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A Win In the Courts

Michael Sean Winters | Nov. 20, 2012 Distinctly Catholic

Last Friday, a federal judge ordered a temporary injunction against the HHS contraception mandate for a private, but distinctly religious, employer, Tyndale House Publishing. There is an important distinction to be made here. I have long argued that the most important aspect of the entire controversy is to enlarge the exemption from the mandate for religious institutions such as Catholic schools and hospitals and charities. But, I also believe that private firms, not officially affiliated with any particular church, but engaged in pervasively religious work, should also be exempt. For example, the Knights of Columbus is not an official arm of the Catholic Church, but I think they could, at bar, make the case that they are a pervasively religious institution and, so, should qualify for an exemption. This exemption should not only be available to non-profit companies. That said, I do not believe the Church should go to the mat on behalf of for-profit companies that are not engaged in pervasively religious work, e.g. Taco Bell.

Despite some rhetoric to the contrary, it is not at all clear when a religious exemption can and should be offered. When the Amish declined to pay taxes, including Social Security tax, the Supreme Court ruled in 1980 that no man can be a law unto himself and ordered the Amish to pay. The role of the federal government in shutting down the Mormon practice of polygamy is well known. It took the Jehovah's Witnesses several attempts before they were finally granted permission to seek conscientious objector status from the draft. Indeed, in the past year, I have come to realize that our nation's jurisprudence on the religious clauses of the First Amendment are something of a hash. But, in this instance, I think it is not asking too much to expect the federal government to find an alternative method for delivering the free contraception the HHS has deemed essential at least for religious institutions but also for employers unaffiliated with a given church but pervasively engaged in religious enterprise. Hinsdale Publishing publishes bibles and books that forbid the taking of human life and they understand some of the mandated drugs to be abortifacients. (Incidentally, Hinsdale said that they do not object to other contraceptives and already include them in their coverage.) For them to cover something their very work condemns is a different kind of intrusion on conscience from the intrusion upon a Taco Bell. The selling of tacos is not contradicted by the covering of contraceptives.

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