A Question of Conscience

As the White House reconsiders forcing religious groups to offer coverage for contraception and abortion, the left pushes back against allowing this kind of choice

By Emily Belz

(WNS)--The Obama administration has ended the government's anti-trafficking contracts with Catholic groups, which many say are the best in the business, and insisted that under its healthcare law many Christian groups must offer insurance coverage for contraceptives and abortifacients, prompting the first lawsuit on that issue. Against that backdrop, Archbishop Timothy Dolan, president of the U.S. Conference of Catholic Bishops (USCCB), visited the Oval Office towards the beginning of November for what he described as an "extraordinarily friendly" meeting with President Obama.

"I found the president of the United States to be very open to the sensitivities coming from the Catholic community—that we're worried about an intrusion on religious liberty," Dolan said during the USCCB's fall general assembly on Nov. 14. Dolan wouldn't go into specifics of his conversation with the president, but he said, "I left there feeling a bit more at peace about this issue than when I entered."

Obama is considering expanding the religious exemption of the healthcare law, giving more latitude for religious organizations that don't want to pay for coverage of contraceptives, sterilization, or abortifacients. Department of Health and Human Services Secretary Kathleen Sebelius announced in August that the healthcare mandate for preventative services would include contraceptives. She also detailed a paper-thin religious exemption from that mandate: Only religious groups whose central purpose is "the inculcation of religious values" qualify for an exemption, and the group's employees must be primarily of one faith and primarily serve members of that faith—leaving out most religious hospitals, relief organizations, and the like.

Some religious groups pointed out that Jesus' ministry would not count as religious under this guideline if serving people of different beliefs is disqualifying. HHS is reviewing public comments it received this fall on the contraceptives rule and the exemption, and without other changes, the proposed rule goes into effect in August 2012. HHS official Richard Sorian wrote during the public comment period in late August that "we ... are open to other definitions of 'religious organizations' to ensure organizations that have religious objections to covering contraception can choose whether or not to cover these services." But Sebelius said when she announced the rule that not covering contraceptives in insurance plans "would be like not covering flu shots."

Catholics weren't the only ones to object to the rule. Representatives from religious organizations across the spectrum—Evangelicals for Social Action, the Union of Orthodox Jewish Congregations of America, Prison Fellowship, World Relief, the National Association of Evangelicals, and Notre Dame Law School, among others—sent a letter to the White House in August protesting the exemption, saying it was "narrow"
and "inadequate." The Council on Christian Colleges and Universities, representing 137 Protestant schools, also wrote a letter saying the mandate "will force most if not all of our institutions to violate their religious consciences."

In late November, Belmont Abbey College, a 1,700-student Catholic school tied to a monastery in North Carolina, filed a lawsuit against the federal government over the preventative coverage mandate. The college, which doesn't qualify as religious under the current exemption because some of its students and faculty aren't Catholic, was the first religious organization to sue over the matter. Soon after the school filed the lawsuit, the administration indicated that it was considering broadening the religious exemption. (A majority of Catholic voters supported President Obama in the 2008 election, according to the Pew Forum on Religion and Public Life, more support than John Kerry received in 2004 and Al Gore in 2000. Aside from high Catholic populations in New York, Rhode Island, and California—heavily Democratic states—the Catholic vote is concentrated in key swing states like Ohio, Michigan, and Nevada.)

"I hope they're feeling the pressure," said Lori Windham, a lawyer with the Becket Fund for Religious Liberty, which is representing Belmont Abbey College in the healthcare case. "If a law is going to burden religion, it has to be neutral and generally applicable. This law is not neutral and generally applicable." The Becket Fund lawyers argue that the administration gave exemptions to certain businesses like McDonalds and teachers' organizations, but gave almost no protection to religious groups, which have explicit constitutional protection. Belmont Abbey's lawsuit denounces not just the mandated coverage of contraceptives, sterilization, and abortifacients, but also "related education and counseling." The lawsuit says the mandate "forces Belmont Abbey College to fund government-dictated speech that is directly at odds with its own speech and religious teachings."

Planned Parenthood, NARAL, and some Democrats on the Hill are in uproar at the possibility of the change to the exemption. Planned Parenthood sent a message to supporters on Nov. 16, saying that "Tea Party Republicans and anti-women's health groups ... are trying to take away women's access to birth control—it's as simple as that." Two days later, a more panicked email went out: "There's no time to lose. We've learned that President Obama may decide at any moment whether to take away birth control coverage from millions of women." Senate Democrats raised the issue on a conference call with White House officials, dismayed at the potential reversal of what one Democrat called "the progress made in favor of reproductive rights."

The administration hasn't indicated when it may issue its decision on the religious exemption, but the government has just under two months to respond to Belmont Abbey's lawsuit. The religious community isn't cheering yet. "While there is the real possibility of a broader exemption, it remains to be seen whether it will protect all religious organizations and the conscience rights of individuals and insurers," said Bishop William Lori at the USCCB's fall general assembly. The Catholic Church has formed a new committee on religious liberty which Lori chairs, including bishops, consultants, a
lawyer, and a lobbyist. Lori announced that the church plans to introduce curriculum to educate all its members on religious liberty.

"For some time now, we have viewed with growing alarm the ongoing erosion of religious liberty in our country," Lori told the room of nodding clergy. He read from Ezekiel 33 where God describes the prophet Ezekiel as His "watchman." "We see these and other threats no longer from afar, but immediately on the horizon. ... Together we will do our best to awaken in ourselves and in our fellow Catholics and in the culture at large a new appreciation for religious liberty and a new determination to defend it."