

United States House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Health

Hearing on the Respect for Rights of Conscience Act of 2011  
“Do New Health Law Mandates Threaten Conscience  
Rights and Access to Care?”

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Testimony of  
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Mr. Chairman and distinguished members of the Subcommittee, thank you for the opportunity to testify before you today in support of the Respect for Rights of Conscience Act. I deeply appreciate the attention you have devoted to this issue of vital importance to religious organizations and individuals across our country.

My name is Jane Belford, and I represent the Archdiocese of Washington, for which I serve as Chancellor and General Counsel. I will summarize my remarks and ask that my written testimony be admitted to the record.

The Archdiocese of Washington is a nonprofit corporation which was chartered by an Act of Congress in 1948. It is home to nearly 600,000 Catholics and includes 140 parishes located in Washington, D.C. and five counties in Maryland: Montgomery, Prince George's, Calvert, Charles and St. Mary's. As just one of the 195 local dioceses of the Roman Catholic Church in the United States, we exist to spread the Gospel and to serve the needs of our neighbors. Throughout history, the Catholic Church and other religious institutions have been the leading private providers of charitable, educational and medical services to the poor and vulnerable. The Archdiocese of Washington continues that tradition of service today through its schools, medical clinics, social service agencies, senior and low income housing, job training programs, and vast number of programs and services for persons in need, regardless of their faith or lack of faith. As the late Archbishop of Washington, James Cardinal Hickey said, "We serve [them] not because they are Catholic, but because we are Catholic. If we don't care for the sick, educate the young, care for the homeless, then we cannot call ourselves the church of Jesus Christ."<sup>1</sup>

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<sup>1</sup> Murphy, Caryle. "A Steadfast Servant of D.C. Area's Needy." *The Washington Post* (2004-10-25).

I join with others in support of the Respect for Rights of Conscience Act, HR 1179. As you know, the proposed legislation would address the Department of Health & Human Services' ("HHS") regulations that mandate that private health care plans cover sterilization, contraceptive services, and abortifacient drugs, and aims to correct the radically narrow religious exemption that those regulations provide. The HHS mandate,<sup>2</sup> which effectively categorizes pregnancy as a disease, is irretrievably flawed and should be rescinded in its entirety. The United States Conference of Catholic Bishops has thoroughly addressed this issue in the comments it submitted to HHS on August 31, 2011 and they are incorporated by reference here.<sup>3</sup>

If the mandate is not rescinded, then its religious exemption, which would be the narrowest exemption of its kind ever enacted in federal law, would fail to protect the vast majority of religious stakeholders in the process of providing health insurance. Until now, federal law has never prevented religious employers, like the Archdiocese of Washington, from providing for the needs of their employees with a health plan that is consistent with the Church's moral teachings.

This would change under the HHS mandate. For this reason, the Respect for Rights of Conscience Act is needed to bring the health care reform law in to line with the policy that has governed other federal health programs for years. It would proactively protect religious employers and others who have moral or religious objections to the drugs and procedures for which the HHS regulations would mandate coverage.<sup>4</sup> HR 1179 would not change any past laws.

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<sup>2</sup> By "the mandate," I am referring only to the requirement that health plans cover contraceptives, sterilization, and related education and counseling. I am not referring to the entire list of preventive services for women.

<sup>3</sup> The USCCB's comments are available at <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08-2.pdf>

<sup>4</sup> The Catholic Church's moral and religious objections to contraception are set forth in the Catechism of the Catholic Church. It is the Church's belief that there is an "inseparable connection, established by God, which

Its approach to conscientious objection in this context is the norm, bringing the Patient Protection and Affordable Care Act into line with standards of conscience protection in health care long agreed upon at the federal level.

The inadequate exemption at issue sets forth a four-part test for an entity to be identified as a religious organization. According to HHS, an organization is religious, and therefore free to exclude contraception and sterilization from its health plan only if it: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. 76 Fed. Reg. 46621 (Aug. 3, 2011).

Under this test, archdiocesan Catholic organizations would be free to act in accord with Catholic teaching on life and procreation only if they were to stop hiring and serving non-Catholics. However, following the example set forth by the parable of the Good Samaritan, these Catholic organizations serve people of all different faiths without question or condition. HHS has drafted a religious exemption that is so narrow that it excludes virtually all Catholic hospitals, elementary and secondary schools, colleges and universities, and charitable organizations, none of which impose a litmus test on those they serve, as the HHS mandate would have them do.

A brief snapshot of some of these organizations and who they serve may help to better illustrate the point. In the Archdiocese of Washington, there are three Catholic hospitals that last year provided millions of dollars of free or low cost care for uninsured men, women and children. So, too, the Archdiocesan Health Care Network, a volunteer program of Catholic

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man on his own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage act.” Pope Paul VI, 1968, *Humanae Vitae*, 12.

Charities, connects low-income and uninsured patients with specialized, pro bono health care services through a network of 300 volunteer doctors, dentists and health care professionals representing all practices. Catholic Charities and our Catholic Services Network, with a staff of 800 and volunteers numbering 3,400, is the largest private provider of social services in the metropolitan DC area and last year served more than 100,000 children, adults and families through 77 programs offering a wide range of services that include health care, maternity programs and residential care for children in crisis, emergency shelter, food, housing, education, job training, counseling, support for persons with development disabilities, services for new immigrants, legal aid, and more. The Spanish Catholic Center, in four locations in the Archdiocese, operates two medical clinics, a dental clinic, a pediatric clinic and provides social services, employment services, ESOL, and other services and had 38,000 client visits last year. Affordable housing is provided to several thousand low and moderate income senior adults, families with children, and others with special needs by Victory Housing, the development arm of the Archdiocese. Victory Housing has built and manages seven senior assisted living communities, five low-to-moderate income and 11 very low income independent senior communities, as well as three workforce housing communities, with two new facilities scheduled to open in 2012.

This social services effort is supplemented by parish-based outreach services. Nearly every one of our 140 parishes has some outreach ministry, including such programs as soup kitchens, a community health clinic, food pantries, outreach support to the disabled, grants for emergency services, assistance to pregnant women, and twinning programs. In addition, church-based service organizations such as the Knights of Columbus, the St. Vincent de Paul Society,

Christ Child Society and the Order of Malta, help to respond to the needs of the poor and vulnerable across the Archdiocese.

In addition to its health care and social services ministries, education is central to the mission of the Catholic Church. The Archdiocese has 98 Catholic elementary and secondary schools that are educating just over 28,000 students. These schools produce an annual cost savings to taxpayers in the District of Columbia and Maryland conservatively estimated at more than \$380,000,000 annually. Finally, through the annual Cardinal's Appeal and other archdiocesan fundraising efforts, and through the generosity of donors, the Archdiocese annually provides millions of dollars to support our ministries of health care, education and social services. If not for these ministries and the service of religious organizations, more of the work of caring for the sick, the poor and the marginalized would fall to government, or simply go undone.

The Archdiocese of Washington employs approximately 3,800 full and part time employees to run its operations and ministries. We provide these employees with health care coverage through a self-funded, church-sponsored, health benefit plan. We provide excellent health benefits consistent with Catholic beliefs, and substantially subsidize the costs of coverage. Currently, the Archdiocese is free under federal law to offer health benefits coverage that excludes contraception and sterilization. We would lose this freedom of conscience under the HHS mandate's current definition of an exempted religious organization. We believe the Archdiocese of Washington and other religious employers should be permitted to continue to extend health benefits to our employees without violating our moral or religious convictions.

It is common to think of the HHS mandate as implicating only one religious belief that the Catholic Church holds—that sterilization and contraception are immoral. However, because

of the narrow scope of its religious exemption—specifically, its condition that qualifying organizations must primarily serve only members of their own faith—the HHS mandate would also significantly burden our deeply held belief that God calls us to serve our neighbors. Both beliefs are grounded in the fundamental Church teaching that consistently upholds the dignity of all human life, of whatever race, status, or creed, from the very beginning to the very end.

It is our belief that God calls us to respect all life and to serve all others—not just Catholics, but the whole community. It is part of the Archdiocese’s central mission and religious identity to be a witness in the world through its acts of service to all who are in need, regardless of religion or creed. We strive to care for the sick, to aid the poor, and to teach children how to lead a good life. We believe that service to others is part of our baptismal calling and our employees care deeply about their work. In addition to our committed employees, we have thousands of dedicated volunteers, who expand the reach of the Church to the most vulnerable throughout our communities. When we are fortunate enough to be able to partner with the government in providing these services, our devotion to the cause and our institutional resources can make each dollar of funding go further.

Unfortunately, the mandate poses an unprecedented threat to rights of conscience for religious organizations that aim to serve their neighbors. One consequence of maintaining this narrow exemption would be that Catholic schools that teach abortion is morally wrong could have to pay for abortifacient drugs for their employees; and Catholic health clinics that refuse to provide contraception or sterilization for patients could have to subsidize contraception and sterilization for their employees. In comments submitted on August 31 by the U.S. Conference of Catholic Bishops to HHS, it was noted: "When a religious organization in particular pays for private conduct, the inescapable message is that it does not disapprove of that conduct. ... [A]

religious organization cannot communicate an effective message that conduct is morally wrong at the same time that it subsidizes that conduct. In particular, Catholic organizations cannot effectively and persuasively communicate the Church's teaching that contraception and sterilization are immoral if they simultaneously pay for contraceptives for their employees or (in the case of colleges and universities) for their students."<sup>5</sup>

Diocesan organizations would not be the only ones to suffer under the proposed mandate. As Cardinal Daniel Dinardo noted in his letter to Congress on September 7 of this year, "individuals, insurers, and the sponsors of non-employee health plans (e.g., student health plans in Catholic schools) would have no exemption at all." This omission jeopardizes the free speech rights of such individuals, insurers, and sponsors by forcing them to offer or subsidize, and thereby to endorse, the practice of sterilization and contraception. For the Church's position on these and other threats posed to religious freedom by these regulations, I would respectfully refer the Committee to the USCCB's August 31, 2011 Comments submitted to HHS.

Therein, the USCCB asserts that the HHS mandate would be subject to challenge in court on a number of other grounds. It would violate the Weldon amendment's prohibition of government discrimination against health plans that do not cover abortions (see Consolidated Appropriations Act, 2010, Pub. L. 111-117, Div. D, § 508(d) (Dec. 16, 2009)); it would contravene the abortion and non-preemption provisions of the Patient Protection and Affordable Care Act (see §§ 1301(b)(1)(A) and 1303(c)(1)); it would run afoul of protections established in the Religious Freedom and Restoration Act (42 U.S.C. 2000bb-1(c)); and it would infringe on the rights and freedoms guaranteed in the Free Exercise and Establishment Clauses of the First

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<sup>5</sup> The USCCB comments are available at <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-hhs-on-preventive-services-2011-08-2.pdf>.

Amendment (see, e.g., *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993) (Free Exercise Clause); *Larson v. Valente*, 456 U.S. 228, 244-45 (1982) (Establishment Clause). The best way to fix these legal deficiencies is to rescind the mandate in its entirety. The next best solution is to pass HR 1179.

Aside from being unconstitutional, the mandate's narrow exemption represents a massive error in policy making by excluding Catholic institutions that provide health care, education and charitable services to the general public. At a time when local, state, and federal governments have had to consider drastic cuts to their health care and social service programs, and when our citizens' need for support is so great, it is difficult to understand why the federal government would impose requirements that are designed to undermine and restrict access to these services.

Regardless of one's beliefs about the specific issues of contraception and abortion, people of faith should not be compelled to act in a manner inconsistent with their moral convictions in order to receive or provide health coverage. This mandate would impose such a compulsion on any religious institution that wishes to continue to employ and serve people of all faiths, and to provide health coverage to those who work in their institutions. Our Catholic schools, hospitals, clinics, and social service programs serve tens of thousands of non-Catholics. No one is required to become Catholic in order to receive these services. Yet this mandate would require us to violate our religious beliefs to serve them.

We believe in the value and dignity of all human life from beginning to end, and we believe that we are called to serve our neighbors—all of them. We will continue to honor these beliefs. But I implore the Committee to consider our nation's historical commitment to religious liberty and the value and importance of the Church's service to the poor and vulnerable, and to allow us to continue to observe our beliefs without interference by the law.