

HHS mandate latest in line of religious crises

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The U.S. Department of Health and Human Services (HHS) regulation that would force employers, including Catholic institutions, to pay, directly or indirectly, for insurance for sterilization and contraceptives, including abortion-inducing drugs, stands as a religious liberty crisis. Scholars see it as the continuation of struggles faced by people of faith throughout the nation's history.

John Garvey, president of The Catholic University of America in Washington, said that the first battle over religious liberty in the United States dealt with the established church of Virginia, the Church of England, after the Revolutionary War. "It had been a thorn in the side of dissenting Protestants - Baptists and Presbyterians in particular - who for theological reasons objected to paying for the support of any established church," he said. In response, Thomas Jefferson, in 1777, drafted Virginia's religious freedom law that disestablished the church. The entire situation had a "powerful influence" on the adoption of the First Amendment to the U.S. Constitution in 1791, Garvey said.

The First Amendment's preclusion of an established church and support of the free exercise of religion was intended to put all faiths on equal footing. That may be why religious people of various stripes become political allies. Today, for example, even religious groups that support contraception often have opposed the HHS mandate

because it forces other believers to pay for contraceptives, in violation of their consciences.

It is not just Catholics who have known prejudice. Garvey called a series of laws against the Church of Jesus Christ of Latter-day Saints, the Mormons, “the most extended form of religious persecution that we have undertaken here in America.”

Catholics faced distrust when immigrating into the country when it was essentially Protestant. Many non-Catholics were concerned about how Catholics viewed the role of religion in politics and justified anti-Catholic policies by arguing that Catholics had an allegiance to Rome that precluded them from being faithful American citizens, he said.

Much of the prejudice against Catholics played out in opposition to parochial schools. State governments opposed providing funds to aid Catholic schools that often were founded in response to public schools that required prayer from Protestant Bibles. Some Members of Congress attempted to block all government aid that could flow to religiously affiliated schools with the Blaine Amendment in 1875. It never became law, but similar legislation was adopted by many state legislatures during the 1800s. Those laws are still in place in 37 states.

Joseph Viteritti, professor of public policy at Hunter College in New York, said that conflict over religious schools was not limited to Catholic schools. A law designed to discriminate against Lutheran schools when anti-German sentiment was at its height following World War I was struck down by the U.S. Supreme Court in *Meyer v. Nebraska*.

Another important U.S. Supreme Court decision is *Pierce v. Society of Sisters* in 1925, which struck down an Oregon law that required all young people, eight- to 16-years-of-age, to attend public schools. It was aimed particularly at Catholics, though

it hurt all religious minorities.

“That case is very important in the school choice movement because it basically said that while the state has an interest in educating children, the primary guardian of the child is the parent,” Viteritti said. “Schools, in addition to teaching basic skills, also teach values, and good parenting involves the inculcation of values in children.”

Viteritti also said that crises in religious liberty continue today with the newest immigrant group, Muslims, who face distrust and are unfairly associated with radicalism and violence.

“Disagreement over religion is part and parcel of life. It has always been with us and will always be with us,” he said. “It’s something that’s been with us since the pilgrims landed on Plymouth Rock.”