

HHS MANDATE VIOLATES RELIGIOUS FREEDOM

On February 15, 2012, the Department of Health and Human Services published regulations pursuant to the provisions of the Patient Protection and Affordable Care Act (Obamacare) which require most health plans and health insurers to offer women coverage for all Food and Drug Administration approved “contraceptive” methods and sterilization procedures at no cost. These “contraceptives” include abortifacient drugs such as Plan B (the morning after pill) which can thin the lining of the uterus, so that a developing embryo cannot implant, the drug ella, which can attack already implanted embryos, and IUDs, which also cause early abortions.

Recognizing that some religious organizations would have moral objections to these regulations, HHS decided to exempt some employers from the rule. Briefly, they exempt churches and associations of churches, but not church-related organizations such as hospitals, schools, publishers and social service agencies.

While the mainstream media like to portray the ensuing controversy as a battle between the Catholic bishops and the government over “contraception,” representatives from the following religious groups have also voiced their objections to the regulations: Eastern Mennonite University, General Council of the Assemblies of God, Lutheran Church Missouri Synod, Missouri Baptist Convention, National Association of Evangelicals, Olivet Nazarene University, Orthodox Christian Church, Southern Baptist Theological Seminary, Union of Orthodox Jewish Congregations, and The Wesleyan Church.

Those officially objecting to the regulations also include 154 members of the U.S. House, 61% of the Ohio legislature, 77% of the Missouri legislature, and the attorneys general of 12 states. In addition, seven states have filed lawsuits against the mandate, as have at least eight colleges and universities and 36 for-profit companies. On May 21, 2012, an additional 43 Catholic entities, including 19 dioceses and various schools, universities and other organizations filed suit in 12 different federal courts.

Past and recent “revisions,” accommodations,” and “compromises” to the HHS’s initial ruling change very little, if anything. For example, its own explanation of the February 1, 2013 proposed “change” states, “The Departments believe that this proposal would not expand the universe of employer plans that would qualify for the exemption beyond that which was intended in the 2012 final rules.” Hence, universities, hospitals, social service organizations, religious publishing houses, etc. are still not exempted from the initial rule.

Besides being an affront to the consciences of those who morally object to contraceptives, abortifacients and sterilization, the HHS mandate is a frontal assault on the free exercise of religion, since it seeks to define which organizations are religious enough to be exempt from the regulations, and how religious groups may or may not accomplish their religious missions. The First Amendment to the Constitution states: “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 belief system is to be exercised in practice.

When Jesus was asked which is the greatest commandment (Matthew 22:34-40) He gave two answers. The first, He said is “You shall love the Lord, your God with all your heart, with all your soul, and with all your mind. ...The second is like it: You shall love your neighbor as yourself.” We love God in worship, and by living our lives according to His will. We love our neighbors by serving them, both individually and through the institutions of education and service we support. In the parable of the Good Samaritan (Luke 10:29-37), Jesus also made it clear that neighbors are those who serve others in need, no matter what their religious affiliation. Furthermore, whatever we do for others we do for the Lord (Matthew 25:31-46). Indeed, serving all others was a major mission for Jesus Himself, whom we are to emulate. Quoting from Isaiah in the synagogue at 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) In other words, He was saying, "Here I am. This is my mission." And later He would say to us, "Go and do likewise." (Luke 10:37)

By saying that only churches are exempt from its regulations, but not religious hospitals, schools, publishers or other agencies, the government is telling Christians they may observe the first of the two greatest commandments, but not the second, unless they are willing to violate their consciences or face severe penalties for non-compliance. Clearly, this mandate violates the First Amendment's guarantee of religious freedom and is unconstitutional.

Social commentators have noted a shift in language President Obama and Secretary of State Hillary Clinton employ when discussing State and Church relations. Rather than speaking of "freedom of religion," they speak of the "freedom to worship." Chicago's Francis Cardinal George has compared this rhetorical shift to the former U.S.S.R.'s guarantee of freedom of worship. He 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."

Echoing the cry of the crowds to whom John the Baptist preached, we may ask, "What then should we do?" (Luke 3:7-11). Some potential remedies to the HHS mandate have already been initiated. The Health Care Conscience Rights Act (H.R. 940) in the U.S. House would prevent the imposition of regulatory mandates that violate the religious or moral convictions of individuals and institutions which purchase or provide health insurance. The bill would also prevent any level of government from discriminating against health care providers who decline to participate in abortions. We should contact our legislators and let them know what we think about this legislation.

Currently, 65 lawsuits have been filed challenging the mandate. Thirty-six of these have been filed by for-profit companies, and the remainder by non-profit organizations. As of this writing, 31 cases involving for-profit companies have yielded judicial opinions. Twenty-four of these have been favorable to the cause of religious liberty. That is, the companies have secured injunctive relief prohibiting the enforcement of the mandate until their cases can be further heard on their merits. Most of the cases involving non-profit organizations were dismissed on procedural grounds, since they were submitted before the government had made final revisions. Given these mixed outcomes in lower courts, the cases will end up in the U.S. Supreme Court.

These developments are somewhat encouraging. The right of religious liberty is firmly established in Constitutional law. In commenting on the Supreme Court's recent ruling on Obamacare, even liberal Justice Ruth Bader Ginsburg said, "A mandate to purchase a particular product would be unconstitutional if, for example, the edict impermissibly abridged the freedom of speech, interfered with the free exercise of religion, or infringed on a liberty interest protected by the Due Process Clause."

The National Catholic Bioethics Center recently published an analysis of the "Options for Non-Exempt Employers Under PPACA," which is available online. It suggests that employers who object to the mandate have three options which may be morally licit, depending upon their particular circumstances. Each of these options involve further moral considerations which the reader may consult in the analysis. Briefly, they are: 1) refusing to comply with the mandate while providing non-objectionable insurance coverage, 2) dropping all coverage, while providing fair compensation for lost benefits, which "appears to be the most morally sound approach" but may

result in substantial fines and legal actions, and 3) only as a last resort, complying with the mandate on a temporary basis “coupled with active opposition by all reasonable and legal means available.” Short of filing individual lawsuits, perhaps the most effective way we can engage in “active opposition” is by financially supporting those non-profit organizations representing others who have sued the government. These organizations include the Alliance Defending Freedom, the American Center for Law & Justice, The Becket Fund for Religious Liberty, and the Thomas More Law Center. Readers may keep updated on the legal progress of the filed lawsuits by going to [HHS Mandate Information Central](#) on the internet.

Finally, we all can pray and inform our family members, friends, and work associates of this aggressive and ill-considered attack on religious freedom. The idea that government can force individuals to violate their consciences and define how they may or may not exercise their religion is the definition of tyranny.

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