

Catholic Diocese of Fort Worth

Background on

Religious Freedom Lawsuit

This lawsuit is about an unprecedented attack by the federal government on one of America's most cherished freedoms: The freedom to practice one's religion without government interference. It is not about whether people have access to certain services; it is about whether the government may force religious institutions and individuals to facilitate and fund services which violate their religious beliefs.

The HHS mandate that all employers provide abortion-inducing drugs, sterilization, and contraceptives includes only a narrow exemption for certain organizations that the government deems sufficiently "religious." The exemption applies only if the government determines that all four of the following criteria are met: the inculcation of religious values is the purpose of the organization; the organization primarily employs persons who share the religious tenets of the organization; the organization primarily serves persons who share the religious tenets of the organization; *and* the organization falls within a certain tax code provision defining a narrow subset of religious non-profits

This exemption runs contrary to decades of federal laws that have consistently honored and respected the conscience rights of religious institutions and individuals (see, e.g., <http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf>). This radical and narrow definition of what constitutes a "religious employer" attacks religious freedom by defining it away: by extending religious freedom protection only to houses of worship, HHS's exemption reduces religious freedom to the freedom of worship.

The exemption excludes most Catholic hospitals, schools, universities, and social service providers, even though they are "religious" organizations by any reasonable definition. That is because, among other things, Catholic institutions often draw from the general public in our hiring and serve the general public in our ministries. As a matter of religious commitment, we serve everyone—Catholics and non-Catholics alike.

The Catholic Diocese of Fort Worth carries out that mission of service through its own offices, parishes, and schools, and through the work of its affiliated ministries. All of these institutions are guided by Catholic beliefs—*both* those regarding human sexuality, marriage, and family, *and* those requiring service to all in need regardless of their religion.

Effectively, the mandate prohibits us from asking what the Catholic Church of the United States has asked for more than 200 years, "Are you hungry?" Now we also have to ask, "Are you Catholic?" To qualify for the exemption, and so to be permitted to follow their beliefs, Catholic institutions may have to stop providing educational opportunities to as many non-Catholics as they currently educate, stop serving as many non-Catholics in need as they currently serve, and

stop employing some of the non-Catholic employees they currently employ. But this kind of withdrawal from the world violates our religious commitment to serve all in need without regard to religion.

The exemption also involves an invasive federal government inquiry into an organization's religious beliefs and practices, conferring powers on government forbidden by the Constitution. Specifically, for an institution to know whether it meets the government's definition, it must submit to a governmental investigation whereby federal employees determine the religion of those employed and served by the entity, whether their beliefs are the same as the institution, and whether the institution hires and serves "primarily" those of in agreement.

When the mandate and exemption were first proposed last August, they prompted widespread outrage crossing partisan and religious lines. In response, the Administration gave assurances that the objections would be addressed. But on January 20, the Administration announced that the mandate and exemption would not be changed at all, and that the only concession would be to delay enforcement for an additional year. After still more outrage, on February 10, the Administration finalized the mandate and exemption "without change," but said it would offer some kind of additional "accommodation" to the religious employers it still refused to exempt. The scope of this "accommodation" remains unclear and may not be decided until next year. In any event, none of the proposals being discussed for the "accommodation" relieve non-exempt Catholic employers from having to facilitate something that violates their religious convictions.

Fortunately, we have recourse to the Constitution and federal civil rights laws through the courts. While some incorrectly argue that "separation of Church and State" refers to keeping the Church out of the public square, the Founding Fathers had in mind keeping the State out of the internal affairs of the Church—exactly what we face today with the HHS mandate. America's great history and tradition of religious freedom is embodied in the First Amendment (which forbids the government from establishing a state religion and from prohibiting the free exercise of religion) and in the Religious Freedom Restoration Act (which forbids the federal government from imposing a substantial burden on religious exercise, unless that burden serves a compelling government interest by the means least restrictive of religious exercise). Both laws protect religious entities from such overbearing governmental action as we see in the HHS mandate.

The government defends the mandate by claiming that its goal is to protect women's health by ensuring access to abortion-inducing drugs, sterilization, and contraceptives. But those services are already widely available and widely covered by insurance. Even if the government's goal actually were to increase access further, it has no reason at all to conscript unwilling religious organizations into that effort—the government could simply provide these things directly itself. Moreover, nothing about this lawsuit (or Catholic ministry) prevents women from obtaining these products or services. Over forty years ago, the U.S. Supreme Court held that individuals have a constitutional right to purchase and use such services, and that is not an issue here. Instead, this suit is about stopping government from forcing religious groups to facilitate and fund things that violate their moral and religious beliefs, within their own religious institutions.

In sum, the HHS mandate jeopardizes religious freedom—a fundamental right enshrined in the Constitution—and undermines access to a wide range of social services. Catholic schools,

universities, hospitals, and social service agencies are in the business of educating and caring for Catholics and non-Catholics alike. As the President acknowledged, these organizations do “more good for a community than a government program ever could.” The mandate jeopardizes all of these good works by forcing Catholic institutions to violate their religious beliefs.