

THE ETHICS & RELIGIOUS LIBERTY COMMISSION

OF THE SOUTHERN BAPTIST CONVENTION



Richard Land, D.Phil. (*Oxon.*), President

April 8, 2013

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: NPRM Coverage of Certain Preventive Services under Affordable Care Act, File Code No. CMS-9968-P

Dear Sir or Madam:

In February 2013, the U.S. Department of Health and Human Services (HHS) issued a proposed rule that would amend regulations relating to the coverage of certain preventive services under the Patient Protection and Affordable Care Act (PPACA). In response to HHS' invitation for public comment, the Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) would like to take this opportunity to submit comment on this Notice of Proposed Rulemaking (NPRM) on preventive services.

The Southern Baptist Convention is America's largest non-Catholic Christian denomination with more than 16.2 million members in over 44,000 churches nationwide. Our office, the Ethics & Religious Liberty Commission, is responsible for "communicating the ethical positions of the Southern Baptist Convention to the public and to public officials."¹ While the ERLC does not speak for every Southern Baptist, we express here the SBC's long history of opposing abortion and supporting religious freedom. It is in this capacity we submit comment.

We do not believe HHS' proposed rule issued in February adequately addresses the issues of conscience violation and religious freedom that we expressed concerning both the original notice of final rule issued in August 2011 and the subsequent Advance Notice of Proposed Rulemaking (ANPRM) in March 2012. Specifically, we urge HHS to make the necessary accommodations to make the contraception services rule consistent with the First Amendment to the U.S. Constitution. Anything short of protecting the freedoms of conscience and religious expression for *all* Americans—not merely houses of worship and their integrated auxiliaries—is unacceptable. This necessarily means exemptions for all individuals, small businesses, and corporations that wish to direct their economic activities according to the dictates of their consciences.

¹ Ministry Statement of The Ethics & Religious Liberty Commission of the Southern Baptist Convention. Retrieved

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While the proposed rule appears to free houses of worship and their integrated auxiliaries from the mandate requirements,² the religious employer exemption still does not apply to many religious organizations. In fact, HHS states 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.” Houses of worship and their integrated auxiliaries deemed religious by HHS are not the only institutions and individuals due protection of their freedoms of conscience and religious expression. The freedom of conscience is a universal human principle not subject to the whims of a government agency. It is a human right to be protected, not granted, by the U.S. government on behalf of all Americans.

To date, more than 50 lawsuits have been filed against HHS as a result of the mandate on the basis of violations of religious or moral objections. This volume of active lawsuits—filed by a host of both non-profit and for-profit organizations—is evidence that the numerous attempts to “accommodate” religious liberty have done little to return the administration to the appropriate equilibrium regarding freedom of conscience.

As it presently stands, both in the Federal Register and in the NPRM published in February 2013, the preventive services mandate continues to commit two offenses against Americans whose participation in communities across our nation happen to be organized as either a business or non-religious non-profit organization. First, it represents a fundamental breach of the freedoms of conscience and religion for all Americans in principle. Second, it offends specific tenets of faith and conscience held by millions of Americans. In the course of this comment we will explain both.

1) The mandate represents a fundamental breach of universal principles.

The contraceptive services mandate presently breaches universal principles affirmed in the U.S. Constitution and the United Nations’ Universal Declaration of Human Rights. Contraceptive services are the offense but the fundamental issue is the violation of the conscience. In contrast to Catholics, most Southern Baptists do not have doctrinal objections to the use of contraception in the context of monogamous marriage. The overwhelming majority of Southern Baptists do, however, object to the use of “emergency contraception,” which can result in the abortion of a human embryo. We will elaborate on the root of those objections in the second section of this comment. Our first concern is with the encroachment of the federal government on the individual’s conscience, whether or not we agree with that conscientious objection.

In its most basic essence, the mandate is the federal government abusing its authority by forcing Citizen A, against his or her convictions, to purchase a product for Citizen B. This should trouble every American. If the federal government can force morally opposed Catholics, for example, to purchase contraception for a third party and force pro-life Americans to purchase abortion-causing drugs for a third party, what prevents this or future administrations from forcing other Americans to betray their deeply held convictions?

In an effort to further “prevent misconstruction or abuse of [the government’s] powers,”³ the

² *Federal Register*. Vol. 78, No. 25, Pages 8456-8476. February 6, 2013.

³ Preamble to the Constitution of the United States.

founders of the United States saw fit to codify a broad and robust protection for the freedoms of conscience and religious expression. The First Amendment in the Bill of Rights clearly states, “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*.” “Free expression” includes the freedom to direct economic pursuits according to one’s religious faith. By denying Americans the constitutionally protected right to express their religion as they see fit in their economic activities, the HHS contraceptive mandate breaches the free exercise clause.

Further, Article 18 of the United Nations’ Universal Declaration of Human Rights (UNUDHR) states,

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁴

Though the United States was an original signatory to the UNUDHR, HHS appears committed to ignoring Article 18. The contraceptive mandate, as it stands in law and in the NPRM, denies many Americans, if not millions, the universal right to *manifest* their belief through *practice* and *observance*. Additionally, Southern Baptists and many other people of faith consider a part of their *worship* to be manifested in their daily lives. This includes their daily work and business practices. Thus, the mandate offends at least those three rights of belief affirmed by the UNUDHR.

Setting aside the specifics of the mandate (health policy, medications) the mandate is coercive. Very simply, the federal government is forcing Citizen A to provide for Citizen B that which Citizen A finds morally aberrant or offensive. Secretary Sebelius, HHS, and the President of the United States have neither a compelling interest nor the authority to coerce Citizen A into funding the specific lifestyle choices of Citizen B. In this case, those lifestyle choices happen to be the use of contraceptives, abortifacients, and sterilization procedures.

2) The mandate offends specific tenets of faith and conscience held by millions of Americans.

First, the HHS mandate conflicts with the biblical command given by God to humans to procreate. A commonly shared theological principle among Catholics, Evangelicals, and Jews is the command to “be fruitful and multiply and fill the earth.”⁵ While not all people in those faith groups apply that principle in a rejection of contraception, many among them do. Most who do hold that conviction do not seek to deny fellow citizens the liberty to use contraception that prevents fertilization. These citizens are free to reject contraception in their own lives, yet HHS reasons it may coerce them into providing contraception for third parties. HHS’ reasoning on this is mystifying. But more importantly, it is wholly inappropriate for the government to force them, against their consciences, to participate in preventing procreation.

It makes no difference if the administration does not hold the same conviction. Through its mandate, HHS is abusing the authority of the federal government by forcing believers to choose

⁴ United Nations’ Universal Declaration of Human Rights, Article 18.

⁵ Genesis 1:28, 9:1, 7.

between either offending their God and violating their consciences or facing crushing fines and possible imprisonment for adhering to their deeply held moral convictions. This is, by definition, a form of religious persecution.

Second, the pro-life philosophy acknowledges that human life begins at fertilization and, therefore, unborn humans are due full and equal protection under the law. As such, pro-life citizens object to the use of emergency contraception and intrauterine devices (IUDs) included under the mandate because they have the capability—if not the expressed purpose—of ending an identifiable and genetically unique human life.

While our nation continues to debate the legality of abortion and *Roe v. Wade* remains the law of the land, the administration's mandate is the first time the government has forced pro-life citizens to fund, directly or indirectly, insurance coverage for abortion-causing activities. This is an egregious abuse of federal power.

If the federal government can force Catholic Americans to pay for contraceptives and other pro-life Americans to pay for abortifacients, what will this or future administrations force American citizens to do tomorrow? For the sake of the universal principles of freedom of conscience and religious expression and in defense of these freedoms for all Americans, in accordance with the First Amendment to the U.S. Constitution, we respectfully plead with the Department of Health and Human Services to, at a minimum, expand conscience protections under the mandate to cover any organization or individual that has religious or moral objection to covering, providing, or enabling access to these services.

Sincerely,

A handwritten signature in black ink that reads "Richard D. Land". The signature is written in a cursive style with a large, prominent "R" and "L".

Richard D. Land