

June 11, 2012

The Honorable Secretary Kathleen Sebelius
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

As leaders and supporters of faith-based service organizations, we write to express our grave concern about the two-class concept of religious organizations that has been created by your department and other federal agencies in connection with the contraceptives mandate of the health insurance regulations for preventive services for women.

Our organizations, and we ourselves, do not all share the same view of the moral acceptability of the contraceptive drugs and services that comprise the contraceptives mandate. We have varied views on the adequacy of the “accommodation” that the administration has promised for religious organizations with deep objections to the contraceptives mandate but that are not eligible for the narrow religious employer exemption. Our organizations are involved in different areas of service. We belong to different faiths.

But we are united in opposition to the creation in federal law of two classes of religious organizations: churches—considered sufficiently focused inwardly to merit an exemption and thus full protection from the mandate; and faith-based service organizations—outwardly oriented and given a lesser degree of protection. It is this two-class system that the administration has embedded in federal law via the February 15, 2012, publication of the final rules providing for an exemption from the mandate for a narrowly defined set of “religious employers” and the related administration publications and statements about a different “accommodation” for non-exempt religious organizations.

And yet both worship-oriented and service-oriented religious organizations are authentically and equally religious organizations. To use Christian terms, we owe God wholehearted and pure worship, to be sure, and yet we know also that “pure religion” is “to look after orphans and widows in their distress” (James 1:27). We deny that it is within the jurisdiction of the federal government to define, in place of religious communities, what constitutes true religion and authentic ministry.

This two-class scheme protects those religious organizations focused on activities directed inward to a worship community while offering little religious freedom protection to the many religious organizations that engage in service directed outward. The scheme honors acts of worship while burdening those whose faith leads them to service in our common life. Among its

many troublesome aspects, the scheme moves us further toward an unconstitutional, unhistorical, and unhealthy naked public square.

The administration has said that the narrow definition of “religious employer” is not intended to be a precedent in federal law and that the two-class system is not meant to disparage the mission or motivation of non-exempt religious organizations. Yet these are only intentions, whereas the narrow definition of religious employer and the narrow scope of the exemption have been inserted, despite widespread protest, into actual federal law. We note, as well, that the administration itself has justified the narrow exemption by its use in the insurance rules of several states. The presence of the narrow exemption in federal regulations can only make it more likely to be used in additional federal policies, notwithstanding any current promises.

Secretary Sebelius, we believe that there is one adequate remedy: eliminate the two-class scheme of religious organization in the preventive services regulations. Extend to faith-based service organizations the same exemption that the regulations currently limit to churches. This would bring the preventive services regulations into line with the long-standing, respected, and court-tested provisions of Title VII of the 1964 Civil Rights Act [§§702, 703(e)] which provide a specific employment exemption for every kind of religious organization, whether they be defined as “a religious corporation, association, educational institution, or society.”

Secretary Sebelius, please restore the federal government’s full respect for faith-based educational, social-service, and health organizations as authentic vehicles for religious service.

Sincerely,

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