

The Fight to Preserve Religious Liberty

*Obamacare's Assault on a Founding Touchstone
of the United States of America*



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June 2013

Introduction

In 2011, the Department of Health and Human Services (HHS) issued a rule based on the Patient Protection and Affordable Care Act (PPACA) that was a direct attack on religious liberty and conscience protections enshrined in the First Amendment. The regulation, known as the “Preventive Services Rule,” forces employers, many of them small businesses and non-profits, to pay for coverage of abortion-inducing drugs, sterilization, contraception, and related counseling services in direct violation of their religious beliefs or moral convictions.

While the Obama administration has claimed that it has “accommodated” religious liberty and safeguarded longstanding conscience protections, the record proves otherwise. Americans, simply exerting their First Amendment rights and following their religious beliefs, are subject to penalties totaling millions of dollars.

Given the administration’s refusal to respect conscience, what James Madison called “the most sacred of all property,” individuals have had to seek relief through the courts. Conestoga Wood Specialties, established in 1964 by the Hahn family in East Earl, Pennsylvania, is just one of the many victims of the HHS mandate and attack on religious freedom. The family-owned business is run by practicing Mennonite Christians who now face potential fines of up to \$34 million per year from the federal government just for practicing their faith.

This report outlines the current status of this unprecedented abuse by HHS and the pending litigation, like the courageous fight waged by Conestoga Wood, to preserve the First Amendment rights of all Americans.

The HHS Mandate

On August 3, 2011, HHS issued an interim final rule¹ under authority provided in Section 1001 of PPACA requiring health coverage to include all FDA-approved “contraceptive methods, sterilization procedures, and patient education and counseling” services.

The mandate applies to nearly all employers providing group health plans and health insurance issuers that offer health coverage. While the regulation includes a narrow religious exemption, the First Amendment rights of countless individuals would still be affected. For example, hospitals, charitable service organizations, colleges, and schools are forced to choose between covering drugs and services that violate their deeply held beliefs and facing significant penalties from the federal government.

While public attention forced the Obama administration to revisit the rule in early 2012,² the administration’s actions did little to reverse the damage done to First Amendment rights. The administration announced an “accommodation”³ that did not change the substance of the coercive nature of the original rule. HHS announced that insurers would be forced to provide “free” coverage for abortion-inducing drugs, sterilization, contraception, and related education and counseling services. However, this announcement has yet to be finalized through formal rulemaking.

¹ 76 Fed. Reg. 46621 (August 3, 2011)

² 77 Fed. Reg. 8725 (February 15, 2012)

³ White House Fact Sheet: Women’s Preventive Services and Religious Institutions (Feb. 10, 2012) as accessed on June 18, 2013 at: <http://www.whitehouse.gov/the-press-office/2012/02/10/fact-sheet-women-s-preventive-services-and-religious-institutions>

Regardless, this change does not work for two simple reasons. Many employers act directly as the insurer for employees under a self-insurance arrangement where they directly pay medical claims. In this instance, employers would still be forced to provide and pay for coverage of abortion-inducing drugs, sterilization, and contraception in violations of their conscience. Secondly, employers who buy health coverage from an insurer would be forced to subsidize the cost of services that they object to in the form of higher premiums.

Furthermore, for-profit employers and individuals were provided no relief by the administration's "accommodation." The only minor change made by HHS was to delay the deadline for compliance for certain non-profit employers. Thus, some Americans are being provided a little more time before they are forced to violate their conscience or face fines from the federal government.

Fines on Faith

The Energy and Commerce Committee solicited a legal memorandum from the nonpartisan Congressional Research Service (CRS) that detailed potential penalties that Americans may face under the HHS mandate.⁴ The CRS Memo confirmed that enforcement of this mandate may be carried out through penalties authorized under federal law.

The Secretary of HHS is the primary enforcer of the Public Health Service Act (PHSA) requirements. The CRS memo confirms that the Secretary may impose a civil monetary penalty on insurance issuers that fail to comply with the PHSA requirements. The maximum penalty is \$100 per day for each individual.

The Internal Revenue Code (IRC) covers employment-based group health plans including church plans, but does not apply to insurance issuers. Under the IRC, failure to meet group health plan requirements is enforced through the imposition of an excise tax. A group health plan that fails to comply with the requirements in the IRC may be subject to a tax of \$100 for each day in the noncompliance period with respect to each individual to whom such failure is related.

Given the design of these penalties, employers that exercise their conscience by refusing to pay for services that violate their beliefs could face fines totaling millions of dollars.

Litigation Status

A broad swath of Americans representing universities, small businesses, charities, hospitals, and others has challenged the HHS mandate. These challenges focus generally on the grounds that the mandate violates the free exercise of religion under the First Amendment and statutory protections included in the bipartisan Religious Freedom and Restoration Act signed into law by President Clinton in 1993.

⁴ Memo from Jennifer Staman and Jon Shimabukuro, Congressional Research Service, to the House Energy and Commerce Committee re "Enforcement of the Preventive Health Care Services Requirements of the Patient Protection and Affordable Care Act." (Feb 24, 2012)

To date, 61 cases involving over 200 plaintiffs have been filed over the HHS mandate according to the Becket Fund⁵. Those fighting for their First Amendment rights in the courts include:

- Wheaton College, an evangelical Christian liberal arts college in Wheaton, Illinois. It wrote that the HHS mandate “creates government-imposed coercive pressure on Wheaton to change or violate its religious beliefs.”⁶
- Conestoga Wood Specialties Corp., a family owned business started in 1964 by the Hahn family. This family owned manufacturer is run by practicing Mennonite Christians who face potential fines from the federal government of up to \$34 million per year for practicing their faith.
- Belmont Abbey College, a small Catholic liberal arts college located in Belmont, North Carolina, was founded in 1876 by Benedictine monks. In its filing in the D.C. District Court, it wrote that the HHS mandate “forces the college to choose among violating its religious beliefs, incurring substantial fines, or terminating its employee and student health insurance coverage.”⁷
- Hobby Lobby, a private retail chain with more than 500 arts and crafts stores in 41 states. The company’s CEO, David Green, stated that “By being required to make a choice between sacrificing our faith or paying millions of dollars in fines, we essentially must choose which poison pill to swallow. We simply cannot abandon our religious beliefs to comply with this mandate.”⁸

Thirty cases involving non-profit entities have not been decided on the merits, partly because the administration has delayed enforcement of the mandate against non-profits. The courts have provided injunctive relief for some of the remaining 32 cases involving for-profit entities. Therefore, these parties challenging the mandate will not have to comply with the mandate while the litigation proceeds. Attached is a summary of the pending litigation.

Conclusion

Religious freedom is a touchstone of the United States of America and was the impetus behind our nation’s establishment. Unfortunately, due to the misguided actions of the Obama administration, for some Americans like the Hahn family in Pennsylvania, practicing personal religious freedom will now be considered federal crime and the penalties could be in the millions of dollars. This attack on religious liberty violates the very principles our nation was founded on and cannot stand.

⁵ The Becket Fund for Religious Liberty: HHS Information Central as accessed on June 18, 2013 at:

<http://www.becketfund.org/hhsinformationcentral>

⁶ Complaint in *Wheaton College v. Sebelius*. D.C. District Court (July 18, 2012).

⁷ Complaint in *Belmont Abbey College v. Sebelius*. D.C. District Court (Nov, 10, 2011)

⁸ Becket Fund Press Release: Hobby Lobby Sues over HHS Mandate (September 19, 2012) as accessed on June 18, 2013 at: <http://www.becketfund.org/hobbylobbysueshhs/>

Status of For-Profit Cases

Injunctions Granted – 20 cases (i.e., don't have to comply with mandate while case proceeds in court):

- [Seneca Hardwood](#) (W.D. Pennsylvania)
- [Korte](#) (7th Circuit)
- [O'Brien](#) (8th Circuit)
- [Annex Medical](#) (8th Circuit)
- [Grote](#) (7th Circuit)
- [Newland \(Hercules\)](#) (D. Colorado – On appeal to 10th Circuit)
- [Weingartz Supply Co. \(Legatus\)](#) (6th Circuit)
- [Tyndale Publishers](#)*** (D.D.C.)
- [Am. Pulverizer Co. \(Griesedieck\)](#) (W.D. Missouri – On appeal to 8th Circuit)
- [Domino's Farms](#) (E.D. Michigan)
- [Sharpe Holdings, Inc.](#) (E.D. Missouri N.D.)
- [Triune Health Group](#) (N.D. Illinois)
- [Sioux Chief Manufacturing](#)** (W.D. Missouri)
- [Lindsay, Rappaport & Postel, LLC](#) (N.D. Illinois E.D.)
- [Fresh Unlimited \(Gilardi\)](#) (D.C. Circuit)
- [Bick Holdings, Inc.](#) (E.D. Missouri E.D.)
- [American Manufacturing Co. \(Hall\)](#) (D. Minnesota)
- [Hart Electric](#)** (N.D. Illinois E.D.)
- [Tonn and Blank Construction](#) (N.D. Indiana)
- [Johnson Welded Products, Inc.](#) (D.D.C.)

Injunctions Denied – 4 cases (i.e., must comply with mandate while the full case continues in court):

- [Hobby Lobby](#) (10th Circuit)
- [Autocam](#) (6th Circuit)
- [Conestoga Wood](#) (3rd Circuit)
- [Armstrong](#) (D. Colorado)

Temporary Restraining Orders Denied - 3 cases:

- [Eden Foods](#) (E.D. Michigan)
- [MK Chambers Co.](#) (E.D. Michigan)
- [Briscoe](#) (D. Colorado)

Cases filed, no additional action – 5 cases:

- [Beckwith](#) (M.D. Florida)
- [Infrastructure Alternatives](#) (W.D. Michigan)
- [Mersino Management](#) (E.D. Michigan)
- [M&N Plastics, Inc.](#) (E.D. Michigan)
- [SMA, LLC](#) (D. Minnesota)

Status of Non-Profit Cases

Allowed by the court to move forward – 2 cases:

- [Catholic Archdiocese of Fort Worth](#) (N.D. Texas)
- [Catholic Archdiocese of NY](#) (E.D. New York)

Held in abeyance by the court – 4 cases (i.e., waiting for action from the administration):

- [ETBU & HBU](#) (S.D. Texas)
- [Louisiana College](#) (W.D. Louisiana)
- [Belmont Abbey](#) (D.C. Circuit)
- [Wheaton](#) (D.C. Circuit)

Waiting on procedural rulings – 2 cases (i.e., timing issues):

- [Grace Schools](#) (N.D. Indiana)
- [Catholic Diocese of Fort Wayne-South Bend](#) (N.D. Indiana)

Cases filed, no additional action – 3 cases:

- [College of the Ozarks](#) (W.D. Missouri)
- [Catholic Archdiocese of Atlanta](#) (N.D. Georgia)
- [American Family Association](#) (N.D. Mississippi)

Dismissed by the court on procedural issues - 19 cases:

- [Geneva College](#) (W.D. Pennsylvania)
- [CCU](#) (D. Colorado)
- [Nebraska](#) (D. Nebraska – On appeal to 8th Circuit)
- [Catholic Diocese of Biloxi](#) (S.D. Mississippi)
- [Catholic Diocese of Peoria](#) (C.D. Illinois)
- [Catholic Diocese of Nashville](#) (M.D. Tennessee)
- [Notre Dame](#) (N.D. Indiana – On appeal to 7th Circuit)
- [Catholic Diocese of Pittsburgh](#) (W.D. Pennsylvania – On appeal to 3rd Circuit)
- [Catholic Archbishop of Washington](#) (D.C. Circuit)
- [Catholic Diocese of Dallas](#) (N.D. Texas)
- [Franciscan University](#) (S.D. Ohio)
- [EWTN](#) (N.D. Alabama)
- [Ave Maria](#) (M.D. Florida)
- [Priests for Life](#) (E.D. New York)
- [Catholic Archdiocese of Miami](#) (S.D. Florida)
- [Catholic Archdiocese of St. Louis](#) (E.D. Missouri)
- [Criswell College](#) (N.D. Texas)
- [Catholic Diocese of Joliet](#) (N.D. Illinois)
- [Catholic Diocese of Erie](#) (W.D. Penn.)

* The numbers of for-profit and non-profit lawsuits provided in the respective scorecard take into account Geneva College v. Sebelius, which includes both for-profit and non-profit plaintiffs. Thus, the case is included in each scorecard's tallies.

**DOJ declined to appeal the injunction

***DOJ voluntarily withdrew appeal before DC Circuit