



Health Care Lawsuits

For months the implementation of Obama-care has dominated the news: spectacular failures of computerized enrollment, emerging threats to confidentiality and coverage, the repeated extension or postponement of deadlines. Through all the flux, however, one feature has remained unchanged: the determination of the Department of Health and Human Services to enforce its mandates for health insurance coverage of abortion-inducing drugs, contraceptives, and sterilization. No exemptions will be granted from the federal assault on religious freedom.

In the face of this manifest hostility, throughout the country defenders of religious liberty have filed nearly ninety cases in federal courts seeking to throw off the Obamacare overreach. Hundreds of for-profit and non-profit plaintiffs are represented in these suits—an Evangelical arts and crafts retail chain, a Mennonite cabinet-making company, Catholic dioceses, Protestant and Catholic universities. Thus far their prospects are encouraging as the cases work their way up to the Supreme Court.

They contend that the HHS mandates violate the Religious Freedom Restoration Act (RFRA). Under this law four questions come into play: (1) Is an employer exercising religious faith when he

refuses, on religious grounds, to provide employees health insurance that covers abortifacients and contraceptives?; (2) Do the HHS mandates “substantially burden” this exercise of religion?; (3) Do they further a “compelling government interest”?; (4) Do they do so in the “least restrictive” way?

A Christian employer who heeds the Commandment “Thou shalt not kill” surely means to put his faith into practice when he refuses to subsidize drugs that can take innocent life in the womb. But crippling fines from HHS would “substantially burden” this free choice to exercise religion. Belmont Abbey College faces an annual penalty of \$340,000; Colorado Christian University would be fined \$500,000 a year.

Increased access to contraceptives is the “government interest” the mandates claim to advance, but it can hardly be considered a “compelling” interest in a land where contraceptives are widely and inexpensively available. Nine out of ten employer-based insurance plans cover a full range of prescription contraceptives, and community health centers and public clinics dispense them at little cost.

How “compelling” can this government interest be when HHS has exempted so many employers from the mandates for purely secular reasons? HHS projected that, in 2013, 55% of large-employer plans and 34% of small-employer plans would be “grandfathered”—that is, dispensed—from the obligation to cover “protective services” for a total of roughly 88 million Americans. Yet HHS refuses to grandfather plans in

order to accommodate objections of conscience from a host of religious believers. We may hope that the Supreme Court decision in the RFRA cases will give HHS a compelling reason to do so.

As for the last RFRA question, forcing conscientiously objecting employers to subsidize readily available contraceptives is certainly not the “least restrictive means” of advancing the government interest in increasing access to contraceptives. A less restrictive means would be to increase direct governmental subsidies for distribution of contraceptives; another would be to grant tax credits or deductions to purchasers of contraceptives. Neither of these means would force citizens’ consciences; neither would be as restrictive of religious liberty as the HHS mandates clearly and needlessly are. There is reason to hope that those who have brought these lawsuits for liberty of religion will be rewarded with the justice they seek. But these days health care is only one arena of a broader struggle, and we must be prepared to stand up for our freedom again and again.