

ISSUE BRIEF

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Obamacare, Religious Liberty, and Civil Society: What the Debate Is Really About

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The recent Health and Human Services (HHS) mandate under Obamacare, requiring nearly all insurance plans to cover abortion-inducing drugs, contraception, and sterilization, has sparked heated debate across the country. Although proponents of Obamacare have attempted to frame the debate differently, one question remains fundamentally at issue: Can the federal government mandate what insurance plans must cover, employers must offer, and individuals must buy?

This overreaching power is especially egregious when it forces institutions and individuals to violate their beliefs. The HHS mandate forces most employers to provide insurance coverage for these products and procedures, regardless of religious or moral objections, under penalty of federal fines. This mandate tramples basic freedoms in general—and the

First Amendment freedom of religion in particular—and harms civil society institutions.

Empty Promises from the Administration

President Obama has proposed a hypothetical “accommodation” that would require insurance companies (rather than employers) to offer employees contraceptive care free of charge. Even if this so-called accommodation were to become law in the future, it would not resolve the moral issue, for insurance companies would still likely charge employers the premiums necessary to cover their employees’ morning-after pills. The President’s accommodation really is no more than a talking point.

The final anti-conscience mandate was published in the *Federal Register* on February 15, 2012, with no change from the version published on August 3, 2011, that caused the outrage in the first place. On March 16, 2012, the Administration released an advance notice of proposed rulemaking, requesting public comment on its suggested “accommodation.” The Administration’s suggestion does not hold the force of law and, even if it were implemented, is nothing but an accounting

gimmick that would not solve the mandate’s fundamental religious liberty violation.

Amid all the political gimmicks and rhetoric, it is important to be clear: This debate is about the government’s relationship to civil society. Obamacare gives unprecedented power to the federal government to dictate how private individuals and institutions must behave. Further, because of its extremely stringent exemption for religious groups—effectively covering only houses of worship—the HHS mandate takes an unduly narrow view of religious liberty, ignoring the religious identity of many institutions and weakening their role in society. Obamacare moves the dial of moral decision making drastically toward the state and attempts to remake civil society in the government’s own image.

Six Misconceptions About the Religious Liberty Debate

Ultimately, this debate is about the freedom of institutions that are guided by moral convictions—convictions that differ from those of the federal bureaucrats whom the new health care law places in charge of health care for everyone. It is about Americans’ freedom to live and

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work in line with their beliefs. But the debate has been plagued by six repeated misconceptions.

Misconception #1: This debate is about religious institutions violating the separation of church and state.

Correction: This is a debate about whether government should force religious institutions to violate deeply held religious beliefs. It is not about whether religious institutions are violating so-called separation of church and state by unduly influencing government policy. The phrase “separation of church and state” does not even appear in the Constitution, but if it means anything at all, it is that the state should not interfere in the affairs of religious institutions by forcing them to violate their consciences. Private employers that wish to provide contraception to employees are free to do so. Religious employers objecting to the anti-conscience mandate are simply asking for the same freedom to make decisions according to their convictions.

Misconception #2: This debate is about government money, and groups that get government funding have to play by government rules.

Correction: Obamacare’s anti-conscience mandate does not apply only to organizations that receive federal funding. In fact, it applies to insurance plans generally, so nearly all employers and individuals will be affected—a mark of just how far Obamacare’s mandates will reach. Even if the mandate were imposed only as a condition of receiving federal funds, it would be a bad policy. Just because the government, within certain limits, can establish rules as a condition of receiving federal funds does not mean that the government should establish rules that violate core freedoms. In any case, the

mandate covers nearly all insurance plans—whether they receive federal funds or not.

Misconception #3: This debate is about exemptions for churches, which the original version of the law already provided.

Correction: All Americans, not just churches, should be free to provide or purchase health insurance consistent with their religious or moral beliefs. The new health care law exempts only religious organizations that hire and serve members of their own faith and whose primary mission is the inculcation of religious values. This extremely narrow exemption effectively protects only churches; it does not protect most religious hospitals, schools, and other charitable organizations, nor does it protect religious employers who run non-religious organizations or the many organizations that self-insure. The government should respect and protect the freedom of *all* employers and individuals to provide or purchase health care in a way that is consistent with their religious or moral beliefs.

Misconception #4: This debate is about religious organizations claiming freedoms that belong only to individuals.

Correction: Religious freedom is not just for individuals; it is for religious institutions too. For example, on January 11, 2012, the U.S. Supreme Court ruled in favor of constitutionally protected religious freedoms for a church-operated school. In addition, numerous federal and state statutes expressly protect the religious freedom of religious institutions. Several religious institutions are currently claiming protection from the Obamacare anti-conscience mandate under a federal law known as the Religious Freedom Restoration Act. As relational beings,

people live and accomplish basic needs in institutions. Through institutions, citizens form and express their identities and gain a sense of connection with the larger social realities of life. It makes sense, then, that both individuals and groups should enjoy religious liberty: It includes the freedom to exercise one’s faith in the various institutions of day-to-day life.

Misconception #5: This debate is about organizations and individuals insisting that their taxes go only to enforce laws with which they agree.

Correction: Most people would agree that citizens should be required to pay duly imposed taxes, regardless of whether they agree with every law or government program that their taxes will support. That’s not the issue here. Rather, the issue is whether government should coerce personal and institutional actions and, in particular, force people and groups to violate deeply held religious beliefs. All business owners must follow all just laws, but this mandate is unjust because it forces citizens to pay for health care products that violate their religious beliefs.

Misconception #6: This debate is about churches and employers wrongly interfering with members’ personal decisions.

Correction: As with other employment opportunities, individuals voluntarily seek to work for religious organizations. In so doing, they freely choose to affiliate with the group’s goals and mission and to accept terms of contracts, including those related to health care benefits. They are also free to change jobs if another employer aligns with their values more closely or if they prefer a different package of benefits. For many, the opportunity to work for a

religious employer offers the opportunity to participate in an organizational mission and system of group benefits consistent with their individual beliefs. By contrast, centralizing health care policy in the federal government, as Obamacare has done, means that citizens do not have recourse to seek alternatives to the health insurance policies dictated by the federal government. Unlike in a private employment relationship, government can coerce compliance with its policies, which is why programs like Obamacare that expand government power pose such a threat to liberty.

Only One of Many Future Mandates

At its core, the debate over Obamacare's anti-conscience

mandate is about freedom—freedom of religion and freedom from government coercion of groups and individuals to violate their consciences. This debate is about whether religious charities are free to serve the common good only if they change or disregard their beliefs according to government dictates.

The anti-conscience mandate is unprecedented and unconstitutional, and it is only the leading edge of the mandates that are likely to come as Obamacare is fully implemented through the regulatory process. Trampling of liberty is the inevitable result of the federal government's taking control of personal health decisions. No waiver or exemption will remedy the problem, which is the Obamacare system itself.

The only way adequately to protect civil society, liberty in general, and religious liberty in particular is to rescind the HHS mandate and repeal Obamacare. America needs real health care reform that respects religious freedom.

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