2008 National Survey of Family Growth. Focusing on the use and efficacy of emergency contraceptives (EC), they concluded: "...EC has yet to significantly affect U.S. rates of unintended pregnancy or abortion..."<sup>41</sup>

Several studies have shown that, not surprisingly, contraception increases sexual activity. With increased sexual activity comes more unintended pregnancies, abortions and sexually transmitted diseases (STDs).<sup>42</sup> A recent study in the U.S. found that; "Programs that increase access to contraception are found to decrease teen pregnancies in the short run but increase teen pregnancies in the long run."<sup>43</sup> It has been noted that states like California and New York, which are ranked high by the Guttmacher Institute on how well they meet existing needs for subsidized contraceptive services (1 and 5, respectively), also have some of the highest abortion rates (5,2).

Similar findings on the ineffectiveness of contraceptives in preventing unwanted pregnancies, STDs and abortion come from studies in the United Kingdom, Spain, and Sweden.<sup>44</sup> In spite of these data, family planning/population control advocates continue to want more money for more contraception. It appears this is ideologically driven, because contraception is ineffective, unrelated to the basic needs of health care, and harmful.

**Cost and Access** The contraceptive mandate argues, "A 2000 study estimated that it would cost employers 15 to 17 percent more not to provide contraceptive coverage in employee health plans than to provide such coverage, after accounting for both the direct medical costs of pregnancy and the indirect costs such as absence and reduced productivity."<sup>45</sup>

The mandate also considered the cost of contraceptives to women, saying, "Research also shows that cost sharing [in insurance plans] can be a significant barrier to effective contraception."<sup>46</sup> The cost to women was also seen as limiting access to contraceptives.

Considering "contraceptives" which are in fact abortifacients, pro-lifers say: Millions for life, not one cent for abortion. We also note the above argument ignores the long-range insurance costs dealing with the cancers, blood disorders, strokes and heart attacks that hormonal contraceptive users are more likely to suffer than non-users. Besides these, Professor Janet E. Smith notes, "... contraceptive lifestyles are tightly connected with increased welfare costs. Contraceptives fail--often. ... The vast majority of single women faced with unwed pregnancies who don't get abortions [another cause of significant health problems for women] become single parents. Single parenthood is certainly a major cause of poverty in this country. Moreover, there is strong evidence that the contraceptive lifestyle that leads many people to have sex before marriage, to cohabit and also to commit adultery, is a major cause of divorce. And divorce too is a major cause of poverty. ...Why should Catholics or anyone else have to pay for nonmedical care that has terrible physical, relational and social consequences?"<sup>47</sup>

The question of the cost of contraceptives for individual women was brought up most dramatically when Ms. Sandra Fluke, a 30-year-old Georgetown University Law student, presented testimony to the House Democratic Steering and Policy Committee.<sup>48</sup> Supposedly being aware of a survey of students, Ms. Fluke indicated many of them had a difficult time paying for their contraceptives. “Just last week,” she said, “a married female student told me that she had to stop using contraception because she and her husband just couldn’t fit it into their budget anymore. ... Without insurance coverage, contraception can cost a woman over \$3,000 during law school [normally a three year period]. For a lot of students who, like me, are on public interest scholarships, that’s practically an entire summer’s salary. ... Forty percent of female students at Georgetown Law report struggling financially as a result of this policy [Georgetown does not cover contraceptives in its health care policy].”<sup>49</sup>

The question of cost then became a question of access. Is birth control so expensive that some women are denied access to it? A quick bit of research showed that a Target store three miles from the Georgetown Law campus sells a month’s supply of birth control pills for \$9 (\$108 per year), and that they are also available on its website for the same price. There are three Planned Parenthood clinics located between 1.2 and 3.2 miles from campus, which sometimes give out contraceptives for free. A personal trip to a drugstore revealed a spermicide available for 63 cents a unit (an annual cost of \$229.95 if one wanted to use it daily), and a basal thermometer with an instruction book for natural family planning is available for a one-time cost of \$30.

The Guttmacher Institute reports that “Virtually all women (more than 99%) aged 15-44 who have ever had sexual intercourse have used at least one contraceptive method. [they include NFP]... only 7% of women aged 15-44 are at risk for unintended pregnancy but are not using contraceptives.”<sup>50</sup> The federal government already spends some \$1.9 billion a year providing contraceptives to low income women.<sup>51</sup> Contraceptives are available everywhere at low cost or no cost to those who desire them. Even if the mandate to provide contraceptives, abortifacients and sterilization for “free” did not violate the consciences of millions of Americans and trample on their right to exercise their religion, Janet Smith notes that, “Free provision of contraception .. is a very poor way to allocate scarce resources. ... every woman will get free contraceptives, even those in the top 1%. How silly is that?”<sup>52</sup>

Thus, in truth, considering all the ways pregnancy can be avoided, access to pregnancy prevention is already universally available at little or no cost.

**Nothing New Here** After initial objections to the mandate, HHS granted a “one-year safe harbor” to non-exempted, non-profit religious organizations for implementation of the rule. It implied that while still accomplishing its objectives, it could somehow accommodate their concerns, saying that “A future rulemaking would be informed by the existing practices of some issuers and religious organizations in the 28 States where contraception coverage requirements already exist, including Hawaii.”<sup>53</sup> Hence, it suggested that “there is nothing new here” and that the parties could “iron out the wrinkles” by following guidelines and rules that had already been developed in 28 states.

But as we have seen, the HHS mandate is radically different from previous rulings in the states and in the federal sphere, as it seeks to determine which organizations are religious enough to qualify for an exemption, and in so doing, attempts to define what a religion’s mission is, and how it may exercise that religion. Existing laws do not do that, but only ask if a religious objection is present, and if so, it exempts a person or organization from providing the service.

After a review of the relevant rules of the 28 states, the National Catholic Bioethics Center indicated that 25 of 28 of the states do not even come close to the HHS mandate’s stand. “There are only three states with such a narrow definition of religion, with some options for being exempt from state law, e.g. through self-insurance plans. Furthermore, the Catholic Church fought these narrow definitions of

religion in these states without success. Why should it simply acquiesce when they are imposed by the federal government?"<sup>54</sup>

**Mandate Observes Existing Conscience and Religious Freedom Guarantees** The *Federal Register* entry on the HHS mandate states, "These final regulations do not undermine the important protections that exist under conscience clauses and other religious exemptions in other areas of Federal Law. Conscience protections will continue to be respected and strongly enforced. This approach is consistent with the First Amendment and Religious Freedom Restoration Act."<sup>55</sup>

Obviously, the 7 state attorneys general, the 5 colleges/universities, the two organizations, and the two private individuals who have filed suits to date against the mandate in federal courts disagree with these bold assertions. (See list in Appendix D).

Other individuals have pointed out that the mandate violates "existing conscience protections on abortion such as the Hyde/Weldon Amendment (insofar as Plan B and Ella are covered) [and the] Church Amendments which protect conscience rights for those who object to contraceptives and other services on moral or religious grounds."<sup>56</sup> The USCCB says, "...a law in effect since 1973 says that no individual is required to take part in 'any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services' if it is 'contrary to his religious beliefs or moral convictions' (42 USC 300a-7 d)."<sup>57</sup>

Michael Stokes Paulsen, University Chair and Professor of Law at the University of St. Thomas in Minneapolis, said: The HHS Policy violates the First Amendment's Free Exercise of Religion clause, under any interpretation. It is [1] not neutral toward religion, [2] exempts some religious employers and not others, [3] vests government bureaucrats with broad discretion as to who will be exempted, [and] even more clearly, the policy [4] violates the Religious Freedom Restoration Act of 1993. ... Under RFRA, any federal law or regulation that burdens the exercise of religious convictions must give way to such beliefs, unless justified by a 'compelling' interest that can be achieved in no other way. The contraception cram-down cannot possibly pass such a stringent legal test."<sup>58</sup>

Horace Cooper, adjunct fellow at the National Center for Public Policy Research, who taught constitutional law at George Mason University in Virginia, said, "This regulation is a cruel use of federal power that rejects over 200 years of understanding about religious freedom in American. ... No American, employer or worker, should be forced to choose between their religious precepts and obedience to the law. It's beyond bizarre to argue that the only way to ensure that the 'morning after' pill or other abortifacients are available is to force religious organizations to pay for them."<sup>59</sup>

**Everybody's Doing It** Although not an argument developed in the *Federal Register*, the national discussion of this issue has many pointing out that a very large percentage of Catholic women do or have used contraception. Furthermore, one study also found that "a multi-year review of 176 Catholic hospitals in seven states found that 48% have performed direct female [contraceptive] sterilizations, which totaled 20,073 procedures.<sup>60</sup> Hence, they argue, since everybody's doing it, the Catholic Bishops ought to face reality and submit to the mandate's dictates.

As we all know, however, morality is not a public opinion poll. Because a majority of people are doing wrong, it does not become right. Given that the HHS mandate calls us to do evil by supporting contraception, abortion and sterilization, it asks us to cooperate with evil. Philosophers distinguish between formal and material cooperation with evil. "Formal cooperation involves acts that assist another in wrongdoing, in which the intention of the one providing assistance is precisely to further the wrongful aims of the primary agent."<sup>61</sup>



Material cooperation involves acts that assist another in wrongdoing, even though one would not choose to do so, but does so as the result of various pressures (such as complying with a law), even though he/she knows the outcome will be evil. Material cooperation and the guilt ensuing may be modified by the seriousness of the evil outcome, and by how close or remote from the evil outcome (how many steps from) the actor's participation is. Assuming one does not wish to support contraception, abortion and sterilization, complying with the mandate would involve relatively direct material cooperation, both because of the physical, mental and spiritual harm done to individuals, and the scandal given to those aware of our cooperation. (That is, our actions may lead others to cooperate with evil, and undermine the validity of the Catholic Church's teaching on these matters for all who are aware of them). Hence, as Fr. John Trigilio, Jr. said recently, "Immoral laws are sins of the legislator [or rule giver]. Complying with immoral laws are sins of the citizens."<sup>62</sup>

In an April 13, 2012 interview on EWTN, Archbishop Raymond L. Burke, an American Cardinal serving as the Prefect of the Supreme Tribunal of the Apostolic Signatura (the highest court in the Vatican), said, "We cannot, we must not, comply with the mandate."<sup>63</sup> Many American bishops have said the same.

#### **E. MEDIA TREATMENT OF THE ISSUES**

**The Mainstream Media** The term "mainstream media" has been in use for several years, and is generally understood to refer to the three main radio/TV stations, ABC, CBS, and NBC, (as opposed to the newer cable and on-line news and opinion sources) along with many of the print news services, such as the Associated Press. There is considerable evidence to suggest that these media lean to the left on the political spectrum, and to the pro-choice side of the life-issues spectrum, which includes the abortion, stem-cell and to a lesser extent, the assisted suicide controversies. As the following studies show, these media also tend to take a favorable view of the Obama administration's "contraception" mandate in what they choose to report, how they report it, and just as importantly, in what they choose not to report.

The Media Research Center (MRC) studied how the three mainstream broadcast networks covered the Obama administration's "contraception" mandate from January 30 through February 15, 2012. The first thing they noted was that ABC, CBS and NBC did not cover the controversy until after some two weeks had past. The networks downplayed the religious freedom component of the controversy, and spun it as a political controversy between liberals and conservatives. Had they reported the religious aspect of the controversy in a more balanced fashion, one would have expected about an equal number of religious representatives presenting their case against government or other secular supporters of the mandate on their side. Instead, MRC found that of 69 "talking heads" interviewed during this period, 87% were politicians, and only 13% were Catholic clergy or institution officials. The broadcast media's scorecards were:

- **ABC** had the least amount of coverage during this period, and failed to bring Catholic leadership onto their newscasts as guests. The network, however, had the lowest talking head imbalance, 10 politicians to two clergy.
- **CBS** had a talking head imbalance of 25 politicians to 4 clergy. To their credit, they did interview Archbishop Timothy Dolan, President of the USCCB, for seven minutes on one show. However, they also seemed to give the impression that most people at Catholic hospitals and colleges were in favor of the mandate, interviewing a student at Catholic University and a "nurse and mother of two" who works at a Catholic hospital, both of whom favored the mandate. They apparently could not find an employee at a Catholic institution that was opposed to the mandate. CBS also touted a poll they took which claimed that 61% of Catholics favored "President Obama's contraception policy." That poll (Poll #4 below) was out of line with most

others conducted during the same time, and neglected to mention that institutions might have moral or religious objection to the policy.

- **NBC** had a talking head imbalance of 25 politicians to 3 clergy. They also failed to bring Catholic leadership onto their newscasts. NBC also apparently could not find an employee at a Catholic institution who favored the bishops' position.

Overall, the Media Research Center found that only 10% of the sound bites on ABC, CBS and NBC came from Catholic Church officials.<sup>64</sup>

Following the story for 18 days after President Obama first announced his "compromise," the Media Research Center noted, "Instead of a story about the overreach of big government and violation of religious freedom, the networks are now spinning the birth control story as one about out-of-control conservatives, to the point of ignoring broad and continuing opposition—including a lawsuit by seven state attorneys general—to the President's power grab. ... just as they have ignored the states' lawsuit, the [three] broadcast networks have failed to acknowledge any of the private lawsuits against the Obama administration's attempt to impose its will on private religious institutions."<sup>65</sup> (See Appendix D for a list of the lawsuits).

Bill Donahue of The Catholic League also did a small study on February 9, 2012, which conducted a Lexis-Nexis search linking the words "Catholic," "Obama" and "birth control." And (recognizing that some studies will be repeated via the wire services) found 345 studies with those terms. When the words "morning-after pill" were included, the number dropped to 62. When "abortifacients" was linked to the initial three terms, there were only 31 stories. Finally, when the term "abortion-inducing drugs" was included, the number dropped to 20.<sup>66</sup> In other words, the media were not telling the whole truth about what the HHS rule mandates.

The moral of these two stories is that if any of these networks are your sole or main source(s) of the news, you are getting a slanted view of the story, and you also may be getting only part of the story. (This also holds for many other topics).

**Public Opinion** Table 1 dealing with public opinion toward the mandate illustrates that Catholics are not alone in their opposition to it. It also shows that major pollsters tend to ask questions from the pro-choice/secular point of view, as the Summaries at the end of each poll section illustrate.

## **F. POSSIBLE CONSEQUENCES: PRESENT AND FUTURE**

### ***PRESENT***

**Catholic Agencies Affected** There are some 251 Catholic colleges and universities in the U.S., enrolling over 900,000 students. Catholic elementary schools and Catholic high schools (which now employ primarily lay teachers) number 6,386 and 1,203, respectively. Together, the latter two systems enroll over 2.5 million students.<sup>67</sup>

There are some 573 Catholic hospitals in the U.S., constituting 12.6% of all U.S. hospitals, and accounting for 15.6% of all admissions. In 2005, some 84.7 million patients were served. About 32% of Catholic hospitals are in rural areas, where patients have few other options for care. Without these hospitals, 120,000 beds would disappear from our health care system.<sup>68</sup>

In 2010, there were 171 Catholic Charities agencies with 3,301 local offices which served 10.3 million people.<sup>69</sup>

Obviously, if these institutions closed because they could not remain open without violating Church teaching, it would have a huge impact on American society.

**Cost** Blue Cross's unofficial estimate put the cost of "free" birth control to consumers and insurance companies at \$2.8 billion. A survey of 15 pharmacy directors of health insurance plans found that 40% thought their current costs would increase, 20% thought the mandate would have no effect, and 33% did not know what its effect might be.

Regarding the costs of non-compliance, Republicans in Congress asked the Congressional Research Service (CRS) to examine the mandate and the consequences for employers that do not want to follow it. The CRS responded, "A group health plan that fails to comply with the pertinent requirements ... may be subject to a tax of \$100 for each day in the noncompliance period with respect to each individual to whom such failure relates. However, if failures are not corrected before a notice of examination for tax liability is sent to the employer, and these failures occur or continue during the period under examination, the penalty will not be less than \$2,500. Where violations are considered to be more than de minimis, the amount will not be less than \$15,000."<sup>70</sup>

At least two organizations have estimated their costs for non-compliance. Catholic Charities sets their cost at \$140 million per year. Belmont Abbey College set their cost at \$300,000 per year. Obviously, they and most of the other organizations affected would go bankrupt in a relatively short time.

**The Slippery Slope** If the present HHS mandate goes unchallenged, there is nothing to stop the Obama administration from declaring abortion, assisted suicide, euthanasia, or any other service it deems necessary to be covered by insurance. Indeed, with abortion, it already has.

Using lawyerly language, President Obama misled the American people when he spoke before a joint session of Congress on September 9, 2009 and claimed that "under our [health] plan, no federal dollars will be used to fund abortion." While perhaps technically correct, he accomplished the same thing under ObamaCare by mandating that the states set up at least one insurance exchange in each state that offered abortion, and then mandating that each individual enrolled in ObamaCare contribute not less than \$1 per month as an "abortion surcharge" to a fund that will pay for abortion.<sup>71</sup> This aspect of the Affordable Care Act, found in Section 1303, will go into effect on January 1, 2014. Contradicting the Obama administration's promise to have the most transparent government in our history, the rule states that the abortion surcharge "can only be disclosed to the enrollee at the time of enrollment. Furthermore, insurance plans may only advertise the total cost of the premiums without disclosing that enrollees will be charged a [minimum] \$1 per month fee to pay directly to subsidize abortions."<sup>72</sup>

**Background: Religion Under Attack** Social commentators have noted that in recent years, the Christian and Catholic religions have been under attack in America by the media, private organizations, and by government.<sup>73</sup>

Focusing on governmental activity, we may note the following:<sup>74</sup>

- When President Obama first assumed office, there was a trial balloon to eliminate the tax-exempt status of religious organizations. It was a lead balloon.
- Traditional military support for religious-based events started to dry up. Patriotic fly-bys and military courtesy participation at religious events ceased.
- Prayers at national cemeteries are being edited to take out "offending" words like "Jesus Christ." Military chaplains are ordered not to use this name in public prayer.
- After 15 years of service, a Jackson County, IN food pantry was shut down by the federal government because it asked recipients if they wanted to pray before receiving commodities.

In a document released on April 12, 2012, the U.S. Conference of Catholic Bishops added the following to the mix:<sup>75</sup>

- An Alabama law makes it illegal for a priest to baptize, hear the confession of, celebrate the anointing of the sick with, or preach the word of God to an undocumented immigrant.
- In 2009, the Judiciary Committee of the Connecticut Legislature proposed to force Catholic parishes to be restructured according to a congregational model, so that it could better define “religious minister” and “religious employer.”
- Boston, San Francisco, the District of Columbia and Illinois have driven local Catholic Charities out of adoption and foster care services—by revoking their licenses, ending their government contracts, or both—because those Charities refused to place children with same-sex couples or unmarried opposite-sex couples who cohabit.
- New York City enacted a rule that barred the Bronx Household of Faith and 60 other churches from renting public schools on weekends for worship services even though non-religious groups could rent them.
- As noted above, the federal government recently turned down a grant application by the USCCB to continue to serve victims of sex trafficking because they would not refer their clients to abortion facilities.

### ***THE FUTURE?***

Among several others, Randy Sly has noted a small shift in language in the Obama administration which may foretell big changes. He states, “Since the initially strong language on religious freedom used in President Obama’s Cairo speech [June 4, 2009] presidential references to religious freedom have become rare, often replaced, at most, with references to freedom of worship.”<sup>76</sup> Sly notes three instances where this has taken place in Obama’s addresses, as well as four instances where Secretary of State Hillary Clinton has referred to freedom of worship.

Sly continues, “Let’s be clear ... language matters when it comes to defining freedoms and limits. A shift from freedom of religion to freedom of worship moves the dialog from the world state into the physical confines of a church, temple, synagogue or mosque. Such limitations can unleash an unbridled initiative that we have only experienced in a mild way through actions determined to remove roadside crosses, wearing of religious t-shirts and pro-life pins as well as any initiatives of evangelization. It also could exclude our right to raise our children in our faith, the right to religious education, literature or media, the right to raise funds or organize charitable activities and the right to express religious beliefs in the normal course of life.”

Others have noted that the Obama administration’s propensity to expand the scope and power of the federal government may well be accompanied by a propensity to limit the influence of other institutions, including the church. Quoting Chicago’s Francis Cardinal George, Philadelphia’s Archbishop Charles J. Chaput noted that “Cardinal George has likened the Obama administration’s rhetorical shift from supporting “freedom of religion” to “freedom of worship” to Russia’s constitutional freedom to worship guarantee under communism, when the state controlled the church.” ... “Freedom of worship was guaranteed in the Constitution of the former Soviet Union’ Cardinal George said. ‘You could go to church, if you could find one. The church, however, could do nothing except conduct religious rites in places of worship—no schools, religious publications, health care institutions, organized charity, ministry for justice and the works of mercy that flow naturally from a living faith. All of these were co-opted by the government. We fought a long Cold War to defeat that vision of society.’”

Archbishop Chaput warned that unless people keep alive their constitutional right to freedom of religion with their convictions and lived witness, the Constitution itself is basically worthless. “The most

important thing [Catholics] can do is realize that constitutional guarantees are just scraps of elegant prose unless people fight to keep them alive.”<sup>77</sup>

## **G. REMEDIES: WHAT THEN ARE WE TO DO?**

### **Some Potential Remedies Have Already Been Initiated**

- The Supreme Court is now considering the constitutionality of the individual mandate to purchase ObamaCare. If it falls, the HHS mandate to purchase insurance coverage for contraceptives, abortifacient drugs and devices, sterilization, and abortion itself may also fall.
- As noted in Appendix D, several lawsuits have been brought challenging the constitutionality of the HHS mandate.
- Senator Roy Blunt (R,MO) introduced an amendment termed the Respect for Rights of Conscience Act, but it was defeated in the Senate on March 1, 2012 by a vote of 51-48. 97.8% percent of the Republicans voted for the amendment while 94.3% of the Democrats voted against it. Senators Roy Blunt and Ben Nelson (D,NE) introduced amendment #1520 in the Senate on March 16, 2012, but a vote on it was blocked by Senate Majority Leader Harry Reid (D,NV).
- Senator Marco Rubio (R,FL) has introduced the **Religious Freedom Restoration Act of 2012** in the U.S. Senate. We should contact our senators to let them know what we think about this act. Since it is unlikely that the present Democratically controlled Senate will pass it, and President Obama is likely to veto it if it should pass, we should elect persons in 2012 that will support it.
- **HR 1179, the Respect for Rights of Conscience Act** was introduced in the U.S. House by Rep. Jeff Fortenberry (R,NE). Its purpose is 1) to ensure that health care stakeholders retain the right to provide, purchase, or enroll in health coverage that is consistent with their religious beliefs and moral convictions, without fear of being penalized or discriminated against under PPACA and 2) to ensure that no requirements in PPACA creates new pressures to exclude those exercising such conscientious objection from health plans or other programs under PPACA. The U.S. Senate version of this bill is **S.1467**.

**Hence, we can contact our U.S. Representatives and our U.S. Senators and let them know our thoughts on these active pieces of legislation.**

### **What Potential Remedies Can We Initiate?**

**Sign Petitions** Catholic Advocate is asking for at least one leader per parish (from among your women’s group?) to sign up at [www.ProtectOurConscience.org](http://www.ProtectOurConscience.org). They state, “If faithful Catholics were able to average 115 letters (or emails or phone calls) per parish to their Representatives and each Senator, Capitol Hill would receive over six million contacts on this issue.” They have the tools to get you started.

You may also sign individual petitions (differently worded, sign the one you like) at any of several websites, including:

- [www.aclj.org](http://www.aclj.org). Click on Petitions and Committees at the website.
- [www.stopthebirthcontrolmandate.org](http://www.stopthebirthcontrolmandate.org)
- [www.womenspeakforthemselves.com](http://www.womenspeakforthemselves.com)
- [www.nationalprolifealliance.com](http://www.nationalprolifealliance.com)

**Vote in November.**

1. Not registered? Call the Board of Elections in your county.

Portage County Board of Elections	Summit County Board of Elections
449 S. Meridian Street #101	470 Grant Street
Ravenna, OH 44266	Akron, OH 44311
330.297.3511	330.643.5200
House: 8-4:30, M-F	

**Ohio is one of the critical states in the coming November, 2012 election.** We know President Obama's record on abortion. We can't do worse.

U.S. Senate We have two Senators. Contact information is below:

Senator Sherrod Brown (D)	Senator Rob Portman (R)
713 Hart Senate Office Bldg.	338 Russell Senate Office Bldg.
Washington, D.C. 20510	Washington, D.C. 20510
(202) 224-2315	(202) 224-3353

To email the Senators, go to United States Senate on the computer.

The National Right to Life Committee (NRLC) scores all U.S. Senators when they vote on the life issues in each session of Congress. For the four Senate votes in the 112<sup>th</sup> Congress:

- Senator Portman received a 100% rating. (Voted pro-life each time).
- Senator Brown received a 0% rating. (Did not vote pro-life at all), and has a long anti-life record going back at least to 2007.

Senator Portman is not running for reelection in 2012 since his term of office is not up. Senator Brown is running for reelection in 2012.

Senator Brown's opponent is Josh Mandel (R), who is pro-life and endorsed by Ohio Right to Life's Political Action Committee.

For more detailed information on the votes, go to [www.nrlc.org](http://www.nrlc.org).

U.S. House of Representatives

Our representative in Kent is

Representative Tim Ryan  
1421 Longworth House Office Bldg.  
Washington, D.C. 20515  
(202) 225-5261

If you live elsewhere and know Ryan is not your representative, you can go to U.S. House of Representatives on the computer, enter your state and zip code (+ 4 digits) and find out who your representative is.

The National Right to Life Committee (NRLC) scores all U.S. Representatives when they vote on the life issues in each session of Congress. For the seven House votes on the life issues in the 112<sup>th</sup> Congress, Representative Ryan received a 0% rating. (Did not vote pro-life), and has a poor pro-life record going back to at least the 110<sup>th</sup> Congress.

If you want more specific information on these votes, go to [www.nrlc.org](http://www.nrlc.org).

**If we want to maintain our religious freedom, our rights of conscience, and promote a Culture of Life, we have to elect the officials at all levels that will support us.**

**Stay Informed** Is some or all of what you learned tonight, or in this paper new to you? Perhaps you need to expand your sources of information. Remember, propaganda consists not only in the slanted news you hear, but also in what is not reported.

**Some sources of information other than the mainstream media are:**

- The websites of: LifeNews.com, LifeSiteNews.com, Family Research Council, frc.org, U.S. Conference of Catholic Bishops, usccb.org, National Right to Life Committee, nrlc.org, and other sites noted in the reference notes to this paper.
- TV: Fox News Channel; EWTN.
- Radio: WILB, EWTN
- Newspapers: The Exponent, National Catholic Register, The Wanderer,
- National Right to Life News.
- **Read the Bishop's latest, "Our First, Most Cherished Liberty," at usccb.org.**

**Once Informed, Inform Others**

- Family, Friends, Work Associates
- Form a committee and inform members of your parish with bulletin inserts.

**Pray.... Without God Nothing is Possible. With God All Things Are Possible**

**BE CREATIVE AND ADD TO THIS "WHAT THEN SHALL WE DO" LIST.**

## REFERENCE NOTES

1. All quotes in this section are from the *Federal Register*, Vol. 77, No. 31 (2/13/12): 8725-8729.
2. For the mechanism of action of these drugs and devices, see Practice Committee of the American Society for Reproductive Medicine, "Hormonal Contraception: Recent Advances and Controversies," *Fertility and Sterility* 90:5 (Nov. 2008) Supplement, pp. S103-S113, and Documentation by the Federal Drug Administration at [www.accessdata.fda.gov](http://www.accessdata.fda.gov). Type in the name of the drug or device, scrolling down to "mechanism of action". The description by the FDA is sometimes overly subtle. For example, for the drug ella, it says: "The likely primary mechanism of action ... is therefore inhibition or delay of ovulation; however alterations to the endometrium that may affect implantation may also contribute to efficacy." That is, it may thin the lining of the womb so that implantation does not occur, or it may cause the lining of the womb to be inhospitable to an already implanted embryo.
3. Steven Ertelt, "Obama Revises Mandate: Free Abortion-Causing Drugs for Women," LifeNews.com (2/10/12).
4. U.S. Census Bureau, *Statistical Abstract of the United States:2000*, Table 82, and *Statistical Abstract of the United States:2012*, Table 83.
5. The information in this section is from [Wikipedia.org](http://Wikipedia.org), "Beginning of Pregnancy Controversy," downloaded 3/23/12.
6. This is a partial list. For more details, see Steven Ertelt, "President Barack Obama's Pro-Abortion Record: A Pro-Life Compilation," LifeNews.com (11/71/10), and Mathew D. Staver, "Obama's Appointees and Nominees," Liberty Council, Washington, D.C., 2010.
7. For more details, see Kathleen Gilbert, "FBI, Obama Admin Join Pro-Abort Groups to Host Training Seminar against Pro-Life Activity," LifeSiteNew.com (9/30/10).
8. Bill Saunders and Anna Franzonello, "Obama HHS Paves the Way to Taxpayer Funding of Abortions," LifeNews.com (2/23/12).
9. FRC Action, "Planned Parenthood's Candidate," (7/9/08) Family Research Council.
10. Steven Ertelt, "Obama Praises Planned Parenthood Abortion Biz in New Video," LifeNews.com, (3/29/12).
11. See Joe Pojman, "Obama Killing Women's Health Program to Fund Planned Parenthood," LifeNews.com (2/29/12) and search this website for other related articles.
12. Steven Ertelt, "Planned Parenthood, Indiana Battle in Court Over Tax Funding," LifeNews.com, (10/21/11).
13. Information on the New Hampshire case is from Steven Ertelt, "Judge: Obama Must Furnish Planned Parenthood Funding Docs," LifeNews.com, (3/13/12).
14. See the 2008 Democratic National Platform, "Renewing America's Promise," p.50, "Choice" as approved by the 2008 Democratic National Convention, (8/25/08) online.
15. Steven Ertelt, "Planned Parenthood Will Spend \$10Million Pushing Pro-Abortion Candidates," LifeNews.com, (1/22/08).
16. Steven Ertelt, "Planned Parenthood Spent \$1M on Democrats in 2010, 600K Lobbying," LifeNews.com, (4/12/11).



17. Congressional Record, December 3, 2009, page S12274, downloaded 3/22/12.
18. Ibid.
19. Steven Ertelt, "Planned Parenthood Launches Campaign to Fund Birth Control Via ObamaCare," LifeNews.com (10/14/10).
20. "Mikulski Amendment Improves Coverage of Women's Preventive Health Services and Lowers Cost to Women," [www.mikulski.senate.gov](http://www.mikulski.senate.gov) (12/9/09) downloaded 4/8/12.
21. Steven Ertelt, "Panel Behind Obama Mandate Dominated by Pro-Abortion Organizations," LifeNews.com (2/16/12)
22. Steven Ertelt, "Obama Mandate Panel Never Considered Conscience Clause," LifeNews.com, (2/29/12).
23. Quotes are from "Clinical Preventive Services for Women: Closing the Gaps," Institute of Medicine, Report released (7/19/11) and Steven Ertelt, "Obama Mandate Panel Never Considered Conscience Clause," LifeNews.com (2/29/12).
24. Information on Sebelius in this section from: Steven Ertelt, "Obama Will Likely Pick Pro-Abortion Gov. Kathleen Sebelius as Health Secretary," LifeNews.com (2/18/09); Steven Ertelt, "President Barack Obama Names Pro-Abortion Kathleen Sebelius Health Secretary," LifeNew.com (2/28/09); Tony Perkins of the Family Research Council, "The Truth about Gov. Sebelius and Her Anti-Woman Record," (3/5/09); Jim Brown, "Sebelius Has Integrity Issue," onenewsnow.com, (4/21/09). George Tiller went to trial on March 23, 2009 on 19 counts of violating a Kansas law that banned post-viability abortions unless the doctor "has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant women." Although Tiller did pay the doctor who made him referrals (and therefore was "financially affiliated" with her), much of the evidence was not admitted, and Tiller was acquitted. Dr. Ann Kristin Neuhaus, the second physician involved, had her medical license revoked by the Kansas State Board of Healing Arts on February 12, 2012. Neuhaus had provided the second opinion Tiller needed to legally justify the expensive post-viability abortions that were his specialty. The records show that over a seven-year period, Neuhaus failed to conduct proper mental health evaluations on eleven patients she referred to Tiller. Neuhaus was simply rubber-stamping diagnoses for Tiller that would justify late-term abortions. In one case, there is no record of her ever seeing or diagnosing the patient she referred, and in other instances, her referral sheets were dated after the abortions had already been performed. Tiller was shot and killed on May 31, 2009. Had he lived, most likely there was enough evidence in Neuhaus' trial to convict him for doing illegal late-term abortions over at least a seven year period. See Cheryl Sullenger, "George Tiller Did Illegal Late-Term Abortions for Years," LifeNews.com (2/23/12).
25. Steven Ertelt, "Sebelius: Didn't Talk to Bishops About Obama Mandate," LifeNews.com, (2/15/12).
26. "Address of His Holiness Benedict XVI to the Bishops of the United States of America on Their 'Ad Limina' Visit." (1/19/12) [www.vatican.va/holy-father/benedict-xvi](http://www.vatican.va/holy-father/benedict-xvi).

27. Since killing an innocent human being in the womb is an intrinsic evil, this case is even worse than, for example, having to pay taxes to support an unpopular war. Wars may be just or unjust in different degrees, but killing the unborn is always wrong.
28. Quotes from Cardinal Dolan in this section are from his op-ed piece, "ObamaCare and Religious Freedom," *The Wall Street Journal* (1/25/12).
29. "Health and Human Services' Sacrosanct Mandate," USCCBLOG (3/23/12), [usccbmedia.blogspot.com](http://usccbmedia.blogspot.com).
30. The Editors, "Policy, Not Liberty," *America*, (3/5/12). Available online at [americamagazine.org](http://americamagazine.org).
31. Letter of Cardinal Timothy M. Dolan to "My brother bishops," dated 3/2/12. Available online at [usccb.org](http://usccb.org).
32. "White House, Bishop at Odds Over State of Talks on Birth Control Policy," by Plain Dealer Wire Services, (3/6/12), online at [blog.cleveland.com/nationworld](http://blog.cleveland.com/nationworld). The charge that religious leaders are only "playing politics" with this issue was made even more vociferously by Representative Gerry Connolly (D,VA) who addressed the first panel of a House committee hearing on February 17, 2012, entitled "Line Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?" The panel included a Catholic bishop, two representatives of the Southern Baptist Convention, the president of the Lutheran Church—Missouri Synod, and a rabbi from Yeshiva University. Rep. Connolly said: "I have to assume each of you gentlemen came here in good faith, but surely it hasn't escaped your attention that you're being used for a political agenda. Maybe you're willingly being used, I don't know. ... I think this is a shameful exercise, and I am very sad that you have chosen to participate and be used the way you're being used. Here you are being asked to testify about your rights being trampled on – an overstatement if there ever was one. ... This is a panel designed – with your conscious participation or not – to try one more time to embarrass the President of the United States and his administration by overstating an issue which is sacred to all Americans, religious freedom. ... Men and women of the cloth it seems to me ought to run, not walk, away from that line." While the White House's charge of playing politics with the issue appears to be spin, Connolly's demeanor during his remarks suggests he really does not appreciate the sincerity and gravity of religious leaders' objections to the mandate. The text and a video of his remarks may be seen at Ben Johnson, "Dem. Congressman Lectures Bishop, Rabbi, Christian Leaders on HHS Mandate," [LifeSiteNews.com](http://LifeSiteNews.com) (2/17/11).
33. Quotes in this section are from "United for Religious Freedom," A Statement of the Administrative Committee of the United States Conference of Catholic Bishops," (3/14/12), available online at [usccb.org](http://usccb.org).
34. Denise J. Hunnell, MD, "The Church Should 'Stay Out of the Bedroom,' But Pick Up the Tab for What Happens There?" [LifeSitesNews.com](http://LifeSitesNews.com) (2/20/12).
35. "Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act," *Federal Register* Vol. 77, No. 31 (2/15/12) p. 8727. (Hereinafter *Federal Register*)
36. 1940 data from Gardner Harris, "Out-of-Wedlock Births Are Soaring, U.S. Reports," *The New York Times* (5/13/09). 2009 data is from Joyce A. Martin et al., "Births: Final Data for 2009," *National Vital Statistics Reports*, Vol. 60, No. 1, (11/3/11) Table C, p. 8, and KJ Dell'Antonia, "Younger Mothers, Out-of-Wedlock Births Are the New Normal," *The New York Times* (2/19/12) available on [parenting.blogs.nytimes.com](http://parenting.blogs.nytimes.com).

37. See National Cancer Institute Fact Sheet, "Oral Contraceptives and Cancer Risk: Questions and Answers," downloaded (10/20/11) and Adam Cassandra, "Breast Cancer Awareness Month Ignores Pill's Link to Cancer," LifeNews.com (10/17/11).
38. Chris Kahlenborn, et al., "Oral Contraceptive Use as a Risk Factor for Premenopausal Cancer: A Meta-Analysis," *Mayo Clinic Proceedings* 81:10 (Oct., 2006):1290-1302.
39. Arland Nichols, "Irony: FDA Announces Major Safety Concern with Common Contraceptives on World Contraception Day," LifeSiteNews.com, (10/31/2011).
40. U.S. Food and Drug Administration, "Safety: Birth Control Pills Containing Drospirenone: Possible Increased Risk of Blood Clots," (10/27/11) downloaded 11/1/11.
41. Megan L. Kavanaugh, et al. "Emergency Contraception Use and Counseling After Changes in United States Prescription Status," *Fertility and Sterility*, 95:8 (6/30/11)2578-2581.
42. For a brief review of some of these studies, see "Fact Sheet: Emergency Contraception Fails to Reduce Unintended Pregnancy and Abortion," Secretariat of Pro-Life Activities, U.S. Conference of Catholic Bishops, Washington, D.C. (n.d.); "Contraception and Abortion Link," *Reason* (6/5/11) at primacyofreason.blogspot.com; "Sex-Ed Advocates Ignore the Relationship between Birth Control, Abortion and STDs," Global Outreach Campus Ministries, (11/19/11) at gocm.org.
43. Peter Arcidiacono et al., "Habit Persistence and Teen Sex: Could Increased Access to Contraception Have Unintended Consequences for Teen Pregnancies?" (1/22/11) online.
44. See Sourafel Girma and David Paton, "The Impact of Emergency Birth Control on Teen Pregnancy and STIs," *J. of Health Economics*, (9/12/2010) at jhealeco.2010.12.004.; K.Edgardh, "Adolescent Sexual Behavior in Sweden," *British Medical Journal*, online (12-16 Nov., 2012) at sti.bmj.com; Jose Luis Duenas, et al., "Trends in the Use of Contraceptive Methods and Voluntary Interruption of Pregnancy in the Spanish Population 1997-2007," *Contraception*, 83:1 (Jan. 2011):82-87 on line at www.contraceptionjournal.org.
45. *Federal Register*, p. 8727.
46. *Federal Register*, p. 8728.
47. Janet E. Smith, "If Only Our Bishops Had Thought to Consult with David Gibson," (2/15/12) on line www.catholicvote.org.
48. How Ms. Fluke got to appear before this committee is an interesting story in itself. It should first be noted that she is a long-time activist for feminist causes, and is a past president of Law Students for Reproductive Freedom at Georgetown. The Development Editor of the Journal of Gender and the Law, by her own admission, she picked Georgetown University after she discovered its health care package did not include birth control. "I decided I was absolutely not willing to compromise the quality of my education in exchange for my health care," she said. According to James Taranto of *The Wall Street Journal*, "it started ... when the House Oversight and Government Reform Committee held hearings on the ObamaCare contraception mandate and its implications for religious liberty. ... the Democrats originally chose Barry Lynn of Americans United for Church and State, over Fluke to testify for the anti-religious liberty side. ... They asked, too late, for Fluke to be subbed in for Lynn, then told Lynn not to bother showing up. When the hearing took place, Rep. Carolyn Maloney (D,NY) demanded: 'Where are the women?' Although it was the Democrats who chose Lynn over Fluke, and the second panel of witnesses included two female members [the first panel had been all male], the liberal media dutifully propagated the 'Republican sexism' [and war on women] charge. A week later, House

Democrats held a mock hearing where Fluke testified.”(Quote from “The Fluke Distraction”online.wsj.com).

49. An audio presentation of Ms. Fluke’s testimony may be heard at “Mind-Numbing Audio of a Law Student Telling Congress Why Religious Colleges Should Pay for Her Birth Control,” (2/29/2012) online at [www.theblaze.com](http://www.theblaze.com).
50. Guttmacher Institute, “Facts on Contraceptive Use in the United States,” (June, 2010) online at [www.guttmacher.org](http://www.guttmacher.org).
51. Tony Perkins, “Senate Assumes Lie-Ability for Schumer,” Family Research Council, (3/2/12) online at [frc.org](http://frc.org). and Steven Ertelt, “Obama Administration’s Obamacare-Birth Control Mandate Panned,” (1/22/12) LifeNews.com
52. See note #47.
53. *Federal Register*, p. 8728.
54. The National Catholic Bioethics Center, “What Compromise?,” (2/17/12) available at [info@ncbcenter.org](mailto:info@ncbcenter.org).
55. *Federal Register*, p. 8729.
56. Steven Ertelt, (see note #51).
57. “The HHS Mandate for Contraception/Sterilization Coverage: An Attack on Rights of Conscience,” United States Conference of Catholic Bishops, available at [uscbb.org](http://uscbb.org).
58. Michael Stokes Paulsen, “Obama HHS Mandate Wasn’t Just About Contraception,” LifeNews.com (3/28/12).
59. Steven Ertelt, “Attorney General Coordinates Lawsuit Against Obama Mandate,” LifeNews.com (2/8/12). Horace Cooper’s paper, “The Birth Control Mandate is Unconstitutional,” is available online at [www.nationalcenter.org/NPA63](http://www.nationalcenter.org/NPA63).
60. Ben Johnson, “Catholic Hospitals in Seven States Conducted 20,073 Sterilizations in Three Years: Study,” LifeSiteNews.com, (2/27/12). The study was a Ph.D. dissertation by Sandra H. Hapenny, and may be read at [CatholicHospitals.org](http://CatholicHospitals.org).
61. Christopher O. Tollefsen, “Mandates and Bad Law,” (2/20/12), online at [www.thepublicdiscourse.com](http://www.thepublicdiscourse.com).
62. Fr. John Trigilio, “Constitutional Law and Natural Moral Law Abomination,” (2/15/2012) online at [blackbiretta.blogspot.com](http://blackbiretta.blogspot.com).
63. See Jenn Giroux, “Cardinal Burke Explains: Catholic Employers Cannot Provide Contraceptive Coverage Because They Would Be Materially and Formally Cooperating with Sin,” online at [www.renewamerica.com](http://www.renewamerica.com).
64. Mathew Balan, “Media Bias: Networks Give One-Sided Coverage of Obama Mandate,” LifeNews.com, (2/17/12).
65. Rich Noyes, “How Network News Has Twisted Obama’s War on Religion Into a Conservative War Against Women,” (2/28/12), [www.mrc.org](http://www.mrc.org).
66. Bill Donahue, “Birth Control Is Not the Issue,” *Catalyst*, Vol. 38:2 (March, 2012) p. 4
67. See [uscbb.org](http://uscbb.org).

68. Ben Johnson, "HHS Mandate Could Close 13 Percent of the Nation's Hospitals," (3/6/12), [www.lifesitenews.com](http://www.lifesitenews.com).
69. See [www.catholiccharitiesusa.org](http://www.catholiccharitiesusa.org).
70. Congressional Research Service, memo regarding "Enforcement of the Preventive Health Care Services Requirement of the Patient Protection and Affordable Care Act," (2/24/12), available online at [www.crs.gov](http://www.crs.gov).
71. One could argue that Obama was not even technically telling the truth. Since the government forces the individual to buy insurance, then puts an abortion surcharge in a special federal account from which it pays for abortions, it is in fact taxing the individual and using those federal dollars to pay for abortion. Both with this aspect of ObamaCare and the HHS contraceptive mandate, the government is using insurance companies to launder funds specifically set aside for abortion.
72. Steven Ertelt, "ObamaCare \$1 Abortion Payment Surcharge Upsets Pro-Lifers," (3/14/12)
73. For attacks by the media, see Tim Graham, "Secular Snobs: Documenting the National Media's Long-Standing Hostility to Religion," The Media Research Center, (April, 2012), available online at [www.MRC.org](http://www.MRC.org). Private organizations would include the American Civil Liberties Union, Americans for the Separation of Church and State, and American Atheists.
74. The first three of these points were made by Ernest W. Liska, "Steady Attacks on Religion," in a letter to the editor of the *Akron Beacon Journal*, (4/11/12), p. A6. The fourth point is from Family Research Council, "No Grace for This Food Pantry," (3/27/12), [frc.org](http://frc.org).
75. I have quoted liberally from "Our First, Most Cherished Freedom," by the Ad Hoc Committee on Religious Liberty of the U.S. Conference of Catholic Bishops. [uscgb.org](http://uscgb.org).
76. Randy Sly, "Obama Moves Away from 'Freedom of Religion' toward 'Freedom of Worship'?" (7/19/10), Catholic Online, [www.catholic.org](http://www.catholic.org).
77. Thaddeus Baklinski, "Archbishop Chaput: HHS Mandate Debate is About Religious Liberty, Not Contraception," (4/5/12), [LifeSiteNews.com](http://LifeSiteNews.com)

## TABLE 1. PUBLIC OPINION ON THE HHS “CONTRACEPTION” MANDATE

**Note:** All response figures are percents. Don’t know, no opinion, etc. responses are omitted.

<u>Poll No.</u> <u>Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
1. Rasmussen	2/6-7/2012	Likely voters	1,000

*Question:* The requirement to provide contraceptives for women violates deeply held beliefs of some churches and religious organizations. If providing such coverage violates the beliefs of a church or religious organization, should the government still require them to provide coverage for contraceptives?

<u>No</u>	<u>Yes</u>
46	43

<u>Poll No.</u> <u>Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
2. Pew Research Center	2/8-12/2012	Adults	1,501

The following question was asked of the 1,042 respondents who said either that they had heard “a lot” or “a little” about the HHS mandate.

*Question:* Should religiously-affiliated institutions that object to the use of contraceptives be given an exemption from this rule, or should they be required to cover contraceptives like other employers?

<u>Should be given exemption</u>	<u>Should be required to cover</u>
48	44

<u>Poll No.</u> <u>Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
3. CNN/ORC	2/10-13/2012	Adults	1,026

*Question:* As you may know, the Obama administration has announced a new policy concerning health insurance plans provided by employers, including religious organizations, and how they handle birth control and contraceptive services for women. Based on what you have read or heard, do you approve or disapprove of this policy?

<u>Disapprove</u>	<u>Approve</u>
50	44

<u>Poll No.</u> <u>Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
4. CBS/NY Times	2/8-13/2012	Adults	1,197

*Question:* And what about for religiously affiliated employers, such as hospitals or universities – do you support or oppose a recent federal requirement that their health insurance plans cover the full cost of birth control for their female employees?

<u>Oppose</u>	<u>Support</u>
31	61

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
5. NY Times/CBS	3/7-11/2012	Adults/Regis. Voters	1,009

*Question:* What about religiously affiliated employers, such as a hospital or university? Do you think their health insurance plans for all employees should have to cover the full cost of birth control for their female employees, or should they be allowed to opt out of covering that based on religious or moral objections?

<u>Should be able to opt out</u>	<u>Should be required to cover</u>
57	36

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
6. Rasmussen	2/20-21/2012	Likely voters	1,000

*Question:* Should health insurance companies be required by law to cover the so-called morning-after pill for women without co-payments or other charges to the patient?

<u>Should not be required</u>	<u>Should be required to cover</u>
50	38

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
7. NBC /Wall St. Journal	2/29-/3/3/2012	Adults	800

*Question:* As you may know, the Obama administration announced a new policy concerning health insurance plans provided by employers and how they handle birth control and contraceptive services. The new policy requires that these services are available as part of the preventive care women would receive. Now, please tell me whether you favor or oppose each of the following: The federal government requiring employers to offer free contraceptive services, including the morning after pill, as part of their health insurance benefit plans.

<u>Oppose</u>	<u>Favor</u>
43	43

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
8. ABC/Washington Post	3/7-19/2012	Adults	1,003

*Question:* Do you think health insurance companies should or should not be required to cover the full cost of birth control for women? (If should be required): What if the insurance is provided through an employer who is affiliated with a religious institution that opposes birth control? This could be a religious-affiliated university or hospital, for example. In this case do you think health insurance companies should or should not be required to cover the full cost of birth control for women? (Combined responses).

<u>Should not</u>	<u>Should</u>
46	49

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
9. Public Religion Research Institute	3/7-11/2012	Adults	1,007

*Question:* There is currently a debate over what kinds of health care plans employers, including religiously affiliated employers, should be required to provide. Do you think the (following religiously affiliated employers) should be required to provide their employees with health care plans that cover contraception or birth control at no cost, or not?

	<u>Should not be required</u>	<u>Should be required</u>
<i>Colleges/Univ.</i>	42	54
<i>Hospitals</i>	38	57
<i>Churches</i>	52	42
<i>Small businesses</i>	43	53
<i>Public corporations</i>	33	62
<i>Religious service orgs.</i>	43	52

**Summary:** Of the above 9 polls dealing with the original mandate, a majority or plurality of Americans disapprove in 5 polls, approve in 3 polls, with one poll a tie. Only 3 polls mention that the organizations involved may oppose or have moral/religious objections to “birth control” and none mention that abortifacient drugs/devices and sterilization are part of the mandate.

**Note:** *The following three polls question the public about the Obama administration’s subsequent “compromise” or “accommodation” purportedly shifting the cost from religious institutions to insurance companies.*

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
10. Quinnipiac Univ.	2/14-20/2012	Registered voters	2,605

*Question:* President Obama recently announced an adjustment to the administration’s health care rule regarding religiously affiliated employers providing birth control coverage to female employees. Women will still be guaranteed coverage for birth control without any out-of-pocket cost but will have to seek the coverage directly from their insurance companies if their employers object to birth control on religious grounds. Do you approve or disapprove of Pres. Obama’s decision?

<u>Disapprove</u>	<u>Approve</u>
38	54



<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
11. United Technologies National Journal Congressional Connection	2/23-26/2012	Adults	1,005

*Question:* As you may know, President Obama recently announced a new policy on health insurance and birth control. Under the rule, if a religiously based institution, such as a Catholic hospital or university, objects to providing coverage for its workers for birth control, its insurance company must pay for the coverage instead. What about you, do you support or oppose this requirement?

<u>Oppose</u>	<u>Support</u>
40	49

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<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
12. NBC/Wall St. Journal	2/29-3/3/2012	Adults	800

*Question:* Now, please tell me whether you favor or oppose each of the following, or if you do not have an opinion one way or the other: The federal government requiring health insurance plans for the employees at Catholic and other religiously-affiliated hospitals and colleges to offer free contraceptive services, including the morning after pill, and mandate that the health insurance company pays for that cost.

<u>Oppose</u>	<u>Favor</u>
49	34

**Summary:** The first two polls above on the Obama administration’s “compromise” or “accommodation” to religious objections to the HHS mandate favor Obama’s policy, while the third does not. The difference appears to be the mention of the morning after pill in the third poll.

**Note:** *The following two polls question the public about what they think the main issue is with the HHS “contraceptive” mandate. None of the polls mention any faith other than Catholic.*

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
13. NY Times/CBS	3/7-11/2012	Adults/Regis. Voters	1,009

*Question:* Do you think the debate on this issue is more about religious freedom or more about women’s health and their rights?

<u>Religious freedom</u>	<u>Women’s health/rights</u>
37	51

<u>Poll No./Pollster</u>	<u>Date of Poll</u>	<u>Respondents</u>	<u>N</u>
14. Bloomberg National	3/8-11/2012	Adults	1,002

*Question:* There has been recent controversy over whether education and health care facilities affiliated with religious organizations, such as the Catholic Church, should provide access to birth control through

health insurance plans. Which of the following describes your view on this debate: This is a matter of religious liberty. This is a matter of woman's health and access to birth control?

**Religious Liberty**

33

**A woman's health**

62

\*Responses given in percents. Don't know, not sure, no answer, etc. percentages are omitted.