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Myth-Busting the Mandate Debate

From the “War on Women” to “a Catholics-only fight”—coverage of the HHS controversy is rife with distortions and misinformation.

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On August 1, 2011, the Department of Health and Human Services (HHS) and the Health Resources and Services Administration (HRSA) issued the guidelines and regulations for women’s “protective services,” and finalized them on February 10, 2012. The final rule—popularly dubbed “the contraceptive mandate”—requires all group health plans and health insurance issuers to provide the full range of US Food and Drug Administration (FDA)-approved contraceptives/sterilizations (and associated counseling) as part of the “preventive services” for women mandated by the Affordable Care Act (ACA). These FDA-approved contraceptives include potential abortion-inducing or “emergency” contraceptive drugs and intrauterine devices, as well as surgical sterilizations, all to be made available without co-pays from employees or their dependents.

The HHS mandate narrowly defines a religious employer as someone who: (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. Thus, most, if not all, religious institutional and individual employers, as well as religious insurers, are not exempt and, under this mandate, will be subject to violations of their religious liberty.

The HHS mandate spawned a tsunami of debate. On one side stands the mandate's Democratic and feminist proponents; on the other, its detractors, the US Catholic bishops (and like-minded religious and secular leaders). Here, we critique five myths that, like flotsam and jetsam, have washed up on the shores of this national controversy.

Myth #1: Catholic bishops' opposition to the HHS mandate constitutes a "war on women."

Wrong, on several counts. First, the Catholic bishops have repeatedly made it clear that their objection to the HHS mandate is not a debate over whether women ought to have access to contraception or sterilization. The bishops are not attempting to criminalize the use of contraception; they know women are legally free to obtain and use it. Nor are the bishops trying to make oral contraceptives (OCs) difficult to get or expensive; they know they're cheap and easy to obtain. In short, the Church's opposition to the HHS mandate is not contesting women's freedom to access contraception or sterilization or associated counseling. The Church is upholding the principle of religious liberty as guaranteed by the US Constitution's First Amendment. In a nutshell, the bishops contend that the Affordable Care Act's final rule forces religious persons and institutions to provide/pay for these reproductive services despite the fact they contravene the moral convictions of conscience.

Second, we have volumes of evidence to support the argument that it is the HHS-mandated national coverage of oral contraceptives for female employees and their dependents that constitutes the real war on women. Consider the use of hormonal contraception for contraceptive purposes. The November 2006 issue of *Obstetrics and Gynecology* reports that its review of 23 studies demonstrates that greater access to emergency contraception *increased* rather than decreased the incidence of unintended pregnancy and abortion rates. The sad truth, then, is that the surge in contraceptive use has resulted in more unplanned pregnancies, which have resulted not only in the increased "backup-contraceptive" choice of abortion, but also in its devastating post-abortion psychological/spiritual sequelae. And, lest we forget: the highly effective "contraceptive rate" of the FDA-approved drug ella, included in the HHS-mandated "preventive services," could only be attributed to its abortifacient mechanism.

Third, hormonal contraceptives can actually cause disease. If we examine the *therapeutic use* of birth control pills, we discover the pill is, well, not very therapeutic. When OCs are taken to treat any of a panoply of gynecologic anomalies—endometriosis, polycystic ovaries, dysmenorrhea—they mask the underlying anomaly, treat symptoms only, and fail to address the woman's real disease. And all this at the expense of sabotaging the normally functioning ovulatory and menstrual cycles and the woman's gift of fertility.

As for the alleged health benefits of contraception—from the lower risk of endometrial cancer, ovarian cancer, colorectal cancer, polycystic ovary syndrome, osteoporosis, and anemia—it's of paramount importance that female patients get the whole picture. Not only does the World Health Organization classify the OC as a carcinogen, but also warnings from package inserts of many OCs specify that the pill "may increase risk of breast cancer and cancer of the reproductive organs." Take the claim that the OC lowers the risk of ovarian cancer. Again, what women need to know—what their doctors need to be telling them—are the specific risks and benefits of the pill. For example, compared to a woman not using hormonal contraception, it is true that the woman who uses the combined OC for five years incurs the benefit of a 40 percent decreased ovarian cancer mortality risk. But here's the tradeoff: the same woman faces *increased risks* from the use of that same OC over the same five-year period—a 100 percent increased risk for venous thromboembolism, a 24 percent increased risk of breast cancer, and at least a 100 percent increased risk of myocardial infarction. The evidence proves OCs are a major player in the war on women; they cause rather than prevent disease and they produce sterility or infertility (a diseased state) over fertility (a condition emblematic of a healthy gyn-ecology).

Fourth, does the pill truly provide women with a "better quality of life," as proponents of the HHS mandate claim? Well, not if you listen to commonly heard complaints from a host of women on the pill. Besides the serious health risks just described, pill-using women also experience a coterie of milder, but debilitating, symptoms: bloating, breast tenderness, headaches, irregular bleeding, mood changes, and nausea. And as for the pill's contribution to a woman's spiritual/moral malaise, we encourage women to investigate Catholic teaching on the meaning of human procreation and the morality of using natural methods of family planning—with all of its pro-woman, pro-family and pro-culture consequences—to discover a healthy alternative to contraception that comprehensively improves the woman's quality of life. (Natural methods of family planning—as you've probably guessed—are not included in the HHS-mandated coverage.)

Myth #2: Catholic bishops' opposition to the HHS mandate forces Catholic morality on the rest of society.

Not true. In fact, this entire critique proves just the opposite. With this HHS mandate, it's the federal government that's forcing its dogma on the Church and the rest of society. Here are the facts: the state, not US Catholic bishops, has imposed a mandate that: *forces* religious insurers to write policies that violate their beliefs, *forces* religious employers and schools to subsidize and facilitate coverage that breaches their morals, and *forces* conscientiously objecting employees and students to purchase coverage that contravenes their consciences. The Church, on the other hand, is merely looking for a religious exemption from, or a rescission of, this unjust federal ruling.

Myth #3: Catholic bishops' opposition to the HHS mandate makes a religious liberty claim that exceeds that guaranteed by the First Amendment.

False. The Establishment Clause ("Congress shall make no law respecting an establishment of religion") is the head of several pronouncements in the First Amendment of the US Constitution that, together with the Free Exercise Clause ("or prohibiting the free exercise thereof"), comprise what are called the "religion clauses." Thus, our Constitution enshrines the principle that religious organizations and their membership must be able to *practice their faith*—not just to worship, but also to live out their religious beliefs and values in daily life according to their conscience—free from government interference. That important term "free exercise thereof" clarifies that our constitutionally-guaranteed freedom of religion in America respects the right of religious persons to take the fruit of their worship into the public square—where it can work for the common good of all Americans.

Myth #4: Opposition to the HHS mandate is only a Catholic "fight."

Absolutely fallacious. This statement would be true only if it were describing the opposition as "small-c" catholic, that is, as universal. As Governor Huckabee quipped: "In these matters [governmental suppression of religious freedom], we're all Catholics."

A palpable *esprit de corps* was in evidence when, almost immediately after Sebelius' February announcement finalizing the HHS mandate, representatives of many religious traditions rallied—joining hands, minds, and wills—in calling the "preventive care" mandate a serious infraction of religious freedom for all denominations. Recognizing the writing on the wall, 2,500 Protestant, Evangelical, Jewish, Catholic, and other religious leaders signed a February letter to President Obama censuring the mandate as a "severe blow to religious liberty" and calling the administration to "reverse this decision and protect the conscience rights of those who have biblically-based opposition to funding or providing contraceptives and abortifacients."

In that same month, the president of the Lutheran Missouri Synod, Matthew Harrison, and Rabbi Meir Soloveichik of Yeshiva University appeared with Catholic Bishop William Lori and others before the Congressional Committee on Oversight and Government Reform. Rabbi Soloveichik, representing the sentiments of all attending religious leaders, sagely opined: "benefiting from two centuries of First Amendment protections in the United States," the Jewish "children of the stock of Abraham" must speak out when conscience rights of their fellow Americans are threatened and when the very definition of religion is changed by governmental fiat.

A USCCB letter, highlighting protest from other religious denominations—the National Association of Evangelicals, the Assembly of Canonical Orthodox Bishops of North and Central America, and the Union of Orthodox Jewish Congregations of America—was subsequently signed by 300 academics, dozens of religious leaders, leaders of religious organizations, and journalists. The common argument behind this religious/secular protest objects to a "naked public square"—bereft of religious arguments and persons of faith—and envisions, instead, a civil public square—an American public square, if you will—where all citizens, believers and non-believers alike, can participate and make a difference working together for the common good. The state's refusal to exempt religious employers from the HHS mandate harms everyone by threatening the continued existence of essential public services on which many Americans, secular and religious, Democrat and Republican, rich and poor, depend.

Myth #5: If the Supreme Court strikes down the HHS mandate, our concerns about threats to religious freedom are over.

Would that were true. Unfortunately, even if the US Supreme Court strikes down the HHS mandate or its relatives (the respective "employer" and "individual" mandates) there are many other serious attacks on religious liberty demanding our unrelenting vigilance and informed action. Consider these troubling scenarios: First, several states have passed laws that forbid so-called harboring of undocumented immigrants. According to an Alabama statute, for example, illegal immigrants are forbidden to attend adult Scripture study groups or Sunday school classes. Priests are barred from baptizing, administering the sacraments of confession or anointing of the sick or offering pre-Cana instructions to illegal immigrants. This state statute even goes so far as to prohibit Catholics parishioners from encouraging undocumented immigrants to attend Mass or from transporting them to Mass.

Second, in 2009, the Judiciary Committee of the Connecticut legislature proposed a bill that would have forced Catholic parishes to be restructured after a congregational model, reminiscent of the 19th century trusteeism controversy, granting government the right to redefine "religious minister" and "religious employer."

Third, for the first time in its 100-year history, University of California Hastings College of Law denied student-organization status to the Christian Legal Society, because the group required its leaders to be Christian and to abstain from pre- or extra-marital sex.

Fourth, after Catholic Charities of the Archdioceses of Boston, San Francisco, and Washington and the state of Illinois refused to place children with homosexual or unmarried heterosexual couples, the respective municipal/state governments drove the respective Catholic Charities out of the adoption business by revoking their licenses, ending their government contracts, or both.

Fifth, New York City passed a rule that prevented the Bronx Household of Faith and 60 other small churches from renting public schools on weekends for their worship services, all the while allowing secular groups to rent the same facilities for a myriad of activities.

Sixth, the federal government refused to renew their contract with the USCCB's Migration and Refugee Services for their work on behalf of human trafficking victims, since the latter conscientiously declined to provide, or refer the victims for, contraceptive and abortion services.

Busting the myths surrounding discussion of the HHS mandate is of paramount significance. For if, today, the government can, with no counter-arguments from its citizenry, invade our most fundamental freedom—to worship and to live as our conscience and faith dictate—what will be next?

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