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## The USCCB Response: Change or Not?

by Michael Sean Winters

Distinctly Catholic

The USCCB's response to the latest iteration of the HHS contraception mandate seems to have occasioned disappointment all around. Those who thought the administration's offer was satisfactory, and I am more or less one of them provided a few more i's got dotted and t's got crossed, were hoping for a statement that would be, at least, more gracious, more willing to recognize that the White House was trying to address our concerns when it really has little or no political advantage in doing so, and most importantly, a little more willing to understand that the mandate, however clumsily it was rolled out and despite the heated debate it brought on, was not intended as an assault on religious liberty.

On the other hand, conservatives determined to fight the administration and defeat any compromise, should be even more disappointed with the statement. Secular politics is no longer an arena of life where nuances matter, but they matter in ecclesiastical politics a great deal. And, in this case, there was more than a nuanced change from what we were hearing one year ago when the administration announced its first "accommodation." Last February, the bishops were calling for legislative action, which seems improbable now as the GOP will not touch this issue with a ten foot pole. Last year, they insisted the recession of the mandate was the only solution. The President's offer was "unacceptable" and, in testimony before Congress that same month, then-Bishop William Lori called the mandate "absurd." In short, one year ago, the bishops were willing to issue a call to the barricades. Nothing like that is found in the statement issued yesterday.

Instead, the headline this year says the administration's proposal "falls short" and states that the "Bishops look forward to addressing issues with the administration." Instead of appealing for a legislative solution, the bishops state they will engage the comment period on the rule to voice their remaining concerns. They

acknowledge that the administration took a good step by eliminating the four-part definition of a religious institution. The entire tone of the document is far, far different from what we heard last year, and not only in February, but then during the Fortnight for Freedom. No one is headed to the barricades now, they are headed to the conference table to negotiate.

Before heading to the negotiating table at the White House, the bishops need to do something first. If, as I believe, the statement issued yesterday reflects a changed approach from combativeness to trying to find a solution, it is really, really, important that the bishops articulate, to themselves, to their staff and to the Catholic faithful, what is the key question before us. It is not only a legal question. It is not only a question for moral theologians. It is a practical question too, and a simple one: What do we need to do to keep our ministries going? If there are some culture warriors who say that any hint of association with the mandate will rob the Church of a part of her soul, the bishops need to understand that closing our ministries will rob more than a part of her soul. A Church that does not care for the poor, minister to the sick and dying, and educate the ignorant, is not the Church of Jesus Christ.

There is also a question for the Obama administration before they head to the negotiating table. I understand that they are committed to making sure there is nearly universal access to free contraceptive care for women. I understand too, that anyone who thinks that there is a solution that will not guarantee such universal access is deluding themselves: The election in November decided that issue. But, the Obama administration, and especially the people at HHS, need to ask themselves this question: If Catholic hospitals were to close, would for-profit health care step into the breach and start caring for immigrants, the poor, and the marginalized? If Catholic Charities were to shut down, who would pick up the slack for all they do to assist the poor in every city and hamlet in America? The administration, however frustrated they might be, need to keep coming back to the table. They need not understand how Catholic moral theology works, and I am sure our concerns about cooperation with evil strike them as strange at best, but they must respect that for Catholics, such issues matter and it is worthwhile trying to appease the tensions.

I mention moral theology specifically for a reason. It is also time that the U.S. bishops assume their role as leaders of the Church in the United States. They need to stop letting the lawyers and the moral theologians dictate the terms of the debate, not least because the lawyers they apparently listen to (that would be you, Becket Fund) and the moral theologians that have their ear (that would be you, National Catholic Bioethics Center), are not pastors and they come at these issues from a specific perspective, a perspective that is not exhaustive, and with an agenda that is not a pastor's agenda. Lawyers, by training, are looking to fight over every jot and tittle and their goal is to win. Some moral theologians read our tradition differently from the way Dr. Haas reads it, and his aim seems to be to narrow the tradition as much as possible.

The Becket Fund and the NCBC also have an agenda that has more to do with politics than with pastoring the Church. I watched Kyle Duncan from the Becket Fund on EWTN's "World Over" last night, and he is scary. At one point he asserted that the government had no business telling a private employer how to run their business. He said this without qualification. Of course, the government tells employers all sorts of things all the time: Zoning regulations govern where and how a building can be constructed, and tax laws govern how much income must be withheld from paychecks, and restaurants must pass certain health standards and all workplaces must abide by worker safety regulations. I half expected Mr. Duncan to invoke his Second Amendment rights as well. Scary. As for the NCBC, well, when you have a guest speaker from the Heritage Foundation calling for the repeal of the Affordable Care Act in its entirety, and you have no one from the opposite side advocating for its retention, and when you do this after the Heritage Foundation has turned to the most prominent Tea Party Republican to lead the group, Sen. Jim DeMint, and he explicitly says the group will now be more of an advocacy organization and less of a think tank, well, it is hard not to discern a partisan agenda at work.

It is time for the U.S. bishops to consult, first and foremost, with the stakeholders in their dioceses. How do Catholic charities deal with state-level mandates already in effect? How do different stakeholders interact with the government already and do those differences threaten our religious liberty? For example, when a local Catholic charity is sued, and this happens with some frequency because working with the poor does not always yield a happy outcome, I am guessing that the lawyer's for the diocese make it very, very clear that diocesan assets are not at risk because the diocese and Catholic Charities are distinct, separate corporations. Or, do they jump in and claim ownership and put the diocese at financial risk? Hmmmm. I bet I know the answer to that question. So, what is all this sound-bite stuff in the statement issued yesterday about "first class" and "second class" religious organizations. The administration is treating "exempt" organizations differently from "accommodated" organizations because the latter group has a lot more women, and more women who might not share the Church's views on contraception and no solution, repeat no solution, is simply going to deny access to this coverage the administration wants.

I remain suspicious about the claim that the current iteration entails material cooperation with evil. I do not see that the Catholic institution that is "accommodated" has to do anything. But, one part of the proposal from HHS Friday might help further address this concern. The administration announced they will erect a separate revenue stream, via refunds on fees charged insurers to participate in the exchanges, that will reimburse the Third Party Administrators at self-insured religious organizations for the contraception coverage. So, there is simply no way to argue, it seems to me, that if someone else is organizing it, writing a stand-alone policy and getting paid by the government, there is no way to claim the religious institution is cooperating with anything, evil or otherwise. Perhaps, this mechanism could be extended to those institutions that are accommodated but which do not self-insure? This seems to me to be halfway between the original accommodation and the USCCB's proposal that women get whatever access they need through Medicaid.

The most disappointing aspect of the bishops' statement was their continued insistence on an exemption for private, for-profit employers. As I wrote Monday, this is a proper concern for the Becket Fund, it is not a proper concern for the bishops. And, furthermore, I think we need to be very careful in this hyper-individualistic society of ours, in advocating an individual's right to claim an exemption from a law based on their religious beliefs. As I discovered in researching my biography of Jerry Falwell, there were many, many white Southern Protestants who claimed the Bible itself justified segregation. They had a deeply held religious belief, rooted in their understanding of Scripture, that informed their conscience in such a way that they believed segregation was God's will. Should they have been able then "or now" to claim an exemption from the nation's civil rights laws? The bishops are playing with fire on this issue and, if I were them, I would be wary, very wary, of accepting the advice of anyone who does not discern that

danger.

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It seems to me that the leadership of the conference has a problem on their hand of which their response to the HHS mandate is the leading symptom, and their problem is similar to that of John Boehner and other establishment Republicans. They have a Tea Party within the fold, and it threatens to turn on them. You saw this a couple of years back when vile and nasty charges were thrown at Cardinal Sean O'Malley's pro-life credentials because he presided at the funeral of Sen. Ted Kennedy. You saw it last autumn, when the Archdiocese of New York had to shut down the comment box on Cardinal Timothy Dolan's blog about the Al Smith dinner because there were such vile and nasty things being said. And, you see it, too, in those who advise the bishops that the HHS mandate is still one piece of a tyrannical scheme to take away our religious liberty. Unfortunately, some bishops listen to that. Unfortunately, most bishops gave that apocalyptic narrative more of a hearing than it deserved throughout the last year. The bishops walked pretty far out on a limb. Now, they must figure out how to walk back. My disappointed friends on the left need to remember that one walks back off a limb one step at a time. My disappointed friends on the right need to recognize that the limb is about to break if we do not get off it quickly. And, the bishops need to get off the limb so they can start figuring out how to keep our Catholic ministries both open and Catholic.

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