NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

Catholic organization files class-action lawsuit to block HHS mandate

Dennis Sadowski Catholic News Service | Mar. 12, 2014
Washington

A coalition of nearly 200 Catholic dioceses, agencies and businesses has asked a federal court in Oklahoma to block enforcement of a Department of Health and Human Services mandate it says would force its members to violate their religious beliefs.

Under the banner of the recently formed Catholic Benefits Association, the entities contended in a class action lawsuit filed Wednesday that the mandate's requirement that they provide health insurance coverage for contraceptive drugs, abortifacients, surgical sterilizations and related counseling is contrary to the First Amendment's free exercise, establishment and free speech clauses.

The mandate -- under rules issued by HHS -- requires nearly all employers to provide such coverage for their employees in their company health plan. It includes a narrow exemption for some religious employers that fit certain criteria.

The lawsuit said the regulations under the Affordable Care Act are discriminatory because some religious entities and ministries are exempt while others are not.

The lawsuit filed in the U.S. District Court for the Western District of Oklahoma seeks a preliminary injunction to block the mandate as it applies to association members.

Named as defendants were Kathleen Sebelius, HHS secretary; Thomas E. Perez, secretary of the Department of Labor; Jacob J. Lew, secretary of the Department of the Treasury; and each of those departments.

The array of plaintiffs are the Catholic Benefits Association and its subsidiary, the Catholic Insurance Co., both incorporated in Oklahoma; the archdiocese of Oklahoma City; Catholic Charities of the archdiocese of Oklahoma City; All Saints Catholic School in Norman, Okla.; Archbishop William Lori of Baltimore; the archdiocese of Baltimore; Villa St. Francis Catholic Care Center, Inc. in the archdiocese of Kansas City, Kan.; and Good Will Publishers in Gastonia, N.C.

Attorney L. Martin Nussbaum, a partner in the law firm Lewis Roca Rothgerber, represents the plaintiffs. Based in Colorado Springs, Colo., he has represented archdioceses and dioceses and various Catholic and religious entities in legal matters largely revolving around religious freedom concerns for more than a decade.

Lori, chairman of the association's board of directors, said the new organization offered Catholic entities the best option to legally challenge the mandate.

"The CBA gives a vehicle for many dioceses that would not find it opportune to bring suit to do so in a manner that has a higher possibility of success. That's very important. I also think it is a further expression of our desire to promote and defend religious freedom not just in the abstract but indeed in a very real issue that affects Catholic employers and Catholic employees," he told Catholic News Service on Wednesday.

"We will understand how to help Catholic employers to obtain morally sound insurance in the most cost effective and least disruptive way," he added.

In a statement released as the lawsuit was filed, Archbishop Paul Coakley of Oklahoma City said Catholic entities across the country objected to the mandate.

"We as Catholics, regardless of the corporate structure within which we work, cannot in good conscience provide employees with insurance that covers contraception, abortifacients and sterilization, which undermine the dignity of the human person and the sanctity of human life and also jeopardizes the physical and mental health of those who use them in untold ways," the statement said.

"It is my prayer that the courts will recognize that the federal government has no clear and compelling public interest that justifies our free exercise of religion by requiring us to pay for conscience-violating drugs and procedures," it said.

Nussbaum told CNS the Catholic Benefits Association was formed in January after months of discussions. Its subsidiary, the Catholic Insurance Co., was incorporated shortly before the lawsuit was filed.

Nussbaum declined to comment about the case but said the new Catholic association and insurance company were started in response to the requirements of the Affordable Care Act and the ongoing legal cases challenging the HHS mandate filed by numerous religious organizations.

The Catholic Benefits Association is comprised of Catholic employers "committed to providing life-affirming health coverage consistent with Catholic values," the organization's website said.

"This is an extremely viable option to provide good quality health care at competitive prices that is compliant with Catholic teaching," Nussbaum said of the association's insurance component.

Four archbishops make up the association's board of directors: Archbishop Coakley, Archbishop Lori, Archbishop Charles Chaput of Philadelphia and Archbishop J. Peter Sartain of Seattle.

In addition to allowing Catholic entities to offer health care coverage in line with church teaching, the association also will provide legal advocacy to protect the religious liberty of its members, the website said.

The association charges monthly dues of 50 cents per employee with a maximum cost of $2,000 per month. The association also adds what the website describes as a "litigation fee" of $1 per covered employee for legal work related to lawsuit against the HHS mandate. Again, the maximum cost is $2,000 monthly for an association member.

"If the litigation is successful, that fee may be partially refundable," the website said.

The association's insurance component is described on the website as an association captive, stop-loss insurance company. The arrangement allows members of the association that offer health care coverage through an insurance carrier or self-funded medical plans to take advantage of stop-loss insurance for unexpected costs they may incur.

Joining such an association allows members to take advantage of reduced costs for the same benefit package offered to employees. Having headquarters in Oklahoma gives the association additional tax advantages, the website said.

The association also allows Catholic entities to join without taking advantage of the insurance component.

In a column in the March 7 issue of *The Colorado Catholic Herald*, newspaper of the diocese of Colorado Springs, Nussbaum hinted at some of the arguments that would be part of the lawsuit. He wrote that regulations governing implementation of the Affordable Care Act "includes a seldom noted system of discriminatory religious classifications."

He said the health insurance law creates four classes of organizations religiously opposed to the mandate: those excused, those who direct a third party to provide insurance coverage, those who are protected under the Religious Freedom Restoration Act and those that must provide the coverage or pay fines up to $36,000 per employee annually.

Nussbaum carefully constructed his argument, outlining how the religious freedom of organizations falling into each classification was being violated even as the government determined that other religious entities met criteria for being exempt from the mandate.

"There is a word for this classification system: discrimination," Nussbaum wrote. "It is the government choosing religious winners and losers -- a practice discredited by 1,600 years of Western history and forbidden in America as an establishment of religion."

Source URL (retrieved on *11/29/2015 - 20:09*): http://ncronline.org/news/politics/catholic-organization-files-class-action-lawsuit-block-hhs-mandate