Opinion



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The last thing the country needs — and the last thing the Catholic Church needs — is another fight about religious liberty and health care, but here it is. President Donald Trump announced May 2 new rules from the Department of Health and Human Services that give much more robust conscience protections to health care providers. Let the disingenuous and distorted attacks begin!

Conscience protections appropriate to the First Amendment's guarantee of the free exercise of religion have long been on the books. The Religious Freedom Restoration Act passed through Congress almost unanimously and was signed into law by President Bill Clinton. But, in recent years, some so-called liberals have sought to weaken this explicit constitutional right whenever it conflicts with reproductive rights or with gay rights. I note in passing that reproductive rights are not explicitly mentioned in the Constitution and, God willing, soon our country will recognize that members of the gay community should be included in all the constitutional protections afforded any other citizen — and deserving of as much respect as any member of our congregations.

Let's be clear: Some religiously motivated bigots will use their religious freedom to discriminate against gay people, and that is wrong morally and, most often, legally. But, these issues do require a balancing act. I think the Supreme Court got it right in the Masterpiece Cakeshop case, which found the Colorado Civil Rights Commission was unconstitutionally hostile to the baker's claims: It seems to me that no one should be forced to send a message with which they do not agree, and employing one's creative talent always sends a message. I would have felt differently if the baker had refused to serve the gay couple entirely, but he didn't.

The court was most definitely correct in the Hosanna-Tabor decision that barred ministers from suing their churches when they are fired, even if the fired minister claims discrimination occurred. The last thing we want is the government getting involved in who is and is not a minister in a church! Masterpiece Cakeshop was decided 7-2, and Hosanna-Tabor was unanimous, so support in these religious liberty rulings is not the sole province of culture war conservatives.

Some liberals claim there are already conscience protections in the law, and they point to the Weldon Amendment as an example. That amendment was indeed designed to protect health care providers from having to perform abortions. But read

the statute:

> None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

What is the penalty for violating the act? Cutting off federal funds. Do you really think the federal government will cancel all health care funding to, say, California or Florida if a violation of the Weldon Amendment is found? The amendment is toothless because it does not provide realistic remedies.

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On the other hand, as we saw in the debate about the HHS contraception mandate, conservative culture warriors are only too happy to abuse their own moral theology in order to make a legal case. Providing health insurance coverage does not constitute illicit cooperation with evil. You will recall that the U.S. Conference of Catholic Bishops' staff promised the bishops a presentation on the issue, but it never materialized because reputable moral theologians knew the mandate wasn't immoral, and that would have undercut their legal argument that our Catholic beliefs required us to object to the mandate.

The International Theological Commission just last week issued "Religious Liberty for the Good of All," which defended the right of conscientious objection: "The church expects that its members can live their faith freely and that their conscience rights will be safeguarded. Living the faith can sometimes require conscientious objection." It warned against the tendency in some Western countries to "consider professed faith and religious belonging as an obstacle for admittance to the full cultural and political citizenship of individuals," calling this a form of "soft totalitarianism." The phrase "soft totalitarianism" might be a bit of a stretch, but only a bit.

The Leadership Conference on Civil and Human Rights, like the ACLU, has sadly become an organization that is willing to run roughshod over religious freedom in pursuit of an aggressive agenda focused on reproductive rights. The organization's CEO and president Vanita Gupta issued a statement that did not see any need to

recognize that these issues require balancing different rights. "HHS's final denial of care rule will substantially harm the health and well-being of many — in particular women and transgender patients," Gupta thundered. "The government should protect all patients from discrimination, not make it easier for those in the health care system to discriminate. The rule is also arbitrary and capricious and exceeds the scope of the laws that it seeks to enforce. This rule must be scrapped."

When you look at the comments the conference filed on the proposed rule, you see a similar lack of balance. Consider this paragraph:

> Discrimination in health care against women, transgender persons, and people of color has been exacerbated by providers invoking religious beliefs to deny access to health insurance and an increasingly broad range of health care services, including birth control, sterilization, certain infertility treatments, abortion, transition-related medical care for transgender patients, and end of life care. [xx] The reach of religious refusals to provide care was growing with the proliferation of both the types of entities using religious beliefs to discriminate [xxi] and the number of religiously affiliated entities that provide health care and related services.[xxii] The harms of these refusals do not fall equally on all. One recent study, for example, found that women of color are more likely than White women to give birth at Catholic or Catholic-affiliated hospitals that impose religious restrictions on the health care that can be provided. [xxiii]

Can you imagine the horror? "Invoking religious beliefs" to "deny access" to "abortion, transition-related medical care for transgender patients, and end of life care." I ask Ms. Gupta: What possible conception of liberty permits her to procure an abortion but does not also provide me with the freedom to refuse to perform one? Why should a Catholic hospital be forced to euthanize someone? I will admit the whole transgender issue is enormously complicated, and I am not sure what I think about it yet.

There was a voice of reason in this debate and, unsurprisingly, it came from Sr. Carol Keehan, of the Daughters of Charity of St. Vincent de Paul, president and chief executive officer of the Catholic Health Association of the United States, who issued this exceedingly well calibrated statement:

CHA welcomes efforts to implement and enforce existing federal laws providing conscience protections. CHA is currently reviewing the final regulation issued by HHS today. Catholic hospitals and long-term care facilities welcome and serve all persons in need of care. Our mission and our ethical standards in health care are rooted in and inseparable from the Catholic Church's teachings about the dignity of the human person and the sanctity of human life from conception to natural death. These are the source of both the work we do and the limits on what we will do. Every individual seeking health care is welcome and will be treated with dignity and respect in our facilities.

Sr. Keehan apparently sees what other advocates for conscience protections do not: If we do not make it clear that our religious liberty will not be used to discriminate against gay people, we threaten the survival of our conscience protections and, not incidentally, disgrace our religion. The religious liberty zealots will never admit this, but the fact is that their willingness to traffic in anti-LGBT politics — and align themselves with the most immoral president in memory — gravely harms the cause they aim to support.

So let the craziness begin. Let both sides trash their credibility as they run roughshod over those with whom they disagree, insisting they win the whole game rather than trying to strike a balance. Both sides can raise money and keep their friends employed. When the White House changes hands, there will be some minor policy tweaks. Sound and fury signifying nothing. It is an old tale, and a tiresome one.

[Michael Sean Winters covers the nexus of religion and politics for NCR.]

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