

Final HHS rule confirms religious exemption to contraceptive mandate

WASHINGTON — A rule finalizing the religious exemption to the contraceptive mandate should be “the end of a long cultural war fight” over the issue and confirm that the U.S. government “never needed nuns to give out contraceptives” to women, said the president of the Becket law firm.

Commenting in a press call to reporters Nov. 8, Mark Rienzi said the rule issued a day earlier by the U.S. Department of Health and Human Services “should be welcomed by people of good faith” on all sides of the issue.

In a joint statement Nov. 9, the president of the U.S. Conference of Catholic Bishops and the chairman of its Committee for Religious Liberty applauded the Trump administration’s decision “to finalize common-sense regulations” for religious employers.

The move allows “those with sincerely held religious or moral convictions opposing abortion-inducing drugs, sterilization, and contraception to exclude such drugs and devices from their health plans,” said Cardinal Daniel N. DiNardo of Galveston-Houston, USCCB president, and Archbishop Joseph E. Kurtz of Louisville, Kentucky, the committee chairman.

“These final regulations restore free exercise rights in accordance with the First Amendment and long-standing statutory protections for religious freedom,” they said. “The regulations allow people like the Little Sisters of the Poor, faith-based schools, and others to live out their faith in daily life and to continue to serve others, without fear of punishing fines from the federal government.”

In talking with reporters, Rienzi, whose law firm has represented the Little Sisters of the Poor in their court fight against the mandate since 2010, also emphasized that the Trump administration is not doing away with the mandate and but instead is

working to expand women's access to contraceptives under Title X.

He also said a view by some that the current administration has declared "a war on women" over the issue is simply not true, Rienzi said, explaining that with the final rule issued by HHS, the Trump administration announced it is taking additional steps to expand the authority of the Title X Family Planning Program to allow coverage of contraceptives for women who cannot afford them or who do not get contraceptive products from their employer.

Title X is the only federal grant program dedicated solely to providing low-income families or uninsured people individuals with comprehensive family planning and related preventive health services.

Once he was in office, President Donald Trump pledged to lift the mandate burden placed on religious employers.

The rule issued Nov. 7 finalizes interim rules his administration issued in October 2017 to expand the exemption to religious employers; the new rules maintain the existing federal contraceptive mandate for most employers.

Days after the interim rules were issued, Pennsylvania and California filed complaints against the federal government over the exemption. Delaware, Maryland, New York and Virginia joined California's lawsuit to become the first plaintiff group to file a motion for a preliminary injunction seeking to prevent the new exemption rule from going into effect.

Rienzi said that the final rule does not end the Little Sisters of the Poor court fight. The lawsuits brought against the religious order by the attorneys general in Pennsylvania and California on behalf of their own states and several others are still working their way through the appeals court process.

In their lawsuits, California Attorney General Xavier Becerra and Pennsylvania Attorney General Josh Shapiro argue that the HHS ruling providing the religious exemption violates two constitutional amendments — the First Amendment and the 14th Amendment — because it allows employers to use religious beliefs to discriminate against employees and denies women their rights to equal protection under the law.

Becerra and Shapiro argue that women will be harmed somehow by this religious exemption, Rienzi said, but so far “in both cases the states have ultimately not been able to show a single person who is being deprived of contraception.”

Before 2010 and the contraceptive mandate, “millions and millions got contraceptives and they didn’t get them from nuns,” he added.

He urged Becerra and Shapiro “to put down their weapons and stop fighting nuns. The administration has come up with good compromise.” If women can’t get contraceptives from an employer, religious or otherwise, they’ll be able to get them under an expansion of Title X.

“That should be end of matter,” he said.

The attorney generals’ cases against the Little Sisters are making their way through the 9th U.S. Circuit Court of Appeals, based in San Francisco, and the 3rd U.S. Circuit Court of Appeals, based in Philadelphia.

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