

Is religious liberty being hijacked?

Michael Sean Winters | May. 29, 2012 | Distinctly Catholic

The U.S. bishops are facing some choices in the weeks ahead. In June, their annual summer meeting may not be the most well attended event, in part because many bishops absent themselves from the summer meeting in any event and this year because the meeting coincides with the International Eucharistic Congress in Ireland. But, two issues must be faced: First, in the subsequent "Fortnight for Freedom," scheduled for the end of June, in their efforts to rescind the mandate, will they focus on the rights of Catholic institutions to be free from government interference or will they over-reach and continue to claim a conscience right for individual, non-ecclesiastical and, in some instances, for-profit employers. Second, will the bishops be focusing on the issue of religious liberty in all its variety or exclusively on the HHS mandate.

During two interviews over the past few days, one on EWTN and one on Fox News Sunday, Washington's Cardinal Donald Wuerl spoke exclusively about the need to rescind the four-part definition of what is and is not a religious institution for purposes of receiving an exemption from the mandate. That definition requires exempt institutions to qualify as non-profit under the tax code, be primarily focused on the inculcation of religious values, primarily hire co-religionists and primarily serve co-religionists. This four-part definition is more restrictive than any other conscience exemption language currently in the federal code and objection to its differentiation between the Church and its ministries was the very point that created such a large swath of opposition from across the political spectrum to President Obama's January decision not to expand the four-part definition. His subsequent "accommodation" leaves that four-part definition in place as a precedent for future legislation and rule-making, even though the HHS and the White House insist it is not a precedent. This raises the question: If it is not a precedent, why is the administration so relentlessly refusing to change it?

The various lawsuits filed last week by more than forty plaintiffs all focused on the ways this four-part definition is objectionable, involving the government in the kind of determinations that require excessive entanglement. The definition subverts, for Catholics, the very heart of our faith, which calls us not only to worship on Sunday morning but to care for the poor and the marginalized regardless of their faith. The definition seeks to make our Catholic charities and hospitals and universities either conform to the standards of the culture or turn inward on themselves. Catholics who have come to embrace the President's subsequent accommodations, especially those Catholics on the left who tend to be especially interested in the Church's social justice ministries, would do well to think about this: What kind of "solution" would leave this four-part definition in place?

The USCCB has also, all along, raised a related but fundamentally different issue regarding the mandates: Should individual employers, who are in no sense a part of the Church, nonetheless be able to opt out of the mandate for religious reasons? This is the famous "Taco Bell" analogy. For years, the bishops have been concerned, for example, about making sure Catholic health care workers are not forced to participate in the performance of abortions. Some groups have been concerned that county clerks should not have to issue marriage licenses to same-sex couples, or that the local K of C Hall should not have to rent space to a pro-choice group. These examples are all different: Should a county clerk, whose job is executive in nature, be able to ignore a law passed by competent legislative authority? More importantly, if part of the reason the Church

objects to same-sex marriage is that individuals cannot violate the natural law, even if they invoke their conscience, how can a state functionary be permitted to become a law unto himself by refusing to grant a license? It just doesn't make sense. On issues of such conscience exemptions, the best course is to draw as bright a line as possible around abortion and let the K of C deposit that rental check, remembering the words of Jerry Falwell when he found out that the Moonies had secretly, through various channels, given money to his ministries and some of his more zealous adherents called on him to return the money as tainted: "The Devil has had that money long enough."

The rights of conscience are important in our culture, but they are not absolute. We Catholics do not believe a person has a conscience right to an abortion. We do not believe a citizen has a conscience right to abstain from paying taxes because they do not want their tax dollars to fund unjust wars. But, the key issue here is this: Many in our culture means something very different by "conscience" from what we Catholics mean, and not just the "aggressive secularists." For us, conscience is the voice of God speaking to us in the concrete circumstances of moral choice. For many in America today, conscience is whim or at least private judgment. We cannot advance a claim to "conscience exemptions" by feeding the beast of an individualistic notion of conscience. This was the burden of Professor Schindler's editorial in *Communio* if I read him correctly.

I would urge the bishops in the days and weeks ahead to decide: Are they going to fight for the conscience rights of our Catholic institutions or are they going to fight for the conscience rights of Taco Bell? To me, this is not a tough call.

The second issue the bishops must face is this: will the "Fortnight for Freedom" focus only on the HHS mandate or will it more broadly look at the issue of religious liberty. Last week, Bishop Stephen Blaire worried, too publicly for some, that the Church's efforts were being co-opted by partisans for an agenda that is not the Church's agenda. To a degree, this always happens of course and the bishops are not responsible for the uses to which their statements are put. Unless they, too, provide a narrative that tilts one way or the other. So, two weeks ago, we had a bulletin insert that only mentioned the HHS mandate and nothing else. I am still waiting for a document from the USCCB that highlights the seminal role of Justice Scalia's decision in *Employment Division v. Smith* in creating the mess we find ourselves in today, and I suspect I shall be waiting for that until the end of time.

I believe the bishops when they say they do not want to appear too partisan, or at least most of them. And, on the issue of religious liberty, there is an easy remedy: Every document, every sermon, every bulletin insert, should start not with the HHS mandate but with the anti-immigration laws passed by Republican legislatures and signed by Republican governors in states like Arizona and Alabama. The USCCB recently filed an amicus brief, supporting the Obama administration's challenge to the Arizona law. And, to be clear, especially in Alabama, the challenge to religious liberty at the heart of the anti-immigration law is just as profound as the threat to religious liberty at the heart of the four-part definition in the HHS mandate. By emphasizing both the anti-immigrant laws loved by the GOP and the HHS mandate from Team Obama, the bishops can make good their claim that they do not see the issue of religious liberty as a Democratic issue or a Republican one, but as an American one.

There is another area where the bishops should weigh in regarding religious liberty. [Last week, Gov. Sam Brownback of Kansas signed an "anti-sharia" bill into law.](#) [1] A spokesperson for the Governor said that he signed the law because it "makes it clear that Kansas courts will rely exclusively on the laws of our state and our nation when deciding cases and will not consider the laws of foreign jurisdictions." Hmmmm. So, if a group of parishioners decide they do not like their pastor and, having raised the money to build their church building, take the bishop to court asking for control of the church building, will the courts of Kansas say that the canon law of the Church has no bearing on the case? After all, the current Code was signed by Pope John Paul II and the Vatican is a "foreign jurisdiction." We send an ambassador to the Holy See, we do not seat a Senator from

the Holy See. Most alarmingly, I went to the website of the Kansas Catholic Conference and found not a word about the anti-sharia law, despite having an entire section devoted to religious liberty. The bishops of Kansas should bestir themselves and the USCCB should bestir themselves. If we are not willing to defend the rights of Muslims, and if we are going to wink at laws that have truly alarming implications for the Church because those laws were signed by a Republican, well, then, it is going to be difficult to say, with a straight face, that the issue of religious liberty is not being hijacked for partisan ends.

Heavy is the head that wears the miter. The bishops face some large decisions in the week's ahead and we should all pray that they will be true to their vocations, suspicious of narratives that serve partisan ends, and mindful of the fact that a Church which permits itself to become too closely identified with any political party is a Church that is running off-the-rails.

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