Why Contraception Mandate Should Be Scrapped
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James Madison, the "Father of our Constitution," believed that America's distinctive commitment to religious liberty "promised a lustre to our country." And, for more than two centuries, we have been trying — sometimes succeeding, sometimes failing badly — to prove Madison right.

In recent months, this effort has been playing out in the context of new rules, recently proposed by the Obama administration's Department of Health and Human Services, that would interpret the 2010 health care law to require all new insurance plans to cover contraceptives, sterilization and even some abortion-causing drugs. A wide range of groups and citizens from all over the political spectrum have filed comments with the department, urging changes to these proposed regulations. A final decision is expected soon.

The proposed rules should be scrapped. The administration should resist the recently reported calls by some liberal Democrats to impose this sweeping and intrusive mandate, which goes well beyond any existing state law requirements dealing with contraception coverage. The rules also clearly conflict with both the moral convictions and religious obligations of many individuals, insurers and employers.

This mandate threatens to tarnish what Madison hoped would shine.

Of course, it is not always clear how a diverse political community should respect and protect religious liberty, our "first freedom." We Americans have long agreed that religious freedom matters, but we don't always agree about what it means.

Where not to meddle

Even so, some things are clear: Governments should neither require nor penalize religious belief, and they should not meddle in religious disputes or presume to resolve religious questions. Such matters are outside the competence and authority of secular officials.

In addition, governments hoping to make good on Madison's promise will sometimes accommodate religious believers and groups by exempting them from rules and requirements. This sounds like special treatment for religion, and indeed it is. Our country's founders believed that such compromises are sometimes necessary and justified, even when the rules in question are popular or seem sensible, because religious freedom is both fundamental and vulnerable.

It is true that the administration's proposed mandate includes an exemption for some religious employers, but it is so stingy as to be nearly meaningless. It does nothing for individuals or
insurers, and it applies only to employers whose purpose is "the inculcation of religious values" and that hire and serve primarily those of the same religious faith. The vast majority of religious educational, social-welfare and health care organizations — not to mention the ministry of Jesus on earth — do not fit this crabbed definition.

The proposed exemption covers only inward-looking, members-only, religious-instruction organizations while excluding those that respond to the call to feed the hungry, care for the sick, house the homeless and share the good news with strangers. Religiously affiliated hospitals, charities and universities that serve people of other religions would be vulnerable. The exemption assumes that religion is only about belief and values, not service, sacrifice and engagement. It purports to accommodate religious believers, but it actually would confine their belief.

We should hope, again, that the administration changes course.

Of course, even a community that earnestly works in good faith to respect religious liberty and conscience will sometimes have to say "no." Not all religious objections to the majority's chosen laws can be accommodated, and, frankly, some such objections should not be. Indeed, the speed limits need to apply to believers and non-believers alike. In some cases, it would be unfair to exempt some people from a burdensome law while requiring others to comply with it.

However, this is not such a case.

**Tension, trade-offs, compromise**

A more generous exemption for religious employers — indeed, the elimination of the mandate itself — would not hamstring the aims of the new health care law because nearly all employer-based insurance plans already cover prescription contraceptives. The belief that drug-induced abortion is wrong and should not be publicly subsidized is deeply and widely held, by people on all sides of the health care debate. This is not an instance in which religious believers are asking the community to compromise a core shared value, to impose harms on third parties, or to endorse an offensive or dangerous view.

It is easy to respect and protect religious liberty if everyone agrees or if governments do very little. The American situation, of course, is different. When more active governments, like ours, direct a religiously diverse citizenry, like ours, there is going to be tension and conflict, trade-offs and compromise.

Given our deep-rooted commitment to religious freedom, our goal should be to resolve this conflict in a way that does not make the radical privatization of faith the price of acting consistently with that faith.

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