

HHS, Immigration & the Estuary

Michael Sean Winters | Jun. 18, 2012 Distinctly Catholic

The estuary where politics and religion meet experienced something like an earthquake, actually two of them, on Friday. First came the news that President Obama was instituting a new policy regarding undocumented immigrants who were brought to this country as children. Then came the news that the Catholic Health Association had been unable to work out the details regarding the conscience exemptions from the HHS mandate, and its comment on the HHS rule which called upon the administration to scrap the unworkable four-part definition of what is or is not a religious organization, employ exemption language from elsewhere in the federal code, and devise a different vehicle, such as Title X or the exchanges the Affordable Care Act sets up, for delivering the preventive services they seek. In case you missed it, I wrote a rare Saturday post on the HHS issue [here](#) [1].

The President's decision is limited to what can be achieved by executive order, without legislation. The change in immigration policy does not open a pathway to citizenship for the youngsters affected, but it will grant them work authorizations and it will protect them from capricious deportation orders, provided the undocumented attend or graduate from high school and do not run afoul of the law. It is a step in the right direction, to be sure, but there are many steps yet to be taken.

The USCCB was quick to put out a statement praising the President for the step he took on immigration. "This important action will provide legal protection, and work authorization, to a vulnerable group of immigrants who are deserving of remaining in our country and contributing their talents to our communities," said Archbishop Jose Gomez, Archbishop of Los Angeles and chair of the USCCB Committee on Migration. "These youth are bright, energetic and eager to pursue their education and reach their full potential." Archbishop Gomez should be careful. Perhaps at the next plenary meeting of the USCCB, Archbishop Naumann will warn that the Migration Committee is "perceived" as being partisan, just as Naumann said the Domestic Policy Committee was "perceived" as being partisan. Interesting that Naumann did not voice any concerns about the religious liberty issue being perceived as partisan.

Archbishop Gomez's statement reaffirmed the bishops' commitment to comprehensive immigration reform nor for enactment of the DREAM Act, which would open a pathway to citizenship for young people who either serve in the military or attend college. Gomez did not quote the Scripture, but he might have: The sins of the fathers are not visited upon the children. Jeremiah 31:29 is quite apt: "In those days they shall no longer say, 'The fathers have eaten sour grapes, and the children's teeth are set on edge.' But everyone shall die for his own sin."

It will be interesting, indeed, to see how Mr. Romney responds to the president's policy change. So far, he has been evasive. And, it will also be curious to see if groups like Catholics and Evangelicals Together will bestir themselves on this issue, setting aside their perusal of the Federalist Papers long enough to recall the words of Jeremiah. Certainly, some evangelicals have joined the Catholic Church in recognizing the exceedingly harmful effects on families of our current immigration policy. But it will be, well, not exactly fun but enlightening in an ironical way, to see how many times conservative evangelicals and Catholics call Mr. Romney "pro-family" so

long as he continues to stand by the proposition that self-deportation is the best solution for immigration and oppose reform of our immigration laws that separate families.

There is nothing interesting about the responses to CHA's comment on the HHS mandate. Boring predictability has been the norm. From the right, [Tom Crowe at CatholicVote.org](#) [2] has a finely polished piece of agitprop that begins, "Sister Carol Keehan utterly, tragically, misses the point." Mr. Crowe goes on to fret about some friends of his who own a small business, making cabinets, and are worried that they will have to provide health insurance that covers procedures they find objectionable. It is not a small worry and the issue of individual conscience exemptions is not unimportant. But, what if Mr. Crowe makes new friends, who happen to believe that blood transfusions are immoral: Should those employers be able to deny coverage of such transfusions to their employees? What recourse would the employees have? Of course, if someone goes to work at the national headquarters of the Jehovah's Witnesses, you know, or should know, what you are signing up for and I support the right of the Jehovah's Witnesses to decline to offer coverage of procedures they find morally offensive to employees of any of their ministries. Crowe can make the argument that the contraceptive mandate is wrong-headed. He can insist that it is different from, say, the legal requirement that public establishments not discriminate on the basis of race. I would tend to agree with him actually in such an argument. But, it is not a religious liberty argument and it is not an argument that should necessarily concern a trade association of Catholic hospitals. As well, as the discussions in Atlanta showed last week, the bishops themselves have come to appreciate that there are difficulties in arguing for individual conscience exemptions, difficulties that do not pertain to the immediate challenge of fighting any legal definition that draws an arbitrary distinction between a church's worship and its ministries.

From the left, comes [a post at the Washington Monthly from Randolph Brickey](#) [3], who is identified only as "an attorney in solo practice in Northern Virginia." He makes two astounding claims. Regarding the HHS mandate, he states that the rule was nothing more than a "federal codification of existing state law." Hmmm. First of all, the rule is a codification of some state law, not other state law, and the difference is important. It is also the case that a federal mandate bears a different color than a state mandate. But, most importantly, Mr. Brickey fails to note that, with the exception of Massachusetts, no other state compels anyone to purchase insurance in the first place, so it is easy enough to avoid a state mandate. I would not hire this man to be my lawyer, that is for sure. (h/t to Tom Berg at [Mirror of Justice](#) [4] for the link to Brickey.)

Brickey's other astounding claim is the more pernicious morally. He claims that Sr. Carol "caved" under pressure from "the conservative upper echelons of the Church." Is their evidence for such a claim. As I mentioned on Saturday, similar aspersions were thrown at Cardinal Wuerl and Father Jenkins when they joined a lawsuit against the HHS mandate. To ascertain someone's motives, you need evidence, say, a pattern of behavior. Does Mr. Brickey have evidence that Sr. Carol "submitted" or "surrendered" to anyone? In fact, as her statement makes clear, the CHA embraced the accommodation when it was first announced, because the accommodation itself promised to work out the details. The details have not been worked out. The CHA did not "change" its position, let alone "cave." The CHA expected, as the administration promised, that the spirit of accommodation would iron out the difficulties. That did not come to pass. It may yet come to pass "certainly, nothing CHA stated last Friday in its comment sounded like an ultimatum to me. But, to suggest that somehow Sr. Carol "of all people!" "caved" to any outside pressure, be it from the White House or from the USCCB is as absurd as it is morally offensive. Sr. Carol is a diminutive woman, to be sure, but you need only five minutes with her to discern a backbone of steel, backed by expertise developed over years of sifting through legislation, medical manuals, and the like, rooted ultimately in her commitment to carry on the healing ministry of Jesus. If you don't know that about Sr. Carol, Mr. Brickey, you know nothing.

It remains to be seen how these two issues "immigration and the HHS mandate" will play out. Certainly, if the White House wants to do itself a favor, it should take Sr. Carol's advice. I also am perplexed that groups like Planned Parenthood and the Pro-Choice Caucus are not enthusiastically supporting Sr. Carol's comment: As she

pointed out, the government can easily find a way to deliver those services to women who work at exempt institutions, making access essentially universal. The current exemptions leave some women un-covered by the mandate, not a lot, but some. Why not find a better vehicle, like Title X or the exchanges, that delivers universal coverage? On the USCCB front, if the administration nixes the obnoxious four-part definition of a religiously exempt institution and uses the language Sr. Carol suggests, the USCCB would take that deal in a heart beat. And, then, instead of being engaged in a political battle with the Catholic Church, a battle that not only is unhelpful to Obama's re-election effort but prohibitively unhelpful to the chances of several Democratic House candidates in more conservative districts, Obama and the Democrats would find the USCCB supporting them on a range of issues from protecting anti-poverty programs to the push for immigration reform. Sr. Carol did not spike the ball. She gently lobbed it over the net into the administration's court. It is up to the White House and HHS to decide if they want to lob it back or just throw down their racket and quit.

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[2] <http://www.catholicvote.org/discuss/index.php?p=31466>

[3] http://www.washingtonmonthly.com/political-animal-a/2012_06/catholic_health_association_ca037988.php

[4] <http://mirrorofjustice.blogs.com/mirrorofjustice/2012/06/catholic-health-association-calls-for-broader-contraception-mandate-exemption.html>