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Becket Replies to MSW

Michael Sean Winters | Jan. 7, 2014 Distinctly Catholic

This weekend, my friends at the Becket Fund asked if they could reply in these pages to my recent articles regarding their claim that the forms used to certify a religious organization?s objection to providing contraceptive services under the HHS mandate is really a ?permission slip.? I have labeled that claim ?a lie.? Here is the response from Daniel Blomberg, Legal Counsel at the Becket Fund and I am delighted to print it in its entirety:

The Becket Fund agrees with Michael Sean Winters about his initial strong stand against the HHS Mandate and his position that the Little Sisters of the Poor ?should . . . be treated the same [1]? as the Catholic bishops and receive an exemption from the Mandate. But, contra Mr. Winter?s recent blog posts, the form that the federal government is forcing the Little Sisters to sign to comply with the HHS Mandate is a ?permission slip? that makes the Little Sisters complicit in a moral wrong.

We can say this with confidence not because Becket lawyers ?determine sinfulness [2],? as Mr. Winters put it, but because that?s what the Little Sisters say their religious beliefs are. The Little Sisters considered the government?s form-based ?accommodation,? found it morally wanting, and stated their religious conclusion in federal court. The Becket Fund defends that religious conclusion for the same reason that we have defended the religious obligations of Jewish [3] prisoners to eat Kosher, Sikh [4] government employees to wear the kirpan, and of Muslims [5] to build houses of worship: because Americans should not be punished by their government for living their faith. And the Little Sisters face severe punishment?they must sign the form or pay millions of dollars per year in penalties.

90% [6] of the federal courts to consider the same coercion of religious conscience that the Little Sisters face are ruling against the government. Several federal judges, including one appointed by President Obama in two different [7] decisions [8], described the government?s self-certification form with the same ?permission slip [9] ? shorthand that Mr. Winters describes as a ?lie.? And judges using other descriptions have reached the same result [10]: ?The self certification form requires [ministries] to do much more than simply protest or object. . . . [Rather, t]he purpose and effect of the form is to accomplish what the organization finds religiously forbidden[.]?

Crucially, even the government admits that the form isn?t a simply statement of religious objection. Instead, as the Little Sisters? explained [11] to the Supreme Court, the government?s dense two-page form [12] (1) authorizes the delivery of contraceptives and abortifacients to the Little Sisters? employees, (2) creates a legal duty to provide those drugs and devices, and (3) is the means by which an insurer is paid to provide the drugs and devices. Unless the Little Sisters sign the form, none of these things happen. The government responds that, for entities like the Little Sisters with ?church plan? health insurance, it cannot currently enforce the legal duty created by the form. But it does not deny that the form creates the legal duty in the first place and both

authorizes and incentivizes obedience. Thus, the form is a ?permission slip,? and has been rejected as such by six of the seven courts to consider the government?s ?church plan? argument.

To use Michael?s analogy, then, the form isn?t like a conscientious objector certification. Rather, it?s like the government telling someone that he must go to war in violation of his beliefs or sign a form that orders his neighbor to go in his stead. One need not be a pacifist to understand that such a system is likely to prick the conscience of many pacifists. And one need not be a Little Sister to understand why signing the abortion/contraception ?permission slip? creates sincere religious objections for Catholic ministries.

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