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## MSW Replies to Becket

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Distinctly Catholic

As noted, our friends at the Becket Fund took exception to my charge that the organization is lying when it puts forth the claim that the self-certification required of religious organizations to avoid providing or paying for contraception coverage in their insurance policies is really a "permission slip" for their insurance company or third party administrator to provide the objectionable coverage. (Lord, I am even beginning to sound like a lawyer!) Their response can be found here. I stick by my claim and, today, explain what kind of lie we are talking about and why it matters.

The idea that a form used to register conscientious objection to a government policy is some kind of permission slip for others defies common sense. We know how a permission slip reads: I remember needing them from my Mom to be able to go on field trips. She would write, "I give permission for my son Michael to join his fourth grade class on their trip to Mystic Seaport." A few years back, I encountered different language, but the same idea, when I needed to board my dogs. I had to sign a form authorizing the people who run the boarding house to seek emergency veterinary assistance and authorize the veterinarian to perform emergency surgery, should anything untoward happen.

That is not how the self-certification (EBSA Form 700) form reads. It says, "I certify that, on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization." It does not say anything about giving anybody permission to do anything. It does not authorize anyone to do anything. It does not have to because, in this instance, as in all instances of conscientious objection from a government mandate, the mandate comes from the government. If they choose to assign it to a third party, that is not

the fault of the organization that conscientiously objects, nor does it make the religious organization morally complicit in the activity itself.

In their response, Becket tries to invoke a metaphor I used on their behalf but, in fact, they confirm it for my purposes. As I noted the other day, if this understanding were to be accepted by the courts, then a young man who conscientiously objected to serving in the military during the Vietnam War, would in fact be giving a "permission slip" to the Pentagon to draft someone else so that they meet the draft quota. That someone else might not have been a neighbor in the common sense of the word, he might not have lived next door, but the mandate to fill the quota shifted to someone else most definitely. The draft board did not tell the Pentagon, "Sorry, but you will not have all the soldiers you requested this year." To take another analogy, if I refuse to sell my property to the town, and they invoke eminent domain to claim it anyway, was I complicit in their decision to invoke eminent domain by refusing to sell in the first instance? It is madness.

The lawyers at Becket Fund are smart. They knew when they made this claim "or, as lawyers like to say, they knew or should have known" that this was a specious argument. And, I do not believe that the cause of religious liberty, or any cause, is advanced by the use of specious arguments.

There are varieties of mendacity. When I say the permission slip language is a lie, it is a very specific type of lie. It is not like Bill Clinton saying, "I did not have sex with that woman," when, as we all subsequently learned, he did have sex with that woman. No, this lie is more like the lies of those who deny climate change. It is the lie of the zealous. It is what happens when someone sees all of reality through a single lens, listens only to one side of the argument, garners its information from sources exclusively with which one agrees, entertains no doubt and views all ambiguities and complexities and counter-evidence, and, yes, simple common sense, as things to be resisted. The lawyers at Becket may be entirely sincere in their claim that the form is a permission slip, but their sincerity is the kind derived from being the first to believe one's own propaganda. Sincerity does not make a claim true.

Mr. Blomberg says that it doesn't matter what the lawyers at Becket think, that what matters is how the Little Sisters of the Poor view it, and they view the form as a permission slip. Certainly, the Little Sisters did not reach this conclusion by reading the text of the form. Perhaps they approached the people at Becket for advice. Perhaps someone suggested the Little Sister to Becket "they do make a great client!" Perhaps they watched one of the many appearances by someone from Becket on EWTN or some other news outlet, using the permission slip language. Perhaps the Little Sisters need a pastor more interested in assuaging their consciences than in turning them into a prop in the culture war. What is clear to me is that the Little Sisters, who are just about the holiest, most Christian people on earth, did not reach this conclusion by simply reading the form.

Aha! Blomberg says. But, the courts are with us too! The fact that some judges have used the "permission slip" language does not convince. One of the saddest facts of our nation's political life is the degree to which ideology has come to infect the practice of law. It does not surprise me that a judge, appointed by George W. Bush, probably a member of the Federalist Society, who watches Fox News, who reads the blast email from Becket, or who went to school with Robbie George, would be among the zealous, not the judicious. And, to be fair, the rise of conservative ideologues on the bench was a consequence of the rise of liberal ideologues on the bench. There is a straight, causal line, or at least as straight and as causal as a line in a complex culture can be, between penumbras and permission slips.

I share the Becket Fund's concern to protect religious liberty. I think the issue of religious liberty is an important one and that we Catholics will have many battles ahead. You can already see this in the drumbeat against our Catholic hospitals that is beginning in such influential and confused intellectual

locations as the editorial pages of the New York Times. But, I do not want to see Becket become to the issue of religious liberty what groups like the American Life League have become to the issue of abortion.

I invoke this analogy precisely. Let us take the example of the American Life League's response to the death of Sen. Edward Kennedy. They called for the late senator to be denied a public funeral. They said that having a public funeral was "spitting on Christ" and castigated Cardinal Sean O'Malley for presiding at the funeral. The Church's core, essential, foundational commitment to mercy went out the window and to hell with the needs of the family. That was their line. Apart from the distortion of Catholic teaching such a view entailed, was it practical toward achieving the ends the American Life League seeks? Do they think that Sen. Kennedy's widow, Vicki Kennedy, would have joined the Church in its effort to beat back a subsequent physician-assisted suicide law in Massachusetts if the Church had denied her and her family a funeral for her husband?

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So, too, the Becket Fund must ask itself whether its willingness to indulge this permission slip analogy does not betray a kind of paranoid defensiveness that will, over the long haul, harm their cause. Does it make sense to alienate those of us who share their concern but deplore such shoddy reasoning and do not want to be associated with it? Will the Becket Fund become just another brigade in the culture war army of the conservative right? Hell, the next thing you know, they will object to atheists being able to put up a display at Christmas! Oops.

Here is my wish: That the Becket Fund will treat the issue of religious liberty with all the seriousness it deserves and be especially mindful of the need to disentangle their concern from regular partisan politics. To be sure, they did just that in defending the rights of Muslims to build a mosque. But, they and their cause are not well served by clinging to a specious argument that is, sadly, still a lie. And, our bishops should be very, very concerned that Becket and its lawyers are becoming seen as the defenders of the Church and its ministries and that their positions, and the Church's positions, will be conflated in the public's eye. Bishops, of all people, should know that listening to one's lawyers does not always result in a confirmation of one's moral authority.

I have another wish. I hope the Little Sister and the other plaintiffs prosper in their lawsuits. But, I hope they prosper on solid grounds, not specious ones. We can all be grateful for the good work that Becket does, but only a culture warrior thinks that such gratitude requires us to uncritically endorse all that they do or say. Friends correct each other. I expect better from Becket. I stand by my claim. And I hope that they will be zealous without becoming zealots.

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