



April 8, 2013

Strengthening Christian Schools

Equipping Christian Educators

Worldwide

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

**Submitted Electronically**

**Re: Notice of Proposed Rulemaking on Coverage of Certain Preventive Services under the Affordable Care Act, File Code CMS-9968-P.**

Dear Sir or Madam:

The Association of Christian Schools International (ACSI) is a nonprofit, non-denominational, religious association providing support services to nearly 24,000 Christian schools in over 100 countries. ACSI serves nearly 3,800 Christian preschools, elementary, and secondary schools and over 100 post-secondary institutions in the United States. We are a leader in strengthening Christian schools and equipping Christian educators worldwide, providing services through a network of 28 regional offices. ACSI accredits Protestant pre-K – 12 schools, provides professional development and teacher certification, and offers its member-schools high-quality curricula, student testing and a wide range of student activities. Member-schools educate some 5.5 million children around the world.

Our member-schools play a unique role in advancing the common good by providing quality education and spiritual formation to their students. As a result, member-school graduates attend college at a significantly higher rate than the national average (86% versus 68%). Since 1974, ACSI schools have scored significantly higher than the national norm in every grade level on a national achievement test. Many of our schools achieve these results with modest budgets: Christian school teachers and administrators are called to their vocation and motivated by their faith.

Because our Christian faith drives our educational activities, we view with alarm the serious religious liberty implications of what has come to be known as the “HHS mandate” or the “contraceptive mandate.” The mandate’s regulations require insurance coverage of “preventive services” which include early-abortion pills, contraceptives, sterilizations and “education and counseling.” To compel involvement in abortion via abortion counseling, abortifacient contraception or other means is a serious violation of religious liberty.

Contraception itself may be less controversial to ACSI members, but contraception which may induce abortion, as well as counseling leading to abortion, unquestionably pose a serious concern. Further, ACSI wishes to stand with our Catholic colleagues, as well as with any Protestant or other believer of similar conviction, on the broader question and to express our strongest objection to their being forced to participate in practices they find morally objectionable.

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We understand that measures have been proposed, both in the current and earlier iterations, with a view to *exempting* some and attempting to *accommodate* others whose religious liberty the regulations violate. This effort simply has not succeeded. The result gives short shrift to the serious violations of religious liberty in question. The Administration has now made more than one attempt to exempt some few from the HHS Mandate and to accommodate others, but those efforts do not successfully exempt or accommodate even many religious organizations, let alone for-profit entities, insurance companies, individuals or others who may be implicated. Religious liberty is for *everyone*, not just those who happen meet an arbitrary federal formula that qualifies them for an exemption from a violation of their religious liberty.

In the case of ACSI member-schools, the new effort, like the old, makes possible an exemption for an integrated auxiliary of a church, but not for a free-standing Christian school which qualifies only for a limited accommodation. Two different Christian schools, then, may find that one is exempt from the requirement that it violate its faith because it is closely related to a church while its free-standing, independent, non-profit, Christian school neighbor is not. These two schools, in fact, may teach and hold to the same theology; they may use the same curricula; and, they may even work cooperatively. For example, they may share sports facilities or a K – 6<sup>th</sup>-grade church-based school may naturally channel its students to its neighbor, a freestanding Christian school serving grades 7 – 12.

Thus, the Christian school founded as a related ministry of a single congregation and a Christian school founded by multiple churches of various denominations find themselves in two different postures with respect to government demands. One is exempt from compulsion to violate its Christian convictions and one is not; the latter is merely accommodated in a complex scheme that nonetheless implicates it in a violation of its religious liberty.

The new proposed regulation offers a modest improvement: the first three of four earlier restrictive requirements for exemption have been removed. This fourth requirement, alas, remains in place and, as demonstrated above, is itself arbitrary. The regulation treats two equally Christian educational institutions differently based upon the accident of their corporate form of government. This is not reasonable. Clearly, both schools should be exempt and the regulations should make that possible.

It may help to recognize that Christians believe religious liberty involves far more than worship services. Everything a Christian does is to be an act of worship. Martin Luther, a 16<sup>th</sup> century leader of the Protestant Reformation, made this point in his famous observation that even the lowly milkmaid glorifies God in fulfilling her duties. The career-choice of a milkmaid sounds quaint to modern ears, but the principle echoes through the centuries and applies to every legitimate vocation.

Further, Christians believe the Bible is authoritative on such matters. It speaks of doing *everything* as a service to God and for His glory, and thus as an act of worship. For example, the letter to the Colossians urges that “whatever you do in word or deed, do all in the name of the Lord Jesus” (Col. 3:13) and again “whatever you do, do it heartily, as to the Lord and not to men” (3:23). Paul urged believers in Corinth: “whether you eat or drink, or whatever you do, do all to the glory of God” (I Cor. 10:31). Whether individual Christians live up to our calling is certainly a matter of considerable humility on our part, but for the federal government effectively to forbid Christians from doing so, as when federal requirements compel Christians to violate their conscientious duty to God, is a matter of the most profound concern.

ACSI joined nearly 150 leaders in a June 11, 2012, letter to Secretary of Health and Human Services Kathleen Sebelius expressing these concerns. The letter observed the regulations would create a two-

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class system whereby the religious liberty of some religious organizations (those that were worship-oriented) would be respected while that of others (those that were service-oriented) would be violated. As noted above, that two-class system continues to exist in the current proposal. It is appropriate to emphasize a key point of the letter, namely that:

*... 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).*

The example of the two Christian schools emphasizes this point. While one is an integrated part of a church and thus, apparently, "worship-oriented" enough to merit an exemption from the regulations, the other is not. The latter, alas, is too "service-oriented" to qualify for an exemption and must settle instead for an accommodation even though both schools *do the same thing* in the same way – educate children – and were each founded upon and operate on the same Christian motivation and principles.

In arguing against a plural religious establishment, Founding Father James Madison's 1785 Memorial and Remonstrance Against Religious Assessments issued a clarion call for civil non-interference in religious matters. The regulation operates on the opposite principle, namely, civil interference via rules to evaluate how religious an organization is and thus whether to exempt or merely accommodate its religious practice. The Memorial and Remonstrance puts it this way:

*A just Government ... will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.*

The proposed regulations fail to "protect every citizen in the enjoyment of his religion with the same equal hand" government protects a citizen's person and property. Worse, it "invades the equal rights" of *anyone*, Christian or otherwise, whose God teaches him that counseling in support of abortion or contraception involving abortifacient drugs or simple contraception itself is morally wrong. Here it is not a rival sect which seeks to invade the equal rights of all sects, but the government itself!

For it is clear – and has been for many months on end, both in previous comment periods and in lawsuits and legislation – that the proposed regulations seek to force *some* to violate their religious convictions, to force *some* to participate in a process that results in their own employees' being given insurance coverage to which the employer and, very likely, the employees themselves object. Madison's Memorial and Remonstrance quotes the Virginia Declaration of Rights in rejecting the use of civil compulsion – such as today's contraceptive mandate – in matters of religion:

*... we hold it for a fundamental and undeniable truth, "that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and **it is the right of every man to exercise it as these may dictate.** This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. **It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him.** This duty is precedent, both in order of time and in degree*

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*of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: **And if a member of Civil Society, do it with a saving of his allegiance to the Universal Sovereign.** We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance. [Emphasis added]*

In short, the regulations restrict Americans' exercise of religion according to their conscience; they alienate individuals from civil society by imposing upon that person's allegiance to the Universal Sovereign. The proposed regulations tread very dangerous ground in their attempt to impose burdens on religious practice. Thomas Jefferson's Statute of Virginia for Religious Freedom warns:

*... that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others...*

Rulers like this, says Jefferson, succeeded only in establishing and maintaining "false religions over the greatest part of the world and through all time". By the same token, the HHS Mandate assumes dominion over the faith of many Americans and sets up a federal-government opinion as the only acceptable one, a gross violation of religious liberty. It exempts some religious organizations and offers an accommodation to others which has the same effect of imposing the objectionable coverage.

Here, too, let it be said that there is no lack of alternatives for anyone who wishes to avail themselves of the "services" in which the mandate seeks to implicate religious believers. First, employees of religious organizations know the beliefs of those organizations and choose to be employed there, typically *precisely because of those beliefs*. Such employees either agree with the religious tenets of the organization or are willing to work there knowing that they will be governed in their employment in accord with those very tenets. At ACSI, we make every effort to urge member-schools to lay out this reality forthrightly in the hiring process. Secondly, even for-profit entities can and often do make their operating principles clear in this regard, particularly when a religious believer is the employer. No one is forced to work for such an employer; everyone who does has other abundant means to provide such services for herself. No compelling reason exists to go so far as to implicate a religious believer in an insurance regime which violates her religious liberty.

In summary, then, ACSI urges that the proposed rules be changed to ensure that no one is forced to violate their religious convictions in these questions. The clearest, simplest way to do so is to eliminate any requirement that any entity be compelled to participate in the provision of any "preventive services" which include early-abortion pills, contraceptives, sterilizations and "education and counseling" in such matters. The Administration's exemption/accommodation formula is a nod in the direction of the importance of religious liberty. However, it fails to recognize that *every* American possesses an unalienable right to religious liberty. The federal government must restrain itself from violating that liberty by imposing obligations in conflict with it.

Respectfully submitted,

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