

Talking points regarding the HHS Mandate and our response

The following talking points are distilled from the briefs submitted by plaintiffs' attorneys and friend of the court briefs in the US Supreme Court case of *Priests for Life vs. HHS* and other consolidated cases.

These documents can be found at www.IStandWithPFL.com.

- The HHS mandate requires employers to include in their organization's health insurance plan coverage for abortion-inducing drugs, contraceptives, sterilization, and related counseling.
- Congress did **not** include in the Affordable Care Act (ACA, "Obamacare") the requirement that these 'services' be covered. Instead, it spoke of the duty to cover 'preventive services' in terms of preventing disease, not pregnancy.
- The specific objectionable "services" were added after the HHS consulted an outside group (the "Institute of Medicine").
- Congress did, however, pass the Religious Freedom Restoration Act (RFRA, 1993), which instituted **the strictest possible standard** that any law that came before or after it must now meet before restricting a person's religious freedom. The government cannot put a 'substantial burden' on someone's exercise of religion without proving that it is the **least restrictive way** to advance a **compelling** government interest.
- The current court case is examining whether the HHS mandate violates RFRA. We claim it does; the government claims it does not.
- An exercise of religion is anything a person does or refuses to do for religious reasons, in any aspect of their life.
- In regard to this case, the "free exercise of religion" we are attempting to carry out is to offer health insurance in accordance with the tenets of our faith, and hence to avoid providing coverage for the objectionable 'services.'
- When Congress passed the ACA, it did **not** exempt it at all from the requirements of RFRA.
- If the ACA itself does not have exemptions from RFRA, then certainly a regulation coming from the department of HHS, implementing an aspect of ACA, is not exempt

from its requirements either. Put another way, if Congress itself is not forcing us to cover the objectionable services, where does an unelected regulatory agency get the authority to do so?

- The Obama Administration has granted many exemptions to the HHS mandate. For example, Churches ('houses of worship') are exempt, as are employers whose insurance plans have been 'grandfathered' into the ACA and -- for administrative convenience -- do not have to be amended to include the coverage of the services we object to. These exemptions affect tens of millions of employees. Some who are exempt from the mandate do not even object to it, and many are exempt for reasons that have nothing to do with religion.
- If the government can exempt the employers of tens of millions of Americans from the mandate of helping extend coverage for abortion-inducing drugs, etc., even when the exemption has nothing to do with religious objections, then it certainly cannot claim to have a 'compelling interest' in forcing us, who do have religious objections, to abide by the mandate.
- The mandate irrationally divides believers into two categories, and the way it distinguishes those who must follow the mandate from those who are exempt has nothing to do with religion, but rather with the classifications of the religious organizations within the tax code. So, for instance, Catholic Charities of the Diocese of Erie is exempt from the mandate because it is part of the corporate structure of that diocese. Catholic Charities of Pittsburgh, however, is not exempt, because it is incorporated separately from that diocese. Yet the beliefs, the work, and the objections to the mandate of both groups are the same.
- Not even Congress, or any of its laws, divide believers this way. The HHS mandate has overstepped its authority and violated RFRA by protecting the free exercise of some believers but not of others.
- All groups and individuals who have a religious objection to the mandate should have an exemption from it, period. Those who have an exemption now do not have to carry out any action whatsoever in regard to the mandate, do not have to notify the government of their objection, and do not have to assist anyone else in any way to provide objectionable coverage. This is the same thing the plaintiffs in this case are asking for.

- The government claims it has given to us an "accommodation," that is, a mechanism to "opt-out" of the mandate, and that all it requires is that we notify the government of our objection by filling out one of two possible forms. But they already know our objection, **based on these very lawsuits!** So something else is going on here.
- The forms we would sign as part of the "accommodation" or "opt-out" would actually provide the legal authority and permission to our health insurer to then pay for the coverage of the objectionable services for our own employers. **This would not be through a separate policy, but would use the very same policy and infrastructure** that our employees already have from us, and only because we authorized it and would have to maintain the relationship with that insurer and regularly update the necessary information. Put another way, **through the mandate the government hijacks our health insurance plan and its infrastructure to provide objectionable coverage to our employees.** That is hardly "opting out."
- Our religion teaches us that this "accommodation," therefore, makes us complicit in the very activity we are trying to avoid. Utilizing the administration's "accommodation" would constitute an immoral degree of cooperation in one of the most fundamental evils, as well as create scandal.
- Our objection is not to the action of the government or of our insurers or of our employees who might use the coverage. Our objection is to the actions **that we ourselves would be forced to take** to authorize coverage for immoral 'services.'
- We are not trying to impose our morality on our employees. All we are insisting upon is that if they were to get coverage for abortion-inducing drugs, etc., that **it would not be through the health insurance policy we offer them.**
- When we speak of this as a "substantial burden" on our religious beliefs, the word "substantial" refers not to the belief itself, but to the degree of pressure the government is putting on us to act contrary to that belief. We would be fined \$100 per day per employee for violating the mandate. That is substantial.
- The government has mistakenly tried to say that our *belief itself* that the accommodation is a 'substantial' burden and would make us complicit in evil is *mistaken*. But **the government is not the judge of our beliefs**. The Supreme Court has ruled multiple times, including in *Hobby Lobby*, that the role of the courts is not to judge

the reasonableness or validity of anyone's religious beliefs, no matter how mistaken, illogical, or absurd they may seem. Once a believer draws a line between acceptable and unacceptable behavior, the government must respect that line and cannot second-guess it. Government can disagree with our beliefs but cannot disregard them.

- The government is trying to say that the 'accommodation' is the *least restrictive* way to advance its interest in expanding access to abortion-inducing drugs, etc. But it is not. A less restrictive way would be for the government itself to arrange for our employees to receive that coverage *without involving us, our actions, or our insurance plan at all*. This can be done through the ACA exchanges, through Title X, through Medicaid, or through other tax subsidies.
- In fact, the government already utilizes less restrictive means than the 'accommodation' for the employees of organizations that are exempt from the mandate. So it should do for us.
- The arguments in this case relate to a fundamental human and constitutional right to religious freedom. It is not just a "Catholic" issue or a "woman's issue"; it is an American issue, a human issue.
- The bottom line is that all Americans should be free to follow their faith and follow the law at the same time. That is the essence of religious freedom.

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