

Published By



MICHIGAN
CATHOLIC
CONFERENCE

VOLUME 41, NUMBER 2
MAY 2013

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CONSCIENCE RIGHTS

*A Foundation for
Democracy*



"No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority." —*Thomas Jefferson, 1809*

Recent literature and documentaries have sought to re-examine the lives of America's Founding Fathers and their collective intent to form a nation free from tyranny. From the correspondences between John and Abigail Adams and Thomas Jefferson to a broader understanding of the life of George Washington, the Founding Fathers demonstrated a unified position on the right to conscience and religious liberty. By and large, history amplifies the goal of the colonial leaders to protect the right to one's conscience and ability to practice faith freely. In 1802, for example, President Jefferson articulated this position in a letter to the Ursuline Sisters of New Orleans, alleviating their concerns about religious liberty rights in the new Louisiana Territory. The latter half of the 20th century witnessed Congress pass numerous policies protecting conscience rights. Regrettably, the federal government's protection of religious liberty has dwindled more recently to the point of being a significant concern for Catholics and people of good will.

The U.S. Department of Health and Human Services' (HHS) "preventable services" policy, which most have come to accept as a secular mandate upon religious organizations, represents a sea change in the federal government's historic protection of religious freedom. The HHS policy requires most businesses and organizations to add morally objectionable services to their employee health care plans. Impacted institutions include faith-based universities, hospitals, schools and charity organizations. These entities serve the general public in their

faith tradition, but because they welcome all persons, regardless of creed, the government is actively redefining their presence as church organizations.

The administration's departure from protecting religious liberty rights stands in stark contrast to recent policies that uphold individual and institutional conscience rights. These policies, detailed on the following pages, have been supported by numerous Congresses and signed by presidents of both parties. These federal measures have sought to uphold moral or religious objections to provide, reimburse for, or provide coverage of morally objectionable services. From contraceptive mandates in federal employee health care plans to persons objecting to abortion while training for a medical career, Congress has consistently deferred to First Amendment protections.

The threat looms large, however, for a national social service and educational framework that disallows diversity in service and tradition should the federal government shift direction and force Catholic agencies to operate contrary to their institutional consciences. Thus, in order for religious organizations to continue serving the general public in their faith tradition, as they always have, a renewed enthusiasm for individual and institutional conscience rights at both the state and federal levels is necessary. This **focus** publication seeks to highlight existing conscience and religious liberty policies, along with past commentary on this critical subject. ■

Timeline of FEDERAL CONSCIENCE PROTECTIONS¹

1973

ABORTION AND STERILIZATION

The "Church amendment," sponsored by former Senator Frank Church (D-ID), declares that hospitals or individuals' receipt of federal funds in various health programs will not require them to participate in abortion and sterilization procedures, if they object based on moral or religious convictions. The policy also forbids hospitals in these programs to make willingness or unwillingness to perform these procedures a condition of employment. Another provision protects the general conscience rights of individuals in federally funded health service programs. A final provision prohibits entities that receive public health service funds from discriminating against applicants who decline to participate in abortions or sterilizations on account of religious beliefs or moral convictions.

42 U.S.C. §300a-7(b-e)

1986

NATURAL FAMILY PLANNING

A Foreign Aid policy prohibits discrimination against foreign aid grant applicants who offer natural family planning on account of religious or conscientious commitments. The policy has been included every year since 1986 with the current provision in Title III of Division I (Department of State, Foreign Operations, and Related Programs Appropriations Act) of the Consolidated Appropriations Act.

1988

EDUCATION POLICY

Language within the Civil Rights Restoration Act prohibits construing a federal sex discrimination provision (Title IX of the Education Amendments of 1972) to require an educational entity to violate its religious tenets, or to pay for or provide abortion or abortion benefits.

20 U.S.C. §1687-1688.

1994

EXECUTIONS AND CAPITAL CRIMES

According to this policy: "No employee of any state department of corrections, the United States Department of Justice, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to those departments, or bureaus, or services under contract shall be required, as condition of that employment or contractual obligation, to be in attendance at or participate in any prosecution or execution under this section if such participation is contrary to the moral or religious convictions of the employee."

18 U.S.C. §3597 (b)

1996

PHYSICIAN TRAINING AND LICENSING

This policy prohibits the federal government and state and local governments receiving federal funds from discriminating against health care entities (including residency programs) and individual health care providers that do not provide, train in or refer for abortions.

42 U.S.C. §238 (n)

VACCINATIONS

The Attorney General may waive the application of a provision that requires documentation that a person has been vaccinated against certain diseases in the case that any "alien" finds a vaccination to be contrary to their religious beliefs or moral convictions.

8 U.S.C. §1182 (g)

1997

MEDICARE COUNSELING

Medicare + Choice and Medicaid managed care plans are protected under the Medicare and Medicaid statutes from being forced to provide, reimburse for or provide coverage of counseling and referral services to which they have a moral or religious objection.

42 U.S.C. §1395w-22(j)(3)(b) 42 U.S.C. §1396u-2(b)(3)

1999

CONTRACEPTIVE COVERAGE FOR FEDERAL EMPLOYEES

Religious health plans are exempted from a contraceptive coverage mandate in the federal employees' health benefits program, and other health plans in the program are prohibited from discriminating against individuals who object to prescribing or providing contraceptives on moral or religious grounds. This provision has been approved every year since 1999 with the current version found in the Financial Services and General Government Appropriations Act of 2012.

2000

D.C. CONTRACEPTIVE MANDATE

As the District of Columbia discussed a contraceptive mandate, Congress sought to ensure that any such mandate "should include a 'conscience clause' which provides exceptions for religious beliefs and moral convictions." This provision has been approved every year since 2000 with the current version found in the Financial Services and General Government Appropriations Act of 2012.

2003

HIV/AIDS POLICY

An organization, including a faith-based organization, eligible to receive foreign aid HIV/AIDS assistance, shall not be required to endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a moral or religious objection.

22 U.S.C. 57631(d).

2004

HYDE/WELDON CONSCIENCE PROTECTION AMENDMENT

Physicians and nurses, hospitals and health insurance companies and other health care entities are protected from being forced by state or federal governments to perform, pay for, provide coverage of, or refer for abortions. This provision has been approved every year since 2004 with the current version found in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2012.

2010

PATIENT PROTECTION AND AFFORDABLE CARE ACT

The federal health care reform law allows individual states to opt-out of including abortion in their health care exchanges and prevents such plans from discriminating against those who do not want to participate in abortion. The Act also prevents government bodies from discriminating against health care providers who do not want to participate in assisted suicide. While these conscience protections are in place, the Department of Health and Human Services' contraceptive mandate policy is authorized under the Act, which does not include complete conscience protections for payers or entities. The Act also does not solidify existing federal conscience protections that currently must be renewed each year.

PRAYER *for* GOVERNMENT

We pray you, O God of might, wisdom, and justice, through whom authority is rightly administered, laws are enacted, and judgment decreed, assist with your Holy Spirit of counsel and fortitude the President of these United States, that his administration may be conducted in righteousness, and be eminently useful to your people, over whom he presides; by encouraging due respect for virtue and religion; by a faithful execution of the laws in justice and mercy; and by restraining vice and immorality. Let the light of your divine wisdom direct the deliberations of Congress, and shine forth in all the proceedings and laws framed for our rule and government, so that they may tend to the preservation of peace, the promotion of national

happiness, the increase of industry, sobriety, and useful knowledge; and may perpetuate to us the blessing of equal liberty.

We recommend likewise, to your unbounded mercy, all our fellow citizens throughout the United States, that we may be blessed in the knowledge and sanctified in the observance of your most holy law; that we may be preserved in union, and in that peace which the world cannot give; and after enjoying the blessings of this life, be admitted to those which are eternal.

Archbishop John Carroll, SS²

Excerpt from
“OUR FIRST, MOST
CHERISHED LIBERTY”

A Statement on Religious Liberty: United States Conference of
Catholic Bishops Ad Hoc Committee for Religious Liberty³

We are Catholics. We are Americans. We are proud to be both, grateful for the gift of faith which is ours as Christian disciples, and grateful for the gift of liberty which is ours as American citizens. To be Catholic and American should mean not having to choose one over the other. Our allegiances are distinct, but they need not be contradictory, and should instead be complementary. That is the teaching of our Catholic faith, which obliges us to work together with fellow citizens for the common good of all who live in this land. That is the vision of our founding and our Constitution, which guarantees citizens of all religious faiths the right to contribute to our common life together.

Freedom is not only for Americans, but we think of it as something of our special inheritance, fought for at a great price, and a heritage to be guarded now. We are stewards of this gift, not only for ourselves but for all nations and peoples who yearn to be free. Catholics in America have discharged this duty of guarding freedom admirably for many generations.

In 1887, when the archbishop of Baltimore, James Gibbons, was made the second American cardinal, he defended the American heritage of religious liberty during his visit to Rome to receive the red hat. Speaking of the great progress the Catholic Church had made in the United States, he attributed it to the “civil liberty we enjoy in our enlightened republic.” Indeed, he made a bolder claim, namely that “in the genial atmosphere of liberty [the Church] blossoms like a rose.”

From well before Cardinal Gibbons, Catholics in America have been advocates for religious liberty, and the landmark teaching of the Second Vatican Council on religious liberty was influenced by the American experience. It is among the proudest boasts of the Church on these shores. We have been staunch defenders of religious liberty in the past. We have a solemn duty to discharge that duty today.

We need, therefore, to speak frankly with each other when our freedoms are threatened. Now is such a time. As Catholic bishops and American citizens, we address an urgent summons to our fellow Catholics and fellow Americans to be on guard, for religious liberty is under attack, both at home and abroad. ■

focus

Volume 41, Number 2
May 2013

focus is published by the
Michigan Catholic Conference
510 South Capitol Avenue
Lansing, Michigan 48933

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1. USCCB, Secretariat for Pro-Life Activities: *Current Federal Laws Protecting Conscience Rights*, July 2012.
<http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf>
2. From his 1791 Prayer for Government, recited in parishes throughout his diocese.
3. Statement can be read in full at <http://www.usccb.org/issues-and-action/religious-liberty/our-first-most-cherished-liberty.cfm>