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

It's not (only) about contraception

Phyllis Zagano | Feb. 15, 2012 Just Catholic

There are several issues in the ongoing saga of the Patient Protection and Affordable Care Act (PPACA). While the problem is painted as a collision of the U.S. Conference of Catholic Bishops' views on religious liberty and the federal government's stated belief that "contraceptive services" are preventive health care, it's more than just that.

It is not only about contraceptive measures, abortifacients and sterilizations. It is not only about freedom of religion. The White House says the policy is set and the issue is behind us. The bishops are still all riled up. Most folks haven't the vaguest idea why.

Unraveling the skein gets quite confusing. The immediate response of some Catholic groups to the announced "compromise" was positive: Here's a solution that provides health care to all. Some, like the Leadership Conference of Women Religious and the Catholic Health Association of the United States, even issued supportive statements. Unfortunately, nobody asked the bishops.

In a brilliant political move -- do remember how important the Catholic vote can be in national elections -- the Obama administration appeared to cave. There would be an "arm's length" between the objecting employer and actual insurance company payment for "contraceptive services." So your employer would not tell you your employee-benefit insurance covers these things. Your insurance company would tell you. Then you and the company have a secret deal whereby it provides the services and no one knows anything. Rather like a Prohibition-era speakeasy.

It gets more confusing when you consider that the newer entry from the government side still seems to exempt churches and the "exclusively religious activities of any religious order."

What does that mean? What is a church? What are "exclusively religious activities"?

The main joist underneath the Obama administration's religious exemption platform is its own determination of what constitutes a "religious employer." Federal regulations say a religious employer:

- has as its purpose the inculcation of religious values;
- primarily employs persons who share its religious tenets;
- primarily serves persons who share its religious tenets;
- is an IRS nonprofit.

So, Mother Teresa would not qualify. That is, despite her motivation, Mother Teresa's works of caring for the sick without first obtaining their baptismal certificates and giving a sermon would disqualify her as a religious employer. According to PPACA definitions, she was not involved in "exclusively religious activities."

That's scary. While there will be a lot of back and forth over what constitutes a "religious employer" -- Bridgeport's Bishop William Lori said it would have helped if the White House included the bishops in the

discussion -- I think the sky has already fallen. Lori said the bishops would have explained that Catholic "ministries of charity, health care and education flow from what we believe and how we worship and how we are to live." As he told the Catholic News Service, "These are not side businesses that the church runs ... they flow from our discipleship. Therefore I do not think the government should be intruding in these things."

But to argue that a Catholic agency -- say, a hospital or social service provider -- is indeed a "religious employer" could make it ineligible for public funding. Either way, the bishops -- and by extension, all members of the church -- lose. If feeding or healing are your ministry and you want to be considered a "religious employer," fine. Do your feeding and healing with your own funds. Don't provide "contraceptive services." And don't get public funds.

It's not a stalemate. It's a checkmate. It is beginning to seem like if you want public funds then you need to slide over to the other category and provide "contraceptive services" through the speakeasy approach.

The fracas has less to do with private moral choices and religious liberty than with rewriting the First Amendment's first freedom, religion. The new code words used by major and minor administration officials are "freedom of worship," and the free exercise of religion is being reduced to free speech inside church buildings.

It comes down to the government defining "exclusively religious activities" as preaching, teaching catechism and providing sacramental services.

The bottom line: Just about anyone will have access to "contraceptive services" (including abortifacients) in one way or another. In dense government-ese and buried in the pages and pages of PPACA documentation is the fact that all insurance companies still must provide the three things Catholic teachings oppose: contraceptives, abortifacients and sterilization.

So the bishops, it would seem, can talk all they want. They are perfectly free to do so. Meanwhile, government regulations will require just about everyone to pay into an insurance pool that ignores them.

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