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Challenging Religious Liberty: The Contraceptive Coverage Mandate

By Jaime Jordan

Religious organizations and individuals with strong religious convictions are waging an epic battle against the United States government over an issue of religious liberty. The battle is being fought in separate lawsuits in multiple jurisdictions in courthouses across the country. The issue is deceptively simple: can the government make an employer provide insurance coverage for “health care services” which violate the employer’s religious beliefs? To legal observers, this is a clash of two titanic forces: the government’s well-established right to provide for the health and welfare of its citizens versus the right of all Americans to the free exercise of their religion.

The fight is over a specific provision in the Affordable Care Act. Regulations issued under the Act by the Department of Health and Human Services require many employee health insurance plans to cover “preventive services” for women. Some of these preventive services are not controversial - for example, wellness visits and domestic violence screening. But the regulations also require health plans to cover some contraception services, and this “contraception mandate” has caused some religious individuals and organizations to draw a line in the sand.

Since its earliest days the Catholic church (and some others) consider any type of contraception to be sinful. In 1930, Pope Pius XI said: “[A]ny use whatsoever of matrimony exercised in such a way that the act is deliberately frustrated in its natural power to generate life is an offense against the law of

God and of nature, and those who indulge in such are branded with the guilt of a grave sin.”

Other faiths strongly oppose drugs labeled as “contraceptives” which result in the destruction of a fertilized human egg, or embryo. The Ethics and Religious Liberty Commission of the Southern Baptist Convention calls this type of contraception “chemical abortion.”

Religious organizations and private employers who hold these strong religious convictions question how the government can require them to provide health insurance which enables their employees to engage in immoral acts. For some faiths, enabling an immoral act is considered just as wrong as committing the sin.

The government has made a couple of efforts to protect religious organizations from having to comply with the contraception mandate. One version of the regulations exempted “religious employers,” defined in a way that included local churches, the Alabama Baptist State Board of Missions, and ministries closely affiliated with churches or conventions (called “integrated auxiliaries”). This exemption quickly proved far too narrow. Baptist colleges, Catholic hospitals, and many other religious ministries were not eligible for the exemption. The Department of Health and Human Services has proposed new rules designed to “accommodate” religious organizations, but many observers have denounced the new accommodation as too restrictive at best, or meaningless smoke and mirrors.

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The articles in this issue were gathered from various sources.
The opinions in the *Christian Life Report* are not necessarily the opinions of the Christian Life Commission.

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Baptist colleges and universities, such as East Texas Baptist University, Houston Baptist University, and Louisiana College, are in court arguing that religious liberty under the First Amendment should trump the government's interest in providing health care for its citizens in the form of contraception coverage. The nation's top First Amendment advocacy groups are in the thick of the fight - organizations such as the SBC's Ethics and Religious Liberty Commission, American Center for Law and Justice, The Becket Fund for Religious Liberty, Alliance Defending Freedom, and the Christian Legal Society.

Granting broad religious freedoms to religious organizations is easier than defining the boundaries of the religious liberty enjoyed by individuals who own for-profit businesses. Certainly individual Americans have rights to religious freedom. It is easy to argue that a Baptist deacon who owns a construction

company should be exempt from the contraception mandate. But can Wal-Mart assert a right of religious freedom? If a majority of General Motors' shareholders adopt a statement of religious convictions could GM claim that the contraception mandate violates its religious freedom? How would such rights be reconciled with existing laws that prohibit religious discrimination by employers? Courts will have to decide where to draw the line.

Baptists have a long and proud heritage of standing up for religious liberty. Reasonable minds can, and do, differ on how broad the First Amendment right to the free exercise of religion should be. Still, most Americans who cherish our "first freedom" agree that the government must not be able to force a non-profit organization founded on religious principles to violate its religious convictions in the absence of a truly compelling need to protect its citizens.

James D. ("Jaime") Jordan has been a partner in the Nashville, Tennessee, firm of Guenther, Jordan & Price since 1983.

SELECTED EXCERPTS FROM RECENT FILINGS AND LEGAL DOCUMENTS

Religious liberty is embedded in our Nation's DNA. Respect for religious conscience is not an afterthought or luxury, but the very essence of our political and social compact.

Religious liberty is among America's most distinctive contributions to humankind. But it is fragile, too easily taken for granted and too often neglected. By sharply departing from our nation's historic, bipartisan tradition of respecting religious conscience, the Mandate poses a serious threat to religious liberty and pluralism.

-Amicus Brief, *Wheaton College and Belmont Abbey College vs. Sebelius*, U.S. Court of Appeals for the DC Circuit, filed by Ethics and Religious Liberty Commission of the Southern Baptist Convention, Christian Legal Society, et al.

[T]he government issued an administrative rule ("the Mandate") that runs roughshod over the Universities' religious beliefs, and the beliefs of millions of other Americans by forcing them to provide health insurance coverage for

abortifacient drugs and related education and counseling. The government's Mandate unconstitutionally coerces the Universities to violate their deeply-held religious beliefs under threat of heavy fines and penalties.

Having to pay a fine to the taxing authorities for the privilege of practicing one's religion or controlling one's own speech is un-American, unprecedented, and flagrantly unconstitutional.

- Complaint, *East Texas Baptist University and Houston Baptist University vs. Sibelius*, U.S. District Court, Southern District of Texas, filed by The Beckett Fund for Religious Liberty.

The Mandate adopts a particular theological view of what is acceptable moral complicity in provision of abortifacient coverage and imposes it upon all religionists who must either conform their consciences or suffer penalty.

- Complaint, *Louisiana College vs. Sibelius*, U.S. District Court, Western District of Louisiana filed by Alliance Defense Fund.

RESOLUTION ADOPTED BY SBC MESSENGERS ON THE CHANGE OF MEMBERSHIP POLICY OF THE BOY SCOUTS

WHEREAS, For more than a century, the Boy Scouts of America (BSA) has been a values-based boys organization designed to “prepare young people for a lifetime of character and leadership,” equipping them “to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law”; and

WHEREAS, The Scout Oath contains language that is consistent with belief in God and biblical precepts that serve as the basis for Christian faith: “On my honor I will do my best to do my duty to God and my country and to obey the Scout Law; to help other people at all times; to keep myself physically strong, mentally awake, and morally straight”; and

WHEREAS, The leadership of the Boy Scouts throughout its history has restricted from membership and leadership those persons who would affect the group’s ability to advocate its viewpoints in regard to belief in God and His moral precepts; and

WHEREAS, In 1992, and again in 2000, the Southern Baptist Convention adopted resolutions affirming the Boy Scouts in their stand that homosexual conduct is inconsistent with the obligations of the Scout Oath, encouraging the BSA “to maintain its historic commitments” (1992) and “to hold fast to its traditional ideals” (2000); and

WHEREAS, The United States Supreme Court ruled in 2000 that the constitutional right to freedom of association allows a private organization, as part of its “expressive message,” to exclude a person from membership when “the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints” and that allowing homosexuals as adult leaders would interfere with that message (Boy Scouts of America et al. v. Dale); and

WHEREAS, In 2004, the Boy Scouts adopted a policy statement that said, in part, “Boy Scouts of America believes that homosexual conduct is inconsistent with the obligations in the Scout Oath and Scout Law to be morally straight and clean in thought, word, and deed”; and

WHEREAS, In 2012, an eleven-person committee appointed by the National Council of the Boy Scouts completed a two-year study and reported its unanimous decision that the Boy Scouts retain the current policy as outlined above; and

WHEREAS, NBC News reported in breaking news on January 28, 2013, that the BSA executive leadership, in concert with certain members of the BSA board of directors, was poised to change the Scouts’ historic policy at its February 4–5 board meeting the following week to allow avowed homosexuals into membership and leadership positions within the Boy Scouts of America; and

WHEREAS, During the week between when news broke of this proposed policy change and the February board meeting, the Boy Scouts received an outpouring of feedback from Scouts, Scouting families, sponsoring organizations, and the American public; and

WHEREAS, On February 6, 2013, the BSA board determined that, “due to the complexity of this issue, the organization needs time for a deliberate review of its membership policy”; and

WHEREAS, The National Council of the Boy Scouts voted on May 23, 2013, to approve new membership guidelines that state, “no youth may be denied membership in the Boy Scouts of America on the basis of sexual orientation or preference alone”; and

WHEREAS, While those who embrace a biblical worldview are grateful that the leadership policy of the BSA remains unchanged, the executive leadership and certain members of the Boy Scouts board clearly signaled their desire to change both the membership and leadership

policies of the BSA; and

WHEREAS, This decision of the BSA is viewed by many homosexual activists as merely the first step in a process that will fundamentally change the BSA, putting the Scouts at odds with a consistent biblical worldview on matters of human sexuality; and

WHEREAS, This decision has the potential to complicate basic understandings of male friendships, needlessly politicize human sexuality, and heighten sexual tensions within the Boy Scouts; and

WHEREAS, Many Southern Baptist churches sponsor Boy Scout troops and many Southern Baptists are involved in Scouting; and

WHEREAS, The Baptist Faith and Message states that “Christians should oppose . . . all forms of sexual immorality, including adultery, homosexuality, and pornography,” and Southern Baptists consistently have expressed their opposition to the normalization of homosexual behavior in American culture through more than a dozen resolutions over the past thirty years; now, therefore, be it

RESOLVED, That the messengers to the Southern Baptist Convention meeting in Houston, Texas, June 11–12, 2013, express our continued opposition to and disappointment in the decision of the Boy Scouts of America to change its membership policy; and be it further

RESOLVED, That we express our gratitude for the thousands of individuals within the Scouting family and the culture at large who expressed their opposition to the BSA executive leadership’s intent to change its membership and leadership policies in regard to homosexuality, leading to the compromise recommendation it presented to the BSA National Council; and be it further

RESOLVED, That we express our gratitude to each voting member of the National Council who voted in opposition to the policy change for membership; and be it further

RESOLVED, That we express our well-founded concern that the current executive leadership of the BSA, along with certain board members, may utilize this membership policy change as merely the first step toward future approval of homosexual leaders in the Scouts; and be it further

RESOLVED, That we call on the Boy Scouts to remove from executive and board leadership those individuals who, earlier this year, sought to change both the membership and leadership policy of the Scouts without seeking input from the full range of the Scouting family; and be it further

RESOLVED, That we affirm the right of all families and churches prayerfully to assess their continued relationship with the BSA, expressing our support for those churches and families that as a matter of conscience can no longer be part of the Scouting family; and be it further

RESOLVED, That we encourage churches and families that remain in the Boy Scouts to seek to impact as many boys as possible with the life-changing Gospel of Jesus Christ, to work toward the reversal of this new membership policy, and to advocate against any future change in leadership and membership policy that normalizes sexual conduct opposed to the biblical standard; and be it further

RESOLVED, That we encourage churches that choose to sever ties with the Boy Scouts not to abandon their ministry to boys but consider expanding their Royal Ambassadors ministry, a distinctively Southern Baptist missions organization to develop godly young men; and be it finally

RESOLVED, That we declare our love in Christ for all young people regardless of their perceived sexual orientation, praying that God will bring all youth into a saving knowledge of our Lord Jesus Christ.



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F A C T S & I S S U E S

Compiled by Keith Hinson — Associate for Public Relations & Christian Ethics
Alabama Baptist State Board of Missions, (334) 613-2289, khinson@alsbom.org

We can boycott and protest and register our outrage, but Satan is undisturbed by all that bluster. Satan isn't afraid of culture warriors or values votes; Satan is afraid of a crucified Galilean who has a great deal of trouble staying dead for very long. We can't fight like the devil to please the Lord. — *Russell Moore, president of the Ethics & Religious Liberty Commission, report to the 2013 annual meeting of the Southern Baptist Convention*

We are past time in addressing the issue of pornography in the church. There must be an urgency about doing everything possible to start the discussion in every church. No church and Christian home is unaffected by pornography. — *Jay Dennis, pastor of First Baptist Church at the Mall in Lakeland, Fla., "Launching a 'Hardcore Battle Plan'," Baptist Press, June 18, 2013*

Prejudice plays a large role in the New Testament. Jews hated the Samaritans because they'd lost their Jewish DNA and because they didn't worship in Jerusalem. The disciples must've been shocked when Jesus told them to take the gospel to Samaria (Acts 1:8). Philip obeyed and saw many Samaritans coming to Christ (Acts 8). The Lord even gave Samaria a "mini-Pentecost" similar to the one in Jerusalem to

demonstrate his acceptance of the Samaritans into the church. — *Michael Brooks, professor of communications, Judson College, "Reflections: On Prejudice," June 5, 2013*

When families center their life and activities in the local church, the world will be a better place. When parents live out what they say in the public arena in the privacy of the home, when families take back the role of teaching their children the ways of God, when families serve God with their heart and soul, mind and strength: Yes, the world will truly be a better place. — *Jeff Fuller, pastor, Rockford Baptist Church, "Going to the World!," online at <http://stonedwitnesses.blogspot.com>*

The greatest threat to America sits in church pews every Sunday morning across the land. Persons who call themselves Christians have so embraced the influences of culture that there is no longer any distinguishable difference between their lives and the lives of those who make no such claim. — *Mark Foley, president, University of Mobile, "Adjustment Is in Order," online at <http://markfoleysupdate.blogspot.com>*