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Contra Gerson

Michael Sean Winters | Feb. 5, 2013 Distinctly Catholic

Michael Gerson takes issue with the new HHS contraception mandate revisions in his column at the Washington Post [1]this morning, and he suggests that ?it seems less like the parting of the Red Sea than a parlor trick.?

Of course, two paragraphs later, he acknowledges that the administration did away with the pernicious four-part definition of a religious institution that was the real stumbling block for Catholics on both the left and the right. So, the White House did something here.

Gerson states that the ?accommodation for religious charities, colleges and hospitals is effectively unchanged from the last version.? This is not true. What is changed is that the administration established a separate revenue stream to fund stand-alone policies that provide contraception coverage to women who work at these institutions and who want the contraception coverage. To my mind, this fact of a distinct revenue stream that reimburses the insurance companies or Third Party Administrators at self-insured institutions with a reduction in the fees they pay the federal government to participate in the exchanges is a significant changed from the last version. I was always wary of the ?cooperation with evil? analysis, because it is the nature of insurance to pool resources. But, now, it seems to me that no one can make the case that the insurance policy of the religious institution is itself the vehicle for the coverage. The new policies are stand alone and someone else is paying for them. The cooperation with evil argument is simply not applicable.

I was especially disheartened to see Gerson quote from the same National Review Online article that Archbishop Chaput cited, an article by Yuval Levin. The quote Gerson employed is this: ?The religious institutions are required by the government to give their workers an insurer, and that insurer is required by the government to give those workers abortive and contraceptive coverage, but somehow these religious employers are supposed to imagine that they?re not giving their workers access to abortive and contraceptive coverage.? Huh? These religious institutions have given their workers an insurer for decades because the Gospel requires it, not the government. That is their intention. I might also add that it is in the self-interest of these institutions to offer insurance coverage. I can?t imagine a university having much luck hiring faculty if it did not offer insurance. And, last time I checked, our entire constitutional system is about the management of self-interest.

Gerson goes on to lament that the administration made no attempt to deal with situations of for-profit employers who, motivated by their religious beliefs, do not want to fund contraceptive care. I suspect a Republican administration would likewise be wary of arguing that an employer has the right to determine what coverage an employee can and cannot obtain. A lot of people don?t like their boss. And, while a person who goes to work at Notre Dame knows they are joining a Catholic institution, I think most applicants for jobs do not know, or care, about the religious beliefs of the company?s owners. If the company is an EWTN or a Hobby Lobby, I suspect these companies have a good legal case under RFRA. A Taco Bell, not so much.

Gerson points to the administration?s brief in Hosanna-Tabor v. EEOC as evidence of their secularizing agenda, and he sees the remnants of that agenda in these ?cosmetic concessions.? Actually, I think the concessions are more than cosmetic, especially the new revenue stream. But, more to the point, maybe these concessions came about because the administration recognized it got spanked in Hosanna-Tabor and does not want a repeat.

I am disappointed in Gerson?s breezy dismissal of what still strikes me as a significant accomplishment and, politically, something of a miracle. As I wrote on Friday, it is not like the White House felt it owed the bishops anything. And, additionally, I do not see many Republican congressmen jumping into the fray to take on this issue. I suspect that being portrayed as opposing contraception is the last thing the GOP wants now. Politically, the revisions were a miracle. Legally, I think the revisions promise a path towards making the mandate work in ways that do not offend religious freedom. But, if cultural conservatives just want to fight another battle over this issue, nothing will keep them from seeing efforts to adjudicate any remaining problems as futile or worse. Mr. Gerson is not a Catholic, so he may be unfamiliar with our proud tradition of casuistry, but it is that disposition, the disposition to resolve differences, not accentuate them, that is needed at this moment. Rejectionism is a bad strategy politically and its aura of moral purity is betrayed by its conformity with conservative political strategies and prejudices. Gerson knows better or he should. Let?s hope the bishops do as well.

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