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The HHS Mandate in Court

Michael Sean Winters | Dec. 7, 2012 Distinctly Catholic

The District Court for the Eastern District of New York issued a ruling Wednesday that essentially allows the lawsuits brought by several New York Catholic organizations, including the Archdiocese of New York and the Diocese of Rockville Center, against the HHS contraception mandate to proceed. The decision was a bit complicated, and you can read the legal analysis of Marc DeGirolami at "Mirror of Justice" by clicking here [1]. In a nutshell, the Court said the Administration can't have its cake and eat it too, that is, it can't argue the Courts should dismiss the lawsuits because the rule has not been finalized, even though, until the rule is finalized, the current rule looms and will go into force in August.

But, apart from the legal analysis, there is a political calculation. If the court cases so far had been unanimous in upholding or defeating the mandate, then the administration could sit back and rest assured that the mandate would be upheld or defeated but, either way, they could blame it on the courts. But, this process could go on for some time because the court rulings are mixed. August looms. There is no way to avoid finding a solution and that means negotiating with the Church in good faith. It also requires that the USCCB decide whether they want to fight for expanded exemptions for our religious institutions or whether they should fight the mandate per se. I believe that if the White House expands the exemptions to cover all our religious institutions, we should call it a day and move on to more productive discussions like securing comprehensive immigration reform.

The White House can fix this. As I have pointed out previously, the current exemptions leave many women without the contraception coverage that women's groups want. Indeed, the White House has been busy trying to explain to the Catholic Church that the current exemptions are broader than they appear, which would leave more and more women without this coverage the women's groups, and HHS, claim is so important. So, why not devise a means - it could require little more than a click on the website at a healthcare exchange, that permits women at exempt institutions to obtain coverage of contraception directly from the federal government. It would not be expensive, and because many women who now get contraception at free clinics will soon bet getting it at the corner drug store under their health care plans, there is plenty of Title X money to cover the expense of this coverage, which is not a lot of money to begin with. If the White House devises such an alternate method for arranging coverage, then they can expand the exemptions to meet the religious liberty concerns raised by the Church. And, women's groups can celebrate the fact that they have achieved universal coverage of contraception, something they do not have under the current rule. Yes, even the rectory housekeeper could get coverage. Everybody wins.

This is a time for Catholics on the left to call their members of Congress and the White House and urge them to get this fixed. Certainly, Hillary Clinton, Joe Biden, Martin O'Malley and anyone else thinking of seeking the Democratic nod for the presidency in 2016 would prefer not to enter that race with their party at war with the largest religious denomination in the country. For decades, conservative, pro-life Catholics have been a cheap date for the GOP. Progressive Catholics should not be a cheap date for the Obama administration. With the court rulings all over the place - and not just on the Church's institutions, but with mixed rulings regarding

private, for-profit employers, the time has come for the White House to cut a deal.

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[1] http://mirrorofjustice.blogs.com/mirrorofjustice/2012/12/an-important-mandate-decision-edny-holds-standing-and-ripeness-satisfied.html#more