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Staffer: Bishops 'will not relent' on contraception compromise

by Joshua J. McElwee



Anthony R. Picarello, Jr., is seen in a 2007 file photo. (CNS photo/Paul Haring)

A key staffer for the U.S. bishops' conference said Thursday that the bishops "will not relent" and "have no choice" but to voice their objections to the controversial mandate requiring coverage of contraceptive services in health care plans.

"Foundational principles, religious liberty are at stake," said Anthony R. Picarello, Jr., the bishops' conference's general counsel and associate general secretary, on a conference call with reporters from Catholic papers across the country Thursday afternoon.

"And...we're not going to stop until we get it done," he continued. "We're just not. The bishops have no choice. They just have no choice. They're not going to relent on this. They can't relent. They have no choice."

Picarello's comments come as several bishops are becoming more vocal about their opposition to the mandate.

Bishop William Lori, the chairman of the bishops' new ad hoc committee for religious liberty, testified Thursday before the House of Representatives' Committee on Oversight and Government Reform. Cardinal Donald Wuerl of Washington also wrote an article posted on the website of the *Washington Post* the same day, saying "What is at stake here is a question of human freedom."

President Barack Obama announced last Friday that the mandate would be revised to address concerns it violated principles of religious liberty and would force employers of religiously affiliated institutions opposed to birth control -- including Catholic hospitals, charities and schools -- to violate their consciences.

Under the revised plan, when an employer affiliated with a religious group declines to provide contraceptive coverage to employees, insurance companies will be required to offer the coverage to individuals who want it free of charge.

On the conference call today, Picarello said the revision still reflects the "coercive power of the state."

"We have the coercive power of the state being applied to force us to provide, sponsor, [and] pay for things that violate our most deeply held religious convictions," he said.

Picarello said there were three main concerns the bishops have with the revised mandate. Basically, he said, "we are still forced by government to pay for these things directly."

In particular, Picarello said, the bishops are concerned about religious insurers who "may well have objections to writing policies that include this" and self-insured religious employers -- a group which would include some Catholic institutions such as schools, and perhaps even some dioceses -- "would be the ones to pay the dollars directly out of their own funds"

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In the bishops' view, Picarello said, the first step forward would be to rescind the mandate altogether.

"These services should not be included within preventive services," he said. "Preventive services are designed to prevent diseases. These things prevent pregnancy. Pregnancy is not a disease. Therefore they do not belong in this mandate."

In his testimony, Lori compared the contraception mandate to a law which would require restaurants run by Orthodox Jews to serve pork.

Making a thinly veiled reference to the number of Catholics who do not follow the church's official teaching on birth control, which some studies put at 98 percent of Catholics women, Lori writes in his official testimony that in his analogy "the fact that some (or even most) Jews eat pork is simply irrelevant."

"The fact remains that some Jews do not -- and they do not out of their most deeply held religious convictions," he writes.

Continuing on with the analogy, Lori writes that the main question in that scenario is: "Can a customer come to a kosher deli, demand to be served a ham sandwich, and if refused, bring down severe government sanction on the deli?"

"In a nation committed to religious liberty and diversity, the answer, of course, is: No," he writes.

Asked by *NCR* on the conference call how the bishops intended to go forward with their objection to the mandate when recent polls show that the majority of Catholics do not think it violates religious liberty, Picarello said that if people take the time to study the revised mandate "they'll come to recognize the problem."

"I think the folks who are willing to give careful attention to how what was announced on Friday actually operates, they'll come to recognize that the problem is still there in very, very significant measure and continues to need to be fixed," he said. "We expect that people will continue to rally around that flag."

Numerous times on the call, Picarello mentioned the bishops' support for the Respect for Rights of Conscience Act, a bill introduced in the House of Representatives by Congressman Jeff Fortenberry (R-Neb.)

That bill, which has 191 cosponsors, would amend the health care reform law to allow employers to deny coverage of specific services in health plans, as long as they cite religious beliefs.

Asked whether that bill would set up a "slippery slope," allowing employers to deny services such as blood transfusions as well as contraception, Picarello said the bill would simply keep in place current practices, where employers work with insurers to specify what will be covered in their health care plans.

While the insurer may agree to an accommodation, Picarello said, the proposed bill "doesn't insist that the insurer say yes to that accommodation."

"What it does do," he said, "is prevent the government from forcing the answer [on such accommodations] to be no."

NCR also asked how the bishops' arguments on the mandate would apply to other issues of conscience, such as to those who argue that they should be exempt from paying taxes if they don't want their money going toward military expenditures.

Responding to that question by also referencing government funding for abortion services at the state level, Picarello said "those are very, very serious, very grave matters."

"But they have not been treated as religious liberty matters," he said. "Because what you're talking about is people paying their taxes - it goes into an enormous pot, and then some small fraction of it is used for this or that which is objectionable."

While he said those payments may be a "troublesome thing," he also said "what we're talking about here is much more direct."

"We're talking about not churches or individuals just paying their taxes, which cover everything that government does," he said. "We're talking about the government coming in and requiring religious organizations themselves to fund these services, with their own money, with their own administrative systems, basically start to finish - not as part of some broader pool."

Picarello continued and said that while he had not done research in this area, it was not his "sense" that the church had treated taxation "as a religious liberty issue."

"Because, unless the government is perfect, there are always going to be some morally objectionable things," he said. "Here, we're being asked to pay for it directly, or one step removed ourselves -- in our own institutions, with our own employees. It's the direct government compulsion that makes it a matter of religious liberty."

Asked whether the bishops' conference would consider joining a number of lawsuits questioning the legality of the contraceptive mandate, Picarello said he wouldn't comment on specifics, but said "all the options are on the table."

Asked how the viewpoint of Catholic organizations, such as the Catholic Health Association, which have supported the compromise play into the bishops' discussions, Picarello pointedly said, "I think you'll need to talk to CHA to get information about what CHA did or didn't do."

Lori's testimony Thursday came in a hearing titled "Lines Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?"

Among ten others also testifying during the hearing were John Garvey, the president of The Catholic University of America; Rev. Dr. Matthew Harrison, the president of the Lutheran church's Missouri synod; and Rabbi Meir Soloveichik, a professor at Yeshiva University.

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