

***Oral Testimony of Most Reverend William E. Lori
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***On behalf of the
United States Conference of Catholic Bishops***

***Before the
Committee on the Judiciary
United States House of Representatives***

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Mr. Chairman and members of the Committee. Thank you for the opportunity to testify today. I would like to discuss the various absurd consequences that have flowed from the HHS mandate.

FIRST: “WITHOUT CHANGE” SUDDENLY MEANS “WITH CHANGE”

On February 10, HHS finalized—as the rule itself said four times, “without change”—the interim final rule imposing the mandate, announced initially last August. Despite this, a surprising number of those who objected vociferously to the initial rule were suddenly and completely satisfied.

The reason for this confusion is that the finalized rule also announced what it described as an “accommodation.” But this “accommodation” would not change the scope of the mandate and its exemption, which, as noted above, have now been finalized as-is. Instead, it would take the form of additional regulations whose precise contours are yet unknown, and that may not issue until August 2013.

In sum, for present purposes, the “accommodation” is just a legally unenforceable promise to alter the way the mandate would still apply to those who are still not exempt from it. Moreover, the promised alteration appears logically impossible, for the reasons detailed in my written testimony. Meanwhile, the mandate itself is still finalized “without change,” excluding in advance any expansion of the “religious employer” exemption. Somehow, this situation of “no change,” is heralded as “great change,” for which the Administration has been widely congratulated.

SECOND: “Choice” suddenly means “force”

Let me quote from the letter I issued in my own Diocese:

“[HHS] announced last week that almost all employers, including Catholic employers, will be forced to offer their employees health coverage that includes sterilization, abortion-inducing drugs, and contraception. Almost all health insurers will be forced to include those “services” in the health policies they

write. And almost all individuals will be forced to buy that coverage as a part of their policies.”

I emphasize this word—“force”—precisely because it is one of the key differences between a mere dispute over reproductive health policy and a dispute over religious freedom.

This is not a matter of whether contraception may be prohibited by the government. This is not even a matter of whether contraception may be supported by the government. Instead, it is a matter of whether religious people and institutions may be forced by the government to provide coverage for contraception or sterilization, even if that violates their religious beliefs.

It is not a matter of “repackaging” or “framing” this as a religious freedom dispute. It is a matter of acknowledging the basic fact that government is forcing religious people and groups to do something that violates their consciences.

THIRD: Liberalism has suddenly become illiberal

When the mandate was first proposed in August, and then reiterated in January, people and groups of all political stripes—left, right, and center—came forward to join us in opposing it. But now, the mere prospect of the “accommodation” described above has caused some simply to abandon their prior objection. In so doing, they undermine the basic American values that they would otherwise espouse.

Only in the post-mandate world might it be considered “liberal” for the government to coerce people into violating their religious beliefs; to justify that coercion based on the minority status of those beliefs; to intrude into the internal affairs of religious organizations; to crush out religious diversity in the private sector; and to incentivize religious groups to serve fewer of the needy.

FOURTH: Sterilization, contraception, and abortifacients are essential, but “essential health benefits” are not

In December, HHS acted to define the “essential health benefits” mandate, which encompasses categories of services so important that they must be included in health plans, like prescription drugs and hospitalization. But notably, HHS handed off to each state the decision what particular benefits should be mandated.

Thus, although HHS will brook no dissent regarding whether sterilization, contraception, and abortifacients, must be covered as “preventive services,” HHS is essentially indifferent regarding what is—or is not—mandated as an “essential health benefit.” As a result, genuinely beneficial items may well be omitted from coverage, state-by-state. By contrast, states have no such discretion with respect to sterilization, contraception, and abortifacients.

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In conclusion, the Respect for Rights of Conscience Act (H.R. 1179, S. 1467) would help bring the world aright again. This legislation would not expand religious freedom beyond its present limits, but simply retain Americans' longstanding freedom not to be forced by the federal government to violate their convictions.

Thank you.