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Provocative Article on HHS Mandate

Michael Sean Winters | Apr. 12, 2013 Distinctly Catholic

More Provocation.

Steven Smith, writing at PENNumbra [1], looks at the RFRA claims against the HHS mandate. I think he is right that the issue for the courts is not whether or not the mandate burdens religion. It is enough for a Church to say that it does. We don't want courts deciding what does and does not constitute a religious burden, comparing doctrinal positions with polling data. The question is an easy one to sustain a RFRA challenge to the mandate: Did the government mandate the least burdensome means of achieving their stated objective?

I want to be clear on this because I think some people have misunderstood my stance on the mandate at this point. I think Catholic institutions, including the USCCB, should accept the accommodations the administration has offered - with all the caveats, of course, like figuring out the self-insured, etc. I think the bishops have bought into a very narrow understanding of cooperation with evil that has led them to be unduly suspicious of the accommodations. But, it is up to the bishops to decide that, not the courts. The courts should not have an opinion about whether or not the Catholic bishops understand that cooperation with evil need not be so narrowly understood. The courts have only to find if the mandate is the least burdensome means of achieving the government's goals.

(h/t to Rick Garnett at Mirror of Justice for sending it along.)

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Links:
[1] http://www.pennumbra.com/debates/debate.php?did=48